

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of General Sessions
Doyet A. Early, III, Circuit Court Judge

Case No. 2013-GS-020-1664
Appellate Case No. 2014-000344

RECEIVED
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SC Court of Appeals

State of South Carolina Respondent,

versus

Frank Muns Appellant.

RECORD ON APPEAL

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VOLUME ONE OF ONE
PAGES 1-144

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WITNESSES

Aiken County Sheriff

Brad Wertz

Law Enforcement Case #: 13-018638

vs

DOCKET NO. 2013GGS0201857

The State of South Carolina
County of Aiken

COURT OF GENERAL SESSIONS

OCTOBER TERM 2013

ARREST WARRANT NUMBER

2013A0210200353

Oct 3, 2013

THE STATE

vs.

FRANK MUNS

ACTION OF GRAND JURY

TRUE BILL

For the People

CDR #: 3410

Indictment for

ATTEMPTED MURDER

\$ 16-03-0029(A)

VERDICT

Forfeiture of Grand Jury
Date: October 3, 2013

Forfeiture of Petit Jury
Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, L. J. Goddard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

FEB 17 2014

CCCP AGA, Aiken County, SC.
J. Stroma
Deputy Clerk

WITNESSES

Aiken County Sheriff

Brad Wertz

Law Enforcement Case #: 13-618638

DOCKET NO. 2013GS0201664

The State of South Carolina

County of Aiken

VS

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

OCTOBER TERM 2013

2013A0210200354

THE STATE
VS.

FRANK MUNS

ACTION OF GRAND JURY

TRUE BILL

Rennie M. Hall

CDR #: 0549

Indictment for

Foreperson of Grand Jury
Date: October 3, 2013

VERDICT

**POSSESSION OF A FIREARM DURING
THE COMMISSION OF OR ATTEMPT TO
COMMIT A VIOLENT CRIME**

§ 16-23-0490

J. STROM THURMOND, SOLICITOR

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, L. Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

FEB 17, 2014

L. Godard
L. Godard, Clerk of Court
CCCF, 160A, Aiken County, S.C.
Deputy Clerk

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Aiken

VS.

Frank Muns

AKA:

Race: White

Sex: M

Age: 48

DOB:

SSN:

Address:

City/State/Zip: Beech Island, SC 29842

DL#: 008270850

SID#: SC00363657

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or death

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS0201664

A/W#: 2013A0210200354

Date of Offense: 4/6/2013

S.C. Code §: 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Shefall, Virginia Lauren

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 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: 13-GS-02-1657☐ 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 18-55.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-23-20 or 16-23-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-11 (DUI Breath Test Fee)	\$50	\$
§ 56-5-294(2)(1) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 bc paid to Clerk during probation.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
THE STATE OF SOUTH CAROLINA

Plaintiff

vs.

FRANK MUNS, SR.

Defendant

IN THE COURT OF GENERAL SESSIONS
FOR THE SECOND JUDICIAL CIRCUIT
Indictment Number: 2013-GS-02-01664

VERDICT FORM

As to the offense of Possession of a Firearm During the Commission of or Attempt to
Commit a Violent Crime, we the Jury find the Defendant

_____ Not Guilty

☒ _____ Guilty

WE UNANIMOUSLY AGREE.

February 6, 2014

Richard W. Cuth
Foreperson

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

FEB 17, 2014

Liz Godard
C.C.C.P. & G.A., Aiken County, S.C.
Ann Sanders
Deputy Clerk

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Aiken

VS.

Frank Muns

AKA:

Race: White Sex: M Age: 48

DOB: [REDACTED] SS#: [REDACTED]

Address:

City/State/Zip: Beuch Island, SC 29842

DL#: 008270850 SID#: SC00363657

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Attempted Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS0201657

A/W#: 2013A0210200353

Date of Offense: 4/6/2013

S.C. Code § : 16-03-0029(A)

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSIn violation of § 16-03-0029(A) of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ § 17-25-45The charge is: ☒ As Indicted ☐ Lesser Included Offense ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation ☐ Negotiated Sentence ☐ Recommendation by the State

ATTEST: [Signature] 100435 Defendant [Signature] Attorney for Defendant 71861 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 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 formonths/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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waiver Hearing ☐ Ordered

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	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def Prob)	\$500	\$
§ 14-1-212 (Law Enforcement Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(B)(1) (Breath Test Fee)	\$50	\$
§ 56-5-2942(1) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

PTUP

days/hours Public Se

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 \$

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
THE STATE OF SOUTH CAROLINA

Plaintiff

vs.

FRANK MUNS, SR.

Defendant

IN THE COURT OF GENERAL SESSIONS
FOR THE SECOND JUDICIAL CIRCUIT
Indictment Number: 2013-GS-02-01657

VERDICT FORM

As to the offense of Attempted Murder, we the Jury find the Defendant

_____ Not Guilty

☒ Guilty

WE UNANIMOUSLY AGREE.

February 6, 2014

Richard W. Cole
Foreperson

If you find that the State has failed to prove beyond a reasonable doubt that the Defendant is guilty of the offense of Attempted Murder, you must consider whether the State has proved beyond a reasonable doubt that the Defendant is guilty of Assault and Battery in the Second Degree.

As to the offense of Assault and Battery in the Second Degree, we the Jury find the Defendant,

_____ Not Guilty

_____ Guilty

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

FEB 17 2014

Liz Godard
CCJP & G.A., Aiken County, SC
Deputy Clerk

WE UNANIMOUSLY AGREE.

February __, 2014

Foreperson

1 (The following proceedings were held February
2 4-6, 2014.)

3 THE COURT: The State may call its next case.

4 MS. SHEFTALL: Thank you, Your Honor.

5 The State calls the *State of South Carolina vs.*
6 *Frank Muns*. It is a true-billed indictment for
7 attempted murder, 2013-GS-02-01657, and a
8 true-billed indictment for possession of a fire
9 during the commission of a violent crime, Indictment
10 No. 2013-GS-02-01664.

11 THE COURT: Thank you, ma'am.

12 All the defendant is present, represented by
13 Mr. Routzong.

14 All right. Ladies and gentlemen, the State has
15 called for trial a case for attempted murder and
16 possession of a firearm during the commission of or
17 attempt to commit a violent crime. Mr. Muns, the
18 defendant, has pled not guilty to both of these
19 indictments. A plea of not guilty gives him the
20 constitutional protection of being presumed innocent
21 unless the State is able to prove his guilt to you
22 beyond a reasonable doubt.

23 Mr. Muns, if you would please stand and face
24 the jury panel.

25 (The defendant stands and faces the jury

1 given in this case, so help you God.

2 THE COURT: Please say, I do.

3 THE JURY (collectively): I do.

4 (Jury is sworn.)

5 THE COURT: Ladies and gentlemen, let me give
6 you just a few opening remarks before we tell you
7 where we're going and how we're going to get there.
8 First of all, let me remind you that the fact that
9 the defendant -- Mr. Muns has been indicted for
10 attempted murder and a possession of a weapon during
11 the commission of or an attempt to commit a violent
12 crime. Please bear in mind that this indictment is
13 simply the charging document by way this case comes
14 into the courtroom. He has pled not guilty to the
15 indictments, and obviously by pleading not guilty,
16 he has the constitutional presumption of innocence
17 unless the State is able to prove their case to you
18 beyond a reasonable doubt. And we will discuss what
19 reasonable doubt means and all of that at the
20 conclusion of the case.

21 Now, the way the case proceeds is because the
22 State has the burden of proof, they will present
23 their witnesses first. And the State will conduct a
24 direct examination of the witness, asking them
25 questions about the events. The defense attorney

1 has the right to cross-examine those witnesses.
2 Once the State has completed their case and
3 presented all of the witnesses, then the defendant
4 has the right, if he chooses, to present his own
5 defense, and then the defendant would call the
6 witnesses, they would directly examine them and the
7 State could then cross-examine those witnesses.

8 Sometimes after the defense's case has been put
9 up, the State would have a right to reply to
10 anything. That rarely happens and I doubt it would
11 happen in this case, but if it does, it's just a
12 very short witness to reply to something. That
13 would be all of the testimony.

14 Before the testimony starts, the State and the
15 defendant have the right to make an opening
16 statement. And that is not evidence in the case,
17 that's simply the lawyers' -- what they want to tell
18 you to look for, sort of their game plan as to how
19 they're going to try the case. It's a roadmap of
20 where they're going from A to Z. But that is not
21 evidence in the case, it's simply the lawyers'
22 explanation to you as to what to listen to and what
23 the case is about.

24 After all of the testimony has been completed,
25 then the lawyers will then give you their final

1 arguments. And the arguments at the end of the
2 case, that, too, is not evidence in the case; that's
3 simply them arguing their side of the case. Once
4 the lawyers have completed their arguments, then I
5 will give you a charge or an instruction on the law
6 in the case dealing with general constitutional
7 policies and general definitions dealing with
8 reasonable doubt and credibility of witnesses and
9 presumption of innocence and that sort of thing, and
10 then I would go in specifically to the elements
11 dealing with these two indictments, attempted murder
12 and possession of a weapon during the commission or
13 the attempt to commit a violent crime. So that's
14 sort of how the trial will flow.

15 I suspect that if we don't finish today, we
16 will certainly finish tomorrow. We plan to go today
17 until 12:30 or so. We'll break for lunch about an
18 hour and half and then go til about 5:00 this
19 afternoon depending on where we are in the case.
20 And if we have to come back tomorrow, then obviously
21 we will get started about 9:30. But we'll just sort
22 of see how we're running as the day goes on and try
23 to accommodate everyone as possible.

24 As I told you yesterday, my job is -- I'm the
25 judge of the law in the case. So I give you the law

1 and you have to accept the law as I give it to you.
2 If you come into the courtroom with some
3 preconceived idea about what the law is or what it
4 should be and it doesn't agree with what I tell you,
5 please set aside your preconceived ideas and accept
6 the law as I give it to you. I give you the law as
7 it currently stands in the state of South Carolina.

8 My other job is to rule on the admissibility of
9 evidence. The lawyers have to ask the questions and
10 present evidence that comply with our rules of
11 evidence and our rules of criminal procedure. Once
12 that evidence is admitted into the trial of the
13 case -- and the evidence from one witness may be one
14 thing and the next witness may be a different thing,
15 but it's all admitted into the trial of the case --
16 then that's where your job comes in. You are the
17 judges of the facts, as I told you yesterday, and
18 what you do by that is you have to sit and listen
19 and judge and determine what the true facts are in
20 the case. You judge the credibility or the
21 believability of the witnesses who testify in the
22 case. It's a job you do on a daily basis dealing
23 with wives, husbands, children, employees,
24 employers. You know how to tell when someone is
25 telling the truth.

1 Once all of the evidence is in and you
2 determine what those true facts are, you take those
3 facts and apply it to the law as I give it to you,
4 then you'll be in a position to render a verdict.

5 I try to run an efficient courtroom. We
6 started right on time this morning and we'll keep
7 the lawyers moving. But I'm not trying to run a
8 race, so if at any time during the trial of the case
9 you become uncomfortable, you need to use the
10 restroom, you just get tired of sitting, get tired
11 of listening to me, whatever, you get hot, cold,
12 please raise your hand and I'll make sure your needs
13 are met. We will take a morning break and then
14 break for lunch, take an afternoon break. The
15 breaks won't be that long because we want to keep
16 the trial moving.

17 I will ask that at the first break, I need a
18 foreperson, the foreperson from the regular jurors,
19 not the alternates. And I would ask that the 12 of
20 y'all select a foreperson who is simply someone who
21 acts as a spokesman or spokeswoman for the jury and
22 you head up the deliberations at the conclusion. I
23 will ask that you do not start deliberating or
24 talking about the case, discussing the case, doing
25 anything about the case while you're in the jury

1 room until all of the evidence has been presented
2 and the final arguments have been made and I've
3 instructed you on the law. So you can talk about
4 anything you want to back there, but don't talk
5 about the case until it's time to start
6 deliberating.

7 So we're going to start right now with opening
8 statements. Any objections to my opening remarks by
9 the State?

10 MS. SHEFTALL: Nothing from the State, Your
11 Honor.

12 THE COURT: By the Defense?

13 MR. ROUTZONG: No, sir.

14 THE COURT: Okay. I look forward to working
15 with you. Like I said, if anything -- if you get
16 uncomfortable, you can't hear, you get cold, you get
17 hot, any problem, raise your hand. Thank you.

18 All right. Ms. Sheftall?

19 MS. SHEFTALL: Thank you, Your Honor. May it
20 please the Court.

21 THE COURT: Yes, ma'am.

22 MS. SHEFTALL: Ladies and gentlemen of the
23 jury, good morning. The case you're about to hear
24 this morning isn't one of those who-done-it
25 mysteries like Matlock or the CSI shows, or any show

1 on television for that matter. These are real
2 events that happened to real people. And we know
3 who done it. And this isn't a love story either, at
4 least not the kind that I expect you're used to
5 hearing where everyone lives happily ever after.

6 The case you're going to hear today is about
7 Kim Turner, the victim, and how she was shot at
8 pointblank range in the ribcage while she was in the
9 driver's seat of her car, by that man, Frank Muns,
10 the defendant, a man that Ms. Turner has known for
11 34 years. He is her ex-husband and he is the father
12 of her four children. Fortunately, Ms. Turner
13 survived the incident and she's here today to tell
14 you her story. You're going to hear what happened
15 to her on Saturday, April 6th, 2013, shortly before
16 noon, 11:45 in the morning.

17 Now, you're going to hear parts of the State's
18 case from different people; you're going to hear
19 from a woman named Lisa Mason, she called 911;
20 you're going to hear from the EMT, his name was
21 Aaron Lemaster, and he was in the ambulance that
22 took Ms. Turner from where 911 was called to MCG,
23 Georgia Regents University Hospital in Augusta;
24 you're going to hear from Investigator Brad Wertz
25 with the Aiken County Sheriff's Office, you're going

1 to hear about how he conducted his investigation,
2 what conclusions he reached and why. And, like I
3 said, you're going to hear from Ms. Turner. She's
4 going to tell you what she was doing that morning,
5 the events leading up to the shooting, what caused
6 her to be at 107 Beard Road that morning and
7 everything in between. You're going hear about a
8 tense encounter between Ms. Turner and the defendant
9 that happened at the 107 Beard Road, at our incident
10 location, in the moments leading up to the shooting.

11 Ms. Turner is going to tell you about her
12 injuries that she sustained that day, she's going to
13 tell you how she left the hospital two days later
14 with a bullet still lodged in her rib and how later,
15 months later, it was removed and why, the impact it
16 had on her, and how it was a constant reminder of
17 what happened to her every day in between.
18 Generally that's what the State's case in chief is
19 going to -- you're going to hear from us this
20 morning.

21 Now I need to talk to you a little bit about
22 evidence. There's two main types; there's direct
23 evidence and there's circumstantial evidence. We'll
24 start with direct evidence. Direct evidence would
25 be Ms. Turner's testimony. She was there. She's

1 going to tell you what she personally experienced,
2 what she saw, what she heard, what she felt. The
3 other type of evidence, circumstantial evidence, is
4 a little bit more difficult to explain, but I'll try
5 two different ways. You're going to hear from
6 Investigator Wertz, like I said, and Mr. Lemaster,
7 the EMT. Neither of them were present when the shot
8 was fired, but based on what they saw and heard and
9 experienced after that, they can testify, you can
10 infer a conclusion from what they saw and
11 experienced after the fact.

12 Another way to explain it is this: The 14 of
13 you right now are sitting in a windowless room. You
14 cannot know for certain, you cannot directly hear,
15 see, feel, smell, experience what the weather is
16 doing outside right now. But let's say that that
17 back door opens and three people walk in, two of
18 them have umbrellas and they're wet, and the third
19 guy doesn't have an umbrella and his clothes are
20 wet, his hair is wet, his shoes are wet. None of
21 you can sit here and directly know for certain what
22 the weather is doing outside, but based on those
23 three people, the logical conclusion, the reasonable
24 conclusion, is that it's raining outside. That's
25 circumstantial evidence. It's an inference. It's

1 the logical conclusion, the reasonable conclusion,
2 from what you can experience and see.

3 The burden of proof is the next thing I want to
4 talk to you about. And you're going to hear that
5 phrase a lot today. The burden of proof is on the
6 State, on myself and my co-counsel. The burden is
7 beyond a reasonable doubt. All of those words in
8 that phrase are important. It is not beyond all
9 doubt. There are very few things in this world that
10 we know with absolute certainty, so a burden of
11 absolute certainty is not placed on the State. It
12 is a burden to convince you, to firmly convince you,
13 to convince you beyond a reasonable doubt that the
14 events happened as the State alleges they did.

15 As Judge Early just said and as he said to all
16 of you yesterday, there are two judges in this
17 courtroom. Judge Early is the judge of the law.
18 What he says the law is, you have to accept that as
19 the truth. The 12 of you, when you begin your
20 deliberations and throughout the course of this
21 trial, are the judges of the facts. And what that
22 means is, your job, collectively, to have a
23 unanimous decision all together as one is to
24 determine credibility, to find out who you believe,
25 what you believe, what you know to be true, what you

1 believe to be true. And that might sound like a
2 difficult task, but you do that every day, we all do
3 that every day. You know how to tell if someone is
4 telling you the truth or if they're lying. We do it
5 with spouses, parents, children, coworkers,
6 strangers we meet on the street. You know how to
7 tell if someone is telling the truth or lying. And
8 that's your job, that is your only job.

9 So as Judge Early said and as I just said, he's
10 the judge of the law. So if something that I say
11 conflicts with what he says about the law, go with
12 him. But generally I want to give you the elements
13 of what Mr. Muns is charged with so you can listen
14 for facts that go along with those throughout the
15 course of the trial.

16 He's charged with attempted murder. Attempted
17 murder is an attempt to kill another person with the
18 intent to kill them; with the mental status to kill
19 them, the mental state to kill them, with malice
20 aforethought. And I'm going to talk to you a lot
21 more about what those -- intent and malice and what
22 those words mean and where you can find that
23 information in the facts in closing. But I just
24 wanted to give you a roadmap, as Judge Early said,
25 so that you know where we're going throughout the

1 course of this trial.

2 Because it's not murder, because it's attempted
3 murder that the defendant is charged with, the State
4 has to prove to you a general intent in the
5 defendant's mind. Rather than a specific intent to
6 kill her, we need to prove to you only a general
7 intent that he intended to harm her with great
8 bodily injury, not specifically kill her. But we'll
9 go into that a lot more in closing.

10 The second thing that Mr. Muns is charged with
11 is possession of a weapon during the commission of a
12 violent crime. What you'll be asked to do with that
13 is you will need to determine whether you are firmly
14 convinced, whether you're convinced beyond a
15 reasonable doubt, that he had a weapon in his
16 possession during the events on April 6th, 2013.

17 As I told you, you-all are the judges of the
18 facts, you-all are here with your common sense this
19 morning. I expect when you came through security
20 downstairs you may have had to check your keys, your
21 wallet, your cell phone, your belt, maybe even your
22 shoes, but you didn't check your common sense. I
23 ask that you keep it with you, I ask that you listen
24 to everything through the lens of your common sense
25 this morning, I ask that when you go back to that

1 jury room and deliberate that you use your common
2 sense to determine who you believe. And at the end
3 of this trial, at the end of your deliberations, I
4 ask that you return a verdict of guilty for
5 attempted murder and possession of a weapon during
6 the commission of a violent crime. Thank you.

7 THE COURT: Mr. Routzong?

8 MR. ROUTZONG: May it please the Court.

9 Good morning, ladies and gentlemen. My name is
10 Michael Routzong. I'm a defense attorney with the
11 Aiken Bar. There are times when I am constrained to
12 agree with the State, and this morning is one of
13 those times. She's right; this is not a love story.
14 On the other hand, that doesn't mean it's a hate
15 story. Your job here today is to listen to all of
16 these witnesses. You have to listen the State's
17 witnesses and I believe you'll be hearing from
18 Mr. Muns, and you're going to be evaluating the
19 credibility of everything that everybody testifies
20 to. His Honor is right, what I say is just my spin
21 on it, what they say is just their spin on it.
22 You're here to look at the evidence, and that's all
23 you're here for, and to speak the truth, speak a
24 verdict -- give a verdict that speaks the truth.

25 One of things that I need to tell you is that

1 while you're sitting right here right now, you have
2 to presume that Mr. Muns is innocent. What does
3 that mean? Well, if you are sitting there presuming
4 that Mr. Muns is innocent, that means the State's
5 case is wrong, they got it all wrong, he's innocent.
6 That's the way you have to view all of this evidence
7 for the entire case until you guys go back there,
8 the Judge gives you your charges and he lets you go
9 back there and you start talking about it. And all
10 the way through that discussion you have to be there
11 with the presumption that they're wrong as you're
12 looking at this evidence because that's what it
13 means to presume somebody is innocent. And then
14 when all of you are ready collectively and you come
15 to a decision, then you render the verdict. Until
16 that moment, he's presumed innocent, they're wrong.
17 If you don't do that, ladies and gentlemen, you've
18 broken your oath. You've taken an oath to do just
19 that. That's how our justice system works. That's
20 what Mr. Muns deserves, that's what the State
21 deserves.

22 This case is one -- it's kind of like
23 Ms. Sheftall said: There are only two people who
24 were present when this happened. There's no NASA
25 photographs, there's no satellite, no known

1 photographs; you've got to go by what two people
2 say, you've got to give both of them a chance. She
3 says you're allowed to infer what may be the case
4 from the evidence that's presented. That's true.
5 But you can't look at that as an invitation to just
6 rubber-stamp whatever the State says is going on
7 because, remember, you've got to presume they're
8 wrong.

9 A couple things aren't in dispute: Ms. Turner
10 got hit by a bullet and Mr. Muns had the gun in his
11 hand. That's not in dispute this morning. The
12 question is, why did it happen? How did it happen?
13 That's what you're here to determine. Please listen
14 to all of the evidence. Please assume that they're
15 wrong all the way through your deliberations and all
16 the way through this trial today. Thank you.

17 THE COURT: You may call your first witness.

18 MR. SLOCUM: Thank you, Your Honor.

19 The State calls Lisa Mason to the stand.

20 LISA MASON

21 being first duly sworn, testified as follows:

22 THE WITNESS: I do.

23 THE CLERK: Have a seat in the witness box
24 stating your full name and spelling your last for
25 the Court, please.

DIRECT EXAMINATION OF LISA MASON BY MR. SLOCUM

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1 THE WITNESS: Lisa Mason, M-A-S-O-N.

2 DIRECT EXAMINATION

3 BY MR. SLOCUM:

4 Q. Ms. Mason, good morning.

5 A. Good morning.

6 Q. Where do you work?

7 A. I work for R&L Trucking.

8 Q. And where is R&L Trucking?

9 A. Beech Island, South Carolina.

10 Q. What do you do for R&L Trucking?

11 A. I strip wire.

12 Q. Can you explain that a little bit? What does
13 that mean to strip wire?

14 A. Copper wire from, like, wiring harnesses and
15 trucks, we have a machine that breaks the casing,
16 and I just pull the wire out.

17 Q. Is wire used for recycling purposes?

18 A. They recycle it.

19 Q. Okay. Where are you from are?

20 A. Martinez, Georgia.

21 Q. And where do you live right now?

22 A. Martinez, Georgia.

23 Q. Okay. How long have you lived in Martinez?

24 A. All my life. I was married 15 years and lived
25 in Beech Island.

DIRECT EXAMINATION OF LISA MASON BY MR. SLOCUM

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1 Q. So you're from Martinez, but you've spent some
2 time in Beech Island?

3 A. Right.

4 Q. Do you recall the day of April 6th, 2013?

5 A. Yes, sir.

6 Q. Where were you on that day?

7 A. At my boyfriend's house in Beech Island.

8 Q. And what is that address?

9 A. 121 Riverbend Drive.

10 Q. And that's in Aiken County?

11 A. Beech Island.

12 Q. What is your boyfriend's name?

13 A. Dawson Mullins.

14 Q. What happened that day that caused you to
15 become involved in this case?

16 A. We were on the way out the door to go
17 yard-saling and Kim pulled in the yard and said that
18 she had been shot, could I call 911.

19 Q. When you say Kim, who -- is Kim in the
20 courtroom today?

21 A. Yes.

22 Q. What is she wearing?

23 A. A black shirt. Ms. Kim Turner.

24 Q. Okay.

25 MR. SLOCUM: Your Honor, let the record reflect

CROSS-EXAMINATION OF LISA MASON BY MR. ROUTZONG

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1 Q. Let me ask it another way: You weren't
2 there when this --

3 A. Oh, about -- yeah. Yes, sir, from Ms. Turner.

4 Q. So what you know about that, you heard from
5 Ms. Turner?

6 A. Yes, sir.

7 Q. And you wrote a statement to law enforcement.
8 And one of things that you wrote in your statement
9 was Mr. Muns broke the window and he shot her.

10 A. Yes.

11 Q. And you know that because you heard that from
12 Ms. Turner?

13 A. Yes, sir.

14 Q. How far away do you live from her house or
15 Mr. Muns' residence at that time?

16 A. About three blocks maybe.

17 Q. Not very far?

18 A. No.

19 Q. How long have you known Mr. Muns?

20 A. Maybe seven years.

21 Q. And he knows where you live?

22 A. Yes.

23 MR. ROUTZONG: I don't have any other
24 questions, Your Honor.

25 THE COURT: Thank you.

DIRECT EXAMINATION OF AARON LEMASTER BY MR. SLOCUM

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1 A. She's the second row, second from the end,
2 black shirt.

3 MS. SHEFTALL: Your Honor, let the record
4 reflect that Mr. Lemaster is discussing the victim,
5 Ms. Kim Turner.

6 BY MR. SLOCUM:

7 Q. Mr. Lemaster, what did you observe when you
8 arrived on the scene at 121 Riverbend?

9 A. Whenever I first walked up, I noticed that she
10 was sitting in the front seat of her car. The
11 officer had the car door open. I could see the
12 window as I approached the vehicle. The window had
13 two different holes in it; one hole was about a
14 half-inch in diameter, and the other hole was
15 somewhere between three and six inches in diameter.

16 When I actually approached Ms. Turner, she said
17 that she had been shot. An officer was actually
18 holding pressure on her wound. He moved his hand
19 away, I was able to see a puncture wound directly
20 under her left breast, approximately around the 10th
21 to 12th rib.

22 Q. And what did you do next after you saw this
23 wound?

24 A. I treated her wounds, I placed my glove hand
25 over her wound to begin with. Whenever an occlusive

DIRECT EXAMINATION OF AARON LEMASTER BY MR. SLOCUM

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1 dressing was ready, I placed an occlusive dressing
2 over it to keep air from possibly going into the
3 chest cavity, and then we moved her to the stretcher
4 and then transported her to the hospital.

5 Q. What is an occlusive dress wound?

6 A. Occlusive dressing is just an airtight dressing
7 to prevent any air from entering the chest cavity.

8 Q. Does it help with bleeding?

9 A. Most of the time the bleeding is generally
10 stopped prior to, but it can help with the bleeding.

11 Q. Do you approach all EMS calls the same?

12 A. No. It really depends on the incident. A
13 gunshot wound would be different from a car wreck, a
14 car wreck would be different from a heart attack, so
15 on and so forth. It all depends on the incident.

16 Q. And why is that?

17 A. Every call is different. No patient is going
18 to present the same, every call is going to be
19 different.

20 Q. Is there a different procedure when treating
21 someone with a gunshot wound versus treating someone
22 on the scene of, say, a car wreck?

23 A. Absolutely. We try to treat all gunshot
24 victims for worst-case scenario. We don't actually
25 know the path that the bullet traveled when it

DIRECT EXAMINATION OF AARON LEMASTER BY MR. SLOCUM

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1 Q. But you didn't know, as you stated earlier,
2 what had happened with the bullet, what it may
3 have --

4 A. Right.

5 Q. -- punctured on the inside?

6 A. There's no way of knowing.

7 Q. About what time -- how long did it take to
8 leave 121 Riverbend to get to MCG?

9 A. We left 121 Riverbend at 12:25 and then arrived
10 at MCG at 12:41, so 16 minutes.

11 Q. What did you do when you arrived at MCG?

12 A. After we arrived, I moved Ms. Turner to C1 in
13 the emergency room which would be their first trauma
14 room over in the emergency room, and then I
15 transferred my patient care over to the ER staff
16 there.

17 MS. SHEFTALL: I beg the Court's indulgence,

18 Your Honor.

19 Mr. Lemaster, that's all of the questions that
20 I have for you.

21 THE COURT: Mr. Routzong, any cross?

22 MR. ROUTZONG: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. ROUTZONG:

25 Q. Good morning, sir.

CROSS-EXAMINATION OF AARON LEMASTER BY MR. ROUTZONG

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1 A. Good morning.

2 Q. I was looking in your notes and it said that by
3 the time you had gotten there, bleeding had stopped.

4 A. Yes, sir.

5 Q. You also write in your report that it looked
6 like the bullet stopped on to of her ribs.

7 A. That's the way it appeared at the time. Her
8 muscle had swollen over top of the ribs, just
9 basically closing off the entry.

10 Q. What does it mean lung sounds, LL clear, LU
11 clear, RL clear, RU clear?

12 A. Each area of your lungs will give off a sound
13 whenever you breathe. Basically I was just stating
14 that all of her lung sounds were clear, there were
15 no noises heard whenever I listened to her lung
16 sounds.

17 Q. What would you conclude from that?

18 A. There's really nothing that I can conclude
19 other than that they were clear.

20 Q. And her vitals were good all the way to the
21 hospital from the time --

22 A. Yes, sir.

23 Q. I'm sorry -- from the time you got there to the
24 time she got to the hospital?

25 A. Yes, sir. She never had a drop in her vital

DIRECT EXAMINATION OF BRAD WERTZ BY MR. SLOCUM

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1 Riverbend Road?

2 A. When I arrived, I observed a white four-door
3 Pontiac that had the driver's side front-door window
4 shattered and busted out.

5 Q. Did you talk to anybody on the scene?

6 A. I did. I spoke with Sergeant Hahn and Deputy
7 Worschel who were the initial responding officers.
8 Ms. Turner had already been transported to MCG for
9 treatment. Left on scene was a Theresa Mason and a
10 Janice Belger -- I believe that's how the name is
11 spelled -- and they were friends of the victim, that
12 the victim came to them and asked them to call 911.

13 Q. And as an investigator with the sheriff's
14 office, is it in your duties to process any crime
15 scenes?

16 A. It does fall within the realms; however, I had
17 a forensic investigator respond, Investigator Chris
18 Johnson, and he processed the scene for me.

19 Q. To your knowledge, were any pictures taken of
20 121 Riverbend Road?

21 A. He did. He photographed the vehicle and the
22 location of where it was sitting.

23 MS. SHEFTALL: Permission approach, Your Honor?

24 THE COURT: Yes, sir.

25 (State's Exhibit Nos. 1-12 marked for

DIRECT EXAMINATION OF KIM TURNER BY MS. SHEFTALL

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1 (The jury retires to the jury room at 11:49

2 AM.)

3 THE COURT: Anything for the record before we
4 break by the State?

5 MS. SHEFTALL: Nothing from the State, Your
6 Honor.

7 THE COURT: Mr. Routzong?

8 MR. ROUTZONG: No, sir.

9 (A luncheon recess transpired.)

10 THE COURT: Call your next witness.

11 MS. SHEFTALL: Thank you Your Honor. The State
12 calls Kim Turner.

13 KIM TURNER

14 being first duly sworn, testified as follows:

15 THE WITNESS: So help me God.

16 THE CLERK: Have a seat in the witness box.
17 State your full name for the Court spelling your
18 last.

19 THE WITNESS: My name is Kim Susan Turner,
20 T-U-R-N-E-R.

21 THE COURT: Ms. Turner, please speak up for me.

22 DIRECT EXAMINATION

23 BY MS. SHEFTALL:

24 Q. Ms. Turner, where do you live now?

25 A. I live at [REDACTED]

DIRECT EXAMINATION OF KIM TURNER BY MS. SHEFTALL

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1 Q. And where did you live on April 6th, 2013?

2 A. At 107 Beard Road, Beech Island, South
3 Carolina.

4 Q. What county is that in?

5 A. Aiken County.

6 Q. Why are you here today?

7 A. Because my ex-husband shot me.

8 Q. And who is your ex-husband?

9 A. Frank Muns.

10 Q. Can you describe to the jury what he's wearing
11 or point him out, please.

12 A. He's wearing a dark suit with a tie and a white
13 shirt. He's sitting between the two lawyers over
14 there. (Indicating)

15 MS. SHEFTALL: Your Honor, please let the
16 record reflect that Ms. Turner has identified the
17 defendant.

18 BY MS. SHEFTALL:

19 Q. Who were you married to last April?

20 A. To Tony Turner.

21 THE COURT: I'm sorry. Who?

22 THE WITNESS: Tony Turner.

23 Q. You were not married to the defendant, Frank
24 Muns?

25 A. No, we were not married at the time.

DIRECT EXAMINATION OF KIM TURNER BY MS. SHEFTALL

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1 Q. Why were you living at 107 Beard Road?

2 A. I lived there with my children. Tony and I
3 were separated, and we lived there with Frank. The
4 kids had to go back to school and they went to
5 school in Beech Island and in Jackson, and so we
6 lived there for them to go to school and because
7 Frank and I were supposedly trying to get together
8 and try to raise them as a family, trying to make a
9 bigger house for them to live in where they all had
10 their own rooms and so forth.

11 Q. Who are you married to now?

12 A. Still married to Tony.

13 Q. Can you tell me what you were doing on the
14 morning of April 6th of last year?

15 A. I was coming back from Augusta, Georgia.

16 Q. Where were you headed?

17 A. We -- I was going home. I had to -- spent the
18 night previously at a motel with Tony and I was
19 coming back home. I had to get ready for work and I
20 wanted to check on my children and make sure they
21 were okay. I had left them with my daughter and
22 so-called daughter-in-law. And she was babysitting
23 that night. I left for work and went and met Tony
24 at a motel and went and spent the night with him.

25 And then when I was coming home, I wanted to

DIRECT EXAMINATION OF KIM TURNER BY MS. SHEFTALL

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1 check on the kids. I had received text messages and
2 so forth that were scaring me. When we came out of
3 the motel room that morning, my mother's -- I had my
4 mother's car, and the mirror on the passenger's side
5 was on the ground. And Tony had went outside and
6 when he came back in the motel room, he had told me
7 that Frank had been out there and ripped the mirror
8 off the car. He had sent me some text messages and
9 he had tried calling and I didn't answer the phone
10 the night before.

11 Q. When you say he, who are you --

12 A. Frank had sent me some text messages that I
13 didn't answer. And like I said, he had tried to
14 call and I didn't answer the phone. Tony had asked
15 me to cut the phone off so he wouldn't -- we --

16 MR. ROUTZONG: Objection, Your Honor.

17 THE COURT: Hold on a second. Objection is
18 what?

19 MR. ROUTZONG: She's trying to say what he told
20 her.

21 THE COURT: Sustained. Don't testify about
22 what anybody told you, ma'am, just what you know.

23 BY MS. SHEFTALL:

24 Q. Let's go back a little bit. So you said the
25 night before. So what day would that have been?

DIRECT EXAMINATION OF KIM TURNER BY MS. SHEFTALL

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1 A. It was the night of April 5th.

2 Q. Okay. And you said that your children were
3 with your daughter-in-law?

4 A. I had left them that day when I went to work --
5 I worked from 2:00 to 10:00 at night. So I had left
6 them that day with my daughter-in-law, she was
7 watching them while I went to work. And then I had
8 already told her that I didn't plan on coming home
9 after work that night, I already had in my mind that
10 I was going somewhere that night.

11 Q. What's your daughter-in-law's name?

12 A. Her name is [REDACTED].

13 Q. Does she go by any other names?

14 A. She goes by Nicky.

15 Q. Okay. So Nicky was watching the kids. So
16 you -- the morning of -- let's get back to the
17 morning of April 6th. What if anything made you
18 feel like you needed to go by the house to check on
19 the kids?

20 A. Because, like I said, I needed to go home and
21 get a shower and get ready for work, for one thing,
22 and the second thing was because he -- I had gotten
23 text messages from Frank and I had read a few of
24 them that were threatening and a little scary to me.
25 I didn't know what kind of state of mind he was in.

1 It had been a lot going on for a long time and he
2 hadn't been in a rational state of mind for quite a
3 while. And I wanted to make sure they were okay.

4 And my phone had died on the -- on the way back
5 to the house, but I had stopped at Dollar General in
6 Beech Island to get a charger to charge my phone up
7 because I knew my battery was dying, and the lighter
8 in the car didn't work so I couldn't charge it. But
9 I had called Lisa who was here earlier and asked her
10 if she knew -- I couldn't get ahold to them. I
11 tried calling the house and couldn't get no answer
12 on the house phone, I couldn't get no answer on --
13 Nicky's cell phone was dead, so I was worried about
14 them. I didn't know -- make sure that everybody was
15 okay. And I had asked Lisa if she could send
16 somebody over there to check on them. And she
17 said that she had sent --

18 THE COURT: Ma'am, don't say what she said.

19 THE WITNESS: Yes, sir. But anyways, that's
20 why I went to the house. I needed to go home and
21 get ready for work, plus I had to make sure if they
22 were okay.

23 BY MS. SHEFTALL:

24 Q. And you said you hadn't been able to get them
25 on the phone?

DIRECT EXAMINATION OF KIM TURNER BY MS. SHEFTALL

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1 A. No, I hadn't.

2 Q. Do you mean the phone at the house?

3 A. I tried the house phone and I tried Nicky's
4 phone. And like I said, Nicky's phone was dead and
5 then the house phone -- nobody answered the house
6 phone.

7 Q. Okay. Thank you. Who if anyone did you tell
8 that you were going to go to 107 Beard Road, to the
9 home where you had been staying?

10 A. I told my mother and I told Lisa Mason on the
11 phone was going.

12 Q. What did Lisa want you to do?

13 A. She told me --

14 THE COURT: Ma'am.

15 Q. Without saying --

16 A. Lisa wanted me to go to her house --

17 THE COURT: Ma'am, you can't ask that question.
18 You can't testify to what somebody told you. Come
19 on. Let's do it right.

20 BY MS. SHEFTALL:

21 Q. What did you do after talking to Lisa?

22 A. I thought about going to Lisa's house and
23 taking a shower there and getting ready for work.
24 But I really felt uncomfortable not knowing if the
25 kids were okay because I couldn't speak to somebody

1 myself and I wanted to make sure if everything was
2 okay. So instead of going to Lisa's house, I went
3 straight to my house.

4 Q. What did you see as you were approaching 107
5 Beard Road, the house where you and your kids had
6 been staying?

7 A. When I turned in to Beard Road, I could see
8 where -- my trailer was here, to the back part of
9 the trailer, I could see Frank's truck sitting by
10 his mother's pool in the backyard. And I didn't see
11 him in it.

12 And like I said, I was already nervous about
13 going home. I was scared to go there because I knew
14 he knew where I had been and I knew that -- like I
15 said, he sent me threatening text messages. And so
16 I went around the side of the house. When I did, he
17 had -- there was a cable that -- he had my driveway
18 blocked and he had the cable up. We had put the
19 cable up previously to keep other people out, and
20 he -- I don't know. Obviously somebody had put it
21 up that night to keep me out that morning.

22 But because I couldn't go through my driveway,
23 I went past. And his mother owned the lot right
24 next to where my lot was. His mother owned that lot
25 too. And the kids used to ride their go-karts

DIRECT EXAMINATION OF KIM TURNER BY MS. SHEFTALL

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1 through there all the time, so there was already a
2 path. And I was going past that and I was going in
3 this way, and when I pulled in, trying to pull
4 around this way, he came from nowhere and blocked
5 me.

6 Q. Okay. Let me stop you right there for just one
7 second. You could not get into the driveway?

8 A. No.

9 Q. Because of that cable?

10 A. Right.

11 Q. You said there was a go-kart path. Is that
12 path what you used to access the property?

13 A. I was attempting to, yes.

14 Q. Okay. So as you're pulling into the go-kart
15 path off of Beard Road, you said that -- continue
16 from that point. Tell the jury what happened as you
17 pulled into the property.

18 A. When I pulled into the property, he came out --
19 like I said, he came out of nowhere and his truck
20 was right there and he jumped out of the truck and
21 his door was still open and he had the pistol in his
22 hand. And he came up to my car window and was
23 telling me I wasn't coming on this effing property.
24 And he said you were with that -- he always him
25 this, but, you were with that faggot motherfucker,

DIRECT EXAMINATION OF KIM TURNER BY MS. SHEFTALL

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1 he said. And I -- he was trying to bang the window
2 out of the car, and I rolled the window down and I
3 told him, I said, you're talking about me. I said,
4 you were with the nastiest, dirtiest dope whore in
5 Beech Island and have been with all of them. And I
6 said, you have no right to tell me what to do, you
7 can't tell me what to do anymore. I said, but I am
8 going home to my children.

9 Q. So suffice it to say, y'all quickly start an
10 argument?

11 A. We started arguing. Anyways, he went to hit me
12 with -- in the window. And when he went to hit me
13 in the window, I leaned over and I started rolling
14 the window all the way back up. And when I rolled
15 the window back up, he -- I didn't even know what we
16 were saying to -- we were still saying stuff back
17 and forth to each other through the window, but he
18 pointed the gun at me and looked at me straight in
19 my face and he caught the trigger and he smirked at
20 me. And when he did that, I thought he was going to
21 shoot me, so I leaned over again and closed my eyes.

22 Q. Well -- I'm sorry. Go ahead.

23 A. And I leaned over again and I felt -- I heard
24 the gun go off and I felt the spray all over me. I
25 thought it was -- glass had went all over me. And I

DIRECT EXAMINATION OF KIM TURNER BY MS. SHEFTALL

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1 went past in here and pulled in like around this way
2 to come in on this side property right here.

3 (Indicating)

4 Q. Okay.

5 A. And --

6 Q. Where did you put the number one?

7 A. I put the number one in here somewhere. It's
8 hard to see with the trees in the way. But right in
9 here somewhere was where he came from here, because
10 that's where his truck was -- when I seen his truck,
11 like, right through here, when I was turning into
12 the road, I could see his truck. It was swimming
13 pool right in here between the bus and the -- behind
14 his mother's house. (Indicating)

15 Q. Okay. Let me stop you right there. So you --
16 when you turned onto Atomic Road --

17 A. I could see right here and seen his truck back
18 here. (Indicating)

19 Q. And by the time you got from here -- from this
20 point on Beard Road right off of Atomic --

21 A. To here. (Indicating)

22 Q. -- to the point where you accessed the go-kart
23 path onto the property, his truck had gone --

24 A. From here --

25 Q. -- from here --

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1 A. -- all the way to here. (Indicating)

2 Q. Please try to stand to the side so all of the
3 jurors can see. I know it's difficult to do.

4 So to reiterate, to make sure everybody saw
5 that, from the time you got from this point right
6 off of Atomic --

7 A. Over here --

8 Q. -- to the point where you got -- where your --

9 A. Right here. (Indicating)

10 Q. -- right here where he stopped you the first
11 time, will you put a number one on that map there
12 for me?

13 A. (Witness complies).

14 Q. His -- Frank's truck, the defendant's truck,
15 went from right here on the property to blocking you
16 off?

17 A. Right.

18 Q. Okay. So you put the number one right here.
19 So follow the path from there. Where did you go
20 from that point?

21 A. After -- after -- after he shot me and I got in
22 the car and took off and I went and I pulled right
23 behind the trailer back here. (Indicating)

24 Q. And this is the trailer?

25 A. That's the trailer. And I pulled behind the

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1 trailer right here. And then we had a back porch
2 back there. And that's when I opened the door and
3 was screaming for someone to call the police, that
4 he had shot me. And then from there --

5 Q. And is that where you put the number two on
6 this map?

7 A. That's where I put the number two.

8 Q. Okay.

9 A. And then from there, when I seen him coming
10 towards me with the gun still in his hand and
11 yelling at me, from there I took off and I skidded
12 out and took off this way and went -- on the side of
13 his mother's house right here is another drive. She
14 has a drive on this side and a drive on that side.

15 (Indicating)

16 Q. And this is his mother's house?

17 A. That's his mother's house back here.

18 Q. Okay.

19 A. And I took off through here and went this way
20 where his truck had previously been, and took off
21 and went out the drive this way and went this way on
22 Oak Drive where it loops all the way around and
23 comes back on Beard. (Indicating)

24 Q. Okay.

25 A. And I flew past him because his truck was still

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1 out there. And I flew past going back by --

2 Q. So you essentially circled the block, came back
3 up Beard Road, the opposite direction of the way you
4 first come down it. And when you got to this point,
5 you said you saw his truck still there?

6 A. Yes. I was -- I was seeing -- when was flying
7 by as fast as I could, I was still scared that he
8 might chase me out the road if he seen me go back by
9 again.

10 Q. All right. So from that point, what did you
11 do? You --

12 A. After that, I took off down here. (Indicating)

13 Q. I know it goes off the map, but is that --
14 that's the road you took to go to Lisa Mason's
15 house?

16 A. Right. And actually, if that's the next
17 street, I went past Oak and went on up and the next
18 street over is going down to Lisa's house. She
19 lives in Riverbend right down there. (Indicating)

20 Q. Okay. Thank you. You can go back to your
21 seat.

22 Ms. Turner, what did you think the defendant
23 was going to do if he caught up to you?

24 A. I thought he was going to shoot me.

25 Q. Why?

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1 A. Because after he shot me the first time, he
2 wasn't going to stop. He had the gun pointed at me
3 to shoot me again. There was no remorse, no
4 nothing. He wanted -- he was still angry. He was
5 still wanting to shoot me. And I kept thinking to
6 myself, at first, I couldn't believe he shot me. I
7 kept saying, well, he needs to kill me because he
8 pointed the gun at me again to shoot me again.

9 Q. What did he look like -- when you say he was
10 angry, what made you think that?

11 A. He had the devil in his eyes. It looked like
12 looking at a pure demon.

13 Q. So once you get to Lisa Mason's house, she
14 called 911 -- and we all heard that earlier -- and
15 we heard from Mr. Lemaster, the EMT who was in the
16 ambulance, did you go to the hospital?

17 A. I did.

18 Q. What hospital?

19 A. To MCG.

20 Q. Okay. What injuries did you have?

21 A. I had a gunshot or a bullet still lodged inside
22 of me, hit my ribcage underneath my left breast, and
23 I had some kind of spray that's -- I had some kind
24 of spray. I'm still not sure what it was from. It
25 looked like birdseed or birdshot or buckshot.

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1 That's why I said buckshot because I didn't know
2 what it was. Nobody could really tell me. But it
3 was like black seeds sprayed all over my arm and my
4 chest right in here. (Indicating)

5 Q. How long were you in the hospital?

6 A. Two -- I think they kept me two or three
7 nights. I can't even remember exactly.

8 Q. Did you ever go back to a doctor after that?

9 A. I did.

10 Q. In relation to these injuries?

11 A. I did.

12 Q. What did they tell you about that bullet?

13 THE COURT: Ma'am, she can't testify to that.

14 MS. SHEFTALL: I apologize, Your Honor.

15 BY MS. SHEFTALL:

16 Q. Was the bullet -- where was the bullet when you
17 left the hospital?

18 A. It was still lodged into my ribcage right
19 outside of my -- above my ribcage up here.

20 (Indicating)

21 Q. And how long did the bullet stay there?

22 A. Till it was taken out in November.

23 Q. Why was it taken out in November?

24 A. Because it was causing me pain because I
25 couldn't lay on my stomach because it caused pain

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1 and because when they took the bullet out, it had
2 been abscessed. But it was causing like heated
3 infection and I was sore and getting sick from it,
4 and it would, like, flare up. And if I got a cold
5 and coughed, it would cause a lot of pain.

6 Q. How often did you feel it?

7 A. The bullet?

8 Q. Right. During the time that it was still
9 lodged in your rib, how frequently did you feel it?

10 A. Every day.

11 Q. You just told the jury that the bullet was
12 removed in November of last year.

13 A. Yes, ma'am.

14 Q. Did you see the bullet when the doctor took it
15 out?

16 A. I did.

17 Q. What did you think when you saw it?

18 A. I was shook up pretty bad because I seen how
19 big it was and I realized that my kids could have
20 lost their mother and their father that day.

21 MS. SHEFTALL: Permission to approach, Your
22 Honor?

23 THE COURT: Sure.

24 BY MS. SHEFTALL:

25 Q. Ms. Turner, I'm going to show you a few of

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1 these exhibits that have previously been entered
2 into evidence, and you just tell me whether these
3 look familiar to you. These are -- State's Exhibit
4 3, do you know what that is?

5 A. Yes. That's my mother's car after he had shot
6 me.

7 Q. And State's Exhibit 12, what's that one?

8 A. That's the inside of the window.

9 Q. Would that have been your viewpoint from inside
10 the car?

11 A. It would have been.

12 Q. Okay. State's Exhibits 14 through 18, tell me
13 what those are.

14 A. This is the trailer I lived at with my
15 children. And the trailer in front is the trailer
16 we had purchased to -- we were supposed to put the
17 two trailers together at one time and try and build
18 one home out of it. That's the driveway to get into
19 my house and that's the cable that was put up that
20 night. That morning when I got in, it was pulled
21 up, it wasn't laying on the ground, so that I
22 couldn't get in. And that's the side right here.

23 And in here, there was all logs right in here.
24 We had cut this tree back here. We had logs up in
25 here trying to keep people out. (Indicating)

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1 Q. Tell me what exhibit that is that you're
2 talking about right now.

3 A. This is exhibit 16.

4 Q. 16. Okay.

5 A. And this is where I came around. This is where
6 the go-kart path was. And that's where I had come
7 around originally. I couldn't get in here because
8 of the log up against the -- blocking that area fell
9 on the ground this way. And that's where I came in.
10 That was the fire pit, which was different at that
11 time.

12 But he had stopped me when I was coming around
13 this way. About right in here somewhere, he had
14 stopped me and came flying from in here and stopped
15 me right in here. And then -- (Indicating)

16 Q. What exhibit?

17 A. Number 17, this will show you -- that's the --
18 this picture they took that day, this was the power
19 pole right here that was on the line. I was right
20 here somewhere and his truck was in here somewhere
21 and I had to jump over that power pole. And part of
22 that fire pit, which you can't tell in this picture,
23 but it was pretty deep. But part of that fire pit
24 right there -- and I came out this way to back
25 around to get back behind my house.

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1 Q. Okay. I'm going to hand you State's Exhibit

2 21. Tell me what that picture shows.

3 A. That's the back behind the house, the -- back
4 behind my house is where -- right in here is where I
5 stopped and was hollering --

6 Q. The second time --

7 A. -- at the back door. The second time. I
8 stopped right here and was hollering for them to
9 call the police because he had shot me.

10 Q. And State's Exhibit 24, tell me what that one
11 is.

12 A. That's where I took off and went around this
13 way. And about -- I went out this way and went on
14 the side. This is the driveway right in here behind
15 the bus. And I went through here and went out that
16 driveway right there --

17 Q. Okay.

18 A. -- and went out and down Oak Drive.

19 Q. Okay. And these are State's Exhibits 25, 26
20 and 27. Tell me what those three show, please,
21 ma'am.

22 A. This is my arm where it had little pieces of
23 black seed or pellet or something. We weren't --
24 nobody was sure what it was. And it was sprayed all
25 over on my chest. You can't see it from this

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1 picture.

2 And then this is some more of the pellets or
3 whatever that was in my hand, which that stayed in
4 there a really long time before it ever wedged its
5 way out. And then this is the bullet wound where
6 the bullet entered inside of me where he shot me at.

7 Q. Thank you, Ms. Turner.

8 MS. SHEFTALL: Your Honor, permission for
9 Ms. Turner to step down and allow the jury to see
10 these on the demonstrative.

11 (Witness steps down from the witness stand.)

12 BY MS. SHEFTALL:

13 Q. Now that the jury can look on with us, I wanted
14 you to identify these. But I want you to do it
15 again for me so the jury can see what you were
16 telling me. So what does this one show you?

17 A. My mother's car window after he shot me.

18 Q. Okay. And then State's Exhibit 12?

19 A. That's the inside view, my view, looking out
20 after he shot me.

21 Q. Okay. State's 14?

22 A. And this was where I came in on Beard Road.
23 This is the actual trailer that we lived in. And
24 like I said, that was the trailer his mother had
25 bought for us to make one home out of. We were

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1 supposed to add onto that trailer.

2 Q. 15?

3 A. This was the cable right here. It was
4 caught -- it's a heavy cable. And my driveway where
5 he blocked at and where it was blocked and I
6 couldn't get through.

7 Q. This cable right here --

8 A. Right.

9 Q. -- was --

10 A. It was caught. It was pulled all the way
11 across -- straight across, blocking the driveway.

12 Q. 16?

13 A. Right here, this is where -- at that time,
14 there were, like I said, logs going all the way
15 across this way where we cut up that tree. And I
16 had come in this way on this far end and came back
17 this way, and he come up this way and blocked me
18 right here. I was stopped right in here somewhere
19 and his truck was pulled up in front blocking me
20 from going any further.

21 Q. And is this --

22 A. And there was more logs and stuff out there
23 that way because all of that was different at the
24 time.

25 Q. Okay. Is this what the cable looked like when

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1 you arrived that day?

2 A. Right. And it was probably even tighter than
3 that at the time.

4 Q. State's 17?

5 A. This is -- this is one you can see better.
6 This is more how it looked like because, see, there
7 were logs and all still here where we had cut it up
8 that -- ones that weren't on the road. And I was
9 right in here, and he had pulled up and stopped me
10 right there. (Indicating)

11 Q. Which way was your car facing?

12 A. My car was coming in -- I was trying to turn
13 around and come in this way, so I was kind of coming
14 in this way. And he stopped me from trying to come
15 in and he blocked me right there. And this is where
16 I ran over the log right in here and run over
17 that -- part of that fire pit and took off and went
18 that way because he was standing there with the
19 car -- his truck door was open and I was trying to
20 avoid hitting him and hitting the truck door even
21 after he shot me and took off and went over the log.

22 Q. Do you recall whether that tarp was there?

23 A. I don't remember. I think I run it over. I
24 think it was laying on top of the fire pit at the
25 time. I think we had that -- I think that's why it

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1 was right there. (Indicating)

2 Q. 18? Is this a progression from what we just
3 saw?

4 A. Right. I took off from there and I went in
5 here. I went in here and pulled in behind -- behind
6 my trailer back there. (Indicating)

7 Q. Would this be the edge of the trailer in the
8 corner of the picture right here?

9 A. Yeah.

10 Q. Okay. 21?

11 A. And this is behind the house. This was behind
12 the trailer right here. (Indicating)

13 Q. Is this where you stopped the second time?

14 A. Right. I stopped right here and was hollering,
15 and my daughter came out on the back porch.

16 Q. Okay. And tell me, what is this right here in
17 the dirt?

18 A. That's my skid marks from me taking off out of
19 there. That's where I took off and went out that
20 way. (Indicating)

21 Q. State's 24? Is that a closer version of those
22 same --

23 A. It is. And you can see right here where I took
24 off and went out and went out this drive right
25 there. (Indicating)

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1 Q. Okay. So this is where you were stopped for
2 the second time?

3 A. Yes.

4 Q. And you looked back and you saw Frank coming
5 after you with the gun still --

6 A. He still had it in his hand.

7 Q. Took off in this direction, went around this
8 way, and went between these vehicles, this bus, and
9 this house?

10 A. Right.

11 Q. Out that driveway right there?

12 A. Right.

13 Q. And that driveway accesses Oak Drive?

14 A. Right.

15 Q. Okay. 25?

16 A. That's my arm with all of the scrap -- all the
17 shrapnel in it. I don't know what all -- and then,
18 like I said, there was a bunch of spray on my chest
19 right here too. It -- he didn't take a picture, but
20 you could see it.

21 Q. Did it look like your arm?

22 A. It did.

23 Q. 26, please?

24 A. Then that's the piece that had gotten in my
25 hand. On the other side, you can see right here, I

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1 had some other pieces that were in that hand also.

2 Q. And 27?

3 A. And that's the bullet wound where he shot me,
4 the bullet where it stayed lodged.

5 Q. Thank you, Ms. Turner. You may have a seat.

6 Ms. Turner, I'm going to show you what's been
7 marked as State's Exhibit 30 and entered into
8 evidence. Can you open this envelope, please,
9 ma'am, and tell me what you see inside.

10 A. This is the bullet that they took out of me at
11 MCG. And it's in the same container that it was in
12 when it -- the doctor put it in there after he took
13 it out of me.

14 Q. And that was in November, that surgery?

15 A. Yes, ma'am.

16 Q. Were they able -- was the doctor able to remove
17 the bullet through the same wound that --

18 A. No. They had to cut another incision in order
19 to remove the bullet. And he -- he was pretty
20 traumatized because he said that he normally
21 would --

22 THE COURT: Ma'am, ma'am, ma'am.

23 Q. Ms. Turner, without telling us what the doctor
24 said, just tell us whether he was able to remove the
25 bullet through the same hole.

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1 A. No, he wasn't.

2 Q. Do you have an additional injury as a result of
3 removing that bullet?

4 A. Right. I have a different -- I have a bullet
5 hole and I have a scar about that wide from where
6 they cut the bullet out of me. (Demonstrating)

7 Q. Thank you, ma'am.

8 MS. SHEFTALL: I beg the Court's indulgence for
9 just a moment.

10 BY MS. SHEFTALL:

11 Q. Those are all of the questions I have for you.
12 Please answer any questions Mr. Routzong has.

13 MR. ROUTZONG: Your Honor, may we approach for
14 just a second?

15 (Sidebar conference.)

16 CROSS-EXAMINATION

17 BY MR. ROUTZONG:

18 Q. Good afternoon, Ms. Turner.

19 A. Good afternoon.

20 THE COURT: Speak up for me, please, ma'am.

21 Q. I just have a couple questions. That gentleman
22 right there, that's your present husband?

23 A. Yes, it is.

24 Q. And you testified that you've been married to
25 Mr. Muns three times, divorced three times?

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1 A. Yes, sir.

2 Q. And presently married to him?

3 A. Yes, sir.

4 Q. And on this date, you were married to him?

5 A. Yes, sir.

6 Q. But you were living at Mr. Muns' residence?

7 A. I was living at my own residence. He wasn't no
8 longer living with us. He had been.

9 Q. But it was at Mr. Muns' property?

10 A. It's his mother's property; it's not his.

11 Q. I think you testified that on the night before
12 this incident, you had spent the night with

13 Mr. Turner, your husband --

14 A. I did.

15 Q. -- and during that time you got some voice
16 mails or text messages.

17 A. I did.

18 Q. And I think you characterized them as being
19 scary and threatening.

20 A. I did.

21 Q. And you got up the next morning --

22 A. I did.

23 Q. -- and you had -- you knew about those text
24 messages and the scary things -- the scary threats,
25 and your husband was still with you.

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1 A. He wasn't with me when I -- when I went home.

2 No.

3 Q. But he knew where you were going?

4 A. Yes, he did.

5 Q. Because you left him at the motel room?

6 A. We probably left around the same time. Yeah.

7 Q. I want to make sure I fully understand. And so
8 these folks fully understand, you took these things
9 very seriously. They were threatening and scary,
10 that's how you characterized it?

11 A. It wasn't the first time I've been scared.

12 Yes, sir.

13 Q. But you took them seriously?

14 A. Yes, sir.

15 Q. And yet your husband, Mr. Turner, stays at the
16 motel room, you go by yourself back to this
17 residence, and you were going -- I think you
18 testified you were going to take a shower.

19 A. I did. I had to be at work that day.

20 Q. But you didn't bring your husband?

21 A. He didn't live there.

22 Q. You didn't call the sheriff's office and ask
23 for an escort?

24 A. No, I did not.

25 Q. You testified that -- that -- was it at the

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1 motel room that the mirrors were broken on your car?

2 Is that what you testified to?

3 A. It was.

4 Q. I think you said they were laying down.

5 A. It was.

6 Q. But you didn't see what happened with those?

7 A. No, sir.

8 Q. And I think you testified that -- and I'm going
9 to try to find a couple pictures here. Bear with
10 me. That's a good one.

11 I'm going to show you what's already been
12 admitted as State's 14, 15, 16 and 17. This is
13 State's No. 14. Can you show the jury where you
14 were heading from? As you were going to the
15 residence, I think you were coming down that road,
16 you testified.

17 A. Where was I heading from? I was heading
18 from --

19 Q. And make sure the jury can see it.

20 A. I was heading from Augusta and I turned into
21 Beard Road.

22 Q. If I were on the road, you'd be heading towards
23 me right now. You hadn't turned in yet.

24 A. I wouldn't be heading towards -- I would be
25 heading from Augusta towards Beech Island, is the

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1 way I was coming.

2 Q. And if that picture was in your rearview
3 mirror -- let's look at it that way -- you'd be
4 heading towards me and I'd be standing here and that
5 would be in your rearview mirror?

6 A. Right.

7 Q. Thank you.

8 I'm handing up to you what's been admitted as
9 State's No. 16. That's not exactly how it looked
10 that day. I think you testified there was a lot of
11 debris and logs and everything around there. There
12 was also, I think you testified, obstructions. Can
13 you show us where those --

14 A. I did.

15 Q. -- obstructions were?

16 A. Right in here, we had placed logs that we had
17 cut like a fence.

18 Q. Yes, ma'am.

19 A. And then this -- this one -- this picture was
20 taken. There was a bunch of piles of logs and stuff
21 up here that were -- that was the pit itself, and
22 everything had been piled up on top of it. But,
23 yeah, there was some more debris and stuff right in
24 this area right here. (Indicating)

25 Q. Yes, ma'am. And didn't you testify that that

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1 cable that's right across that road, that was up at
2 that time?

3 A. It was.

4 Q. And you testified that you couldn't turn in
5 there.

6 A. You're exactly right.

7 Q. Now correct me if I'm wrong, but your testimony
8 is you had to keep driving -- if I'm going down this
9 road like this, you had to keep driving. And you
10 turn around and -- and --

11 A. Right, right here. I turned right in here,
12 right past this tree right here, and went in this
13 way because the kids had a go-kart path going
14 through there.

15 Q. Yes, ma'am. And you testified it doesn't look
16 that -- it looks a lot clearer in that picture, but
17 back then there was a lot more debris, there was --

18 A. There was a lot more debris.

19 Q. It was a pretty narrow, confined little --

20 A. It wasn't that narrow. We drove through there
21 more frequently than not --

22 Q. Just get one car --

23 A. Cars still go through --

24 Q. -- through there, easily --

25 A. Yeah. You could only get one car through

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1 there.

2 THE COURT: Hold on. Mr. Routzong, let her
3 finish before you ask. Ma'am, let him finish his
4 question before you answer.

5 THE WITNESS: Yes, sir.

6 THE COURT: The court reporter can't take down
7 y'all talking at the same time.

8 Rephrase the question.

9 BY MR. ROUTZONG:

10 Q. At least one -- you could get one car at a time
11 through that chokepoint. And it's kind of like a
12 chokepoint there?

13 A. Yes.

14 Q. Okay. And there's obstructions on each side?

15 A. Yes, sir.

16 Q. I know this is going to be hard for you to
17 guesstimate here. And I'm not asking you to guess,
18 I'm actually asking you to, you know, tell us what
19 you remember. But your testimony is Mr. Muns pulls
20 his car up -- his truck -- he's got a pickup truck;
21 right?

22 A. Yes, he did.

23 Q. He pulls it up here and you're coming through
24 that narrow spot. And he's pulling up up here
25 pretty close to your car?

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1 A. He was this way and my car was this way. He
2 cut me off before I could get around into that neck.

3 Yes. (Demonstrating)

4 Q. Yes, ma'am. And you didn't feel like you could
5 easily move forward? It was -- he was close enough
6 where there wasn't much distance between your truck
7 and -- I'm sorry, his truck and your car?

8 A. No.

9 Q. Yes, ma'am.

10 A. I could have moved forward, but I would have
11 run him over and hit his car door because he had his
12 truck door open.

13 Q. But there was an issue about you might be
14 running him over?

15 A. Exactly.

16 Q. What do you remember in terms of time? When he
17 pulls his truck up there and you're worried about
18 running him over and the door is open and all of
19 this is going on and the glass busts -- you know,
20 that's a good -- I meant to ask you about that. I'm
21 sorry.

22 Let me back up right there. You told -- you
23 told -- her name is Lisa, I believe -- that Mr. Muns
24 broke out the glass and then he shot you.

25 A. I never told Lisa that.

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1 Q. You heard her testimony today?

2 A. He told her that.

3 Q. So Mr. Muns got his truck, he pulls up there
4 and he's close, you're worried about running him
5 over, and the glass breaks and you hear a shot. One
6 way or the other, the shot or the glass breaks.
7 This is when this all happened. About how long were
8 you there? Can you tell me what you remember about
9 that?

10 A. I don't know how long it --

11 Q. Was it ten seconds? Fifteen seconds?

12 A. Probably five minutes.

13 Q. You were there for five minutes?

14 A. Probably so.

15 Q. You were there for five minutes? Okay.

16 Well, after that glass breaks, and I think you
17 testified you're trying to get the car in gear, and
18 Mr. Muns is still between -- he's still between your
19 car and his truck. He's trying to -- your
20 testimony, he's trying to get at you --

21 A. He was still standing at my window with the
22 pistol pointed at me when I sat back up and --

23 Q. And his truck is right behind you?

24 A. After he shot me.

25 Q. His truck is right back here.

CROSS-EXAMINATION OF KIM TURNER BY MR. ROUTZONG

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- 1 A. His truck is behind him and --
- 2 Q. Yes, ma'am. And he's trying to get into the
- 3 window; that's your testimony?
- 4 A. No. I said he had the gun still pointed at me
- 5 after she shot me.
- 6 Q. Yes, ma'am. But he's still right here, his
- 7 truck is behind him, you're still afraid --
- 8 A. Yes, sir.
- 9 Q. -- you get that car in gear. And then what
- 10 happens?
- 11 A. Then I floored it. I floored it and I went
- 12 over the wood that I was trying not to run over. I
- 13 run over that log and run over part of that fire pit
- 14 to get away from him. And I pulled up behind the
- 15 house and stopped because --
- 16 Q. Well, that's a good question. I wanted to ask
- 17 you, just about how far is it from -- I know we've
- 18 got photographs, but it's hard to tell sometimes.
- 19 The incident is back there, and you'd gone up this
- 20 way. About how far would you say that is?
- 21 A. It's not that far. It's from one lot to
- 22 another. But it was far enough that I thought he
- 23 would jump in his truck and leave after he shot me.
- 24 I didn't think that he would stay there.
- 25 Q. Well, how fast could you have walked it -- if

DIRECT EXAMINATION OF FRANK MUNS BY MR. ROUTZONG

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1 THE DEFENDANT: Frank Muns, M-U-N-S.

2 DIRECT EXAMINATION

3 BY MR. ROUTZONG:

4 Q. Frank, how old are you?

5 A. 48, almost 49.

6 Q. How many children do you have?

7 A. Four.

8 Q. Do you remember the night of April 5th? That
9 would be the night before this incident.

10 A. Yes, sir.

11 Q. What were you doing?

12 A. I was at my trailer in Beech Island.

13 Q. What did you do -- let's say after 6:00, what
14 did you do?

15 A. I run a few errands. The babysitter was at the
16 house. I was in and out of the house to the bus
17 working on stuff. I was supposed to be at work at,
18 like, 11:00 that next day. I was getting tools
19 ready, stuff like that.

20 Q. What time did go to bed?

21 A. Probably 1:00.

22 Q. What time did you get up on April 6th, the next
23 morning?

24 A. Around 8:00, 830.

25 Q. What did you do then?

DIRECT EXAMINATION OF FRANK MUNS BY MR. ROUTZONG

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1 A. I messed around the house a little bit and I
2 cooked breakfast. And around 9:00, 9:15 -- 9:15,
3 9:30, I went out and got some stuff ready to put in
4 the truck to get ready to go to work. I was
5 supposed to been at work at 11:00. And went back in
6 the house, check on the kids. Of course the
7 babysitter is still asleep, everybody is still
8 asleep but [REDACTED]; he's the one that gets up early.
9 And I was going to the store --

10 Q. Let me stop you right there. You say you were
11 going to the store. Were you in your truck?

12 A. Yes, sir. I was going to drive my truck.

13 Q. When you got into your truck and you started it
14 up, what did you do then?

15 A. I pulled around to the cable to let the cable
16 down to pull out and go to the store.

17 Q. And then what happened?

18 A. When I got to the -- almost to the cable, Kim
19 was coming down the road, so I stopped and I put my
20 truck in reverse. She got right to the cable and
21 swerved around. While I was backing up, she just
22 come around; she didn't stop. She drove down the
23 street a little bit to the end of the lot and was
24 pulling in.

25 Q. Let me show you what's -- let me show you

DIRECT EXAMINATION OF FRANK MUNS BY MR. ROUTZONG

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1 what's been admitted as State's Exhibit No. 15. Do
2 you recognize that?

3 A. Yes, sir; that's my place.

4 THE COURT: Speak up, please, sir.

5 THE DEFENDANT: That's my house.

6 BY MR. ROUTZONG:

7 Q. And what is that you're looking at right there?

8 A. This is my front driveway and this is the road
9 right here. They was standing in the road and took
10 the picture. This is my trailer and this is the
11 driveway to my house.

12 Q. What's that thing attached to the tree?

13 A. This is a cable -- a steel cable.

14 Q. Where's the other end attached to?

15 A. Attached to another tree up by this trailer.

16 (Indicating)

17 Q. Mr. Muns, if -- I guess if the -- right now I'd
18 be -- would I be walking parallel to the road?

19 A. The road, yes, sir.

20 Q. So if I come down this way, what do I have on
21 my left after I pass that tree?

22 A. This tree?

23 Q. Yes, sir.

24 A. There's another tree about three foot right
25 here -- well, it's not quite. But you can see it on

DIRECT EXAMINATION OF FRANK MUNS BY MR. ROUTZONG

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1 this shot, there's a group of trees.

2 Q. That's State's Exhibit No. 16?

3 A. Right. There's another group of trees. But
4 before this lot -- this lot's been cleaned up now.
5 Here's another photograph. I can show you what --
6 in between here where this was, this tree we had to
7 cut down because it was rotten and it was leaning on
8 the power lines. The tree was about this big. So
9 when we cut it down, we cut like three-and-a-half,
10 four-foot blocks. And I placed them down this road
11 and in between these trees, so if you wanted to pull
12 in, you couldn't go around this -- where the cable
13 is. I put the blocks right here so you couldn't
14 drive -- drive through. So it's like a fence, but
15 it's like logs about three foot high.

16 (Demonstrating)

17 Q. So when Ms. Turner is driving down the road and
18 you see her, where is her car at and where does she
19 turn in at?

20 A. She was coming here and about to turn in. But
21 when she saw me here, she swerved and went straight.

22 (Indicating)

23 Q. And how did she get into the property?

24 A. She goes down -- you can't quite see it, but I
25 think there's a tarp. Up behind here is where I had

DIRECT EXAMINATION OF FRANK MUNS BY MR. ROUTZONG

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1 the logs up. On my neighbor's property there's a
2 telephone pole. There was a little spot where you
3 could -- where the go-karts -- all my kids had
4 go-karts. And I wouldn't let them come out of the
5 driveway because they wouldn't -- they wouldn't
6 look to the right to see what was coming. When they
7 come around the house, they was just flying through,
8 so I made them start going this way so they wouldn't
9 get run over.

10 Q. About how wide is that go-kart path?

11 A. It's roughly four, five foot -- five foot,
12 maybe.

13 Q. Okay. A car can get through there?

14 A. Barely. I put the logs up so nobody could
15 drive in. They was -- I had this tree cut up and
16 there was big piles of limbs and some logs. And
17 people -- when I wasn't there, people would come in
18 and stealing wood. And I've had problems with --

19 Q. Let me stop you right there. I'm going to show
20 you what's been marked and admitted as State's
21 Exhibit 17, I believe. That's that area you're
22 talking about?

23 A. Yes, sir.

24 Q. What are all those things at the back end of
25 that picture?

DIRECT EXAMINATION OF FRANK MUNS BY MR. ROUTZONG

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1 A. Those are more logs that we cut up from this
2 tree. They're roughly four to five foot. I try to
3 cut them where I could cut them one more time then
4 split them for firewood.

5 Q. Where did you park your truck at?

6 A. I was here when she was first coming. But when
7 she passed -- when I seen her coming, I put my truck
8 in reverse. Then she whipped around, so I pulled in
9 here. I was going to pull in here to let the cable
10 down and let her in, but she went on past. So I
11 pulled in here. I was already here and she's coming
12 up this way, and I pull in to try to stop her,
13 because here is a septic tank. She knows it's --
14 this is a trailer lot -- an empty trailer lot. And
15 I got a pole right here beside the septic tank. You
16 can barely -- you can see the lid of it. So I put
17 the pole there so nobody would run over the top of
18 it. (Indicating)

19 Q. When you pulled your truck up in there, what
20 did you do next?

21 A. I got out of my truck. When she was pulling
22 in, I got out and said, stop.

23 Q. And where was she at?

24 A. She was in her vehicle.

25 Q. How close were you to your truck and her car?

DIRECT EXAMINATION OF FRANK MUNS BY MR. ROUTZONG

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1 A. When she first pulled in?

2 Q. Yes, sir.

3 A. I was standing beside my truck.

4 Q. And then what happened?

5 A. She pulled in and I said stop. And she had her
6 window down about this much. And she said, F you.

7 So I walk over to her car in between my truck -- my
8 truck door is here -- and she puts her car -- she
9 can't -- she pulls up -- like, my truck is here, and
10 when she pulled in, she can't go further anymore.

11 Her car was here and my truck was here, and she
12 wants to go around this way, but she can't make the
13 angle. So she pulls up probably to her rear quarter
14 panel with my -- the front of my truck. So I'm
15 telling her to stop, stop, but she won't stop.

16 She says fuck -- F you. She puts the car in
17 reverse, she turns her wheels, and the front of --
18 the front of her car comes back toward me.

19 Q. Now let me stop you right there. Where were
20 you, where was your truck, and where was her car?

21 A. I was on the front side of my truck door, she
22 was in her car, and the front of her car was coming
23 around toward me.

24 Q. About how much space are we talking about here?

25 A. At first when she come, it was maybe two and a

DIRECT EXAMINATION OF FRANK MUNS BY MR. ROUTZONG

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1 half feet. But she kept coming. And I got to the
2 car door and I said, stop, stop, stop. And she's
3 coming on around. And I said, stop. And right
4 there where she finally stopped and tried to pull up
5 again, it was no further -- I was -- my back was to
6 the truck and I had my hand on the car door. So it
7 was three feet, maybe -- three and a half feet.

8 Q. What were you afraid was going to happen, if
9 anything?

10 A. That she was going to smush me between the two
11 vehicles.

12 Q. What happened next?

13 A. She backs up again, and she's trying to angle
14 around my vehicle. Like, she couldn't because the
15 logs were up there; she had to back up a couple
16 times. She rolled the window up. But she won't
17 stop. She keeps putting it in forward and reverse
18 maybe three or four times. And I'm telling her to
19 stop and I hit the window a couple times and she
20 still won't stop. Once she -- she comes back around
21 and the front of her car was coming around and
22 pinning me between my truck and her car. I'm
23 telling her to stop, stop. She won't stop.

24 Q. So your testimony is you're afraid you're going
25 to get pinned between these two vehicles?

DIRECT EXAMINATION OF FRANK MUNS BY MR. ROUTZONG

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1 A. Correct.

2 Q. Frank, what did you do next?

3 A. I had a gun -- I had my revolver with me and I
4 pulled it out and hit her window. I was trying to
5 break her window to make her stop. I hit the
6 window -- I hit the window one time and she backed
7 up some more, I hit it again and she stopped, put
8 the car in forward, and I hit it again and the gun
9 discharged.

10 Q. I got a little cardboard cutout. This is not
11 to scale. I just want to ask you how you were
12 holding it. So if we can imagine that's the gun,
13 how were you holding that gun when you hit that
14 window?

15 A. I had the gun like this. And when I hit the
16 window, it was kind of like -- this is a little big.
17 I mean, it's almost -- it's about palm size. And I
18 hit the window with the barrel. And I had my hand
19 up here on the top. And the third time I hit it, it
20 discharged. (Demonstrating)

21 Q. Frank, did you try to kill Ms. Turner?

22 A. No, I did not.

23 Q. What were you trying to do?

24 A. Trying to make her stop. She knew better than
25 to pull around because I didn't want anybody running

DIRECT EXAMINATION OF FRANK MUNS BY MR. ROUTZONG

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1 over the septic tank. I had a telephone pole there.
2 And she run it over anyway. I don't see how she
3 didn't fall in -- it's just a fiberglass lid on the
4 top. I don't see how she didn't fall in the septic
5 tank.

6 Q. After the gun went off, what did you do?

7 A. When I hit the window and the gun went off, it
8 scared me. I dropped the gun. And the way I had
9 it, I thought it hit the window and ricocheted
10 toward me. I thought I got shot. So I did that and
11 she was -- when -- the last -- like, the last time I
12 hit it, she was already pulling forward. It's like
13 this much room. She finally angled around and got
14 straight to come past my vehicle, and she flies on
15 by. (Demonstrating)

16 Q. Where did you see her go then?

17 A. She drives -- she drives here, comes around.
18 She was here, she gets straight, she runs over this
19 and the septic tank, comes this way, comes around
20 here, around to the back of my house, and stops
21 close to the back door. (Demonstrating)

22 Q. What did you see then?

23 A. She stopped. It looked like she put the car in
24 park. She opened her door. And she had dropped
25 something in between her car door and her seat. And

DIRECT EXAMINATION OF FRANK MUNS BY MR. ROUTZONG

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1 she -- whatever she -- I don't know what she picked
2 up. And she yelled out the door, called the police,
3 call the police. She then slammed the door, put the
4 car in drive, and took out through my mother's yard.

5 Q. Frank, what did you do then?

6 A. I stood there a few minutes and I was, like, in
7 a daze. And I didn't think she got hit. So I
8 picked my gun up and I walked to the bus and went
9 into the bus and sit down to try to calm down.

10 Q. When did you become aware that something
11 actually did happen?

12 A. Probably three hours later, three and a half
13 maybe.

14 Q. Frank, did you turn yourself in to the police?

15 A. I was going to, but it was a Saturday and I was
16 going early in the morning and turning myself in to
17 the jail.

18 Q. But you didn't?

19 A. No.

20 Q. When did you actually encounter the police and
21 then they arrested you?

22 A. I was at a motel in Augusta, the same motel
23 they was at.

24 Q. When did that happen? When did you get caught?

25 A. April 28th.

CROSS-EXAMINATION OF FRANK MUNS BY MS. SHEFTALL

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1 Q. Frank, I just got a couple other questions.
2 Are you the same Frank Muns that has two convictions
3 for petit larceny?

4 A. Yes, sir.

5 Q. And a theft by taking in Georgia?

6 A. Yes, sir.

7 MR. ROUTZONG: I don't have any other
8 questions, Your Honor.

9 THE COURT: Cross?

10 CROSS-EXAMINATION

11 BY MS. SHEFTALL:

12 Q. Mr. Muns, you're a convicted felon, aren't you?

13 A. Yes, ma'am.

14 Q. Yet you just testified that you had a revolver
15 on you that day?

16 A. Yes, sir.

17 Q. You also have several long guns, don't you?

18 A. No, ma'am.

19 Q. You don't have a 20-gauge shotgun?

20 A. I do have, yes.

21 Q. You don't have a sawed-off shotgun?

22 A. No, ma'am.

23 Q. You load your own ammo, don't you?

24 A. No, ma'am.

25 Q. You've never loaded your ammo for a long gun or

CROSS-EXAMINATION OF FRANK MUNS BY MS. SHEFTALL

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1 a pistol?

2 A. No, ma'am. You need a machine for -- to put
3 the powder and the shot and everything in to
4 compress the bullets, and I don't have all that. I
5 don't load my own ammunition.

6 Q. You told the jury just a moment ago that you
7 had to be at work at 11:00 a.m. the morning of the
8 6th.

9 A. Yes, ma'am.

10 Q. What time was it then that you saw Kim coming
11 down the road?

12 A. It was roughly ten to 10:00 maybe, 10:15 maybe,
13 somewhere in that neighborhood.

14 Q. 9:50, is that your first number?

15 A. Maybe. Ten after 10:00, somewhere in there.

16 Q. And yet after this incident, you testified just
17 that you went to your bus to sit down to calm down;
18 is that correct?

19 A. I stayed -- I stayed -- after the incident, I
20 stayed on my property for at least 45 minutes.

21 Q. You just testified for Mr. Routzong that it was
22 approximately three and a half hours before you left
23 the property.

24 A. No, I didn't say that.

25 Q. You needed to calm down because you knew you

CROSS-EXAMINATION OF FRANK MUNS BY MS. SHEFTALL

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1 shot her, didn't you?

2 A. No, ma'am. I needed to calm down because we
3 just had a heated argument and I thought she was
4 going to run me over in the car.

5 Q. You saw her when she pulled up, didn't you?

6 A. I was going to the store and I seen her when
7 she was coming down the road, yes.

8 Q. Because you knew she was coming to the
9 property, didn't you?

10 A. I did not. She did not come home from work,
11 she did not call from work. I knew -- I found out
12 where she was. But I didn't know when she was
13 coming home.

14 Q. And you went to that motel in Augusta, didn't
15 you that night?

16 A. Yes, I did.

17 Q. And you knocked off the side mirror off her
18 mom's car, didn't you?

19 A. No, I did not.

20 Q. And you left her threatening voice mails and
21 text messages, didn't you?

22 A. No, I did not. My phone was dead. The only
23 reason I went to the motel -- my phone was dead.

24 Q. But it is --

25 A. I run out of minutes.

CROSS-EXAMINATION OF FRANK MUNS BY MS. SHEFTALL

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1 Q. It is your testimony today that you were at the
2 hotel in Augusta where Kim and Tony stayed the night
3 before the incident?

4 A. I went by there, yes, ma'am, to make -- to
5 see -- somebody had called me and told me they seen
6 her vehicle there, and I went by there to see for
7 myself if she was there.

8 Q. Because that made you mad, didn't it?

9 A. Not really. I was -- she didn't come home, she
10 didn't call.

11 Q. And you were mad about that, weren't you?

12 A. No, ma'am.

13 Q. You told the jury a moment ago that you had a
14 loaded 32 revolver on your person when you -- in
15 this altercation --

16 A. When --

17 Q. -- with the truck and the car and all that.

18 A. Yes.

19 Q. So with a loaded weapon, you decided that the
20 best way to keep her from hitting you was to
21 pistol-whip the window?

22 A. I tried to break the window. Yes.

23 Q. To get Kim to stop the vehicle?

24 A. Yes.

25 Q. Because you were trying to get in the vehicle,

CROSS-EXAMINATION OF FRANK MUNS BY MS. SHEFTALL

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1 weren't you?

2 A. No. I was trying to get her to stop the
3 vehicle. I was trying to keep from getting smushed
4 in between two vehicles.

5 Q. By beating the window with a loaded weapon?

6 A. To try to make her stop, yes. There was this
7 much room in between the two cars and she's pulling
8 back and forth. (Demonstrating)

9 Q. Can you show me again how you were hitting the
10 window with the gun?

11 A. If I can have the --

12 Q. Well, can you tell me if you were hitting it
13 with the barrel or the --

14 A. With the barrel, yes, ma'am.

15 Q. Okay.

16 A. I had it more in my palm -- in the palm of my
17 hand with the barrel this way. And I was hitting it
18 like this. (Demonstrating)

19 Q. Which way was the muzzle facing?

20 A. The barrel was facing down.

21 Q. Okay. So your testimony for the jury is that
22 you were hitting the window -- Kim's driver's side
23 window with a loaded revolver, barrel first?

24 A. Yes, ma'am.

25 Q. While she was in the driver's seat?

CROSS-EXAMINATION OF FRANK MUNS BY MS. SHEFTALL

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1 A. Yes, ma'am.

2 Q. It's your testimony that you hit the window
3 three times?

4 A. Yes, ma'am, three times with the gun and
5 probably twice with my fist before I got my gun.

6 Q. I believe it was your testimony that you were
7 trying to get her to stop so that she didn't run
8 over a septic tank. Is that correct?

9 A. At first when she was pulling in, I didn't -- I
10 didn't want her going and cutting through the lot.
11 That's the whole reason I put the logs down. I had
12 a water meter -- there's a water meter up by the
13 road and the septic tank, which got a fiberglass lid
14 on it, and if a vehicle rides over the top, it's
15 going to cave in. It's right here. This is the
16 septic tank right here. And over here by the road,
17 that's the water meter. (Indicating)

18 Q. The septic tank is buried?

19 A. It's buried but the top is -- it's maybe an
20 inch below the ground.

21 Q. And that's why you were trying to get Kim to
22 stop?

23 A. Yes.

24 Q. I believe you testified just a minute ago for
25 Mr. Routzong that you didn't know how Kim didn't

CROSS-EXAMINATION OF FRANK MUNS BY MS. SHEFTALL

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1 fall through the septic tank in the car -- in the
2 vehicle.

3 A. She jumped -- when she pulled -- when she
4 finally got around, she kinda jumped over the pole.
5 But I guess she was going too fast when she hit the
6 pole. And then she -- after she jumped over that
7 part, she come on around this way. (Indicating)

8 Q. So it's your testimony that she did in fact
9 drive over the septic tank?

10 A. Yeah. She hit the pole.

11 Q. But the septic tank fiberglass top didn't cave
12 in when she drive over it with her vehicle?

13 A. I don't know if she went right over the exact
14 top of it, because the pole was there -- the pole
15 was there to keep people from driving into it, and
16 she hit that. So I'm not sure if she was right over
17 the center of it or hit the side of it. I didn't --
18 I know she hit the pole.

19 Q. Mr. Muns, the septic tank fiberglass top didn't
20 break because she didn't -- because it wasn't there;
21 isn't that true?

22 A. No, it's not true. She stated that she run
23 over the pole herself.

24 Q. She did state that she ran over the pole,
25 that's correct.

CROSS-EXAMINATION OF FRANK MUNS BY MS. SHEFTALL

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1 A. She did.

2 Q. But not a septic tank.

3 A. The pole is right by the septic tank for -- to
4 keep people from running into the septic tank. The
5 pole is here and the septic tank is this -- is
6 under. You can see it right here. (Indicating)

7 Q. Is it your testimony that after you hit the
8 window upon the third time and it just discharged
9 that you dropped the gun?

10 A. Yes, ma'am.

11 Q. Because you were scared?

12 A. I thought I got shot.

13 Q. Where were your injuries?

14 A. I thought I got shot. I didn't have any
15 injury.

16 Q. You weren't shot, were you?

17 A. No. But when the gun went off, I thought it
18 ricocheted this way. But I didn't know it had went
19 in and shot her.

20 Q. You had a long gun on you too at the time,
21 didn't you?

22 A. No, ma'am.

23 Q. You testified that you heard Kim say call the
24 police?

25 A. Yes, ma'am.

CROSS-EXAMINATION OF FRANK MUNS BY MS. SHEFTALL

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1 Q. You also testified that you stood there for a
2 few minutes in a daze?

3 A. Yes, ma'am. And I seen her where she pulled
4 through my mom's yard and headed towards Beech
5 Island.

6 Q. You didn't see your daughter come out of the
7 back door of the trailer, did you?

8 A. No, ma'am. From that angle -- from there I
9 can't -- from where I was over here, I can't see the
10 back door of my trailer. I was kind of over here
11 where my truck was. And if you look that way, I got
12 a little -- I got about a 12-by-12 porch on the back
13 of my place and I can't see the back door from where
14 I was.

15 Q. Mr. Muns, you told Mr. Routzong that you had to
16 be at work at 11:00.

17 A. Yes, ma'am.

18 Q. You also told him that you then intended to
19 turn yourself in at 11:00?

20 A. No, ma'am.

21 Q. You testified that you waited for three hours
22 before you left the property.

23 A. No, ma'am. It was 45 minutes -- roughly 45
24 minutes when I left the property.

25 Q. And that you knew of the warrant for your

CROSS-EXAMINATION OF FRANK MUNS BY MS. SHEFTALL

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1 arrest at that point?

2 A. No, ma'am.

3 Q. But you intended to turn yourself in?

4 A. That's not what I said. I said it was at least
5 45 minutes before I left my residence and it was
6 three and a half hours -- three or three and a half
7 hours before I found out that she was shot and I had
8 a warrant for attempted murder, armed and dangerous.

9 Q. But you did testify that you intended to turn
10 yourself in?

11 A. Yes, ma'am.

12 Q. Then --

13 A. After --

14 Q. Yet you didn't turn yourself in 24 days --

15 A. Yes, ma'am.

16 Q. -- after that day?

17 A. Yes, ma'am.

18 Q. And you were, in fact, located in a different
19 state, weren't you?

20 A. Yes, ma'am. I had went to --

21 Q. And you evaded police for the entire 24 days
22 that you were on the run, did you not?

23 A. Yes, ma'am.

24 Q. Mr. Muns, you shot Kim to kill her that day,
25 did you not?

REDIRECT EXAMINATION OF KYLE [REDACTED] BY MR. SLOCUM

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CROSS-EXAMINATION

1

2

BY MR. ROUTZONG:

3

Q. Good afternoon, Mr. Muns. I just want to make
4 sure I heard correctly. You're saying you saw a
5 candle?

5

6

A. Yes.

7

Q. And a shot shell?

8

A. Yes.

9

Q. What gauge was it?

10

A. Twenty.

11

Q. It was a 20-gauge?

12

A. Yes.

13

Q. Did you see anything else?

14

A. There was a box of rounds on his dresser that
15 were 32.

16

Q. No other reloading equipment?

16

17

A. No.

18

MR. ROUTZONG: I don't have any other
19 questions, Your Honor.

19

20

THE COURT: All right. Anything on redirect?

21

MS. SHEFTALL: Two questions, Your Honor.

21

22

REDIRECT EXAMINATION

23

BY MR. SLOCUM:

24

Q. Had he completed any loadings at that point,
25 any pieces of ammunition?

DIRECT EXAMINATION OF KYLE [REDACTED] BY MR. SLOCUM

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1 A. No, ma'am.

2 MS. SHEFTALL: I beg the Court's indulgence.

3 No further questions, Your Honor.

4 THE COURT: Thank you.

5 Anything on redirect, Mr. Routzong?

6 MR. ROUTZONG: I don't have any questions, Your
7 Honor.

8 THE COURT: All right. You may step down.
9 Thank you, sir.

10 Next witness.

11 MR. ROUTZONG: The defense rests, Your Honor.

12 THE COURT: Anything in reply?

13 MS. SHEFTALL: Yes, Your Honor. The State has
14 one witness.

15 MR. SLOCUM: Your Honor, the State calls Kyle
16 [REDACTED] to the stand.

17 KYLE [REDACTED]
18 being first duly sworn, testified as follows:

19 THE WITNESS: Absolutely.

20 THE CLERK: Have a seat in the witness box.
21 State your full name for the Court spelling your
22 last.

23 THE WITNESS: Arthur Kyle [REDACTED], [REDACTED]

24 DIRECT EXAMINATION

25 BY MR. SLOCUM:

CROSS-EXAMINATION OF KYLE [REDACTED] BY MR. ROUTZONG

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1 Q. Kyle, how old are you?

2 A. I'm 14. I'm going to turn 15 [REDACTED].

3 Q. Are you in school anywhere?

4 A. Yes. I go to -- I'm in [REDACTED] grade at [REDACTED]

5 [REDACTED].

6 Q. And do you know Frank Muns, the defendant?

7 A. That's my father.

8 Q. You were in here just a minute ago. Did you
9 hear his testimony?

10 A. Yes.

11 Q. Have you ever seen your father load his own
12 ammunition?

13 A. I walked in his room for about 30 seconds to
14 tell him something, and I saw shotgun round, a
15 candle, and some shot on the table.

16 Q. What was he doing?

17 A. He was loading his own ammunition.

18 Q. How long ago was this?

19 A. I'd say about a week before the shooting.

20 Q. Is this the only time you've ever seen him do
21 that?

22 A. Yes, sir.

23 MR. SLOCUM: That's all of the questions we
24 have.

25 THE COURT: Cross?

1 A. Yes.

2 Q. And he was loading one when you walked in?

3 A. Yes.

4 MR. SLOCUM: That's all the questions I have.

5 THE COURT: All right. You may step down.

6 Any other witnesses in reply?

7 MR. SLOCUM: That's all from the State.

8 THE COURT: All right. That concludes all of
9 the testimony. Mr. Foreman, ladies and gentlemen,
10 we'll start at 9:30 or 10:00, whatever your
11 pleasure.

12 THE FOREMAN: 9:30, sir.

13 THE COURT: That's a good choice. We'll start
14 right at 9:30.

15 Second question, would you like some sausage
16 biscuits to eat before we start? Fruit, donuts, or
17 nothing?

18 THE FOREMAN: We want sausage biscuits.

19 THE COURT: All right. I'll have sausage
20 biscuits for everyone with hot coffee. We're going
21 to start right at 9:30, so if you wish to eat your
22 sausage biscuits, get here in time to eat them. I
23 can't let you bring them out here.

24 What we intend to do tomorrow as soon as you
25 get here at 9:30, we'll start, and have the final

1 arguments. They probably will be about the same
2 length as the opening statements were. Once we do
3 that, then I'll have my instructions on the law,
4 which is about 15 or 20 minutes, and then you will
5 be given the case to start deliberations. It just
6 depends what time it is to see how we run it. I can
7 order lunch for you and sort of wait to see how
8 you're doing. But once we start deliberating,
9 you'll stay back and deliberate until we finish. If
10 it gets close to lunch, we'll order something. I'll
11 let the girls make that decision.

12 I want you to have a wonderful evening. Please
13 don't go home and do any kind of research on the law
14 or anything else. Have a pleasant evening. Don't
15 deliberate, don't discuss, and I'll see you bright
16 and early at 9:30 in the morning. Thank you very
17 much.

18 (The jury retires to the jury room at 4:32 PM.)

19 THE COURT: Anything for the record before we
20 break for the evening by the State?

21 MS. SHEFTALL: No, sir, nothing from the State.

22 THE COURT: By the defendant?

23 MR. ROUTZONG: No, sir.

24 THE COURT: All right. The charge will be my
25 regular charge; judge and jury, presumption of

1 innocence, reasonable doubt, credibility of
2 witnesses, prior record of the defendant for
3 impeachment only, attempted murder and possession of
4 a weapon during the commission of a violent crime.
5 I'll have two verdict forms; we find the defendant
6 not guilty or guilty of the crime of attempted
7 murder and then one on possession of a weapon during
8 the commission of a violent crime. Anything else we
9 need?

10 MS. SHEFTALL: Your Honor, the State would
11 request an instruction on ABHAN, for the lesser
12 included.

13 THE COURT: What do you say, Mr. Routzong?

14 MR. ROUTZONG: If Your Honor considers that,
15 we'd also like an assault and battery first and
16 second, Your Honor. Those are all lesser includeds
17 as well. In addition, Your Honor, I think we've
18 elicited testimony from Mr. Muns, if the jury
19 believes it, that this was either an accident or
20 self-defense, Your Honor, or both. Actually, it
21 sounds -- it seems somewhat contradictory, but it is
22 kind of nested in -- one inside the other, I guess,
23 so to speak.

24 THE COURT: So what are you asking?

25 MR. ROUTZONG: Self-defense and accident, Your

1 Honor.

2 THE COURT: What do you say?

3 MS. SHEFTALL: Your Honor, I believe those are
4 mutually exclusive. I don't see how we can have
5 that.

6 MR. ROUTZONG: I guess the argument would run
7 like this, Your Honor: He's doing this act out of
8 self-defense. He's testified that he felt like he
9 was going to be crushed, but he's not intending to
10 shoot her, that that part of it was accidental. So
11 it's somewhat nested inside -- one inside the other.
12 He intends to break the window, he's testified to
13 that, but he did not intend for the gunshot to go
14 off.

15 THE COURT: If you believe him. Okay. I'll
16 consider it all this evening and let you know in the
17 morning.

18 MS. SHEFTALL: Thank you, Your Honor.

19 MR. ROUTZONG: Thank you, Your Honor.

20 (A recess transpired.)

21 THE COURT: Mr. Routzong, bring your client
22 out, please.

23 MR. ROUTZONG: Yes, sir.

24 THE COURT: All right. At the conclusion
25 yesterday, I told you that I would take under

1 advisement and do some research last night on the
2 request for a charge on self-defense and accident.
3 Let me address that first: In the case of *State of*
4 *South Carolina vs. David Dwight Smith*, decided in
5 2011, deals with the defense of accident. For the
6 defense to be excusable on the ground of accident,
7 it must be shown the injury was unintentional, the
8 defendant was acting lawfully and due care was
9 exercised in the handling of the weapon. I find as
10 a matter of law two things: He was not acting
11 lawfully, he was not authorized under the law to
12 have that weapon; secondly, there's no way, from the
13 evidence that he testified to, the uncontradicted
14 evidence, the way he was handling the weapon,
15 loaded, pistol forward, beating out a window, can in
16 any way be classified as using due care. So I find
17 as a matter of law that the defense of accident is
18 not applicable.

19 As to self-defense, I will not charge that.
20 The law is very specific on that. The elements of
21 self-defense or, first one being that the defendant
22 must be without fault in bringing on the difficulty.
23 If the defendant's conduct was the type which
24 reasonably calculated to and did provoke an assault,
25 the defendant would be at fault to bringing on the

1 difficulty, would not be entitled to acquittal on
2 self-defense.

3 In this case, the defendant was leaving the
4 premises when the victim appeared in her car and got
5 beyond him, turned in instead of leaving, he stopped
6 her, which without that stop the altercation would
7 never have been -- would never have happened. So I
8 find as a matter of law that he was not without
9 fault in bringing upon the difficulty.

10 Likewise, the third element of self-defense was
11 that the defendant had no other probable way to
12 avoid the danger of serious bodily injury than to
13 act as he did in this particular instance. I find
14 as a matter of law that the means by which he used
15 the pistol, even if you believe him, would be way
16 beyond the fact that he -- simply, all he had to was
17 get in his car, step out of way, or have left. So I
18 find that there were plenty of other avenues to
19 avoid the danger other than the means in which he
20 did it. So I will refuse to charge self-defense.

21 As to the lesser included offenses, as to
22 assault and battery of a high and aggravated nature,
23 under the new legislation, in order to prove assault
24 and battery of a high and aggravated nature,
25 obviously the State must prove beyond a reasonable

1 consider.

2 MR. SLOCUM: I believe that paramedic Aaron
3 Lemaster's testimony does satisfy that and puts
4 it --

5 THE COURT: I respectfully -- I don't think
6 he's qualified to talk about that.

7 MR. SLOCUM: Thank you, Your Honor.

8 THE COURT: All right. I'm going to stand by
9 my ruling.

10 Anything on the self-defense and accident,
11 Mr. Routzong?

12 MR. ROUTZONG: Yes, sir. In the context of
13 accident, to say that the defendant wasn't acting
14 lawfully, Your Honor, I'm not sure in what way he
15 wasn't acting lawfully.

16 THE COURT: Well, he was in the possession of a
17 weapon. And as I understand, he had been convicted
18 previously for a --

19 MS. SHEFTALL: Felony.

20 THE COURT: -- felony. And under the law of
21 this state and federal law, a convicted felon cannot
22 be in possession of a weapon.

23 MR. ROUTZONG: That's correct, Your Honor,
24 under federal law. But then the question is, what
25 does this statute mean by lawfully? It doesn't say

1 federal law or state law, it just says lawfully. I
2 think with that ambiguity, Your Honor, it should be
3 construed against the State.

4 In addition, Your Honor, it would be asking a
5 lot of the defendant to have to prove that he wasn't
6 handling the weapon properly when that was the only
7 object he had that he felt he had at that moment to
8 break that window to try to get her stop to keep him
9 from being pinned between these two automobiles,
10 which is what he testified happened. There is some
11 evidence that he was acting in a reasonable,
12 consistent way a reasonable prudent person would
13 have acted. It's for that -- that is in fact
14 something for the jury to decide.

15 THE COURT: Well, I find as a matter of law
16 that he was not by law allowed to have the weapon on
17 him, that is an unlawful act, and I also find as a
18 matter of law the way in which he used the weapon in
19 no way can be deemed to be in due care. But either
20 one of those prongs hasn't been met, that includes
21 the use of the defense of accident. I stand by my
22 ruling.

23 MR. ROUTZONG: And in the context of
24 self-defense, Your Honor, I know that you observed
25 and you felt that he -- the evidence showed that he

1 was at fault. But actually what he did, what he
2 testified to, was he parked his truck there just to
3 try to stop her from running over things that maybe
4 she wasn't aware that they were there. But he
5 didn't -- this is his property or his mother's
6 property, that he -- it's not that he was trying to
7 confront her, that's not his testimony. His
8 testimony is he's trying to stop her from running
9 over these septic tanks, I believe is one thing, the
10 water meter he testified to. Your Honor, that's not
11 bringing on the difficulty. And he's merely getting
12 out of his car trying to stop her and he's being
13 pinned, he testifies, in between these two vehicles.
14 By being pinned in between these vehicles, Your
15 Honor, he's met the second the prong because he's
16 actually in eminent danger of losing his life or
17 sustaining serious bodily injury.

18 Third, Your Honor, it's for the jury to decide
19 whether or not a reasonably prudent person would
20 have acted like he did. That would be the third
21 prong. And the fourth prong, that he had no other
22 means of avoiding the danger, losing his own life or
23 sustaining this injury, Your Honor, that's for the
24 jury to decide. He acted in the way that he -- the
25 only way, he testifies, that he thought he could

1 have acted.

2 THE COURT: I'm going to stand by my ruling.

3 Thank you.

4 Now, Mr. Muns, my understanding that the State
5 has agreed this morning -- listen to me carefully --
6 to allow you to plead to assault and battery in the
7 first degree, that carries up to ten years in
8 department of corrections. That is not an
9 85-percent, no-parole offense. You would be
10 eligible for parole, and Mr. Routzong can tell you,
11 but it's not serving ten years; it's a lot less than
12 that, and you would have credit for your time
13 served.

14 If the case goes to the jury, one of three
15 things is going to happen. You can ask me
16 questions. One of three things is going to happen:
17 You're going to be found not guilty on all charges
18 and go home; you're going to be found guilty of
19 assault and battery in the second degree, that's the
20 other option, that carries up to three years; or
21 you'll be found guilty of attempted murder, and that
22 carries up to 30 years and you'll do 85 percent of
23 whatever I sentence you to. So if I sentenced you
24 to ten years on that, you'd do eight and a half
25 years; if I sentenced you to 15, you'd do 12 or 13.

1 about. Here's the time. That call to 911 came in
2 at 11:50. So we'll say approximately 11:45, the
3 shooting occurred. The defendant would like for you
4 to believe that it occurred at 9:50 or 10:00 in the
5 morning, about two hours' difference. So the reason
6 for this confrontation between the two of them in
7 the yard. The State alleges that the defendant was
8 mad at Ms. Turner because he knew that she had been
9 in a motel with her legal husband the night before.
10 He knew and he sat right there and told you that he
11 knew. He sat right there and told you that he drove
12 to Augusta to see it with his own eyes.

13 He would like for you to believe that this
14 whole thing started because he didn't want her to
15 run over a septic tank. Ms. Turner told you about
16 some threatening voice mails and text messages that
17 she received from the defendant the night before the
18 incident, the night that he drove to Augusta to see
19 it with his own eyes. He says he didn't. The
20 defendant's own son, his 14-year-old son Kyle, sat
21 there yesterday, told you that about a week before
22 this incident, a week before his father shot his
23 mother, he walked into his father's room and saw him
24 making his own ammunition and saw the finished
25 product too. The defendant says he didn't.

1 The State alleges that Mr. Muns intentionally
2 shot Ms. Turner, that he cocked that hammer on the
3 revolver and he pulled the trigger. That's not an
4 accident and it certainly wasn't self-defense; he
5 meant to shoot her.

6 Now, I'm going to leave this up because the
7 next thing I want to talk to you about is what we
8 agree on. There's a lot, a lot more than the five
9 things -- five big things that we're really here to
10 decide. The defendant admits he had a 32 revolver,
11 he admits that it was loaded, he admits that he had
12 it in his possession at the time of the incident; he
13 admits that the night before he went to that motel
14 room and saw with his own eyes that his ex-wife,
15 when they were trying to work it out, had gone and
16 stayed the night with her husband; he admits that he
17 blocked her path with his truck as she pulled in
18 through that go-kart path, that four- or
19 five-foot-wide path because she had no other way to
20 access the property because the chain was up, she
21 couldn't get ahold of her kids, she wanted to check
22 on them. That's why she put herself there, that's
23 why she felt compelled to come back.

24 They both told you that the incident happened
25 in the same area, that the cars were aligned about

1 the same way. They both told you that an argument
2 ensued. There's a little difference in what was
3 said, who said it, but they both told you that words
4 were exchanged, heated words. They both told you,
5 we can all agree, that she was sitting in her car.
6 We all agree that he was standing next to the window
7 with a gun, a loaded gun. We both agree that her
8 window was up. Why is her window up? Because she's
9 scared? We both agree he sat here and told you
10 yesterday that he hit her driver's side window where
11 she is inches away with the barrel of a loaded
12 weapon. Does that sound like a man who's not angry?

13 Everyone agrees that Ms. Turner was shot.
14 Everyone agrees that she took a bullet to her
15 ribcage and that it stayed there for approximately
16 seven months. But we all agree that she was shot
17 with a bullet. We all agree that at that point
18 Ms. Turner takes off, she floors it. She wasn't in
19 park. Her car was running, it was in gear, that's
20 why when she hit the gas pedal, she accelerated
21 forward. She took off over that power pole right
22 there, around that burn pile. Everyone agrees with
23 how she wound up back behind that trailer.

24 Mr. Muns, the defendant, sat here yesterday and
25 told you the next thing that we agree about is that

1 she stopped right there. The defendant sat right
2 there and told you he heard her yell, call the
3 police. Ms. Muns told you -- Ms. Turner told you
4 the same thing and Lydia Muns told you the same
5 thing too. We all agree that she then took off
6 again through the property and exited the property
7 on the other road, Oak Drive.

8 Interestingly enough, we all agree that the
9 defendant wasn't arrested for 28 days. He sat right
10 here and told you that three hours after the
11 shooting, three and a half, he knew about a warrant
12 for his arrest. But he wasn't arrested for 28 days.
13 And he wasn't arrested at his house, didn't turn
14 himself in, he was arrested in Augusta. And we all
15 agree that there was about five minutes between the
16 time that Ms. Turner entered the property on that
17 go-kart path, got shot, and exited the property on
18 the other side. That's a lot. That is a lot that
19 we all agree about. That's a lot of facts that
20 aren't in issue at all.

21 So look back at this: Given all that we agree
22 about, which version jives with your common sense?
23 What's -- what makes sense? That's all we're asking
24 you to do today is to think about these things that
25 we differ on and everything that we agree about,

1 determine who you believe and what makes sense to
2 you.

3 I told you in my opening a little bit about the
4 law, a little bit about the elements of attempted
5 murder, talked a little bit about malice
6 aforethought, intent, those kinds of things. I'd
7 like to talk to you a little bit about that again.
8 But you're going to hear from Judge Early exactly
9 what law you should apply to the facts.

10 The elements of attempted murder, as I told you
11 in my opening, an intent to kill another with the
12 intent to kill -- I'm sorry. An attempt to kill
13 another with the intent to kill with malice
14 aforethought. So let's talk about intent for a
15 minute. Intent means what's going on in the
16 defendant's head as he -- as the act is committed.
17 When this gun is fired, what's going on in his mind?

18 Now, our Supreme Court in South Carolina has
19 defined it, and I want to read some language to you
20 so that you understand that there's lots of
21 different ways to think about intent, because no one
22 can know for certain what's going on in someone
23 else's mind even if they tell you because you still
24 have to determine whether you believe them.

25 Intent: With attempted murder, all of the

1 intent needed to find him guilty of attempted murder
2 is that he had an intent to commit serious bodily
3 injury. Firing a gun at pointblank range through a
4 car window to someone seated in the driver's seat,
5 does that show you evidence of what was going on in
6 his mind? Does that show you evidence that he
7 intended to commit serious bodily injury to her?
8 She was shot in the chest cavity, ladies and
9 gentlemen. An inch to the left, right, up, down,
10 and Ms. Turner might not have been here to testify.
11 The State doesn't have to prove that the defendant
12 intended to kill her. We don't have to prove that
13 he pulled that trigger intending to kill her. But
14 if you believe that he pulled that trigger intending
15 to hurt her when he shot her in the chest cavity,
16 all of the vital organs and everything contained in
17 there, that's attempted murder. That's the intent
18 that you need to find him guilty of attempted murder
19 because, as our courts have defined it, each of us
20 is responsible for the natural consequences of our
21 actions, each of us is. The defendant is
22 responsible for the natural consequences of his
23 actions. He is responsible for what naturally
24 follows when he points a loaded weapon at someone
25 and pulls the trigger.

1 The next part of the law that I want to talk to
2 you about is malice, malice aforethought. It can be
3 kind of hard to wrap your mind around, which, again,
4 is why I'm going to read you some of the ways that
5 our Supreme Court has defined malice aforethought,
6 so that you can understand. There's lots of
7 different ways to think about it. They've defined
8 malice as ill-will, a wicked or depraved spirit,
9 intent on doing wrong, doing a wrongful act without
10 justification or excuse, a recklessness for the
11 lives and safety of others. It's malice if he
12 committed an act which has a natural tendency to be
13 fatal to another. Shot to a chest cavity,
14 recklessness for the life and safety of another.
15 Malice can be demonstrated by circumstances showing
16 a reckless disregard for human life that a
17 reasonably prudent man or woman would have known was
18 likely that death could follow the act. We have
19 12 -- 14 reasonably prudent men and women with you,
20 the jury.

21 The second part of that phrase in malice
22 aforethought is aforethought. In South Carolina
23 aforethought can be formed in an instant, a split
24 second is all the aforethought needed. He didn't
25 have to plan ahead. If the instant before he pulled

1 that trigger he had ill-will, a wicked, depraved
2 spirit, intent on doing wrong, a recklessness for
3 the life and safety Ms. Turner, if in that instant
4 before he pulled the trigger you believe that, then
5 he's guilty of attempted murder.

6 Judge Early is going to tell you a lot about
7 the law of attempted murder. He's also going to
8 tell you the law of assault and battery in the
9 second degree. Assault and battery in the second
10 degree is committed when someone unlawfully injures
11 another and moderate bodily injury results. There's
12 no intent needed. That's why I wrote this in all
13 caps, ladies and gentlemen, is because to get down
14 to the point of the matter, when you go back there
15 to your jury room and you deliberate, what the 12 of
16 you are going to be deciding is whether you believe
17 that he intended to do it, because if he intended to
18 pull that trigger and he did so in a way that was
19 reckless or could have caused serious bodily injury
20 or all those other ways that I just described to
21 you, then that's attempted murder.

22 Now that I've told you a little bit about the
23 law, I want to go back through the facts with you
24 because it's a lot easier, I think, to understand
25 all of these legal phrases in a context and in the

1 context of the facts. How can you, the jury, look
2 at these facts as the judges of the facts and apply
3 it to the law? What facts do you have in evidence
4 that show you, that prove to you, what was going on
5 in the defendant's mind that he intended to shoot
6 her?

7 Let's start the night before. He heard -- the
8 defendant heard that Ms. Turner was in Augusta in a
9 hotel with her husband. He drove to Augusta to see
10 it with his own eyes, but he testified to you
11 yesterday right here under oath that he wasn't
12 angry, that that didn't make him angry when he saw
13 their cars at the motel parking lot. He had to see
14 it with his own eyes. You heard Ms. Turner testify
15 about threatening, harassing voice mails and text
16 messages that he she got that night at the motel;
17 that the side mirror of her vehicle, the same
18 vehicle that the next day would be shot into, the
19 side mirror of that vehicle had been knocked off and
20 was hanging by a wire on the ground, that it was
21 completely off. Does that sound like an act of
22 somebody who is not mad? Is that what happy people
23 do?

24 The next day, the next morning, Saturday
25 morning, Ms. Turner told you that as she turned off

1 of Atomic Road onto Beard Road, when she turned and
2 she made that turn, she saw the defendant's vehicle
3 back on the property near his mother's house. You
4 will have a map back there with you so that you can
5 see all of this. By the time she made it to the
6 go-kart path, his truck, which had been back by the
7 swimming pool, by the swingset is what she told you,
8 was already right there where everybody agrees the
9 confrontation happened. She said she didn't see him
10 in his car. But there's no way he wasn't lying in
11 wait.

12 He knew she was coming and he was waiting on
13 her because he was angry, because he was mad,
14 because he had ill-will toward her. He flew to the
15 place where that confrontation occurred, by the burn
16 pile and the power pole and all of that that you
17 heard, across the property to cut her off when all
18 she wanted to do was get to the trailer to check on
19 the children and take a shower so she could go to
20 work. Why cut her off? Why start a confrontation
21 if you're not angry? The defendant told you, as
22 well as Ms. Turner, that he was beating on her
23 window with the barrel of a loaded gun. Is that the
24 act of someone who is not angry?

25 Everyone agrees that they were having an

1 argument. I don't think happy people have arguments
2 when they're happy. It's not a happy thing to do;
3 it's an argument. Are you starting to get a picture
4 of what's going on in his head? Are you starting to
5 get a picture of what he's thinking at the time? He
6 is mad at her for spending the night in the motel
7 room with her husband. He waited on her to come
8 home, he started a confrontation, he beat on the
9 window with a gun, with a loaded gun. If that isn't
10 reckless, I don't know what is.

11 A shot was fired. It's a revolver. He pulled
12 the hammer back and he pulled the trigger. It
13 didn't go off accidentally. He sat right here
14 yesterday and told you that he was holding it such
15 that the barrel of the gun was hitting the window.
16 Bullets go in straight lines. If he's hitting the
17 window with the barrel of the gun, how in the world
18 does it go straight through the window, into her
19 ribcage if he didn't mean to pull that trigger? It
20 doesn't. It doesn't. He pulled the trigger and
21 that's why the bullet lodged in her ribcage.

22 Ms. Turner told you that the defendant
23 continued to beat on the window after the shot was
24 fired. There's two holes in that window. You go
25 back there and you look at them. You tell me which

1 one happened first. I submit to you that that
2 bullet hole went through the window first.
3 Investigator Wertz told you that there was a radial
4 shatter pattern like rays of sunlight around the
5 hole where the bullet went through the window and
6 that there is a rectangular-shaped hole near the
7 bullet hole that is almost a perfect cutout between
8 some of those radial shatter marks from the bullet
9 hole. That's because that rectangular hole came
10 after the bullet hole because he was still hitting
11 the window of the car after he shot it because he
12 was furious, because he had ill-will toward
13 Ms. Turner, because he was mad. You don't
14 accidentally fire a gun, continue beating on the
15 window, make another hole, on accident.

16 She takes off when she realizes she's been
17 shot, calls for someone, anyone, to help her, to
18 call 911, and it happens to be [REDACTED], her
19 10-year-old daughter. She's 11 now. You heard
20 [REDACTED] testify that she tried to call 911, she went
21 back inside, she told her sister-in-law Nicky what
22 had happened, that they needed to call 911; they
23 went to the phone and it wasn't there. [REDACTED] told
24 you that the last person she remembers talking on it
25 the night before was the defendant, that he was in

1 and out. She testified that the night of the
2 shooting, the night of the 6th, when she went to
3 stay with Nicky because her mother is in the
4 hospital getting treated for a gunshot wound, they
5 heard a noise, that they were scared to go outside.
6 The next morning they go outside. Low and behold,
7 what's in the yard of Nicky's trailer? The
8 defendant's truck. And what's in his truck? The
9 phone. █████ told you it looked like someone took
10 the phone. He took it, because he knew that
11 Ms. Turner, if she couldn't get ahold of those
12 children, was going to come back there to check on
13 them. And she did. He made this confrontation
14 happen because he was angry, because he wanted to
15 hurt her.

16 The last fact that I have for you to apply to
17 what you think was going on in his mind at the time
18 that he told you out of his own mouth was that he
19 ran from the law for 28 days. 28 days. The month
20 of February is 28 -- a month. He ran for a month.
21 If you accidentally shoot someone, you run for a
22 month when you know there's a warrant for your
23 arrest? He told you he knew. What's going on in
24 his head, ladies and gentlemen? What's reasonable?
25 What jives with your common sense?

1 When you go back there, ladies and gentlemen,
2 to your jury room, you're going to have all of those
3 pictures, you're going to have the bullet, you're
4 going to have maps, you're going to see Ms. Turner's
5 injuries, and you're all going to discuss the
6 testimony that you heard. Your job when you get
7 back there to you deliberate is to put the pieces of
8 this puzzle together, look at all of the evidence,
9 recall the testimony, and figure out who you
10 believe. You can consider who has a motive to lie,
11 who has a motive to make up a story, to come up with
12 an excuse. A motive to lie makes a person less
13 credible, obviously.

14 We talked about in opening that we all know how
15 to tell if someone is telling the truth or lying. A
16 motive to lie is a reason to find someone less
17 credible. There's plenty of other reasons. You-all
18 have them already; it's your common sense. You
19 know. Did those children have a motive to lie? I
20 ask you when you go back there to focus on this,
21 look at all of it, sift through it, dissect it, but
22 remember that these are the main differences that
23 we've got in this case, ladies and gentlemen.
24 They're relatively few. And ultimately the question
25 that you-all will have to answer as one is did he

1 mean to do it? Did he mean to pull that trigger?
2 Did he mean to shoot his ex-wife? If you are firmly
3 convinced after viewing all of the evidence that
4 Frank Muns, the defendant, meant to shoot his
5 ex-wife, that he had intent, that he had malice
6 aforethought, the only reasonable decision, the only
7 reasonable verdict, the only one that makes sense is
8 that Mr. Muns is guilty of attempted murder. Thank
9 you.

10 THE COURT: Mr. Foreman, ladies and gentlemen,
11 let's take about a five-, ten-minute break so
12 everybody can stretch their legs. My charge is
13 about 15 to 20 minutes and then I'll give you the
14 case. That's going to put us about 11:20, 11:30, at
15 the latest. I'm going to leave it up to you, after
16 input from everyone, as to whether or not you'd like
17 for me to order you some lunch. And if you do, they
18 will give you a menu during this break period. Fill
19 it out so we can order it while I'm charging and you
20 deliberate, but with input from everybody. Okay?

21 THE FOREMAN: Yes, sir.

22 THE COURT: Thank you. Don't start
23 deliberating or start talking about the case.

24 (The jury retires to the jury room at 10:49
25 AM.)

1 THE COURT: Okay. We'll stand at ease for
2 about ten minutes. Thank you.

3 (A recess transpired.)

4 THE COURT: Is the State ready to proceed?

5 MS. SHEFTALL: Yes, Your Honor.

6 THE COURT: Mr. Routzong, are you ready to
7 proceed?

8 MR. ROUTZONG: Yes, sir.

9 THE COURT: Let's bring the jury out, please.

10 (The jury enters the courtroom at 11:09 AM.)

11 THE COURT: Mr. Foreman, ladies and gentlemen
12 of the jury, let me give you a charge or instruction
13 on the law. The first part of the charge dealing
14 with certain issues are general propositions of
15 criminal law that we charge in all criminal cases.
16 And then once we finish that, I'll go to the
17 specific indictments in this case and we'll talk
18 about those and then you'll be in a position to
19 start your deliberation.

20 So let me just remind you, the that the
21 defendant was indicted for attempted murder and
22 possession of a weapon during the commission of or
23 attempt to commit a violent crime, that is not
24 evidence in the case; that's simply the charging
25 document by way these cases came into the courtroom,

1 and you cannot infer anything from the fact that he
2 indicted. In fact, he has pled not guilty to both
3 indictments and a plea of not guilty puts the burden
4 on the State of South Carolina to prove the
5 defendant guilty beyond a reasonable doubt. The
6 person charged with committing a criminal offense in
7 our state is never required to prove himself
8 innocent. I instruct you that it is an important
9 constitutional rule of law that a defendant in a
10 criminal trial, notwithstanding how serious the
11 charge may be, will always be presumed to be
12 innocent of the crimes for which he was indicted
13 unless guilt has been proven by evidence satisfying
14 you of that guilt beyond a reasonable doubt.

15 The presumption of innocence does not end when
16 you start your deliberations, but it stays with the
17 defendant throughout the trial until you reach a
18 verdict of guilt based on evidence satisfying you of
19 that guilt beyond a reasonable doubt. The
20 presumption of innocence is not a mere legal phrase
21 or theory. It is a substantial constitutional right
22 to which every defendant is entitled unless you, the
23 jury, are satisfied from the evidence convincing you
24 of that defendant 's guilt beyond a reasonable
25 doubt.

1 Our courts have defined the term reasonable
2 doubt as follows: A reasonable doubt is the kind of
3 doubt that would cause a reasonable person to
4 hesitate to act. It's the kind of doubt that would
5 cause a reasonable person to hesitate to act. Proof
6 beyond a reasonable doubt is proof that leaves you
7 firmly convinced of the defendant's guilt. There
8 are very few things in the world that we know with
9 absolute certainty, and in criminal law, cases do
10 not require proof beyond and overcome every possible
11 doubt. If based on your consideration of the
12 evidence you are firmly convinced that the defendant
13 is guilty of the crimes charged, you must find him
14 guilty. If on the other hand you think there is a
15 real possibility that the defendant is not guilty,
16 you must give him the benefit of the doubt and find
17 him not guilty.

18 Mr. Foreman, ladies and gentlemen of the jury,
19 let me remind you that obviously during the trial of
20 this case I have told you that you and I have
21 certain duties and functions to perform. My job is
22 to instruct and charge you on the law and to rule on
23 the admissibility of evidence. Obviously your job
24 is much more important than mine because you are the
25 judges of the facts in the case. You judge the

1 credibility of the witnesses who testify. And as I
2 told you, you will hear two different sides and,
3 obviously, you have to make a determination on who
4 is telling the truth. So if at any time during the
5 trial of the case I've done anything up here to make
6 you believe that I have some opinion about the
7 facts, please disregard it. The law does not allow
8 me to have any opinion whatsoever about the facts.
9 I try cases all over the state. I'm the judge of
10 the law, but my juries determine the facts. So if
11 I've done anything like yawned or smiled or frowned
12 or took my glasses off, raised my eyebrows or
13 whatever, that's just me up here. I have no opinion
14 about the facts; the law does not allow me to. That
15 is your job and your job only. You are the sole
16 judges of the facts.

17 Now, by being the judges of the facts,
18 obviously you have to determine -- that's your job,
19 to determine the credibility of the witnesses who
20 have testified in this case. Credibility simply
21 means believability. Who do you believe? What do
22 you believe? So it becomes your duty as jurors to
23 analyze and to evaluate the evidence and determine
24 which evidence convinces you of its truth. Now, in
25 doing this job and determining the believability of

1 the witnesses, you can believe one witness over
2 several, several over one, you can disbelieve
3 everything somebody says, you can believe everything
4 he or she says, you can believe a little bit and
5 disregard the rest. In other words, use your
6 ordinary common sense in dealing with people
7 throughout life to determine what the true facts are
8 in the case. You may consider whether any witness
9 has exhibited to you any interest, bias, prejudice
10 or other motive in the case, and also how the
11 witness appeared on the witness stand.

12 In the trial of this case you heard evidence
13 that the defendant was convicted of crimes other
14 than the one for which he is now on trial. This
15 evidence may be considered by you, if you conclude
16 that it's true, only in deciding whether the
17 defendant's testimony is believable or credible and
18 for no other purpose. You must not consider the
19 defendant's prior record as any evidence of the
20 defendant's guilt of the charge we're trying here
21 today. So you use that prior record only to judge
22 his credibility, for no other reason whatsoever, and
23 it cannot be used in deciding the case that's here
24 today.

25 In the first indictment, we're dealing with the

1 charge of attempted murder. Our law defines the
2 word attempt as an effort to accomplish a crime
3 which does not succeed. An attempt includes a
4 specific intent to do a particular criminal act
5 along with an act falling short of the act intended.
6 The State must show more than mere preparation and
7 intent; there must be some overt act committed in
8 the effort to commit the crime. Intent means
9 intending the result which actually occurs, not
10 accidentally or involuntarily. Intent may be shown
11 by acts and conduct of the defendant and other
12 circumstances from which you may naturally and
13 reasonably infer intent. So in this case, the
14 defendant is charged with attempted murder.

15 In order to prove the offense of attempted
16 murder, the State must prove beyond a reasonable
17 doubt that the defendant attempted to kill another
18 person with malice aforethought, that malice
19 aforethought being either expressed or implied.
20 Pretty simple. The State must prove beyond a
21 reasonable doubt that the defendant attempted -- and
22 I defined attempt to you already -- to kill another
23 person with malice aforethought, and that malice
24 must be either expressed or implied. The term
25 malice is defined as hatred, ill-will, or hostility

1 towards another person. It's the intentional doing
2 of a wrongful act without just cause or excuse and
3 with an intent to inflict an injury or under
4 circumstances that the law would infer an evil
5 intent. Malice aforethought does not require that
6 the malice exist for any particular time before the
7 act is committed, but malice must exist in the mind
8 of the defendant just before and at the time of the
9 act is committed; therefore, there must be a
10 combination of the previous evil intent and the act.

11 Malice aforethought may be either expressed or
12 inferred. The terms expressed and inferred do not
13 mean different kinds of malice, but merely the
14 manner in which malice may be shown to exist; that
15 is either by direct evidence or by inference from
16 the facts and circumstances which approve.

17 Expressed malice is shown when a person speaks
18 words which express hatred or ill-will to another,
19 or when the person prepared beforehand to do the act
20 which was later accomplished. Malice also may be
21 inferred from conduct showing a total disregard for
22 human life. So those are the two types of malice --
23 strike that. That's two ways to prove malice.
24 There's only one malice, but they can either be
25 shown by expressed evidence or inferred from the

1 circumstances which were proven.

2 So to prove the offense of attempted murder,
3 the State must prove to you, beyond a reasonable
4 doubt, that the defendant attempted to kill another
5 person with malice aforethought, that malice
6 aforethought being either expressed or implied.

7 Now, Mr. Foreman, ladies and gentlemen of the
8 jury, we have a concept of law that is known as a
9 lesser included offense. So, for example, if you've
10 got a gallon of water, milk, Coca-Cola, whatever,
11 the lesser included of a gallon could be a pint, a
12 quart, or a half a gallon. It's part of the whole
13 thing. So that's -- and in the law we have what's
14 called a lesser included offense. So if you make
15 your decision that the State has failed to prove
16 that the defendant attempted to kill another person
17 with malice aforethought, then you can consider the
18 lesser offense, the one that's not as high up as
19 that. It's a lesser offense. And that's what we
20 call the offense of second degree assault and
21 battery.

22 In order to prove someone has committed the
23 offense of second degree assault and battery, which
24 is in our Section 16-3-600, the State must prove
25 that the defendant unlawfully injures another person

1 or offers or attempts to injure another person with
2 the present ability to do so and moderate bodily
3 injury to another person results or moderate bodily
4 injury to another person could have resulted. And
5 the laws define moderate bodily injury as a physical
6 injury requiring treatment to an organ system of the
7 body other than the skin, muscles, and connective
8 tissues of the body, except when there's a
9 penetration of the skin, muscles, and connective
10 tissue that requires surgical repair of a complex
11 nature or when treatment of the injuries requires
12 the use of regional or general anesthesia.

13 So in making your analysis of whether or not
14 the State has proven the case of attempted murder
15 beyond a reasonable doubt, if you find that the
16 State has failed to do that, then you would then
17 consider whether or not they've proved the lesser
18 included offense of assault and battery in the
19 second degree, which basically just does not require
20 the specific intent that the attempted murder --
21 this is an unlawful injuring of a person.

22 So you will have a verdict form dealing with
23 that. And, Mr. Foreman, first of all, you make an
24 analysis on the attempted murder and you find him
25 guilty of attempted murder, the State has proven

1 their case beyond a reasonable doubt of attempted
2 murder, you stop there. If you find that they
3 failed to prove that, you would find him not guilty,
4 obviously, and then you would consider whether or
5 not he's guilty of the lesser included offense.

6 Now, the other offense to which he is charged
7 is possession of a weapon during the commission of
8 or attempt to commit a violent crime. If you find
9 that he's guilty of attempted murder, then you must
10 decide whether or not he had in his possession a
11 firearm during the commission of that crime. If you
12 find him not guilty of attempted murder, obviously
13 he didn't have a firearm in the commission of a
14 violent crime because assault and battery in the
15 second degree is not a violent crime, so he can't be
16 found guilty of -- assault and battery would not be
17 a violent crime, so this would not -- does that make
18 sense?

19 THE FOREMAN: Yes, sir.

20 THE COURT: You will have a verdict form back
21 there. Now, obviously our law requires that your
22 verdict be unanimous. All 12 of you must
23 unanimously agree on the verdict. Obviously you are
24 to decide the based solely on what you heard in the
25 courtroom, determine what the true facts are and

1 applying it to the law as I give it to you. We're
2 not here to reward any friends or punish any
3 enemies; we're here to simply make a deliberate
4 examination of the facts and apply the law as I have
5 given it to you.

6 Often times during the deliberation you will
7 have questions. That's not unusual. If you do, the
8 procedure is to write it out on a piece of paper --
9 you'll have a notepad in there -- and send it to me.
10 And if I can answer it, I will. Sometimes I can,
11 sometimes I can't. But I will tell you if I can't
12 and basically why I can't. If I can answer it, then
13 I'll either answer it on the paper or bring you back
14 out here and answer it. While you are deliberating
15 you'll have all of the exhibits that have been
16 introduced during the trial of the case to review,
17 if you choose.

18 So I'm going to ask you now to -- and when you
19 finish and complete your deliberations, obviously
20 you fill out the verdict form, sign it, and knock on
21 the door and tell the bailiff you've got it. Lunch
22 should be here within 30 minutes, so when it comes,
23 y'all enjoy it. You can stop deliberating and enjoy
24 your lunch, you can eat and deliberate, but you have
25 to all stay together. So I'm asking you to please

1 go back to your jury room. Please segregate my two
2 alternates. Do not start deliberating quite yet. I
3 have to ask the lawyers if I've left anything out of
4 the charge and then we have to gather up the
5 evidence. And then I'll give you these two verdict
6 forms. And then the bailiff will bring them in
7 there to you in about two or three minutes. Then
8 you can start. Fair enough?

9 THE FOREMAN: Yes, sir.

10 THE COURT: If you have any questions, please
11 let me know. Thank you.

12 (The jury retires to the jury room at 11:27
13 AM.)

14 THE COURT: Any objections, requested additions
15 or deletions to the charge by the State?

16 MS. SHEFTALL: Nothing from the State, Your
17 Honor.

18 THE COURT: Mr. Routzong?

19 MR. ROUTZONG: No, sir. I just -- I think I
20 neglected to renew my directed verdict motion, so
21 I'd like to do that at this time for the same
22 reasons, Your Honor.

23 THE COURT: We'll nunc pro tunc that, and for
24 the same reasons, it's respectfully denied. And
25 also, you're protected on the record as far as the

1 request for charges on accident and self-defense.

2 MR. ROUTZONG: Thank you, sir.

3 THE COURT: Thank you. Please come up and
4 review all of the exhibits and make sure we have
5 them all and that they're in order. The verdict
6 form -- let the record reflect, please, that the
7 State and defendant have examined and reviewed all
8 of the exhibits and they're all in order and
9 accounted for; they've reviewed the verdict form and
10 are in agreement with no objection. Is that
11 correct, Mr. Routzong?

12 MR. ROUTZONG: Yes, sir.

13 THE COURT: Ms. Sheftall?

14 MS. SHEFTALL: Yes, Your Honor, that's correct.

15 THE COURT: All right. We'll let the jury
16 start deliberating at 11:29.

17 (The jury begins deliberations at 11:29 AM.)

18 THE COURT: All right. We'll stand at ease.

19 (A recess transpired from 11:29 AM to 1:16 PM.)

20 THE CLERK: While I'm waiting on the clerks to
21 come in, let me remind everyone, I have no earthly
22 idea what the verdict is. Somebody is going to
23 happy and somebody is not going to be happy. If you
24 cannot control your emotions, I'll ask you to leave
25 now. I will not tolerate any outbursts, any

1 untoward behavior. If you do, you'll be subject to
2 contempt of court. Thank you.

3 All right. Is the State ready to receive the
4 verdict?

5 MS. SHEFTALL: We are, Your Honor.

6 THE COURT: Mr. Routzong?

7 MR. ROUTZONG: Yes, Your Honor.

8 THE COURT: All right. Bring the jury in,
9 please.

10 (The jury enters the courtroom at 1:19 PM.)

11 THE COURT: Mr. Foreman, have y'all reached a
12 verdict?

13 THE FOREMAN: Yes, sir, we have.

14 THE COURT: Please pass up the verdict form.

15 Ma'am?

16 THE CLERK: Your Honor, we have *State of South*
17 *Carolina, County of Aiken vs. Frank Muns, Sr.* As to
18 the offense of attempted murder, we the jury find
19 the defendant guilty. We unanimously agree, dated
20 February 6th, 2014. Signed by Foreperson Richard
21 Arkin.

22 Your Honor, we have *State of South Carolina,*
23 *County of Aiken vs. Frank Muns, Sr.,* Indictment No.
24 2013-GS-02-01664. As to the offense of possession
25 of a firearm during the commission of or attempt to

1 commit a violent crime, we the jury find the
2 defendant guilty. We unanimously agree, dated
3 February 6th, 2014. Signed by Foreperson Richard
4 Arkin.

5 Ladies and gentlemen of the petit jury, if this
6 is your verdict, please indicate by raising your
7 hands.

8 (Jurors raise their hands.)

9 THE CLERK: All hands are raised, Your Honor.

10 THE COURT: Thank you.

11 Anything for the jury before I release them by
12 the State?

13 MS. SHEFTALL: No, sir, Your Honor.

14 THE COURT: By the defendant?

15 MR. ROUTZONG: No, sir.

16 THE COURT: Thank you.

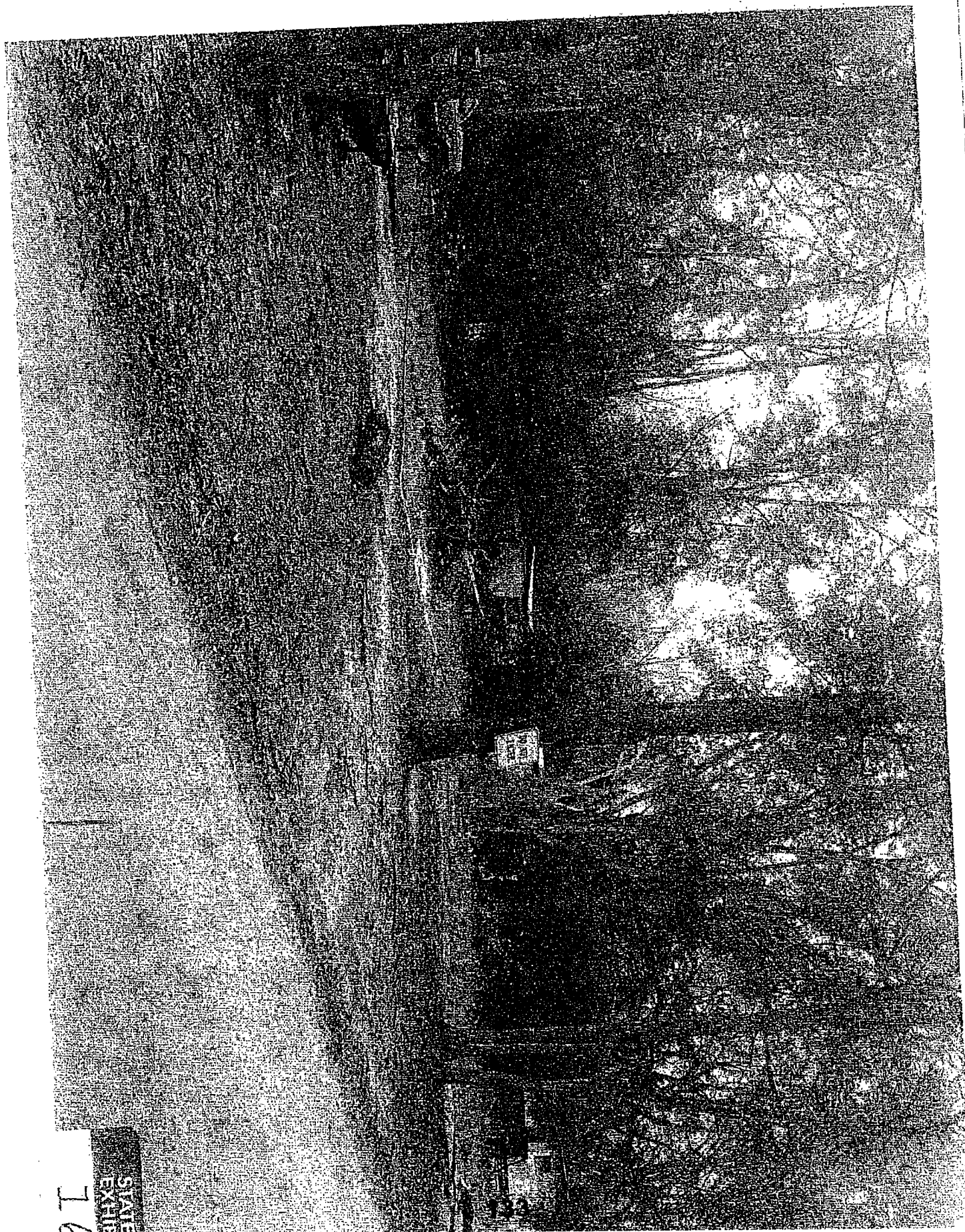
17 Mr. Foreman, ladies and gentlemen, that
18 obviously concludes your service this week. On
19 behalf of the County of Aiken and everyone, we
20 appreciate your service. We cannot run our criminal
21 court system without having people ready, willing,
22 and able to serve. Interesting case, difficult
23 case, sad case. I agree wholeheartedly with your
24 verdict. I think the evidence certainly supported
25 it. I thank you. We will now sentence him. You're

1 THE COURT: All right. As to indictment
2 2013-GS-02-1657, for the offense of attempted
3 murder, having been found guilty by the jury, the
4 sentence of this Court is that you be committed to
5 the state department of corrections for a period of
6 15 years.

7 On the possession of a weapon during the
8 commission of a violent crime, that is a five-year
9 sentence, it will run concurrent with 1657. I'll
10 give you credit for your time served. Good luck to
11 you.

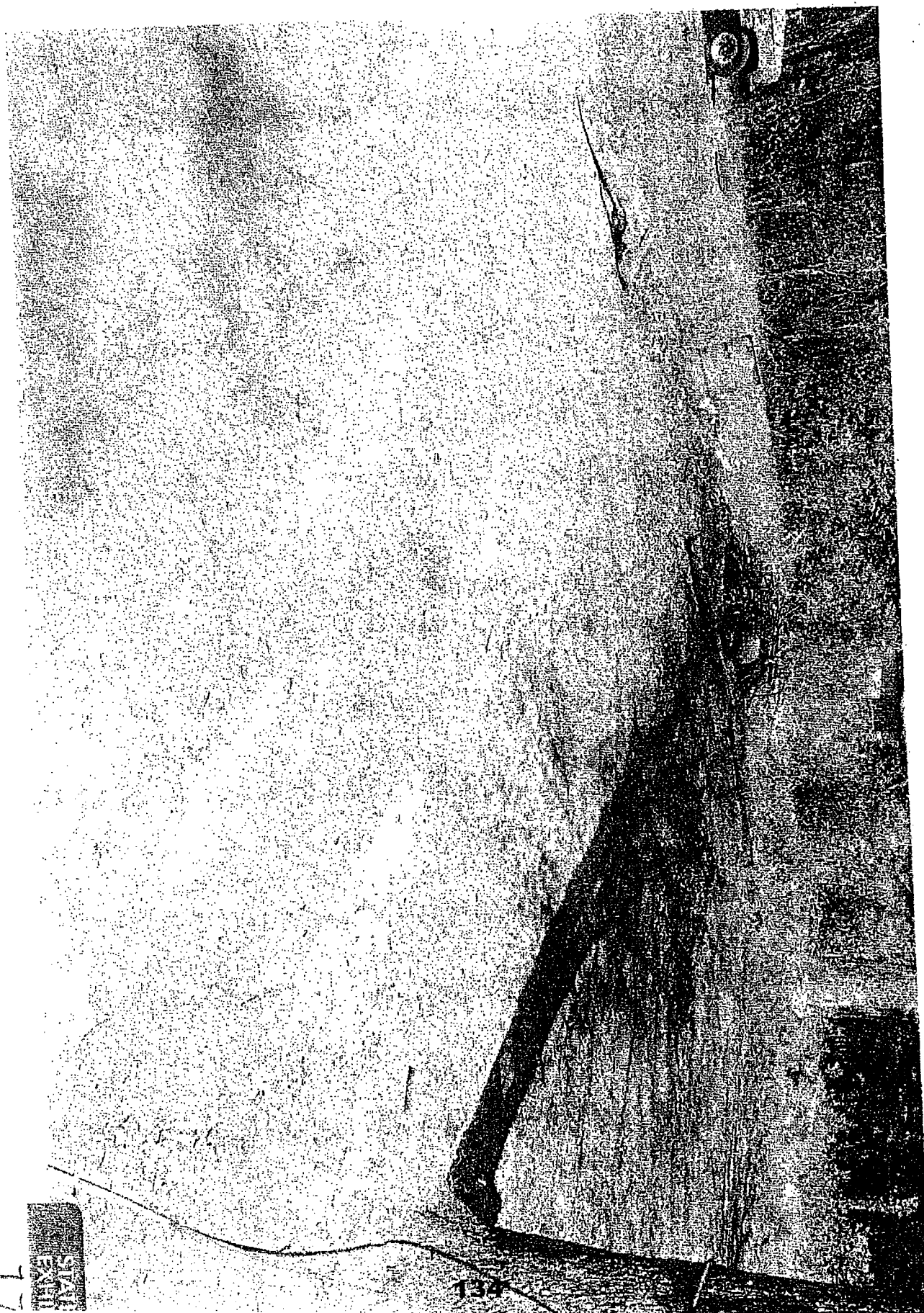
12 THE DEFENDANT: Thank you, sir.

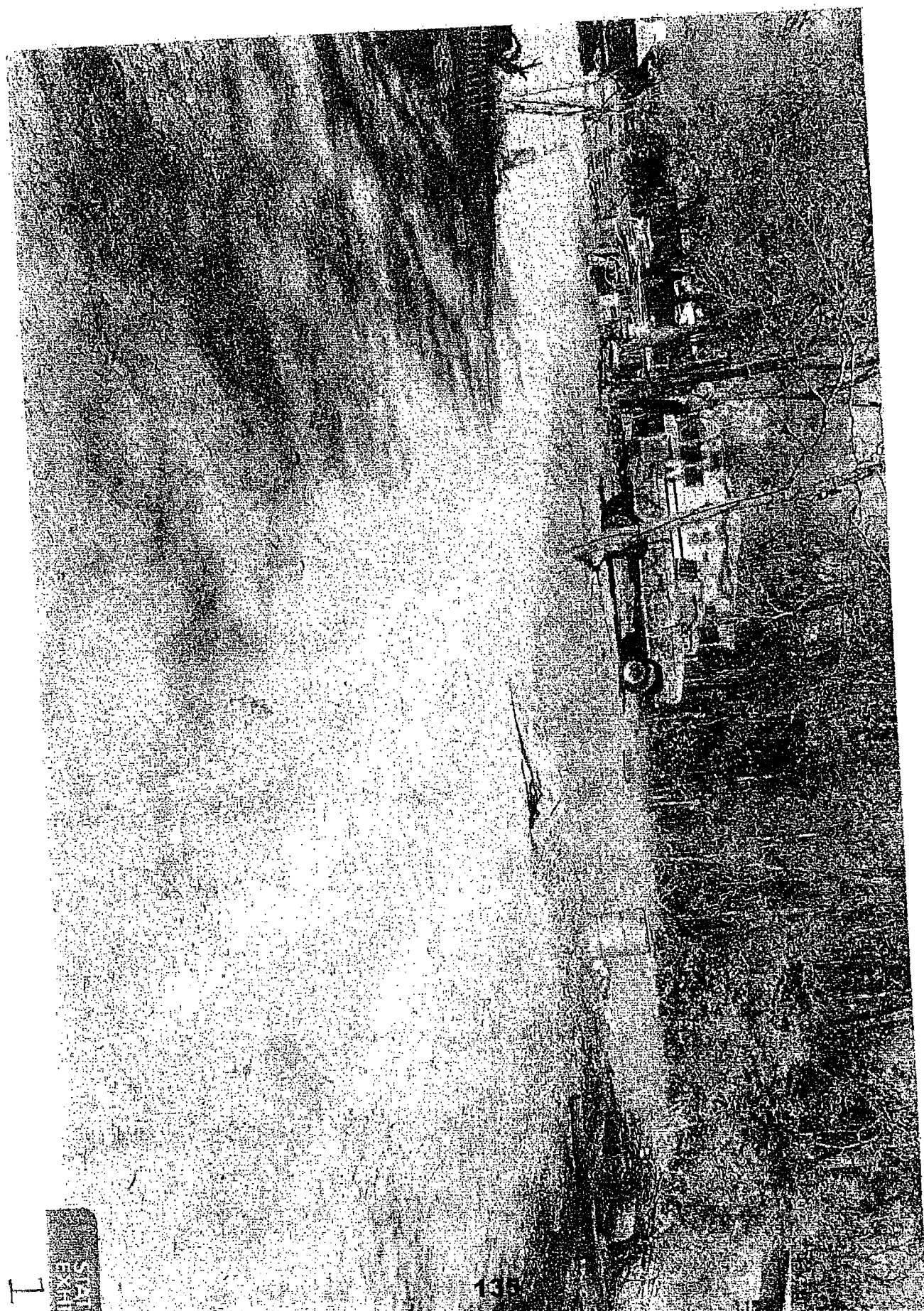
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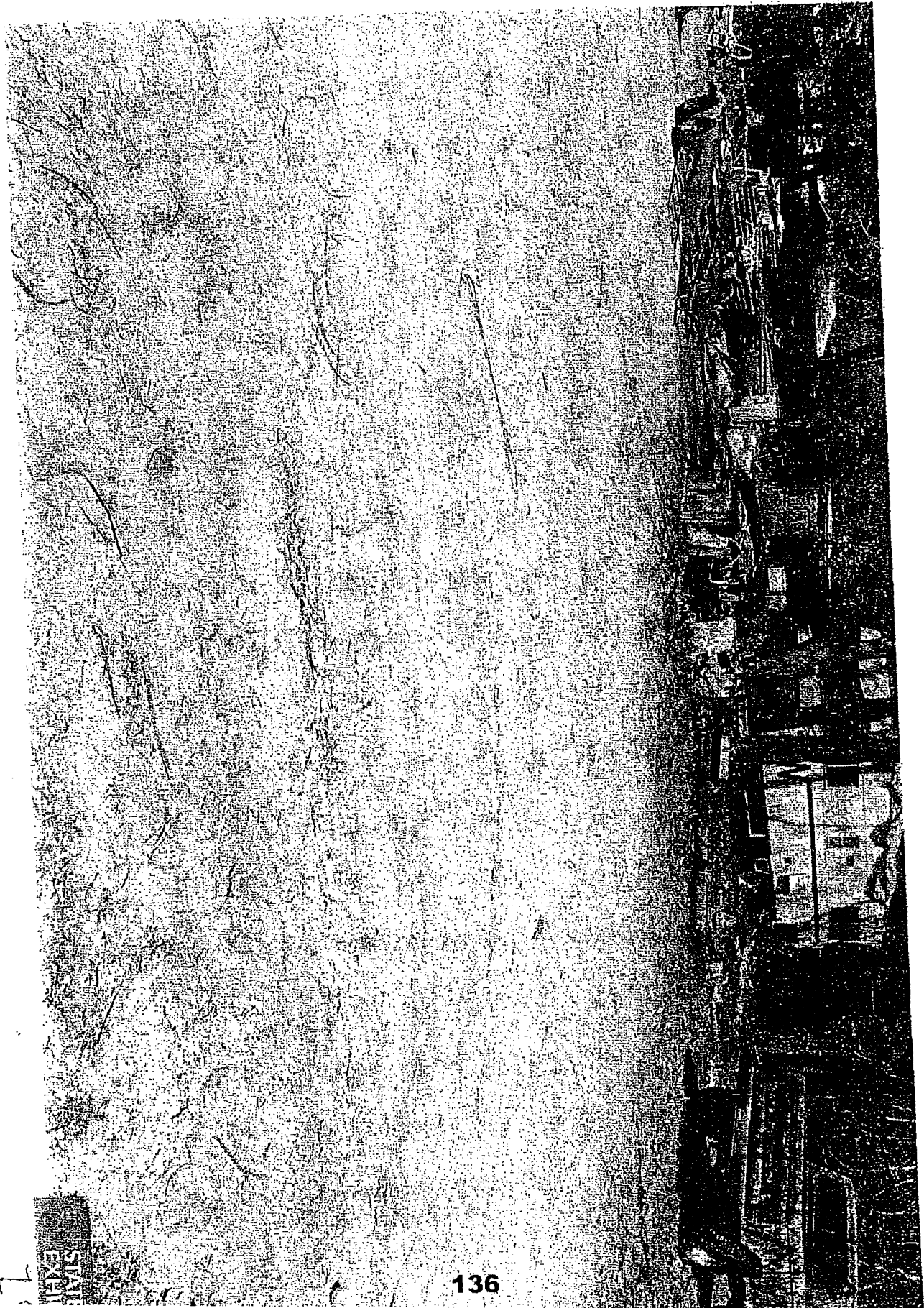
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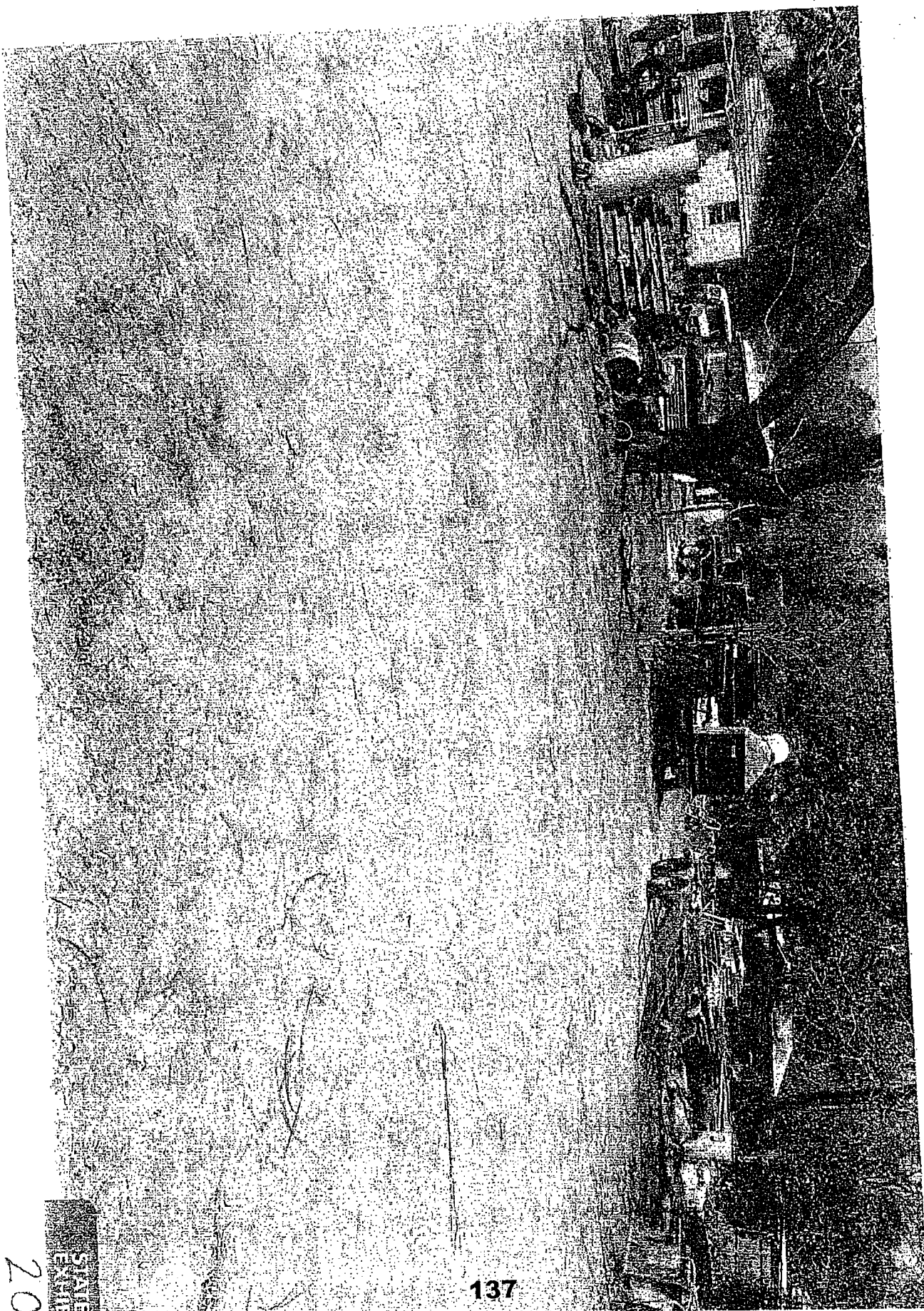
STATE
EXHIBIT

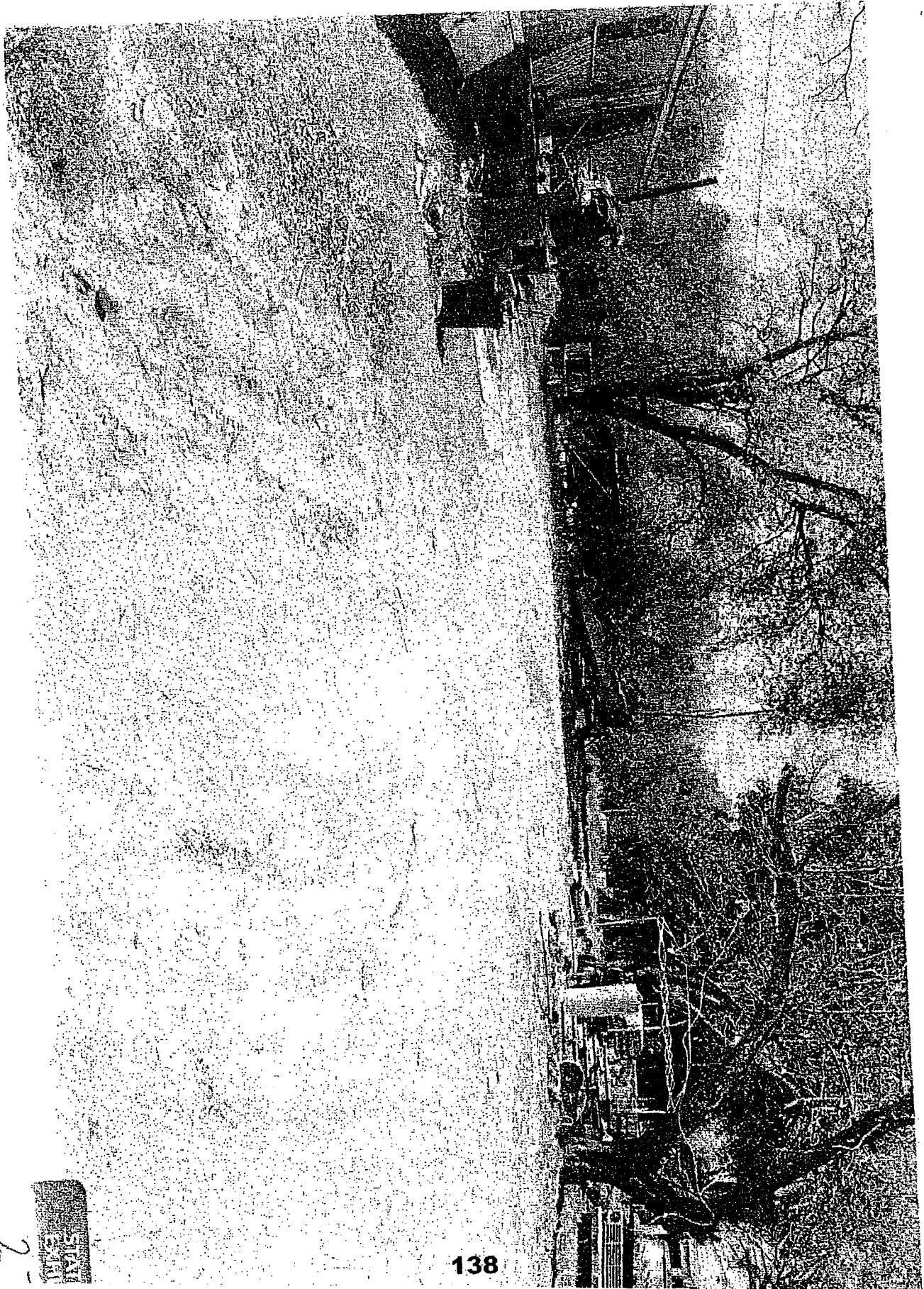


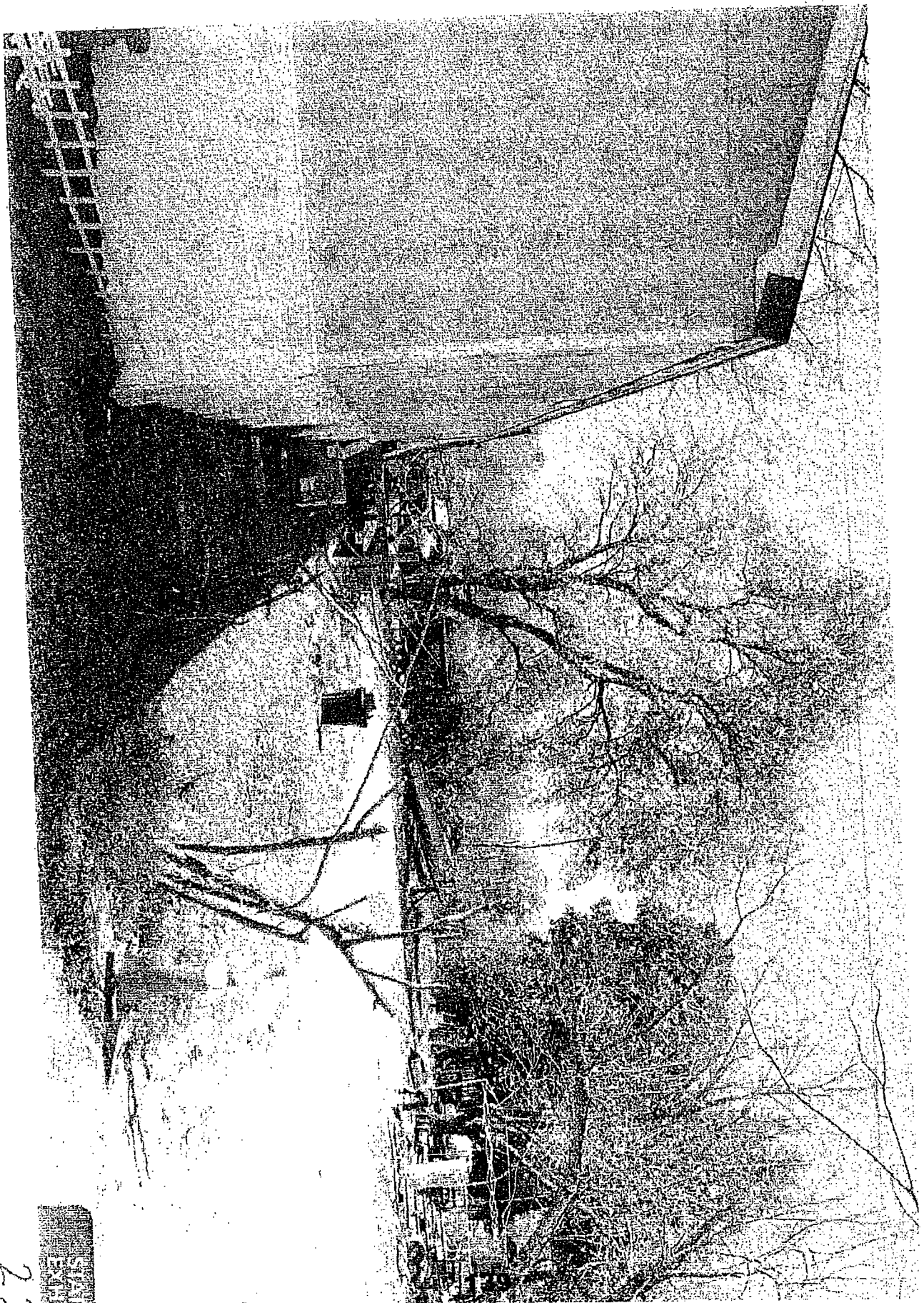


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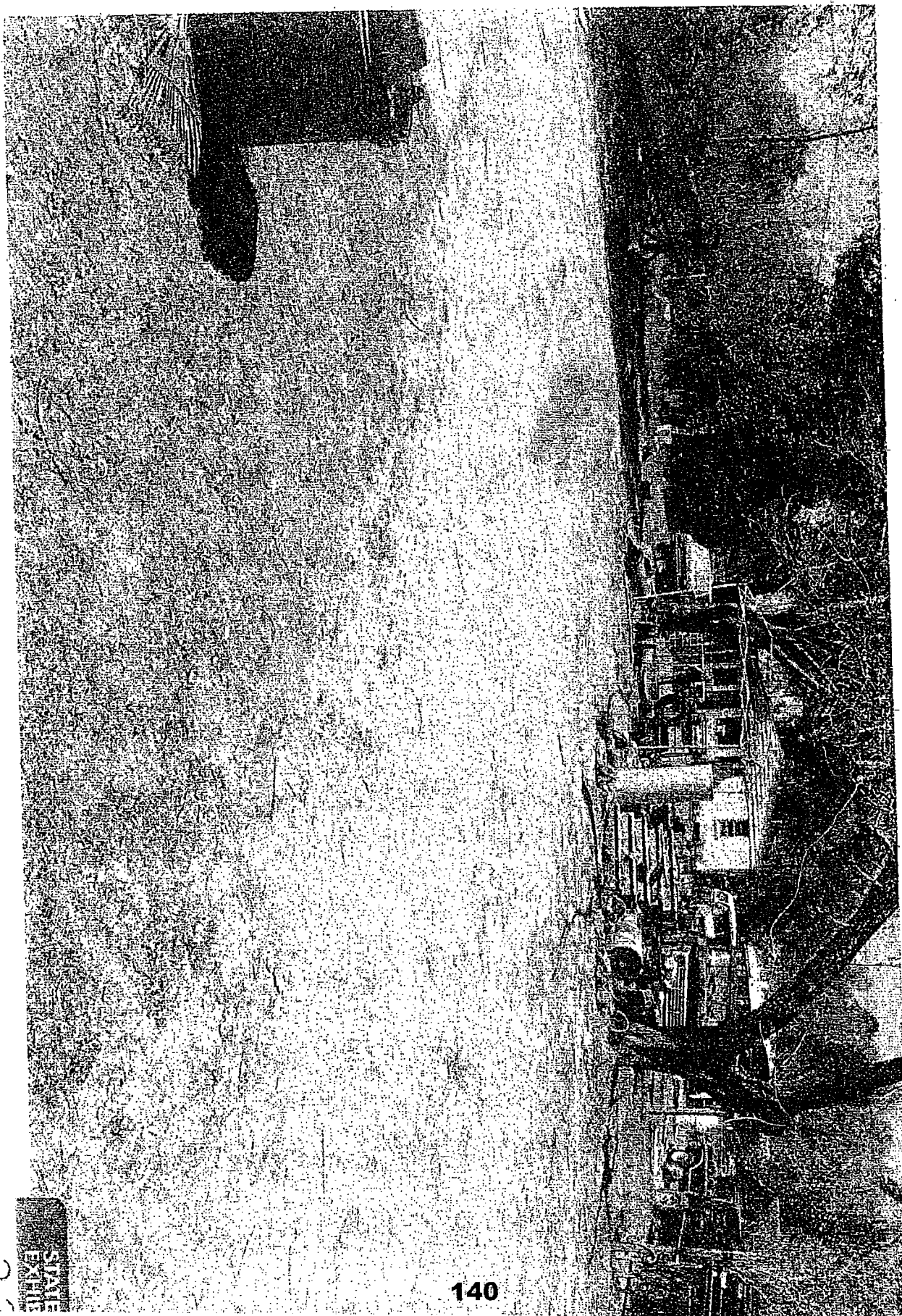


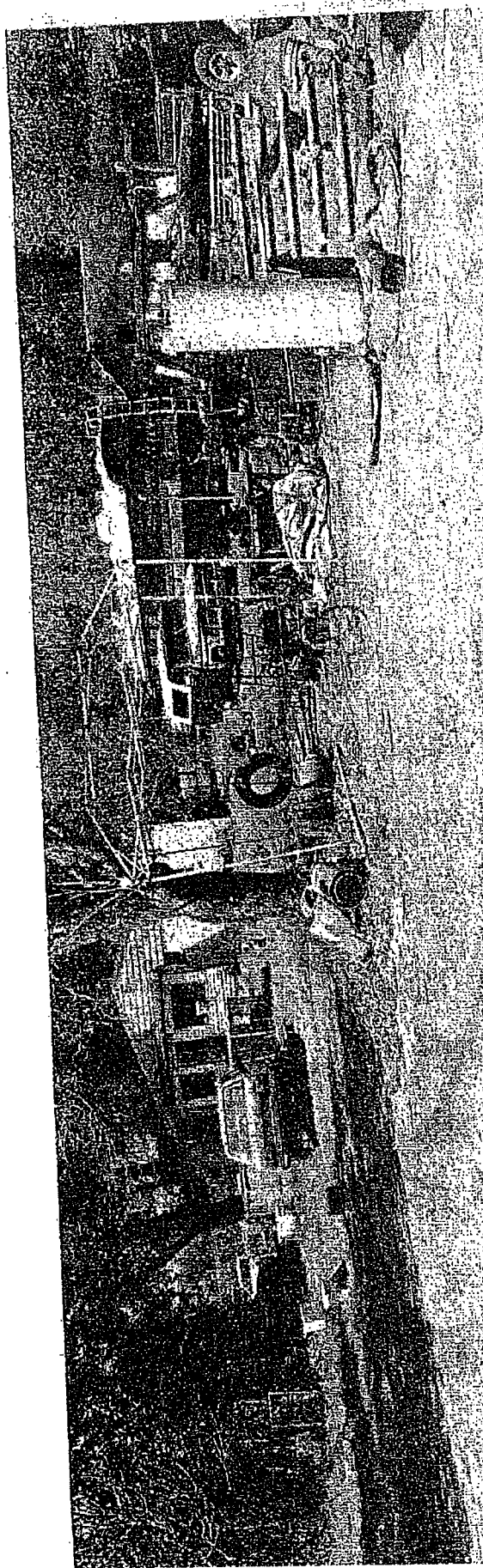




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EXIT

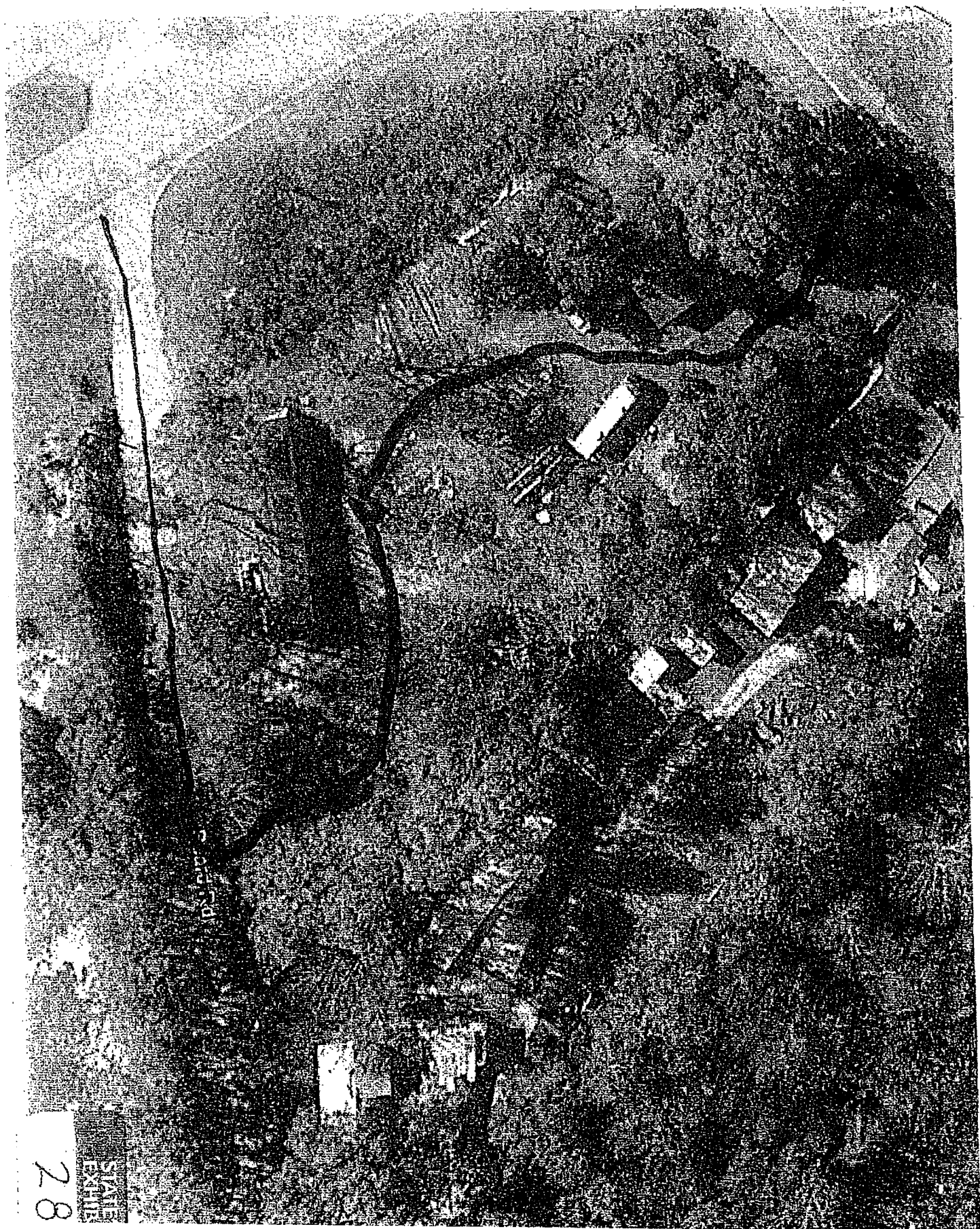
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STATE'S
EXHIBIT

24



28

STATE
EXHIBIT

NOTICE OF INTENT TO APPEAL
THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
FROM AIKEN COUNTY

THE HONORABLE Doyet A. Early III

February 11, 2014

Indictment # 2013GS0201657 & 2013GS0201664

RECEIVED

FEB 24 2014

SC Court of Appeals

 THE STATE OF SOUTH CAROLINA -- Respondent

VS.

Frank Muns. - Appellant

NOTICE OF INTENT TO APPEAL

Frank Muns. had a trial and was convicted of Attempted Murder and Weapons/Possession during violent crime on February 6, 2014 before the Honorable Doyet A. Early III in Aiken, South Carolina. He appeals his conviction and sentence.


Michael Routzong
Attorney for Defendant

Other Counsel of record is:

Virginia Lauren Sheftall
Assistant Solicitor
Second Judicial Circuit
P.O. Drawer 3368
Aiken, SC 29802

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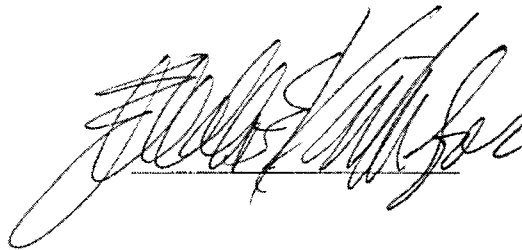
MAY 12 2015

SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Findings."

May 12th, 2015



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Attorneys for Appellant

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Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

 ORIGINAL

APPEAL FROM AIKEN COUNTY
Court of General Sessions
Doyet A. Early, III, Circuit Court Judge

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MAY 12 2015
SC Court of Appeals

Case No. 2013-GS-020-1664

State of South Carolina Respondent,

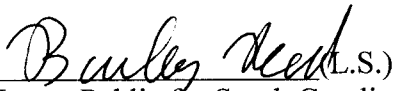
versus

Frank Muns Appellant.

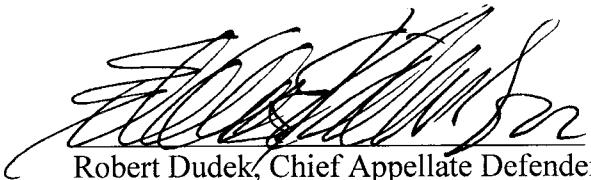
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the South Carolina Attorney General's Office, Post Office Box 11549, Columbia, SC 29211-11549, this 12th day of May, 2015.

SUBSCRIBED AND SWORN TO before me
this 12th day of May, 2014.


Notary Public for South Carolina

My Commission Expires: October 24, 2021


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