

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

 **ORIGINAL**

APPEAL FROM BERKELEY COUNTY

Roger M. Young, Circuit Court Judge

RECEIVED

JUN 12 2015

THE STATE,

SC Court of Appeals
RESPONDENT,

V.

JOHNNY LEE IRBY,

APPELLANT

APPELLATE CASE NO. 2014-001663

RECORD ON APPEAL

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE’S EXHIBIT NO. 71 (AUDIO STATEMENT)**

1 money to do nothing.

2 And, like I say, we already got them logged in for
3 school, started buying school supplies and stuff like
4 this, you know. So I would have got them and told them,
5 Hey, look. I'm going to fix this now, but I've been on
6 the fast track to get them someplace else to be.

7 Q. Okay. So where we're at now is you're moving back
8 into the home, your home, and Telly does what at that
9 point?

10 A. I'm not sure whether or not he turned me back
11 around again to face him, and I had opened the screen
12 door to -- the inner screen door, I had opened that
13 screen door, and I stepped one foot, about that high. I
14 stepped my foot up there and he went for the gun, and I
15 say we struggled, right, for the gun, and some kind of
16 way it didn't take long, it went off, and --

17 Q. And did you ever pull the trigger?

18 A. I don't remember whether I pulled it or not, he
19 caused me to pull it or whatever. My hand was on the
20 trigger. It was by my side. When he pulled me around,
21 you respond with two hands to balance yourself or what
22 have you, right, and when I turned around, like I said,
23 the gun come up against him and it goes off.

24 So -- by then it seemed like we struggled for a
25 long time. It went so quick, but everything happened so

JOHNNY LEE IRBY - DIRECT BY MR. SHELTON

1 quick, so --

2 Q. Do you remember -- did you ever raise your hand?

3 A. No, no. I mean, I can't say that I raised it up
4 into a serious shooting stance.

5 Q. All right. What about the struggle for the gun?
6 Do you remember where he grabbed the gun?

7 A. Yeah. He put his hand across the top of the
8 slide.

9 Q. Okay. And what happened when he put his hand on
10 the top of the slide?

11 A. Like I said, I got the handle already. I got the
12 barrel stick out of that, and we struggled for it. And
13 whatever happened, I don't know whether or not I dropped
14 the slide or whatever, but, anyway, that's when the gun
15 went off and he went down.

16 Q. What do you remember after that?

17 A. Last thing I remember after standing up and
18 looking at him, I mean, everything -- I looked down there
19 and all I could think of was Oh, my God, and I walked off
20 the porch.

21 I walked to the left of the porch. I fired the
22 gun in the air, intending to empty the clip, I reckon,
23 but after I did that, I was bringing the gun down, and I
24 don't remember hearing nothing around me. Everything was
25 calmed down. I threw the gun on the ground in front of

1 me, and I remember, nearly to my knees, and they said I
2 was sitting in that chair around the corner of house
3 there, where Gene was sitting all the time.

4 And I remember going down right there, and next
5 thing I remember is when the officer pulled up and he was
6 in his trunk. Peripheral I could see him in his trunk,
7 and I said, You ain't need that. I ain't going to shoot
8 no more.

9 So he came up, and the rest is history.

10 Q. Well, do you remember talking with the police?

11 A. After we got down to the police station, I do,
12 and --

13 Q. Was there someone there that did something to your
14 hands?

15 A. Oh, that's when they did that -- whatever that was
16 they rubbed on my hands, what they doing, taking
17 something wet, put it on my hands, and then wiped it off
18 and do something with it. I remember that part of it,
19 and --

20 Q. Do you remember if you talked to that officer?

21 A. Like I say, I was -- yes, I talked. I mean, I
22 just -- I mean, I'm in shock. What just happened? I
23 mean, I'm talking on here, I did this, I did this, I did
24 that, I did that, and so forth and so on, and just
25 history just started to repeat itself over and over and

JOHNNY LEE IRBY - DIRECT BY MR. SHELTON

1 over again, you know.

2 And I just couldn't -- I hadn't really focussed on
3 what had happened, right, and I realized that I had been
4 in a tussle with my son, that the gun had gone off, and I
5 didn't realize he -- I didn't realize he died, you know,
6 I really didn't. I just didn't realize that, and I
7 guess -- I mean, what just happened, you know, is what
8 constantly going through my mind. What just happened?
9 You know?

10 And when it really come down to me truly finding
11 out what was happening, like I said, I talked about it,
12 talked about it, and --

13 Q. When you were talking with that officer, do you
14 remember talking to him about --

15 MR. OZMENT: Your Honor, I object to leading.

16 THE COURT: Overruled.

17 BY MR. SHELTON:

18 Q. Do you remember talking to him about size and
19 strength?

20 A. I remember saying that he's approaching me, and,
21 like I say, he's 250. I weighed 179. I didn't think he
22 had a problem snatching me, so I might have mentioned
23 something to that nature of his size. I remember talking
24 about his size in football and so on, but the fact, like
25 I say, he was 6'3" and weighed almost twice as much as I

1 weighed, working on it, anyway, so yeah, I pretty much
2 stuck in that particular stage, that if he decided if he
3 was angry enough to come after me that we would have some
4 issues.

5 Q. And then do you remember talking with Lieutenant
6 Roach?

7 A. Yes, I do, when he first come in there.

8 Q. When you got the gun, did you want to shoot Telly?

9 A. Oh, no, no. The last thing on my mind, the last
10 thing in the world that would have crossed my mind that I
11 would ever, ever, ever have to hurt one of my kids like
12 that. I mean, the simple fact that he was my child --
13 and, like I say, he was in my place for me to help him.

14 I didn't like for him talking out at that point,
15 before he got there. When he leave the nest, I say he's
16 my child. He needs me right now. He needs me to help
17 him, and I truly was committed to get him what he needed,
18 to get him so he could take care of his kids.

19 I was more concerned of him taking care of his
20 kids than anybody else's kids, so I was going to help him
21 get to where he needed to be so he could make that
22 paycheck, and every time he get a paycheck, they take his
23 money. He would be making enough money so he don't have
24 to sweat that.

25 Of course, he could help me make money on certain

JOHNNY LEE IRBY - DIRECT BY MR. SHELTON

1 things I did, so that would be more money for him. That
2 would have been the last thing on my mind for me to ever,
3 ever have to harm one of my kids.

4 Q. What about Michelle?

5 A. Michelle, same thing. She sit back down with me
6 in the back room. We hold little chat sessions or stuff
7 like this. She even asked me one day, she said, You
8 don't like me, do you?

9 I said, I ain't got no problem with you. You and
10 Telly care about each other, but y'all still got to
11 maintain that truth and trust thing that I tell you about
12 all the time. You got to trust one another. If you
13 don't trust one another, how you expect you're going to
14 get along?

15 Q. There was a phone call with you and your sister,
16 and there was mention of a white girl. Did you have any
17 problems with Michelle being white?

18 A. If I think about the case you're talking about,
19 we're not talking about Michelle.

20 Q. Okay. But did you have a problem with Michelle
21 being white?

22 A. No. God loves us all, black, white, or whatever.
23 God loves us. We can love each other. We can be with
24 each other. I didn't have no problem with that. That's
25 his choice of female companionship, and that's his

1 choice. I mean, they got the same situation with my baby
2 boy. That's what they chose, you know. That's what they
3 love.

4 Like I say, love -- you can love anybody, and
5 evidently this is what happened, all right? And this is
6 what happened. Telly, all through high school, this
7 is -- the companionship they had.

8 Q. So how do you feel about Telly dying?

9 A. Oh, I miss him. When I get a chance to think
10 about him sometime, I miss him so much. I had so much
11 things we were going to -- and the simple fact that he
12 didn't get to do all the things that he wanted to do with
13 his boy that I got to do with him, and he just didn't get
14 to do it.

15 And I wake up at night sometimes, and me and
16 myself -- that's all you got to do, is for your mind to
17 wander, and you got plenty of time to wonder when you got
18 nothing to do but think and I thought.

19 And I thought, Oh, my God. Why did that have to
20 happen? Why didn't I just say no to that? Say, Hang on.
21 Let him stay down here.

22 Like I say, he hadn't done anything about it, so I
23 should have left him down there. Like, why did I bother?

24 Q. Did Telly ever do something special between you
25 guys when -- on your birthdays?

JOHNNY LEE IRBY - DIRECT BY MR. SHELTON

1 A. If anybody contacted me on my birthday, Telly was
2 the one that stayed in communication with me. All of my
3 three kids, Telly called me every other month or so:
4 Hey, old dude, wanted to see how you're doing.

5 ... He might be coming through the area, making a
6 delivery someplace, he call and tell me.

7 I might say, No, I'm at work.

8 Okay. Well, we're going to Greenville. He come
9 up here a couple times, and he drive a truck, take
10 furniture someplace. He call me when he get in the area.
11 He's done that a few times. He never forgot my birthday,
12 and when there was a holiday, I always got a call from
13 Telly wishing me, you know, Merry Christmas, or, Hey,
14 what are you doing for the 4th? Are you shaking them
15 ribs? And stuff like this.

16 We used to be in competition with cooking ribs,
17 who be doing it the best, but he call me at home. All
18 kind of occasions, he would call me, and of all them --
19 like I said, of all the kids, he would be the one that
20 call me, and we talk often, and that's how I try to get a
21 chance as to school him about his lifestyle.

22 And I could only remember one time that I went to
23 Jacksonville to visit him that he was in his place, and
24 that was the conversation, that I really had a lot of
25 talk with him about, and I was kind of hoping maybe they

1 would come up here, you know, him and his kids and be
2 here near -- like I say, I was doing things on the side
3 that made money.

4 He could have another job making money, and we
5 would have been a good team, and I even got to the point
6 where I want to help him and his brother get two men and
7 a truck. I wanted to do them for that for them two so
8 they would have a little business on their own.

9 We didn't get around to it, so -- when it's
10 spilled milk is spilled milk. I try not to think about
11 it, but you can't help but think about it because it
12 happened, and it shouldn't have happened.

13 Q. Now, you gave some statements. You heard some
14 statements, some statements that's been played about this
15 all taking place in the back room.

16 A. Yeah. That's part -- that's kind of where it got
17 misconstrued in some kind of way. But Michelle and Telly
18 and myself, we did have part of that conversation. It
19 did happen in the room because I called a conference
20 between the two of them because the fact that she had
21 told him she checked Facebook. He got mad about it, and
22 I think that's just before I left out of the way, and I
23 told them going down the hallway then that they would
24 have to leave the night, you know, and I left the house.

25 And I come back to the house, and I was coming

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1 back in from the other way, but some kind of way I got
2 things misconstrued. It got crossed up in my mind or
3 crossed up in my memory, I don't know, but sometimes it
4 seemed like it didn't happen because what ended up
5 happening, some things that ended up happening -- it's
6 foggy as to where it come from, a dream, a memory or
7 whatever, but it did happen.

8 Q. And -- beg the Court's --

9 MR. SHELTON: No further questions.

10 THE COURT: Cross.

11 MR. OZMENT: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. OZMENT:

14 Q. Hi, Mr. Irby. I'm going to start with the easy
15 questions. Everything you've said today is true,
16 correct?

17 A. To the best of my knowledge.

18 Q. And you took an oath before you took the stand
19 that you were going to tell the truth from that stand,
20 right?

21 A. Nothing but.

22 Q. All right. I want to start with a little of back
23 story and the buildup to what happened that day.

24 When Telly first told you that he was going to
25 come back and ask for some money, you said you had the

1 money to give them then but you didn't want to yet?

2 A. True that.

3 Q. And you said you hoped he would change his mind
4 and actually not come back?

5 A. I told him to wait till Friday.

6 Q. And you testified that was so he would maybe
7 change his mind and not come, right?

8 A. Right.

9 Q. So you didn't really want Telly to come back the
10 second time?

11 A. I wanted him to go ahead and do what he needed to
12 do. His kids was down there. He needed to take care of
13 his kids. I often think -- I didn't leave them, and I
14 don't think he's supposed to leave his kids, you know.

15 Q. Okay. And so when you find out he's coming back
16 that Tuesday, when Gene tells you he's bringing Michelle
17 and the girls, you weren't happy about that either, were
18 you?

19 A. No. I wasn't happy, especially the fact that I
20 didn't know they was on the way until the fact that I get
21 home and they going to be there. I don't know whether
22 they're going to be there when I get home, you know. I
23 got off work after picking my brother up from his job,
24 and when we get to the house, almost to the house, he
25 tell me by the time we get there Michelle and Telly and

1 the kids, and the girls, he said, would be there.

2 And if you remember that letter I wrote to my
3 daughter, I said what the F, you know -- you know, when
4 were you going to tell me? You know.

5 Q. So you weren't happy about that.

6 A. At the initial stage in the car, no.

7 Q. You kind of have mixed feeling with Michelle, a
8 little bit?

9 A. Not really.

10 Q. You don't at all?

11 A. Not really. Like I say, that's his choice.

12 That's his choice, but a choice that you make, you have
13 to go live with it, you know, but you can't bring it to
14 me and live with it.

15 Q. Okay. And just a couple months earlier you told
16 Telly that it's time to move on and he agreed?

17 A. I had to talk him out of it.

18 Q. And now he was back with her?

19 A. He brought her back, and he didn't tell me he was
20 going to get her. Like I say, I don't know what, he got
21 a call from his mother or he found out where Michelle was
22 through the texts he put out there.

23 But, anyway, that's when he end up coming back
24 here with her, and when I come in the house that Tuesday
25 and it just been Telly and Michelle, no, they wouldn't

1 have been there. You know, if it wasn't for those girls
2 being with them, they wouldn't have been there.

3 Q. Okay. And also Michelle is who got him beat up in
4 Florida?

5 A. That's what I figure because she wasn't with him
6 when he got beat, and he tells me that that he don't know
7 where she was. He doesn't know where his dog was, so
8 evidently they had him someplace so he couldn't get there
9 to help him or to stop them, and for him to tell me that
10 he didn't fight back because he felt that he had wronged
11 Michelle so often and stuff like this, you know, that
12 this is supposed to happen to him, so evidently he was
13 taking his medicine.

14 Q. So would you say Michelle wasn't actually good for
15 Telly?

16 A. I would say if you are going to leave your kids to
17 try to take care of some kids that you don't belong to
18 and you can't even take care of your own, what are you
19 doing out there with somebody else taking care of her
20 kids when you ain't taking care of your own?

21 Q. Okay. So they -- and I think also Mr. Shelton
22 asked you when they got there and the girls were hugging
23 on you that you said that that brought your anger down a
24 little bit, but it didn't get rid of it?

25 A. It brought it down a lot because it brought on a

JOHNNY LEE IRBY - CROSS BY MR. OZMENT

1 happy feeling. You got the -- I don't know. You got
2 kids, you think about Christmastime and happy times when
3 kids are happy. I love happy kids, and, like I said, I
4 had a hug around the neck, a hug around the waist, and a
5 hug around the leg, so I got these three happy kids,
6 granddaddy, and it sort of made me feel good to even call
7 me that, the fact that they had two other grandparents,
8 you know, that they very seldom got to go see.

9 Q. Okay. Let's talk about the Facebook. How much
10 was this arguing going on in your house between the two
11 of them about Facebook and all this drama?

12 A. When they come up, they told me they had both shut
13 it down.

14 Q. It was an ongoing issue with them a little bit?

15 A. They shut it down when they got there. They
16 informed me of this when they got there. They informed
17 me that this had happened, so I didn't expect to hear
18 nothing about it. I didn't expect to hear it going on no
19 more than what I already knew about what Michelle thought
20 about him on Facebook and Jacksonville and they always
21 outside on Facebook talking to somebody.

22 Q. Right. Up to that point in Telly's life, would
23 you say you were kind of disappointed in how his life had
24 gone?

25 A. Of course.

1 Q. You felt like he maybe had thrown his life away to
2 a point?

3 A. He did.

4 Q. Let's now kind of start to focus in on a little
5 closer to when this actually happened. You said that you
6 have some memory problems of that day?

7 A. Some.

8 Q. Some? Okay. The first thing, you went over to
9 Miss Mamie's, house but she wasn't there; is that
10 correct?

11 A. I was at the house, Telly, Gene and myself. We
12 changed breakers in the breaker box, right? I put dinner
13 on that day, and when I got ready to leave the house, I
14 asked Michelle if she could keep a watch on it.

15 Q. Do you recall what you were having for dinner that
16 night?

17 A. Yeah, I was having me some green lima beans and
18 pigtails. I bought a whole five-pound pack and a big old
19 pack of green lima beans, and were just going to have at
20 it.

21 Q. Now, you went over to Ms. Mamie's house to move
22 the doghouse for her?

23 A. True that.

24 Q. And she wasn't there but you stayed and you
25 watched Steve Harvey?

JOHNNY LEE IRBY - CROSS BY MR. OZMENT

1 A. I went to do what I went to do. I knew what she
2 wanted so I did that, but I would have stayed longer had
3 she been there.

4 Q. Okay. But you watched a TV show over at her
5 house?

6 A. Yes, 7:00 to 8:00.

7 Q. And you drank a half pint over that period of
8 time?

9 A. True that.

10 Q. Do you remember what you were drinking?

11 A. Yeah. I drank Seagram's Seven.

12 Q. Okay. And did she just keep liquor at her house?
13 Did you get it from her house? Is that how that works?

14 A. From time to time, yeah.

15 Q. Okay. Now, you came back home, you said, and they
16 were drinking in the yard, and you didn't like that?

17 A. I didn't like that. I had told them not to do it
18 out there.

19 Q. And your problem is that people would see them
20 drinking in the yard, and, obviously, you don't have a
21 problem with drinking because you were drinking.

22 A. Go in the house and do it. I always did it in the
23 house.

24 Q. Didn't like other people seeing them drinking?

25 A. True that, true that. It's a facade, I guess.

1 What you do in the dark is going to come into the light.

2 Q. And in the front yard, it's already in the light?

3 A. Yeah, it's in the light. Everybody know it once
4 it happen a few times, and they never saw it before that.
5 Before Telly and them, there was no party in my yard.
6 There was no lounging in my yard unless there was a
7 barbecue day or something like that, you know. I ain't
8 no barbecue in the back yard or side of the house, so
9 nothing like that.

10 Q. Now, after you have that conversation with Telly
11 and you said he stands up and then you go in the house --
12 correct?

13 A. I go in the house. I mean, I go in the house. As
14 soon as I step up on the porch, I look and see the girls
15 sitting on the couch in there watching TV. I tell them
16 to go outside.

17 Q. Okay. And then did you immediately go back to
18 your bedroom after you toll them to go outside?

19 A. No, not immediately. They went out, and as they
20 were going out, I guess Telly come behind me, and he told
21 them to go back inside, all right, and stay right there.

22 I say, There is something wrong with this here
23 today, and I went in my room and I got my weapon and I
24 come to the front room there.

25 Q. So the reason you got the weapon is because he

JOHNNY LEE IRBY - CROSS BY MR. OZMENT

1 told the girls to get back in the house?

2 A. He kept telling them, contrary to what I just told
3 them, right, and last I remember, they actually left the
4 porch, you know, because I hear them saying they were on
5 the porch. I said no, there is not enough room on there
6 for the four of us to be standing there, really. It's
7 just a pathway up there with all that stuff that's on the
8 porch.

9 Q. I just want to be clear. You got the gun because
10 Telly was telling them to come back in the house, and so
11 what -- were you planning on intimidating Telly to keep
12 him out of house? Why did you need a gun to kick three
13 little girls out of your house?

14 A. It wasn't for the girls, it was for Telly, because
15 he intimidates me by the fact that he has got enough to
16 stick his chest out and raise up at me, and I just know
17 he was going to grab at me or grab me or something.

18 Q. He never grabbed you before, though, had he?

19 A. He had never done anything like that before, no.

20 Q. And how old was Telly when he died?

21 A. Telly was 35 years old.

22 Q. And he had never saw -- he never hit you?

23 A. In his life that I remember, but when we talk
24 about ever, ever, ever, Telly hadn't been at my house for
25 no period of time since 1999 when he left, right? When

1 all of them -- all of them went to Jacksonville shortly
2 after their mother went to Jacksonville.

3 Q. But in '99, he would have already been about 20
4 years old, so growing up in high school, he was a big
5 football player in college, he never raised up at you?

6 A. No. He was still at the house. He was still
7 living at that house until Clemson come and sent him off.

8 Q. Did Telly have a weapon on him? Is there a reason
9 you were scared or just him?

10 A. Just his size and strength and I knew, I knew what
11 he could do.

12 Q. Okay. And so you got the gun to kind of
13 intimidate him back?

14 A. If he just stay where he was, gun straight down at
15 my side, I turn around and I go back in the house, and
16 some kind of way he got me turned around, pull me around
17 or whatever, but he went to take a gun from me, so --

18 Q. And I guess -- I'm still not clear if Telly was
19 just intimidating. I'm not clear as to why do you feel
20 that you needed a gun? Was it to kind of intimidate him
21 back? As I mentioned, I'm just confused as to why you
22 said that day, I need to go get a gun.

23 A. Like I said, a gun became my equalizer as far as
24 intimidate him, and I wouldn't -- that's my feeling about
25 a person that's got a weapon on me, and they hadn't done

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1 anything to me with it yet, but if they got it, I'm not
2 going to approach it, you know what I mean, especially in
3 front of me. I just did what he told me to do. I just
4 back off.

5 Q. And so it was to scare him off. It was to get him
6 back off of you.

7 A. Technically, back off, let me go in the house and
8 do what I want to do, and that's why I put everybody out.
9 I'm going to close the doors, and, like I said, I been in
10 there for a while by myself.

11 Q. If you had just closed and locked the door, Telly
12 couldn't have got to you?

13 A. Telly got a key.

14 Q. Did you think about calling the police?

15 A. No, I didn't expect I have to go that far. I
16 didn't expect to go as far as it did go.

17 Q. You thought you needed to get a gun, but you don't
18 think you needed to call the police?

19 A. No. Nothing happened with me having a gun until
20 he approached the gun.

21 Q. Okay. Did you think Telly was going to come in
22 and kill you or something?

23 A. I had no idea what was going on in his mind that
24 day.

25 Q. But he never hurt you before?

1 A. He never tried, no.

2 Q. Okay. Now -- so you have the gun, and you would
3 agree with me that Telly went for the gun. He wasn't
4 trying to get you, he was trying to get the gun; is that
5 right?

6 A. I don't know what he wanted to do to me or what he
7 wanted to do. I have no idea.

8 Q. I think on direct you said he reached for a gun
9 and I think a minute ago you said he reached for a gun.

10 A. He had the gun in his sight, and he's quick enough
11 to do that.

12 Q. So he reached for the gun. He didn't reach for
13 you?

14 A. He reached for my hand with the gun, so that's
15 grabbing the gun and my hand.

16 Q. I agree with that, so he reached for the gun, and
17 how long was this tussle for the gun?

18 A. When he reached for the gun, I tensed up and I
19 tensed up, and now we got this thing going where he's
20 trying to get it, I'm trying to get it.

21 Q. How are you holding the gun before he reached for
22 it? Can you show me?

23 A. I had the gun in my right hand, down by my side.

24 Q. Down by your side, and your hand was on the
25 handle, right here, your right hand?

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1 A. Yeah.

2 Q. Down by your side?

3 A. Yeah.

4 Q. Where was your finger?

5 A. I was holding on the trigger.

6 Q. It was on the trigger like you were ready to shoot
7 somebody?

8 A. Yeah, slide it back, and then on the shoot I would
9 have to pop the slide.

10 Q. So the slide was back. Why did you have the slide
11 back?

12 A. I was told something that -- I had never owned a
13 pistol before in my life.

14 Q. You were a 20-year Navy veteran. You're telling
15 me we got people in the Navy 20 years who don't know how
16 to use a pistol?

17 A. I never owned one. I fired a 45 once a year. I
18 didn't go through clips on a 45 every year because we had
19 to stand watches, so I knew how to shoot a 45. I knew
20 how to shoot that pistol, and since I bought that pistol,
21 I never fired that pistol.

22 Q. So why was the slide back?

23 A. Like I said, something somebody told me about
24 having a round ready to pop in, and evidently I might
25 have got it wrong. I put it wrong in. I dropped a clip

1 and put that bullet back in it, put the clip back in it.

2 Q. Okay. And so you're telling me 20 years in the
3 Navy, shooting once a year to qualify for the Navy?

4 A. It wasn't every year. I shoot once a year. Once
5 you reach a certain plateau where you have to do watch,
6 they allow you to carry a weapon on watch is when you
7 have to go qualify, and that was after you reach E-5 that
8 you actually have to stand watches, so forth and so on.
9 And once I got past E-5, I didn't even have to carry a
10 weapon because the other guy carried a weapon.

11 Q. But in all those years in the Navy, did they ever
12 teach you when do you put your finger on the trigger?

13 A. Supposed to be outside the trigger guard.

14 Q. Unless you want to shoot something, right?

15 A. Yeah, yeah. Like I said, I never owned a pistol,
16 so it didn't -- I mean, from the back of my hand to the
17 front of that trigger guard, it wasn't too easy to reach.

18 Q. So you had -- it was basically just like it is
19 right now, with it slight open?

20 A. Yeah.

21 Q. And you had your finger on the trigger and you
22 were standing there?

23 A. Uh-huh.

24 Q. So Telly goes for the gun. Where are you standing
25 exactly when Telly goes for the gun?

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1 A. Right foot toward the living room.

2 Q. And the other one is going toward the porch?

3 A. I'm stepping on the little four-inch, five-inch
4 ledge going into the living room and right foot is up
5 there already.

6 Q. Okay.

7 A. Left foot is still on the porch.

8 Q. So you're in the doorway?

9 A. So the gun is to my -- inside, inside the house,
10 and how I got turned around and the tussle became is he
11 pulled me around, but I didn't turn around, so they have
12 to pull me around, right?

13 So I guess when he come around, I had to balance
14 myself because he pulled me. The gun come up. He's
15 going for it, right? We tussle with it and we tussle
16 with it, and eventually it's bang, and when he fell was,
17 like, just flipped.

18 Q. Do you remember seeing him fall?

19 A. Yes. It's like --

20 Q. How many times did you shoot him?

21 A. I recall him get shot one time.

22 Q. And you said he walked into the barrel of the gun.

23 A. He turned around and reach, and I don't know what
24 he pulled me, caused me to come toward him or he come
25 toward me, hit the gun. When he hit the gun, he come up

1 with the gun down in the lower section of his pants or
2 the lower section of his right side of his body, you
3 know.

4 Q. So when the gun went off, it was on him? Was it
5 touching him?

6 A. I thought it was at a downward state, but, like I
7 said, if he's pulling on it -- I'm trying to pull down.
8 He's trying to pull up. He's trying to take it."

9 Q. Okay.

10 A. He's above me and all this other stuff.

11 Q. But I think on direct and in your statement to
12 Lieutenant Roach you said he walked into it. What I'm
13 trying to be clear on was it here, was it here? How
14 close was it when it went off?

15 A. It was on this side of his body. That's where I
16 thought it was.

17 Q. Okay.

18 A. And, like I said, him pulling -- I'm pulling,
19 trying to take it, he's pulling, trying to take it up.
20 How did it discharge in the direction that it discharged?
21 I don't know, whether he did it, I did it -- like I say,
22 my hand was on the trigger.

23 Q. Did he cause it to happen like that? Was he just
24 trying to block the slide from moving or what, I don't
25 know what he was trying to do.

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1 Q. But when you say walked into it --

2 A. He walked up to me.

3 Q. Okay. And he walked into the gun?

4 A. The gun was in between us.

5 Q. So the gun was there. It was in between you, and
6 he walked into it?

7 A. Walked into me, yeah, or come into me.

8 Q. He came into you. How far was the barrel of this
9 gun when it went off? How far was it from his chest?

10 A. On his body.

11 Q. It was on his body?

12 A. I thought it was on his body.

13 Q. Okay. So you think this barrel was actually
14 touching --

15 A. Yeah.

16 Q. -- his body, touching his shirt?

17 A. I do.

18 Q. Okay. So that was the first shot. Is that the
19 only time you shot at Telly?

20 A. That's the only shot that I remember, period.

21 Q. The only shot you remember, period.

22 A. That's the one I remember, the one where he went
23 down.

24 Q. Okay. Where was Michelle when you shot Telly?

25 A. I have no idea.

1 Q. Okay. Do you remember her coming up to the porch
2 after you shot Telly?

3 A. I have no idea where she was.

4 Q. So you remember a lot of details from that night.
5 You could tell me what you were drinking, tell me what
6 you watched on TV, tell me you were to move a doghouse.
7 You then come home, tell me exactly how many times the
8 girls went in and out, but as soon as you shoot Telly,
9 you don't remember anything?

10 A. Everything went away.

11 Q. Okay. Do you deny you shot Michelle?

12 A. I can't deny it, because she was shot with the
13 weapon that I own right there, yeah. I mean, I don't
14 think nobody else did it, you know. As a matter of fact,
15 the weapon was mine, and she was shot with the same
16 weapon that Telly was shot with. Now, when did it
17 happen, I don't know.

18 Q. So you agree you shot Michelle?

19 A. I would have to. I have no doubt.

20 Q. But you have no idea how you did it, when you did
21 it?

22 A. I don't remember when it happened. I was just on
23 the fact I shot my boy and the fact that, hey, what just
24 happened, you know? What just happened? And it took me
25 a while to figure out -- it was, like, really Saturday or

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1 Friday, whenever they came and served me that warrant
2 that I truly realized that I had killed my son, you know?
3 I actually caused my son to be shot to death.

4 Q. All right. But Michelle, you don't remember if
5 she went for the gun or anything like that?

6 A. I remember something that I was told that she did.

7 Q. And don't tell me what people told you. Tell me
8 what you remember.

9 A. What I heard on the tape that they had me listen
10 to, she says she was trying to knock the bullets out of
11 my hand. I don't even remember her being that close to
12 me, all right, as far as the fact she was reaching out.

13 Q. So do you remember coming to the porch then?

14 A. No. I don't remember that, but I'm saying they
15 made me listen to a tape where she made that statement.

16 Q. Okay. And so you don't remember her coming to the
17 porch; you don't remember lifting the gun; you don't
18 remember shooting her?

19 A. No, I do not.

20 Q. You would agree with me there were three spent
21 shell casings found on the porch?

22 A. What I looked at, that's what I saw.

23 Q. So you would agree with me there were three found
24 on the porch?

25 A. True that.

1 Q. And you remember only making one shot?

2 A. Right.

3 Q. So there were two more shots, that, would you
4 agree, you shot those two other shots?

5 A. I don't remember two other shots. I remember a
6 round laying on the porch that they saw, which went after
7 discussion and thinking about it that, I guess, when you
8 drop a slide, the round that was already there in the
9 barrel, the round has -- what goes in the barrel had
10 nowhere to go.

11 Q. But you don't know how those -- other than you
12 admit they were there, you don't know how those two other
13 shell casings would have gotten on the porch. You don't
14 remember taking those shots?

15 A. I don't remember.

16 Q. But you agree you probably shot Michelle.

17 A. I had to have.

18 Q. Do you remember Michelle having a gun?

19 A. Get real, man, no.

20 Q. So you're not scared of Michelle?

21 A. I guess not, no.

22 Q. She's a short, petite woman. You're not scared of
23 her or intimidated by her?

24 A. No, I wasn't.

25 Q. Afterwards, do you remember Michelle and the kids

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1 running away?

2 A. When I come out of the house, after Telly went
3 down and I fired that gun in the yard, I then remember
4 them running over to my neighbor's house.

5 Q. You do remember that?

6 A. I remember they were out there. It looked like
7 they were playing in the car, is what they usually do.
8 When they get a chance, they play ring around the rosy in
9 and around the car, and when I fired gun the last time,
10 it looked like they came out of the car and run over to
11 the house.

12 Q. So at that point, the kids were still there and
13 you started shooting a gun?

14 A. I shot a gun in the air.

15 Q. Do you agree that could come down and hit
16 somebody?

17 A. Straight up in the air?

18 Q. You think the bullet just goes up there and stays
19 up there?

20 A. It could come down and hit somebody, but not hurt
21 somebody.

22 Q. So you were still firing gun with the kids there?

23 A. I fired the gun. I fired it and threw the gun on
24 the ground.

25 Q. Just to finish the clip off?

1 A. Just to make sure it was done.

2 Q. Is that what they taught you in the Navy, that you
3 empty a gun by shooting it up into the air?

4 A. No, they didn't teach me that.

5 Q. And then you remember the cops coming?

6 A. I remember -- the first cop come, I could see him
7 outside of my peripheral vision. He opened his trunk up,
8 and I didn't know if he was going to open the trunk up
9 and get a big gun out, and I told him he didn't need that
10 because I wasn't going to shoot no more.

11 Q. Okay. Now, you have a daughter, correct?

12 A. True that.

13 Q. What is her name?

14 A. Anastasia.

15 Q. Did she ask you some questions, wanting to know
16 what happened that night, in some letters?

17 A. She wrote me a letter and told me that if I
18 couldn't tell her what happened, I might want to write
19 her off as a daughter. So I wrote her, I guess, what,
20 three pages I wrote her, and I went on and on and on,
21 trying to get her understand there wasn't anything
22 malicious about this.

23 I didn't plan to hurt my boy. I didn't plan to
24 just come out and shoot my boy, so she didn't buy that
25 because she had what the police had said. She was going

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1 with what she had got -- and I guess she got it off
2 Facebook, and that's the only thing I know about it. She
3 had to get it that fast. For her to know what happened,
4 she had to get it from somewhere.

5 Q. Did you tell her the truth in that letter?

6 A. I think so.

7 Q. So you would agree the letter you wrote her is
8 true?

9 A. As I believed at the time.

10 Q. Does the truth change?

11 A. If you got something twisted in your mind, twisted
12 in your memory, yeah, it could change.

13 (State's Exhibit 46 was marked for
14 identification and admitted into evidence.)

15 BY MR. OZMENT:

16 Q. Well, I'm going to hand you State's Exhibit 46.
17 I'm going to ask you to look at it. Is that the letter
18 you wrote your daughter?

19 A. I would think so.

20 Q. I want to ask you to go to the third page of that
21 letter. The third page starts with the word Facebook, so
22 make sure we're on the right page together.

23 A. Uh-huh.

24 Q. Do you see where you wrote a fly in the soup?

25 A. Uh-huh.

1 Q. I want to you start reading there for me, and
2 we're going to kind of go through it. So you would start
3 reading the first word? I want you to read all along.

4 A. Say again?

5 Q. I want you to start reading the letter out loud,
6 and start with the words, All along.

7 A. All what.

8 MR. OZMENT: May I approach, Your Honor?

9 THE COURT: Uh-huh.

10 THE WITNESS: Oh, all along. All along we
11 have been working together on various projects to -- I
12 can't even read my own writing -- oh, around the house.
13 I go out that evening to Ms. Mamie house and come back
14 around 8 p.m. and so now --

15 BY MR. OZMENT:

16 Q. Let me stop you for a second. So you went to Miss
17 Mamie's house, came back about 8 p.m. Are we talking
18 about the night this happened, the killing?

19 A. I think so, yeah.

20 Q. What happened?

21 A. Now it's conference time back in my home. Kids
22 are all outside playing, so I bring up about the drama,
23 that I told them that if they were to -- while he was
24 going to be there, they would have to find someplace else
25 to live.

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1 Q. All right. So at this point you said you went to
2 Mamie's house, came back at 8 p.m., and then you had a
3 conference back in your room.

4 A. That's the way my mind was clicking at that
5 particular point.

6 Q. Okay. And then keep going.

7 A. I am trying to make it light. If I say you guys
8 don't get it together then you should -- I say I'll shoot
9 you myself, ha ha.

10 Q. So this letter said you brought them back for a
11 conference in your room, and now you told them, if you
12 don't get together, I'm going to shoot you myself, haha?

13 A. Uh-huh.

14 Q. What did you mean by that?

15 A. Well, it was just -- I don't know, some
16 conversation that come up about something had to do with
17 guns.

18 Q. That's terrible, that you would write this and
19 then by happenstance the same day that you did, in fact,
20 shoot both of them.

21 A. True that, true that.

22 Q. Read me the next line.

23 A. And to prove their intentions, to show them that I
24 really did have a gun, all right, and it was down on the
25 floor by my bed at the same time I had thought to move

1 the gun because the girls watch TV back there.

2 Q. And what you're saying is you got the gun out
3 after you said I'm going to shoot you, haha. To show you
4 were kind of being a little more serious, you actually
5 showed them the gun; is that right?

6 A. True that.

7 Q. And that's this gun right here, State's Exhibit 48
8 that we've been talking about, correct?

9 A. True.

10 Q. Okay. So after you showed them the gun, what do
11 you do next?

12 A. I showed them the gun, the box with the slide
13 back, one in the chamber. I turned around with the
14 pistol with intentions of closing the slide. Evidently I
15 had my hand on the trigger and, believe it or not, that
16 gun went off.

17 Q. So it went off in your bedroom, according to this
18 letter?

19 A. That's what I saw in my mind for a long time.

20 Q. Okay. So for a long time you remembered the gun
21 going off in the bedroom first.

22 A. Uh-huh.

23 Q. Were Telly and Michelle there when the gun went
24 off in the bedroom?

25 A. Yes, they were there.

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1 Q. After the gun goes off in the bedroom, tell me
2 what the letter says next.

3 A. Believe it or not, the gun went off, and I think I
4 was -- I said I was going to move the gun because the
5 girls watch TV back there, but I didn't take the gun out
6 to the truck.

7 Q. Let me stop you there. So the gun goes off
8 accidentally in the bedroom with Telly and Michelle
9 there, and then you were going to take the gun out to the
10 truck.

11 A. Right.

12 Q. So according to this letter, you got the gun out
13 to show them you're serious, and the reason you kept the
14 gun out is you were going to take it out to the truck,
15 right?

16 A. Uh-huh.

17 Q. All right. Now, you agree with me that's
18 completely different than what we talked about earlier.

19 A. Completely different, yes.

20 Q. All right. Now, let's -- I think we now got to go
21 to the next page, but now keep reading for me.

22 A. Telly came behind me, said, You're going to shoot
23 me over there? And I say yes. I told --

24 Q. Let me stop you there. Where are you when Telly
25 came up behind you and said, Are you going to shoot me

1 over that?

2 A. In my mind's eye, right then we're in the hallway.

3 Q. Is that the hallway that goes back to your
4 bedroom?

5 A. The hallway going toward the front.

6 Q. Is it from your bedroom to the front of the house,
7 the hallway we're talking about?

8 A. True that.

9 Q. Telly approaches you, asks you if you're going to
10 shoot me. You say yes. What happens next?

11 A. I said, Telly, as he came up behind me in the
12 hallway and grabbed the gun.

13 Q. So you're in the hallway, facing the front of the
14 house, and Telly comes up behind you.

15 A. Right.

16 Q. Okay. Now, you would agree with me again that
17 this is completely the opposite. Earlier, you said it
18 happened when you were in the doorway and he was coming
19 up from the porch, correct?

20 A. True.

21 Q. So he comes up to the hallway and a tussle begins.
22 Tell me what happens next.

23 A. And then he grabs the gun and we tussle and we
24 tussle and we tussle for the longest in the hallway to
25 the living room, and then somehow the gun went off.

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1 Q. So you tussled down the hallway and into the
2 living room?

3 A. Uh-huh.

4 Q. And then the gun went off. Where, by this memory,
5 was Telly and yourself when the gun went off?

6 A. Well -- and from nowhere now, I have a gun with
7 Telly laying on the floor. I go out into the yard. I
8 fire remaining rounds into the air and threw the gun on
9 the ground.

10 Q. Let me go back. So when the gun went off, in this
11 story, where are you and Telly?

12 A. Right there on the -- six feet from where the
13 front door.

14 Q. So in this version of events, the shooting happens
15 in the house?

16 A. Right there by the front door, yeah.

17 Q. And it doesn't say anywhere in here anything about
18 Michelle?

19 A. No, doesn't.

20 Q. It also doesn't say anything about Telly running
21 into the gun and then somehow the gun went off, right?

22 A. I said Telly -- Telly moved in and grabbed the top
23 of the gun to make an attempt to take it from me.

24 Q. Okay. And it says so we tussle and tussle, and
25 I -- can't read it -- I don't know how long, but to the

1 hallway to the living room and then somehow the gun went
2 off.

3 A. Uh-huh.

4 Q. So in this version it doesn't say Telly walked
5 into it.

6 A. Well, like I said, he rolled in and grabbed the
7 top of the gun.

8 Q. Okay. So then you remember going outside. You
9 remember firing the remaining rounds into the ground.
10 You dropped to your knees, and that's how the story goes.

11 A. That's what I remember for all the way up until, I
12 think, when I wrote this letter. That's what I believed.

13 Q. All right. Look at the front letter, and tell me
14 when you wrote this letter?

15 A. On the 18th.

16 Q. Of what month?

17 A. It says 10. I'm pretty sure I had the date wrong.

18 Q. You think you got the date wrong?

19 A. That's in October.

20 Q. When do you think that was?

21 A. Shortly after I got an opportunity to write my
22 daughter, after I had the opportunity to acquire some
23 paper.

24 Q. Is this the first letter you wrote your daughter?

25 A. I don't know if this is the first one or the

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1 second one. I know it was more than once.

2 Q. I showed you one dated September 28, 2012.

3 A. That would have to be before this one.

4 Q. Okay. So would the date be wrong on both of
5 those?

6 A. Could be.

7 Q. All right. So the dates could be wrong, but it
8 could have been in October?

9 A. I doubt it, that long before me having some kind
10 of communication or some kind of -- I don't even know why
11 I talked to her or not, but I know it would have been
12 before that one. It's a closer date than this one.

13 Q. Okay. Let me -- may I approach, Your Honor?

14 Is this the other letter you wrote your daughter,
15 the first one?

16 A. Where is the top of it?

17 Q. I think the top of that page is the top of it. I
18 see. There's a date up there.

19 A. It looks like my writing, anyway.

20 MR. SHELTON: Your Honor, could I see?

21 THE WITNESS: It looks like I jut put a
22 salutation on it.

23 BY MR. OZMENT:

24 Q. And you would agree with me the top of this letter
25 says 9/28/2012?

1 A. Right.

2 Q. And then the top of the next letter says
3 10/18/2012, but you're not sure if those dates are
4 correct?

5 A. It could not be.

6 Q. Okay. So you would agree with me now that this
7 letter to your daughter that tells this version of the
8 events is not true.

9 A. That's -- as what I learned since then, as to what
10 the evidence that I've seen in my Rule 5 motion, yes,
11 where things actually ended up at, it ended up on the
12 front porch.

13 Q. There is a lot in here that, you would agree with
14 me, now that you've seen the evidence, now that you've
15 seen the Rule 5, is not true.

16 A. Right.

17 Q. Because this says y'all went back in the bedroom
18 and you showed them the gun and joked you were going to
19 shoot them. You agree that's not true?

20 A. It's not true as happened at the time it happened.
21 I did have a conference with the two of them that
22 afternoon.

23 Q. Did you show them the gun?

24 A. I may have; I don't know. I know they knew where
25 it was already because they told me they knew where it

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1 was already.

2 Q. At some point did you show them a gun?

3 A. I don't remember when I pulled out that gun if I
4 show it.

5 Q. So this may have never happened?

6 A. May have never happened.

7 Q. But you wrote to your daughter as it having
8 happened?

9 A. Yeah.

10 Q. So you're not sure if that's true?

11 A. I'm not sure if I wrote it having actually done
12 this or not, you know, and --

13 Q. Okay. And then you go on to say that you and
14 Telly start tussling, to use your words, in the hallway,
15 and it goes in into the living room and you shoot him?

16 A. That's not where he fell at. I could see him
17 falling on the font porch as I could see him falling in
18 that front door on that carpet.

19 Q. So you kind of have dual memories of how this
20 happened?

21 A. Yeah. Something happened, and how did it happen,
22 why did it happen, I don't know.

23 Q. So what you testified to today, are you sure
24 that's what's happened, or could this letter be what
25 happened?

1 A. Like I say, the pictures you have, you have seen,
2 shows him on the front porch.

3 Q. So your testimony today, the way you remember it
4 today, is in part based on seeing the evidence against
5 you?

6 A. Yeah.

7 Q. So when you saw that evidence, you made sure your
8 story fit with that evidence?

9 A. Nothing active. I didn't make a story up to
10 corroborate what I saw. That's just what I saw. I have
11 nothing other to go with than this is what happened.

12 Q. But when you wrote this letter, you told me you
13 thought it was true.

14 A. I did, at the time.

15 Q. So you changed this story when you saw this
16 evidence, right?

17 A. When I saw the pictures that I saw.

18 Q. So you changed this story when you saw the
19 pictures?

20 A. That's what I thought I saw.

21 Q. This is what you thought you saw?

22 A. There's is a date on it.

23 Q. I'm not worried about the date. What I'm saying
24 is when you wrote this, you thought it was true, correct?

25 A. In my mind, yeah.

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1 Q. Well, so you thought it was true?

2 A. Yeah.

3 Q. When you wrote it?

4 A. Uh-huh.

5 Q. And then you saw the evidence against you,
6 including those pictures, and you realized this can't be
7 true; is that correct?

8 A. I don't know.

9 Q. Okay. And then you told the story that you
10 testified to today as the truth; is that right?

11 A. Yeah.

12 Q. Okay. So you would agree with me that once you
13 saw the evidence, the story changed as to what happened
14 that night in your mind's eye.

15 A. I reckon, yeah.

16 Q. So we should disregard this letter as not being
17 truth?

18 A. Part of the story about him going to the house,
19 yes.

20 Q. So we're clear -- I'm going to take the letter
21 back from you. So we're clear, the letter we're talking
22 about is State's Exhibit 46, which is in that -- we
23 should believe what you remember today we should believe
24 what is true?

25 A. You should believe what I remember as much as what

1 everybody remembers.

2 Q. We have established your memory isn't that good,
3 and that's based on the letter significantly changed
4 during certain parts of this?

5 A. True that.

6 Q. Okay. I want to talk a little bit more, and just
7 as you remember it, when Telly -- when you got the gun,
8 did you think Telly was going to come and kill you?

9 A. I have no idea what was on his mind.

10 Q. Did you think he was going to seriously injure
11 you, send you to the hospital?

12 A. I thought I knew he could.

13 Q. But he never had before.

14 A. He never raised up at me like that before either.

15 Q. Did you have an imminent fear this was going to
16 happen?

17 A. Yes, I did.

18 Q. So you thought -- he had never done this to you
19 before, but you thought now he was going to come and kill
20 you because he told the girl to come back in the house?

21 A. I don't think that was all the reason, the whole
22 thing when he was blown out of shape about; everything,
23 he was out of shape about everything the night before.

24 He was blown out of shape about people questioning
25 his abilities to have a relationship that he wanted to

JOHNNY LEE IRBY - CROSS BY MR. OZMENT

1 have. He was questioning being a full-grown man, and for
2 him to be a full-grown man, they shouldn't have come back
3 to daddy. He should have did what he had to do. You go
4 take care of your business.

5 Q. You think that had built up, and for the first
6 time in his 35 years he was going to lay hands on you?

7 A. When he come back to the house, when he had a
8 place to lay his head, he was going to come back to the
9 house with a full-grown family in a two-bedroom house.

10 He shouldn't have come back like that, not without
11 telling me or asking me could he come back like that, you
12 know. I mean, just as to things had gotten to the point
13 where he was ready to make a change and he want some
14 help, I was willing to give him some help.

15 Q. That night you said he raised up at you, or did he
16 hit you or anything like?

17 A. When I says raised up at me, he talked like that
18 to me. I mean, now it's a line between manners and
19 respect, but he had both of them. The average person
20 would talk to him, would be yes, sir or no ma'am, or yes,
21 ma'am. He said that. He talked like that to everybody,
22 all right, but a lot of people, young people, do today.

23 Q. You would agree with me that night when he raised
24 up at you, you don't mean he had physically attacked.
25 You mean his attitude and disrespect, that's what you

1 mean?

2 A. Somewhat, yeah.

3 MR. OZMENT: No further questions, Your
4 Honor.

5 THE COURT: Redirect?

6 MR. SHELTON: Yes.

7 REDIRECT EXAMINATION

8 BY MR. SHELTON:

9 Q. Johnny, you went over that letter a lot and those
10 statements, but the night of, when you went back to the
11 police station, you talked to Sergeant Norvell.

12 A. Uh-huh.

13 Q. You remember that?

14 A. Yeah.

15 Q. And your memory was where it was in October, what
16 you just testified to, right?

17 A. In October. It was August, wasn't it?

18 Q. October through your letter. But that night, you
19 remember talking to -- telling what you told Norvell
20 about the porch?

21 A. Somewhat.

22 Q. Okay. And what did you tell Norvell about the
23 porch?

24 A. I think I mentioned how big and strong Telly was
25 and the fact that if he and I would get in a fight, I

JOHNNY LEE IRBY - REDIRECT EXAMINATION BY MR. SHELTON

1 wouldn't stand a chance of winning a fight with him.

2 Q. And do you remember telling him that your son came
3 at you on the porch?

4 A. Yeah.

5 Q. And that was that night?

6 A. That was that night, yeah.

7 Q. August 16th.

8 A. Yeah.

9 Q. 2012.

10 A. Right.

11 Q. And the date on the letter is 2012?

12 A. 2012, right, but October, good God.

13 Q. Say it was October. How long were you in jail at
14 that point in time?

15 A. I had been in jail three months.

16 Q. Okay.

17 A. Yeah.

18 Q. And has it been the easiest thing?

19 A. No, no. It took me a whole weekend to get zoned
20 in and figure out myself, like I said, for me to find out
21 exactly what had transpired, and it just -- I kept trying
22 to see pictures of how that happened, what had happened,
23 where did it happen. I kept trying to see this, and it
24 just didn't click in, like it didn't click in.

25 Q. And what do you do during the day while you're

1 over at the jail?

2 A. Right now --

3 Q. Back then. What were you doing over at the jail?

4 A. I had to figure out -- I had to figure out how to
5 be in jail, first of all. You know, what do you do when
6 you're in jail?

7 Q. You have a lot of time to yourself?

8 A. No, not to myself, per se, you know, the cell I
9 was in had four people in it. You know.

10 MR. OZMENT: Your Honor, I would object.
11 This is beyond the scope of direct. I'm also not sure of
12 the relevance.

13 THE COURT: Sustained. It is beyond the
14 scope of direct.

15 BY MR. SHELTON:

16 Q. You were asked about Telly and his reaction, and
17 you said something was wrong with the kid today.

18 A. I say what's wrong with this kid today.

19 Q. Was he acting different?

20 A. Yes. Like I say, he had never raised up at me
21 like that. I mean, what he would actually raise his
22 voice, I mean, to say, talk derogatory, to say something
23 contrary to what I just told him to do. He would say
24 yes, sir and do what I asked him to do, or no, sir, I
25 haven't got it done yet. I'm working on it or whatever,

JOHNNY LEE IRBY - REDIRECT EXAMINATION BY MR. SHELTON

1 but for him to come and tell me what he's not going to
2 do, he had never done that before. Even when he was a
3 little kid away from home he had never said that to me.

4 Q. Had he ever reacted the way he did?

5 A. Not up until that time.

6 Q. The reaction Telly had, was it physical?

7 A. I thought it would be.

8 Q. Now, you talked about the gun, talked about
9 putting a bullet in the barrel. Why was that?

10 A. I guess I had discussed it -- matter of fact, I
11 discussed it with the guy I bought the pistol from, and
12 he was a constable, and he was telling me how to have the
13 gun ready to go.

14 Q. And by ready to go, was there a reason for that?

15 A. Well, I mean, some stuff had been happening in the
16 neighborhood, and that's why I went for a pistol. At the
17 time I had, like, a rifle at the house, and I just didn't
18 think that I could lift a rifle down; plus it was one of
19 those chop things I had to do, so I basically traded that
20 for a pistol.

21 Q. So that was for protection?

22 A. For the house protection, yes.

23 Q. Beg the Court's --

24 MR. SHELTON: No further questions.

25 MR. OZMENT: Very briefly, Your Honor.

RECROSS-EXAMINATION

1
2 BY MR. OZMENT:

3 Q. Mr. Shelton asked you about the statements you
4 made to Norvell that night at the police station.

5 A. Uh-huh.

6 Q. And you kind of said that those were consistent
7 with your testimony today; is that correct?

8 A. I don't know. I don't know what you're talking
9 about.

10 Q. Do you remember talking to Norvell at the police
11 station?

12 A. Vaguely.

13 Q. Vaguely?

14 A. I mentioned that he was a big person and if we had
15 a fight that I wouldn't stand a chance.

16 Q. And your memory is kind of foggy of that too?

17 A. As of now, yeah.

18 Q. Do you remember talking to Lieutenant Roach?

19 A. Vaguely.

20 Q. You don't remember the details of exactly what you
21 said?

22 A. Not outside of reading it, no.

23 Q. Do you think that your statement to them would
24 have been closer to what's in the letter or closer to
25 your testimony?

1 A. I have no idea.

2 Q. All right.

3 A. I mean, they don't have down there on what I read
4 from them. What's in that letter, I mean, it's not
5 what's in the detective's statements or anything like
6 that. It's as if the whole time I'm sitting there in the
7 room with them talking, it just didn't focus on my mind.
8 It's like I'm in shock. What just happened? You know,
9 what has happened?

10 Q. So it wasn't clear in your mind yet then as to
11 what happened?

12 A. It didn't dawn on me. I mean, I got these guys
13 to call me out and have me to sign these warrants, and
14 when he told me that they was going to charge me with
15 murder and attempted murder, all I could say then was
16 murder? You know, I mean, what happened? You know, and
17 stuff like that, so it was --

18 Q. So when you made those statements that night, it
19 really wasn't clear to you what had happened yet?

20 A. It hadn't dawned on me that everything that
21 happened had happened. Like, I think I kept asking, I
22 kind of sort of remember.

23 Do you remember what happened? Michelle got shot.

24 I said I didn't even know what happened, and so it
25 just goes around and around and around and around, went

1 around like that for a long time.

2 Q. So the first statement made that night, it wasn't
3 really clear what happened that night, you would agree
4 with that?

5 A. I would have to.

6 Q. And then you wrote the letter which you agree now
7 is not the truth?

8 A. Like I say, at the time it was in my mind's eye
9 this is what I saw.

10 Q. But it's not what happened, you would agree with
11 that?

12 A. As far as I can see, what I've looked at since
13 then, no.

14 Q. And your testimony today, though, is finally the
15 truth. Is that true?

16 A. I would have to guess so because -- I mean, it's
17 there in black and white as to what really happened.

18 Q. Because when you look at this evidence, that's
19 what has got to have happened?

20 A. That's what they have proved has happened so far.
21 They're fine with this and they're fine with that and
22 this is what they're saying happened.

23 Q. That doesn't fit with the other stories?

24 A. No, it probably doesn't.

25 MR. OZMENT: No further questions.

1 THE COURT: I think, folks, what we'll do
2 right now is let's break to 1:30, take a little bit
3 shorter of a lunch so we can come back and get this
4 finished up and get it to you for deliberations, so if
5 you would, be back in the jury room at 1:30.

6 Don't talk about the case with anyone,
7 including each other. Don't comment on witness demeanor.
8 Again, same instructions. Don't go by the scene, don't
9 put anything on social media, and if anybody does try to
10 contact you, please let me know when you get back. See
11 you at 1:30.

12 (In open court, jury not present.)

13 MR. SHELTON: It rebuts claims of
14 fabrication, recent fabrication.

15 THE COURT: All right. You can call him. So
16 you got who now, Norvell?

17 MR. SHELTON: Norvell just on -- regarding
18 the statement. I have Elijah Haynes regarding
19 credibility and reputation and Carolyn Smith and
20 Mr. Coaxum for reputation.

21 THE COURT: What was Carolyn Smith testifying
22 about?

23 MR. SHELTON: She's the one that made the
24 first 911 call and reputation. She knows him.

25 THE COURT: Okay. All right.

1 MS. WILLIAMS: We would ask for a limiting
2 instruction about not charging self-defense with
3 Michelle.

4 THE COURT: We're not having a charge
5 conference yet. All right.

6 (Recess taken.)

7 A F T E R N O O N S E S S I O N

8 THE COURT: All right. The jurors back?
9 Bring them in.

10 (In open court jury present.)

11 THE COURT: Okay. Next defense witness.

12 MR. SHELTON: Defense calls Sergeant Norvell.

13 THE COURT: You testified earlier. I'll
14 remind you you're still under oath.

15 THE DEFENDANT: Yes, sir, Your Honor.

16 THE COURT: Okay.

17 BRADLEY NORVELL,

18 having been previously duly sworn,
19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. SHELTON:

22 Q. Sergeant Norvell, how are you?

23 A. Yes, sir, good. How are you?

24 Q. Good. You testified earlier about performing a
25 gunshot residue test on Mr. Irby?

BRADLEY NORVELL - DIRECT BY MR. SHELTON

1 A. Correct.

2 Q. At that time you were performing a gunshot residue
3 test, did he provide any statements to you?

4 A. He did.

5 Q. And essentially what did he say?

6 A. He said a couple of things during the test that I
7 was giving him. He mentioned that --

8 Q. Would it help to refresh your memory if you saw a
9 copy of your report?

10 A. Sure. If you have it, that would be great.

11 Q. Okay. Does that help refresh your memory?

12 A. Yes, sir.

13 Q. What essentially did he say?

14 A. When I was giving Mr. Johnny Irby the gunshot
15 residue kit, he started making comments to me
16 unsolicited. I wasn't asking him any questions. He was
17 telling me this on his own, that earlier that night,
18 during the incident -- well, excuse me. Let me step
19 back.

20 He said he made a comment that he had raised
21 Telly, the victim, from when he was a baby, stating that
22 he's not his biological son, but he always felt that he
23 was his son and that he raised him as his own. And he
24 mentioned to me that he had moved away from the area for
25 a little while and he had moved back to the area with his

1 fiancée, and Mr. Johnny Irby told me he had allowed his
2 son Telly and his fiancée and his children to reside with
3 him at the incident location until they got on their
4 feet.

5 He mentioned they had a -- they had an
6 altercation, a verbal altercation, that ultimately, as
7 you know, turned violent. The details he didn't really
8 give me, but it was basically that he had told Telly that
9 he was going to have to move out and Telly basically told
10 him that, You're not going to be able to do that. You
11 know, I'm not going anywhere, and that a physical
12 altercation ensued and that that is why -- or that led up
13 to the shooting.

14 Q. And did he mention anything about Telly's size?

15 A. He did. He mentioned, you know, that Telly was a
16 big, strong man, and he also mentioned that he was a good
17 football player at Berkeley High School.

18 Q. That was the substance of what he had told you?

19 A. Yes, sir. That was basically it in a nutshell.

20 Q. And that's August 16th of 2012 is when he said
21 that?

22 A. That was the night of the incident.

23 MR. SHELTON: No further questions.

24 CROSS-EXAMINATION

25 BY MR. OZMENT:

BRADLEY NORVELL - DIRECT BY MR. SHELTON

1 Q. Sergeant Norvell, did Mr. Irby tell you where his
2 son had come at him?

3 A. No, sir. I don't believe -- let me rephrase that,
4 if I can. He didn't -- I don't recall him specifically
5 mentioning where, no, but I was under the assumption it
6 was on the porch.

7 Q. If I showed you your statement, would that refresh
8 your memory again?

9 A. If I wrote it down, that's probably --

10 MR. OZMENT: May I approach?

11 THE COURT: You may.

12 BY MR. OZMENT:

13 Q. What does your report say?

14 A. Irby stated that his son came at him on the porch
15 as he alluded to his son's size and strength, resulting
16 in his shooting him.

17 MR. OZMENT: No further questions, Your
18 Honor.

19 MR. SHELTON: No questions.

20 THE COURT: You can step down. Thank you.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: All right. Next witness?

23 MR. SHELTON: Defense calls Elijah Haynes.

24 ELIJAH HAYNES,

25 having been first duly sworn,

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. SHELTON:

4 Q. How are you doing? I appreciate you coming back.
5 What -- and you've known Johnny for how long again?

6 A. Several years.

7 Q. Okay. And you met through the church?

8 A. No, I met through his brother, Gene.

9 Q. And you guys went to church together?

10 A. Correct.

11 Q. What can you tell us about his character and his
12 reputation for honesty and veracity?

13 A. Well, we spent a lot of time together. I would
14 say he was -- I don't think there should be too much
15 question about his integrity at all. He's been a
16 straight A guy as long as I've been with him. Things
17 just happened, and during the time we were together, I
18 could really respect him for his integrity.

19 Q. And he's an honest person?

20 A. Somewhat, yes. I guess you could say that as
21 well.

22 MR. SHELTON: Thank you. No further
23 questions.

24 CROSS-EXAMINATION

25 BY MS. WILLIAMS:

CAROLYN HAYNES SMITH - DIRECT BY MR. SHELTON

1 Q. Mr. Haynes, you testified before about the
2 unfortunate incident that you witnessed?

3 A. Correct.

4 Q. And you also testified that the girls were there.
5 Did you know the girls before?

6 A. No, not --

7 THE COURT: The examination of this witness
8 is limited to questions about character.

9 MS. WILLIAMS: Okay. No further questions.

10 THE COURT: Okay. You can step down. Next
11 witness.

12 MR. SHELTON: Defense calls Carolyn Smith.

13 MS. WILLIAMS: May we approach, Judge,
14 briefly?

15 (Discussion held at sidebar.)

16 CAROLYN HAYNES SMITH,
17 having been first duly sworn,
18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. SHELTON:

21 Q. Hi, Ms. Smith. How are you?

22 A. Fine. How are you?

23 Q. Do you know Johnny?

24 A. Yes, sir, I do.

25 Q. How do you know Johnny?

1 A. My neighbor.

2 Q. Okay. Is there another type of relationship,
3 landlord or --

4 A. Yes, sir. I hold the mortgage to his home.

5 Q. Okay. And how long have you known Johnny?

6 A. I've known Johnny since 2000.

7 Q. Okay. Does he -- what would you say as to his
8 reputation for honestly and truthfulness?

9 A. I have found him to be a very honest person, very
10 truthful. For example, if he doesn't have his mortgage
11 money, he would come across the street and let me know
12 that he didn't have it and when he would have it, and he
13 would stand to his word.

14 Q. The night of August 16th, 2012, you were -- where
15 were you at that point?

16 A. I was on my front porch.

17 Q. You weren't out in Johnny's yard or --

18 A. No, sir.

19 Q. Do you know anything about this other than what
20 you observed that night?

21 A. I really didn't observe anything. I heard. I was
22 standing on my porch saying goodbye to a guest, and I
23 heard the loud talking, and then I heard someone said he
24 had a gun -- he's got a gun, and then I heard shots.

25 Q. Okay. And what did you do after that?

CAROLYN HAYNES SMITH - DIRECT BY MR. SHELTON

1 A. I called 911.

2 Q. And do you recognize this? Do you recognize this?
3 It's been marked for identification as --

4 A. Yes, sir.

5 Q. -- Defendant's 1. And what is that?

6 A. That's the recording of the 911 call.

7 Q. And how can you tell that?

8 A. My initials on the back, and I listened to this --
9 was it Tuesday? One evening this week.

10 Q. Okay. And is that a fair and accurate depiction
11 of the phone call that night?

12 A. Yes, sir.

13 Q. Okay. There hasn't been any changes or deletions?

14 A. No, sir.

15 MR. SHELTON: Your Honor, at this time,
16 defense introduces the 911 call for evidence.

17 MS. WILLIAMS: No objection.

18 THE COURT: Admitted. You can publish.

19 (Defendant's Exhibit No. 1 was marked for
20 identification and admitted into.)

21 BY MR. SHELTON:

22 Q. That's what you remember from that night?

23 A. That's correct.

24 MR. SHELTON: No further questions.

25 THE COURT: Cross?

JOHNNY COAXUM - BY MR. SHELTON

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

3 THE COURT: You can step down. Thank you.
4 What's next?

5 MR. SHELTON: Defense calls Mr. Coaxum,
6 Johnny Coaxum.

7 JOHNNY COAXUM,
8 having been first duly sworn,
9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. SHELTON:

12 Q. How are you?

13 A. Great.

14 Q. Do you know Johnny?

15 A. Yes, sir.

16 Q. How do you know Johnny?

17 A. As a member of the church.

18 Q. Okay. So how long have you known him?

19 A. About a year and a half, two years.

20 Q. Okay. And in that year-and-a-half, two years,
21 have you had a chance to talk with him and meet with him?

22 A. Yes, sir.

23 Q. Okay.

24 A. I'm -- I meet with him quite regularly. I'm one
25 of the elders of the church, and I usually visit folks.

JOHNNY COAXUM - CROSS BY MR. OZMENT

1 Q. Okay. And so that's one of your positions in the
2 church. What is an elder?

3 A. An elder is an overseer of the church.

4 Q. Okay.

5 A. We talk to people, keep them encouraging the Lord,
6 and try to get everybody to do the right thing.

7 Q. And in that time that you have gotten to know
8 Johnny, do you have an opinion as to what his reputation
9 is for truth and honesty?

10 A. From the time I've known Johnny, to me, he has
11 been a wonderful person. He does what he is asked to do,
12 especially in the church. Most of them that I deal with,
13 they don't do it. Honestly, I think he's a honest
14 person.

15 Q. And that's what you see as far as his reputation?

16 A. Reputation, he's a nice person.

17 MR. SHELTON: No further questions.

18 THE COURT: Cross?

19 CROSS-EXAMINATION

20 BY MR. OZMENT:

21 Q. How are you today, Mr. Coaxum?

22 A. Great. Fine.

23 Q. Good. You said you meet with Mr. Irby quite
24 regularly?

25 A. Yeah. Yes, sir.

1 Q. What do you mean by --

2 A. Well, I'm a neighbor. Every time I come to the
3 block, if I see him, we'll talk.

4 Q. Have you visited with him since this happened at
5 all?

6 A. Since this has happened?

7 Q. Yes.

8 A. Oh, yeah.

9 Q. You go see him and talk to him?

10 A. You mean at the prison?

11 Q. Yes.

12 A. Yes, sir.

13 Q. Okay. Has he ever told you what happened that
14 night?

15 A. I don't think, not fully. When I'm coming here
16 mostly to visit him in the prison, we talk mostly church,
17 church-related issues, or trying to encourage him while
18 he's here.

19 Q. But did he ever tell you any of what happened that
20 night?

21 A. I don't -- I don't recall we talking about that
22 too much, I really don't.

23 MR. OZMENT: No further questions.

24 MR. SHELTON: At this time, defense rests.

25 THE COURT: You can step down.

1 Does the State have any rebuttal?

2 MS. WILLIAMS: No, Your Honor.

3 THE COURT: Okay, folks. You have heard all
4 of the testimony that you're going to hear in this trial
5 now, and we're going take a little break right now so we
6 can take care of some legal matters. We have to have a
7 final charge conference where we go over the charges to
8 make sure that what I tell them I'm going to say we've
9 all agreed on or not, and then we'll bring you back here
10 in about 15 minutes.

11 We'll have then the closing arguments, then
12 I'll charge you on the law, and then you'll retire to
13 consider what your verdict will be. So while you've
14 heard all the evidence now, it's still premature to begin
15 your deliberations or discussions about the case, so
16 don't talk about the case yet, all right? See you in a
17 few minutes.

18 (In open court, jury not present.)

19 THE COURT: All right. Any motions?

20 MS. WILLIAMS: Your Honor, we have a
21 different copy of the charge. Did you print it out over
22 here before we left for lunch?

23 THE COURT: Do you have any motions?

24 MR. SHELTON: We would renew our directed
25 verdict motion based on the same arguments as prior.

1 THE COURT: All right. Well, unless you have
2 something new to argue, I'll deny them on the same
3 grounds that I denied them earlier.

4 Take a moment.. Look these over. I think the
5 only thing that is different on that is the State
6 requested an intoxication charge, which is on page ten,
7 and then on page seven, under self-defense, the bulleted
8 point, the following elements are all required to be
9 present for self-defense.

10 Is there anything further from the State?
11 Let's take it up one at a time, murder indictments and
12 then the attempted murder indictment. Is there anything
13 as to the murder indictment?

14 MS. WILLIAMS: No, Your Honor. We don't have
15 any motions regarding the murder indictment. I'm
16 wondering what the Court's position is about charging --
17 and I might have just missed it, self-defense upon the
18 charge of attempted murder.

19 THE COURT: Well, I'll get to that.

20 MS. WILLIAMS: Okay. We don't have any
21 motions or objections to the charge.

22 THE COURT: All right. How about the
23 defense? I know I handed it to you. Essentially, I'm
24 giving you involuntary, voluntary, self-defense, and
25 accident on the murder charge.

1 MR. SHELTON: There's the prior violence of
2 the victim, imminent danger, size and age, and
3 intoxication --

4 THE COURT: What about it?

5 MR. SHELTON: I think there is evidence that
6 he had prior knowledge of violence by the victim and ask
7 that that be a part of the imminent danger and that size
8 and age can be taken in consideration as far as imminent
9 danger.

10 THE COURT: Specifically, I guess I'm asking
11 you, what is it you want that I don't have in here?
12 Because I asked y'all to e-mail me anything you wanted
13 that I didn't have in here, so do you have something that
14 you propose?

15 I know you said yesterday whatever is in the
16 standard charges. Well, this is what is in the standard
17 charges.

18 MR. SHELTON: Sorry, Judge. Let me grab
19 that. Specifically in the standard charge, there is
20 something on the prior violence by the victim, and
21 there's a charge that prior instances of violence by the
22 victim may be considered in whether the defendant
23 actually believed he was in imminent danger of death or
24 serious bodily injury, or is actually in imminent danger.

25 There is also --

1 THE COURT: Could you give me what you are
2 requesting there?

3 MR. SHELTON: Yes, Your Honor. And there's
4 this -- size and age, I think, is -- and the size and age
5 on the other side.

6 THE COURT: All right. Do you have a problem
7 with that sentence?

8 MS. WILLIAMS: No, Your Honor.

9 THE COURT: All right. I'll add that on. On
10 page seven, where it's under imminent danger, in between
11 the first and second sub-bullet point, so it will read
12 the second element of self-defense is that the defendant
13 was actually in imminent danger of death or serious
14 bodily injury or that the defendant actually believed he
15 was in imminent danger of death or serious bodily injury.

16 Prior instances of violence by the victim may
17 be considered in deciding whether the defendant actually
18 believed he was in imminent danger of death or serious
19 bodily injury or was actually in imminent danger. Okay?

20 MR. SHELTON: And then the size and age on
21 the back sheet of that, the one I handed up.

22 THE COURT: All right. I'll read that right
23 afterwards as well. Do you have anything else on the
24 murder indictment?

25 MR. SHELTON: No, Your Honor. Thank you.

1 THE COURT: All right. On the attempted
2 murder, what's the State's position on the attempted
3 murder charges?

4 MS. WILLIAMS: We don't have any objection to
5 the charge as the Court has proposed. The only thing
6 that we would ask the Court to do is give a limiting
7 instruction about self-defense because it is confusing to
8 them.

9 They're getting a lot of charges. They're
10 getting a lot of lessers, and there is absolutely no
11 evidence in the record of any self-defense. I think the
12 defendant testified himself that he wasn't afraid of
13 Michelle. He had no memory of her coming at him, and so
14 we would just ask the Court to clarify that.

15 THE COURT: What's your position on that?

16 MS. WILLIAMS: And no accident on Michelle,
17 excuse me, Your Honor.

18 MR. SHELTON: I can understand the
19 self-defense, taking that out as far as the attempted
20 murder, but I do believe that there is some evidence that
21 the State -- or that the jury could find that there was
22 an accident with the attempted murder or ABHAN, Your
23 Honor, so I would ask that accident be allowed for that
24 one.

25 THE COURT: Amongst the many different

1 versions of what happened today that we've heard over the
2 last couple days, I heard today Mr. Irby testified that
3 after Telly got shot that he really didn't remember
4 anything that happened after that point; however, he was
5 trying to empty out the chamber and the gun just, I
6 guess, went off, is how he said it.

7 If he was, in fact -- had a valid
8 self-defense against Telly and as a result the gun went
9 off accidentally and struck Michelle, then I think that
10 she -- that he would be entitled to the accident charge
11 for the attempted murder charge but not self-defense.

12 So I will limit them to say they're not to
13 consider self-defense on attempted murder, but they can
14 consider whether it was an accident because there is
15 evidence in the record that he was validly exercising his
16 right to self-defense, and the law is pretty clear that
17 if you are validly exercising your right to self-defense
18 and a gun goes off accidentally, then that is a defense.
19 Whether or not it's believable is for them to decide.

20 MS. WILLIAMS: And I agree with the Court on
21 that, and the one thing I would ask the Court to consider
22 with the limiting instruction is instead of bringing more
23 attention to the accident, just give them a limiting
24 instruction, that for self-defense only, you could not
25 consider that defense. For the charge of attempted

1 murder, instead of saying but you can consider -- I think
2 that kind of gives that more emphasis, so if you can just
3 mention that they can't consider self-defense for the
4 charge of attempted murder, that would be what we would
5 request.

6 MR. SHELTON: Our argument would be that
7 would be confusion, Your Honor, confusion to each
8 different charge, that there's something different, then
9 we need to also explain what could be considered for that
10 charge.

11 MR. OZMENT: Your Honor, on the accident
12 charge, defendant said he was trying to unload the gun by
13 shooting it. Part of the accident is you must have due
14 care in using a weapon. Firing a weapon in a residential
15 neighborhood to unload the gun is not due care of a
16 weapon.

17 THE COURT: We can go back and pull it, but I
18 wrote a note down, and I'm pretty sure his testimony
19 today was not that he was stating that he -- he didn't
20 remember, but that he was trying to clear the chamber or
21 the magazine. He didn't say that he was shooting it off
22 to clear the chamber but that it must have gone off, was
23 the testimony.

24 There were other people that said he shot it
25 into the air, but his testimony was he was just trying to

1 clear the chamber with the magazine.

2 MR. OZMENT: Okay. I must be recalling that
3 differently than Your Honor.

4 THE COURT: Okay. All right.

5 See if this solves our limiting problem, all
6 right? I charge you that you may consider self-defense
7 only for the murder charge. However, you may consider
8 the defense of accident for both murder and attempted
9 murder charges.

10 That sounds non-confusing to me. Does it
11 come across as non-confusing?

12 MS. WILLIAMS: No, no. I hate to even take
13 the position, but we may need to clarify they may also
14 consider self-defense for the lesser included, just
15 because they may get the impression -- sometimes we talk
16 to jurors after and they take everything so literally.
17 They may get the impression that they can't consider
18 self-defense for voluntary for or involuntary, you know.

19 We respect the Court is going to do -- it
20 sounds fine. We would request that you not highlight
21 accident again because it's going to be clear to them
22 that they can consider accident because you're only
23 limiting them on the self-defense, and even if you said
24 only for the charge of self-defense is limited to murder,
25 we would prefer you not highlight accident again, but,

1 you know, overall, it sounds fine to the State.

2 THE COURT: Well, I think it's probably
3 asking a lot to say you can consider only self-defense
4 and then, by implication, leave accident in there. I
5 think they need that clarification. I don't think it's a
6 comment on the facts.

7 MS. WILLIAMS: And I guess to that same
8 thought, if you're including ABHAN, maybe we need to say
9 you can't consider self-defense for the charge of
10 attempted murder and ABHAN. So --

11 THE COURT: Say that again?

12 MS. WILLIAMS: Just as we're going to remind
13 them they can consider self-defense for murder and the
14 lessers, we probably need to say we can't consider it for
15 attempted murder and ABHAN.

16 THE COURT: All right. I charge you that you
17 may consider self-defense only for the murder charge and
18 its lesser included charges; however, you may consider
19 the defense of accident for all of the charges, including
20 lesser included offenses.

21 Does that work for you?

22 MR. SHELTON: Yes, Your Honor.

23 THE COURT: While I'm doing this, why don't
24 y'all get together -- make sure all this is together,
25 it's in, and what didn't come in isn't accidentally over

1 there, and then how long do you need? You want to close
2 in full? Who's doing it?

3 MS. WILLIAMS: We're going to do two
4 closings. Mr. Ozment is going to do first close on the
5 law, and I'll do the second close, and they're not going
6 to be particularly lengthy. I'll say mine might be 15,
7 20 minutes.

8 MR. OZMENT: Shorter than that.

9 THE COURT: So 30 total, 10 and 20, and then
10 you want 30?

11 MR. SHELTON: Sure.

12 THE COURT: All right. Anything from the
13 State before we begin?

14 MS. WILLIAMS: Nothing from the State.

15 THE COURT: From the defense?

16 MR. SHELTON: No, Your Honor.

17 THE COURT: All right. Let's bring the jury
18 in.

19 (In open court, jury present.)

20 THE COURT: Folks, we are now into the final
21 phase of the trial where you will now have the closing
22 arguments and I'll charge you on the law and you will
23 retire and consider your verdict.

24 Our procedures are that the State, who has
25 the burden of proof, gets to open and close. They'll

1 open on the law, short, about ten minutes, where you'll
2 hear from the solicitor, basically going over what the
3 law is.

4 Then you'll hear from the defense, and then
5 the State has the right to close in full and then you'll
6 hear from the State last. So we'll hear from both sides,
7 roughly, maximum around 30 minutes, but it's going to be
8 10 and 20 on the State and 30 on the defense, but you'll
9 hear first from the State, then the defense, and then the
10 State again. After that, I will go over the law with
11 you.

12 Now, remember, you've heard all of the
13 evidence that you're going to hear in this trial, and
14 that's what you'll make your decision on, based on what
15 you heard in here. The lawyers aren't witnesses. They
16 aren't testifying. They weren't testifying. They're
17 only going over the evidence that you've heard with you
18 in an attempt to persuade you to render a verdict on
19 their client's behalf.

20 So they're only discussing the evidence.
21 What they say is not to be considered as evidence. It's
22 argument, all right? So we'll have the closing
23 arguments, and I will charge you on the law.

24 So, Mr. Ozment, if you are ready, you may
25 begin.

1 MR. OZMENT: Thank you, Your Honor. May it
2 please the Court, Mr. Shelton, Mr. Schwacke:

3 I'm going to talk briefly about the law in
4 this case. The judge -- after the lawyers are finally
5 done talking, the judge is going to close and tell you
6 what the law is you should consider. If anything I said
7 or anything Mr. Shelton says or Ms. Williams says is
8 different from what the judge says, the judge is wearing
9 the robe. He's always right.

10 Now, in this case, Mr. Irby is charged with
11 the death of Telly Irby, which I'm going to talk about
12 first. He's charged with murder. Then we'll talk about
13 Michelle Wiggins and the attempted murder.

14 South Carolina, this is what murder is. It's
15 the unlawful killing of another with malice aforethought.
16 What does that mean? Obviously, Telly Irby was killed,
17 but what I want to talk to you a little bit about is
18 malice aforethought.

19 Malice is hatred or ill will, hostility
20 toward another person. It's the intentional doing of a
21 wrongful act. I think that's important in our case.
22 It's the intentional doing of a wrongful act. Some
23 people also describe this as an evil heart. It's that
24 moment that the anger, the madness, that kind of pushes
25 somebody over the edge, and malice doesn't mean it's

1 premeditated. It doesn't mean it was planned out for a
2 month, a week, a day. It doesn't mean it's planned out
3 for a minute. Malice does not have to exist for any
4 particular amount of time. It can be that split second:
5 I'm going to pull this trigger. That's all you need for
6 malice.

7 And malice applies to both these charges, the
8 murder of Telly and the attempted murder of Michelle. He
9 had malice when he squeezed that gun and shot Michelle.
10 That's attempted murder.

11 The next thing I'm going to talk about is
12 there is something under murder you're going hear about,
13 and that is voluntary manslaughter. Voluntary
14 manslaughter is unlawful killing of another. So the same
15 as murder, but this is without malice.

16 So if you hear in this case that, you know,
17 We all agree that Mr. Irby shot Telly, but I don't think
18 it was with malice. I don't think he had an evil heart.
19 I don't think he had gotten to that madness. I don't
20 think he was angry, I think he was just caught up in the
21 moment and that he was provoked somehow to do it, that's
22 what voluntary manslaughter is.

23 Like I said, that's kind of a lesser charge
24 than murder.

25 Lastly, there is a defense, both of these

1 defenses, and that is self-defense. Four elements must
2 be established for self-defense. Now, in this case,
3 you're going to hear self-defense. That means just like
4 the other charges, it's our job, the State's job, to
5 disprove self-defense. That sounds weird, just like
6 we're trying to prove something that is assumed to exist.

7 I want you to notice on each of these four
8 self-defense elements, each of them is going to have an
9 and after it. That means if any of them are not present,
10 Mr. Irby is not entitled to self-defense. He has to
11 click all four.

12 To get a run in baseball, you have to hit
13 every base. If you miss second base, you're still going
14 to be out when they toss the ball to second base. It
15 doesn't matter if you hit a home run. Same four things
16 on these elements: The defendant must not be at fault in
17 bringing on the difficulty.

18 What you think about in this case, the
19 defendant had a gun. He was the only person to have a
20 gun. He was the only person who had a weapon. So if
21 that gun hadn't come out that day, we wouldn't be here.
22 Telly Irby would still probably be living in Moncks
23 Corner. That gun is what brought on the difficulty.

24 The reason anybody put any hands on anybody
25 is because that gun came out, and that was the

1 defendant's decision to bring that gun.

2 So I would certainly put it to you, the
3 defendant has some fault in this case in bringing on the
4 difficulty, in bringing on the death of Telly Irby.

5 Defendant must have actually believed he was
6 in imminent danger of losing his life or serious bodily
7 injury or was in actual imminent danger of losing his
8 life or serious bodily injury. Remember, these are all
9 ands.

10 Now, I asked Mr. Irby about that, and he said
11 he believed he was in imminent danger, but the judge is
12 going to charge you, you can consider the past activity
13 between the defendant and Telly. I asked Mr. Irby, in 34
14 years, Telly never once laid hands on him. Telly had
15 never once raised up to him. Telly had never beat him.

16 Telly had never hit him, but for some reason,
17 this time, Mr. Irby thought, From the way he was talking
18 to me, I thought he was about to come to kill me. Never
19 done anything to me before. He was a perfect son; yes,
20 sir; no, sir; great son, but today I had a funny feeling
21 he was going to kill me. I don't know.

22 Next, now, this is the same one as the last
23 one. The last one is what Mr. Irby thinks. This one --
24 and this is kind of legal language here. Would a
25 reasonably prudent man of ordinary firmness and courage

1 have had the same belief? You can read it, but a
2 reasonably prudent man of ordinary firmness and courage
3 is just a normal person off the street, so a normal
4 person with common sense in our community. What would
5 they think?

6 If they had been in Mr. Irby's shoes that
7 night, would they have been scared for their life to the
8 point they would need to go get a gun? Would they have
9 thought Telly Irby is about to kill me. I need a gun to
10 protect myself? I don't think they would.

11 And, lastly, so, finally, home plate, the
12 defendant had no other probable means of avoiding the
13 danger of losing his life or sustaining bodily injury.
14 If he had stayed in the house, if he had called the
15 police, if he had not gotten out a gun, if he hadn't gone
16 back out to confront -- there are many ways he could have
17 avoided this. He got a gun, he went back out front, and
18 that's the only time that any tussle started, and it was
19 over that gun.

20 That's what this is about. I think on all
21 four of these there is a good argument that the defendant
22 does not get self-defense. I don't think he hit any of
23 them. I'm not sure he got to first base, but he has to
24 hit a home run and hit every base to get self-defense.

25 Next, we'll talk about Michelle, and I told

1 you this. Now, in this case -- and the judge is going to
2 explain this to you. Self-defense doesn't apply to
3 attempted murder. It only applies to Telly's murder, and
4 the judge will tell you that, so this is the same thing
5 as murder, like we just talked about. It just means you
6 didn't die.

7 It's called malice aforethought. You still
8 have to try to kill the person, but, obviously, Michelle
9 is not dead.

10 In this case, I think the facts speak for
11 themselves. Mr. Irby says he has memory problems. He
12 remembers every detail of that day. After it happens, he
13 remembers going out on the lawn. He remembers shooting a
14 gun off. He remembers going to the police department.
15 He remembers what he told the police.

16 He conveniently doesn't remember the ten
17 seconds that he almost killed Michelle Wiggins. Can't
18 explain it. Doesn't even know he shot her.

19 He admitted, Yeah, I guess I had to have shot
20 her, but I don't know anything about it.

21 Suspicious memory loss, to me.

22 Lastly, I'm going to talk to you for a minute
23 about reasonable doubt. In any criminal case, the State
24 has to prove the defendant guilty beyond a reasonable
25 doubt, every element. Malice, unlawful killing, that's

1 murder. Both beyond a reasonable doubt. Beyond a
2 reasonable doubt means that you have to be firmly
3 convinced of the defendant's guilt.

4 It doesn't mean proof beyond all doubt. It
5 doesn't mean -- it's not like a math problem, one plus
6 one equals two, and very few things that you have no
7 doubt about, very few things, and you don't have to have
8 no doubt about this. You just have to be convinced
9 firmly. You have to think he did it, and that's all you
10 need.

11 I appreciate your paying attention. I'm
12 going to sit down. Ms. Williams is going to get up after
13 Mr. Shelton and finish our part of the close.

14 Thank you for your attention. In this case,
15 you should vote guilty.

16 MR. SHELTON: May it please the Court: Sixty
17 years old, coming into his home, pulling into his yard.
18 What does he see? He sees the child he raised, a child
19 that became a teenager and excelled, a child that became
20 a young man and started making mistakes.

21 He sees a man that reached a low point and
22 had a lot of pain, sees a man that he helped raise, he
23 helped heal with that pain. He sees that man, and that
24 man was doing anything to get back to that pain.

25 It didn't matter what anyone said to him. It

1 didn't matter that someone was pointing out that he's
2 making the wrong choices. It didn't matter. Johnny was
3 hoping, Johnny was hoping that he wouldn't have to
4 protect himself, that that man that wasn't listening,
5 that wanted to go to pain, he forced Johnny to protect
6 himself.

7 Johnny was hoping it would be that child that
8 looked up to him. Johnny was hoping it was going to be
9 that teenager that asked him for advice. Johnny was
10 hoping it was going to be that young man that wanted him
11 to come to those family functions. Johnny was hoping it
12 was going to be that young man, that man that called him
13 on his birthday. Johnny was hoping it was going to be
14 that man that committed himself to Christ.

15 It wasn't that man. That person that stood
16 up to Johnny, that wasn't that man. That was a different
17 person, and Johnny felt threatened, felt scared,
18 intimidated. Somebody that could snap him, never reacted
19 this way. He had to protect himself.

20 Let's talk about maliciousness. The State,
21 in their opening, used a pot to boil, boiling, reaching a
22 boiling point. That's not real life. We're not cartoons
23 that start getting red and red and red and then blows up
24 the top. That's not real life.

25 Every day is different. He was starting to

1 feel good. Things were starting to go well. He didn't
2 want that night to happen. He didn't want what happened.
3 That's not what he wanted. He didn't want this person
4 and these people that he was helping, that he was fixing
5 up his house, that he was trying to put on the right
6 track -- he did not want that to happen.

7 He didn't disapprove of the relationship. It
8 wasn't because of race, it was because of the pain. As a
9 father, he helped. He helped Telly overcome that pain,
10 and he sees that pain coming back. What matters is that
11 person that caused the pain.

12 Telly wasn't listening, so his choice. He's
13 a grown man, but he's going to leave. He's going to get
14 out, and that was it. That was it for Telly. He's not
15 listening, but that wasn't what Telly was going to do.
16 He was going to physically get up to him. Telly knew
17 that Johnny would be mad about the drinking. Michelle
18 said they already talked about it. Johnny testified he
19 talked about it the day before. Telly knew that, but
20 they did it anyway.

21 It doesn't take advantage of Johnny to go out
22 of the house. You could leave. You could do things on
23 your own. That's when Telly lost control. He had
24 nowhere else to go. He couldn't go back to Florida. He
25 didn't have a place that he built up, he didn't have a

1 place that he worked for, so he had to do the one thing:
2 He had to gain control. He had to intimidate. He had to
3 fight. He had to force somebody to give him what was
4 somebody else's, was his father's. He had to force that,
5 and that's what he did.

6 The thing is, all he had to do was give
7 Johnny a little bit of space, a little bit of respect,
8 and this never would have happened. If he would have
9 shown Johnny that he was that child that looked up to
10 him, if he would have shown Johnny that he was that
11 teenager that sought his advice, if he would have shown
12 Johnny that he was that young man that wanted him to come
13 and visit for family functions, if he would have shown
14 Johnny that he was that man that called on birthdays, if
15 he would have shown Johnny that he was that man that
16 recommitted to the church, this never would have
17 happened. Instead, he wanted to confront. He wanted to
18 be aggressive.

19 From that moment, Telly was not the person
20 that Johnny hoped. He was a different person. He
21 confronted, he attacked, he fought, and he would have
22 killed Johnny. He was desperate. Johnny had no other
23 choice.

24 Self-defense: Without fault. It's not
25 available if your conduct is reasonably calculated to

1 provoke a deadly attack, or your language is so
2 contemptuous would expect to bring on a physical
3 encounter. So what did Johnny do? He's telling him,
4 Move out.

5 Is that contemptuous language? Is that an
6 action that's going to tell you to come fight me? Come
7 kill me? Because that's what Telly did. That's how
8 Telly reacted, from telling him to move out. He
9 approached him. He attacked him. He confronted him, so
10 he protected himself. There is nothing wrong in that.
11 It's his house, his home. It's not unlawful.

12 He wanted to be alone. What's wrong with
13 that? Is that an action to provoke violence? And he's
14 standing in his home. He was in the doorway to his home.
15 How is that an action that provokes violence?

16 Telly's actions, though, drinking outside,
17 standing alone, that's not anything except for he knows
18 that Johnny gets upset about that. Michelle testified
19 about that. Confronting Johnny. He got up on him. He's
20 6 foot 3, 245 pounds, 250 pounds. Johnny, at the time, 5
21 foot 9, 179 pounds.

22 Johnny is 60 years old; Telly, 35. He's
23 showing his size. He's coming on to the porch. He went
24 up there. He confronted Johnny going on the porch.
25 Johnny was in his home. He was on his porch. Telly went

1 up there, physical confrontation. Gene says he heard it,
2 or saw it, before he got the gun. He saw it on the
3 porch. He saw it on the steps.

4 Johnny said there's a struggle for a gun.
5 Michelle says there's a struggle for the gun. Roger,
6 Elijah, the only person that was there, couldn't see what
7 was happening on the porch, fighting over the gun, in the
8 doorway, and you'll get these pictures and you'll see
9 that he was in the doorway, Telly was in the doorway.
10 Imminent danger.

11 Whether you felt you were in imminent danger,
12 you have the right to act on appearances. Telly
13 confronted him. Telly got big. Telly was scary. He was
14 intimidating him. Words accompanied by hostile acts:
15 It's not just words, hostile acts, and he confronted him.

16 He showed himself. Size and age: You can
17 take that into consideration. Prior violence by the
18 victim: You heard Johnny knew what Telly had done to his
19 mom. Intoxication: Consider that Telly was intoxicated.
20 Take that into consideration with whether Johnny felt
21 that he was in imminent danger. Consider all that and no
22 way to avoid danger.

23 It's his house. Telly was coming no matter
24 what. He made it clear he was coming no matter what. It
25 didn't matter. If Johnny would have went in the house

1 and shut the door, Telly would have came right in after
2 him, because Telly wasn't letting those girls go back
3 inside. He was going to take control. He was going to
4 take control of that house.

5 So what about Michelle? Johnny, he tolerated
6 Michelle. I guess you could say that. Yes, this was the
7 a person that hurt Telly, hurt his son, put him in pain,
8 but she also came up with him. She brought those kids,
9 those kids that came and hugged him, those kids that
10 started bringing joy. She also cleaned up the house.

11 Little things: She helped cook, but just
12 starting making it feel like more than just a bachelor
13 pad around there, and she started working. She got a job
14 really quick, and, plus, started going to church. She
15 sought his advice.

16 And he cared about those kids, grandkids.
17 Started them in school, got them sleeping bags for what
18 they had, and he made decisions based on those kids. He
19 changed the shower, the bathroom. He cared about them.
20 He cared about her. He cared -- he didn't want to hurt
21 her.

22 He didn't want that to happen, so he had the
23 convenient memory because he didn't remember what
24 happened with Michelle. You judge his credibility.
25 That's part of his job, believability, credibility, and

1 on that tape, he generally does not remember what
2 happened with Michelle. That's the night of. He says,
3 Oh, my God, I hope there was only one.

4 That's the only thing he remembers. He's
5 being honest. He told you he doesn't remember.

6 He told Norvell that. He told the police he
7 doesn't remember, so accident you can consider for both.
8 Unintentional act, didn't mean for it to happen. Didn't
9 want it to happen. Acting lawfully. He armed himself in
10 self-defense. That is lawful. It's the law. You can
11 arm yourself with self-defense. He's acting lawfully
12 with reasonable care used.

13 He doesn't remember, but Michelle's oldest
14 daughter does, her reaching for the gun. How far away is
15 reaching? Close enough that she had gunshot residue on
16 her hand. So what was Michelle doing? She was drinking.

17 She ran on to the porch after Telly. Her
18 testimony was that she was outside when things are
19 happening.

20 We'll get to that. She ran on to the porch
21 after Telly. There is Elijah saying that she was on the
22 porch. She says that, and she says by her feet was where
23 his head was.

24 Well, you'll get this picture, and you'll see
25 it's in the doorway. His head is in the doorway. She

1 says her own words, her feet were in by his head -- his
2 head is in the doorway. So how close is she to Johnny?
3 She got gunshot residue on her hands. Her feet are by
4 his head. That's where he fell. He fell in the doorway,
5 and you'll get that picture and you'll see the blood that
6 was on the ground. It wasn't moved.

7 So why was there only gunshot residue on the
8 back palm? And you heard the gunshot residue expert talk
9 about how you can wipe it off. It's wiped off easily.
10 That's why the bag the hands. They didn't bag her hands
11 until 2130. This happened at 2005.

12 Another hour and a half later is the
13 testimony was that she had the gunshot in the front and
14 she's putting pressure on it, she said, like ER. If
15 you're putting pressure, you're going to wipe that
16 gunshot residue off. You can't. It's not -- you can
17 wipe it off.

18 Why did he make a point of going through all
19 the gunshots? Because there were five shots, five shots,
20 three on the porch, and then, according to Elijah, two
21 were where no one else was around, and here
22 Mr. Robinson's 911 call, and he says -- he's still
23 firing, but at that point in time Michelle and the girls
24 are already in the house. You heard it on the 911 call.
25 Let them in, let them in.

1 So he's letting them, in and then he's still
2 firing. He's still shooting. They only found five
3 bullet casings, five shots. Elijah said, Man, five or
4 six, because he didn't remember how many happened in the
5 yard. He remembered how many happened on the porch.

6 Why did I have Ms. Smith come testify? Her
7 911 call, she is clear: Three shots. She heard those
8 first three shots, three shots on the porch. Why does it
9 matter? Because what Michelle said, that there were four
10 shots, two at her, two at Telly. Kids, saying that they
11 shot -- two with Telly, at least two with Telly, three
12 with Michelle because the evidence shows only three on
13 the porch and two outside, so now, I have to put the
14 gunshot outside because she said two, and she says she
15 was shot inside on the porch, her statements.

16 It doesn't match the evidence. I asked her
17 that in opening. Memory is not the best, but evidence
18 can't change. That's the three shots on the porch, two
19 outside, matches what Elijah is saying based on the
20 neighbor's 911 call.

21 So Michelle's statement to the girls, they're
22 contradicted by Elijah, Gene, neighbors, by the 911 call
23 and the screen door, because the screen door, you can't
24 see up top. What did the girls say? That they were
25 outside, outside the porch when they saw their mom get

1 shot.

2 Because they say that, we had to put Michelle
3 outside, you know, or we got to put a bullet casing
4 outside now. Johnny, when he testified, is big on this
5 letter, and he's big on what he remembers, but what he
6 testified today matches what he told the police that
7 night that Telly approached him on the porch. Telly is
8 bigger and stronger than him. He's intimidated.

9 Does it matter? Does it matter to Detective
10 Roach and the State that Michelle's statement doesn't
11 match the evidence? No. You don't want to look at that,
12 what Mr. Roach stated. Does it matter to Detective Roach
13 and the State that Michelle's girls' statements don't
14 match the evidence? No. We're here today.

15 Does it matter to Detective Roach and the
16 State that Gene's statement established self-defense?
17 Gene provided the statements to police that night.
18 Talked to the State. It wasn't all by the State.
19 Detective Roach had Gene's statement but decided he's not
20 going to do gunshot residue on Telly. They want you to
21 ignore this because it doesn't go with what they want.
22 These things should matter. It didn't matter to them.
23 It has to matter to you, has to matter for Johnny.

24 I think I'm getting to a couple different
25 charges, and the judge will have that. Unintentional

1 killing -- involuntary manslaughter: The unintentional
2 killing without malice. This is an unlawful activity not
3 naturally tending to cause the death or great bodily
4 injury, lawful activity is reckless disregard of the
5 safety of others. Voluntary manslaughter: Took life of
6 another in the sudden heat of passion without
7 provocation.

8 Johnny's actions are justified. The argument
9 was loud. Ms. Smith said that. There was threats.
10 Gene, Johnny -- physically assaulted. The facts,
11 according to Gene, facts, according to Johnny, struggle
12 over the gun, wounding Michelle, Telly confronted as
13 Johnny was trying to go back inside his home.

14 He tried to leave the argument Telly was
15 starting, and Johnny just wanted to be left alone. He
16 just wanted peace and quite in his own home. Telly
17 couldn't have it, and he was not the same person.

18 I'm going to ask you to consider all the
19 evidence and all the testimony and find Johnny not guilty
20 for the murder and attempted murder.

21 Thank you.

22 THE COURT: Ms. Williams, we need to take a
23 short break for just a few minutes.

24 Folks, we'll just take a short rest room
25 break because she'll take about 30 minutes and then mine

1 will take about 30 minutes, so let's -- again, don't
2 begin deliberations or discussions. We'll have you back
3 in just a few minutes.

4 (Recess taken.)

5 THE COURT: All right. Bring the jury in.

6 (In open court, jury present.)

7 THE COURT: Okay, folks. We'll resume now
8 with the State on the final closing argument.

9 MS. WILLIAMS: Thank you, Your Honor. May it
10 please the Court: There are many, many, many people in
11 the world, in this community, that can relate to
12 disrespectful children. Probably if we took a poll in
13 the county, it would be pretty high, aggravating
14 children. They will aggravate the fire out of them, but
15 you don't get to kill them. You don't get to shoot them,
16 and that's the tragedy in this case.

17 You know, we can try to make Michelle look
18 bad, make Telly look bad. They weren't doing what they
19 were supposed to do. They just won't listen. But is
20 that okay? You just get out a gun and shoot them? I
21 mean, let's be serious. Even if you believe that somehow
22 Telly Irby provoked his dad into shooting him, what the
23 heck is the excuse for shooting Michelle? There's no
24 excuse. There's no explanation, and that's why none is
25 given except this ingenious, "I just don't remember."

1 Telly Irby didn't get shot because he was
2 disrespectful. Telly Irby got shot because he was always
3 respectful, except for that night. That was something
4 new, and no one says that is right. It's never all right
5 to disrespect your parents, especially a parent that is
6 trying to help you, and that is not the way this was
7 supposed to go. This was always a boy who always said,
8 Yes, sir; no, sir. That night, inappropriately maybe, he
9 stood up to his dad, and his dad didn't like it, and what
10 we have that night was a really bad combination of
11 alcohol, anger, and a firearm.

12 And that was a deadly combination, and now
13 there is a man who is 35 years old who is gone, and
14 somehow that's gotten lost in all this baloney about
15 Facebook and jawing back and forth and this petty stuff,
16 but that's what this is about. This man is gone.

17 There were three little girls on that porch
18 that could have died. We could have been sitting here
19 with five counts of murder. Michelle Wiggins almost
20 died. This man had a gun, out on that porch, in front of
21 three little girls. Did you see the size of that porch?
22 And he's shooting it even after everybody is gone.

23 How easy would it have been for one of them
24 to get shot? You want to talk about malice, anger? Is
25 there any question that Mr. Irby was very angry that

1 night? Oh, my goodness. He rants and raves about all
2 the stuff that is aggravating him in his confession, in
3 the jail tapes, in the letter. I mean, I think he's
4 still angry about it, and I don't blame him.

5 Like I said, children are aggravating. Kids
6 these days are disrespectful. They don't do right, but
7 you can't let that make you walk down a hall, Okay. I'm
8 going to get my gun.

9 Go under your bed. He had the time to open
10 the box, get the gun out, get the magazine, and walk back
11 on that porch with those little girls, and this business
12 about the little girls were in the yard when the shooting
13 occurred? No, not true. Not only do the girls tell you
14 that, but in his confession, Roach says, Where were the
15 girls when this happened?

16 Oh, they ran in the yard.

17 Before and after the shooting?

18 And he said after. That's what he says in
19 one of his statements.

20 Now, let's talk about what happened on the
21 porch. Mr. Shelton would have you believe that Telly was
22 so angry that he came up to confront his dad about him
23 telling him to leave. That's not what happened. That's
24 not what anyone says happened.

25 What happened was they had an argument in the

1 yard about leaving. Telly didn't go up on that porch
2 until he saw the little girls come out. Right or wrong,
3 he didn't want the kids in the yard when they were
4 drinking alcohol. He wanted them in the house.

5 The little girls come out. He doesn't go up
6 there to confront his dad. He goes up there and says,
7 Y'all go back in the house.

8 That's when he sees his dad with the gun, so
9 the gun is already there. Mr. Irby has the gun, and he
10 may have the gun to his side, I don't know, but his
11 finger is on the trigger and the slide is back. He has
12 been trained with weapons. He was in the Navy.

13 Anyone that handles a gun knows when your
14 finger is on the trigger, you're ready to shoot. That's
15 what was going on there, and he was still angry and he
16 was very drunk. And then what does Telly do? What would
17 anyone do? Talk about self-defense. Is the man just
18 supposed to get shot? He sees the gun and he's upset
19 that he's brought a gun around the kids.

20 What did Diamond tell you? What did Michelle
21 tell you? He used awful language, but he said, I can't
22 believe you brought a gun around these girls.

23 And that's when he goes for the gun, and that
24 is probably the most consistent piece of evidence you get
25 from everybody. He was going after the gun. He's trying

1 to get the gun away because he was afraid that he or the
2 girls or his fiancée was going to get shot. That's what
3 happened.

4 And then, after the gun goes off once, what
5 does the GSR lady tell you? He's got gunshot powder on
6 both palms and both backs. That is most consistent with
7 two hands on the weapon, and how far away was Telly Irby
8 when he got shot? Three to four feet. That's what you
9 heard from the pathologist. You want to talk about
10 evidence, that's evidence, because there is no stippling
11 around the wound, and that was -- he was challenged, the
12 pathologist was challenged on that.

13 He said, No, it's consistent with three to
14 four feet.

15 So this big scary guy is not -- what
16 difference does it make how big he is? If you've got a
17 gun pointed at him, he's gone.

18 Now, I have no doubt that Mr. Irby regrets
19 that his son is dead now, but at the time, he was
20 enraged. That is clear by his actions. It's so sad,
21 but, I mean, this man was so angry that he not only
22 shoots his son, he turns the gun and shoots Michelle, all
23 five foot two and 110 pounds of her, and then he's still
24 so angry he's still shooting the gun.

25 That's not emptying a clip. That's not how

1 responsible gun owners empty a clip for a magazine.
2 Nobody would do that with any training in guns. He's
3 shooting because he's pissed. He is still angry.
4 Remember, he is still shooting that gun after the girls
5 have gone down the path, out the gate, around the cars,
6 and into another house. That's how long he continues to
7 shoot, and I don't know how many shots there are.

8 I know Mr. Shelton wants to match up the
9 exact number of shell casings they found with the shots.
10 Maybe it was five. That is five too many, but it was
11 probably more. It was very dark. If you look at those
12 pictures, by the time the police get there and the crime
13 scene tape is up, it's dark. They might not have found
14 every shell casing, I don't know, but does it matter?

15 Malice, that's malice. It doesn't have to be
16 premeditation. Now, Mr. Shelton talked to you about a
17 lot of different things, and one of the things that I
18 find so difficult is this memory loss thing, because it's
19 painful to watch.

20 When you came into this process the most
21 important asset you brought with you is your common
22 sense. Y'all judge people every single day of your life.
23 It's what we do. We sort of evaluate situations with
24 people.

25 You are the sole judge of the credibility for

1 every single witness that sits in this chair. Anybody
2 that is being honest with themselves knows Mr. Irby was
3 lying. I hate to say it, because you have a very
4 difficult job. You have to sit in judgment of an elderly
5 man who is a church-going guy who all these people
6 marched up here to say he's a man of God, he's a good
7 man, he's got a good reputation.

8 But as hard as it's going to be, you're going
9 to have to put that aside and really be honest. He was
10 not telling the truth. I mean, the whole business about
11 the letter being a dream, he remembers exactly what he
12 was watching on TV, but he doesn't remembering shooting
13 Michelle, and that's just silly. We all know he wasn't
14 telling the truth.

15 He is a man of God, but you know what? Jesus
16 never said we didn't have consequences. He just said he
17 would help us through them, and, unfortunately, he did a
18 horrible thing, and now he regrets the fact that he's
19 going to have to face some consequences.

20 Now, I promised you I was going to be brief
21 and I meant it. I'm going to very, very, very briefly go
22 through a little bit of the evidence, briefly, and then
23 I'm going to sit down.

24 Can you put up -- Officer Auclair was the
25 first person on the scene, and if you remember -- it

1 seems like ages ago, but if you remember his description,
2 pulls up. He didn't even see Mr. Irby at first, and it's
3 the way he says it.

4 He says, Mr. Irby goes, I shot my son.

5 And he says, Well, is he okay?

6 And he goes, He's dead.

7 I mean, it's just like -- I don't know if it
8 just hit him then or what, but he says, Mr. Irby said,
9 that he doesn't even remember that he killed his son
10 until, like, a day or two later when they give him the
11 warrant.

12 Clearly, that's not true. That's just one
13 more example of the fact that he can't be honest about
14 it, and, you know, maybe he just can't. Maybe he just
15 can't face it. Probably the most important witness in
16 this case, in my opinion, is Elijah Haynes.

17 The reason that Elijah Haynes is so important
18 is because from a credibility perspective, he has no
19 reason to lie. He is Mr. Irby's friend. He was put in a
20 very, very difficult position, and just -- his demeanor,
21 the way he told the story, you could tell he was being
22 truthful, even though it was difficult for him.

23 What does Elijah Haynes tell you? That
24 Michelle's on the steps when she gets shot. He also
25 tells you that there is no physical confrontation between

1 Telly and the defendant before they get in the house,
2 none whatsoever, whether it's on the steps or anything,
3 which contradicts what Gene says.

4 He also tells that you Mr. Gene runs toward
5 the right side of the house to call 911, which is
6 completely different than what Mr. Gene says, the
7 defendant's brother. So I think he's a very important
8 witness. I think he was being very honest, and he was
9 also close enough to come see what was going on. So that
10 was Officer Auclair.

11 The 911 tape, this just underscores the fact
12 that Michelle is already at the house. Telly is dead.
13 There is no more threat. This man is still so angry that
14 he is shooting this gun into the air.

15 Dr. Batalis was the pathologist who I just
16 spoke about, and he said that the range for Telly was
17 three to four feet away. Not only does that go to malice
18 because he shoots him when he's not right on him, but it
19 completely contradicts Mr. Irby's story that Telly walked
20 into the gun and that the gun was right up against his
21 shirt. That just didn't happen.

22 There is also so much blood in this wound,
23 and Dr. Batalis talked about how much blood Telly lost.
24 If you notice, and you'll have an opportunity to look at
25 the pictures, all the blood is on the bottom of

1 Mr. Irby's hands. There is no blood that belongs to
2 Michelle or Telly on his shirt, on his hands, anywhere on
3 his person except for like the very, very bottom of his
4 pants and his socks and his shoes.

5 So if Telly was really struggling with him
6 and on him the way he said, you know, you would expect to
7 find some DNA, some blood DNA, some touch DNA, but she
8 specifically said that Michelle and Telly were excluded
9 from all the DNA that was on his shirt, and the DNA
10 belonged to someone else and to Mr. Irby.

11 The children: It's very hard to drag
12 children into court, especially when they have to talk
13 about something traumatic, and I think the children were
14 being very honest and they were telling about something
15 that they're never, ever going to forget.

16 They were good witnesses. They do remember
17 what happened, unlike Mr. Irby. They gave you the best
18 details they could. The last one, we asked her if she
19 saw it. She said she didn't. I mean, they didn't try to
20 corroborate each other. Them just told it like they saw
21 it.

22 If you remember Diamond's testimony, the
23 judge asked her to explain what she was doing with her
24 hand. After the first shot was fired, he raised up and
25 points the gun, and that's what she described to you. He

1 shoots Michelle while she's still outside on the porch.
2 That's consistent.

3 How easy would it have been for these kids to
4 have been shot? But for the grace of God those kids were
5 not hit by any bullet. Diamond describes him shooting
6 after them because she's over there hiding by the cars,
7 and she kind of sees him go and look around, so she got a
8 very good view of what is going on, and they -- just as I
9 just said, they say that he already had the gun when
10 Telly got to the porch, so this nonsense about him going
11 to get the gun because Telly was so threatened, it just
12 didn't happen that way.

13 Lieutenant Roach: One thing to think
14 about -- I don't know what the average person drinks, but
15 Mr. Irby had drank quite a bit that night. I think it
16 was his practice to drink a lot because when Mr. Shelton
17 asked how much he had to drink and he said half a pint,
18 he said, That's not that much. Half a pint in two
19 drinks.

20 That's eight shots, so, you know, that's a
21 lot of alcohol, and that probably added to the madness of
22 that night. By the time he's interviewed about by
23 Lieutenant Roach, he had two hours to sober up. I'm sure
24 the arrest and everything else probably sobered him up.
25 There is nothing like getting arrested for murder to

1 sober your, but listen to his demeanor on that tape, or
2 try to remember his demeanor: He's still angry.

3 His son is dead, and he is still going on and
4 on and on about that Facebook junk, on and on, about all
5 that stuff, all that stuff, about the kids eating his
6 bacon, his eggs -- you can tell it's really, really
7 bothering him still.

8 His never says Telly put his hands on him.
9 There is one more reason why Gene Irby's testimony is
10 just not credible. Not even the defendant says that
11 Telly walked up behind him and shoved him and pushed him.
12 Nobody says that. Elijah doesn't say it, Michelle
13 doesn't say it, and the defendant doesn't say it. That
14 didn't happen.

15 He never says Michelle put her hands on him.
16 He never says he was threatened by Michelle. He pretends
17 he doesn't remember it, so this implication of Mr.
18 Shelton that Michelle was a threat is silly. Not even
19 the defendant says that.

20 One of the things that is painful to listen
21 to about that is that he's talking to Lieutenant Roach on
22 that tape two hours before that he has killed his son,
23 and he's joking about football. It's just difficult to
24 listen to.

25 An important thing for you to look at with

1 regard to Lieutenant Roach is that period of time that he
2 was with Lieutenant Roach is they took pictures of him.
3 There are no injuries on Mr. Irby. So if Telly Irby
4 attacked him, you think there would be a scratch. There
5 is nothing, his hands, his arms, his face, the back of
6 his head -- there is not one injury on him, and that is
7 something to consider.

8 I don't know what to say about Gene Irby. I
9 think he's a very nice man who is trying to protect his
10 brother, but I don't think he's credible, and there is
11 reasons for that.

12 Like I said, Elijah never sees Telly touch
13 his father and shove people. Michelle doesn't see it.
14 The defendant doesn't see it. He also said that he only
15 had one drink. Corporal Scarborough testified Gene was
16 so drunk he was staggering and he had to kind of hold him
17 up. Also, when you go back there, one of the pictures
18 that you should consider is this picture where Gene
19 says where he's standing he can see everything that is
20 going on the porch. That's just not possible.

21 What he says he can see, it's just -- I don't
22 see how it could be possible, and this door isn't even
23 the door that was there. The door that was there was
24 halfway closed up with metal.

25 So think about that as you evaluate Gene

1 Irby's testimony. Michelle: Why is it attempted murder?
2 Well, she could have died. When you are a trained
3 veteran of the Navy and you point a nine millimeter
4 pistol at someone's chest and shoot them, you're trying
5 to kill them. There is really no other ending to that.
6 She is a very, very lucky lady, and you heard the doctor
7 testify about how close that bullet came to some of those
8 major arteries, her heart, to begin with.

9 I'm not suggesting you listen to all the
10 defendant's statements. I just want to remind you of how
11 many there were, and, again, common sense: If you're
12 telling the truth, it's pretty easy to remember it. If
13 you're lying, you're going to keep changing it up because
14 you can't remember it.

15 He says in the letter that they tussled all
16 the way down the hall. He says in the jail tape, He
17 wasn't attacking me, he was just trying to get the gun
18 from me.

19 And that's the second jail tape you heard
20 where his sister says, Was he attacking you?

21 And he said, No, he wasn't attacking me. He
22 was just trying to get the gun from me. He says, I just
23 got the gun to intimidate him.

24 But then skip one down, he says, I was
25 bringing the gun to my truck, and Telly came behind me

1 and the gun just went off.

2 So, you know, I don't know which of those is
3 true. I think he was getting the gun because he was so
4 angry he was going to shoot somebody, but he certainly
5 doesn't keep a straight story. He also says Telly walked
6 into the gun at some point, but none of those statements
7 are consistent with the others.

8 Some other things that he says. This is very
9 telling: Lieutenant Roach says, I know it's your house
10 and everything, Mr. Irby. Why didn't you call the
11 police? If it was that bad, if your son was such a
12 threat to you that you are so afraid of him, why didn't
13 you just call the police?

14 I wasn't going to call the police. It was my
15 house, and he should have left.

16 I'm not suggesting that people should call
17 the police every time someone is disrespectful. What I'm
18 suggesting is if Mr. Irby's telling the truth on the
19 stand and he was in such fear, why didn't he just walk in
20 and call the police? Why did he shoot his son? It's
21 because he wasn't in fear of his life.

22 He told you himself this boy had never
23 attacked him before, never, so there was no reason for
24 him to think he was going to attack him then. They were
25 arguing about the kids. We made you listen to that first

1 jail tape, and I apologize for that. It was very long,
2 but at the very end of that tape, there is a little
3 something on there that is very important for you to
4 think about.

5 He says, He wasn't trying me, but he was
6 going to try me.

7 And they were talking about the murder, and
8 what that means is, he wasn't trying me then, but he was
9 going to; in other words, he wasn't after me then. He
10 wasn't hitting me then, but he was going to. Obviously
11 all these statements are different.

12 If he's telling the truth, why does he keep
13 changing his story? Ask yourself that question.

14 This was not an accident, y'all. This was
15 not an accident. You don't approach a situation with the
16 slide back on the gun and your finger on the trigger
17 unless you intend to shoot one. I mean, I might, because
18 I don't know a lot about guns, but not someone that does
19 know something about guns.

20 You don't put your finger on the trigger
21 unless you're going to shoot. He knows that. He's been
22 trained, and if we're going to talk about accident, how
23 logical is that? Was the first shot an accident? What
24 about the second shot? What about the third shot? What
25 about the fourth shot, the fifth shot? Five accidents?

1 Does that make any sense?

2 Don't ever forget that those kids were on
3 that porch. I think that's a very important factor for
4 you to consider.

5 Timing: I think the defense would like you
6 to analyze these two shootings of these two people
7 separately, but you really can't do that because what
8 does the shooting of Michelle tell you about the shooting
9 of Telly? If the shooting of Telly was self-defense, why
10 does he have to shoot Michelle?

11 There's just no reason. She's not a threat.
12 She's not armed. She's tiny. Apparently she's drunk, so
13 how is he a threat to him? If the shooting of Telly is
14 an accident, why does he have to shoot Michelle? Why
15 does he have to go in the yard and keep shooting?

16 So it's tempting to look at each one
17 separately, but it's okay to use common sense and look at
18 the whole situation. These shootings occurred within
19 seconds of each other. The whole self-defense,
20 accidental thing might make sense until he turns and
21 shoots the next person and walks out and keeps shooting.

22 That tells you that it wasn't self-defense
23 and it wasn't an accident. If it's an accident, you stop
24 and you're distraught: I just shot someone by accident.

25 If it's self-defense, once he drops, that

1 threat is gone and you stop shooting. That's how you
2 know it's not self-defense, and that's how you know it's
3 not an accident.

4 Why? We don't have to prove why, but I think
5 it's human nature to just wonder, why did this happen?
6 Why did this happen? Anger, as seen by the evidence,
7 alcohol, and a gun. That's the deadly combination that
8 caused this tragedy to happen, no question.

9 What was he angry about? What was this man
10 so angry about? Because we all know because we heard it
11 over and over and over again: His football career.
12 Telly was a disappointment. He didn't get to go to
13 Clemson. He went to junior college. Grandma died. He
14 didn't want to play football anymore. Threw away his
15 life. He brought Michelle's kids, not his own. Can't
16 take care of own kids.

17 Didn't want that drama back here. He was
18 also angry with him driving Michelle to work: It's only
19 a mile. Can't she walk?

20 These kids are eating all his food. He said
21 some very unkind things about these kids: Chubby kids.
22 They're eating all our bacon. They're eating sausages.
23 I buy all these eggs, and the eggs are gone.

24 He's just kind of fuming, even two hours
25 after the murder. He's upset about the church, and

1 that's understandable. You know, these are people that
2 respect him in the community, and he was so proud of his
3 son when he gave his life back to Christ, and now the
4 church is coming over saying they disapprove of this
5 shacking up thing, and that's embarrassing. That's
6 embarrassing to him.

7 And, you know, the elder from the church
8 comes over the very night before, and Michelle says she
9 kind of looks over and he looked embarrassed. The very
10 next day, they're in the yard drinking, and he's afraid
11 someone from the church is going to go by, and that's one
12 more thing that upsets him. And, don't forget, Telly had
13 never stood up before.

14 Like I said when I started, he was a good
15 son. He said he was a good son. He was shocked because
16 he had always been respectful before. He had never
17 challenged his father before, and I think that was the
18 straw that broke the camel's back because he stood up,
19 and Telly said, You want to talk? Let's talk about what
20 you did to my mama.

21 And that was it. That set him off. He went
22 in that house. Those kids had to come out, and he went
23 walking down the hall and he got his gun.

24 This was something I was going to show you,
25 where the blood was. When you look at the little stick

1 figure, if you look at the photos, all the blood is on
2 the bottom of the pants. There is no DNA from Telly or
3 Michelle on the top.

4 This is a little timeline that kind of tells
5 you basically what happened because there has been some
6 dispute about the timeline. Everyone is in the yard
7 around 6:30 or 7:00. Everyone is having a good time.
8 The first 911 call goes about 8:06, and they arrive
9 shortly after, and that's when Mr. Irby says, I shot my
10 son.

11 After that, you know, he's still shooting.
12 She's next door, and they develop both of those crime
13 scenes.

14 This is the critical question in this case:
15 How do you explain the girlfriend being shot? There is
16 this very, very interesting part of the interview when
17 Mr. Irby is so chatty, talking, talking, talking,
18 talking, and, all of a sudden, Lieutenant Roach says,
19 Well, how do you explain the girlfriend getting shot?

20 Nothing.

21 Oh. How did she get shot?

22 And that's the question for you: You start
23 considering self-defense or accident, how do you explain
24 the girlfriend getting shot? Because it just doesn't
25 make sense. There is no way that you can make sense of

1 that.

2 You have such a difficult task. As I said
3 before, you're charged with the truth, finding the truth.
4 Sometimes that's easier; sometimes it's hard. In this
5 case you have to sit in judgment of an old man who goes
6 to church, who, on any other day, this might have been
7 just fine, but it's important. It's important for the
8 rule of law, the State of South Carolina, and this
9 community for you to really apply the law in this case,
10 and it's going to be very tempting for some of you to
11 sort of fold because it's a difficult job to do, very,
12 very difficult job to do.

13 And what I'm asking you to do is to go back
14 there and have the courage of your convictions. If you
15 know that he had malice in his heart and anger in his
16 heart and he killed his son dead, don't fold. Stick by
17 your guns. Have the courage to tell the truth, even when
18 it's an unpleasant truth, and when you go back there and
19 consider the lesser included offenses, remember
20 something: You don't even get to the lesser included
21 offenses until you've all decided that the greater
22 offense, that he's not guilty of that.

23 You don't consider them all at once. And,
24 again, if I say something that is different from what the
25 judge says, by all means, go with the judge, but there is

1 a sentence that the judge gives you before every single
2 lesser included offense, and he says if you find that the
3 State has failed to prove beyond a reasonable doubt that
4 the defendant committed murder, in this case murder, you
5 may consider whether the State has proved beyond a
6 reasonable doubt that the defendant committed voluntary
7 manslaughter.

8 So what that means is that you need to have a
9 full discussion about murder before you even think about
10 voluntary manslaughter. Please go back there and take
11 this seriously.

12 You have been so attentive this whole week,
13 and I thank you for your service. I'm asking you to
14 speak the truth in this case.

15 Thank you.

16 THE COURT: All right. Well, folks, we are
17 now to the part of the trial where I am to charge you on
18 the law, and then you'll retire to consider your verdict.
19 Remember, I told you at the beginning of the trial that
20 you have duties, I have duties, and part of my job as the
21 trial judge was to preside over the trial and rule on
22 such things as admissibility of evidence, following
23 procedures, those sort of things.

24 Your job as the jurors is to consider only
25 the evidence that you have before you in this courtroom.

1 That's why I've been stressing to you all week long,
2 don't go out and try to do anything on your own. Under
3 the oath that you took, you're only to consider the
4 evidence that was presented to you in this courtroom this
5 week.

6 Evidence are statements from the witness
7 stand, exhibits that got made part of the record, and any
8 stipulations of counsel. I also told you I have another
9 duty, and that is to charge you on the law that is
10 applicable to this case. It's your duty as jurors to
11 accept and apply the law as I now state it to you. If
12 you think you have any idea as to what the law is or what
13 it ought to be and it does not agree with what I tell you
14 the law is, you must forget that idea because you are
15 sworn to accept the law and apply the law exactly as I
16 state it to you.

17 Now, I told you, you're the judges of the
18 facts. You're the sole judges of the facts. It's not
19 part of my job at all. You determine how much weight to
20 give testimony and evidence. You alone determine how
21 much credibility to give a witness's statements. You can
22 decide whether or not a witness has a bias, a prejudice,
23 or an interest in the outcome. You can judge such things
24 as their appearance and demeanor on witness stand and the
25 reasonableness of a witness's statement.

1 You are not bound to decide this case based
2 on the number of witnesses that the State produces, and
3 you can believe one witness over many or many against
4 one. You can accept all of a witness's statement or you
5 can reject it entirely. You can also accept part of a
6 witness's statement and reject part of it, so if you
7 reject part of it, you are still able to accept the
8 remainder of a witness's statement if you desire.

9 I also told you about expert witnesses, and I
10 told you, normally we don't let people come in and
11 testify and give their opinion about evidence. We make
12 an exception for expert witnesses, and those are people
13 that are considered experts because of their experience
14 or their education or specialized training in some area.

15 They may give you their opinion, and they can
16 state their reasons for their opinion. You decide how
17 much weight to give an expert's testimony. You give it
18 as little or as much weight as you think it deserves. If
19 you don't think it's based on sufficient educational
20 experience, or you conclude that an expert's opinions
21 aren't sound or that they're outweighed by other
22 evidence, then you can disregard the opinion entirely.

23 You're not compelled to blindly accept an
24 expert's opinion. You have the right to consider their
25 testimony in light of all of the circumstances and give

1 it such weight as any that you think it's entitled to.

2 Now, I also want to remind you that the fact
3 that the defendant was arrested, charged, and indicted in
4 this case is not evidence in this case and cannot be
5 considered by you as evidence of guilt in this case, nor
6 does it create any presumption of -- or inference of
7 guilt. This document, those indictments, as I told you,
8 are simply the formal written instruments by which the
9 defendant is put on notice of the charges that are
10 against him, and it gives this Court jurisdiction to hear
11 the case.

12 The defendant pled not guilty to those
13 indictments, and that plea therefore casts the burden on
14 the State to prove that the defendant is guilty beyond a
15 reasonable doubt. A person who is charged with
16 committing a criminal offense in South Carolina is never
17 expected to prove that he is innocent. This is an
18 important rule of law in this country. The defendant in
19 a criminal trial will always be presumed to be innocent
20 of the crime for which he is indicted unless and until
21 his guilt has been proven by evidence satisfying you of
22 that guilt beyond a reasonable doubt.

23 The presumption of evidence is not just some
24 mere legal theory. This isn't just a legal phrase. This
25 is a substantial constitutional right to which every

1 defendant is entitled. This presumption of innocence
2 accompanies the defendant from the time he is charged
3 throughout the trial and unless and until you reach a
4 verdict of guilt based upon evidence satisfying you of
5 that guilt beyond a reasonable doubt.

6 We've talked about reasonable doubt. The
7 State has the burden of proving guilt beyond a reasonable
8 doubt. Some of you may have served as a juror in a civil
9 case where you were told it was only necessary to prove
10 that a fact is more likely true than not true, such as by
11 the greater weight or a preponderance of the evidence.

12 In criminal cases, the State's proof must be
13 more powerful than that. It must be beyond a reasonable
14 doubt. Proof beyond a reasonable doubt is proof that
15 leaves you firmly convinced that the defendant -- of the
16 defendant's guilt. There are very few things in this
17 world that we know with absolute certainty, and criminal
18 law does not require proof that overcomes every possible
19 doubt.

20 If, based on your consideration of the
21 evidence you are firmly convinced that the defendant is
22 guilty of the crime charged, you must find the defendant
23 guilty. If, on the other hand, you think there is a real
24 possibility that he is not guilty, then you must give the
25 defendant the benefit of the doubt and find him not

1 guilty.

2 Now, in a trial, we have two types of
3 evidence: There is direct evidence and there is
4 circumstantial evidence. Direct evidence directly proves
5 the existence of a fact and does not require deduction.
6 Circumstantial evidence is proof of a chain of facts and
7 circumstances that indicate the existence of a fact.
8 Crimes can be proven by circumstantial evidence.

9 Law makes no distinction between the weight
10 or value to be given either direct or circumstantial
11 evidence; however, to the extent that the State relies on
12 circumstantial evidence, all of the circumstances must be
13 consistent with each other and, when taken together, can
14 point conclusively to the guilt of the accused beyond a
15 reasonable doubt.

16 If the circumstances merely portray the
17 defendant's behavior as suspicious, then the proof has
18 failed. The State has a burden of proving the defendant
19 guilty beyond a reasonable doubt. This burden rests with
20 the State regardless of whether the State relies on
21 direct evidence, circumstantial evidence, or some
22 combination of the two.

23 Now, I told you, there are two indictments:
24 One is for murder; one is for attempted murder. I'm
25 going to go over the elements of the charge of murder

1 first, and then what we call our lesser included
2 offenses, along with some possible defenses for the
3 charge of murder. Then I'll do the same separately for
4 attempted murder.

5 Now, the defendant's charged with murder.
6 The State must prove beyond a reasonable doubt that the
7 defendant killed another person with malice aforethought.
8 Malice is hatred, ill will, or hostility towards another
9 person. It's the intentional doing of a wrongful act
10 without just cause or excuse and with an intent to
11 inflict an injury or under circumstances that the law
12 will infer an evil intent. Malice aforethought is not
13 required if malice exists for any particular time before
14 the act is committed. Malice must exist in the mind of
15 the defendant just before and at the time the act is
16 committed. Therefore, there must be a combination of the
17 previous evil intent and the act.

18 Malice aforethought may be expressed or
19 inferred. These terms, express or inferred, do not mean
20 different kinds of malice, but merely the manner in which
21 malice may be shown to exist; that is, either by direct
22 evidence or by inferences from the facts and
23 circumstances which are proved.

24 Express malice is shown when a person speaks
25 words which express hatred or ill will for another or

1 when a person prepared beforehand to do the act which was
2 later accomplished. For example, lying in wait for a
3 person or any other acts of preparation going to show
4 that the deed was within the defendant's mind would be
5 malice, express malice. Malice may also be inferred from
6 conduct showing a total disregard for human life.

7 Now, I want to discuss with you what we call
8 a lesser included offense. If you find that the State
9 failed to prove beyond a reasonable doubt the defendant
10 committed murder, then you may consider whether the State
11 has proved beyond a reasonable doubt that the defendant
12 committed voluntary manslaughter.

13 To prove voluntary manslaughter, the State
14 must prove beyond a reasonable doubt that the defendant
15 took the life of another in the sudden heat of passion,
16 based upon sufficient legal provocation. Both heat of
17 passion and sufficient legal provocation must be present
18 at the time of the killing to constitute voluntary
19 manslaughter.

20 Sudden heat of passion may, for a time,
21 affect a person's self-control and temporarily disturb a
22 person's reasoning. The sudden heat of passion must be
23 the type that would make an ordinary person unable to
24 coolly reflect on his actions and would produce an
25 uncontrollable impulse to do violence.

1 Sufficient legal provocation must be the type
2 that would make a person of ordinary reason and caution
3 become enraged and lose control temporarily. The
4 provocation needed for voluntary manslaughter must come
5 from some act of or related to the victim. Words alone,
6 however vulgar or insulting, are not enough to be legal
7 provocation. Where death is caused by the use a deadly
8 weapon, the words must be accompanied by some overt
9 threatening act which could have produced the heat of
10 passion. The exercise of a legal right, no matter how
11 offensive it is to another, is never sufficient legal
12 provocation for voluntary manslaughter.

13 If the heat of passion has cooled or if there
14 was enough time between the provocation, if any, and the
15 killing for the passion of a reasonable person to cool,
16 the killing would not be voluntary manslaughter. In
17 deciding whether a person, a reasonable person, would
18 have had enough time to cool off, you should consider all
19 the circumstances surrounding the killing. You may
20 consider the nature of the provocation, if any, the
21 defendant's mental and physical state, and the
22 circumstances and relationships between the parties.

23 There is a second lesser included offense
24 that you may consider as well. If you find that the
25 State has failed to prove beyond a reasonable doubt the

1 defendant committed a voluntary manslaughter, you may
2 consider whether the State has proved beyond a reasonable
3 doubt the defendant committed involuntary manslaughter.

4 To prove involuntary manslaughter, the State
5 must prove beyond a reasonable doubt that the defendant
6 unintentionally killed the victim without malice but
7 while engaged in an unlawful activity not naturally
8 tending to cause death or great bodily harm, or that the
9 defendant unintentionally killed the victim without
10 malice while engaged in a lawful activity with reckless
11 disregard for the safety of others.

12 Unintentional means that the defendant did
13 not intend for anyone to be killed or seriously injured.
14 Reckless disregard for the safety of others is more than
15 mere negligence or carelessness. Mere negligence or
16 carelessness is the failure to use the care that a person
17 of ordinary reason would use under the same
18 circumstances.

19 Recklessness is a conscious failure to use
20 ordinary care. Reckless disregard for the safety of
21 others means that you are not interested in the
22 consequences of your acts or the rights and safety of
23 others. If a person who knows or should know that the
24 ordinary care requires that cautions be taken for the
25 safety of others when using a dangerous instrumentality

1 such as a gun or a car, when that person fails to use
2 those precautions without concern, the person's actions
3 are considered reckless.

4 The State must also prove beyond a reasonable
5 doubt the defendant's act was the proximate cause of the
6 death. Proximate cause is the direct cause. It is the
7 immediate cause. It is the efficient cause. It is that
8 cause without which the victim, the death of the victim,
9 would not have resulted.

10 There must be a chain of causation from the
11 time of the injury inflicted by the defendant until the
12 time of the victim's death. Proximate cause does not
13 necessarily mean that it occurred immediately prior to
14 death. There may be more than one proximate cause. The
15 acts of two or more persons may combine together to be a
16 proximate cause of the death of a person.

17 The defendant's acts may be regarded as a
18 proximate cause if it is a contributing cause of the
19 death of the victim. The fact that other causes also
20 contributed to the death of the victim does not relieve
21 the defendant from responsibility. The defendant's acts
22 need not be the sole causes of death, but must be a
23 proximate cause or contributing to the death of the
24 victim.

25 It's not a defense to show that the victim

1 might have recovered had he been treated according to the
2 most approved surgical or medical standards or as a
3 reasonably prudent doctor would have treated him in the
4 case or even by showing the treatment was negligent. If,
5 however, the death was not caused by the wound or the
6 injury that the victim had but was caused by the gross,
7 erroneous, willful, deliberate treatment, the defendant
8 would not be liable.

9 In other words, negligence on the part of
10 someone would not relieve the defendant from liability if
11 the injury was the proximate cause of the victim's death;
12 however, gross negligence or intentional activity on the
13 part of the practitioners would relieve the defendant of
14 liability. The propriety of the medical procedures is an
15 integral question in determining causation. The
16 violation of a statute, if it is the proximate cause of
17 an injury, is evidence of recklessness.

18 Now, you may also consider the defense of
19 self-defense. The defendant has raised that.
20 Self-defense is a complete defense, and if it is
21 established, you must find the defendant not guilty. The
22 State has the burden of disproving self-defense by proof
23 beyond a reasonable doubt.

24 If you have a reasonable doubt of the
25 defendant's guilt after considering all of the evidence,

1 including evidence of self-defense, then you must find
2 the defendant not guilty. On the other hand, if you have
3 no reasonable doubt of the defendant's guilt after
4 considering all the evidence, including the evidence of
5 self-defense, then you must find the defendant guilty.

6 The following elements are all required to be
7 present to establish self-defense: First, the defendant
8 must be without fault in bringing on the difficulty. If
9 the defendant's conduct was the type which was reasonably
10 calculated to and did provoke a deadly assault, the
11 defendant would be at fault in bringing on the difficulty
12 and would not be entitled to an acquittal based on
13 self-defense.

14 Self-defense is not available to a person who
15 uses language which is so contemptuous that a reasonable
16 person would expect to bring on a physical encounter and
17 which did, actually, contribute to the physical
18 encounter. The second element of self-defense is that
19 the defendant was actually in imminent danger of death or
20 serious bodily injury or that the defendant actually
21 believed he was in imminent danger of death or serious
22 bodily injury.

23 Prior instances of violence by the victim may
24 be considered in deciding whether the defendant actually
25 believed he was in imminent danger of death or serious

1 bodily injury or was, actually, in imminent danger.

2 The relative size, ages, and weights of the
3 defendant and the victim may be considered in deciding
4 the apparent or actual need for force and self-defense
5 and the amount of force needed. If the defendant was
6 actually in imminent danger, it must be shown that the
7 circumstances would have warranted a person of ordinary
8 firmness and courage to strike a fatal blow to prevent
9 death or serious bodily injury. If the defendant
10 believed he was in imminent danger of death or serious
11 bodily injury, it must be shown that a reasonably prudent
12 person of ordinary firmness and courage would have the
13 same belief.

14 In deciding whether the defendant actually
15 was or believed he was in imminent danger of death or
16 serious bodily injury, you should consider all of the
17 facts and circumstances surrounding the crime, including
18 the physical condition and characteristics of the
19 defendant and the victim.

20 The defendant does not have to show that he
21 was actually in danger. It is enough that if the
22 defendant believed he was in imminent danger and a
23 reasonably prudent person of ordinary firmness and
24 courage would have had the same belief. The defendant
25 has the right to act on appearances even though the

1 defendant's belief may have been mistaken. It's for you
2 to decide whether defendant's fear of imminent danger of
3 death or reasonable bodily injury was reasonable and
4 would have been felt by an ordinary person in the same
5 situation.

6 Words accompanied by hostile acts may,
7 depending on the circumstances, establish self-defense.
8 The intoxication of the victim may also be considered in
9 deciding whether the defendant's fear of death or bodily
10 harm was reasonable, and then the final element of
11 self-defense is that the defendant had no other probable
12 way to avoid the danger of death or serious bodily injury
13 than to act as the defendant did in this particular
14 instance.

15 The defendant has also raised the defense of
16 accident. An act may be excused on the ground of
17 accident if it is shown that the act was unintentional,
18 that the defendant was acting lawfully, and that
19 reasonable care was used by the defendant in the handling
20 of the weapon.

21 For example: If a person is lawfully armed
22 in self-defense and the gun accidentally discharges, the
23 defense of accident would apply. It is lawful for a
24 person to possess a weapon in his own home; however, he
25 may not handle a dangerous weapon in a negligent,

1 careless, or unlawful manner. The burden is on the State
2 to prove beyond a reasonable doubt that the act was not
3 an accident but was caused by the negligence or
4 carelessness on the part of the defendant in handling --
5 in the handling of a dangerous instrumentality or by the
6 dangerous activity of the defendant.

7 Now, the second indictment is for attempted
8 murder, and there is one possible lesser included offense
9 on that one that I will go over with you as well.

10 On the attempted murder charge, in order to
11 prove this crime, the State must prove that the
12 defendant, with the intent to kill, attempted to kill
13 another person with malice aforethought, either express
14 or implied. Again, malice is hatred, ill will, hostility
15 towards another person. It's the intentional doing of a
16 wrongful act without just cause or excuse and with intent
17 to inflict injury or under circumstances that the law
18 will infer an evil intent.

19 Malice aforethought does not require that
20 malice exists for any particular time before the act is
21 committed, but malice must exist in the mind of the
22 defendant just before and at the time the act is
23 committed; therefore, there must be a combination of
24 previous evil intent and the act.

25 Malice aforethought may be expressed or

1 inferred. Again, the terms express or inferred do not
2 mean different types of malice but merely the manner in
3 which malice may be shown to exist. That is, either by
4 direct evidence or by inference from the facts and
5 circumstances which are proved.

6 Express malice is shown when a person speaks
7 words which express hatred or ill will for another or
8 when the person prepared beforehand to do the act which
9 was later accomplished, for example, lying in wait for a
10 person or any other acts of preparation going to show the
11 deed is within the defendant's mind would be express
12 malice.

13 If a facts are proved beyond a reasonable
14 doubt sufficient to raise an inference of malice to your
15 satisfaction, this inference would simply be an
16 evidentiary fact to be considered by you, the jury, along
17 with the other evidence in the case, and you may give it
18 the weight you decide it should receive.

19 An intent to kill is an element of attempted
20 murder, and the context of an attempted crime, specific
21 attempt means the defendant intended to complete the act
22 comprising the underlying offense. Intent means not
23 accidentally or involuntarily. Intent may be shown by
24 acts and conduct of the defendant and other circumstances
25 from which you may naturally and reasonably infer intent.

1 Evidence of the character of the act, the
2 character of the instrument used, the manner in which it
3 was used, the purpose to be accomplished, and the
4 resulting wounds or injuries may be considered in
5 determining the intent with which the act was committed.

6 Intent may also be inferred when it is
7 demonstrated that the defendant involuntarily and
8 willfully commits an act, the natural tendency of which
9 is to destroy another's life.

10 If you find the defendant has not proven that
11 the defendant is guilty of attempted murder, you must
12 then determine whether the State has proven the defendant
13 is guilty of assault and battery of a high and aggravated
14 nature. A person commits the offense of assault and
15 battery of a high and aggravated nature if the person
16 unlawfully injures another person and great bodily injury
17 to another person results or the act is accomplished by
18 means likely to produce death or great bodily injury.

19 Assault and battery of a high and aggravated
20 nature includes all of the elements of attempted murder,
21 except malice aforethought. In addition, the State must
22 prove beyond a reasonable doubt an aggravating
23 circumstances. Circumstances of aggravation include use
24 of a deadly weapon, the intent to commit a felony, the
25 infliction of serious bodily injury, a great disparity

1 between the ages or physical conditions of the parties, a
2 difference in genders of the parties, the taking of
3 indecent liberties or familiarities with a female through
4 the use of force, the purposeful infliction of shame and
5 disgrace, and the resistance of lawful authorities.

6 These are only examples of circumstances of
7 aggravation. I charge that you may consider self-defense
8 only for the murder charge and its lesser included
9 offenses; however, you may consider the defense of
10 accident for all of the charges, including the lesser
11 included offenses.

12 Insanity caused by the use of drugs or
13 alcohol may be a defense if insanity is permanent and
14 destroys the defendant's ability to know right from
15 wrong. When voluntarily intoxication has not produced
16 permanent insanity, it is not a defense to a crime. A
17 person who voluntarily becomes intoxicated is just as
18 responsible for the acts committed while intoxicated as
19 when the person is not intoxicated.

20 In determining your verdict of guilty or not
21 guilty, you cannot consider any possible penalty for any
22 particular crime. Punishment for a crime is a matter for
23 me to determine and should never be considered by you in
24 any way in arriving at the verdict of guilty or not
25 guilty. You cannot find the defendant guilty based on

1 suspicion, conjecture, or speculation, no matter how
2 strong.

3 A conviction only can be based upon proof of
4 guilt beyond a reasonable doubt. If the proof does not
5 meet that standard, you must find the defendant not
6 guilty.

7 Finally, your verdict must be unanimous. In
8 other words, all 12 jurors must agree. Now, Mr. Foreman,
9 this is where you have your extra duties with no extra
10 pay, all right?

11 Two indictments, and I told you, these are
12 the two pieces of paper that go back that are not
13 evidence. The reason they're going back is because you
14 write the verdict form on it, and you'll see on one side
15 it's got the elements of the charges, on the other side,
16 it's got the language that says this is what the number
17 of it is, and you'll see this stamp right there that says
18 true billed. That means the grand jury reviewed it and
19 passed it on for trial.

20 Below that is the word verdict, all right?
21 There are, between these two indictments, seven possible
22 verdicts.

23 On the murder charge, there are four possible
24 verdicts for you to consider. There is murder, then
25 there is the lesser included charge of voluntary

1 manslaughter, involuntary manslaughter, and not guilty.

2 So if the jury finds unanimously that he is
3 guilty of murder, you write guilty, sign it, and date it.
4 You don't have to do anything more with that indictment.
5 If, on the other hand, y'all find not guilty on the
6 murder, then you should consider voluntary manslaughter.

7 If you find guilty on voluntary manslaughter,
8 you write guilty of voluntary manslaughter, sign and date
9 it. On the other hand, if you find him not guilty of
10 voluntary manslaughter as well, then you consider
11 involuntary manslaughter, and if the jury unanimously
12 finds he is guilty of involuntary manslaughter, you write
13 guilty of involuntary manslaughter, sign it and date it.

14 On the other hand, if you find he's not
15 guilty of murder, voluntary manslaughter, and involuntary
16 manslaughter, then you just write not guilty. You only
17 have to write that once, but if you write that, that
18 means you found him not guilty on all three of the
19 others. Okay? Sign and date it.

20 Then, after you have come up with a verdict
21 on that one, you consider this one separately, and that's
22 the attempted murder indictment, and there are three
23 possible verdicts on this one: Verdict for attempted
24 murder, and then there is a lesser included of assault
25 and battery of a high and aggravated nature and then

1 there is a not guilty.

2 So if the jury unanimously finds him guilty
3 of attempted murder, that's the indicted offense, you
4 just have to write guilty. If you find him not guilty of
5 that, though, then you consider assault and battery of a
6 high and aggravated nature, and if the jury unanimously
7 finds guilty of a high and aggravated nature, you put
8 ABHAN for assault and battery of a high and aggravated
9 nature. You can just write guilty of ABHAN, sign it, and
10 date it.

11 If, on the other hand, you find he is not
12 guilty of that as well, then you write not guilty. That
13 means you found him not guilty of attempted murder and of
14 assault and battery of a high and aggravated nature.

15 Okay? Now, I'm going to send you back in the
16 jury room with the bailiff. Don't begin your
17 deliberations just yet, because I have to give the
18 lawyers the opportunity to say if I misspoke something
19 because we've gone over all this, but sometimes I just
20 say something wrong. It just happens from time to time,
21 in which case, I'll bring it out and straighten it up,
22 but you have to give them that opportunity.

23 If I get it all right, if I've done
24 everything I'm supposed to, I'll send it back, the
25 verdicts, or the indictments back, with the evidence with

1 the bailiff. The bailiff will say, The judge says you
2 can begin your deliberations, and we'll pull the two
3 alternates out at that point.

4 Now, it's 4:30. You can take as long as you
5 want. All right? We'll stay as late as you want. But
6 after a while, if you have not reached a verdict, a
7 couple options at that point. I know sometimes people
8 have child care issues, and if you need to call home and
9 say, I got to be here for a while, make child care
10 arrangements, just let the bailiffs know. Everybody has
11 to stop, and you go make your phone calls, all right?

12 If you get going for a while and you go, You
13 know what? I think we've been here for a little while,
14 but I think we just need to work here a little bit more,
15 everybody has to have time to talk, we would like you to
16 order dinner, we can order you pizza any time you tell us
17 to.

18 On the other hand, after you've gone a while
19 and you say, We really just need to come back fresh
20 tomorrow, we can do that too.

21 Totally up to you, so we'll work as late as
22 you want. When you decide you've got a verdict, you let
23 us know, but if you decide you want to get to a certain
24 point and come back tomorrow, you let us know. We'll
25 work with you on it, okay?

1 So go back, but don't begin your
2 deliberations until I send the indictments back along
3 with the evidence, and that's when the bailiffs will say
4 you can begin your deliberations. We're almost there,
5 all right? Thank you.

6 (In open court, jury not present.)

7 THE COURT: Is there anything from the State?

8 MS. WILLIAMS: Nothing from State.

9 THE COURT: From the defense?

10 MR. SCHWACKE: Your Honor, I believe you
11 omitted or actually added turned with without.

12 THE COURT: What page are you talking about?

13 MR. SCHWACKE: On page nine, attempted
14 murder, in the section bullet point. I believe what you
15 said is --

16 THE COURT: What paragraph are you on? What
17 bullet point?

18 MR. SCHWACKE: Bullet point is the second one
19 on attempted murder.

20 THE COURT: Attempted murder beginning with
21 malice is?

22 MR. SCHWACKE: Yes, sir. And you said it's
23 the intentional doing of -- at least my recollection, the
24 intentional doing of a wrongful act without just cause or
25 excuse and without an intent to inflict an injury or

1 under circumstances that --

2 THE COURT: You're saying I said "without"
3 twice?

4 MR. SCHWACKE: Yes, sir.

5 THE COURT: All right. Can you pull that up
6 real quick? If I did, I'll just bring them back real
7 quick.

8 (Whereupon, the record was read back.)

9 THE COURT: She says that I said "with".

10 MS. WILLIAMS: I have that you say "with".

11 THE COURT: Are you okay then?

12 MR. SCHWACKE: Yes, sir.

13 THE COURT: And y'all have made sure all of
14 this is in? Okay.

15 Now, last thing: Do you have any problem
16 with me sending the jury charges back?

17 MS. WILLIAMS: I don't. I think it's helpful
18 because it's so complicated.

19 THE COURT: Are you okay with it?

20 MR. SHELTON: No objection.

21 (Court's Exhibit No. 3 was marked for
22 identification and admitted into evidence.)

23 (Whereupon, at 4:42 jury began
24 deliberations.)

25 THE COURT: Let the record reflect I have

1 discharged the alternates.

2 (8:21 p.m., in open court, jury present.)

3 THE COURT: All right. Mr. Foreman, I
4 understand the jury has reached a verdict; is that
5 correct?

6 THE FOREPERSON: That is correct.

7 THE COURT: Is it unanimous as to both?

8 THE FOREPERSON: Yes, it is.

9 THE COURT: Would you hand it to the bailiff,
10 please.

11 All right. The defendant will rise. We'll
12 publish the verdict.

13 THE CLERK: State of South Carolina, County
14 of Berkeley versus Johnny Lee Irby, indictment number
15 2012-GS-08-2100, indictment for murder: The jury find
16 the defendant guilty. Signed by the foreperson.

17 State of South Carolina, County of Berkeley
18 versus Johnny Lee Irby, indictment number
19 2012-GS-08-2101, indictment for attempted murder, the
20 jury find the defendant guilty, signed by the foreperson.

21 If I have accurately published your verdict,
22 please indicate by raising your right hand at this time.

23 THE COURT: Let the record reflect all the
24 jurors have raised their right hand. Do you wish to have
25 the jury polled?

1 MR. SHELTON: Yes, Your Honor.

2 THE COURT: Poll the jury. You may be
3 seated.

4 (Whereupon, the jury was polled.)

5 THE CLERK: I polled the jury, and the
6 verdict stands.

7 THE COURT: Well, ladies and gentlemen: Let
8 me thank you for your jury service this week. Some weeks
9 we have difficult cases, some weeks we have less
10 difficult cases. They're all important cases by the time
11 they work their way to this level of court.

12 This has been a difficult week. You've heard
13 a most unusual set of circumstances, and any time you're
14 dealing with a charge of murder, it's a serious case.
15 They don't get more serious than this, and so, you know,
16 this may be the only time you ever get to serve on a
17 jury.

18 I'm certain that you won't hear one that has
19 probably been more difficult for you, and the fact that
20 you folks have set and listened for the last couple days
21 and been very attentive and obviously gave very thorough
22 consideration to your verdict in the amount of time that
23 you spent deliberating shows that have you done
24 everything anybody could ever ask.

25 It's a very difficult set of facts, and the

1 only thing I could ever say on a verdict like this is
2 thank you for doing your service. I know that you have
3 given up time from your home, your life, your work.
4 We've disrupted your lives this week. You'll probably
5 remember this case for the rest of your life, I'm sure
6 you will, but we want to thank you for your service on
7 behalf of the citizens of South Carolina.

8 You know, I told you a little bit earlier in
9 the week about how back in the old days people, kings,
10 just pulled people off the street, put them up for trial.
11 They never knew what they were up for, and it was a very
12 rough form of justice, but you see how things play out
13 here, and we have, along the way a legal system, a
14 criminal justice system that I think in the adversarial
15 system that we have, the facts are presented to you.
16 Both sides get to show you the facts in different lights,
17 and 12 people who are random to probably each other -- I
18 would be very surprised if any of y'all knew each other
19 more than superficially before you ever came in here, all
20 different races, backgrounds, go in there and 12 people
21 agreed on these verdicts.

22 It seems like an impossible task, and yet you
23 did it, so we thank you for that. We can't ask you to do
24 any higher public service than what you have done this
25 week, so we have taken up enough of your time.

1 You don't have to come back tomorrow. We're
2 finished for the week. They'll get you a check here to
3 take which is just a small token for, obviously, the
4 amount of time you've spent here and given us this week,
5 but we want to thank you for your service, and you're now
6 free to go. All right?

7 (Jury dismissed.)

8 THE COURT: All right. Do you have any
9 sentencing sheets?

10 MS. WILLIAMS: I'm going to get them, Your
11 Honor, and I think there is two people that want to speak
12 and they're kind of collecting their thoughts, if we
13 could have just a couple minutes.

14 THE COURT: Any motions the defense wants to
15 make before we go into sentencing?

16 MR. SHELTON: Yes, Your Honor. We renew all
17 motions, pretrial motions, including the motion for a
18 continuance and all motions made during trial and
19 pretrial and during trial, and in addition, Your Honor,
20 we move for a new trial.

21 It appears that at least three of the jurors
22 had difficulty in expressing their verdict. Though they
23 ultimately said yes, it was their verdict, it's possible
24 their verdict was not based on facts alone but was unduly
25 influenced and the result of -- unduly influenced by

1 other jurors and passion and not facts alone, and we ask
2 that you grant a new trial.

3 THE COURT: Motions are denied. No evidence
4 of undue influence on the jury either.

5 All right. What would the State like to tell
6 me?

7 MS. WILLIAMS: Your Honor, Mr. Irby has a
8 criminal domestic violence from 1991. That's against
9 Mrs. Irby, and he has two DUI charges from '97 and 2010.
10 At this time, the victims would like to address Your
11 Honor, Mrs. Antoinette Irby, and then I think Michelle
12 Wiggins.

13 THE COURT: Well, what would you like to tell
14 me?

15 ANTOINETTE IRBY: First of all, I would like
16 to thank everybody for listening and for trying to
17 understand what actually happened.

18 I'm not saying that Telly was a great kid,
19 but he was my son, and I married Mr. Irby with him
20 knowing that he was not his biological father, and in 35
21 years, he had never, never told no one that was not his
22 child. He always say, That's my son.

23 And for him to do what he did to him and then
24 say that he was not his biological son, does that make a
25 difference? No. Telly might have been 6'2", 240 some

1 pounds, but this is all I have right here, this little
2 box. And, yes, I have memories of him, and I will always
3 have those memories and not one time, not one time has he
4 told me he was sorry.

5 How do you kill your own child and not tell
6 the mother that you're sorry? I don't care what led up
7 to that. Nothing children do to make you want to pull a
8 trigger on them. Who do that? And the sad part about
9 this all is we have three other kids that have to live
10 with losing a brother and now they losing a dad.

11 I don't think he gets it yet, but I just
12 wanted to thank the Courts for everything that they done,
13 for Telly and for me. Thank you.

14 THE COURT: All right.

15 MICHELLE WIGGINS: Good evening, Judge.

16 I just wanted to say, Mr. Irby, I just want
17 him to know that his son loved him and respected him more
18 than he would have ever known. He took a son, a father,
19 a stepfather, and the love of my life, but so he knows,
20 he will forever live on. His legacy will live on through
21 his son, his daughters, his stepdaughters, and his family
22 forever.

23 He forever changed me and my children's life.
24 It is really, really -- the ripples, he said you never
25 know how far they spread. Well, they spread even further

1 than he could ever knew, or could ever know, and I just
2 want to say something.

3 A few months ago I was riding in the car with
4 my children and we were discussing what happened, and
5 they said, Mama, why are you so mad?

6 And I turned around, and I said, Y'all ain't
7 mad?

8 They said, No, ma'am.

9 I said, Why?

10 They said, 'Cause we forgive him.

11 And I said, How can you forgive him?

12 They said, Well, you make him stronger when
13 you stay mad, Mama. You got to let it go.

14 So no matter how angry I am, I forgive him,
15 and I pray to God that he really helped me and my
16 children get through this because it's not over with us.
17 With this trial, it's not over for us.

18 This is going to last a lifetime for my
19 children and I, my step-kids, and their family and my
20 parents. All I got to say is I'm going to pray for you,
21 'cause this isn't where it ends for you. You still got
22 to face the Lord one day. That's all I got to say.

23 THE COURT: Thank you.

24 MS. WILLIAMS: That's it from the State, Your
25 Honor.

1 THE COURT: All right. Mr. Shelton?

2 MR. SHELTON: Thank you, Your Honor. May it
3 please the Court: Judge, I know that Johnny wants to
4 address Your Honor. Obviously, the jury has spoken, and
5 we respect their decision. Your Honor, the faith and the
6 talk of church that Johnny -- that you saw a little bit
7 of with his testimony, I can tell, I feel is genuine.

8 I have come to know Johnny over these two
9 years of representing him, and I've met clients that I
10 really don't believe them being genuine in their faith,
11 and it's an excuse to try to get out of jail or to make
12 them look better, and I don't sense that. I haven't
13 sensed that from day one with Johnny, and he's continued
14 to show that through my representation of him, Your
15 Honor.

16 Obviously, with these types of cases, there's
17 certain decisions, certain arguments that are made that
18 are part of the process, but I know that he would like to
19 address Your Honor, and we were faced, from my
20 perspective, from a legal perspective, with spending the
21 rest of his life in jail on a plea versus trial.

22 Even the minimum, he's going to be over 90
23 years old, day for day, 30 on the murder, Your Honor, and
24 you know that, and so this was just a decision that was
25 made, but I would ask for Your Honor to hear from Johnny

1 as far as sentencing.

2 THE COURT: Mr. Irby, would you like to say
3 anything?

4 THE DEFENDANT: Very little, Your Honor.

5 Listening to my ex-wife saying that I didn't
6 ever say I was sorry, I haven't talked to her since this
7 thing went down. I talked to her the weekend that I went
8 down to talk with her about Telly, and we made the
9 decision to have Telly come up here with me.

10 I haven't talked with her. She haven't
11 written me. I didn't have her telephone number, so I
12 couldn't say I was sorry because I hadn't been in
13 communication with her. I am sorry that that happened, I
14 really am. It wasn't supposed to happen.

15 If I had to do that again, I would have left
16 him in Jacksonville I would have left him get in the
17 scrap that he would. Two, three weeks he didn't
18 retaliate against those guys, I wouldn't have bring him
19 up here in the first place. He should have taken care of
20 his family down there.

21 To make it look like they are so much in love
22 and doing this and not stabilizing, just remember
23 conversations that I've had with Michelle, say, Why don't
24 you just go home to your mother, all right?

25 She couldn't go home with her mother because

1 she couldn't take Telly with her. When she got up here,
2 I asked her why she didn't go to the kids' grandmother up
3 here in Sumter? She couldn't go there because she had
4 Telly with her, so she chose that life so they chose to
5 be together. They shouldn't have had that difficulty to
6 be together.

7 To say that I killed my son, no, sir, I did
8 not, all right? I got God as my witness, and my heart is
9 clear and my conscious is clear. I did not murder my
10 son, and I still state again, I did not remember pulling
11 that trigger on Michelle. I do not, and to this date I
12 still do not, and I'll go to my grave still believing
13 that I did not, and I do not remember anything happening
14 to Michelle.

15 As far as that particular day, I do not
16 remember anything, but I gave them the best. I wanted to
17 give them all my best, and if this is what I get for
18 that -- like she say, God forgives. I've already
19 repented, and I know everything is going to be all right
20 with me, with my soul. My soul is at rest. My mind and
21 my consciousness is at rest, so all I can say again is
22 I'm sorry that it happened.

23 It didn't have to happen. It shouldn't have
24 happened. It just do. We did what we supposed to do.

25 THE COURT: All right. Well, you got to do

1 what you got to do to sleep at night, and I guess if you
2 have to believe what you got to believe, but the evidence
3 was there to convict you, and the jury convicted you of
4 murder and of attempted murder.

5 Sentence on murder is 30 years; attempted
6 murder is 30 years. Murder is 30 -- murder is day for
7 day. You'll get credit for the time you've served.
8 Attempted murder is no parole. Could have just as easily
9 been life, but I imagine a 30-year sentence for somebody
10 your age and your health is probably a life sentence
11 anyway, but on the outside chance that, you know, prison
12 works well for you, you might get to see the outside
13 again some day. We'll see.

14 Good luck to you. They'll run concurrent.

15 - - -

16 (Whereupon, the proceedings were concluded.)

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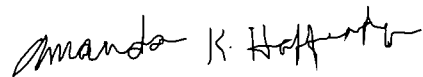
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I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Berkeley County, South Carolina, on the 24th of July 2014.

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

October 20, 2014

A handwritten signature in dark ink, appearing to read "Amanda K. Haffenden", is written over a horizontal line.

Circuit Court Reporter

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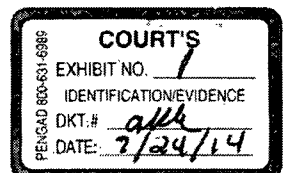
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	
	)	Stipulation
STATE OF SOUTH CAROLINA	)	
	)	INDICTMENT NUMBER(S): 2012-GS-08-02100
	)	2012-GS-08-02101
	)	
v.	)	
Johnny Lee Irby,	)	
	)	CHARGES: MURDER
	)	ATTEMPTED MURDER
Defendant	)	
_____	)	

The Defense and State stipulate that the defendant wrote the letter that is marked as State's exhibit 46



STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

STATE OF SOUTH CAROLINA)

v.)

Johnny Lee Irby,)

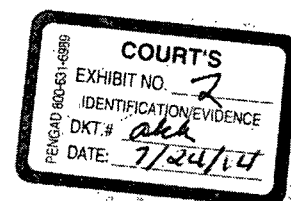
Defendant)

IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT

Stipulation

INDICTMENT NUMBER(S): 2012-GS-08-02100
201~~2~~ GS-08-02101CHARGES: MURDER
ATTEMPTED MURDER

The State and Defense stipulate that the voice on the jail tape, States exhibit 64 is the defendant, Johnny Irby.



ADVICE OF MIRANDA RIGHTS
YOUR RIGHTS

Name: Johnny IRBY Date: 8-16-12
Place: MCPD Time: 2155

Before we ask you any questions, you must understand your rights.

- 1) You have the right to remain silent. Initials: [Signature]
- 2) Anything you say can be used against you in court. Initials: [Signature]
- 3) You have the right to talk to a lawyer for advice before we ask you any questions and to have him/her with you during questioning. Initials: [Signature]
- 4) If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish. Initials: [Signature]
- 5) If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer. Initials: [Signature]

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make statements and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

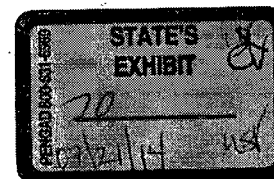
Initials: [Signature]

Signature: [Signature]

Witness: [Signature]

Witness: _____

Time: 2155



COR2012-08-01339

WITNESSES

Moncks Corner Police Department

AGENCY CASE NUMBER

20121607

ARREST WARRANT NUMBER

2012A0820500080

DATE OF ARREST

August 17, 2012

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 11/14/12

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS0802100

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

November Term 2012

THE STATE

Vs

JOHNNY LEE IRBY

DOB: [REDACTED]

B/M

Indictment for

Murder

12 NOV 14 AM 11:33
MARY E. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

JFH

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on November 14, 2012 the Grand Jurors of Berkeley County present upon their oath:

Murder

That Johnny Lee Irby did in Berkeley County on or about August 16, 2012, with malice aforethought, kill and murder Telly Irby by means of a gun, and that Telly Irby did die in Berkeley County as a proximate result thereof on August 16, 2012; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASHLEY B CORNWELL
ASSISTANT SOLICITOR

COR2012-08-01339

WITNESSES

Moncks Corner Police Department

AGENCY CASE NUMBER

20121607

ARREST WARRANT NUMBER

2012A0820500081

DATE OF ARREST

August 17, 2012

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 11/14/12

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS0802101

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

November Term 2012

THE STATE

Vs

JOHNNY LEE IRBY

DOB: [REDACTED]

B/M

Indictment for

Attempted Murder

RECEIVED

JUL 31 2014

SC Court of Appeals

FILED

12 NOV 14 AM 11:33

MARY F. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on November 14, 2012 the Grand Jurors of Berkeley County present upon their oath:

Attempted Murder

That Johnny Lee Irby did in Berkeley County, South Carolina, on or about August 16, 2012, willfully, feloniously, and intentionally attempt to kill another person, Michelle Wiggins, with malice aforethought, either expressed or implied, by means of a gun, in violation of §16-03-0029 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

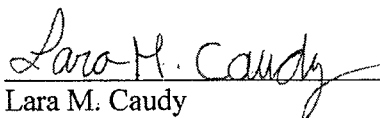


ASHLEY B CORNWELL
ASSISTANT SOLICITOR

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 Filings."

June 12, 2015



Lara M. Caudy
Appellate Defender

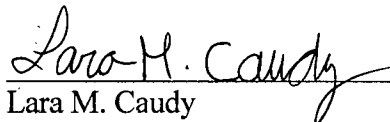
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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 Filings."

June 12, 2015



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED

JUN 12 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

Roger M. Young, Circuit Court Judge

**ORIGINAL
RECEIVED**

JUN 12 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOHNNY LEE IRBY,

APPELLANT

APPELLATE CASE NO. 2014-001663

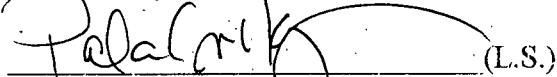
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 12th day of June, 2015.



Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 12th day of June, 2015.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022