

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THEODORE MANNING,

APPELLANT

RECORD ON APPEAL

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******THE FOLLOWING EXHIBITS WILL BE TRANSPORTED TO THE COURT OF APPEALS: STATE'S EXHIBIT'S 2 (STATEMENT), 3 (STATEMENT), AND 133 (CD AND TRANSCRIPT), 226 (PHOTO) AND 227 (PHOTO); DEFENDANT'S EXHIBIT'S 1 (SEARCH WARRANT) AND 2 (SEARCH WARRANT); COURT'S EXHIBITS 1 (MOTIONS LIST) AND 6 (DEFENDANT'S REQUEST TO CHARGE).**

1 rehearsed or not, and clearly, the State has almost an
2 obligation to object when testimony is being elicited
3 that is not testimony by the defendant.

4 It's a rehearsed act by the two defense attorneys.
5 Your Honor, I'd also add that the slapping that they're
6 talking about, he had testified that he was slapped one
7 time. I counted at least three slaps that the -- one of
8 the defense attorneys did. I forget who was who in the
9 thing. I think Mr. Shealey was the one that was slapping
10 Mr. May, but clearly at that point, Your Honor, I think
11 I have a right to object.

12 And, Your Honor, if you -- if the defense thinks that
13 in closing arguments that the State is not going to
14 mention the fact that this clearly was rehearsed, then
15 I think they -- they are not in this courtroom.

16 MR. SHEALEY: (Laughing.)

17 Well, Your Honor, Mr. Manning was clearly moving my
18 hand as we were demonstrating. The question of the number
19 of slaps hadn't quite come out from him.

20 It's not -- you know, it's up to Mr. Giese whether
21 he has the right to question him in cross, but he
22 interjected his personal opinion on whether this
23 demonstration was rehearsed or not. That's him
24 testifying to the jury. They got a visible reaction out
25 of it.

1 It's not appropriate. We'd move for a mistrial.

2 THE COURT: Motion is denied.

3 MR. SHEALEY: And I would ask to strike Mr. Giese's
4 characterization.

5 THE COURT: I'll consider that. I'll consider that.

6 I'll instruct the jury to disregard Mr. Giese's
7 characterization of what took place as being rehearsed.

8 MR. SHEALEY: Just in general, Judge, for the record,
9 we'd have to object to that, you know, curative.

10 THE COURT: Well, if you don't want it, that's fine.

11 MR. SHEALEY: I have to ask for it.

12 THE COURT: You have to ask for it, but you don't want
13 it?

14 MR. SHEALEY: I have to ask for it for the record,
15 but I don't know if it will do any good. You asked if
16 it would be stricken. Certainly, they'll disregard
17 anything you strike.

18 THE COURT: Okay. Well, let's just get something
19 clear. You've can't strike anything from this record.

20 MR. SHEALEY: I understand, Judge, but this --

21 THE COURT: I can tell the jury to disregard, but the
22 court reporter is taking it down.

23 MR. SHEALEY: Yes.

24 THE COURT: And if I say disregard it, she is not
25 going to stop taking it down.

1 MR. SHEALEY: I understand.

2 THE COURT: So you want me to instruct the jury to
3 disregard?

4 MR. SHEALEY: Yes, I do, Your Honor.

5 THE COURT: I'll be glad to.

6 MS. PRINGLE: And, Your Honor, I think -- just if I
7 may, this is just what we are specifically --

8 MR. GIESE: And, Your Honor, I'd object to
9 Ms. Pringle at this time having a say in this. She is
10 not the arguing party from the defense, and it's improper
11 for her to put anything on the record at this time.

12 THE COURT: Well, she's --

13 MS. PRINGLE: We feel it's actually --

14 THE COURT: She has done it for the entire trial so --

15 MR. GIESE: I understand that, Your Honor, but -- and
16 I've never objected to it, but I'm objecting to it now.

17 THE COURT: Go ahead, Ms. Pringle.

18 MS. PRINGLE: It really wasn't specifically with
19 regard to just this mistrial motion, but we are
20 specifically instructed -- the case law specifically
21 says that in order to preserve these mistrial motions,
22 we have to do them.

23 I know it's awkward and it's strange, and it doesn't
24 make any sense. It's counterintuitive that we then ask
25 for something that we have to object to, but that is what

1 we have to do to preserve it.

2 I just want to -- I just really want you to understand
3 that's why we do it that way. We're not trying to be
4 problematic, but that is the way we have to do it, to
5 preserve this, as awkward as it is.

6 THE COURT: All right. Do you want the jury back now,
7 or do you want to take a few minutes to sort of regroup?

8 MR. SHEALEY: We could take a couple minutes to
9 regroup, Judge, because we're already on the break.

10 THE COURT: All right. Stand at ease for about ten
11 minutes.

12 Now, can your witness stay in the box?

13 MR. SHEALEY: That's fine by me.

14 THE COURT: Are you okay?

15 THE DEFENDANT: Yes, sir.

16 MR. SHEALEY: Do you need to take a bathroom break
17 or anything?

18 THE DEFENDANT: No.

19 THE COURT: All right. You stay in the box.

20 We'll stand at ease for probably less than ten
21 minutes at this point. The jury has already been out.

22 (WHEREUPON, a short break was taken.)

23 THE COURT: All right. Mr. Shealey?

24 MR. SHEALEY: Yes. I just have one more matter to
25 address while we're on this topic.

1 The more I think about it, hearing from Mr. Giese
2 about how he's going to ask him on cross if it's been
3 rehearsed and all this stuff, I truly believe that
4 infringes on our attorney/client privilege. I think
5 that's objectionable.

6 I want to get it addressed from you before we have
7 to take another break or something.

8 THE COURT: I think he said he would argue it in
9 cross -- in final argument. I don't think --

10 MR. GIESE: Your Honor, I plan to ask him.

11 MR. SHEALEY: He said both.

12 THE COURT: Okay.

13 MR. SHEALEY: Your Honor, I think I would have to
14 object to it. I'm just trying to avoid sending the jury
15 out and make the argument again.

16 I think it violates attorney/client privilege to
17 ask if we rehearsed, or whatever he's going to ask, the
18 personal conversation between a defendant and his
19 lawyer.

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

21 MR. GIESE: So I guess they're arguing that I can't
22 ask him whether or not they've ever done that before?
23 Clearly, that's admissible.

24 THE COURT: He -- he says it's -- it's
25 attorney/client privilege.

1 MR. GIESE: Beg the Court's indulgence.

2 (Pause)

3 THE COURT: Asking about what was the state of their
4 pretrial preparations, something like that. I don't know
5 if --

6 MR. GIESE: So I'm not allowed to ask him whether or
7 not if he's gone over the testimony with his defense
8 attorneys, even though they're allowed to ask whether or
9 not say a victim of the State's has gone over with their
10 prosecutor? Is that -- that's --

11 MR. SHEALEY: Well, Your Honor, I mean that's a
12 different issue because Kendra Goodman is not the defendant
13 in this case. She is a witness. She doesn't have the right
14 to --

15 MR. GIESE: I didn't say Kendra Goodman.

16 MR. SHEALEY: Well, any witness in this case doesn't
17 have the same rights --

18 MR. GIESE: Well, anyone --

19 MR. SHEALEY: -- for attorney/client privilege, and
20 just obviously, there's no prejudice between the State
21 and any witness like there is between myself and
22 Mr. Manning.

23 THE COURT: All right. I'm not going to allow you
24 to ask him questions about conversations he had with his
25 counsel.

1 If you want to argue something in -- I'm not even
2 sure -- I'm not even going to address that issue. Final
3 argument is one thing, but just to be on the safe side,
4 I think that --

5 MR. GIESE: Your Honor, I think --

6 THE COURT: You can't go into anything he -- he and
7 his counsel discussed prior to trial, which may
8 include --

9 MR. GIESE: Your Honor, would it not --

10 THE COURT: We're going to go -- we're going to have
11 a demonstration or something like that, I don't know.

12 MR. GIESE: Well, Your Honor, would I be allowed to
13 ask him whether or not he's ever done the demonstration
14 before like to police or to anyone?

15 THE COURT: I don't see why not.

16 MR. SHEALEY: Well, I think he could certainly ask
17 if he's ever done it to police, but at the time he's --

18 THE COURT: We're not going to parse this thing to
19 death now.

20 MR. SHEALEY: All right.

21 THE COURT: I'm ready for the jury. Make your
22 objection when you think it's appropriate.

23 MR. SHEALEY: Yes, sir.

24 THE COURT: Bring the jury, please.

25 (WHEREUPON, the jury came into open court at

1 approximately 11:08 a.m.)

2 THE BAILIFF: The jury is seated, Your Honor.

3 THE COURT: All right. Mr. Shealey, you may
4 continue.

5 BY MR. SHEALEY:

6 Q All right. Theo, we were demonstrating what happened
7 between you and Nikki that day. Can you step down from
8 the box again?

9 THE COURT: Please position him so that the court
10 reporter can hear what he has to say.

11 MR. SHEALEY: Yes, sir. Your Honor, may we approach?

12 (WHEREUPON, a bench conference was held in the
13 presence, but not within the hearing of the jury.)

14 THE COURT: All right, ladies and gentlemen, before
15 this continues, this testimony continues, I want to ask
16 you to disregard the comment from the State implying that
17 this is a rehearsed demonstration. Just disregard that,
18 please.

19 It was probably an improper comment from the State's
20 attorney, and I order it stricken from the record.

21 You may continue.

22 BY MR. SHEALEY:

23 Q Thank you, Your Honor.

24 All right, Theo. Tell me again where, if I'm
25 Ms. McPhatter and Jim May is you, tell us where we were

1 positioned if you're standing there that day.

2 A All right. She was standing here. I'm right here.

3 (indicating)

4 Q Okay.

5 A You got your hand behind your back.

6 Q Okay.

7 A And it's -- when I come out, I'm standing here.

8 You're telling me -- you're still yelling at me about how
9 we have to make this work.

10 MR. GIESE: Your Honor, I apologize. I can't hear
11 him.

12 THE COURT: Well, I've asked him to speak up numerous
13 times. Please do it.

14 BY MR. SHEALEY:

15 Q Speak up as best you can so we can all hear you.

16 A You're yelling at me about how we have to make this
17 work, and you pull the gun out in front of you. When you
18 pull the gun out, I put my hands up. Then it's like I
19 fall back a little against the wall. You're still
20 yelling about that we need this to work; we have to make
21 this work.

22 Q Okay.

23 A And I'm telling you to stop playing, and it's
24 just -- I'm scared. I'm just -- snapped. I grabbed the
25 gun.

1 Q Okay.

2 A I wrestled it from you.

3 Q All right.

4 A Now, your back is towards the stairway.

5 Q Okay.

6 A And my back is towards the bathroom, and I have the

7 gun pointed at you.

8 Q And what hand is it in?

9 A In my left hand.

10 Q Okay. And if I'm Nikki, what am I doing at this

11 point?

12 A You're still standing there. You're still yelling

13 at me.

14 Q Okay.

15 A You're yelling about telling me about how it has to

16 work. You get the gun, and I back up. You move forward

17 and keep yelling that we have to make this work. You get

18 the gun.

19 Q Okay.

20 A Move forward and you're like telling me about how I'm

21 just like everybody else. I hurt you just like everybody

22 else hurts you. Slap.

23 Q Okay.

24 A Move back, you got the gun and you like charged, and

25 when you charged, it's like you flinched.

1 Q Okay. Now, let me stop you at this point. When
2 you're saying charged, what do you think Nikki is doing
3 at this point?

4 A I thought she was going for the gun.

5 Q Okay. So if she's got the gun, is that what she's
6 going for?

7 A (Nods in the affirmative).

8 MR. GIESE: Your Honor, let him testify. He is not
9 testifying.

10 MR. SHEALEY: I'm just --

11 THE COURT: Don't lead your witness.

12 BY MR. SHEALEY:

13 Q Okay. What happens?

14 A Nikki's charging. I think she is going for the gun,
15 and it's like she flinched and I shoot.

16 Q Okay. All right. All right. We're done with this
17 demonstration. You can have a seat back in the witness
18 box for us. Thank you.

19 I know that was hard and that was kind of rough for
20 you, but --

21 MR. GIESE: Objection.

22 THE COURT: Ask the question.

23 BY MR. SHEALEY:

24 Q Theo, I want to talk to you about what happened after
25 that gun -- after you shoot her. What happens to Nikki?

1 Does she? Where is she -- what happens to her personally?

2 A It's -- it's sort of like she -- I guess slumped
3 against the wall. I mean, the wall, she is against the
4 wall, and it's like she just sits down.

5 Q Okay.

6 A Slides down. And at the time, I thought she had
7 fainted. I mean, I couldn't tell whether she was hit
8 or -- I mean, I didn't know where the bullet had went.

9 Q Do you see any blood?

10 A I didn't see any blood. I didn't see like a hole in
11 the wall or anything. I just -- I just thought she had
12 fainted.

13 Q And what do you do at this point regarding Nikki?

14 A I mean, I just -- I immediately dropped the gun. I
15 kneeled down beside her, and I'm shaking her because I'm
16 telling her to wake up. I keep telling her to just wake
17 up.

18 Q Did she wake up?

19 A No. And I checked for a pulse, and she didn't have
20 no pulse.

21 Q Theo, do you feel that you murdered Nikki
22 McPhatter?

23 A No.

24 Q What happened?

25 A I mean, I just -- she pulled the gun on me, and I took

1 it away from her. I told her to leave, but she just kept
2 coming at me.

3 Q How did you feel?

4 A I felt terrible. I never -- I mean, I've never shot
5 anybody before. I've never shot anything before other
6 than targets.

7 Q When she had the gun on you, were you scared?

8 A Yes, sir.

9 Q But you also said you were pissed.

10 A I was pissed because I couldn't believe she
11 pulled a gun on me. I mean, there were so many different
12 emotions. All of them just -- all at the same time. It
13 was like -- I mean, it was like my heart was just beating
14 so loud and so fast, and my stomach was in my throat.

15 Q Now, when you said that she -- your words were charged
16 at you, did you feel like you could control yourself at
17 this point?

18 A No.

19 Q Theo, when she called you up wanting to see you
20 that day on May 6th, did you ever have any intention of
21 hurting her?

22 A No.

23 Q Theo, now, you said that you checked on her. She
24 didn't have a pulse, right?

25 A She didn't have a pulse.

1 Q What do you do? Where are you? What's going on?

2 A I'm upstairs. I'm on the floor beside her. It's
3 like -- it's like I'm in shock. I couldn't believe what
4 had just happened. I tried with my phone, and I just kept
5 pressing the call button.

6 All I remember is hearing a voice, and I was like,
7 "I need help." It was Kendra, and she was like, "I was
8 already on my way to your house anyway."

9 Q Now, I want to talk to you a little about Kendra.
10 We've heard from her during the course of this trial. How
11 long had you been --

12 A (Crying)

13 Q How long had you been dating Kendra or whatever you
14 were with Kendra?

15 A I've known Kendra probably three years.

16 Q Okay. And you heard her testify about thinking that
17 she was exclusive with you. Is that a fair statement on
18 her part?

19 A She -- she thought that.

20 Q Okay. Did you know her children? Did you know her
21 family?

22 A I knew her kids. I used to help her baby-sit them
23 for her, or if she needed advice on how to dress her son,
24 she would ask me.

25 Q Okay.

1 A And I met her parents. They were more, I guess you
2 would say, strict.

3 Q Did you ever help her with any bills or money or
4 anything?

5 A I would help her from time to time to pay some bills
6 when she needed it.

7 Q How did you think she was doing financially?

8 A She was always complaining about money, and she was
9 always trying to come up with a different angle on how
10 to get money or how to work someone to get money.

11 Q Okay. Now, I know you met Nikki on tagged.com. How
12 did you meet Kendra? Did you meet her on tagged.com?

13 A No, sir. I met Kendra on -- originally, I met her
14 on Yahoo. We was in a game room, and some guy was being
15 very disrespectful and rude. I -- I told him he should
16 stop that. After that, she was thankful for me just
17 taking up for her, I guess.

18 She had like a sign beside her name in parenthesis.
19 It was OBC. I was curious what it meant, so I asked her.
20 I found out that she was on onlinebootycall.com.

21 Q Okay. And for the several years that y'all were
22 together, y'all had sex?

23 A At first I didn't, but later on, yes.

24 Q Okay. And you included her in one of these six or
25 so women that you talked to us that you kind of had

1 going?

2 A Yes.

3 Q Now, the Kendra that we saw in court, is that the Kendra
4 that you know?

5 A No, sir.

6 Q How did you -- what's different about the Kendra that
7 you knew?

8 A The Kendra I know is very outgoing, very outspoken.
9 She has no problems with saying what she thinks, when she
10 thinks it. If she doesn't like something about you, she
11 will tell you.

12 Q Okay. Now, you also heard Kendra's testimony. In
13 your opinion, was she lying?

14 MR. GIESE: Objection.

15 THE COURT: Sustained.

16 BY MR. SHEALEY:

17 Q Let's get to Kendra coming over that day. You said
18 you called her on the phone, had sex. You redialed or
19 called back, isn't that what you were saying?

20 A I just kept pressing the call button.

21 Q Okay. At some point, is she there?

22 A She showed up. I mean, it was like she showed up
23 within seconds.

24 Q Okay. Where were you when she got there? Tell us
25 about her getting there, what she is doing, how she is

1 acting?

2 A When she got there, she came in, I guess through the
3 back door. I was upstairs. I had heard her. She was
4 yelling about how she wasn't -- she said she wasn't feeling
5 well so she could get out of work.

6 Q Okay. And you're upstairs where, in the hallway?

7 A I'm upstairs on the floor, kind of balled up, I guess,
8 next to Nikki.

9 Q And what does -- what does she do when she gets
10 there?

11 A When she gets there, the first thing she did was pick
12 up the gun, and she looked at me. She was like, "Don't
13 worry about it. I'll take care of everything. I'll take
14 care of everyone."

15 Q Why would she want to take care of everything?

16 MR. GIESE: Objection.

17 THE COURT: Speculation, sustained.

18 BY MR. SHEALEY:

19 Q Okay. She told you that. What was -- other than pick
20 up the gun, what do you --

21 MR. GIESE: Objection, leading.

22 MR. SHEALEY: I'm trying to ask a question.

23 THE COURT: Well, ask your question. Don't suggest
24 the answer.

25 BY MR. SHEALEY:

1 Q When she picked up the gun, what did she do next?

2 MR. GIESE: Objection.

3 MR. SHEALEY: He testified --

4 THE COURT: Overruled.

5 MR. SHEALEY: -- she picked up the gun.

6 THE COURT: Overruled.

7 THE WITNESS: After she picked up the gun, she told
8 me I need to snap out of it. I need to help her.

9 BY MR. SHEALEY:

10 Q Okay.

11 A She told me to go and put Nikki's car up in the
12 garage, and while I was doing that, she -- somehow, she
13 got Nikki down the steps, and she had Nikki at the back
14 of the car, and she told me I needed to help her.

15 Q Okay. What is going on in your head at this point?

16 A At this point, I didn't really know what to think too
17 much. I mean, I had never seen a dead person.

18 THE COURT: Can he -- could he speak up, please?

19 MR. SHEALEY: Try to speak --

20 THE COURT: I mean, the witness -- I mean, the jury
21 is having a hard time.

22 MR. SHEALEY: Try to speak up.

23 THE WITNESS: I had never seen a dead person, so I
24 don't really know what to think. I couldn't believe that
25 Nikki was really dead.

1 BY MR. SHEALEY:

2 Q Okay. And you said she -- Kendra asked you to help?

3 A She told me to lift her feet and help put her in the
4 car.

5 Q And did you?

6 A I did.

7 Q Okay. Does Kendra mop?

8 A She had some bleach in her car, and she put it in a
9 bucket that was at the house. When she went upstairs,
10 I guess she was mopping. I know when she came downstairs,
11 she was mopping.

12 Q Is this something that you asked her to do?

13 A No.

14 Q She just did it?

15 A Yes, sir.

16 Q Now, what I'm going to talk about next is extremely
17 unpleasant. We have to get through it.

18 MR. GIESE: Your Honor, I object.

19 THE COURT: Allright. No -- just don't make comments.
20 Just ask questions.

21 MR. SHEALEY: I apologize.

22 BY MR. SHEALEY:

23 Q Some -- at some point, do y'all leave?

24 A Well, the car is in the garage. She made comments
25 on the car itself. She said that she wanted to keep it.

1 Q Okay.

2 A And I was -- I guess I was caught off guard because
3 I was like huh? She was like, "It's such a pretty car.
4 I want to keep it."

5 Q Okay.

6 A Then she saw the rims. She wanted me to take the rims
7 off the car.

8 Q The rims, you're talking about -- what are you talking
9 about?

10 A She had some after-market rims that she had had put
11 on the car.

12 Q Okay. So you said Kendra wanted you --

13 A She wanted me to take them off.

14 Q Okay.

15 A Nikki's car and put them on her car.

16 Q Now, --

17 A I told her that the rims wouldn't fit her car.

18 Q Okay. Now, you had a chance to look at your
19 statement, right?

20 A Yes, sir.

21 Q Now, in this statement, it's typed that you took them
22 off and tried to put them on. Did you actually do that
23 now?

24 A No, sir.

25 Q Did you ever tell the police that you actually did

1 that?

2 A No, sir. I told them that she wanted me to take them
3 off.

4 Q Okay. So that would be accurate in your statement?

5 A Yes, sir.

6 Q All right. Is there anything else that Kendra is
7 looking for?

8 A She started -- she looked in the car, and she sees
9 a -- like a -- some kind of a wallet-type purse on the
10 seat.

11 Q Okay.

12 A She says it's a Coach bag. I didn't know what a
13 Coach bag was, if there is a word for that.

14 She went through it, and she saw Nikki's credit cards
15 and her driver's license.

16 Q What did she do then?

17 A She kept -- held on to it. Later on, she saw a -- I
18 guess, she paid attention to her shades that was in the
19 car.

20 Q Her shades?

21 A She had some -- some kind of big shades.

22 Q Sunglasses?

23 A Yes, sir.

24 Q Okay. Now, does she ever tell you anything about
25 what she wants to do with the car?

1 A She told me that we -- we should get rid of the car.

2 Q Okay. Now, at this point, you told us that the body
3 is in the trunk?

4 A Yes, sir.

5 Q And you helped -- helped Kendra do this when she
6 asked you, right?

7 A Yes, sir.

8 Q I'm about to take you through the next hours of the
9 day, but at this point, do you feel that what's gone on
10 is right or wrong?

11 A At this point, as far as the end that -- it's gone
12 too far. I mean, if I tried to tell somebody what
13 happened now, would they really believe me?

14 Q Okay. What do you mean?

15 A I mean, what I'm saying is we moved the body and it
16 was in the trunk, I mean, if I told them that she wasn't
17 really -- that what had happened and that she came at me
18 and I shot her, would they actually believe me.

19 Q Okay. Okay. Did you kind of feel like you were on
20 a path at this point?

21 A At this point, I felt like I was just -- I felt like
22 I was just trapped.

23 Q Okay. So what happens next? What's going on?

24 A Kendra started suggesting places to get rid of the
25 car at. She says about Irmo, Lexington, and Aiken. She

1 said something about she had family in those areas, so
2 she knew the area pretty well.

3 Q Okay.

4 A I told her I didn't know. She told me, well, what
5 about Winnsboro, since I had family in Winnsboro. I told
6 her again that I didn't know.

7 Q Okay. So where do you go, and whose idea is it,
8 what's going on?

9 A She said that he had a full tank of gas, so why don't
10 we just get on the interstate and drive, and we'll just
11 find somewhere.

12 Q Did y'all do that?

13 A Yes, sir.

14 Q You headed up 77?

15 A We went up 77 towards Charlotte, and on the way up
16 through different signals and phone calls back and forth
17 to Kendra, she tells me to call Laine.

18 Q So you all are calling on the way up?

19 A Yes, sir.

20 Q Now, is her phone working at this time?

21 A No, sir. It receives incoming calls, but she can't
22 place outgoing calls.

23 Q How would you know if she wanted you to call her?

24 A She would flash her lights.

25 Q So she was behind you?

- 1 A Yes, sir.
- 2 Q And whose car is that?
- 3 A I'm driving Nikki's.
- 4 Q What does she want you to do with Laine? Who is Laine?
- 5 A Laine is like one of her friends, I guess. She wanted
- 6 me to call Laine, so I called Laine and told her that Kendra
- 7 wanted her to pick up her kids and --
- 8 Q Okay. Now, did you understand that Laine had the
- 9 kids?
- 10 A No. The kids were in daycare.
- 11 Q Okay. That reminds me, earlier that day, did you
- 12 ever call Kendra?
- 13 A I called her -- you mean like --
- 14 Q In the morning.
- 15 A In the morning time, yes, sir.
- 16 Q Why would you have done that?
- 17 A I called in the morning to make sure she got up to
- 18 take her kids to daycare on time.
- 19 Q Is that something that was normal for you and Kendra
- 20 at this point?
- 21 A I called pretty much every morning to make sure
- 22 she took her kids to daycare on time, because she
- 23 wasn't -- she has a bad habit of over sleeping, then it's
- 24 too late to take them.
- 25 Q Okay. Back to driving. Now, do you know where you're

1 going at this point?

2 A At this point, no, sir.

3 Q How do you end up getting where you go?

4 A Well, I'm still going back up 77. When we got close
5 to the exit, Kendra would -- she started flashing her
6 lights and blowing her horn to signal me to get over.

7 I got off on the exit. We pulled up to the top of
8 the road, and she was like do I recognize anything in this
9 area. I told her no.

10 She was like well, "Let's ride down and see if you
11 recognize anything," so we started going down the road
12 to our exit, and it was like a construction site or
13 something.

14 So she signaled for me to pull over. When I pulled
15 over, she was like, "You still don't recognize anything?"
16 I told her "no."

17 So we rode further down, and we passed -- at the time
18 I didn't notice it, but basically it was like a dirt road.
19 We came upon a white church. She was signaling me to
20 turn into the church.

21 Q All right. That the point, are y'all talking through
22 the cars or what were you? What's going on. She
23 still -- we were still going back and forth on the phone
24 a little bit, but it's more so her flashing her lights
25 and blowing her horn.

1 Q Okay. What happens next?

2 A When we entered the church parking lot, she asked me
3 did I see the dirt road that we just passed. I told her
4 I didn't see it.

5 She was like, "You just passed it. It's right
6 back" -- since I was going that way, it would have been
7 on the left side, the same side as the church.

8 She told me to take it down the road and see if I
9 can see anything.

10 Q Okay.

11 A So I started coming down the dirt road, and Kendra
12 is actually walking behind -- when I go to pull the car
13 off the road, she comes up to the car. She has a gas can.
14 She has Nikki's little purse on her wrist and the shades
15 on her head.

16 She was like, "That's not off the road far enough."
17 So she moves the car further off the road. She goes up
18 to the car again, talking about she wants to see if she
19 had missed anything.

20 Nikki had some needles, quilting needles.

21 Q Okay.

22 A And then she took those.

23 Q Okay. And what happens?

24 A And after that, she -- I believe that she started
25 pouring liquid out of the gas can on the car. There was

1 a rag in the back of the car which she stuffed in the gas
2 lid, told me to -- to wait.

3 Q Okay.

4 A She tried to light it, but it wouldn't catch. So she
5 gave the rag to me and told me to try.

6 Q Why wouldn't it catch?

7 A It turned out to be water that was in the gas can.

8 Q Okay. Now, where did this gas can come from?

9 A It came from my house, but it was there before I moved
10 in.

11 Q Okay. Did she realize that -- she didn't know there
12 wasn't gas in it?

13 A I asked her. When she realized it was just water,
14 she got mad. She was like what kind of dummy would put
15 water in a gas can.

16 Q Okay. So where do y'all go then?

17 A She said that we needed to go get gas, so we went back
18 up the dirt road. When we got to her car, she got in the
19 passenger's side. She told me to drive.

20 Q Where did you go?

21 A Well, I asked her why, and she was like "Just drive".
22 So we pulled out, and we were going back towards the
23 interstate. A police officer pulls in behind us, and I'm
24 real scared and nervous.

25 She is like -- she is like -- she is very calm about.

1 the whole situation. She is just so calm. She's like,
2 "You know, watch your speed. Put your seatbelt on. Just
3 calm down, relax."

4 Q At that point when the officer drives by, did you feel
5 like you could signal that officer at that point and say,
6 "Look, I need to tell you what happened in that house"?

7 A At that point I didn't feel like I could say anything
8 because -- I mean, it was still that -- that thought that's
9 like would he actually believe.

10 Q All right. Where do y'all go?

11 A We got on the interstate. As soon as we got on the
12 interstate, a cop flew past us, and we went further down.
13 She told me to get off on the next exit, and when we got
14 off, it was about three different gas stations.

15 She told me to pull over to the one on the right,
16 which was a B.P. gas station.

17 Q Okay. What happened there?

18 A We pulled up. She told me to get the gas. She was
19 going to go in and pay. She went inside. She paid, and
20 when she came back out, I had just finished pumping. She
21 asked me whether I thought that was enough. I told her
22 I didn't know.

23 So she went back inside and paid for more gas. This
24 time when she came out, she had two Miller 22-ounce beers
25 with her.

1 Q Okay.

2 A And she -- she told me that I was messing up the gas.
3 She told me I needed to reset the pump before I could start
4 back pumping again.

5 Q All right.

6 A So I started -- I did that, and I finished pumping.
7 She got up -- after that, when we was in her car, she made
8 a little joke about how doesn't it -- see, don't it pay
9 not to clean out my car.

10 Q Okay.

11 A She put plastic bags in the backseat for the gas can
12 to sit on, and I got in the car. She told me I needed
13 to drink a beer.

14 Q Why?

15 A Because she said that I was supposed to be the man,
16 and she was all calm and relaxed and I needed to just calm
17 down.

18 Q Where do y'all go?

19 A We went back up to the church.

20 Q And what happens?

21 A When we got back to the church, she told me to -- for
22 me to go down to the car and put the gas on and light it.
23 She gave it to me. I told her I didn't have anything.

24 She gave me her lighter and rolled up a paper bag
25 and told me to just light it. After I put the gas on the

1 car, just light it and come back. She was going to keep
2 me calm.

3 Q Did you do that?

4 A I did it.

5 Q Do you regret it?

6 A I regret that day. I mean, I didn't want to hurt
7 Nikki. I didn't intend to hurt her. I wish -- I wish I
8 had called 911 before all that had happened.

9 Q Okay. When you get back to the car, is it running?

10 A The car was running. She was talking to somebody that
11 was in a car next to her. When I started coming up, the
12 car pulled off and went to the other side of the church
13 facing the road.

14 Q I hate to address this. Did you ever say anything
15 about harming any witness to anything in this case?

16 A No.

17 Q Where do y'all go? What's going on?

18 A After this, she is like, "Do you know the pin
19 number?" At first, I'm feeling hesitant about it. I'm
20 like, "I guess so." She was -- then she was more, I guess
21 assertive about it. She said, "Do you know the pin
22 number?"

23 Q Are y'all driving again?

24 A We had just pulled out of the church parking lot to
25 get back on the interstate.

1 Q Were you -- she was asking for the pin number to what?
2 A Nikki's credit cards.
3 Q Okay. Now...
4 (Inaudible)
5 (Pause)
6 THE COURT REPORTER: I'm sorry, I didn't hear your
7 question.
8 BY MR. SHEALEY:
9 Q I said, what are you thinking in general, at this
10 point?
11 A I'm just thinking about how bad I messed up.
12 Q Okay. Did you call anybody on the ride back?
13 A I mean, I think I made a couple of calls. I was
14 trying -- I tried calling one of my friends, you know.
15 I just needed to hear a voice, something.
16 Q That friend would be -- who was that friend?
17 A Vera Parker.
18 Q How long has she been your friend?
19 A Fourteen years.
20 Q Okay. At some point, did you ever have a sexual
21 relationship with her?
22 A Yes.
23 Q Did you tell her anything about what happened?
24 A No. The first time I called her, I didn't get an
25 answer. She called me back. When she called me back, I

1 was just -- I was too scared to tell her anything.

2 Q All right. You said Kendra was asking about the pin
3 number. Where do y'all go?

4 A We started going down 77, and when we got to -- by
5 the Farrow Road exit, she was like, "Get off on the exit.
6 I want to go right there."

7 Q Okay. Do you do that?

8 A Well, before we did that, when we first left from
9 the -- where the car was, Kendra was -- I mean, she was
10 acting like a big kid in the front seat. It was like
11 she turned around, and she was like, "I want to see the
12 fire." She was really happy about it.

13 Q Okay.

14 A And then it was like -- she was like, "I see the smoke.
15 That's some smoke." She was really -- just real happy.

16 Q Tell me where did y'all go?

17 A After that, that's when -- you know, we got by the
18 Farrow Road exit. She was like, "I need to go by the
19 bank."

20 We got off on the Farrow Road exit, and we went to
21 the Wachovia.

22 Q Okay. Did you pull up to the drive-thru lane?

23 A No. She told me to pull up short because she didn't
24 want them getting her license plate.

25 Q Whose car were you in at that point?

1 A We was in her car.

2 Q What kind of car was it?

3 A A Chevy Lumina.

4 Q Did she ask you to do anything?

5 A She told me to go ahead and get the money out of the
6 A.T.M.

7 Q Okay. Why did she want you to get the money?

8 A I was guessing because of her situation. She was
9 behind on her rent, behind on her electricity, her cell
10 phone. All her bills were at least a month or two behind.

11 Q Did you get money?

12 A I ended up getting money out of the A.T.M. When I
13 got back to the car, I gave her the money, and it looked
14 like she was -- I mean, it looked like she had a look of
15 satisfaction on her face, and she pulled off.

16 Then there was -- we got around the bank. It was like
17 halfway around, and it was just, "Was this all of it?"

18 I told her, "No. I only used like one card."

19 She was like, "I want it all."

20 This time, she went back around to the A.T.M. again.

21 Q And what did you do again?

22 A She told me to get the rest of it out, so I went back
23 to the A.T.M., and I got more money out. I went and
24 got back in the car, and I gave it to her. She was like,
25 "Good. Now, I can pay my rent."

1 Q Now, getting the money out, you told us how you feel
2 at this point, but why would you do that?

3 A I don't -- I mean -- it was like one bad decision
4 after another. I mean, it just kept getting worse.

5 Q Throughout this thing with Kendra, did she ever
6 make you feel like it was just you and her?

7 A Yeah. She made a comment about, "We're in this to
8 the end, like Bonnie and Clyde."

9 Q Did she ever say anything to you about what you might
10 have to lose or gain about this situation?

11 A She told me that I got just as much to lose as she
12 did. I asked her what did that mean. She said, "Well,
13 you can lose what's closest to your heart just like I
14 can."

15 Q Okay. And like you've told us, did you feel like you
16 could run to that teller in that bank and tell them what
17 happened with you and Nikki in the house at this point?

18 A I felt like I was just -- I mean after all these bad
19 decisions, I'm just -- I knew how much I messed up, and
20 I felt trapped.

21 Q Where did y'all go after the bank?

22 A After I got back to the car and gave her money, this
23 time she backed up and backed all the way out of the back
24 parking lot.

25 I asked her why and she said -- she told me that it

1 was just because she didn't want them to get the license
2 plate. After that, I was just like, "I want to go home.
3 I just want to go home."

4 Q Did you go?

5 A She wanted to go and do something, but I told her I
6 just wanted to go home, so she took me home.

7 Q Okay. Now, the next day we've seen you at a
8 Wal-Mart. You've been here with Kendra. Tell us what
9 that was about. Did she call you? Did you call her? Why
10 did you still hang out with Kendra?

11 A At that point after I had got off work, I was on U.S.
12 1 in Lexington, and Kendra called me. She called me a
13 couple of times actually, and I was trying to avoid her
14 phone calls.

15 Finally I just answered her call. She asked me where
16 I was. I told her that I was on U.S. 1. She told me that
17 she needed to go shopping. I told her, "I ain't got no
18 money for that."

19 She was like, "I didn't ask you for that. I need to
20 go shopping, grocery shopping."

21 Q Let me stop you. Is this something -- did y'all shop
22 sometimes together as part of y'all's deal?

23 A We would go -- we would go grocery shopping
24 together because she used an E.B.T., so she could only
25 buy groceries and other things that she needed as far as

1 like household, paper, whatever.

2 Q An E.B.T. is what stands for?

3 A Food stamps.

4 Q Okay. So she called you, and did you feel like you
5 needed to go?

6 A She told me that either I came to the Wal-Mart by her
7 or on Bush River or she would come to the Wal-Mart and
8 meet me at U.S. 1.

9 Q Okay. We've seen the video. We've seen you pushing
10 the buggy. Y'all buy some cleaning supplies?

11 A She needed bleach and carpet cleaner for her house,
12 so I ended up buying the bleach and the carpet cleaner
13 for her. She bought like -- I think it was like sausage
14 or something for me.

15 Q Okay. In this bleach that was bought for her, was
16 this in any way connected to her mopping --

17 A No.

18 Q -- your house the day before?

19 A No. This was -- she said she just needed it for her
20 house.

21 Q Now, in the video, I see you pushing your buggy
22 walking up before you used the A.T.M.

23 Did you talk to Kendra?

24 A Yeah, I talked to Kendra. She told me that she
25 wasn't -- she didn't believe me when I told her that I

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1 had got all the money out of the account for her. She
2 wanted me to go use the account again, because at that
3 Wal-Mart, they -- I think the A.T.M. is like dollar amounts
4 so you can go down to singles.

5 Q Did you try to use it again?

6 A I tried to use it again. It came up with some kind
7 of like bank code, so I tried one more time, and then I
8 went and when I went up to her, she gave me the sausage.
9 I gave her the bleach and the cards and stuff.

10 Q Now, in terms of your financial situation in general
11 in May, you told us you were making -- what were you
12 making again?

13 A About \$14 an hour.

14 Q Okay. Were you working a lot?

15 A I was working Sunday. Actually, I was pretty much
16 working like seven days a week at different periods. It
17 starts Sunday night and would go to like Thursday night.
18 Friday and Saturday counted as -- well, Friday counted
19 as time-and-a-half and Saturday counted as double time.

20 Q So you made overtime sometimes, as well?

21 A I made that pretty much, at least three weeks out of
22 the month.

23 Q Did you keep or take any of this money of Nikki's?
24 Was it for you? Was it for Kendra?

25 A No. Kendra got everything.

1 Q Okay, I'm going to shift gears a little bit. Now,
2 one thing I want to know, when Charlotte came and talked
3 to you, did you lie to them?

4 A Yes, I did.

5 Q Just in general, why did you lie to them?

6 A Well, I lied to them because -- like I said, I mean
7 after all that was done -- who would they believe?

8 Q You didn't think you could tell them at this point
9 about what happened with Nikki?

10 A No.

11 Q Because of what y'all did afterwards?

12 A Yes.

13 Q Now, there's a couple of things you do tell
14 Charlotte that I want to talk to in particular. Now, at
15 one point, you tell Charlotte that you ended your
16 relationship with Nikki because there were guys coming
17 around cutting her grass or what have you.

18 Why would you say this?

19 A I mean, that's maybe one part of it, but I'm
20 messing -- I was messing with like six different women,
21 and I was -- as long as they were -- as long as they thought
22 I was only for them, they was only for me. So I didn't
23 really worry about -- I guess, I didn't think I had to
24 worry about S.T.D.s or anything like that.

25 Q Okay. Hold on a second. What you mean by that -- so

1 when you're with all of these women, they weren't with
2 any other men at this point. Is that what you mean?

3 A Yes. Can.

4 Q Okay. And how long had you known Nikki at that point?

5 A Maybe like two months, two-and-a-half months.

6 Q Okay. And you had mentioned kind of in the course
7 of your relationship -- y'all were on different pages,
8 right?

9 A Yes.

10 Q So I guess when you're talking to Charlotte about
11 that incident, that incident actually happened in one way,
12 right?

13 A Right it happened in one way, but that was only part
14 of it. The other part was the fact that she want me to
15 like drop everything I was doing with my daughter and my
16 mother and come up and cut her grass.

17 Q Okay. So I guess your lie had some reference?

18 A It had some reference.

19 Q Okay. But just specifically at that point,
20 regarding Nikki and other guys coming around, were you
21 jealous of her?

22 A No.

23 Q Were you dating all of these other women, as well?

24 A Yes.

25 Q Were you having sex with these other women?

1 A Yes.

2 Q Okay. But you didn't tell Charlotte what happened
3 in that house?

4 A No, I didn't.

5 Q I want to talk to you a little bit about once you got
6 arrested. Who was it -- who came in your house and
7 arrested you?

8 A Sergeant McDaniels.

9 Q And did he come in alone or with other people?

10 A It was Sergeant McDaniels, a Detective Hopkins I
11 believe from Charlotte, and probably eight or nine other
12 Richland County deputy sheriffs.

13 Q Okay. And they arrest you, right?

14 A Yes.

15 Q And at some point, are you taken outside?

16 A After that, I was handcuffed and everything. I was
17 taken outside. I was outside for maybe a minute. He was
18 talking to another detective, deputy sheriff.

19 Then he put me in his truck.

20 Q Go ahead.

21 A After he put me in the truck, maybe another minute
22 or two went by. He got in on the driver's side. I believe
23 it was detective -- Sergeant Wagner got in on the
24 passenger's side, maybe on that side, behind Sergeant
25 McDaniels.

1 After that, he read me my rights.

2 Q Does he ever mention anything to you about an
3 accident at all?

4 A At this point he did go into, after he had left my
5 yard, that he had started mentioning about that and he
6 asked me.

7 Q What did he say?

8 A After we left, he went up Bluff Road. He told me
9 that Kendra is making that -- a statement about me, really
10 bad things, making me look bad. If it was an accident,
11 just say it was an accident. An accident can be explained.
12 He mentioned about how he had a friend who had an accident
13 with a shotgun.

14 He told me, "Just say it was an accident. I can help
15 you. Talk to me."

16 Q Okay. And what's going on in your head that this
17 point?

18 A At that point, I mean I didn't really know what to
19 say. I was just there kind of dazed, I guess.

20 Q Did you tell him it was an accident?

21 A We got to the post office where Sergeant Wagner got
22 out. She made a phone call. Then she told him that she
23 would see him at headquarters.

24 He told me again, you know, "Just say it was an
25 accident. An accident can be explained." So I told him

1 it was an accident.

2 Q Did you feel that -- I mean, knowing everything you
3 told us and how you felt through this whole experience,
4 did you feel that telling him it was an accident would
5 make you safer?

6 A Yeah.

7 Q Did you feel like that's what he wanted you to say?

8 A At that point, yes.

9 Q All right. You get back to Richland County at some
10 point, right?

11 A Right.

12 Q Did you continue to tell him it was an accident?

13 A Yes, sir.

14 Q And everything about what Kendra did, when you told
15 him all of that, what you did, was all of that true?

16 A The point that happened afterwards, yes.

17 Q Okay. Now, eventually he types that up, right?

18 A Right.

19 Q And you sign that, right?

20 A Right.

21 Q And I guess it's getting -- was it late at night?

22 A I can't -- I mean, when they brought me in, it was
23 already getting late, so I guess by now, it's already
24 dark.

25 Q Okay. Now, at some point, did you see Sergeant

1 Isenhoward come into the picture?

2 A After the first statement, Sergeant McDaniels told
3 me to sign it, so I went through and I signed it. A little
4 while later, Sergeant Isenhoward came in.

5 Q Now, when he comes in, do you start talking to him?

6 A He starts talking to me about how -- if he had
7 wanted -- he said if they wanted Kendra, they could
8 have then had her. They could have arrested her, took
9 her kids, whatever, but he wanted me to talk to him.

10 Q Okay. Now, at this point, did you try to really tell
11 him what happened in the house that night?

12 A At this point I tried to, but he took a pencil and
13 stuck it like on the edge of the desk. He said that
14 whenever I say what they want to hear, the pencil goes
15 down. When I don't, the pencil goes back in.

16 Q All right. Now, he's got a pencil here. So when you
17 told him what they liked or they had a --

18 MR. GIESE: Objection, Your Honor. If he'd like to
19 show the jury, that's fine, but the defense attorney is
20 testifying for the witness.

21 THE COURT: Have him demonstrate it. Let's move
22 on.

23 BY MR. SHEALEY:

24 Q Go ahead and demonstrate, will you, Theo, with that
25 pencil.

1 A The pencil would be like this (indicating), and if
2 I say what he wants to hear, he'll slide it out. When
3 I said something that he didn't really want to hear, he'd
4 slide it back in.

5 Q Did he tell you this was what he was doing?

6 A He told me before he put the pencil down.

7 Q You read that second statement from that night,
8 right?

9 A Yes, sir.

10 Q It's not that long, is it?

11 A No, sir.

12 Q Do you do everything you try to tell them that night
13 about what happened in that house was accurately in that
14 statement?

15 A No, sir.

16 Q Did they want to hear everything you wanted to say?

17 A No, sir.

18 Q Have you told us today, and the jury, and the Court
19 what happened in the house?

20 A Yes, sir.

21 Q Theo, do you regret what happened?

22 A Yes, sir, I do. I mean, I regret calling Kendra. I
23 have regret for not calling 911. I regret, actually,
24 opening the door to Nikki to come in the house in the first
25 place.

1 Q But did you murder her?

2 A No, I didn't. I mean, I didn't murder her. I shot
3 her, but she -- she pulled a gun on me, and I was scared.
4 She came towards me. I didn't know. I thought she was
5 going for the gun.

6 Q Do you hate yourself for what happened afterwards
7 with Kendra?

8 A Of course, I do.

9 MR. SHEALEY: I'll almost done.

10 (Pause)

11 That's all I have right now. Theo, please answer any
12 questions Mr. Giese has right now.

13 THE COURT: Cross-examination?

14 CROSS-EXAMINATION:

15 BY MR. GIESE:

16 Q Now, Mr. Manning, you just testified that you were
17 scared that night; is that right?

18 A Yes, sir.

19 Q And, of course, in your last statement that you made
20 to anyone in this case from law enforcement, that was that
21 second statement that you signed, right?

22 A Yes, sir.

23 Q And, in fact, when you were talking to these officers
24 about that, you never mentioned the word scared, did you?

25 A I told them I was scared.

1 Q So these officers, these two right here, these two
2 sergeants, it's your testimony today that you told them
3 that you were scared?

4 A Yes, sir.

5 Q And it just didn't make it into this statement.
6 That's your testimony?

7 A I told them I was scared numerous times while they
8 was interrogating me. It got to the point where Sergeant
9 McDaniels even told me, "Okay. We understand you were
10 scared."

11 Q Yet, it's not in your statement, is it?

12 A No, sir.

13 Q And, in fact, you signed every page of it as a truthful
14 statement; is that correct?

15 A He told me to sign it, so I signed it.

16 Q In fact, the last question is, "Is there anything else
17 you would like to add to this statement?" And what was
18 your answer?

19 A I told him "no."

20 Q You said no. Then the next question, "Is this
21 statement the whole truth?" and you said what?

22 A I told him, I said, "yes."

23 Q Well, maybe I'm missing something, but scared is not
24 in this statement, is it?

25 A There's a lot of things that he didn't put in that

1 statement, and a lot of things they added on their own.

2 Q Mr. Manning, you're intelligent. You're an
3 intelligent man, aren't you?

4 A I guess.

5 Q You've been in the military, haven't you?

6 A Yes, sir.

7 Q Yet, when you talked to the police and you claim you
8 tell them you're scared and it's not in this statement,
9 you still sign it?

10 A When I was told to sign it, I signed it.

11 Q So you didn't sign it voluntarily?

12 A Not in the sense you mean.

13 Q So this is an incorrect statement?

14 A It's incorrect to the fact that it doesn't have
15 everything that I told them.

16 Q Yet you signed it?

17 A Yes, sir.

18 Q So these police officers had you sign an incorrect
19 document; is that right?

20 A When I was instructed to sign it, I signed it.

21 Q And that's their fault? They're at fault in that,
22 correct?

23 A It's not their fault. It's my fault.

24 Q Well, doesn't it seem strange to you that you've
25 been testifying now have for about two hours, and it just

- 1 seems to be everybody's fault but yours?
- 2 A No. I didn't say it was everybody's fault but mine.
- 3 Q Well, let's go over --
- 4 A It was --
- 5 Q Let's go --
- 6 A -- fault --
- 7 Q -- over it.
- 8 A It was --
- 9 Q Let's go over it, the victim, Nikki McPhatter. You
- 10 claim that you shot her, but it was her fault that you
- 11 shot her, right?
- 12 A I said that she pulled a gun on me, and when she
- 13 came -- when I took the gun from her, she kept coming
- 14 towards me.
- 15 Q In your statement --
- 16 A And charged at me, and I pulled the trigger.
- 17 Q And you're saying it's her fault that you pulled the
- 18 trigger, correct?
- 19 A I'm saying that she had pulled a gun on me first.
- 20 Q Well, let me ask you, did you have any fault in this?
- 21 A I had fault when I didn't call 911. I had fault when
- 22 instead I went along for what Kendra told me to do, even
- 23 though I should have known better. I had a lot of fault
- 24 in it.
- 25 Q So you're testifying today that it was not your fault

1 that Nikki McPhatter was killed. Is that what you're
2 telling this jury?

3 A It's my fault that -- it's my fault that I went along
4 and let her come into my house at my home.

5 Q No, sir. You didn't answer my question. Is it -- is
6 it -- do you have any fault in the shooting and killing
7 of Nikki McPhatter, yes or no, it's a simple question.

8 A I shot Nikki McPhatter, so yes, that's my fault.

9 Q So you were at fault in shooting Nikki McPhatter?

10 A When she came at me, yes.

11 Q Now, you also say it's not your fault that you just
12 so happened to burn Nikki McPhatter's body?

13 A No. I just said that it was my fault that I went
14 along with everything.

15 Q But you're saying to this jury that it wasn't your
16 idea to burn the body?

17 A No, it wasn't.

18 Q So it's Kendra's fault that the body was burned?

19 A Kendra told me about getting rid of the car. It was
20 my fault for going along with it and listening.

21 Q All of this was Kendra's idea?

22 A She led it, and I was -- I went along with it. I
23 accept that as being my fault.

24 Q And you claimed you went along with it. I mean,
25 let's -- clearly now, you're driving Nikki McPhatter's

1 car with Nikki McPhatter's body, dead body, in the trunk;
2 is that right?

3 A Yes.

4 Q And you're driving to Winnsboro that way, correct?

5 A Yes.

6 Q You're driving on I-77 toward Charlotte, correct?

7 A Yes.

8 Q And who is from Winnsboro, you or Kendra?

9 A Well, considering where we put the --

10 Q Well, just answer the question. Then you can
11 explain.

12 A I'm not originally from Winnsboro.

13 Q Have you ever lived in Winnsboro?

14 A No.

15 Q You've never been to Winnsboro?

16 A I've been to Winnsboro, yes. I have some family that
17 lives in Greenbriar, which is off of Monticello Road or
18 321.

19 Q Which is in?

20 A Which is in a border part of Winnsboro, but not the
21 actual city of Winnsboro.

22 Q So, again, to answer my question, do you have
23 connections to Winnsboro or does Kendra have connections
24 to Winnsboro?

25 A I don't know who Kendra has connections to. I know

1 I have family in Winnsboro, yes.

2 Q And where does Kendra live?

3 A Irmo, but that doesn't explain how she may have been
4 to different places.

5 Q But you're leading. You're driving down the
6 interstate, correct?

7 A Correct.

8 Q You pull off on Peach Road, correct?

9 A She said for me to get off on Peach Road.

10 Q Yes. So it was her idea to get off on Peach Road?

11 A Yes.

12 Q And this -- I-77 just happens to be going towards
13 Charlotte?

14 A I-77 goes toward Charlotte and Charleston.

15 Q And that's the direction you were headed until you
16 pulled off, right?

17 A I didn't know where we was going. I knew we were going
18 up I-77, yes.

19 Q Towards Charlotte, correct?

20 A That's where the interstate goes, yes.

21 Q And that's where Nikki is from, correct?

22 A She is from Charlotte, yes.

23 Q And it was your idea go up that way --

24 A No, it wasn't.

25 Q -- to pull off --

1 A No, it wasn't.

2 Q -- down a dirt road because if a body was ever found,
3 it would look like she was headed home, correct?

4 A No. It was not my idea.

5 Q Was it Kendra's idea?

6 A It was Kendra's idea to get off on that exit. It was
7 Kendra's idea to take it down that dirt road.

8 Q But you went specifically towards Charlotte in case
9 the body was ever found, correct?

10 A No. I did not.

11 Q It's just coincidence, coincidence --

12 A I didn't --

13 Q -- that you happen to be going in the same direction
14 she was going to be going home?

15 A I have no idea why Kendra picked that direction.

16 Q So it was coincidence?

17 A I can only guess why she picked that direction.

18 Q She picked the direction. Let's talk about that
19 for a moment. It's your testimony that at this time you
20 had, at the time, six women that you were having sexual
21 relations with, correct?

22 A (There was no response.)

23 Q And you were able to do that, in your testimony,
24 because you were able to manipulate them, I believe were
25 the words you used, correct?

1 A Manipulate is not the word I used.

2 Q Well, what word was it?

3 A I said that I let them believe that they were the only
4 ones.

5 Q And that's manipulated, isn't it?

6 A If that's the word you want to use.

7 Q And now, it's your testimony now, though, that Kendra
8 in this conversation or this incident, Kendra -- Kendra
9 testified a couple of days ago -- that Kendra actually
10 manipulated you on that day, correct? Is that what you're
11 saying?

12 A I'm just saying she took advantage of the situation.

13 Q Well, she took advantage of what situation?

14 A The situation of me being in -- in shock, scared,
15 afraid. The fact that I -- she didn't want -- I guess
16 she didn't want to see me get in any trouble since I help
17 her out with her bills. I help her out with other
18 things.

19 Q Shocked, scared. What was the other word? You said
20 shocked, scared and what? After the incident?

21 A Shocked, scared.

22 Q What time did this -- this killing take place?

23 A I don't know. I mean, I don't know the exact time.

24 Q Approximately.

25 A I don't know. Sometime in the afternoon, I guess.

1 Q Early afternoon, late afternoon, early evening?

2 A What do you consider late?

3 Q I'm asking you.

4 A And I'm asking you, what do you consider late or early
5 afternoon.

6 Q Early afternoon. I'd say before three o'clock.

7 A After.

8 Q So the shooting took place after three o'clock?

9 A I guess so, yeah.

10 Q But yet, you testified that you went and got gas at
11 twelve o'clock, correct?

12 A Yes.

13 Q Came back home. She was tired. She wanted to lay
14 down, correct?

15 A Came back home. We went upstairs. We had sex. We
16 laid down. We watched T.V. I mean, we fell asleep.

17 Q I mean, this is the first time you've mentioned that,
18 isn't it?

19 A To who?

20 Q To anyone, law enforcement, on direct examination,
21 to anybody, that you watched T.V. and fell asleep?

22 MR. SHEALEY: Your Honor, objection. I think
23 Mr. Giese has mistaken the facts here.

24 THE COURT: You can ask him the question. I'll allow
25 it. It's cross-examination.

1 THE WITNESS: At that point, I mean, it's hard to
2 remember that -- every little detail about
3 where -- whether you had sex and did this or if you had
4 sex and went to sleep. I mean, I know we had sex, but...

5 Q It's hard to remember every little detail, but you
6 remember every little detail of what Kendra
7 Goodwin -- Goodman, did to you -- Goodman?

8 A After that, we just kind of like -- it's hard to
9 remember every little detail.

10 Q But you were in shock, correct, in your testimony?
11 You were panicked, right?

12 A About the situation, yes.

13 Q Yet, after the killing took place, you made
14 numerous phone calls. We'll go over the phone calls in
15 a little while.

16 A I understand.

17 Q But you made numerous phone calls, didn't you?

18 A I -- I mean, phone calls to people, yes, sir.

19 Q And you actually -- your first phone to Kendra wasn't
20 just this redial, redial, redial. It was you called her
21 workplace, which was the laundromat.

22 A That's not true.

23 (Pause)

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

25 (Pause)

1 THE COURT: Yes, sir.

2 MR. SHEALEY: You know, this appears to be what
3 we've...

4 Go ahead.

5 THE COURT: All right. You may proceed.

6 BY MR. GIESE:

7 Q Let me show it to you first. You can take a look at
8 it.

9 (Pause)

10 You understand it says time. It says date: 5/6/09,
11 which is May 6th.

12 A I can't see that far.

13 Q (complies)

14 A Okay, 5/6/09.

15 Q Which is the day that you shot and killed Nikki
16 McPhatter, correct?

17 A You're saying that --

18 Q Is that correct?

19 A That I shot Nikki McPhatter, yes.

20 Q And killed her.

21 A Yes, sir.

22 Q While she was unarmed, correct?

23 A After she was -- came towards me and turned, yes,
24 sir.

25 Q While she is unarmed, yes or no?

1 A Yes, sir.

2 Q Now, and these are all outbound or routed. Routed
3 means they went to your voicemail, right?

4 A Right.

5 Q Which means it's not an outgoing call. It goes to
6 your voicemail. Inbound means you received a call,
7 correct?

8 A Yes.

9 Q Routed, routed, routed, and then all of these outbound
10 calls. At 15:32, 15:32, all right, to Renee Webb. Who
11 is Renee Webb?

12 A She is a coworker. She is actually an assistant
13 supervisor.

14 Q So she is your supervisor?

15 A Assistant supervisor at Westinghouse, yes, sir.

16 Q And you think that this took place, you said around
17 three o'clock?

18 A No. I said -- you said that about early afternoon,
19 just before three, and late afternoon was after three.

20 Q Okay. So which one is it?

21 A That was late afternoon.

22 Q Late afternoon. So what time?

23 A What time exactly? I don't know. I guess it would
24 be after I have called Kendra because I -- I already had
25 4:48 maybe --

1 Q Well, your first call to Kendra Goodman, you have one
2 that's routed, which means she called you at 12:41. The
3 next time that you called Kendra Goodman, you called her
4 cell phone is 3:42:11. Do you see that?

5 A Okay.

6 Q 3:42:11 but right before that, right before that,
7 within one minute of that call to Kendra Goodman at
8 15:41:16, you called outbound for 27 seconds Breeze Dry
9 Cleaner, didn't you?

10 A Yeah. I called, but I didn't talk to her.

11 Q Correct, but you testified earlier that you were so
12 panicked and so upset that you just kept hitting redial
13 redial --

14 A I believe --

15 Q And it went to Kendra Goodman?

16 A I believe you asked me the first time I contacted her
17 after the shooting.

18 Q Yes.

19 A That wasn't the first time I contacted her. I mean,
20 the shooting didn't even happen that early. I don't think
21 it happened until after four.

22 Q But your first call of that day to Kendra Goodman was
23 to Breeze Dry Cleaner, correct?

24 A I wasn't looking at the phone number. She was
25 supposed to be at work, so I --

1 Q You tried to get in contact with Kendra Goodman,
2 weren't you?

3 A To make sure she made it to work, yes.

4 Q And you talked to them for 27 seconds, correct?

5 A Yes, sir.

6 Q And then you called Kendra Goodman on her cell phone,
7 correct?

8 A Yes.

9 Q And that was 58 seconds; is that right?

10 A Correct.

11 Q Then you talked to Renee Webb about work and Kendra
12 Goodman again for ten seconds, and then eight seconds.

13 A Yes. And I believe the ten second phone call was the
14 time that I called her and told her I needed help. The
15 call didn't last that long.

16 Q But you had testified earlier the first time you'll
17 talked to Kendra Goodman -- well, let me ask you that,
18 too. How is it that when you hit the -- what happens when
19 you hit the send button time after time after time after
20 time? Where does it go?

21 A Well --

22 Q Where does it go?

23 A It calls back.

24 Q It goes to redial, correct?

25 A But with my phone, if I let it sit, the screen

1 blacks out, and I keep pressing the call button to turn
2 the screen back on.

3 Q Okay. You hit it once until you're screen comes back
4 on. You hit it again, and it redials?

5 A Yes, sir.

6 Q And under your testimony, it redialed back to Kendra
7 Goodman. Is that what you're saying?

8 A I'm saying that's who it ended up calling back, yes.

9 Q By redial?

10 A Correct.

11 Q Well, how does that work, because the last person that
12 called you prior to -- to your testimony now to Kendra
13 Goodman was Renee Webb?

14 A I talked to Renee about something dealing with work
15 probably.

16 Q Yeah.

17 A I got off the phone.

18 Q Yeah. And then it takes place and the killing -- the
19 shooting takes place, is that what your saying?

20 A It happened. I mean, it happened like -- it seemed
21 like an eternity, but it didn't take that long.

22 Q So you're saying that after you talked to Renee
23 Webb -- for the first time, by the way, you've ever said
24 this, after you talked to Renee Webb at 16:48, which is
25 4:48, for 171 seconds, four minutes later -- so within

1 four minutes after talking to Renee Webb, you have shot
2 and killed Nikki McPhatter. That's your testimony
3 today?

4 A That's -- yes.

5 Q Four minutes.

6 A (No response.)

7 Q Yet, your testimony today and prior to this has been
8 that you hit redial and that's how you got ahold of Kendra
9 Goodman.

10 A That's how I got ahold of Kendra Goodman.

11 Q But your records show that's impossible, doesn't
12 it?

13 A Not on my phone.

14 Q Excuse me?

15 A I said not with my phone it wouldn't be.

16 Q So four minutes. This whole thing took place in four
17 minutes, in your testimony today?

18 A I guess. I mean, I don't know how long it took.
19 Everything just happened very quickly.

20 Q So four minutes after you hang up with Renee Webb,
21 you shot and you killed Nikki McPhatter?

22 A Before this happened, Renee Webb, it was like a huge
23 argument, yes.

24 Q So now, it's your phone's fault, right?

25 A I mean, no. I'll take the blame for that, too, if

1 you want me to.

2 Q But your phone doesn't function like normal phones?

3 A That phone -- that phone I bought off of eBay. So
4 it's not like I'm the first owner. I'm sure it had plenty
5 of damage and somehow I dropped it.

6 Q So it's the phone's fault.

7 Now, let's move on from phones, cell phones. You're
8 so upset and so panicked that after Kendra gets there,
9 whatever time that is, whichever call it is, you make at
10 least ten phone calls outbound. You made a bunch, didn't
11 you?

12 A I can't say, so...

13 Q How many did you make? Do you remember?

14 A I had called -- called Kendra, calling Laine for
15 Kendra. The only person that I actually called for myself
16 was my friend Vera. The first call, I didn't get anybody,
17 I don't believe.

18 She called me back, and I just -- I couldn't -- I
19 just couldn't tell her what had happened.

20 Q And you wouldn't tell her what was happening because
21 you knew you had done wrong, right?

22 A About putting Nikki in the back -- in the car?

23 Q No. About killing Nikki, shooting her in the back
24 of the head and then stuffing her body in the trunk. You
25 knew you had done wrong, didn't you?

1 A Nikki came at me.

2 Q Now --

3 A She pulled a gun on me, and I --

4 Q We'll get to that.

5 So you're making all these outbound calls, correct,
6 but you're so panicked that you don't know what you're
7 doing, but you're making all these calls while you're
8 driving the car, correct?

9 A (There was no response.)

10 Q Excuse me?

11 A Yes, sir.

12 Q Because you're phone starts going in motion, doesn't
13 it?

14 A Yes, sir.

15 Q And you're driving down the road with a body in the
16 back of the trunk, correct?

17 A Yes, sir.

18 Q And you're making these phone calls?

19 A Actually after -- at 12:20, I believe that's Kendra
20 who's making phone calls, because she called Laine. I
21 mean, Kendra is in the car after Farrow road.

22 Q All right. So let's say it's ten. You still make
23 these, don't you? You called Laine --

24 A No.

25 Q You called Vera Parker, you made all those calls,

1 didn't you?

2 A I called up Vera Parker, yes.

3 Q And you called Laine Washington. You testified
4 earlier to that, didn't you?

5 A I called Laine the first time, yes.

6 Q So you're making outgoing calls even though you're
7 so panicked and so upset that you're doing everything
8 that Kendra Goodman tells you to do?

9 A No. By now it's already -- it's done sunk in how -- how
10 I had messed up so bad.

11 Q You had messed up bad because --

12 A Because --

13 Q -- you had shot an unarmed woman in the back of the
14 head.

15 A No. I messed up so bad because I didn't call 911.

16 Q Now, let's talk about Kendra, one of your six
17 girlfriends. It's your testimony today that all of this
18 that happened after the killing was Kendra Goodman's
19 idea; is that right? Yes or no and then you can explain.

20 A Initially, Kendra made the suggestions, I guess,
21 because I went along with her. I'm just as guilty of it.

22 Q But it was your Kendra's idea is your testimony today?

23 A Yes.

24 Q The burning of the body, the burning of the car, all
25 of that?

1 A Yes.

2 Q And, in fact, you testified earlier that when Kendra
3 first saw the car -- well, it was Kendra that actually
4 carried the body down the stairs and put it near the trunk
5 of the car, correct?

6 A She drug the body down the stairs, yes.

7 Q Okay. And you were too upset and too shocked to do
8 anything about that. That was your testimony?

9 A When she was doing that, I was just -- I was just
10 standing there.

11 Q And then you and Kendra put the body in the trunk of
12 the car, correct?

13 A Kendra told me to help her by grabbing her legs.

14 Q I'm sorry. Kendra told you to help put the body in
15 the trunk. That's your testimony?

16 A Yes, because she said she couldn't do it by herself.

17 Q Which -- which to me is -- I don't quite understand
18 because then you said that Kendra looked at you and said,
19 "I want to keep that car."

20 A That's -- the first thing she said, she said the car
21 was beautiful. She wanted to keep it.

22 Q After you had put the body in the trunk?

23 A Yes, sir.

24 Q All right. So from your testimony, Kendra Goodman
25 helped you put a body in the trunk of the car. There was

1 blood, correct?

2 A No.

3 Q No blood.

4 A I didn't see any blood until after Nikki was in the
5 car, and it was only like a -- maybe two or three drops.

6 Q You put a body in the car with Kendra, and then in
7 your testimony, you said Kendra said, "I want to keep that
8 car." Does that make sense to you?

9 A You're asking me to tell how she thinks?

10 Q I'm asking you if that's how it happened.

11 A That's how it happened, yes.

12 Q You leave in Nikki's car, correct?

13 A Actually halfway up Bluff Road, Kendra was
14 leaving. It was not until we got on 77 and left. She got
15 behind me once we got on 77.

16 Q So your leaving down 77 now. That's the first time
17 you've testified or said that, isn't it? Never.

18 A The first time you asked me.

19 Q Anybody has ever asked you.

20 A About who led?

21 Q Yeah.

22 A Yes.

23 Q She is behind you. You get off. You take the car
24 down a dirt road, correct?

25 A We're going down 77. She is behind me. When we start

1 coming up on the exit, she was flashing her lights one
2 on one signaling me to get off, yes.

3 Q So you don't call her. She just flashes her lights?

4 A Yes.

5 Q You get off. You go down the road. There's -- you
6 talk to her. You turned back around, and she says go down
7 that dirt road, correct?

8 A Yes.

9 Q You go down that dirt road.

10 A And while I'm driving down a dirt road, she is
11 coming behind me.

12 Q And we saw on this -- one of these, it's about half
13 a mile from Peach Road, isn't it?

14 A I don't know.

15 Q It's a long way.

16 A I don't know.

17 Q From Peach Road to where the body was found, it's
18 long way, isn't it?

19 A I don't know.

20 Q But you drove down there. You drove the car down
21 there, correct?

22 A Correct.

23 Q And it's your testimony that you get out of the car
24 with the gas can --

25 A No. I said that Kendra was walking behind me while

1 I was driving down that dirt road.

2 Q And --

3 A She had the gas can.

4 Q And that's what I wanted to ask you, because in this
5 600 yards, 800 yards down that road, it's your testimony
6 that Kendra -- you drove and Kendra walked down there?

7 A Yes.

8 Q In the woods?

9 A Yes.

10 Q And she had the gas can?

11 A Yes, sir.

12 Q But you knew what the gas can was for, didn't you?

13 A She had already said that it was better to get rid
14 of the car.

15 Q There again, Kendra's fault again. Kendra's idea,
16 get rid of the car. How about the body? Did you talk about
17 that?

18 A Since it was in the car, I guess she meant that, too.

19 Q You're guessing at that, too. Guessing at that, too.
20 Now, from your testimony then, who poured the gas can with
21 the water in it on the car?

22 A Kendra did that.

23 Q Kendra did that, okay. And you tried to light it off,
24 correct?

25 A She told me --

- 1 Q Which she told you to do that, okay.
- 2 A I didn't really say that.
- 3 Q And you knew what it was for. You were going to burn
- 4 the car and the body, correct?
- 5 A I made a lot of bad the choices by going along with
- 6 it, yes.
- 7 Q At which point, it doesn't light off, right?
- 8 A Correct.
- 9 Q You go back. You get gas in the gas can. You grab
- 10 it, and you go back to near the church, correct?
- 11 A Correct.
- 12 Q And then you get out, correct?
- 13 A Correct.
- 14 Q And you walked down to the car?
- 15 A Yes.
- 16 Q By yourself.
- 17 A Kendra told me --
- 18 Q Correct?
- 19 A -- to go down the dirt road, and she was going to
- 20 keep the car running.
- 21 Q I'm sorry. Kendra told you to do that. So you get
- 22 out of the car, and you walked down there because
- 23 Kendra told you to go down there. That's your testimony?
- 24 A She told me to do it, and I went along with it.
- 25 Q And you walked down there, correct?

- 1 A Correct.
- 2 Q And what did you do?
- 3 A I poured the gas, and I lit the rag.
- 4 Q Let's talk about pouring that gas. You poured the
5 whole can out, correct?
- 6 A I believe so, yes.
- 7 Q And you poured it inside the car, correct?
- 8 A I'm not sure whether I poured it inside the car or
9 just over the car.
- 10 Q On the outside of the car?
- 11 A I know the doors -- I know at least one door was open,
12 and I was pouring gas on the car.
- 13 Q And you poured it inside the car?
- 14 A I'm not sure about that.
- 15 Q And you took the gas cap off, correct?
- 16 A No, I didn't.
- 17 Q Who did that?
- 18 A The gas cap was already off from when Kendra put the
19 rag in it.
- 20 Q So Kendra took the gas cap off is your testimony. No
21 one was there but you, correct?
- 22 A Correct.
- 23 Q You could have just can kept walking, couldn't you?
- 24 A I guess I could have.
- 25 Q Could have just walked off, but you didn't, didn't

1 you?

2 A No, sir, I didn't.

3 Q You didn't because you wanted to get rid of that
4 body?

5 A No, sir.

6 Q And her car?

7 A No, sir.

8 Q And then you took a lighter. Well, let me ask you
9 this, did you pour gas on her body?

10 A No, sir.

11 Q You didn't pop the trunk and pour gas and close the
12 trunk?

13 A No, sir.

14 Q You pour it inside the car, take a lighter, light a
15 bag and you light it off, correct?

16 A Correct.

17 Q And that car burned, correct?

18 A Yes, sir.

19 Q And her body burned?

20 A Yes, sir.

21 Q So what then, an hour after you had shot and killed
22 her, you burned her body, too?

23 A I don't know the time.

24 Q And after you set her on fire and her car and her body
25 burned, you went straight from there to the bank, didn't

1 you? Yes or no and then you can explain.

2 A After that, yes, we went to the bank.

3 Q And who was driving?

4 A I was driving on the way down.

5 Q So you went to the bank, and you stopped early,
6 correct, and within one hour of you burning her body
7 beyond recognition, you took money. You took money out
8 of her account.

9 A We went to the A.T.M., and I gave it to Kendra.

10 Q And that's because you were so panicked, is your
11 testimony --

12 A No, sir.

13 Q -- is your testimony, because you did anything that
14 Kendra told you to do?

15 A No, sir, that's not my testimony.

16 Q You voluntarily went to that A.T.M. machine because
17 you voluntarily drove that car there and stopped there,
18 correct?

19 A I said this was one bad mistake after another one.
20 I mean, it was -- I guess it was like a snowball,
21 almost. It was like after moving and putting her in the
22 car, nobody would believe me about what actually happened
23 at the house that day, and yes, I am wrong for going along
24 with what happened afterwards.

25 Q Not only going along with it. Even under your

1 testimony, you're the person who alone poured the gas,
2 right?

3 A Yes, sir.

4 Q And you're the one that went to the A.T.M. machine
5 and got the money out, right?

6 A I got the money out for Kendra like she wanted.

7 Q And you're the one who tried to use the card the next
8 day at Wal-Mart, right?

9 A Because Kendra didn't think I actually got all the
10 money out of it.

11 Q And you kept some of that money, didn't you?

12 A No, I did not.

13 Q Because you spent it the next day at Wal-Mart,
14 correct?

15 A No, I did not.

16 Q You used cash the next day at Wal-Mart, didn't you;
17 a hundred dollars worth?

18 A So I don't have any money of my own?

19 Q I'm just asking -- you used cash, didn't you?

20 A I probably did. I don't know.

21 Q After you paid cash, you went to the A.T.M. machine.

22 A You're talking about --

23 Q You tried to use her --

24 MR. SHEALEY: Objection, Judge --

25 THE WITNESS: (Unintelligible)

1 (Talking over each other.)

2 MR. GIESE: -- yes, I'm talking about --

3 THE WITNESS: I believe I --

4 MR. GIESE: -- the next day --

5 THE COURT: Solicitor, there's an objection.

6 What's the objection?

7 THE WITNESS: Because I did self check-out.

8 THE COURT: Sir. Sir.

9 MR. SHEALEY: Theo.

10 Judge, just that the witness will be allowed to answer
11 the question.

12 THE COURT: All right. Answer the last question.

13 BY MR. GIESE:

14 Q Did you use cash or a debit card?

15 A I believe I used my debit card.

16 Q Now, this incident, that you say happened inside the
17 house -- we're going to go over your different statements
18 as to what you said prior to all of this, but now you're
19 saying that she came at you, and you're -- using your left
20 hand, and the gun somehow turns behind her head on the
21 right and goes off, correct? After she pushes into you,
22 right?

23 A I said that she came at me, and when she came at me,
24 it was like -- I guess it was like she flinched. When
25 she flinched, I shot her.

1 Q Well, maybe I'm missing it, but didn't your two
2 lawyers when they were demonstrating what was
3 happening --

4 MR. SHEALEY: Objection, Your Honor. May we
5 approach.

6 (WHEREUPON, a bench conference was held in the
7 presence, but not within the hearing of the jury.)

8 THE COURT: Overruled. Put it on the record.

9 BY MR. GIESE:

10 Q So when they were demonstrating it to the jury,
11 did you not see one of the lawyers, I forget which
12 one -- Mr. May, I think he was the one -- or Mr. Shealey
13 who was the victim, bumping into each other. Did you see
14 that? Is that what happened?

15 A No. That's not what happened.

16 Q Well...

17 A She was coming at me at first. I was backing away.
18 It was to the point where I couldn't back up anymore. It
19 was like she just charged at me. Now, when you're
20 standing and I fall to my left, my left leg is forward,
21 so my right leg is back.

22 Q Mr. Manning, did I miss it, or did they bump into
23 each other? Did one of them run into the other one while
24 they were sticking the gun to the back of the victim's
25 head? Did I see that or didn't I?

1 A They bumped into each other, yes.

2 Q So did the victim bump into you?

3 A Not like that, no.

4 Q Well, you didn't say, "Stop. Not like that." Did
5 you?

6 A It's kind of hard to -- it's kind of hard to sit there
7 and try to reenact what happened. I mean, how can you?

8 Q Let's talk about firearms. You were in the military
9 for three years?

10 A Yes, sir.

11 Q During that time, they trained you on how to use a
12 weapon?

13 A Yes, sir.

14 Q Do they train you in self-defense?

15 A Not so much in the Air Force.

16 Q But suffice it to say, they teach you about firearms,
17 right?

18 A They teach you about firearms to some degree. They
19 teach you more about firearms if you're like an M.P.,
20 military police.

21 Q But you took training in the Air Force, firearms,
22 didn't you?

23 A I took training as a -- what anybody would take when
24 they went through basic training.

25 Q Correct, so you could become efficient and

1 proficient with a firearm, correct?

2 A No, sir. The training that they give you is not
3 in-depth like that. I mean, you go to a firing range.
4 They let you fire. You either qualify or you don't qualify.
5 That's about as far as it goes.

6 Now --

7 Q Did you qualify?

8 A Did I qualify? Yes, sir. I believe I did.

9 Q So you're qualified with a firearm in the military?

10 A M-16, yes, sir.

11 Q But clearly, they teach you if a pull a trigger, the
12 bullet comes out, right?

13 A Yes, sir.

14 Q They also teach you that if you point a gun at somebody
15 and you pull the trigger, the bullet is going to hit that
16 person. Don't they teach you that?

17 A Yes, sir.

18 Q They teach you to be very careful about it, too, don't
19 they?

20 A Yes, sir.

21 Q Now, in your testimony today, you said, you said,
22 that after you have taken the gun from her, you got it
23 pointed at her, correct?

24 A Wrong hand, but yes, sir.

25 Q Correct?

- 1 A Yes, sir.
- 2 Q And you have -- you have -- she is talking to you and
- 3 you're talking to her, correct?
- 4 A I'm telling her to leave.
- 5 Q And is she armed or unarmed?
- 6 A She is unarmed.
- 7 Q Now, this woman you've just had sex with twice that
- 8 day, she is unarmed, yet you've got a gun pointed at her,
- 9 correct?
- 10 A She is unarmed. She is hysterical, and yes, I did
- 11 have a gun pointed at her.
- 12 Q It was your testimony she kept coming?
- 13 A She slapped the gun.
- 14 Q And somehow, somehow, after having the gun slapped
- 15 once, twice, three times, I'm not sure where to go with
- 16 your statement, but somehow, her head got turned around
- 17 such that you --
- 18 A Well --
- 19 Q For whatever reason --
- 20 A No.
- 21 Q Pulled the trigger --
- 22 A You --
- 23 Q I'm talking about what you did, pulled the trigger
- 24 and entered the back of her skull, correct?
- 25 A Correct.

1 Q And your testimony is you pulled that trigger because
2 you were scared?

3 A Yes, sir, I was.

4 Q Scared of an unarmed person after having the training
5 you've had?

6 A Scared of a person that had just pulled a gun on me.

7 Q Now, after all this takes place, it's your testimony
8 that you went to work that night, correct?

9 A Yes, sir.

10 Q You were not too upset, not too panicked to go put
11 a full shift in, correct?

12 A I just couldn't stay in the house.

13 Q And all of a sudden, you go to work that day. You
14 come home, and then go on with your life like -- like it's
15 nothing, right? Like nothing has happened, correct?

16 A I don't believe that it went quite that way.

17 Q Well, let me ask you, day after day, did you get up
18 and eat, talk to your five remaining girlfriends during
19 that time?

20 A Every day I thought about it, every day.

21 Q You --

22 A It was to the point where I was actually medicating
23 myself, just so I could try to sleep.

24 Q You knew -- you knew she was missing, correct?

25 A Correct.

- 1 Q You knew where she was, correct?
- 2 A Correct.
- 3 Q You knew she was dead, correct?
- 4 A Correct.
- 5 Q Yet day after day, hour after hour, minute after
- 6 minute, you went on living your life, correct?
- 7 MR. SHEALEY: Objection, Judge, relevance to this?
- 8 THE COURT: Overruled. It's cross-examination.
- 9 BY MR. GIESE:
- 10 Q Didn't you?
- 11 A Not like that.
- 12 Q Now, at some point, at some point, you were
- 13 contacted by the Charlotte/Mecklenburg Police
- 14 Department, correct?
- 15 A Yes, sir.
- 16 Q And I believe that was on the 21st of May?
- 17 A Yes, sir.
- 18 Q So 15 days go by. At that point, you think you had
- 19 gotten away with it, don't you?
- 20 A No, sir, I didn't.
- 21 Q Well, let me go into that, because when they come to
- 22 see you -- when you go to see them, correct? You meet
- 23 them some place, right?
- 24 A Yes, sir.
- 25 Q And you volunteer to meet them down there, right?

1 A Not in the sense you mean, no.

2 Q Well, what sense do you mean?

3 A Well, I mean they told me they needed to talk to me.
4 I didn't really feel like I had much of a choice in the
5 matter.

6 Q Well, you voluntarily met them, right?

7 A Because they told me they needed to see me.

8 Q Right. You didn't have to go, right?

9 A They didn't make me feel I had a choice.

10 Q And that was on May 21st, 2009 at 22:45 at the post
11 office on Bluff Road, right?

12 A Right.

13 Q In the Charlotte/Mecklenburg Police Department's
14 car, correct?

15 A Correct.

16 Q And you make this statement to investigators or
17 detectives, I guess they called themselves, Martin and
18 Fitch, right?

19 A Correct.

20 Q Now, your testimony is you didn't voluntarily go
21 down there. You just felt like you had to, right?

22 A Yes, sir.

23 Q At that time -- now, if you need a copy of this, I'll
24 give you a copy. Just let me know, okay.

25 A Okay.

1 Q But this is the transcription that the jury had
2 when they were playing the tape, remember?

3 A Yes, sir.

4 Q All right. It's a copy of it. So 15 days after, and
5 it's your testimony, you shot an unarmed person in
6 self-defense in your own home, 15 days have gone by. The
7 police have finally contacted you.

8 At the time they're looking for a body right, or
9 looking for her. She is missing, right?

10 A Yes, sir.

11 Q They don't know she is dead, right?

12 A Yes, sir.

13 Q You know she is dead, right?

14 A True.

15 Q You know where her body is, right?

16 A Yes, sir.

17 Q You know how she died, right?

18 A Yes, sir.

19 Q You know that the body had been burned, right?

20 A Yes, sir.

21 Q And you knew exactly where it is, correct?

22 A Yes, sir.

23 Q Now, your first opportunity, your first
24 opportunity, to look at the police and say, "I know
25 where the body is. I want to put everybody's concerns

1 to rest, in Charlotte, home, wherever, her family," and
2 then go Martin, "We are -- we're working. We have a case
3 we're working on, and we're trying to talk to friends
4 and, uh, associates of Nikki and try to figure out" -- and
5 before he could finish the sentence, your answer is,
6 "What's wrong with Nikki?" correct?

7 A Yes, sir.

8 Q "What's wrong with Nikki?" Clearly, that's not true.
9 Clearly, you knew what was wrong with Nikki, correct?

10 A Yes, sir.

11 Q So that right there is a total untruth?

12 A Most of the statement is untrue.

13 Q You're trying to lead law enforcement somewhere
14 else, aren't you?

15 A No, sir.

16 Q No, sir? "Well, I" -- the answer, "Uh, right. Right
17 now I'm not sure. I really don't know at this point,
18 so" -- and before you finish this, you answer, "What
19 you mean you don't know?" And you said that because you
20 wanted to know what they knew?

21 A No, sir. That's not the case.

22 Q And then you go on -- I'm sorry, what?

23 A When I gave those statements, I admit I lied. I'd
24 been through a lot. I mean, I lied on both of those
25 statements. I was scared. I mean, after everything that

1 had done happened, I mean, what me and Kendra did, after
2 the fact, who would believe me when I tell them what really
3 happened in the house?

4 Q Then later on, on page five of that same transcript,
5 you answered, "Then maybe around one o'clock, she got up,
6 said she had to go somewhere and left. While we was there,
7 it did seem strange that her phone" --

8 "She spent the night?"

9 "No, no, no. She just stayed the day because I went
10 to work that night," true or untrue?

11 A That's what I told them, yes.

12 Q And what you told them was not true, correct?

13 A I admitted to that.

14 Q And, in fact, you kept on. For 40 minutes you deny
15 knowledge of it, correct?

16 A Yes, sir. I admitted to it.

17 Q Just like you're talking to me right now. You looked
18 right at them, and you told them you didn't know anything
19 about it, correct?

20 A I told -- I didn't so much look right at them. I mean,
21 I believe I was quite fidgety and nervous.

22 Q Well, did you sound nervous on the tape?

23 A I don't know what the taken picked up as to how I
24 actually was.

25 Q So now it should have been videotaped is what your

1 saying, so you could see how upset you were, correct?

2 A No, I didn't say that. I mean, it was the
3 interrogation, and I admit that I lied to them.

4 Q For 40 minutes?

5 A If that's how long it was, yes.

6 Q Then the next day, May 22, 2009, and it just wasn't
7 one lie. It was one lie after another that one, wasn't
8 it, over that 40 minutes?

9 A It's a good portion of it, yes.

10 Q May 22, 2009, 11:00 a.m. at your home, Stan Smith
11 who is in the courtroom and Kevin Isenhoward who
12 testified yesterday, they came to your house, didn't
13 they?

14 A Yes, sir, they did.

15 Q They talked to you, didn't they?

16 A They talked to me for a little while, yes.

17 Q For about 30 minutes?

18 A Actually I believe it was less than that.

19 Q And you were nervous and upset, right?

20 A I was nervous. They was asking me questions. I was
21 trying to answer them and not show too much how nervous
22 I was, and then the doorbell rang.

23 After the doorbell rang, they decided to leave.

24 Q Once again, on May 22, 2009, just like your talking
25 to this jury, just like your talking to me, you told lies

- 1 about what happened, correct?
- 2 A I told them the same thing that I told Charlotte.
- 3 Q That she left that day?
- 4 A Yes, sir.
- 5 Q And on May 22nd, you knew where she was?
- 6 A Yes, sir.
- 7 Q You knew what had happened to her?
- 8 A Yes, sir.
- 9 Q And you knew her family and friends were looking for
- 10 her?
- 11 A Yes, sir.
- 12 Q Now, May 22nd, 2009, same day, about 11 hours later,
- 13 20:50 at your house, it starts, and then you go over to
- 14 Region I, it's the Charlotte Police Department again,
- 15 right?
- 16 A Yes, sir.
- 17 Q And that's Martin and Hopkins. They talk to you
- 18 again on tape, right?
- 19 A Yes, sir.
- 20 Q And your voice came over, and you sounded pretty
- 21 calm, didn't you?
- 22 A For the most part, yes, sir.
- 23 Q Yeah, because you were calm, right?
- 24 A I don't know how calm I was.
- 25 Q Let's go over that. Page four. I'll give you kind

1 of a narrative.

2 "We went to Freeman's gas station right down the
3 street. I filled her car up and came back to the house.
4 She told me that she wanted to lay down for a little while.
5 She was tired. I said no problem.

6 "We go upstairs. She was like, 'Do you want to lay
7 down with me?'

8 "I said, Okay. We laid down. We was intimate again,
9 and then all of the sudden, she got up, said she had to
10 go. I'm up. I'm like all right, fine.

11 "She went to the bathroom downstairs. She said she
12 was about to leave. I said all right, and let me know
13 when after you get home. She left and that was it."
14 Correct?

15 A Yes, sir. That's what I told them.

16 Q And that's not true, is it?

17 A The end part, no, sir.

18 Q Well, that's the important part isn't it?

19 8:17 -- now, this is an hour and 19 minutes, remember?
20 It was a long time, wasn't it?

21 A I believe so.

22 Q "No. I'm okay. Every time" -- oh, "So what time was
23 it that you think she left?"

24 "She left the house, it was like 1:30, one, 1:30,
25 okay. Because like maybe around 2:30, I got a -- I think

1 I got a text message from one of my friends that asked
2 me what was I doing. I told him nothing."

3 "Okay. Now, while she was there -- while she was
4 there, did -- did I any kind of argument occur?"

5 What was your answer?

6 A I told him no.

7 Q True or not true?

8 A That's not true.

9 Q "Did the -- did you get injured in any way?"

10 "No."

11 Well, that's true, right?

12 A Right.

13 Q Because you didn't.

14 A No, sir.

15 Q "Well, did she get injured in any way?"

16 What was your answer?

17 A I told them no.

18 Q "Okay. Did you have any marks, any scratches, that
19 maybe happened accidentally during sex or" -- and your
20 answer was?

21 A No.

22 Q That was true. Okay.

23 So no, neither of you got injured. What was your
24 answer?

25 A I told him no.

1 Q Just like your talking to me, just like your
2 talking to this jury today, you looked at -- you looked
3 right at them and you lied, correct?

4 A I told them the answers to their questions. The
5 answers that I told them was because I was scared.

6 Q And then you go, "Why you ask that?" Because you're
7 starting to think, "Well, maybe they're getting some
8 information out of me." Right? That's why you asked
9 that, correct?

10 A No. Actually, I said that --

11 Q Yes. Or no --

12 A I believe I --

13 MR. SHEALEY: Objection, Your Honor. He's trying to
14 answer the questions.

15 MR. GIESE: Yes or no, and then --

16 THE COURT: Just answer --

17 MR. SHEALEY: Your Honor.

18 THE WITNESS: I believe I asked him that because
19 they was getting text messages and asking me questions
20 off the text message at the time.

21 BY MR. GIESE:

22 Q Hopkins, that's the lady, "Just to go over, make sure
23 that nobody got injured to the point of, you know, during
24 a domestic violence situation."

25 Your answer? "Oh, no, no. When we got into arguments,

1 it wasn't even an argument. It was just she stated her
2 opinion. I stated my opinion, and then we just dumped
3 off."

4 Hopkins, "Okay. So you never -- you never,
5 particular to this day, had a physical confrontation?"

6 What was your answer?

7 A I told him no.

8 Q Untrue, correct?

9 A Correct.

10 Q "You understand what I'm saying as far as people get
11 in arguments." And your answer, "We've never."

12 Hopkins, "Pushing and shoving and" --

13 Your answer, "We've never had a physical
14 confrontation during the entire time we talked."

15 Hopkins, "Okay."

16 Not true, is it?

17 A Well, we never had a pushing or shoving argument.

18 Q Correct me if I'm wrong, but didn't your two
19 lawyers when you were demonstrating what happened,
20 didn't they bump into each other like we talked about
21 before, or she read them to you in your testimony?

22 A She turns at me. That's not pushing and shoving,
23 though.

24 Q Page 19, "All right. Let me get back to this timeline.
25 So she leaves, and you think that's around 1:30?"

1 "Uh-huh."

2 Lie, correct?

3 A Correct.

4 Q "Now, you didn't speak or make any other effort to
5 communicate with her after that?"

6 "No."

7 A No, sir. I mean, I have already admitted that I lied
8 during both of those statements and --

9 Q I think the jury has a right to see this. Page 38.
10 MR. SHEALEY: Objection, Your Honor, the solicitor
11 is making a comment.

12 THE COURT: Just ask your question, solicitor.

13 MR. GIESE: Yes, sir.

14 BY MR. GIESE:

15 Q Page 38, "Has she ever, um, given you any of her credit
16 cards, debit cards to use to go out?"

17 What was your answer?

18 A I told them no.

19 Q No. Martin, "No, you've never been in possession or
20 control of any of her debit cards or credit cards?" Your
21 answer?

22 A I told him no.

23 Q Untrue. They go, "Speak up." And your voice dropped
24 because you knew they had caught you, right.

25 A I told them no.

1 Q Okay. "Has she ever given you the pin numbers?" your
2 answer?

3 A I said no.

4 Q Had she given you the pin numbers?

5 A Yes.

6 Q "To any of her cards?" And your answer? No.

7 A (There was no response).

8 Q Page 39, "Okay. So you never used them or anything
9 before?" Your answer, "No."

10 Now, at that time, you're starting to feel like
11 they're closing in on you, don't you?

12 A Actually, I stayed scared the entire time, so...

13 Q Here comes the important part. "We're going to be
14 asking you a couple of tough questions, and, um, this is
15 just something I've got to go through, okay.

16 "Question, did you harm Nikki in any way?"

17 What was your answer?

18 A I told him no.

19 Q Just like we're talking right now, just like you
20 talk to this jury, you looked at him, and you lied, right?

21 A (There was no response).

22 Q Okay. But you killed Nikki?

23 A No.

24 Q And that's not true because you did.

25 Hopkins, "Okay. Do you know anything about her

1 current location?"

2 "No."

3 "Do you know anything about her vehicle?"

4 A I mean, he was answering the questions for me, so...

5 Q I'm asking you, what was your answer?

6 A No.

7 Q "Do you know, uh, about anything, any using of her
8 credit cards for a vehicle?"

9 What was your answer?

10 A I said no.

11 Q "Do you know of -- did you have any role in her being
12 missing?"

13 A I said no.

14 Q Okay. "If something is wrong, is wrong and she is
15 not with us anymore, and we find -- we found -- we find
16 out that there's foul play, what do you think should
17 happen to the person that did it?"

18 What did you say?

19 A "They should go to jail."

20 Q Because you knew what you had done to her, right?
21 That's why you said that, and then they go, "Like what?"
22 What was your answer?

23 "Like, um, death penalty, electrocution. I don't
24 even know what the penalty is." You said that because
25 in your mind, you knew exactly what had happened and

1 exactly what you had done. You shot an unarmed woman in
2 the back of the head with a pistol?

3 A I know that -- the situation that ended up with Nikki
4 being shot was the argument, her pointing the gun at me,
5 and I took -- taking the gun from her and told her to leave.

6 She still kept coming at me, to the point where she
7 charged at me, and I felt she was going for the gun. So
8 I pulled the trigger.

9 Q And shot her in the back of the head.

10 A Where she got hit, I did not know.

11 Q Okay. Finally, Hopkins, "Um, do you have any
12 questions of me or Detective Martin?"

13 Then Martin goes, "Being straight with us, being
14 honest with us," talking to you.

15 Then what did you say?

16 A "Uh-huh."

17 Q Just like you're being straight and honest today?

18 Martin, "We're not going to find out anything
19 different?"

20 What was your answer?

21 A "Straightforward."

22 Q Excuse me?

23 A "Straightforward."

24 Q Meaning you're telling the truth, correct?

25 A Correct.

1 Q Let's go over the written statements very quickly.
2 The written statements you made at the Richland County
3 Sheriff's Department.

4 You were read your rights, correct?

5 A Correct.

6 Q You understood your rights?

7 A Correct.

8 Q You knew you could ask for a lawyer at any time,
9 correct?

10 A Correct.

11 Q You knew you didn't have to answer any questions,
12 correct?

13 A I knew that's what they told me, but I wasn't too sure
14 about it.

15 Q But you knew what your rights were. Handing you
16 State's Exhibit Number one, you recognize that, don't
17 you?

18 A Yes.

19 Q What is it?

20 A It's a sheet, advice of rights that Sergeant McDaniels
21 had me sign.

22 Q Read to you?

23 A He read to me and had me sign it.

24 Q And then you signed down here where it says, "I have
25 read this statement of rights, understand what my rights

1 are. I am willing to talk and answer questions. I
2 understand and know what I am doing. No promises have
3 been made to me. No pressure or coercion of any kind has
4 been used against me."

5 You signed on that, right?

6 A He told me to sign it. I signed it.

7 Q And I forgot this statement. We'll get into this real
8 brief, but you had those rights read to you one other
9 time, didn't you?

10 A No.

11 Q I'm asking you, did you have them read to you before?

12 A No.

13 Q They weren't read to you in the car, at your house,
14 or near the car at your house?

15 A That day when --

16 Q By Sergeant McDaniels.

17 A -- they came first, yes.

18 Q And then you made a statement. At that point, you
19 looked at Sergeant McDaniels, and you said it was an
20 accident, correct?

21 A After Sergeant McDaniels had told me, just go ahead
22 and say it was an accident repeatedly, yes, I eventually
23 told that it was an accident.

24 Q So then it's your testimony that Sergeant
25 McDaniels -- you did tell Sergeant McDaniels also your

1 house while you're standing outside of your car, in the
2 bay of the car, that you -- it was an accident at that
3 point?

4 A No.

5 Q So what Sergeant McDaniels said, that's not what had
6 happened?

7 A No, it wasn't. After I had got arrested. I was
8 standing in front of his truck for about a minute before
9 he put me in the truck. After he put me in the truck,
10 I sat in there for about -- maybe a minute or two more
11 before he had gotten in on the driver's side. He was still
12 making phone calls or talking to the other deputy.

13 I believe it was Detective Wagner or Sergeant Wagner,
14 she got in the truck behind him. After that, we left my
15 house. We went up Bluff Road, and on the way up, he was
16 telling me, just go ahead and say it was an accident about
17 how Kendra was painting a picture, a bad picture of me,
18 and for me just to talk to him.

19 Q So it was Sergeant McDaniels' fault, to use that word
20 again, that you said it was an accident, correct?

21 A I didn't say it was anybody's fault that --

22 Q Well, you just said -- you only said it because
23 Sergeant McDaniels said it. How is that not his fault?

24 A I said -- I told him what he told me to say, and that's
25 what I said. It's not his fault. It's my fault that I

1 said it.

2 Q He gave you the idea?

3 A He told me that -- just go ahead and say it. Accidents
4 can be explained, and he gave me the example of his
5 friend.

6 Q So then you go to the station, they read your rights
7 again. This time it's Holly Wagner again with Sergeant
8 McDaniels, and they read the rights to you, and you make
9 a statement that time, right?

10 A They gave me some pants, and at the end of giving me
11 my rights again, yes.

12 Q And they typed it in when he talk to you, correct?

13 A He typed it in.

14 Q Okay. And after you finished, they showed you all
15 the other pages of it, didn't they?

16 A Yes.

17 Q And that's State's Exhibit Number 2, right?

18 A Right.

19 Q You signed every page, correct?

20 A Correct.

21 Q Freely and voluntarily you signed it?

22 A Well, I guess he instructed me to signed it, so I
23 signed it.

24 Q Wait a minute.

25 A I mean, I was --

1 Q He instructed you to sign it, so it was his fault you
2 signed it?

3 A It was like this --

4 Q Well, you knew you didn't have to sign it, did you?

5 MR. SHEALEY: Objection, Your Honor. The witness is
6 trying to answer.

7 THE COURT: Let him answer his question.

8 THE WITNESS: It's like this, growing up, a lot of
9 times it's more like discipline wherein you do what you're
10 told. He told me to go ahead and sign it. He signed it,
11 he passed it to me. I signed it. Then I believe Sergeant
12 Isenhoward signed it as a witness.

13 BY MR. GIESE:

14 Q Did he read it to you before you signed it?

15 A I'm not sure whether he read to me from the sheet or
16 he read it to me while it was on the computer, but I
17 believe so.

18 Q And you said yes, that's my statement?

19 A I told him yes, sir.

20 Q And they asked you at some point, "Is there anything
21 you would like to add to this statement?" You added
22 something, correct?

23 A I believe so, yes, sir.

24 Q But you didn't add that she came at you and it was
25 self-defense?

1 A I told him that.

2 Q It just didn't make the statement?

3 A I told them quite a few things that didn't make the
4 statement.

5 Q So there again, it's their fault?

6 A Well, since they were typing it, I believe so.

7 Q But then specifically, on one of the pages that you
8 did sign that did actually make it into the statement,
9 as you say, "What do you want to do? I told her nothing."
10 You went back to the house.

11 "She said, 'I'm kind of tired. Can I lay down for
12 a few?'.

13 "I said fine. You know where the bed is. She said,
14 'You're going to join me.' I told her, 'Okay.'.

15 "We went back upstairs, had sex again. We got up.
16 She started walking through the other bedrooms. She
17 told me that I needed to throw the boxes out of one of
18 them. Then she went in the other bedroom.

19 "She said, 'What are you going to do with this?' I
20 told her that I think I could make it my daughter's room.
21 She mentioned how she decorated her house again because
22 that is -- that is one of her things that she do big. She
23 likes to decorate."

24 She liked to decorate.

25 "I said, 'What would you do to this room?' She looked

1 around, said, 'Paint it, put some borders up.'

2 "Then she saw my bag was open. The gun was sitting
3 in the bag. It was a .380 Highpoint. She picked it up.
4 I told her to stop playing. I grabbed the gun, took it
5 away from her, and when I pulled it back from her, she
6 turns around, and it went off."

7 You said that.

8 A Is that -- is that the first statement or the second
9 one?

10 Q This is the first one. Did you say that or not?

11 A I agreed with Sergeant McDaniels, and that's what we
12 put in the statement, yes.

13 Q Did you say it or did Sergeant McDaniels say it?

14 A Sergeant McDaniels suggested it, and I said it.

15 Q "I didn't know what to do. I got scared and started
16 shaking. I grabbed my phone. I don't know who to call,
17 so I hit redial, and I called Kendra."

18 A Yes, sir.

19 Q We've already discussed that, haven't we?

20 A Yeah.

21 Q Then on page nine, and correct me if I'm wrong, but
22 nowhere in this first written statement do you say
23 anything about an argument, correct?

24 A In the first statement, I don't believe there was an
25 argument.

1 Q Or any kind of fight, correct?

2 A I don't think so.

3 Q Or her threatening you with a gun, correct?

4 A Correct.

5 Q Or you being scared and shooting her in self-defense,
6 do you?

7 A Actually, I did say I was scared.

8 Q And who did you tell that to?

9 A Sergeant McDaniels.

10 Q And that just didn't make your statement?

11 A No, it didn't.

12 Q It wasn't in that last part where he said you could
13 add anything you want. You didn't think, "I should just
14 say I was scared because I was"?

15 A He told me to just go ahead and sign it.

16 Q "I don't remember. She had a skirt on, like a jean
17 skirt. I do not remember what kind of shirt she had on.
18 Kendra told me that she made up a story about what had
19 happened. She told me that Nikki was fine and she ran
20 off to Mexico."

21 Question, "Right before Nikki was shoot, did you
22 actually grab the gun from her?"

23 Answer, "Yes."

24 "So the gun was completely in your hands?"

25 Answer, "The handle of it was in my hand. The front

1 end of the gun was like in her hand, but it was inside
2 of her jacket. Her jacket was big on her, so it was over
3 her hand. She went to turn around, and when she pulled
4 her hand, it was like the gun just went off."

5 You told that to Sergeant McDaniels, correct?

6 A Yes, I did.

7 Q Nothing about an argument, nothing about a fight,
8 nothing.

9 Question, "What did Nikki say?"

10 Answer, "Shedidn't say anything. She just fell. She
11 hit the floor. It was almost like she just sat down."

12 A I -- I think you missed a part.

13 Q I'll read the whole part.

14 "I couldn't tell whether she got hit or whether she
15 just fainted. She just hit the floor. It was like she
16 fell on the floor hard. It was almost like she just sat
17 down. I didn't see no blood."

18 A I --

19 Q "I tried to shake her to see if she was going to wake
20 up. She didn't move, and that's when I got scared. I
21 mean, really scared."

22 You didn't talk about being scared prior to taking
23 the shot, do you?

24 A I did, but it wasn't put in.

25 Q Well, they put it in here, didn't they?

1 A I wasn't the one typing. I know I told them that I
2 was scared before.

3 Q "I didn't know who to call. I just kept pressing
4 the call button, and it called Kendra."

5 So they put in part of your statement, but not all
6 of your statement is that what your saying, yes or no?

7 A Yes.

8 Q Then the final statement you made, and this was one
9 to Sergeant Isenhoward and Sergeant McDaniels, correct?

10 A Correct.

11 Q And it was at the assistance of Sergeant Isenhoward
12 because he wanted to talk to you about this statement,
13 correct? Because he had just thought of something,
14 hadn't he?

15 A I don't know.

16 Q The shot was in the back of the head?

17 A I don't know. I didn't find out where the shot was
18 until probably the next day from Sergeant McDaniels.

19 Q And here again, they read you your rights. They talk
20 about your rights here. You sign the bottom saying, yeah,
21 you know, I understand my rights. You understood your
22 rights, right?

23 A Yeah.

24 Q And they asked you, "Is it true that you would like
25 to change part of your first statement?"

1 Your answer, yes.

2 "Are you doing this of your own free will and accord?"

3 Yes, because you were, weren't you?

4 A Changing it, yes.

5 Q "Have you been properly advised of your Miranda
6 rights?"

7 "Yes."

8 "Were you fully honest when you gave your first
9 statement?"

10 No, but that's not unusual with you, is it?

11 A Going home --

12 MR. SHEALEY: Objection, Judge, that's not a fair
13 question.

14 THE COURT: It's a fair question. Go ahead.

15 BY MR. GIESE:

16 Q That's not unusual with you, is it?

17 A For going along with it, what Sergeant McDaniels
18 said, yes.

19 Q No. I'm talking about all the times you didn't tell
20 the truth to the Charlotte Police Department and the
21 Richland County Sheriff's Department prior to you
22 getting caught.

23 A I mean, --

24 Q I asked the question, and you can explain.

25 A The reason I didn't tell the truth to the Charlotte

1 Police Department was because I was afraid. I told you
2 that.

3 I mean, if I was to actually explain to them what
4 had happened, would they actually believe me considering
5 everything that me and Kendra had done after?

6 Q Question, "What would" -- are you finished? I didn't
7 mean to interrupt you. Are you done?

8 A Yes.

9 Q Question, "What would you like to change or add to
10 your statement?"

11 Answer, "It was a disagreement between two of us.
12 I was disregarding some of her questions when it came to
13 the relationship which turned into an argument that
14 got heated.

15 "Nikki picked up the firearm and pointed it at me.
16 I asked her what the hell was she thinking. She asked
17 me was I still serious, referring to whether or not I wanted
18 to have kids with her.

19 I told her it was just friends with benefits, which
20 made her even madder. I told her to stop playing and took
21 the gun from her."

22 All right. So at this point, do you say, "I tell her,
23 stop playing and took the gun from her." So at this
24 point, she is unarmed, correct?

25 A Correct.

- 1 Q And you are armed, correct?
- 2 A Correct.
- 3 Q And you pointed the gun at her, correct?
- 4 A Correct.
- 5 Q "I grabbed her hands and just took it from her. Then
- 6 I pointed it at her and asked, 'Are you fucking crazy?'
- 7 I told her that. 'You can't be mad at me because when
- 8 I came up to see you last, you were asking me if I wanted
- 9 to be friends with benefits."
- 10 A Actually --
- 11 Q And you still got the gun pointed at her, correct?
- 12 A Actually, I believe that line was taken from
- 13 somewhere else in Kendra's statement because after I had
- 14 the gun on her, I asked her was she fucking crazy, and
- 15 then I told her to leave.
- 16 Q That's not what you say in this statement.
- 17 A But that's what I told them.
- 18 Q That's not what you said, so there again, they didn't
- 19 put you what said in the statement, correct?
- 20 A Correct.
- 21 Q She was still talking about whether I was serious.
- 22 She was still talking about whether or not I was serious,
- 23 and you still got the gun on her, correct?
- 24 A And I was still telling her to leave.
- 25 Q That's your testimony today, correct?

1 A That was my statement then.

2 Q "The whole time she was crying. Even when she was
3 pointing the gun at me, she was crying. She hit the gun
4 and asked me again, 'Are you fucking crazy?' She told
5 me, 'You're just like everybody else.'" So she hits the
6 gun once in this statement.

7 Now, in this statement, you said that she said, "You
8 were going to be there for me, and you hurt me just like
9 everybody else." You've still got the gun pointed at her,
10 correct?

11 A I had the gun pointed at her, and she was still
12 hitting the gun.

13 Q "She went to take a step, like motioned toward me,
14 but she pivoted when she did, toward me," not into me,
15 like your lawyers did, "toward me, and I pulled the trigger
16 to show her to stop playing."

17 A Yeah, those are Sergeant Isenhoward's words.

18 Q Told her to stop playing.

19 A Now, those are Sergeant Isenhoward's words. That
20 was when he told me about pulling the pencil back because
21 I wasn't saying what he wanted to hear.

22 Q But you signed the statement, didn't you?

23 A I signed it because they told me to go ahead and sign
24 it.

25 Q And that's your signature, the bottom of it --

1 A And --

2 Q -- that it's true --

3 A And --

4 MR. SHEALEY: Objection, Your Honor..

5 MR. GIESE: I'm asking him a question. He hasn't
6 answered it.

7 MR. SHEALEY: He's trying to, Judge.

8 BY MR. GIESE:

9 Q Did you or did you not sign the statement?

10 A I signed the statement because I was told to sign it.
11 Their exact words were, "It's been a long day." They're
12 tired. They're ready to go home. If I didn't hurry it
13 up, that they'll just come and get me again in the
14 morning.

15 Q You said you shot her with a .380 Highpoint,
16 correct?

17 A Correct..

18 Q Where is the gun?

19 A I have no idea.

20 Q And why? You have no idea? That's your gun.

21 A The last time I saw the gun was when Kendra had it.

22 Q So Kendra got rid of it?

23 A I guess. I don't know what she did with it.

24 Q Kendra's fault again. Where is the shell casing?

25 A I don't know.

- 1 Q Did you pick it up?
- 2 A No.
- 3 Q You don't know where that is either, do you?
- 4 A No.
- 5 Q License tag?
- 6 A What license tag?
- 7 Q The victim's license tag?
- 8 A It was on the car.
- 9 Q When you dropped -- when you burned it?
- 10 A It was on the car.
- 11 Q Still on there?
- 12 A Yes.
- 13 Q So it ought to still be on there, right?
- 14 A Either that or it burned off. I have no idea.
- 15 Q I'm handing you State's Exhibit Number 129 that's
- 16 in evidence and 130, okay. Do you recognize those two
- 17 pictures?
- 18 A This is inside my garage. This is inside the garage
- 19 at my house.
- 20 Q What is it a picture of?
- 21 A Two gas cans. It looks like a can of paint, an old
- 22 mailbox box and a chair.
- 23 Q Now, weren't those the gas cans that you used to pour
- 24 on the car?
- 25 A I'm not sure.

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1 Q What do you mean you're not sure?

2 A Well, the gas can was left in the car with Kendra.

3 Q So Kendra had the gas can. So then, you have two gas
4 cans like that just sitting around?

5 A There was a lot of stuff just sitting around the
6 house. I had just moved in and most of the stuff was left
7 there.

8 Q Now, these pictures were taken on May 22 by the
9 Charlotte Police Department, okay.

10 A Okay.

11 Q And that's -- in their search warrant, and there are
12 two gas cans, right? Correct?

13 A Correct.

14 Q Okay. And this is -- the search warrant is being done
15 at the exact same time that they're taking one of your
16 oral statements, correct?

17 A It was done at the same time that they was
18 interrogating me, yes.

19 Q So at that point you knew they were on to you,
20 correct?

21 A I didn't know what they were. I --

22 Q You had a feeling though, didn't you?

23 A I don't know. I was just scared.

24 Q I hand you State's Exhibit Number 286. What is that
25 a photograph of?

1 A It's a photograph of -- it's one of the gas cans, I
2 guess.

3 Q Well, it's the same corner as State's Exhibits
4 number 129 and 130, isn't it?

5 A It's the same gas can. It just has a little more
6 trash over it. The only difference is that there is another
7 piece of trash over it.

8 Q How many gas cans are in this picture?

9 A Only one now.

10 Q And --

11 A It looks like.

12 Q In the search -- this picture was taken on May 29th
13 and 30th by the Richland County Sheriff's Department --

14 A That --

15 Q -- after you had been arrested, correct?

16 MR. SHEALEY: Your Honor.

17 THE WITNESS: That picture is only half --

18 MR. SHEALEY: Objection.

19 THE WITNESS: -- of the pictures.

20 THE COURT: Let him answer his question.

21 THE WITNESS: It doesn't even show the chair in that
22 picture. It only shows half of the mailbox container.

23 BY MR. GIESE:

24 Q So it's your testimony that there's two -- there's
25 two gas cans in there?

1 A Right there you'll see the paint can on the -- right
2 at the corner. You can't see anything past that paint
3 can, and in the other picture, the other gas can that was
4 on the other side of the paint can.

5 Q So --

6 A So as far as I know, it should still be there.

7 Q They have photographs of it. They can look at it,
8 right?

9 A Sure enough.

10 Q But you would testify that there's only one picture,
11 one gas can in that picture, correct?

12 A It looks like you only took a picture of one gas can,
13 yes.

14 Q But also they inventoried what was found in there
15 too, right?

16 A They --

17 MR. SHEALEY: Objection, Your Honor. I don't think
18 the witness would know about the police --

19 THE COURT: Well, if he knows, he knows. If he
20 doesn't, he doesn't.

21 MR. GIESE: Your Honor, he would be given the -- what
22 was taken out of his -- out of his garage.

23 THE WITNESS: Actually, I haven't received any letter
24 or anything with that information. As for this first
25 search warrant when Charlotte did it, that was left on

1 my kitchen table. The second search warrant I never
2 seen anything of it.

3 MR. GIESE: That's all I have.

4 THE COURT: Redirect?

5 MR. SHEALEY: Beg the Court's indulgence.

6 (Pause)

7 Your Honor, I don't think -- I don't think I have
8 anymore questions for Theo.

9 THE COURT: All right. You may come down, sir.
10 Thank you very much.

11 All right. Ladies and gentlemen, we're going to take
12 our lunch break at this time. It's 1:30. I'll ask you
13 to be back in your jury room at 2:30. That gives us an
14 hour for lunch.

15 Again, don't discuss the case among yourselves
16 when you return to the jury room or with anyone else over
17 the lunch hour. Have a pleasant lunch. We'll see you at
18 2:30. Thank you very much.

19 (WHEREUPON, the jury left open court at approximately
20 1:27 p.m.)

21 THE BAILIFF: Everyone remain seated.

22 (Pause)

23 THE COURT: All right. Stand at ease until 2:30.

24 (WHEREUPON, a lunch break was taken.)

25 THE COURT: Is the State ready for the jury?

1 MS. CAMPBELL: The next witness, Mr. Fite, we're
2 aware of who he is. However, I'm just somewhat concerned
3 about the parameters of his possible testimony. I
4 assume they're not going to ask him any legal opinions
5 or give any legal opinions as far as what this constitutes
6 or anything of that nature.

7 I would just ask for maybe a proffer, just to see
8 what he says, the substance would be to make sure it doesn't
9 cross those lines.

10 THE COURT: I'm familiar with him.

11 MS. CAMPBELL: He's from the -- he used to work at
12 the Georgia -- the Georgia equivalent of S.L.E.D., and
13 I know he has some training or expertise in ballistics;
14 is that correct?

15 THE COURT: Do you want to voir dire him out of the
16 presence of the jury?

17 MS. CAMPBELL: It's not a voir dire issue, Your
18 Honor. I just want to know as far as the extent of his
19 opinion.

20 I just don't want him to get up there and say he thinks
21 this is voluntary manslaughter.

22 THE COURT: Well, at that point I guess you could
23 object.

24 MS. CAMPBELL: We would just ask for a proffer to make
25 sure they don't get there, Your Honor.

1 THE COURT: Can you tell us what he's going to say?

2 MR. MAY: He's not going to say that. He's not going
3 to make the determination as far as what -- I don't think
4 there's a determination as far as the mens rea or anything
5 like that.

6 THE COURT: You --

7 MS. CAMPBELL: You're representing you're not going
8 anywhere near that?

9 MR. MAY: There is no way he could testify to the mens
10 rea.

11 THE COURT: Or guilt or innocence.

12 MR. MAY: No.

13 MS. CAMPBELL: Or whether that constitutes
14 self-defense, voluntary manslaughter or murder.

15 MR. MAY: As I said, the mens rea of it is -- it's
16 not what he's coming here to testify to.

17 THE COURT: We'll find out.

18 Is the State ready for the jury?

19 MS. CAMPBELL: The State is ready, Your Honor.

20 THE COURT: Is the defense ready for the jury?

21 MR. SHEALEY: Yes, sir, Your Honor.

22 MR. MAY: I beg the Court's indulgence.

23 (Pause)

24 MR. MAY: The only other issue, Your Honor, is that
25 the jury, in the State's case in chief, they were

1 introducing the defendant's cell phone with the
2 charger. We made a motion to get -- as long as...

3 THE COURT: I don't understand.

4 MR. MAY: Ms. Campbell has remembered it.

5 To get the cell phone, the actual memory card and
6 the battery, we're just asking that it be removed.

7 Ms. Campbell agrees that --

8 THE COURT: Does that have anything to do with this
9 witness?

10 MR. MAY: No, sir. I was just trying to break it up
11 while we had the jury out.

12 THE COURT: Well --

13 MR. MAY: And we're not lost in thinking about
14 closing statements.

15 THE COURT: Bring the jury, please.

16 (WHEREUPON, the jury came into open court at
17 approximately 2:37 p.m.)

18 THE BAILIFF: The jury is seated, Your Honor.

19 THE COURT: All right. Thank you very much, ladies
20 and gentlemen. I hope you had a pleasant lunch. The
21 defense will now continue their case.

22 MR. MAY: Thank you, Your Honor.

23 THE COURT: Yes, sir.

24 MR. MAY: The defense calls Kelly Fite.

25 THE BAILIFF: Place your left hand on the Bible,

1 raise your right hand, face the clerk.

2 KELLY FITE,

3 after being duly sworn, testified as follows:

4 THE CLERK: Thank you. Have a seat in the witness
5 stand, please.

6 (There was no response.)

7 DIRECT EXAMINATION:

8 BY MR. MAY:

9 Q State your name for the record.

10 A Kelly Fite.

11 Q Hey, Mr. Fite. How are you doing?

12 A Fine, sir.

13 Q Can you tell the jury where you're from?

14 A Atlanta.

15 Q All right. Can you please tell them about your
16 background and your education?

17 A I got my B.S. degree in chemistry from Berry College
18 in Rome, Georgia. I worked for the Georgia Bureau of
19 Investigations crime laboratory for 31 years. I've
20 been retired 11 years. I'm an independent firearms
21 examiner. I testify both for the prosecution and the
22 defense.

23 Q Okay. Can you talk about your training and -- your
24 training as far as your 31 years with G.B.I.?

25 A I've attend schools and seminars all over the

1 country concerning firearms and firearms related
2 evidence, firearms reconstruction school. I'm an
3 American Life Member of the Association of Firearms and
4 Toolmarks Examiners. I've testified in the southeastern
5 United States about 2700 times.

6 Q All right. So that was going to be my next question.
7 Have you ever been qualified as an expert before?

8 A About 2700 times.

9 Q All right. And can you please tell us the different
10 disciplines or the different fields you've been
11 qualified in?

12 A Basic firearms, matching bullets and cartridge
13 cases back through weapons, muzzle target distances, how
14 the firearm works, is it working properly, accidental
15 firings, the bullet trajectories, both in humans and in
16 cars and buildings.

17 Q Crime scene reconstruction?

18 A Yes.

19 Q What courts have you been qualified in?

20 A Most all the southern, southeastern states,
21 Alabama, Florida, Georgia, Tennessee, South Carolina, and
22 some courts up north in Washington, D.C. and into Orange
23 County, California.

24 MR. MAY: Your Honor, at this time the defense would
25 move to qualify Mr. Fite as an expert in crime scene

1 reconstruction, firearms and ballistics.

2 THE COURT: Voir dire?

3 MS. CAMPBELL: No, sir.

4 BY MR. MAY:

5 Q All right. Were you here today for Mr. Manning's
6 testimony?

7 A Yes.

8 Q And have you been provided any information outside
9 of that testimony?

10 A Yes. I met with -- I met with him, Mr. Manning, on
11 the fourth of October. He made a statement to me that
12 was similar to the statement that he gave to law
13 enforcement when he was arrested.

14 Q All right. Were you provided with any other
15 evidence in the case?

16 A The medical examiner's autopsy report.

17 Q Were you also provided with his last statement to
18 the Richland County Sheriff's Department?

19 A Yes.

20 Q All right. Now, can you talk to the jury about does
21 the autopsy evidence support his statement in any way?

22 A It does. The medical examiner's autopsy says it's
23 a shot to the right side to the back of the head; that
24 it's 2.4 inches right at the midline. That's
25 four-and-a-half inches from the top of the head, which

1 puts it about above the ear right here.

2 Its direction is back to front, right to left, and
3 up.

4 Q All right. And can you please talk about how that
5 would relate to the testimony?

6 A Well, the testimony was that the victim turned and
7 I think he said made a movement. This bullet trajectory
8 is what you see when people are faced with a weapon that
9 they know they're going to probably be shot and they turn
10 their head. They turn their head and they tilt their
11 head. This bullet trajectory is that way.

12 Q So is it common for people to get shot on the side
13 of the back of the head during typical struggles?

14 A Most common for people to be shot in any area except
15 the face when they're up close to the gun because they
16 don't want to face the gun.

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

18 (Pause)

19 No further questions at this time, Your Honor.

20 MS. CAMPBELL: Thank you, Your Honor.

21 CROSS-EXAMINATION:

22 BY MS. CAMPBELL:

23 Q Mr. Fite.

24 A Good morning, afternoon.

25 Q Your testimony as you just said is that in close

1 struggles -- I believe you said that it's not unusual for
2 the victim to turn their head when they knew they were
3 going to be shot?

4 A That's correct.

5 Q Because they wouldn't want to take it to the face,
6 right?

7 A That's correct.

8 Q And also when a victim knows they're going to be
9 shot, that means that there would be some indication that
10 someone is pointing a gun at them?

11 A Yes.

12 Q And, of course, the closer they get to it, would they
13 think they're going to be shot by the gun, would they
14 continue towards the gun or would they try to get away
15 from the gun?

16 A They would move away from the weapon.

17 Q Okay. And as a part of that, you also testified they
18 would turn their head?

19 A Yes.

20 Q So your testimony here today is that if she got shot
21 in the back of the head, she would have known prior to
22 that that she was going to be shot by Theodore Manning?

23 A She was expecting to be shot.

24 Q And her natural reaction would have been to get away
25 from that, in your expertise?

- 1 A Yes. Can.
- 2 Q Not go towards it?
- 3 A No.
- 4 Q You're paid here today for your testimony?
- 5 A Yes, hopefully.
- 6 Q And what are your rates?
- 7 A \$150 an hour.
- 8 Q How much?
- 9 A \$150 an hour.
- 10 Q \$1.50 an hour?
- 11 A \$150 an hour.
- 12 Q An hour?
- 13 A Yes.
- 14 Q And that includes your presence here in South
15 Carolina?
- 16 A Yes.
- 17 Q Presence in the courtroom?
- 18 A Yes.
- 19 Q You've been here all day today. You were here earlier
20 in the week; is that correct?
- 21 A Yes.
- 22 Q And so far, do you know how many thousands of dollars
23 they've spent?
- 24 A I don't know. I haven't figured it out.
- 25 Q Would you say that your hourly -- you are in excess

1 of 20, 30, 40 hours?

2 A No.

3 Q Okay. The first time -- you indicated what office
4 provided you that your basing your examination on, or
5 your opinion here today?

6 A Say that again.

7 Q Your basing your opinion here today on what you saw
8 in court.

9 A On what I saw in the Court, what I saw in the
10 statement given to law enforcement, what was in the autopsy
11 report and what Mr. Manning told me himself.

12 Q What he told you on October 4th is your testimony?

13 A Basically, it was what he said to --

14 Q Now, I'm not asking what he told you. The first
15 time you met with him was October 4th?

16 A Yes.

17 Q That was Monday of this week?

18 A Yes.

19 Q That was the first time you ever had that
20 information provided to you?

21 A Yes.

22 Q When you saw Mr. Manning testify here today in
23 court, there was a demonstration that was done down here;
24 is that correct?

25 A Yes.

1 Q And your testimony is that it would have been
2 consistent with the demonstration you saw?

3 A It was -- it was a little different than that. He
4 didn't clip her that close to the gun.

5 Q So what those lawyers demonstrated is not what he
6 told you happened?

7 A Well, I couldn't -- I sat in the very back of the
8 courtroom. I have couldn't really understand what they
9 were saying, but it looked like they were much closer
10 than what he told me they were.

11 Q So that demonstration was not accurate as to what he
12 testified to?

13 A No, I didn't say that.

14 Q The demonstration that he coordinated?

15 A I can't say that, because I was sitting in the back.
16 I couldn't hear it.

17 Q So he told you something different from the
18 demonstration he coordinated here in this courtroom?

19 A It was different, yes.

20 Q You said his statement -- the line of travel was as
21 far as this -- it's in the back of the head; is that
22 correct?

23 A It's in the right back of the head.

24 Q And it's from the back towards the front?

25 A Back to the front, right to the left.

1 Q And at a slightly upward angle?

2 A Upward angle, yes.

3 Q That's important. And you said it was consistent with
4 his last statement?

5 A Yes.

6 Q Let me ask you this, as far as Mr. Manning's
7 statements. To your knowledge, was the gunshot to the
8 back of the head, from the back to the front at a slightly
9 upward angle consistent with his May 21st statement?

10 A Is that the first statement he gave to law
11 enforcement?

12 Q Did they provide you with a copy of that?

13 A Yes.

14 Q Is it consistent with that statement?

15 A I don't know if that date is the statement that I --

16 Q The first statement to the Charlotte detectives?

17 A I think so, yes.

18 Q It was consistent with that statement?

19 A Yes.

20 Q Where he said he had no idea what happened to Nikki
21 McPhatter?

22 A He said -- in his statement that he gave me and the
23 statement I read, he said that she made a move away from
24 him.

25 Q Are you aware that he gave one, two, three, four, five,

1 six different statements to law enforcement?

2 A No.

3 Q So the only information you had was how many
4 statements that were provided to you.

5 Q Yes. But were you aware that he had denied having
6 any knowledge of what happened to her on May 21st?

7 A I don't know.

8 Q But that would be consistent with a gunshot wound made
9 by Mr. Manning to the back of the head, would it?

10 A I don't know.

11 Q And on May 22nd he gave two different statements
12 denying any knowledge of what happened. Would that be
13 consistent with him shooting her in the back of the
14 head?

15 A No.

16 Q And on May 29th he gave an initial statement saying
17 that the gun -- she had it in her hand under her coat.
18 Would that be consistent with a gunshot wound to the back
19 of the head?

20 A If it was prior to him taking the gun, it could
21 have.

22 Q Did he have the gun, the butt of the gun in his hands
23 and she had hers on the end of the barrel, and it was stuck
24 in her coat?

25 A No, that's not consistent.

1 Q And then the statements, what was shown during court
2 here today, as well as the information provided to you,
3 those were not consistent with each other?

4 A (There was no response.)

5 Q The demonstration?

6 A Yes.

7 Q That wasn't consistent with what he had told you?

8 A It didn't look exactly like his statement to me.

9 Q And...

10 (Pause)

11 Nothing further.

12 THE COURT: Redirect?

13 MR. MAY: Yes, sir.

14 REDIRECT EXAMINATION:

15 BY MR. MAY:

16 Q All right. Real quick. Are we paying for your
17 opinion or your testimony?

18 A Uh...

19 Q I mean, are we paying for your opinion or your time?

20 A My time.

21 Q Okay. And you have to make a living, as well?

22 A Yes.

23 Q All right. Now, when you met with Mr. Manning, he
24 never acted it out, did he?

25 A No.

1 Q It's the first time you saw it acted out was today
2 in the courtroom?

3 A Yes.

4 Q But it is your expert opinion that the wound
5 suffered by the victim is consistent with a close-quarters
6 physical altercation?

7 A Yes, it's -- it's close.

8 MR. MAY: Beg the court's indulgence.

9 (Pause)

10 Nothing further.

11 MS. CAMPBELL: Nothing further, Your Honor.

12 THE COURT: All right. You may come down.

13 May this witness be excused?

14 THE BAILIFF: Watch your step.

15 (There was no response.)

16 THE COURT: Without objection.

17 Next witness?

18 MR. SHEALEY: Your Honor, at this time the defense
19 rests.

20 THE COURT: All right. Any reply?

21 MS. CAMPBELL: Yes, Your Honor, but we need...we
22 weren't sure what else -- we need a little time to figure
23 out...

24 THE COURT: All right. Ladies and gentlemen, that
25 completes the State's case and the defense case now.

1 MS. CAMPBELL: Your Honor, we do have reply.

2 THE COURT: What?

3 MS. CAMPBELL: We have reply testimony.

4 THE COURT: I'm going to tell them that. Thank you.

5 That completes the State's case in chief. That
6 completes the defendant's case.

7 Now, the State has the right to offer a reply, a short
8 reply if it's appropriate. I need to take that up with
9 the attorneys to see if it is appropriate, so there could
10 be just a little bit more testimony in the case. So I
11 don't know what the State has in mind, but I'll find out
12 in just a few minutes.

13 So I'm going to ask you to go to the jury room, and
14 again, don't discuss the case among yourselves while
15 you're in the jury room. Just relax for a few minutes.
16 I'll -- it looks like we're getting close to the end of
17 the trial at this point, so just relax in the jury room
18 for a few minutes.

19 (WHEREUPON, the jury left open court at approximately
20 2:52 p.m.)

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

22 MR. GIESE: Your Honor, we're going to need some time
23 to discuss what the reply is going to be.

24 THE COURT: Well, I understand, but just give me a
25 ballpark. Ten minutes, fifteen minutes?

1 MR. GIESE: Ms. Campbell has informed me that
2 this -- 30 minutes or less of actual testimony, but we
3 need to --

4 THE COURT: Well, I'm just asking, five minutes, ten
5 minutes, fifteen minutes?

6 MR. GIESE: Oh, I'm going to need at least fifteen
7 at this point.

8 THE COURT: Before we bring our jury?

9 MR. GIESE: Yes.

10 THE COURT: Yes, sir.

11 MR. MAY: Yes, sir, Your Honor. We'd just like to
12 renew all our prior objections, motions that we made
13 before. We just want to make sure the record is
14 preserved at the close of our --

15 THE COURT: Okay. I'll let you do it at the close
16 of the State's case.

17 MR. MAY: Yes, sir, I understand. I just want to make
18 sure that...

19 THE COURT: All right. We'll stand at ease ten
20 minutes.

21 (WHEREUPON, a short break was taken.)

22 (WHEREUPON, State's Exhibits No. 361 was marked for
23 identification only.)

24 MS. CAMPBELL: Your Honor, the court reporter brought
25 to our attention there are two photographs that have been

1 State's Exhibit 224. In the presence of the defense, we
2 we're going to mark them 224A, the photograph of the
3 exterior of Kendra Goodman's apartment.

4 THE COURT: Okay, same number?

5 MS. CAMPBELL: Yes, sir. We would just --

6 THE COURT: Any objection?

7 MR. SHEALEY: No objection.

8 THE COURT: All right.

9 MR. SHEALEY: Well, just subject to our prior
10 objection. As to A or 24, we're fine.

11 THE COURT: Is the State ready for the jury?

12 MR. GIESE: The State is ready. After further
13 discussion, the State is not going to present any reply.

14 THE COURT: All right. That's what I wanted to
15 discuss.

16 Okay. Why don't we just go ahead -- what I'm going
17 to do is I'm going to dismiss the jury.

18 MR. SHEALEY: Yes.

19 THE COURT: Do you have to wait for Ms. Pringle to
20 do that?

21 MR. SHEALEY: No, sir.

22 MS. CAMPBELL: Your Honor, we amended one of the -- the
23 court reporter asked if we could make one of them 261 (sic).

24 THE COURT: All right.

25 MS. CAMPBELL: Thank you.

1 THE COURT: Bring the jury, please.

2 (WHEREUPON, the jury came into open court at
3 approximately 3:30 p.m.)

4 THE BAILIFF: The jury is seated, Your Honor.

5 THE COURT: Thank you, ladies and gentlemen. Again,
6 thank you for your patience. The State has elected not
7 to present any reply testimony, so that would conclude
8 all the evidence in this case.

9 Now, the remaining portion of the trial consists of
10 the final arguments of counsel and my charge to you or
11 instructions to you on the law of South Carolina as it
12 applies to this state.

13 That procedure is going to take several hours, so
14 I think the best use of our time, because there are a
15 number of legal matters I need to go over with the
16 attorneys prior to the closing arguments, and those
17 involve the nature of the charges, the length of time they
18 can argue, the various just sort of procedural things that
19 I need to go over with them.

20 There's no reason for you to sit in the jury room
21 while we do that. We'll continue to get everything ready
22 for the final arguments which will take place starting
23 at 9:30 in the morning, so I'm going to dismiss you now
24 for the afternoon, ask you to be back in the jury room
25 promptly at 9:30, at which time we will begin the final

1 arguments. After the arguments of counsel, I will give
2 you my instructions on the law as it applies to this
3 case, and then the case will be turned over to you for
4 deliberation, so get a good night's sleep, and be ready
5 to go in the morning. We're going to conclude this trial
6 this week.

7 So I don't know how long everything is going to take,
8 but I'm pretty confident we'll finish it this week.

9 All right. You're dismissed for the day. Thank you
10 very much for coming. We'll see you at 9:30 in the
11 morning.

12 (WHEREUPON, the jury left open court at approximately
13 3:32 p.m.)

14 THE COURT: Any motions?

15 MR. MAY: Your Honor, we renew all our previous
16 motions, as well as objections. Specifically, Your
17 Honor, we renew our motions for a mistrial. We believe
18 we have valid grounds.

19 Your Honor, we'd renew all pretrial motions to
20 include but not be limited to the search warrant issue.

21 Your Honor, I believe that is an issue that has -- is
22 very prevalent in this case and that search warrant did
23 not allege that a crime occurred. It did not allege
24 that he committed a crime, nor did the search warrant
25 allege that a crime occurred on the premises of 8047 Bluff

1 Road.

2 Your Honor, we'd renew that motion to suppress all
3 evidence that was a direct result of the search warrant
4 or any proof thereof.

5 Your Honor, we'd renew our objection to
6 introductions. We'd renew our motion for the fact that
7 we were not given the opportunity to argue the Castle
8 Doctrine.

9 Your Honor, I believe that the plain meaning of the
10 law states that a defendant who kills an attacker in his
11 house is immune from prosecution. We believe there needs
12 to be an evidentiary hearing.

13 Your Honor, we'd renew our directed verdict. As
14 Ms. Pringle stated, the State has presented volumes of
15 evidence as malice as an afterthought. They have not
16 presented a single piece of evidence of malice
17 aforethought as it's required per South Carolina statute
18 and code.

19 Your Honor, we'd renew that. We'd renew the fact they
20 have not disproved self-defense, which is -- they must
21 do. We'd move for a directed verdict on self-defense,
22 especially now that the defendant has taken the stand.

23 Your Honor, we'd move for a directed verdict for
24 those reasons.

25 In the alternative if you do not give a not guilty

1 directed, we'd ask that only voluntary manslaughter be
2 submitted to the jury.

3 I cannot underscore enough that we do not believe
4 there is a single piece of evidence of malice aforethought.
5 It is all malice and afterthought. I believe the law in
6 South Carolina is clear; that malice must be present at
7 the time when the gun goes off.

8 Beg the Court's indulgence.

9 (Pause)

10 Your Honor, we would renew our motions as far as
11 recording of statements. I believe there was a lot of
12 testimony where the State pretty much -- it pitted their
13 witness against the defendant as far as a swearing
14 contest.

15 We do not know what occurred at Richland County
16 headquarters because there was no recording. Your
17 Honor, we'd renew our objection to the viability of res
18 gestae.

19 I believe that in 1995, with the adoption of the South
20 Carolina Rules of Evidence, res gestae is no longer
21 applicable as it is not encompassed in Rule 404(b) or any
22 other rule that could have been encompassed.

23 We'd renew our objections to the specific details
24 of the burning, the financial transaction card fraud.
25 Your Honor, specifically I believe it was picture -- I'm

1 going along with number 226, the gruesome picture. I
2 cannot think of anything more -- it is a grotesque
3 picture that had the skull, spinal column and the pelvis
4 looking up from the trunk.

5 I don't believe that would come in during the guilt
6 phase of a death penalty case. That's the reason why we
7 had Brett V. Georgia (phonetic) is so that such prejudicial
8 evidence does not affect the jury's decision as far as
9 guilt or innocence.

10 I think that it's far from even in the penalty phase
11 for the State to get that piece of evidence is.

12 Your Honor, if there are any other motions
13 specifically that I failed to address, I would renew
14 those. At this time, Your Honor, we'd move for a directed
15 verdict as no evidence of malice has been presented.

16 THE COURT: State's position?

17 MS. McDUFFIE: Your Honor, we ask that you stand by
18 your prior ruling. You found that there was sufficient
19 evidence to be presented to the jury. We'd ask that all
20 previous rulings stand and that this case goes to the jury
21 on the charge of murder.

22 We believe that malice has been shown in this, Your
23 Honor. We believe that there was evidence that the jury
24 may conclude that there was malice, and it should be a
25 case to submit to the jury, Your Honor.

1 THE COURT: All right. Mr. May, I respectfully
2 deny your motion.

3 Now, any requests to charge from the State?

4 MS. McDUFFIE: No, sir, Your Honor.

5 THE COURT: Any requests to charge from the defense?

6 MR. SHEALEY: No, sir.

7 (Pause)

8 THE COURT: Any objection to the defendant's request
9 to charge from the State?

10 MS. McDUFFIE: Yes, Your Honor, if we may have just
11 a minute to finish.

12 THE COURT: Go ahead.

13 (Pause)

14 MS. McDUFFIE: All right. Defendant's requested
15 charge number one.

16 Your Honor, we would object to the second sentence,
17 "If you have reasonable doubt as to whether the State
18 has proven the defendant did not act in self-defense or"
19 (unintelligible).

20 THE COURT REPORTER: I'm sorry, you need to slow
21 down, please and speak up.

22 MS. McDUFFIE: All right.

23 "If you have reasonable doubt as to whether the
24 State has proven that the defendant did not act in
25 self-defense or the defense of his premise, then you must

1 find the defendant not guilty."

2 THE COURT: What's the objection?

3 MS. McDUFFIE: Your Honor, we would object that that
4 has no bearing -- that that's not -- we would ask for your
5 standard burden of proof charge and would ask that you
6 not interject that into the charge.

7 THE COURT: How about if we take out the words, "Or
8 in defense of his premise"? Does that make any
9 difference?

10 MS. McDUFFIE: I mean, it wouldn't make a difference,
11 Your Honor. We would still object to that entire
12 sentence being charged to the jury.

13 THE COURT: All right.

14 MS. McDUFFIE: Or, Your Honor, if you're going to
15 charge it, we would ask for the converse of that sentence
16 be charged, as well.

17 THE COURT: Well, let's just back up a minute. You
18 object to a self-defense charge?

19 MS. McDUFFIE: Yes, we do.

20 THE COURT: The defense is requesting a self-defense
21 charge?

22 MR. MAY: Yes, Your Honor.

23 THE COURT: All right. On what grounds does the
24 State object to a self-defense charge?

25 MS. McDUFFIE: Your Honor, we believe it doesn't fit

1 the elements of self-defense; that the defendant was
2 without fault in bringing on the difficulty; that the
3 defendant reasonably believed to be in imminent fear
4 of -- or in imminent fear of death or great bodily injury.

5 THE COURT: He said it.

6 MS. McDUFFIE: He said he was afraid. He never said
7 that he was afraid for his life or that he believed that
8 he was in imminent fear of death or great bodily injury.

9 THE COURT: Well, what would you be afraid of if
10 somebody pointed a gun at you?

11 MS. McDUFFIE: Your Honor, he testified that when he
12 had the gun, he was scared. He was then scared of an
13 unarmed woman who had no means of causing death or great
14 bodily injury to him. I believe that was his testimony.

15 THE COURT: What's the defense's position?

16 MR. MAY: Yes, Your Honor. I believe his testimony
17 was that he was scared she was going for his gun.

18 Your Honor, I believe that a gun is a deadly weapon.

19 THE COURT: All right.

20 MR. MAY: And if he believed that she was going for
21 the gun, it was -- that he had the fear that she was trying
22 to wrestle it from him.

23 I believe that there is a piece of evidence -- there
24 is evidence to present it to this jury. Then the jury
25 could find self-defense. It was the defense's theory from

1 the opening that there is a challenge of -- that there
2 is evidence presented that could go to self-defense.

3 THE COURT: All right. Let's flesh this out a little
4 bit. You're seeking -- there will be a murder charge.
5 You're seeking a voluntary manslaughter charge?

6 MR. MAY: Yes, Your Honor.

7 THE COURT: And an accident charge?

8 MR. MAY: Your Honor, we believe that an accident is
9 present from his first statement.

10 THE COURT: Well, I'm just getting the parameter.

11 MR. MAY: Yes, Your Honor. We're seeking that, yes,
12 sir. We're also seeking a statutory manslaughter
13 charge.

14 THE COURT: That's what I just said.

15 MR. MAY: No, Your Honor. We're asking for a
16 voluntary manslaughter, as well a statutory manslaughter
17 charge.

18 THE COURT: Tell me what your talking about.

19 MR. MAY: Yes, sir. Voluntary manslaughter is, of
20 course, defined in our common law as the unlawful
21 killing of another with -- I mean, unlawful killing of
22 another with essentially no provocation and immediate
23 heat of passion, Your Honor.

24 THE COURT: Without malice.

25 MR. MAY: I'm sorry?

1 THE COURT: Without malice.

2 MR. MAY: Without malice.

3 THE COURT: All right.

4 MR. MAY: Your Honor, I believe that expressly in the
5 South Carolina code -- if you can give me one second, I
6 can quote you the code.

7 THE COURT: Is that in your list of requests to
8 charge?

9 MR. MAY: Yes, sir.

10 (Pause)

11 Charge number 15.

12 THE COURT: This one?

13 MR. MAY: Yes, sir. Your Honor.

14 Your Honor, if we look at South Carolina Code
15 16-3-50, we have a definition of what manslaughter is.
16 That is the unlawful killing of another without malice.

17 I believe that if we look at Harris v Anderson County
18 Sheriff's Office, 381 S.C. 357 at 362, it's a 2009 South
19 Carolina Supreme Court opinion, the Court will give the
20 words their plain ordinary meaning and will not resort
21 to subtle or force in instruction that will limit or
22 expand the statute's operation.

23 The statute's plain meaning is as clear as day; that
24 it's -- manslaughter is the unlawful killing without
25 malice aforethought. We believe that is a charge here

1 that should be presented to the jury.

2 The Defendant said he did not have malice in his
3 heart when asked on direct. Therefore Your Honor, I
4 believe that is an appropriate charge based on the
5 statute as defined by the legislature.

6 THE COURT: And what else?

7 MR. MAY: Your Honor, we believe the Castle
8 Doctrine.

9 THE COURT: What?

10 MR. MAY: The Castle Doctrine.

11 THE COURT: All right. And?

12 MR. MAY: Your Honor, we also have several charges
13 that are involved with the Castle Doctrine, such as
14 defined dwelling.

15 THE COURT: Yes, I know.

16 MR. MAY: It's --

17 THE COURT: Let's just talk about the broad
18 parameters right now.

19 MR. MAY: Okay. Yes, sir.

20 THE COURT: In your pretrial motions, you asked for
21 a Wood charge.

22 THE COURT: Your Honor, a Wood charge, what we were
23 asking is that the State be limited in their
24 presentation of the facts to what Justice Kittredge did
25 in the case of State v. Wood.

1 In State v. Wood, of course, there was a killing,
2 prior killing of a highway patrol person. We are asking
3 that the State not be able to get into the details of the
4 burning in the present case or of the A.T.M.

5 Your Honor, I believe that we have passed that issue,
6 and that issue ended with pretrial, Your Honor.

7 THE COURT: So you're not seeking any.

8 MR. MAY: No, sir.

9 THE COURT: There's a Wood charge that involves
10 withdrawal from activity. You're not talking about that?

11 MR. MAY: No, sir.

12 THE COURT: Of the conspiracy or --

13 MR. MAY: No, sir.

14 THE COURT: Joint acts?

15 MR. MAY: No, sir. We're just trying to get a limited
16 instruction to the State.

17 THE COURT: So you want two involuntaries, Castle
18 and self-defense and accident?

19 MR. MAY: I'm sorry, Your Honor. I didn't quite
20 catch that.

21 THE COURT: You said you wanted the common and the
22 statutory voluntary manslaughter charges. You wanted a
23 self-defense charge. You wanted a Castle Doctrine
24 charge. You wanted an accident charge.

25 MR. MAY: Yes, sir, I was -- well, I clarified that

1 we asked for a voluntary manslaughter, common law
2 voluntary manslaughter, and then a statutory
3 manslaughter.

4 THE COURT: That's what I just said.

5 MR. MAY: Manslaughter.

6 THE COURT: Isn't that what I just said?

7 (There was no response.)

8 THE COURT: All right. What's the State's position
9 on the Castle Doctrine?

10 MS. McDUFFIE: Your Honor, we believe the Castle
11 Doctrine is not applicable in this case. The Castle
12 Doctrine applies to an intruder upon the premises to
13 eject an intruder from a person's premises.

14 We would argue that it is not applicable in this case.
15 This was an argument between two people. She was not a
16 trespasser. He was not allowing an unwarranted
17 intrusion into his home when this occurred, and we would
18 argue that the Castle Doctrine does not apply in this case.

19 THE COURT: All right. Well, I think I have ruled
20 previously that I do not believe the Castle Doctrine
21 applies to this case.

22 (Pause)

23 I don't believe it applies. I think I explained my
24 reasoning during the course of the trial. This talks
25 about unlawful and forcible entry.

1 If I recall, the defense took the position that a
2 civil definition of invitee versus a trespasser should
3 apply and that somehow the deceased was transformed into
4 a trespasser, which would bring into play the Castle
5 Doctrine.

6 I just don't -- I've never seen case law that supports
7 that. I don't feel it's an appropriate charge for this
8 case.

9 MR. MAY: Yes, sir.

10 Just to preserve the statement for the record, Your
11 Honor, it was -- we believe it was -- the person was a
12 licensee as a social guest and when they did the
13 unlawful act, via tort property or via any unlawful -- once
14 a guest commits an unlawful act, which we would submit
15 to the Court would be the pulling of the gun, that they
16 become an attacker as is defined in State v. Dickey, and
17 therefore warrant a Castle Doctrine charge.

18 THE COURT: All right. Thank you.

19 (Pause)

20 All right. With that -- with that out of the charge,
21 is there any reason for a -- number four?

22 MR. MAY: Your Honor, I believe that two, three and
23 four could be eliminated.

24 MS. PRINGLE: Over our...

25 MR. MAY: Over our objections, of course.

1 THE COURT: How about five?

2 MR. MAY: Yes, sir, over our objection.

3 (Pause)

4 THE COURT: Yes, sir. You're not seeking a lesser
5 included of involuntary manslaughter?

6 MR. MAY: No, Your Honor. From our view of the
7 facts, we don't believe it's warranted.

8 THE COURT: Okay. I just want to make sure.

9 All right. Ms. McDuffie, that puts you -- you
10 narrowed it down a little bit. That puts you back on the
11 stand.

12 MS. McDUFFIE: Your Honor, we would object to
13 State's -- I mean, Defense's request to charge number
14 five, charging the defense with having --

15 THE COURT: Number five is already objected to. I've
16 taken it out. I've moved onto six.

17 I know you don't --

18 MS. McDUFFIE: We would object to number six, but if
19 Your Honor is going to charge it, we would argue that it's
20 duplicative with number eight.

21 THE COURT: I was wondering about that. I haven't
22 read them. I haven't read eight in its entirety. I do
23 see it's a Castle Doctrine case, but I haven't read it.

24 I'll look at that and/or I'll give you a self-defense
25 charge in the morning.

1 I think self-defense should be charged. How about
2 seven?

3 MS. McDUFFIE: Your Honor, we just ask if you're going
4 to charge self-defense, you do a general self-defense
5 charge.

6 THE COURT: Ten?

7 MS. McDUFFIE: Your Honor, again, we would just ask
8 that you just do a general self-defense charge.

9 THE COURT: Well, this is a murder charge.

10 MS. McDUFFIE: Your Honor?

11 THE COURT: Eleven.

12 MS. McDUFFIE: I'm sorry. I thought you said number
13 ten.

14 (Pause)

15 Your Honor, we would ask that you charge Mouzon
16 malice.

17 THE COURT: Mouzon? Did Belcher say that?

18 MS. McDUFFIE: Your Honor, in the interim, we
19 prepared a Mouzon malice charge.

20 THE COURT: Hand it up. Hand it to me.

21 (Pause)

22 Is that a quote from Belcher?

23 (Pause)

24 I'm looking at Belcher. Footnote nine says, "The
25 standard applied malice charge remains valid, as does the

1 general inference, instructions. The facts proved
2 beyond a reasonable doubt sufficient to raise an inference
3 of the malice to the satisfaction (unintelligible).

4 THE COURT REPORTER: I'm sorry, Judge. You're going
5 to have to --

6 THE COURT: I'm sorry.

7 "If facts are proved beyond a reasonable doubt
8 sufficient to raise an inference of malice to your
9 satisfaction, this inference would simply be -- it would
10 simply be an evidentiary fact to be taken into
11 consideration by you the jury, along with other evidence
12 in the case that may give it such weight as you
13 determine it should receive."

14 That's what I'm looking at. I'm going to have to
15 look at that.

16 Twelve, what's the State's position on this, the two
17 voluntary manslaughter charges requested by the
18 defense, one being statutory and one being common law?

19 MS. McDUFFIE: Your Honor, we would argue that just
20 voluntary manslaughter be charged to the jury.

21 If Your Honor does want to charge both of them, they
22 could be incorporated into the same charge or voluntary
23 manslaughter be covered. We submit that voluntary
24 manslaughter is inappropriate to be charged in this case.

25 THE COURT: Is what? Voluntary?

1 MS. McDUFFIE: Should not be charged in this case,
2 Your Honor.

3 THE COURT: Should not, okay.

4 (Pause)

5 Well, 16-3-50 doesn't say exactly what you said it
6 does, does it, Mr. May?

7 MR. MAY: Your Honor, that quote -- that was actually
8 pulled from -- give me one second, Your Honor.

9 THE COURT: I'm looking at the statute.

10 MR. MAY: That was actually directly pulled from...
11 State v. Knowlton -- Knoten.

12 THE COURT: Max Knoten.

13 MR. MAY: Yes, sir. That's actually a direct
14 from -- quote from the header of the opinion or -- about
15 it.

16 THE COURT: Well, most of the cases seem to say what
17 your request to charge 12 says, and your request to charge
18 15 quotes 16-3-50, and 16-3-50 says, "A person convicted
19 of malice -- of manslaughter for the unlawful killing of
20 another without malice expressed or implied must be
21 imprisoned not more than 30 years or less than two
22 years."

23 So I mean, I'm not clear about what you're seeking.

24 MR. MAY: Yes, sir.

25 THE COURT: I mean, I see the head note. I mean, the

1 decision notes under the statute say, "Voluntary
2 manslaughter is the unlawful killing of a human being in
3 sudden heat of passion upon sufficient legal
4 provocation," State v. Smith.

5 "Voluntary manslaughter is an unlawful killing of
6 a human being in sudden heat of passion and upon sufficient
7 legal provocation," State v. Wood.

8 So I'm not sure what your getting at when you say
9 manslaughter is defined as the unlawful killing of
10 another without malice. It's sort of an incomplete
11 definition --

12 MR. MAY: Your Honor.

13 THE COURT: -- that you submitted.

14 MR. MAY: Your Honor, respectfully, I'd like to state
15 that in the code there is -- voluntary is never defined.
16 I would argue that in South Carolina, we have the
17 voluntary manslaughter and we have manslaughter.

18 Voluntary manslaughter, of course, follows the
19 common definition. I believe that when one reads 16-3-50,
20 there is no -- there is nothing in the statute itself about
21 heat of passion or sufficient legal provocation.

22 THE COURT: Well, the Court has interpreted it as
23 having that.

24 MR. MAY: Yes, sir, and I recognize that. I would
25 ask that looking at the statutory construction, we don't

1 force the language. We don't force it into reading
2 something that it doesn't say that it is.

3 I believe that on the face of 16-3-50, it states
4 succinctly that manslaughter is the unlawful killing of
5 another without malice aforethought.

6 Your Honor, respectfully, we'd ask for a
7 manslaughter charge that states that. I believe that when
8 one reads it, that there is no inference or anywhere in
9 there, despite the language that we have for our common
10 law manslaughter.

11 That's the reason why we have the statutory
12 manslaughter charge, Your Honor.

13 THE COURT: I'll look at it.

14 MR. MAY: Yes, sir.

15 Your Honor, real quick, referring to your previous
16 question about our request to charge number 11, you asked
17 was it a direct quote from Belcher.

18 THE COURT: Yes.

19 MR. MAY: It is a direct quote from Belcher quoting
20 Fennell in footnote number five.

21 THE COURT: One moment. Let me find it.

22 (Pause)

23 I got it. I agree with you.

24 MR. MAY: Yes, sir.

25 (Pause)

1 Tell me about 13.

2 MR. MAY: Yes, sir, Your Honor.

3 THE COURT: What's this citizen's arrest?

4 MR. MAY: I beg the Court's indulgence.

5 (Pause)

6 Your Honor, respectfully, we withdraw that.

7 THE COURT: All right. Okay, what about fourteen?

8 MS. McDUFFIE: Your Honor, we would argue that
9 accident is not appropriate to charge here. The
10 defendant testified himself that it wasn't an accident;
11 that that's not what happened.

12 THE COURT: Say that again. He testified what?

13 MS. McDUFFIE: Okay. That it was not an accident.

14 THE COURT: Well, he said it was an accident in his
15 statement.

16 MS. McDUFFIE: And then he said that the police
17 forced him to say that, Your Honor. He says that it is
18 not an accident and that he -- that his testimony before
19 the jury and then his second statement to law
20 enforcement where he said the first one is untrue and that
21 he intentionally pulled the trigger.

22 Your Honor, I don't think accident applies in this
23 case.

24 THE COURT: Well, the accident charge, if I give it,
25 if appropriate, would be: "The defense has raised the

1 defense of accident. An act may be excused on the grounds
2 of accident if it is shown that the act was unintentional
3 and that the defendant was acting lawfully and that
4 reasonable care was used by the defendant in the handling
5 of the weapon.

6 "For example, if a person is lawfully armed in
7 self-defense as the gun accidentally discharges, the
8 defense of accident would apply.

9 "The burden is on the State to prove beyond a
10 reasonable doubt that act was not an accident but was
11 caused by the negligence -- that the act was not an
12 accident but was caused from the negligence or
13 carelessness on the part of the defendant handling the
14 dangerous instrumentality or by lawful activity from the
15 defendant."

16 What's the defendant's position on accident in
17 what's an accident?

18 MR. MAY: Your Honor, respectfully, the State
19 introduced the statement where the statement states that
20 this was an accident. That --

21 THE COURT: He said that he was told to say that.

22 MR. MAY: I agree, but, Your Honor, that is a piece
23 of evidence which a juror could believe; that the -- we
24 would ask that if you are willing to charge it and you
25 do not like this one, then you can use the charge that

1 you just read.

2 THE COURT: Well, the question is whether to charge
3 it at all, whether the testimony of the evidence supports
4 such a charge.

5 I realize the Court's obligation to charge, if
6 requested, if the evidence supports the request to charge.

7 (Pause)

8 MS. McDUFFIE: Your Honor.

9 THE COURT: Yes, ma'am.

10 MS. McDUFFIE: If I may go back to self-defense at
11 some point.

12 THE COURT: All right. Go ahead.

13 MS. McDUFFIE: Your Honor, as mentioned -- I direct
14 the Court's attention to State v. Light cited at 664 S.E.
15 2d 465 --

16 THE COURT: Do you have a copy of it?

17 MS. McDUFFIE: Yes, Your Honor.

18 THE COURT: Okay. Tell me what it says.

19 MS. McDUFFIE: Your Honor, this -- the facts of this
20 case almost parallel the Light case. In the Light
21 case, the defendant returned home. A female he had been
22 having relations with was at his house.

23 They got into an argument, and she got a rifle out
24 of his home. He disarmed her. He says that she then hit
25 the rifle a couple of times, and then the rifle was fired.

1 The victim died.

2 In this case, the Court said that it is not proper
3 to -- the defendant was not entitled to a jury instruction
4 on self-defense.

5 To quote from that case, Your Honor, it says that
6 the defendant was then taken in possession of the firearm
7 when the shot was fired. Under those facts, the Court
8 held that he was not a threat and could not be
9 reasonably -- excuse me, reasonably believe that she did
10 pose a threat to him at the time.

11 Your Honor, based on that, we would ask that you not
12 charge self-defense.

13 THE COURT: Give a copy to the defense.

14 MS. McDUFFIE: Your Honor, they are making a copy.

15 THE COURT: What is the cite?

16 (Pause)

17 (No response)

18 All right. Let's just move this along. I'll look
19 at it.

20 MR. MAY: Your Honor, respectfully, State v. Light
21 says the defendant was entitled to a self-defense
22 charge, "We find that under the particular facts, the
23 State's petitioner was entitled to a charge of
24 self-defense in the involuntary manslaughter. According
25 to this decision, the Court of Appeals is reversed."

1 THE COURT: I saw the reversed Court of Appeals. It
2 didn't get how far -- tell you what the Court of Appeals
3 did.

4 MR. MAY: Yes, sir. The Court of Appeals said that
5 self-defense was not proper, and the Supreme Court said
6 under those facts that the charge of self-defense was
7 proper.

8 THE COURT: All right. I'll look at it.
9 What else? We misread that?

10 MS. McDUFFIE: Your Honor, I'm still reading it.
11 If you look at the Court's analogy of this -- if you look
12 at the Court's analogy of this, we will argue that
13 self-defense is not a proper charge --

14 THE COURT: Okay.

15 MS. McDUFFIE: -- to the jury.

16 THE COURT: All right. Well, I'll let you know at
17 nine o'clock in the morning.

18 All right. The State has handed up State v. Bullington.
19 Have you had a chance to look at that?

20 MR. MAY: To State v. Bollington?

21 THE COURT: Bollington, I'm sorry.

22 MR. MAY: Yes, sir. We have. We would object to it,
23 Your Honor.

24 THE COURT: All right.

25 MR. MAY: It's shepardizing State v. Bollington. It

1 comes up that it was overruled by State v. Belcher.

2 Your Honor, State v. Bollington was a case where they
3 also had the Belcher --

4 THE COURT: Charge?

5 MR. MAY: Jury charge. Your Honor, this is analogous
6 to it.

7 State v. Belcher is based on a Maryland case that
8 says that a Court cannot comment on the facts. We believe
9 this to be a comment on the facts analogous to you may
10 infer malice from the gun.

11 Your Honor, this -- I believe that this is overruled
12 by Belcher.

13 THE COURT: Inferred from the cover up? Is that what
14 you --

15 MR. MAY: Yes, Your Honor. Yes, Your Honor.

16 (Pause)

17 How about the Mouzon charge on malice?

18 MR. MAY: Yes, sir, Your Honor. Respectfully, Your
19 Honor, I believe Mouzon is a very fact-specific case.

20 Your Honor, with Mouzon, it involves drinking and
21 driving, driving from Marion, South Carolina.

22 I actually read, in anticipation of Ms. Campbell's
23 customary request of it, I believe it is, number one, a
24 comment of the facts very similar to Belcher.

25 I believe it is also not applicable in this. The

1 facts of the case are that it was a close quarters physical
2 confrontation. This is not driving drunk at a high rate
3 of speed through the town of Marion.

4 Your Honor, I believe that when one reads the facts
5 of Mouzon, Mouzon is in a completely different time
6 period. When one looks at the other issues in Mouzon,
7 that Mouzon is completely inapplicable to the current
8 situation.

9 It's -- it's -- it's not the same. It's just not
10 applicable.

11 THE COURT: All right. Any objection to the general
12 charge?

13 MR. MAY: Not from the defense, Your Honor.

14 THE COURT: Already submitted it.

15 MR. MAY: Yeah. I'm sorry, Your Honor. We have one
16 brief...

17 Right above direct and circumstantial evidence.

18 THE COURT: I should have numbered them.

19 Yes.

20 (Pause)

21 "Must give the defendant"...

22 Yes, find him not guilty --

23 MR. MAY: Or guilty of the lesser charge. I
24 believe -- I believe there needs to be some type of analysis
25 similar to that of the old King charge.

1 While I know the King charge is no longer applicable
2 because of the modern day reasonable doubt charge, I
3 believe that there needs to be some kind of verbiage in
4 there that talks about that if it is not murder or nothing,
5 that there is another step to the analysis.

6 THE COURT: How about that?

7 MS. McDUFFIE: Your Honor, I don't think that's the
8 appropriate charge to submit to the jury; that if they
9 believe they must give him the reasonable doubt or find
10 him guilty of the lesser, I believe what Mr. May just said.

11 THE COURT: That is the King charge.

12 MS. McDUFFIE: And, Your Honor, that's not an
13 appropriate charge to charge the jury here.

14 THE COURT: Just articulate it a little bit.

15 MR. MAY: Yes, sir. I'm going to try to.

16 It's late in the day, and my brain is dead.

17 We believe that the reason why the Court said that
18 the King -- the King charge is no longer reversible error
19 was due to the fact that it was largely encompassed in
20 the modern day reasonable doubt charge.

21 THE COURT: Which this is?

22 MR. MAY: Yes, sir. We would just ask for an
23 additional clarification so that the jury members do not
24 believe it is either murder or nothing; that there is an
25 analysis.

1 THE COURT: I think they'll understand that when I
2 finish my charges.

3 As a matter of fact, I plan to charge the jury prior
4 to closing arguments just briefly on the issue of the
5 lesser-included charges and defenses.

6 MR. MAY: Will you provide us a copy of that
7 beforehand?

8 THE COURT: You don't need to write it down. I'm
9 going to tell them, as I do frequently, that: "The
10 attorneys are going to talk about something called
11 lesser-included charges.

12 "I don't want you to get confused. Under our statutory
13 law, there are -- similar to other jurisdictions where
14 there is -- there are charges of murder in the first
15 degree, murder in the second degree, murder in the third
16 degree.

17 "We don't have that sort of thing. We have murder
18 and involuntary manslaughter or manslaughter," your
19 words, and just so they will be familiar with the concept
20 when you are arguing those concepts.

21 If I tell them, as I have, that the only charge is
22 murder and that's what they have to decide, they're going
23 to be confused when you start talking about involuntary
24 manslaughter.

25 MR. MAY: Yes, sir.

1 THE COURT: So I'll just give them a brief overview
2 of what the -- what the attorneys will be arguing and the
3 State will be arguing the opposite --

4 MR. MAY: Yes, sir.

5 THE COURT: -- of what you're arguing, and that's
6 it. It's just so they will be acquainted with the concept
7 of the lesser-included charges and defenses.

8 All right. We'll meet at nine o'clock. I'll have
9 a set of charges.

10 (There was an overnight recess).

11 THE COURT: All right. Is the State ready to proceed?

12 MS. CAMPBELL: The State ready.

13 THE COURT: Is the defense ready to proceed?

14 MR. MAY: Your Honor, we'd just -- before you bring
15 the jury in, we'd ask to look at the charges.

16 THE COURT: I know. We will. I just want to know
17 if you're ready --

18 MR. MAY: Yes, Your Honor.

19 THE COURT: -- to proceed?

20 MR. MAY: Yes, Your Honor.

21 THE COURT: All right. Any -- I have submitted to
22 both parties the proposed jury charges. Any exceptions
23 or additions or deletions from the State?

24 MS. CAMPBELL: Nothing that we haven't already put
25 on the record, Your Honor.

1 THE COURT: All right. From the defense?

2 MR. MAY: Yes, Your Honor. In addition to what
3 we've already put on the record, we would state in
4 self-defense, we'd ask that the addition be that a person
5 in their own home has no duty to retreat.

6 I have a litany of cases that cite that. Seeing as
7 how self-defense has four elements, the fourth element,
8 when one is in his own home, per case law they have no
9 duty to retreat. We'd ask that be inserted.

10 THE COURT: Did you hand something up to that
11 effect? I think you did.

12 MR. MAY: Yes, sir, but I believe it was also part
13 of the Castle Doctrine. I believe this is independent
14 of the Castle Doctrine.

15 THE COURT: I understand that. I'm just trying to
16 find it.

17 MR. MAY: Yes, sir.

18 THE COURT: Any problem with that?

19 MS. CAMPBELL: No, sir.

20 MS. McDUFFIE: No, sir.

21 THE COURT: All right. That's fine. I'll put it in.

22 MR. MAY: Your Honor, we would ask -- as Ms. Pringle
23 stated yesterday, we would ask for leave to add in an
24 additional charge. We would ask for a precautionary
25 instruction to the jury for the police's failure, local

1 police, to record the statements.

2 I know the Commonwealth of Massachusetts has that.
3 We would ask that it be inserted. I believe that from
4 the evidence presented, especially since there is a
5 complete dichotomy -- I mean, we have two extremes.

6 We have Charlotte, who did everything and presented
7 all the evidence, and we have Richland County who
8 willfully chose to not record what went on in those rooms,
9 as well as would only provide written statements
10 through blind appearance to policy.

11 We would ask for a cautionary instruction to the jury
12 regarding the willful failure of the Richland County
13 Sheriff's Department not to record it.

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

15 MS. McDUFFIE: Your Honor, that is not the law in the
16 State of South Carolina. While it might be the law in
17 Massachusetts, it is not the law here.

18 We argue it would be improper for you to jury the
19 charge on something that is not the law.

20 THE COURT: All right. Have you made this part of
21 the record?

22 MS. PRINGLE: I'd ask to do that at this time.

23 THE COURT: A Court's Exhibit?

24 MS. PRINGLE: Yes, Your Honor.

25 THE COURT: I'm not -- so you don't --

1 MS. PRINGLE: I've already given her one.

2 THE COURT: Make it -- all right.

3 MS. PRINGLE: A Court's exhibit, and I also this
4 morning provided to the court reporter -- and I showed
5 this to the State, as well -- I changed the caption on
6 the request to charge yesterday. There were just two
7 rather significant typos just in the caption and I
8 changed --

9 THE COURT: In your proposed...

10 MS. PRINGLE: Yes, sir. I changed the caption.

11 THE COURT: I noticed you had the wrong G.S. number
12 on it.

13 MS. PRINGLE: Yes. I changed that, as well. That
14 should be correct.

15 I would just ask if the newly submitted one this
16 morning could be -- could substitute the older one and
17 asked Tracy if we could do that this morning. She said
18 if it's on the record it could be something where we
19 could just substitute that one and get rid of the other
20 one. It's just a significant problem.

21 THE COURT: Does she have them? Does she have this?

22 MS. PRINGLE: She has both of them, yes, sir.

23 (WHEREUPON, Court's Exhibit No. 6 was marked for
24 identification only.)

25 THE COURT: Well, the jury is not present yet. Do

1 you have anything that --

2 MS. CAMPBELL: A housekeeping matter that the
3 court reporter brought to my attention, Your Honor.

4 There were certain items that were marked, physical
5 items that were marked for -- as evidence in the State's
6 case that were not introduced.

7 For the record, I believe the Clerk of Court and the
8 court reporter have asked that we withdraw these on the
9 record.

10 THE COURT: We're just working on the seating
11 arrangements here. There's a couple in the back that look
12 like they're separated, but I understand they're about
13 to be joined.

14 MS. CAMPBELL: I understand.

15 Those are items number 192, 196, 197, 198, 199. We
16 would withdraw those for purposes of the record at this
17 point. I think defense counsel doesn't have a problem
18 with that.

19 MR. MAY: Yes, Your Honor.

20 MS. CAMPBELL: The only other matter, Your Honor, is
21 you chose not to -- we submitted State v. Bollington on
22 the change. I note you did not choose to charge that.
23 We would, however, since it is the law would perhaps argue
24 that --

25 THE COURT: Well, you know, it is prior to

1 Bollington.

2 MS. CAMPBELL: Yes, sir.

3 THE COURT: It's a Court of Appeals opinion.

4 MS. CAMPBELL: Yes, sir.

5 THE COURT: It creates an inference.

6 MS. CAMPBELL: We aren't arguing that. I just
7 wanted -- we may argue that to the jury, although we
8 understand you aren't charging that.

9 THE COURT: As long as you don't tell them that's
10 the law in contradicting anything that I'm going to say
11 that's in the instructions.

12 MS. CAMPBELL: No. I will tell them you will not
13 instruct them on this; however, the courts have held...

14 THE COURT: No. I mean, I can't -- I can't tailor
15 your argument.

16 MS. CAMPBELL: Yes, sir.

17 THE COURT: But I think Belcher -- I mean, you run
18 the risk, although it says only use of a firearm --

19 MS. CAMPBELL: Yes, sir.

20 THE COURT: -- to me, it raises a rather significant
21 issue.

22 MS. CAMPBELL: Your Honor, even -- I'm sorry.

23 THE COURT: As to what can be used to infer malice.

24 MS. CAMPBELL: And even Belcher says --

25 THE COURT: I mean, that just takes the gun away.

1 MS. CAMPBELL: I understand, Your Honor. Legally,
2 as far as the jury charge, but even Belcher goes on to
3 say -- it's my understanding from Belcher that it can still
4 be argued to the jury, the inference to a gun. It can
5 be argued, it's just not a proper charge. If I misquoted
6 it, Your Honor, I apologize, but that's my understanding
7 of Belcher.

8 THE COURT: Well, you know, that doesn't make a lot
9 of sense to me unless you show me where it says that --

10 MR. SHEALEY: I believe it says --

11 THE COURT: -- that I can argue it. "I can argue it
12 even though the judge says that's not the law."

13 MS. CAMPBELL: I'll get the case, Your Honor.

14 THE COURT: I'm looking at the case.

15 MR. SHEALEY: Your Honor, I believe it discusses
16 that inference cannot be made about just the gun alone
17 unless -- you know, especially with mitigating
18 circumstances, such as self-defense or a fight --

19 THE COURT: Right.

20 MR. SHEALEY: That you cannot infer from the gun
21 alone that there is that mitigating stuff.

22 We would have -- the defense would have a problem
23 in general about the State being allowed to make
24 arguments to the jury regarding Bollinger -- Bollington
25 when that's clearly not in your charges.

1 It's no longer good law, according to this, and the
2 inference that can be made. I'm not going to argue Castle
3 Doctrine to the jury because you told us it's not
4 appropriate to be charged. I don't -- we would find it
5 highly objectionable to argue that --

6 THE COURT: I think the State can argue any number
7 of facts in this case which they perceive are evidence
8 of malice such as the burning, the use of the credit card.

9 I don't think the State can say in argument that the
10 use of a weapon is an inference of malice. In other
11 words, it's -- it's -- unless you show me where Belcher
12 says you can do that.

13 MS. CAMPBELL: Your Honor, I apologize. I didn't
14 bring Belcher with me this morning. She is getting it.

15 THE COURT: Well, if you want my copy, I'll give it
16 to you --

17 MS. CAMPBELL: Thank you, Your Honor.

18 THE COURT: -- but it's pretty well marked up.

19 MS. CAMPBELL: I appreciate it.

20 THE COURT: I mean, this is a sticky wicket, folks.
21 The Supreme Court only said the use of a weapon is
22 not -- cannot be used as an inference. It doesn't say
23 what can be used as an inference, so my charge is very
24 general in -- on the inference of malice.

25 MS. CAMPBELL: Your Honor, I believe it's in

1 footnote nine. "In addition, we need to restrict the
2 state of arguments to the jury for a finding of malice
3 from the use of a deadly weapon in order to restrict a
4 defendant from arguing the absence of malice for the
5 presence of reasonable doubt in this regard."

6 THE COURT: You say footnote nine authorizes you to
7 do exactly what the holding of the case says you can't?

8 MS. CAMPBELL: As far as argument, not as far as jury
9 charges go.

10 THE COURT: How about it?

11 MR. MAY: Yes, Your Honor. Yes, Your Honor. May it
12 please the Court, Your Honor. I believe that Belcher
13 stands for the proposition...

14 THE COURT: She -- address footnote nine.

15 MR. MAY: Yes. I'll be happy to.

16 Your Honor, when the State starts arguing issues
17 that are not charged in the law, then they are not -- then
18 they are overstepping their bounds.

19 If they get up there, and as Ms. Campbell says she
20 is going to state regarding the cover-up, "courts have
21 found" that is supplanting other courts for this Court.

22 She is saying that the -- that is the law, and that's
23 what the direct inference is; is that other courts have
24 found it. Therefore, it must be proper for this Court
25 to find it.

1 I believe that it's appropriate -- it's a correct
2 juxtaposition that just as -- if she does that, then it's
3 okay for us to get up there and say, "Well, Castle Doctrine,
4 Castle Doctrine says you can't find him guilty if he
5 shoots somebody in his own house."

6 I believe that would be improper. We must restrict
7 ourselves to the law in this case as the Court is going
8 to charge impermissive inferences thereof.

9 To argue that, we will object. We will ask for a
10 mistrial. We believe that that could be reversible
11 error, as it is a misstatement of the law as the Court
12 is going to charge.

13 Furthermore, if she refers to other courts as -- as
14 having certain laws, that is completely improper, and if
15 she --

16 THE COURT: All right. Just a minute.

17 MR. MAY: Yes, sir.

18 THE COURT: Footnote nine, Ms. Campbell.

19 MS. CAMPBELL: Yes, sir.

20 THE COURT: Footnote nine, if you look that the
21 paragraph wherein footnote nine is cited, the Court is
22 saying that the inference is proper in a case -- in a
23 straight homicide case, not a self-defense case. That's
24 what footnote nine, to me, is referencing.

25 I'm just -- I think your --

1 MS. CAMPBELL: Your Honor, then we will argue just
2 the facts. We won't argue it in reference to any legal
3 precedence.

4 THE COURT: I mean, it just -- I think it's risky
5 business, and the defense may object, but...

6 MS. CAMPBELL: We won't reference it as being the law.
7 We would argue facts there.

8 THE COURT: I know what I'm going to do, but I don't
9 know what y'all are going to do.

10 MR. MAY: Yes, sir. And just to put the State on
11 notice, not only will we be objecting to if they say this
12 has been found to be the law in other courts, we're also
13 arguing that it's inference.

14 We're just going to put everybody on notice that if
15 you say you may infer malice from the use of a deadly
16 weapon as the court -- I believe the Court's teaching is
17 correct, that footnote nine refers to when there is no
18 mitigation to another -- to a lesser.

19 MS. CAMPBELL: I'm on notice.

20 THE COURT: All right. Anything else?

21 MR. GIESE: Yes, sir. While we're putting people on
22 notice, it's my understanding, as they did before the
23 opening statements, we will make a motion in limine to
24 make sure that the defense -- I'm not sure who is making
25 the closing statement, but that they stay away from any

1 irrelevant cases, any cases that have been handled by my
2 office that's not involved in this case, we just ask them
3 not to mention them because it's irrelevant to mention,
4 and the Innocence Project.

5 THE COURT: And what?

6 MR. GIESE: The Innocence Project, clearly, would
7 not be appropriate.

8 THE COURT: You can object at the appropriate time.
9 Is the jury here?

10 THE BAILIFF: We're missing two.

11 THE COURT: The jury is not present.

12 We'll stand at ease. We're missing two.

13 And again, if you plan to use exhibits in your closing
14 arguments, please take just a few minutes to sort of
15 segregate them out.

16 How many exhibits do we have?

17 THE COURT REPORTER: About 350.

18 THE COURT: 350.

19 Same juror that was late before.

20 MS. CAMPBELL: May I approach?

21 THE COURT: Yes.

22 (WHEREUPON, there was a bench conference.)

23 MS. CAMPBELL: We're going to switch the redacted with
24 State's 2 and then the original will go with --

25 THE COURT REPORTER: Won't that be confusing if you're

1 reading the transcript?

2 MS. CAMPBELL: No, no. It will be fine. The jury
3 will refer to it as State's Exhibit 2, but we have
4 to --

5 THE COURT REPORTER: Well, if that's -- can you just
6 switch the stickers?

7 (The exhibit stickers for State's 360 and State's
8 2 were switched.)

9 MS. CAMPBELL: Your Honor, our only other concern
10 with State's Exhibit 2, which is now the redacted
11 version, this is obvious that it's not how he signed the
12 other statement, which was in pen.

13 THE COURT: Well, they've never seen it.

14 MS. CAMPBELL: They've never seen the statement.
15 That's not our issue.

16 Our concern is they're going to wonder why they got
17 a copy of this statement and the original of State's
18 Exhibit 3.

19 THE COURT: Well, that will take up ten minutes of
20 their discussion, but you'll just have to do it.

21 MS. CAMPBELL: Certain items had to be redacted.
22 That's why there's a copy rather than an original.

23 THE COURT: I don't ever do that, tell them that
24 statements have been redacted. Statements are redacted
25 all the time.

1 MS. CAMPBELL: I'm aware of that, Your Honor.

2 THE COURT: Especially in multiple-defendant cases.
3 I don't try to explain it to them. I don't have to explain
4 it to them.

5 MS. CAMPBELL: I understand. We're requesting you
6 explain it to them. I understand you don't have to do
7 anything, but we're just requesting.

8 THE COURT: It's not what I meant. I don't think it's
9 necessary with redactions to try to explain why it was
10 redacted or that it was redacted because somebody else
11 is going to say, "Well, why was it redacted?"

12 If they want to, they can -- I think it's better
13 that the Court not get into a discussion of why exhibits
14 have been redacted. I mean, exhibits are redacted all
15 the time. You know that.

16 MS. CAMPBELL: Okay. Your Honor, my only other
17 concern is that in the tape recording, of course, as you
18 instructed us not to play a part of, we discussed this
19 a little bit yesterday about how that would be submitted
20 to the jury.

21 The disc is actually in evidence. We have no means
22 by which to redact out the -- I think it's half a page
23 of the transcript you asked to redact out. I don't know
24 how you want to address it for the jury why --

25 THE COURT: If they want it. If they want to play

1 it.

2 MS. CAMPBELL: That one exhibit?

3 THE COURT: Yes. Your operator can play it for them
4 and do it as it was done in court. I don't know any other
5 way to do it.

6 MS. CAMPBELL: Okay. And that -- okay. So both
7 those first statements to Charlotte are on that disc.

8 THE COURT: They may not want to hear them.

9 We'll just have to deal with it.

10 Anything further before we bring the jury?

11 MR. SHEALEY: I don't believe so, Your Honor.

12 MS. CAMPBELL: Nothing further. Thank you, Your
13 Honor.

14 THE COURT: Is the State ready for the jury?

15 MS. CAMPBELL: The State is ready.

16 THE COURT: Is the defense ready for the jury?

17 MR. SHEALEY: Yes, Your Honor.

18 THE COURT: Bring the jury.

19 (WHEREUPON, the jury came into open court at
20 approximately 9:58 a.m.)

21 THE BAILIFF: All jurors are seated, Your Honor.

22 THE COURT: All right. Thank you very much. Good
23 morning, ladies and gentlemen.

24 JURORS: Good morning.

25 THE COURT: We're now ready for the final arguments

1 of counsel or summations of counsel, following which I
2 will instruct you on the law of the State of South
3 Carolina as it applies to this case.

4 I want to give you a little preview of what I think
5 the lawyers are going to talk about, only in very general
6 terms.

7 In South Carolina, as it may be different from
8 other states, we don't have murder defined as murder
9 first degree, murder second degree, murder third
10 degree.

11 You may -- you may want to make note of this. In
12 South Carolina, we consider the lesser-included offenses
13 of murder to be voluntary manslaughter and involuntary
14 manslaughter.

15 Now, involuntary manslaughter is not an issue in
16 this case, but the attorneys are going to talk to you,
17 I think, about what I'm calling the lesser-included
18 offenses.

19 They're going to address that, so I didn't want you
20 thinking, "We got an indictment for murder. Why are
21 these people talking about voluntary manslaughter?"

22 It is an included -- what we call in the law a
23 lesser-included offense, just like it would be -- maybe
24 in North Carolina or Virginia, it might be murder in the
25 second degree, murder in the third degree.

Closing by Campbell

1 They're going to define it for you, so I think you'll
2 understand it. But I wanted you to keep that in mind.
3 You're not only going to hear about murder, you're going
4 to hear about voluntary manslaughter, and you're also
5 going to hear about self-defense.

6 Self-defense is what we call an absolute defense.
7 If it's so proven and the jury so finds, it's an absolute
8 defense to murder.

9 So I think those are the primary subjects that the
10 attorneys are going to talk to you about and how the facts
11 fit into those various categories.

12 I just wanted to give you sort of a heads up. I'm
13 going to define these terms in much greater detail when
14 I give you my final instructions, but the attorneys are
15 going to talk about it.

16 I just wanted to give you, as I say, a snapshot or
17 a heads up of what they're going to be talking about,
18 because they know pretty much what my instructions are
19 going to be. I've shared that with them this morning.

20 So with that, Solicitor, you may begin with your
21 final argument, final summation.

22 MS. CAMPBELL: May it please the Court.

23 THE COURT: And let me just state that the
24 State -- because the State has the burden of proof in this
25 case, the State gets to argue twice. They get to argue

Closing by Campbell

1 once at the opening, and the defense will argue. The State
2 will close. The reason for that is because the State has
3 the burden of proof.

4 All right. You may continue.

5 MS. CAMPBELL: May it please the Court.

6 Good morning.

7 THE JURORS: Good morning.

8 CLOSING STATEMENT:

9 MS. CAMPBELL: The first thing I want to do on behalf
10 of the State of South Carolina, on behalf of Nikki
11 McPhatter's family, is to thank you for your service in
12 this case.

13 I know ten days ago when you showed up for jury duty,
14 you may not have anticipated the type of case you would
15 sit on. You thought it might be a civil case, a traffic
16 offense, something of that nature.

17 Over the last ten days as we have watched, you have
18 been very attentive. You have been very patient as you
19 have been made to wait outside the courtroom as we take
20 up other matters.

21 We haven't started on time, things of that nature,
22 but I hope as you have seen over the last ten days, that
23 this case is very important.

24 It's important to the State of South Carolina, to
25 the citizens of Richland County. It's important to the

Closing by Campbell

1 defendant, and your role in this courtroom is the most
2 important role.

3 The State has the burden or the right to bring forth
4 all the relevant evidence as far as this defendant's
5 guilt on the charge of murder.

6 The defense's role is to defend their client to the
7 best of their ability. The judge's role is to rule what
8 evidence is actually going to come before you, what he
9 perceives is relevant and to rule on different matters
10 of law.

11 But by far, ladies and gentlemen, and no one will
12 question this: The most important role in this courtroom
13 is yours. Each of you individually -- and once you are
14 addressed as far as what the judge will tell you is the
15 law that applies, collectively when you to back in that
16 jury room and deliberate.

17 Now, as the judge just told you, we are going to have
18 the opportunity, the State, to address you first. I'm
19 going to talk primarily about the law in this case and
20 how it applies to the facts. Then you're going to hear
21 from Mr. Shealey or Mr. May as far as they get to argue
22 their version of the facts and the law.

23 Then, finally, Mr. Giese will get up before you and
24 talk to you about the different issues, specifically what
25 the credible evidence points to in this case,

Closing by Campbell

1 overwhelmingly points to. That is what Mr. Manning is
2 charged with, the murder back on May 6, 2009, of Nikki
3 McPhatter.

4 Now, you have heard all the evidence you can consider
5 in this case, and this is important. Evidence is the
6 testimony, the physical evidence, the photos that will
7 go back with you.

8 What's not evidence are lawyer's questions, fishing
9 expeditions, innuendo, conjecture, speculation or just
10 plain wishful thinking. That's not evidence. The sworn
11 credible testimony is the evidence that you should
12 consider in this case, and the judge will instruct you
13 on that.

14 Now, I want to apologize if we have done anything
15 on behalf of Nikki McPhatter, on behalf of the State of
16 South Carolina, the citizens of this community, to offend
17 you in any way over the last several days.

18 There has been legal wrangling going back and forth.
19 At times something is admissible -- or not admissible,
20 then admissible, the form of the question. I've been
21 inartful, clumsy, sloppy in questioning at times.

22 Please don't hold that against the State of South
23 Carolina, against Nikki McPhatter's family. For this is
24 their day in court, just like it's Mr. Manning's.

25 MR. SHEALEY: Objection, Your Honor. May we

Closing by Campbell

1 approach?

2 THE COURT: Approach the bench.

3 (WHEREUPON, a bench conference was held in the
4 presence, but not within the hearing of the jury.)

5 THE COURT: Overruled.

6 MS. CAMPBELL: Thank you.

7 Now in a criminal case, as you need -- because in
8 criminal cases, as you've noticed, is all about live
9 testimony. The witnesses themselves, be it the experts,
10 law enforcement, whoever, they have to get up before you
11 and testify.

12 The reason for that is very simply that in our
13 constitution, as it should be, the defendant has the right
14 to confront each and every witness before them.

15 You've heard references to reports, such as D.N.A.
16 reports. You've heard references to statements from
17 witnesses. Those are not admissible, generally. The
18 only statements that are admissible are those the
19 defendant made in regards to this case and his knowledge
20 of it.

21 That's why you've heard from the D.N.A. expert. You
22 heard from the crime scene people. We didn't just submit
23 the report. There are no videotaped depositions. There
24 is nothing of that sort that's admissible in this case,
25 because you have the right and should have the opportunity

Closing by Campbell

1 to judge the credibility of each and every person who in
2 this case came before you and gave testimony.

3 In that same vein, you also heard references to other
4 witnesses that may have been -- said something in a
5 search warrant or may have been present during the arrest
6 of the defendant.

7 We can't -- cumulative evidence, you heard
8 objections about cumulative evidence. We have can't bring
9 forth before you every single person to say the same exact
10 thing over and over and over. That is considered
11 cumulative evidence and is not allowed.

12 That's why you may have heard references to people
13 that did not testify in this case being there, but if they
14 don't have something different or more to offer, it would
15 be cumulative to bring them before you.

16 Now, the burden of proof, just like the judge just
17 told you, is on the State of South Carolina to prove
18 this defendant's guilt of murder beyond a reasonable
19 doubt.

20 That's what the constitution guarantees, and as the
21 defense will tell you, it is the highest level of proof
22 we have in any court, as it should be. Ladies and
23 gentlemen, I submit in this case with this evidence, that
24 is a burden the State welcomes perhaps more than any
25 other. The evidence in this case of murder is

Closing by Campbell

1 overwhelming.

2 Now, the judge is going to instruct you on how to
3 define some of the legal terms that are going to come before
4 you when you are back there deliberating, the law as it
5 applies, proof beyond a reasonable doubt.

6 The courts have held -- or perhaps the simplest
7 explanation: What is reasonable doubt? It's the type of
8 doubt that would make a normal person hesitate to act,
9 but the courts have gone further than that.

10 They differentiate it from proof in a civil case.
11 Proof in a criminal case is proof beyond a reasonable
12 doubt. It's proof that leaves you firmly convinced of
13 the defendant's guilt.

14 There are very few things in this world that we know
15 with absolutely certainty. In criminal cases, the law
16 does not require proof that overcomes every possible
17 doubt.

18 If, based on your consideration of the evidence, you
19 are firmly convinced that the defendant is guilty of the
20 crime charged, you must find him guilty.

21 If, on the other hand, you think there is a real
22 possibility he is not guilty, then you must give him the
23 benefit of the doubt and find him not guilty.

24 Let me repeat it: Criminal cases recognize that we
25 can't know everything to an absolutely certainty.

Closing by Campbell

1 Criminal cases do not require us to provide proof that
2 overcomes every possible doubt, but if, based on your
3 consideration, the evidence in this case, this defendant
4 is guilty, you are firmly convinced he is guilty, that's
5 all, then you must find him guilty of the crime that he
6 is charged with.

7 Now, there is going to be one indictment that goes
8 back with you. As the judge just told you and helped
9 explain, in every case, certain things are raised. There
10 may be lesser includeds that are charges.

11 In this case as far as the guilt of this defendant,
12 you are going to have murder, and I'll go over the elements
13 of that. Then you are also going to be allowed -- if you
14 don't find, I submit, that we have met all the elements
15 of murder -- a lesser included of voluntary manslaughter.

16 So I'm going to address those. Murder is the most
17 heinous crime that can be committed in our society. In
18 our state, it has perhaps the shortest definition of any
19 crime.

20 Murder is the unlawful killing of another with
21 malice aforethought either expressed or implied. Very
22 simply, ladies and gentlemen, I want to talk about that.
23 Very simply, it's the killing of a person with malice.
24 Malice must exist at the time the crime occurred.

25 The judge will instruct you in determining what

Closing by Campbell

1 happened that day, you can look at all the circumstances
2 surrounding the crime itself.

3 Now, the term of malice which must be proved, either
4 expressed or implied. Malice may be inferred. The evil
5 intent is perhaps the easiest way to put it. It's an
6 unjust act.

7 Malice may be inferred from conduct showing a total
8 disregard for human life. Malice is a legal term implying
9 wickedness excluding a just cause or excuse.

10 The term "malice" indicates a formed purpose and
11 design to do a wrongful act under the circumstances that
12 exclude the legal right to do it, something that springs
13 from wickedness, depravity, from a heart devoid of social
14 duty and fatally bent on mischief.

15 In other words, malice is a mental state, and it may
16 be inferred from facts and circumstances proven
17 surrounding this crime, something which springs from
18 wickedness, from depravity, from a heart devoid of social
19 duty and fatally bent on mischief.

20 Ladies and gentlemen, this case reeks of malice.
21 Now the terms that he's going to say, expressed or implied,
22 don't mean a different kind of malice, just how you may
23 come to that conclusion.

24 Expressed malice typically doesn't happen. The
25 judge will give you examples: Someone laying in wait or

Closing by Campbell

1 someone walking up to another person saying, "I'm going
2 to kill you," and then stabbing them. Those generally
3 do not happen.

4 Infer or implied malice -- you may infer it from the
5 circumstances surrounding the crime itself, because
6 just as with criminal intent -- and I'll get to that -- we
7 can't open up his body, look into his brain and
8 determine that, "Oh, that reaches the level of malice."

9 You must infer it from the actions around the time
10 of the crime itself: Before, during, and after. That's
11 how you come to malice, whether or not malice existed in
12 his mind, in his heart, at the time the fatal blow was
13 struck.

14 Malice aforethought, the law -- judge will instruct
15 you that it doesn't have to be -- and you will have to
16 listen carefully to him.

17 Because in our state, murder doesn't require motive,
18 although I'll get to that in a moment. Murder doesn't
19 require premeditation. Listen carefully to the judge.

20 He will instruct you that those are elements of
21 murder. All we have to show is that malice aforethought
22 does not require -- exist for any particular time before
23 the act is committed.

24 Malice must exist at the time in the mind of the
25 defendant just before and at the time the act was committed.

Closing by Campbell

1 There must be a combination of the previous evil intent
2 and the act.

3 I submit, ladies and gentlemen, as far as the
4 credible evidence you have before you, an execution-style
5 shot to the back of the victim's head, that alone is
6 malice.

7 Now, the judge will instruct you if you think we
8 haven't proven all of the elements of murder, there is
9 a lesser-included that you may consider and that is
10 voluntary manslaughter.

11 If, based on the defendant's, I guess third, fourth
12 and fifth statement, to the police when he says that she
13 was grabbing the gun, and it went off in her jacket, that
14 would be a version that could -- possibly you could find
15 voluntary manslaughter. Although, I submit it was
16 malice.

17 The voluntary manslaughter is the unlawful killing
18 of a human being in the sudden heat of passion and upon
19 sufficient legal provocation, and I want to talk to you
20 about those terms.

21 In other words, it's almost likened to be a reaction
22 that was legally provoked. What do those terms mean? The
23 judge will instruct you sudden heat of passion may for
24 a time affect a person's self-control.

25 If there has been any testimony before you that he

Closing by Campbell

1 shot because he -- simply she had said something -- and
2 it's got to be more than words. I'll get to that, and
3 done something that just provoked him so he just
4 couldn't control himself and had to kill her, that is
5 sudden heat of passion, but it's got to be legal
6 provocation, affects a person's self-control and
7 temporarily disturbs a person's reason.

8 The sudden heat of passion must be the type that
9 would make an ordinary person unable to coolly reflect
10 on his actions and would produce an uncontrollable
11 impulse to do violence.

12 Sufficient legal provocation must be the type that
13 would make a person of ordinary reason and caution become
14 enraged and lose control.

15 Remember the testimony. At any point did he say, "I
16 was so enraged I couldn't help myself. I had to shoot
17 her?" No.

18 The testimony from this defendant who got up here
19 before you -- and they don't have to put up any evidence,
20 but once they do choose to put up evidence, you have the
21 right to judge it in the same manner as every other piece
22 of evidence in this case.

23 And said -- and I believe it's -- and remember this.
24 Don't let me misquote. "He was scared and pissed."

25 Did you ever hear from this defendant that it was

Closing by Campbell

1 just so overwhelming, her coming towards me, that I lost
2 control so I had to shoot her? That she was coming towards
3 me with a knife, so I had no -- nothing else to do; that
4 I thought she was going to hurt me because she is bigger
5 than me, so I had to shoot to protect myself?

6 Voluntary manslaughter? Those elements aren't
7 here. Words alone, however vulgar or insulting, are not
8 enough to be legal provocation.

9 Where death is caused by the use of a deadly weapon,
10 the words must be accompanied by some overt threatening
11 act which could have produced the heat of passion.

12 Overt threatening act. An unarmed woman who is 5'5"
13 coming towards him, I submit, ladies and gentlemen, is
14 not sufficient, even if you could believe him.

15 Now, the judge will instruct you in every case that
16 comes into criminal court, we must prove criminal intent,
17 much as we must prove malice.

18 Criminal intent is a matter that must be determined
19 by the jury from the circumstances surrounding the
20 situation. That is important, the circumstances
21 surrounding the situation.

22 There is no way to prove intent to a mathematical
23 certainty. There is no way medical science can dissect
24 a person's brain to show what the person had in mind.

25 So the law says criminal intent, just like malice,

Closing by Campbell

1 may be inferred from the circumstances shown to have
2 existed at the time and place of the incident.

3 You may consider the action or lack of action of this
4 defendant on the date in question on May 6th in inferring
5 whether or not he had malice, whether or not he had
6 criminal intent. That's what the law says, because the
7 law recognizes, ladies and gentlemen, that when people
8 commit heinous crimes, murder, rape, there may not be
9 independent witnesses. So you have the right to infer
10 from the actions or non-actions of this defendant whether
11 or not he had malice.

12 I submit, ladies and gentlemen, loading up someone's
13 body into a car, driving it up to Fairfield County and
14 burning her, that alone infers criminal intent, malice.
15 Listen to the judge's directions.

16 Now, this defendant, as is his right, has asserted
17 self-defense as his defense. You heard him testify
18 yesterday.

19 An attempt to make self-defense apply in his -- if
20 you believe his final version, which I submit, even his
21 final version, doesn't meet the elements of self-defense,
22 but they will ask you to consider this.

23 So I want talk to you for a minute about what those
24 elements are in order for you to find him not guilty on
25 the basis of self-defense.

Closing by Campbell

1 The defendant must be without fault in bringing on
2 the difficulty, and this defendant was very clear over
3 the last day in his other statements. He is a victim.
4 He is without fault. It's everybody's else's fault.
5 It's women that he has brought into his life, that he has
6 manipulated, according to his own words, but suddenly
7 on that day victimized him, without fault in bringing on
8 the difficulty.

9 If Mr. Manning's conduct, in fact, was reasonably
10 calculated to you and did provoke the assault, he would
11 be at fault in bringing on the difficulty and would not
12 be entitled to an acquittal. That's just the first
13 element, and there are four that they must meet.

14 Ladies and gentlemen, this element alone, I submit,
15 he has not met. This is not a self-defense case, but
16 let's move on to the second element of what he must
17 prove -- of what must be proven.

18 MR. SHEALEY: Objection, Your Honor.

19 (Pause)

20 MR. MAY: Burden shifting.

21 MR. SHEALEY: It's burden shifting. This is
22 self-defense. They have to disprove it.

23 THE COURT: All right.

24 MS. CAMPBELL: The burden is on us.

25 The second element of self-defense is that the

Closing by Campbell

1 defendant was actually in imminent danger of death or
2 serious bodily injury or that the defendant actually
3 believed he was in imminent danger of serious bodily
4 injury.

5 Ladies and gentlemen, you didn't hear one word out
6 of his mouth. He might have been scared and pissed, but
7 he never said he thought she was going to hurt him or kill
8 him. She was unarmed. That is not in dispute.

9 So again, just to the second element of self-defense,
10 he cannot, by his own final version, meet the elements
11 of self-defense.

12 But there's more: The third element of self-defense.
13 If you find that he was actually in imminent danger, it
14 must be shown. If you were to find that. I submit you
15 can't, based on his own testimony. It must be shown
16 that the circumstances would have warranted a person of
17 ordinary firmness and courage to strike the fatal blow,
18 the fatal blow, to prevent death or serious bodily
19 injury.

20 Their own expert disproves this. His own testimony,
21 because once again, it was Nikki McPhatter's fault,
22 according to this defendant, that she got shot in the back
23 of the head. I've never quite figured out the final
24 version.

25 In deciding, you should consider all the facts and

Closing by Campbell

1 circumstances surrounding the crime, including the
2 physical condition and characteristics of the defendant
3 and the victim, you judge it.

4 The testimony is she is 5'5". He is 6'1". He has
5 the gun. She is unarmed. Ladies and gentlemen, under no
6 interpretation -- and I'm trying to say this -- is that
7 self-defense.

8 The final element of self-defense is that he had no
9 other way to over. Now, the law recognizes that when
10 a person is in their own home, they have no duty to
11 retreat.

12 That's put in there if someone is home and someone
13 is attacking them, an intruder. In this case, they were
14 both in the house, had no other probable way to avoid the
15 danger or death other than the shooting.

16 I submit, ladies and gentlemen, he had the gun. She
17 was unarmed, and under whichever version he puts out
18 there, and I submit none of them are credible. We'll get
19 back to credibility in a minute. He can't even make this
20 self-defense.

21 Now, the judge will instruct you when in
22 determining what the facts were and what happened that
23 day beyond a reasonable doubt, you can consider two types
24 of evidence. There is direct evidence and circumstantial
25 evidence.

Closing by Campbell

1 As I just mentioned, in many cases, violent cases,
2 there may not be independent witnesses. There may not
3 be that type all of evidence.

4 Specifically in domestic cases, but what you can
5 consider in addition to direct evidence -- and what is
6 direct evidence? It's eyewitness testimony. It's what
7 people see, hear, feel, touch. They come in and testify
8 about it. Eyewitness testimony is direct testimony.

9 You heard from Mekenda Bradley. She had contact
10 with the victim that day at 11:44, the last person on this
11 earth that talked to her that day other than this
12 defendant.

13 She told you the information. She was in a bad
14 situation, and she was out of gas. Those were her words.
15 She knew she was in a bad situation.

16 There's another type of evidence you can consider,
17 and that's called circumstantial evidence. Very
18 simply, circumstantial evidence is proof of a chain of
19 facts or circumstances indicating the existence of a
20 fact.

21 The law makes absolutely no distinction between the
22 weight or value to be given either direct or circumstantial
23 evidence, nor is a greater degree of certainty required
24 of circumstantial evidence than of direct evidence.

25 You should weigh all the evidence in the case. After

Closing by Campbell

1 weighing all the evidence, if you are not convinced of
2 the guilt of the defendant beyond a reasonable doubt, you
3 must find him not guilty.

4 If, on the other hand, you are convinced of the
5 defendant's guilt beyond a reasonable doubt, then it is
6 your duty to find him guilty.

7 Circumstantial evidence, as to what was in his
8 mind, putting her in the trunk, driving her halfway to
9 Charlotte, burning her. It wasn't easy, taking her car.

10 We don't have to make -- prove motive, ladies and
11 gentlemen. How did he get the pin number? He happened
12 to have the cards.

13 The first thing this defendant did after burning her
14 body, looking at the smoke in the rearview mirror, was
15 to go directly to the bank and clean out her bank account.
16 That alone is circumstantial evidence from which we don't
17 have to prove it, but there is a motive.

18 Are those the actions of a man that just acted in
19 self-defense?

20 The next day, going to another A.T.M., as he and
21 Kendra are shopping -- and you can observe his demeanor
22 on that day, which is different than the one on the
23 stand. Is Kendra directing him? Is Kendra telling him
24 what to do?

25 What is reasonable? What makes sense? The judge

Closing by Campbell

1 will instruct you as part of his instruction that you as
2 jurors -- when considering credibility, use your own
3 common sense. What is reasonable? What is possible?

4 The last thing is you also will hear from the judge
5 on the instruction about voluntary statements, and I want
6 to talk about credibility.

7 In this case, you must determine whether or not the
8 statement made by the defendant was voluntary, whether
9 or not he went willingly.

10 I submit, ladies and gentlemen, when he went to meet
11 with Charlotte, he wanted to know what they had. That
12 was voluntary. He wanted to know what the evidence was,
13 what they knew. He drove himself there to meet him at
14 the post office.

15 He drove himself to the Richland County Sheriff's
16 Department satellite office voluntarily. The police
17 didn't grab him and make him go do those statements.

18 I submit, they aren't going to get up here and say
19 those statements aren't voluntary. You also -- however,
20 when a person is taken into custody, as he was that night
21 when he was arrested on May 29th of 2009, once they are
22 in custody, there is a new set.

23 The constitution wants to make sure that this
24 defendant's rights were protected, as they should be. In
25 considering that, the judge will say you can consider one

Closing by Campbell

1 of the main factors is whether or not he was advised of
2 his rights.

3 If he is in custody, and this only applied -- and
4 the only time Miranda is required is once he was arrested
5 on that night.

6 Was he advised of his rights, including the right
7 to remain silent; that it could be used against him in
8 a court of law? He has the right to a lawyer. If he
9 couldn't afford a lawyer, a lawyer would be appointed,
10 and that he could stop making the statement at any time.

11 It is not in dispute, and this defendant actually
12 even admitted yesterday, that he understood his rights.
13 He was advised of his rights and that he signed off on
14 them, just like he signed off on those statements that
15 he now doesn't want to acknowledge.

16 There is no question that he was advised of his
17 rights, and that his rights were protected, as they should
18 be. There is no evidence in this case of any police
19 misconduct; that he wasn't afforded all of his rights the
20 constitution granted, as it should be.

21 Credibility. This case, as most, boils down to
22 credibility. What do you believe? The judge will
23 instruct you in determining credibility you can believe
24 all of a witness, part of a witness, none of what a witness
25 says. You can believe one witness against many, many

Closing by Campbell

1 against one.

2 In considering credibility, does the witness have
3 a bias, a prejudice, a reason to change their story? Do
4 they have an interest in what happens?

5 Those are all factors, and he will tell you when
6 judging credibility, use your common sense. Understand
7 that you judge credibility every day in your normal
8 lives.

9 You will also, he will instruct you -- or may
10 instruct you, that you can consider whether their
11 statements are corroborated, whether the testimony was
12 corroborated by other witnesses or not.

13 In this case, they are going to get up here and talk
14 to you about you can't believe Kendra because she gave
15 different statements.

16 I submit, ladies and gentlemen, she did give
17 different statements, and she got up here and admitted
18 to you that she lied, but in that same vein, consider his
19 testimony, the reason why it changed, as he was confronted
20 with new evidence, the shot to the back of the head being
21 the most significant.

22 He didn't count on that. When he set that fire, he
23 thought that would be destroyed. When confronted with
24 the fact, he did the best he could, because he likes to
25 talk his way out of things.

Closing by Campbell

1 Credibility, ladies and gentlemen. And all the
2 State asks, and Mr. Giese will talk to you about this,
3 is when you go back there, who was credible? Who was
4 believable? What evidence, the videotape, the credit
5 cards, all that.

6 We aren't asking you just to look at what happened
7 afterwards. Look at what happened before. Why she went
8 down there, to break up with a man named Teddy.

9 You can consider -- just as evidence of flight, you
10 can consider what he did afterwards, as the judge will
11 instruct you.

12 I submit, ladies and gentlemen, when you go back and
13 deliberate, you will find because this case boils down
14 to either you believe Theodore Manning or he's guilty of
15 murder, which he so desperately tried to cover-up over
16 and over and over.

17 Thank you.

18 MR. SHEALEY: You can leave that over there.

19 May it please the Court, Your Honor.

20 THE COURT: Yes, sir.

21 CLOSING STATEMENT

22 MR. SHEALEY: I enjoy watching the American Movie
23 Channel.

24 The other day I came across a movie that I found
25 appropriate to the situation we're in. It's called

Closing by Shealey

1 Twelve Angry Men. It's a 1957 classic. Henry Fonda is
2 the main character. It's a black and white.

3 In this movie, the entire movie focuses on the jury
4 and their role. Now, in this movie, it's a murder case.
5 In the entire movie, you get back to the deliberation
6 room, and the jury sits there. The start of it is a poll.

7 They've got a knife. They've got the witness who
8 saw the defendant do it, and they have an unsavory
9 defendant, as well. They took a poll. What is it, guilty
10 or not guilty?

11 At the very beginning of the movie, it's 11 to 1
12 guilty. Without thinking, just their gut reaction.

13 Now, the entire rest of the movie is the process of
14 deliberating, of applying the law to the facts, logic and
15 reason without passion, without prejudice.

16 Now, as you can imagine, Henry Fonda being the star
17 character, he was the one hold-out at first. By the end
18 of the movie, after they did their job, they achieved a
19 just result.

20 The reason I bring this up is because the State is
21 trying to turn y'all into twelve angry men and women.

22 They would like you to be overcome with your
23 emotion, with your passion, because that makes you not
24 think clearly. That makes you out of control, as evidenced
25 in this case.

001701

1 The State has the burden in this case, as
2 Ms. Campbell stated. In order to find Theo Manning
3 guilty of murder, they have to convict him beyond a
4 reasonable doubt.

5 The only thing in question is malice. At the time
6 he pulled that trigger, did he have malice in his heart,
7 at that moment? That is the sole question that you can
8 consider as jurors.

9 Well, we spent over a week talking about everything
10 else other than that moment in an effort by the State to
11 enrage you, to make you mad, to make you hate Theo
12 Manning.

13 When Mr. May got up in his opening, he told you what
14 was going to happen. He told you that you were not going
15 to like Theo Manning.

16 There's a lot of qualities there that he admitted,
17 that I brought out when he was -- with his sexual life,
18 all the things he told you he did afterwards that make
19 him an unsavory character.

20 They spent over a week going through these things.
21 All you have to focus on, and the only thing the judge
22 will ever instruct you to focus on is the moment the
23 trigger was pulled, what was in his head?

24 Bear with me.

25 (Pause)

Closing by Shealey

1 You guys decide the facts, but the judge is going
2 to instruct you on the law. If it's different from what
3 I say, it's different from what they say, he is the one
4 who decides what the law is.

5 This is his charge on intent. We're going to talk
6 about malice. We're going to talk about intent.
7 Criminal intent may be inferred from the circumstances
8 shown to have existed at the time and place of the
9 incident.

10 This will be what the judge will read to you about
11 when intent is formed. It doesn't -- it doesn't ever say
12 anything about hours after, weeks after, lies, hiding,
13 self-preservation. That is not intent. That is not what
14 you're here to focus on.

15 To prove murder, they have to show an evil
16 wickedness, deliberateness, when he pulled that trigger.
17 They have not met their burden.

18 When I talk about burden, we've heard a lot about
19 burdens. The State does have this burden. When we said
20 beyond a reasonable doubt, what does that mean? That's
21 legal jargon.

22 What does that mean to average people from Richland
23 County? Well, I thought about a lot of ways. Mr. May
24 told you it was when his buddy wants to call him to go
25 fishing and he checks the weather, okay. He hesitates,

Closing by Shealey

1 that's reasonable doubt, something that would make you
2 pause before you act.

3 A very intelligent legal mind also put it in a way
4 that I think is easy to understand. If you go to your
5 refrigerator and you pull out a gallon of milk and you
6 see the expiration date is today, when you sniff it
7 before you pour that milk, you're hesitating. That is
8 doubt. You're all reasonable people. That's why you're
9 on this jury.

10 If any of you have a doubt, they cannot cure it. If
11 one of you has doubt, if one of you thinks that what was
12 going on with Theodore Manning's mind in the middle of
13 that fight in his house when confronted with his own
14 pistol, loaded -- they're arguing about relationship. He
15 disarmed her. He told her to leave. She continued to come
16 forward.

17 If any of you has a doubt and you think that is passion
18 or self-defense, it cannot be malice. You cannot find
19 him guilty of murder.

20 Now, life is a funny thing. We're all -- every
21 person: You, me, the lawyers, these people in the media,
22 everybody is faced with choices in their lives.

23 In general, you have two types of choices. You have
24 choices that are tough, choices that you wrestle with.
25 You'll usually find from your own experience that when

Closing by Shealey

1 you deliberate and you wrestle with these choices, that
2 the end result is usually the right result. It's a
3 rewarding result. Those are tough choices. That's one
4 path.

5 Now, the other path are the easy choices. It's the
6 path of temptation. If I'm married and I'm looking at
7 another woman as my wife sits next to me at the dinner
8 table, that's temptation. It happens to people.

9 It's easy to follow the path of temptation on a
10 smaller scale. If you're on a diet and you see a piece
11 of delicious, rich chocolate cake, it's easy to be
12 tempted by that. These are the easy choices: Adultery,
13 eating the chocolate cake. Those easy, tempting choices
14 are the ones that we regret later because they end up being
15 wrong. That's what we have here.

16 Your job as jurors is to wrestle with these choices.
17 You do not have an easy job here. The tough choice is
18 going to be the true choice, but temptation is a choice
19 that the solicitor has presented to you to divert you from
20 their task, your tough difficult decision.

21 Think about everything bad that happened, all of the
22 badness that came from up here. We told you that would
23 be what would be happening.

24 Theo Manning got up here and told you about what he
25 did afterwards. It's your job to judge credibility of

Closing by Shealey

1 all witnesses, which you've done.

2 Theo Manning admitted to many crimes afterwards.
3 We told you that he was guilty of a lot of things, but
4 he was never charged with them.

5 The bank, that's fraud. That's theft. Damage to the
6 car, the burning of the human remains, separate charges.
7 Again at Wal-Mart, the A.T.M., separate charges. Even
8 lying to police in his investigation could be a separate
9 charge.

10 If he was on trial for those things, there wouldn't
11 be a trial, but he's on trial for murder. He is on trial
12 regarding what was in his mind during that fight the
13 moment he pulled the trigger and nothing else.

14 The judge will never tell you that you should
15 consider what happened down the road, these things in an
16 effort, as a snowball effect were his words, of
17 mistakes.

18 He will never tell you that that is what you used
19 to develop whether there's malice or not, because it's
20 not the law in this state.

21 But again, we have temptation. We have two of the
22 most experienced solicitors, the Solicitor and the Deputy
23 Solicitor, who have been doing this a long time. They're
24 excellent attorneys.

25 They know how to instill passion in a jury,

Closing by Shealey

1 prejudice, hate. They want you to hate Theodore Manning,
2 and it's tempting. That's that road to temptation.
3 That's that easy choice.

4 The judge isn't going to allow you to consider that
5 when thinking about malice, but it's an easy choice. If
6 you get caught up in that choice, you won't be doing your
7 jobs.

8 Now, I don't think anything after that fight should
9 be discussed when I talk about whether they proved their
10 case of murder or not, but because they brought
11 temptation into this courtroom trying to tempt you, I'm
12 going to talk about it, but only so that I can give you
13 the tools to recognize it, to feel how it's welling up
14 in you; that tempting, passionate, prejudicial choice,
15 and allow do you pull yourselves up and get back to
16 wrestling with the hard choices in this case and thinking
17 solely about Theo Manning's house that day on May 6th in
18 that hallway, an argument about the relationship.

19 His own loaded .380 is pointed at his face, a quick
20 confrontation where he disarms or takes the gun and
21 tells her to leave. She won't do it. That is why I want
22 to bring you back every time, and that is what you can
23 only consider now.

24 Now, we have heard from dozens of State witnesses
25 over this week. We have hundreds, hundreds, of exhibits.

001707

Closing by Shealey

1 And, really, the only two things that matter in this case,
2 the only two things are the evidence that I tried to give
3 you.

4 Mr. Manning doesn't have to prove anything. He
5 doesn't have to enter anything into evidence, but we did.
6 All these pictures, they don't matter. None of this
7 matters. Tapes don't matter. Only what matters is what
8 happened in that house, in that hallway, during that
9 moment and his statement to Richland County, which I
10 entered into evidence.

11 I want you to read it. I want every one of you to
12 read it. This is what is important, his final statement
13 to Isenhoward. You'll have a chance to read it.

14 His testimony, and he doesn't have to testify. He
15 doesn't have to say anything, but he wanted to. This was
16 his time to get it off his chest, to let everybody know
17 what happened in that house, to tell you he was wrong in
18 what he did afterwards.

19 He was wrong. He's not blaming everybody else. He
20 took a lot of fault. Mr. Giese questioned him thoroughly
21 about it.

22 There were a lot of things that he was at fault for,
23 despicable things afterwards, but once again, that's the
24 road to temptation. We can pull ourselves up by our
25 bootstraps and focus on the moment the trigger was pulled.

Closing by Shealey

1 Y'all did not check your common sense when you came
2 through the door. Let's just think about it from a
3 common sense approach. What reason would he have to kill
4 Nikki?

5 You heard from him, and he was -- and this is part
6 of the reason why he's an unsavory character. He was
7 dating six other women, all having sexual relationships
8 with them. They all thought they were the only woman in
9 his life.

10 That is bad -- that is something that doesn't sit
11 well with any one of you. I can look at your faces and
12 tell that. That doesn't have anything to do with murder,
13 okay. He met Nikki on tagged.com.

14 This is -- I asked Mr. Manning, this is not eHarmony.
15 This is not looking for that lasting connection that we
16 hear about. That was -- it's called tagged. It was
17 purely for sexual partners. Nikki was there, and they
18 struck up an online conversation.

19 They had things in common. They were both in the
20 military, okay. They started meeting, and he told you
21 every time they saw each other, the first thing that
22 happened was sex. That's what this was about to him.

23 What motive would he have to kill her? She was
24 one, and it sounds bad and you hate him for it, one of
25 six or seven sexual partners that he had at the time. He

001709

Closing by Shealey

1 was not obsessed with her. This is no zealous rage that
2 would cause him to want to own her, possess her.

3 They met online. They knew each other for
4 two-and-a-half, three months, tops. She was 32 years
5 old. She had never been married. Her biological clock
6 was ticking.

7 We are not here to attack her, but we have to explain
8 everybody's mental state. She had been abused as a child.
9 She sought therapy for it. She was needy, and she wanted
10 this to work.

11 She wanted to be married, to have a man. Because of
12 the way he acted towards women, she thought she was
13 probably the only one, figured that he -- this could work
14 out.

15 You know, he discussed the numerous encounters, going
16 up there, the very small tiffs, how she approached him
17 early on and bared her soul to him; how they would get
18 in small tiffs about fixing the jewelry or whether he was
19 going to come up there to cut the grass.

20 The bottom line, and it's consistent with
21 everybody's side of events, is that they were -- they were
22 broken up. Whether he says he broke up with her, whether -- I
23 don't know. Whether they think she broke up with him,
24 but if you're in Charlotte and Mr. Manning is in
25 Columbia, you're not going to drive an hour-and-a-half

001710

Closing by Shealey

1 to break up with someone you met on tagged.com.

2 If they were broken up at the time due to whatever
3 disagreement they had about their relationship or levels
4 of commitment, she came to him to make up, not to break
5 up, okay.

6 There's no reason to come down from Charlotte to
7 break up. It was to make up, because of the various
8 positions, the various things they wanted out of life.
9 He wanted sex out of life at this point, lots of sex.

10 When she came there that day, they had sex twice.
11 She was wanting to get back with him. That was what she
12 knew he wanted after she got in the door, to then talk
13 about the relationship, talk about decorating his
14 daughter's room and then proceed to talk about why he
15 wouldn't be serious. We've heard what happened after
16 that.

17 Financial gain for Theo Manning is something that
18 they're alleging? Theo Manning, after getting out of the
19 Air Force, worked and worked and worked.

20 During this time, he work at Westinghouse assembling
21 nuclear power plants -- nuclear power rods. He was
22 making \$14 an hour working over 40-hour weeks, including
23 overtime.

24 By my calculation, he's making approximately \$2600
25 a month. He lives in a country home with low rent. You'll

Closing by Shealey

1 see pictures of it, because there's numerous pictures of
2 the house. It's nice. There's a flat screen T.V., nice
3 floors, plenty of space. He makes more money than I do.

4 There is no motive financially for him to somehow
5 lure her down here, kill her only to get her \$500. No.
6 No. They want to portray him and take you down the road
7 to temptation. They want to portray him as a Pee Wee
8 Gaskins, as one of these types, as a monster.

9 This -- do you know how this is an argument that
10 happened in passion without malice? Because there's a
11 crime scene in his own home. These things happen quickly.

12 If he had some intent, some preplanned thinking to
13 bring her here, to maybe get her money, if he was that
14 type of person with that type of intent, he wouldn't have
15 killed her in his own home.

16 No. This was a heat of the moment, passionate
17 confrontation in his hallway, nothing more. That is what
18 you ought to consider.

19 Kendra -- I want to talk to -- try to talk to Kendra
20 about her motivations.

21 I think it's only fair -- I tried to talk to you about
22 Theo's motivations, what Nikki wanted out of her life.

23 Kendra, at the time, was in love with Theodore
24 Manning. I brought you her love letter that she wrote
25 to him, and I discussed it with her. That's in evidence.

Closing by Shealey

1 I put that in evidence for you to read because she
2 sat up here facing 15 years in prison, admitted to me that
3 she doesn't want to go to prison, and that doesn't take
4 an expert to know that. Nobody does.

5 She told me that she had love for him but, you
6 know -- she also told me that she was exclusive with him
7 because that's his unsavory characteristic. He had
8 these six or seven women that all thought they were the
9 one.

10 You'll have this letter signed by Kendra to review
11 telling him how she loves him so very much. He's brought
12 so much joy into her life. "When I tell you I love you,
13 I mean it."

14 Most importantly, in this letter, which was written
15 about a week after May 6th, she says, "I don't know what
16 other way to tell you what I'm feeling. I don't know what
17 other way to show you other than what I've been doing."

18 I'm not here to blame Kendra, okay, but she loved
19 him at this point. He told you he took care of her
20 children. He paid for her bills.

21 She told you from her very own mouth, and she told
22 the police that she was stressed about money. She worked
23 part-time at the dry cleaners. She was on welfare. She
24 had food stamps. When she was driving that day after
25 leaving the cleaners, she was stressing about money.

001713

Closing by Shealey

1 She came there when Theo called her. He didn't make
2 the right decision. He told you that. He should have
3 called 911. He panicked, faced with something horrible
4 in his home, something he had never encountered before
5 and called for help. When she encountered him and came
6 to help, she knew this was not good.

7 She wanted to take care of him. She told him she would
8 take care of everything, and that, as he's there shocked
9 by everything that's going on, she is in action.

10 Her motivation is she does not want her man, who she
11 thinks is her man and her man alone, getting in any
12 trouble, because if he is in trouble, he would be unable
13 to provide for her, to give her the support that he had
14 been giving.

15 She took matters in her own hands in an ill advised
16 way. She dragged Nikki down the stairs to the car. She
17 is a big girl, I would submit. She said, "Get her in the
18 trunk."

19 The biggest mistake of Theodore Manning's life. At
20 that point, putting Nikki McPhatter in the trunk, it
21 changed everything.

22 I had a hard time thinking about this case and
23 thinking about these facts as a lawyer, as a person. So
24 I know you are having an impossible time with it, but I
25 thought about something that happened throughout my

Closing by Shealey

1 childhood that helped me get a little perspective.

2 My dad has a World War II Army Jeep. It's green. He
3 always had it in the garage as I was growing up, and he
4 took painstaking years to restore it to original
5 condition. It was beautiful.

6 As a kid, I would play with my toys and see the
7 ultimate toy right there, just wondering, waiting for the
8 day I could drive his Jeep. I turned 16. I got my license.
9 I said, "Dad, I want to drive the Jeep."

10 He told me, "Son, you have to earn that. One day you
11 will, but when you do, you're going to have to watch your
12 speed, make sure the Jeep is warmed up properly, be careful
13 of the soft brakes."

14 Years went by. I turned 18. I hadn't gotten any
15 traffic tickets. I haven't gotten in any wrecks. I asked
16 him again, "Dad, I'm 18. Can I drive the Jeep, please?"

17 He said, "Son, not now, but one day you will, and
18 when you do, you need to warm it up properly, watch your
19 speed, and watch the soft brakes."

20 Years go by. I'm 21 now. I'm in college. I bought
21 my own car. I come to visit my dad. I left home to go
22 to college. I didn't see the Jeep as much, and I saw the
23 garage door open where he always kept it.

24 He was going fishing. He was getting his gear. I
25 saw the Jeep in pristine condition, and I thought I'd

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Closing by Shealey

1 give it a whirl. I said, "Dad, can I drive the Jeep?"

2 He threw the keys to me. He said, "Son, you're ready.
3 Three rules: Warm it up, watch your speed, be careful
4 of the soft brakes."

5 He went fishing and left me with his prized
6 possession. He lived out in the country in Blythewood,
7 and there was a bunch of land nearby. So I took it there
8 because they had a nice five-mile track through the woods.

9 I warmed it up for ten minutes. I watched my speed.
10 I never went more than 10 miles an hour the whole time
11 I was in the Jeep. The brakes were soft. I was very
12 careful. I was obeying all his rules, and I was in the
13 right.

14 The first turn I make, I rammed it. He didn't warn
15 me about it not having power steering. I put that Jeep,
16 going five miles an hour, into a tree in a ditch.

17 I was in the right. I had done everything right. I
18 had obeyed his rules. At that point, I had two choices:
19 I could call my dad for help, because I was doing the right
20 thing, and tell him what happened. He would have
21 believed me. He would have been okay, but I freaked out.

22 This was his prized possession. I just wrecked my
23 dad's Jeep into a tree in a ditch. What did I do? I called
24 my brother. I said, "Come. Come over. I need help.
25 I've got to get this Jeep home. I can't let Dad know about

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Closing by Shealey

1 it."

2 He came over. He had his S.U.V., and he hooked up
3 some chains to the back of this Jeep which had been
4 restored so beautifully.

5 He jerked it out of the ditch, scraped the muffler
6 right off. Now, I had made matters worse because I
7 actually damaged the Jeep.

8 When he towed it home, it wouldn't start. It stalled
9 out. We towed it home. My dad was still fishing. We
10 backed it up, pushed it into the garage so you couldn't
11 see that the muffler was off. I closed the garage door,
12 and I didn't tell him.

13 He didn't know for a month. When he found out after
14 a month, I don't need to tell you what he said to me, but
15 he certainly didn't believe that I was abiding by his
16 rules, not to this day he doesn't.

17 Now, this may seem trivial, and it's small scale,
18 but it helped me wrap my mind around this case.

19 At the moment Theodore, in shock in his own home with
20 a dead woman, put Nikki in the trunk, at that point, very
21 quick goes by, listening to Kendra at this point,
22 everything has changed.

23 He told you several times that afterwards -- from
24 that moment, he cannot call 911 because no one would
25 believe his story because Richland County would come

001717

Closing by Shealey

1 out, and they would find a woman in the trunk and say,
2 "No, sir. We do not believe you."

3 Everything changed. He told you that. He told you.
4 It wasn't that Kendra had some power over his will after
5 that point, no.

6 He didn't have to drive out there. He did. He told
7 you he was at fault with that. He didn't have to agree
8 to try to get rid of the body.

9 He could have left Kendra there holding the gas
10 can, holding the Coach purse and Nikki's sunglasses. He
11 could have walked away. He had the physical power to do
12 that, but who is going to believe him?

13 I asked him, at the B.P. Station, you could have run
14 in. You could have asked the clerk and told them what
15 happened. "No one is going to believe me."

16 He made poor choices, terrible, despicable choices
17 that are criminally -- they're criminal acts after the
18 fact that he was never charged with.

19 Had he been on trial for those, it would not be a
20 trial, but he's not on trial for that. But the Solicitor's
21 Office would like you to think this is what the trial is,
22 take you down the road of temptation, ignore logic and
23 reason to be inflamed with passion and prejudice,
24 consumed, just full of it, for your hatred of Theodore
25 Manning, who messed up afterwards.

001718

Closing by Shealey

1 Again, your only decision is in that fight in his
2 hallway when she would not stop coming and was crying and
3 hysterical about the relationship, and pulling the
4 trigger.

5 At that point, it's all you could think about. The
6 judge will never tell you anything different.

7 Now, I do want to talk to you about credibility.
8 That is your job, to be the fact finders, determine the
9 facts. Who is credible, who is not credible.

10 You listen and you look. All of this, I don't think
11 is important. That statement is important. Kendra's
12 love letter is important, the things we tried to show you.

13 What Theo Manning said here, you're people. You can
14 look at him and tell if he is upset about what he did
15 afterwards. You can look at him and tell he got upset
16 about talking about the fight.

17 He's a man with no criminal record, 30 years old.
18 You can judge his credibility. That's for you. He
19 admitted to lying.

20 Charlotte came down. They recorded everything, and
21 I commend them for that. One day, we will have that in
22 this county. One day, Richland County will record
23 everything.

24 Today you don't have that to consider. Charlotte
25 recorded all their conversations. You sat here, and you

Closing by Shealey

1 listened for hours. You have read hundreds of pages of
2 transcripts.

3 He lied to them. I asked him why, and he told you,
4 "No one is going to believe what really happened in that
5 hallway."

6 He was scared, yeah. He -- he probably wanted to
7 know if they had him or not. He was scared. No one is
8 going to believe him, nobody. Things had snowballed
9 were his words, snowballed.

10 If you ski, it's like when you get off of that slope
11 at the top of the mountain and you have three options:
12 bunny slopes, intermediate, expert.

13 If you're not a good skier, which I'm not a good skier,
14 and I've done this before, I've headed down the expert
15 mistakenly. I've crashed and burned all the way down the
16 mountain. I can't get back up because it's a slippery
17 slope.

18 There's no changing that path once you're set on it.
19 Charlotte isn't going to believe him. He was scared. It
20 was simple self-preservation at this point.

21 He knew he was in the right, but he had made
22 terrible wrongs afterwards, terrible wrongs, that they
23 could have prosecuted him for it but didn't.

24 They could have charged him with this, charged him
25 with that. They didn't, and he lied to them because he

Closing by Shealey

1 was scared. They arrested him.

2 McDaniels came out to his house. His sole job in this
3 case was to arrest, and they had a warrant for arrest.
4 They didn't really care about what his side of the story
5 was.

6 Just like Theo felt, they weren't going to believe
7 a word that came out of his mouth. They didn't care about
8 what happened in that house.

9 They arrested him. They put him in the car, and
10 here you've got a battle of credibility. Theo says
11 McDaniels tells him, "It's okay. Accidents are
12 understandable. I've had friends that get in -- had
13 accidents, accidental shootings. Just tell me, it's okay.
14 Tell me that's what happened. We can work with that,"
15 a classic interrogation technique, to be your friend, to
16 buddy up.

17 Theo needed a friend. He needed a friend, so he told
18 them it was an accident because he thought that would help
19 him. He thought that would help him. That's what they
20 wanted.

21 Now, McDaniels denies that. He would never say
22 that. You saw him sit here in this witness stand. You
23 have to judge his credibility from what he's wearing, his
24 bow tie, to what he says. It was slick. He was evasive,
25 and he was hiding something. That something was that he

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Closing by Shealey

1 told Theo to say it was an accident and everything would
2 be better.

3 Now, they don't record anything in Richland
4 County. We don't know what happened in that seven-hour
5 span when they arrested him until they were done with them.
6 We'll never know.

7 Had we, we would hear it, those words. I asked him,
8 "You never record, do you?"

9 "No, I never do. That's our policy." But then
10 judging your credibility -- judging his credibility,
11 that's your job. He changed that. He does record
12 sometimes.

13 He records his friends because he knows the true
14 value of what we've been preaching this entire time of
15 a recorded statement. It protects people who are charged
16 with crimes because you know what was said.

17 He does it for his friends but not just for
18 everybody. Judge his credibility. Judge it. That's
19 your job. This is the wrestling I'm asking you to do.

20 You're not going to want to think that an investigator
21 with Richland County would lie to you, but Theo -- Theo
22 gets there, tells them, they reduce to it writing, an
23 accident. That part is small.

24 But there -- and you've got the statements. You're
25 going to be forced to look at them. There's ten other

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Closing by Shealey

1 pages of that first statement that talk about the details
2 afterwards, him admitting what happened. That's all
3 real. That all really happened, because common sense
4 tells you if someone is going to lie to you, it's a vague,
5 vague story. "Oh, it was an accident."

6 He admitted that wasn't the truth. He thought he had
7 to say it. He felt that it would help him. He was scared.
8 He thought that's what they wanted to hear, but the
9 details about his involvement afterwards, were truthful.
10 They were ten pages of details. He got it off his chest
11 at that point about the details.

12 Now, he is scared. He knows nobody is going to
13 believe what really happened. Isenhoward gets involved.
14 This is where he gets involved.

15 You have a three-page statement. They boiled -- and
16 I talked a long time with McDaniels about this, about what
17 is actually reduced to writing about the fight in that
18 hallway. His one paragraph and two sentences is what
19 they've got it boiled down to, one paragraph and two
20 sentences when is he told them what really happened.

21 He was right, they didn't believe him. They
22 wouldn't believe him. He knew that, and he was right.
23 I ask you to even look at what they wrote.

24 He told you about that fight. We tried to act it out,
25 trying to help y'all. We fumbled around a little bit.

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Closing by Shealey

1 We got interrupted, but even read what they boiled down
2 typing to make it sound that is possible for Theo.

3 Even what they boiled down shows no malice. What
4 they typed up shows a fight about the relationship. She
5 wanted more. She pulled his loaded .380. This is a quick
6 moment.

7 This is not a long, drawn-out fight. It happened in
8 a flash. He reacted. He takes the gun, and he has it on
9 her. She is hysterical. She is furious. She is hitting
10 the gun telling him he's just like all the others, and
11 he shot her as she came at him.

12 Even that is in that statement, the boiled down
13 version, seven hours, one paragraph, two questions, that
14 even worst case scenario for Theo, that is not malice.
15 That is self-defense or something that happened in the
16 heat of passion. Please read it.

17 Now, we have -- the Judge is going to charge you on
18 what you're allowed to consider in this case. There's
19 two things you're allowed to consider from the defense
20 perspective, because there is no malice in this case:
21 Logic and reason, not passion and prejudice.

22 They're taking you down the road to temptation, but
23 there is no malice because you're smarter than that.
24 You're more reasonable than that. The judge is going to
25 tell you to only focus on the moment.

Closing by Shealey

1 This fight -- no one dispute what this fight was
2 about. It was about the relationship. It was about -- the
3 fight itself was about passion. She had more passion for
4 him. He had less passion for her. A fight about passion
5 can only be in the heat of passion.

6 It's not malice. It's passion. The judge will
7 instruct you on passion. You have two things to
8 consider: Self-defense or voluntary manslaughter, a
9 killing that has the passion.

10 This is for you. It's that tough choice I was
11 talking about to wrestle with. The easy choice, the easy
12 choice of murder, that's a real easy one, but I wouldn't
13 be thinking you'd be doing your jobs if you considered
14 that based on what I'm telling you.

15 Self-defense, let's think about it. The judge is
16 going to tell you exactly what that means and what it is.
17 Most of you know from your own understanding what that
18 is.

19 Self-defense is the complete defense. They have, in
20 their case in general, the burden of prove to you beyond
21 a reasonable doubt the charge of murder. They haven't
22 done that.

23 But for self-defense, if the judge says this case
24 is about self-defense, which he will, they have to
25 disprove it. They have to prove to you that it's not

Closing by Shealey

1 self-defense. They have to disprove it.

2 Ms. Campbell went over some of those elements. I'm
3 going to let you read them and evaluate them yourself.
4 They would have to, number one, prove to you that he was
5 somehow legally at fault for bringing on this fight. The
6 easy way to think about that is if he pulled the gun on
7 her first, he would be legally at fault. That didn't
8 happen here.

9 All right. The same smell test with the milk applies
10 to all of this. They have to disprove beyond a reasonable
11 doubt that it's not self-defense.

12 Number two, they have to prove to you that when he's
13 staring down the barrel of his own .380, that he wasn't
14 in fear for his life. We didn't check our common sense
15 at the door.

16 There's a loaded gun that's pointed at you with a
17 woman who is upset with you. She is angry with you.
18 You're in fear for your life.

19 Number three, they have to prove he didn't act
20 reasonably in what he did. Read the law. To the point
21 he disarms her, as she still continues to come as he's
22 backed up in his narrow hallway, they can't disprove
23 that.

24 Finally, as it applies to your home, no one disputes
25 this happened in Theo Manning's home in his narrow

Closing by Shealey

1 hallway. We do not, under the laws of self-defense, have
2 any duty to retreat. You don't have to say, "Well, they're
3 unarmed now. I have to retreat."

4 You don't have to in your home. That's the law of
5 our state. Whether you like it or not, whether you agree
6 with it or not, he will instruct you on that. So all of
7 that, they would have to disprove beyond a reasonable
8 doubt applies to Theodore Manning.

9 You have to address this first in your deliberations
10 to see if you can even get past self-defense. You're not
11 going to like it. This is a complete defense for him.

12 You're not going to like thinking about him going
13 home. You're not going to like that at all, but this is
14 the tough decision under our law, and you have to consider
15 it.

16 Can they disprove self-defense? I don't think they
17 can. They have provided no evidence of what happened in
18 that house. We brought that to you.

19 The statement, Kendra's letter, his testimony.
20 We're trying to show you. The only legions of evidence
21 they have about what happens afterwards, is that road
22 down temptation, passion and prejudice, not logic and
23 reasoning.

24 The other thing you have to consider is voluntary
25 manslaughter. This simply means an unlawful killing,

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Closing by Shealey

1 meaning he wasn't in the right, based on sudden legal
2 provocation. That means he had a reason to be provoked.
3 It wasn't just random for him, and that the killing
4 occurred during the heat of passion.

5 Passion, ladies and gentlemen. This was a fight
6 about varying levels of passion. That is voluntary
7 manslaughter. It's one of these two. I'm not going to
8 tell you what to choose. Only you can do that.

9 In talking about voluntary, we're talking about
10 quick, sudden exchanges where you can't control
11 yourself. He said he was scared looking down the barrel
12 of his own .380. He was angry, as well. I think he said
13 he was pissed.

14 He had let her come down. He knew he was going to
15 have more sex. She confronted him again about the
16 relationship. I do not think in a thousand years that
17 he expected this, to be sitting here in front of you this
18 day. It just happened so quick, he couldn't control
19 himself.

20 Think about what he told you. Think about that
21 statement, that statement. You can boil it down with
22 police in a silent room with no audio recordings so you
23 don't know what really happened over those seven hours.
24 Think about it.

25 Now, Mr. Giese is going to come up here after I'm

Closing by Shealey

1 done, and he's going to get loud. There's going to be
2 a lot of gun pointing, air gun pointing.

3 He is going to storm over there, yell at the defense,
4 yell at Theo. It's time to get y'all riled up, riled up,
5 get inflamed.

6 He's going to talk about things dripping with
7 malice, I think is what he said in his opening statement
8 to you, visceral gut wrenching thoughts to think about.
9 Why? You know why.

10 He's taking you right down that road of temptation,
11 that easy choice to hate him for what happened afterwards,
12 the things that he got up here and told you he was at fault
13 for, hate him for it, loathe him. That's what he's going
14 to try to bring you back.

15 He's going to be the last one to talk to you. I won't
16 have a chance to get up here and calm you down, make you
17 think about logic and reason and the hard choices, make
18 you think again about what happened in that narrow
19 hallway after his own gun had been pointed at him, after
20 he had disarmed her, and she wouldn't stop coming.

21 I wouldn't be able to make you think about that
22 moment, because he'll be dragging you down the road of
23 temptation to make you think about burning, to make you
24 think about fraud, to think about lying to police.
25 That's the only place he'll take you. He'll talk about

Closing by Shealey

1 anything that makes you upset.

2 We have the best judicial system in the world, bar
3 none. It took a long time to get where we are. We didn't
4 just pop up being in America and have this, no. We fought
5 wars, blood, sweat and tears to get to where we are.

6 Other countries don't enjoy the same privileges.
7 Other countries don't have our justice system. Other
8 countries still have witch hunts. Other countries still
9 lop off heads, lop off hands, pull out tongues. We don't
10 do that.

11 I enjoy being part of our system, but to keep the
12 integrity of our system, you are the gatekeepers. It's
13 going to be tempting. It's going to be oh so tempting.

14 I know you will not be tempted. You will stay and
15 wrestle with our choice. Self-defense or heat of
16 passion, voluntary killing.

17 Theodore Manning is innocent of murder.

18 THE COURT: Mr. Shealey.

19 (Pause)

20 Solicitor?

21 MR. GIESE: May it please the Court.

22 CLOSING STATEMENT

23 MR. GIESE: Mr. Foreman, ladies and gentlemen of the
24 jury, I, too, before I get started want to thank y'all
25 for giving us these, I guess, eight days of your life to

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Closing by Giese

1 come down here and settle a dispute that we have in our
2 judicial system.

3 Once -- well, there's a judge here that quotes another
4 judge. He thanks jurors when he says that when there is
5 no war, the greatest civic duty that someone can do for
6 their country is sitting -- to sit as a juror in a criminal
7 case.

8 I agree with that. I want to thank you, for the
9 system, for the State of South Carolina, and for Richland
10 County.

11 Now, a couple of things that I want talk to you about
12 that the defense talked to you about. I think that I need
13 to respond to them.

14 The first is that he got up here and he showed you
15 the judge's charge on criminal intent, said that nothing
16 that happened, nothing that happened, after the trigger
17 was pulled by the defendant is important in y'all's
18 rendering and decision-making process.

19 Well, let me ask you this, in your minds, if that's
20 true, if you can't look outside of his body, what he did
21 prior to, during and after, why was it allowed into
22 evidence? Why did the judge rule that it's relevant?

23 The State submits it's relevant because it goes to
24 the defendant's state of mind and his intent during the
25 shooting.

Closing by Giese

1 It shows, ladies and gentlemen, the State submits,
2 an evil, dark heart that was fatally bent on mischief and
3 devoid of all social duty.

4 You know, I sat there just like y'all sat in that
5 box. I sat there for all these eight days, or seven days,
6 and I noticed something. I noticed two things: How
7 this whole trial the defense has tried to make you
8 believe that none of this is Theo Manning's fault.

9 Theo Manning himself has tried to make you believe
10 when he testified that none of this was his fault. Theo
11 Manning is faultless. It's every single entity and
12 person, other than Theo Manning, that's been in this trial.

13 Charlotte/Mecklenburg Police Department, yesterday
14 he testified, forced him to come down and talk to them.
15 Oh, and yeah, they did an audiotape, but they didn't
16 videotape my statement to them.

17 Do you remember? That's when I was fidgeting showing
18 how nervous I was. They're at fault. The Richland County
19 Sheriff's Department, these men right here, were at fault
20 because, you know, I told them about being scared, and
21 I told hem about all of those things, but it didn't end
22 up in my statement, the one I signed and read. They're
23 at fault.

24 Oh, and Sergeant McDaniels, the one that even gave
25 him the idea about an accident, they're at fault. They're

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1 at fault. It's not in my statements.

2 Anything that helped me is not in my statements. Who
3 else is at fault? Nikki McPhatter, the victim, is at
4 fault. Kendra Goodman is at fault. It was Kendra's idea
5 to do all this. She came over and said, "I'll take over."

6 Did that look like somebody that was going to take
7 over, Kendra?

8 Everyone's fault -- oh, I'm sorry. I forgot one last
9 thing. His cell phone. "Well, you know, I have a cell
10 phone. I bought on eBay." Could you believe that? "I
11 hit redial, and it just went to her number."

12 Every single person, every single entity, every single
13 thing in this case, except Theo Manning, is at fault.

14 He wanted you, and the defense wanted you, to focus
15 on those faults and on those people. The State submits
16 that was done through this whole trial and through this
17 whole eight days because the defense and the defendant
18 don't want you, the jury, to focus on what he did.

19 And yes, I have might be passionate about this, and
20 if I offend you, I apologize, but yes, yes, what he did
21 was as horrible a situation in a case as you can have,
22 because, ladies and gentlemen, not only did he shoot an
23 unarmed woman in the back of her head at close range, he
24 watched her die.

25 He called no one but one of his six girlfriends. He

Closing by Giese

1 stuffed her, and I don't care if you believe that Kendra
2 dragged her body -- that little Kendra dragged a victim's
3 body down the stairs or whether or not she put him -- made
4 him put that in the car, he put that body in that car.

5 He drove that car. He took the gas can. He poured
6 the gasoline on that car, and he lit it off. He burned
7 her body beyond all recognition.

8 I'm not going to show you the picture of her. You
9 can look at it if you want, but that's the car. You can
10 imagine what her body looked like, and he did it all.
11 He did it all to cover-up his murder.

12 Who had a reason to burn that body? Who had a reason
13 to burn that car? Who had a reason to lie? One man. The
14 State submits it's because what he did is as vile a case
15 and a situation as you can have, an unarmed woman in the
16 back of the head.

17 You know, he also talked about choices, didn't he?
18 Choices. We all had choices. He talked about his
19 father's Jeep. He made a choice.

20 Theodore Manning made choices, and that's why we're
21 here. Conscious, deliberate choices, but you know,
22 probably one of the more evil parts, the State submits,
23 or one of the evil parts of this case is the 23 days, the
24 23 days that this victim's family and Nikki McPhatter's
25 friends in Charlotte endured.

Closing by Giese

1 They endured hell. The State submits, hell can't
2 be much different than that, all, all while this man went
3 to work, ate, drank, slept, watched T.V., I assume had
4 sex with his other five girlfriends, I don't know, all
5 while he did that, this family suffered.

6 The community suffered, and yet, they want you to
7 believe that this killing somehow wasn't malicious. It
8 was in self-defense. It was voluntary manslaughter. It
9 was something other than murder.

10 Yet, for 23 days, this man put everyone through it.
11 Time after time, chance after chance, he could have come
12 forward and said, "Look, I did this. I know where the
13 body is. I'm going to put these people's mind to rest.
14 Your daughter is dead."

15 No, he didn't, because, ladies and gentlemen, 15
16 days, 15 days after the murder on May 21st, 2009, at
17 22:45 at the Post Office on Bluff Road in Charlotte/
18 Mecklenburg County, in their car, this man, given a chance
19 to say where that body is and to say what happened and
20 to say, "Oh, this is self-defense." No. It's voluntary
21 manslaughter. "Oh, I was scared."

22 What did he say?

23 This is what this case is about. "What's wrong with
24 Nikki?" Do you know why this case is about that?
25 Because it shows exactly what he knew he had done. He

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Closing by Giese

1 still is trying to cover it up.

2 Now, ask yourselves, if you kill somebody in
3 self-defense, in your own home, don't you come forward?
4 Don't you say, "I did it? Yeah. This is self-defense."

5 MR. SHEALEY: Objection, Your Honor --

6 MR. GIESE: No, because he panicked --

7 MR. SHEALEY: Golden Rule, Your Honor. He has --

8 THE COURT: Overruled.

9 MR. GIESE: Because he claims that he panicked.
10 We'll get to panic in a minute. We're going to get to
11 panic in a minute.

12 Next chance, May 22nd, 2009, around 11:00 a.m.,
13 Theodore Manning's house, Stan Smith and Kevin
14 Isenhoward go to him, the next day, and say, "Hey, hey,
15 do you know anything about Nikki McPhatter and where she
16 could be?" His answer, "No."

17 By the way, on May 21st, that statement, he had 39
18 minutes of that interview that he had a chance to say what
19 happened to her, and he didn't do it. He didn't take it,
20 39 minutes.

21 Listen to his voice. Listen to his voice on that
22 tape, if you want. It's calm, the State submits. It's
23 quiet just like yesterday, and it doesn't sound like he
24 has a care in the world.

25 May 22nd, with Stan Smith and Kevin Isenhoward, he

Closing by Giese

1 denies it again. Then again on May 22nd, 2009, at 20:50,
2 Theodore Manning's house, Region One. They go from
3 Theodore Manning's house to Region One. It's Charlotte/
4 Mecklenburg again.

5 I'm going to over a couple of these with you. His
6 next opportunity, this will be his third opportunity to
7 tell the truth.

8 Now, this is, by the way, someone that the defense
9 wants you to believe -- they want you to believe that he
10 killed -- that what he said was true yesterday, was he
11 was scared. He shot in self-defense. It was heat of
12 passion. Yet, time after time, this man has lied in this
13 case.

14 Page 17 of the transcript, "Okay. So about what time
15 was it that you think she left?"

16 Mr. Manning: "She left the house. It was like one,
17 1:30, because like -- okay, because like maybe around
18 2:30, I got -- I think I got a text message from one of
19 my friends asking me what I was doing. I told him
20 nothing."

21 We know that's not true.

22 Hopkins: "okay. Now, while shewas there, did -- did
23 uh -- any kind of argument occur?"

24 "No." Now, he wants you to believe that an argument
25 did occur.

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Closing by Giese

1 Hopkins: "Did the -- did you get injured in any
2 way?"

3 Manning: "No." Well, that's true. That's true.
4 In this self-defense case, this struggle, not a scratch
5 on him.

6 "Okay. Do you have any marks on you like scratches
7 that maybe happened accidentally during sex or" --

8 "No." True.

9 "Okay." So no. "Neither one of you got injured?"

10 Manning: "No."

11 Neither one of you got injured, and this is same man
12 they want you to believe now?

13 Page 18, Hopkins: "Just to go over, make sure that
14 nobody got injured to the point of -- you know, during
15 a domestic violence situation."

16 Manning: "Oh, no. When we got into arguments, it
17 wasn't even an argument. It was just she would state her
18 opinion. I'd state my opinion, then we just don't
19 talk."

20 Hopkins: "Okay. So you never, particular to this
21 day, had a physical confrontation?"

22 "No."

23 Now, he wants you to believe he did.

24 Hopkins: "You understand that I'm saying -- as far
25 as people get in arguments and" --

Closing by Giese

1 Manning: "We have never, pushing, shoving, we never
2 had a physical confrontation during the entire time
3 we've talked."

4 Page 38, "Has she ever up, uhm, given you, uhm, any
5 of her credit cards or debit cards to go use out -- to
6 go out?"

7 Manning: "No."

8 "No? You were never in possession or control of
9 any of her debit cards or credit cards?"

10 "No."

11 "Speak up."

12 "No."

13 "Okay. Has she ever given you the pin numbers?"

14 "No."

15 "To any of her cards?"

16 "No."

17 Lie after lie after lie to cover-up, but no, now
18 they want you to believe it.

19 Page 39: "Okay. So you've never used them or
20 anything before?"

21 Manning: "No."

22 "And this is -- this is on the 22nd of May."

23 Hopkins: "Let me ask you a couple of tough
24 questions, and this is going -- this is just something
25 I've got to go through, okay. Did you harm Nikki in any

Closing by Giese

1 way?"

2 "No."

3 "Okay. Did you kill Nikki?"

4 "No."

5 "Okay. Do you know anything about her current
6 location?"

7 "No."

8 "Do you know anything about her vehicle?"

9 "Do you know, uh, about anybody using any of her
10 credit cards or vehicle?"

11 "No."

12 "Do you know of -- did you have any role in her being
13 missing?"

14 "No."

15 And here is the only truthful part: "If something
16 is wrong, and, uhm, she is not with us anymore and we
17 found -- we find out there's foul play, what do you think
18 should happen to the person that did it?"

19 Now, when he is asked that question, he knows what
20 he has done. He knows he shot an unarmed person in the
21 back of the head. He knows he's burned her body and put
22 it where no one is going to find it, and what is the
23 answer? "They go to jail or worse."

24 "Like what?"

25 "Like, uhm, death penalty, electrocution. I don't

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Closing by Giese

1 know what the penalty is."

2 Does he say, "Unless it was in self-defense, or
3 unless the person was impassioned?" No, because he knows
4 what happened in that house. He knows.

5 And then finally, on that one hour and 19 minute
6 tape -- one hour and 19 minutes, he had the opportunity
7 time after time to tell the truth, and he didn't. He
8 didn't for a reason.

9 Finally, Martin: "Being straight with us? Being
10 honest with us?"

11 Manning: "Uh-huh."

12 "Not going to find out anything different?"

13 "Straightforward."

14 Time after time, question after question, "I
15 don't know what you're talking about. I have no earthly
16 idea."

17 Those are Theodore Manning's original statements,
18 but things -- things picked up. Things changed.

19 He was fairly consistent up to that point, wasn't
20 he? "I don't know anything about it. I don't know where
21 she is. I don't know what happened to her."

22 He was consistent until May 22nd, but in between
23 May 22nd and May 29th, what does he find out? He
24 finds out the police are talking to Kendra Goodman.
25 Think about it.

Closing by Giese

1 What does he do that came from this witness stand
2 once he finds out they're talking to Kendra Goodman? He
3 starts texting her and calling her.

4 Don't talk, don't talk, don't talk. He knows
5 Kendra is talking, and he knows Kendra has talked on the
6 29th because they come to arrest him and he gets
7 arrested, and he -- they tell him, "We've got the body.
8 We've got the car."

9 So he knows at that point that Kendra Goodman has
10 rolled on him. So they take him down -- or they get ready
11 to take him down.

12 Sergeant McDaniels puts him in the car, reads him
13 his rights. He admits to having known his rights. He
14 admits to saying, "Yeah, it was an accident."

15 Now, he claims that Sergeant McDaniels, who is at
16 fault in this, suggested it to him.

17 Well, after they get down to the Richland County
18 Sheriff's Department, they take a statement from him.
19 I'm not going to over the whole statement with you, but
20 it's 11 pages.

21 As Sergeant McDaniels told you, it's what he wanted
22 on his written statement. He told him. He typed it, and
23 lo and behold, they read it to him, and he signed every
24 page of it.

25 Sergeant McDaniels' testimony was it was because

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1 that is exactly what Theodore Manning wanted, so Theodore
2 Manning's statement from May 22nd where he doesn't know
3 anybody, doesn't know anything to May 29th, has changed.

4 But you know, is there truth in this statement? Sure.

5 I think it was Robert Kennedy. I'm not sure. I'm
6 fairly positive it was. Robert Kennedy, who was one of
7 the Kennedy brothers who was the Attorney General for
8 the United States at one point, and I think it was him
9 that said, "There is a little bit of truth in everything
10 a man says."

11 If you go through everything, there is some truth
12 in it. Every single statement he makes, there is some
13 truth in it. Nikki McPhatter was there. I've known Nikki
14 McPhatter. There is truth in it.

15 The reason that they tell you the truth in parts of
16 it is because it's easier to tell the truth, so they're
17 good on that spot. But it's because they want you to buy
18 the big lie, the big lie.

19 The State submits that's what you have here,
20 because he starts talking about it. On page two, he says,
21 "We went back upstairs, had sex again. We got up. She
22 started walking through the other bedrooms. She told me
23 that I needed to throw the boxes out of one of them. Then
24 she went in the other bedroom. She said, 'What are you
25 going to do with this?'

Closing by Giese

1 "I told her that I think I'll make it my daughter's
2 room. She mentioned how she decorated her house again,
3 because that is one of her things that she do big. She
4 likes to decorate.

5 "I said what would you do to this room? She looked
6 around and said paint it, put up some borders. Then she
7 saw my bag was open. The gun was sitting in the bag. It
8 was a .380 Highpoint.

9 "She picked it up. I told her to stop playing. I
10 grabbed the gun and took it from her, and when I pulled
11 it back from her, she turned around. It went off."

12 Where is the argument? Where is the fight? Where
13 is this confrontation? Where is, "I was scared. I shot
14 in self-defense"? Where is it?

15 The State submits it's not in there, because he
16 hasn't made it up yet, because he thinks this will do it.
17 He thinks this will do it.

18 He says, "Oh, I told them I was scared." I think he
19 told that to Sergeant McDaniels, but you know, there
20 again, you know, the police in this, they're at fault.

21 Page nine, and you'll have the whole statement back
22 there, and I ask you to read it. Ask yourself, or ask
23 each other, where does it say anything about him being
24 scared?

25 "Right before Nikki was shot, did you actually grab

Closing by Giese

1 the gun from her?"

2 "Yes."

3 "So the gun was completely in your hands?"

4 "The handle of it was in my hand. The front end of
5 the gun was like in her hand, but it was inside of her
6 jacket. Her jacket was big on her, so it was over her
7 hand. She went to turn around, and when she pulled her
8 hand, it was like the gun just went off."

9 Question: "Did you have your finger on the
10 trigger?"

11 Answer: "I do not think so, but I am not sure. All
12 I know is that I pulled it, and it went off. Then it went
13 off."

14 "What did Nikki say?"

15 "She didn't say anything. She just fell. There was
16 blood every--- anywhere. There was no blood anywhere.
17 I couldn't tell whether she got hit or she just fainted.
18 She just hit the floor. It was like she just fell to the
19 floor hard. It was almost like she just laid down. I
20 didn't see no blood. I tried to shake her to see if she
21 was going to wake up. She didn't move, and that's when
22 I got scared, I mean really scared.

23 "I don't know who to call, and I just kept pressing
24 the call button, and I called Kendra."

25 Well, ladies and gentlemen, he testified

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1 yesterday that when he said the word "scared" before the
2 shooting, it didn't make it in. Well, it made it in after.

3 He wants you to believe that they edited the
4 "scared" part before but left it afterwards that he was
5 scared because he had shot her and killed her.

6 Yeah, it is a question of credibility. It truly is.
7 Who's credible in this case? You can't believe him. So
8 at this point on May 29th at 20:40, it's some kind of
9 accidental shot where she is holding on to the barrel,
10 and she turns and it goes into her body.

11 He tells that story, the State submits, because he
12 believes -- and take a look at the picture -- he believes
13 that her body has been burned. There would be no evidence
14 as to where that shot came in. Take a look. That's his
15 mistake.

16 Finally, the last statement, you have it right here.
17 You can see it when you go back there. It was to Sergeant
18 McDaniels and Sergeant Isenhoward again.

19 Now, ladies and gentlemen, I can't even count how
20 many different statements this is. I really can't, but
21 it's several. It's one, two, three, four, five, maybe
22 six at this point, all from a person they want you to
23 believe is telling you the absolute truth.

24 This first part is just the page where they talk
25 about reading him his rights again, and "Do you want to

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1 change a part of your statement?"

2 "Yes."

3 "Are you doing this of your own free will and
4 accord?"

5 "Yes."

6 "Have you been properly advised of your Miranda
7 rights?"

8 "Yes."

9 Page two: "Were you fully honest when you first gave
10 your statement?"

11 "No."

12 I told her -- then he goes into the facts, which they
13 said we won't talk about. "I told her, 'Stop playing,'
14 and took the gun from her. I grabbed her hands and just
15 took it from her. Then I pointed it at her and asked her,
16 'Are you fucking crazy?'."

17 "I told her that" -- and by the way, this is while
18 the gun is pointed. Yes, I'm going to point my finger
19 while he was.

20 "'Are you fucking crazy?' I told her that you can't
21 be mad at me because when I came up to see you last, you
22 were asking me if I wanted to be friends with benefits.
23 She was still talking about whether I was serious," with
24 the gun pointed on her.

25 "The whole time she was crying," with the gun pointed

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1 on her. "Even when she was pointing the gun on me, she
2 was crying. She hit the gun. I asked her again, 'Are you
3 fucking crazy?'

4 "She told me, 'You're just like everybody else. You
5 said that you were going to be there for me, and you just
6 hurt me like everybody else,' with the gun still pointed
7 at her.

8 "She went to take a step like motioned toward me,
9 but she pivot (sic) when she did. I pulled the trigger
10 to show her to stop playing."

11 No malice? No malice. That's not malicious. Of
12 course, now he's saying he didn't say that. They added
13 that, the officers did.

14 "I didn't see where the bullet went. I didn't see
15 where she got hit anywhere. I couldn't tell if she got
16 hit anywhere. She just sat down. Her eyes were closed.
17 She wasn't breathing. She didn't have a pulse. I thought
18 she had just fainted. I kept pressing the call button
19 and called Kendra back."

20 I'll show you, the State submits, in a minute, why
21 that's important.

22 So now he's fired the shot, and had specifically
23 said, "I pulled the trigger to show her to stop playing."
24 And the State -- the defense wants you to believe there
25 is no malice there, but this cavalcade, this actual

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1 parade of stories and statements doesn't end, because
2 yesterday we got a new one.

3 Yesterday, the defendant took the stand on 10/12/10,
4 and now, even though it was in none of these statements,
5 no self-defense on this last statement, no pissed, no
6 scared, none of it anywhere. In every one of these
7 statements, and he now wants you to believe yesterday that
8 on that day he was pissed. He was scared. He was angry,
9 and it was self-defense.

10 Each of the two lawyers that have talked to you
11 asked you, use your common sense. And I ask you, the State
12 submits, please use your common sense in this.

13 Does this sound like this cavalcade, this actual
14 parade of statements, sound like something you should
15 believe?

16 Then, you know, and I wasn't going to talk much about
17 this, but they brought it up. The demonstration, we all
18 saw that yesterday, and I'm also calling it the
19 demonstration. That's what they called it.

20 Did that make sense to you? Apparently, they were
21 doing it. Mr. Manning was guiding them how to do it, slap,
22 the slap, the slap. We only heard about one slap, but
23 he's slapping, slapping, slapping.

24 They're doing it, and she falls into him. He just
25 happens to shoot her with his left hand behind her

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1 head. Do you remember that? They fell into each other.

2 Well, all of the sudden on cross-examination
3 yesterday, Mr. Manning says, "Well, that demonstration
4 -- that wasn't right."

5 "Well, you were guiding it, weren't you?"

6 "Yeah, but that's -- you know, that's not how it
7 happened."

8 Do you remember? I ask you, use your common sense.
9 The State submits, the State submits that the reason
10 that the stories have changed so dramatically, time after
11 time after time, and even the demonstration itself was
12 false. If you tell a lie, the state submits, you have
13 to tell ten lies to cover it. The State submits that's
14 what happened yesterday. That's what happened yesterday.

15 Finally, and this -- he has mentioned this before.
16 He panicked. He panicked. Before I get to panicked, I
17 want to say one thing: I'd like to point out one more
18 thing about these statements.

19 You saw when I questioned him, and the State submits
20 that every question, almost every question I asked, he
21 fought. "Well, no, that's not what I said. No. This
22 really happened this way, that way."

23 He -- we -- it was a discourse, yet -- yet, his
24 testimony about when the officers, these officers, showed
25 him these statements and he read them and signed them,

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1 he's saying that, "Well, I just signed it because they
2 told me to do it."

3 Does that look like somebody that would just sign
4 something because someone told them to?

5 He questioned every question I had. Yet, he wants
6 you now to believe that because the police handed him
7 these without "scared" in it, without "self-defense" in
8 it, without anything in it, he just signed because he told
9 them to sign it.

10 Use your common sense. It didn't happen. Panicked.

11 Ladies and gentlemen, this is going to be hopefully
12 fairly brief. I know you're tired, but that panic is
13 important. That panic, the State submits, is important,
14 because he stated even yesterday that he was panicked.

15 He stated it several times, and that he just hit that
16 call button. Do you remember? The redial, call button,
17 you hit the call button. You just hit the redial, redial,
18 redial. He said his phone was not working.

19 It went to Kendra. Do you remember? And it's
20 important because he then says that Kendra comes over,
21 and this goes to malice, the State submits. Kendra comes
22 over and says, "I'll take charge. I'll take over. You
23 just don't worry about it," because he was, as he said,
24 balled up in a little ball on the floor. Remember?

25 And Kendra, because he was so panicked and was so

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1 totally out of his mind, Kendra took over. Kendra dragged
2 the body down the stairs.

3 Kendra took it to the car, and he helped to get in
4 the car, instead of, what the State submits, he takes the
5 body down and he takes it and puts it in the car.

6 Now, why is that important? Why is it that he was
7 so intent yesterday about when he called Kendra and how
8 he hit the redial. The State will show you.

9 The State submits that at 15:41:16, he made an
10 outbound call that lasted 27 seconds to Breeze Dry
11 Cleaner where Kendra worked.

12 The State submits he called because he had already
13 killed and murdered the victim, and he's figuring out how
14 to get rid of the body. And he needs help. He needs
15 somebody to follow him.

16 Less than -- well, little less than a minute later,
17 15:42:11, he makes an outbound call to Kendra Goodman.

18 Now, why is that important? Well, because in
19 statements, and he was on the stand yesterday. He claimed
20 he just hit redial. Do you remember?

21 So I asked him. I said, "Well, you didn't just hit
22 redial, because you called the dry cleaners first to find
23 out what, that Kendra wasn't working."

24 Kendra testified she came in, but she left early.
25 So at that point, he knows that he's caught, the State

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1 submits, because at that point, he talks to somebody.

2 This man is supposed to be so panicked, so upset,
3 that he talked to somebody at Kendra's work. They say,
4 "Kendra is not here."

5 The next thing he does is call Kendra on her cell
6 phone, outbound. He talks for 27 seconds to the dry
7 cleaners, 58 seconds to Kendra. The State submits that's
8 the call. That's why I asked him, "That's the call where
9 you said, 'I need you to come over to the house.'"

10 But no, no. That's not what had happened. That's
11 not what had happened. That's not when the murder took
12 place. "I called Kendra earlier."

13 Do you remember? He sat up here, swore on oath and
14 said, "That's not when I called her." This man, they
15 want you to believe. He says, "No, no, no. It happened
16 right down here," to this outbound call to Kendra Goodman
17 at 16:52:26, which was for ten seconds. The prior call
18 was at 16:48 to Renee Webb. Renee Webb, if you remember
19 correctly, is his supervisor at work.

20 So for 171 seconds, he talks to Renee Webb, and then
21 less than four minutes later, he calls Kendra Goodman.
22 He claims that's the call.

23 So he's saying that the murder took place in between
24 that, and he testified to that. He said, "After I hung
25 up with Renee Webb, that's when it happened," yesterday

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1 on the stand.

2 Ladies and gentlemen, from what he testified to
3 yesterday to be the truth, the whole truth and nothing
4 but the truth, this is what would have happened:

5 Defendant testified that after talking to Renee Webb at
6 16:48:36 and before talking to Kendra at 15:52:26, three
7 minutes and 50 seconds, he says the murder took place.

8 This is what would have had to have happened for that
9 to have been the truth. "Nikki was in bed. She went to
10 the bathroom." He -- he went to the bathroom, I'm sorry.
11 He came out, and she was looking around house.

12 He and Nikki had a conversation about the boxes in
13 the extra bedroom, talked about making it his daughter's
14 room. Nikki started talking about how they can work it
15 out. This is all in three minutes and 50 seconds.

16 Defendant then goes into the master bedroom, puts
17 the T-shirt on. Nikki continues to yell at him. Nikki
18 is standing in the doorway with her hands behind her back.

19 Defendant told her they were just friends with
20 benefits. Nikki pulls the gun and points it at him. The
21 gun is going up and down. Nikki is hysterical, says, "We
22 can make this work."

23 Defendant grabs the gun, wrestles it from her.
24 Defendant told her to leave, pointed gun -- defendant told
25 her to leave, pointed gun at her. She hit gun in his gun.

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1 Defendant with gun pointed at her asked if she was
2 fucking crazy. He told her to stop playing. Nikki
3 charged, pivoted and pulled the trigger. Nikki sat down
4 on the ground.

5 Defendant tried to wake her up, checked her pulse.
6 Defendant then, just pressing the call button, and Kendra
7 suddenly gets called. All of this standing up walking,
8 going into the bathroom, having the conversations about
9 the boxes in the extra room, going into the master
10 bedroom. All of that happens within three minutes and
11 50 seconds, the State submits that's impossible.

12 Oh, and then that call, that call to Kendra that he
13 says is where he said, "I need you to come over here real
14 quick," and she -- of course, she says, "Hello. Who is
15 this?" Whatever. That only took ten seconds, under
16 his -- under his theory.

17 Now, all that, the State submits, didn't happen,
18 could not have been the call.

19 Now -- so now he's claiming that the murder took
20 place in between 16:48 and 16:52. He calls Kendra once.
21 He calls Kendra twice, although he never testified to
22 that.

23 At 16:58, an outbound call to Kendra Goodman, and
24 the reason that's important is because he's starting to
25 move. He's already moved. He is already moving because

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1 it hits a different tower.

2 So within 16:52, he has called Kendra, and within
3 16:58:32, he's outbound.

4 Let's see what would have had to have happened in
5 that period of time if he's telling the truth. That's
6 for y'all to judge.

7 Defendant testified that after talking to Kendra at
8 16:53:03, he and Kendra did the following: Kendra got
9 on the phone. Kendra drove to his house. Kendra got
10 Nikki's body downstairs. He pulled Nikki's car to the
11 garage. Kendra told him to help her put body in the trunk.
12 He and Kendra put body in trunk. Kendra did something
13 with the gun. Kendra got bleach out of her car and a bucket
14 from his garage.

15 Okay. So up to this point, Kendra has driven to the
16 house, and let me mark it. Kendra has driven from
17 wherever she was to his house, gotten out, seen the
18 situation, gone upstairs, picked up the body, dragged the
19 body down the stairs into the garage and laid it next to
20 the car, because he's pulled the car in -- or he's pulling
21 the car in while she is dragging the body down. He and
22 Kendra picked the body up, put it in the trunk, and Kendra
23 did something with the gun.

24 Kendra then got bleach out of her car and a bucket
25 from his garage. Kendra then goes back upstairs from the

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1 garage, mopped the upstairs hall, down the stairs and in
2 the garage by the trunk, had a conversation with Kendra
3 about the rims on Nikki's car.

4 Kendra went through Nikki's car, removed items she
5 wanted, talked with Kendra about where to go. Kendra
6 said Irmo, Lexington, Aiken, decided to go where his family
7 was from in Winnsboro.

8 It was just, just coincidentally. It happened to be
9 on the way to Charlotte. The State submits because he
10 was going to mislead law enforcement if they ever found
11 that body.

12 So they decided to go to Winnsboro, got on road and
13 headed towards I-77 north, traveled between five and ten
14 miles to be in the range of the cell tower at 8253 Garners
15 Ferry Road.

16 Ladies and gentlemen, they did all that, all of
17 this, all of it, including driving the five to ten miles
18 to get to this next cell tower, which I'll show you in
19 a second, all in five minutes and 29 seconds.

20 When Kendra -- when the defendant called Kendra
21 from that number, from that cell tower, all that, five
22 minutes, 30 seconds to do all that in the house.

23 They get in the car from his house, here is the first
24 cell tower, and somehow drive all the way to hit that second
25 cell tower, five minutes and 29 seconds.

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1 The State submits you couldn't make the drive in
2 five minutes and 29 seconds, much less clean up a crime
3 scene. Yet that, that, is the testimony that you have
4 to believe because that's what he told you.

5 No, ladies and gentlemen. The State submits he's
6 not credible in any of this. He is incredible, not
7 credible. It doesn't stop there, this fault business and
8 this continuous crime spree.

9 I mean, it's just a -- he commits this crime and then,
10 and then because all of the malice in it, he takes the
11 car, takes the car, burns the car, burns her, covers it
12 up, and then blames Kendra Goodman. It was all Kendra's
13 idea.

14 Take a look at the 11-page statement, because most
15 of it is what he wanted in there. All of it is what he
16 wanted in there, but most of it is about Kendra Goodman
17 being a bad person. She is evil.

18 It was her idea to do all of this. She did it, but
19 you know, ladies and gentlemen, she is one of six of his
20 girlfriends, and I asked, "Did you -- do you manipulate
21 these people, these women?"

22 I don't know if he answered it or not, but I know
23 this: I know he testified on direct examination that
24 none of the six know the other six exists.

25 Kendra Goodman testified she didn't even know who

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1 Nikki was. "I don't know who Nikki is. I don't know where
2 she's from. I don't know her."

3 But yet, he comes in and says that Kendra Goodman,
4 because he was panicked, manipulated him. Ladies and
5 gentlemen, the State asks: who is the manipulator in
6 this? The guy with the six girlfriends that don't know
7 about each other or poor Kendra Goodman, the person who
8 led the police to the body, the person who vomited when
9 she found out a body was in that burned car, vomited. Who
10 is evil?

11 And I'm not going to go over this for very long,
12 but, you know, when you talk about manipulation, you
13 talk about who is doing what, who is being wronged, whose
14 idea all of this is, the State submits you need to look
15 at this, and you can look at the tapes if you want.

16 The State asks, who drove to the bank? Mr. Manning.
17 Who used the cards? Who got out? You saw him get
18 out, walk around from the driver's side, walk around, made
19 sure they didn't get far enough in to where the cameras
20 got them? Mr. Manning.

21 Who got the money out from -- of the A.T.M. machine?
22 Mr. Manning.

23 Who paid cash at Wal-Mart on 5/7/09, \$100? State's
24 Exhibit 66, cash tendered, \$100. Mr. Manning,
25 Mr. Manning.

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1 Finally, on the testimony -- and, you know, they kept
2 talking about how the State won't talk about what
3 happened inside the house. We've been talking about what
4 happened inside the house.

5 They put somebody up yesterday that was pretty
6 interesting, Mr. Fite, \$150 an hour, came in here, and
7 what did he testify to? Very brief, he said, "Look, I'm
8 testifying from what I was told by the defendant on
9 10/4/2010."

10 So Mr. Fite, who is an expert, claims to be, comes
11 in. The first time he's looked at this case, and knows
12 anything about this case, is his conversation with
13 Theodore Manning on 10/4/2010. That's the date the trial
14 started, isn't it?

15 What didn't they give Mr. Fite? And I feel sorry
16 for Mr. Fite because they didn't give him any of these
17 other statements that I know of.

18 Ms. Campbell asked him, "What -- did you have this
19 statement? Is it consistent with this, this, this?" I
20 didn't see those.

21 Yet, they bring him in as an expert to testify on
22 what he's told on 10/4/2010, and what's the most important
23 part?

24 He said the demonstration -- I'm sorry. He said,
25 "Did not resemble the statement he was given, did not

Closing by Giese

1 resemble Mr. Manning's story in the reenactment."

2 The State submits because he is still lying. They
3 want you to say, "Oh, he says it's self-defense now,
4 because he's killed the only other witness, and it's
5 self-defense."

6 But they can't even get -- he still can't get the -- he
7 doesn't even -- he can't get the story straight.

8 Then most important, "She would have known she was
9 going to get shot." His -- their witness, because she
10 had the gun pointed at her, and she knew she was going
11 to get shot. Their own witness said it. That's why she
12 turned. She got hit in the back of the head, that's if
13 you believe his statement.

14 The State submits it could have just as easily been
15 a shot just directly execution style in the back of the
16 head.

17 You know, if you had to stop right after the gun has
18 been fired or the person has been murdered and the
19 trial stopped at that point, you didn't see what the
20 person did afterwards, you'd never have a murder case.
21 That's why the law says you can look at what happened,
22 during it, before and after it. It's just that simple.

23 Ladies and gentlemen, I'm almost done.

24 MR. SHEALEY: Objection, Your Honor, as to what the
25 law says. It's not accurate.

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1 THE COURT: I'll tell them what the law says.

2 MR. GIESE: You can take the relevant facts, and
3 relevant facts are facts that are allowed in court, and
4 you can determine whether or not he had malice or not.

5 Ladies and gentlemen, I say this, the State submits
6 this: I'm going to say it one more time, and I hope I'm
7 not offensive. You've got a man with a pistol. You have
8 an unarmed woman. She is shot in the back of the head.
9 That man takes the body down the stairs, stuffs it in a
10 trunk of the victim's car to hide his actions.

11 He gets a gas can. He puts it into the car, and he
12 drives down the interstate to a place he knows. He drives
13 her down a dirt road. He stops the car to conceal what
14 he has done because he knows he did wrong. He gets out
15 of the car with the gas can.

16 Now in his statement, he claims that Kendra had
17 stopped at the road, gotten out of her car, and that Kendra
18 walked 800 yards to the car. Do you believe that, with
19 the gas can?

20 He pours the gas can onto the car. It doesn't light.
21 He goes back to the car. Doesn't leave it. Doesn't go,
22 "Gosh. This is a horrible idea. I just panicked. This
23 is a horrible idea."

24 He goes back to the car, gets in, drives to a gas
25 station, buys gas, gets back in the car, drives back to

Closing by Giese

1 the scene, and by himself this man who has the most to
2 lose, because he knows what he has done is wrong, he takes
3 that gas, pours it in the car.

4 The State submits for her to be as burned as she is,
5 he had to pour it on the body. Take a look at the
6 pictures, wrapped up a piece paper, lit it off and
7 destroyed her body.

8 He waits 23 days to come up with any story. He never
9 leads them to the body. Someone else has to. He never
10 tells anybody anything about self-defense, being scared,
11 and he's come up here today and asked you to believe him
12 and his story. The State submits do not fall for this
13 story.

14 This case, ladies and gentlemen, is about one thing.
15 It's about a man murdering an unarmed woman in his home.
16 It's not about self-defense. It's not about voluntary
17 manslaughter.

18 The State submits anything less than murder in
19 this case is another victory for Theo Manning.

20 MR. SHEALEY: Objection, Your Honor.

21 MR. GIESE: Theodore Manning.

22 THE COURT: Overruled.

23 MR. GIESE: I come to this time in trial. I'm always
24 amazed at the power that a jury has. You have the power
25 over the facts of this case and the verdict.

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1 You have the power over Theodore Manning and what
2 he did that day and Nikki McPhatter and what happened to
3 her that day, and it's a huge power.

4 But, ladies and gentlemen, you don't have all that
5 power, because you can't bring Nikki McPhatter back,
6 give her to her friends, give her to her family, but you
7 can give Nikki McPhatter and this courtroom justice.
8 You can give the citizens of Richland County justice.

9 On Wednesday morning each of you raised -- stood up,
10 raised your right hand, and you swore to this: You shall
11 well and truly try and true deliverance make between the
12 State of South Carolina and the defendant at bar, whom
13 you shall have in charge, and a true verdict give, according
14 to the law and the evidence, so help you God. Each of
15 you took that oath, each of you.

16 The State asks you, asks you, get a true deliverance
17 in this case. The State submits after the testimony
18 you've heard, the only true deliverance in this case is
19 a murder conviction against Theodore Manning, because
20 the State submits that is what happened that night.

21 The State asks you to do your duty. Thank you.

22 THE COURT: All right. Ladies and gentlemen, we've
23 been going for a couple of hours now. Let's take a short
24 break. If your lunch is back there, don't eat it just
25 yet.

JURY CHARGE

1 We'll -- after a short break, just a comfort break,
2 I'll give you my final instructions, and then the case
3 will be turned over to you for deliberations. So just
4 relax for a few minutes. I'll call you. When you're
5 ready, let us know and we'll --

6 THE BAILIFF: Everyone remain seated.

7 THE COURT: -- conclude this trial.

8 (WHEREUPON, the jury left open court at approximately
9 12:27 p.m.)

10 THE COURT: All right. We'll stand at ease for
11 about ten minutes.

12 (WHEREUPON, a short break was taken.)

13 THE COURT: Is the State ready for the jury?

14 MS. CAMPBELL: The State is ready.

15 THE COURT: Is the defense ready for the jury?

16 MR. SHEALEY: Your Honor, just briefly, I did object
17 to the Golden Rule during the closing, and I just felt
18 that was something that could be inferred by the
19 question -- by the comments.

20 I just wanted to cite Gomez v. State, 732 South Second
21 (inaudible).

22 THE COURT REPORTER: I'm sorry, I can't hear you.

23 MR. SHEALEY: Gomez v. State that discusses the
24 Golden Rule, 751 South Second 630. That's all it is. I
25 just wanted to put that on the record.

JURY CHARGE

1 THE COURT: All right. I'm somewhat familiar with
2 the Golden Rule. I've gotten reversed on it.

3 MR. SHEALEY: Yes, sir.

4 THE COURT: All right. Bring the jury.

5 (WHEREUPON, the jury came into open court at
6 approximately 12:40 p.m.)

7 THE BAILIFF: The jurors are present, Your Honor.

8 JURY CHARGE

9 THE COURT: All right. Thank you very much, ladies
10 and gentlemen.

11 All right. As I explained to you a few minutes ago,
12 a couple of hours ago, that when we go through the legal
13 elements of this case and touch on several things, in
14 addition to three possible verdicts in this case, and
15 you've now heard all the testimony in this case.

16 You've heard the arguments of both the State and the
17 defendant, and you will take to the jury room with you
18 all the evidence in this case that's been introduced.

19 Now, sometimes I've had juries from time to time,
20 send out a message and ask me to send them a copy of what
21 I'm going to go over with you. I'm not able to do that
22 in South Carolina.

23 In some states that's done, but it's not done here.
24 So I ask you to pay close attention, take whatever
25 notes you feel necessary, as I explain to you the law as

JURY CHARGE

1 it applies to this case.

2 Now, under our constitution and code of laws, only
3 the jury can make findings of fact. I'm not permitted
4 to indicate to you how I might feel about the facts, and
5 if I've said or done anything in this case which would
6 indicate to you that I have an opinion concerning the
7 facts, you should disregard that.

8 You must independently weigh the evidence
9 presented during the trial and render a verdict based
10 solely on that evidence.

11 Now, the same constitution and laws which designate
12 and make you the finders of fact also make me the
13 instructor of the law.

14 If you have some idea as to what the law is or what
15 the law ought to be that does not agree with what I now
16 tell you the law is, you're obligated under your oath to
17 abandon this preconception on your part and apply and
18 accept the law precisely as I now state to it you.

19 Mr. Manning, in this case, has been charged with
20 murder. I remind you, the fact that the defendant was
21 arrested, charged, and indicted in this case is not
22 evidence in this case and cannot be considered by you as
23 evidence of guilt in this case, nor does it create any
24 presumption or inference of guilt.

25 The document is simply the formal written instrument

JURY CHARGE

1 which contains the charge made against the defendant.

2 Mr. Manning has pled not guilty to this indictment,
3 and that plea puts the burden on the state to prove the
4 defendant guilty.

5 A person charged with committing a criminal offense
6 in South Carolina is never required to prove himself or
7 herself innocent.

8 I charge you that this is an important rule of law
9 that the defendant in a criminal case, no matter what the
10 seriousness of the charge may be, will always be
11 presumed to be innocent of the crime for which the
12 indictment was issued unless guilt has been proven by
13 evidence satisfying you of that guilt beyond a reasonable
14 doubt.

15 This presumption of innocence does not end when you
16 begin your deliberations, but it accompanies the
17 defendant throughout the trial until you reach a verdict
18 of guilt based on evidence satisfying you of that guilt
19 beyond a reasonable doubt.

20 The presumption of innocence again is not a mere legal
21 theory. It's not just a legal phrase. It is a
22 substantial right to which every defendant is entitled
23 unless you, the jury, are satisfied from the evidence of
24 the defendant's guilt beyond a reasonable doubt.

25 The State is required -- not required to prove the

JURY CHARGE

1 guilt of the defendant beyond all doubt or beyond every
2 doubt, but beyond a reasonable doubt.

3 Now, what is a reasonable doubt in the law? A
4 reasonable doubt is the kind of doubt that would cause
5 a person, a reasonable person, to hesitate to act. Let
6 me say that again. A reasonable doubt is the kind of
7 doubt that would cause a reasonable person to hesitate
8 before doing something, for example, or to act.

9 The State has the burden of proving the defendant
10 guilty beyond a reasonable doubt. Some of you may have
11 served as jurors in civil cases where you were told it's
12 only necessary to prove that a fact is more likely true
13 than not true, such as by the greater weight or the
14 preponderance of the evidence.

15 In criminal cases, however, the State's proof must
16 be more powerful than that. It must be beyond a
17 reasonable doubt. If you think that a defendant is
18 probably guilty or the circumstances are suspicious is
19 not enough.

20 Proof beyond a reasonable doubt is proof that leaves
21 you firmly convinced of the defendant's guilt. Now,
22 there are very few things in this world we know with
23 absolute certainty.

24 In criminal cases, the law does not require proof
25 that overcomes every possible doubt. If, based on your

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1 consideration of the evidence, you are firmly convinced
2 that the defendant is guilty of the crime charged, you
3 must find the defendant guilty.

4 On the other hand, if you think there is a real
5 possibility the defendant is not guilty of murder or any
6 lesser-included offense, you must give the defendant the
7 benefit of the doubt and find him not guilty.

8 Generally speaking, there are two times of evidence
9 that are introduced during the course of the trial:
10 Direct evidence and circumstantial evidence.

11 Direct evidence is the testimony of a person who
12 claims to have actual knowledge of a fact, such as an
13 eyewitness. It is evidence which immediately establishes
14 the main fact to be proven.

15 Circumstantial evidence, on the other hand, is proof
16 of a series or chain of facts and circumstances indicating
17 the existence of some fact. It's evidence which
18 immediately establishes collateral facts from which the
19 main fact may be inferred.

20 Circumstantial evidence is based on inference, in
21 other words, and not on personal knowledge or
22 observation, but the law makes absolutely no distinction
23 between the weight or value to be given either direct or
24 circumstantial evidence, nor is a greater degree of
25 certainty required of circumstantial evidence than of

JURY CHARGE

1 direct evidence.

2 You should weigh all of the evidence in the case,
3 and after weighing all the evidence, if you are not
4 convinced of the guilt of the defendant beyond a
5 reasonable doubt, you must find the defendant not guilty.

6 Now, necessarily, you must determine the
7 credibility of the witnesses whose have testified in this
8 case. Credibility simply maintains believability.

9 It becomes your duty as jurors to analyze and evaluate
10 the evidence and determine which evidence convinces you
11 of its truth.

12 In determining the believability of witnesses who
13 have testified in this case, you may believe one witness
14 over several witnesses or several witnesses over one
15 witness.

16 You may believe a part of the testimony of a witness
17 and reject the remaining part of the testimony of the same
18 witness. You may believe the testimony of a witness in
19 its entirety or reject the testimony of a witness in its
20 entirety.

21 You may consider whether any witness in this case
22 has exhibited to you any interest or bias or prejudice
23 or other motive in this case.

24 You may also consider the appearance and the manner
25 of the witness while on the witness stand. These

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1 considerations you do not exercise arbitrarily, however.
2 Your objective, ladies and gentlemen, is to seek the truth
3 regardless of its source.

4 In exercising your mental processes and
5 determining what you consider to be true, the law simply
6 requires that you exercise your good judgment, your
7 common sense, your sense of logic and reason and your
8 experiences in life.

9 You then apply these attributes to the evidence and
10 determine what you, the jury, consider to be the truthful
11 evidence. You will then take and apply the law as it's
12 now stated to you and thus arrive at a true verdict in
13 this case.

14 You are not to consider any evidence or testimony
15 that I ordered stricken from the record or that you were
16 ordered to disregard.

17 Now, the Rules of Evidence which are the rules that
18 govern our court proceedings ordinarily do not permit
19 witnesses to testify about their opinions or their
20 conclusions.

21 However, an exception to this rule exists for
22 witnesses we call expert witnesses, a witness who by
23 education or experience, has become an expert in some art
24 or science or profession, may state an opinion as to
25 relevant and material matter in which the witness claims

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1 to be an expert and may also state the reasons for that
2 opinion.

3 You should consider any expert's opinion received
4 in evidence in this case like any other evidence. Give
5 it the weight you think it deserves.

6 If you decide that the opinion of an expert witness
7 is not based on sufficient education and experience, or
8 if you conclude that the reasons given in support of the
9 opinion are not sound or that the opinion is outweighed
10 by other evidence, you may disregard that opinion
11 entirely.

12 An expert witness's testimony, in other words, is
13 to be given no greater weight than that of other witnesses
14 simply because that witness is an expert. Further, you
15 are not required to accept an expert's opinion, even
16 though it's not -- that it's not contradicted.

17 Now, in order to establish criminal liability,
18 criminal intent is required. Criminal intent must be
19 proven by the state beyond a reasonable doubt. Criminal
20 intent is always a matter that must be determined by
21 the jury from the circumstances surrounding that
22 situation.

23 There's no way to prove intent to a mathematical
24 certainty. There is no way medical science can dissect
25 a person's brain and determine what a person had in mind.

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1 So the law says that criminal intent may be inferred from
2 the circumstances shown to have existed at the time and
3 place of the incident, and that's how you make a
4 determination of whether or not the element requiring
5 intent was present.

6 Criminal intent is a mental state of conscious
7 wrongdoing. It's to determine what the defendant intended
8 to do based on the circumstances shown to have existed
9 at the time and place of the incident.

10 Now, in this case, certain statements alleged to
11 have been made by Mr. Manning have been admitted into
12 evidence. While the court has determined that these
13 statements are admissible, I instruct you that you are
14 to make the ultimate decision of whether or not the
15 defendant made the statements.

16 If Mr. Manning did make the statements, you must
17 determine whether the statements were made by him
18 voluntarily and of his own free will. This means that
19 the statements were not caused by pressure or force or
20 fear or threats or coercion or intimidation or by hope
21 or a promise of leniency or a reward of any kind.

22 In determining whether the statements were
23 voluntary, you should consider both the characteristics
24 of the defendant and the details of the questioning.

25 Some of the factors you may consider are the age of

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1 the defendant, the defendant's education or lack of
2 education. The defendant's mental ability or capacity
3 and the defendant's I.Q. or intelligence, the defendant's
4 background and his environment, the place and length of
5 the detention, the nature of the questioning and the
6 advice or lack thereof to the defendant of his
7 constitutional rights, including but not limited to, the
8 right to remain silent; that any statement could be used
9 against him in a court of law, the right to have a lawyer
10 present; that if he could not afford a lawyer, a lawyer
11 would be appointed to represent him without any cost and
12 that he could stop making statement at any time.

13 You must carefully consider all of the surrounding
14 circumstances before you give any weight to an alleged
15 statement.

16 The State has the burden, as I've said, of proving
17 beyond a reasonable doubt that the alleged statements
18 were voluntary. If you determine they were, you may
19 give the statements any further consideration that you
20 deem proper.

21 You must decide what weight, if any, should be given
22 to the alleged statements. If you determine the alleged
23 statement was not the free and voluntary statement of the
24 defendant, you should not consider the statements at all.

25 Now, as you know, the defendant is charged with

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1 murder. The State must prove beyond a reasonable doubt
2 that the defendant killed another person with malice
3 aforethought.

4 Malice is hatred, ill will or hostility towards
5 another person. It is the intentional doing of a wrongful
6 act without just cause or excuse and with an intent to
7 inflict an injury or under circumstances that the law will
8 infer an evil intent.

9 Malice aforethought does not require that malice
10 exists for any particular time before the act is
11 committed, but malice must exist in the mind of the
12 defendant just before and at the time the act is committed.
13 Therefore, there must be a combination of the previous
14 evil intent and the act.

15 Malice aforethought may be express or inferred.
16 These terms express and inferred do not mean different
17 kinds of malice but merely mean the manner in which malice
18 may be shown to exist, that is either by direct evidence
19 or by inference from the facts and circumstances which
20 are proved.

21 Expressed malice is shown when a person speaks words
22 which express hatred or ill will for another, or when the
23 person prepared beforehand to do an act which is later
24 accomplished. For example, lying in wait for a person
25 or any other acts or preparation going to show that the

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1 deed was in the defendant's mind would be expressed
2 malice.

3 Malice may be inferred, also, from conduct showing
4 a total disregard for human life. Malice is a legal term
5 implying wickedness and excluding a just cause or excuse.
6 The term malice indicates a formed purpose and design to
7 do a wrongful act under the circumstances that exclude
8 the legal right to do it.

9 It's something which springs from wickedness, from
10 depravity, from a heart devoid of social duty and fatally
11 bent on mischief. In other words, malice is a mental
12 state, and it may be inferred by facts and circumstances
13 proven by the State beyond a reasonable doubt.

14 Now, if you find that the State has failed to prove
15 beyond a reasonable doubt that Mr. Manning committed
16 murder, you may consider whether the State has proved
17 beyond a reasonable doubt that he committed voluntary
18 manslaughter.

19 To prove voluntary manslaughter, the State must prove
20 beyond a reasonable doubt that Mr. Manning took the life
21 of another in the sudden heat of passion based upon
22 sufficient legal provocation. Both heat of passion and
23 sufficient legal provocation must be present at the time
24 of the killing to constitute voluntary manslaughter.

25 Sudden heat of passion may for a time affect a

1 person's self-control and temporarily disturb a person's
2 reason.

3 The sudden heat of passion must be the type that would
4 make an ordinary person unable to coolly reflect on his
5 actions and would produce an uncontrollable impulse to
6 do violence.

7 Sufficient legal provocation must be the type that
8 would make a person of ordinary reason and caution become
9 enraged and lose control temporarily.

10 The provocation needed for voluntary manslaughter
11 must come from some act of or related to the victim. Words
12 alone, however vulgar or insulting are not enough to be
13 legal provocation.

14 Where death is caused by the use of a deadly weapon,
15 the words must be accompanied by some overt threatening
16 act which could have produced the heat of passion. The
17 exercise of a legal right, no matter how offensive it is
18 to another is never sufficient legal provocation for
19 voluntary manslaughter.

20 Now, the defendant has raised the defense of
21 self-defense. Self-defense, as I explained earlier, is
22 a complete defense to either murder or voluntary
23 manslaughter. If it is established, you must find
24 Mr. Manning not guilty.

25 The State, the State of South Carolina, has the

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1 burden of disproving self-defense by proof beyond a
2 reasonable doubt.

3 If you have a reasonable doubt of the defendant's
4 guilt after considering all of the evidence, including
5 the evidence of self-defense, then you must find
6 Mr. Manning not guilty.

7 On the other hand, if you have no reasonable doubt
8 of the defendant's guilt of murder or voluntary
9 manslaughter after considering all of the evidence,
10 including the evidence of self-defense, then you must
11 find the defendant guilty of one or the other.

12 The following elements are required to establish
13 self-defense: First, the defendant must be without
14 fault in bringing on the difficulty.

15 If Mr. Manning's conduct was the type which
16 reasonably calculated to and did provoke a deadly
17 assault, he would be at fault in bringing on the
18 difficulty and would not be entitled to an acquittal based
19 on self-defense.

20 The second element of self-defense is that the
21 defendant was actually in imminent danger of death or
22 serious bodily injury himself or that the defendant
23 actually believed he was in imminent danger of death or
24 serious bodily injury.

25 The third element of self-defense is that if

JURY CHARGE

1 Mr. Manning was actually in imminent danger, it must be
2 shown that the circumstances would have warranted a
3 person of ordinary firmness and courage to strike the fatal
4 blow to prevent death or serious bodily injury.

5 If he believed he was in imminent danger of death
6 or serious bodily injury, it must be shown that a
7 reasonably prudent person of ordinary firmness and
8 courage would have had the same belief.

9 In deciding whether the defendant was -- actually
10 was or believed he was in imminent danger of death or
11 serious bodily injury, you should consider all of the
12 facts and circumstances surrounding the crime, including
13 the physical condition and characteristics of the
14 defendant and the victim.

15 The final element of self-defense is that the
16 defendant had no other probable way to avoid the
17 danger of death or serious bodily injury than to act as
18 Mr. Manning did in this particular instance.

19 The defendant has the right to act on appearances,
20 even though the defendant's beliefs may have been
21 mistaken, it's for you to decide whether Mr. Manning's
22 fear of imminent danger or death or serious bodily injury
23 was responsible and would have been felt by an ordinary
24 person in the same circumstances or situation.

25 However, there is no duty to retreat where an

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1 act -- attack occurs in one's own dwelling, his yard, or
2 elsewhere on the property owned and lawfully occupied by
3 him.

4 I further charge you that evidence of prior
5 difficulty between Mr. Manning and the victim may be
6 considered in deciding whether the threat existed,
7 whether the defendant had a reason to believe that a
8 threat existed and how serious that threat was.

9 I would further charge you that the relative size,
10 ages, and weights of the defendant and the victim may be
11 considered in deciding the apparent or actual need for
12 force in self-defense and the amount of force that was
13 needed.

14 All right, ladies and gentlemen, as I said at the
15 beginning, I am required to declare the law as I have done
16 through these instructions to help and guide you to a just
17 and lawful verdict.

18 Whether some of these instructions will apply will
19 depend upon what you find to be the facts. The fact that
20 I've instructed on various subjects in this case must not
21 be taken by you as indicating an opinion of this court
22 as to what you should find to be the facts or as to which
23 party is entitled to be your verdict.

24 Your verdict must represent the considered
25 judgment of each juror. In order to return a verdict,

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1 it's necessary that each juror agree. Your verdict must
2 be unanimous, in other words. All 12 of you must agree
3 on the verdict.

4 Your verdict cannot be based on sympathy, passion,
5 prejudice, emotion or any other consideration that's not
6 in evidence in this case.

7 Remember at all times that you are not partisans
8 favoring one party over the other. You are judges, judges
9 of the facts. Your sole interest is to seek the truth
10 from the evidence in this case.

11 Now, ladies and gentlemen, I'm going to ask you to
12 retire to the jury room.

13 I -- where is the clerk? Are their lunches here, does
14 anybody know?

15 THE BAILIFF: Yes, sir. They're here.

16 THE COURT: They're here, all right.

17 The court reporter tells me there -- how many
18 exhibits?

19 THE COURT REPORTER: Over 350.

20 THE COURT: Over 350 exhibits have been introduced
21 in this case. You're going to have them all in your jury
22 room, including the CDs. If you want the CDs played,
23 we'll have somebody come in, set up the cameras and play
24 them for you.

25 Otherwise, you're just going to have, somehow, to

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1 go through the exhibits as you see fit. So I'm going to
2 ask you to retire to the jury room. I'm going to ask you
3 not to begin your deliberations until all the evidence
4 has been brought to you and the verdict form.

5 So I think probably -- you do it any way you want
6 to, but you might as well go ahead and eat your lunch
7 because it's going to take a few minutes to pull all of
8 this together and bring it to you in the jury room.

9 Once you have received all the evidence and the
10 verdict form, you may begin your deliberations whether
11 you finished your lunch or however you want to do it.
12 It's up to you.

13 I'm going to ask the two alternates to remain in the
14 hall for just a few minutes. I'll talk to them when you
15 start your deliberations.

16 All right. Ladies and gentlemen, I'll turn the case
17 over to you. You now -- retire to the jury room to begin
18 your deliberations, but don't begin, as I said, until you
19 have all the evidence and the jury verdict form.

20 (WHEREUPON, the jury left open court at approximately
21 1:04 p.m.)

22 THE COURT: Any exceptions to the charge from the
23 State?

24 MS. McDUFFIE: None from the State, Your Honor.

25 THE COURT: From the defense?

1 MR. MAY: Your Honor, we renew our objections to the
2 charges not given.

3 THE COURT: All right, sir. Thank you.

4 MS. McDUFFIE: Your Honor.

5 THE COURT: Just wait a minute. Wait a minute. He's
6 not finished.

7 Or is he? Are you finished?

8 MR. MAY: Yes, sir, Your Honor.

9 THE COURT: Go ahead.

10 MS. McDUFFIE: We would like an opportunity to view
11 the verdict form.

12 THE COURT: I would, too. We forgot. We're working
13 on it right now.

14 All right. Anybody want to check the evidence?
15 Probably should. I think they're going to eat their
16 lunch anyway. I'll get the verdict form in just a minute.

17 (Pause).

18 THE COURT: Any objection to dismissing the jury?

19 MS. CAMPBELL: No, Your Honor.

20 MS. PRINGLE: No, Your Honor.

21 (WHEREUPON, the alternate jurors were brought into
22 the courtroom.)

23 THE COURT: Hold on just second. I've got to get your
24 numbers. I've got them somewhere.

25 What are your numbers?

1 ALTERNATE JUROR: 171.

2 THE COURT: 171.

3 ALTERNATE JUROR: 53.

4 THE COURT: All right. Ms. 171 and 53, your service
5 is -- since all of the jurors have weathered this ten
6 days, your service is complete.

7 Now, I always tell jurors that -- and especially in
8 a long trial like this one, or semi-long, it is very
9 unusual that we have 12 jurors that make it through. I
10 don't mean fatalities or anything like that, but for
11 some reason somebody's car breaks down. They can't get
12 there that day.

13 We just can't stop, or somebody comes up and says,
14 "Well, now that I hear some more about this case, I know
15 something about it," things like that.

16 There are any number of reasons why jurors have to
17 be relieved, so we need alternate jurors to serve. I
18 want -- I just want to impress upon you that your service
19 is just as important as any of 12 who were sitting in there
20 who were the regular jurors.

21 I don't know how long the deliberations are going
22 to take. You are welcome to stay. We'll give you -- is
23 that other jury room being used?

24 THE BAILIFF: They've got a jury.

25 THE COURT: They do? In there?

1 THE BAILIFF: I think so.

2 THE COURT: Where can -- I don't want them to have
3 to sit out in the hall and eat their lunch.

4 You all can take your lunch with you. We just don't
5 have a lot of places. We've got a -- we've got a jail
6 cell.

7 THE BAILIFF: Down to the assembly room downstairs.

8 THE COURT: The what?

9 THE BAILIFF: The general assembly room downstairs.

10 THE COURT: The grand jury is working today, too,
11 aren't they?

12 THE BAILIFF: Yes.

13 THE COURT: Well, it seems like every nook and cranny
14 of the courthouse is occupied.

15 Can you take them somewhere?

16 THE BAILIFF: Back downstairs.

17 THE COURT: All right.

18 THE BAILIFF: To the jury assembly room.

19 THE COURT: Oh, the jury assembly room.

20 THE BAILIFF: Yeah.

21 THE COURT: All right. You can go back down to the
22 jury assembly room. You can come back up here. If you
23 come back up and wish to stay with us, you're certainly
24 welcome to sit in the gallery.

25 If anybody tries to talk to you, you don't have to

1 talk to anybody. You can if you wish, but you don't have
2 to.

3 By the same token, you're free to go. Chances are
4 whatever takes place, you can probably read about it in
5 the paper, but I do want to thank you.

6 I've told jurors all the time this system can do
7 without me. It can do without these lawyers, but it
8 can't do without you. You're such an important part of
9 the judicial system in this county and this state, this
10 nation, that your role was written into the Constitution
11 of the United States when it was 200 some odd years ago
12 when this country was founded.

13 It's important that we have jurors who are willing
14 to come and sit and volunteer their time, even though jury
15 service, as I say, is not a voluntary activity, but to
16 sit and help us resolve these matters which must be
17 resolved in our community.

18 Thank you very much for your service. Mr. Dye will
19 maybe show you where you can go and eat your lunch if you
20 wish to stay. Otherwise, you're free to go. The clerk
21 will give you a work excuse or a check or whatever you
22 need.

23 Thank you very much.

24 ALTERNATE JUROR: Thank you.

25 (WHEREUPON, the alternate jurors left the

1 courtroom.)

2 THE COURT: All right. We'll be at ease.

3 MS. McDUFFIE: We're fine with the one the defense
4 likes better, Your Honor, but are you going to go back
5 and explain to it them or just send it to them?

6 THE COURT: I'll just send it to them. I said they
7 had to be unanimous. It has to be that.

8 THE CLERK: That's the old one.

9 MR. MAY: Correct. Do you mind if I fold it?

10 THE CLERK: No. So you agree?

11 MS. PRINGLE: Yes.

12 THE COURT: Consent?

13 MS. McDUFFIE: Yes, sir, Your Honor.

14 THE COURT: All right.

15 (WHEREUPON, the jury began their deliberations at
16 1:31 p.m.)

17 THE COURT: Counsel, the jury has been out what,
18 four-and-a-half hours. I'd like to bring the foreman in,
19 just see where they are, see if they want to -- it's up
20 to you.

21 I'm just -- all I'm going to do is ask them if they
22 want to go home or if they want to continue to work.
23 That's all I'm going to do.

24 MR. MAY: Your Honor, we would respectfully ask him
25 to be in here without the belly chains on, if there's

1 going to be a member from the jury come into the
2 courtroom.

3 THE COURT: That's a pretty simple request. Do you
4 really need him?

5 (Pause)

6 MS. PRINGLE: We want the client in, Your Honor.

7 THE COURT: Go get the defendant, please.

8 (Pause)

9 MR. SHEALEY: Your Honor, just while we're waiting,
10 if you could caution them about walking in, to avoid the
11 whole chains, like they have them.

12 THE COURT: Oh, we have a new camera; is that right?

13 MEDIA: (Nods in the affirmative).

14 THE COURT: There's really nothing. I mean, I can't
15 stop you from filming. I'd advise you not to -- I'm
16 going to caution you not to film the defendant walking
17 into the courtroom with belly chains, okay.

18 MEDIA: Okay.

19 THE COURT: And nothing else is going to happen. We
20 are just going to try find out if the jury wants to order
21 dinner, supper.

22 If you can just take his cuffs off, that's all.

23 (Complies)

24 THE COURT: Bring the foreperson of the jury.

25 THE BAILIFF: Yes, sir.

1 (WHEREUPON, the foreman entered the courtroom at
2 6:08 p.m.)

3 THE COURT: Mr. Foreman.

4 THE FOREMAN: Yes, sir.

5 THE COURT: I want to ask you a couple of questions.
6 I don't want any -- just -- just -- I don't want to know
7 what's going on in the jury room, but I wanted to ask you,
8 you've been in there about four-and-a-half hours. It's
9 getting past six o'clock.

10 You've got several choices: First, continue to
11 work, and if you wish to continue to work, we can order
12 a meal for you, if that's what the jury wants to do.

13 By the same token, you can go home and come back
14 tomorrow morning and continue deliberating. I'd like
15 for you to just poll the jury, go talk to the jury, see
16 what they would like to do.

17 If you're close, you may want to stay and -- you may
18 want to order a meal or not order a meal. I'll tell you,
19 it's probably going to be Lizard's Thicket, so that may
20 enter into your decision one way or the other.

21 (Laughing)

22 THE FOREMAN: Oh, boy.

23 THE COURT: I have the same reaction, but anyway, if
24 you -- would you do that for me, just talk to the jury,
25 see what they would prefer to do or maybe you already know.

1 I don't want to know anything about voting or
2 anything like that. I just -- procedurally, how would
3 you like to proceed?

4 THE FOREMAN: Well, we've got a list of requests for
5 four definitions.

6 THE COURT: All right. Four different issues -- as
7 far as the case is concerned? If you'll write them out.

8 THE FOREMAN: Yeah.

9 THE COURT: Okay. Does that have anything to do with
10 what I was talking about whether --

11 THE FOREMAN: No, no.

12 THE COURT: All right. Well, just have a seat. Let
13 me...

14 All right. Approach the bench, Counsel.

15 (WHEREUPON, a bench conference was held in the
16 presence, but not within the hearing of the
17 foreman.)

18 THE COURT: All right. Let counsel read it.

19 (Pause)

20 All right. Now, back to my first question, would you
21 rather deal with these issues tonight? Would you rather
22 do it tomorrow, in the morning? Do you want to ask your
23 fellow jurors?

24 THE FOREMAN: Well, I -- we've been over this point
25 for several minutes. I think people would like to have

1 those to digest them.

2 THE COURT: To digest them.

3 THE FOREMAN: Yes, come back in the morning and let
4 us pick up where we left off tonight.

5 THE COURT: What, you want to be instructed on these
6 tonight? Is that what you're saying?

7 THE FOREMAN: Yes.

8 THE COURT: All right. All right. You can return
9 to the jury room. Thank you, sir.

10 (WHEREUPON, the foreman left the courtroom at
11 6:12 p.m.)

12 (Pause)

13 THE COURT: Approach the bench, counsel.

14 (WHEREUPON, there was a bench conference.)

15 THE COURT: All right. Bring the jury, please.

16 THE BAILIFF: Yes.

17 THE COURT: The jury has asked for additional
18 instructions, just for the press purposes.

19 (WHEREUPON, the jury came into open court at
20 approximately 6:17 p.m.)

21 THE BAILIFF: The jury is all present, Your Honor.

22 THE COURT: All right. Ladies and gentlemen of the
23 jury, I have your note and counsel for both the State and
24 the defendant have reviewed it with me.

25 I cannot go beyond what I have already explained to

1 you. I can do it again, and hopefully, it will lend some
2 clarity to these instructions.

3 I know the first time through it, when you -- when
4 you haven't applied the facts, it's sort of given to you
5 in the abstract. Some of these concepts may have been
6 difficult to absorb.

7 So what I'm going to try -- what I'm going to do is
8 go back over the portions of the charge which deal with
9 these concepts.

10 Hopefully, if you choose to make notes or not,
11 that's fine. Hopefully, it will help clarify some things
12 in your mind.

13 These are exactly as I stated them to you earlier
14 in the day. The first issue is intent. In order to
15 establish criminal liability, criminal intent is
16 required.

17 Criminal intent must be proven by the State beyond
18 a reasonable doubt. Criminal intent is always a matter
19 that must be determined by the jury from the
20 circumstances surrounding the situation. There is no
21 way to prove intent to a mathematical certainty.

22 There is no way medical science can dissect a
23 person's brain and determine what the person had in mind,
24 so the law says that criminal intent may be inferred from
25 the circumstances shown to have existed at the time and

1 place of the incident. This is how you make the
2 determination as to whether or not the element requiring
3 intent was present.

4 Criminal intent is a mental state, a conscious
5 wrongdoing. It's up to you to determine what the
6 defendant intended to do based on the circumstances shown
7 to have existed at the time and place of the incident.

8 The defendant is charged with murder. The State
9 must prove beyond a reasonable doubt that the defendant
10 killed another person with malice aforethought.

11 Malice is hatred, ill will or hostility towards
12 another person. It is the intentional doing of a wrongful
13 act without just cause or excuse and with an intent to
14 inflict an injury or under circumstances that the law will
15 infer an evil intent.

16 Malice aforethought does not require that malice
17 exists for any particular time before the act is committed,
18 but malice must exist in the mind of the defendant just
19 before and at the time the act is committed. Therefore,
20 there must be a combination of the previous evil intent
21 and the act.

22 Malice aforethought may be express or inferred.
23 These terms express and inferred do not mean different
24 kinds of malice, but merely the manner in which malice
25 may be shown to exist, that is either by direct evidence

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1 or by inference from the facts and circumstances which
2 are proved.

3 Expressed malice is shown when a person speaks
4 words which express hatred or ill will for another or
5 when the person prepared beforehand to do the act which
6 was later accomplished. For example, lying in wait for
7 a person or any other act or preparation going to show
8 that the deed was within the defendant's mind would be
9 expressed malice.

10 Malice may be inferred from conduct showing a total
11 disregard of human life -- for human life. Malice is a
12 legal term implying wickedness or excluding a just cause
13 or excuse.

14 The term malice indicates a formed purpose and
15 design to do a wrongful act under the circumstances that
16 exclude the legal right to do it.

17 It is something which springs from wickedness,
18 from depravity, from a heart devoid of social duty and
19 is fatally bent on mischief. In other words, malice is
20 a mental state, and it may be inferred from facts and
21 circumstances proven by the State beyond a reasonable
22 doubt.

23 If you find that the State has failed to prove beyond
24 a reasonable doubt that Mr. Manning committed murder,
25 you may consider whether the State has proved beyond a

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1 reasonable doubt that he committed voluntary
2 manslaughter.

3 To prove voluntary manslaughter, the State must
4 prove beyond a reasonable doubt that Mr. Manning took the
5 life of another in the sudden heat of passion based on
6 sufficient legal provocation.

7 Both heat of passion and sufficient legal
8 provocation must be present at the time of the killing
9 to constitute voluntary manslaughter.

10 Sudden heat of passion may, for a time, affect a
11 person's self-control and temporarily disturb a person's
12 reason -- reason.

13 Sudden heat of passion must be the type that would
14 make an ordinary person unable to coolly reflect on his
15 actions and would produce an uncontrollable impulse to
16 do violence.

17 Sufficient legal provocation must be the type that
18 would make a person of ordinary reason and caution to
19 become enraged and lose control temporarily.

20 The provocation needed for voluntary manslaughter
21 must come from some act of, or related to, the victim.
22 Words alone, however vulgar or insulting, are not enough
23 to be legal provocation.

24 Where death is caused by the use of a deadly
25 weapon, the words must be accompanied by some overt or

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1 threatening act which could have produced the heat of
2 passion.

3 The exercise of a legal right, no matter how
4 offensive it is to another, is never sufficient legal
5 provocation for voluntary manslaughter.

6 All right. Those are the topics which were raised
7 in the note to the Court. Now, I have asked your
8 foreman if you would like to continue deliberating this
9 evening.

10 We can make arrangements to get a meal for you, if
11 it turns out that you want to continue to deliberate or
12 you have the option to stop deliberating and return in
13 the morning.

14 I'm going to leave that up to the jury to -- I'll
15 ask you to go to the jury room and poll the jury, see how
16 you'd like to proceed.

17 The procedure at this point is up to you. However
18 you'd like to proceed, we're here to accommodate you as
19 best you can.

20 THE FOREMAN: Your Honor, we've already taken that
21 poll.

22 THE COURT: You've already taken that poll. What
23 would the jury like to do?

24 THE FOREMAN: The jury would like to retire for the
25 evening and return tomorrow.

1 THE COURT: Is that all right with everybody?

2 (Nods in the affirmative).

3 How about nine o'clock tomorrow? That will give you
4 a full day.

5 THE FOREMAN: We'll take it.

6 THE COURT: Is that too -- can everybody make it by
7 nine? I know somebody had a little bit of difficulty
8 earlier.

9 THE JUROR: 9:30.

10 THE COURT: All right. We'll do 9:30.

11 Again -- and I know probably -- I don't know about
12 the media. I'll caution you again about media research
13 or reading -- availing yourself of the media or doing any
14 independent research.

15 It's -- it's -- probably the hardest thing is going
16 to be to ask you not to discuss the case with anyone else
17 over the evening hours. It's -- you're just going to have
18 to search your souls and try to, as best you can, recall
19 the testimony and the evidence that you have.

20 I trust that tomorrow you'll be fresh and ready to
21 go, and we'll conclude this matter. But in any event,
22 have a pleasant evening, and we'll see you at 9:30 in the
23 morning.

24 Once the jury has assembled in the morning, begin
25 your deliberations. You don't need me. You can start

1 right away, as soon as all members of the jury are
2 present. All right. Thank you very much.

3 (WHEREUPON, the jury left open court at approximately
4 6:26 p.m.)

5 THE COURT: Any objection from the State?

6 MR. GIESE: No, Your Honor.

7 THE COURT: From the defense?

8 MR. SHEALEY: Just as to our previous charges that
9 we didn't get.

10 THE COURT: I understand, 9:30.

11 (WHEREUPON, Court's Exhibit No. 7 was marked for
12 identification only.)

13 (There was an overnight recess.)

14 (The jury resumed deliberations.)

15 (WHEREUPON, a break was taken.)

16 THE COURT: All right. Counsel, the bailiff informs
17 the Court that the jury has reached a verdict. Are you
18 ready to receive the verdict?

19 MR. GIESE: The State is ready.

20 THE COURT: Is the defense ready?

21 MR. SHEALEY: Yes, Your Honor. The only other
22 question we had was about the belly chain. It was our
23 understanding that there's a policy, generally, about
24 when the verdict is coming out. They keep them
25 handcuffed, but if there's some kind of mistrial or

1 anything where the jury isn't fully decided, they'll see
2 him in belly chains and handcuffs. We'd ask that he
3 be --

4 THE COURT: As long as he remains seated. Can he
5 remain seated?

6 MR. SHEALEY: Yes.

7 THE COURT: All right. Well, as my usual caution,
8 trials sometimes are very emotional, and participants
9 in the gallery have interests, sometimes, one way or the
10 another.

11 I just caution anybody in the gallery, this is a
12 Court of honor. It's a place of business. I don't expect
13 any outbursts of emotion, however the jury has decided.
14 If necessary, they will be treated appropriately.

15 Bring the jury, please.

16 THE BAILIFF: Yes, sir.

17 (WHEREUPON, the jury returned to open court with the
18 verdict at 2:31 p.m.)

19 THE BAILIFF: The jury is all present, Your Honor.

20 THE COURT: Mr. Foreman, has the jury reached a
21 verdict?

22 THE FOREMAN: Yes, they have.

23 THE COURT: Will you hand it to the bailiff, please?

24 (Complies)

25 Madam clerk, you may publish the verdict, please.

VERDICT

THE CLERK: Yes, Your Honor.

In the Court of General Sessions for the Fifth Judicial Circuit, the State of South Carolina, County of Richland, State of South Carolina v. Theodore Manning, Case No. 2009-GS-40-4647. We, the jury, on the charge of voluntary manslaughter by unanimous consent find the defendant, Theodore Manning, guilty. Signed by the foreperson, dated October 14th, 2010.

Mr. Foreman, is this your verdict and the verdict of the entire jury?

THE FOREMAN: Yes.

THE CLERK: Thank you.

THE COURT: Any desire to poll the jury?

MR. GIESE: Not from the State, Your Honor.

MR. SHEALEY: No, sir.

THE COURT: All right. Thank you very much.

All right. Ladies and gentlemen, I counted about ten hours that you were together.

I do want to thank you. I know that these -- I think as I said yesterday in some of my -- in the evening when we restated part of the charge that these get to be complex issues.

It's always difficult for two people to agree on a lot of things, so I understand why twelve people could

1 have some difficulty with these concepts and these
2 decision, but you have labored honestly, and we do
3 appreciate your service.

4 Let me tell you that the remaining portion of this
5 trial will consist of the sentencing of the defendant.

6 Now, you're welcome to stay for that. Sometimes I
7 find -- or frequently I find that jurors wish to stay
8 and sort of watch the end of the process for closure
9 purposes.

10 I will tell you that the charge of voluntary
11 manslaughter carries a penalty of up to 30 years in jail.
12 Murder, obviously, carries a much harsher penalty. So
13 I'm going to go through a sentencing procedure with the
14 attorneys, and whatever information they want to bring
15 to bear on sentencing in about ten minutes. There's a
16 good bit of -- some paperwork that needs to be done before
17 that.

18 We don't have the luxury here in Richland County that
19 they do on television and Law and Order or frankly, for
20 the federal courts. There's a lot that goes on between
21 the verdict and the sentencing.

22 We've got another trial starting Monday, so we have
23 to go ahead and pronounce sentence at this time, which
24 I will do after -- as I say, we'll take a few minutes
25 break, and then the Solicitor will present their case and

1 the defense will present their case to me for sentencing
2 purposes. As I say, you're certainly welcome to stay for
3 that.

4 The bailiffs will show you, if you wish to stay,
5 where to sit. The clerk is going to, of course, talk to
6 you about your work excuses and your paycheck and all of
7 that.

8 Let me just take this opportunity to thank you
9 again. I know the attorneys have thanked you, but I'm
10 going to thank you again for your service. This is an
11 important service. I tell jurors all the time this
12 system can do without me. It can do without these
13 attorneys, but it can't do without you.

14 You are such an important part of the judicial
15 system of this county and this state, this nation, that
16 your role was written into the Constitution of the United
17 States.

18 We can't function without citizens who are willing
19 to come and sit, give of their time, although it's not
20 entirely voluntary, as I said, but to give of their time
21 and resolve these matters in our community.

22 These matters must be resolved, and only through
23 your participation and your assistance can they be
24 resolved. So thank you very much for your service. If
25 you wish to stay, we're glad to have you stay. If not,

1 you are excused at this time.

2 Thank you very much.

3 THE FOREMAN: Your Honor, might I ask a question on
4 behalf of all of the jurors?

5 THE COURT: Let me meet with you in the jury room,
6 and I'll be glad to answer your question.

7 THE FOREMAN: Okay. Thank you.

8 THE BAILIFF: Follow me.

9 (WHEREUPON, the jury left open court at approximately
10 2:36 p.m.)

11 THE COURT: All right. We'll stand at ease for about
12 ten minutes.

13 Any -- let me say this, any motions?

14 MR. MAY: Your Honor, we would ask for --

15 THE COURT: Wait a minute, let the jury go.

16 (Pause)

17 Yes, sir.

18 MR. MAY: Yes, sir. Respectfully, Your Honor,
19 respectfully, we'd ask for just a few minutes to gather
20 our thoughts. Then we will be ready to move forward as
21 far as motions.

22 THE COURT: Yes, it will be about ten minutes.

23 MR. MAY: Yes.

24 THE COURT: Okay.

25 (WHEREUPON, a short break was taken.)

1 THE COURT: All right, Solicitor.

2 MR. GIESE: Come around.

3 THE COURT: Come around. Bring your client.

4 MR. MAY: Yes, sir.

5 THE COURT: All right, Solicitor.

6 MR. GIESE: May it please the Court, Your Honor.

7 Whereas I respect the jury's verdict in the case, it's
8 still my position, and the State's position, that this
9 is one of the more heinous offenses against a woman that
10 I've seen in my 30 years here.

11 She was unarmed. She was shot in the back of the
12 head. Her body was then stuffed in the trunk of her own
13 car, driven off to an area where it was intended for her
14 body never to be found. Her body was doused with
15 gasoline. Her car was doused with gasoline, and it was
16 set on fire.

17 Your Honor, I cannot think of a fact situation, like
18 I said, in my 30 years that is worse than that. We would
19 ask Your Honor, for the State, that you give him every
20 day that he gets. He deserves it.

21 THE COURT: Does he have a record?

22 MR. GIESE: No, Your Honor.

23 THE COURT: No record?

24 MR. GIESE: No convictions, no.

25 THE COURT: Anything else on behalf of the State?

1 MR. GIESE: Yes. We have some victims that would like
2 to speak.

3 THE COURT: All right.

4 GRANDFATHER: Yes. My name is Willie Bridges.

5 THE COURT: Just --

6 GRANDFATHER: He's -- I'm a grandfather of Nikki.

7 THE COURT: Would you all stand aside so I can see
8 this gentleman?

9 GRANDFATHER: I said my name is Willie Bridges. I'm
10 the grandfather to Nikki McPhatter. She had a loving
11 family. We were all close, but we can't bring her back.
12 She is gone.

13 We won't get a chance to see her again. It's hard
14 to speak what's really down in my heart, but I appreciate
15 the Court for what they did, everything that they did,
16 everything that they tried to do for justice, but you
17 can't do but so much.

18 On this side, justice has been served, but there's
19 another justice that's going to come. I don't have any
20 madness in my heart for the victim (sic) for what he has
21 done.

22 It shouldn't have been done, but it's going to be
23 paid later by the man up above. Nikki had a chance.
24 If -- she didn't have it right. She lost her chance, but
25 the individual, he still has got his life. He got a

1 chance, and he's got to meet the master.

2 I'm sorry for his parents. They'll get a chance to
3 see him again, but we'll never get a chance to see Nikki
4 again, but I feel he deserves everything that he can get
5 from the Court because the life shouldn't have been took
6 because you don't have any right to take anybody else's
7 life.

8 But I say to the victim (sic), he has a -- he has
9 a -- he still has a chance. We lost Nikki. We won't see
10 her again. My family loves her. We're all close, but I'd
11 like to tell his mother and his family, I'm sorry, but
12 y'all still have him. We don't have Nikki.

13 Thank you.

14 THE COURT: Yes, sir.

15 THE AUNT: My name is Tawana Fogg. I'm the aunt of
16 Nikki McPhatter. We loved Nikki. Nikki was happy, a
17 loving person. She didn't meet any enemies.

18 I just feel bad. I'm so sad. I'm hurt. I'm
19 also -- I'm not upset. I just know that we won't see her
20 again and that whatever the Courts do, it's just -- please,
21 the maximum.

22 It's hard. I have children, and I couldn't imagine
23 that my kids would never ever have a relationship with
24 her anymore.

25 I just pray that the Court would do whatever is

1 needed for punishment, the maximum, because no argument,
2 no situation could ever excuse taking the life of someone
3 else.

4 Nothing on this earth is that bad, and we have suffered
5 mentally. It's been a hard two weeks. All in another
6 state, people back home are calling. They're worried,
7 and they're just in distress over the situation.

8 It's sad. It's pitiful. Two young people just
9 gone, same race, same -- just, just sad. I hope the Court
10 will do justice to the maximum it can.

11 THE UNCLE: My name is Willie Bridges, Jr., and I'd
12 just like to say, Nikki was...

13 (Pause)

14 She -- took my spirit. It was supposed to be a
15 spokesperson for her accomplishments, for which she came
16 from. One thing, her achievements, she didn't get a
17 chance to speak to the family.

18 (Crying)

19 I thought I was the greatest, and I thought I was
20 the spokesperson. But I didn't accomplish anything she
21 accomplished.

22 Now, she -- she did not -- it was senseless. It's
23 like I don't even care what sentence because it will never
24 bring back Nikki. She'll never be able to speak to my
25 family until...

1 What she accomplished...

2 (Pause)

3 (Crying)

4 I ask...

5 Just whatever. I just hope to live a few more years
6 myself. Whatever you do, it's just -- whatever you can
7 do.

8 THE SISTER: Hello. My name is Latoya McPhatter.
9 I'm Nikki McPhatter's oldest sister. My sister was a
10 very sweet, jolly person. She was my biggest fan. She
11 used to tell me when I was a little...

12 (Crying)

13 She used to tell me when she was a little girl that
14 she want to be like her -- like her big sister. I'm going
15 to always miss her. My heart is so heavy now.

16 I feel like my friend is gone. I don't have nobody
17 to talk to no more. My family, they said I am so strong,
18 but I am not.

19 (Crying)

20 (Indicating)

21 Don't. I'm okay.

22 I'm going to miss her, Judge. Please just do my
23 family this favor and just -- just give us justice,
24 please. I don't have a sister no more.

25 It ain't going to bring her back, but I don't have

1 any hatred in my heart towards nobody, but just please
2 give us some justice.

3 Thank you.

4 THE AUNT: My name is Tabitha Bridges. I'm from
5 North Carolina. I'm Nikki's aunt. I just ask, Your Honor,
6 it was 23 days that she had been missing.

7 It is 365 days plus that she is still not here for
8 a ruthless crime, shot in the back of the head, then
9 killed a second time, burned up to a crisp. That should
10 have not happened.

11 Please, Your Honor, I beg, please, please, please
12 there is no greater argument, no situation that you are
13 allowed to take anyone's life. There's no excuse any
14 greater. There is no excuse for no ruthless crime as this
15 is.

16 I beg you, Your Honor. I beg you, please serve the
17 maximum penalty. We will not see Nikki anymore. I loved
18 Nikki. She called me every day. We lived in the same
19 town, and I knew something was wrong when I did not hear
20 from her. I knew she was gone then, but we are the victims
21 here. We suffer every day. Every day, where is Nikki?
22 Where is Nikki?

23 Nobody could tell us nothing. I ask that question
24 today, where is Nikki? She ain't here. I can't see her
25 anymore. I will never see her anymore.

1 I just ask that you serve the maximum penalty
2 because this person, he's still living. He's still going
3 to be walking around. He's going to live, breathe, eat,
4 but Nikki won't. I will never, ever see her again.
5 Please, I beg you.

6 THE FRIEND: My name is Tara Norell (phonetic). I
7 was a friend and coworker of Nikki's. I just want to read
8 a poem that I wrote shortly after Nikki was found. It's
9 called the Nikki McPhatter Story.

10 "Hi, my name is Nikki McPhatter, and I want to tell
11 you my story, but first let me give praise to God, to Him
12 be the glory.

13 "Before my life could begin, it ended at age 30. I
14 was treated like a nobody, and that's just plain dirty.
15 It all began in the beginning of '09. I was on my
16 computer and met a man online.

17 "I didn't bother to tell close friends of mine. I
18 wish I had. Now I must leave them behind. I wish I had,
19 as you can see, I'm not here to tell my story. These words
20 speak for me.

21 "I traveled to the point of no return. It cost me
22 my life. I was shot and then burned. I guess I want to
23 be a teacher and teach other women, of course, about
24 being careful of the men that they meet. I didn't do my
25 homework because if I had, I would have found out about

1 this man's violent past.

2 "I cannot believe how much I was loved. My friends
3 passed out fliers and searched in woods as I watched from
4 above. They prayed in hope that I was still alive, but
5 on May 29th, my car was found and I was inside.

6 "To my loved ones, I pray you all find closure after
7 all of this mess. I loved you all and wish you all nothing
8 but the best.

9 "To those who played a part in taking my life away
10 from me, justice will be served. You all just wait and
11 see."

12 I hold in my hand a scarf that Nikki made for me,
13 and I just also want to say Nikki was a very giving
14 person. She made scarves just like these for men in the
15 homeless shelters.

16 I also want to say she had a bright future. She
17 wanted to be a customs patrol officer, and shortly after
18 Nikki was found, we learned later that she passed the
19 test.

20 Thank you.

21 MS. CAMPBELL: Your Honor, finally, Ms. Bridgette
22 Morrison was here earlier this week. She did write out
23 something that she wanted to be read to the Court, for
24 your information.

25 THE COURT: Go ahead.

1 MS. CAMPBELL: "She is still a granddaughter,
2 daughter, sister and friend. Unfortunately, you,
3 Mr. Manning, chose to take her away from us in this life,
4 but we, her friends and family, will see her again.

5 "The picture painted of Nikki McPhatter is not the
6 person she has been made out to be by the defense. The
7 fun-loving friend to the end, Nikki, is best known for
8 her love of people, her community and adventure.

9 "Mr. Manning is the only one that knows what
10 happened in Nikki's final hours. I believe that story
11 is still yet to be told.

12 On May 6th, 2009, Mr. Manning took Nikki's life on
13 earth, but he can never remove the love we have for Nikki.
14 nor the love she has given us. In the words Nikki used
15 often, Nikki McPhatter, your family, your friends, love
16 you, mean it."

17 THE COURT: Anything further from the State?

18 MR. GIESE: No, Your Honor. I think that says it
19 all.

20 THE COURT: Mr. Shealey?

21 MR. SHEALEY: Thank you, Your Honor. May it please
22 the Court. It's been a difficult case for everybody. We
23 respect the jury's decision. It's been difficult, the
24 ordeal, for everybody involved.

25 The only thing I'd like to say is that Theo, I've

1 got to know him through the course of my representation.
2 He has a ten-year-old daughter, and she's the one he
3 truly cares about.

4 His family is here in court, his mother and his aunt,
5 who have been here in support of him throughout this. I
6 can say that I think he regrets everything about that day
7 and the pain he has caused, the mistakes, terrible things
8 he has done.

9 I think he truly regrets what happened. I won't say
10 anymore. I just ask that you consider a sentence that
11 is lenient, and at the appropriate time, I think his mom
12 would like to talk, and co-counsel.

13 THE COURT: Mr. May?

14 MR. MAY: Yes. May it please the Court, Your
15 Honor. On May 6th, a tragedy really stole two people's
16 lives.

17 Mr. Manning understands that he's going to have to
18 pay dearly for his actions that day. He has understood
19 that since the first day that I met him.

20 He served three years in the Air Force. He has no
21 criminal record. Your Honor, we'd ask for a just
22 sentence. We'd ask for your mercy. This has been a tough
23 case, and I believe his mother that would like to address
24 the Court right now.

25 THE MOTHER: Yeah.

1 THE COURT: Who -- which one is the mother?

2 (Indicating)

3 All right.

4 THE MOTHER: Your Honor, my name is Annette Sanders,
5 and Theodore Manning is my son.

6 I would like to tell the family that I'm so sorry
7 for their loss, but my son didn't mean to do anything to
8 hurt your daughter or your aunt.

9 Theodore has been a good child all his life. He's
10 never been in trouble, and he's not a violent person. I
11 beg the Court, Your Honor, to please just be lenient on
12 him.

13 He has a ten-year-old daughter that he loves and who
14 misses him so much. He's always been a good father to
15 his child.

16 He has a background for his -- he's a Christian. He
17 has always attended church and everything, and I really
18 believe that he is sorry for what has taken place. I pray
19 that the Court be lenient on my son.

20 Thank you.

21 THE COURT: Yes, ma'am.

22 MR. SHEALEY: Your Honor, I do think Mr. Manning
23 would briefly like to address the Court.

24 THE COURT: Yes, sir. I'll be glad to hear from you.

25 THE DEFENDANT: I'd like to first apologize to

1 Nikki's family and friends. I really am sorry for all
2 the pain and suffering that I caused them.

3 I didn't mean to hurt Nikki. I do accept my
4 responsibilities for what I did do, though. I just pray
5 that maybe one day that they will forgive me.

6 THE COURT: Anything further?

7 MS. PRINGLE: Your Honor, I -- the only thing I would
8 say is he has been -- the one theme that is never-ending
9 with him is that he is so deeply ashamed and disappointed
10 in himself.

11 He knows how terribly he has let everyone down. He
12 is loved very dearly by his mother. She has been here
13 every day, every minute, except when we asked her to step
14 out during the testimony. She stayed right outside the
15 door.

16 Up to this point in his life, he has led a good life.
17 He loved his child. He had a great life, and it's
18 just -- it's a terrible thing for everyone.

19 THE COURT: Anything further?

20 MR. SHEALEY: No, Your Honor.

21 THE COURT: All right. Well, Mr. Manning, I agree
22 with the Solicitor. This is a horrendous case.

23 Had you stopped after the initial gunfire, thought
24 about what you've done, taken a different course of
25 action, I might have some sympathy for you, but based on

1 not only the taking of a life, but then the desecration
2 of the human body, and what took place thereafter, I have
3 no sympathy for you whatsoever.

4 The sentence of the Court is you be committed to the
5 State Department of Corrections for a period of 30 years.
6 Good luck to you, sir.

7 MR. GIESE: Thank you.

8 THE COURT: What's his date of arrest? Give me that,
9 please.

10 MR. MAY: May 29th.

11 MS. PRINGLE: Thank you, Your Honor.

12 THE COURT: 5/25/09?

13 MS. CAMPBELL: May 29th.

14 MR. MAY: Twenty-ninth.

15 THE COURT: Twenty-ninth?

16 MR. MAY: Yes, sir.

17 THE COURT: Credit for time served.

18 MS. PRINGLE: Your Honor, we would like
19 to -- previously we had asked to -- we are preserving all
20 of our post-trial motions in what we have tendered
21 today.

22 We are not waiving any right to file those with the
23 remaining ten days. I believe there was also a question
24 here where -- (inaudible).

25 COURT REPORTER: I'm sorry. I can't hear what you're

1 saying.

2 THE COURT: All right. Come to order, please.
3 Counsel is trying to address the Court.

4 Ten days.

5 MS. PRINGLE: Yes, sir, Your Honor.

6 I believe there was a juror question that -- addressed
7 to the Court. We were just wondering if we could have
8 that put on the record.

9 THE COURT: No. It was addressed to the Court only.
10 Thank you very much.

11 MR. MAY: Thank you, Your Honor.

12 MR. SHEALEY: Thank you.

13 MS. PRINGLE: Your Honor, just for the record, we
14 would object to not placing the question on the record.
15 We will file a --

16 THE COURT: It was a colloquy.

17 MS. PRINGLE: I understand, Your Honor, but I think
18 it would be appropriate if it was relating to the case
19 it be on the record, and I think I'm obligated to
20 object.

21 THE COURT: That's fine. It was addressed to the
22 Court only.

23 (Whereupon, the proceedings were concluded.)
24
25

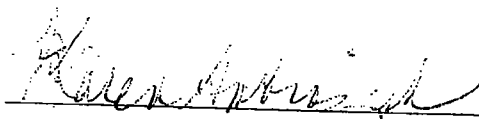
CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Karen Tracy, Official Court Reporter for the 5th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the General Sessions for Richland County, South Carolina, from October 4, 2010 to October 14, 2010.

March 1, 2011



Karen Ambroziak, Court Reporter

My Commission Expires: 04/01/14

WITNESSES

✓ (S) Isenhoward - RCSD

ARREST WARRANT NUMBER

M235247

ACTION OF GRAND JURY

TRUE BILL

Thelma H. Fields

Foreperson of Grand Jury

Date:

SEP 15 2010

VERDICT

Foreperson of Petit Jury

Date:

Amended
DOCKET NO. 2009-GS-40-4647

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

September TERM 2009

42

THE STATE

vs.

Theodore Manning

DOCKET NO. 2009-GS-40-4647

The State of South Carolina

County of Richland

Indictment for

MURDER

SC Code: 16-3-10

CDR Code: 0116

Class FEL/EXM(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

001820

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on SEPTEMBER 16, 2009, the Grand Jurors of Richland County present upon their oath:

MURDER

That THEODORE ROOSEVELT MANNING, IV did in Richland County on or about MAY 6, 2009, feloniously, willfully and with malice aforethought, kill one NIKKI/LATOYA MCPHATTER, by unknown means, and that the said victim died as a proximate result thereof. All in violation of §16-3-10, 20, *Code of Laws of South Carolina*.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

W. Bang

Warren B. Giese, SOLICITOR

001821

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE

VS.

Theodore Manning

AKA:

Race: B

Sex: M

Age: 31

DOB: 10/10/79

SS#: _____

Address: _____

City, State, Zip: _____

DL# _____

SID# _____

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Voluntary Maiming

in violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code # 0217

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant initial)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Janna McDuffie
Solicitor

Theodore Manning
SC Bar # _____ Defendant

Shirley Shale
Attorney for Defendant SC Bar # 75591

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	_____
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-289 (DUI Breath Test)	\$500	\$
\$35.13 (Public Def/Prob)	\$25	\$
\$73.3, 1B TP (Law Enforce. Funding)	\$25	\$
\$33.7, 1B TP (Drug Court Surcharge)	\$100	\$
\$50-21-114(BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$
\$90.11 TP (SCCJA Surcharge)	\$5	\$
TOTAL	\$	\$

Jeannette W. McBride
Clerk of Court/Deputy Clerk

Court Reporter: R. Tracy

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009 -GS- 40 - 4647

AWW#: M235247

Date of Offense: 5/6/2009

S.C. Code §: 16-3-10

CDR Code #: 0116

SENTENCE SHEET

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____
\$ _____ paid to Public Defender Fund

Other: _____

\$25 \$

☐ Appointed PD or appointed other counsel, \$35.13 TP
☐ Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE G. L. King

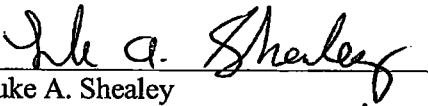
Judge Code: 2126

Sentence Date: 10-14-10

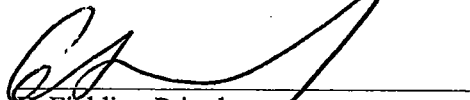
CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 13th, 2013



Luke A. Shealey
Assistant Public Defender



E. Fielding Pringle
Chief Public Defender

Richland County Public Defender's Office
1701 Main Street
Columbia, SC 29201

ATTORNEYS FOR APPELLANT

001823