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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of General Sessions

D. Craig Brown, Circuit Court Judge

CASE NUMBER: 2014-001391

RECEIVED

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SC Court of Appeals

THE STATE,

RESPONDENT,

vs.

DAMON ELLIS MOODY

APPELLANT.

RECORD ON APPEAL

Volume II of II

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TABITHA DURANT - DIRECT BY MR. ANDERS

1 THE COURT: All right. I've been informed that that
2 chair was fixed or at least taken out and replaced. Okay? So
3 hopefully y'all are comfy. And I was in here personally when
4 I saw somebody from downstairs, one of the workers in the
5 building, come and adjust these thermostats. Personally, I
6 can already tell a difference. I hope you can as well. At
7 this time we are going to continue the trial of this. The
8 State is recognized. Call your next witness, please.

9 MR. ANDERS: Thank you, Your Honor. The State calls
10 Tabitha Durant.

11 THE CLERK: If you will, Ms. Durant, place your left hand
12 on the Bible and raise your right hand. Do you swear to tell
13 the truth, the whole truth, and nothing but the truth, so help
14 you God?

15 THE WITNESS: I do.

16 THE CLERK: Please be seated and state your full name for
17 the record.

18 THE WITNESS: It's Tabitha Lynn Head-Durant.

19 TABITHA DURANT, being first duly
20 sworn, testifies as follows:

21 DIRECT EXAMINATION

22 BY MR. ANDERS:

23 Q: Good afternoon, Ms. Durant. Can you tell the jury your
24 relationship with Damon Moody?

25 A: He is my son-in-law. He is married to my daughter, Rabin

1 Moody.

2 Q: All right. And where do you live?

3 A: I live at 1313 Gilbert Drive, Florence, SC 29506.

4 Q: Where does Mr. Moody live?

5 A: They are -- they live in my backyard. It's actually
6 adjacent to the side of my -- of my house.

7 Q: Okay. And who owns the property that you live on?

8 A: The property is in my father's name, John S. Head, and I
9 paid for that land, every penny, and it has not been changed
10 into my name due to -- due to an agreement between me and my
11 children's father. It stays in my father's name so they
12 always have somewhere to live.

13 Q: All right. So for all intents and purposes, y'all share
14 these lots?

15 A: Yes, sir.

16 Q: There's ever been any partition. There's never been any
17 fences. It's just a shared yard?

18 A: Correct.

19 Q: He has kennels?

20 A: Yes, sir.

21 Q: Okay. And if you don't mind, just tell the jury what
22 occurred on June 13th, 2013?

23 A: There was a pool party at my house involving my other
24 daughter, Regan Mott, and her fiancé, and some other guests,
25 and we were cooking out on the back patio. Again, it was a

TABITHA DURANT - DIRECT BY MR. ANDERS

1 pool party and there were children in the pool. I was
2 supervising, trying to get the cookout ready, watching the
3 children in the pool, and gunfire goes off. I look over and
4 it's Mr. Moody firing a gun into the ground.

5 Q: Let me just -- let me just stop you there. All these
6 are your guests in your home; correct?

7 A: Yes, sir.

8 Q: And one of them has a dog or two dogs?

9 A: Yes, sir.

10 Q: And you were aware of that?

11 A: Yes, sir.

12 Q: Okay. And so people are swimming, people are cooking,
13 and then you hear gunshots?

14 A: Yes, sir.

15 Q: Do you recall how many gunshots you heard?

16 A: I think there were five gunshots.

17 Q: All right. Did you see them or hear them?

18 A: No, I saw them.

19 Q: Okay. Where were you when this happened?

20 A: On my back patio.

21 Q: Okay. Looking towards his house?

22 A: Yes. Because the pool is right there. The way my
23 backyard is, when you look out, you see everything.

24 Q: All right. And what did he -- did the defendant make any
25 statements after he fired the gun that you recall?

TABITHA DURANT - DIRECT BY MR. ANDERS

1 A: I know Mr. Moody walked towards my patio, Jermaine and
2 Jermichael Wright were on the back patio, and there was a
3 confrontation. I don't recall every word for word what was
4 said between the three of them. There was a bunch of chest
5 bumping. At that point, I'm trying to make sure that these
6 kids that are in the pool -- because you're talking about a
7 time where three five-year-olds are in the pool. So I'm
8 making sure the children are safe and trying to get this
9 situation calmed down.

10 I know the three of them were -- Mr. Moody in front,
11 Jermichael Wright on this side, and Jermaine Wright on this
12 side. I know the three of them went off the porch. They went
13 to the left of the pool. Again, I could not hear what was
14 going on as far as words being passed.

15 Q: It was -- was your testimony that the defendant came to
16 your porch?

17 A: That's correct.

18 Q: And that's your home?

19 A: Yes.

20 Q: And those are your guests?

21 A: Yes.

22 Q: And started the confrontation?

23 A: Yes.

24 Q: All right. And when he came to your porch, there was
25 some chest bumping going on and it sort of overflowed into the

TABITHA DURANT - DIRECT BY MR. ANDERS

1 yard a little bit, and at some point -- what happened next?
2 A: The three of them broke up. Damon proceeded to go into
3 his home and came back out with a pistol in his hand. I'm not
4 familiar with what kind of pistol; I just know it's a gun and
5 it's short. He got a dog and proceeded to go around the left
6 side of the pool, which would have been his right side but my
7 left side because I'm facing the pool, and I'm standing
8 outside this whole time. At this time, I'm at the -- on the
9 ground at the bottom step of my pool deck in-between my patio
10 and my porch, which is only like three -- four feet away from
11 each other.

12 And me and Mr. Moody -- I was passing words with Mr.
13 Moody because at that time when he walked around the pool with
14 the gun going up and down like this, there's a child standing
15 on the pool deck. At that time, I didn't know the child's
16 name. I've since learned his name was Ontario. His eyes were
17 this big around, and Mr. Moody proceeded to tell him -- he
18 said I will shoot you like I'm going to shoot your cousins.
19 And at that time, I told Mr. Moody -- I said you need to calm
20 down and I said you need to take your f-ing A-double-S home.

21 Q: Let me just stop you. Where was Ontario? He was on the
22 pool deck at this time?

23 A: He was on the pool deck.

24 Q: Okay. Do you recall how old he was at the time? You
25 said you didn't know him, but he was --

TABITHA DURANT - DIRECT BY MR. ANDERS

1 A: First time I had met him.

2 Q: Okay. He was younger than 18 at that time?

3 A: Oh, yes, sir.

4 Q: And the gun that he had when he was waving it around and
5 he said these words to Ontario, do you recall any aspect of
6 that gun that you recall -- that you remember in particular?
7 The first gun -- did you see the second gun?

8 A: Yes.

9 Q: Was it different? Do you recall?

10 A: I don't recall.

11 Q: Do you recall Jermaine, Jermichael or anybody at your
12 party -- your home as guests threaten Mr. Moody?

13 A: I never heard anybody threaten anybody -- I mean them
14 threaten anybody.

15 Q: Do you recall giving a statement to SLED Agent John
16 Follin on or about June 18th, 2013?

17 A: Yes, sir.

18 Q: And he interviewed you; correct?

19 A: Correct.

20 Q: And did you call him back 45 minutes after that
21 interview?

22 A: I did.

23 Q: And do you recall telling Mr. Follin some information?

24 A: I did. I told him that Jermichael was known to carry a
25 gun in a backpack.

TABITHA DURANT - DIRECT BY MR. ANDERS

1 Q: All right.

2 A: Why did you call Mr. Follin that -- that 45 minutes after
3 the first interview?

4 A: Because I spoke with Mr. Moody in my home, and Mr. Moody
5 brought it to my attention that he did carry a gun in his
6 backpack, and I said, well, I was aware, I have always heard
7 he did, but I've never witnessed a gun in a backpack. I
8 always knew Jermichael carried --

9 Q: Was there a backpack there that day with a gun in it?

10 A: No, sir, there wasn't.

11 Q: Did you ever see a gun at your home?

12 A: I've never seen that gun and to this day I've never seen
13 that gun.

14 Q: Did Mr. Moody suggest to you that you call Agent Follin
15 and tell him that information?

16 A: Yes, sir.

17 MR. ANDERS: I beg the Court's indulgence. No further
18 questions, Your Honor.

19 THE COURT: Cross examination.

20 MS. PARHAM: Thank you.

21 CROSS EXAMINATION

22 BY MS. PARHAM:

23 Q: And what you told Agent Follin is that Jermaine Wright is
24 known to carry a pistol in his backpack and Damon Moody knows
25 that; is that correct?

TABITHA DURANT - CROSS BY MS. PARHAM

1 A: I didn't say Damon Moody.

2 Q: Damon Moody knows that?

3 A: I told him that Jermaine was -- I mean Jermichael was
4 known to carry a backpack with a gun in it.

5 Q: Have you seen your -- the typed up memorandum of
6 interview that SLED typed up after they interview you?

7 A: No, ma'am.

8 Q: Is it fair to say that you stated to Agent Follin that
9 Jermaine Wright is known to carry a pistol in his backpack and
10 Damon Moody knows that?

11 A: Well, I reckon it would be fair to say that.

12 Q: Did you say that?

13 A: That's not what I added on, not to my -- that I remember.

14 Q: Okay.

15 A: I don't have a copy of that.

16 MS. PARHAM: May I approach the witness, Your Honor?

17 THE COURT: Yes.

18 MS. PARHAM: Thank you.

19 A: That's the first time I've seen it. Okay. Well, if it
20 said I said that, then I would -- I would agree that I said
21 that. It's the first time I've seen the report.

22 Q: Well, the question is did you say that?

23 A: If it's in the report, then I said it.

24 Q: Okay. I'm a little bit confused. So you were on the
25 pool deck by the pool?

TABITHA DURANT - CROSS BY MS. PARHAM

1 A: No, ma'am.

2 Q: Okay.

3 A: I was at the bottom of the pool deck which is
4 approximately five steps up to the pool deck.

5 Q: Okay.

6 A: And I was on the ground at the bottom of the -- I was
7 actually on the ground. I was trying to monitor the children
8 that were in the pool, which was the smaller children because
9 they never got out of the pool.

10 Q: Okay. So your pool had a deck -- steps and a deck that's
11 built up -- it's an above the ground pool; correct?

12 A: Correct.

13 Q: And so there's a deck beside the pool that has steps
14 going up to it?

15 A: Yes.

16 Q: All right. So you're standing on the ground or sitting
17 on the ground or in a lawn chair --

18 A: I was standing on the ground.

19 Q: Okay. And are you between that -- those steps and your
20 porch?

21 A: The patio?

22 Q: Yes, ma'am.

23 A: Yes.

24 Q: Okay. And so you're standing there monitoring
25 everything. Were you out there the entire time this happened?

TABITHA DURANT - CROSS BY MS. PARHAM

1 A: Yes.

2 Q: Okay. Did you ever see Damon Moody point a gun at
3 Jermaine Wright?

4 A: No, ma'am.

5 Q: Did you ever see Damon Moody point a gun at Jermichael
6 Wright?

7 A: No, ma'am.

8 Q: Did you ever see the pit bull running around near Damon's
9 trailer?

10 A: I don't remember the dogs being outside. I was told they
11 were, but for me to answer that I'd have to say no. I don't
12 remember.

13 Q: You don't recall seeing the dogs outside at all?

14 A: No.

15 Q: Okay. You don't recall ever seeing the dogs out -- the
16 pit bull outside at all?

17 A: No.

18 Q: Okay. And when you saw Damon Moody -- tell me again
19 where you saw him shoot the gun?

20 A: It was directly into the ground standing out of his back
21 door.

22 Q: Okay. Was he standing in his back doorway or was he on
23 his porch?

24 A: I don't remember. I don't remember if he was actually on
25 the patio -- I mean on his little porch or maybe on the first

TABITHA DURANT - CROSS BY MS. PARHAM

1 step, but it wasn't much further than the first step..

2 Q: Okay. And do you recall him saying anything after he
3 fired his gun?

4 A: No, ma'am.

5 Q: Okay. And so then after he fired his gun, what happened?

6 A: He proceeded to come over to the patio that we were
7 standing on.

8 Q: Okay. And so after he fired his gun, he just walked off
9 his porch and came towards the patio?

10 A: He did.

11 Q: Okay.

12 A: That is what happened.

13 Q: Okay. What did he do with the gun he had just shot?

14 A: I don't recall what he done with the gun. I don't
15 remember him having a gun in his hand when he come to my
16 porch.

17 Q: Okay. So then he came to the porch and then what do you
18 remember seeing?

19 A: There was a confrontation between Mr. Moody, Jermichael,
20 and Jermaine. Again, Mr. Moody was on this side because he
21 come from this side. Jermichael was on this side; Jermaine
22 was on this side. And the confrontation went off of the
23 porch, went to the left side of the pool --

24 Q: Let me stop you there. Did you ever see Jermaine or
25 Jermichael push Damon off the porch?

TABITHA DURANT - CROSS BY MS. PARHAM

1 A: I never saw anybody push anybody. It was the three of
2 them chest bumping.

3 Q: Okay. So you never saw anybody get pushed off the porch?

4 A: No.

5 Q: Okay. Now, when the chest bumping went around to the
6 pool, what you're saying, was there talking going on?

7 A: I didn't hear any. I'm sure there was because there was
8 noise and I could hear people talking.

9 Q: Do you recall a previous hearing when being asked chest
10 bumping, you answered, yes, it was chest bumping, that sort of
11 thing. Talking? And you answered talking. Do you recall
12 testifying previously that there was talking while there was
13 chest bumping?

14 A: I -- sure, yes.

15 Q: Okay. What was being said while they were chest bumping
16 one another?

17 A: Ma'am, I -- I don't know.

18 Q: Okay. Who was doing the talking when there were doing
19 the chest bumping?

20 A: I know I could hear the three of them, but I was not
21 paying attention to what was being said. I had children and
22 grown-ups all in a matter of feet from each other, and I was
23 monitoring trying to control the situation.

24 Q: Well, did you hear Damon talking while the chest bumping
25 was going on?

TABITHA DURANT - CROSS BY MS. PARHAM

1 A: I can't specify whose voice it was. I know I heard -- it
2 seems like all --

3 MR. ANDERS: The question has been asked and answered
4 several times.

5 THE COURT: I'll allow it. Go ahead. Answer the
6 question, please.

7 Q: Did you hear Jermaine and Jermichael talking during the
8 chest bumping?

9 A: I know there were all three of them because I remember
10 them kind of hollering and bickering at each other.

11 Q: Okay. So there was hollering and bickering during the
12 chest bumping, you just don't know who?

13 A: Pardon me?

14 Q: There was hollering and bickering during the chest
15 bumping, but you're unsure as to who?

16 A: Correct.

17 Q: Okay. Do you recall writing a voluntary statement the
18 day of this incident?

19 A: I do.

20 Q: The police giving you a form and letting you fill out in
21 the form what you believe happened?

22 A: I do.

23 Q: Okay. And then you gave it back to the police?

24 A: Yes, ma'am.

25 Q: Okay. And do you recall saying in that statement that

TABITHA DURANT - CROSS BY MS. PARHAM

1 Damon shot the gun out of the back door?

2 A: Yes, ma'am.

3 Q: Okay. And do you recall saying that Jermichael -- Damon
4 did approach Jermichael and bumped him and told him he had
5 something for him? Do you recall saying that?

6 A: If I wrote it at that time, I'm sure. That was a year
7 ago. Do I remember it? No, ma'am, because I have never
8 received a copy of that report. I have not seen it.

9 Q: Okay.

10 MS. PARHAM: May I approach the witness?

11 THE COURT: Yes, ma'am.

12 MS. PARHAM: Thank you.

13 A: Thank you. Yes, ma'am, it says so.

14 Q: Okay. And -- and also in this statement, you say Damon
15 went back in his house, got another gun and his dog, and told
16 14-year-old Ontario that he would kill him and his cousins?

17 A: That is correct.

18 Q: Okay. And you -- it seems like from this statement that
19 that's what he said after he went back in his house and got
20 the gun and his dog?

21 A: Yes, ma'am.

22 Q: Okay. And I believe you testified earlier that he came
23 back out of his house with the pistol in his hand?

24 A: He came out with a gun. I -- I -- I can't describe the
25 gun. All I can say is it was about this long.

TABITHA DURANT - CROSS BY MS. PARHAM

- 1 Q: And it was in his hand?
- 2 A: Yes, ma'am, it was in his hand.
- 3 Q: And the dog -- did the dog come out the door with him?
- 4 A: No, ma'am.
- 5 Q: Okay. Did he get that dog out of the kennel?
- 6 A: Yes, ma'am.
- 7 Q: And you never saw him point the gun at Jermaine or
- 8 Jermichael?
- 9 A: No, ma'am. My back was on that -- they were behind me.
- 10 This situation that I was addressing was to the side of me and
- 11 the children that I was looking at were in front of me.
- 12 Q: And you're certain you never saw that?
- 13 A: I'm certain I never saw that.
- 14 Q: When Damon came over and spoke to you I guess prior to
- 15 the police getting there -- well, let me rephrase. Are you
- 16 aware of prior problems with the pit bull and the kennel dogs
- 17 at this location?
- 18 A: There's been one incident where -- there's been one
- 19 incident where Mr. Moody complained to me, yes.
- 20 Q: All right. And -- and sometimes is that pit bull left on
- 21 your property? You kind of dog-sit for the pit bull on your
- 22 property? Sometimes is it tied to a tree in your -- in your
- 23 yard?
- 24 A: No, ma'am. I don't have any trees in my yard.
- 25 Q: Okay. So have you ever dog -- kept that dog at your

TABITHA DURANT - CROSS BY MS. PARHAM

1 property without its owners being there?

2 A: No, ma'am.

3 Q: Okay. Well, the other incident that you refer to, how --
4 how far before this happened was that?

5 A: I couldn't -- I don't know.

6 Q: Okay.

7 MS. PARHAM: I believe that's all I have. Thank you.

8 THE COURT: Any redirect?

9 MR. ANDERS: Briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. ANDERS:

12 Q: Does it -- Ms. Durant, is it fair to say that most of
13 your attention that day after hearing five shots --

14 MS. PARHAM: Your Honor, I object to leading his own
15 witness.

16 Q: Where was your attention most of the time that day? What
17 were you concerned about most that day after hearing those
18 shots?

19 A: The welfare of the children that were in the pool.

20 MR. ANDERS: No further questions, Your Honor.

21 THE COURT: Any recross?

22 MS. PARHAM: No, sir.

23 THE COURT: Ma'am, you may step down. Thank you.

24 THE WITNESS: Thank you.

25 THE COURT: Call your next witness.

ONTARIO MCCLELLAN - DIRECT BY MR. ANDERS

1 MR. ANDERS: Your Honor?

2 THE COURT: Call your next witness.

3 MR. ANDERS: Yes, sir. Your Honor, the State calls
4 Ontario McClellan.

5 THE COURT: Put your left hand on the Bible and raise
6 your right hand. Do you swear to tell the truth, the whole
7 truth, and nothing but the truth, so help you God?

8 THE WITNESS: Yes, sir.

9 THE COURT: Thank you. Please be seated and state your
10 full name for the record, spelling your last name.

11 THE WITNESS: Ontario Jamel McClellan.

12 THE COURT: Spell your last name for the record, please.

13 THE WITNESS: M-c-C-l-e-l-l-a-n.

14 THE COURT: Thank you, sir. Mr. Anders, you may proceed.

15 ONTARIO MCCLELLAN, being first duly
16 sworn, testifies as follows:

17 DIRECT EXAMINATION

18 BY MR. ANDERS:

19 Q: Ontario, how old are you?

20 A: Fifteen.

21 Q: And how old were you last June?

22 A: Fourteen.

23 Q: Do you recall being at a party at Tabitha Durant's house
24 last summer?

25 A: Yes, sir.

ONTARIO MCCLELLAN - DIRECT BY MR. ANDERS

1 Q: If you would, tell the jury what you recall from being at
2 that party.

3 A: Well, we were at Ms. Tabitha's house and everyone in the
4 house and everyone gets ready to get in the pool, go outside,
5 and all the kids get into the pool. And we let the dogs out
6 and the dogs run around the yard and everything, and Damon
7 lets two dogs out of his house. And I'd say maybe after five
8 minutes he lets his two dogs out the house, he comes back out
9 the house to call them in. And then maybe two or three
10 minutes later, he comes back outside and fires gun shots into
11 the ground to the right of his porch. And as that happens,
12 the dog that was close to his house ran back to where we were,
13 and he says something to Jermichael, and Jermichael says to
14 him, don't talk to me like that in front of my family, and so
15 Damon goes back into the house --

16 Q: Let me just -- let me just stop you. What do you
17 remember the defendant saying after firing the shots?

18 A: I -- I can't recall really.

19 Q: All right. So you just said there's a -- Jermichael's
20 pit bull was in the yard?

21 A: Yes, sir.

22 Q: Okay. And it's running around with the other dogs?

23 A: Yes.

24 Q: And it's in the yard? All the dogs are running around?

25 A: Yes, sir.

ONTARIO MCCLELLAN - DIRECT BY MR. ANDERS

1 Q: And then all of a sudden you hear -- did you hear shots
2 or see shots?

3 A: I seen shots.

4 Q: You saw the shots?

5 A: Yes, sir.

6 Q: And how many shots do you recall seeing or hearing?

7 A: Anywhere from five to eight.

8 Q: All right. So after those shots -- after you heard those
9 shots, what happened after that?

10 A: After those shots, they exchanged words. Damon goes into
11 the house. Shortly after, he comes back out.

12 Q: What -- who exchanged words?

13 A: Jermichael and Damon.

14 Q: Okay. Do you recall what was said?

15 A: No, sir. Other than Jermichael.

16 Q: I'm sorry?

17 A: Other than -- other than what Jermichael said, no, sir.

18 Q: Okay. They said something? Jermichael said something?

19 A: Yes. He told him don't talk to me like that in front of
20 my family.

21 Q: All right. And then what happens?

22 A: Damon goes back inside. He comes back out shortly and
23 approaches Jermichael on the patio, and so they're exchanging
24 words, chest bumping, pushing here and there, and eventually
25 they're off the porch and they're still chest bumping and they

ONTARIO MCCLELLAN - DIRECT BY MR. ANDERS

1 end up on about the side of the pool -- on the left hand side
2 of the pool. And Damon -- I guess when he -- he went back
3 inside afterwards -- not too long afterwards and said I got
4 something for y'all. And he goes back inside. I'd say two or
5 three minutes at the most he spends in the house, comes back
6 outside, his leash in his hand, and he goes and gets the dog
7 farthest to the end of the cage, and he comes walking over.
8 And as he gets maybe beside the pool, he pulls a gun out of
9 his pocket and he points it towards Jermichael and Jermaine.
10 And --
11 Q: All right. Did you see -- see him point it?
12 A: Yes.
13 Q: Okay. And how was that? How were you able to see where
14 he was pointing the gun?
15 A: I was in the pool at the time and they were standing on
16 the patio.
17 Q: Okay. Can you describe the gun?
18 A: It was a black gun, a laser on it. It wasn't really too
19 big.
20 Q: All right. So did you ever see the laser?
21 A: Yes, sir, when it was shined on me.
22 Q: Okay. Well, when was it shone on you?
23 A: After -- I was left outside with Ms. Tabitha and Bryant
24 on -- outside near the pool. I was standing on the deck and
25 he says to me, I'll leave you dead --

ONTARIO MCCLELLAN - DIRECT BY MR. ANDERS

1 Q: Who says? Who says?
2 A: Damon.
3 Q: The defendant?
4 A: Yes.
5 Q: What did he say?
6 A: He says I'll leave you dead like one of your cousins.
7 Q: And what happened at that point?
8 A: Ms. Tabitha --
9 Q: What was your reaction?
10 A: I was just -- just in shock, but I mean there was really
11 nothing I could do or say.
12 Q: All right. At this point when you were out there, what's
13 everybody else doing? Do you know where -- where everybody
14 else is?
15 A: Ms. Tabitha is on the ground where the steps are to the
16 deck, and Bryant is somewhere behind me. And everyone else
17 was in the house.
18 Q: Bryant was behind you?
19 A: Yeah.
20 Q: Who is Bryant?
21 A: Reid's -- I mean Regan's son.
22 Q: And how old is Bryant?
23 A: Four to five.
24 Q: Now, did you ever -- how was the defendant acting towards
25 the people inside?

ONTARIO MCCLELLAN - DIRECT BY MR. ANDERS

1 A: Like he wanted to get at them in some type of way.

2 Q: Because you were outside?

3 A: Yes, sir.

4 Q: What was he doing?

5 A: He was pacing back and forth with the dog and the gun and
6 talking and yelling.

7 Q: And to your knowledge was 9-1-1 ever called?

8 A: Yes, sir. I just didn't know they were called because I
9 was outside at the time.

10 Q: All right. And at some point, the defendant left;
11 correct?

12 A: Yes, sir.

13 Q: And is the man who pointed the gun at you today -- here
14 today?

15 A: Yes, sir.

16 Q: Can you point him out to us?

17 A: He's there.

18 MR. ANDERS: Please let the record reflect that the
19 witness picked out the defendant.

20 THE COURT: So noted for the record.

21 MR. ANDERS: No further questions, Your Honor.

22 THE COURT: Cross examination?

23 MS. PARHAM: Thank you, Your Honor.

24 CROSS EXAMINATION

25 BY MS. PARHAM:

ONTARIO MCCLELLAN - CROSS BY MS. PARHAM

1 Q: Do you recall seeing the pit bull over by the kennels --
2 the dog kennels?

3 A: I don't recall it being by the kennels, but I do know the
4 dog was running around; so it's a possibility.

5 Q: Okay. And did you see the dog running around before Mr.
6 Moody came out and shot the gun?

7 A: Yes. The dog was running out -- running around the whole
8 time we were outside.

9 Q: All right. And what do you recall him saying after he
10 fired the gun?

11 A: I really don't remember. It was directed to Jermichael
12 though.

13 Q: Okay. Well -- and prior to him shooting with the gun, do
14 you recall him letting his two German Shepherds out of the
15 house?

16 A: Yes.

17 Q: And then they go back in the house?

18 A: Yes.

19 Q: And then that's when you -- then you say the pit bull is
20 running around; but you don't see it at the kennels. Is that
21 what you're saying?

22 A: Yes.

23 Q: Okay. And then at that point, you hear these gun shots?

24 A: Yes.

25 Q: And you say you don't recall what he said?

ONTARIO MCCLELLAN - CROSS BY MS. PARHAM

1 A: No, ma'am.

2 Q: Okay. Do you recall testifying at a previous hearing
3 under oath that he said -- in fact, it was yesterday -- that
4 he said he was going to put a bullet in the dog's head?

5 A: Possibly.

6 Q: Do you recall saying that under oath yesterday? Yes or
7 no, sir?

8 A: I think so.

9 Q: Okay. And then after you testified to that yesterday,
10 then I asked you about the statement that you made originally
11 to law enforcement where you said, keep your stupid ass dog
12 away from my dogs. Do you recall that?

13 A: If I wrote it down, then yes.

14 Q: All right. But you recall me asking you about that
15 yesterday? The difference in your statements?

16 A: I mean, there may be a difference, but it's all coming
17 back.

18 Q: Well, that's what you said to me yesterday. It was all
19 coming back. But yest -- now, you're saying you don't
20 remember what he said. Because there was a discrepancy
21 yesterday between your testimony yesterday and your statement;
22 correct?

23 A: It's -- I mean it's been a long time; so I really
24 wouldn't remember. It's been a whole year and four days.

25 Q: Okay. But is it true or false that you told police

ONTARIO MCCLELLAN - CROSS BY MS. PARHAM

1 officers keep your stupid ass dog away from my dog?

2 A: If I wrote that down, then yes.

3 Q: Okay. And you testified yesterday after you heard
4 Jermaine and Jermichael -- one of them testify about the
5 bullet in the head, then you testified that way yesterday that
6 he came up and said I'm going to put a bullet in your head;
7 isn't that right? Under oath, that's what you said yesterday?

8 A: Yes.

9 Q: Okay. Now, today on direct examination, you say you
10 don't remember what he said; correct?

11 A: Yes.

12 Q: And that's all under oath?

13 A: (No verbal response.)

14 Q: Okay. Now, you said today under oath that you saw my
15 client point a gun at Jermaine and Jermichael. Do you recall
16 just testifying to that?

17 A: Yes.

18 Q: Okay. Do you recall yesterday testifying under oath that
19 you did not see him point a gun at Jermaine or Jermichael?

20 A: I don't remember not saying that yesterday.

21 Q: Okay. Let me read the following and see if you agree
22 with it. Question by me --

23 MR. ANDERS: I object, Your Honor.

24 THE COURT: Can the lawyers approach?

25 (Whereupon, a bench conference is held in the presence of

ONTARIO MCCLELLAN - CROSS BY MS. PARHAM

1 the jury but out of the hearing of the jury as follows.)
2 MR. ANDERS: She's testifying as she's reading that.
3 MS. PARHAM: I have to give him the opportunity to say
4 whether he said it or not before I can offer the --
5 MR. ANDERS: And the rule --
6 MS. PARHAM: -- transcript.
7 MR. ANDERS: If we want to give him the statement, I'll
8 let read the whole Statement.
9 THE COURT: I mean he's entitled to it under the rule.
10 He's entitled to keep it in the whole context.
11 MR. ANDERS: I'm going to go into it.
12 MS. PARHAM: No. This is -- this is a false statement
13 under oath. This is about this whole --
14 THE COURT: Hold on.
15 (Whereupon, the bench conference ends.)
16 THE COURT: Ladies and gentlemen, please step to the jury
17 room for just a minute. I'll bring you back out here as
18 quickly as possible. Do not discuss the case. Hold on before
19 you step out. While you are back there, why don't you all
20 select who you all so desire to serve as the foreperson of
21 this jury? Write it on a piece of paper to hand up to me when
22 you get back. I will say this. Mr. Hill -- Mr. Hill cannot
23 serve as the foreperson. Okay? Do not discuss the case. I
24 will get you back out here as quickly as possible.
25 (Whereupon, the jury exits the courtroom at 4:34 p.m.)

ONTARIO MCCLELLAN - CROSS BY MS. PARHAM

1 THE COURT: All right. Yes, sir, Mr. Anders?

2 MR. ANDERS: Your Honor, I just think that the way that
3 she -- that that last question was improper. She's
4 testifying, and basically what she's doing is she's nit-
5 picking. She's going through this statement that he's written
6 and --

7 THE COURT: Well, she's getting ready to ask him
8 something that he testified to yesterday during our hearing.

9 MS. PARHAM: Yeah. The --

10 THE COURT: You're talking about going through the
11 statement on nit-picking. I mean you certainly can clean it
12 up on redirect, can you not?

13 MR. ANDERS: I can if you're -- if you'll allow me to --
14 allow the witness to read the statement. I think it's rule of
15 completeness. She's --

16 MS. PARHAM: I'm not --

17 MR. ANDERS: -- reading tidbits.

18 THE COURT: Hold on a minute. Go ahead, Ms. Parham.

19 MS. PARHAM: I am not asking him about the statement in
20 his hand.

21 THE COURT: Right.

22 MS. PARHAM: And the rule of completeness has nothing to
23 do with what I'm asking him.

24 THE COURT: I understand.

25 MS. PARHAM: I'm asking him if he testified under oath

ONTARIO MCCLELLAN - CROSS BY MS. PARHAM

1 yesterday.

2 THE COURT: Correct.

3 MS. PARHAM: And I'll read it. Did you ever see him
4 point the gun at Jermaine and Jermichael? Because I have to
5 do that for -- to impeach him with prior statement. I don't
6 recall that. You don't -- and then my question, you don't
7 recall seeing him point the gun at Jermichael? No, because I
8 was in the pool. He testified under oath to that yesterday
9 and then raises his hand in here today and says he saw him
10 point the gun at both of them. And that is proper cross
11 examination.

12 THE COURT: Mr. Anders? Why is that not --

13 MR. ANDERS: I didn't get a chance to look at the
14 transcript. I can't --

15 MS. PARHAM: Well, he could have bought it like I did.
16 It was \$750.

17 THE COURT: Well. You got time right now; look at it if
18 you want to.

19 MR. ANDERS: Is this --

20 MS. PARHAM: And I'm not entitled to enter it unless he
21 denies that.

22 THE COURT: Hold on. Hold on a minute. Well, I think
23 you certainly can question him -- question him on it under
24 Rule 613. I think you certainly can, you know, but --

25 MR. ANDERS: Your Honor, he says he doesn't recall.

ONTARIO MCCLELLAN - CROSS BY MS. PARHAM

1 THE COURT: Well, if he doesn't recall, then you get into
2 the admissibility of extrinsic evidence pertaining to his
3 prior statement. I mean --

4 MR. ANDERS: Yes, Your Honor.

5 THE COURT: You know, if he -- she can let him look at
6 it. She can -- pursuant to Rule 16(b) -- 16(a). I mean I'm
7 sitting here looking at it. I mean -- I mean I think she's
8 right on target in addressing that issue.

9 MR. ANDERS: Yes, sir.

10 THE COURT: Sir?

11 MR. ANDERS: Yes, sir.

12 THE COURT: All right. Any further objection from the
13 State? I mean I just --

14 MR. ANDERS: Nothing further, Your Honor.

15 THE COURT: I understand your objection, but I think
16 she's right on target. She's entitled to cross examine him on
17 that pursuant to Rule 613. I mean I think it's open there.
18 But if you -- if there's an objection, I'll certainly -- as
19 I've done with her, please make whatever argument and
20 objection so the record is clear on it. Okay?

21 MR. ANDERS: No further objection.

22 THE COURT: Okay. All right. Anything else before I
23 bring the jury back out from the State?

24 MR. ANDERS: Nothing further, Your Honor.

25 THE COURT: Ms. Parham?

ONTARIO MCCLELLAN - CROSS BY MS. PARHAM

1 MS. PARHAM: No, Your Honor.

2 THE COURT: Bring me the jury, please.

3 THE BAILIFF: Yes, sir.

4 THE COURT: I know it's been a long day. We're getting
5 close to the end of the day. Just bear with us.

6 THE BAILIFF: Judge, they are still trying to decide.

7 (Whereupon, there is a pause in the proceedings.)

8 (Whereupon, the jury enters the courtroom at 4:40 p.m.)

9 THE COURT: All right. Ms. Diane Rowell, Juror Number
10 151, is our forelady. That will be your seat throughout the
11 remainder of this trial, Ms. Rowell. Will you mark that as a
12 Court's exhibit, please?

13 (Whereupon, the jury note is marked and entered as
14 Court's Exhibit Number 2.)

15 THE COURT: All right. Ms. Parham, you may continue.

16 MS. PARHAM: Thank you, Your Honor.

17 Q: Mr. McClellan, do you recall the following being said
18 under oath yesterday as you were testifying?

19 Question. Did you ever see him point the gun and
20 Jermichael and Jermaine?

21 Answer. I don't recall that but --

22 Question. You don't recall seeing him point the gun at
23 Jermichael?

24 Answer. No, because I was still in the pool.

25 Do you recall that being your testimony yesterday --

ONTARIO MCCLELLAN - CROSS BY MS. PARHAM

1 yesterday?

2 A: It was likely to be said. I really don't remember every
3 word I said yesterday.

4 MS. PARHAM: May I approach? I would like to mark this
5 as Defense Exhibit 3 -- 4. Excuse me.

6 THE COURT: Mr. Anders, any objection?

7 MR. ANDERS: No objection, Your Honor.

8 THE COURT: All right. Without objection..

9 (Whereupon, page 66 of the transcript from June 16, 2014,
10 is marked and entered as Defendant's Exhibit Number 4.)

11 MS. PARHAM: Thank you.

12 Q: You testified here under oath today that you did not
13 recall seeing the pit bull by the kennels. Do you recall that
14 a few minutes ago?

15 A: I recall seeing him around, but I did not see him by the
16 kennels. I don't think so.

17 Q: Okay. And that was your testimony here today; correct?

18 A: Yes.

19 Q: Okay. Do you recall this thing under oath yesterday?

20 Question. Well, do you recall seeing the pit bull by the
21 kennels?

22 Answer. Yes.

23 A: If he's running around then, yes, he's by the kennels.

24 Q: Do you recall answering yes to me yesterday when I asked
25 if you saw the pit bull by the kennels?

ONTARIO MCCLELLAN - CROSS BY MS. PARHAM

1 A: If that's what's up there, then yeah.

2 Q: Do you remember that?

3 A: No, not clearly, but --

4 THE COURT: Any objection?

5 Mr. Anders: We do have an objection to that. Yes, Your
6 Honor.

7 THE COURT: Can the lawyers approach a minute?

8 (Whereupon, a bench conference is held in the presence of
9 the jury but out of the hearing of the jury as follows.)

10 MR. ANDERS: He said he didn't recall.

11 THE COURT: He's not denying it. If it's there, he's not
12 denying it. He didn't deny the other.

13 MS. PARHAM: Well, if he doesn't admit it, then it's
14 offered extrinsically.

15 THE COURT: Well, he's got to deny making it.

16 MS. PARHAM: Okay.

17 THE COURT: He's not denying it.

18 MS. PARHAM: Okay.

19 THE COURT: He said he doesn't recall.

20 MS. PARHAM: I'll clarify. I'll try to clarify.

21 THE COURT: All right.

22 MR. ANDERS: I think it's been answered.

23 (Whereupon, the bench conference ends.)

24 Q: Do you recall telling me yesterday that you recalled
25 seeing the pit bull by the kennel?

ONTARIO MCCLELLAN - CROSS BY MS. PARHAM

1 A: If the dogs was running around, then -- if the dog was
2 running around, it's going to be everywhere in the yard, so
3 yes.

4 Q: You recall saying -- just answer my question. Yes, you
5 recalled seeing the pit bull by the kennel?

6 A: I don't recall just saying yes, but if that's something,
7 yes.

8 MS. PARHAM: May I approach the witness?

9 THE COURT: Yes.

10 Q: Was the question, well, do you recall seeing the pit bull
11 by the kennels? Answer, yes.?

12 A: That's what's up there.

13 Q: So basically, yesterday you testified the pit bulls were
14 by the kennels and that you did not see my client point a gun
15 at Jermaine and Jermichael and that it was a bullet in your
16 after he shot the gun, and today your testimony has been that
17 the pit bull was not by the kennels, that you did see my
18 client --

19 A: I did not say that the pit bull was not by the kennels.

20 Q: You don't recall testifying that earlier today under
21 oath?

22 A: No. I said the dog was running around so basically it
23 would have been by the kennels if it was running around.

24 Q: And do you recall testifying today that you did see him
25 point a gun at Jermaine and Jermichael?

ONTARIO MCCLELLAN - CROSS BY MS. PARHAM

1 A: Yes.

2 Q: And yesterday you testified he didn't.

3 A: I didn't testify that I didn't, I said I really didn't
4 recall.

5 Q: Okay. Well, the transcript is in evidence. And all --
6 all of this is under oath. And -- and -- and you were sitting
7 in the courtroom for the entire hearing yesterday; is that
8 correct?

9 A: Yes.

10 Q: And you've been sitting in the courtroom all day today;
11 isn't that correct?

12 A: Yes.

13 MS. PARHAM: Nothing further.

14 THE COURT: Any redirect?

15 MR. ANDERS: Your Honor, briefly.

16 THE COURT: Yes, sir.

17 REDIRECT EXAMINATION

18 BY MR. ANDERS:

19 Q: When you were 14 years old -- when you were 14 years old,
20 this incident occurred; correct?

21 A: Yes, sir.

22 Q: And you gave law enforcement everything you remembered?

23 A: Yes, sir.

24 Q: And now you're here today?

25 A: Yes, sir.

ONTARIO MCCLELLAN - REDIRECT BY MR. ANDERS

1 Q: And you're telling everybody the truth; correct?

2 A: Yes, sir.

3 Q: You got any reason to lie?

4 A: I wouldn't have any reason to lie.

5 Q: Are you telling the truth?

6 A: I'm telling the truth.

7 Q: You were startled that day, were you not?

8 A: I was. My life could have ended.

9 MR. ANDERS: No further questions. Thank you.

10 THE COURT: Any recross?

11 RECROSS EXAMINATION

12 BY MS. PARHAM:

13 Q: You also told law enforcement you never saw my client
14 point the gun at Jermaine and Jermichael, didn't you?

15 A: Repeat?

16 Q: You told law enforcement, SLED, the South Carolina Law
17 Enforcement Division that you never saw my client point the
18 gun at Jermaine and Jermichael; correct?

19 A: When did I first told them this?

20 Q: Last year.

21 A: Where is that?

22 MS. PARHAM: May I approach, Your Honor?

23 THE COURT: Yes, ma'am.

24 Q: Is this your statement that you gave to SLED on June 20th,
25 2013?

ONTARIO MCCLELLAN - RECROSS BY MS. PARHAM

1 A: Mm-hmm.

2 Q: And is that your signature on the bottom?

3 A: Yes.

4 Q: Will you look through this statement and tell me anywhere
5 that you said that you saw my client point a gun at Jermaine
6 or Jermichael?

7 (Whereupon, there is a pause in the proceedings.)

8 Q: It's not in there, is it?

9 A: No, it's not, but who wouldn't remember something like
10 that? Especially when I'm here having to tell it all over
11 again.

12 MS. PARHAM: Nothing further.

13 THE COURT: Sir, you may step down. Thank you. Can the
14 lawyers approach, please?

15 (Whereupon, a bench conference is held off the record.)

16 THE COURT: All right. Ladies and gentlemen, we are
17 going to stop at this time for the balance of today. We have
18 gone through -- the State has put up 13 witnesses today.
19 Thirteen witnesses today. We've done a lot. Not many
20 witnesses for the State are left, and then defense has an
21 option -- they're not required to, but have an option to put
22 up a defense. At this time, I am going to excuse you for the
23 balance of today. Okay?

24 But during your overnight break, my instructions remain
25 the same. Do not -- do not discuss the case until you are

26

1 instructed to do so. That means with anybody. Don't do any
2 independent investigation on your own. You're to decide this
3 case based solely -- based solely upon the testimony and
4 evidence presented in this courtroom and nowhere else.

5 I'm going to ask that you be back in your jury room
6 tomorrow morning at 9:30 -- at 9:30, and we will resume the
7 trial of this case as promptly at that time as possible.

8 Thank you. You all are free to go for the evening.

9 (Whereupon, the jury exits the courtroom at 4:53 p.m.)

10 THE COURT: All right. Anything from the State before we
11 break for the balance of the evening?

12 MR. ANDERS: Nothing from the State, Your Honor.

13 THE COURT: Defense counsel?

14 MS. PARHAM: No, Your Honor.

15 THE COURT: All right. Nine thirty in the morning.

16 Thank you all.

17 (Whereupon, the proceedings adjourn for the day at 4:55
18 p.m.)

19
20 --- CONTINUED IN VOLUME III OF III - DAYS 3 & 4 OF 4 ---
21
22
23
24
25

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE NO. 2014-GS-21-533
	)	CASE NO. 2014-GS-21-534
	)	CASE NO. 2014-GS-21-535
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	TRANSCRIPT OF RECORD
	)	
	)	VOLUME III of III
DAMON MOODY,	)	
	)	Days 3&4 of 4
Defendant.	)	
	)	

June 16-19, 2014
Florence, South Carolina

B E F O R E:

THE HONORABLE D. CRAIG BROWN, Judge; and a jury

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

JASON ANDERS, Assistant Attorney General
MEGAN BURCHSTEAD, Assistant Attorney General
Attorneys for the Plaintiff

ROSE MARY PARHAM, Esquire
Attorney for the Defendant

KRYSTAL J. SMITH
Court Reporter

1 JUNE 18, 2014

2 (Whereupon, the proceedings resume at 9:32 a.m.)

3 THE COURT: Do we have all the jurors?

4 THE BAILIFF: Yes, sir. Judge, before we start?

5 (Whereupon, a bench conference is held with the bailiff
6 as follows.)

7 THE BAILIFF: One of the jurors is having trouble with
8 her work. It's a Kerr. Her name is Kerr.

9 THE COURT: All right. Where does she work?

10 THE BAILIFF: Actually, she didn't tell us. I wanted to
11 let you know so you could take care of that.

12 THE COURT: All right.

13 THE BAILIFF: Okay.

14 THE COURT: I'll talk with her. I'll talk with her boss
15 if I need to.

16 THE BAILIFF: Okay.

17 (Whereupon, the bench conference ends.)

18 THE COURT: All right. Is the State ready to proceed?

19 MR. ANDERS: Yes, Your Honor.

20 THE COURT: Defense counsel?

21 MS. PARHAM: Yes, Your Honor.

22 THE COURT: Any issues before I bring the jury out, Mr.
23 Anders?

24 MR. ANDERS: No, Your Honor.

25 THE COURT: Ms. Parham?

JERMICHAEL WRIGHT - DIRECT BY MR. ANDERS

1 MS. PARHAM: No, Your Honor.

2 THE COURT: We got all the jurors here?

3 THE BAILIFF: Yes, sir.

4 THE COURT: All right. Please bring them out.

5 (Whereupon, the jury enters the courtroom at 9:33 a.m.)

6 THE COURT: Good morning, Madam Forelady and ladies and
7 gentlemen of the jury. I hope you all had a nice, peaceful,
8 restful evening last night and are ready to continue with the
9 trial of this case this morning. At this time, Mr. Anders,
10 you're recognized. Call your next witness, please.

11 MR. ANDERS: Thank you, Your Honor. The State calls
12 Jermichael Wright.

13 THE CLERK: If you will, sir, place your left hand on the
14 Bible and raise your right hand. Do you swear to tell the
15 truth, the whole truth, and nothing but the truth, so help you
16 God?

17 THE WITNESS: Yes, ma'am.

18 THE CLERK: Please be seated and state your full name for
19 the record.

20 THE WITNESS: My name is Jermichael Wright.

21 JERMICHAEL WRIGHT, being first
22 duly sworn, testifies as follows:

23 DIRECT EXAMINATION

24 BY MR. ANDERS:

25 Q: Jermichael, will you tell the jury a little bit about

JERMICHAEL WRIGHT - DIRECT BY MR. ANDERS

1 yourself, where you grew up, and what you do?

2 A: I grew up in Latta, South Carolina. I'm a professional
3 tattoo artist. I'm all the time -- I work out with kids. I'm
4 an AAU basketball coach and I mean we travel all around to get
5 kids ready to play in front of college coaches when they get
6 older because my sister and my brother and my other brother --
7 I've trained them when they was growing up too, and all of
8 them got scholarships. My sister went to Georgetown, my
9 brother went to Virginia, and my other brother went to
10 Maryland and then went to Virginia.

11 So where I'm from you don't see too many people make it.
12 My best friend plays in the NBA. So what I do -- I kind of
13 give these kids the blueprint on how to prepare themselves,
14 school, and basically train them to get ready to play
15 basketball, basically to get a chance to get from where I'm
16 from.

17 I'm starting up my own tattoo shop -- it'll will be ready
18 sometime in July -- called NBA Tattoos, Natural Born Artist
19 Tattoos. I have a fiancée and I just had a baby in September.
20 She'll be one on the 9th of September of this year. So I am an
21 open book.

22 Q: And you were involved in an incident that took place June
23 13th of last year; correct?

24 A: Yes, sir.

25 Q: Can you tell the jury in your own words what occurred,

JERMICHAEL WRIGHT - DIRECT BY MR. ANDERS

1 how you came to be there, and what happened?

2 A: We was basically -- I -- I had some -- like I said, I
3 have -- I coach kids during the summer; so I had some kids
4 with me, my brother, and we was working out and it was real
5 hot that day. So actually Tyree brought it up, like, I wish
6 we could get in a pool. And I know my fiancée's mom has a
7 pool; so I told her to call Ms. Tabitha and ask her would it
8 be all right if we had a cookout.

9 She called her. She said it was fine; so basically
10 everybody was getting ready to go over there. So we went
11 there. We got food first, went there, and everybody's getting
12 ready to get in the pool or whatnot. The women in the kitchen
13 preparing the meats and stuff and Jermaine really the only one
14 that really know how to grill. I was just out there helping,
15 helping him clean off the grill and everything like that. So
16 he was outside on the grill cleaning it and I was back and
17 forth in the kitchen, you know, seeing what they're doing with
18 the meats, seeing if it was ready to be brought out or
19 whatever.

20 So I go back outside and I'm standing beside Jermaine and
21 we're both cleaning off the grill and out of nowhere I hear
22 these gunshots. So I turned around --

23 Q: Let me just stop you there. About how many do you recall
24 hearing or seeing?

25 A: To the best of my recollection, it was about five or six

1 shots.

2 Q: Okay.

3 A: And I turned around -- after I heard the first one, I
4 turned around, and he's just shooting the gun. And the next
5 thing you know I see -- he's on his steps and I see the dog
6 running towards where everybody was at. Mind you, the dogs
7 was out there, we -- about the dog, we got -- we had Sire with
8 us, which is our blue pit bull, and he was outside running
9 around. He had let his dogs out; so basically I saw all the
10 dogs running around. He has two house dogs or whatever. So
11 they just running around the yard and whatnot.

12 Q: Let me ask you because you bring up they're running in
13 the yard?

14 A: Mm-hmm.

15 Q: Describe the yard. Is there a fence that divides his
16 property and Ms. Tabitha's or is it all just sort of right --

17 A: I can draw it if it wouldn't take -- it wouldn't take but
18 a second really because it's not really -- the backyard is
19 real simple.

20 MR. ANDERS: May I approach, Your Honor?

21 THE COURT: Yes, sir. Can the lawyers approach for a
22 minute?

23 (Whereupon, a bench conference is held in the presence of
24 the jury but out of the hearing of the jury as follows.)

25 THE COURT: He's already drawn this thing one time in

JERMICHAEL WRIGHT - DIRECT BY MR. ANDERS

1 here. Are you going to do it again or use what he's already
2 drawn? Is that into evidence?

3 MS. PARHAM: It is in evidence.

4 THE COURT: Well, it was in evidence for that first
5 hearing.

6 MS. PARHAM: Right.

7 THE COURT: You can have it introduced in this case. You
8 can enter it if you don't want to use that.

9 MR. ANDERS: If he's already drawn it, then we can use
10 that.

11 THE COURT: He drew on it?

12 MS. PARHAM: He did. I mean he can draw it on the board.

13 MR. ANDERS: Well, that --

14 THE COURT: I didn't know if you wanted to do it. I'm
15 just trying to -- look through those exhibits. I'm not sure
16 which one.

17 (Whereupon, the bench conference ends.)

18 Q: Jermichael, I'm handing you what's been marked as
19 Defendant's Exhibit 1.

20 A: Okay.

21 Q: And I believe you've already drawn that.

22 A: Mm-hmm.

23 THE COURT: Is that a yes?

24 THE WITNESS: Yes, sir. I'm sorry.

25 A: Yes, sir.

JERMICHAEL WRIGHT - DIRECT BY MR. ANDERS

1 THE COURT: Okay. Thank you.

2 MR. ANDERS: Your Honor, permission to publish?

3 THE COURT: Any objection?

4 MS. PARHAM: No. And for the record, that was Defense
5 Exhibit?

6 THE COURT: 1.

7 MR. ANDERS: 1.

8 MS. PARHAM: Thank you.

9 THE COURT: Yes, ma'am.

10 Q: So essentially there's no fence between his property and
11 Tabitha's property?

12 A: No.

13 Q: And -- you can hold on to that. Is there any -- any
14 fence between the kennels that he owns and the rest of the
15 yard?

16 A: Yes.

17 Q: There is?

18 A: There is a fence on the other side of the pool. It's --
19 he has a kennel and the kennel is -- is gated. The dogs are
20 in pens, and in-between the kennel there's a gate in-between
21 the pool. This is the kennel, the gate covering where -- and
22 it's this big tarp over the -- over the fence. So if I'm
23 standing by the pool or whatever, you can't see. You have to
24 go around to see the dogs and whatnot, but you can see the
25 dogs jumping at the very top. You may see a head jumping, but

JERMICHAEL WRIGHT - DIRECT BY MR. ANDERS

1 you can't see the dogs unless you go around it because there's
2 a tarp on the fence.

3 Q: All right. And just back track a little bit. About what
4 time was this party kicking off?

5 A: Early afternoon around 2:30 -- between 2:30 and three
6 o'clock.

7 Q: And what were you wearing?

8 A: I was wearing American flag swim trunks.

9 Q: And you had your dog?

10 A: Yes, sir.

11 Q: And you were guests of Ms. Tabitha?

12 A: Yes, sir.

13 Q: And what's the relation with you and Ms. Tabitha?

14 A: It's my fiancée's mom.

15 Q: Okay. So she had you over and some of the guys that you
16 coach and some other people?

17 A: Yes, sir.

18 Q: And your dog was out in the back; correct?

19 A: Yes, sir.

20 Q: Was Mr. -- the defendant's dogs out there as well?

21 A: Yeah.

22 Q: Okay.

23 A: They -- well, they -- they wasn't out there at first, but
24 while -- while we was out there or whatever, the dogs were let
25 out, and it was his two house dogs running around the yard

JERMICHAEL WRIGHT - DIRECT BY MR. ANDERS

1 with Sire.

2 Q: Did he know you were in the backyard?

3 A: I don't see how you couldn't know I was in the backyard.

4 It was me, it was --

5 Q: Let me ask you this. Between the pool and his back
6 porch, what's the distance?

7 A: In his back porch, probably -- probably from here to
8 where Jermaine is -- a little bit past Jermaine.

9 Q: Not very far?

10 A: Not far at all no.

11 Q: And the distance between Ms. Tabitha's back porch and his
12 back porch approximately?

13 A: Probably from here to the elevator.

14 Q: So if the defendant were to get up and let his dogs out
15 and there were people in the pool, he could have seen them?

16 A: He saw them. Yeah.

17 Q: Okay. All right. If you don't mind, go ahead and tell
18 the rest of the story.

19 A: Okay. He -- like I said, he -- I heard shots. So we
20 turned around and after he shot those shots off, he looked at
21 me and he said get your dog, the next one's going in his f-ing
22 head. And I screamed back to him, don't talk to me like that
23 in front of my family. So he turns around and he walks back
24 in, and everybody's hysterical because it's like -- it just
25 came out of nowhere, you know, shots. I didn't -- I didn't

JERMICHAEL WRIGHT - DIRECT BY MR. ANDERS

1 see no reason for shots to go off. So as soon as he walk in
2) --
3 Q: Let me just stop you. And I'm sorry to keep interrupting
4 you. After he shot --
5 A: Yes, sir.
6 Q: You said don't do that around my family or something to
7 that effect?
8 A: I -- I was like don't talk to me like that in front of my
9 family. I didn't even say anything about the shots because it
10 was just -- I was -- I was in shock. I didn't understand what
11 the shooting was for.
12 Q: Okay. Then he went back inside?
13 A: Mm-hmm.
14 Q: And what did you think? That was the end of it or what?
15 A: After he said what he said and I was like don't talk like
16 that in front of my family, I thought it was -- I didn't see
17 no reason for him to come back out. I was just like -- it was
18 -- it was -- my idea was, you know, everybody was out there,
19 you know, for the pool party and then out of nowhere shots,
20 and I'm like, you know, he could have stayed in, you know, and
21 I wouldn't have thought no more of it, you know, but he came
22 right back out.
23 Q: And who was in the backyard and/or the pool at this
24 point?
25 A: Me and my brother was on the porch, like I said. The

JERMICHAEL WRIGHT - DIRECT BY MR. ANDERS

1 kids were in the pool, Tyree, Tyquan --

2 Q: How many kids?

3 A: It was Tyree, Tyquan, Ontario, Bryant, Reid; so it was
4 five kids. Regan was on the inside and Ms. Tabitha I believe
5 was on the inside also dealing with the food and stuff.

6 Q: All right. So after he goes inside, what happens next?

7 A: After he goes -- after he goes inside, he goes in and he
8 comes immediately back out. And me and my brother's standing
9 at the edge of the -- at the edge of the -- Ms. Tabitha's
10 patio, and he's walking up and first thing he do -- he said
11 what you going to do and basically gets in my face. And once
12 he gets in my face, my brother put his hand, like, in-between
13 us and he was like you need to get out of my brother's face.
14 And he takes his attention all the way from me and says, oh,
15 what you going to do, big boy, and put his -- put -- gets in
16 Jermaine's face.

17 Remind you, Jermaine never seen this guy in his life. He
18 gets in Jermaine's face, and he was like what you going to do,
19 big boy, and they so close, like, they look like they could
20 kiss. So Jermaine pushes him out of his face and pushes him
21 off of the patio steps, and that's when we all on the ground
22 and we all chest -- chest bumping like rams. And it moved
23 from the patio steps to, like, near towards the grill towards
24 the left side of the pool.

25 So we chest bumping, chest bumping, and the next thing

JERMICHAEL WRIGHT - DIRECT BY MR. ANDERS

1 you know he was like, all right, I got something for y'all,
2 y'all wait right here, and he immediately turns around and
3 walk towards his house, and me and Jermaine walk right back to
4 the patio and we still in the same place we started at on the
5 top of the patio. So he goes in and once he walks back out,
6 he comes -- he has this leash thrown over his shoulder and he
7 walks around the kennel, and he comes back out with Sniper and
8 I know Sniper because I know him.

9 I know his dogs. I know what he do. He trains K-9's.
10 He has Darco, AZ and Sniper. Those are the ones that I'm
11 familiar with because those are the ones, you know, I see him
12 deal with most. And Darco and AZ is his house dogs or
13 whatever. But Sniper is his prize dog. That's the one he has
14 the videos and it shows the footage of him training. So it
15 has the guy holding the thing, the arm guard, and Sniper, you
16 know, he attacks them, just like on the police shows or
17 whatever.

18 So he goes and gets Sniper, and once he gets Sniper, I'm
19 like what you going to do with the dog, and next thing you
20 know, he just pulls out -- he fumbles in his pocket and pulls
21 out the black gun that I saw with the laser on it and puts it
22 on me and my brother. And once he does that, Jermaine like he
23 got a gun, y'all get in, and he's basically pulling us in the
24 house or whatever. So I go in and I call the cops and that's
25 what you heard -- that's what you heard on the 9-1-1 call.

JERMICHAEL WRIGHT - DIRECT BY MR. ANDERS

1 Q: All right. And did you ever call -- did Mr. Moody ever
2 come to you and ask you to -- hey, put your dog on a leash?
3 A: Not at all.
4 Q: Please take your dog inside?
5 A: No, sir, not at all.
6 Q: Had he ever done that in the past?
7 A: No, sir, not at all.
8 Q: To your knowledge, had he ever talked with Ms. Tabitha
9 about your dog?
10 A: That's the -- yesterday was the first day I ever heard of
11 him having any kind of issue with Sire ever.
12 Q: All right. Now, when he approached you with the dog and
13 you described as a black gun with a laser site --
14 Q: Yeah.
15 Q: Did he point it at you?
16 A: Yes.
17 Q: Okay. Did you -- did you witness him point it at anybody
18 else?
19 A: The -- the first time I ever saw this gun was I was at
20 Ms. Tabitha's house. The first time I ever seen this gun --
21 mind you, I --
22 Q: Well, we're going to talk -- let's just talk about this
23 day.
24 A: Oh, okay.
25 Q: Okay?

JERMICHAEL WRIGHT - DIRECT BY MR. ANDERS

1 A: Mm-hmm.

2 Q: You had seen that gun before?

3 A: I have seen that gun before.

4 Q: But on this day, did you see that laser sight on you?

5 A: Yes.

6 Q: Did you see it on anybody else?

7 A: It was on me and my brother.

8 Q: Okay. And when? When during this incident did that

9 occur?

10 A: It was after he got Darco -- I mean after he got Sniper,

11 came from around the kennels, and he was walking towards us.

12 I saw him fumbling in his pocket and then that's when he -- I

13 seen him draw the gun on us and we was on the patio.

14 Q: And at that point, were you trying -- were you trying --

15 was Jermaine trying to get you inside with the others?

16 A: Yes.

17 Q: When he was walking towards you with the gun --

18 A: Yes.

19 Q: -- or when he got closer?

20 A: No. When he was -- the yard's not -- it's not that big

21 at all. So once he -- once he pulls the gun and point it at

22 us, he's walking towards us with the gun and Jermaine

23 basically trying to pull -- everybody was heated, you know, so

24 Jermaine basically like pulling, pulling me and telling me to

25 get in, like he got a gun he going to shoot you, like get in.

JERMICHAEL WRIGHT - DIRECT BY MR. ANDERS

1 So that's when we go in the house or whatever, and you still
2 hear the chatter going back and forth over the 9-1-1 call
3 because he's like pacing back and forth in front of the patio
4 with the -- with the gun in his hand and the dog.

5 MR. ANDERS: May I approach, Your Honor?

6 THE COURT: Yes, sir.

7 Q: I'm going to show you what's been entered as State's
8 Exhibit 1. It's a CAD report. Under the name, what's it say?

9 A: Under the name? Oh, Mr. Wright.

10 Q: All right. Would that be you or your bother?

11 A: That's me.

12 Q: Can you describe the scenario as you're on the phone --
13 what's going on while you're on the phone with 9-1-1?

14 A: I was just basically trying to let her know how -- how
15 serious it was, like it was -- it was -- my thoughts was it's
16 a glass window right there. The door is basically just a full
17 glass window and I see so much happen all the time, I'm just
18 thinking in my head, like, please get somebody here. I don't
19 know if he going to shoot the window out and come in and
20 basically try to, you know, come for me and my brother or -- I
21 was just scared. I didn't -- I didn't know, you know, what he
22 could have done. I didn't underestimate him. So basically I
23 was just letting them know, like, look, it's no reason for,
24 you know, him to have a gun out here to be shooting around
25 kids and nothing like that, so somebody please get here. That

JERMICHAEL WRIGHT - DIRECT BY MR. ANDERS

1 was basically my -- that was my -- my only thought process.

2 Q: All right. And while you're on the phone, can you
3 describe what the defendant was doing at that point?

4 A: He was just -- I could only see him through the glass
5 window. I wasn't close enough to hear. I hear him -- I hear
6 -- you know, it sound muffled because you outside of --
7 outside of the window or whatever -- I mean outside of the
8 glass door where they were walking back and forth. So I'm
9 just looking at basically keeping eyes on him the whole time.
10 So --

11 Q: What was he doing?

12 A: He was just walking back and forth talking to Ms. Tammy.
13 Ms. Tammy was outside with him. And Ontario and two kids was
14 out there.

15 Q: Could you -- did he still have his gun with him?

16 A: Yes.

17 Q: Did he ever threaten -- did you ever threaten the
18 defendant in any way that day?

19 A: No. Not at all.

20 Q: Did you ever make any move --

21 A: Not at all.

22 Q: -- or say something that would make him feel threatened?

23 A: I -- I -- all I did was run. Like, I saw the gun and we
24 ran in the house. That was it.

25 MR. ANDERS: No further questions.

JERMICHAEL WRIGHT - CROSS BY MS. PARHAM

1 THE COURT: Cross examination.

2 MS. PARHAM: Thank you.

3 CROSS EXAMINATION

4 BY MS. PARHAM:

5 Q: What did you say to him when he walked out of his house
6 with the leash and got the dog out of the kennel?

7 A: I said, "What are you about to do with that dog?"

8 Q: All right. And what did your brother say to him?

9 A: I wasn't paying attention to my brother.

10 Q: Did you hear your brother say something?

11 A: I -- I can't recall him saying anything actually.

12 Q: Okay. Do you recall testifying previously that you heard
13 your brother say something, but you weren't sure what it was
14 because you weren't paying attention?

15 A: That's what I just said.

16 Q: Okay. And -- and you were saying what to him?

17 A: I was asking him what you going to do with that dog?

18 Q: Isn't it true that when he got the dog out, you said, if
19 you take one step closer to me with that dog, I'm going to put
20 a bullet between your heads?

21 A: That's the furthest thing from the truth.

22 Q: All right. And -- and you also testified that you saw
23 him -- him pull the gun out of his pocket; is that correct?

24 A: Yes, ma'am.

25 Q: After he got the dog?

JERMICHAEL WRIGHT - CROSS BY MS. PARHAM

1 A: Yes, ma'am.

2 Q: And -- and there's no question your pit bull was running
3 around the property that day?

4 A: Yes, ma'am.

5 Q: Did you see the pit bull over at the kennels earlier?

6 A: I wasn't paying attention to where he was at the whole
7 time because I was at the grill. So while my back was turned
8 to the grill, he may -- may have well been at that -- at his
9 kennel.

10 Q: All right. And after those gunshots rang out, did you
11 actually see my client shoot the gun into the ground?

12 A: Oh, yeah.

13 Q: Okay. Did your pit bull -- what was -- what was your pit
14 bull doing after those gunshots?

15 A: He was running.

16 Q: Running back towards you; correct?

17 A: Yes. He wasn't running towards me; he was running away
18 from the bullets I guess.

19 Q: Okay. And did you see your pit bull jumping up on his
20 cages?

21 A: Not one time.

22 Q: All right. And you said you were not aware of any
23 problems with the pit bull previously?

24 A: No.

25 Q: All right. You know my client has a gun, you knew he was

JERMICHAEL WRIGHT - CROSS BY MS. PARHAM

- 1 a cop; correct?
- 2 A: Yes.
- 3 Q: And he -- you know he knows you have a gun; correct?
- 4 A: Of course.
- 5 Q: All right. Because he's seen it with you -- you with it
- 6 before; correct?
- 7 A: I brought it to his house.
- 8 Q: Okay. And let me ask you -- did you have your glasses on
- 9 that day?
- 10 A: I don't wear glasses. These are not -- these are not
- 11 prescription glasses by the way. These are just I guess to
- 12 look smart.
- 13 Q: Let me show you a picture and see if you can identify
- 14 this.
- 15 A: Yes, ma'am. That's me and Porkchop at the tattoo shop
- 16 that I used to work at with Sire.
- 17 Q: Okay.
- 18 A: Mm-hmm.
- 19 Q: And so this is your pit bull that was there that day?
- 20 A: He was a puppy then, but he's not -- he's not a puppy
- 21 anymore; he's a big dog now.
- 22 Q: Okay. Do you remember how close in time this was to the
- 23 incident?
- 24 A: Not at all.
- 25 Q: Okay. But your dog was one year old at the time of the

JERMICHAEL WRIGHT - CROSS BY MS. PARHAM

1 incident?

2 A: Yeah. Yeah.

3 Q: Okay.

4 A: That was -- around that time, that's when I tattooed
5 Damon. It was near around that time.

6 Q: Okay.

7 MS. PARHAM: We'd offer Defense Exhibit 6, which is a
8 picture of him with his pit bull.

9 THE COURT: Any objection?

10 MR. ANDERS: No objection, Your Honor.

11 THE COURT: Without objection, Defense Exhibit 6 admitted
12 into evidence.

13 MS. PARHAM: Thank you.

14 Q: Tell me what y'all were saying when y'all were chest
15 bumping my client around the yard?

16 A: That was a year ago. I definitely couldn't tell you what
17 we were saying. I know we were all mouthing.

18 Q: Okay. Can you tell me -- you don't remember anything you
19 said?

20 A: We -- it was, like, just back and forth talking, what you
21 going to do, what you going to do, that's it, from him and us.
22 It was all three of us.

23 Q: And -- and how long was he in the house after the chest
24 bumping and before he came out with the leash?

25 A: He probably was in the house two to three minutes.

JERMICHAEL WRIGHT - CROSS BY MS. PARHAM

1 Q: All right. You mentioned or the prosecutor mentioned
2 Raymond Felton earlier?

3 A: Yeah. That's my best friend.

4 Q: That's your very best friend?

5 A: Yes, ma'am.

6 Q: And where does he live?

7 A: He lives in Raleigh, North Carolina.

8 MS. PARHAM: That's all I have.

9 THE COURT: Any redirect?

10 MR. ANDERS: Nothing, Your Honor.

11 THE COURT: Sir, you may step down. Thank you.

12 THE WITNESS: Thank you.

13 THE COURT: Call your next witness, please.

14 MS. BURCHSTEAD: The State calls Special Agent John
15 Follin.

16 MS. PARHAM: I have a matter of law, Your Honor.

17 THE COURT: All right. Ladies and gentlemen, I'm going
18 to have to ask you to step to the jury room. Do not discuss
19 the case. I'll get you back out here as quickly as possible.

20 (Whereupon, the jury exits the courtroom at 9:58 a.m.)

21 THE COURT: Yes, ma'am?

22 MS. PARHAM: I just wanted to make sure we're not getting
23 into improper bolstering. I don't know what the agent is
24 planning on testifying to, but I just wanted to find out what
25 their intentions were before it comes out in front of the

26

1 jury;

2 THE COURT: I mean he's the investigating officer. I
3 mean I assume he's going to testify as to his investigation.
4 Ms. Burchstead?

5 MS. BURCHSTEAD: That's correct, Your Honor. At this
6 time, the State has no intention of going into statements.
7 We're just going to ask the agent what he did in the course of
8 his investigation.

9 MS. PARHAM: That's fine, Your Honor. Just wanted to
10 make sure.

11 THE COURT: All right. Anything else?

12 MS. BURCHSTEAD: Not from the State.

13 THE COURT: Ms. Parham?

14 MS. PARHAM: No. Your Honor, you know, I just like to
15 protect myself.

16 THE COURT: I understand. I understand and you do a very
17 good job of doing that. You've been on both sides I know.
18 I'm going to get -- we going to -- I'm going to stand down for
19 just a minute because I'm sure some of the jurors are going to
20 the bathroom. Rather than pull them right back out, we're
21 going to stand down for just a minute. Okay? Five minutes.

22 (Whereupon, there is a break in the proceedings from
23 10:00 a.m. until 10:20 a.m.)

24 THE COURT: All right. Anything else before I bring the
25 jury back out, Mr. Anders?

AGENT JOHN FOLLIN - DIRECT BY MS. BURCHSTEAD

1 MR. ANDERS: Nothing from the State, Your Honor.

2 THE COURT: Ms. Parham?

3 MS. PARHAM: No, Your Honor.

4 THE COURT: All right. Bring me the jury, please, ma'am.

5 (Whereupon, the jury enters the courtroom at 10:22 a.m.)

6 THE COURT: Madam Forelady and ladies and gentlemen, we
7 are going to continue the trial of this case at this time.

8 Ms. Burchstead, call your witness, please.

9 MS. BURCHSTEAD: Thank you, Your Honor. The State calls
10 Special Agent John Follin.

11 THE CLERK: If you will, sir, place your left hand on the
12 Bible and raise your right hand. Do you swear to tell the
13 truth, the whole truth, and nothing but the truth, so help you
14 God?

15 THE WITNESS: I do.

16 THE CLERK: Please be seated and state your full name for
17 the record.

18 THE WITNESS: John Epps Follin, III.

19 AGENT JOHN FOLLIN, being first duly
20 sworn, testifies as follows:

21 DIRECT EXAMINATION

22 BY MS. BURCHSTEAD:

23 Q: Good morning, Agent Follin. With whom are you employed?

24 A: I'm employed with the South Carolina Law Enforcement
25 Division, also known as SLED.

AGENT JOHN FOLLIN - DIRECT BY MS. BURCHSTEAD

1 Q: SLED. Okay. And how long have you been with SLED?

2 A: I've been with SLED approximately eight years.

3 Q: All right. And prior to coming to SLED, what was your --
4 your background and training?

5 A: I graduated high school in '85, joined the Marine Corps
6 and did approximately eight years with them. After getting
7 out of the Marine Corps, I joined the Williamsburg County
8 Sheriff's office and worked with them as a deputy sheriff.
9 After leaving Williamsburg County, I joined the City of
10 Florence Police Department, at which time I worked in patrol.
11 I worked as a criminal investigator. I've worked as a
12 training officer and I finished up as a patrol supervisor.

13 During that same time, I earned my associate's in
14 Criminal Justice from Florence Darlington Technical College,
15 and also my Bachelor of Science in Workforce Education
16 Training and Development from Southern Illinois. After that,
17 I went to work for Tri-County Technical College as Director of
18 Campus Safety, and then I came on with SLED after that.

19 Q: All right. And then you said SLED eight years?

20 A: Yes, ma'am.

21 Q: All right. And what all have you done at SLED?

22 A: Basically, I'm assigned as a special agent. I do
23 criminal investigation work. SLED is broken down into several
24 regions. The region that I work is considered the Pee Dee
25 Region, which consists of twelve counties, Florence County

AGENT JOHN FOLLIN - DIRECT BY MS. BURCHSTEAD

1 being one of the counties that I'm assigned in my region. We
2 do all criminal investigations assigned to me by the
3 supervisor. We also provide manpower and technical support
4 for local agencies that may need our assistance. Sometimes we
5 work those cases alongside those agencies and sometimes we
6 work those cases independently from them.

7 Q: Okay. So last summer is it accurate to say you served in
8 the role of investigator?

9 A: That's correct.

10 Q: Okay. And were you assigned to investigate the
11 defendant, Damon Moody?

12 A: Yes, ma'am.

13 Q: Okay. And how did you get assigned that case?

14 A: Basically my supervisor, Lieutenant Johnny Abraham,
15 assigned me to work the case that Florence County had actually
16 started on June 13th, and I was assigned the case sometime
17 around June 17th or June 18th.

18 Q: Okay. Is it common for local agencies to ask for SLED's
19 help?

20 A: It just depends on the agency.

21 Q: Okay.

22 A: I mean it's not really a yes or no answer. It just
23 depends on what they see or if there is any conflicts or if
24 they have any issues.

25 Q: Okay. And are you aware of why the request for help was

AGENT JOHN FOLLIN - DIRECT BY MS. BURCHSTEAD

1 generated in this case?

2 A: We received a letter from the Florence County Sheriff's
3 Office. I think it was Captain McFadden who stated that they
4 had a -- I guess you could say a relationship with Mr. Moody
5 and they felt it appropriate for SLED to work the case.

6 Q: Okay. I believe you said the incident started July 13th;
7 is that correct?

8 A: That's correct. That's my understanding through the
9 paperwork.

10 Q: All right and that --

11 A: I'm sorry. June 13th.

12 Q: Yes. Thank you. June 13th of last year. Thank you.
13 Okay. And -- all right. So you actually did an
14 investigation. Did you review documents in the course of your
15 investigation?

16 Q: Yes, ma'am. Once I was assigned the case, I asked
17 Florence County to send me their initial report. I found out
18 Investigator Hester was the -- I guess the investigator
19 assigned for Florence County, and I asked for his paperwork.

20 Q: Okay. And so you actually did get Investigator Hester's
21 paperwork?

22 A: Yes, ma'am.

23 Q: And you did review that?

24 A: Yes, ma'am.

25 Q: All right. Were there any pictures associated with that?

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1 A: He did provide two pictures.

2 Q: Okay. Did you interview witnesses from the incident?

3 A: Yes, ma'am. After reviewing the paperwork, I started to

4 interview people.

5 Q: Okay. Did you talk to Ms. Durant -- Tabitha Durant?

6 A: Yes, ma'am, I did.

7 Q: All right. And did you talk with Jermichael Wright?

8 A: Yes, ma'am.

9 Q: And Ms. Regan Mott?

10 A: Yes, ma'am.

11 Q: Okay. And did Ms. Mott ever provide you with any

12 photographs?

13 A: Yes, ma'am. Later on, she provided me some pictures of

14 some dogs.

15 Q: Okay. And did you talk with Jermaine Wright?

16 A: Yes, ma'am.

17 Q: How about Ontario McClellan?

18 A: Yes, ma'am, I did. He was a juvenile and when I met with

19 him, I had his parent -- or his mother present.

20 Q: Okay. And did you talk to Tyree Porter?

21 A: Yes, ma'am. Same thing. He was a juvenile and I had his

22 father present.

23 Q: Okay. And how about Tyquan Porter?

24 A: Yes. Same thing. Juvenile and I had his father present.

25 Q: Okay. (Coughs.) Excuse me. And I understood you to say

AGENT JOHN FOLLIN - DIRECT BY MS. BURCHSTEAD

1 you reviewed the paperwork from Investigator Hester. Did you
2 actually talk with Investigator Hester?

3 A: Yes, ma'am, I did.

4 Q: Okay. And did you review the 9-1-1 call?

5 A: Yes, ma'am. I asked for the 9-1-1 information, and it
6 was provided to me on disk and I listened to that also.

7 Q: Okay. And did you talk to Sergeant Driggers?

8 A: Yes, ma'am.

9 Q: All right. Did you review any reports that may have been
10 generated by him?

11 A: He provided an incident report and I reviewed that, yes,
12 ma'am.

13 Q: Okay. And did you review other documents that assisted
14 you in your investigation? Any crime scene paperwork?

15 A: Yes, ma'am. I had actually requested our SLED crime
16 scene to -- when I was informed that there was weapons
17 involved and that Florence County had actually initially taken
18 those weapons, I asked for our crime scene to go get those and
19 they provided documentation on that.

20 Q: Okay. And did you talk to Lieutenant Hicks?

21 A: Yes, ma'am.

22 Q: All right. Did you ask about any audio or video
23 recordings?

24 A: Yes, ma'am. I asked if there were any and there were
25 none.

AGENT JOHN FOLLIN - DIRECT BY MS. BURCHSTEAD

1 Q: Okay. And did you talk to Corporal Dean with Highway
2 Patrol?

3 A: Yes, ma'am.

4 Q: All right. And did this incident occur in Florence
5 County?

6 A: Yes, ma'am. 1313 Gilbert Drive in Florence.

7 Q: And based on the course of your investigation, did you
8 ultimately arrest the defendant?

9 A: Yes, ma'am.

10 Q: For an incident occurring at that address?

11 A: Yes, ma'am.

12 Q: On June 13th of last year?

13 A: Yes, ma'am.

14 MS. BURCHSTEAD: I beg the Court's indulgence.

15 THE COURT: Yes, ma'am.

16 MS. BURCHSTEAD: Nothing further for direct, Your Honor.

17 THE COURT: Cross examination?

18 MS. PARHAM: Thank you.

19 CROSS EXAMINATION

20 BY MS. PARHAM:

21 Q: So basically you interviewed the people who we heard
22 testify over the past couple of days?

23 A: Yes, ma'am.

24 Q: And you took or memorialized those statements in typed
25 form, and those are what we have and that's what we've been

AGENT JOHN FOLLIN - CROSS BY MS. PARHAM

1 talking about when we've been questioning witnesses; correct?

2 A: Yes, ma'am. What I did was I reviewed with them -- I had
3 obtained four statements from Investigator Hester, and when I
4 met with those certain individuals, I provided that statement
5 and then I interviewed them and they provided written
6 statements in some format, handwritten and/or memorialized it,
7 yes, ma'am.

8 Q: So some of those four have two statements and the other
9 ones -- some of them just have one statement?

10 A: That's correct. Yes, ma'am.

11 Q: All right. And when did you visit the scene in this
12 case?

13 A: It would have been -- can you give me just one second?

14 Q: Okay. I don't need to know the exact date, just
15 approximate.

16 A: It should have been the 18th or 19th. When I initially
17 interviewed Tabitha -- they also call her Tammy. When I went
18 to her residence, which was 1313, I interviewed her based at
19 her residence.

20 Q: Did you take any photographs when you went to the scene?

21 A: No, ma'am, I did not.

22 Q: Okay. Has anyone as part of the investigation that you
23 are aware of taken any photographs?

24 A: I wouldn't say we took any photographs, but I requested
25 an overhead shot of the location --

AGENT JOHN FOLLIN - CROSS BY MS. PARHAM

1 Q: Okay.

2 A: -- to show that.

3 Q: Did also interview Blaine Long?

4 A: Yes, ma'am, I did.

5 Q: And was she also present that day?

6 A: Blaine Long was present the day of the incident, but she

7 lives in Virginia; so I actually had to do a telephone

8 conversation with Ms. Long.

9 Q: Okay. And that would be Jermaine Wright's girlfriend?

10 A: That was my understanding, girlfriend or friend.

11 Q: Okay.

12 MS. PARHAM: That's all I have. Thank you.

13 THE COURT: Any redirect?

14 MS. BURCHSTEAD: No, Your Honor.

15 THE COURT: Agent Follin, you may step down. Thank you,

16 sir.

17 WITNESS: Yes, sir.

18 THE COURT: Mr. Anders?

19 MR. ANDERS: The State rests.

20 THE COURT: All right. Ladies and gentlemen, the State

21 at this time rests. There are some matters of law we need to

22 take up at this time outside of your presence. I'm going to

23 ask that you step to the jury room. Do not -- do not discuss

24 the case. I'll get you back out here as quickly as possible.

25 Okay?

1 (Whereupon, the jury exits the courtroom at 10:32 a.m.)

2 THE COURT: All right. Ms. Parham, any motions at this
3 time?

4 MS. PARHAM: Yes, Your Honor. We would move for a
5 judgment of acquittal. We don't believe that the evidence is
6 sufficient to go to the jury. There have been a lot of
7 inconsistent testimony. We caught several witnesses in -- in
8 outright lies. One witness I submit committed perjury. And
9 so we would ask for a judgment of acquittal on all three
10 counts. And I would also renew all of my other motions at
11 this time, Your Honor.

12 THE COURT: Yes, ma'am.

13 MS. PARHAM: Specifically, we believe that the inability
14 to cross examine witnesses regarding specific acts of conduct:
15 with regard to Ms. Durant, her husband receiving a dismissal
16 on a charge that happened this same day; with regard to Ms.
17 Durant, the ability to cross examine her on bias in favor of
18 the State; and more specifically, Your Honor, under Rule
19 608(b), the specific instance of the criminal conspiracy and
20 false pretense charges.

21 I do have three exhibits I would like to put in for the
22 record just so that they'll be in the record. One is her
23 criminal history that shows that that charge is still pending
24 and two are the General Sessions printouts that show what she
25 was charged with. In the case of --

1 THE COURT: Just make them Court's exhibits.

2 (Whereupon, the criminal history is marked as Court's
3 Exhibit Number 3 and the two General Sessions printouts
4 are marked as Court's Exhibit Number 4 and Court's
5 Exhibit Number 5.

6 MS. PARHAM: Yes, excuse me, Court's exhibits. In the
7 case of State v. McDonald, a 2000 case, it was found to be
8 reversible error when a trial judge did not allow a witness to
9 be cross examined regarding false tax returns, and we believe
10 that this is similar in nature. Specifically, breach of peace
11 is conduct involving moral turpitude. In fact, the notes even
12 say that inquiry under 60(b) -- 608(b) is limited to those
13 specific instances of misconduct which are clearly probative
14 to truthfulness or untruthfulness, such as forgery, bribery,
15 false pretense and embezzlement. And Ms. Durant was charged
16 with breach of trust, which we believe is very similar and we
17 should have been able to inquire about that.

18 In addition, Your Honor, she had bias against my client,
19 and this is a case involving just pure witness credibility.
20 There's not much evidence in the case other than witness
21 testimony, and with regard to the fact that my client actually
22 tape recorded her and turned her in for that crime, we believe
23 that that would be bias towards him and a reason that she
24 would lie, and her testimony wasn't consistent yesterday with
25 the day before. We believe that's further evidence of all

1 that.

2 So we just renew all of our motions. We also would renew
3 our motion and believe that it was improper not to allow
4 Jermaine Wright to be cross examined regarding his beating up
5 of a disabled man who was sent to the hospital and that charge
6 also being dismissed by the State. We believe under two
7 reasons it should have been available for cross examination.
8 One is that it's favorable treatment by the State and it shows
9 a bias in favor of the State, and secondly, also as a specific
10 instance of conduct. This -- this case clearly has an issue
11 of who was the aggressor and who might have been violent, and
12 we believe we should have been able to go into those.

13 So we would just renew all of our previous motions and
14 move for judgment of acquittal on all three counts.

15 THE COURT: Mr. Anders?

16 MR. ANDERS: Thank you, Your Honor. In response to the
17 directed verdict motion, Your Honor, we believe that there is
18 existence of evidence, and as Your Honor's well aware, we're
19 not concerned with the weight of that evidence, but we do feel
20 that we put up sufficient evidence that there is evidence for
21 these charges to go forward, all being looked at in the light
22 most favorable to the State.

23 Your Honor, as far as -- we see the evidence completely
24 opposite. We see nothing but consistency over and over and
25 over again. We would just address the perjury. You know,

1 he's a fifteen-year-old kid and he got -- he got sort of
2 twisted up, Your Honor, but if Ms. Parham's going to I guess
3 make Court exhibits of the charges of Ms. Durant, I think she
4 should also put in the letter of completion of PTI that I
5 handed her Monday.

6 MS. PARHAM: He can put in whatever he wants to put in,
7 Your Honor.

8 THE COURT: Well, I --

9 MR. ANDERS: I gave her my only copy.

10 THE COURT: Sir?

11 MR. ANDERS: I gave her my only copy, but I can get
12 another copy.

13 THE COURT: Well, I've made my rulings on that. I stand
14 by my rulings as previously made.

15 All of these alleged issues that go to credibility, had
16 this stuff possibly, had this stuff possibly occurred before
17 this incident that we stand here for today, I think you'd
18 stand in a different light, Ms. Parham, and the rulings may
19 have been different. Okay?

20 But just as your client sits there cloaked with the
21 presumption of innocence, so do these other individuals, Mr.
22 Wright, Ms. Durant. When they're charged with something,
23 they're cloaked with innocence -- with the cloak of innocence
24 as well. And had there been testimony -- and I gave an
25 opportunity that would have opened that door. If they had

1 stayed and gone down it concerning these subsequent statements
2 of your -- alleged statements of your client, then I think you
3 would have had an opportunity to -- or right under the rules
4 to go down that road. Okay?

5 But my rulings remain the same, but your objections are
6 certainly noted for the record. I mean I think the record is
7 clear on it. But if I'm wrong, the courts above can make a
8 decision if need be.

9 With regards to directed verdict motion, under the law --
10 under the law in State v. Wiggins, 330 S.C. 538, 500 S.E.2d
11 489, which is a 1998 case, the trial court is concerned with
12 the existence -- with the existence of evidence, not its
13 weight. Furthermore, under State v. Johnson, 334 S.C. 78, 512
14 S.E.2d 795, which is a 1999 case, it stands for the
15 proposition that if there is any direct or substantial
16 circumstantial evidence reasonably tending to prove --
17 reasonably tending to prove the guilt of the accused or from
18 which guilt may be fairly and logically deduced, the case
19 should be submitted to the jury.

20 There is certainly evidence in this case reasonably
21 tending to prove the guilt of the accused. Furthermore, guilt
22 in this case may be fairly and logically deduced from the
23 evidence. Certainly understanding that there is a credibility
24 issue here -- credibility and that is what -- Ms. Parham
25 brought that out in her opening statements.

1 Under -- what is the case cite here? Under State v.
2 Wharton, W-h-a-r-t-o-n, 263 S.C. 437, 211 S.E.2d 237, which is
3 a 1975 case, it says a motion for a directed verdict is
4 properly -- is properly refused where the determination of
5 guilt is dependent upon the credibility of the witnesses,
6 which is a question of the weight of the evidence to be
7 determined by the fact finder, and that is certainly what we
8 have in this case.

9 Therefore, I am respectfully denying your motion for a
10 directed verdict, but your motion for such, as well as your
11 renewal of all prior motions, are certainly noted for the
12 record. All right. Anything else at this time?

13 MS. PARHAM: No, Your Honor.

14 THE COURT: All right. What I'm going to do at this time
15 is I am going to advise your client of his rights. Mr. Moody,
16 if you would, stand please, sir. Raise your right hand. Do
17 you swear to tell the truth, the whole truth, and nothing but
18 the truth, so help you God?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. You can put your hand down. All
21 right. You are Damon Ellis Moody?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. At this time, I'm going to
24 explain to you certain of your rights. If you do not
25 understand anything that I say, please let me know. If you

1 want me to explain anything in more detail, please let me know
2 as well. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. We have now reached the stage of
5 the trial where you may present your defense. You have the
6 right -- however, you have the right to claim the protections
7 given to you by the Fifth Amendment to the United States
8 Constitution.

9 This amendment states in part that no person -- no person
10 shall be compelled in any criminal case to be a witness
11 against himself. This means that you cannot be required --
12 (coughs) excuse me -- to testify in this case. You have the
13 right to testify on your own behalf. However, no one -- no
14 one can make you testify. This is a personal right and no one
15 can waive this right except you.

16 If you decide to testify, you will be subject to the same
17 rules that govern other witnesses and you may be examined and
18 cross examined on any relevant issue in this case. In
19 addition, if you have any convictions involving dishonesty or
20 false statement or for crimes punishable by imprisonment for
21 more than one year and this Court determines that the
22 probative value of admitting this evidence outweighs its
23 prejudicial effect to you, the prosecutor will be able to
24 introduce your record to attack your credibility.

25 If you decide to testify, this decision on your part must

1 be freely, voluntarily, and intelligently made with the
2 knowledge of the protections given to you by the Fifth
3 Amendment and the consequences of your decision to testify.
4 If you decide not to testify, I will instruct the jury that
5 they cannot -- that they cannot give the fact that you did not
6 testify any consideration whatsoever, and that there is to be
7 absolutely no prejudice to you because you did not testify.

8 You may talk with your attorney, your family and friends,
9 or anyone else, but the final decision will be left entirely
10 up to you. Do you understand what I've explained to you?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you have any questions about what I have
13 explained to you?

14 THE DEFENDANT: No, sir.

15 THE COURT: Have you discussed with your lawyer whether
16 you should or should not testify?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you wish to talk with your lawyer anymore?

19 THE DEFENDANT: No, sir.

20 THE COURT: All right. Do you wish to testify?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. Anything else, Ms. Parham?

23 MS. PARHAM: No, Your Honor. Just to let you know, we'll
24 have three witnesses. We have Mr. Moody and two other short
25 witnesses. I realize Your Honor might need to inquire of the

1 jury if they know the other two witnesses.

2 THE COURT: Who are the witnesses? Mr. Moody, you may be
3 seated, please, sir.

4 THE DEFENDANT: Thank you, sir.

5 MS. PARHAM: Rabin Moody, his wife, and Carey Shealy.

6 THE COURT: All right. Anything else?

7 MS. PARHAM: No, sir.

8 THE COURT: Mr. Anders?

9 MR. ANDERS: Your Honor, I --

10 THE COURT: Anything else?

11 MR. ANDERS: I guess Mr. Shealy was the person that Mr.
12 Moody helped out and received some medal of valor for that.

13 MS. PARHAM: That was separate.

14 MR. ANDERS: Okay.

15 MS. PARHAM: It was after he was charged in this case.
16 He wasn't an officer.

17 MR. ANDERS: Okay. Well, I believe she intends to go
18 into specific instances of his good conduct or good character,
19 Your Honor.

20 MS. PARHAM: He did save Mr. Shealy's life, but I'll -- I
21 need -- I will instruct Mr. Shealy again not to go into the
22 specific instances. He is going to testify merely as to if he
23 has an opinion as to my client's truthfulness and his mother-
24 in-law's truthfulness. He lives next door to them.

25 MR. ANDERS: I would just like a -- some law or some

1 basis for her being able to put him up for that, Your Honor.

2 THE COURT: Hold on just a minute. Hold on just a second

3 here. I assume that you are asserting this under 608, Ms.

4 Parham?

5 MS. PARHAM: Yes, Your Honor.

6 THE COURT: 608(a)? Is that a correct assumption?

7 MS. PARHAM: Yes, sir. I thought -- I thought I said

8 yes, sir. I'm sorry.

9 THE COURT: Mr. Anders, do you want a few minutes to look

10 at that rule?

11 MR. ANDERS: I think, Your Honor, that's she only -- she

12 going to put that up there only after I attack his

13 credibility.

14 MS. PARHAM: That's true.

15 THE COURT: That's all what this about, is credibility of

16 witnesses. Any objection?

17 MR. ANDERS: We do make an objection, Your Honor.

18 THE COURT: Let me hear it.

19 MR. ANDERS: We don't think it's proper under 608 nor

20 proper --

21 THE COURT: Why's it not proper under 608?

22 MR. ANDERS: I have not yet attacked his credibility,

23 Your Honor.

24 MS. PARHAM: We're not going to put that man on first.

25 Let's just see how this goes. We're going to put -- I'm going

1 to put my client on first.

2 THE COURT: Okay.

3 MS. PARHAM: I'm not going into specific instances of
4 conduct. I've already been told not to per personal files.
5 I'm just asking questions about the incident.

6 THE COURT: You open the door on some of this stuff, Ms.
7 Parham, I mean you treading a thin line there. You start
8 getting into -- but I mean, you know what you're doing, I know
9 that, there ain't no question about that, but we'll stand down
10 for just a minute and see how things kind of play along. How
11 about that?

12 (Whereupon, there is a break in the proceedings from
13 10:51 a.m. until 11:03 a.m.)

14 THE COURT: All right. Anything from the State before we
15 bring the jury back in?

16 MR. ANDERS: Your Honor, I guess -- one thing. If any of
17 these witnesses at the end get into the specific instances of
18 the conduct --

19 THE COURT: We'll -- I understand your position on that
20 and we'll cross that bridge, so to speak, when --

21 MR. ANDERS: The only thing I would ask for is some time
22 to get somebody from Hartsville or Mullins to be able to come
23 and to testify to these personnel records.

24 THE COURT: Well, if it's something that gets out there
25 that -- I mean we'll cross that bridge -- so.

1 MR. ANDERS: Thank you, Your Honor.

2 MS. PARHAM: We're not going to get into specific
3 instances of conduct.

4 THE COURT: Well, you know, I think the door can be
5 opened without specific instances, but anyway, again, we'll
6 cross that bridge if we need to. All right. Anything --

7 MR. ANDERS: Your Honor, one other minor issue. During
8 defense's motion for directed verdict, she -- she referred to
9 somebody as committing perjury. That's a legal charge.
10 Nobody's been charged with perjury; nobody's been convicted of
11 perjury. We would just ask that she not use that term in her
12 closing because that's not the case.

13 THE COURT: Anything in response, Ms. Parham?

14 MS. PARHAM: No, Your Honor.

15 THE COURT: All right. So granted.

16 MR. ANDERS: Thank you, Your Honor.

17 THE COURT: Anything else?

18 MR. ANDERS: No, Your Honor.

19 THE COURT: Ms. Parham?

20 MS. PARHAM: No, Your Honor.

21 THE COURT: Bring me the jury, please.

22 THE COURT: Ms. Parham, Mr. Anders, can y'all come up
23 here, please?

24 (Whereupon, a bench conference is held as follows.)

25 THE COURT: I think I got this name right. Was it Rabin,

1 R-a-b-u-n?

2 MR. ANDERS: I think it's R-a-b-i-n.

3 THE COURT: Okay. It's Rabin. I wanted to make sure I
4 was correct.

5 MR. ANDERS: Okay.

6 THE COURT: I never heard that as a first name.

7 (Whereupon, the bench conference ends.)

8 (Whereupon, the jury enters the courtroom at 11:05 a.m.)

9 THE COURT: All right. Madam Forelady and ladies and
10 gentlemen of the jury, we have now reached the stage of the
11 trial where defense has a right to present its defense.
12 Before we move forward, the defense has informed the Court of
13 a couple of potential witnesses here, one of which is Rabin
14 Moody -- Rabin Moody and Carey Shealy.

15 If you will recall, before we selected a jury in this
16 case, I asked you several questions about potential witnesses
17 in the case. At this time, I'm going to ask you a few
18 questions. In this case, if any of them apply to you, please
19 raise your right hand and I'll address it accordingly at that
20 time.

21 Is there any member of the jury panel -- of this jury
22 panel that has ever been related by blood, connected by
23 marriage, had a close personal, business, or social
24 relationship with any of those potential witnesses? If so,
25 raise your right hand.

DAMON MOODY - DIRECT BY MS. PARHAM

1 (Whereupon, there is no response from the jury.)

2 THE COURT: All right. None are raising their hand
3 reflecting such. Ms. Parham, at this time you are recognized.

4 MS. PARHAM: Thank you, Your Honor. The defense calls
5 Damon Moody.

6 THE COURT: Sir, if you will, come around to be sworn.

7 THE CLERK: Place your left hand on the Bible and raise
8 your right hand. Do you swear to tell the truth, the whole
9 truth, and nothing but the truth, so help you God?

10 THE WITNESS: Yes, ma'am.

11 THE CLERK: Please be seated. State your full name for
12 the record.

13 THE WITNESS: Damon Ellis Moody.

14 THE COURT: Go ahead.

15 DAMON MOODY, being first duly
16 sworn, testifies as follows:

17 DIRECT EXAMINATION

18 BY MS. PARHAM:

19 Q: Mr. Moody, how old are you?

20 A: I'm 31 years old.

21 Q: How far did you go in school?

22 A: I went through high school and then continued my
23 education at Florence Darlington Tech in specific programs out
24 there.

25 Q: What high school did you graduate from?

DAMON MOODY - DIRECT BY MS. PARHAM

- 1 A: West Florence.
- 2 Q: And have you lived in Florence all your life?
- 3 A: Yes, ma'am, I have.
- 4 Q: What did you study at Florence Darlington Tech?
- 5 A: I went through the welding program at Florence Darlington
- 6 Technical College.
- 7 Q: At some point in your life, did you decide to go into law
- 8 enforcement?
- 9 A: Yes, ma'am, I did.
- 10 Q: When did that begin?
- 11 A: That actually began at a very young age. My sister's
- 12 fiancé was killed in the line of duty and I had an extremely
- 13 strong bond with him, and I really didn't know how to go in
- 14 and I just continued to work until, you know, I got the
- 15 courage to -- to go into law enforcement. And I made the
- 16 decision with my family, my mother, and my sister and that's
- 17 when I got into law enforcement.
- 18 Q: Did you start by working as a correctional officer at the
- 19 Florence County Sheriff's office?
- 20 A: Yes, ma'am, I did.
- 21 Q: And when was that?
- 22 A: December of 2008.
- 23 Q: And then did you go to the law enforcement academy?
- 24 A: Yes, ma'am.
- 25 Q: And when did you go there?

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- 1 A: In August of '09.
- 2 Q: And what type of training did you receive there?
- 3 A: They teach you everything. You go through the legals.
- 4 You have firearms training, defensive tactics training. You
- 5 go through driver training. Everything from threat assessment
- 6 to clearing houses. Everything that encompasses police work,
- 7 you go through at the academy.
- 8 Q: And after you graduated, where'd you start working?
- 9 A: I was employed with the Hartsville Police Department.
- 10 Q: All right. And -- and were you living in Florence at the
- 11 time you were employed there?
- 12 A: Yes, ma'am, I was.
- 13 Q: So you were commuting?
- 14 A: Yes, ma'am.
- 15 Q: And after -- how long did you work at the Hartsville
- 16 Police Department?
- 17 A: From actually May of '09 until March of 2011.
- 18 Q: And then did you work for the Mullins Police Department?
- 19 A: Yes, ma'am, I did.
- 20 Q: And from what point in time to what point in time?
- 21 A: April to around August or September.
- 22 Q: Of what year?
- 23 A: Of August of -- or April of 2011, to August -- September
- 24 of the same year.
- 25 Q: And what caused you to leave the Mullins Police

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1 Department?

2 A: It was just -- I wasn't happy. It was a real small town

3 police agency and there really wasn't a lot of back-up, and I

4 wanted to go to an agency that was -- had a little bit more

5 people where you were working side by side and you really

6 weren't the only person out there. And that's -- that's why I

7 left the Mullins Police Department.

8 Q: Okay.

9 A: And to be closer to home as well.

10 Q: Where you commuting from Florence to Mullins?

11 A: Yes, ma'am.

12 Q: And so did you find a job closer to home?

13 A: Yes, ma'am, I did.

14 Q: And where was that?

15 A: Francis Marion University.

16 Q: And when did you begin working there as a police officer?

17 A: September of 2011.

18 Q: And did you work there up until the time of your arrest

19 on this charge?

20 A: Yes, ma'am, I did.

21 Q: All right. Are you married?

22 A: Yes, ma'am.

23 Q: Who's your wife?

24 A: Rabin Moody.

25 Q: How long have y'all been married?

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- 1 A: We got married October 6th, 2012.
- 2 Q: Okay. And do you have any children?
- 3 A: Yes, I do.
- 4 Q: How old are your children?
- 5 A: I have one son who is eleven; he'll be twelve in
- 6 November. I also have a ten-month-old baby.
- 7 Q: All right. Now, you know, you've heard witnesses testify
- 8 as to where you live. What is the address of where you live?
- 9 A: I reside at 1311 Gilbert Drive.
- 10 Q: All right. And who owns that property?
- 11 A: Johnny Head owns the property.
- 12 Q: And is he related to your wife?
- 13 A: Yes, ma'am. He's my wife's grandfather.
- 14 Q: All right. And does he still own the property?
- 15 A: Yes, ma'am, he does.
- 16 Q: All right. Do you have his permission to live on his
- 17 property?
- 18 A: Yes, ma'am, I do.
- 19 Q: Okay. And so you have a trailer on the property and your
- 20 mother-in-law has a trailer on the property; is that correct?
- 21 A: Yes, ma'am, that is correct.
- 22 Q: All right.
- 23 MS. PARHAM: May I approach the witness, Your Honor?
- 24 THE COURT: Yes, ma'am.
- 25 Q: Let me show you --

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1 (Whereupon, counsel confer regarding Defendant's Exhibits
2 7 through 16, all color photographs.)

3 MR. ANDERS: No objection.

4 MS. PARHAM: We would offer for Defense Exhibits 7, 8, 9,
5 10, 11, 12, 13, 14, 15 and 16 into evidence with no objection
6 from the State.

7 THE COURT: So -- excuse me -- so admitted. Defense
8 Exhibits 7 through 16; is that correct?

9 MS. PARHAM: Yes, sir.

10 THE COURT: All right.

11 Q: Can you identify what is depicted in Defense Exhibit 7?

12 A: Yes, ma'am. That is a front view of Ms. Durant's house.

13 Q: Okay. And on the right side of that picture, what is
14 depicted?

15 A: That is a picture of my house.

16 MS. PARHAM: Okay. Permission to publish to the jury,
17 Your Honor?

18 THE COURT: Yes, ma'am.

19 Q: All right. And Defense Exhibit 8, what is that?

20 A: That is an aerial view -- overhead view of the whole
21 property with both houses, my kennels, the pool, my storage
22 building, her storage building.

23 Q: Okay. And Defense Exhibit 9, what is that?

24 A: That is a closer overhead view of -- more encompassed
25 into the back yard of the house where you can -- you can see

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1 more of the yard and how it's laid out with my back porch, my
2 kennels, the pool, and her back porch.

3 Q: And Defense Exhibit 10?

4 A: This would be the side of Ms. Durant's house with the
5 fence going to her storage building and a picture of my
6 backyard from the porch to the pool.

7 MS. PARHAM: May Mr. Moody stand up and describe what's
8 depicted in these pictures to the jury please?

9 THE COURT: Any objection?

10 MR. ANDERS: No, Your Honor.

11 THE COURT: Yes, ma'am.

12 MS. PARHAM: You may step down.

13 (Whereupon, the witness complies.)

14 Q: This is with regard to Defense Exhibit 9. Can you please
15 point to Ms. Durant's trailer please in this picture?

16 A: This would be Ms. Durant's trailer here.

17 Q: Step behind me so the people can see you.

18 A: I'm sorry.

19 Q: I'm sorry. All right. Point to Ms. Durant's trailer,
20 please?

21 A: Ms. Durant's trailer is here.

22 Q: Okay. Let me show these jurors. Is that Ms. Durant's
23 trailer?

24 A: Yes, ma'am.

25 Q: Okay.

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1 A: That's correct.

2 Q: And where is your trailer?

3 A: My trailer is right here.

4 Q: Okay. And then where is your -- where is your stoop with

5 your steps -- your porch?

6 A: They would be right here.

7 Q: Okay. Right there? Is that it?

8 A: Yes, ma'am.

9 Q: Okay. And where are your dog kennels?

10 A: These are my kennels that are located right here. These

11 two kennels are back to back.

12 Q: Okay. And then where is the porch of Ms. Durant's house

13 that we've heard about?

14 A: Right here.

15 Q: Okay. And I think it's pretty obvious, but where is the

16 pool?

17 A: The pool is located right here.

18 Q: Okay. And then the pool deck?

19 A: The pool deck is located right here.

20 Q: Okay. And then the stairs going to the pool deck?

21 A: Right here.

22 Q: Okay. And where is the road? Where's the front of Ms.

23 Durant's house and the road we just saw in the other picture?

24 A: The front of her house is located here.

25 Q: Mm-hmm.

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1 A: And the road would be here.

2 Q: Okay. All right you can sit back down.

3 (Whereupon, the witness complies.)

4 Q: All right. Tell us what you were doing on June 13th,
5 2013, when all this happened?

6 A: I got up and I started my day and I heard my dogs were
7 barking, and I can usually tell by the way they bark that
8 something's going on. So I let my two inside dogs go outside.

9 Q: What kind of dogs are your two inside dogs?

10 A: They're both German Shepherds.

11 Q: All right. Continue, please.

12 A: I just -- I just opened the door, let them outside, and
13 shut the door behind them. It wasn't until I went back inside
14 that I heard a bunch of commotion. At that time when I went
15 to the back door, I opened the back door and saw Mr. Wright
16 and several other individuals outside. I didn't think it was
17 appropriate with them being outside that my dogs were running
18 around because I saw their dog outside. Just out of respect
19 for them, I brought my two dogs back inside.

20 Q: How long were your dogs outside, the two German
21 Shepherds?

22 A: Maybe three minutes.

23 Q: Okay. And then what happened?

24 A: Once I let them back inside, as I turned to walk back
25 into my home or actually into my hallway, I heard the dogs in

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1 the kennels. They just immediately erupted, were barking
2 crazy. I could hear them jumping on the deck. I looked out
3 through my rear window to -- on my door and I could see the
4 pit bull was actually -- feet were up on the deck and he was
5 grabbing at my female puppy and the kennels, and he was
6 actually biting the kennels and trying to grab her arm through
7 the kennel.

8 Q: All right. What kind of dogs do you keep in the outside
9 kennels?

10 A: I have Belgian Malinois.

11 Q: And how many did you have on that day?

12 A: I had -- I had four.

13 Q: And what are Belgian Malinois?

14 A: Belgian Malinois are a specific breed of dogs. They're
15 bred and used specifically for working purposes. They do
16 narcotics detection, search and rescue, apprehension, a wide
17 array of different things. They can do bomb detection as
18 well.

19 Q: Are they long-haired or short-haired dogs?

20 A: They're long-haired animals.

21 Q: All right. And I think there is a picture of them in
22 evidence, but do they -- do they kind of look like a German
23 Sheppard?

24 A: They -- they're similar. They're actually all fawn and
25 normally most of them have just a kind of a black muzzle.

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1 (Whereupon, counsel confer about Defendant's Exhibits 17
2 through 20, all color photographs.)

3 MR. ANDERS: No objection.

4 MS. PARHAM: Thank you. The defense would offer into
5 evidence Defense Exhibits 17, 18, 19, and 20. No objection
6 from the State.

7 THE COURT: Without objection, admitted into evidence.

8 Q: All right. What is depicted in Defense Exhibit 17?

9 A: That would be where my kennels are and the female puppy
10 that was in the kennel that day.

11 Q: Okay. All right. And what is depicted in Defense
12 Exhibit 18?

13 A: That would be a side view of the kennel and my female
14 puppy that was in the kennel that day.

15 Q: Okay. And Defense Exhibit 19?

16 A: Would be a wider photo showing the four kennels that were
17 up front and how they -- they were aligned that day.

18 Q: All right. In -- in Defense Exhibit 19, is -- can you
19 show the jury where the pit bull was jumping up on the kennel?

20 A: The pit bull was jumping up on the kennel around this
21 area right here with his feet perched on the deck itself and
22 his hind legs on the ground, grabbing at the kennel and the
23 left flank of my dog.

24 Q: Okay. And that was what you saw when you looked out the
25 house?

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1 A: Yes, ma'am.

2 Q: All right. And did you take a photograph of what you
3 believe the damage that might have been caused by his teeth?

4 A: Yes, ma'am, I did.

5 Q: Okay. And is that depicted in Defense Exhibit 20?

6 A: Yes, ma'am, it is. It is depicted.

7 Q: Did you see that damage that day after the pit bull left?

8 A: Yes, ma'am.

9 Q: All right. So what did you do when you saw the pit bull
10 on the kennel with his teeth on the kennel?

11 A: I opened the door. I actually -- I have a pistol that I
12 keep at my back door.

13 Q: What caliber of pistol was that?

14 A: A .22 caliber. I grabbed that pistol, I opened the door
15 and actually yelled at the dog. The dog continued to growl,
16 bark, and grab at the kennel. At that time, it was imperative
17 that I got that dog away from my dog, just for the simple fact
18 that if that dog would have grabbed hold to my dog's arm, he
19 could have done serious damage to that puppy. And I fired
20 several shots to get the dog to get away.

21 Q: Where were you standing when you fired the shots?

22 A: Directly right outside of my door to the right side of my
23 little porch.

24 Q: Were you standing on the ground or were you standing on
25 your porch?

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1 A: Oh, I was standing on my porch.

2 Q: All right. And you fired the bullets directly into the
3 ground?

4 A: Yes, ma'am.

5 Q: Was that between your porch and the kennel?

6 A: It was between my porch and the kennel, further to the
7 right of the doorway.

8 Q: How many shots do you believe you fired that day?

9 A: Four or five.

10 Q: All right. And what did the pit bull do when you fired
11 those shots?

12 A: He immediately pulled himself away from the kennel. He
13 tucked his tail and he turned and ran towards the pool area.

14 Q: All right. Have you had problems with that same pit bull
15 -- pit bull previously?

16 A: Yes, ma'am, I have.

17 Q: When was that?

18 A: I've had several occasions. The dog would be let out
19 late at night. He would come over to my kennels. I had
20 instances where they've just let him out in the daytime and he
21 does this same type of behavior. I've had instances where
22 I've walked outside and he's been tied by a rope to lawn
23 furniture and just left there. And I've had to ask my wife,
24 you know, what's going on, you know, is Regan over there? She
25 didn't know. It's been on an ongoing type of situation that I

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1 never know what's going to -- you know, what's going to happen
2 with the dog.

3 Q: Have you fired a gun into the ground before to get the
4 dog away from your kennel?

5 A: Yes, ma'am, several weeks prior.

6 Q: Okay. What happened, beside from the dog running away,
7 after you fired the gun into the ground?

8 A: Mr. Wright actually started yelling across the -- the
9 yard and I told him to get -- I told him to get his fucking
10 dog.

11 Q: Okay. And then what did he say?

12 A: He said, you know, don't be disrespecting me in front of
13 my people.

14 Q: Okay. And then -- and then what happened?

15 A: I walked inside and set my gun down and I went to go talk
16 to Mr. Wright.

17 Q: Okay. Had y'all gotten along with each other prior to
18 this?

19 A: Yes, ma'am.

20 Q: Okay. And what -- did you go approach him on -- where
21 they were cooking on the stoop?

22 A: Yes, ma'am.

23 Q: Okay. And so that is the same porch that's depicted in
24 those overhead photographs that we've looked at? You
25 approached on their porch?

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1 A: Yes, ma'am.

2 Q: Okay. And then what happened?

3 A: I walked up the stairs. I was trying to tell Mr. Wright,
4 you now, you need to get your dog. This has been something
5 that's been ongoing. I've told you about it and I've told Ms.
6 Durant about it and I've told, you know, your girlfriend about
7 it. And he continued to yell and cuss and say that, you know,
8 I shouldn't disrespect him in front of his people and that I
9 shouldn't be firing the gun out here with the kids. And, you
10 know, like I told him, you know, it was hot that day and, you
11 know, his dog going over there could have put my dogs in
12 serious, serious danger.

13 Q: All right. How much money do you have invested in your
14 dogs?

15 A: In the one dog particular, Sniper, at that time just
16 through the investment of getting the dog, all the training,
17 my time was roughly about \$17- to \$18,000.

18 Q: All right. And what was your goal to do with these dogs
19 after you've trained them?

20 A: Sniper particularly is my dog. The other dogs, I train
21 and I sell them or I donate to an organization called Canines
22 for Cops. And what we do is we actually -- you actually train
23 a dog for agencies that cannot afford to go out and start a
24 canine program through the investment of the actual dog and
25 the car and everything. They pretty much have to do

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1 everything step by step.

2 Q: What do you recall the temperature being that day?

3 A: I'm not sure if the index was 105 or the actual
4 temperature was 105, but --

5 Q: It was hot?

6 A: It was very hot.

7 Q: Okay. And that's what you mean by the fact when you say
8 your dogs could be in danger because -- why -- why is that?

9 A: Yes, ma'am. Belgian Malinois -- they're -- they have an
10 undercoat, just like a lot of long-haired dogs do. Even
11 though it is a form of insulation, it's kind of a blessing and
12 a curse. Those dogs tend to -- once they are highly stressed
13 and they get active, Malinois tend -- their motor runs
14 continuously. They have to be stimulated and have to be
15 directed a lot. If they sit idle, I mean it's just -- they'll
16 walk in their kennels. And once they get agitated, they'll --
17 their motor continues to run and they don't know how to calm
18 themselves down. You actually have to take them and calm them
19 down.

20 Q: All right. So you go approach Jermichael on the porch,
21 and was Jermaine standing next to him?

22 A: Yes, ma'am. They --

23 Q: All right. And you said you had that conversation and
24 they said don't disrespect us and don't shoot the gun, and
25 then what happened?

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1 A: At that time, you know, I told Mr. Wright, Jermichael
2 Wright -- you know, I said, look, get your dog. You know, I
3 don't want to ask you again. I don't want to tell you again.
4 At that time, Mr. Wright very rapidly --
5 Q: Which Mr. Wright?
6 A: Jermichael. I'm sorry.
7 Q: Okay.
8 A: Jermichael Wright very rapidly came into my space and at
9 that time is when I took my left arm and actually extended it
10 out to create distance between me and Mr. Wright.
11 Q: And so, in essence, you pushed him out of your space?
12 A: Yes, ma'am.
13 Q: When he came up towards you?
14 A: Yes, ma'am.
15 Q: All right. And then what happened?
16 A: That was when his brother came into the situation and
17 actually told me not to put, you know, my f-ing hands on his
18 brother.
19 Q: Okay. And then what happened?
20 A: And I looked at Mr. Jermaine Wright. I've never seen him
21 before, and I asked him who he was.
22 Q: Okay. And then what happened?
23 A: At that time, Jermaine Wright and Mr. Wright both -- they
24 L'ed me off and kind of -- they kind of got -- one was in
25 front and one was beside me, both of them -- both of them

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1 yelling and cursing at me.

2 Q: All right. And at some point, were you pushed off the
3 deck?

4 A: Yes, ma'am. I was shoved off the deck by Jermichael
5 Wright, and I was actually pushed off the deck, fell onto the
6 ground and had to pick myself back up off of the ground.

7 Q: All right. And then what happened?

8 A: At that time, I kind of walked towards the steps and I
9 just told Mr. Wright -- you know, I said, look, just get your
10 dog. And before I could do anything, Mr. Wright -- Mr.
11 Jermichael Wright pushed me again and started pushing me and
12 shoving at me and cursing and yelling once again.

13 Q: Do you remember that being with their chests or their
14 hands?

15 A: That was with their hands.

16 Q: All right. And did that go around the side of the pool
17 as we've heard described previously?

18 A: Yes, ma'am. I was off of the --

19 MS. PARHAM: If you'll stand up again, please.

20 (Whereupon, the witness complies.)

21 A: I was pushed off of in-between the steps here and the
22 deck here and fell here. Mr. Wright -- both -- both of the
23 Wright brothers pushed me continuously around the pool until
24 we got into this area right here.

25 Q: All right. And then when they were pushing you, did they

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1 threaten you in any way?

2 A: Jermaine Wright yelled to his brother, "Let's just go
3 ahead and knock this motherfucker out."

4 Q: All right. And that's Jermaine Wright, the one that you
5 had not met previously?

6 A: That's correct.

7 Q: All right. And then what did Jermichael Wright say?

8 A: He said -- he said -- he said, "Nah, blood, nah. Chill,
9 chill."

10 Q: Okay. And then what happened?

11 A: Then Mr. -- Mr. Wright shoved me again.

12 Q: Okay.

13 A: Jermichael Wright.

14 Q: All right. And at that point, what -- what happened
15 after that?

16 A: Through this whole event, I mean I had my hands up. I
17 was saying okay, okay, okay, okay, okay. I was trying to
18 retreat as I was being pushed. I just didn't want to turn my
19 back due to the threat of, you know, him already saying that
20 he wanted to knock me out. It wasn't until Ms. Durant, Regan
21 Mott, and Ms. Long actually came out of the residence and
22 began yelling at Jermichael and Jermaine to stop. And it
23 wasn't until they actually got Jermaine and Jermichael's
24 attention and they turned away that I backed off and went back
25 to my house.

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1 Q: Okay. And what were the dogs in the kennel doing during
2 this whole time?

3 A: They were going -- they were going, you know, ballistic.
4 They were --

5 Q: All right.

6 A: They were -- they could hear everything. Every dog that
7 I have -- and I have a strong connection with these dogs. I
8 spend hours, you know, a week. I take them to training. I
9 bathe them, you know, I feed them, everything. I mean I love
10 my animals. These dogs have a very strong connection with me,
11 and they could hear everything and through jumping up they
12 could see me being assaulted.

13 Q: All right. So then what happened?

14 A: I walked back into my house. As I proceeded up the
15 stairway, I looked back and could see the longest-haired dog,
16 which was Sniper, he was -- he was in bad shape. His tongue
17 was further out to the side and he -- he appeared to be
18 swaying actually standing up. I knew at that time that I
19 needed to -- I needed to take care of him. I needed to take
20 care of him, as well as every dog, and get him calmed down and
21 cooled off.

22 Q: All right. And so did you go into your house?

23 A: Yes, ma'am, I did.

24 Q: And did you get a gun when you went in your house?

25 A: I did retrieve my -- I had a small .380 caliber handgun

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1 that I put in my pocket.

2 Q: And why did you put that gun in your pocket?

3 A: I -- I'd just been threatened to be knocked out, I'd been
4 assaulted by both of these individuals on my property, and I
5 was pushed around. I was pushed off the porch, you know, I
6 was -- at that time, I was -- I mean I was scared.

7 Q: Did you put it in your pocket -- the gun?

8 A: Yes, ma'am, in my right pocket.

9 Q: And did you walk out of that door with the gun in your
10 pocket?

11 A: Yes, ma'am, I did.

12 Q: You didn't have it in your hand?

13 A: No, ma'am.

14 Q: All right. Had you ever seen -- well, I guess you hadn't
15 seen Jermaine Wright before that day, but had you ever seen
16 Jermichael Wright with a gun?

17 A: Yes, ma'am, I have.

18 Q: How many times have you seen him with a gun?

19 A: On numerous occasions.

20 Q: Okay. And where in the past have you seen a gun on him?

21 A: In his back. I'd seen him at the tattoo parlor -- he had
22 his gun in his back.

23 Q: Okay. Where else?

24 A: I've seen it in a black backpack that he carried with him
25 regularly.

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1 Q: Okay. Anywhere else?

2 A: Just pretty much those two locations.

3 Q: Okay. Have you ever seen him shoot a gun at the
4 residence where you live?

5 A: Yes, ma'am. To the side of the residence, firing back
6 into the woods, he has shot.

7 Q: Okay. What kind of gun does he carry?

8 A: I'm not exactly sure on the caliber. I've seen two
9 different guns. He's had a revolver and he's had a black
10 semi-automatic handgun, not sure of the calibers.

11 Q: Okay. So you come out your door and you have your gun in
12 your pocket?

13 A: Yes, ma'am.

14 Q: And then what do you do?

15 A: I walked immediately to Sniper. I put a collar on him.
16 I pulled him out.

17 Q: But did you also have a leash when you walked back out?

18 A: Yes, ma'am, I did.

19 Q: Okay.

20 A: I had a -- I actually had a leash. I had a five-foot
21 lead and I had a two-inch collar. It's made to not be as
22 stressful on the dog's neck; and I put the collar on him and
23 pulled him out to walk him down and cool him down, as well as
24 water him down to start to cool his core temperature off.

25 Q: As soon -- as soon as you got him out of the kennel, what

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1 happened?

2 A: As I began to walk around the kennel, once I crested the
3 fence line where my kennels are behind, Mr. Wright yelled out,
4 "What are you going to do with that dog?" As I made a
5 movement to grab my water hose that was through the fence, Mr.
6 Wright said, "If you bring that dog over here, I'm going to
7 put a bullet in your fucking head and I'm going to put a
8 bullet in your dog's head."

9 At that time, while he was saying it, he made a motion to
10 behind him. And the threat became very real.

11 Q: All right. Where was his brother during this time?

12 A: His brother was standing right beside him.

13 Q: Okay. And what did you do when you saw him make that
14 motion?

15 A: I drew down my gun and I yelled, "Hands, hands, hands,
16 hands."

17 Q: And as you did that, did you get closer and closer to
18 them?

19 A: Yes, I did.

20 Q: All right. And did you have a laser on your gun?

21 A: Yes, I did.

22 Q: And did you point the laser at them?

23 A: Yes, I did.

24 Q: All right. How far will a laser reach?

25 A: It's -- it really all depends on the laser.

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1 Q: Okay. I mean would your laser shoot a long way?

2 A: Yes, ma'am.

3 Q: Okay. Does sunlight affect a laser in any way?

4 A: Very dramatically it does.

5 Q: All right. How does it affect the laser?

6 A: In direct sunlight, lasers -- they lose their visibility.

7 Sunlight is kind of -- of -- I mean that's kind of the laser's
8 kryptonite. I mean it's -- if you shine it when it's a bright
9 sunny day, it's very difficult to see that laser on anything.

10 Q: But there's no question someone would see a red dot
11 coming out your gun?

12 A: There's no question about it.

13 Q: Okay. Let me ask you to stand up again and I want you to
14 put a dot on this overhead map. This is Defense Exhibit 9. I
15 want you to put a dot on -- or an X on this map of where you
16 were when you drew your gun and pointed it and said -- and
17 said hands.

18 (Whereupon, the witness complies.)

19 Q: All right. And then I want you to put a line of where
20 you walked with your gun drawn pointed at them.

21 (Whereupon, the witness complies.)

22 Q: All right. So you've basically put a -- this is Defense
23 Exhibit -- sorry -- 9. So you're going to show the jury where
24 you were when you drew your gun.

25 (Whereupon, the witness points to the photo.)

DAMON MOODY - DIRECT BY MS. PARHAM

1 A: I was right here. The fence is located here, my water
2 spigot's here, my hose is here, and this is where I was --

3 Q: Okay.

4 A: -- when I drew the gun.

5 Q: Okay. And where were Jermaine and Jermichael?

6 A: They were at the very corner of the porch back here.

7 Q: Okay. And when you yelled hands, hands, hands, you
8 continued to point the gun at them and walk towards them;
9 correct?

10 A: That's correct.

11 Q: All right. And where -- you tried to draw it, but where
12 were you walking?

13 A: I actually made a direct line from here straight towards
14 the side of the back deck.

15 Q: Okay. And did they go inside the house when you did
16 that?

17 A: Yes, ma'am, they did go inside the house.

18 Q: All right. And then where was your mother-in-law when --
19 when you got over there beside the pool?

20 A: It was actually when I got beside the pool that I could
21 see her sitting on the -- the kind of middle of the row of the
22 steps on the porch.

23 Q: Okay. And did you have a conversation with her there?

24 A: I did.

25 Q: Did you still have your gun in your hand?

DAMON MOODY - DIRECT BY MS. PARHAM

1 A: I did.

2 Q: Did you still have your dog on the other hand?

3 A: Yes, ma'am.

4 Q: All right. And what was your conversation with your
5 mother-in-law?

6 A: I -- you know, I just told her that, you know, this was
7 an ongoing problem, that I'd expressed my concerns with her.
8 I told her about several instances. You know, I told her it
9 was a problem. You know, I told her that Mr. Wright -- they
10 just needed to leave until we could -- we could hash out this
11 whole thing.

12 Q: Was she fussing at you?

13 A: No, she was not.

14 Q: Okay. Where you fussing at her?

15 A: No.

16 Q: All right. Where'd you have your gun when you were
17 talking to her?

18 A: I had it down to my --

19 Q: Please stand up and show the jury.

20 (Whereupon, the witness complies.)

21 A: I had it down over here in my hand with -- this finger
22 was on the slide of the gun.

23 Q: All right. Where is the laser button on your handgun?

24 A: It's in the grip. Once you wrap these fingers around
25 where the magazine is loaded, once you apply any pressure,

1 it's right there.

2 Q: Okay. Were you waving your gun around when you were
3 talking to her?

4 A: No, ma'am.

5 Q: All right.

6 THE COURT: Mr. Moody, how about have a seat back in the
7 chair, please?

8 (Whereupon, the witness complies.)

9 Q: Where you waving your gun around when you were talking to
10 her?

11 A: No, ma'am.

12 Q: All right. At any point, did you wave or point a gun at
13 Ontario McClellan?

14 A: No, ma'am.

15 Q: Was he outside when you were talking to your mother-in-
16 law?

17 A: Yes, ma'am.

18 Q: All right. And what do you recall Mr. McClellan doing
19 while you were talking to your mother-in-law?

20 A: Mr. McClellan was behind me, and he was actually laughing
21 and giggling at the matter. I turned to him and I -- and I
22 asked him, you know, why are you laughing? This is not a
23 joking matter. Your cousin could have been hurt today.

24 Q: All right. And then what did he do?

25 A: He just -- he just sat there and he continued to have a

DAMON MOODY - DIRECT BY MS. PARHAM

- 1 smile on his face.
- 2 Q: Did he ever go inside?
- 3 A: No, ma'am.
- 4 Q: Okay. Did your mother-in-law ever go inside?
- 5 A: No, ma'am.
- 6 Q: All right. At some point, did someone say we're going to
- 7 call the cops because you pointed a gun at somebody?
- 8 A: Yes, ma'am.
- 9 Q: And what'd you say?
- 10 A: Call them.
- 11 Q: Okay.
- 12 A: Call them.
- 13 Q: And do you remember the cops getting there?
- 14 A: Yes, ma'am.
- 15 Q: Did you talk to them?
- 16 A: I did talk to the police officers.
- 17 Q: Okay.
- 18 A: I talked to Officer -- Deputy -- excuse me. Deputy Moore
- 19 and Investigator Hester.
- 20 Q: All right. And did you tell the cops what you told the
- 21 jury today?
- 22 A: I did. I did.
- 23 Q: All right.
- 24 A: The same exact story.
- 25 Q: Okay. And was anyone else at your house that day?

DAMON MOODY - DIRECT BY MS. PARHAM

1 A: In my residence?

2 Q: Yeah.

3 A: No, ma'am.

4 Q: Okay.

5 A: No. No.

6 Q: So you didn't -- your wife wasn't home?

7 A: No, ma'am.

8 Q: You didn't have anyone there?

9 A: No, ma'am.

10 Q: In Defense Exhibit 12, is this a picture of the back door
11 to your house?

12 THE COURT: What exhibit number is that?

13 MS. PARHAM: Defense Exhibit 12.

14 THE COURT: Thank you.

15 A: Yes, ma'am.

16 Q: Okay. And what is depicted on the far left of that
17 picture?

18 A: That would be where my water spigot is, as well as, you
19 know, going back to my kennels.

20 Q: Okay. Now, in Defense Exhibit 15, there are some, like,
21 children's toys on the back porch. Were those toys there that
22 day?

23 A: No, ma'am. Those toys were actually further over closer
24 to the fence to the right of them in the yard.

25 Q: Do you recall anything being on the porch that day other

DAMON MOODY - DIRECT BY MS. PARHAM

1 than the grill?

2 A: No, ma'am.

3 Q: And Defense Exhibit 16, is that the base of the stairs to
4 the pool that you were talking about?

5 A: Yes, ma'am, that is.

6 Q: All right. And is that where your mother-in-law was
7 seated?

8 A: Yes, ma'am. She was probably on the third step down.

9 Q: Okay. And are those cobblestone steps leading back to
10 the other porch that we just saw a picture of?

11 A: Yes, ma'am.

12 Q: And Defense Exhibit 14, is that a picture of your back
13 steps as it relates to the kennels -- the beginning of the
14 kennels?

15 A: Yes, ma'am.

16 Q: And is that the area to the right of the steps where you
17 shot the firearm into the ground?

18 A: Yes, ma'am.

19 Q: And is Defense Exhibit 10 just another view of the two
20 trailers and the pool area?

21 A: Yes, ma'am.

22 Q: And the dark grey kind of sheets in the back, are those
23 the kennels?

24 A: Yes, ma'am. They're the fence before the kennels.

25 Q: Okay. Because the kennels actually sit behind that

DAMON MOODY - DIRECT BY MS. PARHAM

1 fence? Now, I believe another witness testified that those
2 dogs can jump up on that. Can they actually see over?

3 A: Yes, ma'am.

4 Q: Okay. And you can see their head when they jump up?

5 A: Yes, ma'am.

6 Q: Would you have pointed your gun at Jermaine or Jermichael
7 had you not seen them make a movement together?

8 A: I would have -- I would -- I would have if the threat was
9 made.

10 Q: No. If it hadn't been made?

11 A: Oh. If it hadn't been made, no, ma'am.

12 Q: Okay. Would you have pointed your gun at them if you
13 hadn't seen them make that movement towards each other?

14 A: No, ma'am.

15 Q: Okay. Did you ever discharge your weapon after -- I mean
16 during -- did you ever discharge this weapon with the laser on
17 it?

18 A: No, ma'am.

19 Q: All right. And it was actually in your pocket when you
20 went to get the dog?

21 A: Yes, ma'am, it was.

22 MS. PARHAM: Please answer any questions the State has.

23 THE WITNESS: Yes, ma'am.

24 MR. ANDERS: Your Honor, we have a matter of law.

25 THE COURT: All right. Ladies and gentlemen, I'm going

DAMON MOODY - DIRECT BY MS. PARHAM

1 to have to ask you to step to the jury room. Do not discuss
2 the case. Be right -- we'll get you back out here as quickly
3 as possible.

4 (Whereupon, the jury exits the courtroom at 11:48 a.m.)

5 THE COURT: Yes, sir, Mr. Anders?

6 MR. ANDERS: Your Honor, I believe the question was asked
7 by Ms. Parham to the defendant: why did you leave the Mullins
8 Police Department? His answer: wanted a change, wanted
9 something different. Your Honor, I have a letter, if I may
10 approach?

11 THE COURT: Yes, sir.

12 (Whereupon, a bench conference is held as follows.)

13 THE COURT: Have you seen this?

14 MR. ANDERS: She has, Your Honor. She's gotten a copy.

15 MS. PARHAM: I believe you can ask him about it, but I
16 don't think the letter is admissible.

17 MR. ANDERS: I'm going to ask him to read the letter --
18 the letter to him.

19 MS. PARHAM: It's hearsay.

20 MR. ANDERS: Well, she opened the door.

21 THE COURT: I think you've opened the door. I'm going to
22 --

23 MS. PARHAM: I don't -- I don't think the letter is
24 admissible. I think he can ask him --

25 THE COURT: Well, hold on a minute. Hold on a minute.

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1 MS. PARHAM: Mm-hmm.

2 THE COURT: I mean we went down this road yesterday to
3 your benefit on the extrinsic evidence. It cuts both ways on
4 the admission -- I mean as far as impeachment on extrinsic
5 evidence. I think you can ask him about it. If he denies it,
6 it's extrinsic evidence for impeachment.

7 MS. PARHAM: Right, I agree, I agree, I agree.

8 THE COURT: Okay.

9 MS. PARHAM: I agree with that.

10 THE COURT: If he denies it --

11 MS. PARHAM: That's right.

12 MR. ANDERS: If he denies being terminated?

13 MS. PARHAM: Right.

14 THE COURT: I mean if he denies the reason for his
15 termination, I mean I think you've opened the door on that.

16 MS. PARHAM: I agree. I agree. His answer opened the
17 door. I didn't know what the answer was.

18 MR. ANDERS: I think the question opened the door.

19 MS. PARHAM: Well --

20 THE COURT: Well, regardless, the door's open.

21 MS. PARHAM: Okay.

22 MR. ANDERS: Okay.

23 MS. PARHAM: Okay.

24 MR. ANDERS: Thank you, Your Honor.

25 THE COURT: With the question or answer, the door's open.

DAMON MOODY - DIRECT BY MS. PARHAM

1 Hold on a minute. Let me -- let me read the letter, please.

2 MR. ANDERS: Certainly.

3 THE COURT: I told my law clerk before you even said
4 anything, I said -- I told her what the issue was, right over
5 here. I knew it.

6 MS. PARHAM: Let him -- wait a minute, let my client look
7 at the letter.

8 MR. ANDERS: Your Honor, can I also ask for a brief
9 recess to use the restroom?

10 THE COURT: Yes.

11 MR. ANDERS: Thank you.

12 (Whereupon, the bench conference ends.)

13 THE COURT: All right. We'll stand down for a minute.

14 (Whereupon, there is a break in the proceedings from
15 11:51 a.m. until 11:56 a.m.)

16 THE COURT: All right. Anything else before I bring the
17 jury back in?

18 MR. ANDERS: Nothing, Your Honor.

19 THE COURT: Hold on a minute.

20 MR. ANDERS: Your Honor, can she not talk to her client,
21 please?

22 MS. PARHAM: All right. I just wanted to make sure he
23 read the letter, Your Honor.

24 THE COURT: Okay. Is the State ready to proceed?

25 MR. ANDERS: The State is ready, Your Honor.

DAMON MOODY - DIRECT BY MS. PARHAM

1 THE COURT: Ms. Parham, are you ready to proceed?

2 MS. PARHAM: Yes.

3 THE COURT: All right. Bring me the jury, please.

4 (Whereupon, the jury enters the courtroom at 11:57 a.m.)

5 THE COURT: All right. Mr. Anders, cross examination.

6 MR. ANDERS: Thank you, Your Honor.

7 CROSS EXAMINATION

8 BY MR. ANDERS:

9 Q: Mr. Moody, during the first three minutes of your
10 testimony earlier, you were asked why you left the Mullins
11 Police Department?

12 A: Yes, sir.

13 Q: And your answer I believe was because you wanted
14 something bigger and a change?

15 A: Yes, sir.

16 Q: Correct? Would you mind just reading this to yourself?

17 (Whereupon, the witness complies.)

18 Q: Was that, in fact, the truth what you told this jury
19 earlier?

20 A: As far as?

21 Q: Why you left the Mullins Police Department.

22 A: It was. It was actually a resignation letter that was
23 presented two days prior to that letter.

24 THE COURT: Mr. Anders? Can the lawyers approach a
25 minute?

DAMON MOODY - CROSS BY MR. ANDERS

1 (Whereupon, a bench conference is held in the presence of
2 the jury but out of the hearing of the jury as follows.)

3 MS. PARHAM: I think --

4 THE COURT: Here's the proper way to do it.

5 MS. PARHAM: Okay.

6 THE COURT: In fact, you were terminated --

7 MS. PARHAM: Exactly.

8 THE COURT: I mean -- come here. I was wrong a minute
9 ago, but I was looking at -- I think looking at another rule.
10 But under 608(b), extrinsic evidence is not admissible --

11 MS. PARHAM: Right.

12 THE COURT: -- but you can go into it.

13 MS. PARHAM: Mm-hmm.

14 MR. ANDERS: Sure.

15 THE COURT: All right.

16 (Whereupon, the bench conference ends.)

17 Q: Mr. Moody, isn't it a fact that you were terminated?

18 A: I was terminated from Mullins Police Department.

19 Q: And you were terminated because incidents involving you
20 and your attitude toward the public had come into question,
21 isn't that the reason?

22 A: If that's what they wrote on the paper.

23 Q: Okay.

24 A: I mean I --

25 Q: Not for bigger and better changes; correct?

DAMON MOODY - CROSS BY MR. ANDERS

1 A: That was why I put my resignation letter in.

2 Q: Okay. All right. And June of 2013, what were you doing
3 at that point? What was your occupation?

4 A: I worked for Francis Marion University Police Department.

5 Q: All right. And what hours did you keep? What were your
6 shifts?

7 A: Most of the time, my shift began at 5:00 and ended at
8 3:30.

9 Q: So as you testified earlier, at two or two-thirty you
10 would have been sleeping?

11 A: No, sir.

12 Q: Okay. On June 13th of 2013, when did you wake up?

13 A: Around -- around about two o'clock.

14 Q: All right. And why did you wake up?

15 A: Because I woke up.

16 Q: At that point?

17 A: Because I woke up.

18 Q: Okay. Do you recall being asked yesterday under oath why
19 you woke up at that time and you answering that your dogs were
20 barking?

21 A: That was the first time I woke up was at two o'clock. I
22 walked into my living room and got into my chair and laid down
23 and actually drifted kind of back off to sleep and was awoken
24 by my two German Shepherds inside.

25 Q: All right. And what was the cause of your German

DAMON MOODY - CROSS BY MR. ANDERS

1 Shepherds to bark?

2 A: The dogs outside were barking. I mean they were -- they
3 were going ballistic -- crazy.

4 Q: All right. Is that when you went outside?

5 A: No, sir. No, sir. I --

6 Q: When did you go outside?

7 A: I actually let my two German Shepherds outside first.

8 Q: When you let them outside, did you look outside into your
9 yard?

10 A: No, sir.

11 Q: You didn't? You just opened the door and let them out?

12 A: Yes, sir.

13 Q: And you had no knowledge of anybody being in that yard?

14 A: No, sir.

15 Q: You didn't see another dog and you didn't see children?

16 A: I do it every day.

17 Q: And you testified that you keep dogs and you have about a
18 \$17- or \$18,000 investment?

19 A: That's correct.

20 Q: And the jury's seen the kennels and the jury's heard
21 testimony that there's no fence between you and the Durant's;
22 correct?

23 A: That's correct.

24 Q: So my question to you is if you have this money invested,
25 why not build something around the kennels? As you testified,

DAMON MOODY - CROSS BY MR. ANDERS

1 this is an ongoing problem.

2 A: I do actually have a fence that runs in front and I have
3 a surrounding wooden fence that encompasses that backyard.

4 As far as on the backside of the kennel --

5 Q: A fence that encompasses the kennel?

6 A: The kennels, yes..

7 Q: You do not have that?

8 A: Sir?

9 Q: You do not have a fence that encompasses the kennels;
10 correct?

11 A: Except for that one small spot, I do.

12 Q: Okay. Do you recall me asking you yesterday if you had
13 any pictures of any sort of damage that this pit bull might
14 have done to your dogs?

15 A: Mm-hmm.

16 Q: Do you recall saying that I don't have pictures, but Rose
17 Mary may have taken some?

18 A: That's correct.

19 Q: And I believe your testimony earlier was that you took
20 some pictures; isn't that correct?

21 A: I mean I have taken pictures. I've taken pictures of a
22 bunch of things.

23 Q: Who took those pictures?

24 A: Those pictures were taken by me.

25 Q: Okay. What time? When?

DAMON MOODY - CROSS BY MR. ANDERS

1 A: Several of them were yesterday. There were several of
2 them that were before that incident.

3 Q: So you took pictures of a dog injury that happened a year
4 before?

5 A: I -- I didn't take pictures of the dog injury that year
6 before.

7 Q: When did you take those pictures of your dog?

8 A: I took the pictures of the kennels yesterday.

9 Q: Okay. My question is when you took the pictures of the
10 injury of the dog.

11 A: There was no injury to the dog in those pictures.

12 Q: Okay. But that's not what you testified to earlier. You
13 said a pit bull was nipping at your dog?

14 A: Was -- was trying to attack my dog.

15 Q: Trying to attack your dog?

16 A: Yes, sir. That's what I testified to.

17 Q: All right. Do you recall -- you've been in the court
18 room. Do you recall Tabitha Durant testifying or being asked
19 the question -- or being asked a question by Rose Mary Parham
20 whether or not there was an incident where she left a pit bull
21 tied to a tree, and she said we don't have any trees?

22 A: That's correct.

23 Q: But today the question was posed to you and you answered
24 there was an incident where a dog was tied to something. Do
25 you recall?

DAMON MOODY - CROSS BY MR. ANDERS

1 A: It actually -- to be specific, it was a small picnic
2 table that was for my wife's younger brother who was adopted.
3 That's what --
4 Q: I believe you said some lawn furniture.
5 A: Well, that's -- that's -- I mean that's furniture for a
6 child, isn't it?
7 Q: But not a tree?
8 A: I didn't -- I never said it was a tree, sir.
9 Q: All right. So let's go back to June 13th. When you wake
10 up and you come out and you said you were awakened by your
11 dogs?
12 A: That's correct.
13 Q: Outdoor dogs?
14 A: The inside dogs.
15 Q: Okay. The inside dogs. So you let them out?
16 A: That's correct.
17 Q: And you've heard testimony that those dogs were out
18 playing with other dogs in the yard; correct?
19 A: That's correct.
20 Q: Do you have knowledge of that?
21 A: I do not. I assumed -- that's what they testified to.
22 Q: Okay. Do you have any reason to not believe that's the
23 case, that their dogs were back there, that your dogs were
24 out, that they may play together?
25 A: I don't know what my dogs were doing.

DAMON MOODY - CROSS BY MR. ANDERS

1 Q: Okay. But they were out?

2 A: They were out.

3 Q: In the yard?

4 A: That's correct.

5 Q: The shared yard?

6 A: That's correct.

7 Q: So when do you come out?

8 A: When I heard people speaking. Like I said before, it's

9 -- I didn't think it was right to have my dogs outside when
10 they were having whatever they were having.

11 Q: But you just testified you didn't know people were in the
12 backyard.

13 A: You just asked me --

14 Q: When you let your dogs out --

15 A: That's right.

16 Q: You said you heard people speaking?

17 A: You were asking when I brought my dogs in; correct? And
18 that was when I heard them speaking. I actually looked out my
19 back window to my door --

20 Q: Okay.

21 A: And that was when I saw people outside. That's when I
22 recalled my dogs back inside.

23 Q: From the time you let -- you the dogs out to the time you
24 heard people speaking, how much time was that?

25 A: Maybe three minutes.

DAMON MOODY - CROSS BY MR. ANDERS

1 Q: Three minutes?

2 A: Mm-hmm.

3 Q: Okay. So you heard them speaking and you thought I need

4 to get my dogs inside?

5 A: That's right.

6 Q: And you brought them inside?

7 A: That's correct.

8 Q: All right. So when did you come out and start firing

9 your gun?

10 A: I actually -- once I brought my dogs in, as I shut the

11 door, I heard the outside dogs begin to go ballistic again.

12 As I walked toward the hall --

13 Q: Did you ever think to yourself that it could have been

14 your dogs that made the outside dogs bark?

15 A: No, sir.

16 Q: Okay.

17 A: My relationship between my inside dogs and my out dogs --

18 my outside dogs, they all love one another.

19 Q: Okay.

20 A: They don't -- they don't bark when they come out. They

21 all play together.

22 Q: Do they ever bark for any reason?

23 A: Yes. They -- they bark for any reason that alerts them

24 to somebody's either in the yard, somebody's messing around,

25 there is somebody that drives up in my driveway, there's

DAMON MOODY - CROSS BY MR. ANDERS

1 somebody walking behind my fence, there's somebody in my yard,
2 there's somebody that walks in my roadway.
3 Q: When you say your yard, would they also bark at things in
4 the shared yard?
5 A: Yeah.
6 Q: Are we talking about the shared yard? Because you don't
7 have a yard; correct?
8 A: My house is on that property; so that is my yard, yes,
9 sir.
10 Q: Well, it's not in your name legally; correct?
11 A: It's not in either of our names, but my house resides
12 there so, yes, sir, that's my yard.
13 Q: When you say yard, it's a shared yard?
14 A: It's my yard, sir.
15 Q: They will bark if somebody's in that yard?
16 A: In my yard, yes, sir.
17 Q: And also Tabitha's yard?
18 A: Also in Tabitha's yard, yes, sir.
19 Q: Right. So if she has guests, they'll bark?
20 A: Yes, sir.
21 Q: All right. So -- continue.
22 A: What -- what -- let's get back on track.
23 Q: I'm sorry. So you came outside?
24 A: That's correct.
25 Q: And when you brought your dogs in, your outdoor dogs

DAMON MOODY - CROSS BY MR. ANDERS

1 started barking; correct?

2 A: Yes, sir.

3 Q: And when did you come out and start firing rounds?

4 A: It wasn't until, like I said, as I walked back to the
5 hallway, I could hear my female. Her pitch of her bark began
6 to come almost like a squeal. That's what really alerted me
7 to the situation. As I looked out the window, I could see the
8 pit bull was -- had his feet up on the deck and was actually
9 grabbing at her and grabbing the kennels. And that's when I
10 retrieved my .22, I walked outside, I yelled at the dog, the
11 dog didn't even pay me any attention, and I fired the shots
12 into the ground.

13 Q: Why did you not just walk across and talk to Jermichael
14 or call Tabitha or call the police, if this is an ongoing
15 problem?

16 A: It -- it -- it -- at that --

17 Q: You're awakened, the dogs are barking, you come outside
18 and start shooting, isn't that true?

19 A: That -- that is true, but it was in --

20 Q: So why not call the police? Answer that.

21 A: There was no crime committed.

22 Q: If your dog -- if there is a pit bull trying to get to
23 your dog, then you --

24 A: That's not a crime. In the State of South Carolina --

25 Q: I'm sure there are ordinances --

DAMON MOODY - CROSS BY MR. ANDERS

1 THE COURT: Hold on a minute. Let him ask the question
2 and you answer it. Both of you can't talk at the same time.

3 THE WITNESS: Yes, sir.

4 THE COURT: Same goes to you, Mr. Anders.

5 MR. ANDERS: Yes, Your Honor.

6 THE COURT: If he's talking, let him finish his response.
7 My court reporter can't take down when both of you are
8 talking. Okay?

9 MR. ANDERS: Yes, sir.

10 THE COURT: You may continue. Thank you.

11 Q: You had problems with these dogs, why not call the
12 police?

13 A: There was no reason to call the police. There was not a
14 crime that was being committed. The dog was in the backyard,
15 it had a collar, it had its proper vaccinations. There was
16 nothing legally that the police could do except come out there
17 and look at the situation and go -- I mean he's in a backyard,
18 he's got a collar, he's properly vaccinated. There was
19 nothing that they could do.

20 Q: Isn't that really -- isn't that the case?

21 A: What is the case?

22 Q: There's a dog in your backyard and you come out and start
23 shooting. Instead of talking to the animal owner or the next
24 door neighbor, why not call the police or talk to them?

25 A: Sir, I have -- like I testified before, I have tried

DAMON MOODY - CROSS BY MR. ANDERS

1 numerous times talking to Ms. Durant, Miss Mott, Mr. Wright
2 over and over again about this dog.
3 Q: And your -- and you decide to take matters into your own
4 hands and start shooting?
5 A: It was imperative that the dog not grab my female through
6 that fence because with his jaw pressure he could have broke
7 her leg and rendered her useless and I would have been out of
8 a significant monetary value.
9 Q: And how many children were in the yard at that point when
10 you started shooting?
11 A: I -- I do not know.
12 Q: There were -- do you deny there were children in the
13 backyard?
14 Q: I'm -- I'm -- I'm not denying there were and I'm not
15 saying there weren't. I just -- I don't know.
16 Q: All right. And you went to the academy; correct?
17 A: That is correct.
18 Q: And you took gun safety classes?
19 A: That is correct.
20 Q: And a .22 -- what do you know about a .22 pistol?
21 A: It's a small caliber weapon.
22 Q: How far will it shoot?
23 A: Depends on elevation and range. I mean it can go a long
24 -- it can go a long way.
25 Q: About a mile?

DAMON MOODY - CROSS BY MR. ANDERS

1 A: If -- if angled properly.

2 Q: All right.

3 A: Not into the ground.

4 Q: So you shot five to seven times?

5 A: In the ground, sir. Yes, sir.

6 Q: All right. So after you shoot, you walk over to the

7 Durant's; correct?

8 A: That is correct.

9 Q: All right. And before that -- I asked you a question

10 yesterday while you were under oath. Would it be reasonable

11 to expect a parent or a guardian or another adult to be upset

12 there were guns shot around their children, and you said yes.

13 Do you remember that?

14 A: Yes, sir.

15 Q: Is that still your testimony?

16 A: I -- I don't know in their eyes what reasonable is, but I

17 mean I --

18 Q: Is it reasonable to assume --

19 A: It -- a reasonable person -- it is assumed that they

20 could be aggravated or upset.

21 Q: By the firing of a gun by their children?

22 A: That is correct.

23 Q: You go inside after something is said to you. You go

24 back inside; correct?

25 A: Yes, sir.

DAMON MOODY - CROSS BY MR. ANDERS

1 Q: Do you call the police then?

2 A: No, sir.

3 Q: Okay. Do you call Tabitha Durant?

4 A: No, sir.

5 Q: Do you go across and talk to Jermichael at that point?

6 A: Yes, sir, I do.

7 Q: Okay. No, you go inside; correct?

8 A: I went inside and then came back outside.

9 Q: Why go back outside?

10 A: I -- I --

11 Q: You just shot a gun around people's children. They're

12 obviously upset. It's your testimony that you go back to

13 confront them while they're on their porch. Why is that?

14 A: Because there was not -- the issue still hasn't been

15 resolved. The pit bull was continuously running around the

16 yard. I needed to bring it to Mr. Wright's attention once

17 again after numerous times that I've already brought it to his

18 attention.

19 Q: But you never brought it to his attention before you shot

20 the gun? But now you want to try to bring it to his attention

21 after you shoot the gun?

22 A: The reason I didn't bring it to his attention is because

23 my dog was in serious danger of having its leg pulled through

24 a kennel and bitten by a pit bull.

25 Q: And you testified to that, but isn't that the same

DAMON MOODY - CROSS BY MR. ANDERS

1 situation that's going on before you start shooting? You're
2 concerned about your pit bull -- I mean your -- your dog;
3 correct?

4 A: This is going on as this is happening. It -- I mean I
5 couldn't walk to Mr. -- Mr. Wright and say, hey, you know,
6 your dog is, you know, biting my dog. Can you go over there
7 and get him?

8 Q: Why not? Why not?

9 A: Because, sir, I have -- you don't understand. I have
10 tons of time and money -- at that current time, I made \$24,000
11 a year. My income to support my family was supplemented with
12 these dogs.

13 Q: But I just want to make sure I'm straight. You shoot
14 first, and then you want to talk second; correct?

15 A: I stopped the threat on my dog. And then I went to go to
16 Mr. -- Mr. Wright to get him to pull the pit bull back inside,
17 which is something I've already discussed with him numerous
18 times about. If they have the dog there, let the dog go
19 outside and use the bathroom and bring it back inside. I
20 don't let my dogs free run around the backyard. They go
21 outside, they use the restroom, they come back inside. The
22 dogs out in the kennels, if I pull them out, they get pulled
23 out one by one. They get to use the bathroom and then they
24 get put on a leash and we go wherever we're going to go. I
25 don't let my dogs just run around in the backyard.

DAMON MOODY - CROSS BY MR. ANDERS

1 Q: I'm just going to ask this one more time and move on.
2 What is the point in trying to talk to somebody if you've
3 already started shooting a gun? You say you go over there
4 after you leave your house to go talk to get Mr. Wright to
5 take his dog inside. Why didn't you just do that first?
6 A: Because --
7 Q: That's my question.
8 A: Because of the threat to my dog. I mean my dog was
9 literally --
10 Q: And your gunshots are a threat to other people, are they
11 not?
12 A: My gunshots were into the ground on my porch away from
13 anybody to the far left of me close to 90 feet across that
14 property.
15 Q: Would you agree that shooting a gun near kids creates a
16 situation?
17 A: It may.
18 Q: It did create a situation.
19 A: I assume it did on that day.
20 Q: Instead of going into your house and calling the police
21 --
22 A: Yes, sir.
23 Q: -- and diffusing that situation, you confront them at
24 their porch?
25 A: In a reasonable manner. I went to go speak to Mr. -- Mr.

DAMON MOODY - CROSS BY MR. ANDERS

1 Wright, Jermichael Wright, to try to get him to bring the dog
2 inside, to once again try to reiterate what was going on. And
3 I had spoke with him before. I had talked to Ms. Durant. Ms.
4 Durant had relayed messages to them about him bringing the dog
5 inside. And that's when, you know, the whole situation began
6 of them attacking me.

7 Q: That's not actually true, is it?

8 A: That's -- that's true.

9 Q: You confronted them on their porch, and they're social
10 guests of Ms. Durant and have every right to be there, as much
11 right as you to be on that porch --

12 A: Yes, sir.

13 Q: -- in that yard? But wasn't your testimony earlier, as
14 it was yesterday, that you actually made the first physical
15 contact?

16 A: I used my left arm --

17 Q: Okay.

18 A: -- as I was taught at the South Carolina Criminal Justice
19 Academy and leveraged from my elbow and pushed out to create
20 space. I did not use two hands; I used one arm.

21 Q: Is that -- is that not just saying you pushed him?

22 A: Well, sir, he was in my face. I mean --

23 Q: But he was on his porch at a place he had a right to be?

24 A: But he --

25 Q: You went there; he didn't go to you?

DAMON MOODY - CROSS BY MR. ANDERS

1 A: That's correct.

2 Q: You went there?

3 A: Yes, sir.

4 Q: And you pushed him?

5 A: But I didn't ask him to get in my personal space, sir.

6 Q: You've already done that. You've already gone to his

7 porch where they are trying to have a party.

8 A: I was --

9 Q: Did you or did you not make the first physical contact?

10 A: I -- I -- I guess I did.

11 Q: Yes or no?

12 A: Yes, sir.

13 Q: Thank you, sir.. We've heard testimony about some chest

14 bumping?

15 A: Yes, sir.

16 Q: And light confrontation. And they say chest bumping, but

17 your testimony was they were using their hands?

18 A: That's correct.

19 Q: It was sort of -- kind of spilled from Tabitha Durant's

20 porch to the yard?

21 A: Yes, sir.

22 Q: And at some point, their testimony is -- because you were

23 in here. They said I've got something for y'all. That's what

24 you said; correct?

25 A: I didn't say that.

DAMON MOODY - CROSS BY MR. ANDERS

1 Q: That's what they said you said; correct?

2 A: That's what they said I said.

3 Q: Correct. And all of a sudden after they testify -- two
4 of them say that you go to your house once again and instead
5 of staying there and calling 9-1-1 or just staying in your
6 house, you come back out and get a trained attack dog that you
7 trained and another pistol; correct?

8 A: Yes, sir.

9 Q: And what do you do?

10 A: Well, I grabbed the pistol for my protection. I'd
11 already been assaulted.

12 Q: But you were in your house. Why come back out?

13 A: Because my dogs were in danger, sir. I had three
14 quarters of my salary in one year in one dog that I had
15 raised. I mean this is not -- this is how I supplement my
16 income to my family. I made \$24,881 as a police officer.
17 That dog was swaying and possibly could have died if he
18 wouldn't have been calmed down and I wouldn't have got him
19 cold.

20 Q: So wouldn't it have made sense that instead of leaving
21 your house and confronting them on their porch, you tend to
22 the dog?

23 A: The situation at hand --

24 Q: Answer my question.

25 A: The dog wasn't -- the dog wasn't as worked up then as he

DAMON MOODY - CROSS BY MR. ANDERS

1 was after he had saw me or seen me be assaulted and he heard
2 me and saw me with my hands up yelling, okay, okay, okay, and
3 watched these two gentlemen push me around my backyard.

4 Q: Was there -- is there not something on your kennel to
5 shield the view of your dogs?

6 A: There's -- there's 17 inches above the fence that my dogs
7 can see, sir.

8 Q: Okay. So it's your testimony today that your dogs got so
9, worked up because they saw you being assaulted?

10 A: Yes, sir.

11 Q: Okay.

12 A: Sniper particularly.

13 Q: All right. Two of the witnesses testified that you said
14 "I've got something for y'all," and that's when you go back to
15 get a gun; correct?

16 A: If that's what they testified to, that's what they
17 testified to.

18 Q: Well, after you start -- stop chest bumping and then they
19 say -- you say hands, they say chest bumping, where do you go?

20 A: I walked back to my house.

21 Q: Did you go inside your house?

22 A: Yes, I did.

23 Q: Did you call 9-1-1?

24 A: No, sir.

25 Q: Why not?

DAMON MOODY - CROSS BY MR. ANDERS

1 A: At that time, I --

2 Q: You felt threatened, did you not?

3 A: At -- at --

4 Q: You felt threatened at that point?

5 A: At which point?

6 Q: When you were saying -- before, when they were -- you

7 said -- you just testified that they were pushing you around

8 the yard and that you felt threatened.

9 A: Yes, sir.

10 Q: So when you go into your house, why do you not call the

11 police?

12 A: Because I needed to tend to my dogs.

13 Q: And then you get this gun and you come outside; correct?

14 A: Yes, sir.

15 Q: And you state that the gun is in your pocket?

16 A: It's in my right pocket.

17 Q: Okay. And when does the gun come out of your pocket?

18 A: After Jermichael Wright said that he would put a bullet

19 in my fucking head and one in my dog's head and made a -- made

20 a movement that he had something behind him.

21 Q: What kind of movement did he make?

22 A: A furtive movement that he may be concealing something

23 behind him.

24 Q: Could you -- could you tell us what that is because I'm

25 not sure what that is?

DAMON MOODY - CROSS BY MR. ANDERS

1 A: It's a --

2 Q: Could you maybe just show us what he did?

3 (Whereupon, the witness stands and demonstrates.)

4 A: As he said -- made the threat, he went like this with his
5 brother beside him L'ing him on. And he made the movement
6 behind his back.

7 Q: What's he wearing at that point?

8 A: He's wearing shorts.

9 Q: Shorts or swim trunks?

10 A: I don't know if they were swim trunks or board shorts or
11 what they were, if they were regular shorts.

12 Q: You ever see a gun?

13 A: I never -- he never turned his back to me.

14 Q: Did you ever see a gun?

15 A: He never presented a gun.

16 Q: Is that a no?

17 A: No, sir.

18 Q: Were you ever physically attacked in your home?

19 A: No, sir.

20 Q: By anybody?

21 A: No, sir.

22 Q: Were you physically attacked by anybody there?

23 A: Yes, sir.

24 Q: What injuries did you sustain?

25 A: I mean I was thrown to the ground.

DAMON MOODY - CROSS BY MR. ANDERS

1 Q: You were -- you were asked to leave and you were pushed
2 off the porch; is that not true?

3 A: No, sir. I was never asked to leave. I was yelled at
4 and cussed at and shoved off the porch to where I fell, and I
5 was then repeatedly pushed around the pool almost back to my
6 house by two individuals after one of them also threatened to
7 knock me the fuck out.

8 Q: All right. So you were on their porch when this
9 happened?

10 A: I was on Ms. Durant's porch.

11 Q: And they were a guest of Ms. Durant?

12 A: I don't know if they were guests. I don't know if they
13 were -- at that point, I didn't know if they were guests.

14 Q: You think they were over there without her permission?

15 A: It's happened before, sir.

16 Q: Okay. You heard the testimony. Do you deny the fact
17 that they were having a pool party for some kids and cooking
18 out?

19 A: I don't know what they were having.

20 Q: What did you observe?

21 A: I observed people outside.

22 Q: Was there water in the pool?

23 A: There's water in the pool 24 --

24 Q: Did it seem to be like they were getting ready to grill
25 out?

DAMON MOODY - CROSS BY MR. ANDERS

- 1 A: I did see the grill.
- 2 Q: Okay. You testified earlier that you went to the academy
3 and you said you took defensive tactics?
- 4 A: Yes, sir.
- 5 Q: Can you explain what that is?
- 6 A: Defensive tactics are -- they teach you about, you know,
7 going through your array of different things that you have
8 from, you know, soft empty hand, you know, to hard empty hand
9 to your electronic control devices.
- 10 Q: If you don't mind, what is hard -- what are those terms?
- 11 A: Just using -- using techniques such as straight arm bars
12 or different types of positions to gain compliance.
- 13 Q: And did you ever use that to gain compliance from anybody
14 that day?
- 15 A: No, sir.
- 16 Q: Why not?
- 17 A: Because I didn't want to assault them. I tried verbal,
18 which is the first step, and that didn't work.
- 19 Q: So you pointed your gun? That was your next step?
- 20 A: That was after the threat and the movement had been made,
21 sir.
- 22 Q: When you were in the shared yard and there was pushing
23 and shoving going on, why didn't you use your training?
- 24 A: I don't know if the jury can see these individuals, but
25 both of them --

DAMON MOODY - CROSS BY MR. ANDERS

- 1 Q: But you're --
- 2 A: They're over -- they're over six feet. Both of them are
- 3 athletes. They both L'ed me off. I'm -- I'm one person
- 4 against two people. They also had younger kids that appeared
- 5 to be 14, 15, 16 years old, and that could have been them
- 6 getting into the situation as well.
- 7 Q: Did they seem like a threat to you as well?
- 8 A: At that time, everybody seemed like a threat.
- 9 Q: And it was a threat to you because you were over at Ms.
- 10 Durant's after firing a gun; correct?
- 11 A: Sir?
- 12 Q: It felt like a threat to you because you were on the
- 13 porch after firing the shots; correct?
- 14 A: That was after I was being shoved around my yard, sir,
- 15 and threatened to be knocked out.
- 16 Q: And after you went inside?
- 17 A: You're losing me.
- 18 Q: You went inside after being shoved; correct?
- 19 A: Yes, sir.
- 20 Q: And you didn't call the police?
- 21 A: No, sir.
- 22 Q: You didn't call anybody, did you?
- 23 A: No, sir.
- 24 Q: All right. And you heard the 9-1-1 tape?
- 25 A: Yes, sir.

DAMON MOODY - CROSS BY MR. ANDERS

1 Q: And I believe at some point one of the Wrights says,
2 "He's outside pacing back and forth."

3 A: Yes, sir.

4 Q: Is that true or not?

5 A: No, sir. I was -- my dog was pacing. I was simply
6 merely just holding my dog as he was going in the directions
7 that he was going.

8 Q: So you took your dog towards the pool towards Ontario and
9 Tabitha?

10 A: To speak to Tabitha.

11 Q: Okay. With your gun in your hand?

12 A: With my gun down by my side, sir.

13 Q: Okay. And what was it you told 14-year-old Ontario?

14 A: As he was laughing at that matter, I told him that this
15 -- this is -- you know, it's not a laughing matter. It's not
16 a joke. That his cousin could have been hurt.

17 Q: At that point, what was -- what was Tabitha telling you?

18 A: Tabitha told me to talk to her.

19 Q: Did she tell you to get your f'ing ass back in your
20 house?

21 A: No, sir.

22 Q: She did not tell you that?

23 A: No, sir. Ms. Durant -- actually, as I was explaining the
24 situation about me telling her about the Wrights recently
25 after I had to fire at the dog previously to this, that she

DAMON MOODY - CROSS BY MR. ANDERS

1 continuously said I know, I know, I know, I'll take care of
2 it. And I actually asked her to make them leave. I also put
3 the gun in my pocket and used her water hose to cool off my
4 dog who was beginning to get worse and worse in that
5 situation.

6 Q: How far is it from your back porch to the pool?

7 A: Probably around 30 feet.

8 Q: And how far is it from your porch to Ms. Durant's porch?

9 A: Roughly probably anywhere from 75 to 85 feet.

10 MR. ANDERS: I beg the Court's indulgence.

11 THE COURT: Yes, sir.

12 Q: Well, I would like to ask you one other question. When
13 you said hands, hands, hands, what does that mean?

14 A: I wanted them to show me their hands.

15 Q: Okay. When did this occur?

16 A: That was when I -- when I drew down on Mr. Wright.

17 Q: When you drew down on Mr. Wright?

18 A: That's correct.

19 Q: And then you said hands, hands, hands?

20 A: As I drew down, I yelled hands, hands, hands.

21 Q: But at no point -- at this point, you feel it's a threat;
22 correct?

23 A: Yes, sir.

24 Q: But at no point before do you call the police? At no
25 point after do you call the police; correct?

DAMON MOODY - CROSS BY MR. ANDERS

1 A: I didn't call the police before and there was -- the
2 police were already on the way and I knew they were on the
3 way; so I waited for them.

4 Q: And what was it that you told the police when they
5 arrived? Do you recall?

6 A: I didn't speak a whole lot to Officer Moore, but I told
7 Investigator Hester, you know, the situation and that the
8 threat had been made.

9 Q: The threat has been made. And what did they teach you in
10 the academy about self-defense?

11 A: When it comes to on- or off-duty, police officers in
12 every state are police officers 24/7. Every -- every threat
13 can't be taken as being idle. You have to be vigilant. If
14 you feel that your life is danger and that bodily harm can be
15 done to you, you -- you assess that threat and make that
16 judgment call. And that occurs on- or off-duty. Whether it's
17 myself or somebody else, I have to make that judgment call.
18 And in this situation --

19 Q: Let me ask you. Did you -- I'm sorry I didn't mean to
20 interrupt.

21 A: In this situation, with everything that had happened that
22 day, the threat was real and I made that judgment call.

23 Q: Did you or did you not tell Sergeant Driggers -- so this
24 is how you're going to treat me, like a criminal, come on, I'm
25 one of you?

DAMON MOODY - REDIRECT BY MS. PARHAM

1 A: No, sir.

2 MR. ANDERS: No further questions

3 THE COURT: Any redirect?

4 MS. PARHAM: Yes.

5 REDIRECT EXAMINATION

6 BY MS. PARHAM:

7 Q: Did you tell the police officers that came to talk to you
8 that Jermichael threatened to put a bullet in your head and
9 your dog's head?

10 A: Yes, ma'am, I did.

11 Q: And that they made this furtive gesture towards their
12 waistband?

13 A: Yes, ma'am.

14 Q: All right. You told them that that day?

15 A: Yes, ma'am, that day.

16 Q: Okay.

17 MS. PARHAM: I believe that's all I have.

18 THE COURT: Any recross?

19 MR. ANDERS: Nothing further, Your Honor.

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

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: Call your next witness.

23 MS. PARHAM: We call Rabin Moody.

24 THE COURT: As she's coming up, can the lawyers approach
25 a minute?

1 THE CLERK: I need you to stand there with the Bible.
2 THE WITNESS: Okay.
3 (Whereupon, a bench conference is held in the presence of
4 the jury but out of the hearing of the jury as follows.)
5 THE COURT: I'm not trying to be holier than thou or
6 anything, but I have heard the F-bomb about as much as I can
7 stand it. All right?
8 MR. ANDERS: Did I say the F-bomb?
9 THE COURT: Not you, but the witnesses.
10 MR. ANDERS: Okay.
11 MS. PARHAM: Mm-hmm.
12 THE COURT: From here forward, instruct your witness that
13 I can get the context of what went on.
14 MR. ANDERS: Okay.
15 THE COURT: I mean I cringe every time I hear it.
16 MR. ANDERS: Yes, Your Honor. I understand, Your Honor.
17 MS. PARHAM: Mm-hmm.
18 (Whereupon, the bench conference ends.)
19 THE COURT: Go ahead. Go ahead.
20 THE CLERK: Place your left hand on the Bible and raise
21 your right hand. Do you swear to tell the truth, the whole
22 truth, and nothing but the truth, so help you God?
23 THE WITNESS: I do.
24 THE CLERK: Please be seated and state your full name for
25 the record.

RABIN MOODY - DIRECT BY MS. PARHAM

1 THE WITNESS: Rabin Mott Moody.

2 RABIN MOODY, being first duly
3 sworn, testifies as follows:

4 DIRECT EXAMINATION

5 BY MS. PARHAM:

6 Q: Ms. Moody, how old are you?

7 A: I am 25 years old.

8 Q: Are you related to Damon Moody?

9 A: Yes. That is my husband.

10 Q: Okay. And where do y'all live?

11 A: We live at 1311 Gilbert Drive, Florence.

12 Q: All right. And y'all still live there?

13 A: Yes, ma'am.

14 Q: All right. Do you know Jermichael Wright?

15 A: I do.

16 Q: How do you know him?

17 A: That is my sister's fiancé.

18 Q: All right. Is Jermichael Wright a visitor at the trailer
19 next to you at times?

20 A: Yes.

21 Q: All right. Have you ever seen Jermichael Wright with a
22 firearm?

23 A: I have.

24 Q: All right. How many times have you seen him with a
25 firearm?

RABIN MOODY - DIRECT BY MS. PARHAM

1 A: Numerous occasions.

2 Q: All right. And where have you seen it on him?

3 A: I've seen it in his waist band. I've seen it in a
4 backpack.

5 Q: Have you ever seen the gun with him at your mother's
6 house?

7 A: I have.

8 Q: Okay. Are you employed anywhere?

9 A: I am.

10 Q: Where do you work?

11 A: McLeod.

12 Q: Okay. What do you do there?

13 A: I'm a registered nurse.

14 Q: All right. And how long have you worked there?

15 A: A total of eight years..

16 Q: All right. And you were not at the house when this
17 happened?

18 A: No.

19 Q: Okay.

20 A: I was at work.

21 Q: All right. Please answer any questions the State may
22 have..

23 A: Okay.

24 THE COURT: Cross examination.

25 MS. BURCHSTEAD: Thank you, Your Honor.

RABIN MOODY - CROSS BY MS. BURCHSTEAD

CROSS EXAMINATION

- 1
- 2 BY MS. BURCHSTEAD:
- 3 Q: Ms. Moody?
- 4 A: Yes, ma'am.
- 5 Q: How long have you and Damon been married?
- 6 A: We've been married -- this October will be two years.
- 7 Q: Two years. All right. And you dated before that?
- 8 A: Yep, for about three years.
- 9 Q: Okay. And you have a child together?
- 10 A: We do.
- 11 Q: Is that correct?
- 12 A: Yes, ma'am.
- 13 Q: So he's not just your husband, he's the father of your
- 14 child?
- 15 A: Yes.
- 16 Q: Is that right?
- 17 A: Yes.
- 18 Q: Okay. So I assume you love him?
- 19 A: Yes.
- 20 Q: And I assume you don't want anything bad to happen to
- 21 him?
- 22 A: Of course not.
- 23 Q: Okay. You'd anything to help him, wouldn't you?
- 24 A: I wouldn't lie for him.
- 25 Q: You wouldn't lie for him?

RABIN MOODY - CROSS BY MS. BURCHSTEAD

- 1 A: No.
- 2 Q: Okay. But you don't want anything bad to happen to him?
- 3 A: No.
- 4 Q: Okay. So Regan is your sister?
- 5 A: Yes, ma'am.
- 6 Q: Okay. And you know Jermichael through her?
- 7 A: Yes.
- 8 Q: It's your testimony that you've seen a gun before?
- 9 A: Yes.
- 10 Q: Okay. But you weren't there that day?
- 11 A: No, I was at work.
- 12 Q: All right. So you have no idea if he had a gun that day
- 13 or not?
- 14 Q: No, I do not know.
- 15 Q: All right. Isn't it true that your sister called you
- 16 that day?
- 17 A: She did.
- 18 Q: All right. And didn't you talk to her?
- 19 A: I did.
- 20 Q: And what did she tell you?
- 21 A: She -- she called me and she asked me if I was at home
- 22 and I told her no, I was at work, and asked her, you know,
- 23 what -- you know, do you need me. She said, yeah, Damon's
- 24 outside shooting the gun, and I said, well --
- 25 Q: That's all. I asked what she told you.

RABIN MOODY - CROSS BY MS. BURCHSTEAD

1 A: Okay.

2 MS. PARHAM: I'd ask that she can finish her answer.

3 MS. BURCHSTEAD: The questions was what --

4 THE COURT: Hold on. Finish -- finish your answer.

5 A: Okay. And I said, well, you know, let me -- let me call

6 Damon and let me see, you know, what he says. Why would he be

7 out there shooting the gun?

8 Q: Okay. Was that the extinct of the conversation?

9 A: Yep.

10 Q: Okay. So she told you Damon had a gun and was shooting?

11 A: Mm-hmm.

12 THE COURT: Yes or no?

13 A: Yes. Yes.

14 THE COURT: Thank you.

15 MS. BURCHSTEAD: I beg the Court's indulgence?

16 THE COURT: Yes, ma'am.

17 MS. BURCHSTEAD: Nothing further. Thank you.

18 THE COURT: Any redirect?

19 REDIRECT EXAMINATION

20 BY MS. PARHAM:

21 Q: Did you call your husband after you spoke to your sister?

22 A: I did.

23 Q: Did he give you an explanation?

24 A: At that time, no.

25 Q: Okay. Why not?

RABIN MOODY - REDIRECT BY MS. PARHAM

1 A: He didn't answer his phone.

2 Q: At some point, did you receive an explanation?

3 A: I did.

4 Q: All right.

5 MS. PARHAM: Nothing further.

6 THE COURT: Any redirect?

7 MS. BURCHSTEAD: No, Your Honor.

8 THE COURT: You may step down. Thank you. Call your
9 next witness.

10 MS. PARHAM: Carey Shealy Sr.

11 THE CLERK: If you will, sir, place your left hand on the
12 Bible and raise your right hand. Do you swear to tell the
13 truth, the whole truth, and nothing but the truth, so help you
14 God?

15 THE WITNESS: I do.

16 THE CLERK: Please be seated and state your full name for
17 the record.

18 THE WITNESS: Carey Cyril Shealy Sr.

19 CAREY SHEALY SR., being first duly
20 sworn, testifies as follows:

21 DIRECT EXAMINATION

22 BY MS. PARHAM:

23 Q: Mr. Shealy, how old are you?

24 A: Eighty-five.

25 Q: Where do you live?

CAREY SHEALY SR. - DIRECT BY MS. PARHAM

- 1 A: 2120 East National Cemetery Road.
- 2 Q: Where are you from originally?
- 3 A: Newberry County.
- 4 Q: All right. What brought you to Florence? What brought
- 5 you to Florence County?
- 6 A: My job.
- 7 Q: All right. Where did you work?
- 8 A: Exxon Corporation.
- 9 Q: What did you do for Exxon?
- 10 A: My title was a LP gas technician.
- 11 Q: All right. Prior to that, were you in the service?
- 12 A: I was.
- 13 Q: What did you do in the service?
- 14 A: Well, I slept between two air conditioner compressors
- 15 down in the hull of a ship.
- 16 Q: All right. Would that have been in World War II?
- 17 A: It was.
- 18 Q: How many years of service did you have?
- 19 A: Two.
- 20 Q: All right. Are you married?
- 21 A: Yes.
- 22 Q: And does your wife live with you?
- 23 A: My present wife, yes.
- 24 Q: Do you know my client, Damon Moody?
- 25 A: I have. I do.

CAREY SHEALY SR. - DIRECT BY MS. PARHAM

- 1 Q: All right. And how do you know Damon?
- 2 A: He became my neighbor about two years ago.
- 3 Q: All right. And have you gotten to know him in the course
4 of being his neighbor?
- 5 A: I have.
- 6 Q: And do you know his mother-in-law, Tabitha or Tammy
7 Durant?
- 8 A: I do.
- 9 Q: And have you gotten to know her in the course of living
10 next door to her?
- 11 A: Not real well, no.
- 12 Q: Okay. Do you know her?
- 13 A: I do know her.
- 14 Q: Have you had conversations with her?
- 15 A: Not many.
- 16 Q: Okay. In the course of your knowing my client, have you
17 formed an opinion as to his truthfulness or untruthfulness?
- 18 A: I would say he's a fine, upstanding young man.
- 19 Q: All right. But have -- do you have an opinion as to his
20 truthfulness or untruthfulness?
- 21 A: I think he's very truthful.
- 22 Q: All right. Have you formed any opinion based upon your
23 dealings with Ms. Durant?
- 24 A: Yes, I have.
- 25 Q: All right. And have you formed an opinion as to her

CAREY SHEALY SR. - DIRECT BY MS. PARHAM

1 truthfulness or untruthfulness?

2 A: Untruthful.

3 Q: All right. And that's based upon your relationship and
4 living next door to her?

5 A: Well, from what I -- from my --

6 Q: You can't go into specifics, but just is it based on your
7 relationship with her?

8 A: Well, I don't really have a close relationship with her.

9 Q: Well, I understand. Is it based through experiences
10 though that you've had?

11 A: What I've seen, yes.

12 Q: Okay.

13 MS. PARHAM: I'd pass the witness. Thank you.

14 THE COURT: Cross examination.

15 MS. BURCHSTEAD: Thank you, Your Honor. May it please
16 the Court.

17 THE COURT: Yes.

18 CROSS EXAMINATION

19 BY MS. BURCHSTEAD:

20 Q: Good afternoon, Mr. Shealy. Did you say you were Navy in
21 World War II? We all thank you for your services, of course.

22 A: Thank you.

23 Q: We certainly appreciate that. Do I understand you to say
24 you don't know Ms. Durant very well?

25 A: No, she's not been very sociable.

CAREY SHEALY SR. - CROSS BY MS. BURCHSTEAD

1 Q: Okay. So you don't really know her?

2 A: Not personally, no.

3 Q: You don't have a social relationship with her?

4 A: No, I do not.

5 Q: All right. Would you agree that just because someone is
6 truthful doesn't mean they can't do something bad? Let me
7 rephrase it. Is it possible to be an honest person and still
8 commit a bad act?

9 A: I would say yes, it is. You can be forced in to it.

10 MS. BURCHSTEAD: Nothing further, Your Honor.

11 THE COURT: Any redirect?

12 MS. PARHAM: No, sir.

13 THE COURT: Sir, you may step down. Thank you.

14 THE WITNESS: Thank you.

15 MS. PARHAM: The defense rests, Your Honor.

16 THE COURT: Can the lawyers approach please?

17 (Whereupon, a bench conference is held in the presence of
18 the jury but out of the hearing of the jury as follows.)

19 THE COURT: Are y'all going to put up any reply?

20 MR. ANDERS: I don't think so. No. No, Your Honor.

21 THE COURT: All right. What time y'all want to start
22 argument and charge? After lunch at 2:30?

23 MS. PARHAM: That's fine.

24 MR. ANDERS: Sounds great. You want the jury charges
25 now, Your Honor? I mean there are -- there's only two or
26

1 three.

2 THE COURT: Pretty straightforward?

3 MR. ANDERS: Yeah.

4 THE COURT: You got a book for me? I'm going to ask that
5 you all be back here at 2:15 and we'll have a charging
6 conference.

7 MR. ANDERS: Sure.

8 THE COURT: At 2:15 in my office.

9 MS. PARHAM: Okay. Thank you.

10 THE COURT: I'm going to tell the jury to be back here at
11 2:30. All right?

12 MS. PARHAM: Okay. Thank you.

13 (Whereupon, the bench conference ends.)

14 THE COURT: All right. Ladies and gentlemen, the defense
15 at this time rests. There are some matters of law that I need
16 to take up. So what I am going to do at this time is I'm
17 going to excuse you for lunch. Okay? I'm going to excuse you
18 for lunch while we take up some matters of law outside of your
19 presence.

20 My instructions remain the same. Do not discuss the case
21 at all. Do not do any independent investigation on your own.
22 You are to decide this case based solely on the evidence and
23 testimony that you have heard in this court -- heard and seen
24 in this courtroom.

25 The only -- that which remains in this case is going to

1 be closing arguments when you come back after lunch and my
2 charge on the law applicable in this case, and after that is
3 done, I will instruct you to begin your deliberations. But do
4 not do any outside investigation and do not talk to anybody
5 about the case until you're instructed to do so.

6 I'm going to ask that you be back here at 2:30 -- at 2:30
7 and we will resume this case at that time. See you back at
8 2:30.

9 (Whereupon, the jury exits the courtroom at 12:44 p.m.)

10 THE COURT: All right. We're going to stand down. I'm
11 going to ask that the court personnel and the lawyers be back
12 here at 2:15 -- 2:15, and we'll have a charging conference at
13 that time.

14 Ms. Parham, if you would, go ahead for the record to
15 protect your client's rights, go ahead and renew your
16 previously-made motions, so that is of record, please.

17 MS. PARHAM: Yes, sir. The defense renews all previous
18 motions including the motion for a directed verdict or
19 judgment of acquittal and all the other motions regarding
20 admissibility of evidence.

21 THE COURT: All right. Objections are so noted for the
22 record. This Court's rulings remain the same -- remain the
23 same without change. All right. Thank you.

24 MS. PARHAM: Thank you.

25 THE COURT: 2:15.

1 (Whereupon, there is a break in the proceedings from
2 12:45 p.m. until 2:52 p.m.)

3 THE COURT: All right. Anything from the State before I
4 bring the jury in?

5 MR. ANDERS: Nothing from the State, Your Honor. It's
6 just -- I don't know. Ms. Parham wanted to get the charges on
7 the record.

8 THE COURT: Well, this is what I'm going to do and I'll
9 say -- I'll put this on the record. We did have a charging
10 conference back in chambers. Ms. Parham, I know you saw the
11 charge and, you know, there was some changes made. Did you --
12 did you see the verdict form?

13 MS. PARHAM: No, sir.

14 THE COURT: I mean I know Mr. Anders saw it, but he
15 didn't have any objection to it and I'll let you look at it.
16 Ms. Frances, could I have a cup of ice, please?

17 MS. PARHAM: No objection.

18 THE COURT: All right. I also reviewed -- I mean I know
19 there are some objections from the State as well as defense
20 possibly, and I will allow you to make objections at the
21 conclusion of my charge to the jury. Again, I know there are
22 some out there.

23 All right. Anything else at this time, Mr. Anders?

24 MR. ANDERS: Nothing, Your Honor.

25 THE COURT: Ms. Parham?

1 MS. PARHAM: No, Your Honor.

2 THE COURT: All right. If you will, bring me the jury
3 please, ma'am.

4 THE BAILIFF: Yes, sir.

5 (Whereupon, the jury enters the courtroom at 2:54 p.m.)

6 THE COURT: All right. Madam Forelady and ladies and
7 gentlemen of the jury, as I told you before we broke for
8 lunch, the only thing that remained in this case was the
9 closing arguments by counsel and my charge on the law to you.
10 At this time, I'm going to recognize the State for closing
11 arguments.

12 I will tell you, ladies and gentlemen, that what the
13 lawyers tell you in their closing arguments is not evidence in
14 this case. It is not evidence in this case. The State is
15 recognized for closing argument.

16 CLOSING ARGUMENT ON BEHALF OF THE STATE

17 MS. BURCHSTEAD: Thank you, Your Honor. Good afternoon.
18 Mr. Anders and Ms. Parham are going to speak with you after I
19 do a little more about the facts and the evidence and what's
20 been presented to you from the witness stand, but before they
21 do that, we'd like to give you a little bit of context of the
22 law. And so I'm going to give you a little bit of a guide so
23 that you can have that in your mind when you're listening to
24 them make their summations.

25 But let me just tell you that the Judge, as he mentioned,

1 is going to charge you on the law, and he'll do that after
2 they speak and before you deliberate. And what the judge says
3 is what you need to listen to. If somehow I am contradicting
4 or maybe not completely the same as what the judge says, you
5 follow what the judge instructs you, but we want to just give
6 you a little bit of context before you -- before you listen.

7 So the defendant is charged with what is commonly called
8 as pointing or presenting. And it is actually -- the statute
9 is pointing a firearm at another person. As I mentioned, it's
10 pointing and presenting, and it's really pretty simple.

11 It's unlawful for a person to present or point at another
12 person a loaded or unloaded firearm. So it doesn't matter if
13 the gun is loaded or not. You just have to have a firearm
14 pointed or presented at another person and that -- that's it.
15 That's what he's charged with. Three counts for Jermichael,
16 Jermaine and Ontario. Again, my colleagues will talk to you
17 more about what evidence is there to prove that.

18 But we recognize at the beginning of this case that the
19 State does have the burden to prove Mr. Moody guilty beyond a
20 reasonable doubt. Sometimes that's thought of as proof that
21 leaves you firmly convinced. I believe the judge is going to
22 instruct you that it is proof that would cause a reasonable
23 person to hesitate to act. I'm sorry we've got such tiny
24 print here, but it's just proof that would cause a reasonable
25 person to hesitate to act.

1 Now, the defendant has presented some evidence and the
2 judge is going to instruct you on self-defense and what that
3 means, and I'm going to get some help with this board here and
4 we're just going to go over a couple of those elements.

5 I beg the Court's indulgence. I'm going to get Agent
6 Follin to help set this prop up for me. There is just a few
7 elements we'd like to address. All right. Thanks.

8 So if you -- in considering the case, you need to look at
9 whether you think self-defense applies, and the elements that
10 meet self-defense are without fault in bringing on the
11 difficulty. The defendant has to be without fault in bringing
12 on the difficulty. Two, he has to have actually believed
13 there was imminent danger of losing his life or serious bodily
14 injury. And to accompany that, a reasonably prudent person of
15 ordinary firmness or courage would have had the same belief.
16 And no other means to avoid the danger.

17 Again, my colleagues are going to talk about that and let
18 me just say to you, Mr. Anders and I do not believe any of
19 these elements are met, but it is the State's burden to prove
20 beyond a reasonable doubt to disprove self-defense, and we
21 believe we've done that. We believe the evidence shows that
22 he did point a firearm at three individuals and that he does
23 not meet any of these self-defense elements.

24 And again, it is the State's burden to prove that and we
25 believe that we have done that, and I ask that you just listen

1 to Ms. Parham and Mr. Anders, and thank you for your attention
2 this week.

3 THE COURT: All right. Ms. Parham?

4 MS. PARHAM: Thank you. May it please the Court.

5 THE COURT: Yes, ma'am.

6 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

7 MS. PARHAM: Attorney General's Office, ladies and
8 gentlemen, good afternoon. Thank you all for your attention.
9 I know y'all have been paying attention. These three days
10 have been long, but the details of this case are very
11 important. And as I told you at the beginning, it's a
12 question of credibility of witnesses.

13 The State does have the burden of proving this case
14 beyond a reasonable doubt and that's a significant burden.
15 And that burden protects all of us, all of our families, even
16 people we don't know from being wrongfully charged, wrongfully
17 convicted. It's the same burden whether you're in General
18 Sessions Court or you're in Federal Court or you're in
19 Municipal Court or Magistrate's Court. It's the same burden
20 everywhere and it's beyond a reasonable doubt. And he's going
21 to charge you that that burden is the doubt that would cause a
22 person to hesitate in the most important of their own affairs.

23 And the State has to prove that burden. We don't have to
24 present any evidence. The defendant has a right to remain
25 silent and the State has to prove their case beyond a

1 reasonable doubt to you. If we had just sat here and said
2 nothing, they would have had to prove it beyond a reasonable
3 doubt, and I submit to you that at the conclusion of the
4 State's case, if you didn't know beyond a reasonable doubt
5 what happened out there that day, then that in and of itself
6 is reasonable doubt.

7 There were a lot of inconsistencies. You know, the
8 State's witnesses would hit the high spots, but when it came
9 down to details, they were very inconsistent. I submit to you
10 that the reason they're inconsistent on details is because
11 they didn't know the details and perhaps they were -- you
12 know, knew what the story was on the high points.

13 You know, some of the witnesses had my client coming out
14 the house with a gun in his hand. Jermaine and Jermichael
15 said the gun was in his pocket and he pulled it from his
16 pocket. Some witnesses had my client not going back into the
17 house after he discharged the firearm on the steps. They had
18 him leaving the steps and going straight to the deck and
19 talking to them.

20 You know, the witnesses conveniently want to not remember
21 important things that help my client and that is that there is
22 a pit bull running around the whole time. I mean when I would
23 say do you remember seeing the pit bull, no one wants to -- no
24 one wants to admit that there is a pit bull running around.
25 No one wants to admit that the pit bull is jumping up on this

1 kennel.

2 You know, they would have you believe that my client
3 comes out and shoots five times in the ground for no good
4 reason and that then he comes over and has a shoving match and
5 then pulls a gun and points it them for no good reason, and
6 that's just not reasonable under the circumstances. You know,
7 they also don't want you to know what words were exchanged,
8 and words are important. And the judge is going to charge you
9 that words accompanied by hostile acts is something that you
10 can consider.

11 You know, Jermaine Wright testified that it was silent
12 chest bumping. I asked him very specifically what he said,
13 nothing, what his brother said, nothing, what did my client --
14 nothing. I mean it was literally silent chest bumping, which
15 we know is not true. And we know from other witnesses that's
16 not true.

17 And -- and I submit to you that one of the most important
18 witnesses is Ontario McClellan because he testified
19 differently than he had about three important issues under
20 oath. The most important thing, he testified under direct
21 examination he saw my client point a gun at Jermaine and
22 Jermichael. He had testified the day before that he didn't
23 see that and he had never told cops that. And what does that
24 tell you? That tells you that there's -- and other people had
25 problems like that too. With regard to one of their witnesses

1 came up and for the first time said, I'll leave you dead like
2 my cousin, or something that they knew another witness had
3 said.

4 The problem with that -- the problem with one of the
5 witnesses doing that is I suggest to you that there is an
6 effort, you know, to get the main story. I mean I could sit
7 here and tell the main story; y'all could too. You know,
8 there were shots fired, there was a bumping -- chest bumping,
9 and then my client comes out and points a red laser. I mean
10 the basics are consistent, but it's the details. If people
11 were really there and really saw stuff, then they need to know
12 -- I mean they would know.

13 And you know, Tabitha, the mother-in-law, she says she
14 was out there the whole time at the foot of the pool and she
15 never even saw my client point a gun at the two people. And I
16 submit to you that that's what Ontario said too the day before
17 under oath, and so that should be considered by all of you.

18 And if you don't know beyond a reasonable doubt what
19 happened that day at the conclusion of their case, then you
20 need to find my client not guilty. And finding someone not
21 guilty does not mean that you don't think they made a mistake
22 or they used poor judgment, it's that the State has not met
23 their burden to prove it to you beyond a reasonable doubt,
24 which is a significant burden.

25 And let me -- I have a chart as well regarding that

1 burden of proof. Even before the defense presents its case --
2 and I'll remind you, there was not even a picture, not even an
3 overhead picture presented in the State's case. We presented
4 that so you could try to make some heads or tails of what
5 happened that day. They didn't even present a picture of
6 where things were or what happened. None of that.

7 You know, it's down here for me to prove someone not
8 guilty. Guilt highly unlikely, guilt less than likely,
9 probably not guilty, guilt unlikely, possibly not guilty,
10 maybe guilty, perhaps guilty, suspected guilty, possibly
11 guilty, probably. All of these are not guilty. It is only
12 when the State proves it to you beyond a reasonable doubt that
13 you're entitled to find a defendant guilty.

14 My client told you that the dog was jumping on the cages
15 and that's why he shot five times in the ground. That's not
16 illegal. He's not charged with discharging a firearm in the
17 ground. In Florence County, I submit you can do that if you
18 are more than fifty yards from the roadway. That's not
19 illegal conduct. He did that though in response to the pit
20 bull.

21 And then there's the confrontation on the deck, and then
22 he goes, gets a gun, sticks it in his pocket. You know, I
23 submit to you that if my client really wanted to get back at
24 them for pushing him down or pushing him around the pool, then
25 why not -- why not come straight out of his house with a gun

1 and draw down on them right there. A gun is much more
2 powerful than a dog, and when you have a gun in a pocket and a
3 dog in one hand, I submit you're less effective as a person
4 but, you know, he puts his gun in his pocket. Jermaine and
5 Jermichael even say that the gun came out of his pocket after
6 he got the dog out of the kennel, and they would have you
7 believe they said nothing when that dog came out. He brought
8 the dog out and they said -- they say they said what you doing
9 with that dog? My client says they said if you take one step
10 closer to me with that dog, I'm going to put a bullet in your
11 head, I'm going to put a bullet in your dog's head.

12 And these people that he knew to carry guns made a
13 furtive gesture and he drew down and said hands. You know,
14 it's what was going on in his mind, what was reasonable. And
15 he had been assaulted. He had been pushed around the pool.
16 They had said let's just go ahead and knock this m-f'er out.

17 I mean, all of that plays into it, but they're going to
18 say, well, he can't meet self-defense because he has to be
19 without fault. Well, you know I submit that the act for which
20 he is claiming self-defense is the act of pointing and
21 presenting a firearm. That is the act for which he is
22 claiming self-defense.

23 That -- that act in and of itself was -- you know, that's
24 why I got into the record all the differences in times. You
25 know, there's three minutes between this and three minutes

1 between that. You know, the act for which he's claiming self-
2 defense is after he puts a gun in his pocket, which he's
3 allowed to do. It's after he goes and gets the dog out of the
4 kennel, which he's allowed to do. There's nothing illegal
5 about that, and so he's done nothing illegal, nothing -- which
6 he has a right to do all of that, and then they make this
7 comment and he says makes this motion and that's when he draws
8 down. I mean that is when, in his perception, he had a threat
9 that he needed to protect himself from.

10 Even if they want to take it back to the very beginning,
11 they'll say, well, he caused the danger, it -- you know, it's
12 all one episode. Even from the very beginning, he was not
13 without fault. He just went out there and shot five times in
14 the ground. I submit to you that is not what started this.
15 The shooting five times in the ground is not what started it.

16 The starting is a pit bull that's running around his
17 house, his yard, and -- and chewing on his cages. I mean if
18 their pit bull hadn't been running around doing this, none of
19 this would have ever happened and he has a right to protect
20 his property, protect himself, and protect his dog.

21 When a defendant -- you know, as I described earlier,
22 they have to prove guilt beyond a reasonable doubt, and if
23 they don't do that, it's not guilty. Once the defendant
24 raises the defense of self-defense, then they have to disprove
25 it beyond a reasonable doubt. It's not up to me to prove

1 self-defense beyond a reasonable doubt. Once I raise it, they
2 have to disprove it beyond a reasonable doubt.

3 So much like the other billboard, self-defense beyond a
4 reasonable doubt -- that would be I guess if I proved it to
5 you beyond a reasonable doubt the act of self-defense, not
6 guilty; Self-defense highly likely, not guilty; self-defense
7 likely, not guilty; probably self-defense, not guilty;
8 suspected self-defense, not guilty; perhaps self-defense, not
9 guilty; may not be self-defense, not guilty; possibly not
10 self-defense, not guilty; unlikely self-defense, not guilty;
11 probably not self-defense, not guilty; less than likely self-
12 defense, not guilty; highly unlikely self-defense, not guilty.

13 It is only when they've disproved self-defense beyond a
14 reasonable doubt that you would find the defendant guilty.
15 They have not done that and I ask you to find my client not
16 guilty of all three counts. This is an important case to
17 State, but I submit to you it is an equally important case to
18 my client. He is charged with a serious crime. He is charged
19 with three felony counts.

20 And I'd finally like to tell you that if there is
21 anything that I have said or done that has in any way offended
22 any of you all all week, I would ask that you not hold it
23 against my client because I am merely his advocate and he is
24 the individual on trial, not me. Thank you.

25 THE COURT: Mr. Anders?

CLOSING ARGUMENT ON BEHALF OF THE STATE

MR. ANDERS: Ladies and gentlemen of the jury, my name is Jason Anders. I work for the State. You've heard the defense attorney make a big case about dogs. She believes this case centers around dogs. Well, the State believes this case is about people. It's about people trying to enjoy their day last summer at 2:30 in the afternoon, until that defendant came outside and started shooting into the ground, which we submit brought upon the difficulty. He then goes into his house.

Ladies and gentlemen, I want to talk to you briefly about corroboration and consistency. You heard all of the State's witnesses. They were all consistent, all very similar. You've heard our story several times.

That on that day, the defendant came out. He was asleep. He was awakened. He came out and started shooting. Jermichael and Jermaine got upset. They said something. The defendant went back into his house. Instead of calling the police or calling the homeowner, he goes back to the Durant's house. Has a confrontation on their steps. He testifies he's the first one to push and there's some chest bumping and some pushing going on, at which time our witnesses consistently stated he said, "I've got something for y'all."

And what did he have for y'all? He had another gun and a dog. He goes back to his house, goes into his house. He

1 could have called the police at that point. He could have
2 called the homeowner, but no, he comes out, he gets his dog
3 gets his gun, and now he wants to talk.

4 He goes back to the Durant's house. At that point,
5 Jermichael sees the gun the defendant has, and Jermaine and
6 Jermichael are trying to get people inside the house. There's
7 kids in the yard, kids in the pool. He tries to get them in
8 at which point Jermichael and Jermaine both testified they saw
9 the red dot on themselves. They're inside. Jermichael calls
10 9-1-1. You heard the tape and I'll play the tape again.

11 At that point, they're inside and you'll hear on the tape
12 that he's outside. The defendant is outside and you heard
13 them state from that witness stand under oath, he's pacing,
14 he's taunting, he's got that gun. Tabitha is outside. Talks
15 to him. At some point, he points it at Ontario McClellan, a
16 14-year-old kid. The defense attorney wants to point out that
17 he got turned around in his facts, a 15-year-old kid. He
18 points the gun at Ontario, and Tabitha tells him to get his
19 ass home.

20 So I want you to keep in mind corroboration and
21 consistency. The defendant's story is uncorroborated. Nobody
22 -- nobody corroborates his story.

23 Ladies and gentlemen, I would like to play for you what's
24 been entered into evidence. You heard it at the beginning,
25 but I think now it might make a little more sense.

1 (Whereupon, State's Exhibit Number 2, the 9-1-1 tape, is
2 played for the jury in open court.)

3 MR. ANDERS: So corroboration, consistency. You hear
4 them saying he's outside. He's outside as they are calling 9-
5 1-1. The defendant never called 9-1-1. He had several
6 opportunities to call anybody.

7 You also heard from Investigator Hester and Sergeant
8 Driggers on the stand. Their testimony was when they arrived
9 on scene, Jermichael and Jermaine ran out to them. Two black
10 males ran to them, startled, excited. I asked how was
11 Ontario. He was like a 14-year-old would be in that
12 situation, upset. I could tell by looking at him that
13 something happened.

14 Your Honor -- I'm sorry. Ladies and gentlemen, the
15 defense attorney did talk about credibility of witnesses.
16 That's something I believe the judge will charge. You're in a
17 position as the trier of fact. There are no facts in this
18 case until you determine what those facts are.

19 In doing so, when you look at the witness stand and you
20 judge the credibility of the witnesses, there are a few
21 factors you can use, and I believe that's the appearance and
22 manner of the witness. Did the witness have an interest in
23 the outcome of the trial? Was the witness forthright or
24 hesitant? What was the ability to know about the facts
25 concerning what he or she gave testimony? These are several

1 of the things you can use to judge that credibility, the
2 credibility of the State's witness and their consistency.
3 They were direct. They answered the questions.

4 However, you heard from the defendant and in the first
5 three minutes, he told you something that was not true. He
6 told you that the reason he left the Mullins Police Department
7 was to go do other things -- a change. He was terminated,
8 ladies and gentlemen. The first three minutes of his
9 testimony. He was terminated for recent incidences involving
10 him and his attitude towards the public. And they want to go
11 on and on about the inconsistency of a 14-year-old child.

12 I would like to take now a few minutes to talk about
13 self-defense. As Ms. Burchstead pointed out, there are a few
14 elements that we have to prove as beyond a reasonable doubt.
15 That is our burden and we accept that burden.

16 Number one, without fault in bringing on the difficulty.
17 The whole situation was created by that man. He brought upon
18 the difficulty, started firing shots, and went to confront
19 people. Had the opportunity several times to let it diffuse,
20 to call somebody, or just not go over there. He didn't do
21 that. He escalated it. He brought on the difficulty.

22 That he actually believed he was in imminent danger of
23 losing his life or serious bodily injury. Normally, ladies
24 and gentlemen, somebody who believes they are in danger or
25 serious bodily injury, doesn't go towards the problem. You

1 don't confront the problem if you think you're in danger, you
2 back away, you go to your house. You don't go towards it and
3 you don't escalate it by getting a gun and going back towards
4 it three times.

5 The third element is what a reasonably prudent person
6 would have done in his position. And I submit and the State
7 submits a reasonably prudent person would not have gone and
8 confronted Jermichael and Jermaine and that whole party once
9 that situation was created.

10 No other probable means of avoiding the danger. Ladies
11 and gentlemen, you've heard from every witness how many times
12 he went back into his house only to come back out again. The
13 last time he came out with a pistol. A red dot that our
14 witnesses said was shined on two of those people and then a
15 14-year-old minor. He doesn't call 9-1-1. He doesn't diffuse
16 the situation. He creates it. He escalates it. That's why
17 we're here today. And he ends that situation by pointing a
18 gun at three individuals and they run inside and they call the
19 police.

20 Ladies and gentlemen, you also heard from Tabitha Durant.
21 You heard Tabitha Durant testify that she gave an interview
22 June 16th to SLED to Agent Follin. Forty-five minutes later,
23 she calls with new information. This new information concerns
24 a gun in a backpack, none of which was seen at the scene, none
25 of which was seized from the scene, just new information. And

1 I asked her, why did you call back? Damon Moody asked me to.
2 Damon Moody asked me to call SLED.

3 Why would he do that?. This is not an act of an innocent
4 man. That is not what you do when you are not guilty. That
5 is what you do when you are planning a defense. And the State
6 submits that's exactly what he was doing -- planning a
7 defense. He knew he messed up big.

8 Ladies and gentlemen, the State submits that we have met
9 our burden. We would ask that you return the only verdict
10 that the evidence supports; that's a verdict of guilty. Thank
11 you.

12 CHARGE ON THE LAW BY THE COURT

13 THE COURT: All right. Ladies and gentlemen, it is now
14 my duty as the trial judge under the Constitution of this
15 state to charge and instruct you on the law applicable to this
16 case. It is your duty as jurors to accept and apply the law
17 as I will now state it to you. Furthermore, it is your
18 exclusive duty to decide all the issues of fact in this case,
19 and to determine the effect, value, weight, and truth of the
20 evidence.

21 Both the State and the defendant have a right to expect
22 that you will carefully consider and evaluate the evidence and
23 apply the law of this case to it; so that in the end, both the
24 State of South Carolina and the defendant will receive a fair
25 and impartial trial. I want you to understand that when I use

1 the word defendant, I refer to Mr. Damon Ellis Moody.

2 The indictments in this case allege three separate counts
3 of pointing and presenting a firearm. They allege pointing
4 and presenting a firearm as to Jermaine Wright, pointing and
5 presenting a firearm as to Jermichael Wright, and pointing and
6 presenting a firearm as to Ontario McClellan.

7 Now, to these charges, the defendant has entered pleas of
8 not guilty. These pleas of not guilty places the burden of
9 proof on the State to prove the guilt of the defendant to you,
10 the jury, beyond a reasonable doubt.

11 As I mentioned above, the indictment or indictments in
12 this case allege three separate and distinct offenses against
13 the defendant. You must decide each charge separately on the
14 evidence and the law applicable to it, uninfluenced by your
15 decision as to any other charge. The defendant may be
16 convicted or acquitted on any or all of the offenses charged.
17 As stated previously, you will be asked to write a separate
18 verdict of guilty or not guilty for each charge alleged in the
19 indictments.

20 I remind you that the fact that the defendant was
21 arrested, charged and indicted in this case, is not evidence
22 in this case and cannot be considered by you as evidence of
23 guilt in this case, nor does it create any presumption or
24 inference of guilt. The indictment is simply the formal
25 written instrument which contains the charges made against the

1 defendant. It is the formal document by which this case is
2 brought into this court.

3 It is vital to understand that the defendant is presumed
4 under the law to be innocent of these charges. The defendant
5 has no obligation to prove his innocence. It is a fundamental
6 rule of our law that a defendant, irrespective of the
7 seriousness of the charges against him, is always presumed
8 innocent of the crimes for which he is charged, unless and
9 until his guilt has been proven by evidence that satisfies
10 you, the jury, beyond a reasonable doubt..

11 The presumption of innocence is not a mere legal theory
12 or a legal phrase. The presumption of innocence is very
13 important and you need to understand that this presumption
14 accompanies the defendant from the time of his arrest and
15 appearance in this court and continues with the defendant even
16 after you retire to the jury room to deliberate. In other
17 words, the defendant receives the benefit of the presumption
18 of innocence until the very end of this trial, when you, the
19 jury, will deliberate upon the evidence and decide whether the
20 State has proven his guilt beyond a reasonable doubt.

21 Now, what is a reasonable doubt in the law? A
22 reasonable doubt, ladies and gentlemen, is the kind of doubt
23 that would cause a reasonable person to hesitate to act.
24 Proof beyond a reasonable doubt is proof that leaves you
25 firmly convinced of the defendant's guilt.

1 Now, there are very few things in this world that we know
2 with absolute certainty; so even in criminal cases the law
3 does not require proof that overcomes every possible doubt.
4 However, if, based on your consideration of the evidence, you
5 are firmly convinced that the defendant is guilty of the crime
6 charged, you must find him guilty. If on the other hand, you
7 think there is a real possibility that he is not guilty, you
8 must give him the benefit of the doubt and find him not
9 guilty.

10 Jurors, please understand that reasonable doubt may arise
11 from evidence which has been presented in the case or from the
12 lack of evidence in the case. It is your responsibility to
13 determine whether or not reasonable doubt exists as to the
14 guilt of the defendant.

15 I charge you that the defendant is entitled to every
16 reasonable doubt arising in the whole case. If, upon any
17 issues of fact essential to conviction and a verdict of
18 guilty, you have a reasonable doubt as to how that issue
19 should be resolved, it would be your duty to resolve that
20 reasonable doubt in favor of the defendant.

21 Now, during this trial, you and I have had separate
22 duties to perform. As the trial judge, it is my
23 responsibility to preside over this trial, and I also have the
24 duty to rule upon the admissibility of the evidence offered
25 during the process of this trial. In that regard, you are to

1 consider only the competent evidence before you, and you are
2 to disregard from your mind any testimony ordered stricken
3 from the record of this case during the progress of the trial,
4 if there was any. And you are to consider only the testimony
5 which has been presented from this witness stand, together
6 with any exhibits admitted into the record of this case and
7 any stipulations of counsel made into the record, if there
8 were any.

9 Furthermore, I have the additional duty to charge you on
10 the applicable law of this case, and in that regard, I am the
11 sole judge of the law of this case. It is your duty to accept
12 and apply the law as I state it to you. If you have any
13 preconceived ideas as to what the law is or what the law ought
14 to be, and it does not agree with what I tell you the law is,
15 you are obligated under your oath to abandon these
16 preconceptions because you are sworn to accept the law
17 precisely as I state it to you.

18 Now, in this trial, ladies and gentlemen, you are the
19 sole and exclusive judge of the facts, and I am the judge of
20 the law. Do not infer that I have any opinion about the facts
21 in this case from anything I have said during the course of
22 this trial, in ruling upon the admissibility of evidence or
23 otherwise, or from anything that I say during the course of
24 this charge to you. In this regard, the law simply does not
25 permit me to have an opinion about the facts. As jurors, it

1 is your duty alone to determine the effect, value, weight, and
2 truth of the evidence presented during the course of this
3 trial.

4 In determining what the facts in this case are, you must
5 judge the credibility, which simply means the believability,
6 of the witnesses and the value of weight to be given to their
7 testimony. In making this decision, there are many things you
8 may, and should, take into consideration, such as the
9 appearance and manner of the witness on the stand, a
10 characteristic often referred to as the demeanor of the
11 witness. Was the witness forthright or hesitant? Was the
12 witness' testimony consistent or did it contain discrepancies?

13 What was the ability of the witness to know the facts
14 about which he or she testified? Did the witness have a cause
15 or reason to be biased and prejudiced in favor of the
16 testimony that he or she gave? Was the testimony of the
17 witness corroborated or made stronger by other testimony and
18 evidence, or was it made weaker or impeached by such other
19 testimony and evidence.

20 As jurors, please understand you have the right to
21 believe a small portion of a witness' testimony and discard
22 the larger portion or vice versa. You may believe all of a
23 witness' testimony or none. You may believe the testimony of
24 a single witness against that of many witnesses or the other
25 way around.

1 In exercising your mental processes and attempting to
2 decide the truth, the law simply requires that you exercise
3 your good judgment, your common sense, your sense of logic and
4 reason, and your experiences in life. You then apply these
5 attributes to the evidence and apply the law as I state it to
6 you, and thus arrive at a verdict.

7 Now, there are two types of evidence which are generally
8 presented during a trial, direct evidence and circumstantial
9 evidence. Direct evidence is the testimony of a person who
10 claims to have actual knowledge of a fact, such as an
11 eyewitness. It is evidence which immediately establishes the
12 main fact to be proved.

13 Circumstantial evidence is proof of a chain of facts and
14 circumstances indicating the existence of a fact. It is
15 evidence which immediately establishes collateral facts from
16 which the main fact may be inferred. Circumstantial evidence
17 is based on inference and not on personal knowledge or
18 observation.

19 The law makes absolutely no distinction between the
20 weight or value to be given to either direct or circumstantial
21 evidence, nor is a greater degree of certainty required of
22 circumstantial evidence than of direct evidence. You should
23 weigh all of the evidence in the case and if, after weighing
24 all the evidence, you are not convinced of the guilt of the
25 defendant beyond a reasonable doubt, you must find the

1 defendant not guilty.

2 There has been evidence presented during the course of
3 this trial that witnesses have made prior statements which are
4 not consistent with the witnesses' present testimony. You may
5 use this evidence to decide whether to believe the witness.
6 You may also use evidence of the earlier contradictory
7 statements to determine the truth of those statements. It is
8 up to you to decide whether to believe the earlier statements
9 or the testimony given at trial.

10 If a witness is shown to have knowingly testified
11 untruthfully concerning any material matter, you may consider
12 this in determining whether to trust the witness' testimony as
13 to other matters. You may reject all testimony of that
14 witness or give all or part of the testimony the weight you
15 think it deserves.

16 Now, ladies and gentlemen, during the course of this
17 trial, you heard the testimony of police officers. Please
18 understand that the testimony of a police officer is not
19 entitled to more weight than that of any other witness. You
20 are the sole judges of the credibility of a witness, and you
21 are not to give more weight to a police officer's testimony
22 solely because he or she is a police officer. Rather, you
23 should judge an officer's testimony by the same standards that
24 you apply to all other witnesses.

25 Now, during the trial, you heard the testimony from

1 children. Where a witness is a child, you must determine, as
2 with any witness, whether that testimony is believable. In
3 deciding believability, you may consider not only matters that
4 I have already discussed with you, but you may also consider
5 the age of the child, the child's ability to observe and
6 remember facts, and the child's ability to understand and
7 answer questions.

8 Because young children may not fully understand what is
9 happening here, it is up to you to decide whether the child
10 understood the seriousness of appearing as a witness at this
11 criminal trial, whether the child understood the questions,
12 whether the child has a good memory, and whether the child
13 understands the difference between lying and telling the
14 truth. In addition, young children may be influenced by the
15 way that questions are asked. It is up to you to decide
16 whether the child understood the questions asked.

17 Now, in order to establish criminal liability, criminal
18 intent is required. For example, the mental state required to
19 be proven by the State for a particular crime might be
20 purpose, intent, knowledge, recklessness, or criminal
21 negligence. Criminal intent must be proven by the State
22 beyond a reasonable doubt. Criminal intent is always a matter
23 that must be determined by the jury from the circumstances
24 surrounding the situation.

25 There is no way to prove intent to a mathematical

1 certainty. There is no way that medical science can dissect a
2 person's brain and determine what the person had in mind; so
3 the law says that criminal intent may be inferred from the
4 circumstances shown to have existed. This is how you make a
5 determination of whether or not the element requiring intent
6 was present. It is not necessary to establish intent by
7 direct and positive evidence, but intent may be established by
8 inference in the same way as any other fact by taking into
9 consideration the acts of the parties and all the facts and
10 circumstances of the case.

11 Criminal intent is a mental state, a conscious
12 wrongdoing. It is up to you to determine what the defendant
13 intended to do based on the circumstances shown to have
14 existed.

15 Criminal intent can arise from action or a failure to
16 act. It may arise from negligence, recklessness, or an
17 indifference to duty or to consequences that is considered by
18 the law to be the equivalent of criminal intent.

19 Now, the defendant, ladies and gentlemen, has raised the
20 defense of self-defense. Self-defense is a complete defense
21 and, if it is established, you must find the defendant not
22 guilty. The State has the burden of disproving self-defense
23 by proof beyond a reasonable doubt.

24 If you have a reasonable doubt of the defendant's guilt
25 after considering all the evidence, including the evidence of
26 self-defense, then you must find the defendant not guilty. On

1 the other hand, if you have no reasonable doubt of the
2 defendant's guilt after considering all the evidence,
3 including the evidence of self-defense, then you must find the
4 defendant guilty.

5 The following elements are required to establish self-
6 defense. First, the defendant must be without fault in
7 bringing on the difficulty.

8 The second element of self-defense is that the defendant
9 was actually in imminent danger of death or serious bodily
10 injury or that the defendant actually believed he was in
11 imminent danger of death or serious bodily injury. If the
12 defendant believed he was in imminent danger of death or
13 serious bodily injury, it must be shown that a reasonably
14 prudent person of ordinary firmness and courage would have had
15 the same belief. In deciding whether the defendant actually
16 was or believed he was in imminent danger of death or serious
17 bodily injury, you should consider all the facts and
18 circumstances surrounding the crime, including the physical
19 condition and characteristics of the defendant and the victim.

20 The defendant does not have to show that he was actually
21 in danger. It is enough if the defendant believed he was in
22 imminent danger and a reasonably prudent person of ordinary
23 firmness and courage would have had the same belief. The
24 defendant has the right to act on appearances even though the
25 defendant's beliefs may have been mistaken.

1 It is for you to decide whether the defendant's fear of
2 immediate danger of death or serious bodily injury was
3 reasonable and would have been felt by an ordinary person in
4 the same situation. Threats made by the victim may be
5 considered in determining whether the defendant actually was
6 or believed he was in imminent danger. Words accompanied by
7 hostile acts may, depending on the circumstances, establish
8 self-defense.

9 The final element of self-defense is that the defendant
10 had no other probable way to avoid the danger of death or
11 serious bodily injury than to act as the defendant did in this
12 particular instance. The defendant had no duty to retreat if
13 by doing so the danger of being killed or suffering serious
14 bodily injury would increase.

15 A person cannot be required to make an exact calculation
16 as to the degree or amount of force which may be needed to
17 avoid death or serious bodily injury. Therefore, in self-
18 defense, the defendant has the right to use the force needed
19 to avoid death or serious bodily harm. The force used in
20 self-defense does not have to be limited to the degree or
21 amount of force used by the victim. The defendant has the
22 right to use so much force as appeared to be necessary for
23 complete self-protection, and which a person of ordinary
24 reason and firmness would have believed to be needed to
25 prevent death or serious bodily harm.

1 Now, the defendant as I told you previously in this case,
2 ladies and gentlemen, is charged with pointing or presenting a
3 firearm, three counts of it. The State must prove beyond a
4 reasonable doubt that the defendant pointed or presented a
5 loaded or unloaded firearm at another person. The defendant
6 must have committed some action with regard to a firearm that
7 amounts to a pointing or presenting.

8 The item which the defendant pointed or presented must
9 have been a firearm. It is not necessary for you to find that
10 the firearm was loaded with ammunition of some kind. The
11 firearm may be loaded or unloaded. The defendant must have
12 pointed the firearm at a person other than himself.

13 Now, ladies and gentlemen, I am now drawing near the end
14 of my charge and I want you to clearly understand that you are
15 not partisans or advocates for the State of South Carolina or
16 the defendant. It is your duty by your joint deliberations to
17 determine the truth in this case, giving to the defendant the
18 benefit of every reasonable doubt on each and every issue.

19 Then to the facts which you determine to be true, you
20 should take and apply the law which has been given to you by
21 this Court and thus arrive at a verdict which speaks the truth
22 in this case. In fact, the word verdict, which has a Latin
23 derivative, means a true saying. Thus, when you have
24 accomplished these responsibilities, you will have satisfied
25 your oath as jurors and you will have discharged your duty to

1 this Court.

2 Now, once you retire to the jury room, the bailiff will
3 give the verdict form to the forelady. When you, the jury,
4 arrive at a verdict as to the offenses charged in this case,
5 the forelady will select the verdict as to the charge or as to
6 each charge on the verdict form.

7 If the State has failed to prove the guilt of the
8 defendant beyond a reasonable doubt, your verdict will be "not
9 guilty." Likewise, if the State has proven his guilt beyond a
10 reasonable doubt, your verdict will be "guilty."

11 Now, once a decision has been made, Madam Forelady, you
12 will check on the verdict form whichever choice is the verdict
13 of the jury. The verdict that you render in this case, ladies
14 and gentlemen, must be the verdict of each and every juror.
15 It must be your unanimous verdict. All twelve jurors must
16 agree on the verdict which you authorize the forelady to write
17 for the jury.

18 Now, ladies and gentlemen, I want you to further
19 understand that the order in which the choices of verdict
20 appear on the verdict form are not suggestive of any verdict
21 on the part of this Court. The verdict in this case is to be
22 determined by you, the jury, not the Court. Furthermore,
23 ladies and gentlemen, please understand that even though I
24 will give the verdict form to the forelady, it is not her
25 verdict alone. It is the verdict of all twelve of you, and I

1 emphasize again that it must be unanimous.

2 I am also going to give you a copy of these instructions
3 in written form. During your deliberations, you may refer to
4 the instructions to guide your decision-making. You must
5 consider the instructions as a whole and not follow some and
6 ignore others. Please return these instructions, Madam
7 Forelady, to the Court at the time that your verdict is
8 rendered.

9 I am now going to ask you all to retire to the jury room,
10 but do not -- do not begin your deliberations until you are
11 told to do so. The law requires that I now consult with the
12 attorneys to make sure that I have not left anything out of
13 these instructions. After I have checked with the attorneys,
14 the bailiff will bring in a copy of these instructions and the
15 verdict form and instruct you to begin your deliberations.

16 Also, should you have any questions during your
17 deliberations, Madam Forelady, it will be your responsibility
18 to reduce such questions to writing, sign and date, let the
19 bailiff know that you have a question, give it to her, and she
20 will get it to me and I will answer it according to how I see
21 fit. Okay?

22 Once you all have reached a verdict -- once you've
23 reached a verdict and have filled out the verdict form, signed
24 and dated by the forelady, please knock on the door, let the
25 bailiff know that you have reached a verdict, and I will get

1 you back into the courtroom as quickly or as promptly as
2 possible.

3 Thank you all. Well, let me ask this question before I
4 let you retire to the jury room. Everybody on the jury feel
5 okay? Anybody not feeling well, raise your right hand. All
6 right. I'm going to ask that all of you step to the jury
7 room, but do not -- do not begin your deliberations until you
8 are instructed to do so.

9 (Whereupon, the jury exits the courtroom at 3:54 p.m.)

10 THE COURT: All right. Any objection or exception to the
11 charge by the State?

12 MR. ANDERS: No objection, Your Honor.

13 THE COURT: Defense counsel?

14 MS. PARHAM: Yes, Your Honor.

15 THE COURT: All right.

16 MS. PARHAM: We object to the Court not including the
17 defense of habitation. We requested the following charge:

18 "A person may use deadly force to protect his home.
19 Thus, he may use deadly force to eject a trespasser who is in
20 his house or in the area immediately surrounding his house.
21 For the defense of habitation to apply, the defendant need
22 only establish that a trespass has occurred and that his
23 chosen means of ejection were reasonable under the
24 circumstances.

25 Stated differently, unlike the defense of self-defense,

1 the defense of habitation does not require the defendant
2 reasonably believe that he or his property was in imminent
3 danger of sustaining serious injury or damage. Instead, the
4 defense of habitation provides that where one attempts to
5 force himself into another's dwelling, the law -- the law
6 permits an owner to use reasonable force to extol the
7 trespasser."

8 State v. Wright and State v. Bradley. They're cited in
9 our motion.

10 We have also objected to the Court -- and I won't read
11 that -- it's in our motions filed on the record of this case
12 -- the Stand Your Ground principle pursuant to 16-11-440(c),
13 and we also believe there could be some common law Stand Your
14 Ground principles. We believe that even though Your Honor
15 found it was not a bar to prosecution, for the defense we
16 believe that the jury should be able to consider that.

17 I'd also like to read another paragraph with regard to
18 defense of habitation:

19 "There is no duty to retreat where an attack occurs in
20 one's home or place of business. The absence of the duty to
21 retreat also extends to the curtilage of the home. Curtilage
22 is the space as is necessary and convenient and is habitually
23 used for family purposes, including an adequate yard and
24 garden and room for necessary outbuildings.

25 Curtilage includes outbuildings, yard around dwelling and

1 gardens. It also includes garages, driveways, courtyards and
2 parking areas. Garages, courtyard and driving ways and parking
3 areas usually and customarily used in common by occupants of
4 apartment houses, condominiums, and other such complexes with
5 other occupants therefore constitute a part of the curtilage
6 of the specifically described apartment or condominium or
7 living unit thereof."

8 We believe, Your Honor, there is evidence from the
9 witness stand that a pit bull trespassed on his property and
10 came within the curtilage of his home. We also believe there
11 is other evidence that Jermichael and Jermaine Wright pushed
12 him around the pool, and he indicated on the picture that it
13 was back towards his house which was also the curtilage of his
14 home.

15 You know, we believe that it depends on whether they look
16 at this last pointing and presenting as one separate incident
17 or the totality. We also believe that when someone threatens
18 to shoot -- I mean put a bullet in someone's head that that
19 also could -- is a sign of aggression and could be considered
20 under some circumstances a trespass.

21 So for those reasons, we object to the Court not
22 including the defense of habitation charge and the Stand Your
23 Ground principal charge. Thank you.

24 THE COURT: So noted. Anything in response?

25 MR. ANDERS: No, Your Honor.

1 THE COURT: All right.

2 MS. PARHAM: I have one more thing, Your Honor.

3 THE COURT: Yes, ma'am.

4 MS. PARHAM: At this time, we would ask since the juror
5 Cook approached Agent Follin in the elevator at the beginning
6 of the case after he was instructed, you know, not to really
7 communicate with anyone involved in the case, we think that
8 because he reached out and shook his hand and made some
9 contact, and that all the jurors are well and the alternate is
10 well, we would ask at this time that he be exchanged with the
11 alternate.

12 THE COURT: Anything on that, Mr. Anders?

13 MR. ANDERS: Your Honor, we object to that. Your Honor
14 addressed this earlier.

15 THE COURT: All right. Well, I'm going to deal with and
16 just put on the record my basis for denying defendant's
17 motions and certainly respecting her request, but I believe
18 that this Court's decision is well-founded in the law.

19 First of all, with regards to defense of habitation,
20 defense of habitation is addressed in State v. Manning, which
21 is a 2014 case. The WestLaw cite is 1805319, which is a South
22 Carolina Court of Appeals Case.

23 Ms. Parham correctly read into the record that for
24 defense of habitation to apply, defendant need only establish
25 that a trespass has occurred. There's no evidence in the

1 record -- there's no evidence in the record that the Wrights
2 or Mr. McClellan were trespassing on anything. They had a
3 right to be where they were. At the time that this alleged
4 incident took place, they were at the residence of Ms. Durant
5 -- Ms. Durant. Albeit it was a shared area, shared yard, she
6 clearly testified that they had a right to be there. There
7 was not even any testimony from Mr. Moody that they did not
8 have a right to be where they were. In fact, when the alleged
9 incident that brings us here in this court today, the two
10 Wright brothers were on the porch and in the house of Ms.
11 Durant; so I don't believe that that would constitute
12 curtilage of somebody else's residence that's on the property,
13 shared property -- would constitute curtilage of his house,
14 his residence.

15 Furthermore, defense of habitation goes on to say --
16 addresses the issue when one attempts to force himself into
17 another's dwelling. The defendant by his own testimony -- by
18 his own testimony testified that there was no attempt -- no
19 attempt whatsoever by anyone to enter into his dwelling.

20 So, therefore, that's the court's basis for refusing to
21 charge defense of habitation because I believe that is -- it's
22 not an issue in this case.

23 Furthermore, with regards to defense counsel's request to
24 charge 16-11-440(c) under the Protection of Persons and
25 Property Act, in State v. Curry, 406 S.C. 364, that very issue

1 was handled by the Court. And in that particular case,
2 appellant claimed that the charge of charging self-defense, as
3 well as 16-11-440(C), created a -- and I quote -- "purposeful
4 ambiguity" which confused the jury. The appellant asserted
5 that. The Supreme Court -- the Supreme Court stated in State
6 v. Curry that the charge under the Act was indeed error, but
7 it inured to appellant's benefit.

8 That is this Court's reason for not charging 16-11-
9 440(c). This Court previously made a determination that it
10 was inapplicable -- that it was inapplicable based on the
11 facts and, therefore, the Court has refused to charge it
12 pursuant to State v. Curry. Defense counsel's objections are
13 certainly well-noted -- well-noted for the record.

14 With regards to the juror, I am denying defense counsel's
15 motion to remove this juror at this time after -- that being
16 Mr. Cook, Mr. Raymond Cook, Juror Number 34. After facts came
17 to the Court's attention concerning him shaking Agent Follin's
18 hand in the elevator, I brought Mr. Cook out and questioned
19 him at length and further questioned him regarding his ability
20 to be fair and impartial to both the State and the defense,
21 which he indicated he could be fair and impartial to both
22 sides.

23 Therefore, this Court sees no reason or founded in law as
24 to whether -- as to have Mr. Cook removed and serve as a juror
25 in this case. All right. Could you all please come up and

1 look at the exhibits and make sure all the exhibits are in
2 order?

3 MS. PARHAM: Yes, sir. And may I have a look at the
4 verdict form one more time?

5 THE COURT: Well, we changed the verdict form. I'm glad
6 you said that. I think you brought -- who brought it to your
7 attention? Doris did. There are three separate indictments
8 here. Okay? There separate indictments, and so she just went
9 back and labeled and put the indictment numbers up here.

10 MS. PARHAM: Okay.

11 THE COURT: And you heard me in my charge say that there
12 were three separate indictments --

13 MS. PARHAM: Okay. That's fine.

14 THE COURT: -- as well. But make sure you read that
15 carefully and make sure. Also, there were a couple of typos
16 that I wrote on this charge. But y'all look at the exhibits.
17 All right, this right here I want to change on page 10. It
18 says each defendant; change it to the defendant. Ms. Parham?

19 MS. PARHAM: Yes, sir.

20 THE COURT: You had an objection. I want this on the
21 record. Ms. Parham, you had an objection to me back in
22 chambers and I just want to make sure it's on the record for
23 you because I want address it -- the issue of me removing size
24 and age of victims.

25 MS. PARHAM: I decided not to make that because you did

1 cover it a little bit in your charge.

2 THE COURT: Yeah. And I just wanted to make a -- point
3 that out that on page 12 of my charge there is some
4 information in there.

5 MS. PARHAM: I noticed that. Once you said that, I
6 scratched it off the list, Your Honor.

7 THE COURT: Did y'all look at the verdict forms? Is that
8 good..

9 MS. PARHAM: Yes, sir.

10 MR. ANDERS: Yes, sir.

11 THE COURT: Any -- I didn't ask this, but my charge -- I
12 always send my jury charge back. Any objection on that, Mr.
13 Anders?

14 MR. ANDERS: No, Your Honor.

15 THE COURT: Ms. Parham?

16 MS. PARHAM: No, sir.

17 THE COURT: You practiced long enough in federal court.
18 I know that's what y'all do over there and that's kind of why
19 -- one of the reasons I do that. Go get me the corrected
20 charge. Where is the verdict form?

21 THE CLERK: Right here.

22 (Whereupon, there is a pause in the proceedings while the
23 evidence is checked by counsel.)

24 THE COURT: Y'all ready for it to go back?

25 MR. ANDERS: Yes, Your Honor.

1 THE COURT: All right. Madam Bailiff, Ms. Frances, can
2 you go back there and get Mr. Hill and tell him to get all his
3 belongings and come out here, please, ma'am.

4 THE BAILIFF: All right.

5 THE COURT: And then give that to them and tell them they
6 can begin their deliberations. Make sure you got a pencil.
7 Pencil, paper --

8 THE BAILIFF: I've got pencils and a pad in here.

9 THE COURT: All right. Thank you.

10 (Whereupon, the jury deliberations begin at 4:08 p.m.)

11 (Whereupon, the alternate juror enters the courtroom.)

12 THE COURT: Mr. Hill, if you would, come up here, please,
13 sir. I want to thank you for your service. Let me tell you
14 this. It's the reason I asked everybody whether or not they
15 feel okay before I send them back because I don't want any of
16 my jurors back there not feeling okay.

17 THE JUROR: Okay.

18 THE COURT: The law does not authorize alternates to stay
19 back there once the case goes to the jury. A couple of things
20 -- I want to thank you for your service this week. Thank you
21 for your attentiveness throughout the trial of this case. I
22 hope you've had a good experience up here and I hope you
23 learned this isn't television. Now, when I release you here
24 today, you are done for the week.

25 THE JUROR: Okay.

1 THE COURT: Regarding the case, if you want to talk about
2 it, you can, but you don't have to.

3 THE JUROR: Okay.

4 THE COURT: If somebody approaches you and wants to talk
5 to you about it and you tell them you don't want to and they
6 won't leave you alone, you call up here to the courthouse --

7 THE JUROR: Okay.

8 THE COURT: -- and talk to somebody in the Clerk's
9 Office.

10 THE JUROR: Okay.

11 THE COURT: And they will get the message to me and we'll
12 handle it.

13 THE JUROR: Okay.

14 THE COURT: But you do not -- you cannot be made or
15 required to talk about it.

16 THE JUROR: Okay.

17 THE COURT: It's up to you. Again, thank you for your
18 service. I hope you have a good rest of the week.

19 THE JUROR: I will.

20 (Whereupon, the alternate juror exits the courtroom at
21 4:10 p.m.)

22 (Whereupon, there is a break in the proceedings from 4:10
23 p.m. until 4:40 p.m.)

24 THE COURT: Can the lawyers approach a minute, please?
25 (Whereupon, a bench conference is held as follows.)

1 THE COURT: Court's Exhibit Number 6. Question by the
2 jury. They want to see statements in the matters of
3 termination.

4 MS. PARHAM: Good grief.

5 THE COURT: If I wanted to get in trouble, I'd bring them
6 out here and say did y'all just hear what I said in those 17
7 pages of charge I just gave to you.

8 MS. PARHAM: Right.

9 THE COURT: But I'm just going to tell them It's not
10 evidence, you can't -- it's not coming in. It wasn't
11 admitted. If y'all want to listen to testimony --

12 MS. PARHAM: Right.

13 THE COURT: -- of any of these witnesses --

14 MS. PARHAM: That's right.

15 THE COURT: -- I'll be happy to play them for you.

16 MS. PARHAM: That's right.

17 MS. BURCHSTEAD: We agree.

18 (Whereupon, the bench conference ends.)

19 THE COURT: All right. Bring me the jury, please, ma'am.
20 And I may say a few other things that I didn't say up
21 here, but I'll address it.

22 (Whereupon, the jury enters the courtroom at 4:41 p.m.)

23 THE COURT: All right. Madam Forelady, ladies and
24 gentlemen of the jury, I received your note with questions
25 concerning -- and it's been marked as Court's Exhibit Number 6

1 -- concerning your request to see various statements of
2 individuals, as well as the termination letter of Mr. Moody.
3 Let me tell you this. Those documents are not admitted
4 into evidence. We have certain rules of procedure that apply
5 in this courtroom and under -- only under certain
6 circumstances may they be admissible. They are not admitted
7 into evidence in this case. They are not admitted into
8 evidence in this case; so the answer to your question, no, you
9 can't see them. You can't see them because they weren't
10 admitted as evidence in this case.

11 If you all so desire to hear the testimony or rehear the
12 testimony of any witness, you let us know and we'll bring you
13 back in here and we'll play the testimony for you from these
14 witnesses. But no, you cannot see those documents. They were
15 not admitted into evidence and they're not for you to consider
16 in your deliberations. Okay? You are to consider the
17 testimony that was elicited from this stand and those exhibits
18 that you have in the jury room in deciding this case. Okay?

19 Please return to the jury room and continue your
20 deliberations.

21 (Whereupon, the jury exits the courtroom at 4:43 p.m.)

22 THE COURT: All right. Any objection or exception to
23 what I said to the jury from the State?

24 MR. ANDERS: No, Your Honor.

25 THE COURT: Defense counsel?

1 MS. PARHAM: No, Your Honor.

2 THE COURT: All right. We'll stand down.

3 (Whereupon, there is a break in the proceedings from 4:44

4 p.m. until 5:39 p.m.)

5 THE COURT: Number 7. Bring me the jury, please, ma'am.

6 Let me hold it back, please. Thank you.

7 (Whereupon, the jury enters the courtroom at 5:39 p.m.)

8 THE COURT: Madam Forelady, ladies and gentlemen of the

9 jury, I have received your note, which is a question which has

10 been marked as Court's Exhibit Number 7.

11 What I will say to you in response to that after -- well,

12 I'll say this to you. Self-defense has been raised in this

13 case and I have charged -- charged you on the applicable law

14 of self-defense. The State -- the State of South Carolina has

15 to disprove at least one element of self-defense beyond a

16 reasonable doubt.

17 Having responded in that manner, I'm going to ask you to

18 return to the jury room and continue your deliberations.

19 (Whereupon, the jury exits the courtroom at 5:40 p.m.)

20 THE COURT: All right. Any exception or objection by the

21 State?

22 MR. ANDERS: No, Your Honor.

23 THE COURT: Defense counsel?

24 MS. PARHAM: Yes, Your Honor. I just object to not

25 rereading the charge before answering that question. I think

1 we should have just reread the charge.

2 THE COURT: Well, your objection is noted. I've given
3 them a copy of the charge in the jury room. I'm not saying
4 I'm not going to bring them back out at some point and read
5 them that charge. We may have to. But the objection so noted
6 for the record. We'll stand at ease.

7 (Whereupon, there is a break in the proceedings from 5:41
8 p.m. until 5:49 p.m.)

9 THE COURT: Ms. Parham made an objection after I read my
10 response to the jury just now and I went back and looked at my
11 -- at the charge on self-defense. What I am going to do is I
12 am going to bring the jury back out and I'm going to recharge
13 them on self-defense pursuant to that objection and then read
14 again what I've read to them.

15 MS. PARHAM: We need Mr. Anders.

16 THE COURT: Any objection to that, Ms. Parham?

17 MS. PARHAM: I object to you reading again what you've
18 already read. I would just read the charge.

19 THE COURT: Okay.

20 (Whereupon, there is a pause in the proceedings.)

21 THE COURT: Any objection -- well, I'll wait until Mr.
22 Anders gets back in here.

23 MS. PARHAM: Are you going to read the whole charge on
24 self-defense?

25 THE COURT: Yeah.

1 MS. PARHAM: With all the other nuances?
2 (Whereupon, there is a pause in the proceedings until Mr.
3 Anders enters the courtroom.)
4 THE COURT: Mr. Anders, what I am going to do pursuant to
5 Ms. Parham's objection -- I'm going to bring the jury back out
6 and I'm going to read them the charge on self-defense, and
7 then I'm going to read them the note again.
8 MR. ANDERS: Yes, sir.
9 THE COURT: Ms. Parham objected to me reading them the
10 note again, but I'm going to do it. She objected to it the
11 first time for me not reading the self-defense so I'm going to
12 read it the way she initially wanted me to the first time.
13 Okay? Where's the bailiff?
14 THE CLERK: She's back there with them.
15 THE COURT: Bring them back out.
16 MS. PARHAM: Just to be -- just to be clear for the
17 record --
18 THE COURT: Hold on.
19 MS. PARHAM: Just to be quicker, I objected to reading
20 the note and still object to reading the note. I just wanted
21 just the charge of self-defense.
22 THE COURT: You didn't object to the note when we
23 discussed it before. You objected to me not reading self-
24 defense and then reading the note. That's what your objection
25 was.

1 MS. PARHAM: I'm sorry. I just didn't make myself clear.
2 I just was going to preserve for the record because I'm not
3 sure what --

4 THE COURT: Well, do you -- I mean we discussed this at
5 length about 25 minutes back there in chambers when this note
6 came out. Myself, you and Mr. Anders and Ms. Burchstead. I
7 certainly understand you have a -- you have a right to object
8 to whatever, but this -- after at length discussions on this,
9 this is what we concluded to read and it's -- I don't have my
10 case out here, but I think it was pursuant to State v. Curry
11 -- State v. Curry, and I don't have the cite, but I've given
12 the cite on the record.

13 That is a -- our concern and the discussions back there
14 was this Court making some comment on the facts -- on the
15 facts, which it would be highly improper for me to do. And
16 therefore, that's what the conclusion came to on what I read
17 to them previously. So -- and I will note you did ask back in
18 -- when we were discussing this to read the self-defense. You
19 certainly did. So having said all of that. anything else at
20 this time, Ms. Parham?

21 MS. PARHAM: No, Your Honor.

22 THE COURT: Mr. Anders, any objection or exception?

23 MR. ANDERS: No objection, Your Honor.

24 THE COURT: All right. Bring me the jury, please.

25 (Whereupon, the jury enters the courtroom at 5:53 p.m.)

1 THE COURT: All right. Madam Forelady, ladies and
2 gentlemen of the jury, after further consideration after
3 sending you all back there after responding to -- I think
4 Court's Exhibit Number 7. Is that right, Madam Court Reporter?

5 THE COURT REPORTER: Yes.

6 THE COURT: All right. I'm going to read this to you
7 again, and it's the charge relating to self-defense.

8 The defendant has raised the defense of self-defense.
9 Self-defense is a complete defense and if it is established,
10 you must find the defendant not guilty. The State has the
11 burden of disproving self-defense by proof beyond a reasonable
12 doubt.

13 If you have a reasonable doubt of the defendant's guilt
14 after considering all of the evidence, including the evidence
15 of self-defense, then you must find the defendant not guilty.
16 On the other hand, if you have no reasonable doubt of the
17 defendant's guilt after considering all of the evidence,
18 including the evidence of self-defense, then you must find the
19 defendant guilty.

20 The following elements are required to establish self-
21 defense. First, the defendant must be without fault in
22 bringing on the difficulty.

23 Second, the defendant was actually in imminent danger of
24 death or serious bodily injury or the defendant actually
25 believed he was in imminent danger of death or serious bodily

1 injury. If the defendant believed he was in imminent danger
2 of death or serious bodily injury, it must be shown that a
3 reasonably prudent person of ordinary firmness and courage
4 would have had the same belief.

5 In deciding whether the defendant actually was or
6 believed he was in imminent danger of death or serious bodily
7 injury, you should consider all the facts and circumstances
8 surrounding the crime, including the physical condition and
9 characteristics of the defendant and the victim.

10 The defendant does not have to show that he was actually
11 in danger. It is enough if the defendant believed he was in
12 imminent danger and a reasonably prudent person of ordinary
13 firmness and courage would have had the same belief. The
14 defendant has the right to act on appearances even though the
15 defendant's beliefs may have been mistaken. It is for you to
16 decide whether the defendant's fear of imminent danger of
17 death or serious bodily injury was reasonable and would have
18 been felt by an ordinary person in the same situation.

19 Threats made by the victim may be considered in
20 determining whether the defendant actually was, or believed he
21 was, in imminent danger. Words accompanied by hostile acts
22 may, depending on the circumstances, establish self-defense.

23 The final element of self-defense is that the defendant
24 had no other probable way to avoid the danger of death or
25 serious bodily injury than to act as the defendant did in this

1 particular instance. The defendant had no duty to retreat if
2 by doing so the danger of being killed or suffering serious
3 bodily injury would increase.

4 A person cannot be required to make an exact calculation
5 as to the degree or amount of force which may be needed to
6 avoid death or serious bodily injury. Therefore, in self-
7 defense, the defendant has the right to use the force needed
8 to avoid death or serious bodily harm. The force used in
9 self-defense does not have to be limited to the degree or
10 amount of force used by the victim. The defendant has the
11 right to use so much force as appeared to be necessary for
12 complete self-protection, in which a person of ordinary reason
13 and firmness would have believed to be needed to prevent death
14 or serious bodily harm.

15 As I told you previously, self-defense has been raised in
16 this case and I have charged you on the applicable law in this
17 case as it relates to self-defense. The State has to disprove
18 at least one element of self-defense beyond a reasonable
19 doubt.

20 At this time, I'm going to ask you to return to your jury
21 room and continue your deliberations.

22 (Whereupon, the jury exits the courtroom at 5:58 p.m.)

23 THE COURT: Any exception or objection by the State?

24 MR. ANDERS: No, Your Honor.

25 THE COURT: Defense counsel?

1 MS. PARHAM: No, Your Honor.

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

3 (Whereupon, there is a break in the proceedings from 5:59

4 p.m. until 6:59 p.m.)

5 THE COURT: I'm going to send the jury home for the

6 balance of the evening. I hate to make y'all come back from

7 Columbia tomorrow, but they've been here and we've been going

8 since 9:30 this morning. So any exceptions or objections from

9 the State?

10 MR. ANDERS: Your Honor, the only -- is there any way to

11 ask them if it would help them to deliberate a little longer

12 to see if they've made progress, to see where they are? I

13 mean I don't mind coming back tomorrow, but --

14 MS. BURCHSTEAD: If we're close --

15 MS. PARHAM: I object to saying anything to them.

16 THE COURT: Well, I mean -- they've had it for about two

17 hours. I mean they've got all day tomorrow to sit back there

18 and they've got all day Friday. If we got to be here until

19 Friday night midnight, we'll be here. Okay? Is Ms. Frances

20 back there?

21 THE CLERK: She is.

22 THE COURT: All right.

23 (Whereupon, the jury enters the courtroom at 7:00 p.m.)

24 THE COURT: All right. Madam Forelady and ladies and

25 gentlemen of the jury, it is now seven in the evening. I am

1 going to -- it's been a long day. It's been a long day in
2 here. You all have been here since 9:30. The lawyers and
3 court personnel have been here since before that. What I'm
4 going to do is I'm going to excuse you for the balance of
5 today.

6 What my instructions are is you are not to discuss the
7 case at all with anybody. Okay? I'm going to ask that you be
8 back here in the courtroom -- in your jury room at 9:30
9 tomorrow morning -- at 9:30 tomorrow morning.

10 Now, as you all come in tomorrow morning, you are not to
11 discuss the case until you are instructed to do so when all of
12 the jurors are present in the jury room again. Okay? So I'm
13 going to let you go for the balance of the evening. Be back
14 at 9:30 in the morning. Ms. Frances, if there are any -- if
15 you will gather the exhibits out of there and any notes or if
16 anything, take into possession --

17 THE BAILIFF: They left their belongings in there.

18 THE COURT: Okay. Take into possession whatever may be
19 in there. Give it to my court reporter. It will be in her
20 custody overnight. Again, do not discuss the case. I look
21 forward to seeing you back tomorrow morning at 9:30 --
22 tomorrow morning. Okay.

23 (Whereupon, the jury exits the courtroom at 7:03 p.m.)

24 THE COURT: All right. Anything from the State before we
25 break for the balance of the day?

1 MR. ANDERS: Nothing, Your Honor.

2 THE COURT: Defense counsel?

3 MS. PARHAM: No, Your Honor.

4 THE COURT: All right. 9:30 in the morning. 9:30 in the
5 morning. I've instructed the court reporter to secure -- and
6 I think it will be secured by the Clerk's Office. They have
7 something to lock items of evidence, as well as whatever
8 notes, et cetera, et cetera. Not to be viewed -- not to be
9 viewed by anybody -- not to be viewed by anybody. See you all
10 at 9:30 in the morning.

11 (Whereupon, the proceedings adjourned for the day at 7:04
12 p.m.)

13 JUNE 19, 2014

14 (Whereupon, the proceedings resumed at 9:32 a.m. The
15 defendant and his counsel were not present in the
16 courtroom.)

17 THE COURT: Go back there and call Ms. Parham and find
18 out where she is. They were going to gather at the 10th floor
19 waiting room. Wayne, will you go to the 10th floor waiting
20 room and see if Rose Mary or any of her people are up there?
21 Tell them to get down here now. I said 9:30, please, sir --
22 or radio up there. Krystal just said she said she was going
23 to come at 10:00. She is going to call Rose Mary's office.
24 If you will, check on the 10th floor and see if there are any
25 of those up there.

1 (Whereupon, there is a break in the proceedings from 9:39
2 a.m. until 9:44 a.m. The defendant is not yet present.)
3 THE COURT: Where is your client? You all are going to
4 have to take him out of the jury box because I'm going to
5 bring the jury back out in a minute. Where's your client?
6 MS. PARHAM: I've texted him. There was some confusion
7 when we left last night. It's my fault. We were talking to a
8 deputy and he said y'all might want to meet on a different
9 floor because we're doing guilty pleas here tomorrow morning.
10 So I told them to meet me on the 10th floor. So I mean we had
11 that conversation last night and so it's my fault that --
12 that's why this happened because he said we're doing guilty
13 pleas down here and you might need to meet on a different
14 floor.
15 THE COURT: Let me know when your client gets here.
16 DEPUTY: I don't know where they are, but they're not up
17 there.
18 (Whereupon, there is a break in the proceedings from 9:46
19 a.m. until 10:01 a.m. The defendant is now present.)
20 THE COURT: Mr. Moody, how about stand up a minute,
21 please, sir?
22 THE DEFENDANT: Yes, sir.
23 THE COURT: What time were you told to be here this
24 morning by me?
25 THE DEFENDANT: At 9:30, sir.

1 THE COURT: All right. And why were you not here at
2 9:30?

3 THE DEFENDANT: I was given some other directions after
4 the bailiff told us about some issues, sir. I'm sorry.

5 THE COURT: Is the bailiff in charge in here?

6 THE DEFENDANT: No, sir.

7 THE COURT: Is anybody else in charge in here?

8 THE DEFENDANT: No, sir.

9 THE COURT: If -- when I say we're starting at a specific
10 time, it's what this Court says and nobody else. If you can't
11 be here when I say be here, I'll have you taken into custody
12 and I'll ensure that you are here when I say when you are
13 supposed to be here. You understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Bring me the jury, please, ma'am.

16 (Whereupon, the jury enters the courtroom at 10:02 a.m.)

17 THE COURT: All right. Madam Forelady, ladies and
18 gentlemen of the jury, I apologize for you all having to sit
19 back there for the last 30 minutes. Some people that were
20 supposed to be here at 9:30, just like you all were here at
21 9:30, were not here when they were supposed to be here. I've
22 addressed that issue and I've taken care of it.

23 At this time, I am going to instruct you all to return to
24 the jury room. The items of evidence along with my jury
25 instructions and whatever notes you all may have had -- I

1 don't know what's in there, but whatever was given to the
2 Court yesterday when you all left will be returned to you all
3 at this time, and you are instructed to continue your
4 deliberations. Okay. Thank you. You all may step back to
5 the jury room.

6 (Whereupon, the jury exits the courtroom at 10:03 a.m.)

7 (Whereupon, the jury deliberations resume at 10:03 a.m.)

8 THE COURT: All right.. Anything from the State at this
9 time?

10 MR. ANDERS: Nothing, Your Honor.

11 THE COURT: Defense counsel?

12 MS. PARHAM: No, Your Honor.

13 THE COURT: All right. We'll stand down. I believe the
14 Solicitor's Office has some pleas that they want to do. Do
15 y'all have anybody signed up, Mr. Tucker?

16 MR. TUCKER: Not right this moment, Your Honor, but we
17 are very close to getting some. Ten minutes tops.

18 THE COURT: All right. If you'll let me know, we'll
19 stand at ease. The lawyers are not to leave this building
20 that are involved in this particular case nor the defendant.

21 (Whereupon, there is a break in the proceedings from
22 10:03 a.m. until 10:44 a.m.)

23 THE COURT: All right. I've been informed by the bailiff
24 that the jury has a verdict in this case. I will remind
25 everybody in the courtroom whatever the verdict is to keep

1 your emotions in check. Failure to do so could result -- I'll
2 start over.

3 MR. ANDERS: I'm sorry.

4 THE COURT: I've been informed that the jury has reached
5 a verdict in this case. I will remind everyone, whether you
6 are an alleged victim or whether you are an alleged defendant
7 or family members of such, to keep your emotions in check
8 regardless of what the verdict is. Your failure to do so
9 could result in you being held in contempt of court and
10 sentenced to a period of incarceration or -- and/or a fine.
11 Just want to advise everybody of that before the jury comes
12 back in.

13 Anything from the State before I bring the jury out?

14 MR. ANDERS: Nothing, Your Honor.

15 THE COURT: Defense counsel?

16 MS. PARHAM: No, Your Honor.

17 THE COURT: All right. If you will, bring me the jury,
18 please, ma'am.

19 (Whereupon, the jury enters the courtroom at 10:46 a.m.)

20 THE CLERK: Madam Forelady, have you reached a verdict?

21 THE FORELADY: Yes, we have.

22 THE COURT: I seat them closest to me in this courtroom.

23 THE CLERK: They were backwards.

24 THE COURT: All right. The verdict appears to be in
25 order. Madam Clerk, will you publish the verdict? The

1 defendant will stand for publication of the verdict, please.

2 (Whereupon, the defendant and his counsel stand.)

3 VERDICT OF THE JURY

4 THE CLERK: The State of South Carolina, County of
5 Florence, in the Court of General Sessions. Indictment
6 Numbers 2014-GS-21-00533, 00534, 00535. State of South
7 Carolina versus Damon Ellis Moody.

8 As to the first indictment, as to the charge of pointing
9 and presenting a firearm as it relates to Jermichael Wright,
10 we, the jury, unanimously find the defendant, Damon Ellis
11 Moody, guilty.

12 As to the second indictment, as to the charge of pointing
13 and presenting a firearm as it relates to Jermaine Wright, we,
14 the jury, unanimously find the defendant, Damon Ellis Moody,
15 guilty.

16 As the third indictment, as to the charge of pointing and
17 presenting a firearm as it relates to Ontario McClellan, we,
18 the jury, unanimously find the defendant, Damon Ellis Moody,
19 not guilty.

20 Dated June 19th, 2014, signed Dianne Rowell, foreperson.
21 Members of the jury, if this is your verdict, please raise
22 right hand.

23 (Whereupon, all jurors raise their right hand.)

24 THE CLERK: That is everyone, Judge.

25 THE COURT: All right. Anything from defense counsel at

1 this time?

2 MS. PARHAM: No, Your Honor.

3 THE COURT: All right. If you'll be seated, please. All
4 right.

5 Ladies and gentlemen, I want to thank you for your
6 service this week. When I release you here today, you are
7 done for the week. All right? You are done for the week. I
8 want to thank you for your service. I appreciate it and I
9 know the lawyers appreciate it.

10 Mr. Moody, you can be seated, please, sir.

11 I know the lawyers and everybody involved in this case
12 appreciate your attentiveness throughout the trial of this
13 case. You all have fulfilled your responsibilities and now
14 what will happen after this is I will carry out my
15 responsibilities, and that will be sentencing. That will be
16 sentencing.

17 When I excuse you here today, ladies and gentlemen, I'm
18 going to let you know that or I will tell you that you will
19 get a check for your service this week. Okay? You've heard
20 the proverbial statement of the check is in the mail. It will
21 be in the mail for you this week. Don't go lay away some
22 large ticket item thinking that check is going to be big
23 because it's not.. The truth of the matter is we can't pay you
24 for what your service is worth. We can't pay you. If we did,
25 the country would be in worse financial condition than it is

1 right now. Also included with that check will be a work
2 excuse if you need a work excuse. Okay?

3 If you are summoned back up here at least within the next
4 three years, I would encourage you to serve, but if you so
5 desire, you can -- can be excused. Now, if you are summoned
6 for jury duty in Magistrate's Court, City Court, or Federal
7 Court, there's not a thing I can do to help you on that one.
8 Okay? Not a thing I can do to help you.

9 Now, during the course of this trial, I told you all
10 throughout not to talk about the case until you are instructed
11 to do so. Okay? Now that you have fulfilled your
12 responsibility as jurors, you can talk about the case. You
13 can talk about it if you so desire -- if you so desire.
14 Nobody -- no one can make you talk about it. Okay? No one
15 can make you talk about it. I say that to say this. If
16 somebody approaches you to talk about this case and you tell
17 them you don't want to talk about it and they don't leave you
18 alone, you let the Court know and we'll handle it. Okay?
19 We'll take care of it.

20 So what I am going to do at this time -- you are free to
21 go, if you so desire. What takes place next is sentencing.
22 You can stay or you can go. I'll leave that up to you. If
23 you so desire to leave, you can do so at this time. If you
24 leave, have a great day. Have a great rest of the week. I
25 look forward to hopefully seeing you again sometime in the

1 very near future. If you want to leave, now is your time to
2 leave. Okay.

3 (Whereupon, the jury is released at 10:51 a.m.)

4 THE COURT: All right. What we are going to do -- does
5 the State have sentencing sheets prepared?

6 MR. ANDERS: Your Honor, I think they just went to go get
7 a few for us.

8 THE COURT: All right. We'll stand down while the State
9 -- well, let's do this. Any motions or anything that you have
10 at this time, Ms. Parham?

11 MS. PARHAM: We just renew all previous motions, Your
12 Honor.

13 THE COURT: Okay. And the Court stands by its previous
14 rulings on said motions, but certainly your objections are so
15 noted for the record.

16 MS. PARHAM: Thank you, Your Honor.

17 THE COURT: All right. We'll stand down for just a
18 minute while sentencing sheets are prepared.

19 (Whereupon, there is a break in the proceedings from
20 10:52 a.m. until 11:29 a.m.)

21 SENTENCING HEARING

22 THE COURT: All right. Is the State ready to proceed?

23 MR. ANDERS: We are, Your Honor.

24 THE COURT: All right. I will hear from the State, and
25 if the victims want to say anything, they can stand where they

1 are, state their name, and I'll be happy to hear from them at
2 that time. Once I've heard from the State, I will then hear
3 from you, Ms. Parham, along with any family members of Mr.
4 Moody.

5 MR. ANDERS: May I approach, Your Honor? May it please
6 the Court?

7 THE COURT: Yes, sir.

8 MR. ANDERS: Your Honor, we're before you for sentencing
9 in 00533 and 00534 on two counts of pointing and presenting.
10 Your Honor was here and you saw the testimony. The State has
11 really nothing to add to that, Your Honor, just that the
12 victims may wish to address the Court at the appropriate time,
13 Your Honor.

14 THE COURT: All right. Mr. Jermichael -- Jermichael
15 Wright, anything you want to tell me, sir?

16 JERMICHAEL WRIGHT: Not at one point in this trial did I
17 intend to hurt anybody. You know, from the beginning I put it
18 in God's hand and now I just put it in your hands.

19 THE COURT: All right. Anything else?

20 JERMICHAEL WRIGHT: No, sir.

21 THE COURT: Mr. Jermaine?

22 JERMAINE WRIGHT: I'm fine with whatever you decide.

23 THE COURT: Sir?

24 JERMAINE WRIGHT: I said I'm fine with whatever you
25 decide.

1 THE COURT: All right. Anything else, Mr. Anders?

2 MR. ANDERS: Nothing further, Your Honor.

3 THE COURT: All right. Ms. Parham, I'll be happy to hear
4 from you.

5 MS. PARHAM: Thank you, Your Honor. Your Honor, my
6 client is 31 years old. He has never been in trouble a day in
7 his life. He has an eleven-year-old son and a ten-month-old
8 son. You heard his wife testify she's a nurse at McLeod.

9 You know, it's frustrating. In this case, we did not get
10 any plea offer other to plead straight up to these counts and,
11 you know, I told the Attorney General's Office I have a lot of
12 clients who've been charged and accused of doing far worse
13 than this who get pre-trial intervention on a regular basis
14 and that -- that was not offered, nothing was offered in this
15 case.

16 But it's frustrating to me as a defense attorney, you
17 know, to see, you know, other people even related to this case
18 accused with things that do get pre-trial intervention and
19 their case is dismissed. You know, Mr. Anders stood up
20 yesterday when I was trying to get into breach of trust that
21 his mother-in-law did, and he said, well, she got PTI, you
22 know, which is what most first-time offenders get, and he is
23 right about that.

24 And I understand they didn't want to, you know, recommend
25 that because he was a police officer, but it's just

1 frustrating and, you know, he's devastated to have been
2 charged with this, and you know, he's even more devastated to
3 be convicted of this. I'm -- I'm -- you know, I'm sure it was
4 a tough decision for the jury; they were out a good while.

5 Your Honor, he did receive a letter of commendation on
6 January 26th, 2011, which says that he along with officers were
7 dispatched to a robbery call at Jack B. Nichols Children's
8 Boutique, and he also received a Medal of Valor, Your Honor,
9 which is the highest honor anyone in law enforcement can ever
10 receive. He -- he saved a women from an arson and robbery.
11 I'll pass those up.

12 He also received a letter of appreciation which said on
13 or about March 20th, 2010, he responded to a dog complaint. We
14 received an email of appreciation for your kindness and
15 professionalism. You are hereby recognized for your
16 dedication and commitment to the citizens of Hartsville and
17 your fellow officers. Officers said that you exemplify the
18 definition of public service. Again, thank you for a job well
19 done.

20 Thank you.

21 THE COURT: Thank you.

22 MS. PARHAM: Your Honor -- and, you know, law enforcement
23 has been something that has been in his blood, and even after
24 this happened, Your Honor -- I would like to read the article.
25 I'm sorry. I have it on my cell phone. I have the article.

1 After this happened, Your Honor, the neighbor, Mr.
2 Shealy, that testified as a witness for truthfulness on the
3 stand, Damon was in the same backyard. It was after he was
4 arrested, so he lost his job. He'd already lost his job. He
5 was not a police officer anymore.

6 He was in his backyard and he heard muffled crying, and
7 he just kept looking around to see where it was coming from
8 and starts walking down the road, and he goes to Mr. Shealy's
9 house and Mr. Shealy has a white storage building in the
10 backyard. And Damon came in and Mr. Shealy was being beaten
11 and robbed by a young man, and Damon pulled the guy off of Mr.
12 Shealy, saved his life, and then ran barefoot for a mile and
13 chased the boy down that was doing it and held him on the
14 ground until Florence County Sheriff's deputies arrived. And
15 so, you know, that's just another piece of heroism on his
16 part.

17 I would like to read -- Mr. Shealy wanted to be here if
18 he was convicted for his sentencing to tell Your Honor. He
19 was in World War II, and he told the news media when that
20 happened that he had, you know, seen things in World War II,
21 but had never been frightened like he was on that particular
22 day. And so, you know, he is very grateful to Damon for his
23 efforts. His wife is very sick and had to be at a doctor this
24 morning and she couldn't be here, but I would just like to
25 read the newspaper article -- one of the newspaper articles.

1 "Carey Shealy Sr., 84, of Florence, is recovering from
2 injuries after being assaulted in his back yard on National
3 Cemetery Road Monday during an attempted robbery. The World
4 War II veteran was fixing the lock on his shed when a man hit
5 him in the side. It took me such -- such by surprise in the
6 privacy of my own backyard, not bothering anybody. He comes
7 off the street onto private property, trespassing, and hits
8 me. It knocked the breath out of me.

9 Florence County Sheriff's Office charged Calvin Mouzon,
10 24, with attempted strong armed robbery. Shealy said Mouzon
11 was trying to get inside his pocket to get his wallet. I was
12 eyeball to eyeball with him and that's when he said, give me
13 your wallet, and proceeded to put me on ground. He added that
14 Mouzon continued hitting him, but Shealy would not roll over
15 to give access to his wallet.

16 Shealy's neighbor, Damon Moody, heard Shealy screaming
17 for help and ran over to see what was going on. I took off.
18 It was a race. Bare feet and all, no shoes on, but I was
19 determined to get him, said Moody. Moody is a former police
20 officer with years of experience at different departments in
21 the Pee Dee. He chased Mouzon down National Cemetery Road,
22 even going back to get his SUV to continue the chase. Moody
23 says a Florence County Sheriff's Office deputy happened to be
24 patrolling in the area and saw Mouzon running, and that's when
25 they arrested him."

1 It was a -- it was a violent attack that he saved Mr.
2 Shealy from, and Mr. Shealy wanted Your Honor to see these
3 photographs of the injuries that he sustained that day.

4 Your Honor, we would ask for a sentence of either, you
5 know, time served or probation. Prison is not -- you know,
6 he's never been to jail.

7 Prison is usually not a good place for former law
8 enforcement officers, and Mr. Moody's made hundreds of arrests
9 -- arrests in his career, you know, and I think jail would be
10 a horrible place for someone who's been in law enforcement.

11 Your Honor was in private practice and, you know, a lot
12 of times there is an animosity there and besides the fact,
13 Your Honor, he is a first-time offender. He has never been in
14 trouble in his life. And I know his family wants to address
15 the Court. Y'all please come up.

16 THE COURT: Well, they can stand right there.

17 MS. PARHAM: Okay, excuse me.

18 THE COURT: State their name for the record. I'll be
19 happy to hear from them. Yes, ma'am, tell me your name for
20 the record.

21 DANA MOODY: Dana Moody.

22 THE COURT: Yes, ma'am, Ms. Moody.

23 DANA MOODY: My brother has never been in trouble. He
24 has been -- he's an amazing person and volunteers. I lost my
25 fiancé in the line of duty in this county. He was shot and

1 killed, and Damon over the last 16 years has stood by me
2 through every charity and every volunteer organization that I
3 could do. I am a single mother of twins. He helps with my
4 children, takes them swimming, plays with them every day. We
5 lost my father and my grandfather recently. He's the only man
6 in our life. He handles everything, he fixes everything, and
7 he is our everything. He's never been in trouble. He stops
8 trouble before it starts.

9 Our family has been through so much through this. We are
10 a law enforcement-loving family. We would give everything we
11 have to law enforcement and there is many people in this room
12 that will shake their head to that because they see that my
13 brother with me has started different programs to give back to
14 kids.

15 And we have had our lives threatened during this, scared
16 for our lives, and it's just -- and we've never been on this
17 side to where we've always believed so much in the judicial
18 system and we still do. It's just it's sad to see somebody
19 for \$24,000 a year put his life on the line, and we've already
20 lost somebody in the line of duty with a bullet to the head
21 for \$24,000 a year. He put his life on the line and to this
22 day what's so sad is if you took those cuffs off of him, he
23 would still save those same people if they needed saving.

24 If Jermichael and Jermaine Wright were in danger, he
25 would go put his life in front of them. He has never said

1 anything bad about them. He has continued to live beside his
2 mother-in-law's home and has had no trouble. That should say
3 right there that he is not a revengeful person. He's not a
4 bad person.

5 But more than anything, our family needs him. He has a
6 little boy, I have two little girls. They this morning cried
7 and just wanted to know whether Uncle Damon was coming back.
8 And I just please just ask you to let him come home with us.

9 THE COURT: All right.

10 DANA MOODY: He's never been in trouble a day in his life
11 and we are the most law enforcement-supporting family you will
12 ever meet.

13 THE COURT: Thank you, Ms. Moody.

14 DANA MOODY: Thank you.

15 THE COURT: All right. Anybody else?

16 MARSHA MOODY: My name is Marsha Moody. I'm his mother.

17 THE COURT: Yes, ma'am.

18 MARSHA MOODY: I would just like to say that Damon is an
19 upstanding young man. He is exactly what his sister said and
20 he has been our rock since my husband died. He's a wonderful
21 father. And he floundered for years to try not to go into law
22 enforcement. And when he said that's what he wanted to do, I
23 said, Damon, you have to do what makes you happy.

24 And I don't want to regret that I encouraged him to do
25 that because he is a good person and only reacted as a cop

1 because they take that creed, that 24/7 they are policemen.
2 And I would just please ask your leniency because he is a good
3 person and has -- like she said, he's never been in trouble in
4 his life.

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

6 RABIN MOODY: My name is Rabin Moody and I'm Damon's
7 wife. I just want to say that my husband was a great cop. My
8 husband is a great cop. It's a 24 hour job. I married him
9 when he was a police officer and it's -- you know, they
10 brought me into their family with all the law enforcement
11 stuff, and it's great to have that bond with other people to
12 support you behind you and everything because it does get hard
13 at times.

14 You know, I feel that on that day my husband reacted as a
15 police officer, as he would because they never let their guard
16 down. My husband is a wonderful person. My husband's never
17 been in trouble. He's always showed up for work and doesn't
18 complain about it. He loved his job and I love my husband.
19 And, you know, we have a ten-and-a-half-month son at home and
20 I need my husband here with me.

21 He's never done anything to be in trouble. I felt like
22 he was reacting to the situation at hand and in the way he
23 thought was appropriate. I just ask you to take that into
24 consideration because I need my husband here with me.

25 THE COURT: All right. Thank you. Anybody else, Ms.

1 Parham?

2 MS. PARHAM: I'm not sure. Does anyone else want to
3 speak? I know my client wants to address the Court.

4 THE COURT: All right. Mr. Moody, I'll be happy to hear
5 from you sir.

6 THE DEFENDANT: Your Honor, first and foremost, if I can,
7 I'd like to apologize to both the Wright brothers. I'm sorry
8 for everything -- that everything had to come down this path.
9 I apologize for everything.

10 I'm just -- I'm at -- I'm really at a loss for words,
11 Your Honor. I understand that my peers have found me guilty
12 of these offenses. I understand the consequences. I just ask
13 that -- your leniency.

14 I mean it's -- I've got my ten-month-old son that I pick
15 up just about every day. I just -- I just want to go home for
16 him and my wife, and I want to go home and have my eleven-
17 year-old son. And if I have to do probation for 15 years just
18 to have that, I'll do it. I go to work. I come home. I
19 don't bother anybody. I try -- I'm a family man. I just try
20 to support my family. I help my friends. I'd give anybody
21 the shirt off my back, and the only thing I ask is your
22 leniency to this whole situation.

23 THE COURT: All right.. Anything else, Ms. Parham?

24 MS. PARHAM: No, Your Honor.

25 THE COURT: How much time he do in jail? In and out the

1 same day or what?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. I want to step down for just a
4 second. I want to look at something. I'll be right back.
5 We'll stand down just for a second.

6 (Whereupon, the Court leaves the bench at 11:48 a.m. and
7 then returns to the bench at 12:00 p.m.)

8 THE COURT: All right. In listening to all parties
9 involved in this case and hearing the testimony over the last
10 few days, it's the Court's opinion that there are multiple,
11 multiple parties at fault in this whole situation.

12 I have three children of my own and it's often -- they're
13 young children -- that my two oldest engage in arguments. My
14 oldest child is a daughter and my other two are boys. It
15 hasn't happened in a long time, but when they were younger,
16 one of my sons raised his hand and struck my daughter, which I
17 promptly dealt with. First thing I told him was, son, me and
18 your mom have disagreements, but you have never ever seen me
19 raise a hand to your mother and you never will, and I better
20 never see you raise a hand to your sister or any other female
21 again.

22 There are a lot of people in the Department of
23 Corrections that have done things out of anger -- out of
24 uncontrolled anger. On this particular day, this matter
25 escalated out of control, which subjects Mr. Moody to ten

1 years in the Department of Corrections. You, as a trained
2 police officer, knew or should have known more so than a lot
3 of people how to handle such a situation.

4 Before going to law school, I went through the police
5 academy and one of the things I was taught, however many years
6 ago that I went, was always if there's a problem, reach out
7 for back-up. I would assume without questioning any law
8 enforcement in here that the same thing is taught today and
9 when you went through it. It's commendable as to your prior
10 service as a law enforcement officer, but that doesn't excuse
11 what took place here. And there -- and there are consequences
12 to every decision we make, whether it's small or big.

13 There are -- in the four plus years I've been on the
14 bench, alluding to what Ms. Parham said about nothing being
15 offered here, it was straight up. No prosecutor has to offer
16 anything. They don't they just don't. I've been in the very
17 shoes that you stand in, the same situation when I practiced
18 law. It is what it is.

19 But I could count on one hand -- I don't even think I
20 could count on one hand the number of defendants that I've
21 seen go to jail over pointing and presenting a firearm over
22 the last four plus years I've been on the bench. Most of them
23 are pled down, recommendation of time served or probation.
24 But I can also now count on one hand the number of times that
25 it was a law enforcement or former law enforcement officer

1 involved.

2 SENTENCE BY THE COURT

3 Therefore, on Indictment 2014-GS-21-533 and 534, the
4 defendant is committed to the State Department of Corrections
5 for a period of five years, provided upon the service of 45
6 days, the balance suspended with probation for two years,
7 given credit for one day. Each of these sentences on the 45
8 days as well as the -- they're to run consecutive. Probation
9 for two years on 533 and probation for three years on 534. He
10 is to attend and complete anger management while on probation.

11 Good luck to you, Mr. Moody.

12 MS. Parham: Your Honor?

13 THE COURT: Yes, ma'am?

14 MS. PARHAM: We are going to file an appeal today. Would
15 you consider an appellate bond?

16 THE COURT: No, ma'am.

17 MS. PARHAM: Okay.

18 MR. ANDERS: Thank you, Your Honor.

19 THE COURT: Thank you. We'll stand down. I would ask
20 that law enforcement insure that the victim's family gets out
21 of here. The defendant's family is still in the courtroom.
22 They are to remain in the courtroom. I don't know -- does the
23 State wish to meet with the victim's family for anything, Mr.
24 Anders?

25 MR. ANDERS: I wanted to keep them in the conference

1 room.

2 THE COURT: All right. The victims' family -- make sure
3 they stay up here and I want the defendant's family cleared
4 from the building premises. Okay? Because I don't want any
5 potential problems there.

6 (Whereupon, the proceedings end at 12:07 p.m.)

7

8 --- END REQUESTED TRANSCRIPT. ---

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1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF FLORENCE)
4

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 631 constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 General Sessions for Florence County, South Carolina, on the
13 16th through 19th days of June, 2014.

14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.
16

17 Krystal J Smith
18 Court Reporter
19

20 Florence, South Carolina

21 September 19, 2014
22
23
24
25

WITNESSES

Agent John Follin - SLED

ARREST WARRANT NUMBER
2013A2110200891

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

Wendy Sanders
4/3/2014

VERDICT

Foreperson of Petit Jury

Date:

Docket Number 2014-GS-21-00533

The State of South Carolina

County of Florence

COURT OF GENERAL SESSIONS

April Term 2014

THE STATE

vs.

Damon Ellis Moody

DEFENDANT

Indictment for
Pointing and/or Presenting a Firearm

SC Code: 16-23-410

CDR Code: 0122

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury

Defendant

I, _____
hereby appear in my own proper person
and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. Pls. And G.S.

CERTIFIED: A TRUE COPY
Chris Halpin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

) INDICTMENT
) POINTING AND/OR PRESENTING A FIREARM
) VIOLATION OF SECTION 16-23-410

At a Court of General Sessions, convened on 4-3-14 the Grand Jurors of
Florence County present upon their oath:

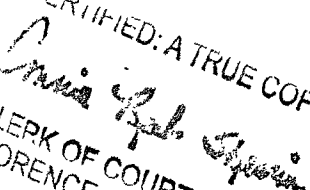
Pointing and/ or Presenting a Firearm

That Damon Ellis Moody did, in Florence County on or about June 13, 2013, point
and/ or present a firearm at another person. To wit: Damon Ellis Moody did point and/or
present, on or about June 13, 2013 in Florence County, a firearm at Jermichael Wright, in
violation of Section 16-23-410, of the South Carolina Code of Laws, 1976 as amended.

Against the peace and dignity of the State, and contrary to the statute in such case
made and provided.



ALAN WILSON (JSA)
ATTORNEY GENERAL

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

WITNESSES

Agent John Follin - SLED

ARREST WARRANT NUMBER
2013A2110200892

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

Wendy Sanders
4/3/2014

VERDICT

Foreperson of Petit Jury

Date:

Docket Number 2014-GS-21- *00534*

The State of South Carolina
County of Florence

COURT OF GENERAL SESSIONS

April Term *2014*

THE STATE

vs.

Damon Ellis Moody

DEFENDANT

Indictment for
Pointing and/or Presenting a Firearm

SC Code: 16-23-410

CDR Code: 0122

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury

Defendant

I, _____
hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. Pls. And G.S.

2014 APR - 3 AM 11:43
FILED
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.
CERTIFIED: A TRUE COPY
David R. [Signature]

STATE OF SOUTH CAROLINA) INDICTMENT
COUNTY OF FLORENCE) POINTING AND/OR PRESENTING A FIREARM
) VIOLATION OF SECTION 16-23-410

At a Court of General Sessions, convened on 4-3-14 the Grand Jurors of
Florence County present upon their oath:

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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ALAN WILSON (JSA)
ATTORNEY GENERAL

CERTIFIED: A TRUE COPY
Maria H. Spain
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

WITNESSES

Agent John Follin - SLED

ARREST WARRANT NUMBER
2013A2110200893

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

Wendy Sanders
4/3/2014

VERDICT

Foreperson of Petit Jury

Date:

Docket Number 2014-GS-21- *00535*

The State of South Carolina

County of Florence

COURT OF GENERAL SESSIONS

April Term *2014*

THE STATE

vs.

Damon Ellis Moody

DEFENDANT

Indictment for
Pointing and/or Presenting a Firearm

SC Code: 16-23-410

CDR Code: 0122

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury

Defendant

I, _____
hereby appear in my own proper person
and plead guilty to the within indictment or
to _____

Defendant

Witness:

C.C.C. Pls. And G.S.

CERTIFIED: A TRUE COPY
Chris J. [Signature]
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

2014 APR - 3 AM 11:43
CLERK OF COURT
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

) INDICTMENT
) POINTING AND/OR PRESENTING A FIREARM
) VIOLATION OF SECTION 16-23-410

At a Court of General Sessions, convened on 4-3-14 the Grand Jurors of
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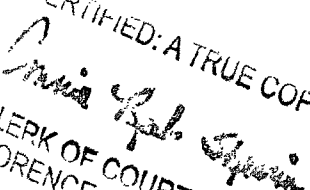
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violation of Section 16-23-410, of the South Carolina Code of Laws, 1976 as amended.

Against the peace and dignity of the State, and contrary to the statute in such case
made and provided.



ALAN WILSON (JSA)
ATTORNEY GENERAL

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE) TWELFTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)

INDICTMENT NOS: 14-00533

14-00534

14-00535

DAMON MOODY,
Defendant.

DEFENDANT'S REQUEST
TO CHARGE

FILED
JUN 18 AM 11:59
FLORENCE COUNTY, SC
JONNIE REEL-SHEPHERD
CLERK OF COURT C.P. & G.S.

TO: THE HONORABLE D. CRAIG BROWN; CLERK OF COURT; DEPUTY
ATTORNEY GENERAL

NOW COMES the Defendant, Damon Moody ("Moody"), represented by
his undersigned attorney, and moves this Court to charge the following to the jury:

(1) STANDARD CHARGE OF SELF-DEFENSE and in addition the
following:

(2) DEFENDANT'S RIGHT TO ACT ON APPEARANCES

"A defendant must show that he believed he was in imminent danger, not
that he was actually in such danger, because he had the right to act on
appearances, and under the circumstances as they appeared to him, he believed he
was in such danger and a reasonable prudent man of ordinary firmness and
courage would have entertained the same belief." *State v. Jackson*, 277 S.C. 271,
87 S.E.2d 681, 684-685 (1955).

(3) WORDS ACCOMPANIED BY HOSTILE ACTS

CERTIFIED: A TRUE COPY

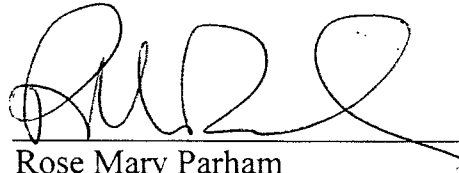
Jonnie Reel-Shepherd

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

"If the defendant was not engaged in an unlawful activity and was attacked in any place where he had a right to be, he had no duty to retreat and had the right to stand his ground and meet force with force, even to the extent of using deadly force or great bodily injury if it was necessary to prevent death or great bodily injury to himself or others." *State v. Curry*, 406 S.C. 364 (2013.)

(7) DEFENSE OF PROPERTY CHARGE

Respectfully submitted,



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843-407-7757
Attorney for Defendant

Florence, South Carolina
June 18, 2014

RECEIVED: A TRUE COPY
Christie R. Spain
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

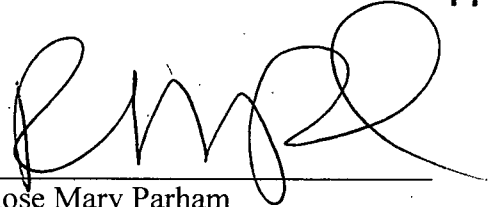
Certificate of Counsel

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.

January 25, 2016

FEB 01 2016

SC Court of Appeals

A handwritten signature in black ink, appearing to read 'RMP', is written over a horizontal line.

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