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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

RECEIVED

Lee S. Alford, Circuit Court Judge

MAY 28 2015

SC Court of Appeals

Indictment No. 2012-GS-46-04105

Appellate Case No. 2013-002227

State of South Carolina

Respondents,

v.

Lynne Smith Saucier

Appellant.

RECORD ON APPEAL

R. Mills Ariail, Jr., Esq.
Law Office of R. Mills Ariail, Jr.
11 North Irvine Street, Suite 11
Greenville, South Carolina 29601
(864) 232-9390
Attorney for Appellant

Alan Wilson, Attorney General
Salley W. Elliott, Senior Assistant Deputy
Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia SC, 2911-1549
(803)734-3727

Kevin S. Brackett
Solicitor, Sixteenth Judicial Circuit
1675-1A York Highway
York, SC 29745
(803) 628-3020
Attorneys for Respondent

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Date: August 27, 2013

BEFORE: The Honorable Lee Alford, Judge; and a jury

APPEARANCES:

John Shiflet, Esq.,
Assistant Solicitor

Ryan Newkirk, Esq.,
Assistant Solicitor

Misti Shelton, Esq.,
Assistant Solicitor

Mills Ariail, Esq.,
Attorney for Defendant.

Cindy Meek, Court Clerk.

Phyllis M. Campo, RPR
Court Reporter

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1 (Whereupon, State's Exhibits 1, 2, 3, 5, 6, 7,
2 8, 10, and 11 were marked for identification, this
3 date.

4 MR. SHIFLET: Your Honor, may it please the
5 Court. The State calls the State of South Carolina
6 vs. Lynn Saucier. 2012-GS-46-04105, pointing and
7 presenting a firearm. The State does have some
8 pre-trial motions on which we discussed in chambers.
9 I remind the Court that I think we have a jury at 3
10 o'clock and it is apparently 10 to at this time. If
11 we wanted to maybe address a few miscellaneous
12 matters and then pick a jury, or if you wanted to
13 proceed on with the issue, I will leave that in the
14 Court's discretion.

15 THE JUDGE: Let me ask first. Is the defense
16 ready for trial?

17 MR. ARIAIL: Yes, your Honor, we are.

18 THE JUDGE: Let's go over the witness list and
19 any voir dire requests that you might have and iron
20 that out so we will have that done before the jury
21 comes in. I have the State's voir dire request and
22 list of witnesses. How about for the defense?

23 MR. ARIAIL: We didn't submit any, your Honor.
24 I do have some questions in regard to the State's
25 voir dire just to make sure -- I know it is pretty

1 standard. I wanted your Honor to be -- I guess for
2 myself, asking me. I am sure you ask about the
3 solicitor and other items that are part of that.

4 THE JUDGE: I will ask about that.

5 MR. ARIAIL: I don't have any other issues in
6 regard to that.

7 THE JUDGE: How about your witness list?

8 MR. ARIAIL: Your Honor, I just have my
9 client.

10 THE JUDGE: Just your client?

11 MR. ARIAIL: Yes, your Honor.

12 THE JUDGE: Let me tell you what I will do.
13 My procedure that I follow and when I am asking the
14 jury questions. First thing I do is introduce the
15 solicitors who participate and ask them to stand up
16 and so the jury can see them in person. Then I will
17 ask them if they are related by blood, marriage,
18 friends with in a social, business or professional
19 relationship. Then I will ask them if they are
20 related to anybody who works in the Sixteenth Circuit
21 Solicitor's Office, related by blood, marriage or
22 friends with in social, business, professional
23 relationship. Then I will ask you to stand.

24 How does she pronounce her last name?

25 MR. ARIAIL: Saucier.

1 THE JUDGE: Saucier. I will ask you to stand
2 up so the jury can see who you are, and ask I will
3 ask the same questions about Ms. Saucier and ask
4 about yourself, social, business relationship.

5 I go from there straight into the witness list
6 and into voir dire questions. That's how I will
7 proceed.

8 I believe strikes in this case will be five
9 and five. We will probably go ahead and draw one
10 alternate. Strikes for the alternate are supposed to
11 be two but it is one.

12 Number three and number five on the State's
13 request, I will taking it up with the beginning
14 questions of the jury.

15 I will hear you regarding motions now. We can
16 take a brief motion right now.

17 MR. SHIFLET: Your Honor, just in a matter of
18 housekeeping, the State does have prior criminal
19 history for the defendant. I don't see where there
20 would be anything impeachable.

21 The motion to determine the State has complied
22 with Rule 5 Brady, there is -- also, your Honor, we
23 would make a motion to determine admissibility. Many
24 of the statements made by the defendant on the video
25 obtained by the victim in the case as well as both

1 the in-car videos the State intends to introduce, to
2 make that determination whether we would need to
3 engage in --

4 MR. ARIAIL: Yes, your Honor. I want to make
5 sure we have the two videos down. We have the
6 incident video that she had. There is another one
7 where the officer went to her house after I guess the
8 report was made, and we have a third video of when
9 she was arrested.

10 The first video, it is our position there is
11 objectionable material in there. We clearly would
12 like to redact some of that, and I discussed that
13 with Mr. Shiflet in regard to that.

14 The last video, it is my position she --
15 during that, it does invoke her right to counsel.
16 She mentioned my name, and basically, I think she
17 asked for her attorney somewhere in there. Some of
18 that needs to be redacted or struck at that time too.
19 There is some issues with those. I can address them
20 further or we can review what we want to have
21 stricken from those.

22 MR. SHIFLET: With regard to the incident
23 video, certainly the Court is going to have to
24 observe that and make that determination. We would
25 have a different position.

1 With regard to the arrest date in-car video,
2 your Honor, as a practical matter, I made a request
3 from defense attorney as to what statements he wished
4 to have redacted from the video. I never received a
5 response to that with regard to timeframes and what
6 the statement was. I understand there may be
7 references for her asking for an attorney, and
8 certainly, I wouldn't oppose to that request that
9 that particular statement being redacted from the
10 video. However, if there is any other statements
11 that he is objecting to specifically, I am not sure
12 what those objections concern or I have been made
13 aware.

14 MR. ARIAIL: My response is any time after
15 she invoked her right to counsel, I believe it was a
16 voluntary, her providing information. I think they
17 were asking her questions. I think it was Detective
18 Estep. I think that was the officer involved. These
19 went back and forth. At that time, it was my view it
20 should cease at that time, and therefore, any
21 statements that she made should not be part of the
22 record.

23 THE JUDGE: Are you talking about
24 incriminating statements?

25 MR. ARIAIL: Any statements she was making at

1 that time, there is a lot of stuff going on,
2 statements being made. I think it should be cut off
3 at that point in time. When they get there, I think
4 there is a time that they have a discussion with her,
5 and then once she is going to be under arrest, I
6 think they tell her and start to surround her. At
7 that time she mentions my name, and pretty much, I
8 think at that time, it should be stopped basically on
9 her invocation to right to counsel.

10 THE JUDGE: I think if she was told she was
11 under arrest and there is sufficient presence there
12 to indicate to her that she was under arrest, from
13 that point, I think that she would have been in
14 custody, once she is arrested and told she was under
15 arrest. If she invoked any constitutional rights,
16 the right to remain silent or have an attorney
17 present, then I think at that point it probably does
18 not come in. It depends on what it is. If it says
19 the sky is blue. And they say, no, it is cloudy,
20 something like that. If somebody over there did
21 something or something like that, that might not be
22 incriminating for her.

23 On the other hand, she is not allowed to get
24 self-serving as opposed to keep out incriminating
25 stuff. You will have to make a decision about that.

1 I have not seen anything.

2 MR. SHIFLET: Again, I think to the extent
3 there were any statements he was moving to have
4 removed, I would need to know the exact statement
5 with the timeframe as a practicality matter so they
6 can be redacted from the video.

7 Generally, that is an advance request for the
8 solicitor's office because it is a substantially time
9 consuming task that we undertake, sort of as a
10 courtesy. That being said, we have not been able to
11 accomplish that yet.

12 Number two, with regard to the statements when
13 she is arrested, I would agree, she certainly is in
14 custody. However, if your Honor views the video, she
15 is not being questioned in any manner whatsoever.
16 She is volunteering the statements and engaging in
17 conversation, but there isn't a questioning.

18 THE JUDGE: Counsel, do you agree with that?
19 I mean, it is just in custodial questioning that you
20 would be entitled keep out if she asserts her right
21 to counsel. If she makes a conscious decision to
22 keep on talking and it is not in response to any
23 questioning by the officer then I don't see how you
24 can say those are statements made while she is in
25 custody, custodial questioning. I can quote you the

1 cases right quick. They say you not only have to be
2 custody for custodial interrogation, but you have to
3 be asking questions which would tend to be
4 incriminating if she answered them.

5 MR. ARIAIL: My concern with this is when she
6 is surrounded there she is asking, trying to get
7 information, I think she makes a couple of
8 statements. She already invoked her right to counsel
9 and they continue -- when she is asking things, they
10 continue to ask her -- to give her an analysis of the
11 situation. At that point in time, the continual
12 conversation and stuff that she elicited in what she
13 stated was brought on by the question and continued
14 by the officers.

15 THE JUDGE: He is saying it was her comments
16 and statements -- I have not seen it. I have to look
17 at it. He is saying that they were not her giving
18 information to them or her talking, didn't have
19 anything to do with the questions asked but she was
20 just talking. I am saying that there is a line
21 there. If they were asking the questions which were
22 designed to elicit information from after she invoked
23 the right to counsel then they would not come in.
24 But if she invokes and says I would like to have my
25 lawyer, and she goes on and keeps right on rattling

1 off, that's her. She can invoke her right to remain
2 silent. When was she given her Miranda warnings?

3 MR. SHIFLET: I am not sure she received
4 Miranda on that video. Regardless, your Honor, I
5 stand by my previously-stated position, I would like
6 the Court to observe she simply continues to engage
7 the officer in conversation and the officer is simply
8 responding to her comments not in the form of
9 questions.

10 THE JUDGE: I will look at it. If she wasn't
11 given Miranda rights, certainly, if she was placed
12 under arrest, she should have been given Miranda
13 warnings at that point. If she volunteered
14 statements, not subject to any questions asked by the
15 officer, then those could be voluntary statements.
16 If the officer continued to ask questions and she
17 kept giving information then they probably are not
18 going to come in.

19 MR. ARIAIL: My concern is, and we can look at
20 the video again. I looked at it a couple of times.
21 Also the issue -- I don't know if they are particular
22 questions, I think there are some questions but in
23 addition there are responses which continue to elicit
24 questions in her asking, her saying things, and
25 that's where -- even though it might not be a

1 particular question, it might be a comment that
2 elicits something else. That is what I am concerned
3 about, that that type of information shouldn't come
4 in. They clearly didn't Mirandize her right when
5 they started to surround her.

6 MR. SHIFLET: I would agree with that
7 characterization of what transpired. However, the
8 statements would only be protected and included under
9 Miranda if they were in response to custodial
10 interrogation. Our position is there is no
11 interrogation in this situation.

12 THE JUDGE: I will have to look at it and see.
13 The fact of the matter is, they didn't give Miranda
14 warnings when they arrested her and continued with
15 the conversation and they should have. At that
16 point, once she is under arrest, anything they ask
17 her after that point when she is under arrest, they
18 should have given her Miranda warnings at that point
19 when she was placed under arrest.

20 I am not saying that she couldn't make
21 voluntary statements that are not a result of
22 custodial interrogation, but the presumption is it
23 was a result of custodial interrogation and wasn't
24 given Miranda warnings. You know, if you say you
25 have the right to remain silent, anything you say can

1 and will be used against you in a court of law and
2 she keeps on talking, she is doing that in violation
3 of Miranda. If she was never given those warnings as
4 you know then --

5 MR. SHIFLET: Your Honor, maybe we should
6 watch the video. I think in response to that, I
7 would say it wasn't a typical simple arrest scenario,
8 and as she ran from the officers at one point they
9 were having to control her, and one of the deputies
10 required the assistance of another deputy. I think
11 it was a little chaotic situation which might have
12 gone towards the officer who had the presence of mind
13 to regrant at that point.

14 I stand by my position the officer was not
15 engaging in further investigation. He was walking
16 her back to the car and she was talking to the
17 officer.

18 THE JUDGE: There is no way I can determine
19 it without seeing it. What else?

20 MR. ARIAIL: There is the incident video
21 where my client -- this is a two-prong issue. There
22 is profanity on the -- there is actually a voice
23 enhanced version of the tape and there is the
24 regular. The gentleman took a cell phone camera
25 video. I think it was on his iPhone. When the time

1 of the incident I think one of the officers came up
2 and looked at it. They felt there was not enough
3 there so they didn't charge her at that time. I
4 think it was on April 2 or April 3. Somehow he went
5 and got it enhanced, took it down. Then at that time
6 they filed a measurable level of offense against her
7 discharging a firearm in an unincorporated area. She
8 was charged with that. Then that was eventually
9 dismissed and this charge came about.

10 The issue is there was some -- the videos had
11 been enhanced. What I am concerned with is I asked
12 some of the language be stricken from it because it
13 is more prejudicial to my client as to what she is
14 saying in regard to cuss words and things like that.
15 A lot of that dealt with the issues we dealt with in
16 chambers. My concern is some of that should be
17 stricken. Based on that language, I asked that to be
18 done. I don't know if we had a disagreement in
19 regard of that. I ask that be done.

20 Also, I have an issue, and I have received --
21 I know, John, another solicitor had it for a time.
22 There had been some videos that had been enhanced. I
23 think one was enhanced for audio. Another had been
24 enhanced for viewings so that you can see what she is
25 doing, and I think another has both of them together.

1 My concern is these are simply small timeframes of
2 the video and do not entail the entire video.

3 Also, I am not even sure if they are going to
4 submit it, but I ask clearly it be done, the original
5 raw footage, as to what they had in the beginning
6 because that's the best evidence they had. I think
7 it is necessary under I think 106, Rule 106 of the
8 South Carolina Rules of Evidence requires that. I
9 would ask that be in. I would also ask that if the
10 full videos are non redacted videos, not there, that
11 they not be allowed into evidence unless we have a
12 full video because there are things said in the
13 beginning and there is stuff that happens at the end,
14 and clearly, they are going through what happened in
15 a snapshot of that period.

16 MR. SHIFLET: I can tell you the State will be
17 introducing the full video.

18 MR. ARIAIL: Full video -- I know you are
19 doing full video on the cell phone. I am saying are
20 the full videos of the, I guess, the noise enhanced
21 or redacted versions, are they going to be put in?

22 MR. SHIFLET: What we do have is cell phone
23 video obtained by the victim in the case. He
24 provided that to Sheriff's Department and the
25 Sheriff's Department performed some enhancements on

1 the video. There are essentially four different
2 clips. One is raw video enhanced audio. One is
3 zoomed, sharpened and stabilized.

4 The State's intention is to introduce three
5 videos. The first is the video that is the original.

6 The second would be the raw video with
7 enhanced audio. It would be the same linked video of
8 the entire event. It would include all the dialogue.
9 It would be -- however, subject to the redactions
10 with regard to the civil lawsuit, but that's a
11 different issue. Ignoring that for the time being.

12 The third video, and this may be the subject
13 of his issue, is the one that is zoomed and
14 sharpened, and edited clip. The clip is a short
15 clip, approximately 40 seconds, I believe. It is a
16 portion of the other video that we are playing.
17 That's all it is. It does have zooming as part of
18 it. So that's what we will be introducing.

19 I talked to counsel in advance, actually, when
20 we were going try this case in a previous term, and I
21 requested that we able to introduce that video simply
22 through the victim. He was unable to agree to that.
23 I have arranged for the individual who actually
24 performed the enhancements who will be testifying to
25 authenticate that video.

1 Although, our legal impression is that would
2 not be necessary, but as a practical matter, we are
3 going to introduce the video go into evidence.

4 With regard to the content of the video, it is
5 our position, aside from the civil suit, any language
6 on that video is highly relevant and probative in
7 this case and should not be deleted. We can argue
8 that further obviously.

9 MR. ARIAIL: What I am understanding, the
10 full video on the cell phone which is not enhanced is
11 going to be. Then there is one, I want to make sure,
12 that is the full video with audio enhanced?

13 MR. SHIFLET: Correct.

14 MR. ARIAIL: The entire tape?

15 MR. SHIFLET: Correct.

16 MR. ARIAIL: And then there is another one
17 which is a snapshot of, I guess, it was a --

18 MR. SHIFLET: It was at the end when she was
19 shooting.

20 MR. ARIAIL: It doesn't include any of the
21 stuff before or after that?

22 MR. SHIFLET: Correct.

23 MR. ARIAIL: If we are going to do it, I think
24 we need to do the full tape is what I would ask of
25 the entire thing of showing the enhanced video. I

1 just don't want to pick and chose what we are doing.
2 If we are going to do the whole thing in, let's do
3 the whole enhanced video of it. It makes it cleaner
4 to me and less prejudicial to her. We concentrate on
5 that one item.

6 MR. SHIFLET: I am not sure what he is saying.
7 We are putting the entire video in. This enhancement
8 of zooming features is on a portion of that video.
9 That's all we have. We don't have a full version of
10 that. We have him enhance or zoom the earlier
11 portion of the video when she is shooting. He
12 enhanced a portion of the video where she is
13 shooting. That's the purpose of that. It would not
14 be a rule of completeness issue because we are
15 putting in the rest of the video. There is nothing
16 to explain or deny because with regard to that
17 portion of the video because it is all there anyway.

18 THE JUDGE: Well, Counsel, I think that under
19 the Rule of Completeness you referred to, if he puts
20 part of it in, you are entitled to have it all in.
21 There is no question about that. But I think if he
22 wants to show an enhanced portion, as long as he puts
23 the full tape in and the jury has a chance to view
24 that and you have a chance to cross-examine on it or
25 make your own statements on it, then you got that in.

1 Now, if they are enhancing a portion of it to
2 show something on there, I think they can do that
3 subject to them being able to lay a proper foundation
4 for it to show that it is, in fact, what it purports
5 to be. If you have some questions about that of
6 whether it is or not and there is some prejudice to
7 your client then I will certainly hear you on that
8 and might keep it out.

9 I think it is just like running the video and
10 somebody takes still clips off there, still shots off
11 there and presents it to the jury, they are still
12 entitled to do that. He emphasizes that and that is
13 true, but it is done for a purpose. Unless you can
14 show some prejudice, and I think they can do that, as
15 long as all of it comes in, the entire video.

16 The fact that they chose to enhance a portion
17 of it, as long as you also have the original to go
18 on. If they lay a proper foundation to get it in,
19 that's probably going to require the person to do
20 enhancement subject to cross-examination by the
21 defense. I think it is probably okay to do that as
22 long as it is understood and the jury understands
23 what is being done and they have a chance to look at
24 the original tape. As long as you show a proper
25 foundation and not showing any prejudice.

1 The mere fact that some part of it is
2 emphasized doesn't itself show prejudice. You have
3 to show there is prejudice. In other words, if it is
4 not being properly presented or presented in a way
5 that distorts then I would certainly hear from you on
6 that. If it is prejudicial then it doesn't come in.

7 MR. SHIFLET: While he is looking at that, we
8 have to look at the machine for a second. I think we
9 have several different motions going on all at once.
10 I think there is a motion concerning content of
11 statements. If you want me to play that for your
12 Honor. That would be one motion, your Honor.

13 While we are waiting, that is going to concern
14 admissibility of some of the statements on that
15 video. We are going to play the other video that
16 concerns the statement when she was arrested. The
17 State has one other motion that might take a little
18 bit of time to consider, but we might not get to it
19 yet. I am going to begin with the video from the
20 time of the arrest, your Honor. I guess this will
21 concern her statements and whether they were made in
22 response to questions.

23 (Playing video.)

24 MR. SHIFLET: At this point, your Honor, I
25 think it would be the State's position to take these

1 videos out of order. We have a series of issues
2 going on. Let's hear the other video first. I am
3 going to play two clips from the cell phone video.
4 We have the enhanced audio, which is the full video.
5 There is nothing different than that in the original
6 except that it has enhanced audio. At this time, we
7 don't have the other video, the original with the
8 redactions performed on it. I don't have it in here
9 with me. This video does play the exact same
10 contact.

11 (Playing video.)

12 MR. SHIFLET: Those would be the two videos.
13 I will make making the Court aware, that version that
14 I just played had the portions referencing the money
15 and the lawsuit and they were not in that. I
16 performed the redactions so that's what is in the
17 power point. I can gladly just play the video
18 without that removed if anybody would like me to.

19 (Playing video.)

20 MR. SHIFLET: Your Honor, this is the video
21 from the incident date. I am not sure it concerns
22 the subject or custody based arguments. So I guess
23 unless we need additional, we will play the video the
24 day of the arrest.

25 (Playing video.)

1 MR. SHIFLET: That would be where the State
2 stops the video. It goes on a few more minutes,
3 nonrelevant to the case.

4 Your Honor, the officer never once asked her
5 any questions that concerns the case. She simply --
6 she continually volunteers a statement or a question.
7 So I can't shoot on my property? And the officer
8 simply responds, it has to be in safe manner. And
9 they have a dialogue about which way she was
10 pointing.

11 In summary, your Honor, Miranda would only
12 apply and include statements when it is subject of
13 custodial interrogation. The State would acknowledge
14 she is in custody when she is arrested, but
15 interrogation is when there is a direct question or
16 function equivalent that includes police words or
17 actions, other than those normally intended to the
18 arrest in custody, they should know or reasonably
19 likely to solicit an incriminating response.

20 The officer, she never questions her. It is
21 not her intent to investigate the case. She is not
22 making a statement. She intends to elicit a
23 response. The defendant in this case is simply
24 engaging in further discussion about which way she
25 was pointing. She is doing so voluntarily and not in

1 response to officer's questions.

2 MR. ARIAIL: Your Honor, this is why we have
3 Miranda right here. Once they went around and
4 circled her, it was custody I would say at that time.

5 THE JUDGE: Let me ask you one last thing.
6 She never said anything incriminating. She denied
7 she did anything wrong, so how in the world -- and
8 the police officer -- she kept asking the police
9 officer, "you can't fire a gun in the county? You
10 can't fire a gun in the county? Those people are
11 harassing me." How is that incriminating of her?
12 The main thing she kept saying was, "I can't fire a
13 gun in the county?" And the officer is saying,
14 "well, you are pointing in their direction. I saw it
15 on the video." Where is that custodial question?
16 She is responding to her saying, "you can't arrest
17 me, don't take me in, I haven't done anything wrong."
18 Where is it?

19 MR. ARIAIL: My position was, and what I am
20 looking at -- here is the concern I have: First of
21 all, when they walk up, they surround her. She sees
22 three officers coming to her.

23 THE JUDGE: I agree with you on that part. I
24 agree with you that at that point they tell her she
25 was under arrest. She is resisting as some think,

1 but they tell her she is under arrest and they
2 surround her and they are trying to get her to put
3 her hands behind her back so they can put handcuffs
4 on her. I agree with you at that point. I would
5 consider that under arrest or in custody.

6 Now, let's go from there. If somebody is in
7 custody, if there are four police officers there or
8 not. If she is in the custody and hands behind her
9 back, statements she makes voluntarily on her own
10 denying she has done anything wrong is not the
11 subject of custodial interrogation. So I mean they
12 have to be asking her some questions, and they are
13 not asking her any questions. The question is, are
14 at the they asking anything -- it doesn't have to be,
15 are you guilty? It can be something just to ask her
16 a question to elicit, to try get some kind of
17 response that is incriminating. That doesn't happen
18 here. The only thing they are saying is after they
19 told her she is under arrest, they tell her that she
20 is firing a gun in the direction of the alleged
21 victims. She says, can I not shoot? And you are
22 under arrest for discharging a firearm. They are
23 saying she said, I can't discharge a firearm? Yes
24 you can, but you have to do in a safe manner.

25 They are responding to her questions. They

1 are not asking her questions. What questions did
2 they ask her after they placed her under arrest?

3 MR. ARIAIL: The concern I have, there is
4 questions I think that are there. There is one or
5 two there that elicit stuff from her, and they also
6 respond to her. My concern is, and I don't know what
7 the solicitor is going to do with this. Potentially
8 some of the information that was elicited was I
9 believe through wrongful interrogation.

10 THE JUDGE: They didn't ask her anything.
11 Tell me how they did? You are glossing over that and
12 saying just because she was in custody that's enough,
13 and no matter what my client said to them they can't
14 use it because she was --

15 MR. ARIAIL: I think when they go in, in the
16 initial part -- and here is the only part I am
17 concerned with about is that she provides a different
18 analysis of what happened once she starts asking her
19 about discharging the firearm and the mechanics. You
20 can't do that, and they have a discussion in regard
21 to that. That is inconsistent with the previous
22 video so he is going to potentially throw that out
23 which is going to throw my client's credibility into
24 issue.

25 THE JUDGE: I will have a problem with that.

1 You know, she wants to tell two different stories,
2 yes, that is inconsistent. It does have to do with
3 her credibility if she wants to tell two different
4 stories.

5 MR. ARIAIL: My concern is that would never
6 have been arrived at -- if she puts her in handcuffs
7 and says I am going to read you Miranda right here,
8 provides it to put her in the back, here is your
9 Miranda rights. She already said she has an
10 attorney. She comes out and starts talking about the
11 circumstances that happened. You were standing here.
12 I saw you on the video, starts questioning her.
13 Well, how do you know? I have the video. And then
14 she puts her in a box is what she is doing trying to
15 explain herself out.

16 THE JUDGE: She denied all of it. What is
17 the incriminating statement that she made you are
18 trying to keep out?

19 MR. ARIAIL: Well, I am saying she is sitting
20 here saying, acknowledges that she is right here with
21 the gun. I am saying that is inconsistent with the
22 statement she made when she talked about the muskrats
23 earlier or shooting. I don't want that played
24 against her and have those two different ones when
25 that statement should never have been brought in from

1 my position or they would have never gotten if they
2 stopped their questioning or told her Miranda rights
3 before that.

4 MR. SHIFLET: To the extent it clarified the
5 facts as portrayed by the video, it is not the first
6 time she was shooting at muskrats the other way. She
7 does it numerous times on the video. They talked to
8 her about it. She is pointing at the pond and saying
9 I shoot the muskrats. That was on the video prior to
10 this as well, to the extent that is relevant.

11 THE JUDGE: Well, she does say that. The
12 police say, "well, I know you were shooting in their
13 direction." She said, "no, I was not. I can't
14 shoot"? In any event, she never admits that she was
15 firing in their direction and that's why I am asking
16 about the incriminating part, what is incriminating.

17 MR. ARIAIL: Well, my concern is I look at it
18 from, it could be potentially incriminating to her to
19 have inconsistent -- if she says one thing in one
20 video, it should never have gotten to this issue
21 here, and that is going to go to the jury. I don't
22 want me being forced to put her on the stand asking
23 why did you say two different things, then I am in a
24 pickle here. What I am trying to limit is my view
25 that this, we would never have gotten this far in

1 regard to the testimony if they read the Miranda and
2 done that and not started playing off that
3 conversation in regard to where you were, where you
4 were shooting, saw it on the video, all of that.

5 THE JUDGE: Your client instigated all of
6 that. She instigated it all. My question is then in
7 my mind, what I am trying to resolve in my mind, is
8 whether they should have given her Miranda warnings
9 at the time she was placed under arrest. She was
10 engaged in a conversation. They really weren't
11 investigating at that point. They already made a
12 determination they were arrested and placed under
13 arrest. There is no question where she instigated
14 the whole conversation herself. If she hadn't said
15 anything and let them put the handcuffs on her and
16 take her away, there wouldn't have been any
17 conversation. All they wanted to do is put her hands
18 behind her. She didn't want to be arrested. I think
19 they could have charged her with resisting arrest.
20 Once they told her you are under arrest and she
21 refused to be arrested and to put her hands behind
22 her back, she was resisting arrest right then. I
23 think they could have charged her with that.

24 She was trying to make a case of why they
25 shouldn't arrest her. So she was instigating that,

1 not them.

2 MR. ARIAIL: I guess once they put the
3 handcuffs on do, once they do what they have done, at
4 that point in time, I have to go back and do is there
5 a break in regard to now she is under arrest, she is
6 in custody clearly. If they stop her right there and
7 say, look, you are under arrest, you have the right
8 to remain silent, go through that, that puts a break
9 in it. At least that tells us where there is a break
10 and where there isn't.

11 THE JUDGE: I will look at it. I think she
12 instigated the whole thing. I don't think her
13 statements were in response to any custodial
14 interrogation questions asked by them. There is no
15 question about that. They responded to her. She
16 said, I wasn't shooting in their direction. I was
17 shooting down at the pond at muskrats or whatever.
18 In trying to keep them from arresting her and saying
19 I have not done anything wrong, they are explaining
20 to her you can shoot your weapon on your property but
21 you have to do it safely. You can't shoot in the
22 direction of somebody else. There is a chance of
23 somebody getting hurt is basically what they are
24 saying to her. I don't see how that is eliciting any
25 information to her. She is volunteering information.

1 "No, I was not shooting in their direction. Where
2 was I?" They said, "you are standing on the right."

3 "No, I was in-between these two vehicles."

4 The question I am trying to resolve, I think
5 you should have given Miranda warning. I don't think
6 we would be arguing this if they had given Miranda
7 warnings, but they didn't. At the same time, I don't
8 think they were asking her interrogating questions
9 while she was in custody. I think she initiated the
10 entire conversation.

11 MR. ARIAIL: Your Honor, I have dealt with
12 that before in the murder case where somebody asked
13 the officer to come back in. They began to talk. My
14 question of this is hybrid of what I dealt with
15 before. I think they are asking things which are
16 eliciting stuff which if she had known her Miranda
17 rights when she was done --

18 THE JUDGE: Let me ask you, what did they ask
19 her?

20 MR. ARIAIL: I am trying to go back in my
21 mind, they started asking her about the previous
22 times about her issues with them. Then it goes in to
23 where she was.

24 THE JUDGE: I didn't hear them say anything
25 about asking her any questions about previous. She

1 brought that up. All right. I didn't hear them ask
2 her any questions about that. I am asking you, what
3 did they ask her to elicit in response from her?

4 MR. ARIAIL: I think my issue, if I go back,
5 is dealing with what was on that video and what they
6 say we have. This is what we have. This is where
7 you were. Then she said, no, I wasn't. Yes, we have
8 it. Here is the video. We have video of it.
9 Clearly, there is a conversation in regard to that.

10 THE JUDGE: There was a conversation but it
11 was all because she didn't want to be arrested and
12 didn't think she ought to be arrested and didn't
13 think she did anything wrong. She was saying, you
14 can't arrest me. Basically, I have not done anything
15 wrong. You can't arrest me. You can't take me in
16 because I have not done anything wrong. I have a
17 right to shoot my gun on the property, and you know,
18 I shoot my gun on property. They are responding to
19 that.

20 MR. ARIAIL: But I think they then placed it
21 back on her by saying we have a video of you.

22 THE JUDGE: They did say that.

23 MR. ARIAIL: Which then forces her to defend
24 herself to them which she has already been trying to
25 do. What did she say in response that that was

1 incriminating?

2 That's where we get to what she said is
3 inconsistent from the previous video, the other video
4 he was showing you. Then I am sitting here, if both
5 of them come in, they are inconsistencies and I am
6 forced to put her on the stand. I don't know how a
7 jury is going to read that.

8 My concern is, we should have stopped it where
9 it was -- if she was read Miranda, I would be sitting
10 down right now. There would be no issue.

11 THE JUDGE: I agree. That's what should have
12 been done. It wouldn't be an issue if she was read
13 her rights and she continued to talk.

14 I am going to take that one under advisement
15 until we get to it. My inclination is you are
16 probably not going to get it in, Solicitor, because
17 you didn't give Miranda warnings. If there is any
18 way you can say statements made by an officer at the
19 scene caused her to say something that is going to be
20 a different story because of something the officer
21 told her they had, I mean, you can interpret that,
22 even show she really wasn't asked any questions,
23 saying we have this which is different than what you
24 are saying. Then she responds to that.

25 I will think about it. I will look at it.

1 The whole issue is the Miranda warnings should have
2 been given, and if the Miranda warnings were given
3 and then she continued to talk, whatever she said you
4 could use unless she revoked her right to remain
5 silent or have her attorney present before she
6 talked. If she volunteered the conversation after
7 that then it is not in violation of the Fifth
8 Amendment rights.

9 MR. SHIFLET: May I be heard, your Honor?

10 THE JUDGE: Yes.

11 MR. SHIFLET: I think your Honor has the
12 understanding. All I will say, it is my
13 understanding there is no legal requirement for
14 Miranda for arrest. Miranda is required for
15 custodial interrogation. Interrogation, your Honor,
16 is -- referring to the Verdile [sic] case. The
17 Court's concern is that the interrogation environment
18 created their play in interrogation and custody to
19 associate the individual to the will of the examiner
20 thereby undermining the privilege against compulsory
21 self-incrimination.

22 We are talking about a set of circumstances,
23 your Honor, that are not present here. She is
24 arrested and she is volunteering statements to the
25 officer. The officer is simply responding to her

1 statements and not asking questions. That's just the
2 requirement here.

3 THE JUDGE: The whole issue is by giving the
4 contrary position that the State has to her saying,
5 we have an video, coming back to that referral, and
6 then essentially, expects she is going to respond to
7 that in some way.

8 The question is, you know, by the officer
9 saying, we have video that shows this, that, and the
10 other. Does that invite her to make a statement
11 which could be incriminating if it is inconsistent
12 with what she already said.

13 MR. SHIFLET: I would argue the alternative.
14 The officer is telling her we have a video, stop
15 taking this position. The officer is not making this
16 statement to her for the purpose of an investigation
17 or for the purpose of eliciting an incriminating
18 response. She is responding to the defendant's
19 statement.

20 THE JUDGE: That is true, however, the issue
21 is, can her response lead to an incriminating --
22 basically, a position by the defendant.

23 MR. SHIFLET: The failure would be, should the
24 officer reasonably note that it would lead to. I
25 think that goes into subjective standards with regard

1 to what was the officer actually engaging in. Was
2 she investigating the case and trying to get
3 responses, or was she trying to get an answer to this
4 defendant who was saying, "why can't I shoot my gun?
5 I wasn't pointing it at them." That's the
6 statements.

7 THE JUDGE: I will look at it. It is a recent
8 case that has just been out. I will call your
9 attention to it, State vs. Lance Williams, Opinion
10 5161, filed July 24th. It sets some parameters in
11 what to look at and if the police officers ask
12 questions, making statements to this defendant. So I
13 will look at that and get some guidelines and factors
14 to look at and determine whether the questions or
15 responses were designed to elicit some kind of
16 response that could be used against them. I will
17 look at it. It is a fine line. I agree with you.
18 Like I said, if Miranda warnings had been given,
19 there is no question of what will come in.

20 MR. SHIFLET: Thank you. We've got about 10
21 before at this point.

22 THE JUDGE: We better draw a jury if we are
23 going to draw one today. Then we can send them home
24 and get back in the morning and start by 9:30.

25 MR. SHIFLET: With regard to bringing them

1 back, we may need to evaluate that a slight bit more.
2 I know we have at least one more motion the State
3 wishes to be heard on that we have not addressed at
4 this point, and that's before we jump into the
5 substantial issue concerning -- we have a decent
6 amount of pre-trial from my estimation at this point.

7 THE JUDGE: I think you all determined to run
8 this case a lot longer than I wanted it to run time
9 wise. How long do you think it is going take? It is
10 going to be 5 o'clock by the time we get the jury
11 drawn in this case and get them out of here with
12 proper instructions. So what are your thoughts about
13 how much time we will need in the morning?

14 MR. ARIAIL: Aside from the civil suit that we
15 discussed in chambers, I have one motion concerning
16 the procedural background of this case and the
17 warrant that was originally taken and the discharge
18 of firearm in the county that was subsequently
19 reconsidered by the Sheriff's Department and a
20 different warrant was taken. I have a motion that
21 would concern that aspect of the case. Other than
22 that, I guess it would depend on where the other
23 issue went.

24 THE JUDGE: These motions should have been
25 taken up in the half day or some other time and

1 gotten out of the way before we have the jury coming
2 in. They have been sitting down there an hour
3 already, and we have to bring them up, and we are
4 nowhere near ready to start this trial. With this
5 much pre-trial, we should have taken these up taken
6 in a half day either before the trial or a week
7 before the trial. It should have already been done
8 so we would not be pressed time wise. Only thing I
9 can do is.

10 I have agreed to hear a plea first thing in
11 the morning around 9 or so.

12 MR. SHIFLET: Maybe we can revisit the issue
13 of resolving the other situation in light of some of
14 the Court being familiar with some of the evidence in
15 the case at this point. Maybe we can revisit that in
16 chambers and determine it if there is a way to work
17 this out.

18 THE JUDGE: I would be glad to talk to you in
19 chambers and see if there is anything we can agree to
20 as far as what comes in and how it comes in. Let's
21 do this. If we start this case at 11 or so tomorrow,
22 we are going to have hard time finishing it tomorrow.
23 I am not going to be happy about that scheduling wise
24 because it is not supposed to happen.

25 I will dismiss them and have them come in at

1 11 tomorrow and that will give us time to work on it.

2 I am not happy about it, I will tell you that.

3 MR. SHIFLET: So we will not have them sworn
4 at this time?

5 THE JUDGE: We will not have them sworn. I
6 never swear the jury until I have to because
7 questions come up. Once they are sworn, you can have
8 a mistrial. If they are not sworn, you don't have to
9 have a mistrial and simply can continue the case at
10 that point as long as the jury is not sworn. You
11 can't do that if they are sworn. So I don't need to
12 swear them until they need to swear them. Other
13 issues can come up too.

14 Let me see counsel in chambers before we get
15 started.

16 (Court in recess.)

17 (Open court.)

18 THE JUDGE: Good afternoon, ladies and
19 gentlemen of the jury panel. If you would give me
20 your attention, please. I have not met you yet
21 because I did not qualify the jury. My name is Lee
22 Alford. I am a resident circuit court judge in the
23 Sixteenth Judicial Circuit.

24 We are about to go into a trial in the matter
25 of the State of South Carolina vs. Lynn Smith

1 Saucier.

2 The State charges Ms. Saucier with the offense
3 of pointing and presenting a firearm. To this
4 charge, the defendant has pled not guilty, and we are
5 about to go into a trial on that matter.

6 Let me begin by apologizing to you for keeping
7 you down in the jury room as long as we did. We had
8 a matter going on that we have been actively working
9 on and it took longer than we thought, and we still
10 didn't get finish. We will handle a little of that
11 in the morning. We want to get a jury drawn and then
12 send you home and get started with the trial
13 tomorrow. Those that are not necessary for this
14 case, we can free you up all together. Again, we
15 apologize for any inconvenience to you and the delay
16 in getting up. We have been actively working.

17 The State is represented in this case by
18 Assistant Solicitor's John Shiflet and Misti Shelton,
19 and Ryan Newkirk. Counsel, please stand. Misti
20 stepped out.

21 Is anyone on the jury panel related by blood,
22 marriage, friends with, or have any other type
23 social, business, or professional relationship with
24 either John Shiflet, Misti Shelton, or Ryan Newkirk.
25 If so, please stand.

1 Yes, ma'am, please give us your name and
2 number.

3 PROSPECTIVE JUROR 197: Cristy Scheenks, 197.

4 THE JUDGE: Say that again.

5 PROSPECTIVE JUROR 197: 197, Kristy Scheenks.

6 THE JUDGE: Yes, ma'am.

7 PROSPECTIVE JUROR 197: I went to high school
8 with Ryan Newkirk.

9 THE JUDGE: Ma'am is there anything about that
10 relationship that would interfere with your ability
11 to give both the State and the defendant a fair and
12 impartial trial in this case?

13 PROSPECTIVE JUROR 197: No, sir.

14 THE JUDGE: Anyone else? Is anyone else on
15 the jury panel related by blood, marriage, friends
16 with, or have any other type of social, business or
17 professional relationship with anyone that works in
18 the Sixteenth Circuit Solicitor's Office? If so,
19 please stand.

20 PROSPECTIVE JUROR 57: Excuse me, your Honor.

21 THE JUDGE: Please stand.

22 PROSPECTIVE JUROR 57: I volunteer with the
23 Sixteenth office with the arbitration program.
24 That's all I do is volunteer.

25 THE JUDGE: Can you give us your name and

1 number for the record.

2 PROSPECTIVE JUROR 57: My number is 57,
3 Theresa Earle.

4 THE JUDGE: Is there anything about your work
5 there that would interfere in any way with your
6 ability to give both the State and the defendant a
7 fair and impartial trial in this case?

8 PROSPECTIVE JUROR 57: No, sir.

9 THE JUDGE: Thank you, ma'am. Anyone else?
10 Please stand.

11 PROSPECTIVE JUROR 24: Marsha Black.

12 THE JUDGE: Yes, ma'am.

13 PROSPECTIVE JUROR 24: I am friends with
14 Mr. Shiflet's parents, and I am also your neighbor.

15 THE JUDGE: Okay. That doesn't matter. I am
16 neutral. Is there anything about your relationship
17 with Mr. Shiflet's parents that would interfere in
18 any way with your ability to give both the State and
19 the defendant a fair and impartial trial in this
20 case?

21 PROSPECTIVE JUROR 24: No, sir.

22 THE JUDGE: Thank you. You maybe seated.
23 Anyone else?

24 The defendant, Lynn Smith Saucier is
25 represented in this case by Mills Ariail. Please

1 stand, sir, and I will ask Ms. Saucier to stand.

2 Please be seated.

3 Is anyone on the jury panel related by blood,
4 marriage, friends with, or have any other social,
5 business, or professional relationship with Lynn
6 Smith Saucier. If so, please stand. Her last name
7 is spelled S-A-U-C-I-E-R.

8 Is anyone on the jury panel related by blood
9 or marriage, friends with, or have any other type of
10 social, business or professional relationship with
11 that is to say currently or formally represented by
12 or any other relationship to Mills Ariail. If so,
13 please stand.

14 Ladies and gentlemen of the jury panel, I am
15 going go through a list of potential witnesses in
16 this case. All of these witnesses may not be called
17 but they may be called. What I am going to ask you
18 to do is when I call the potential witnesses' name,
19 if you are related by blood or marriage, friends
20 with, or have any other type of social, business, or
21 professional relationship with any of these names of
22 potential witnesses. When I call their the names, I
23 would ask that you please stand if you are on the
24 witness list.

25 Deputy Estep. Thank you, you maybe seated.

1 Deputy Moseley with the Sheriff's Department.
2 Detective E. Strait, S-T-R-A-I-T with the Sheriff's
3 Department. Trent Faris, F-A-R-I-S. Barry Foy,
4 spelled F-O-Y, last name. Carol Jones. I think you
5 know how to spell that. Robert Rainey. Cynthia
6 Jones.

7 Is any member of the jury panel, or a member
8 of your immediate family, members of the National
9 Rifle Association or a similar organization. If so,
10 please stand.

11 Yes, ma'am, give us your name and number.

12 PROSPECTIVE JUROR 41: I am Number 41, Andrea
13 Cordle. My husband is a member of the NRA.

14 THE JUDGE: Ma'am, is there anything about
15 your husband's membership in that organization that
16 would interfere in any way with your ability to give
17 both sides a fair and impartial trial in this case
18 given the nature of the charge?

19 PROSPECTIVE JUROR 41: No, sir.

20 THE JUDGE: Thank you. Ma'am, give us your
21 name and number.

22 PROSPECTIVE JUROR 88: Wendy Hanson, Number
23 88.

24 THE JUDGE: Yes, ma'am.

25 PROSPECTIVE JUROR 88: My husband is a

1 benefactor level of the NRA, and I am a lifetime
2 member of the NRA.

3 THE JUDGE: Let me ask you whether there is
4 anything about your and your husband's affiliation of
5 that organization that would interfere in any way
6 with your ability to give both the State and the
7 defendant a fair and impartial trial in this case
8 given the nature of the charge in this case?

9 PROSPECTIVE JUROR 88: No, sir, there isn't.

10 THE JUDGE: Thank you, ma'am, you may be
11 seated.

12 I am going to ask you three questions now. I
13 ask you if you need to respond to one or more of
14 these questions, I will ask you to wait until I have
15 gone through all three questions. Then if you need
16 to respond to one or more of these questions, I will
17 get to you when I finish. I will get you to come to
18 the center aisle and come forward one at a time as
19 the bailiff may direct. We will take your responses
20 down front where we can do that with a little more
21 privacy.

22 Here are the questions: Have you, or a member
23 of immediate family, ever been charged with or
24 accused of the offense of pointing and presenting or
25 other firearm related charge?

1 Second question: Have you, or a member of
2 your immediate family, ever been a victim of a
3 pointing and presenting or other firearm related
4 crime?

5 Is there any member of the jury panel who has
6 a belief, religious or otherwise, that would prevent
7 you from rendering judgment against another person?

8 If you need to respond to one or more of these
9 questions, I will ask you to come to the center aisle
10 at this time and bring you down front one at a time.

11 Give us your name and number.

12 PROSPECTIVE JUROR 26: Donald Blair, Number
13 26.

14 THE JUDGE: Yes, sir.

15 PROSPECTIVE JUROR 26: I was an armed robbery
16 victim January 1st, 2008.

17 THE JUDGE: Let me ask you whether there is
18 anything about your experience in that regard that
19 would interfere in any way with your ability to give
20 both the State and the defendant a fair and impartial
21 trial in this case given the nature of the charge?

22 PROSPECTIVE JUROR 26: No, sir.

23 THE JUDGE: Thank you so much. You can return
24 to your seat.

25 Just a few more questions, ladies and

1 gentlemen. Has any member of the jury panel have any
2 prior knowledge about this case from any source
3 before coming here to Court today? If so, please
4 stand.

5 Has any member of the jury panel formed or
6 expressed an opinion as to the guilt or innocence of
7 the defendant, Lynn Smith Saucier? If so, please
8 stand.

9 Has any member of the jury panel conscious of
10 any interest, bias, or prejudice for or against the
11 defendant, Lynn Smith Saucier? If so, please stand.

12 Can each member of the jury panel give both
13 the State and the defendant, Lynn Smith Saucier, a
14 fair and impartial trial in this case? If not,
15 please stand.

16 Does any member of the jury panel know of any
17 reason whatsoever why he or she should not serve as a
18 juror in this particular case? If so, please stand.

19 Any additional questions requested for the
20 jury panel from the State?

21 MR. SHIFLET: No, your Honor.

22 THE JUDGE: From the defense?

23 MR. ARIAIL: No, your Honor.

24 THE JUDGE: Madam Clerk, give us a jury,
25 please.

1 THE CLERK: If your name is called, please
2 bring your personal items you have and stand by the
3 bailiff.
4 Number 205, William Simmons.
5 What say ye for the State?
6 MR. SHIFLET: Please seat the juror.
7 THE JUDGE: Defense?
8 MR. ARIAIL: Please seat the juror.
9 THE CLERK: Number 166, Sheila Paster.
10 What say ye for the State?
11 MR. SHIFLET: Please seat the juror.
12 THE JUDGE: Defense?
13 MR. ARIAIL: Please seat the juror.
14 THE CLERK: Number 177, Christopher Potts.
15 What say ye for the State?
16 MR. SHIFLET: Please seat the juror.
17 THE CLERK: Defense?
18 MR. ARIAIL: Please excuse the juror.
19 THE CLERK: Excused in this case.
20 Number 144 Cindy Lawton.
21 What ye for the State?
22 MR. SHIFLET: Please seat the juror.
23 THE CLERK: Defense?
24 MR. ARIAIL: Please seat the juror.
25 THE CLERK: Number 93, Tessie Blackwell.

1 What say ye for the State?

2 MR. SHIFLET: Please seat the juror.

3 THE JUDGE: Defense?

4 MR. ARIAIL: Please seat Ms. Blackwell.

5 THE CLERK: Number 126, Christine Lekich.

6 What say ye for the State?

7 MR. SHIFLET: Please seat the juror.

8 THE JUDGE: Defense?

9 MR. ARIAIL: Please seat the juror.

10 THE CLERK: Number 202, Stephen Siebert.

11 What say ye for the State?

12 MR. SHIFLET: Please seat the juror.

13 THE JUDGE: Defense?

14 MR. ARIAIL: Please seat the juror.

15 THE CLERK: Number 88, Wendy Hanson.

16 What say ye for the State?

17 MR. SHIFLET: Please excuse the juror.

18 THE CLERK: Excused from this case.

19 Number 191 India Roseboro.

20 What say ye for the State?

21 MR. SHIFLET: Please seat the juror.

22 THE JUDGE: Defense?

23 MR. ARIAIL: Please seat the juror.

24 THE CLERK: Number 237, Russell Watkins.

25 What say ye for the State?

1 MR. SHIFLET: Please seat the juror.
2 THE CLERK: Defense?
3 MR. ARIAIL: Please seat the juror.
4 THE CLERK: Number 76, Cynthia Murray.
5 What say ye for the State?
6 MR. SHIFLET: Please seat the juror.
7 THE CLERK: Defense?
8 MR. ARIAIL: Please seat the juror.
9 THE CLERK: Number 95, Georgia Harmens.
10 What say ye for the State?
11 MR. SHIFLET: Please seat the juror.
12 THE CLERK: Defense?
13 MR. ARIAIL: Please seat the juror.
14 THE CLERK: Number 64, James Eubanks. What
15 say ye for the State?
16 MR. SHIFLET: Please seat the juror.
17 THE JUDGE: Defense?
18 MR. ARIAIL: Please seat the juror.
19 THE CLERK: Number 234, Jennifer Walker.
20 What say ye for the State?
21 MR. SHIFLET: Please seat the juror.
22 THE JUDGE: Defense?
23 MR. ARIAIL: Please seat the juror.
24 THE CLERK: This is for the alternat.
25 Number 215, Ashley Stewart.

1 What say ye for the State?

2 MR. SHIFLET: Please excuse the juror.

3 THE CLERK: Excused in this case.

4 Number 201, Judy Shook.

5 What say ye for the State?

6 MR. SHIFLET: Please seat the juror.

7 THE JUDGE: Defense?

8 MR. ARIAIL: Seat the juror.

9 THE JUDGE: Are there any questions concerning
10 the selection process from the State?

11 MR. SHIFLET: None from the State, your
12 Honor.

13 THE JUDGE: From the defense?

14 MR. ARIAIL: None, your Honor.

15 THE JUDGE: Thank you. Ladies and gentlemen
16 of the jury panel, if you were not selected for this
17 particular case, I am going to excuse you at this
18 time. I ask you to please call into your voicemail
19 numbers tonight any time after 7 o'clock. There will
20 be a message on there if you even need to report back
21 or call back again as case may be. Thank you for
22 your patience and your service thus far this week.
23 You are free to go.

24 (Prospective jurors exiting courtroom.)

25 THE JUDGE: Ladies and gentlemen of the jury

1 panel, as I have said earlier, we are not actually
2 going to be starting the trial of the case today. We
3 still have some pre-trial matters we have not
4 completed. I have one other matter that I agreed to
5 hear first thing in the morning so we will get a
6 little later start tomorrow while we finish up on
7 these other things. What I am going to ask you to do
8 is be back in the jury room here -- and the bailiff
9 will show you where to go and how to get in and out.
10 I will ask you to be back at 11 o'clock. You get to
11 sleep in a little bit in the morning, hopefully. At
12 any rate, be here at 11 o'clock and we will try to
13 get started promptly at 11.

14 I need to give you a little additional
15 information. One of the things I am going to get you
16 to do before you leave today is I am going to ask you
17 to go back into the jury room. The bailiff will take
18 you back. I am going to ask you to select from the
19 first 12 jurors chosen, not the alternate, but from
20 the first 12 jurors chosen, a foreperson, your
21 foreperson.

22 Let me tell you what the foreperson does. The
23 foreperson serves as a spokesperson for the jury back
24 to Court so if there is a matter that needs to come
25 to the attention of the Court from the jury, we ask

1 that the foreperson write the message down on the
2 tablet that will be provided for you back in the jury
3 room and give it to the bailiff. The bailiff will
4 bring it to me and I will correspond in like manner
5 or bring you back out in the courtroom to respond.

6 We also ask that the foreperson serve as the
7 moderator once we reach and deliberation stage in the
8 trial to maintain some order in those deliberations,
9 and make sure everyone is allowed to participate and
10 to be heard in the deliberations.

11 Finally, once an unanimous verdict is reached
12 by the jury, to record that verdict on the verdict
13 form which will be provided to you and explained to
14 you at the appropriate time at the conclusion of the
15 trial.

16 The primary role of the foreperson is the same
17 as every other juror, and that is to listen carefully
18 to the testimony and evidence so you would be in a
19 position to deliberate and help reach a verdict in
20 this case.

21 If that person who is elected by the jury as
22 the foreperson would write their name and number,
23 juror number, down on the tablet provided for you
24 back in the jury room, give that to the bailiff on
25 the way out, and the bailiff will get it to me.

1 I want to instruct you on overnight recess.
2 You don't really know anything about this case at
3 this point, but please do not during the overnight
4 recess talk about this case among yourselves. Do not
5 talk about it with anyone else, that would include
6 family members, friends, or anyone else. Please do
7 not discuss the case with them. Please do not go on
8 any kind of electronic device and try to find out
9 anything about this case. We are aware that people
10 have smart phones, iPads, whatever, computers, please
11 do not go on any of those devices and try to get any
12 information about this case or any issue in this
13 case. It is very important that you not do that. If
14 do you that and the Court is made aware of it, that
15 could cause us to have to mistrial in this case and
16 start over again another day with a different jury,
17 and we don't want to do that. That will cause a real
18 complication, so please do not do that. This is
19 expected to be a fairly short trial and will not be
20 an imposition on you not to try to find out anything.
21 After the case and verdict comes in, you are welcome
22 to find out anything you want to or do anything you
23 want to in that regard.

24 If there should be any media coverage and some
25 of that comes by way of electronic media or computer,

1 et cetera, please do not, or there should be any
2 information about this case at all, please do not
3 read, listen to, or watch any media account of this
4 trial. After the verdict is over and the trial is
5 over, and the verdict is in, then you are welcome to
6 read, listen to, or watch any media accounts if
7 somebody wants to save it for you or have it
8 automatically saved on an electronic device.

9 It is very important that you make your
10 decisions solely on the sworn testimony and evidence
11 that comes in during the course of the trial and not
12 from any other source. There is no way we can
13 guarantee the accuracy of any other information or
14 account of this trial. It is very important that
15 your decision be made solely on the sworn testimony
16 and evidence that comes in.

17 You might say, well, what is wrong with our
18 discussing the case among ourselves as we go along.
19 The problem with discussing the case is once you
20 start discussing the case among yourselves or with
21 anyone else, you start forming opinions. It wouldn't
22 be fair to both sides of this case unless you waited
23 until you have all of the information you need
24 including the Court's instruction on the law before
25 you start forming an opinion. Until then you should

1 keep an open mind, wait until you have all of the
2 information needed until you start forming opinions
3 in this case.

4 Thank you for your kind attention and your
5 patience. I will ask you to be back in the jury room
6 ready to go in the morning at 11 o'clock. You can go
7 back to the jury room and elect a foreperson, that
8 foreperson is to write their name and number down,
9 and you are free to go for the evening. We will see
10 in you the morning. Thank you.

11 (Jury exiting courtroom).

12 THE JUDGE: All right. Counsel, if you all
13 could maybe talk to your clients a little bit and see
14 if there is anyway we can work anything out.

15 Is there anything we need to address that
16 won't wait until the morning?

17 MR. SHIFLET: Nothing that can't wait to the
18 morning.

19 THE JUDGE: I am going to leave the defendant
20 out. We haven't sworn the jury in any event yet so I
21 will leave her out during the trial, but of course,
22 you obviously cannot have any conversation with
23 anybody that may be involved in this case.

24 Also, I need to inform her that for any reason
25 if she didn't show back up when she's supposed to be

1 here, the trial will go forward in her absence. Your
2 attorney will be here to represent you the best he
3 can. If you were found innocent that would be the
4 end of it. If you were found guilty, a bench warrant
5 would be issued for your arrest. The Court would
6 sentence you and seal that sentence until you were
7 picked up on that bench warrant. I'm required to
8 tell every defendant that. If you don't show up, the
9 trial is going forward. Thank you.

10 (Whereupon, the above-entitled matter was
11 adjourned.)
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C E R T I F I C A T I O N

STATE OF SOUTH CAROLINA

COUNTY OF YORK

I, Phyllis M. Campo, Official Court Reporter for the Sixteenth Judicial District of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings at the time and place herein in the above-entitled matter.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 4, 2014

Phyllis M. Campo
Official Court Reporter

1	STATE OF SOUTH CAROLINA	)	Court of General Sessions
		)	
2	COUNTY OF YORK	)	2012-GS-46-04105
3		)	
4	_____	)	Transcript of Record
	State of South Carolina	)	
5		)	VOLUME 2
	vs.	)	
6		)	
	Lynne Smith Saucier,	)	
7		)	
	Defendant	)	
8	_____	)	

9
Date: August 28, 2013

10
11
BEFORE: The Honorable Lee Alford, Judge; and a jury

12
13
APPEARANCES:

14 John Shiflet, Esq.,
15 Assistant Solicitor

16 Ryan Newkirk, Esq.,
17 Assistant Solicitor

18 Misti Shelton, Esq.,
19 Assistant Solicitor

20 Mills Ariail, Esq.,
21 Attorney for Defendant.

22 Phyllis M. Campo, RPR
23 Court Reporter

24

25

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1 (Open Court)

2 THE JUDGE: First of all, insofar as once the
3 defendant was placed under arrest with a police
4 officer present and once they engaged in a
5 conversation there, and the deputy was pretty
6 confrontational about that in the video, what we have,
7 what we got to use against you, that sort of thing.

8 She was not interrogated, there is no question
9 about that. I don't think she was deliberately
10 interrogated. But it is not just deliberate
11 interrogation questions that count as interrogation
12 when you don't give somebody their rights.

13 Now, the issue of whether she was in custody,
14 that's not an issue. Most of the cases deal with
15 whether they were actually in custodial interrogation.
16 She definitely was in custody. There's no question
17 about that.

18 Several officers there said she was under arrest,
19 she was placed under arrest, handcuffs were placed on
20 her. And then anything that happened after she was
21 put under arrest without giving the Miranda warnings,
22 the Court is going to take the position under --
23 again, you can question whether it was interrogation
24 or not, and I don't think it was asking questions
25 trying to get answers which would be incriminating by

1 the defendant.

2 But by being confrontational issues and telling
3 her what they have, what they were going to use
4 against her, that sort of thing, that invited a
5 response from her which they got.

6 I really don't think her statements are
7 incriminating because she never admitted she shot in
8 the direction of the defendants; but nevertheless,
9 looking at a recent case of *State v. Williams*, which I
10 referred to yesterday, opinion on 5161, there are a
11 number of factors which the Court looks at. I am not
12 going to go through all of them.

13 Several of these factors go against the State,
14 probably about half of them go against the State
15 insofar as whether that was custodial interrogation or
16 not. I am not going through all of them. But that is
17 my authority, and I am going to deny that in abundance
18 of caution.

19 I don't think it is really -- I am going to leave
20 it there. It is a close question whether it comes in
21 or not, her statements. But because they didn't give
22 her the Miranda warnings when she was in custody, the
23 Court has a problem with that and I think the Appeals
24 Court would have a problem with that, particularly
25 when several of these factors cited in *Williams* are

1 present here in weight against the State. You can
2 make that determination.

3 All right. Next, with regard to the statements
4 by the defendant on the video that the defense has
5 made a motion to keep out, some of the ugly statements
6 that she made on there, some of the words she used in
7 there, the Court is going to deny that motion. I
8 think they are entitled to get it in. I think it is
9 very probative.

10 It is a little bit prejudicial to the defendant,
11 but it is much more probative to the State on the
12 issue they are going to have to find, which is that
13 she deliberately and intentionally pointed a gun in
14 down in that direction, shot in that direction, and
15 her motivation for doing so and her demeanor at the
16 time and what she had to say and who her comments were
17 directed to and that sort of thing.

18 I think that is exact on the issues that the
19 State has to prove, the elements of the offense of
20 pointing and presenting, so it is far more probative
21 than prejudicial to the defendant. I will allow those
22 in.

23 The more difficult question is the issue of the
24 prior civil suit and the judgment in the civil suit,
25 and I have weighed that heavily and I made the

1 determination that it is not going to come in. The
2 reason -- I am going to give you all the reason. I am
3 going to have to state all of that so bear with me.

4 First of all, 401 defines relevant evidence. I
5 don't think it is really relevant to this case and
6 certainly not relevant evidence to prove anything in
7 the case, and so it is tangential relevancy in that
8 there is previous action between the party, contact
9 between the parties. It is not relevant on the issues
10 of whether the defendant did or did not do what the
11 State argues she did in this case and the evidence in
12 the case. So it is not really relevant in proving
13 anything in this case or disproving anything in this
14 case. So relevant evidence under 402 is generally
15 admissible, but again, I find tangentially only
16 relevant.

17 Under Rule 403, the Court can exclude relevant
18 evidence on the grounds of prejudice, confusion, or
19 waste of time, and that's exactly what you are going
20 to have in this case if I allow that in. Because
21 number one, it is going to require if I allow that in
22 and it doesn't prove anything in this case, it doesn't
23 prove what the complaining parties are doing in this
24 case. It does not prove what the defendant did or did
25 not do in this case. It doesn't prove anything.

1 By simply saying somebody got sued before and got
2 a judgment against somebody, then having that, they
3 can't -- the person who got the judgment against the
4 other parties can't ever complain again or file a
5 complaint against or file charges against somebody
6 because they have a civil judgment that happened in
7 the past doesn't make any sense.

8 So again, it is not relevant to this particular
9 case of whether the defendant did or did not do what
10 she is alleged to have done in this particular case.

11 Also, the Court does not favor a trial within a
12 trial. By that I mean when you bring up this one
13 issue, then we have to try that issue, okay? We have
14 to try that issue. And that's going to take most of
15 the time in the case to try that issue instead of the
16 actual case that we have before us today and the
17 charges against the defendant, whether she did or did
18 not do this.

19 Secondly, civil cases require a different
20 standard of proof than is required in this case and
21 what was required in the case that was dismissed
22 against the defendant earlier brought by the
23 complainants in this case because they are beyond a
24 reasonable doubt.

25 The solicitor simply made a decision not to

1 proceed with that case because it is one person's word
2 against another, one side against another with no
3 other evidence. With that, basically, you got a 50/50
4 proposition that doesn't prove anything beyond a
5 reasonable doubt.

6 How the defendant got a civil judgement in that
7 case I don't know. If the State made the decision not
8 to proceed with it, it is not the same as not finding
9 any probable cause to have brought the action in the
10 first place.

11 So really, I don't know. I think the attorneys
12 probably did a good job in that case because I think
13 it is questionable. Nevertheless, I can't quarrel
14 with the jury. They made their decision.

15 But to prove a criminal case against the person
16 requires beyond a reasonable doubt proof of standard.
17 In a civil case, it is only mere preponderance, to tip
18 the scales in one way or the other, and very different
19 burden of proof.

20 That would confuse the issues in the Court's mind
21 and make it look like -- the jury would have a hard
22 time grasping that, trying to understand the
23 difference of burden of proof and that sort of thing
24 in a civil case and civil judgment.

25 Furthermore, if the case, that case, the first

1 case, then you have to go back into why was the case
2 dismissed in the first place, the criminal case. The
3 solicitor -- as I understand it, the solicitor made
4 the decision not to go forward with it because it
5 didn't have enough evidence. One person's word
6 against another.

7 And then from there, you got to go into why they
8 get to go back behind that civil judgment and as to
9 the reasons why the original case was dismissed
10 because I can't limit them once you get a civil
11 judgment brought in, to not go back behind that and
12 explain everything that happened before then. That
13 would get into another trial.

14 The solicitor who made the decision to dismiss
15 that case is no longer with the solicitor's
16 department, no longer in town. She has moved away.

17 So in order for the State to be able to combat
18 that, they would have to be able to get that solicitor
19 back here and put them on the stand and have them
20 testify as to why she dropped these charges to give
21 the whole picture on that.

22 As I say, I am not sure why you got a civil
23 judgment. I think it must have been a good job on
24 your part because I question whether that was a proper
25 case. The solicitor made the decision, not that there

1 wasn't any probable cause to bring it, but to proceed
2 on it because she could not reach the burden of proof
3 beyond a reasonable doubt. It is not the same in a
4 civil case, again, I say.

5 So instead of trying this case, we would spend
6 most of the time in this proceeding trying the first
7 case, that is, that they brought an action against
8 her, the solicitor made her decision that she didn't
9 believe she could prove it beyond a reasonable doubt
10 and dismissed it.

11 As I say, that is not the same as not having
12 probable cause to bring it to start with or what
13 actually happened, okay? So they get to bring all
14 that in. So we'll spend most of this case trying that
15 case and I don't want to try that case.

16 That's not the purpose of it, and what is going
17 to do is terribly confuse the jury, terribly confuse
18 them and invite them to try to decide this case based
19 on what happened before between the parties and not
20 what happened in this case. And that would invite
21 them to make a decision on something other than the
22 testimony and evidence as to the issues in this
23 particular case.

24 So I think it would be confusing. It would be a
25 terrible waste of time because we would spend more

1 time on that than we would on the case here that is
2 actually in court. It would be a terrible waste of
3 time and very confusing to the jury. I think they
4 would have a very difficult time coming to grips with
5 those concepts, burden of proof, why the solicitor
6 dismissed the case, require the State to try to get
7 that solicitor back here to testify, put her on the
8 stand, and all that kind of stuff.

9 So we would spend an awful the time on that case.
10 Sure, the defense would like to get that in and try to
11 create a defense for the defendant and say these
12 people tried to put some -- paint them in a little bit
13 different light and would like to be able to do that.

14 But it is not relevant and they should not decide
15 this case based on the fact that the defendant got a
16 civil judgment previously. That's not the basis.
17 That has nothing to do with what their decision ought
18 to be in this case.

19
20 I know you would like to get it in. I am sure
21 because it would be helpful for you to say she got a
22 civil judgment. Somehow it invites them to make a
23 decision on that rather than the facts of this case,
24 and I want them to make decision on the facts of this
25 case.

1 It would be somewhat comparable to if somebody is
2 in here on a grand larceny charge and they had a
3 previous grand larceny charge, which is a conviction
4 and affects their credibility perhaps with the jury,
5 but you can't bring it in. You can't put it on the
6 record because it is too prejudicial to the defendant.

7 And you can't have the jury decide this current
8 grand larceny based on a previous grand larceny and
9 invite them to decide because a person once did it,
10 they did it again in this case. Instead, they have to
11 base it on facts and evidence and proof in this case,
12 not what happened in a previous case.

13 Once you bring that before the jury, it invites
14 them to decide on that basis, which is not a proper
15 basis. I am putting all of this on the record because
16 for all of those reasons I think bringing in the civil
17 judgment that she got in previously requires an
18 extensive trial to explain all of that and get into
19 all of that, and I cannot limit the State to get into
20 that once it is brought in to be able to explain it.

21 I think the jury would be terribly lost and it
22 invites them to decide it based on what happened in a
23 civil judgment before as opposed to what happened in
24 this case.

25 Again, what happened in that civil case and the

1 basis before has zero to do with whether the defendant
2 did what she is alleged to have done in this case or
3 not, or whether the State can prove through their
4 evidence that she meets the elements of the offense.
5 Whether they can do that or not -- or what she did or
6 didn't do constitutes the elements of a point and
7 present. Those are the real issues in this case.

8 I don't want the jury to be confused and waste
9 all of this time dealing with the prior issue and
10 totally confusing the jury and take them away from the
11 real issues in this case.

12 So that's my ruling. What else do we have to
13 deal with before we get started?

14 MR. SHIFLET: I think that wraps it up from the
15 State.

16 THE JUDGE: All right. Anything from the
17 defense?

18 MR. ARIAIL: Nothing, your Honor.

19 MR. SHIFLET: I do want to make the Court aware,
20 in light of the Court's ruling with regard to some of
21 these evidence matters, we are going to have some
22 video stuff we are going to have to take care of as
23 far as taking things out in various portions
24 especially with regard to statements on the roadside
25 video.

1 That may take some time, and I actually just
2 received some information that one of the IT guys is
3 in the trial next door. We'll get this sorted out as
4 quickly as possible.

5 We might even be able to do it a different way,
6 maybe muting it or something and maybe once we get the
7 redactions, those are the ones that go back to the
8 jury or bring the jury out and play it again. We can
9 do it however the Court wants to.

10 THE JUDGE: Well, like I say, this is a case --
11 we should have addressed these pre-trial issues
12 previously. We had plenty of time to do this before
13 we get a jury drawn and get into all of this stuff.
14 At any rate, we have no choice but to proceed on, I
15 guess, but I wish you would consider in the future if
16 you get these kind of issues and you are going to have
17 to do extensive editing and et cetera, that you do it
18 ahead of time and not wait until we are getting ready
19 to go before the jury.

20 MR. SHIFLET: Your Honor, what we'll try to do is
21 either if we can maybe agree to muting it instead of
22 removing it, that might make it a lot faster. I would
23 at this time, in light of the Court's ruling, ask the
24 Court for a redaction instruction to the jury at the
25 appropriate time when they hear these videos.

1 THE JUDGE: I can do that. If you are going to
2 mute part of it or something is not going to be
3 played, I can simply instruct the jury that
4 determination has been made that that which is muted
5 is not relevant to the case and therefore has been
6 taken out and leave it at that.

7 That's the instruction I usually give. If there
8 are gaps in there, sometimes the jury doesn't
9 understand that. I say the Court determines it is not
10 relevant to the case. That usually works pretty good.

11 MR. SHIFLET: Thank you.

12 THE JUDGE: Another instruction with regard to
13 enhancement and proper instruction to the jury would
14 be that they consider the whole video in its full and
15 not give any more emphasis to that which has been
16 enhanced. If it has been enhanced, to consider that
17 but it is not to be given any more consideration than
18 the rest of the tape and must be considered in its
19 entirety and not piecemeal.

20 Okay. Anything else?

21 MR. ARIAIL: No, your Honor.

22 THE JUDGE: What we'll do then is I will give you
23 some time to work on this. However you can work it
24 out as long as both sides are in agreement insofar as
25 the video, whatever, that's fine. See if you all can

1 come to some agreement of dispute about that before we
2 get started.

3 The jury is coming at 11. I would like to get
4 started at 11 and I usually give the jury -- this is
5 the first jury of the week. I usually give them
6 preliminary instruction about the format and conduct
7 of the trial and go through briefly their role,
8 et cetera. I will do that.

9 And for your information, the jury selected Juror
10 Number 126, Christine Lekich, L-E-K-I-C-H, as their
11 foreperson.

12 All right. We'll take a break.

13 (A recess transpired.)

14 THE JUDGE: On the record.

15 (Whereupon, the jury came into open court at
16 11:17 a.m.)

17 THE JUDGE: Good morning, ladies and gentlemen of
18 the jury panel. I hope you had a pleasant evening
19 last night. We are ready to start the trial at this
20 time. I had your note of yesterday indicating that
21 you had elected Christine Lekich -- is that how you
22 pronounce it?

23 MS. LEKICH: Lekich.

24 THE JUDGE: -- as foreperson, Juror Number 126.
25 Ms. Lekich, I want to get you to keep that same seat,

1 please, throughout the trial, and I ask the alternate
2 behind you to keep that same seat throughout the
3 trial. All of the other seats are interchangeable, so
4 it does not matter where you sit, but we do like to
5 keep those same persons in the same seats throughout
6 the trial.

7 Madam Foreperson and ladies and gentlemen of the
8 panel, I am going to give you what I call preliminary
9 instructions about the format of the trial and how
10 we'll proceed so you will have a better idea of that
11 and hopefully make you feel more comfortable in these
12 unfamiliar surroundings.

13 First thing that will happen after I complete my
14 instruction to you is that the attorney for the State,
15 who is Assistant Solicitor, will make an opening
16 statement to you, and then the attorney for the
17 defendant will have the same opportunity to address
18 you in an opening statement. These opening statements
19 by the attorneys are not evidence. But you should pay
20 close attention because they are, in essence, going to
21 identify to you what they perceive or say the issues
22 in the case are.

23 After they've made their opening statements to
24 you, then the State will proceed by presenting the
25 testimony and evidence they want you to consider.

1 The reason the State goes first is that the State
2 has the burden of proof in this case. There is no
3 burden of proof upon the defendant to prove her
4 innocence. The burden of proof is upon the State of
5 South Carolina to prove the charge against this
6 defendant by evidence that satisfies you, the jury,
7 beyond a reasonable doubt before you can return the
8 verdict of guilty. If the State fails to meet that
9 burden of proof, then your verdict must be not guilty.

10 After the assistant solicitors have presented you
11 the evidence they want you to consider on behalf of
12 the State, then the same opportunity will be afforded
13 to the defense. The defendant may but is not required
14 to present any testimony or evidence because the State
15 has the burden of proving the defendant guilty beyond
16 a reasonable doubt.

17 The defendant does not have to prove she is
18 innocent. She is presumed innocent and that
19 presumption stays with her throughout the trial and
20 may only be removed if the State meets its burden of
21 proving the guilt of the defendant beyond a reasonable
22 doubt.

23 What is evidence in the case? Evidence is the
24 sworn testimony you hear from the witness stand to my
25 right, exhibits admitted into the record for your

1 consideration by me, the presiding judge, and any
2 stipulation of counsel. Now, exhibits may take many
3 forms such as documents, pictures, videotapes, maps,
4 diagrams, and so forth.

5 Stipulations are agreements of facts by the
6 attorneys. If the attorneys enter into a stipulation
7 of fact, that would be made known to you and you may
8 consider it along with all of the other testimony and
9 evidence in the case and give it such weight as you
10 deem appropriate once you begin your deliberations.

11 Sworn testimony and exhibits and stipulations are
12 the only evidence you may consider in your
13 deliberations of the innocence or guilt of the
14 defendant. You may not consider anything you heard
15 from any other source about this case in making your
16 decision because that is not evidence.

17 After you have heard all of the evidence, then
18 the attorneys for the State and the defendant will
19 once again appear before you and make what we call
20 closing arguments. We call them arguments because the
21 attorneys are allowed at that time to argue their
22 positions to attempt to persuade you as to their view
23 or their position as to the facts.

24 When you have heard final arguments from counsel,
25 I will then charge you, which simply means to instruct

1 you as to the law that applies to the issues in this
2 case. You will then retire to the jury room to
3 deliberate and reach your verdict. That is how a case
4 is tried in general sessions court, whether it be this
5 case or any other case. Some cases take a half day or
6 a day. Some cases take weeks but the same format
7 applies in every case.

8 As the trial judge, I have three functions to
9 perform during the trial. I am the presiding officer
10 and therefore see that the trial is run in an orderly
11 manner. I decide, based on rules in civil or criminal
12 procedure, whether testimony or exhibits are
13 admissible into evidence for your consideration. And
14 at the conclusion of the trial, I instruct you as to
15 the law you must apply to the facts in this case in
16 reaching your verdict.

17 You, ladies and gentlemen, were also the judges
18 in this case. You are the judges of the facts. In
19 other words, you determine the truth of the facts in
20 this case. Under our Constitution, I am not permitted
21 as the judge of the law to have an opinion about the
22 facts, so I do not get into whether I believe a
23 witness or not. That is not my function. I am not
24 even permitted to express an opinion if I had one as
25 to the facts in this case. So you, the jurors,

1 determine what is the truth of the facts.

2 I do not permit jurors to take notes during the
3 trial because it is my experience that while writing
4 notes you may miss something very important for you to
5 hear and you may fail to observe a witness when
6 testifying.

7 It is important that you pay careful attention to
8 all testimony and introduction of the evidence since
9 you must judge the credibility or believability of the
10 witnesses and the weight to give all evidence
11 introduced in this case in determining the truth of
12 the facts.

13 During the trial the attorneys may object to the
14 admissibility of certain testimony or other evidence.
15 I will either sustain the objection, which means I
16 agree and the testimony or evidence may not be made
17 part of the record for your consideration. Or I will
18 overrule the objection, which means as the judge of
19 the law, I have determined that it is admissible as
20 part of the record for your consideration.

21 The mere fact that I have admitted it does not
22 mean that you must believe it or disbelieve it. I
23 simply determined it is admissible and there are rules
24 and it is up to you then to believe it or disbelieve
25 it and to assign such weight to it as you determine to

1 be appropriate.

2 At the conclusion of the trial, when I send you
3 to the jury room, every exhibit that is admitted into
4 evidence will be sent to the jury room for you to
5 examine further and to consider.

6 I remind you that one of the most important
7 aspects of your duty as a jury -- did we administer
8 the oath?

9 THE CLERK: No.

10 THE JUDGE: Please administer the oath.

11 (The jury was duly sworn by the Court Clerk.)

12 THE JUDGE: Please be seated. Thank you.

13 Madam Forelady, members of the jury panel, I
14 remind you that one of the most important aspects of
15 the duty of the jury lies essentially in the oath that
16 you have just taken to well and truly decide this case
17 and determine the truth of the facts in this case.
18 That oath, once again, in a very essential way, says
19 you are the sole judges of the facts in this case.

20 Madam Forelady and ladies and gentlemen, whatever
21 your verdict in this case is, it must be your
22 unanimous verdict. All 12 of you must agree on the
23 verdict which the foreperson will be authorized to
24 write on behalf of the jury.

25 As I stated to you yesterday, Madam Forelady and

1 members of the jury panel, you are not to discuss this
2 case at any time during the trial until I tell you,
3 and that will not occur until you received all of the
4 evidence and I have instructed you upon the law. You
5 should not discuss the case among yourselves. You
6 should not discuss it with your family, friends, or
7 anyone else that you might see on recess of the court.

8 If you should overhear the parties, their
9 attorneys, or witnesses talking about the case outside
10 of the courtroom, you should not listen but move away
11 from them. If anyone should deliberately try to
12 discuss the case with you, you should not discuss it
13 with them but leave and report that attempt to me
14 through the bailiff or Clerk of Court and I will deal
15 appropriately with that person. No one should try and
16 discuss the case with you. If they do, I certainly
17 wish to be made aware of it.

18 If there should be any media coverage of this
19 trial, please do not read, listen to, or watch any
20 media account of this trial until after the trial is
21 over. You must decide this case and the issues in it
22 based on the evidence presented in the courtroom and
23 that only. By that I mean, as I told you yesterday,
24 that would include any kind of electronic device to
25 try to find out anything about this case or get any

1 kind of media report about it. Please do not do
2 that. We may finish this case today or certainly by
3 tomorrow, no later than tomorrow, so that should not
4 be a hardship.

5 I am concerned about your comfort and your
6 ability to see and hear the testimony and evidence so
7 you can properly do your job. I try to take a break
8 every hour and a half. If you need to take a break
9 before a break is taken, please raise your right hand
10 and let me know and I will take a break as quickly
11 after that as I can.

12 If you cannot see or hear something you need to
13 hear or see, I will try to anticipate that. But some
14 of you are much further away from the witness stand or
15 where the attorneys are standing than I. If you
16 cannot see or hear something you need to hear or see,
17 please do not hesitate to raise your right hand and
18 let me know and I will make sure you are able to hear
19 or see so you can properly do your job.

20 Now, if you wish to communicate with the Court
21 other than needing a break or the inability to see or
22 hear, please write the message down in the jury room
23 and give that to the bailiff. The bailiff will bring
24 it to me. I will either correspond in like manner or
25 bring you back out in the courtroom if need be. That

1 is how we should communicate with you now having been
2 sworn as jurors in this case.

3 I want to explain the role of the alternate.
4 Ma'am, your role is the same as the first 12 jurors
5 chosen because if an emergency should develop with
6 regard to one of the first 12 jurors and we had to
7 excuse them, you would automatically fill in for the
8 missing juror. You could not do that if you had not
9 listened carefully to the testimony and evidence and
10 were in a position to deliberate to reach a verdict in
11 this case.

12 I would remind you that if you have something to
13 drink back in the jury room that you want to drink in
14 the jury box with you, the Clerk of Court allows that
15 and this Court does too. So if you have something to
16 drink like tea or water, Coke, whatever, coffee, you
17 are welcome to do that and bring it back in the jury
18 box. Counsel and myself will be sipping on water. If
19 you want to bring something to sip on, we would be
20 glad to allow you to do that.

21 Thank you for your kind attention, ladies and
22 gentlemen of the jury. We are now actually ready to
23 get started with the trial. We'll do that part of the
24 trial where counsel will make their opening statements
25 to you. I ask that you listen attentively now as

1 counsel addresses you.

2 MR. SHIFLET: May it please the Court?

3 THE JUDGE: Solicitor.

4 MR. SHIFLET: "Call the F'n cops on me." Ladies
5 and gentlemen, besides the use of the F word, those
6 are the exact words the defendant, Ms. Saucier, used.
7 She was firing a shotgun in the air toward the
8 direction of the victim, Barry Foy, in this case.

9 You will hear a lot more about that, but we are
10 here today because the defendant is charged with
11 pointing and presenting a firearm. The facts and
12 evidence will reveal it. On April 2 of 2012,
13 Ms. Saucier and the Jones family both have properties
14 that come up against each other.

15 And to tell you what this case is about, this
16 case is about a line. The neighbors had a dispute
17 some time ago about a property line. Ladies and
18 gentlemen, as they move forward in this case, you will
19 hear from several witnesses. You will hear from
20 Mr. Foy, who is the victim in the case. He will come
21 and testify. You will have an opportunity to see a
22 video with your own eyes of what took place. Mr. Foy
23 had his iPhone and captured some valuable evidence in
24 this case on video.

25 You will also hear from Deputy Estep with York

1 County Sheriff's Department. She went out and
2 responded to the call. She spoke to the victim in the
3 case about what happened. She then went over and
4 talked to the defendant.

5 And pay careful attention when you hear her
6 testimony as well as listen to a video that was the
7 result of her going and meeting with the defendant in
8 this case. Pay careful attention to some of the
9 statements that the defendant makes at that time.
10 After that, she was arrested and we are here today.
11 She is charged with pointing and presenting.

12 Now, in South Carolina it is unlawful to point or
13 present a firearm. It is called pointing and
14 presenting. But the elements of the law -- listen to
15 the judge, he will instruct you on what the law is.
16 But just to give you a glimpse at it right now, it is
17 unlawful to point or present a loaded or unloaded
18 firearm at another person. That's it. It is just
19 that simple.

20 It is my role or my job to seek justice. I
21 represent the State of South Carolina. My name is
22 John Mark Shiflet. My role in this case in seeking
23 justice is to prove beyond a reasonable doubt that the
24 defendant is guilty of pointing and presenting.

25 Now, what does "beyond a reasonable doubt" mean?

1 Of course you have all heard the term for it. You are
2 familiar with it. But what does it really mean in the
3 context of criminal proceedings.

4 It has been described as a kind of doubt that
5 would cause a reasonable person to hesitate to act.
6 Another way to think about it is what it is not. It
7 is beyond a reasonable doubt. It is not beyond all
8 doubt.

9 When you come into that courtroom from your
10 workplaces or your homes, you have several important
11 resources or tools. You have your life experiences,
12 your common sense. Those are important assets when
13 you decide the facts of this case. At the end of this
14 trial, you need to be firmly convinced that the
15 defendant is guilty.

16 Ladies and gentlemen, I talked a little bit about
17 what my role is. Many of us in the courtroom have a
18 role. The defense will have an opportunity to present
19 evidence if they choose to do so. The judge's role is
20 to instruct you on the law. He will make rulings and
21 interpretations on the law as it applies to the facts
22 of this case.

23 But it is your role as the jury to receive all of
24 the facts and evidence and piece it together into a
25 picture in your own minds of what actually happened on

1 April 2nd, 2012. That is a very important response
2 that belongs only to you. Only you can make that
3 decision.

4 I told you in the beginning this case was about
5 lines. I told you about the property line dispute.
6 Ladies and gentlemen, a lot of neighbors, or people
7 for that matter, they have disagreements. They have
8 problems. But there is also a line drawn that
9 reasonable people don't cross.

10 There is also a line drawn by the law that I just
11 told you about, what you can and can't do. Ladies and
12 gentlemen, on April the 2nd, 2012, the defendant
13 crossed that line. When you return to the jury room
14 and you decide this case, I ask you to return with a
15 verdict that speaks the truth and hold her accountable
16 for her actions and her decisions in crossing that
17 line. Thank you.

18 THE JUDGE: Counselor.

19 MR. ARIAIL: Your Honor, may it please the Court?

20 THE JUDGE: Yes, sir.

21 MR. ARIAIL: Ladies and gentlemen, how are you
22 doing today? My name is Mills Ariail and I am from
23 Greenville. I represent Ms. Saucier, who is seated
24 here. She has been waiting for this day, to be able
25 to have her day in court. It is a very important day

1 for her. She wanted to do this. She wanted to get
2 this out of the way. She appreciates your time
3 spending looking at this and considering all of the
4 evidence.

5 Now, seated here now, she has just been charged
6 with pointing and presenting. She is innocent at this
7 time. She has the ability to sit here and have the
8 State present the evidence against her. She can put
9 witnesses up. She can contest their evidence. She
10 can do what she needs to do.

11 So she has no -- she does not have to put up any
12 evidence. She does not have any burden in this case.
13 It is the State's burden to be able to prove that
14 beyond a reasonable doubt she did the charge they
15 accused her of, of pointing and presenting.

16 Now, that burden is not a light burden. As some
17 of you -- I don't know if you served in jury before.
18 It is not the standard civil jury where it is the
19 tipping of the scale of preponderance of the evidence.
20 The judge will explain all this to you. But it is
21 beyond a reasonable doubt. That is something that is
22 a substantial burden, we believe. It means it causes
23 someone to hesitate to act.

24 So if you hesitate to act, then that's an issue
25 in this case. And we are going to show, or I believe

1 through their own evidence, they are going to show
2 that they cannot prove this charge, pointing and
3 presenting.

4 We can go through the facts, but the key to this
5 whole case, and I think, which all of us understand,
6 when you live on your own property, you have certain
7 things you can enjoy on your own property. You can
8 fire weapons on your own property so long as you do
9 them in a lawful manner. You have a right to act in
10 York County to discharge weapons in a safe manner, in
11 a lawful manner.

12 Now, in this case, and we'll go through the facts
13 in this, and what I hope you will look at is all the
14 totality of the circumstances of this and understand
15 that simply because they will allege my client has
16 said some inappropriate things on an audiotape, that
17 does not mean she is guilty of pointing and
18 presenting.

19 And we apologize for some of the language you are
20 going to hear. She apologizes for that. But that
21 does not mean that she is guilty of the charge she has
22 because she uses inappropriate language. You will
23 have to consider and look at -- there will be an
24 audio and a videotape of what happens. You will see
25 what happens.

1 It is our position that the facts will show, that
2 the video will show, that she never pointed the weapon
3 in the direction of the individuals, of Mr. Foy. She
4 never pointed it, shot in their direction, did any of
5 that. She acknowledges she shot up in the air.
6 Simple as that.

7 But to prove that, they have to not only say
8 pointing or presenting a weapon at another, but it has
9 to be done with the specific intention of threatening
10 harm. So you need to look at everything in regard to
11 that.

12 So it is not simply pointing a gun, showing it,
13 shooting it up in the air, shooting in a direction,
14 all of that. You will see in the video, we'll show
15 you, she did not point a gun in their direction. She
16 did not walk down to their direction. She did not
17 make any threats to them, "I am going to hurt you. I
18 am going to come down and shoot you," any of those
19 items.

20 So I hope that you will keep an open mind during
21 the trial, look at all of the facts and understand you
22 cannot take this in a vacuum simply from what the
23 specific -- what they want you to do. You have to
24 look at everything and understand the whole video or
25 review all the facts and we hope you'll keep an open

1 mind through this all.

2 We appreciate your help in this matter and look
3 forward to working with you. Thank you.

4 THE JUDGE: Will the State will call its first
5 witness, please.

6 MR. SHIFLET: Your Honor, may we approach?

7 THE JUDGE: Yes, sir. Approach at the bench.

8 (Whereupon, a bench conference was held off the
9 record in the presence of the jury, but out of the
10 hearing of the jury.)

11 THE JUDGE: Madam Forelady and members of the
12 jury panel, we have a little technical glitch to work
13 out. It'll just be a few minutes to do that. What I
14 will do is just take a short recess at this time and
15 ask you to go back to the jury room and refresh
16 yourself and remind you if you want to bring something
17 to drink back in the courtroom, you are welcome to do
18 that. We will probably be only about ten minutes or
19 so.

20 (Whereupon, the jury exited the courtroom at
21 11:39 p.m.)

22 THE JUDGE: We'll take a short recess. Let me
23 know when you are ready.

24 (Court in recess.)

25 THE JUDGE: We are on record. Are you ready to

1 proceed?

2 MR. SHIFLET: Yes, your Honor.

3 THE JUDGE: Please bring the jury in.

4 (Whereupon, Plaintiff's Exhibit 4 was marked for
5 identification.)

6 (Whereupon, the jury came into open court at
7 11:58 p.m.)

8 THE JUDGE: State, please call your first
9 witness.

10 MR. SHIFLET: At this time, the State will call
11 Barry Foy to the stand.

12 BARRY FOY,

13 being first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. SHIFLET:

16 Q Good morning or midday, Mr. Barry. How are you doing,
17 sir?

18 A Good morning.

19 Q State your full name for the record.

20 A Barry Lee Foy, II.

21 Q Mr. Foy, where do you live?

22 A I live at 715 Kelly Road, York, South Carolina.

23 Q Is that in York County?

24 A Yes, sir.

25 Q Let me show you something real quick.

1 MR. SHIFLET: May I approach, your Honor?

2 THE JUDGE: Yes.

3 BY MR. SHIFLET:

4 Q I am going to show you what is previously marked for
5 identification as State's Exhibit 1. Please take a look at
6 that and see if you can identify what's on there.

7 A I see our house, my wife's house and I, her parents'
8 house, and Ms. Saucier's place as well as our barn.

9 Q Is that a true accurate representation of the
10 surroundings represented there?

11 A Yes, sir.

12 MR. SHIFLET: At this time, the State would offer
13 State's 1 in evidence.

14 MR. ARIAIL: No objection.

15 THE JUDGE: Without objection.

16 (Whereupon, State's Exhibit 1, previously marked
17 for identification, was received in evidence.)

18 MR. SHIFLET: Request to publish.

19 BY MR. SHIFLET:

20 Q Mr. Foy, is your residence represented on that image?

21 A Yes, sir.

22 Q If you would like to use this to laser point. For the
23 jury's benefit -- if you need to walk around here, you can.
24 Please indicate to the jury where your house is.

25 A Our house is here.

1 Q Mr. Foy, are you married?

2 A Yes, sir.

3 Q Who are you married to?

4 A Cynthia Jones.

5 Q Is there anyone else that lives in that property?

6 A Her parents and her cousin Andy; Andy and her parents.

7 Q Who are her parents?

8 A Robert Jones, IV, and Carol Jones.

9 Q Where is their residence?

10 A Their residence is here (indicating).

11 Q Great. Thank you very much. You can take the stand.

12 Mr. Foy, I'm going to jump right through. Let's talk
13 about April 2, 2012. Where were you that morning?

14 A During the morning I was working at Stacy's Greenhouses
15 in York, South Carolina. I came home for lunch around 12.
16 It took me about ten minutes to get there. Her father was
17 in the garage area of our house, and when I pulled up, he
18 came up to me, he was, like, How was your day --

19 Q No, don't say anything that he said.

20 A Oh, okay.

21 Q What happened after you arrived there?

22 A Sure. After our conversation or during our
23 conversation, I heard a couple gunshots towards that
24 direction and he looked up at me and he said --

25 MR. ARIAIL: Objection, your Honor. Hearsay.

1 BY MR. SHIFLET:

2 Q When you are testifying, don't say what he told you --

3 A Okay, sure.

4 Q -- just what you ended up doing.

5 A Okay. What I ended up doing was going down to check on
6 them.

7 Q Were you concerned about anything?

8 A Yes. I knew that Mrs. Jones and Robert Jones -- or not
9 Robert Jones but Robert, our worker --

10 Q Who is that?

11 A He is a help on the farm. He helps us out on the farm.
12 We have an equestrian center and he is one of our helpers.
13 And they usually work around the lower property when it is
14 time to bush hog it. And so I was under the impression they
15 were down there working. I heard two --

16 Q After you heard the gunshots, what did you do next?

17 A I went --

18 Q If you would like to use this again, you can.

19 A Sure. I was here in this section and I heard gunshots
20 from this direction here (indicating). And then so I went
21 -- we had a Kubota parked under their carport here. And
22 then I took it, I came up around this section and I drove
23 around down across -- we have two entryways.

24 Q I think the lights are maybe causing a hard time.
25 Start over.

1 A Sure. No problem.

2 I came in -- this is our main driveway -- during
3 lunchtime and I parked here (indicating). And in about say
4 probably five minutes or so, I heard gunshots from that
5 direction (indicating). We usually will bush hog this area.
6 I don't know if you can see a line, but there is a straight
7 line going through there and that is a fence line
8 (indicating). Our property is here, and we usually bush hog
9 this area up there for hay and stuff like that (indicating).

10 When I heard gunshots in that area, I took the
11 Kubota from here (indicating), and I drove across this
12 property. We have two entry points across the creek
13 that divides in these trees, one entry point is here,
14 another entry point is there.

15 I drove through this entry point into this
16 section here (indicating). And I saw Robert Rainey
17 and Carol Jones were in this area cutting branches so
18 we could maneuver the tractor in that narrow area. So
19 they were cutting branches back, and that's when I saw
20 them and came down there.

21 Q When you first got there, what did you observe?

22 A Robert Rainey was in the back of the Kubota with
23 loppers. He was cutting branches. She was in the Kubota.
24 It was raining. She was kind of driving slowly, backing up
25 slowly so he could reach the top branches because our

1 tractor is big, and when the branches overhang that narrow,
2 you know, it would kind of get in your face and you can't
3 really see anything.

4 So being so close to the fence line here, you
5 don't want to, you know, kind of overshoot, turn, the
6 branches get in your way. So they were cutting them
7 back. I came up -- and I don't know if you want me to
8 continue.

9 Q At that point, were they on you all's property?

10 A Yes.

11 Q Were you on you all's property?

12 A Yes.

13 Q Once you came up and observed that, what happened after
14 that?

15 A I came up and I said, "Hey, you guys all right? I
16 heard gunshots." And, you know, and then I was informed
17 that there was gunshots --

18 MR. ARIAIL: Objection, your Honor.

19 BY MR. SHIFLET:

20 Q Don't indicate what they said, just chronologically
21 what happened.

22 A Sure. I asked them did they hear gunshots. And
23 Mrs. Jones said she did not --

24 MR. ARIAIL: Objection.

25 BY MR. SHIFLET:

1 Q You can't say what anybody said.

2 A Oh, okay.

3 THE JUDGE: Counsel, do we need him to stand if
4 he doesn't need the diagram anymore.

5 MR. SHIFLET: We are going to get back to it.
6 One more question.

7 THE JUDGE: Okay.

8 BY MR. SHIFLET:

9 Q Mr. Foy, don't say anything about your conversation
10 about who was down there. What did you observe?

11 A After I got down there, I didn't see anything except
12 them working.

13 Q Were you there for some time period after that?

14 A Yes.

15 Q How long?

16 A About 20 minutes.

17 Q Then what happened after approximately 20 minutes?

18 A After 20 minutes I heard some horn honking.

19 Q Go ahead.

20 A Horn honking down the driveway. It seemed to me -- it
21 seemed kind of aggressive, kind of laying into the horn. So
22 it kind of put me back a little bit. Then I started, you
23 know, I took my video camera out, my iPhone and that's when
24 everything started happening.

25 Q What happened?

1 A Ms. Saucier came out.

2 Q I will stop you there. Who is Ms. Saucier?

3 A The woman sitting there (indicating).

4 Q Last question I need you down here for: How do you
5 know Ms. Saucier?

6 A She is our neighbor.

7 Q Where is she living?

8 A She lives here (indicating).

9 Q Go ahead and retake the stand.

10 Are you familiar with Ms. Saucier?

11 A Just that she is our neighbor.

12 Q Did you have an opportunity to observe her before?

13 A I've seen her working with her horses and cutting her
14 lawn.

15 Q Is Ms. Saucier in the courtroom today?

16 A Yes.

17 Q For the record for the jury, is she sitting at the
18 defense counsel table?

19 A Yes.

20 Q Thank you.

21 Now, at this point, I will show you additional
22 exhibits.

23 MR. SHIFLET: May I approach the witness?

24 THE JUDGE: Yes.

25 BY Mr. SHIFLET:

1 Q Mr. Foy, I am showing you what was previously marked
2 State's Exhibit 2 and 3. Please identify those for the
3 jury.

4 A This looks like an aerial view of --

5 Q Indicate for the record which exhibit you are referring
6 to by number.

7 A This is State Exhibit 3.

8 Q Okay.

9 A It looks like a corner shot of an aerial view of
10 Ms. Saucier's property as well as our property.

11 Q How about State Exhibit 2?

12 A State Exhibit 2 looks like a full aerial shot of -- or
13 I guess maybe a partial aerial shot primarily centered on
14 Ms. Saucier's property. I see her pond to the right of the
15 facilities.

16 Q Is that also the same property represented right there
17 on this image?

18 A Yes, it is.

19 Q Are those fair and accurate representations of that
20 property?

21 A Yes, sir.

22 MR. SHIFLET: The State would move Exhibit's 2
23 and 3 into evidence at this time.

24 MR. ARIAIL: No objection.

25 THE JUDGE: Without objection.

1 (Whereupon, State's Exhibits 2 and 3, previously
2 marked for identification, were received in evidence,
3 this date.)

4 BY MR. SHIFLET:

5 Q Now, Mr. Foy, with regard to Ms. Saucier, what exactly
6 did you observe? What did she do?

7 A I heard laughing at first. Then when she came out, I
8 heard her call us a -- some names. She called us "you
9 stupid bunch of mf'ers." And then it escalated to more
10 laughing and then, you know, some name-calling. I heard her
11 say, "Let's have some more -- let's have some more fun."
12 And a while after she said that, she went and got her
13 shotgun and she came around the back side of her truck and
14 she shot up in the air, straight up. And it --

15 Q Let me stop you there.

16 MR. SHIFLET: May I approach the witness?

17 THE JUDGE: Yes.

18 BY MR. SHIFLET:

19 Q I will hand you this. Indicate where you all were on
20 State's Exhibit 3.

21 A I believe this group of trees is on her property and
22 there is a line here (indicating). Then I think it
23 somewhere goes in this direction here (indicating). It is
24 hard to see.

25 Q Fair enough.

1 A But I believe when this incident took place, one of our
2 Kubotas was parked here or here and around this area, and I
3 was somewhere around in this area here. She was here. Her
4 truck, I believe, was parked at the time there (indicating).

5 She shot once or twice in this area (indicating)
6 and then came around the corner. That's when she
7 looked at us and told us, you know, told us to call
8 the F'ing cops and then leaned the gun toward us,
9 shot, and you know, I was pretty startled.

10 Q Why don't you go over and take the stand.

11 A Sure. When that happened, I heard the pellets from the
12 shotgun falling down behind us into our tree line. Our tree
13 line was positioned about 10 or 15 feet behind me where I
14 was standing. And that shook me up enough to tell the
15 others it is time to go, let's get out of here. That's when
16 I called the police.

17 Q Mr. Foy, were you able to observe her pretty clear at
18 that point?

19 A Yes, sir.

20 Q Was there anything blocking your line of sight?

21 A No, sir.

22 Q Did you have an opportunity to observe the gun?

23 A Yes, sir.

24 Q Did you hear the gunshots?

25 A Yes, sir.

1 Q Talk a little bit about how the gun was pointed.

2 A Sure. At first she came out from the shed area. And
3 she loaded the gun and she shot up in the air, I think it
4 was twice. Then that's when she came around the back side
5 of the truck, that's when she looked in our direction. She
6 said, "Call the F'ing cops on me."

7 She pointed -- I guess she kind of had it on her hip
8 and she kind of leaned it toward us and then shot. It was
9 April 2nd. I can't remember if she shot once or twice doing
10 that, but that's when I remember hearing not long after,
11 probably within seconds, I remember hearing the shots fall
12 behind us.

13 Q What do you mean by "shots"?

14 A It sounded like pellets from a shotgun blast.

15 Q How many seconds would it have been between the shot
16 and --

17 A I couldn't tell you. It was within 20 seconds.

18 Q Mr. Foy, how far would you say you were from the
19 defendant when she was shooting?

20 A I would say probably within 150 feet.

21 MR. SHIFLET: May I approach, your Honor?

22 THE JUDGE: Yes, sir.

23 BY MR. SHIFLET:

24 Q Mr. Foy, I am showing you what was previously marked as
25 State's Exhibit 4. Tell the jury -- before we talk about

1 that, you stated that you had your iPhone?

2 A It was a work phone provided by Stacy's Greenhouse.

3 They told me to keep it on me at all times.

4 Q What exactly did you do with your phone?

5 A I recorded a video of the incident that took place that
6 day.

7 Q Referring to State's Exhibit 4, what does that show?

8 A It is a DVD. I guess it's a recording of -- there was
9 many DVDs that I watched. I don't know if this is the full
10 version.

11 Q Let me ask you this: After you recorded with your
12 phone, what did you do with that video?

13 A What I did with that video is I contacted the police.
14 They arrived and I showed them the video directly on my
15 iPhone.

16 Then they suggested that I download it and put it
17 on a thumb drive and give it to them. So I downloaded
18 the video, I put it on thumb drive and I went to the
19 police department and gave them the thumb drive.
20 That's when I was called in later.

21 Q What did they do with that thumb drive?

22 A From what they told me, they enhanced the video for
23 audio --

24 Q Fair enough. I know you have seen a couple of those
25 videos. Is that the original video that you have there?

1 A If this is the one that was shown to me, yes.

2 Q Have you seen that video before you came into court
3 today?

4 A Yes.

5 Q That is the one you took with your phone?

6 A That is the one that I took with my phone.

7 Q With no enhancements.

8 A No enhancements.

9 Q Is that a true and accurate representation of what took
10 place out there that day?

11 A Yes.

12 MR. SHIFLET: At this point, the State would move
13 to enter State's Exhibit 4 into evidence.

14 MR. ARIAIL: Your Honor, I object. I don't think
15 he has shown a proper chain of custody as to where the
16 thumb drive went, how it got on there, if that is how
17 it was transferred. I think he has to do more than
18 that before we submit this into evidence.

19 MR. SHIFLET: Your Honor, there is a chain of
20 custody. He authenticated it by saying he personally
21 reviewed the video and it was a fair and accurate
22 representation.

23 THE JUDGE: Approach just a minute.

24 (Whereupon, a bench conference was held off the
25 record in the presence of the jury, but out of the

1 hearing of the jury.)

2 THE JUDGE: Madam Forelady, members of the jury
3 panel, there is a matter I need to take up with
4 counsel out of your presence. We will have you back
5 in just a few minutes. Thank you.

6 (Whereupon, the jury exited the courtroom at
7 12:22 p.m.)

8 THE JUDGE: Counsel, we are on the record now.
9 An objection has been made as to the authentication of
10 the tape. The witness has testified that he made a
11 video on his phone. The police asked him to transfer
12 that to a thumb drive and bring it to them. He did
13 that. They took the thumb drive.

14 Then somebody from there, I don't know if it was
15 the solicitor's office or them, there was testimony
16 that it was enhanced, whether he was asked by the
17 police or somebody in the solicitor's office. But
18 then it was transferred, I am assuming, from the thumb
19 drive to a DVD by the solicitor's office, their IT
20 department; is that right?

21 MR. SHIFLET: The enhancements were performed by
22 the Sheriff's Department.

23 THE JUDGE: Did the thumb --

24 MR. SHIFLET: The particular video we have right
25 now is simply the original video that he took that was

1 transferred from his iPhone to a thumb drive, and then
2 that was taken in by the Sheriff's Department and it
3 went to the staff attorney with them and then I was
4 provided that video.

5 That's how we came into possession of it. The
6 argument is very simple. Mr. Foy is the one that took
7 the video. He can certainly within the rules fairly
8 say that he was there and that's what he observed and
9 he has watched that video and it's a fair and accurate
10 representation. That's all the authentication that is
11 required.

12 THE JUDGE: I think that is probably right,
13 Counsel. So what are you saying?

14 MR. ARIAIL: My concern, your Honor, is that I
15 don't know -- the dilemma I have with this from the
16 beginning is the report was made, I think, on 4/2. It
17 has been in his possession.

18 THE JUDGE: See, it is not a question of
19 establishing the chain; that's irrelevant in this
20 case. It is not drugs or something, one substituted
21 for another and that sort of thing, if somebody added
22 to it or that sort of thing. That's not the case.
23 The question is here -- there is a chain of custody on
24 that kind of evidence where it could be tampered with
25 or made.

1 This witness testified, "I made the video. I
2 looked at the video. I reduced the video to a thumb
3 drive. That thumb drive was taken to the Sheriff's
4 Department. I looked at it. It is the same as the
5 video I took, exactly the same." So he is
6 authenticating, "This is the video I took," and he is
7 authenticating it.

8 So you don't have a chain of custody. It doesn't
9 matter if the thumb drive that he had in his
10 possession for seven or eight days and before he made
11 the thumb drive and then took the thumb drive to the
12 Sheriff's Department and the Sheriff's Department had
13 the thumb drive from which they did a DVD or made a
14 copy of it.

15 It really doesn't matter about the chain of
16 custody unless you say it has been changed somehow.
17 The question is the accuracy of it. He is saying, "I
18 took it. I took it on this date. I transferred it to
19 a thumb drive. I took to the Sheriff's Department.
20 The Sheriff's Department edited it and what have you."

21 It is not a question of chain of custody. It is
22 a question of authentication. Is this an accurate
23 video taken at the time, like a picture taken at the
24 time authenticated by the person who took the picture
25 on such and such a date.

1 MR. ARIAIL: If he authenticates -- my concern
2 was that thumb drive. There was an issue at one point
3 we didn't have the video. Now we apparently have it.
4 If he authenticates it, I understand that is
5 sufficient.

6 THE JUDGE: I believe it is. It usually is of a
7 picture or something like that. Unless it is
8 something -- you can always attack it on the basis it
9 is not accurate or it's been added to or changed. You
10 can always attack it on that basis, obviously.

11 But as far as authenticating it, I think that's
12 all that is required. It's not like evidence that can
13 be tampered with and changed easily from one place to
14 another, one substituted for another. I mean, if
15 you -- but he is authenticating that it is accurate.

16 And of course you can attack his credibility; you
17 can attack the tape, attack it on the basis it is not
18 the same. You can do anything in that regard, but I
19 don't think they are required to show chain of custody
20 as long as he can authenticate that it is an exact
21 duplicate or exactly shows what he looked at, and he
22 looked at it now, and he says it is exactly the same.

23 MR. ARIAIL: Yes, your Honor.

24 THE JUDGE: That is under Rule 91(1) -- excuse
25 me, (b)(1), testimony of witness with knowledge that

1 is accurate, so we'll allow it in.

2 All right. Let's bring the jury back in.

3 (Whereupon, the jury came into open court at
4 12:28 p.m.)

5 THE JUDGE: Counsel, the exhibit is admitted.
6 Please proceed.

7 (Whereupon, State's Exhibit 4, previously marked
8 for identification, was received into evidence.)

9 MR. SHIFLET: Thank you, your Honor. May it
10 please the Court.

11 At this time the State would request to publish
12 State's 4.

13 THE JUDGE: You may publish it.

14 MR. SHIFLET: Court's indulgence.

15 (Playing video.)

16 BY MR. SHIFLET:

17 Q Mr. Foy, please describe to the jury one more time what
18 sound you heard right at the end?

19 A It was pellets, kind of like a crackling noise, but
20 there is pellets falling through the leaves. I turned back
21 and I could see the leaves fluttering as the pellets were
22 hitting them.

23 Q Mr. Foy, again, once you provided that video to law
24 enforcement, what is your understanding about what they did?

25 A At first I provided the thumb drive to the person that

1 was overseeing the case. Can I offer her name or not?

2 Q It doesn't matter.

3 MR. SHIFLET: May I approach the witness, your
4 Honor?

5 THE JUDGE: Yes.

6 BY MR. SHIFLET:

7 Q Mr. Foy, I am showing you what was previously marked as
8 State's Exhibits 5 and 6. Please identify those for the
9 jury.

10 A Exhibit 5 is a raw video with I believe is enhanced
11 audio. Yes, enhanced audio. That's Exhibit 5. And Exhibit
12 6 is a video that has been zoomed and sharpened and
13 stabilized from the shaking of the camera phone.

14 Q All right. Mr. Foy, have you watched both those
15 videos?

16 A Yes, sir.

17 Q Now, are those videos taken from the video we just saw?

18 A Yes, sir.

19 Q How do you know that is the same video you watched?

20 A Because that is the same video on my iPhone.

21 Q How do you know that disc right there is the same one
22 you've previously seen?

23 A Because I have seen the video and the disc.

24 Q Did you put any marks on that disc to indicate it was
25 the same one?

1 A My initials.

2 Q Is that on both exhibits?

3 A Yes, sir.

4 Q Mr. Foy, having been out there on the date in question
5 when you shot the video, are those fair and accurate
6 representations of what happened?

7 A Yes, they are.

8 Q Thank you, Mr. Foy.

9 Now, other than the enhancements performed by the
10 Sheriff's Department, has it been changed or altered in any
11 way?

12 A No, sir.

13 Q Mr. Foy, when all of this was going down, what was your
14 state of mind?

15 A I was frightened. I mean, I literally watched it
16 escalate as time went on from laughing to name-calling to
17 cursing to getting the gun to shooting it straight up in the
18 air then turning in our direction and shooting it at an
19 angle over us.

20 When that happened, I was frightened. I didn't
21 know how much further it was going to go. And so I
22 told the people that were with me, Carol Jones and
23 Robert Jones, "We need to go. We need to get out of
24 here."

25 Q When did you leave?

1 A When did I leave? It was right when the video turned
2 off. When you saw that go, I told them, "I've got it. I
3 have it recorded. Let's go." Then we got in our Kubotas
4 and drove off.

5 MR. SHIFLET: No further questions. Please
6 answer any questions counsel may have.

7 CROSS-EXAMINATION

8 BY MR. ARIAIL:

9 Q My name is Mills Ariail, and I represent Ms. Saucier.
10 We have not met before, have we?

11 A No, sir.

12 Q Now, let me understand a little bit about your
13 background. You are married to Kelly Jones; is that
14 correct?

15 A Cynthia Jones.

16 Q Cynthia. That's the daughter of --

17 A Kelly and Robert Jones, yes, sir.

18 Q How long have you lived at that residence?

19 A I have lived there for about two and a half years.

20 Q When were you married?

21 A May 17th of this year.

22 Q May 17th of this year. That's a good date. That's my
23 birthday.

24 A Oh.

25 Q In regards to living at this residence, how much

1 interaction have you had with Ms. Saucier?

2 A Very little. It is basically, you know, I have seen
3 her on her tractor at times, skeet shooting and, you know,
4 basic farm chores.

5 Q And you've never been introduced to her, correct?

6 A I've never been introduced to her, no, sir.

7 Q You've never shaken hands with her?

8 A Never shaken -- never spoken with her.

9 Q Never talked to her?

10 A Never talked to her.

11 Q Is this the closest you had ever been to her in this
12 video right here?

13 A I was closer to her at one point when she was -- I was
14 down working in the lowers driving with the Kubota and she
15 was skeet shooting at one point. That was probably the
16 closest I've ever been.

17 Q You specifically said it was her in regard to this.
18 You pointed to her and said it was her, correct?

19 A Yes, sir.

20 Q So even though you had not met her, haven't seen her,
21 hadn't done any of that, you specifically knew that at this
22 time of the video; is that right?

23 A Yes.

24 Q Ms. Jones didn't tell you who she was or anything like
25 that?

1 A No.

2 Q Mr. Jones?

3 A No. I have seen her, though.

4 Q Robert Rainey?

5 A No.

6 Q Now, you, at the time of this video, also called 911;
7 is that correct?

8 A Yes.

9 Q Do you remember what you said to 911?

10 A I told them we had a -- I can't remember the exact
11 words, but I remember being frightened at that point. I
12 can't remember the exact words that were stated. But I did
13 say, you know, we needed someone out here because we have, I
14 think, a neighbor firing shots or something like that in a
15 dangerous manner. I can't remember exactly how it was put.

16 Q But you called them and you reported this -- how long
17 after it did it take you to report this?

18 A It took me -- I got up to the top of the hill. I
19 wanted to be in a safe position. Matter of minutes, maybe.

20 Q Okay. How long did it take to get there from that
21 location?

22 A Up the hill, to be honest, I think probably two
23 minutes, two, three minutes.

24 Q You called when you got to the top, correct?

25 A When I got to the top -- not exactly. Not right at the

1 time because I informed others where this happened. I
2 informed Mr. Jones and my then girlfriend, Cynthia.

3 Q You said "call the police" and you went and told them
4 what happened --

5 A First, and then I called them.

6 Q So in that circumstance, you didn't think it was that
7 imperative to call right away, correct?

8 A Oh, I did, but I didn't own the property so I don't
9 want to incite stuff going on. I wanted to make sure, hey,
10 I am going to call the police, you know, I want you to be
11 prepared for this because we're going to have police -- we
12 have an equestrian center and we don't want the boarders and
13 stuff getting riled up seeing police officers driving down,
14 and so I wanted to inform the owners of the property, look,
15 this is what happened. I am going to call the police.

16 Q So instead of reporting a crime immediately, you go up
17 and you verify you can report it through your father-in-law,
18 correct?

19 A No, not verified that I can but that I am going to
20 report it.

21 Q So after you start this conversation, you had this
22 conversation with the 911 dispatcher, do you remember that?

23 A Yes, sir.

24 Q Okay. It goes on for a pretty good time, right?

25 A Yes, sir.

1 Q You tell what happened in regards to this, right?

2 A Yes, sir.

3 Q You give him all the details?

4 A I can't remember the exact wording, if I gave him all
5 the details. I can't remember.

6 Q But you told him a fair accounting of what happened,
7 correct?

8 A Yes.

9 Q And during that, do you remember talking to them in
10 regards to, you know, how you felt or what your position
11 was?

12 A Yes.

13 Q Do you remember telling them you didn't feel
14 threatened?

15 A Yes.

16 Q You said you weren't threatened?

17 A I felt threatened, yes.

18 Q Do you remember talking to the 911 operator and saying
19 you didn't feel threatened or you weren't threatened?

20 A I don't remember saying that I did not feel threatened.
21 I did not remember saying that.

22 Q Do you remember making a statement that "She did not
23 make any threatening comments to me"?

24 A "She did not make any threatening comments to me." I
25 can't remember.

1 Q Now, after the 911 tape, you, I guess, went around the
2 police department; is that correct?

3 A Yes.

4 Q You gave a statement of what happened in that one,
5 correct?

6 A That's correct, yes, sir.

7 Q You provided all of that information as to what you
8 said happened at the time of that incident, correct?

9 A That's correct.

10 Q I think it was Deputy Estep is the one that came out,
11 correct?

12 A Yes.

13 Q You showed her the video?

14 A Yes, sir, on the iPhone.

15 Q Nothing happened at that time, correct?

16 A She said she needed to further look into it because the
17 video, because it was really bright outside and with the
18 iPhone having such a small screen and it was still loud, the
19 wind was blowing through the trees and she was looking at it
20 and I had the volume maxed out. She did say she can't make
21 out everything that was stated there, it needed to be blown
22 up.

23 Q So she could not see anything enough to make a decision
24 if there was a crime that occurred?

25 MR. SHIFLET: Objection. He cannot ask him about

1 what she thought.

2 THE JUDGE: Sustained.

3 BY MR. ARIAIL:

4 Q At that time after you talked to her, do you know what
5 she did, where she went?

6 A I do not.

7 Q Now, we just watched the tape of this matter. It is
8 difficult to see anything. So my understanding of your
9 testimony is that you come home from work from Stacy's --

10 A Stacy's Greenhouse.

11 Q And you hear two shots?

12 A I distinctly remember hearing a couple shots.

13 Q So your first reaction when you hear two shots is to
14 drive in the direction of the shots, correct?

15 A To check on them because I knew they were down there in
16 the lower pasture.

17 Q When you get down there you don't find anything, right?

18 A I don't find anything, no, sir.

19 Q So you sit there for 20 minutes, 20 or so minutes, pull
20 your Kubota over, that vehicle we see on the tape, right up
21 next to the fence, correct?

22 A No, sir. During this time they were continuing to work
23 along -- during the 20 minutes they were continuing to go up
24 the fence line, lopping branches. And I was talking to them
25 and I think we started talking about the day at work. I

1 wanted to make sure they were safe, has there been anything
2 going on, that kind of conversation. And then I didn't see
3 anything and I was about to leave, and that's when it all
4 happened.

5 Q When you say you were about to leave, I thought you
6 indicated you were at the bottom part or that's where they
7 were, at the bottom?

8 A When I first arrived, yes, sir.

9 Q Which is far away from her house, correct?

10 A It is the furthest, it is one of the -- possibly almost
11 the furthest point away that we can -- you know, without the
12 trees cutting us off. We cannot get the Kubotas up there,
13 so the furthest point, almost the furthest point in that
14 lower pasture, at least.

15 Q So you heard two shots, you are at the lower part of
16 the pasture and you find yourself at the very top of where
17 you are when you take the video now, correct?

18 A As I drove -- first off, I drove my Kubota down to them
19 to make sure they are okay. And then as they started, you
20 know, moving up, I was walking beside the Kubota because
21 they were going all of the way up to the ridge line closer
22 to her house because they were going through the entry
23 points and stuff.

24 And so I was walking with them and I was looking
25 around and I was, like, well, I am not really seeing

1 anything going on. I am pretty sure everything is
2 fine. Okay.

3 So right then I actually turned to Mrs. Jones and
4 I said, you know -- I was about to say, Mrs. Jones, I
5 am going to leave because it is 12:40, 12:45, I have
6 to get back to work at 1 o'clock, I had a 12 to 1
7 lunch. And then right before I get that statement
8 out, that's when all of the activity happened.

9 Q But my question was, you went from the furthest point
10 on her property up to the closest part, it looks like you
11 say 150 feet?

12 A Yes, sir.

13 Q You are at the fence line right there, correct?

14 A Uh-huh.

15 Q So you not only come to the house far away where you
16 heard two shots --

17 A Uh-huh.

18 THE JUDGE: Excuse me. I don't mean to interrupt
19 you, but please say yes or no because uh-huh is hard
20 to record.

21 THE WITNESS: Oh, I'm sorry.

22 BY MR. ARIAIL:

23 Q But you had gotten as close now as you can to the fence
24 next to her house, correct?

25 A Once the activity started, yes, but not during the

1 lopping of the branches, no.

2 Q Okay, but my point is, you moved from the house all the
3 way to the closest fence to her house, correct, even though
4 you heard two shots?

5 A Yes, sir.

6 Q You are there and the video, as we see it, you go
7 through and say, I think, numerous times -- correct me if
8 I'm wrong -- "I got it. I am getting all of it. Keep it
9 up. Keep it up."

10 A Yes, sir. I was relieved that I had the video because
11 at this point I was taking it as verbal abuse and harassment
12 and I wanted to get this to the police department.

13 And so I was like, yes, I don't want it to be a
14 hearsay, "he said-she said" kind of thing. So I was
15 very relieved I had the iPhone on my person and so I
16 was saying, you know, keep it up, statements like that
17 because I am getting this and it will be directed to
18 the police department in order to turn you in.

19 Q At nowhere during this -- and let me go back and make
20 sure. You gave a statement, a written statement, correct?

21 A Written statement, yes, sir.

22 Q Nowhere during your written statement do you say
23 anything about her pointing or presenting a shotgun,
24 correct?

25 A That, I don't remember. I would have to look at the

1 written statement.

2 Q Take a look at your statement. Do you remember that?

3 A I said that she started harassing us verbally and with
4 her gun on that statement.

5 Q Okay. But there is nothing in that statement that says
6 she pointed a gun at you, she directed it in your direction,
7 she shot at you, any of that, correct?

8 A I didn't write it in those words, but I meant it in the
9 comment of the harassing.

10 Q You went and talked to an officer. You sat down,
11 correct, on this date, I think it was 4/11/2012. You took
12 your video that you had at the same time?

13 A Yes, sir.

14 Q You did all of that, and you put down what you say
15 happened, correct?

16 A Yes, sir.

17 Q Nowhere in this document does it show, pointed a gun at
18 you, shot at you, presented a weapon to you, anything like
19 that, correct?

20 A Only the fact that she was harassing us with her gun
21 and I was hoping that was going to get the point across.

22 Q But we are here today on pointing and presenting charge
23 and you didn't put that in there, correct?

24 A I did not in that written statement, but I believe I
25 have spoken to Officer Estep about that.

1 Q It says right here -- is this under oath or was it a
2 voluntary statement you gave, correct?

3 A Yes, it was voluntary.

4 Q Now, the distance is 150 feet. Is that what you are
5 saying?

6 A Somewhere within 150 feet, yes, sir.

7 Q It is blocked by trees and things in your way, correct?

8 A Not -- I mean, sporadically. You had to move over a
9 couple of times, but it was -- when the actual shooting
10 occurred, there was no trees involved in our way.

11 Q It is hard for the jury to see because it was sideways
12 on this thing. But I mean, it appears that the video went
13 on for four to five minutes; is that correct?

14 A Yes, sir. Around that time.

15 Q She is walking -- is she walking back and forth in this
16 area?

17 A Yes, sir. She is walking back and forth.

18 Q She is doing something up there?

19 A Yes, sir. It looks like she was unloading a truck, but
20 I don't know.

21 Q At no point in time you left, you just stayed there and
22 took the video? That was you taking it the whole time?

23 A That was me taking it the whole time.

24 Q Where is Robert Rainey and Carol at this time?

25 A They are standing beside me. Or Carol is sitting on

1 the Kubota and Robert is standing beside me.

2 Q Okay. You come out and I think we heard three
3 gunshots; is that right?

4 A Three or four, I think, something like that.

5 Q The first one -- and refer to what the video shows but
6 you can't see when she shoots the first time, correct?

7 A I can see her through the window of her truck but not
8 through the video. Actually, when I was on the property,
9 yes.

10 Q So you didn't put any of that in your statement, that
11 you could see her through the truck or show where she shot
12 or anything like that, correct?

13 A There was only so much room on the piece of paper that
14 I could write.

15 Q You could have more pieces of paper. You understand
16 that, right?

17 A I didn't understand that. I thought I had to fit
18 everything in a condensed statement on there. I fit as much
19 as I could.

20 Q You didn't use two of the lines on that piece of paper,
21 you know that?

22 A Yes.

23 Q So there was more space on there?

24 A Yes.

25 Q In regards to the shot, the first one you say you saw

1 her through the truck?

2 A Yes.

3 Q You've seen her through a truck. Is it a window?

4 A It is a window, but I saw her also coming out of the
5 barn through the -- you know, to the side of her truck. It
6 is kind of like here is her truck, here is her barn, she is
7 walking this way.

8 Q The next shot appears to be also behind the truck,
9 correct?

10 A Yes, sir.

11 Q So we have two shots that are behind the truck?

12 A Uh-huh.

13 Q You can't tell where the gun is facing, anything like
14 that?

15 A I can tell the gun was facing straight up.

16 Q Straight up?

17 A Yes.

18 Q Straight up. Not in your direction. Straight up?

19 A Yes, sir.

20 Q So then we have those two shots come out, and then the
21 third shot?

22 A Yes.

23 Q The third shot you can kind of see on the video. It
24 was shot straight up too, correct?

25 A The third shot I believe she actually pointed and

1 leaned it toward us.

2 Q Pointed and leaned it toward you?

3 A I would have to look at the video.

4 Q When you say leaned and pointed it toward you?

5 A When she basically -- the first time she is walking
6 beside her vehicle -- this is her truck. She is walking
7 like this. I am on this side. She is on this side. She
8 shoots one shot here, probably one shot there (indicating).
9 And then she turns and says, "call the F'n cops," shoots,
10 and then shoots again. That's when she had turned and it
11 looked like she had her shotgun on her hip and leaning at an
12 angle toward us.

13 Q So we have a shotgun on hip, leaning toward you,
14 shooting in your direction, correct?

15 A Yes.

16 Q Not shooting straight up?

17 A I did not see it go straight up, no, sir.

18 Q So after that you sit there and watch it. You sat
19 there for a little while longer; is that correct?

20 A Yes, sir.

21 Q Now, you didn't leave immediately after that?

22 A Not until I heard the shots falling behind me.

23 Q You don't also know if she was shooting at something
24 else on her property, correct?

25 A No. I am very sure she was directing it at us and

1 shooting at us.

2 Q But sitting here today, you cannot tell if she was
3 shooting at something else or shooting in the other
4 direction or anything of that nature?

5 A She was shooting at us.

6 Q But you just said twice she wasn't shooting at you?

7 A But when she turned and looked at us and shot at us,
8 she was not shooting at any kind of -- at anything.

9 Q I am confused as to what you are saying is how she shot
10 at you --

11 A Can I show you?

12 Q Yes, please.

13 A She basically -- the way I remember it -- I will say
14 this is the -- imagine this is the truck. She came out,
15 fired, she reloaded and fired and that's when she came and
16 she looked at me and she said, "call the F'n cops on me" and
17 shot here and may have shot one more time after that.

18 So she's literally -- she's got it on her hip, she's
19 leaning in our direction, shoots enough to where, in a
20 matter of seconds, I hear pellets falling behind us.

21 Q Stand there real quick. You said she turned toward
22 you. You are down at the bottom of the hill?

23 A Yes.

24 Q You are saying she turned the gun down the hill?

25 A I am not saying "turned down the hill" but she did turn

1 and pointed it in our direction.

2 Q And that would be all on the video. That's what you're
3 saying, correct?

4 A Yes, sir.

5 Q Now, you can sit back down.

6 After that third shot, she continued to walk on down
7 the road, correct?

8 A I believe yes.

9 Q At no time during this did she ever say, I am going to
10 shoot you, I am going to harm you, I am going to hurt you,
11 anything of that nature, correct?

12 A She did not say anything of that nature, correct.

13 Q She doesn't come down toward you? She doesn't walk
14 down, run down the hill, do any of that?

15 A No, sir.

16 Q If you could bear with me one second.

17 MR. ARIAIL: May we approach real quick.

18 THE JUDGE: Yes.

19 (Whereupon, a bench conference was held off the
20 record in the presence of the jury, but out of hearing
21 of the jury.)

22 THE JUDGE: Just be at ease, Madam Forelady and
23 members of the jury panel. We are waiting on
24 something.

25 BY MR. ARIAIL:

1 Q Mr. Foy, just a few more questions. You live in York
2 County, correct?

3 A Yes, sir.

4 Q Do you have weapons?

5 A I do not. I have probably like a baseball bat for home
6 intrusion purposes.

7 Q Does anybody at your residence, your wife, her parents,
8 have weapons?

9 A No, sir.

10 Q You know it is not unlawful to have a weapon on your
11 property?

12 A Yes, sir.

13 Q You understand that?

14 A Yes, sir. One of our cousins, Andy Kearns, actually
15 has a gun on his -- basically firearms. He is a cousin, and
16 he lives on the front property, so yes.

17 MR. ARIAIL: I have no further questions, your
18 Honor.

19 REDIRECT EXAMINATION

20 BY SHIFLET:

21 Q Mr. Foy, she didn't run down to you guys, correct?

22 A Correct.

23 Q She didn't say she was going to shoot you?

24 A Correct.

25 Q But she did make statements directly at you, correct?

1 A Yes, sir.

2 Q She did fire the gun, and as a result of firing that
3 gun, you heard pellets around you?

4 A Yes, sir.

5 Q It was in the air, but it was in your general
6 direction, correct?

7 A Yes, sir.

8 MR. SHIFLET: No other questions.

9 THE JUDGE: Any other questions?

10 MR. ARIAIL: No other recross, your Honor.

11 MS. SHIFLET: Your Honor, I hate to do this. We
12 have to approach one more time.

13 (Whereupon, a bench conference was held off the
14 record in the presence of the jury, out of hearing of
15 the jury.)

16 MR. SHIFLET: At this time, the State has no
17 further questions for this witness, but we would like
18 to reserve our right to recall him at a later time.

19 MR. ARIAIL: No objection.

20 THE JUDGE: All right. You may stand down, sir.

21 (Witness excused.)

22 THE JUDGE: Madam Forelady and members of the
23 jury panel, I think it is a good time to get some
24 lunch. It's about 10 after 1. We'll go ahead and get
25 lunch at this time. I will ask you to be back in the

1 jury room ready to go, I am trying to move this case
2 along so I don't want to take longer than I have to
3 for lunch.

4 Let's be back in the jury room ready to go at
5 2:10. That's an hour. That will give everybody
6 plenty of time to get lunch. Be back ready to go at
7 2:10. We'll start promptly at 2:10. Enjoy your
8 lunch.

9 (Whereupon, the jury exited the courtroom at 1:10
10 p.m.)

11 THE JUDGE: Is there any matter to take up out of
12 the presence of the jury?

13 MR. SHIFLET: No, your Honor.

14 MR. ARIAIL: Your Honor, one thing I think I will
15 probably have to present some evidence in my case. I
16 know there is a 911 tape. I'm probably going to have
17 to serve that or get somebody to come here. I tried
18 to talk to the solicitor on whether or not he would
19 allow that in or not so I won't have to waste more
20 time. If not, if we can authenticate that so that 911
21 call can be allowed so I can play it in my case.

22 MR. SHIFLET: I think we just need to -- if Mr.
23 Foy actually plays the tape outside the presence of
24 the jury so he has the ability to authenticate it.

25 THE JUDGE: If Mr. Foy agrees that that's what

1 the conversation was, you wouldn't require someone
2 from 911 to come in?

3 MR. SHIFLET: That's right.

4 MR. ARIAIL: I don't want to hold the Court up if
5 Mr. Foy gets on the stand and doesn't say that's him.
6 So I don't want to go and serve them and get a 911
7 operator --

8 THE JUDGE: Well, I mean, if he says it is not
9 him, I understand we may have to get -- - I hope not.
10 I don't want you to have to get somebody from 911 if
11 you don't have to because it takes them away.
12 Anything else?

13 MR. ARIAIL: Nothing.

14 THE JUDGE: Let's go ahead and recess for lunch
15 and start back at 10 after 2. I want to start
16 promptly at 10 after 2.

17 (Court in recess.)

18 (Whereupon, State's Exhibit 9, was marked for
19 identification, this date.)

20 (Whereupon, Defendant's Exhibit 1, was marked for
21 identification, this date.)

22 THE JUDGE: On the record. Is there anything you
23 need to address before we bring the jury in?

24 MR. SHIFLET: No, sir.

25 THE JUDGE: Please bring the jury in.

1 (Jury entering courtroom.)

2 THE JUDGE: Good afternoon, Madam Forelady and
3 members of the jury panel. I hope you enjoyed your
4 lunch. We are ready to resume trial.

5 Counsel, are you ready to proceed?

6 MR. SHIFLET: Yes.

7 THE JUDGE: Call your next witness.

8 MR. SHIFLET: The State calls Trent Faris.

9 TRENT FARIS,

10 being first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. SHIFLET:

13 Q Good afternoon, Mr. Faris.

14 A Good afternoon.

15 Q State your full name for the record.

16 A Trent Faris.

17 Q Where are you employed, sir?

18 A I am the public information officer at York County
19 Sheriff's Office.

20 Q How long have you been there?

21 A Approximately a year.

22 Q How did you become to be involved in this case?

23 A Just about a year ago our staff attorney, Chris Jordan,
24 asked me for a favor, if I could help her out with a video
25 to work on it for her.

1 Q Why did she come to you? Do you have any experience
2 with that kind of thing?

3 A Yeah, I used to work in the media industry. I was a
4 reporter-photographer-editor for a couple of TV stations.

5 Q What exactly were you provided for that purpose?

6 A She gave me a thumb drive with some videos on it.

7 Q Once you took possession of that, what exactly did you
8 do?

9 A I have an editing software system that I used back when
10 I was working in television called EDIUS Neo 3. I worked
11 with different versions of that software. I loaded it into
12 the system. The original video was sideways in cell phone
13 form, so I adjusted it to where you could see it straight up
14 and down.

15 I also stabilized it because the video was shaky
16 so I made it where it wasn't, so shaky so you could see
17 the person in the video on one stream and also
18 enhanced the audio on it so you could hear it a little
19 bit better.

20 Q Why don't we take it one at a time.

21 MR. SHIFLET: May I approach the witness?

22 THE JUDGE: Yes.

23 BY MR. SHIFLET:

24 Q I am going to show you what has been marked State's 5
25 and 6. Take a look at those beginning with State's 5 and

1 please identify what that is to the jury.

2 A This is a DVD with my initials on it. It says "Raw
3 Video Enhanced."

4 Q Identify for the jury exactly what that video is with
5 regards to the enhancements.

6 A This one is just the raw video from the original cell
7 phone video but the enhancements as it is turned up and down
8 where you can see it so you don't have to look sideways on
9 it, and also the audio is enhanced where you can see -- you
10 can hear.

11 Q Tell the jury a little bit about how you enhance the
12 audio.

13 A In the program there is a -- you have video tracks and
14 audio tracks. And in the audio track you can -- there is a
15 line across it where you can -- it is called a rubber band.
16 In that you can increase the volume or decrease the volume.

17 In the parts where I could hear the person in the video
18 say something or make some noise, I would increase the audio
19 on that and bring it down because there was a lot of
20 background noise with trees and wind and other such.

21 Q So all you did was enhance the audio for those
22 portions?

23 A Yes, sir, just tried to turn up the volume a little
24 bit.

25 Q Did you change it in any other way?

1 A No.

2 Q Did you add any other voices?

3 A No.

4 Q With regard to that video, have you watched that video
5 before coming into court today?

6 A Yes, I have.

7 Q Is that the same video that you enhanced?

8 A Yes. It has my initials on it.

9 MR. SHIFLET: At this time, your Honor, the State
10 would request to move State's 5 into evidence.

11 MR. ARIAIL: Subject to my pre-trial motions, I
12 have no objection.

13 THE JUDGE: All right. Admitted, subject to the
14 pre-trial matters.

15 (Whereupon, State's Exhibit 5, previously marked
16 for identification, was received into evidence, this
17 date.)

18 THE JUDGE: Let me explain to the jury, though,
19 that the original video has been enhanced, certain
20 portions of it, and that's what they are attempting to
21 show you from the same video.

22 However, you are to consider, not just this
23 portion of it, but you are to consider all of the
24 video and not give this particular part of the video
25 any more emphasis than any other part.

1 But they have enhanced it they say to hear it and
2 see it better. But when you consider it, consider the
3 entire video and not just this portion. Consider it
4 all. Thank you.

5 BY MR. SHIFLET:

6 Q Mr. Faris, please identify for the jury exactly State's
7 Exhibit 6.

8 A DVD with zoomed, sharpened, and stabilized on it.

9 Q Tell the jury what that means.

10 A The video was very shaky because it was a cellphone
11 video. So what I did was stabilized it, keeping it to where
12 it is not so shaky and you can see the person in the video a
13 just a little bit easier.

14 Also, the portions of the video were condensed
15 down a little bit for time purposes, and also I
16 sharpened the video because, of course, it is a very
17 far off video. So I zoomed in on it, on the person in
18 the video, and I used an editing feature that makes
19 it -- it's a file called Sharped It. It just sharpens
20 up the video and makes it a little more crisp and
21 clear for you to see better with.

22 Q When you performed those enhancements, did you use the
23 exact original video?

24 A Yes, sir.

25 Q That's what you started with?

1 A Yes, sir.

2 Q Now, it would represent a portion of the original
3 video?

4 A Yes.

5 Q But is there anything about the enhanced video that is
6 different than the original version other than you can see
7 it better?

8 A You can see it better, it is stabilized better, it is
9 zoomed in so you can see it from -- it's a far off distance,
10 you can see it better, and also, I guess, edited down so you
11 can see certain aspects of it closer.

12 Q Nothing about the content of the video, however, would
13 be different?

14 A No. No, sir.

15 Q Thank you.

16 MR. SHIFLET: The State would move to put State
17 Exhibit 6 into evidence.

18 MR. ARIAIL: Subject to my pre-trial motion, your
19 Honor.

20 THE JUDGE: Subject to the pre-trial motions,
21 they are admitted.

22 (Whereupon, State's Exhibit 6, previously marked
23 for identification, was received into evidence.)

24 MR. SHIFLET: No further questions. Thank you.

25 MR. ARIAIL: I have no questions, your Honor.

1 THE JUDGE: Thank you, sir. You may stand down.

2 Do you wish to have this witness excused?

3 MR. SHIFLET: I do, your Honor.

4 THE JUDGE: Thank you. The witness is excused.

5 (Witness excused.)

6 MR. SHIFLET: At this time, the State recalls
7 Barry Foy to the stand.

8 THE JUDGE: You were previously sworn and you
9 continue to be sworn under oath for your testimony.

10 REDIRECT EXAMINATION

11 BY MR. SHIFLET:

12 Q Good afternoon, Mr. Foy.

13 A Good afternoon.

14 Q The videos we talked about a little bit earlier, I
15 think I may have asked you this, but you actually watched
16 those videos before you came to court?

17 A That's right, yes, sir.

18 Q Other than the enhancements that Mr. Faris just talked
19 about, is it a true and accurate representation of what you
20 observed that day?

21 A Yes, sir.

22 Q How do you know it is the exact same video?

23 A Because I had my initials on it. I watched it and I
24 initialed it.

25 MR. SHIFLET: Your Honor, the State would request

1 to move State's 5 and 6, based on the testimony, into
2 evidence at this time.

3 MR. ARIAIL: Subject to the previous objection,
4 your Honor.

5 THE JUDGE: Subject to the objection made
6 earlier.

7 MR. SHIFLET: At this time, the State would
8 request to publish State's Exhibits 5 and 6.

9 THE JUDGE: You may publish.

10 MR. SHIFLET: Your Honor, at this time, my
11 co-counsel pushed the wrong button so just one second.

12 THE JUDGE: Okay.

13 (Playing video.)

14 BY MR. SHIFLET:

15 Q Mr. Foy, I think I asked you this: Tell the jury one
16 more time, describe the sounds you heard after the third
17 shot was fired.

18 A It sounded like pellets falling through the leaves
19 behind me. It sounded like a crackling sound and when I
20 turned around, I could actually see the leaves fluttering
21 from the pellet drops.

22 (Playing video.)

23 MR. SHIFLET: At this time, your Honor, the State
24 requests to publish State's Exhibit 7.

25 THE JUDGE: You may publish it.

1 MR. SHIFLET: I apologize. It is State's 6.

2 (Playing video.)

3 BY MR. SHIFLET:

4 Q Mr. Foy, based on your observations that day, can you
5 identify who that is in the video?

6 A It is Ms. Saucier.

7 (Playing video.)

8 BY MR. SHIFLET:

9 Q Couple more questions.

10 MR. SHIFLET: Your Honor, may I approach the
11 witness?

12 THE JUDGE: Yes, sir.

13 BY MR. SHIFLET:

14 Q Mr. Foy, I am showing you what has been previously
15 marked State's 7 and 8. Please take a look at those and
16 identify that for the jury.

17 A For Exhibit 7, this looks like Ms. Saucier's truck and
18 the overhang that it was parked within. Exhibit 8 is an
19 image of Ms. Saucier presenting her firearm at our
20 direction.

21 Q Is that a fair and accurate representation of what you
22 observed just now on video?

23 A Yes, sir.

24 Q Changed or altered in any way?

25 A No, sir.

1 MR. SHIFLET: At this time, the State requests to
2 move State's Exhibits 7 and 8 into evidence.

3 MR. ARIAIL: No objection, your Honor.

4 THE JUDGE: Without objection.

5 (Whereupon, State's Exhibits 7 and 8, previously
6 marked for identification, were received into
7 evidence.)

8 MR. SHIFLET: Mr. Foy, at this time I don't have
9 further questions. Please answer any questions
10 defense counsel has.

11 RECROSS-EXAMINATION

12 BY MR. ARIAIL:

13 Q Mr. Foy, to go back over the video, and we have seen
14 the stills when Solicitor held them. You were down here and
15 you testified earlier the gun was pointed at you at some
16 point in time; is that correct?

17 A Yes.

18 Q In any of those, clearly, do you agree the gun was
19 pointed away from you at all time?

20 A I believe it was presented and pointed in our
21 direction.

22 Q Presented and pointed. Which still shot do you say it
23 is pointed at you?

24 A Where she is looking right at us and has the gun there.

25 Q But the gun is not pointed at you in that picture,

1 correct?

2 A Not directly, no.

3 Q Nowhere on this does she threaten you in any way?

4 A She threatens us, yes. I wouldn't say she does not
5 threaten in any way. I'm saying she does threaten by her
6 body language, her posture, "call the F'n cops on me, I dare
7 you." And then holding her gun in a threatening manner,
8 pulling the trigger. I don't know that I would take that
9 other than, I am threatening you, this is my power, this is
10 my authority. And so I do find that a threat.

11 Q There is no comments that is she going to shoot you,
12 she's going to come down the hill, she's going to do
13 anything like that?

14 A She does not make comments like that.

15 Q She shoots on her property all the time, correct?

16 A Yes.

17 Q You have heard her numerous times over there?

18 A Yes.

19 Q Do you shoot any trap or skeet or anything like that?

20 A I have, yes, sir. Not lately, but I have. I used to
21 dove hunt.

22 Q Somebody that shoots trap and skeet is a better shot
23 with a shotgun than others; would you agree?

24 A It depends on the shooter.

25 Q Well, in this case, how many times do you think you

1 heard her shooting over there?

2 MR. SHIFLET: Objection. Relevance, your Honor.

3 THE JUDGE: Overruled.

4 THE WITNESS: It alternates. I mean, I can't
5 really give you a set number because I am not there
6 during the day. I come home late, like around
7 evening, around 7:30, so it alternates. On weekends
8 it is sporadic. But about a year ago, I just --

9 MR. SHIFLET: Objection. May we approach?

10 (Whereupon, a bench conference was held off the
11 record in the presence of the jury, but out of hearing
12 of the jury.)

13 BY MR. ARIAIL:

14 Q As far as her shooting, you said you heard her numerous
15 times over there, correct?

16 A Yes, sir.

17 Q Now, if she wanted, in this circumstance, to shoot at
18 you, she could have done that?

19 A Yes, sir.

20 Q From that angle, she could have hit you probably?

21 A Yes, sir.

22 Q You are saying you are close enough?

23 A I am close enough, yes, sir.

24 Q You tell me, she didn't shoot directly at you, she shot
25 up in the air, correct?

1 A She shot in the air angled towards us.

2 Q She didn't come down the hill to hit you or come down
3 to get close or anything?

4 A No, sir.

5 Q Did she walk in back of her driveway, correct?

6 A Yes, sir.

7 Q It goes down towards, I guess, the front gate; is that
8 right?

9 A Yes, sir.

10 Q Did you hear any shots after that?

11 A No, but I can't really -- I did not, but I was on the
12 Kubota and it was diesel and it is very loud and it rattles.
13 So I do not know if any shots were fired as I was going back
14 up the hill.

15 Q You remember giving the statement to 911, correct?

16 A Yes, sir.

17 Q In that do you recall telling them anything about
18 feeling threatened or not threatened in that?

19 A I do remember saying -- they asked me, did she threaten
20 to kill, and I said, "no, she did not threaten to kill."

21 Q Did she say -- do you remember having any statements in
22 regard to whether or not you were threatened in any way by
23 her?

24 A Yes. I did say I was in danger. I felt in danger.

25 Q Have you seen this disc before?

1 A Yes, sir.

2 Q Take a look at that. Do you recognize what that is?

3 A I am estimating this is the 911 call I made regarding
4 the incident.

5 Q Have you listened to that with the solicitor's office?

6 A Yes.

7 Q Is it a true and accurate representation of your call
8 to 911?

9 A Yes, sir.

10 MR. ARIAIL: Your Honor, based on this, I offer
11 this into evidence.

12 MR. SHIFLET: No objection.

13 THE JUDGE: Received with no objection.

14 (Whereupon, Defendant's Exhibit 1, previously
15 marked for identification, was received into
16 evidence.)

17 MR. ARIAIL: Your Honor, may I publish it?

18 THE JUDGE: You may.

19 (Playing tape.)

20 BY MR. ARIAIL:

21 Q Barry, on that you say that there was another
22 individual there, her husband too, correct?

23 A Thinking about it because I was -- I did not see him.
24 I saw the truck driving. I assumed it was him. I saw the
25 truck driving up this way and then not long after I saw Lynn

1 exiting the house.

2 But since it is on an angle, it could have possibly
3 been her in the truck, gotten out, came around on the back
4 side and then came through. So I assumed there was two
5 individuals, but I never saw him.

6 Q So you didn't take any video of the car coming in or
7 anyone else there?

8 A I did not take video of the car. The horn was honking
9 in the first video, I believe you hear me say "He is still
10 tooting, isn't he?"

11 Q How do you know it was her husband?

12 A I didn't -- because when I thought -- I think I said
13 "they're still -- they're still tooting." I saw the truck
14 going, and I saw her coming out, so I mean, I -- but I did
15 not see him. That was an assumption on my part. I could be
16 completely wrong.

17 Q My question is, did you see a car or any --

18 A I did see a truck driving up, yes, sir.

19 Q So there would be another witness there?

20 A Not unless it was her in the truck.

21 Q Not unless it was her in the truck. So you are saying
22 she could be the one driving the truck.

23 A Yes, sir.

24 Q So did you or did you not see someone else there with
25 her?

1 A I did not see someone else with her.

2 Q That's what you just told the police, correct?

3 A Yes.

4 Q You said you saw someone else pulling in. That's not
5 true, correct?

6 A That's not true, yes, sir. That was incorrect. It was
7 an assumption.

8 Q Also, going back and forth with regard to this
9 threatening, whether or not you specifically stated on this
10 tape, correct, that you were not -- she didn't threaten you
11 or say anything threatening to you?

12 A I said she did not threaten to kill. The word there
13 was "kill."

14 Q You say threaten to kill, not anything threatening?

15 A I said "threaten to kill" and I did say I was in
16 danger.

17 MR. ARIAIL: I have no other questions.

18 MR. SHIFLET: Nothing.

19 THE JUDGE: Thank you, sir. You may stand down.

20 MR. SHIFLET: Your Honor, may this witness be
21 excused?

22 THE JUDGE: No objection, Counsel?

23 MR. ARIAIL: No objection.

24 THE JUDGE: Thank you for coming. You may be
25 excused if you wish.

1 (Witness excused.)

2 MR. SHIFLET: At this time, the State would call
3 Deputy Estep.

4 DEPUTY SHANNON ESTEP,

5 being first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. ESTEP:

8 Q Good afternoon, Deputy Estep.

9 A Good afternoon.

10 Q Would you state your full name for the jury and record,
11 please?

12 A Deputy Shannon Estep.

13 Q Ms. Estep, where are you employed?

14 A York County Sheriff's Office.

15 Q How long have you been in the Sheriff's Department?

16 A Twelve years.

17 Q What sort of training or work-related training have you
18 had?

19 A I had to attend the Criminal Justice Academy in
20 Columbia for nine weeks, then continue training once a month
21 here at the Sheriff's Office.

22 Q Deputy, how did you first get involved with this case?

23 A I received a dispatch over the radio to respond out to
24 Kelly Road in reference to a neighbor dispute involving a
25 gun being shot.

1 Q Did you respond by yourself or with any other officers?

2 A Deputy Moseley responded as well.

3 Q Now, you were there. Did Deputy Moseley speak or
4 interview any witnesses that you didn't?

5 A No, sir.

6 Q Did he observe or investigate any part of the case that
7 you didn't?

8 A No, sir.

9 Q Why was he there?

10 A He was just there for support.

11 Q Deputy, when you first got out there, what did you do
12 first?

13 A I went and spoke to the complainant, Mr. Barry Foy, to
14 investigate, find out what happened.

15 Q Now, after you spoke to him, did you have any evidence
16 at that point about what had happened?

17 A He did show me a clip, video clip, on his cell phone,
18 and due to the brightness of the day, the sunny day, the
19 glare, I was unable to make out exactly what was on there.
20 I could hear some verbiage, someone talking, using
21 profanity. But I couldn't make out the actual picture.

22 Q So after talking with him, watching the video with
23 Mr. Barry Foy, what did you do after that?

24 A I went and spoke to the defendant.

25 Q How about before going to see her? Did you do anything

1 with the victims?

2 A Oh, yes, sir. We went down to the actual incident
3 location which is on the property line.

4 Q After you looked around down there, what did you do
5 next?

6 A After we looked around out there, I went and spoke to
7 the defendant.

8 Q Who was the defendant?

9 A Lynn Saucier.

10 Q Did you have an opportunity -- did you see her that
11 day?

12 A Yes, sir.

13 Q Is she in the courtroom today?

14 A Yes, sir.

15 Q At the defense counsel table?

16 A Yes, sir.

17 Q Deputy, why, as part of your investigation, did you
18 want to talk to her?

19 A To get her side of the story as to what happened.

20 Q So you go to speak to her and ask her some questions?

21 A Yes, sir. ,

22 Q All right. Tell the jury a little bit about that.
23 What did you learn from talking to her? Did you ask her
24 what happened about shooting the gun?

25 A Yes, sir, I did.

1 Q How did she respond?

2 A She said she was shooting muskrats.

3 Q Did she make any other statements about the gun?

4 A She stated that she was not pointing it in their
5 direction.

6 Q Did you ask her about the statements, that you could
7 hear her on the video?

8 A Yes, sir, I did.

9 Q Did you ask her about some of the statements she made
10 on that video?

11 A Yes, sir, the profanity.

12 Q What was her response when you made that statement?

13 A In response to saying she was saying, "Call the F'n
14 cops," her response was "I was saying 'muskrats.'"

15 Q Thank you.

16 Did you ask her about where she was shooting and how
17 she was shooting?

18 A Yes, sir.

19 Q What was her response?

20 A She stated she was over there near the truck pointing
21 toward her pond.

22 Q Deputy, after you talked to her that day, what did you
23 do then?

24 A I didn't have enough evidence or anything. I was
25 unable to see the video on the phone and I advised the

1 complainant that we needed -- if he could get that on a
2 thumb drive or something and bring it to us so we could
3 investigate it further.

4 Q Deputy, when you went out there that day, how did you
5 get there?

6 A I drove by patrol car.

7 Q Doesn't patrol cars have the ability to capture video?

8 A Yes, sir.

9 Q How does it go about doing that?

10 A It is either activated by activating the blue lights,
11 turning the blue light siren on. It will come on
12 automatically or you can push a button on the microphone
13 that we carry on our belt.

14 Q Did you get video from the day you went and saw her?

15 A Yes, sir.

16 MR. SHIFLET: Your Honor, may I approach?

17 THE JUDGE: Yes.

18 BY MR. SHIFLET:

19 Q This is State's Exhibit 9. Please identify this for
20 the jury.

21 A This is the video. It has my initials on it.

22 Q Deputy, have you seen this video before you came to
23 court today?

24 A Yes, sir.

25 Q Does it truthfully and accurately reflect the

1 circumstances of your interview with her that day?

2 A Yes, sir.

3 Q Is it changed or altered in any way?

4 A No, sir.

5 MR. SHIFLET: The State requests to publish
6 Exhibit 9.

7 THE JUDGE: Once it is admitted into evidence.

8 MR. SHIFLET: We request to introduce it into
9 evidence.

10 MR. ARIAIL: No objection.

11 THE JUDGE: Without objection.

12 (Whereupon, State's Exhibit 9, previously marked
13 for identification, was received into evidence, this
14 date.)

15 THE JUDGE: You may publish it.

16 BY MR. SHIFLET:

17 Q By the way, what was the physical location of the
18 address where you responded?

19 A 715 Kelly Road.

20 Q Where is that located?

21 A In relation to?

22 Q The State.

23 A It is in York, South Carolina, in the County of York.

24 Q Thank you.

25 (Playing video.)

1 BY MR. SHIFLET:

2 Q Deputy, when you left that day, did you have an
3 opportunity to view that video under better circumstances,
4 that Barry Foy video?

5 A Yes, sir, at a later date.

6 Q What happened when you observed it, the next time?
7 What was the difference? What did you see different about
8 it?

9 A It was on a disc. I was able to watch it on the
10 computer.

11 Q What instrument did you watch it with?

12 A Computer.

13 Q Okay. In watching it on the computer, when you saw it
14 at that time, what changed about this case?

15 A I was able -- not only did I meet Ms. Saucier and know
16 what she looked like, I could identify her as being on that
17 video, and saw that the gun was angled up in the air towards
18 their direction.

19 Q What about that muskrat story?

20 A Where she was stating her pond, she was pointing in the
21 opposite direction of where the complainant was standing,
22 the victim was standing when this occurred. It was not in
23 the direction as to where --

24 MR. ARIAIL: Objection your Honor. Can I
25 approach?

1 THE JUDGE: Yes, sir.

2 (Whereupon, a bench conference was held off the
3 record in the presence of the jury, but out of hearing
4 of the jury.)

5 BY MR. SHIFLET:

6 Q Deputy, I want to ask you a question pertaining to that
7 video when you responded and talked to her that first day.

8 I will ask you a question and perhaps we could play a
9 portion of the video that may refresh your memory.

10 A Okay.

11 THE JUDGE: While you are doing that, Counsel,
12 let me instruct the jury. There are portions of the
13 video which goes from one part to another part. Those
14 parts that are not being played, the Court had
15 determined previously that they are not relevant to
16 the case and that's why they are omitted. So your
17 close attention is to be on what is put in evidence.

18 BY MR. SHIFLET:

19 Q Deputy, with respect to what the defendant may or may
20 not have done, did she ever make a statement about where her
21 pond is located?

22 A No, sir.

23 Q Would it help you if we could refresh your memory from
24 the video?

25 A Yes, sir.

1 (Playing video.)

2 BY MR. SHIFLET:

3 Q So did she make statements about where the pond is?

4 A Yes, sir. Sorry.

5 Q All right. I want to --

6 MR. SHIFLET: Can I approach the witness, your
7 Honor?

8 THE JUDGE: Yes.

9 BY MR. SHIFLET:

10 Q This is previously marked State's Exhibit 10. Take a
11 look at this and see if you can identify that.

12 A That is the defendant's driveway, 1212 California Road.

13 Q Is that a fair and accurate representation of what it
14 looked like when you were there that day?

15 A Yes, sir.

16 Q Changed or altered in any way?

17 A No, sir.

18 MR. SHIFLET: At this time, Your Honor, the State
19 would ask to move State's 10 into evidence.

20 MR. ARIAIL: With no objection, your Honor.

21 THE JUDGE: Without objection.

22 (Whereupon, State's Exhibit 10, previously marked
23 for identification, was received into evidence, this
24 date.)

25 BY MR. SHIFLET:

1 Q Deputy, based on the totality of your investigation,
2 what did you determine with regard to what took place?

3 A I determined that the story about shooting muskrats was
4 not true based on the area where the pond is located and
5 based on where the complainant stated they were. They're on
6 opposite sides of the barn, resident area. , She was angling
7 or on the side of --

8 MR. ARIAIL: Objection, your Honor.

9 THE JUDGE: Approach just a minute.

10 (Whereupon, a bench conference was held off the
11 record in the presence of the jury, but out of hearing
12 of the jury.)

13 MR. SHIFLET: Deputy, I don't have any further
14 questions. Please answer any questions Mr. Ariail may
15 have.

16 MR. ARIAIL: Thank you.

17 CROSS-EXAMINATION

18 BY MR. ARIAIL:

19 Q Deputy Estep; is that correct?

20 A Yes, sir.

21 Q You got involved in this, I guess, after the 911 call
22 was made?

23 A That's correct.

24 Q And so the first account, you got all of the
25 information, I guess, from Mr. Foy and other individuals

1 over at the Jones' property; is that correct?

2 A That's correct.

3 Q Then you went over to -- I guess, you walked down, saw
4 the location where the alleged incident took place, correct?

5 A That's correct.

6 Q Now, I think you have been sitting here throughout the
7 trial, there is an allegation there was some pellets or
8 leaves or issues that came down in the direction of Mr. Foy,
9 correct?

10 A Right.

11 Q Did you find any shotgun pellets, any shells, any
12 wadding that comes out of a shotgun, or anything of that
13 nature?

14 A There was a lot of leaves on the ground in that area.
15 We did try to look but those are so small that we weren't
16 able to find any.

17 Q You didn't find any of those. The leaves, you were not
18 sure if they were knocked down because of that?

19 A No, sir.

20 Q So there was nothing that confirmed whether or not
21 those pellets came down in that area?

22 A Based on just the pellets coming down on looking and
23 observing the area, no.

24 Q Now, after you went back -- I think you went back and
25 got in the car and came over and talked to Ms. Saucier,

1 correct?

2 A That is correct.

3 Q We just saw that video right there?

4 A Right.

5 Q Okay. At that time I guess you had -- what was your
6 decision -- I guess you made a decision on how you were
7 handling this case or you were trying to get additional
8 information from her? I guess that's what I'm asking. Were
9 you getting additional information from her as to what
10 happened?

11 A I needed more evidence at that time. I was unable to
12 view the video based on the cellphone to make a
13 determination.

14 Q Okay. And after your discussion with her, what did you
15 do?

16 A I cleared up from the call.

17 Q Cleared up from the call. Was the case closed out?

18 A No, sir. It was -- well, the case, as far as
19 administratively, was closed out until we gathered more
20 information.

21 Q Okay. And I guess more information was gathered at
22 some time?

23 A Yes, sir.

24 Q How long did that take, any timeframe as to when you
25 all made a decision on this?

1 A I believe that Mr. Foy did bring that either -- I
2 believe it was the next day to Detective Strait.

3 Q Okay. Do you remember your case report you had in this
4 case?

5 A Yes, sir, I do.

6 Q Do you remember that, is that yours?

7 A That's the Page 2, yes, sir.

8 Q What are the dates? When does it say -- I guess the
9 alleged incident was on April 2nd, 2012?

10 A Yes, sir. These are additional paragraphs added. The
11 actual original paragraph is at the bottom.

12 Q So when did Mr. Foy come back in, based on your notes?

13 A I did not document the exact date he came in.

14 Q Okay. It said in the references April 12, 2012. Is
15 that --

16 A Where is that at?

17 Q (Pointing.)

18 A Those marks are when our reports are -- our reports
19 have to go through a process, through a computer system, and
20 sometimes they don't get checked off when we actually type
21 them.

22 Q Okay.

23 A So that's actually the merge clerk.

24 Q So you don't have any records in your possession
25 showing when, I guess, he came back in?

1 A No, sir, I don't.

2 Q Now, we heard Ms. Saucier talking about muskrats and
3 permit and all that?

4 A Yes, sir.

5 Q When you arrived -- the first time you had any
6 involvement in this is when you arrived at the Jones'
7 residence?

8 A That's correct.

9 Q You were not there and didn't hear any shots or
10 anything like that?

11 A No, sir, I didn't.

12 Q You don't know what was happening in the morning or
13 preceding when you got there?

14 A No, sir.

15 Q You don't know if she was shooting muskrats or doing
16 other things that day either?

17 A I do not.

18 Q It is not unlawful to shoot your weapon or shoot a gun
19 on your property, correct?

20 A As long as it is in a safe manner.

21 Q As long as it is in a safe manner. She wasn't
22 initially charged with this, was she?

23 A No, sir.

24 Q What was she charged with?

25 A She was charged with --

1 MR. SHIFLET: I object to relevance.

2 THE JUDGE: Overruled. You may answer.

3 THE WITNESS: She was originally charged with
4 discharging a firearm in an incorporated area of the
5 county which is a misdemeanor.

6 BY MR. ARIAIL:

7 Q What happened to that charge?

8 A Well, I asked for counsel through our staff attorney,
9 and through her advisement in checking all of the evidence
10 and looking at the videos once we had them, she told me
11 otherwise as far as what charge. I am not an attorney.

12 Q Maybe I should ask: Was that charge dismissed?

13 A Yes, sir.

14 Q And this charge was filed against her?

15 A That's correct.

16 Q And it wasn't filed until approximately four to five
17 months later?

18 A I am not sure of the exact date.

19 MR. SHIFLET: Your Honor, same objection. It is
20 not relevant to the case.

21 THE JUDGE: Overruled. You can answer.

22 BY MR. ARIAIL:

23 Q I guess at some time point in time she was charged with
24 pointing and presenting, correct?

25 A That's correct.

1 Q Were you involved in that? Do you recognize that
2 document?

3 A Yes, sir. That's the warrant that I signed for the
4 shooting, discharging the firearm in an unincorporated area
5 of the county.

6 Q That was the initial one?

7 A That was the initial.

8 Q Was there another warrant after that?

9 A Yes, sir.

10 Q That was, I guess, some time I believe in -- do you
11 recall that document?

12 A This is the first time I have seen this document.

13 Q That was not filed by you, was it?

14 A No, sir, it wasn't.

15 Q Do you know who Eddie Strait is?

16 A Yes, sir. He is sitting in the courtroom back there.

17 Q Okay. And this is dealing with the pointing and
18 presenting charge that she is here with, correct?

19 A That is correct.

20 Q The date of that is 8/7/2012; is that correct?

21 A That's correct.

22 Q Now, based on your conversations with Mr. Foy, he
23 didn't make any comments to you that he was threatened, felt
24 harmed, thought he was going to get hurt, or that she
25 indicated she was going to shoot at him; is that correct?

1 A He was verbally shaken because I asked him about that
2 when his hands were shaking holding the phone.

3 Q But he didn't say anything about her saying, "I am
4 going to injure you, harm you, shoot at you." I mean, she
5 didn't make any of those comments, did she?

6 A No.

7 Q At that time, he didn't even say she pointed or
8 presented the gun to me. He didn't say anything like that?

9 A He stated that -- I remember that he stated that it was
10 pointed at their direction.

11 Q Is that in your report? Is that anywhere else, do you
12 remember?

13 A If I could look at my original report I would be able
14 to -- it should be in there.

15 Okay. What is your question, sir.

16 Q I guess I was going through whether or not he mentioned
17 or said anything to you about pointing or presenting a gun
18 at him. My question we went into was whether or not you put
19 anything in your report about that?

20 A Okay. I did not state in the report that it was in
21 their direction but that she did shoot three shots from a
22 shotgun up into the air.

23 Q So up into the air. Okay.

24 MR. ARIAIL: I have no further questions.

25 MR. SHIFLET: Nothing further.

1 THE JUDGE: Thank you, ma'am.

2 (Witness excused.)

3 MR. SHIFLET: At this time the State rests its
4 case.

5 THE JUDGE: Madam Forelady, members of the jury
6 panel, there are matters I need to take up with
7 counsel at this time without your presence, so we are
8 going to go ahead and take a break. Please, no
9 discussions during the break. Thank you.

10 (Whereupon, the jury exited the courtroom at 3:25
11 p.m.)

12 THE JUDGE: I will hear you in regard to any
13 motion you might wish to make at this time.

14 MR. ARIAIL: Yes, your Honor. I make a motion
15 for a directed verdict, first and foremost. I have
16 listened to the testimony, and one thing that I
17 believe I have not heard is that the incident occurred
18 -- I heard somebody mention York County. I think they
19 were saying they were on their property.

20 Nobody has said that the alleged incident with my
21 client where she shot the gun or allegedly pointed or
22 presented is in York County. I have heard people say
23 that -- I think Mr. Foy said it was in York County. I
24 don't think the officer mentioned that when we went to
25 arrest her she was in York County with regard to this

1 incident, her property is in York County.

2 Based on that, in addition to other evidence not
3 satisfied in the verdict, I move for directed verdict.

4 THE JUDGE: Does the State wish to be heard?

5 MR. SHIFLET: With regard to the first motion,
6 the officer did testify that she responded to that
7 location in York County on the date of the incident.

8 As it concerns the directed verdict motion,
9 generally speaking, clearly there is substantial
10 evidence in the video and testimony that the defendant
11 was making statements.

12 Those statements certainly can be characterized
13 as threatening. She was doing that while holding a
14 firearm, whatever direction you want to call it, in
15 their general direction, and furthermore, firing the
16 firearm.

17 Certainly all that conduct can be characterized
18 as threatening based on the evidence in the case.
19 Certainly taking the evidence in the light most
20 favorable to the State, the State would submit we have
21 proved our case.

22 THE JUDGE: Well, let's take the first issue
23 first. I think the officer did testify that she
24 investigated and the scene was in York County, in
25 York, South Carolina in York County. So I think she

1 did testify to that.

2 911 was looking at a map to send them out there,
3 from York County 911, to send them out there. They
4 had a map saying it was the property. She recognized
5 it as part of her territory. Obviously, the sheriff
6 was investigating it in York County.

7 The deputy testified that the incident occurred
8 in York County; York, South Carolina; York County. I
9 take judicial notice of the fact that the City of York
10 is in York County and the area we are talking about is
11 not in the City of York. The Court will take judicial
12 notice that, in fact, it is in York County. As a
13 matter of fact, I live a couple miles from there.
14 When you got to go out to western York County, you got
15 to go miles before you get out of York County. So it
16 was in York County, and I think the testimony agrees
17 with that.

18 Secondly, with regard to a directed verdict, I'm
19 required to look at the evidence most favorable to the
20 party against who the motion is being made, in this
21 case, looking at the evidence most favorable to the
22 State, and I find all inferences can be drawn from
23 that.

24 I find there is sufficient evidence for the jury
25 to find the State proved the elements of this case

1 beyond a reasonable doubt. What is required, and I am
2 going to charge the jury, is that the elements that
3 the jury must find beyond a reasonable doubt is the
4 defendant committed some action with regard to firing
5 that amounts to pointing and presenting.

6 I think if a weapon is skewed that way, but if
7 the shotgun was pointed in the direction of the
8 complainants in this case, the victims, and we have
9 testimony from Mr. Foy that that is the case, it is
10 not only pointed in their direction but fired in their
11 direction, although it was not directly at them, it
12 hit the tops of the trees and pellets fell down,
13 knocking off leaves, et cetera.

14 So there is an indication the gun was pointed in
15 their direction, fired, and some of the pellets hit
16 the trees and bounced out around them. So that is
17 some action with regards that amounts to pointing and
18 presenting, I submit.

19 Secondly, you have to prove it was a firearm.
20 There is no question about it. It was a shotgun,
21 plenty of testimony on that. It doesn't have to be
22 loaded. It can be blank. In this case it was loaded
23 and could be fired. No question about that.

24 The defendant was pointing and presenting a
25 firearm at another person other than herself unless

1 she was pointing to herself, it would be. But if you
2 point it, you have to point it at a third person,
3 somebody else. There is testimony to that fact, as I
4 said earlier in regard to the first one.

5 So all of these I have to find. Now, there may
6 be conflict in the testimony as to whether the
7 gunshots were fired just in the air, fired in their
8 direction such that it raised an issue with possibly
9 being hit by it in a threatening manner, thought they
10 were going to be hit by it.

11 All of those issues are for the jury, credibility
12 of witnesses and weighing the evidence. The Court
13 looks at evidence most favorable to the party against
14 who the motion was made. The Court doesn't weigh the
15 evidence. The only question for the Court to
16 determine is, is there substantial evidence for the
17 State to prove these elements of offenses beyond a
18 reasonable doubt.

19 Anyway, I so find and I deny your motion for
20 directed verdict.

21 Has the defendant made a decision if she is going
22 to testify or not testify?

23 MR. ARIAIL: Yes, your Honor, she is.

24 THE JUDGE: If you would bring her up. I want to
25 over that right.

1 MR. ARIAIL: Your Honor, I want to clarify one
2 thing with regard to her testimony because I want to
3 make sure that we figure this out. If she is to
4 testify, and she has decided to do so, her state of
5 mind is going to be an issue in regard to what was
6 going on at the time of the shots and all that, and so
7 I want to make sure I don't go over in regard to some
8 of your motions earlier, but there is testimony that
9 might come out as to why she reacted the way she did
10 and would be limited --

11 THE JUDGE: You know, if you open that door, it
12 is going to be wide open. You make up your mind on
13 that because you spent a lot of time trying to keep it
14 out.

15 MR. ARIAIL: My issue is I was trying to figure
16 -- I didn't want to go against your rule in the
17 beginning. I'm going to talk to her about that in
18 break, just because to make sure she understands what
19 she can and cannot testify to.

20 THE JUDGE: A lay person on the stand sometimes
21 doesn't understand everything about the rules. But I
22 am telling you, if she opens that door, the State
23 can -- it will be wide open and the State can walk
24 through it and come back showing videos, statements
25 she made, all that kind of stuff. You need to be

1 careful about that if she takes the stand and starts
2 testifying.

3 MR. ARIAIL: That's fine.

4 THE JUDGE: You take that risk. Do you
5 understand that?

6 MR. ARIAIL: I do. She does too.

7 THE JUDGE: Let me ask you, ma'am, for the
8 record, you are Lynn Smith Saucier; is that right?

9 THE DEFENDANT: Saucier.

10 THE JUDGE: Saucier. I can't quite get that
11 right.

12 Ms. Saucier, we have reached a stage at the trial
13 where you may present your defense. You have the
14 right to testify on your own behalf, however, no one
15 can make you testify. In the event you have a record
16 or any convictions regarding dishonesty or false
17 statements, or for a crime that the Court can find
18 imprisonment for more than one year, if this Court
19 finds the probative value of admitting this evidence
20 outweighs its prejudicial effect to you, the solicitor
21 may be able introduce this record for impeachment
22 purposes to attack your credibility or believability.

23 If you elect not to take the stand, I will charge
24 the jury that they are not to give the fact that you
25 did not testify any consideration whatsoever and there

1 is to be absolutely no prejudice to you because you
2 did not testify. It is left entirely up to you
3 whether or not you testify.

4 You may talk with your attorney, your family and
5 friends or anyone else, but the ultimate decision is
6 left entirely up to you.

7 Do you understand it is your decision whether you
8 will or will not testify in the case?

9 THE DEFENDANT: Yes, sir.

10 THE JUDGE: And have you discussed the advantages
11 and disadvantages of testifying with your attorney?

12 THE DEFENDANT: Yes, sir.

13 THE JUDGE: And do you wish to testify in your
14 case, ma'am?

15 THE DEFENDANT: Yes, sir.

16 THE JUDGE: Is that your decision?

17 THE DEFENDANT: It is mine.

18 THE JUDGE: All right. Thank you. You may
19 return to your seat.

20 We will take a quick five minutes and come back.

21 (Court in Recess.)

22 THE JUDGE: Please Bring the jury in.

23 (Whereupon, the jury came into open court at 3:34
24 p.m.)

25 THE JUDGE: Counsel, ready to proceed?

1 MR. ARIAIL: Yes, your Honor. I call my client,
2 Lynn Saucier, to the stand.

3 LYNNE SAUCIER,
4 being first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. ARIAIL:

7 Q State your full name again, please.

8 A Lynn Saucier.

9 Q Tell me, you reside here in York County?

10 A Yes, I do.

11 Q Where do you reside?

12 A 1212 California Road, York.

13 Q How long have you lived there?

14 A Since 1998.

15 Q Is it a farm or do you have acreage --

16 A I have acreage and some horses and dogs.

17 Q And some horses?

18 A And dogs.

19 Q How many acres is it?

20 A Sixteen.

21 Q Do you have a barn on there too?

22 A Yes, I do.

23 Q So you lived there since -- when was that again?

24 A 1998.

25 Q Are you married?

1 A Yes, I am.

2 Q Who are you married to?

3 A Clay Saucier.

4 Q He is here with you today?

5 A Right.

6 Q Ever since, I guess, 1998 you lived in that residence;

7 is that correct?

8 A I was married, had another marriage for a year, so I

9 didn't live there for that year.

10 Q Okay.

11 A And then I moved back to the barn.

12 Q Now, you got some neighbors next door, the Jones,

13 correct?

14 A Correct.

15 Q How long have they been there?

16 A Since 2007 or something like that.

17 Q Where did they come from, do you know?

18 A I don't know -- Pennsylvania, I think.

19 Q Your property, I guess, is next to theirs, adjoining

20 property lines?

21 A Correct.

22 Q Now, give me a little bit about your background. Are

23 you employed now?

24 A Yes, sir.

25 Q Where are you employed?

1 A Health South Rehab Hospital in Rock Hill.

2 Q What is your position there?

3 A I am an R.N. I was a full time R.N., but I am P.R.N.
4 now.

5 Q Where did you go to school? What's your training?

6 A Presbyterian Nursing School in Charlotte.

7 Q How long have you been a nurse?

8 A Since 1979.

9 Q How long have you worked for Health South?

10 A Since 2006, and prior to that I worked 16 years in the
11 emergency room.

12 Q Okay.

13 A Then I worked for Robert Lesley at Urgent Care.

14 Q Okay. Let me take you to this incident now that you're
15 here. You have been charged with pointing and presenting.
16 It came out of the incident that you had watched some video
17 of on April 2nd, okay?

18 Now, that day, we have seen the tapes. How did
19 you start off your day?

20 A I was recovering from rotator cuff surgery that I had
21 done a couple months before. I have two trucks. I have a
22 Dodge truck, which is a diesel truck, and a Ford diesel
23 truck. And I haven't driven the Ford in two months because
24 of my shoulder.

25 I was rehabbing my shoulder and I went to crank

1 my Ford and it wouldn't crank. And a diesel truck is
2 very hard to crank cold if the battery is dead. So I
3 have been trying all morning long to crank the truck,
4 putting a triple charger on it and hooking it up to my
5 tractor and different things.

6 During this time I had an audience, these people
7 that watch me. So finally, I left and I had to drive
8 my Dodge truck to build up -- it is kind of hard to
9 start, so I have to build up the battery on my Dodge
10 truck so I could hook it and my tractor to my Ford
11 truck to jump it off. So I left. I went and ran
12 errands and I was gone for an hour or maybe longer
13 than that. So I drove -- I came up my driveway and --

14 Q Let me stop you real quick. When you left, what time
15 was that?

16 A It was probably 10 o'clock or something like that.

17 Q So you came back an hour later?

18 A Right.

19 Q Where did you go during that time?

20 A I went to the feed store. I went and got diesel and I
21 went to the grocery store.

22 Q So when you came back -- when you left, was anybody in
23 the pasture down below?

24 A Yes, sir.

25 Q Who was down there?

1 A I recognized Robert Rainey, one of the men that walks
2 up and down California Street. He is usually the one that
3 watches me.

4 Q Where were they located in the field when you were
5 there?

6 A Directly in front of my front door where they usually
7 are.

8 Q Okay. You leave, you come back?

9 A Right.

10 Q Was anybody in the field down below now?

11 A Yes. There were more people. Carol Jones had pulled
12 her orange golf cart and had pulled it up and was sitting --
13 here is my front door. She was over here (indicating).

14 Q When you say "front door," the jury sees in the
15 photos --

16 A The one that showed -- you could see it.

17 Q The one on the side that is facing down the hill?

18 A Right.

19 Q So they were down to the left?

20 A Right.

21 Q On the bottom?

22 A Right.

23 Q Okay. Now, where, in relation to where the video was
24 taken by Mr. Foy, where were they in relation to that,
25 farther on down?

1 A They were over on -- looking at my front, they were
2 over here (indicating).
3 Q So farther on down the left?
4 A Right.
5 Q Closer to your pond down at the beginning --
6 A No, the pond is on the other side.
7 Q Excuse me?
8 A My front door. They were this way. Looking out my
9 front door, they were over here (indicating). She was
10 sitting --
11 Q Let me get you the photos. This is an exhibit right
12 here.
13 A Okay.
14 Q Show me where is it on this. Is it on the side over
15 here (indicating)?
16 A Yes. Back there. This is my front door. They were
17 down here (indicating).
18 Q So they are in the bottom down --
19 A Right down in the bottom.
20 Q But this is your door on the side we're talking about?
21 A Right..
22 Q So it looks out toward the bottom?
23 A Right.
24 Q So that's where they were down --
25 A You could probably see it better here. This would be

1 my front door and they were like down -- this is my dog
2 yard. This is the fence. They were like back here
3 (indicating).

4 Q Okay. How long do you think they stayed in that area
5 from the time you first saw them?

6 A From when I pulled up -- from going to the grocery
7 store?

8 Q Yes.

9 A It wasn't but a few minutes because I got my propane
10 tanks out. Then I had to have a second set of jumper cables
11 which was in my Dodge truck. So I pulled my -- I was really
12 aggravated about trying to get these trucks cranked -- truck
13 cranked. I was really aggravated. I am used to the people
14 watching me and filming me.

15 MR. SHIFLET: Objection.

16 THE JUDGE: I'm going to sustain the objection.

17 I don't know relevance to this, Counselor.

18 BY MR. ARIAIL:

19 Q Tell me what happened and not anything outside --

20 A Okay. So I pulled -- I'd gotten my propane tanks out
21 of the back of the Dodge truck and all along I have my
22 rotator cuff that I am just getting on with. So anyway, I
23 have a shotgun in the back of my Dodge truck. So when I
24 pulled the jumper cables out -- and the jumper cables for
25 the diesel truck are heavy duty and long.

1 So when I pulled those out, I pulled my shotgun
2 out from underneath the back seat of my truck. And so
3 I had the jumper cables and I had my shotgun and I am
4 walking to the Ford truck, which is in that picture
5 right there (indicating).

6 Q So you are up top here, right?

7 A Yeah. I pulled the Dodge in right there. This is
8 where my Ford was parked. So I am going there to there
9 (indicating).

10 Q Okay.

11 A And I was frustrated in dealing with trying to jump
12 this truck off, my shoulder, and there was my audience. And
13 I just shot my shotgun and used profanity. I had no idea.
14 I shoot skeet in that exact same spot. I did not know it
15 was against the law to cuss within your own home. I did not
16 know that. I didn't know that.

17 I did not know that I cannot shoot my shotgun in
18 my driveway where I always shoot my shotgun, where I
19 shoot skeet. I did not realize that.

20 Q We saw the shots. Where were you, I guess, positioned
21 on each of the shots? The first shot it appears you were
22 behind the truck?

23 A Right. I had gotten it out of underneath the back seat
24 of my Dodge truck.

25 Q How were you holding the gun? Where were you pointing

1 it?

2 A I was pointing it up in the air. I couldn't put it to
3 my shoulder because I just had -- my rotator was messed up.

4 Q Okay.

5 A So I just, you know, I had ammo in it and I just raised
6 it and I shot up in the air.

7 Q So the second shot?

8 A I am going to the Ford truck.

9 Q Okay.

10 A I have the jumper cables, I have my shotgun. Actually,
11 I am putting the shotgun in the Ford truck because I am
12 getting ready to go to Virginia and pull my horses up to
13 Virginia and so I like to carry something when I go alone,
14 you know, out of state and stuff pulling horses, I like to
15 have a gun, something, some kind of protection. So I was
16 putting that shotgun into the Ford truck.

17 Q Then you fire another one?

18 A I fired another one.

19 Q Why are you doing this at this time? Why are you
20 shooting these --

21 A I was frustrated.

22 Q Okay.

23 A I was frustrated.

24 Q Now, there was some comments you made in regard to,
25 what was the issue -- why did you use the profanity during

1 this time?

2 A I was very, very aggravated. You know, when you have
3 people watching you --

4 MR. SHIFLET: Objection, your Honor.

5 THE WITNESS: -- filming you.

6 BY MR. ARIAIL:

7 Q How long have you used guns?

8 A All of my life. I have been a gun owner since I was 12
9 years old. So I don't know how many years that's been, but
10 I have always owned guns.

11 Q Have you taken any safety classes or any classes in
12 regard to guns?

13 A Yes, I have.

14 Q Which ones?

15 A I have taken a concealed weapons permit class plus I
16 was married to a firearms instructor, so I kind of got free
17 courses there.

18 Q Do you shoot skeet and trap?

19 A I do.

20 Q How many times do you do it per week?

21 A I have not shot in, gosh, it has been months -- since I
22 blew my shoulder out I have not been able to do it very
23 much.

24 Q Now, during this whole situation you are up on top of
25 your yard. What was your intent or did you have any ill

1 will toward individuals below?

2 A No, I did not.

3 Q Were you threatening them in any manner, making any
4 comments?

5 A Absolutely not.

6 Q Had you ever had any issue with Mr. Foy?

7 A No. I didn't know him except for seeing him looking
8 at, you know, watching me. I have had issues.

9 Q In regards to the shot, I guess it was the third shot
10 that said that pellets had come down around. Were you
11 pointing it in that -- it's hard to see on the tape a little
12 bit. Could you tell this jury where you were pointing that?

13 A I was headed to my Ford truck which was down my
14 driveway. I wouldn't have had -- in no way was I pointing
15 at anybody. In fact, they were actually behind me from the
16 direction I was going.

17 MR. ARIAIL: I have no further questions, your
18 Honor.

19 MR. SHIFLET: Court's indulgence?

20 THE JUDGE: Yes, sir.

21 MR. SHIFLET: The State has a matter of law to
22 take up at this time.

23 THE JUDGE: Madam Forelady, members of the jury
24 panel, if you would retire to the jury room for a
25 brief period of time.

1 (Whereupon, the jury exited the courtroom at 4:03
2 p.m.)

3 MR. SHIFLET: Two issues, your Honor, I would
4 like to bring to the Court's attention before we begin
5 cross-examination. The last statement the defendant
6 made was that she never shot in that direction. I
7 think we have some inconsistency and conflict at least
8 as it concerns her statements that were kept out of
9 the previous video. I understand those statements
10 cannot be ruled on and couldn't be introduced in our
11 case. However, when the defendant takes the stand and
12 they give statements, they are still bound by
13 statements even if they are kept out for some reason
14 by Miranda. If they take a position that is
15 inconsistent with that, they can still be impeached
16 based on that statement.

17 Furthermore, also a portion of the video that was
18 kept out references her shooting skeet. She says, "I
19 shoot skeet right there." Furthermore, stating, "you
20 will find evidence of that over by the pond." Very
21 specific in that statement, one of which was
22 suppressed.

23 During her direct examination she stated, "I
24 shoot skeet in that exact same spot," referencing
25 where she was in the video. Again, we have a

1 conflict. I would like to make the Court aware that I
2 think the State would be entitled to address that
3 conflict in cross-examination.

4 THE JUDGE: Mr. Ariail.

5 MR. ARIAIL: I am trying to remember what she
6 said in her last comment. I don't know if it was
7 inconsistent with her position that she took on the
8 tape.

9 THE JUDGE: I am trying to recall that. It
10 seemed like on the tape I don't think -- even though I
11 kept out her statement on the tape to the police
12 officer, I don't believe she testified that she shot
13 in the direction of the victims in the case.

14 I don't think she testified that she did that. I
15 think she shot up in the air is all she said, if I
16 remember the tape right. So that's why I am saying,
17 you are trying to keep the tape out to what she said
18 on the tape after she was arrested, and I agree that
19 you are entitled to keep it out.

20 But actually, I didn't hear her say anything
21 that's incriminating except as it may tend to a
22 direction or something, maybe. But so far as where
23 she fired, she didn't say anything about it. I think
24 her testimony was, "I did fire up in the air."

25 MR. SHIFLET: I think our position would be

1 simply she was extremely specific in the video
2 portion, which was suppressed, that she shot in this
3 direction, and I am referencing toward the pond.

4 In her testimony now she is taking the position
5 that she was shooting in the air, that she was not
6 shooting at the victims. In that regard, it is
7 inconsistent with the specific nature of her testimony
8 or her statements on the video.

9 MR. ARIAIL: I think the jury can also take the
10 video for what it is worth. They are going to see the
11 video. They are going to know which way she is
12 shooting.

13 THE JUDGE: You put her up. Now, once you put
14 her up -- she didn't have to take the stand and
15 testify. Once she does, her credibility is in issue.
16 They can attack that credibility with any
17 inconsistencies with regard to her statements or her
18 testimony today or any prior inconsistent statements
19 she made.

20 So, you know, once she takes the stand, I told
21 you, you open the door, you know the State can walk
22 right through that door because she cannot get on that
23 stand and take an inconsistent position than what she
24 has taken before or something that her credibility
25 might reasonably deny.

1 MR. ARIAIL: I am just trying to figure out if it
2 is inconsistent -- what I thought she said was
3 consistent with that she shot -- she never said, "I
4 turned this way and shot at them." She is always
5 saying, "I am going in a different direction," which I
6 think is consistent with what she is saying is she is
7 shooting where the pond is.

8 MR. SHIFLET: I am going back to my notes and I
9 believe there was also testimony to the fact that she
10 was pointing at the truck, which would be also in
11 conflict with her statement on the video.

12 MR. ARIAIL: The truck was just toward the pond,
13 on the property. I don't think it is inconsistent.

14 MR. SHIFLET: I have no intentions of dragging
15 this out any further, your Honor.

16 THE JUDGE: I will let you ask questions about
17 her testimony today and on the stand any
18 inconsistencies that are on the testimony. I will
19 allow you to ask her about that. If she is saying I
20 went in this direction, but what she says is in that
21 direction is not really that direction, obviously, you
22 can impeach her with that or question her about that.

23 MR. SHIFLET: My point was under the original
24 scenario, subject to your pre-trial ruling, I was not
25 going to be able to get into her statement on the video

1 saying, "I shot in that direction." I have a still
2 image of her pointing and when she said it. I was
3 relying heavily on that with my case because it was a
4 major conflict in the position she is taking.

5 Now, on direct examination, she has conflicted
6 with that position --

7 THE JUDGE: Let me see that. If you can bring
8 that up on the tape. Let me look at it.

9 If that turns out be the case, I may let you ask
10 her specifically and just show her that specific
11 portion and no other portion and ask her about that,
12 did you say to the police officer on the tape, even
13 though it may not have been shown before. I may let
14 you do that and not let you go into the whole thing.

15 MR. SHIFLET: That's fine.

16 (Playing video.)

17 MR. SHIFLET: Her statement in that is, "I didn't
18 point at anybody. I pointed it this way."

19 THE JUDGE: All right. Back it up. Let me see.

20 MR. SHIFLET: She said, "I didn't point it at
21 anybody. I pointed" -- and then it looks like the
22 video kind of stutters a little bit, and then you hear
23 "this way."

24 (Playing video.)

25 THE JUDGE: Is that what you are talking about?

1 MR. SHIFLET: She is pointing at the pond.

2 THE JUDGE: She is pointing to the right of the
3 house. I don't know where the pond is. She pointed
4 to the right of the house.

5 MR. SHIFLET: She is pointing -- she is standing
6 right here, your Honor, or right here in this
7 direction (indicating). She is pointing this way.
8 The victims were over here (indicating).

9 THE JUDGE: Okay. That is what you want to ask
10 her?

11 MR. SHIFLET: Yes.

12 THE JUDGE: Isn't that what she testified to
13 today on the stand, that she was firing down towards
14 the truck and not over to the left?

15 MR. ARIAIL: Correct.

16 MR. SHIFLET: But my position is --

17 THE JUDGE: That is not inconsistent, is it, with
18 what was on there? If she is saying, "I was pointing
19 this way." Where the alleged victims were was over
20 there, that's what she is saying today, so why is that
21 inconsistent?

22 MR. SHIFLET: Her testimony was that she was
23 walking from Point A to Point B with jumper cables and
24 a gun and she was firing in the air. The testimony
25 from the video is, "I was pointing that way." That is

1 inconsistent. It is the third or fourth version of
2 inconsistency, but it is nonetheless inconsistent.

3 THE JUDGE: Well, didn't she testify today that
4 she was pointing away from them toward the pond?
5 Isn't that what she testified to?

6 MR. ARIAIL: "I fired in this direction." She
7 basically was saying something opposite of where they
8 were. That's what I took --

9 THE JUDGE: I don't see that as inconsistent,
10 Solicitor. You can cross-examine her, but I don't see
11 that as inconsistent with the tape.

12 Anything else?

13 MR. SHIFLET: No.

14 THE JUDGE: Please bring the jury back in.

15 (Whereupon, the jury came into open court at 4:14
16 p.m.)

17 THE JUDGE: Please proceed, Solicitor.

18 MR. SHIFLET: Thank you, your Honor.

19 CROSS-EXAMINATION

20 BY MR. SHIFLET:

21 Q Good afternoon, Ms. Saucier. Is that --

22 A Saucier.

23 Q Ms. Saucier, again, I know we have talked about this.
24 Where exactly do you live?

25 A 1212 California Road.

1 Q Again, you agree that would be that residence right
2 there ?

3 A Right.

4 Q Were you home on April 2, 2012?

5 A I was.

6 Q So the individual on the video we have seen, that's
7 you, correct?

8 A Yes.

9 Q You own a gun?

10 A Yes.

11 Q You own more than one?

12 A Yes, I do.

13 Q How many guns do you have?

14 A I have no idea.

15 Q What kind of gun is that on the video? Is that a
16 shotgun?

17 A Yes.

18 Q When you are shooting at barns or whatnot, what
19 ammunition do you generally use?

20 A With my shotgun, I use targets. But if I am shooting
21 like muskrats or something like that, I have a 22.

22 Q So when you are shooting muskrats, you have a 22?

23 A Right.

24 Q The gun that you had on the video was what?

25 A I believe that was a Franchi 20 gauge shotgun.

1 Q That would be a shotgun?

2 A Right.

3 Q A little bit about the ammo. What did you call it?

4 A Target.

5 Q Maybe I need to help the jury understand a little bit.

6 How does that work? What is the actual shell made of?

7 A It is little bitty shells, little bitty bullets.

8 Q BB's?

9 A Little tiny -- I think there's 500 per ounce is how
10 small they are, and they don't have a lot of power. What
11 you shoot with a target load is basically skeet, and
12 anything like 50 feet out, it is not powerful enough to hit
13 so you have to shoot it pretty close up otherwise it just
14 drops off, the BB's lose momentum.

15 Q Let's talk a little about the layout of your property.
16 Do you agree that's your residence?

17 A Right.

18 Q Which building is your residence?

19 A The silver.

20 Q That one (indicating)?

21 A Right.

22 Q What is this?

23 A That is a car shed.

24 Q What is this?

25 A A hay barn.

1 Q Is this your pond?

2 A Right.

3 Q Is it safe to say -- whose property goes this way

4 (indicating)?

5 A That's mine up until it meets the Jones.

6 Q So the Jones property would be this way?

7 A Right.

8 Q So again, same scenario: Your residence, the shed, the

9 barn, and Jones' property is this way (indicating)?

10 A Uh-huh.

11 Q Now, you saw that video we played, correct?

12 A Yes.

13 Q Were you able to clearly see yourself on the video?

14 A I knew that was me.

15 Q You could see yourself?

16 A Yes. I was the only person there, yes.

17 Q But there was no trees in the way or anything like

18 that?

19 A No. There was a tree in front of the video, or trees

20 where he was going around.

21 Q Right. But were you visible on the video with no

22 obstructions?

23 A Yes.

24 Q So you were able to see yourself with the shotgun,

25 correct?

1 A Yes.

2 Q So you would agree whoever took that video they would
3 have seen the same thing, correct?

4 A Correct.

5 Q Now, I want to talk a little bit about your muskrat
6 problem.

7 A Okay.

8 Q You have an issue with muskrats, don't you?

9 A Absolutely.

10 Q First question is, I sat there and I paid attention
11 when your attorney was asking you questions and I don't
12 recall the word "muskrat" having been said by you one time.

13 Did you mention anything about muskrats just now when
14 your attorney was asking you questions?

15 A I don't recall. I don't know.

16 Q Would you agree that you didn't mention muskrats just
17 now?

18 A I don't think I did.

19 Q Okay. I didn't either. I didn't hear it. Just so we
20 all know, what is a muskrat?

21 A It is a four-pound rat that lives in the water. They
22 weigh -- well, they are probably bigger than that. Four to
23 eight pounds. They look just like a rat. They look similar
24 to a beaver but a beaver is about 50 to 70 pounds and a
25 beaver has a wide tail.

1 A muskrat has a tail that's like two inches wide and it
2 is flat. And they live in the water. They are aquatic
3 animals, and they burrow into the pond. Actually, my
4 pond -- I almost lost my pond this summer because they
5 tunneled so bad underneath it that it has drained my pond,
6 and about two months ago my driveway caved in because the
7 muskrats had gotten into my driveway and chewed the black
8 plastic pipe that goes under your driveway, chewed it, and
9 my driveway caved in. I had a 40-inch -- I measured it -- I
10 a 40-inch deep hole that you could put a Volkswagen in.

11 Q So you have a problem with them?

12 A Yes, I do.

13 Q When you are shooting at muskrats, you are shooting --
14 you say they live in the water?

15 A They come out, they den -- they go underwater and they
16 build dens up into the bank.

17 Q When you are shooting at them, you are shooting at the
18 pond, toward the pond?

19 A If I see one swimming or if I see one on the bank,
20 that's the only time I can hit one.

21 Q But if you are shooting at a muskrat, you are going to
22 be aiming in this direction (indicating), correct?

23 A Unless they are down at my driveway.

24 Q Where are you talking about in the driveway?

25 A Where they caved my driveway in.

1 Q Well, your pond is down here. Did it cave in there?

2 A Where my driveway is, I have an overflow that goes from
3 my pond to my driveway and the muskrats get down into the
4 overflow and they chew --

5 Q They live in the water and they den up under the banks;
6 is that correct?

7 A Correct.

8 Q You call them aquatic. They don't fly, do they?

9 A No.

10 Q Now, let's talk about April 2nd, 2012. When
11 Deputy Estep came and talked to you, she asked you what was
12 going on. You said you were shooting at muskrats, did you
13 not?

14 A I had earlier that day.

15 Q She asked you about an hour ago what is going on and
16 you said?

17 A And I said I have been trying to jump my truck off.

18 Q Then you said, "I am shooting muskrats." And you
19 went -- correct?

20 A I said that at some point.

21 Q We can play the video.

22 A I said that at some point.

23 Q You don't disagree that's what you said in response to
24 her question?

25 A No.

1 Q In fact, you went and got a permit or something saying
2 you could shoot muskrats?

3 A I do. I have a federal depravation.

4 Q When you shoot at muskrats, do you generally call out
5 to them and say "muskrats" when you shoot? Is that what you
6 do? Do you agree that's what you told Deputy Estep?

7 A I did not say that.

8 Q You didn't say that?

9 A You don't call them muskrats.

10 Q Do you disagree that -- let's talk about some of the
11 statements you made. We heard it on the video. You have
12 acknowledged it was because you were frustrated that you
13 used some profanity, right?

14 A Right.

15 Q Deputy Estep, did she ask you -- did she say, "Well,
16 you can't be cussing and saying M-F'ers like that"? Do you
17 agree she asked you that question?

18 A Right.

19 Q Do you agree that you responded "I didn't say that. I
20 said muskrats"? Did you say that on the --

21 A I did say that, yes, I did.

22 Q Thank you. Now, let's talk about how you were
23 aggravated. You stated you were aggravated and you were
24 upset and I believe you stated something about the people
25 down there filming you?

1 A Yes, sir.

2 Q And that's why you were aggravated?

3 A No, sir.

4 Q Well, why were you aggravated? Because of the jumper
5 cables in the truck?

6 A There was a number of things. Would you like me to go
7 back over them?

8 Q No. I heard them on direct exam, but my question is,
9 that was the sole reason for you being frustrated, the truck
10 and the situations you explained before?

11 A My shoulder, my audience.

12 Q Well, my question then, the statements you were making,
13 would you disagree that they were directed toward the
14 individuals down there?

15 A I am sure some of them were.

16 Q Okay. Again, you said you were used to people filming
17 you, correct?

18 A Absolutely.

19 Q But you agree also that you told the officer you were
20 shooting at muskrats?

21 A I had been.

22 Q And you were upset and you were frustrated. That's why
23 you were shooting and cussing, right?

24 A No, sir. I pulled my shotgun out with my jumper cables
25 and I had it so I shot it.

1 Q Let's look at this property for a second. This is,
2 again, another view of your residence; is that correct?

3 A Correct.

4 Q This would be the your main residence and this is where
5 you were on the video (indicating)?

6 A No, sir.

7 Q Not where you were?

8 A No, sir. I was not.

9 Q Where were you on the video?

10 A As I said -- do you see where my Ford truck is?

11 Q Yes.

12 A Do you know which one is -- I mean the Dodge truck, not
13 my Ford.

14 Q I see the Dodge and the Ford.

15 A Okay. I had driven my Dodge truck to charge the
16 battery so I could use it to charge my Ford truck. Do you
17 see where my Ford truck is sitting?

18 Q Yes.

19 A Okay. My Ford truck was backed into that area.

20 Q All right. But on the video you leave from right here
21 (indicating). There is a truck here on the video and you
22 walk beyond that truck and you head in this direction.

23 A No, I do not.

24 Q All right. Let's take a look. First of all, let's
25 start with this: Again, you agree this is your residence

1 and this is your barn (indicating), correct?

2 A Correct.

3 Q Same barn as right here (indicating), right?

4 A Right.

5 Q The pond is over here (indicating)?

6 A Uh-huh.

7 Q Who is that right there (indicating)?

8 A That is me.

9 Q Okay.

10 A So you can see -- if I was in the grass, it would look

11 like I was in the grass.

12 Q I didn't say you were in the grass.

13 A Well, you said I was in the grass. You just

14 pointed there.

15 Q You are in this direction?

16 A That's grass. Sorry, but that's grass. I am in the

17 gravel.

18 Q Well, you know what, do you think it makes any

19 difference whether you are here or here?

20 A Yes, sir, because as I said, I was walking from my

21 Dodge truck to my Ford truck.

22 Q Again, Deputy Estep asked what is going on with the

23 shooting and you said you're shooting the muskrats. You

24 agree if you are shooting muskrats, you are shooting at the

25 pond?

1 A That was earlier that day.

2 Q She asked you about what just happened --

3 A And I said I was trying to jump my truck off. She
4 said, "What went on an hour ago" and I said, "I have been
5 trying to jump my truck off."

6 Q You also explained to her, you agree, she said, "You
7 can't make this statement 'motherfuckers'" and you agree
8 that you said, "I didn't say that, I said 'muskrats'"?

9 A I was being --

10 Q Did you say that or not?

11 A Yeah, I did.

12 Q Okay.

13 A I was making a joke.

14 Q Making a joke?

15 A Yes, I was.

16 Q It wasn't a joke when you were firing your firearm in
17 the direction of the victims. Was that a joke?

18 A No, sir, it was not. I was not firing in the direction
19 of the victims.

20 Q You were not. Let's talk about that for a second.
21 Let's look at this image. It's a little fuzzy. They had to
22 zoom it in a little bit.

23 We already talked about the pond is this way.
24 Here you are (indicating). And looking at your
25 property, pond being this way, and you are right here

1 (indicating). I don't care if you are right here. It
2 doesn't make any difference to me.

3 When you look at this, your body is facing all of
4 us; is that correct? And you are facing in the
5 direction toward this way (indicating); are you not?

6 A I can't tell. I'm sorry.

7 Q Are you not standing in this area, and based on your
8 image where you are facing, are you not facing this way?
9 Yes or no?

10 A I can't tell.

11 Q You can't tell from this image right here? Is that the
12 front of your body or is that the back of your body?

13 A I don't see. Can you point to where I am because maybe
14 from here -- okay, I see it. I was looking over a ways.

15 Q If you would be more comfortable, you can come down
16 here.

17 A I'm fine.

18 Q So you agree you are facing this direction?

19 A I don't see my whole face.

20 Q But what are you holding?

21 A I've got my shotgun.

22 Q You can't hold that -- are you holding the shotgun
23 behind your back?

24 A No.

25 Q Okay. I don't want to keep talking about the

1 statements you made on that short video. That's not really
2 my point, but you agree that you made those statements,
3 correct?

4 A Correct.

5 (Playing video.)

6 BY MR. SHIFLET:

7 Q So there is no disagreement what the exact words were?

8 A No.

9 Q And you agree that they were -- you were talking to the
10 individuals you saw down there, correct?

11 A Right.

12 Q You were not talking to muskrats or anything?

13 A No.

14 Q Okay. You agree you were holding a gun, correct?

15 A Yes.

16 Q You agree you fired that gun, correct?

17 A Yes, I did.

18 Q You agree you fired it in the air, correct?

19 A Yes.

20 Q You agree you fired it in the air in their direction,
21 correct?

22 A No, sir.

23 Q You didn't do that?

24 A No, sir.

25 Q Let's talk about those little pellets we talked about

1 earlier from shotgun shells.

2 A Yes.

3 Q Did you hear that on the video?

4 A No.

5 MR. SHIFLET: Key that back up, please.

6 (Playing video.)

7 BY MR. SHIFLET:

8 Q That's the last shot of three, right?

9 A Yes.

10 (Playing video.)

11 Q Do you hear that? We can play it again.

12 (Playing video.)

13 A I don't know what that is.

14 Q You don't hear that?

15 A I do hear that. I don't know what that is.

16 Q You don't know what that is? Was it raining?

17 A No, I don't think so.

18 Q Had you just fired your shotgun?

19 A Yes.

20 Q You admit your shotgun discharges a shell that has

21 little BB's or pellets shells in it?

22 A Yes.

23 Q Do you agree what goes up must come down?

24 A True.

25 MR. SHIFLET: Court's indulgence.

1 BY MR. SHIFLET:

2 Q You had some sort of disagreement, some problems with
3 the Jones', correct?

4 A Correct.

5 Q About the property line?

6 A Correct.

7 Q In fact, you don't care very much for them, do you?

8 A No, sir.

9 Q You saw those individuals down there on that property,
10 didn't you?

11 A Yes, sir.

12 Q Then you made those statements, daring them to call the
13 police, correct?

14 A Yes, sir.

15 Q And you fired your gun in the air in their direction,
16 correct?

17 A No, sir.

18 Q Did you fire it in the air?

19 A I fired it in the air.

20 Q And that's you right there?

21 A Yes.

22 MR. SHIFLET: No further questions.

23 MR. ARIAIL: No questions, your Honor.

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

25 (Witness excused.)

1 MR. ARIAIL: No further witnesses, your Honor.
2 That's our case.

3 THE JUDGE: Anything in reply, Solicitor?

4 MR. SHIFLET: No.

5 THE JUDGE: We have run just long enough so we
6 cannot charge this afternoon, it is too late. We
7 don't like to go past 4 o'clock with that.

8 Madam Forelady and members of the jury panel,
9 this concludes all the taking of testimony and
10 evidence in the case. We still have remaining final
11 arguments from counsel and my instruction to you with
12 regard to the law that applies.

13 It is a little late in the day to do that. By
14 the time we finish that up, it will probably be 5:30
15 or 6 o'clock, so we are not going to do that. We are
16 going to recess for the evening.

17 I am going to try to get started as soon as we
18 can in the morning so I will ask you if you will be
19 back in the jury room ready to go at 9:15, at 9:15.
20 So we will begin at that time with arguments and
21 charge and get the case on to you at that time.

22 On the overnight recess, I have to remind you not
23 to talk about the case among yourselves or anyone else
24 including family, friends, or anyone else you might
25 see. You can talk to them when the case is over and

1 the verdict is in. Please do not do that tonight.

2 Please do not use any kind of electronic device
3 to find anything about this case or try to find
4 anything out about it. Please do not watch any media
5 accounts if there is any. I don't know of anything.
6 Please do not watch or listen to any media accounts.
7 Please have a pleasant night and be back in the jury
8 room and ready to go at 9:15. Thank you.

9 (Whereupon, the jury exited the courtroom at 4:35
10 p.m.)

11 THE JUDGE: Counsel, I will hear you with regard
12 to any motion you might need to make at this time.

13 MR. ARIAIL: I think I have to renew my motion as
14 to directed verdict and be able to preserve that and
15 all other motions that were made pre-trial.

16 THE JUDGE: All right. The motion is noted for
17 the record and denied for the same reason I gave
18 earlier. I find there is substantial evidence from
19 the State to prove the elements of this offense beyond
20 a reasonable doubt. And in looking at the evidence
21 most favorable to the State and all inference drawn
22 from that evidence, that motion is denied.

23 Anything else from the State?

24 MR. SHIFLET: No. I was wondering if we might
25 talk briefly in chambers with regard to the charge.

1 MR. ARIAIL: That's the question I have.

2 THE JUDGE: Yeah, we can do that. Come on back.

3 I've got my charge in place. It probably will satisfy
4 you when you come back and see me.

5 (Whereupon, the above-entitled matter was
6 adjourned, this date.)

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C E R T I F I C A T I O N

STATE OF SOUTH CAROLINA

COUNTY OF YORK

I, Phyllis M. Campo, Official Court Reporter for
the Sixteenth Judicial District of the State of
South Carolina, do hereby certify that the
foregoing is a true, accurate and complete Transcript
of Record of the proceedings at the time and place
herein in the above-entitled matter.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

February 7, 2014

Phyllis M. Campo
Official Court Reporter

1 STATE OF SOUTH CAROLINA) Court of General Sessions.
)
 2 COUNTY OF YORK) 2012-GS-46-04105
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State of South Carolina) Transcript of Record
 vs.) VOLUME 3
 Lynne Smith Saucier,
 Defendant

Date: August 29, 2013

BEFORE: The Honorable Lee Alford, Judge; and a jury

APPEARANCES:

John Shiflet, Esq.,
 Assistant Solicitor

Ryan Newkirk, Esq.,
 Assistant Solicitor

Misti Shelton, Esq.,
 Assistant Solicitor

Mills Ariail, Esq.,
 Attorney for Defendant.

Phyllis M. Campo, RPR
 Court Reporter

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1 THE JUDGE: Good morning, Counsel. Are we
2 ready to proceed?

3 MR. SHIFLET: The State is ready. One thing I
4 wanted to bring to the Court at this time, a very
5 minor issue. I have some case law, if necessary. I
6 wanted to make sure we were clear, the defense would
7 not be able to argue that some other charge should
8 have been charged in this case as we did have some
9 evidence on the initial warrant, discharging firearm,
10 and subsequent warrant. Based on the case law, of
11 course, the defense wouldn't be able to --

12 THE JUDGE: He can't argue that. I mean, the
13 decision has to be made. Now, he can point out that
14 originally a different charge was made, but he can't
15 argue that it should have been another charge. I
16 think he can argue that they initially charged
17 something else and decided on this particular charge.
18 I think he is entitled to do that, but he is not
19 going to be able to argue that this is what they
20 should have charged.

21 MR. ARIAIL: I am not going to argue that.
22 That would be a lesser included, which I don't have
23 in this case.

24 THE JUDGE: Now, the defense put up some
25 testimony and evidence so the State will get the last

1 argument. Does the defense have anything on the law?

2 MR. ARIAIL: No, your Honor.

3 THE JUDGE: Then I think we are ready to
4 proceed. All right. Please bring the jury in.

5 (Whereupon, the jury came into open court at
6 9:21 a.m.)

7 THE JUDGE: Good morning, Madam Forelady, and
8 members of the jury panel. I hope you had a pleasant
9 night last night. We are ready to resume the trial.
10 We do have more of the trial. Counsel will make
11 their final arguments to you. I ask that you listen
12 attentively now as counsel addresses you in closing
13 arguments.

14 MR. ARIAIL: Thank you, your Honor. May it
15 please the Court.

16 THE JUDGE: Yes, sir, Counsel.

17 MR. ARIAIL: Good morning, ladies and
18 gentlemen. This is my last opportunity to speak with
19 you in closing this case. My client and I appreciate
20 your time and attention in this matter. This is a
21 very serious matter to her. She wanted to have this
22 heard. She got on the stand yesterday to tell you
23 her side of the story. She appreciates your time and
24 attention in this matter.

25 Now, in regard to this closing argument, I am

1 going to speak first. The solicitor is going to come
2 after and he will provide the last word. I want to
3 make sure that when you go back in there, that you
4 look at all of the evidence as you have it in front
5 of you.

6 Now, I can't reply to what the solicitor is
7 going to say. I know kind of what the solicitor is
8 going to say and what they are going to argue. But
9 when I am going through this, I guess the first thing
10 that comes out to me in my closing is what all of us
11 like to tell each jury, the defense attorney. When
12 you all look at it, it is my hope you would use your
13 common sense and everyday knowledge that you have in
14 evaluating this case.

15 There is going to be argument from the
16 solicitor that I am sure that use of profanity,
17 unkind comments to law enforcement, things of that
18 nature. My client admits that she shouldn't have
19 said that, no question. But when you get down to the
20 nuts and bolts of this, the judge is going to charge
21 you on the law. He is going to tell you what
22 pointing and presenting is.

23 It is a pretty straightforward charge that you
24 will see in this. It is point or present, which
25 means point or present, have a gun of that nature, of

1 a firearm, and you point it at another person.

2 What you have to understand is, even though
3 it's those elements right there, there is another
4 part of this charge the judge is going to give you
5 that he is going to talk about criminal intent.

6 Criminal intent is the intent -- what was the
7 intent of Ms. Saucier? What was her state of mind?
8 What was she intending to do? And he will charge you
9 that presenting a weapon has to be done in a
10 threatening manner. And to be able to satisfy the
11 burden, the State has to prove that a gun was
12 presented in a threatening manner.

13 And what they are going to draw on is, and I
14 think what they are going to say, these comments,
15 this language -- as you have seen they have enhanced
16 these videos to make sure you hear the bad comments,
17 the cuss words. So they are going to hammer on that
18 because they want you to think that she's a
19 threatening individual and that she was doing this
20 based on her language.

21 The way I look at it is, and I go back since
22 day one when Ms. Saucier came to my office, I said
23 people are allowed to have guns on their property.
24 People are allowed to shoot weapons on their
25 property. I have done it before. Ms. Saucier has

1 done it before. Probably the solicitors have done it
2 before. You are allowed to do that if you do it in a
3 lawful manner.

4 In this case, I do not see the threatening
5 nature of my client. The only thing I see is some
6 unkind words, some unkind -- if she was threatening,
7 as you can see from the video, she could have easily
8 walked down the hill right to where they were, they
9 are only 150 feet away. She could have pointed the
10 gun in their direction. She could have yelled at
11 them, "I am going to hurt you. I am going to harm
12 you. I am going to come down and shoot you."

13 She didn't do that. She walked back and forth
14 in her driveway up on the top of her property and she
15 discharged the weapon. Now, she didn't use good
16 judgment in discharging the weapon. There is no
17 question, she probably should have just walked on --
18 but she told you on the stand she was frustrated, she
19 had things going on, her arm hurt, she had been
20 trying to get her car started, things were going on.

21 Now, even though discharging the weapon, it
22 still, from my review, from what I saw, it didn't
23 rise to the level of that threat, that criminal
24 intent that she had to have, the state of mind that
25 "I am going to threaten these people, I am going to

1 harm these people."

2 You can even hear, and I will go through it
3 before we conclude, let you hear the 911 tape, the
4 911 tape that we introduced, my client introduced,
5 not the State. They didn't want to put it in. And
6 the reason they didn't want to put it in is because
7 it has the statement in there by Mr. Foy saying "she
8 didn't threaten me."

9 He admits that to the 911 operator. We'll go
10 through it. She asks him specifically, "Did she
11 threaten you?" "No. No, she didn't." That's what
12 he said. You can hear it for yourself.

13 So when I look at it too, not only from the
14 state of mind from my client, which we believe was
15 not a threatening nature, you ought to look at it
16 from Mr. Foy's position too. He is down in the
17 bottom -- he comes not only into two gunshots he said
18 he heard, goes into the firing zone or whatever you
19 want to call it, as he says, he goes into that area
20 and then starts taking a camera.

21 He is sitting there. He says "I got it. I
22 got it. Oh, here we go." It has all of this on the
23 video as to what he is doing. He doesn't feel
24 threatened. He doesn't feel that way. He even
25 admits it on the 911 tape.

1 So when you look at it from that standpoint,
2 my view is the criminal intent they have to prove,
3 which is connected to this threatening manner, they
4 have not satisfied their burden.

5 As the judge will tell you, this is not a
6 simple burden. As we said in the beginning, it is
7 not the preponderance of the evidence in a civil
8 trial. It is not the tipping of the scales. You
9 have seen the scales of justice where they tip.
10 That's not what this is. This is a reasonable doubt.
11 Beyond a reasonable doubt.

12 So if you hesitate and say, "Why, I am not
13 sure here," that's reasonable doubt. It is hesitate
14 to act. Any doubt. And I will tell you there is no
15 question there is a substantial doubt in this case
16 based upon their statements from their own victim,
17 alleged victim, saying he was not threatened.

18 Now, Ms. Saucier came in here and she told me
19 from the beginning she wanted to be able to provide
20 her side of the story. She got up here. She let you
21 know what was going on. She wanted to present her
22 story in regard to it.

23 Now, she was clearly having some things going
24 on that she acknowledges she shouldn't have shot, she
25 shouldn't have done what she did. But at the same

1 time, she didn't go to the level I believe and what I
2 think you will see in the charge, as to doing a
3 criminal act in South Carolina.

4 Now, it is my hope that when you go back, and
5 I can't give you any other statement after this, it
6 is my hope that when you finish, that you will take
7 all this evidence, look at all of the information you
8 have and conclude that there is no criminal intent on
9 my client's behalf to point and present a firearm at
10 another.

11 I think that when you listen to the one last
12 statement I want you to hear and you go back there, I
13 don't think there will be any question that you will
14 find Ms. Saucier not guilty. I am going to play it
15 one last time before I conclude. Thank you.

16 (Playing 911 call.)

17 MR. ARIAIL: It is as simple as that. "She
18 didn't threaten me. No, she shot up in the air."
19 They have not satisfied their burden beyond a
20 reasonable doubt and it is my hope when you get back
21 there, you will see that and find her not guilty.
22 Thank you very much.

23 MR. SHIFLET: Good morning, ladies and
24 gentlemen. As I told you in the beginning, my name
25 is John Shiflet, and I am proud to represent the

1 State of South Carolina in this case against
2 Lynn Saucier.

3 As you know, she is charged with pointing and
4 presenting a firearm. I told you in the beginning
5 you have an extremely important role or
6 responsibility in this case. You've got to listen to
7 all of the facts and evidence, which you have done at
8 this point, and return with a decision that only you
9 can make.

10 I want to thank you for your careful attention
11 the last couple of days and especially for your time.
12 I am sure there's a lot of other things you'd rather
13 be doing than sitting here listening to us talk. But
14 I will let you know we would not be able to resolve
15 this matter, and it is an important matter, without
16 your assistance and we appreciate that.

17 Nothing that I have said throughout the
18 process of this trial, or Mr. Ariail, for that
19 matter, even in closing or at any point in the trial,
20 none of that is evidence. The only evidence is what
21 you heard from that witness stand or what you saw on
22 video.

23 At this point, all I can do is re-examine the
24 element of the law that does apply and also review
25 the facts and evidence that were presented.

1 We talked about pointing and presenting. The
2 elements are very simple. Now, I want to tell you
3 you are going to hear from the judge when I get done
4 talking. He is going to tell you exactly what the
5 law is in this case, how to apply it. What I think,
6 if it is any different from what he says, what he
7 says goes. But I am going to try to give you a
8 snapshot of it so that as I tell you about the
9 evidence in the case, we can kind of put it together.

10 It is very simple. The defendant must have
11 pointed or presented, one or the other, a loaded or
12 unloaded firearm, that doesn't matter in this case.
13 No question it was loaded. It is being shot at
14 another person. The other person, that is Mr. Foy.

15 The judge may also tell you they must have
16 committed some action with regard to the firearm that
17 amounts to pointing or presenting.

18 Now, very important in this case, it is
19 pointing or presenting. I am going to go ahead and
20 get rid of pointing right now. By getting rid of it,
21 I mean just talk about it for just a second.
22 Pointing doesn't have a definition, as far as I
23 understand it, that is more specific than that.

24 But what does pointing mean? You saw the
25 video. You saw where the gun was. It wasn't pointed

1 directly at them, but it was in the air and it was in
2 their direction. Is that pointing at another person?
3 That's your decision. Considering all of the other
4 evidence, is that pointing?

5 But I think more important in this case would
6 be presenting. What does present mean? Very simply,
7 to show in a threatening manner.

8 You also heard a little bit about criminal
9 intent. And the defense counsel is absolutely right.
10 That is an element of this case we have to prove
11 beyond a reasonable doubt. But the law accounts for
12 the fact that we cannot read people's minds.

13 Basically, the judge will tell you that, based
14 on the circumstances surrounding the situation, the
15 actions and the conduct, you can infer criminal
16 intent through that kind of action. It doesn't have
17 to be direct or positive evidence. That may be
18 inferred.

19 Reasonable doubt. Now, it might be the fourth
20 or fifth time we have talked about it at this point
21 and you are going to hear it again from the judge.
22 It is a very important legal concept. It provides
23 important testing in our criminal justice system.

24 You've heard it's the doubts that would cause
25 a reasonable person to hesitate. After everything

1 you heard and after what you've seen, would a
2 reasonable person hesitate to reach a decision about
3 whether or not she is guilty.

4 Importantly, a few things in life are certain,
5 the judge will tell you that. It is not beyond all
6 doubt. The law doesn't require that kind of proof.
7 It is beyond a reasonable doubt. After hearing the
8 facts and evidence, if you are firmly convinced, then
9 we have met our burden.

10 Ladies and gentlemen, you took an oath at the
11 beginning of this trial and in that oath you swore to
12 decide the facts of this case. Nowhere in that oath
13 did you swear to look for reasonable doubt.

14 Last night I was thinking about what I was
15 going to say to you about this case. I decided there
16 is really two important questions. When you go back
17 to that jury room and you are talking about what you
18 heard and you are trying to decide if she's guilty,
19 ask yourself two questions: First one is pretty
20 obvious, did she present the gun? That's
21 contemplated by the law. Did she show it in
22 threatening manner?

23 Number two, do you find the defendant
24 credible? Did you believe her story? We'll get into
25 that.

1 In deciding that first question, let's talk a
2 little bit about what you heard. And I promise it
3 will be pretty fast. You heard it. I don't need to
4 tell you everything again. You heard it from two
5 witnesses and saw it in Foy video, Mr. Foy. He took
6 the stand, swore on the bible and he testified to you
7 about what happened, about how it happened. He
8 described to you how he felt after it happened.

9 He says that he comes home for lunch, he is
10 with Mr. Jones up at the main residence, they hear
11 gunshots. He goes down to check on the people that
12 are there. That's why he went down there. They were
13 working. He goes to check on them. He is there for
14 a period of time when, after that, everything begins
15 to unfold that you already heard about.

16 He describes that he had a clear line of sight
17 to the defendant, that he knew she could see him. He
18 described to you the statements that were being made.
19 I am not going to go into those at this point but
20 we'll talk about them in a second.

21 He described that he could see the gun
22 clearly, he could hear the gun. He saw her shoot the
23 gun. He heard the fragments or the pellets from the
24 gun that was falling around his vicinity.

25 But importantly, ladies and gentlemen, Mr. Foy

1 also described the situation. I thought this was
2 very, I guess, profound. He described the situation
3 as escalating. She comes out and she is laughing.
4 Then she is name calling and cussing. You heard the
5 words. Then she is taunting them and daring them to
6 call the police while she is shooting the gun.

7 She shoots the gun. It's in the air. By the
8 third shot, she is shooting it in their direction and
9 he is hearing pellets on the ground around him. He
10 described that as escalating. And he finished by
11 saying that he was afraid. Those were his words.

12 Let's talk about the 911 call for just a
13 second. I wasn't going to get into it. But I am
14 going to play it again for you as well just to make
15 sure we are clear.

16 He was asked about it and what he stated on
17 that 911 call yesterday. He explained -- I called
18 Barry Foy to the stand and he told you what happened.
19 When he is asked, "Did she threaten you," listen very
20 carefully to his response.

21 (Playing tape.)

22 MR. SHIFLET: Did you hear that? Her question
23 was, "Did she threaten you?" And his response was,
24 "She didn't threaten to kill." He told you on the
25 stand, the statement was, "She didn't threaten to

1 kill us." That's where he was going. You can hear
2 it. "She didn't threaten to kill." You heard it.
3 If you'd like to hear it again, it is in evidence.
4 Listen to it as many times as you want. You decide
5 the facts of this case. We can't tell you what they
6 are.

7 Ladies and gentlemen, you also heard from
8 Deputy Estep. She received a 911 call. She
9 responded to the scene. She spoke to Mr. Foy and
10 others who were there about what happened. She went
11 down and looked around. She then went and talked to
12 the defendant, Lynn Saucier.

13 And I would submit to you that the substance
14 of that conversation, her questions and the answers,
15 are very important aspects of this case. That video
16 is also in evidence. I am not going to play that for
17 you today, but I will talk to you a little bit as
18 quickly as I can about what some of the statements
19 were in just a minute.

20 She didn't do anything that day. She doesn't
21 arrest her. She testified the video she saw was on
22 the cellphone and she had some difficulty seeing what
23 was what. I believe that was her testimony.

24 But after that, the video is provided to law
25 enforcement. They watch it in a different situation,

1 under different circumstances. She can see it on the
2 computer. At that point, she testified that she -- I
3 mean, everything that happened, that you heard about
4 so far, what you have seen, she was able to see.
5 After that, the defendant was arrested.

6 Now, there was some comment about what the
7 original arrest warrant was and the fact that she is
8 charged with pointing and presenting now. Ladies and
9 gentlemen, that didn't have anything to do with this
10 case, very simply, absolutely nothing to do with this
11 case. Deputy Estep stated that she is not an
12 attorney and another attorney in the Sheriff's
13 Department is the one that made that decision. It
14 has nothing to do with this case and whether or not
15 Ms. Saucier pointed or presented a firearm. Very
16 simple.

17 The other important piece of evidence in this
18 case is the video. Now you know what the video is.
19 It is the one that Mr. Foy took with his phone and
20 there are three versions. There is an original and
21 there is the enhancements, and I would urge you to --
22 and certainly, you should consider the entirety of
23 that original video.

24 But ladies and gentlemen, I would also ask you
25 to recall the testimony of Trent Faris, the gentleman

1 with the Sheriff's Department who actually performed
2 the enhancements on those videos. He testified as to
3 how they were enhanced and how he did it. He didn't
4 change anything.

5 With that enhanced audio and video, I would
6 submit to you, ladies and gentlemen, that doesn't add
7 in the language from the defendant that you heard.
8 It doesn't create that sound of pellets that is
9 falling around Mr. Foy. It just increases the sound
10 so you can hear it. Very simple.

11 The zoomed-in and sharp and stabilized video,
12 that image doesn't put a shotgun in her hands. It
13 doesn't control the angle of the shotgun or which way
14 she is pointing, this way toward the opposite, or
15 this way toward the victim. It doesn't change any of
16 that. It just allows you to see it better. That's
17 all.

18 Ladies and gentlemen, the video speaks for
19 itself in this case. You will see a clip of it in a
20 minute. I am not going to harp on it. You get to
21 watch it. You get to decide.

22 Those are the facts. That is the evidence
23 that you have been presented with. Very quickly, of
24 all of that, think about what do we even disagree
25 about? What do we all agree on? What is undisputed?

1 Well, either by video or by the defendant's
2 own testimony, her own admissions, she is out there.
3 She is shooting her gun. She is shooting it in the
4 air by her own admission. She is making those
5 statements. I won't go into each one of them every
6 time I bring it up, but she is making those
7 statements by her own admission directed at Mr. Foy
8 and those that were down there.

9 Ladies and gentlemen, those are the facts and
10 evidence that -- we know what happened. This is a
11 case where there is not really a disagreement about
12 what happened with a couple of minor exceptions. You
13 just have to decide is what happened against the law.
14 Very simply.

15 Now what is disputed? Well, Ms. Saucier
16 testified -- and we'll get into some of her
17 statements. She testified the gun was shot in the
18 air. We can agree on that much. She would not admit
19 that it was shot in the direction of the victims.

20 There it is. That's the image. You get to
21 look at that. Again, you decide these facts because
22 that is what is disputed in this case, if it was in
23 their general direction.

24 Which brings me to my next point and the next
25 question in this case. You decide. The judge is

1 going to tell you, another part of his instruction
2 that, as the finder of fact, you determine the
3 credibility of witnesses. You get to make that
4 determination based on the manner in which they
5 respond to questions, the existence of
6 inconsistencies.

7 Those are the kind of things that it is
8 entirely within your right to consider when you are
9 making a decision about what kind of weight to give
10 to that testimony.

11 I want to talk to you about two different
12 Lynn Sauciers. We've got one from the day this
13 happened, April 2nd, 2012, and then we have the one
14 we saw right here yesterday.

15 Ladies and gentlemen, on April 2nd, 2012, you
16 hear her on the video, the laughing, the statements,
17 the taunting, the cussing, the daring. Recall the
18 tone. Recall her demeanor in that video.

19 She testified yesterday that the reason she
20 did the whole thing was she was frustrated because of
21 a dead battery. Did she sound frustrated and
22 aggravated?

23 Back to my point, this was her on April 2nd.
24 Yesterday she was apologetic for foul language. On
25 April 2nd, you know, I asked her about the muskrats,

1 and this case has a lot of muskrats in it, if you
2 think about it. Deputy Estep responds to that
3 location where she is and she says, very plain and
4 simple, she is a law enforcement officer finding out
5 what is going on, what happened, what happened with
6 the shots fired in the air. What was Ms. Saucier's
7 response? She was shooting at muskrats. That's what
8 she said.

9 Yesterday she is shooting the gun in the air.
10 That was her testimony. Now, she acknowledges the
11 muskrats live in the water and the pond is over here,
12 not in the air. She also said muskrats don't fly.

13 Ladies and gentlemen, on April 2nd, 2012, this
14 is what she was doing. In court it is in the air,
15 and the reason being that she provided, she was
16 frustrated.

17 This isn't a major issue in the case but it is
18 just extremely important when you are considering
19 someone's credibility. There was a dialogue between
20 Deputy Estep. I'm not going to play this video, but
21 it was the video from when she responded to the
22 scene. It was, you know, "You can't do this."

23 She said, "I didn't know I can't cuss on my
24 property." And Estep said, "Well, not when it goes
25 across the boundary lines and you are saying 'call

1 the F'n cops.'" That was her question.

2 Ms. Saucier, the defendant said, "I didn't say
3 that. I said 'muskrats.'" That was her statement to
4 a police officer about what had just happened and
5 that police officer is investigating a possible
6 criminal case. That's her statement.

7 I asked her about that yesterday. Her
8 response was she was joking. You decide. Was she
9 joking? Is she credible?

10 Also, yesterday we heard about the people that
11 were down there watching her. Deputy Estep asking
12 her what is going on. We don't hear anything about
13 that. We hear about muskrats and producing a permit
14 to shoot muskrats.

15 Ladies and gentlemen, she is painting two
16 different pictures. I submit to you that there is
17 two different Lynn Sauciers in this case. That's
18 what you should consider as far as evaluating her
19 credibility.

20 Now, we have heard this concept of threat and
21 we heard it again in closing arguments. She could
22 have and didn't walk down the hill. She didn't
23 threaten to shoot them. She didn't threaten to harm
24 them. You heard a lot about that.

25 That doesn't matter. Very simply, she is not

1 charged with threatening to shoot Barry Foy or
2 threatening to harm Barry Foy. If she had pointed
3 the gun again directly at him and fired, or if she
4 pointed the gun directly at him and shot him, she
5 would be charged with something else, ladies and
6 gentlemen. She is charged with presenting or
7 pointing a firearm.

8 What's this case about? This case is just
9 very simply not about Lynn Saucier's right to own
10 guns, her right to shoot guns. In fact, she admitted
11 she shoots guns all the time. This case is not about
12 Barry Foy's right to be, his absolute right to be
13 wherever he wants on his own property. This case is
14 about Barry Foy's right to be on his own property and
15 not have a firearm presented at him.

16 The judge is not going instruct you that it is
17 a violation of the law to point and present a firearm
18 unless you are on your own property. He is not going
19 to instruct you it is a violation of the law to point
20 and present or point or present unless your neighbors
21 are close to your property. You are not going to
22 hear that, ladies and gentlemen.

23 She knew he was down there. She said that.
24 She knew he could see her. She knew he could see the
25 gun. She called out to him, "Let's have more fun."

1 Ladies and gentlemen, she wanted him to see that gun.
2 That's her idea of fun.

3 Wrapping up, the only thing you have to decide
4 was her actions, was that done in a threatening
5 manner. What she did with the gun, was it done in a
6 threatening manner. Not did she threaten them, but
7 was it in a threatening manner.

8 (Playing video.)

9 MR. SHIFLET: Let's decide. Let's talk about
10 this. Was it threatening? The profanity. She
11 called them motherfuckers, and she told them to call
12 the F'n cops. Her statements, acknowledged by her,
13 directed at them while holding a shotgun that they
14 could see visibly. You saw the video. She
15 acknowledged that they could see the shotgun in clear
16 view of Barry Foy, knowing he was there, taunting,
17 "Let's have more fun. Call the F'n cops."

18 Ladies and gentlemen, she's got a gun in her
19 hand, Barry Foy is down in there. That right there
20 is pointing and presenting. That is in a threatening
21 manner.

22 But you don't have to stop there. If you want
23 to talk about reasonable doubt, if there is any doubt
24 whatsoever at this point, she shoots the gun three
25 times. You don't have to shoot a gun to be guilty of

1 pointing and presenting, but she does it three times
2 and in the direction of them in the air. I will
3 submit to you, that is the very definition of
4 threatening.

5 I will conclude by telling you that in the
6 beginning of this trial I told you that this case was
7 about lines. It started over a dispute about a
8 property line. I went on to tell you that people
9 have disagreements all of the time. Neighbors have
10 disputes over property lines. Other people have
11 arguments over who knows what.

12 But people don't involve guns. There is a
13 line that is drawn about what reasonable people do, a
14 line that reasonable people will not cross. There is
15 also a line drawn by the law of what is and what is
16 not allowed.

17 Ladies and gentlemen, the defendant on
18 April 2nd, 2012, she crossed that line. I ask you to
19 return with a verdict holding her accountable for
20 crossing that line. Thank you for your time.

21 THE JUDGE: Madam Forelady and members of the
22 jury panel, you heard arguments by counsel and it is
23 time for me to charge you, that is, to instruct you
24 with regard to the law that applies to the issues in
25 this case.

1 In this case, the State charges Lynn Smith
2 Saucier with the offense of pointing and presenting a
3 firearm. To this charge, the defendant has pled not
4 guilty, which then places upon the State the burden
5 of proving the defendant guilty beyond a reasonable
6 doubt.

7 A person charged with committing a criminal
8 offense in South Carolina is never required to prove
9 himself or herself innocent. I charge you that it is
10 a rule of law that a defendant in a criminal trial
11 must always be presumed innocent until his or her
12 guilt has been proved beyond a reasonable doubt.

13 This presumption of innocence remains with the
14 defendant at all times throughout the trial and is
15 only removed when and if the State has proved guilt
16 beyond a reasonable doubt.

17 It is your solemn duties, ladies and
18 gentlemen, if not clearly convinced of guilt beyond a
19 reasonable doubt to the contrary, to find the
20 defendant not guilty. So the State has the burden of
21 proving the defendant guilty beyond a reasonable
22 doubt.

23 What is a reasonable doubt? Some of you may
24 have served as jurors in civil cases where you were
25 told it is only necessary to prove the fact that it

1 is more likely true than not such as by the greater
2 weight or preponderance of the evidence. However, in
3 criminal cases, the State's proof must be more
4 powerful than that. It must be beyond a reasonable
5 doubt.

6 Ladies and gentlemen, proof beyond a
7 reasonable doubt is proof that leaves you firmly
8 convinced of the defendant's guilt. There are very
9 few things in this world that we know with absolute
10 certainty. And in criminal cases, the law does not
11 require proof that overcomes every possible doubt. A
12 reasonable doubt may also be described as the kind of
13 doubt that would cause a reasonable person to
14 hesitate to act. If you have such a doubt as to the
15 guilt of the defendant, then she would be entitled to
16 a verdict of not guilty.

17 Reasonable doubt may arise from evidence which
18 is in the case or from the absence or lack of
19 evidence in the case. If, based on your
20 consideration of the evidence, you are firmly
21 convinced that the defendant is guilty of the crime
22 charged, you must find her guilty.

23 If, on the other hand, you think there is a
24 real possibility that she is not guilty, you must
25 give her the benefit of the doubt and find her not

1 guilty. You alone must make the determination of
2 whether or not reasonable doubt exists as to the
3 guilt of the defendant.

4 Madam Forelady, members of the jury panel,
5 there are two types of evidence that are generally
6 presented during trial: direct evidence and
7 circumstantial evidence. Direct evidence is the
8 testimony of a person who asserts or claims to have
9 actual knowledge of the fact such as an eyewitness.

10 Circumstantial evidence is proof of a chain of
11 facts and circumstances indicating the existence of a
12 fact. The law makes absolutely no distinction
13 between the weight or value to be given to either
14 direct or circumstantial evidence nor is a greater
15 degree of certainty required for circumstantial
16 evidence than direct evidence.

17 You should weigh all of the evidence in the
18 case. After weighing all of the evidence, if you are
19 not convinced of the guilt of the defendant beyond a
20 reasonable doubt, you must find the defendant not
21 guilty.

22 Madam Forelady, members of the jury panel,
23 under the Constitution of South Carolina, you are the
24 finders of facts in this case. I do not have the
25 right to pass on the facts or even to express any

1 opinion I might have as to the facts. Nor may I
2 suggest in any way what I may think about the guilt
3 or innocence of the defendant. You should form no
4 opinion in that regard from anything I may have said,
5 any ruling I made during the course of the trial.

6 As the sole judges of the facts in this case,
7 you are also necessarily the sole judges of the
8 credibility or believability of each of the witnesses
9 that testified during the course of the trial.

10 Now, there are a number of factors which you
11 may consider in arriving at your assessment as to a
12 particular witness's credibility or believability.
13 Some factors I am going to list for you. Should you
14 think of other factors that you believe also ought to
15 be considered when you go back into the jury room on
16 the question of credibility, then you should consider
17 those factors as well.

18 You may consider the demeanor of the witness
19 from the witness stand. You may also determine what
20 the witness's manner of appearance. Was the witness
21 straightforward in answering questions or hesitant in
22 responding to questions? Simply put, do you believe
23 the witness was telling the truth or not telling the
24 truth.

25 Do you believe the witness knew of what that

1 witness testified or did not know of what that
2 witness testified? You may consider whether or not
3 the testimony of a witness is consistent or
4 inconsistent with that witness's own testimony or
5 with other testimony or evidence presented during the
6 course of the trial.

7 You may also consider how the witness came to
8 know the facts to which he or she testified. You may
9 consider the opportunity that the witness had to
10 observe or hear, that is, to perceive the existence
11 of a fact by means of their senses.

12 You may also consider whether or not a witness
13 is biased or prejudiced. That simply means do you
14 find that a particular witness had some reason to
15 come into court and testify one way or another to
16 help or hurt one side or the other?

17 You may also consider whether or not the
18 testimony of a witness was strengthened or weakened
19 by other testimony or other evidence presented during
20 the course of the trial.

21 Now, you, as the finders of facts in the case,
22 and you as judges of the credibility or believability
23 of each of the witnesses that testified, may believe
24 as much or as little of what a witness testifies as
25 you deem appropriate. You may believe all of what a

1 witness says. You may believe none of what a witness
2 says or you may believe only part of what a witness
3 says.

4 You may believe one witness against another or
5 several against one. Whatever your good judgment and
6 common sense tells you is the most believable
7 testimony is the testimony you should accept and
8 reject that testimony which you find not to be
9 credible or believable.

10 Madam Forelady, members of the jury panel, the
11 same constitution that makes you the finders of the
12 facts makes me the sole and only instructor in the
13 law. You must accept as correct the law that I
14 charge and apply to the law the evidence as you find
15 it and reach your verdict.

16 Put aside any conceptions you may have had as
17 to the law before coming here today and accept the
18 law as I instruct it to be. You, for purpose of your
19 duty as jurors today, should not be concerned about
20 what the law ought to be but what I charge you the
21 law is now in this state.

22 Madam Forelady and members of the jury panel,
23 I charge you with regard to criminal intent.
24 Criminal intent is a necessary element of each crime
25 that must be proved by the State beyond a reasonable

1 doubt. Criminal intent is always a matter that must
2 be determined by the jury from the circumstances
3 surrounding the situation. There is no way to prove
4 intent to a mathematical certainty. There is no way
5 medical science can dissect a person's brain and
6 determine what he had in mind.

7 So the law says that criminal intent may be
8 inferred from the circumstances shown to be existing.
9 This is how the jury makes a determination whether or
10 not the elements requiring intent was present.

11 Criminal intent is a state of mind which
12 operated jointly with an act in the commission of a
13 crime. Criminal intent is a mental state, a
14 conscious wrongdoing. So it is up to you as the jury
15 to determine what the defendant intended to do based
16 on the circumstances shown to be existing.

17 I tell you that the State must prove criminal
18 intent beyond a reasonable doubt just as the State
19 must prove every element beyond a reasonable doubt.
20 It is not necessary to establish intent by direct and
21 positive evidence, but intent may be established by
22 inference and the same way as any other fact, by
23 taking into consideration the acts of the parties and
24 all of the facts and circumstances of the case.
25 While the State may prove motive, it is unnecessary

1 that the State do so. However, the State must prove
2 intent.

3 Madam Forelady, members of the jury panel, I
4 charge you now specifically with the offense which
5 the defendant is charged in this case. Please listen
6 carefully. It is a very short instruction, but
7 please listen carefully to it as I go through it.

8 If you are not sure about it when you get back
9 and start deliberating and you want to have it back
10 there in the jury room with you, but if you need to
11 be reinstructed on that, I can do that upon your
12 request, but at this time I ask that you listen
13 carefully to it.

14 In this case the defendant is charged with
15 pointing and presenting a firearm. Section 16-23-410
16 of the South Carolina Code of Laws provides as
17 follows: It is unlawful for a person to present or
18 point at another person a loaded or unloaded firearm.
19 The State must prove beyond a reasonable doubt the
20 elements of pointing or presenting a firearm.

21 The elements are as follows: First, that the
22 defendant pointed or presented; second, a loaded or
23 unloaded firearm; third, at another person.

24 Now, the defendant must have committed some
25 action with regard to a firearm that amounts to a

1 pointing or presenting. To present is to show in a
2 threatening manner. The item which the defendant
3 pointed and presented must have been a firearm. It
4 is not necessary for you to find that the firearm was
5 loaded with ammunition of some kind. The firearm may
6 be loaded or unloaded. The defendant must have
7 pointed or presented the firearm at a person other
8 than herself.

9 To convict the defendant of this offense, you
10 must find that all three elements have been proved to
11 you beyond a reasonable doubt. If you find that any
12 one of these elements has not been proved, then you
13 must return a verdict of not guilty of pointing or
14 presenting a firearm.

15 Madam Forelady, members of the jury panel,
16 nothing that I may have said or done in the course of
17 this trial has been in any way intended to express or
18 suggest a view of the case or opinion of the facts or
19 weight of the evidence or the credibility of the
20 witnesses. If any of my actions or words have seemed
21 to so indicate, you will disregard such and form your
22 own opinion as to these matters.

23 You have been selected as fair and impartial
24 jurors, sworn to impartially try and determine the
25 facts of this case and when you comply with your oath

1 to do so, then no one will have a right to criticize
2 your verdict and you will have fully discharged your
3 duties as jurors.

4 You are to decide this case according to the
5 testimony you heard from the lips of the sworn
6 witnesses along with other evidence introduced during
7 the course of the trial.

8 I charge you that as jurors you must decide
9 the issues in this proceeding without bias and
10 without prejudice to any party. You cannot allow
11 yourself to be governed by sympathy, by prejudice, by
12 passion, by public opinion, or any other arbitrary
13 factor.

14 Both the State and the defendant have the
15 right to expect that each of you will carefully and
16 impartially consider all of the evidence in the case
17 and you will follow the law as I have explained it to
18 you.

19 Madam Forelady, I charge you once you begin
20 your deliberations, that you maintain some order in
21 those deliberations. Everyone who wishes to be heard
22 in those deliberations be allowed to do so. If for
23 any reason any member of the jury panel takes a break
24 from deliberations, all should take a break. By that
25 I mean all 12 jurors should be present and

1 deliberating when deliberations are going on.

2 Now, I have prepared for your use -- let me
3 remind you that whatever your verdict in this case,
4 it must be your unanimous verdict. All 12 jurors
5 must agree on the verdict which the foreperson is
6 authorized to write on behalf of the jury. You would
7 write it on the verdict form which I am going to go
8 over with you at this time.

9 On the verdict form there are two possible
10 verdicts which appear on the verdict form. The first
11 possible verdict is we, the jury, find the defendant
12 guilty of pointing or presenting a firearm. The
13 second possible verdict that appears on the verdict
14 form is we, the jury, find the defendant not guilty
15 of pointing or presenting a firearm.

16 Now, in preparing the verdict form, Madam
17 Forelady and members of the jury panel, I have to put
18 possible verdicts on the form in some order. I do it
19 the same way every time. The order in which the
20 possible verdicts appear on the verdict form means
21 absolutely nothing. You should not infer anything
22 from it. What you should do is deliberate.

23 Madam Forelady, once the jury has reached a
24 unanimous verdict, you will go to the verdict form
25 and find the verdict on the verdict form which

1 corresponds to the unanimous verdict reached by the
2 jury. There is a blank by each possible verdict.
3 You put a checkmark by that particular verdict and
4 sign your name on the line above the word
5 "foreperson's signature" and date it.

6 Once you've done that, knock on the door and
7 let the bailiff know that you have reached a verdict
8 and the bailiff will let me know to bring you back
9 into the courtroom to receive that verdict.

10 I am going to ask you to retire to the jury
11 room at this time but do not yet begin the
12 deliberations. I have to give counsel an opportunity
13 to request additional instructions on the law. If
14 additional instructions are requested and I deem them
15 necessary, I will bring you back out and give you
16 those additional instructions. We should make sure
17 all instructions are completed before you begin your
18 deliberations.

19 If no additional instructions are necessary, I
20 will send you by means of the bailiff the verdict
21 form, all exhibits which have been admitted into
22 evidence. If any of those need to be replayed, we'll
23 probably have to bring you back out in the courtroom
24 to replay them, and we'll do that upon your request.

25 Please retire to the jury room, all except the

1 alternate. Ma'am, I will ask you at this time not to
2 go into the jury room and wait outside the courtroom
3 door for further instructions. Thank you.

4 (Whereupon, the jury exited the courtroom at
5 10:11 a.m.)

6 THE JUDGE: Exceptions or additional request
7 to the charge?

8 MR. SHIFLET: None from the State, your Honor.

9 THE JUDGE: From the defense?

10 MR. ARIAIL: No, your Honor.

11 THE JUDGE: I'm having to reprint the verdict
12 form. If you would hold on just a second.

13 You can tell them to begin deliberating and
14 the alternate to come in.

15 (Alternate juror entering courtroom.)

16 THE JUDGE: As it turns out, we made it
17 through the trial without an emergency development.
18 It will not be necessary for you participate in
19 deliberations. So this will complete your service on
20 this particular case. It will complete your service
21 for the week.

22 We have plenty of other work this week, but we
23 are not going to have another jury trial this week.
24 So this will complete your service. I want to thank
25 you for your service and sacrifice this week. You

1 have made our justice system work. We don't take
2 that for granted. We do appreciate it.

3 I'm going to excuse you at this time. A check
4 will be put in the mail for your services this week.
5 Do you need anything to take to your employer showing
6 you are required to be here?

7 ALTERNATE JUROR: No.

8 THE JUDGE: Thank you very much. You are free
9 to go.

10 (Alternate juror exiting courtroom.)

11 (Court in recess.)

12 (Whereupon, the jury came into open court at
13 10:46 a.m.)

14 THE JUDGE: Madam Forelady and members of the
15 jury panel, I have your note requesting details on
16 the charge. What I am going to do is recharge you.
17 I am going to read back over the charge again and
18 reinstruct you on the charge. Sometimes it is hard
19 to take it all in on one read, so hopefully you will
20 be able to understand it a little bit better when I
21 go back over it. So please listen carefully.

22 I have charged you previously that the
23 defendant in this case is charged with pointing or
24 presenting a firearm. Section 16-23-14 of the South
25 Carolina Code of Laws provides as follows: It is

1 unlawful for a person to present or point at another
2 person a loaded or unloaded firearm. The State must
3 prove beyond a reasonable doubt the elements of
4 pointing or presenting a firearm. The elements are
5 as follows: First, the defendant pointed or
6 presented; two, a loaded or unloaded firearm; three,
7 at another person. The defendant must have committed
8 some action with regard to a firearm that amounts to
9 a pointing or presenting.

10 To present is to show in a threatening manner.
11 The item which the defendant pointed or presented
12 must have been a firearm. It is not necessary for
13 you to find that the firearm was loaded with
14 ammunition of some kind. The firearm may be loaded
15 or unloaded.

16 The defendant must have pointed or presented
17 the firearm at a person other than herself. To
18 convict the defendant of this offense, you must find
19 that all three elements have been proved to you
20 beyond a reasonable doubt. If you find that any one
21 of these elements have not been proved, then you must
22 return a verdict of not guilty of pointing or
23 presenting a firearm.

24 Now, let me just say, I have gone back over
25 that with you and that is as detailed as you are

1 going to get in the charge. You must make the
2 decision on the facts and the evidence yourself as to
3 whether the facts and circumstances, by those stated,
4 proved beyond a reasonable doubt the elements of this
5 offense and whether it amounts to a pointing or
6 presenting a firearm. You have to make that decision
7 from the facts of the case and look at that.

8 I am going to ask you to retire back to the
9 jury room to resume deliberations. If you any
10 further questions, please send a note.

11 (Whereupon, the jury exited the courtroom at
12 10:48 a.m.)

13 THE JUDGE: Any exceptions to the recharge?

14 MR. ARIAIL: No, your Honor.

15 MR. SHIFLET: No, your Honor.

16 (Court in recess.)

17 (Whereupon, Court Exhibit 1 was marked for
18 identification and received into evidence, this
19 date.)

20 (Open court.)

21 THE JUDGE: Please bring the jury in.

22 (Whereupon, the jury came into open court at
23 11:36 a.m.)

24 THE JUDGE: Madam Forelady, have you and the
25 jury reached a unanimous verdict in this case,

1 MADAM FORELADY: Yes, your Honor, we have.

2 THE JUDGE: Please hand the verdict form up to
3 the bailiff.

4 If the clerk will please publish the verdict.

5 THE CLERK: In the *State of South Carolina*
6 *versus Lynn Smith Saucier* with Indictment Number
7 2012-GS-46-04105, we, the jury, find the defendant
8 guilty of pointing or presenting a firearm. Signed
9 by the foreperson, this date.

10 If this so be your verdict, so say you all by
11 raising your right hand.

12 Let the record show all affirmed.

13 THE JUDGE: Any questions for the jury panel
14 from the State?

15 MR. SHIFLET: No, your Honor.

16 THE JUDGE: From the defense?

17 MR. ARIAIL: No, your Honor.

18 THE JUDGE: Madam Forelady and members of the
19 jury panel, this completes your service on this case.
20 It will also complete your service for the week. We
21 have plenty of other work to do. There's a trial
22 going on in the other courtroom. It's been going all
23 week. It will go all week.

24 We have plenty of other work to do in here for
25 the rest of the week, but it will not require a jury.

1 I want to thank you for your service this week, and
2 thank you for the sacrifices you've made this week to
3 help make our justice system work.

4 We do not take that sacrifice for granted. We
5 deeply appreciate your service this week. I am going
6 to excuse you at this time with our thanks. A check
7 will be put in the mail in the very near future for
8 your services. You will get that.

9 Does anybody need anything to take to their
10 employer showing you are required to be here this
11 week? Does anybody need that? A couple of you do.
12 All right. The clerk will take care of it.

13 The clerk's office is on the first level in
14 the front, and the bailiff can show you if you are
15 not sure where that is. If you go in there, they
16 will give you something to take to your employer.
17 Again, I want to thank you for your services this
18 week. You are free to go except for the forelady.

19 Ma'am, if you will please come up and sign the
20 indictment for us. The rest of you are free to go.
21 Thank you.

22 (Whereupon, the jury exited the courtroom at
23 11:38 a.m.)

24 (Whereupon, the forelady exited the courtroom
25 at 11:39 a.m.)

1 THE JUDGE: Okay. We have to sentence. Does
2 the State wish to be heard on sentencing?

3 MR. SHIFLET: Your Honor, just to make the
4 Court aware, I think the victim in the case would
5 like to address the Court. As far as the State's
6 position, your Honor is aware of the facts at this
7 time and the strength of the evidence of the case and
8 we would like to make the Court aware that in the
9 negotiations the State had made a probationary offer,
10 and of course, we were not able to resolve it in that
11 manner and that's why we proceeded to trial.
12 Mr. Foy, you wanted to address the Court?

13 MR. FOY: Your Honor.

14 THE JUDGE: Yes, sir.

15 MR. FOY: The events of that day has had a
16 profound effect on my life personally. I cannot
17 speak for the Jones' or anyone else, but I can speak
18 for myself. When my little niece comes over, I am --
19 I never direct her down to that part of the property
20 because I am afraid of what might take place.

21 I just want you to know I don't have a problem
22 with guns. Andy, our cousin on the property, has
23 firearms and he fires them. I don't have a problem
24 with that. It's just when the right is abused, and I
25 believe any and all people will agree that when a

1 right is abused, there is a chance for it to be
2 impinged upon and taken away.

3 I just hope and pray that justice is done. I
4 don't want anything more or anything less than
5 justice. I do want to let you know that that had a
6 profound effect on my life.

7 THE JUDGE: Thank you, sir.

8 MR. SHIFLET: Judge, the last thing I will
9 say, the main concern in the case is the firearms,
10 and depending on the Court's decision on sentencing,
11 because I am not sure if is automatic through
12 probation or not, but if some term of probation is
13 involved, some restrictions the Court finds
14 appropriate with regard to her possessing a firearm.

15 THE JUDGE: Thank you. Counselor?

16 MR. ARIAIL: Yes, your Honor. You heard the
17 facts. I want to give you little bit of background
18 in regard to Ms. Saucier. As you heard, she is a
19 nurse. She has been here living since 1998 on that
20 piece of property. We went through a lot of
21 information, you know, in regard to the relationship
22 and an issue she was having with her neighbors in
23 regard to this event.

24 There is a lot of long history of issues
25 involved with them, as you know, in a previous

1 criminal charge that was dismissed and then a civil
2 case which she brought against them. It was just a
3 lot of things going on here.

4 Clearly, she acknowledges and knows that she
5 didn't do the right thing in regard to shooting a gun
6 off. But what I am hopeful in this case, and based
7 on the background and all of the things, this is a
8 very difficult situation for her because she has been
9 convicted. She has an issue with a felony on her
10 record for her job which is going to clearly affect
11 her with Health South.

12 Also, she has to go back and live at this
13 residence and, as you know, property disputes never
14 seem to get better so long as they still have issues.
15 So my hope in this, and I will let her address you
16 too, is that you can be as lenient on her as
17 possible, and we would hope for a probationary
18 sentence to allow her to be out, be able to still
19 work or do what she needs to do.

20 I also think, based on the circumstances, this
21 is, you know, pointing and presenting -- I know she
22 fired a weapon in the air, just stated it was not
23 directed toward them, she didn't fire at them. I
24 guess for mitigation, I'd like to show that she is
25 not a violent person, made a bad decision on that day

1 that she regrets. And hopefully, you will give her
2 some leniency for that. Thank you.

3 THE JUDGE: Mrs. Saucier, I think I finally
4 can pronounce it correctly. Is there anything you
5 wish to say to the Court?

6 THE DEFENDANT: Yes, sir, I do. I hope I
7 don't say the wrong thing. After this civil trial, I
8 was so relieved because I thought these people that
9 had moved next to me would quit killing my horses,
10 would quit poisoning my dogs. I was so relieved that
11 I would not be stopped anymore, I would not be
12 harassed, I would not have people pulling up in my
13 driveway, not have these crack cocaine dealers
14 watching my house, this man shining lights at my
15 house at night, knowing I lived alone.

16 So the day of the court verdict, I thought
17 this was all going to be over. I did. The very next
18 week I actually threw all my evidence away because I
19 was relieved that my dogs would be safe, and my dogs
20 are my entire life.

21 So I threw all that stuff away and then I was
22 excited about going back to riding because of my
23 shoulder and all, and my truck wouldn't crank. Those
24 people had been down trimming bushes and stuff. I
25 left. They were watching me trying to jump my truck

1 off, whereas, Shane Guerra, Cindy Jones' boyfriend,
2 before seen me do that and he has come over and
3 helped me jump my truck off.

4 Anyway, I am rambling on. I left when they
5 were there. I left. I went and ran my errands and
6 then I come back and now it's even more people. When
7 I look at Carol Jones, I see a horse that the day I
8 laid eyes on him when he was a year old, I had to
9 have him, and I had him, and Carol Jones would let my
10 horses out. I would have to keep him in my old
11 pasture to keep her from letting him out. And this
12 day that I left him over there not thinking, I come
13 home, he is out. A deputy helped me get him in the
14 pen, in the back pen, a sheriff's deputy, and he was
15 injured. I had to put him down.

16 This is someone that I have loved for 28 years
17 with all my heart and soul. And every time -- when I
18 saw her down there that day, it was like she is
19 laughing in my face because she got away with killing
20 Cos. That's why I was so angry.

21 Then my dogs come up with these strange
22 diseases, poisonings. It is terrible. I have to
23 live next door to these people. I quit my job in
24 April of last year because I told them -- and they
25 are really good, they are really good at Health South

1 -- I know I am rambling.

2 But I told them, I said, I cannot leave my
3 dogs unattended because these people. The day after
4 this happened Barry Foy is still filming me. He is
5 talking about how scared he is. I set up a
6 surveillance camera, and I have cameras filming him
7 walking back and forth multiple times filming me.

8 Two weeks ago I am mowing. Here comes
9 Carol Jones, and they sit on the property line
10 watching me whenever they see me. And I had to go
11 through this with Judge Wood -- am I talking too
12 much? I apologize.

13 The thing they are doing now is attacking my
14 dogs again. They call animal control on my dogs all
15 of the time. I talked to Art Melton (phonetic
16 spelling) about it. My dogs are within my fence.
17 Barry Foy calls the dog catcher and lies about my
18 dogs barking. My dogs bark. My dogs bark at snakes.
19 My dogs bark at raccoons. They bark at my muskrats
20 which I am glad they do. In fact, two months ago --

21 THE JUDGE: Ma'am, I am going to have to cut
22 you off.

23 THE DEFENDANT: This is real quick.

24 THE JUDGE: I mean, you know, it sounds to me
25 all of this you are saying, if you have proof of all

1 of this --

2 THE DEFENDANT: I do have proof.

3 THE JUDGE: If you don't have proof -- I don't
4 think you have proof of all them. I think maybe you
5 need to go get some mental health and get some
6 evaluation and counseling over there. I cannot
7 imagine all of these things without something being
8 done about it. I just don't.

9 I realize you all have a bad relationship and
10 I realize that some of these -- there may be some
11 harassment back and forth about that. But some of
12 these things that you are alleging in any event does
13 not have anything to do with the sentencing today.

14 So I tried to work this out earlier before we
15 ever started the case. I have been around for a long
16 time. I have been a judge for 34 and a half years.
17 I was a probate judge, family court judge, and now
18 circuit court judge.

19 I have seen these disputes and they probably
20 should be resolved in magistrate court for the most
21 part until it gets serious, when someone starts
22 shooting a gun, it gets a lot more serious and winds
23 up here. These things kind of ought to be resolved
24 there.

25 I have seen them before where people can't act

1 like grown adults and resolve their problems and live
2 in peace with each other side by side and say and do
3 nothing to each other. To me, it is ridiculous.

4 I tried to work it out so that we could put
5 some mutual restraining orders in place and put some
6 restrictions on certain things so you all could just
7 get along. You are not going to sit across from the
8 table and talk to each other and everything and work
9 it out so you can use and enjoy your property freely
10 without interruption without hating a person on the
11 other side.

12 That hate is what destroys you. Hate will
13 destroy you more than it will hurt the other person.
14 I can tell you that. I tried to work this out from
15 the beginning and couldn't get the parties together.
16 I was not shocked with that, but I was hoping we
17 could do it. We could have put restraining order and
18 have some sanctions if one or the other violated the
19 order, but that couldn't be done, so here we are.

20 Ms. Saucier, what you did that day was just
21 plain mean. I think you are a nice enough person. I
22 respect a person who has worked all their life,
23 worked as a nurse and that sort of thing. I think
24 what you did that day was plain mean.

25 Whether you like them using their property or

1 not or being near the property line, they have a
2 right to be there. You have a right to use yours and
3 be on your property.

4 When you start using names and threats, not
5 really a threat to hurt them necessarily, but when
6 you start using names and calling them ugly names and
7 you start saying, call the police, harassing them in
8 that regard and that sort of thing. And then firing
9 a shotgun, even if it is up in the air, if some of
10 the stray bullets come down on their property and
11 that sort of thing, that is just totally wrong.

12 What you said and did it was just plain mean.
13 I don't care how frustrated you were. I just think
14 it is a shame you all cannot get along and live to
15 enjoy your property. Both of you have some nice
16 property out there that you can't enjoy because you
17 can't grow up and act like adults and settle your
18 problems with discussing, maybe even get counseling
19 worked out.

20 But in the long run, one of you is probably
21 going to have to sell your property and move on
22 because it looks like because you cannot act as
23 adults and sit down and work out these differences.
24 It is just a shame.

25 I can tell you, after my 71 years and 34 and a

1 half years in this business, that that hatred and
2 that hating to see the other person and just seeing
3 red when you see the other person, that will destroy
4 the individual who has it. Even if you have a reason
5 for it, it will destroy you. It will destroy them.
6 It will destroy you. I am telling you that. I am
7 basing that on a whole lot of life experiences and
8 court decisions and everything else in any kind of
9 way, form and fashion. It will destroy you.

10 You need to find a way to resolve it. Either
11 get some counseling or help or something or maybe do
12 some kind of mediation, somebody sit down and iron it
13 out. You need to do that. I hope you will do that.

14 I am saying the same thing to Mr. Foy and the
15 Jones'. I hope you do that. If you can't, one of
16 you is going to have to sell your property and move
17 on because that's the only way you are ever going to
18 get some peace, either one of you.

19 That would be my suggestion. If you can't
20 work it out, then just one of you is going to have to
21 sell and move on. That's the only way I see you are
22 going to resolve it. You can't live like this. They
23 can't live with the threat of somebody firing a
24 shotgun on their property. They cannot live with
25 that kind of threat.

1 The jury, I believe, feels the same way, that
2 they should not have to worry about a threat from a
3 shotgun if they're out using their property like they
4 are supposed to use it.

5 In any event, the jury convicted you. That's
6 where we are. I am here for sentencing. It is not
7 my decision whether you were innocent or guilty. The
8 jury made that decision. I didn't make that
9 decision. It is up to me to impose a sentence.

10 Let me ask Probation: If she is on probation,
11 can she have guns in her house.

12 PROBATION OFFICER: No, your Honor.

13 THE JUDGE: That's what I am thinking. So
14 that's unfortunate, but that's the way it is. They
15 will not allow you to have guns in your possession or
16 on your property while you are on probation. I can
17 tell you, Ms. Saucier, if you want to get in trouble
18 with Probation, just do what you are not supposed to
19 do on probation, and you can flaunt their rules, and
20 you will be back in this court looking at serving
21 prison time. You have got to cooperate and follow
22 their rules and regulations. Do you understand?

23 THE DEFENDANT: Yes, sir.

24 THE JUDGE: If you don't, you are going to
25 wind up serving time. You cannot be belligerent with

1 them and refuse to cooperate with them what you are
2 required to do legitimately under their rules and
3 regulations. So you need to cooperate in that.

4 In any event, that's where we are. I don't
5 think you are a bad person. I don't think you are a
6 criminal. I don't think I need to give you jail time
7 today. Although, if you violate this probation, you
8 could very well do some time, part of this sentence
9 or all of this sentence, for that matter. You need
10 to understand that. You need to understand that.

11 I don't want to see you back here before me or
12 another judge and have to force them to give you some
13 time on this. Do you understand? You might not like
14 it, but that's where we are.

15 Case number 2012-GS-46-4105, Lynn Smith
16 Saucier, having been found guilty by a jury of
17 pointing and presenting a firearm at a person, the
18 sentence of court is to be committed to the State
19 Department of Corrections for a determinate term of
20 five years provided the sentence is suspended with
21 probation for five years.

22 Did you serve any time in jail? Did she serve
23 any time in jail when she got arrested.

24 THE DEFENDANT: Yes, sir.

25 THE JUDGE: How much time?

1 THE DEFENDANT: Two days.

2 THE JUDGE: I am going to give her credit for
3 those two days. Special conditions of the probation:
4 Have no contact, either verbal -- you can't holler
5 at -- no verbal or otherwise with Mr. Foy or the
6 Jones' family or workers on their property. That's
7 the condition of probation.

8 I would urge you to seek some kind of
9 counseling, but I am not going to make it a condition
10 of probation, but I urge you to consider getting
11 counseling. I would also urge you and Mr. Foy and
12 the Jones' to try to get something in place so that
13 you could talk with them with their consent. Maybe
14 try to get some kind of mediation or somebody to come
15 in and counsel you to work this out. That's all I
16 can do.

17 THE DEFENDANT: I would love that. I would
18 love that, Judge, but they --

19 THE JUDGE: It takes two sides to do anything.
20 Mr. Foy is sitting here. I am suggesting that to him
21 too, because it is certainly going to be beneficial
22 to Mr. Foy and the Jones' family to be able to use
23 their property without any kind of hard feelings or
24 anything going on down there.

25 So maybe if they could do that, that might be

1 the only way you would get peace and enjoyment of the
2 property. Both of you have a nice property. You
3 should be able to enjoy your property and get some
4 freedom out there without worrying about this stuff
5 going back and forth. Anyway, there you go.

6 MR. ARIAIL: Thank you, your Honor.

7 MR. SHIFLET: Thank you, your Honor.

8 (Whereupon, the above-entitled matter was
9 concluded.)
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C E R T I F I C A T I O N

STATE OF SOUTH CAROLINA

COUNTY OF YORK

I, Phyllis M. Campo, Official Court Reporter for the Sixteenth Judicial District of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings at the time and place herein in the above-entitled matter.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 7, 2014

Phyllis M. Campo
Official Court Reporter

State's Exhibit 4 – DVD Original

State's Exhibit 4 from the jury trial held August 27 – 29, 2013 before The Honorable Lee S. Alford, to be released to the Office of the Attorney General, or its designee, for transporting to the Court of Appeals of South Carolina for purposed of review.

State's Exhibit 5 – DVD Enhanced Audio

State's Exhibit 5 from the jury trial held August 27 – 29, 2013 before The Honorable Lee S. Alford, to be released to the Office of the Attorney General, or its designee, for transporting to the Court of Appeals of South Carolina for purposed of review.

State's Exhibit 6 – DVD Zoomed, Sharpened, Stabilized

State's Exhibit 6 from the jury trial held August 27 – 29, 2013 before The Honorable Lee S. Alford, to be released to the Office of the Attorney General, or its designee, for transporting to the Court of Appeals of South Carolina for purposed of review.

State's Exhibit 9 – DVD In-Car Video

State's Exhibit 9 from the jury trial held August 27 – 29, 2013 before The Honorable Lee S. Alford, to be released to the Office of the Attorney General, or its designee, for transporting to the Court of Appeals of South Carolina for purposed of review.

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

IN THE COURT OF GENERAL SESSIONS
THE SIXTEENTH JUDICIAL CIRCUIT

Indictment No.: 2012-GS-46-04105

STATE OF SOUTH CAROLINA

Plaintiff,

vs.

LYNNE SMITH SAUCIER,

Defendant.

ORDER

This matter is before the Court on Motion of the Defendant, Lynne Smith Saucier, for a new trial in the above entitled matter. The Defendant was convicted of pointing or presenting a firearm by a jury. The Defendant was given the opportunity to file any post-trial motions at the conclusion of the trial and none were made. The Defendant did not request that she be allowed to file a post-trial motion or that the period be left open for ten (10) days. The Defendant thereafter filed with the Clerk of Court a written Motion for a new trial within ten (10) days on September 10, 2013, but it was not sent to the Court until September 26, 2013. Assuming that the Motion complies with Rule 29 of the S. C. Rules of Criminal Procedure, the Court will rule on the Motion.

The Court finds no merit to the Motion. Addressing grounds 1. and 2. of the Motion, the Court finds, as it did during the trial, that there was substantial evidence from which the jury could have found that the State had proven the charge against the Defendant.

including criminal intent beyond a reasonable doubt. The credibility of the witnesses and the weight to be accorded to the evidence is a matter for the jury and not the Court.

There was testimony from an eyewitness, supported by a video with visual and audio made from a cell phone of the Defendant's actions. This evidence supports the State's position that the victims were lawfully working on their property when the Defendant cursed them and fired a shotgun in their direction. Further, that shotgun pellets hit the trees above their heads on their property and fell down from the trees near them.

The third ground cited in the Motion is the exclusion of a civil judgment in favor of the Defendant against the victims in this case following a decision by an assistant solicitor to dismiss a previous charge against the Defendant.

Whether to admit evidence of the civil judgment was discussed at length in chambers prior to the start of the trial and on the record in pre-trial. The State opposed the admission of the civil judgment for several reasons. The State also insisted that all circumstances surrounding the dismissed charge and the judgment be admitted into evidence. Specifically, the State stated to the Court that the previous criminal charge was a "he said," "she said," case with no other evidence to support either side. Given the burden of proof required in criminal cases, the assistant solicitor decided not to go forward with the case and dismissed it. The Defendant then sued the complaining witnesses and got a civil judgment for malicious prosecution. The assistant solicitor, who handled the previous criminal case and made the decision to dismiss it, is no longer working for the Solicitor's Office in York County. She is working as a prosecutor in another state. The State requested that the case be delayed to get her here to explain why she dismissed the previous charge. The Court decided that she would be a material witness if the civil judgment were to be

allowed into evidence. In order to prevail in a civil action for malicious prosecution, a plaintiff must establish that there was no probable cause to support a warrant. This is usually established by the finding of "no probable cause" at a preliminary hearing or the refusal of a grand jury to indict. Neither of those events happened in the previous case and the dismissal was solely based on the decision of the assistant solicitor that it was not a winnable case based on the burden of proof and possessing no proof other than the testimony of the complaining witness and the Defendant. Since there may well have been probable cause, but difficulty of proof, the assistant solicitor's testimony would be important to the State.

The civil judgment regarding a previous incident involving the parties is relevant evidence as defined in Rule 401, SCRE, which would be admissible under Rule 402, SCRE, but solely on the issue of motive of the complaining witness in this case. However, relevant evidence may be excluded by the trial court pursuant to Rule 403, SCRE, on the grounds of prejudice, confusion or waste of time.

The Court excluded evidence of the civil judgment on the grounds that it was prejudicial to the State, would be confusing to the jury, and that it would take twice as long to try this case, and a delay to get the assistant solicitor's presence.

A trial within a trial is almost always confusing to a jury. The State would have to educate the jury on the burden of proof in a civil case and a criminal case, provide testimony on "probable cause," and why the previous criminal charge was dismissed. The State would have had to present testimony as to the previous conduct of the Defendant, out of which the previous criminal charge was made. That would have required the addition of witnesses, lengthened the trial, and confused or misled the jury as to the State's case.

The Defendant would have had to present her side of the facts and events leading up to the civil judgment. This would have led to a trial within a trial, resulting in undue delay, waste of time, confusion of the issues, and misleading the jury. The Defendant would have told the jury, in effect, they did it before and they are doing it again. In determining whether a previous criminal conviction can be used to impeach a defendant, the trial court is required to balance the probative value against unfair prejudice to the Defendant. In this case, the cases are similar and the admission of a civil judgment would be more prejudicial to the State than probative to the defense. It is only relevant on the question of motive. But, the danger would be that the jury would decide this case based on a previous case and not on the merits of this case or would be confused or misled concerning the issues in this case.

In an effort to compromise and let the Defendant present the question of motive of the complaining party, the Court permitted the parties to tell the jury that the parties had an ongoing dispute about a property boundary issue. This addressed the possible motive issue without trying the previous case in the present trial.

The complainants knew they had to have more evidence than their word against the word of the Defendant or face another dismissal. They had physical evidence by way of a video recording. But, the jury may not have understood the differences in "probable cause," burden of proof, additional evidence, and why the previous charge was dismissed.

The jury knew the parties did not like each other, which allowed them to judge motives. The jury heard the testimony of the witnesses and had the opportunity to judge their credibility. Their verdict was based on the testimony and evidence in this case. Any slight prejudice to the Defendant was heavily outweighed by undue delay, waste of time,

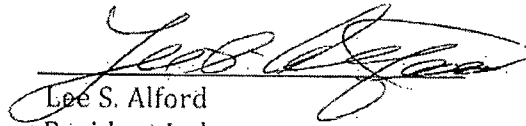
confusion of the issues for the jury, prejudice to the State, and the danger that the jury would decide this case based on an arbitrary factor, a civil judgment.

The Motion for a new trial is denied for all of the foregoing reasons. The Defendant received a fair trial, and the verdict was supported by substantial evidence.

IT IS SO ORDERED.

York, S. C.

October 4, 2013

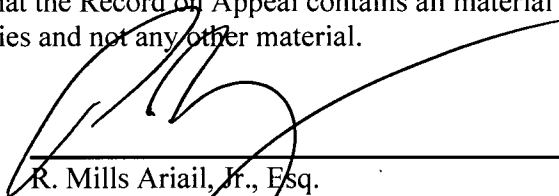

Lee S. Alford
Resident Judge
of the Sixteenth Judicial Circuit



Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

May 15, 2015



R. Mills Ariail, Jr., Esq.
Law Office of R. Mills Ariail, Jr.
11 North Irvine Street, Suite 11
Greenville, South Carolina 29601
(864) 232-9390
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

Lee S. Alford, Circuit Court Judge

Case No. 2012-GS-46-04105

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SC Court of Appeals

Lynne Smith Saucier Appellant,

v.

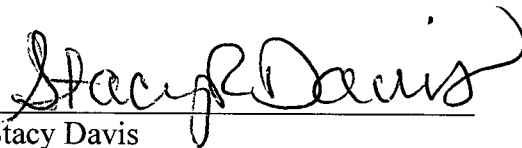
State of South Carolina Respondent.

PROOF OF SERVICE

I, Stacy Davis, do hereby certify that on this ____ day of May, 2015, I served upon the below named Respondents copies of the **Record on Appeal** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

Salley W. Elliott
SC Attorney General's Office
P.O. Box 11549
Columbia, SC 29201

Kevin Brackett
York County Solicitor's Office
1675-1A York Highway
York, SC 29745


Stacy Davis

May 26 2015
Greenville, SC