

ORIGINAL

VOLUME II OF III

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY

MAR 11 2016

Brooks P. Goldsmith, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

PRESTON RYAN OATES,

APPELLANT

APPELLATE CASE NO. 2014-001404

RECORD ON APPEAL

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COURT'S
EXHIBIT NO. 13
IDENTIFICATION/EVIDENCE
DKT.#
DATE:

501

17

STATEMENT OF:

Name: Elizabeth Reyes

DOB: 9-9-81

H:

Add:

SSN:

C:

W:

On the night of Dec 24th 2010 my family and I pulled up to our driveway from dining out; we came home to get some stuff from our house and leave to visit some family. As I was waiting inside the car I put my window down because I heard a lot of noise and also I saw a tow truck in front of a van trying to tow it away. People were running outside to see what was going on. I saw a man standing on the little ramp of the tow truck pleading with the tow truck driver telling him its Christmas, please take the boot of the car. He kept repeating the same thing there was another man standing ~~behind~~ on the side of the truck also screaming to take the boot off. He was only there a few minutes. All this in a matter of minutes, my husband came out of the house I put my windows back up, but then my husband forgot something in the house again, so I put my windows back down, I saw a lady in a long skirt very upset said "Its Christmas", "you are ruining Christmas man" my eyes were directed towards the door of the driver tow truck driver side. where this man was still begging the tow truck driver to give him the keys that how much is it for the boot to come off, there were a lot of people outside, kids I saw some other neighbors, then my husband came back to the car and we were discussing ^{about} telling the neighbor to park their cars inside our driveway, at this point my window was up and we were going to move my other car back up to the garage door so people can use our parking lot; my husband then went to my car turned it on I was putting my window back down to listen some more when I heard the first shot. I did not see the first shot, once my window was fully

Date _____

Page No. ②

STATEMENT OF:

Name: Elizabeth Rapes DOB: _____ H: [REDACTED]
Add: _____ SSN: _____ C: _____

down I looked directly at the door ^{of the truck} and saw it was open then I saw a man shooting towards the the ground I was still for a second. Couldn't react, I could see a body of someone on the ground, there were several shots fired, I couldn't move. I couldn't believe what was happening, my daughter was screaming and my son was calling my name. That's when I stepped out of my car and open her door telling it's going to be alright, she was crying and scared. Screaming mommy, papa my husband jumped out of my other car and went towards my son and then said "O my God I have to go help them" I said, "NO" worry about your kids, we need to go now. As we were driving off all I had in my head was that man the reflection of those shots I saw, the trucks door open and the screams off the people.

Elizabeth Rapes

Certified to be a true and correct copy of the original statement on file with the Office of Sheriff, St. Lawrence County.

Michael C. [Signature]
CHIEF OF POLICE, ST. LAWRENCE COUNTY

APR 1 ~ 2011

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THE COURT: As you heard, my name is Brooks Goldsmith. I'm a retired active circuit judge. About six months -- no, excuse me, 12 months ago, I was a circuit judge in Lancaster County, South Carolina. I retired, moved to Edisto Island, and now am working a retired -- I guess it's a retired active status where I work about three weeks out of four. It's my pleasure though to be with you for this one-week term of general sessions, sometimes called criminal court.

Our purpose, ladies and gentlemen, this morning is to determine your qualification and your eligibility to serve as jurors. In just a few minutes, I'm going to begin asking you some questions. And we'll ask you to do this, if you need to respond to the question, and for the most part, you won't need to respond to these questions. But if you do need to respond, please stand, try to speak distinctly, give us your juror number, and then tell us why you stood.

As to a couple of you, it is possible that you may believe a couple of the questions are personal, and you may prefer not to answer them in the presence of everyone in the courtroom. And if that's the way you feel, just please let me know that. When you stand give me your juror number and then say, I'd rather

QUALIFICATION OF THE JURORS

1 answer this later. And after we finish answering --
2 asking all the questions, we'll let you come down front
3 and we'll speak about the matter in a little more
4 private setting.

5 Ladies and gentlemen, the very first question is
6 probably the easiest question: Is there any member of
7 the jury panel who is not a resident and citizen of the
8 United States of America? If so, please stand. Is
9 there any member of the jury panel who is not a
10 resident and citizen of Beaufort County, South
11 Carolina? If so, please stand. And let's get your
12 juror number. Yes, sir.

13 JUROR 272: I am juror number 272.

14 THE COURT: 272?

15 JUROR 272: Yes. And I'm temporarily living in
16 Atlanta right now.

17 THE COURT: All right. Now, let's think about
18 that.

19 JUROR 272: My home base is St. Helena Island.

20 THE COURT: All right. How long have you been
21 temporarily residing elsewhere?

22 JUROR 272: I have been back and forth, sir, for
23 like seven or eight years.

24 THE COURT: Does that mean that you have a
25 driver's license?

QUALIFICATION OF THE JURORS

1 JUROR 272: Yes, sir, I do.

2 THE COURT: Now, does your driver's license
3 indicate you live in Beaufort County?

4 JUROR 272: South Carolina.

5 THE COURT: Have you changed any other addresses
6 with any other agencies, indicating you live somewhere
7 other than Beaufort County?

8 JUROR 272: Well, because I'm in Atlanta I move
9 around a lot, so I -- you know, so I don't have like a
10 current address because I'm back and forth a lot. I do
11 have a piece of property here. So I'm back and forth.

12 THE COURT: All right. All right. A couple more
13 questions. Your home is here?

14 JUROR 272: Yes, I was born. This is -- yeah, I'm
15 from Wausau.

16 THE COURT: And you consider this to be your --
17 place you live?

18 JUROR 272: Yes. This is my home base, but you
19 know, I work my job.

20 THE COURT: Your work requires you to travel?

21 JUROR 272: Well, yes. And, you know, based on
22 the less time that I have to work.

23 THE COURT: But your residence then is here in
24 Beaufort County?

25 JUROR 272: Right.

QUALIFICATION OF THE JURORS

1 THE COURT: Okay. You may live or spend the
2 nights at other places?

3 JUROR 272: Exactly.

4 THE COURT: You get your mail here?

5 JUROR 272: Yes, sir.

6 THE COURT: It sounds like to me you're a resident
7 of Beaufort County. All right. Thank you, sir.

8 Is there any member of the jury panel who is
9 unable to read, write or speak the English language?
10 If so, please stand.

11 Yes, ma'am. Your number?

12 JUROR 259: 259. My first language is Spanish. I
13 can understand, but perfectly write, no.

14 THE COURT: In other words, you can understand
15 because we're conversing with each other?

16 JUROR 259: Yes. But I don't know if I understand
17 all the terms that you're going to use in court.

18 THE COURT: All right. I understand you can
19 understand the spoken English word.

20 JUROR 259: And writing.

21 THE COURT: Can you read in English?

22 JUROR 259: The writing is my problem.

23 THE COURT: The writing is your problem?

24 JUROR 259: Yes. I'm not sure.

25 THE COURT: Does that mean that your handwriting

QUALIFICATION OF THE JURORS

1 is poor, or you have trouble with correct spelling.

2 JUROR 259: Yes, correct spelling.

3 THE COURT: Do you read newspapers?

4 JUROR 259: No.

5 THE COURT: Do you read on line?

6 JUROR 259: Yes, I can understand -- I can read
7 but I don't know how to write perfect English.

8 THE COURT: All right. Thank you. I think that
9 you're qualified though to stay with us.

10 JUROR 259: Okay.

11 THE COURT: Does any member of the jury panel have
12 less than a sixth grade education or its equivalent?
13 If so, please stand.

14 Is there any member of the jury panel who is
15 unable, because of a mental or physical infirmity, to
16 render efficient jury service this week? For example,
17 does any member of the jury panel have a medical
18 condition that would interfere with your ability to
19 serve on jury duty? If so, please stand.

20 Yes, sir. Your number?

21 JUROR 354: 354.

22 THE COURT: 354. Yes, sir?

23 JUROR 354: I have a chronic back condition that
24 causes me to take Oxycontin and Oxycodone. And I have
25 to stand and sit constantly because of my condition.

QUALIFICATION OF THE JURORS

1 THE COURT: You have to stand?

2 JUROR 354: Stand and sit constantly, yes.

3 THE COURT: Do you have a statement you wish to
4 hand up?

5 JUROR 354: It's from the doctor, yes.

6 THE COURT: While I'm getting that, let me ask you
7 this question, I wasn't here earlier. Are you employed
8 anywhere?

9 JUROR 354: No, I'm retired. I'm retired chaplain
10 from the MCAS.

11 THE COURT: I do have something from Dr. Eller.
12 Actually, it's fairly common for us, I mean people who
13 appear here in courtrooms, I've had jurors who have
14 back trouble, lots of jurors have back trouble. What I
15 normally ask, and I'm going to ask you this is, if you
16 do experience that discomfort that you're explaining to
17 me, about the need to stand and stretch, as mentioned
18 here; if you're able to do that, can you continue?

19 JUROR 354: Yes, sir. I have my medication in my
20 bag and, yes, I can do it. But I'll have to constantly
21 stand and sit. I don't mind standing.

22 THE COURT: Well, what I'm getting ready to say
23 now applies to you as well to anyone else who needs to
24 take a break, or to do something to be more
25 comfortable. I try to tell people this oftentimes,

QUALIFICATION OF THE JURORS

1 that if I feel I need a break, I merely say, we're
2 going to have a recess. But if a juror needs a break,
3 I ask people who are serving on the jury, if they would
4 raise their hand or speak to me or one of the bailiffs,
5 and let them know. And we can either take a recess, or
6 if you need to stand up and stretch, we can do that,
7 too.

8 Sometimes, actually, you know, 3:30 in the
9 afternoon, some jurors get sleepy. And, you know, some
10 judges get sleepy. But, you know, we get up and try to
11 move around so you can pay attention. If you think you
12 can stay, we'll let you stay.

13 JUROR 354: I don't mind.

14 THE COURT: Great. Thank you.

15 JUROR 354: As long as I can, you know, get up and
16 move around, I don't mind. I have my medication with
17 me.

18 THE COURT: All right. Thank you, sir.

19 Yes, ma'am?

20 JUROR 399: 399.

21 THE COURT: 399?

22 JUROR 399: Yes, sir. I have a genetic blood
23 condition called Factor Five, which means my body's
24 always making blood. So, I'm on a lot of blood
25 thinners. I'm on like ten different medications. I've

QUALIFICATION OF THE JURORS

1 been hospitalized four times since March. I've had
2 four blood transfusions and countless trips to the
3 emergency room. I either get blood clots or
4 hemorrhage, so like a hemophiliac. My concern is, how
5 much trouble do I get in if I get rushed to the
6 emergency room, and I don't show up for jury duty like
7 the next day?

8 THE COURT: We'll send a deputy and bring you in.
9 You said that you've been hospitalized four times since
10 --

11 JUROR 399: Yes, sir, since March. The longest
12 one was 17 days straight, at Beaufort Memorial.

13 THE COURT: And the last time would have been
14 approximately how long ago?

15 JUROR 399: I'm sorry, sir?

16 THE COURT: The last time you had to be
17 hospitalized?

18 JUROR 399: It was probably about a month ago.
19 But I've had trips to the emergency room since. They
20 take blood, and usually before I can even make it home
21 to get results they're calling to say, Get yourself to
22 the emergency room right away. They just can't
23 stabilize my blood levels.

24 THE COURT: Is your hope that some time in the
25 future, that your situation will improve?

QUALIFICATION OF THE JURORS

1 JUROR 399: Oh, yeah, hopefully, of course.

2 THE COURT: What if I were to transfer you to
3 another term towards the end of the year?

4 JUROR 399: That would be great. I have no
5 problem serving. I'm just concerned that someone's
6 going to come get me if I don't show up one day.

7 THE COURT: Well, I'm concerned that if you're
8 selected on the jury, in one of the cases that we're
9 going to have this week, may last three or four days.

10 JUROR 399: Right.

11 THE COURT: And we may need all of the jurors that
12 we have. Is it possible your condition would improve
13 by December or something?

14 JUROR 399: Yes, sir, I hope so, certainly.

15 THE COURT: What if we transfer you -- okay. If
16 you'll come down front we can get something worked out
17 about transferring. Potentially to fit for a time that
18 would work with your schedule.

19 Anyone else?

20 Has any member of the jury panel been convicted,
21 by way of a guilty plea or by way of a trial, in a
22 State or Federal Court of record of a crime punishable
23 by imprisonment for more than one year and your civil
24 rights have not been restored by way of pardon or
25 amnesty? And punishable by more than one year means

QUALIFICATION OF THE JURORS

1 that you could have received a sentence of more than
2 one year, regardless of what sentence you may have
3 actually received? So, if that applies to you, please
4 stand.

5 Is there any member of the jury panel who is a
6 clerk, or a deputy clerk of court, a constable, a
7 sheriff, or some other commissioned law enforcement
8 officer, a probate judge, a County commissioner, a
9 magistrate, or some other County officer? Or are you
10 employed within the walls of any courthouse? If so,
11 please stand.

12 All right. Yes, sir, your number?

13 JUROR 384: 384, sir.

14 THE COURT: 384?

15 JUROR 384: I was a law enforcement officer for 33
16 years, but I'm retired.

17 THE COURT: Well, I'll probably ask this question
18 later on. So I'll go ahead and get you to tell me the
19 rest of the story. You were a law enforcement officer
20 for 33 years, but the last time you were was how long
21 ago?

22 JUROR 384: Fifteen years retired.

23 THE COURT: And when you -- the majority of that
24 time you were a law enforcement officer was served
25 where?

QUALIFICATION OF THE JURORS

1 JUROR 384: Oakland, California and Lake Tahoe,
2 California/Nevada.

3 THE COURT: And what kind of law enforcement
4 officer?

5 JUROR 384: I was chief of police and fire.

6 THE COURT: All right. Thank you, sir. You won't
7 have to stand if I ask that question later.

8 THE BAILIFF: May I approach, Your Honor?

9 THE COURT: Yes, sir.

10 (Discussion between the Court
11 and the bailiff off the record.)

12 THE COURT: Is there any member of the jury panel
13 who has previously served on jury duty in circuit
14 court, as opposed to the City court or Magistrate
15 court, for this calendar year? If so, please stand.

16 Is there any member of the jury panel who has
17 served on the Beaufort County grand jury in the past
18 several years? If so, please stand.

19 Ladies and gentlemen, we now move to jury
20 exemptions. State law provides for several exemptions
21 to jury duty. You may be qualified, but the
22 Legislature has determined that for certain individuals
23 or categories of people, you're simply not required to
24 serve on jury duty. And all you have to do is say, I
25 choose not to serve on jury duty.

QUALIFICATION OF THE JURORS

1 Another question: If you have any trouble hearing
2 me at any time, will you please raise your hand and I
3 will try to speak more directly into the microphone.
4 Okay? Thank you. It's been now brought to my
5 attention.

6 Yes, sir?

7 JUROR 284: Yes. Number 284.

8 THE COURT: 284?

9 JUROR 284: In less than two months, I'll be
10 turning 67.

11 THE COURT: I'm sorry?

12 JUROR 284: In less than two months I'll be
13 turning 67.

14 THE COURT: Well, you must be clairvoyant, because
15 that was my next question. If you are 65 years of age
16 or older than 65, you may be exempted from jury
17 service, and all you have to do is say, I choose not to
18 serve.

19 JUROR 284: Yes, sir. I've served every time I've
20 been called.

21 THE COURT: Yes, sir.

22 JUROR 284: This is a little bit of a traumatic
23 week for me, because for 36 years and seven months I
24 have been managing tax ranges around the world. This
25 week I'm cleaning out my office, and I'm turning my

QUALIFICATION OF THE JURORS

1 reins over to a new manager, a new contractor. And I'm
2 transitioning my staff and actually packing up boxes
3 and moving them.

4 THE COURT: All right. I take it you would prefer
5 not to serve this week?

6 JUROR 284: Prefer not to serve, but I still live
7 here in Beaufort County, and I'll be available again at
8 any time.

9 THE COURT: Well, yes, you're right. You will get
10 credit for being here this week, but your name will not
11 be stricken from the rolls. And so maybe you'll get
12 called again.

13 JUROR 284: Thank you, sir.

14 THE COURT: But thank you so much. You're
15 excused.

16 Another exemption concerns prior jury service. No
17 person is required to serve as a juror or alternate
18 more often than once every three calendar years. So,
19 if anybody has served on jury duty in the two prior
20 calendar years and wishes to be exempted, please stand
21 and give us your number.

22 JUROR 168: Number 168.

23 THE COURT: 168?

24 JUROR 168: Yes, sir.

25 THE COURT: And when did you serve on jury duty in

QUALIFICATION OF THE JURORS

1 Circuit court?

2 JUROR 168: January of 2012. You said three
3 years, that's why I stood.

4 THE COURT: One second, they will double-check the
5 year just to make sure. And they're going to let me
6 know, and we'll let you know. The smile you have on,
7 do you think you can --

8 JUROR 168: I got told the last time that I was
9 here that I smiled too much. So maybe you don't want
10 me to come back?

11 THE COURT: Anyone else? Okay.

12 Similar question to the one I asked earlier. If
13 you've served as a grand juror in the last five
14 calendar years you have the right to be exempted. So,
15 if anyone's done that and they wish to be exempted,
16 please stand.

17 THE CLERK: 2012.

18 THE COURT: Let me go back to the Juror Number
19 168. They say that you're right. Now, does that mean
20 you prefer not to serve?

21 JUROR 168: Yeah, I have to work. We're kind of
22 short-staffed. It would be better if I don't serve.

23 THE COURT: Thank you for coming though. You're
24 excused.

25 JUROR 168: Thank you.

QUALIFICATION OF THE JURORS

1 THE COURT: The next exemption deals with those of
2 you who may have legal custody of young children. You
3 may be exempted if you have a child under the age of 7
4 and you have legal custody of the child, and you are
5 primarily responsible for caring for the child, and
6 you're unable to find anyone to care for the child
7 while you are serving on jury duty. So, if that
8 applies to you and you wish to be exempted, please
9 stand.

10 JUROR 45: I just had twins that are 8 months.

11 THE COURT: And your number?

12 JUROR 45: 45.

13 THE COURT: Okay. Tell me again.

14 JUROR 45: I have twins that are eight months, and
15 I have a 5-year-old. My mother is disabled, and she's
16 not able to keep all three of them.

17 THE COURT: So, normally, you have to?

18 JUROR 45: I am the primary caregiver for all
19 three.

20 THE COURT: Do you wish to be exempt?

21 JUROR 45: Yes.

22 THE COURT: Thank you for coming, you are exempt.
23 Yes, ma'am. Your number?

24 JUROR 324: I'm Juror 324. I do not wish to be
25 dismissed, but I do want to clarify the question. I

QUALIFICATION OF THE JURORS

1 have arranged to pay for my daughter to be in day care
2 this week. But I want to make sure that it doesn't go
3 past this week, because if that is the case, I wouldn't
4 be able to financially pay for an extra week.

5 THE COURT: In other words, if you're here on
6 Saturday afternoon, it's okay?

7 JUROR 324: I'm usually --

8 THE COURT: I'm informed that it should not be an
9 issue. But if it turns out for some reason, then we
10 will protect you.

11 JUROR 324: Okay. And then also, how late will we
12 go, while I have you to ask a question.

13 THE COURT: Well, that's probably a good question
14 for a lot of people. We try, generally speaking, to
15 conclude the business of the Court at 5:00 or so. It
16 always doesn't work that way. And we need, I guess,
17 jurors to let us know if it becomes an issue one day.
18 If we're sitting here at 4:00 o'clock, and it looks
19 like it's going to be a long day we'll try to let
20 jurors know that. But jurors need to let us know that
21 they have an issue. I mean, sometimes we're here a lot
22 later than 5 o'clock, but we give you a heads-up, if
23 that makes any difference.

24 JUROR 324: Okay.

25 THE COURT: Okay. Thank you.

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1 THE BAILIFF: One more, Judge.

2 THE COURT: Oh, sorry. Yes, ma'am, your number?

3 JUROR 191: 191. I have a 2-year-old son who is
4 currently with his grandfather, who works overnight.
5 So, the time issue would be an issue for me.

6 THE COURT: And tell me about your time issue.

7 JUROR 191: If it's going to run too late, he has
8 to go to work at 5 o'clock. And right now he has my
9 son, he got off work at 7:30 in the morning, so I could
10 come to jury selection. But if it's going to run too
11 late, I need to know, because it's going to be an
12 issue. He's the only one that can watch my son right
13 now.

14 THE COURT: And he has to go to work at what time?

15 JUROR 191: He generally leaves at 5:00 to go to
16 work, and he works every day.

17 THE COURT: Well, if we ended up being in this
18 room until 5:30, tomorrow let's say, then that's going
19 to cause you a problem?

20 JUROR 191: Yes, sir, it will.

21 THE COURT: Okay. That is a real possibility. I
22 don't know about tomorrow, but maybe Wednesday.

23 JUROR 191: Right.

24 THE COURT: Sometimes schedules just cause us to
25 have to work until, you know, we don't want to say

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1 11:00 at night, but sometimes it does happen. I'll
2 excuse you from jury duty. Thank you, ma'am.

3 Yes, sir, your number?

4 JUROR 77: 77. I'm fine, except for the week of
5 July the 5th. So, if anything is going to go that far,
6 then I'm in trouble.

7 THE COURT: You're in good shape.

8 JUROR 77: Okay.

9 THE COURT: If you are the primary caregiver of a
10 person who is 65 years of age or older and you are
11 unable to provide some adequate care for that person
12 while you're on juror duty, you may be exempt. A
13 similar exemption applies to those who may be the
14 primary caretakers of severely disabled individuals who
15 can't be left alone. So, if you are a caretaker for
16 such a person and you're unable to find anybody to care
17 for that individual while serving on jury duty, you may
18 be exempt. If so, please stand.

19 JUROR 63: I'm number 63, and my son is only 11,
20 but he has got Autism. And I'm a single parent, and
21 there's no one else for them to call. He's prone to
22 violent outbursts, and I have to be available for him
23 24/7, to go to his aid if he has an outburst.

24 THE COURT: And "he", this week would be --

25 JUROR 63: He's at a camp until 1:00. If they

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1 have an issue at camp, they need to be able to get
2 ahold of me. And I also need to be home at 1:00 when
3 he gets home.

4 THE COURT: Oh, it sounds to me as though jury
5 duty is not going to work for you.

6 JUROR 63: I would love to but I can't manage it
7 right now.

8 THE COURT: It doesn't sound like that. All
9 right. We'll excuse you from jury duty. Thank you,
10 ma'am.

11 JUROR 63: Thank you.

12 THE COURT: The next exemption involves those of
13 you who may be attending school or working at a school,
14 and normally we end up transferring such individuals.
15 But if you're a full-time student or working at a
16 school in some capacity and would like to be
17 transferred, please stand.

18 JUROR 277: I'm standing, Your Honor.

19 THE BAILIFF: One standing, Judge.

20 THE COURT: Thank you, sir. Yes, sir?

21 JUROR 277: Juror 277.

22 THE COURT: 277.

23 JUROR 277: I have a camp interview on Friday and
24 Saturday in Clemson. And it is the only time of the
25 year I can go. It's a one-time deal.

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1 THE COURT: Yes. We probably need to transfer
2 you. I would like to think that it won't be a problem,
3 but there's always a chance we may be here on Friday,
4 and you're saying you can't be here Friday?

5 JUROR 277: It is a job interview that I don't
6 really want to pass up.

7 THE COURT: I understand. What time of year --
8 well, I'll just transfer you. You can step down front
9 and speak to our coordinator. She will pick you
10 another time.

11 Is there any member of the jury panel who is
12 employed with the Department of Corrections or
13 penitentiary and would like to be exempted? If so,
14 please stand.

15 Is there any member of the jury panel who performs
16 services for a business, a commercial or agricultural
17 enterprise, and you are so essential to the operation
18 of that business or enterprise that if you're required
19 to serve on a jury duty that enterprise would be
20 required to close and cease functioning? If that
21 applies to you and you wish to be exempted, please
22 stand.

23 Ladies and gentlemen, that actually concludes the
24 statutory list of qualifications and exemptions. It
25 may be though, that you are qualified and no exemption

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1 applies to you. But, nevertheless, as you've already
2 heard, this turns out to be a terrible week for you,
3 and under certain circumstances we could arrange to
4 transfer you to another term. So, if anybody wishes to
5 apply for a hardship transfer, please stand.

6 Yes, your number?

7 JUROR 273: 273.

8 THE COURT: 273.

9 JUROR 273: I'm almost embarrassed to say it, but
10 my daughter is supposed to be at Spartanburg Methodist
11 College tomorrow at 3:00, and I'm the only person
12 around that can take her. My mom works, my husband is
13 a teacher at the Technical College. And I have to be
14 there -- to get her next week, Wednesday. So, I could
15 do -- I could easily do one next month, but I just --
16 that sounds so silly.

17 THE COURT: No, it isn't that. You need to be
18 there. If you'll come down forward, we'll arrange for
19 a transfer.

20 And while she's coming around, yes, sir, your
21 number?

22 JUROR 157: 157.

23 THE COURT: 157. Yes, sir?

24 JUROR 157: As previously stated, I'm the owner of
25 a ice cream wholesale distribution company. We're a

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1 small company. This time of the year, obviously, is
2 our peak season. And I'm essential to the business,
3 and it would be a hardship for me to serve this week.

4 THE COURT: December is a better time?

5 JUROR 157: That is much better.

6 THE COURT: We can arrange for a transfer. I
7 think that we have enough jurors. If you would come
8 down and speak with the coordinator.

9 And, yes, sir, your number?

10 JUROR 162: 162.

11 THE COURT: 162.

12 JUROR 162: I'm a hairdresser that gets paid
13 solely on my production. And my wife and I work
14 together, and we're the only two. So, when one of us
15 is out, it suffers as much as 70 percent of revenue.
16 So, I can plan ahead for it, and it might be a little
17 easier. But this came up so quick. And I had already
18 transferred from an earlier date. And, you know,
19 couldn't -- it's a busy time of year.

20 THE COURT: When you were transferred from an
21 earlier date, they didn't give you --

22 JUROR 162: I was here in April.

23 THE COURT: I'm sorry?

24 JUROR 162: I was here in April and had an
25 engagement that week that superseded me being here.

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1 So, I transferred to this week. And just with the 4th
2 of July holiday coming up, and the loss of work there,
3 and not being there to work this whole week. Possibly
4 one or two days is not such a problem, but the whole
5 week. My income is solely based upon production, and I
6 have some financial matters that extenuate that.

7 THE COURT: All right. What if I do this. What
8 if I protect you from a four or five-day trial, but
9 make you available for a two-day trial?

10 JUROR 162: That absolutely isn't a problem. The
11 whole week is a problem.

12 THE COURT: And, of course, it's -- there's also a
13 possibility that --

14 JUROR 162: I don't want to circumvent my civil
15 duty, but I have to pay my bills.

16 THE COURT: All right. I'll protect you from the
17 four or five-day trial, and then we'll see what else
18 happens. There's only one -- I think there's only one
19 trial scheduled for the week that might run out that
20 long.

21 JUROR 162: Okay. Thank you.

22 THE COURT: Yes, ma'am?

23 JUROR 183: Juror 183.

24 THE COURT: 183.

25 JUROR 183: I also work as a clerk for the

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1 Beaufort County Election Commission, and I'm working
2 this week with them. They're in the process of getting
3 ready for a runoff election next Tuesday. If I could
4 be transferred to another one, that would be perfect.

5 THE COURT: But not in November?

6 JUROR 183: Yes. I forgot about that. Yes. The
7 election is in November, and there's a runoff on
8 Tuesday. So I'm working in the office this week.

9 THE COURT: Okay. We can transfer you. If you
10 come down front, we can give you another date.

11 Anyone else?

12 JUROR 248: Juror 248.

13 THE COURT: 248. Yes, sir?

14 JUROR 248: So, I'm an air conditioning
15 contractor, and I would like to be transferred to maybe
16 October, November, when I'm not so busy. It is
17 supposed to be like 92 degrees for today. So I'll be
18 working till 10:00 or 11:00 tonight, if I can get off.

19 THE COURT: Phone's ringing off of the hook?

20 JUROR 248: Yes, sir.

21 THE COURT: All right. We can transfer you.

22 All right. Anyone else? Okay, thank you.

23 I need to see juror --

24 THE BAILIFF: Another one's getting ready to
25 stand, I think, Your Honor.

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1 THE COURT: Slow stander. Yes, ma'am, your
2 number?

3 JUROR 328: 328?

4 THE COURT: 328.

5 JUROR 328: And my uncle died Saturday morning,
6 and the family's been together trying to -- And so if
7 I could do, like you said for the other gentlemen, two
8 or three days, that will be fine.

9 THE COURT: You don't know when everything is
10 scheduled yet?

11 JUROR 328: The funeral is tomorrow afternoon.

12 THE COURT: Oh, it's tomorrow?

13 JUROR 328: Yes. I'm willing to serve, it's just
14 at this particular time, it would be --

15 THE COURT: All right. Let me make sure I
16 understand. You could serve on jury duty, are you
17 saying Wednesday, Thursday?

18 JUROR 328: Yes, sir.

19 THE COURT: All right. We'll do that then. We'll
20 protect you from anything between now and Wednesday
21 morning.

22 JUROR 328: Thank you so much.

23 THE COURT: Yes, ma'am.

24 JUROR 328: Do I need to come forward or --

25 THE COURT: We've got it here.

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1 JUROR 328: Do I need to come up now?

2 THE COURT: Oh, no, we're fine. If something
3 happens and somebody says, you're supposed to be
4 sitting on a jury tomorrow morning you say, whoa, whoa,
5 whoa, that other judge said --

6 JUROR 328: Okay.

7 THE COURT: Yes, ma'am?

8 JUROR 158: 158.

9 THE COURT: I'm sorry. Say it again.

10 JUROR 158: 158.

11 THE COURT: 158.

12 JUROR 158: Is there any way to be protected on
13 Wednesday, because I do have kind of an important
14 doctor's appointment?

15 THE COURT: I really couldn't hear. You say you
16 have a doctor's --

17 JUROR 158: I have a doctor's appointment on
18 Wednesday at 1:30 in the afternoon.

19 THE COURT: Hang on a second.

20 We're going to probably have to transfer you. If
21 you will come down, they will try to work something out
22 for you.

23 Now, I need to see, down front, Juror 354. And,
24 Solicitor, anyone else you need to speak with? And
25 Juror 228.

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1 How are you doing?

2 JUROR 354: Good. How are you?

3 THE COURT: Looks like you have some old real old
4 arrest.

5 JUROR 354: Yes, sir, way back.

6 THE COURT: But that appears to disqualify you
7 from serving on a jury.

8 That's almost 30 years ago or longer. That's a
9 long time ago. But it still -- it still disqualifies'
10 you though. Let me make sure that I have got it right
11 here. Aggravated assault in the '70s?

12 JUROR 354: Yes, it was a good way back.

13 THE COURT: Well, that solves your back problem.
14 You know, you may be able to get that taken off your
15 record but you'll have to contact the authorities in
16 the other state. Because this State can't do anything
17 with it. It's so old it ought to be -- it doesn't
18 automatically take care of itself, I know. All right.
19 So, you're excused.

20 JUROR 354: Thank you, sir.

21 THE COURT: Thank you for coming.

22 What has she got here? Hey, how are you doing?
23 I'm trying to make sure that I've got this right -- I
24 have got -- the computer indicates that somebody with
25 your Social Security number has some convictions. One

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1 is a --

2 JUROR 228: Your Honor, I got hearing loss, and I
3 didn't hear nothing you said, and I'm standing right
4 next to you.

5 THE COURT: Can you hear me now?

6 JUROR 228: No, sir. I couldn't hear -- I can
7 hear your voice, but I can't make out the words you're
8 saying. And sitting on the -- I had back surgery,
9 sitting on those benches, I thought I could do this.
10 And I got arthritis kicking through. And the air
11 conditioning and that bench is killing me too. I
12 thought I could do this, but I can't. Because I could
13 have got medical from my doctor.

14 THE COURT: Well, let me ask you this: Do you
15 have several convictions on your record?

16 JUROR 228: (Nods in the affirmative). You going
17 to dismiss me?

18 THE COURT: Yes, ma'am.

19 JUROR 228: Please. I appreciate that. Unless I
20 can bring a pillow to sit on or speakers everywhere
21 where I can hear.

22 THE COURT: All right. Well, I'll let you go.
23 Thank you, you're excused.

24 Got that?

25 THE CLERK: Yes, sir.

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1 THE COURT: That's all.

2 Let me see the attorneys involved in this first
3 case real quickly.

4 (Off the record discussion
5 held.)

6 THE COURT: One of the bailiffs indicated that he
7 believes that one or maybe two jurors have other issues
8 they need to bring to the attention of the Court. Does
9 any other juror have a reason that they believe that
10 they should not be serving on jury duty this week? If
11 so, please stand. Okay, this is -- I see someone
12 standing. And you're going to have to give us your
13 number.

14 JUROR 293: 293.

15 THE COURT: 293.

16 JUROR 293: If there's any way I could be
17 protected from Friday? I'm in a tennis tournament, but
18 two partners have paid to be in the tournament to play
19 with me starting on Friday.

20 THE COURT: Is this doubles?

21 JUROR 293: Women and men, mixed doubles. Oh,
22 doubles. It is not Wimbledon, I know -- I feel
23 like -- I hate to say this, but I want to be here
24 though. So I just feel badly if I'm in one of the long
25 cases.

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1 THE COURT: All right. You can serve Monday,
2 Tuesday, Wednesday and Thursday?

3 JUROR 293: Yes.

4 THE COURT: And what time on Friday?

5 JUROR 293: Morning through noon.

6 THE COURT: What time is your tournament?

7 JUROR 293: I could be placed any time after, like
8 3:00.

9 THE COURT: Friday?

10 JUROR 293: Yep. It's only because I have people
11 that paid to be in it with me.

12 THE COURT: We will protect you for Friday
13 afternoon.

14 JUROR 293: Thank you.

15 THE COURT: All right. That's what you asked me
16 for, right?

17 JUROR 293: Yes, sir.

18 THE COURT: Okay. We will do that.

19 Anyone else?

20 All right. Ladies and gentlemen, I know that some
21 of you have done this before, and some of you are
22 hoping that we would have this business of selecting
23 juries done before lunch. Unfortunately, we're not
24 going to be able to do that today.

25 We're going to recess now until 1:00. And when we

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1 come back it is our intent to try and select a jury in a
2 case that is anticipated to last three or four days. But we
3 have some matters we must take up before we can do that. I
4 know it's not convenient, and I'd like for it to be
5 different than it is, but that's just the way it is.

6 So, ladies and gentlemen, we'll be in recess until
7 1:00. Thank you so much.

8 (Prospective jurors exit the
9 courtroom at 11:45 a.m..)

10 (Lunch recess taken.)

11 THE COURT: Order, please. It's my understanding
12 that we need to take up a motion of the Defendant.

13 MR. NEWMAN: Yes, Your Honor. And I think that at
14 least part of it on one of the remedies that I'd asked
15 for, I think the State's going to do anyway, in talking
16 with the Deputy Solicitor. It's kind of an unusual
17 case. There is an indictment for a greater offense and
18 a lesser offense -- lesser included normally. And we
19 feel that the -- that they're going to have to dismiss
20 one or the other. I don't think that they can go
21 forward on both the greater and lesser, as indicted.

22 MR. THORNTON: And, Your Honor, just so we can
23 dispense with that one. I agree with Mr. Newman. The
24 Defendant was originally charged with manslaughter.
25 That charge was upgraded by me, when I was given the

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1 case to handle, to murder. However, because of all of
2 the press coverage we had Mr. Newman made a request,
3 which I did not object to, to file the murder
4 indictment under seal. Because the manslaughter
5 indictment was not under seal, and it was already out
6 there, had been publicized, I felt like it would have
7 created a lot more, frankly, media drama had I -- I
8 would have to had to nullify the voluntary
9 manslaughter. And then everybody would have been
10 calling wondering where this charge went because it was
11 dismissed, not knowing that there was a murder
12 indictment already filed.

13 I agree with him, we need to do that. We're going
14 forward on the murder. So I will go ahead and dismiss
15 the -- separate voluntary manslaughter petitions,
16 2011-GS-7-0120. The State will be electing to proceed
17 on the murder indictment, Your Honor, of
18 2014-GS-07-359. Again, that one was filed with --
19 through another circuit court judge, Your Honor,
20 through our resident judge. That one was filed under
21 seal at Mr. Newman's request. But I will have
22 dismissed that on the record, and I'll hand it up to
23 the clerk's office.

24 And if I need to I'll fill out some additional
25 paperwork, Judge, and get that signed. But I did want

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1 to place that on the record.

2 THE COURT: All right.

3 MR. THORNTON: I think that solves one of the
4 issues.

5 THE COURT: It does. Now, Mr. Newman, another
6 motion?

7 MR. NEWMAN: Yes, sir. As to the murder
8 indictment itself, we believe that that indictment is
9 not proper. That the State went to a grand jury in
10 2011 and gave sworn testimony. It would have had to
11 give sworn testimony, that there was no malice
12 aforethought was present, legal provocation existed and
13 therefore that grand jury passed on a charge of
14 voluntary manslaughter. With no change in facts on the
15 eve of what was going to be the scheduling of this
16 trial, the State sought an indictment for murder, and
17 they would have had to put evidence up that there was
18 malice aforethought, in the absence of sufficient
19 provocation in front of a different grand jury.

20 We believe that the 2011 grand jury has spoken,
21 and we move to dismiss the 2014 indictment. Because
22 one of them would have had to have been on perjured
23 testimony. And that's our motion on that.

24 THE COURT: All right. Thank you, Mr. Newman.
25 State?

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1 MR. THORNTON: Your Honor, State's position is,
2 but first of all, I understand what Mr. Newman's saying
3 that he thinks must have happened. But what happens
4 in a grand jury room is secret. We're not even in
5 there, Your Honor, unless they have a specific legal
6 question. I don't think that he has anything --
7 there's no merit that he can bring forward that
8 anything improper was done at the grand jury.

9 It is not unusual, Your Honor, for a grand jury to
10 make determinations without even asking my office for
11 any legal advice. So, there was nobody from my office
12 even in the room. Mr. Newman certainly wasn't in the
13 room. And what the grand jury did under both to the
14 original indictment, as well as the murder indictment
15 that State puts forward, Your Honor, is sufficient and
16 proper, and was properly true billed on both. I do
17 agree with Mr. Newman that we need to elect to go
18 forward on one, which the State has done.

19 MR. NEWMAN: And again, I would certainly hope
20 that the Solicitor's office did not give legal advice
21 to the grand jury, because that would be wholly
22 improper. For the Court is the only person who can
23 charge and can give legal opinions to the grand jury.
24 That, notwithstanding, that's our motion, Your Honor.

25 And then I have one awaiting ruling, I have one

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1 other motion on indictment 1.1.

2 THE COURT: I understand that motion of the
3 Defendant, the Court agrees, though, with the position
4 and argument set forth by the State, and the motion is
5 denied.

6 MR. NEWMAN: I understand, Your Honor. And on
7 indictment 1.1, that is possession of a weapon during a
8 violent crime. That indictment alleges that the
9 violent crime is voluntary manslaughter. It does not
10 allege murder. We believe that it will be confusing.
11 We also raised the issue on -- under State V. Belker,
12 that this is a case solely involving the question of
13 self-defense. Belker says that in cases of
14 self-defense, it's improper to do certain jury charges,
15 such as use of a weapon, meaning malice, if there's any
16 evidence of mitigation, lesser accountability,
17 justification of claim of self-defense.

18 We believe that in this case, that that indictment
19 will be confusing to the jury. It will lead to a
20 myriad of confusing jury charges. Obviously, the
21 Defendant cannot be convicted of that charge, unless
22 convicted of a violent crime.

23 Number one, we believe that it requires material
24 alteration of the indictment. Two, as to jury
25 confusion we are alleging that a number of violent

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1 crimes happened in this case, but they were perpetrated
2 upon the Defendant, and not the other way around. We
3 don't want the jury to get confused, as well. They
4 showed that there was an armed robbery, with pointing
5 of pistols going on. So, that's a violent crime. Mr.
6 Oates had a pistol during that, so maybe he's guilty of
7 that.

8 We think it's too confusing. We also are offering
9 a remedy, which we don't think the State would be
10 prejudiced. That is if Mr. Oates were convicted, we
11 believe we would agree to immediate bench trial in
12 front of Your Honor on that issue, using the facts that
13 Your Honor heard in the trial to make your
14 determination of guilt or innocence on that charge.

15 So, we're asking -- basically waiving a juror
16 trial on that issue, asking for a bifurcation of it.
17 We don't think that would cause the State any prejudice
18 whatsoever. There's a great risk of prejudice to the
19 Defendant. There's also a greater risk of jury
20 confusion and unnecessary jury charges. We think it
21 would streamline things a lot. And I would withdraw
22 our request for a jury trial on that, and ask the Court
23 to bifurcate that charge under the unique circumstances
24 of this case.

25 THE COURT: Thank you. Mr. Newman?

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1 MR. THORNTON: Thank you, Your Honor. First of
2 all, I'll go one at a time. It is not a material
3 operation of the indictment. Again, you know, we did
4 as much of this under seal at Mr. Newman's request that
5 I could do. In order to change the indictment,
6 literally, all you have to do is substitute the word
7 murder instead of voluntary manslaughter. The facts
8 are the same; the witnesses are going to be the same.
9 The manner is the same, i.e., a pistol.

10 So, certainly, you know, indictments are
11 notifications. Certainly, Mr. Oates is on notification
12 of what he's on trial for, Your Honor. And literally
13 all you would need to do is substitute the word murder
14 for manslaughter. He was certainly advised that the
15 State had upgraded the charge to murder. I advised the
16 victim's family that I was doing it. And then we
17 agreed to do it under seal.

18 So all that was done. Mr. Oates' previous
19 attorneys have certainly been on notice of what he has
20 been charged with. We don't feel that it's a material
21 alteration, Your Honor, of the indictment and what he's
22 been charged with.

23 Your Honor, with regard to the argument that there
24 will be jury confusion, one of the things that
25 Mr. Newman has mentioned to me, and he's mentioned now

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1 to the Court, is that somehow there will be some
2 confusion because he is alleging that -- that the
3 victim in the case was committing an armed robbery, or
4 pointing or presenting a firearm. You know, Judge, I
5 kind of debated this, whether I should take this up
6 pretrial, or whether I should just wait and see if he
7 asks the question and then deal with it then.

8 I think, as a matter of law, Mr. Newman should not
9 be allowed to accuse the victim of committing an armed
10 robbery. I've got State versus Jackson. And again,
11 this may not come up, Judge, until, you know, testimony
12 starts obviously. I want to bring it up to the Court
13 now. State versus Jackson, Your Honor, which is a 1993
14 Court of Appeals case. And that references a 1952
15 case, Your Honor. State versus Jackson is 315 South
16 Carolina and 219. I'm handing Your Honor up a copy of
17 it. I've handed Mr. Newman a copy. State versus
18 Jackson, and also, Your Honor, State versus Sweat,
19 which is a 1952 Supreme Court of South Carolina case.
20 It's 221 South Carolina and 270. I've also given
21 Mr. Newman a copy. I'm handing one up to Your Honor.

22 Here's what they say, in essence, Your Honor: You
23 can't armed rob or larceny your own property. And what
24 Mr. Newman's allegations is, is that the victim in the
25 case somehow committed an armed robbery, by demanding

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1 that the boot be removed from his van. "His" being his
2 own van. So as a matter of law you can't -- and that's
3 what Jackson said. As a legal matter, you can't steal
4 your own property.

5 So, I understand the pointing and presenting,
6 although I may debate the merits of that. I do at
7 least understand it in theory. However, I don't think
8 Mr. Newman should be allowed to allege something that
9 is a legal impossibility, which is, somehow the victim
10 in the case was committing or attempting to commit an
11 armed robbery by getting his own van back. It's a
12 legal impossibility. He wasn't even attempting -- even
13 under whatever stretch Mr. Newman wants to do with the
14 boot itself. Because he was asking, obviously, that
15 the boot belonged to Mr. Oates. He was asking that
16 that be removed.

17 So, my position would be A, he shouldn't be
18 allowed to go into it at all, Mr. Newman, be allowed to
19 go into the armed robbery aspect. And that's one of
20 his arguments is, well, it's going to create jury
21 confusion. Well, if, Your Honor, for some reason,
22 disagreed with me on those two cases and said he could
23 go into it, he's creating the confusion. So, the State
24 should not be prevented from going forward on a charge
25 to avoid confusion created by Mr. Newman, even if Your

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1 Honor did allow him to go into the armed robbery
2 aspect.

3 Finally, Your Honor, Mr. Newman brings up the
4 issue of -- actually, I think I've covered everything
5 he's covered, Judge.

6 Yes, sir. I think the State will rest on those.
7 I apologize, Judge, I think I've covered everything he
8 did.

9 MR. NEWMAN: May it please the Court, Your Honor,
10 as to these cases are absolutely inapplicable in this
11 matter. The Solicitor obviously is forgetting his own
12 facts in the case. The testimony from this
13 investigator right here was that she had -- would have
14 had, if the decedent had lived, wouldn't have probable
15 cause to arrest him for armed robbery. We have that
16 sworn testimony under oath.

17 Number two, the State keeps forgetting that
18 there's photographs of it. There were a set of keys
19 and a locking mechanism taken while at gunpoint by the
20 Defendant. The picture show -- the video shows Nelson
21 Olivera walking over to where the boot is with the
22 Defendant's keys, bending down to get the boot off the
23 car, and then taking a steel locking mechanism that
24 unlocks the boot of the car. Those were taken at
25 gunpoint from Mr. Oates. Those are Mr. Oates'

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1 property. There's a photograph, the keys on the back
2 of the flatbed of the truck where Mr. Oates never went
3 at any time after he was assaulted in the cab of the
4 van.

5 And there's, likewise, a photograph of the locking
6 mechanism that was taken from his person. It's on the
7 ground near the boot. These were all photographed by
8 law enforcement. Those were Mr. Oates' property, and
9 they were taken at gunpoint. And we need to go into
10 that. Whether he was trying to repossess -- regain, I
11 guess, not even possession of the -- I don't know what
12 he was trying to do. The decedent came out there with
13 a gun and demanded that the boot be taken off the car.

14 His brother, while the decedent had him at
15 gunpoint, snatched the keys, snatched the locking
16 mechanism. And that's the subject of the armed
17 robbery, and that's the subject of the larceny. It's
18 kind of a legal charade to say that. The object of the
19 robbery was to get my van back. That may have been the
20 object, but the property is not the van that was
21 stolen. The property is the locking mechanism and the
22 keys, that are clearly photographed away from and off
23 of the Defendant's person.

24 So, that is the larceny that's the subject of the
25 robbery, not the van. That's just a cute little legal

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1 twist that won't quite make it. Thank you, Your Honor.

2 MR. THORNTON: Your Honor, briefly, the only thing
3 I have -- the only charade would be trying to say that,
4 first of all, I haven't forgotten the facts. Mr.
5 Newman should probably look back at basic larceny,
6 because you have to -- even if you wanted to say that
7 the keys and the lock are the property of Mr. Oates,
8 and that's what the armed robbery was about. There has
9 to be some evidence of a permanent intent to deprive a
10 person. And the only purpose of any of it is to remove
11 the boot off the van. None of it was removed from the
12 scene, you know, 15, 20 feet away. I mean, it's all in
13 the photographs. And again, I realize that we may be
14 putting the cart before the horse. But since it's
15 brought up I want to go ahead and deal with it now.

16 And the other -- I'm sorry, Judge, I did forget
17 one other issue, which I apologize, Mr. Newman brought
18 up, was a bench trial on that. You know, Your Honor,
19 we think the State is entitled to go forward in front
20 of the jury on both of these charges, and that's what
21 I'll request.

22 THE COURT: The motion before me deals with the
23 possession during the commission of a violent crime;
24 Isn't that right?

25 MR. NEWMAN: That's correct.

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1 THE COURT: And whether it should be -- whether
2 the Court should quash the indictment?

3 MR. NEWMAN: No. No, sir.

4 THE COURT: The Court --

5 MR. NEWMAN: That is one motion that was based
6 on -- that is alleged is the wrong crime. That is one
7 motion that is out there. Assuming you deny that
8 motion, the Defense motion is to bifurcate.

9 THE COURT: To bifurcate?

10 MR. NEWMAN: Yes, sir.

11 THE COURT: Okay. I got lost in all of that. All
12 right. The motion to quash is denied for the reasons
13 argued by the State. Let me ask you this though,
14 Mr. Newman. Part of your argument is the jury is going
15 to be confused by the fact that the indictment is read
16 to them, or that the verdict that might be given to
17 them? Where are they going to be confused?

18 MR. NEWMAN: The -- and I also forgot the penalty
19 of kidnapping as well. The confusion that comes in is,
20 you're going to have to give a jury charge that says,
21 You can't consider indictment 121 unless you convict
22 the Defendant. Then, you're going to have the charge
23 on what possession of a weapon is, what a violent crime
24 is. And our position is, that we're going to talk
25 about violent crimes. But just on the opposite end of

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1 the spectrum. And they may become confused with that.
2 I think the easiest remedy for that is, since they
3 can't consider indictment 121 unless and until there's
4 a conviction on indictment 359, that the easiest remedy
5 to avoid confusion, to avoid this issue about violent
6 crimes and that type of thing, is to bifurcate that
7 trial.

8 We're not asking to, you know, have a second trial
9 on that and go into that. What we're saying is, if
10 he's convicted, we would consent to the Court, to avoid
11 all of these issues, to avoid extra jury charges, that
12 the Court be the finder of facts on the facts they've
13 heard in trial, and determine the guilt or innocence on
14 that particular indictment, in the event.

15 THE COURT: The violent crime that you want to
16 talk about, that you allege the facts are going to
17 show, were committed by the deceased?

18 MR. NEWMAN: Yes, sir.

19 THE COURT: Is the larceny?

20 MR. NEWMAN: No, not the larceny, but the armed
21 robbery, kidnapping, and pointing a firearm.

22 THE COURT: The armed robbery?

23 MR. NEWMAN: And the kidnapping.

24 THE COURT: Let me go back -- let's stay with the
25 robbery. I understand the armed part of it, but what

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1 about the State's argument that there is no evidence
2 that there was any intent to deprive the owner. And if
3 the owner is -- if the Defendant is the owner of that
4 property.

5 MR. NEWMAN: Well, again, you know, that may be a
6 question. I don't know where you can come up with
7 that, that's not in evidence. This investigator right
8 here testified in a court of law she would have had a
9 probable cause to arrest him for armed robbery. And
10 I've got the testimony on it. I've got the testimony
11 on it.

12 THE COURT: But let me go back to the argument of
13 the State that they just made a few minutes ago,
14 though, because there's not going to be any evidence
15 presented -- I don't -- I guess we won't know until we
16 get there. But the State argued there's no evidence
17 that there was any intent to deprive. Isn't that an
18 element?

19 MR. NEWMAN: No, I don't believe so. Because
20 would you throw out a case that -- on a directed
21 verdict, if you heard evidence, if a man walked up with
22 a gun and took property from another person and then
23 was shot to death, would -- an only accomplice -- would
24 you direct a verdict because you'd say, well, you can't
25 prove that there's no intent to permanently deprive?

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1 We don't know what their intent. When someone sticks a
2 gun in your face and demands property, I think the
3 intent can be, certainly, the property was never
4 returned to Mr. Oates.

5 THE COURT: Maybe I misinterpreted the briefs
6 submitted by both sides. But I thought that the
7 evidence was going to show that the deceased wanted the
8 keys for the purpose of unlocking the boot?

9 MR. NEWMAN: Right. And they couldn't figure out
10 how to do that, so they ordered the Defendant out of
11 the car to do it himself, and that's when the shooting
12 occurred.

13 Now, you also have the crime of kidnapping. When
14 he was ordered out of his vehicle to go take that off
15 -- and I do have case law I can bring to you that says,
16 you can't have armed robbery and kidnapping existing at
17 the same time.

18 You also have the crime of carjacking, since he
19 was ordered out of the car. So, there's plenty of
20 felonies out here to talk about. But I think that
21 would be an evidentiary finding. We don't know what
22 the intent is; what they were going to do with that
23 key. They didn't take the boot off the car. So, I
24 don't know what their intent was. Ultimately I think
25 that he came out with a gun and demanded that his car

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1 be released. I get that. But if you still take
2 something from somebody at gunpoint, it's kind of
3 disingenuous to come up with, well, we don't know if he
4 intended to permanently deprive. That's a factual
5 question.

6 But the question is whether or not a robbery
7 occurred, whether or not a kidnapping occurred, whether
8 or not a carjacking occurred, whether or not a pointing
9 -- presenting a firearm occurred. There's multiple
10 felonies that have occurred in this case.

11 THE COURT: All right. Let me hear from the State
12 on those. We didn't talk about those.

13 MR. THORNTON: Your Honor, first of all, Mr.
14 Newman keeps jumping up and down about this prior
15 transcript. First of all, the question that was
16 objected to in his original question, if you'll look at
17 his transcript, the Judge sustained our objection and
18 then allowed her to answer, because we weren't in front
19 of a jury. It is an improper question to ask an
20 officer to make a legal conclusion. It's the jury's
21 job to determine what someone may or may not be guilty
22 of.

23 And an officer, while they maybe able to say,
24 okay, well, it appears on first blush, yes, I think I
25 could have charged him. And, you know, I know he's

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1 getting out a transcript, which I'm happy for him to
2 read to Your Honor. But the original question he asked
3 when dealing with Master Sergeant Viens was objected
4 to, and our objection was sustained. And then he asked
5 it a different way.

6 And it's because it wasn't in front of a jury,
7 this was in regards to the Castle Doctrine. And, you
8 know, we let a lot more get in, because it was the
9 Judge making the determination. That was a completely
10 improper question to ask an officer, because ultimately
11 the officer doesn't decide what charge gets indicted.
12 The State -- the Solicitor's office does. And
13 ultimately it's up to a jury as to whether somebody's
14 guilty of something, or should have been charged with
15 something.

16 Moving on to the next thing, Your Honor, with
17 regard to kidnapping. If he wants to argue to the jury
18 that his guy was kidnapped, you know, Judge, that's his
19 purview. I can't tell you that -- if what his client
20 says is true, that they ordered him out of the car at
21 gunpoint, at least there's an argument. I certainly
22 dispute that factual allegation, but I understand it.
23 But I don't think that it's proper to drill law
24 enforcement about why wasn't he charged, or couldn't
25 you have charged him with that. Because that

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1 predisposes that Mr. Oates is telling the truth, which
2 the State strongly disagrees with.

3 So, the pointing and presenting a firearm, if he
4 wants to argue that, well, he ought to be looked into
5 -- the victim could have been charged with that or
6 should have been charged with that, that's his
7 argument, that's fine with regard to those two. The
8 armed robbery, I think is a legal matter he can't do,
9 even based on what his client said, which again, the
10 State has some strong feelings about. But there's been
11 no evidence that anybody did anything, even according
12 to his client, other than they wanted the boot off the
13 car, period.

14 So, with regard to the other two, my concern,
15 Judge, is that he's trying to make it a law enforcement
16 issue, as opposed to his argument to the jury on the
17 kidnapping and the pointing and presenting. If what
18 his client says is true, I at least think he has an
19 argument on those two.

20 THE COURT: All right. So, you agree then that he
21 does have the right to argue that the victim, the
22 deceased, was committing a crime?

23 MR. THORNTON: Could have been, if they disregard
24 what the other witnesses say, and believe his client
25 totally. I think he has -- I'm not trying to hamstring

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1 him, I think he has that right. But I do not think,
2 even under -- what with his client had -- the evidence
3 that we've got before us, in anyway shows anything
4 except they wanted the boot off of the car. So, I
5 certainly don't think there can be an armed robbery.

6 THE COURT: All right. Anything else, Mr. Newman?

7 MR. NEWMAN: No, sir. But I would just like to
8 read the transcript.

9 THE COURT: All right. On isolating the issue of
10 the argument about armed robbery, unless I hear more,
11 something different, I would say that he can't -- that
12 can't be argued because it's not possible under the
13 facts that I have thus far been -- have heard, I guess.
14 As to the motion to bifurcate and have a bench trial,
15 I'm going to deny that motion.

16 Anything else we need to do? All right.

17 MR. THORNTON: None before selection of the jury.

18 THE COURT: All right. We will be in recess until
19 1:00.

20 MR. THORNTON: Thank you, Your Honor.

21 THE COURT: All right.

22 (Lunch recess taken at 12:18
23 p.m.)

24

25

MOTIONS

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2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6

7 I, MONA L. MANLEY, Court Reporter, certify that I was
8 authorized to and did stenographically report the foregoing
9 proceedings and that the transcript is a true and complete
10 record of my stenographic notes.

8

9 DATED this 25th day of November, 2014.

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INDEX

1 PROCEEDINGS

2 THE COURT: Good afternoon, ladies and gentlemen.
3 Please be seated. Mr. Solicitor, you have a case to
4 call.

5 MR. THORNTON: I do, Your Honor. Have you already
6 been handed up?

7 THE COURT: I have not.

8 Do you have a copy of it?

9 MR. THORNTON: Yes, I'll get you a copy. The
10 originals are on the way.

11 Your Honor, may we approach?

12 (Pause.)

13 MR. THORNTON: Thank you, Your Honor. I'm going
14 to hand up the originals, they are up here.

15 Your Honor, the State is ready to go forward in
16 the State versus Preston Oates. Your Honor, we're
17 going for 2014-GS-7-359, for the offense of murder,
18 2011-GS-7-121, possession of a weapon during the
19 commission of a violent crime. The State is ready to
20 proceed.

21 THE COURT: The Defense ready to proceed?

22 MR. NEWMAN: Yes, Your Honor.

23 THE COURT: Ladies and gentlemen, as you've heard
24 just a moment ago, we're about to begin with selection
25 of a jury in the case of State versus Preston Ryan

JURY SELECTION

1 Oates, charged with the offense of murder, and charged
2 with possession of a weapon during the commission of a
3 violent crime. The indictments allege, in part, the
4 events in question occurred on or about December the
5 24th, 2010, and allege that the Defendant did kill and
6 murder one Carlos Olivera, O-L-I-V-E-R-A, by means of
7 shooting him.

8 I'll try to speak louder.

9 THE BAILIFF: It's not on, Your Honor.

10 THE COURT: The indictment alleges that the
11 Defendant did kill and murder one Carlos Olivera by
12 shooting him, and that he died in Beaufort County as a
13 result of this act. And the same date, the indictment
14 alleges that the Defendant did possess a weapon, or
15 displayed a weapon during the commission of a violent
16 crime, specifically the charge of murder.

17 I tell you that, ladies and gentlemen, because in
18 just a moment I'll begin asking you questions to
19 determine whether you -- whether it will be appropriate
20 for you to be selected to sit on a jury in this case.

21 But before I do that, what we're going to do is
22 ask the attorneys who are involved in the case if they
23 will stand and identify themselves to you, and identify
24 any potential witnesses that they believe may be called
25 to testify in this case. After they do all of that

JURY SELECTION

1 THE CLERK: What says the Defense?

2 MR. NEWMAN: Please swear the juror.

3 THE CLERK: Now, calling for the second alternate.

4 Juror number 421. What says the State?

5 MR. THORNTON: Please present the juror.

6 THE CLERK: What says the Defense?

7 MR. NEWMAN: Please excuse the juror.

8 THE CLERK: Juror number 21. What says the State?

9 MR. THORNTON: Please present this juror.

10 THE CLERK: What says the Defense?

11 MR. NEWMAN: Please swear the juror.

12 THE COURT: Any matters of law the Court needs to
13 consider, concerning the composition of the selection
14 of the jury from the State?

15 MR. THORNTON: None from the State, Your Honor.

16 THE COURT: Any from the Defense?

17 MR. NEWMAN: None from the Defense, Your Honor.

18 THE COURT: Ladies and gentlemen, in just a minute
19 I'm getting ready to let you go for the day. The
20 bailiff will show you to the jury room. See you in the
21 morning about 9:15. However, between now and 9:15 I'll
22 tell you this: You cannot, you may not, you shall not
23 do any research on your own. You shall not watch any
24 television coverage concerning this case. If it comes
25 on, turn it off. Can't go back and pick up old

JURY SELECTION

1 newspapers that might be sitting in your living room.
2 You can't get on the Internet to do research on it.
3 You can't call your next door neighbor and ask them
4 what they think about it.

5 You have to make a decision in this case based on
6 what happens in this courtroom, or what doesn't happen
7 in this courtroom. We'll talk more about that later
8 tomorrow. Anybody going to have a problem with being
9 here tomorrow at 9:15, in the jury room at 9:15 in the
10 morning? If there's a problem, we need to know about
11 it now.

12 THE JUROR: Your Honor, I work nights, so I don't
13 get home until almost 3:00 every morning.

14 THE COURT: What time are you getting ready to go
15 to work?

16 THE JUROR: I need to be at work now, but I'm
17 here.

18 THE COURT: I don't want you sleeping on the job
19 or sleeping while you're driving your automobile. But
20 we need you back at 9:15. Anybody else?

21 When you go home, you don't tell your spouse, your
22 friend or neighbor about the case. If you start
23 talking to them about the case, they're going to tell
24 you what they think about the case. Everybody's read
25 about the case, read something about it. Whether it's

JURY SELECTION

1 correct or not is another matter. But now, you're on
2 the jury. If they start talking to you, you tell them
3 you can't let them talk to you about the case. You're
4 going to decide the case based on what happens here.

5 Ladies and gentlemen, I'll see you in the morning.

6 (Jury is excused at 3:50.)

7 THE COURT: Now, folks, talking about the people
8 at the table. We've got another jury in this case
9 that's going to be brought. So let's back up.

10 THE COURT: Ladies and gentlemen, I've got to now
11 talk to the prospective jurors. Got some good news.
12 And the bad news for you is that Judge Mullens is
13 coming in to pick at least one jury or, or maybe two.
14 The good news and the bad news is, is that if you don't
15 get picked on a jury, you may not have to come back for
16 the rest of the week, as opposed to having to come back
17 tomorrow to come through the selection process. So, I
18 see the lawyers coming in the back of the courtroom.
19 Now, they're getting ready to set up. I don't know
20 anything about the case, can't tell you anything about
21 it, or cases. It may be plural.

22 So I'm getting ready to slip out of here and let
23 you have Judge Mullen. It's been a pleasure. You'll
24 be at ease until Judge Mullen arrives.

25 (Prospective jurors excused at 4:00 p.m.)

JURY SELECTION

1 THE COURT: If I remember from the
2 pretrial conferences on this matter, we still have a few
3 pretrial motions on matters that have to be taken up outside
4 of the presence of the jury. One of them, I believe, was a
5 matter raised by the Solicitor's office.

6 MR. THORNTON: Yes, sir, Your Honor. Just out of
7 an abundance of caution, we have several statements
8 made by the Defendant. My understanding in talking to
9 Mr. Newman is, for the purposes of your determination
10 as to voluntariness, they are going to concede that the
11 statements were done voluntarily. Again, only by the
12 standard for Your Honor to hear, not for the jury.

13 But for the normal Jackson v. Denno purposes, Your
14 Honor, I believe they are going to concede. There are
15 three statements in particular we are talking about.
16 One to Deputy Hardy on 12/24/2010. And then there was
17 a second statement to Captain Bromage 12/27/2010. And
18 another statement on the Christmas Eve, 12/24/2010, to
19 Investigators Adams and Albertin. Those would be the
20 three specifically that I am talking about, Your Honor.

21 Mr. Newman has indicated I believe that he's going
22 to concede their voluntariness for the purposes of a
23 Jackson V Denno hearing. If he does that, Judge,
24 there's no reason for me to waste the Court's time, or
25 the witness'. I would just ask the Court to find that

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1 they are freely and voluntarily made for the purposes
2 of Denno.

3 MR. NEWMAN: That is correct, Your Honor. And let
4 the record show that Mr. Oates is present at this
5 hearing. As to those statements we, for the standard
6 that the Court would have to have by the preponderance
7 of the evidence, the jury is the one who will
8 ultimately have to decide whether they are free and
9 voluntarily beyond a reasonable doubt. But for your
10 threshold purposes of admitting them in front of the
11 jury, we will concede that the statements were
12 voluntarily made, that Miranda was given. Although I
13 don't believe that Miranda was applicable. The
14 statement was given when the Defendant was not in
15 custody.

16 However we do, as to those three statements, do
17 concede for the purposes of being able to publish them
18 to the jury that they were freely and voluntarily given
19 by a preponderance of the evidence.

20 THE COURT: All right. Based on that I wouldn't
21 have any problem at all, and would so find that those
22 three statements shall be admitted without objection.
23 Those are the only three statements in question?
24 There's not a fourth statement or fifth statement that
25 we are not talking about?

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1 MR. NEWMAN: It's my understanding that they are
2 going to publish a statement made to the initial -- one
3 of the initial responding officers. Mr. Oates was
4 taken to -- voluntarily taken to a substation. There's
5 a recording of about approximately one hour, one hour
6 recording of Deputy Albertin and Adams. Three days
7 passed, they asked Mr. Oates to voluntarily come back
8 in and give a statement to Captain Bromage. Mr. Oates
9 did that.

10 That recording, likewise, is about an hour and --
11 about an hour and ten minutes. As long as the State
12 publishes -- if the State doesn't publish the entirety
13 of it, I do want to be able to publish the parts I want
14 out of it. But those are the three statements that we
15 are talking about.

16 MR. THORNTON: We are, Your Honor. And the only
17 additional thing I would bring is that Mr. Oates also
18 did a written statement. Obviously I think that would
19 come in. So, if we want to divide that up, there's
20 three recorded statements. And I believe that at the
21 end of those he did a written statement. I'm kind of
22 joining a written and oral because it was done at the
23 same time. But those are the statements correctly
24 referred to by Mr. Newman. I think that they are
25 longer than what he's referencing, but yes, sir, those

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1 are the statements we are talking about. And Mr. Oates
2 did a written statement. And we would at least like
3 to -- whether we introduce it or not, we would at least
4 like it ruled on as well.

5 MR. NEWMAN: I agree with the written statement as
6 well. Same position.

7 THE COURT: All right. So admitted. Is there
8 anything else?

9 MR. THORNTON: I believe Mr. Newman was going to
10 make the standard sequestration motion, Judge. And the
11 State has made arrangements -- I know that the Court is
12 always concerned with making sure that the witnesses
13 are ready -- able and ready to go so we are going to
14 have them lined up. Hopefully, I have been informed we
15 have two places to keep them, Judge, both close by.
16 And I will instruct all of my witnesses. I would just
17 ask that anyone -- if there's a possibility of anyone
18 that Mr. Newman might call, that he would instruct his
19 witnesses in the same fashion.

20 THE COURT: Okay. Well, let's define exactly what
21 we are talking about with the sequestration order. Are
22 we talking about not being present in the courtroom? I
23 mean, I'm sure that we are talking about that. And
24 then what happens after they -- a witness testifies?

25 MR. THORNTON: After they testify I have no

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1 objection to them staying around. I just ask that they
2 be sequestered and be cautioned not to discuss their
3 testimony, outgoing witness not to discuss the
4 testimony with incoming witnesses.

5 THE COURT: Outgoing not discuss with incoming.

6 MR. THORNTON: Your Honor, what I -- sorry, Judge.

7 THE COURT: That's okay.

8 MR. NEWMAN: But once they are done testifying, I
9 don't have any problem with them staying in the
10 courtroom. And if any -- if I call any witnesses they
11 may be the Solicitor's witnesses he's listed. I don't
12 have anybody else that would not have been on the list
13 that the Solicitor provided during jury voir dire.

14 MR. THORNTON: Thank you. Your Honor, what I will
15 do is that I tell the folks the same thing in pretty
16 much every case which is, you can talk about anything
17 that you want to talk about you just can't talk about
18 the facts of this case. You can't talk about your
19 testimony in the case or anything that you think might
20 or might not have happened in the case or in the
21 courtroom. And obviously they are not in the
22 courtroom. I only have one caveat, and I would
23 request -- I have the victim's brother and the victim's
24 widow who I would ask that they be excused from that.

25 You know, obviously, one of them -- you know, one

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1 of them is always going to be excused from that because
2 the victim is always entitled to be in here. I have
3 both -- a lot of family members. Some of them will
4 testify, some of them won't. With regard to just the
5 wife, the widow of the victim and the brother,
6 Mr. Nelson Olivera, I would ask that they be allowed to
7 remain in the courtroom for the entire time as victims.
8 I would ask the Court to grant me that. Other than
9 that I don't have anything.

10 THE COURT: Are they also witnesses?

11 MR. THORNTON: Yes, sir, both of them are also
12 witnesses.

13 THE COURT: Widow and brother?

14 MR. THORNTON: Yes, sir. Obviously, normally one
15 victim, even if they were witnesses, would be allowed
16 to sit in. My request is that I be able to let those
17 two in.

18 THE COURT: Do you have a chief investigator?

19 MR. THORNTON: I have Angela Viens, Your Honor,
20 who is our case officer. She will be in here at the
21 table with me as well. And I probably -- I wouldn't
22 put them at the table with me, Judge, the victim's
23 family, those two folks, I would put them right behind
24 me. And Angela Viens would likely be at the table with
25 me as the case officer. And Mary Concannon. And that

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1 will be it.

2 MR. NEWMAN: We don't have a problem with that,
3 Judge.

4 THE COURT: All right. That is the way that we
5 will do it then.

6 MR. THORNTON: Thank you, Your Honor.

7 THE COURT: Anything else?

8 MR. THORNTON: This is all as far as I know from
9 our pretrial conferences, Judge.

10 THE COURT: Anything else from Defense?

11 MR. NEWMAN: Just to get a thumbnail of what,
12 when, and where we will do in the morning.

13 THE COURT: Which courtroom? It is my
14 understanding --

15 MR. NEWMAN: It is my understanding, and I have
16 talked to Judge Mullen about that, due to the amount of
17 press coverage and the amount of interested people in
18 this case, we are going to be here for a good part of
19 the week, this courtroom can get a little stuffy with
20 lots of people in it. So, Judge Mullen -- I think Sean
21 and I, Deputy Solicitor Thornton and I discussed that
22 with Judge Mullen and she agreed that she will be --
23 she has I think two short, short trials, that we are
24 going to be in the larger courtroom for those reasons.

25 THE BAILIFF: It's already been settled. We will

MOTIONS

1 be there.

2 THE COURT: All right. 9:15.

3 MR. THORNTON: Yes, sir. The State will be ready
4 to go, start openings and move through. And I will
5 have the witnesses lined up too so we can get through
6 as many as possible.

7 THE COURT: Anything else?

8 MR. NEWMAN: I just ask as to unrulèd-upon and
9 contested issues that the State not go into those in
10 their opening statements.

11 MR. THORNTON: No objection, Your Honor.

12 THE COURT: Right, certainly.

13 MR. THORNTON: And as Mr. Newman knows, my
14 openings are extremely brief, Judge.

15 THE COURT: As are his.

16 MR. THORNTON: Yes, sir. I think that we both
17 like to under promise and over deliver.

18 THE COURT: All right. See you at 9:15 in the
19 morning.

20 MR. THORNTON: Thank you, Your Honor.

21 MR. NEWMAN: Thank you, Judge.

22 (Trial adjourned for the day. Proceedings
23 continued in Volume 3.)

24

25

MOTIONS

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CERTIFICATE

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4

STATE OF SOUTH CAROLINA:

5

COUNTY OF BEAUFORT:

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7

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

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DATED this 25th day of November, 2014.

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MONA L. MANLEY

Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
(850) 893-6662

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JURY INSTRUCTIONS

1 PROCEEDINGS

2 THE COURT: Good morning, ladies and gentlemen.

3 In just a few moments we will actually begin the trial
4 of this case. But before we do, I wanted to make a few
5 comments to you to tell you a few things about how we
6 may proceed in the case. As you know the Defendant in
7 this case has been charged by way of two indictments,
8 one with the crime of murder; the other with possession
9 of a firearm during the commission have a violent
10 crime. The elements of these offenses will be
11 explained to you at a later date.

12 I need to tell you, though, that the fact that the
13 Defendant was charged with these offenses, that he may
14 have been arrested, is not evidence to be considered by
15 you. These indictments are merely the vehicle that
16 brings the case into the courtroom. But once again,
17 it's not evidence to be considered by you. The
18 Defendant has pled not guilty to both of these
19 indictments. That places the burden upon the State to
20 prove his guilt to your satisfaction, beyond a
21 reasonable doubt. It will be your duty, ladies and
22 gentlemen, to determine, at the end of the trial,
23 whether or not you believe the State has met its burden
24 of proof.

25 You are the sole judges of the facts of the case.

JURY INSTRUCTIONS

1 I rule on the admissibility of evidence. I determine
2 what the law is. I tell you what the law is. But if I
3 ever do anything to cause to you to believe that I have
4 an opinion about the facts of the case, you must
5 disregard it. The law does not permit me to express an
6 opinion about the facts of the case in your presence.

7 The same law that makes you the judge of the facts
8 of the case makes me the judge of the law of the case,
9 and you must accept the law as I give it to you, even
10 though you might disagree with it or think the law
11 should be different. You must accept the law as I tell
12 you it is.

13 As I told you the other day during this trial,
14 until the trial is completely over you're not to look
15 at any TV, listen to any news reports, read any
16 articles, do any Internet searches, or permit anyone
17 else to discuss the case with you. Every now and then
18 a juror may find himself or herself in the presence of
19 people who don't realize they're jurors, and people
20 around you may be discussing the case. And if that
21 happens you need to either do one of two things, tell
22 them that they need to quit discussing the case in your
23 presence, that you're a juror, or you distance yourself
24 from that conversation.

25 From time to time you may see the attorneys ask if

JURY INSTRUCTIONS

1 they can approach, if they can have a sidebar with me.
2 The reason that we normally do that is not necessarily
3 to keep secrets from you about this case, but it is
4 because I need to discuss with the attorneys a matter
5 of law. But in doing that it may require me to discuss
6 the facts of the case with the attorneys. And as I've
7 already told you, I can't discuss the facts of the case
8 in your presence, because you determine the facts of
9 the case, uninfluenced by what I might think or what I
10 might do in this case.

11 The first thing that will happen is the attorneys
12 will probably make opening statements to you where they
13 tell you what they think the case is going to be about
14 or not about; what the evidence is going to show or not
15 show. After that typically witnesses take the witness
16 stand. They are examined and cross-examined. There
17 may be other documents or videotapes, audio tapes
18 introduced during the trial. You make your decision
19 based on all of that evidence that is presented here in
20 the courtroom, not on anything you heard or someone has
21 told you outside of the courtroom about what the facts
22 are or are not.

23 After the attorneys make their opening statements,
24 after the witnesses testify, conclude all of the
25 presentation of evidence to you, then the attorneys may

JURY INSTRUCTIONS

1 make a closing argument to you, where they try to
2 convince you to see the case the way they see it.
3 After all of that occurs, I will tell you or give you
4 the law, or tell you about the law that applies to this
5 case.

6 Then you retire to the jury room and begin your
7 deliberations. But believe it or not, up until that
8 point until all that occurs, not only can you not let
9 anybody talk to you about the case you can't talk to
10 anybody about the case, including your fellow jurors.
11 Even in the jury room. In the jury room you can talk
12 about the weather, the sports, the news, or anything
13 you want to talk about, until the case is completely
14 and finally over. Then and only then can you discuss
15 this case.

16 Ladies and gentlemen, the next thing we're going
17 to do is have the Clerk of Court administer to you your
18 oath as jurors.

19 THE CLERK: Ladies and gentlemen of the jury,
20 would you please stand and raise your right hand for
21 me.

22 Do you solemnly swear or affirm that you should
23 well and truly try and true deliverance make in the
24 case in the State of South Carolina and accused at the
25 bar, and a true verdict give according to the evidence.

STATE'S OPENING STATEMENT

1 So help you God? Please answer by saying, I do.

2 THE JURY: I do.

3 THE CLERK: You may be seated. Thank you.

4 THE COURT: Opening statements from the attorneys.

5 STATE'S OPENING STATEMENT

6 MR. THORNTON: Thank you, Your Honor. May it
7 please the Court. Good morning.

8 Christmas Eve 2010 Carlos Olivera and his family
9 went over to his brother's house, Nelson Olivera, over
10 in the Bluffton Area of Beaufort County. They went
11 over there like a lot of families do on Christmas Eve,
12 to talk about the holidays, take presents.. But at the
13 end of that night Carlos Olivera was dead, shot
14 multiple times. Shot by Preston Oates.

15 You know, ladies and gentlemen, a lot of times I'm
16 sure probably everybody in the jury box has watched
17 "Law and Order" or watched crime shows on television,
18 and this is real life, it's not television. And it's
19 always -- it always makes me a little bit nervous when
20 you see the "Law and Order" on television, and the
21 crime happens October the 5th and the trial is November
22 the 2nd. Or when you hear about these multi-week
23 trials in California that take weeks and weeks and
24 weeks. The Judge has, I think, told everybody, and you
25 all remember the large panel that we had yesterday,

STATE'S OPENING STATEMENT

1 this case is going to take a few days. It's not going
2 to take weeks, but it is a murder case. And the first
3 thing I want to ask everybody to do is, don't confuse
4 this with the fact that it's going to be a lot shorter
5 than maybe what you've seen or heard about on
6 television, that it's not important. Because it is.
7 It's important to everybody in this courtroom.

8 And the Judge has told you, and Mr. Newman may get
9 up and tell you and I'm going to tell you, sometimes
10 we're going to overlap. Anything the Judge tells you
11 about the law is the law. What Mr. Newman and I tell
12 you is not evidence. And our opening is basically my
13 chance and Mr. Newman or Mr. Colongeli, whichever one
14 gets up here and talks to you, it's our chance to tell
15 you what we think the case is about.

16 In this case, unlike a lot of cases, there are
17 some things that are really not going to be in dispute.
18 There's not going to be a dispute that Carlos Olivera
19 was killed. There's not going to be a dispute about
20 where it happened, in front of his brother Nelson's
21 house. There's not going to even be a dispute about
22 who did it. Preston Oates did it. The why, ladies and
23 gentlemen, is what's important in this case. The why
24 it happened is important. And the circumstances
25 surrounding it are what is important. And all anybody

STATE'S OPENING STATEMENT

1 really can ask you to do as you sit through this trial
2 is to pay attention to every single witness that gets
3 up there, and every piece of evidence that goes in.
4 Because that's what you have to base your decision on.
5 Not what I tell you, not what Mr. Newman tells you, not
6 what Mr. Colongeli tells you. The evidence is going to
7 come to you from that stand. There's going to be
8 several witnesses that are going to testify, there's
9 going to be video tapes played, going to be some audio
10 tapes played.

11 You're going to hear from all different kinds of
12 witnesses. I would imagine you're going to have some
13 folks that were there, eyewitnesses to the crime.
14 You're going to hear from several law enforcement
15 folks. You're going to hear from a pathologist. But
16 at the end of the day, it is you, ladies and gentlemen,
17 as the Judge told you, that have to make the decision
18 on what the facts of this case are.

19 And after we have gone through all the witnesses,
20 and after we've gone through our closing arguments,
21 what you're going to be asked to do as fair and
22 impartial jurors is go back to that room and issue a
23 verdict. And you may have heard this before, you may
24 hear it again before this trial is over. Verdict,
25 roughly translated is Latin for to speak the truth.

STATE'S OPENING STATEMENT

1 And that's all anybody can ask you as jurors to do, is
2 to go back there, evaluate all of the evidence and
3 determine what the truth is. And that's all the State
4 can ask you to do, and that's all the Defense can ask
5 you to do.

6 My request, ladies and gentlemen, is that you
7 listen to every piece of evidence and don't make any
8 determination until you've heard every single bit of
9 this case. And when the Judge sends you back there and
10 tells you it's time to deliberate, that's when you need
11 to deliberate. Because that's all anybody can ask.
12 But in this case, ladies and gentlemen, it is the why.
13 Why did Carlos Olivera have to be murdered on Christmas
14 Eve of 2010, with his family watching? That's what's
15 important.

16 Thank you.

17 THE COURT: Thank you. Solicitor?

18 MR. NEWMAN: Thank you, Your Honor.

19 DEFENSE'S OPENING STATEMENT

20 MR. NEWMAN: The Solicitor asked you why did this
21 have to happen on Christmas Eve. And the why is
22 contained right here in this box. This is Carlos
23 Olivera's Glock 27 pistol, 40 caliber, semiautomatic.
24 It was loaded with 17 rounds chambered, no safety,
25 ready to go.

DEFENSE'S OPENING STATEMENT

1 The Clerk gave you all an oath just a few minutes
2 ago, kind of old English verbiage, that you shall well
3 and truly try and true deliverance make between the
4 accused, Mr. Oates, based solely upon the evidence in
5 this case.

6 We went through lengthy voir dire yesterday,
7 asking all questions. Each one of you swore under oath
8 that you could be fair, and we believed that and we
9 seated you. That's all we ask you to do. Forget
10 anything that you might have read in the paper because
11 the paper, frankly, is notoriously wrong on so many
12 things. So you said -- you 12, and Mr. Alternates if
13 you have a chance to serve, sit in the most unique
14 position in the world right now. You will be the ones
15 to decide this case, nobody else. Not the press, not
16 Mr. Olivera's family, not Mr. Oates' family, but based
17 upon the evidence that you hear that comes from this
18 witness stand.

19 And you're going to hear it was Christmas Eve.
20 And I ask you throughout the trial to wonder why
21 somebody like Mr. Olivera would carry a pistol with him
22 on Christmas Eve to deliver presents or visit family.
23 The evidence is going to show -- you're going to see a
24 video clip. And it's disturbing, I will tell you that.
25 In a few minutes. But what you're going to see is

DEFENSE'S OPENING STATEMENT

1 you're going to see two men, that is going to be Nelson
2 Olivera and Carlos Olivera, walk very quick. The
3 reports and the deputies are going to tell you, and the
4 film is going to tell you, that Mr. Oates saw two men
5 advancing upon him, and he retreated to his truck, to
6 the cab of his truck, got in his truck and closed the
7 door. You'll see that on the video.

8 You will see that the Olivera brothers, armed,
9 approached that truck and were yelling at the tow truck
10 driver, Mr. Oates, to take the boot, placed for the
11 disabling of the device on the car prior to towing it,
12 to take it off of the car. And Mr. Nelson Olivera, who
13 was interviewed immediately after this happened says,
14 well, my brother pulled a gun on him and we wanted that
15 boot off the car and we took the keys from him.

16 He will testify markedly different today, I
17 anticipate. I anticipate in his fourth or fifth
18 version of the story could be, well, my brother started
19 to pull out a gun, and I told him, no, we don't need
20 that. And this crazy tow truck driver just came out
21 blasting.

22 But you'll hear from the statements. You'll hear
23 from the deputies who, quite frankly, left a lot of
24 stones unturned in this case. And we'll develop that
25 as the case goes on. But when you hear the full story.

DEFENSE'S OPENING STATEMENT

1 You will have as long as you need to deliberate about
2 what to do. Mr. Oates had about three seconds to
3 figure out what he was going to do when he was
4 confronted by an armed attacker and his accomplice on
5 Christmas Eve. Those will be the facts.

6 We believe that when you look at self-defense, the
7 preservation of one's own life, one to act when one is
8 attacked. The law provides for that. And the Judge
9 will charge you that, we believe, that he came to this
10 case, that Mr. Oates acted in self-defense.

11 Nobody wants to be in this courtroom. Y'all
12 probably don't want to be here, Mr. Oates doesn't, the
13 Oliveras certainly don't. But when you look at the
14 facts in this case, ask when it started. The whole
15 thing started when Carlos Olivera, unfortunately,
16 decided to settle the issue with a firearm. Thank
17 y'all.

18 THE COURT: Thank you, Mr. Newman. Solicitor, you
19 may call your first witness.

20 MR. THORNTON: Thank you, Your Honor. Melanie
21 Smith.

22 THE BAILIFF: Come forward to be sworn, please,
23 ma'am.

24 Thereupon,

25 MELANIE SMITH

WITNESS-MELANIE SMITH

1 was called as a witness, having been first duly sworn,
2 was examined and testified as follows:

3 THE WITNESS: I do.

4 THE CLERK: Please be seated and state and spell
5 your first and last name.

6 THE WITNESS: My name is Melanie Smith,
7 M-E-L-A-N-I-E S-M-I-T-H.

8 DIRECT EXAMINATION

9 BY MR. THORNTON:

10 Q Ms. Smith, I'm so used to calling you Master
11 Sergeant Smith, but you no longer have a rank; is that
12 correct?

13 A Correct.

14 Q All right. And that's because your department has
15 been shifted around a little bit?

16 A Correct.

17 Q Frankly, I'm at a loss as to what to call you now.
18 I've been calling you Master Sergeant for so long.

19 Ms. Smith, let me ask you this: What do you
20 do for the County?

21 A I'm the NCIC controller, agency coordinator, in
22 charge of all of the SLED operations, and the records
23 custodian for the 911 center.

24 Q And back in 2010, did you have that same position?

25 A Correct.

WITNESS-MELANIE SMITH

1 Q And tell us about what some of your duties are
2 with the 911 center.

3 A I respond to all requests for information and
4 recordings for freedom of information acts or
5 investigations.

6 Q And when you -- when you do this, when you respond
7 to these freedom of information acts or requests, is that
8 also requests from the Solicitor's office?

9 A Yes.

10 Q And what types of information do you maintain on
11 the 911 system?

12 A The 911 recordings, that's recordings of phone
13 calls and radio transmissions, and our CAD, which is our
14 computer aided dispatch program reports.

15 Q And did you -- were you doing that, again, on or
16 about Christmas Eve of 2010?

17 A Yes.

18 Q At my request did you pull, I believe it was about
19 fourteen 911 phone calls?

20 A Yes.

21 Q And that was associated with the case we're here
22 about today; is that correct?

23 A Correct.

24 Q And did you review, at my request, what's been
25 marked as State's Exhibit 1 for identification?

WITNESS-MELANIE SMITH

1 A Yes.

2 Q Is that some of the 911 phone calls?

3 A Yes.

4 Q Right. But it's not all of them, is it?

5 A Correct.

6 Q Okay. But it is some of the 911 calls issued on
7 December the 24th, 2010?

8 A Correct.

9 Q And have they been altered or changed in any way?

10 A No.

11 Q And just out of curiosity, how do you know the
12 disc I just handed you is, in fact, correct?

13 A Oh, my initials and dates are on it.

14 Q Was that reviewed by you at my request?

15 A Correct.

16 Q Thank you very much.

17 MR. THORNTON: Your Honor, at this time I'd move
18 State's Exhibit No. 1 into evidence.

19 MR. NEWMAN: I just want to hear it first. I
20 don't think so. I don't mind the Solicitor playing it.
21 But before they admit it I want to make sure it is what
22 it is, and then I would consent to it being admitted.
23 I mean, I don't know what's on that list.

24 THE COURT: There's no objection to you playing it
25 for the jury, as I understand it?

WITNESS-MELANIE SMITH

1 MR. NEWMAN: That's correct.

2 MR. THORNTON: Thank you, Judge.

3 Your Honor, it will take us one minute and we'll
4 get the disc loaded in.

5 THE COURT: All right.

6 MR. THORNTON: Your Honor, at this time we'll
7 publish those to the jury.

8 THE COURT: All right.

9 (Audio playing.)

10 BY MR. THORNTON:

11 Q If I could ask you a quick question: Obviously,
12 there was a caller who called in, gave an address, and then
13 at some point either hung up or was disconnected. But you
14 hear a lot of other racket in the background. Is that other
15 calls that are coming in about the same incident that are
16 going on, or other calls coming into the 911 center?

17 A It could be the same call and also different calls
18 at the same time.

19 Q Okay, thank you.

20 (Audio playing.)

21 MR. NEWMAN: Your Honor, I'm going to approach on
22 an objection that I have.

23 THE COURT: Sure.

24 (Off-the-record discussion held.)

25 MR. THORNTON: Thank you, Your Honor.

WITNESS-MELANIE SMITH

1 BY MR. THORNTON:

2 Q I almost called you Master Sergeant again.
3 Ms. Smith, other than your -- and again there were, I think,
4 there were 14 or 15 odd calls total. But other than taking
5 in that information, as custodian of the records for 911,
6 did you have any other connection to this case?

7 A No, I did not.

8 MR. THORNTON: Your Honor, the State, at this
9 time, would again move -- I know that there was an
10 objection earlier, but we will again move that State's
11 Exhibit No. 1 be moved into evidence.

12 MR. NEWMAN: I don't have any objection, subject
13 to the redaction of where we stopped.

14 MR. THORNTON: That's fine with the State, Judge.

15 THE COURT: All right. Motion granted.

16 *(Whereupon, State's Exhibit No(s). 1 marked for*
17 *identification and received in evidence.)*

18 MR. THORNTON: That's all I have for this witness.

19 BY MR. THORNTON:

20 Q Thank you very much, Ms. Smith. Answer any
21 questions Mr. Newman has.

22 THE COURT: Cross-examination?

23 MR. NEWMAN: Thank you.

24 CROSS-EXAMINATION

25

WITNESS-MELANIE SMITH

1 BY MR. NEWMAN:

2 Q Good morning, Ms. Smith, how are you?

3 Do you actually work in the 911 center, or
4 did you; were you a dispatcher at one time?

5 A Yes, I was.

6 Q Okay. And I take it you are no longer a
7 dispatcher?

8 A No, I'm not in the center, but I am still a
9 dispatcher.

10 Q But you are still a dispatcher, okay.

11 A I can still perform the duties, but I just don't
12 on a daily basis.

13 Q Okay. Once a dispatcher, always a dispatcher?

14 A Right.

15 Q All right. Very good. Now, you -- the dispatch
16 office received, I believe, about 14 calls on this, all in
17 rapid fire succession?

18 A Correct.

19 Q In fact, a lot of noise of what we heard on the
20 calls are dispatchers sitting over here talking to somebody,
21 a dispatcher here talking to somebody. And it just got real
22 noisy. You hear a lot of cross-talk and things like that;
23 is that correct?

24 A Correct.

25 Q And Mr. Oates was one of the 911 callers?

WITNESS-MELANIE SMITH

1 A Correct.

2 Q And it mentioned , but there was also at a
3 Reba Bryant who called; is that correct?

4 A I don't recall.

5 Q Okay.

6 A You have to check my records.

7 Q You're not denying that Ms. Bryant at made a
8 call?

9 A I have no information on that right now.

10 Q Okay. And each of -- as I'm listening to those
11 tapes, it took over nine minutes for the deputies to get
12 there?

13 A I would have to check the CAD report.

14 Q Okay. Would you disagree with that assessment,
15 that it took a while for the patrol deputies to respond to
16 that call?

17 A I don't have any information on that.

18 Q Okay. Who would?

19 A I would have -- if I had a copy of the CAD report,
20 I could tell you how long it took.

21 Q Okay. Do we have the CAD report? Let me see if I
22 can show it to you and see if that will refresh your
23 recollection on it.

24 A Okay.

25 Q I'm not sure if this is what you want, but just

WITNESS-MELANIE SMITH

1 take a look at it.

2 A Yes. (Witness complies.)

3 Q If you're having trouble finding it I can withdraw
4 that question and ask another.

5 A It looks like the first officer arrived at 20:40,
6 which is 8:40 p.m.

7 Q And I guess we have to look back to when the
8 dispatch, first dispatch call was made?

9 A The first call looks like it was received at
10 20:31, which is 8:31. So it looks like it took
11 approximately nine minutes.

12 Q Okay, about nine minutes?

13 A Yeah.

14 Q Thank you.

15 MR. NEWMAN: I don't have any further questions of
16 this witness, Judge.

17 MR. THORNTON: None, Your Honor. I ask that she
18 is excused, but placed on telephone standby in case we
19 need to recall her for anything.

20 MR. NEWMAN: No objection, Your Honor.

21 THE COURT: All right. You may be excused on
22 those terms and conditions. Thank you.

23 MR. THORNTON: Thank you, Judge.

24 THE COURT: Call your next witness.

25 MR. THORNTON: Yes, sir. Steve Varedi.

WITNESS- STEVEN VAREDI

1 THE COURT: Come forward to be sworn, please, sir.

2 Thereupon,

3 STEVEN VAREDI

4 was called as a witness, having been first duly sworn,

5 was examined and testified as follows::

6 THE WITNESS: I do.

7 THE CLERK: You may be seated. Please state your
8 name and spell it so the court reporter can hear it.

9 THE WITNESS: Steven Dennis Varedi, S-T-E-V-E-N
10 D-E-N-N-I-S V-A-R-E-D-I.

11 DIRECT EXAMINATION

12 BY MR. THORNTON:

13 Q Good morning, Mr. Varedi.

14 A Good morning.

15 Q Mr. Varedi, where do you live, sir?

16 A I live at .

17 Q And where is ?

18 A It is off of .

19 Q Okay. And would that be here in Beaufort County?

20 A Yes, in Beaufort County.

21 Q I'm going to show you what's been marked for
22 identification as State's Exhibit No. 3 and ask you if you
23 can identify that for me?

24 A That is my home.

25 Q All right. And in this picture, is that picture a

WITNESS- STEVEN VAREDI

1 fair and accurate picture of what your home would have
2 looked like December the 24th of 2010?

3 A Yes.

4 Q Does it look like it's been altered or changed in
5 any way?

6 A No.

7 Q All right. And are there cameras mounted at your
8 home, sir?

9 A Yes.

10 Q And are they exterior cameras or interior cameras?

11

12 A Exterior.

13 Q And can you point those out for me?

14 A One on the left-hand side here, and one above the
15 front door.

16 Q All right. One above the front door, and the
17 first one you indicated was above the garage; is that
18 correct?

19 A Yes.

20 Q All right. And were those cameras there on -- in
21 fact, does this picture appear as your house did on
22 December 24th, 2010, taken that night?

23 A Yes.

24 Q All right. And were the cameras there at that
25 time?

WITNESS- STEVEN VAREDI

1 A Yes.

2 MR. THORNTON: Your Honor, at this time I would
3 ask that State's Exhibit No. 3 be moved into evidence?

4 MR. NEWMAN: No objection.

5 THE COURT: Moved in without objection.

6 *(Whereupon, State's Exhibit No(s). 3 marked for*
7 *identification and received in evidence.)*

8 BY MR. THORNTON:

9 Q Mr. Varedi, these cameras that you have, are those
10 your typical type security cameras, that record live feed?
11 In other words, it records things as they happen; is that
12 correct?

13 A Yes, they record 24/7.

14 Q Mr. Varedi, there was a mention on some -- you
15 were not in the courtroom obviously, but there were some 911
16 calls that were played which came about Christmas Eve of
17 2010.

18 A Uh-huh. (Indicating affirmatively.)

19 Q Was there something unusual that happened at
20 your -- or near your home on December the 24th of 2010?

21 A Yes.

22 Q All right. And on that night, somewhere, we heard
23 about 8:00, 8:40 or so, 8:30 8:40 in the evening. Did you
24 have occasion to see Nelson Olivera at any time that
25 evening?

WITNESS- STEVEN VAREDI

1 A Yes, I did.

2 Q Do you know Nelson Olivera?

3 A Yes.

4 Q All right. And at -- in December of 2010 did he
5 live near you?

6 A Yes.

7 Q How close?

8 A Directly next door.

9 Q And at some point did you see the victim in this
10 case, Carlos Olivera's vehicle out in front of your home?

11 A Yes.

12 Q And what type of vehicle is it?

13 A It is just a typical minivan.

14 Q And when you were -- when you saw his -- saw
15 Carlos' vehicle out in front of your home, what did you do?

16 A I noticed it parked on the street next to -- in
17 front of my residence. And I went inside to get the keys to
18 my vehicle so I could move it over in my driveway, to make
19 room for them to park their van in my driveway.

20 Q And why did you do that?

21 A Because I know we're not allowed to park in the
22 street, and I know he always has family over. And I have
23 plenty of room in my driveway. So, I always let them park
24 if they need it.

25 Q And did you go over to tell Nelson that?

WITNESS- STEVEN VAREDI

1 A Yes.

2 Q And what happened then, sir?

3 A As I was leaving my house, after I had moved my
4 vehicle, I had gone back inside the house. And then came
5 back outside to go next door to tell them that they could
6 come park in my driveway. And as I was walking to their
7 house I noticed the tow truck pulling up.

8 Q All right. And did you -- so, you see the tow
9 truck pulling up?

10 A Uh-huh. (Indicating affirmatively.)

11 Q Did you see anybody in particular in the tow truck
12 or driving the tow truck?

13 A No.

14 Q Okay. And you just see the truck pulling up; what
15 do you do then?

16 A I just go next door -- continue to go next door
17 and knock on their door and they answered. I said, You need
18 to come move your vehicles, it's about to get towed.

19 Q All right. What did you see after that?

20 A After that we -- I walked with them out --

21 Q And when you say them, who were you walking with?

22 A It was Carlos -- I'm sorry, Nelson and Carlos.

23 Q Okay.

24 A And we walked out to the van and we noticed that
25 it had a boot on the left front wheel. And I stayed there

WITNESS- STEVEN VAREDI

1 in my driveway, basically, while Nelson and Carlos went up
2 to the tow truck driver.

3 Q Okay.

4 A And they were talking to him and having a
5 conversation, I guess. I just stood in my driveway.

6 Q Were you close enough that you heard exactly what
7 anybody was saying?

8 A No, I couldn't hear what anybody was saying.

9 Q All right. Did -- at the time did you hear any
10 shouting or screaming? Were they yelling at one another?

11 A No, I didn't hear anything like that.

12 Q Were you, like -- and forgive me for asking this,
13 but were you 1 or 2 feet away? Were you 300 feet away? Can
14 you tell about how close you were to them?

15 A I had said, While I was standing pretty much
16 directly behind the truck. So probably the length of the
17 truck, from the cab to the back of the truck. I'd say 10 to
18 15 foot.

19 Q About as close as you are to me?

20 A At least, yeah.

21 Q All right. So they go up and talk to the driver.
22 You were not right there, you're 15 feet away, according to
23 your testimony; is that correct?

24 A Yes.

25 Q What do you hear or see after that?

WITNESS- STEVEN VAREDI

1 A I don't hear anything. I see Nelson come back to
2 the van.

3 Q Okay.

4 A And he's -- he appears to have some keys. And
5 he's looking at the boot.

6 Q Okay. And is this, the boot -- is this one of
7 those boots that we talk about when something's locked on to
8 a -- locked on to a vehicle?

9 A Yes.

10 Q I'm going to show you what's been marked as
11 State's Exhibit No. 4. And forgive me, I know the picture
12 is a little bit dark. But do you recognize that photograph?

13 A Yes.

14 Q And what is that photograph of?

15 A That is the photograph of the boot device on the
16 left front wheel of the van.

17 Q All right. And by "the van"; is that Carlos' van?

18 A That is Carlos' van.

19 Q Is this an accurate depiction of how the van and
20 boot appeared on December the 24th, 2010?

21 A Yes.

22 Q Has it been altered or changed in any way?

23 A No.

24 MR. THORNTON: At this time, Judge, I'd move
25 State's Exhibit No. 4 into evidence.

WITNESS- STEVEN VAREDI

1 MR. NEWMAN: No objection.

2 THE COURT: Admitted without objection.

3 *(Whereupon, State's Exhibit No(s). 4 marked for*
4 *identification and received in evidence.)*

5 BY MR. THORNTON:

6 Q So, when you say Nelson was down there with what
7 appeared to be keys and the car was booted, what you mean is
8 that big orange thing that prevents the vehicle from moving;
9 is that correct?

10 A Correct.

11 Q That was on the, it appears to be left front
12 wheel, I believe you said; is that right?

13 A Yes.

14 Q All right. Now, Mr. Varedi, what did you do when
15 you saw Nelson approaching the vehicle with the keys. And
16 when I say "the vehicle," I mean the van. What did you do
17 then?

18 A I just stood there. And basically we observed
19 what was going on.

20 Q Now, I'm sorry to interrupt you. When you say you
21 observed what was going on, were you watching what Nelson
22 was doing at that point?

23 A Yes.

24 Q And what did it appear he was trying to do?

25 A It appeared that he was trying to get it unlocked.

WITNESS- STEVEN VAREDI

1 Q And by "it," you mean the boot?

2 A The boot, yes.

3 Q All right. And what happened after that?

4 A After that? It wasn't long, maybe a few seconds,
5 I heard gunshots. And I looked over to my right and I saw
6 Carlos falling to the ground and shots still being fired at
7 him.

8 Q Okay. And were you able to see which way, when
9 Carlos fell to the ground and was still being shot, which
10 way was -- in other words, did he land face down, face up?

11 A He was facing towards me.

12 Q Okay.

13 A So, he was falling towards my direction.

14 Q All right. And when he fell did he fall face down
15 or did he fall face up?

16 A Yes. It appeared that he fell face down.

17 Q Face down. All right. Were you at any time
18 assisting Nelson with trying to -- holding anything for him
19 or assisting him?

20 A No. I had a flashlight on me, which I just have
21 on person most of the time. And I was just looking to see
22 what was -- what was going on. But I wasn't assisting.

23 Q Okay. Did you see or hear anything after the,
24 after the shots stopped, based on what you've said, Carlos
25 falls down towards you, and he's face down. Did you hear

WITNESS- STEVEN VAREDI

1 anything or see anything after that?

2 A I believe that I pointed the flashlight towards
3 Preston and saw --

4 Q And by Preston -- I'm sorry to interrupt you, by
5 Preston, do you mean Preston Oates?

6 A Preston Oates.

7 Q And do you see Preston Oates in the courtroom?

8 A Yes.

9 Q And can you point him out for me?

10 A In the middle of the table there.

11 Q All right. Sir, go ahead.

12 A I pointed my flashlight at him and he was waving
13 the firearm around just erratically at everyone, myself
14 included. And --

15 Q And when you say firearm, do you mean a rifle, a
16 shotgun, a pistol?

17 A Handgun.

18 Q Handgun?

19 A Yes.

20 Q Go ahead, sir.

21 A I believe he told me to put the light down.

22 Q And did you hear him talking to anybody? Was he
23 on the phone?

24 A After that I believe he got on the cell phone with
25 911, or whoever he was calling.

WITNESS- STEVEN VAREDI

1 Q And did -- did you see any of the family members
2 approach Carlos or go over to Carlos?

3 A Yes, Nelson immediately ran over to Carlos as he
4 was on the ground.

5 Q Do you recall anything he was saying at the time?

6 A No. I believe that he was just yelling and, you
7 know. I don't remember exactly what was said, no.

8 Q Was he visibly upset?

9 A Yes.

10 Q And did you at some point, while you were walking
11 around, observe any guns on the ground?

12 A I did not.

13 Q Okay. I'm going to hand you something.

14 Did you give a written statement --

15 A Yes.

16 Q -- for the police. And was that given, in fact,
17 the evening that this occurred?

18 A Yes.

19 Q All right. If I gave that to you, would that
20 possible refresh your memory about whether or not you saw
21 any guns laying on the ground?

22 A Well, I did see a gun laying on the street.

23 Q Okay.

24 A Not immediately after.

25 Q I apologize for that. Sometimes lawyers ask bad

WITNESS- STEVEN VAREDI

1 questions, and that was an inartful question. So, at some
2 point during the night did you see a pistol?

3 A I did see a handgun on the ground.

4 Q Okay.

5 MR. THORNTON: Your Honor, Court's indulgence,
6 please, one moment, sir.

7 THE COURT: Certainly.

8 BY MR. THORNTON:

9 Q During the time that you were out there,
10 Mr. Varedi, were you able to observe -- you said you were
11 right at the back of the tow truck, and then very near
12 Nelson Olivera as he tried to get the boot off; is that
13 correct?

14 A Yes.

15 Q Was the tow truck blocked in, or could it have
16 been driven away?

17 A No, it was not blocked in.

18 Q Okay. So there was no -- there weren't vehicles
19 blocking him in. And there was traffic -- was there traffic
20 going by?

21 A Traffic was going by.

22 Q Okay. I have nothing further. Please answer any
23 questions Mr. Newman has.

24 CROSS-EXAMINATION

25 BY MR. NEWMAN:

WITNESS- STEVEN VAREDI

1 Q Let me make sure I get this right. Is it Varedi?

2 A Varedi, yes.

3 Q Okay. Carlos had -- you knew Carlos, correct?

4 A No, I didn't know Carlos personally. I knew that
5 he was the brother of Nelson.

6 Q Had you seen him visit Nelson's house before?

7 A Yes.

8 Q And he'd been in the neighborhood?

9 A Yes.

10 Q And in the Edgefield Community, you all live in a
11 planned urban community; is that correct?

12 A Yes.

13 Q And there are one, two -- there's several signs at
14 the entrance to the development that says, no on-street
15 parking; is that correct?

16 A At the time, I don't know.

17 Q Okay. If the police took photographs of that,
18 would you deny that there were signs that said, no on-street
19 parking and that vehicles would be towed?

20 A No.

21 Q Okay. In fact, you knew that there was no
22 on-street parking? You knew that, correct?

23 A At the time, yes.

24 Q Okay. And I'm curious, in the surveillance video
25 that you gave to the -- or surrendered to the police

WITNESS- STEVEN VAREDI

1 department you are seen, are you not, when the tow truck
2 pulls up, that you actually take the camera that is pointed
3 down on your porch and point it up so that it points up to
4 the street?

5 A I'm not aware of that.

6 Q Okay. Would you deny that happening, if I showed
7 you that in a video?

8 A If I was shown that in a video, I would not deny
9 that.

10 Q Okay. Do you know why you would have repositioned
11 the camera?

12 A I reposition them here and there. Sometimes they
13 tilt for whatever reason. I don't know why. But I
14 reposition them sometimes.

15 Q Okay. So you didn't specifically reposition the
16 camera for this event?

17 A No.

18 Q All right. But again, you would not deny if
19 that's what the video shows?

20 A If that's what the video shows, I would not deny
21 that.

22 Q Okay. And you went over to Nelson's house to tell
23 them, Y'all are fixing to get towed; is that correct?

24 A Yes.

25 Q What was Carlos' response?

WITNESS- STEVEN VAREDI

1 A I don't remember getting a response from Carlos.

2 No one really said anything. We just immediately walked out
3 towards the van.

4 Q Okay. And Nelson came with Carlos?

5 A Yes.

6 Q All right. And Nelson and Carlos advanced to the
7 cab of the tow truck; is that correct?

8 A Yes.

9 Q You did not?

10 A I did not.

11 Q All right. And Mr. Oates, during the entire time
12 prior to the gunshots, was in the cab of the van; is that
13 correct?

14 A Yes, he got out of the vehicle -- well, he got --
15 as soon as he pulled up and parked and backed up to the van.

16 Q He got out?

17 A He got out and he said, Don't move the van, and
18 got back inside the vehicle.

19 Q Okay. Was it not true that when Carlos Nelson
20 advanced upon Mr. Oates he retreated to the cab of his
21 vehicle?

22 A No. He, I believe, from what I remember is, he
23 was already in the vehicle. He never stepped foot on the
24 ground. He stayed in the cab of the vehicle, opened the
25 door and hung outside of vehicle.

WITNESS- STEVEN VAREDI

1 Q You could see the cab of the vehicle? From where
2 you were in the driveway, was not the bed of the tow truck
3 blocking your view -- the camera's view?

4 A I was in the street when he first pulled up and
5 backed up to the van.

6 Q Right.

7 A On the driver's side of the van.

8 Q Okay. When --

9 A So, I had perfect view of the left-hand side of
10 his vehicle, and had him hanging out of the vehicle with the
11 door open.

12 Q Okay. At what point -- where was Mr. Oates when
13 Carlos and Nelson advanced upon him?

14 A He was in the vehicle.

15 Q Okay. And you didn't hear any of the conversation
16 that was going on in the vehicle; is that correct?

17 A No.

18 Q All right. So, the next thing you got is, Carlos
19 and Nelson are at the cab of the tow truck, correct?

20 A Yes.

21 Q And at some point, because you can't hear the
22 conversation, Nelson comes over to the boot of the vehicle?

23 A Uh-huh. (Indicating affirmatively.)

24 Q And you hold a flashlight while he bends down and
25 apparently tries to figure out how to unlock it or do

WITNESS- STEVEN VAREDI

1 something?

2 A Uh-huh. (Indicating affirmatively.)

3 Q Did you notice whether he had a locking -- a
4 specialized mechanized locking tool also with him?

5 A No.

6 Q Okay.. And during the whole time Carlos is at the
7 door at the cab of that truck; is that correct?

8 A Yes. He had -- he had stopped to direct traffic,
9 as people were driving by.

10 Q And how many cars went by?

11 A I don't know exactly. At least two or three.

12 Q I counted two by the video.

13 A At least.

14 Q Okay. Now, did you not think it odd that Nelson
15 was trying to unlock a mechanism he was unfamiliar with?
16 Why was Nelson trying to do that?

17 MR. THORNTON: Objection, Your Honor, that would
18 call for speculation.

19 THE COURT: Sustained.

20 BY MR. NEWMAN:

21 Q What did you think at the time?

22 A I -- I don't know. I wasn't thinking about any of
23 that at the time.

24 Q Okay. And that didn't strike you odd at the time?
25 You just weren't thinking about it?

WITNESS- STEVEN VAREDI

1 A You know, I didn't know if they were Nelson's
2 keys, or -- I didn't know whose they were.

3 Q How could they be Nelson's keys?

4 A People carry keys on them. I don't know.

5 Q To unlock a boot?

6 A To unlock a lock, I guess. I don't know.

7 Q Well, Nelson didn't put the boot on the car, did
8 he?

9 A No.

10 Q Now, a neighbor of yours across the street at
11 at the time, was Reba Bryant; was that correct?

12 A Yes.

13 Q Did you know Reba?

14 A I knew that -- I knew that she was my neighbor,
15 that was it.

16 Q Okay. And she lived there since at least July?

17 A That I can't remember.

18 Q You can't remember?

19 A I can't recall that, no.

20 Q Okay. Do you recall seeing Reba going up to
21 Carlos and talking to him?

22 A The only thing I recall is seeing her standing in
23 her front yard area.

24 Q Okay. And you didn't hear her telling Carlos to
25 just call the police?

WITNESS- STEVEN VAREDI

1 A I can't recall exactly what she said, no.

2 Q Do you deny that she would have said that?

3 MR. THORNTON: Objection, Your Honor. That would
4 be hearsay anyway.

5 THE COURT: Sustained.

6 MR. NEWMAN: I was just asking within the res
7 gestae of the situation.

8 THE COURT: I sustained the objection.

9 BY MR. NEWMAN:

10 Q Do you recall telling a police investigator that
11 you did not see the actual shooting?

12 A I do not recall that, no.

13 Q Okay. Do you recall speaking to an Angela Viens,
14 this investigator back here?

15 A Yes.

16 Q And you made statements to her?

17 A I don't believe I made a statement to her. The
18 written statement I made to -- was of a uniformed officer.

19 Q All right. And you don't recall talking to her at
20 all?

21 A I remember seeing her there. And I don't remember
22 making a statement to her.

23 Q If she has notes recorded of statements
24 purportedly made by you, would you disagree that you made
25 those statements to her?

WITNESS- STEVEN VAREDI

1 A I wouldn't disagree with that.

2 Q Okay.

3 MR. NEWMAN: I think I'm done. Just one minute,
4 Your Honor, please.

5 THE COURT: Sure.

6 MR. NEWMAN: Thank you, Your Honor.

7 THE COURT: Any redirect?

8 MR. THORNTON: Just briefly, Judge.

9 Your Honor, sorry for doing this out of order,
10 we're going to go ahead and play the clips now that
11 we've both had a chance to talk to Mr. Varedi. I don't
12 think that Mr. Newman has any objection to that?

13 MR. NEWMAN: I do not, just as long as I can sit
14 over there?

15 THE COURT: You may.

16 REDIRECT EXAMINATION

17 BY MR. THORNTON:

18 Q Mr. Varedi, I'm going to hand you what's been
19 marked as State's Exhibit No. 2. Can you identify that disc
20 for me?

21 A Yes.

22 Q And did you review that disc this morning at my
23 office's request?

24 A Yes, I did.

25 Q And what is contained on that disc?

WITNESS- STEVEN VAREDI

1 A These are several video clips from two different
2 cameras from the front of my house. And two different views
3 of what happened that night.

4 Q All right. And these views, basically, you've got
5 one camera, that was the one you pointed out that's right
6 above your door. And then you've got one camera that was
7 above the garage; is that correct?

8 A Correct.

9 Q All right. Now, are these -- when you reviewed
10 them this morning, are these accurate as to the events that
11 occurred, at least as to your cameras captured them on
12 December the 24th, 2010?

13 A Yes.

14 Q Have you altered or changed them in any way, or
15 has anyone else, based on your review this morning?

16 A I have not.

17 Q All right. And are they a fair and accurate
18 depiction of what occurred that night, as captured by your
19 cameras?

20 A They are.

21 MR. THORNTON: Your Honor, at this time I'd ask
22 these be moved into evidence as State's 2. There are
23 actually multiple clips. Each camera has about a
24 ten-minute clip. I'm going to play one at Mr. Newman's
25 request. And I'm going to play one. The jury,

WITNESS- STEVEN VAREDI

1 obviously, will be free to look at additional clips if
2 they wish.

3 MR. NEWMAN: That's fine. Are you going to play
4 them in chronological order?

5 MR. THORNTON: Yes. Mr. Newman's clip would be
6 first.

7 MR. NEWMAN: Okay.

8 MR. THORNTON: Your Honor, it will take just a
9 moment to get it set up.

10 THE COURT: And as I understand it, that's without
11 objection, Mr. Newman?

12 MR. NEWMAN: That's correct, Your Honor.

13 MR. THORNTON: Judge, I'm just going to stand back
14 and let Mr. Hightower handle that. Otherwise we'll be
15 here all day.

16 *(Whereupon, State's Exhibit No(s). 2 marked for*
17 *identification and received in evidence.)*

18 MR. NEWMAN: Solicitor, as I understand it, this
19 is no audio?

20 MR. THORNTON: That's correct. This is only a
21 video.

22 BY MR. THORNTON:

23 Q Mr. Varedi, that's correct, is it not?

24 A That's correct.

25 Q Your system did not record audio, did it?

WITNESS- STEVEN VAREDI

1 A No, it does not.

2 MR. THORNTON: Your Honor, at the appropriate time
3 I will dim the lights, with the Court's permission.
4 I've had the bailiffs instruct me on how to do that
5 this morning.

6 THE COURT: That's fine.

7 MR. THORNTON: Your Honor, at this time, that's
8 what the State would publish before the jury. Again,
9 all of the clips are in evidence. If they wish to look
10 at them later, that would be within their purview.

11 THE COURT: All right.

12 (End of playing video at
13 10:50 a.m.)

14 THE COURT: All right. Ladies and gentlemen, I
15 think it's time for a mid-morning break. Let's take a
16 ten-minute recess. As you step into the jury room, I
17 remind you it's too early to begin discussing the case.

18 Thank you.

19 (Jury exits the courtroom.)

20 THE BAILIFF: Jury is clear, Your Honor.

21 THE COURT: I'm sorry to do this so quickly. The
22 bailiff indicated several of the jurors said there was
23 a very serious need for a break.

24 MR. THORNTON: Yes, sir.

25 THE COURT: Do y'all have any more of this

WITNESS- STEVEN VAREDI

1 witness?

2 MR. THORNTON: I do not of that witness, Your
3 Honor.

4 MR. NEWMAN: I don't believe so.

5 THE COURT: Okay. Any objection to him stepping
6 down?

7 MR. THORNTON: No, sir. No objection from the
8 State.

9 MR. NEWMAN: No, sir.

10 THE COURT: All right. Court will be in recess
11 for ten minutes.

12 (Jury enters the courtroom.)

13 THE BAILIFF: The jury is in, Your Honor.

14 THE COURT: Welcome back, ladies and gentlemen.

15 I believe the State is ready to call another
16 witness. Solicitor?

17 MR. THORNTON: Thank you, Your Honor. Nelson
18 Olivera.

19 Thereupon,

20 NELSON OLIVERA

21 was called as a witness, having been first duly sworn,
22 was examined and testified as follows:

23 THE WITNESS: I do.

24 THE CLERK: Please state your name and spell it to
25 Court, please.

WITNESS-NELSON OLIVERA

1 THE WITNESS: Nelson Olivera, N-E-L-S-O-N
2 O-L-I-V-E-R-A. , Bluffton.

3 DIRECT EXAMINATION

4 BY MR. THORNTON:

5 Q Mr. Olivera, sir, where did you live in December
6 of 2010?

7 A , Bluffton.

8 Q And that's in Bluffton, South Carolina?

9 A Correct.

10 Q And, Mr. Olivera, was it your -- was your voice
11 one of the voices we heard on one of the 911 calls earlier?

12 A Yes, sir.

13 Q And did you have reason to call 911 on December
14 the 24th, Christmas Eve, of 2010?

15 A Yes, I did.

16 Q Let me back up just a little bit, Mr. Olivera, and
17 ask you, do you recognize the photograph, State's
18 Exhibit No. 6 for identification?

19 A I do.

20 Q All right. And what -- what house is depicted in
21 that picture?

22 A That's my cross street neighbor house.

23 Q All right. And do you see -- do you see any
24 vehicles in this picture?

25 A Yes, I see my brother's minivan, his family

WITNESS-NELSON OLIVERA

1 minivan and the tow truck parked right in front of my
2 brother's van.

3 Q And is this picture an accurate depiction of the
4 street and your brother's van, as well as Preston Oates' tow
5 truck on December the 24th, 2010?

6 A Correct.

7 Q Has it been altered or changed in any way?

8 A No.

9 MR. THORNTON: Your Honor, at this time I'd ask
10 that State's Exhibit No. 6 be moved into evidence.

11 THE COURT: Without objection?

12 MR. NEWMAN: Without objection.

13 MR. THORNTON: Your Honor, I'm also going to ask
14 when I publish these to the jury, just for the Court's
15 information, to do it a little bit differently. I have
16 these same photographs loaded onto this television. So
17 it's a little bit easier to see some of these. I just
18 wanted to give the Court a heads-up on that, unless
19 there was some objection.

20 MR. NEWMAN: No objection.

21 THE COURT: All right.

22 *(Whereupon, State's Exhibit No(s). 6 marked for*
23 *identification and received in evidence.)*

24 BY MR. THORNTON:

25 Q All right. So, what we're going to see in just a

WITNESS-NELSON OLIVERA

1 minute, Mr. Olivera, this is the area where you lived; is
2 that correct?

3 A Correct.

4 Q At the time, in December of 2010?

5 A Yes, at that time in December 2010, that's the
6 place where I lived.

7 Q All right. In this photograph, which is the same
8 one that's on the screen, is of your brother's minivan and
9 tow truck, as they appeared on that night; is that correct?

10 A Correct.

11 Q Mr. Olivera, can you tell me about when you
12 first -- well, you may have seen your brother several times
13 that day, but when you saw your brother around 8:00, or
14 shortly thereafter, 8:00 p.m. on Christmas Eve, can you tell
15 me about that?

16 A Well, I really didn't see my brother a few days
17 after -- you know, until that day. I think I saw him like
18 the 19th of December. The of was his
19 birthday, so I call him. And that night I was really
20 surprised because around -- right before 8:00 p.m, I
21 received a phone call, this was a surprise. And he told me,
22 I'm on my way to your house with my family. I'm going to
23 drop off some presents. So, that make me happy and I say
24 come over.

25 Q Well, let me ask you this: How long -- how long

WITNESS-NELSON OLIVERA

1 had you lived in Bluffton at ?

2 A Seven years.

3 Q How many?

4 A Seven years.

5 Q All right. Before that, where did you live?

6 A I lived for 14 years in Hilton Head.

7 Q And what about before that?

8 A I live in Massachusetts, in Maynard, Massachusetts
9 for about eight months.

10 Q All right. But you've been in the Hilton Head,
11 Bluffton area for over 20 years?

12 A Till now, 23 years.

13 Q Any way, I'm sorry to make you back up like that.

14 So, you hear from Carlos after several days,
15 you were happy he's coming over, it was Christmas Eve. What
16 happens?

17 A So, I remember I was taking a shower, the
18 telephone ring, he called me. And so I told my wife, my
19 brother is coming. And I went downstairs and wait for him,
20 you know. And at that time he knocked the door and came
21 with the family. Everything was happy, we hug and talk,
22 kids were jumping and happy, you know, everything was
23 normal. It was Christmas Eve, so it was a reason to be
24 happy, you know.

25 Q Did you see -- well, let me ask you a question:

WITNESS-NELSON OLIVERA

1 Do you know Steve Varedi?

2 A Yes, Steve Varedi is my, at that time, my next
3 door neighbor.

4 Q All right. And did you see Steve Varedi that day?

5 A I didn't see him before that day.

6 Q Did you see him that night after your brother got
7 there?

8 A Yes, I saw him that night.

9 Q Tell me about what happened; did he come over to
10 your house?

11 A Well, again, my brother told me, we were talking,
12 he say, I just going to stay for, you know, a little time
13 because I have to go and visit my other relatives, which --
14 the Olivera family, just for the record, we live all in
15 Bluffton. I have three brothers and three sisters, all of
16 them married. Each one of them have their own family and
17 house. And little brother, Carlos, he was the baby. So, he
18 told me that he was planning to visit everyone at the time.

19 Q Okay. So, you have several brothers?

20 A Yes.

21 Q And Carlos was, you said he's the baby. Was he
22 the youngest?

23 A Yes, he was the youngest.

24 Q Are you the oldest?

25 A I am the oldest.

WITNESS-NELSON OLIVERA

1 Q So, Carlos, from your testimony Mr. Olivera,
2 Carlos, had come by and he told you he could only stay for a
3 little while and he has to go and visit some other folks?

4 A Yes.

5 Q All right. What happens then?

6 A Then next -- well, we were talking a little bit
7 about the future, what about jobs, what we're going to do
8 and all of that. And then somebody knocked the door. And
9 it was my next door neighbor, Mr. Varedi.

10 Q And what did Mr. Varedi come over for?

11 A Well, Mr. Varedi say, your relative -- your car
12 is, you know, almost getting -- being towed, but you can
13 park in my space, he told me. So, I told my brother, before
14 anything else happens. Let's go turn on the engine and move
15 the van to my next door neighbor. Which we went over and
16 trying to do faster.

17 Q All right. When you left your home and walked
18 outside was the -- was there already one of those boot
19 things on the van?

20 A I told my brother, turn the engine on and move the
21 van. But then he went into the car and started the engine
22 and -- but he couldn't move the van. And we noticed it was
23 an object, you know, on the boot on the tire.

24 Q Let me stop you for just a second. Is this the --
25 let me show you what's already been entered into evidence as

WITNESS-NELSON OLIVERA

1 State's Exhibit No. 4. Is that the --

2 A Yes, correct. That's the one.

3 Q So, there was this orange boot device, and
4 obviously that's designed so that you cannot drive the van
5 away?

6 A Yes. We didn't see it before. We didn't notice
7 it.

8 Q All right. When you and Carlos recognized that
9 the boot is on there, what did you do next?

10 A Well, the first thing we heard is him, the driver
11 of the tow truck saying, Don't move that van.

12 Q Now, when you say "him," the driver of the tow
13 truck; do you see that person in the courtroom?

14 A Yes.

15 Q All right. And can you point him out for me?

16 A (Pointing.)

17 Q You're pointing to the Defendant, Preston Oates;
18 is that correct?

19 A Correct.

20 Q And is that who the driver of the tow truck was
21 that you saw that evening?

22 A Yes.

23 Q All right. Go ahead.

24 A Well, he say, don't move that van. And then he
25 start -- at that time he was on the ground and then he start

WITNESS-NELSON OLIVERA

1 to walk to the car, to the tow truck cabin, and he went
2 inside the car. I don't know if he went to back up the car
3 a little or something. But I went over with my brother
4 Carlos and we tried to talk to him, almost beg him, Look,
5 it's Christmas Eve. My brother, he just coming over for
6 some little time to open present. He's leaving right now.
7 So, just give us a break, you know. There's no reason. And
8 I remember at that time people was driving by and saying,
9 It's Christmas Eve. And so at the same time my brother is
10 standing behind me. I told the driver of the tow truck, Can
11 you do something for us? Just give us a break, it's
12 Christmas Eve. But he say, I don't know if he did call
13 somebody or pretend call somebody. But he grab his
14 telephone and he say, Let me call back to my boss. And then
15 he was talking briefly and then he say, I'm sorry, I can't
16 do anything. You have to pay \$300 right now or \$400
17 tomorrow if I take it.

18 At that time I say, again, it's Christmas
19 Eve, you know, you can just let my brother go. He just
20 leaving right now. He just ignore us and he start to
21 walking again into his car, his tow truck. When he went to
22 the cabin, I was following him and tried to convince him to
23 bring him a -- to common sense. And --

24 Q Mr. Olivera, let me stop you for a second. I'm
25 sorry to interrupt you.

WITNESS-NELSON OLIVERA

1 Now, obviously there's been some talk
2 already, Mr. Newman's mentioned already. Did your brother,
3 that night, did he own a pistol?

4 A Yes.

5 Q All right.

6 A Then I later found out that he have a pistol. I
7 didn't know that he got one at the beginning.

8 Q All right. But during your conversation with
9 Mr. Oates, did you find out that your brother had a pistol
10 on him? In his waistband or something?

11 A No, no. When I was talking to the tow truck
12 driver I was standing on the board, in the step. And he got
13 the window up and I told him, you know, roll the window
14 down. Which he did it. And I almost beg him again, you
15 know, let my brother go. At that moment my brother standing
16 behind, and my brother say, he yelled, not yelled, but he
17 say, Release my car. And my brother, at that moment he -- I
18 noted that he have a pistol.

19 Q Okay. And did you see the pistol in your
20 brother's hand?

21 A Yes. And my brother got the pistol in his hand.
22 And I say, he's my little brother, and I say, Carlos, we
23 don't need that, put it away. Which he did it right away.
24 He listen to me all the time.

25 Q So -- and I'm sorry, I may have asked my question

WITNESS-NELSON OLIVERA

1 poorly before. So, during this encounter with Mr. Oates, at
2 some point you did find out and you just testified that your
3 brother did have a gun. And you saw it in his hand, and you
4 testified you told him to put it up and he put it away; is
5 that correct?

6 A Correct.

7 Q Did he point it at Mr. Oates at any time?

8 A No, never.

9 Q Once he put it up, did you ever see his gun come
10 back out?

11 A Never.

12 Q And when I say "his gun," I mean, your brother's?

13 A No.

14 Q All right. And were you still in front of him
15 talking to Mr. Oates?

16 A Yes.

17 Q All right. Please continue.

18 A So, at that time, when I turn my back, you know,
19 and I say -- I told my brother, you know, I told him,
20 Carlos, I saw him and I seen the gun in his hand. And I
21 say, Carlos, we don't need that, put it away. There's no
22 reason. It's Christmas Eve, I give you my money. He
23 listened to me. He's my little brother and he put it away.
24 Then I turned back to talk to the tow truck driver, and I
25 notice that he was moving papers and doing something, you

WITNESS-NELSON OLIVERA

1 know. And I said, what are you doing? I just -- I have --
2 what you got in your hand? And he said, Keys. And he was
3 doing this (indicating).

4 Q With a set of keys?

5 A With a set of key. And he just was moving them
6 like that. And I say, what is that; the keys for the
7 device? And I thought in mind, well, this gentleman, he
8 don't talk hick, I don't know. But give me the keys, I told
9 him, you know, I can release it. And he say, okay, here.
10 And he handed the keys to me. At that moment I thought in
11 my mind, everything is okay. He's a gentleman. He
12 understood it's Christmas Eve. And so I say, Carlos, look,
13 I got the keys. And I don't remember. But I went over to
14 the -- my brother's minivan and I tried to unlock the
15 device. Just --

16 Q Let me stop a second. Did he hand you -- was it
17 one key or it was a whole bunch of keys? Or do you
18 remember?

19 A It was about, I don't know, it was all kind of
20 keys, but different sizes. I think there were about seven
21 or ten keys.

22 Q Okay.

23 A Yes. So, I tried, you know, to open the -- I
24 never opened one of those devices. I was not familiar, but
25 I just want -- I found the lock that I have to unlock and

WITNESS-NELSON OLIVERA

1 that's it. I tried the keys and it was a little dark. So,
2 my next door neighbor, Mr. Varedi, I notice he have -- he
3 got a flashlight. And I say, Steve, come over here, bring
4 your flashlight. He came over, and I tried the keys but
5 neither one of those worked. At that moment I heard my
6 wife -- I know the car was passing by, I don't know how
7 many. But my wife was --

8 Q Let me stop you for a second, you said "the car,"
9 meaning cars were passing by on the street in the
10 neighborhood?

11 A Yes. Exactly. Cars was, you know, driving by,
12 you know, the street and passing by the -- my brother's
13 minivan and the tow truck. And I notice -- I heard my
14 brother say, let him -- tell him to pass by, to drive by.
15 So, my wife was on the back of my brother's minivan. And my
16 brother was in front of the tow truck driver directing
17 traffic, teaming with my wife. And I heard my brother say,
18 let him, tell him to pass by. At that time --

19 Q And let me stop you, just so we're clear. And
20 where were you while they were directing traffic?

21 A I'm trying to unlock the boot, on my knees.

22 Q Okay. Go ahead.

23 A When I try out every single key real quick. I
24 have some little experience because I work for this
25 maintenance company -- management company for several years,

WITNESS-NELSON OLIVERA

1 six years, and I used to be accustomed to handle a lot of
2 keys, hundreds of keys, checking apartments and opening
3 doors. So, you know, I tried the keys real quick and
4 neither one of those worked.

5 At that moment I don't recall how much time
6 had passed, but I think maybe a minute or two or maybe less.
7 But at that time my wife said, Did you open it? And I told
8 her, I think that neither one of these keys work. And when
9 I say that, I heard, you know, I thought in my mind, oh,
10 firecrackers or something. But I heard several shots. And
11 when I turned my side to see, it was my brother on the
12 ground already. So, when I saw my brother on the ground I
13 just ran to him. And I say, Carlos. I don't recall very
14 well, but he was almost face down, but like on the side, on
15 his side. I don't remember if it was the left or the right
16 side, but he was, you know, on the ground.

17 So, I start shaking him and I say, Carlos,
18 Carlos. And I see his eyes and his eyes, I didn't see no,
19 you know, movement or anything. And then I went over and
20 talked to, I told the guy, when you shoot my brother for no
21 reason? Why you did it? And then I thought --

22 Q Mr. Olivera, let me stop you for just a second.
23 Back up for me for just a minute. You said you were at the
24 van when you heard shots, you turned around. What did you
25 see? What did you see with your brother, and what did you

WITNESS-NELSON OLIVERA

1 see, if anything, with Mr. Oates?

2 A Well, I see my brother on the ground, and I just
3 ran to my brother and check if he was okay, he was all
4 right, fine. I see that he didn't move. So, real quick, I
5 notice Oates with a gun -- with a pistol in his hand, waving
6 all of it around and saying, whatever come near me, I kill
7 you, don't move.

8 So I say in my mind, I don't care if he kill
9 me. I run over -- run to him and I wanted to jump on him
10 and say, Why? Why do you kill my brother? No reason. You
11 gave me the keys, I told him. Why you did it? And he was
12 just saying bad words and saying, somebody come over near
13 me, I'm going to kill you. And he put his gun, I remember,
14 on my forehead like this. And he said, You make another
15 step, I kill you, he told me were his words. So I say,
16 Okay, kill me, like that.

17 But then I remember my brother was there, so
18 I thought my brother is still alive. So, I run to my
19 brother and I wanted to give him CPR. And I did it.

20 Q Now, Mr. Olivera, let me ask you a couple of
21 questions. Did -- was the tow truck blocked in or was it
22 able to drive away?

23 A I remember the -- the truck was able to drive away
24 every -- any moment, any time, and the engine was running.

25 Q There were no vehicles blocking it in?

WITNESS-NELSON OLIVERA

1 A No.

2 Q Did you see any of the shots? In other words -- I
3 know you turned around after you saw -- or after you heard
4 them, did you see any of the shots?

5 A I didn't see anything. I didn't see, because I
6 was focused my, you know, unlock the device. Next thing, I
7 heard the shots. I thought firecrackers. For the record,
8 we live in United States. We are naturalized United States
9 citizens, but we originally from Honduras. And I don't know
10 if you are aware of this, but the Latin countries, and
11 Christmas Eve, 12:00 midnight, people -- it's our custom,
12 it's our tradition to have firecrackers.

13 Q And is that why -- I'm sorry, go ahead.

14 A And fireworks and all kinds of things. So, when I
15 heard the sounds of these shots, I thought somebody's, you
16 know, have some firecrackers or something. But then I
17 notice it was -- my brother is on the ground. And then I
18 realized that, you know, the -- that he was wounded. And
19 when I saw him with the pistol in his hand, so I thought
20 well, hey, you know.

21 Q And let me ask you: When you saw "him" with the
22 pistol, who had the pistol in his hand?

23 A Preston Oates.

24 Q Just a couple of final questions, Mr. Olivera.

25 Did -- did you hear your brother arguing with Preston Oates

WITNESS-NELSON OLIVERA

1 or yelling at Preston Oates, right before the shots went
2 off?

3 A My brother never spoke to him, because he was my
4 little brother and, again, I am the older of seven, and all
5 my brothers and sisters respect me. And I told him, stay
6 back, Carlos, let me handle it. He never talked to Oates.

7 Q And the other -- I know you testified that your
8 brother, you saw he had his gun in his hand, you told him to
9 put it up. After that occurred, did you see your brother
10 threaten or attempt to do anything to Preston Oates at all?

11 A No.

12 MR. THORNTON: Your Honor, the Court's indulgence
13 one moment, please.

14 THE COURT: All right.

15 BY MR. THORNTON:

16 Q And, Mr. Olivera, one last question. I think I
17 already asked you this, but you were one of the voices on
18 911. So, you did call 911; is that correct?

19 A Yes.

20 MR. THORNTON: Your Honor, I don't have anything
21 further at this time.

22 BY MR. THORNTON:

23 Q Mr. Olivera, please answer any questions
24 Mr. Newman has.

25 THE COURT: Cross-examination?

WITNESS-NELSON OLIVERA

1 CROSS-EXAMINATION

2 BY MR. NEWMAN:

3 Q Good morning, Mr. Olivera.

4 A Good morning.

5 Q I don't think we've formally met. I'm Jared
6 Newman.

7 And this incident took place rather quickly,
8 did it not? Fast?

9 A Repeat the question, please.

10 Q This incident, the shooting was very quick; is
11 that correct?

12 A I believe it was a little amount of time, yes.

13 Q Okay. And you talked to the police that night
14 when they came; is that correct?

15 A Yes.

16 Q And you talked with a -- a deputy and gave him a
17 statement of what happened; is that correct?

18 A Yes.

19 Q All right. And the statement you gave was that
20 they started to argue and his brother, this is you, Nelson,
21 says, Nelson stated they started to argue and his brother
22 pulled his gun out of his waistband. Nelson advised, once
23 he saw Oates with the gun, he gave the keys to the boot so
24 he could remove it. And that Nelson stated Carlos grabbed
25 the keys and put the gun back in his pants.

WITNESS-NELSON OLIVERA

1 A Well, that is one of the reasons that I would like
2 to, you know, ask the Solicitor to have a translator here.
3 Because sometimes the Spanish language and the English
4 language is opposite. For example, you say, I want a hot
5 dog and in Spanish, you say, reverse, I want a dog hot.

6 MR. THORNTON: Pero caliente?

7 A So -- and when I say, he handed the keys, that
8 mean Preston not -- handed the keys to me, not Carlos.

9 Q Okay. Not Carlos grabbed the keys?

10 A Carlos never touched the keys. I had the keys all
11 the time. Preston Oates handed the keys to me.

12 Q Okay. Now, you lived in Edgefield for seven
13 years, correct?

14 A Correct.

15 Q There's no on-street parking in Edgefield,
16 correct?

17 A Well, that's a new rule. You know, since I live
18 there, there were several times they changing presidents and
19 board members. And at that time were no signs.

20 Q There were no signs?

21 A No.

22 Q You know for an absolute fact?

23 A Not a trace. There was no signs stating, No
24 parking on the streets.

25 Q Okay. No signs at all?

WITNESS-NELSON OLIVERA

1 A Not on the --

2 Q Okay. So there were no signs absolutely?

3 A Well, in the entrance of Edgefield there was a
4 little sign saying, you know, I think on -- the local
5 authorities are enforcing the parking and all the traffic
6 lots, something like that. But it is dark. There's no
7 lights at the entrance of Edgefield.

8 Q Okay. Because your house is very dark too?

9 A Yeah.

10 Q There's no street lights?

11 A Okay. But it's a little sign, maybe saying --
12 stating and some numbers, that the local authority, they
13 enforcing the parking. And it's about 8:00 p.m. and I don't
14 think that nobody's able to read those -- that little sign,
15 you know, at that time entrance. That's the only one.
16 There's no -- on every street a sign saying, Don't park.
17 So, somebody coming from Pennsylvania, California, whatever,
18 they have no idea they can park -- they may be looking for
19 some relative or whatever. No, no signs.

20 Q All right. Now, during this incident you have a
21 neighbor named Reba Bryan; is that correct? Or had one at
22 the time?

23 A Yes.

24 Q Lived across the street?

25 A Correct.

WITNESS-NELSON OLIVERA

1 Q . You lived at , I believe, or ?

2 A .

3 Q You're at -- Reba's -- you at , Reba at
4 and Mr. Varedi at ?

5 A Yes.

6 Q Okay. At any time did Reba come and speak with
7 you?

8 A Well, I remember the lady say, because my next
9 door neighbor had an incident before with another tow truck
10 driver who pulled a gun to my -- to her neighbor. And I
11 guess she had that glimpse, and she thought, oh, I'm going
12 to call 911. So she say, I remember she yelling and say I
13 will call 911. And -- but it was no arguing, it was no
14 fighting, it was no bad words. So I told her, you know,
15 dear lady, I don't think it's necessary to call 911, since
16 he handed the keys to me without -- there's no reason to,
17 you know, call 911 or the police or anything. Because
18 there's no reason to fight or anything. So, yes.

19 Q Okay. Didn't Ms. Bryan, in fact, tell you, why
20 don't y'all just call 911, and either you or Carlos told her
21 to go mind her own business?

22 A No, we never say that. No, we never say that.

23 Q Okay. Now, you also gave a statement and were
24 interviewed a week later -- or about a week later on January
25 1st by Sergeant Angela Viens; is that correct?

WITNESS-NELSON OLIVERA

1 A Yes.

2 Q And when you were talking with her, you were being
3 truthful?

4 A Being?

5 Q When she was asking you questions about this
6 incident and writing a police report, you were being
7 truthful with her; yes?

8 A Yes.

9 Q Okay. And you told her that your brother had a
10 concealed weapons permit, correct? Do you recall that?

11 A I know that he, my brother have a permit to carry
12 a gun.

13 Q Okay.

14 A I know that.

15 Q And you said you didn't know he had a gun on him
16 until he pulled it out during this incident?

17 A At the incident, yes.

18 Q Okay.

19 MR. NEWMAN: One moment, Your Honor. I need to
20 find something up in Preston's box.

21 (Counsel opening an exhibit.)

22 BY MR. NEWMAN:

23 Q Now, this is your brother's pistol?

24 A I didn't recognize my brother's pistol. I never
25 saw it before.

WITNESS-NELSON OLIVERA

1 Q Because you never saw this pistol before?

2 A No.

3 Q Now, when your brother carried the pistol, he
4 carried it -- I don't -- I guess he's right-handed, I'm
5 left-handed. He carried it right here?

6 A No.

7 Q Where did he pull the gun out from?

8 A In the side.

9 Q On the side?

10 A Uh-huh. (Indicating affirmatively.)

11 Q Over here?

12 A On the left side.

13 Q On the left side? Over here?

14 A Yes, but it wasn't visible.

15 Q Okay. It wasn't visible. And when he pulled it
16 out -- he pulled his pistol out, what did he do with it?

17 A I was talking to Preston Oates, so I didn't see
18 when my brother pulled the gun out. I didn't see because my
19 -- you know, I'm facing the tow truck driver, not my
20 brother, so I didn't see him. But my brother say, nobody
21 gonna take my car.

22 Q Right?

23 A So, then is when I saw, you know, and I heard a
24 noise. I heard a noise, and that noise caught my attention.

25 Q Like a ratchet?

WITNESS-NELSON OLIVERA

1 A Yeah. That noise caught my attention. And my
2 brother said, Nobody's going to take my car. So, I turned
3 real quick to him and I say, No, Carlos, don't do that. Put
4 that away. Which he listen to me, he did it real quick.

5 Q And he put it away?

6 A Yes.

7 Q Back where it was?

8 A Yes.

9 Q Talking with the tow truck driver?

10 A And then I turned back to talk to him, the tow
11 truck driver. At that moment that I saw him moving, like a
12 person he's moving some papers in the seat. And moving
13 around like looking for something.

14 Q In fact Carlos told him, There better not be any
15 paperwork on my vehicle?

16 A Well -- say again.

17 Q Didn't Carlos tell him that there better not be
18 any report or paperwork on that vehicle?

19 A No, he didn't say that.

20 Q Okay.

21 A No, he never said that.

22 Q Now, you spoke with Angela Viens on January the
23 1st of 2010 -- '11, I'm sorry -- this investigator right
24 here?

25 A Yes, sir.

WITNESS-NELSON OLIVERA

1 Q Correct? And you told her, sir, that my brother
2 pulled a gun out of his pants and demanded that the subject
3 release his car?

4 A Well, my brother say, Release my car, take that
5 thing off, nobody's going to take my car.

6 Q Right.

7 A And I say, Carlos, just let me handle it. Put the
8 gun -- put that thing away, we don't need it. And he never
9 say anything else.

10 Q Okay. And you told the investigator, Nelson
11 stated that the subject ran back to his truck, closed the
12 door and appeared very nervous, the tow truck driver?

13 A Who's the subject?

14 Q That would be Mr. Oates.

15 A Well, when we first went out and Mr. Oates say,
16 Nobody move that car, that van, my brother ask him, I
17 remember my brother asking him, Do you have any paperwork?
18 Did you have any paperwork? And Oates say, No. But my
19 brother never say, you don't have to have no paperwork or
20 you better not have any paperwork, he never said that.

21 Q No. But he did ask about paperwork?

22 A Well, yeah, I guess, Mr. Oates maybe filling out
23 like a form, any report or something, before he take a car,
24 I don't know. We are not familiar with this procedures.
25 But we know that there has to be some type of a receipt or

WITNESS-NELSON OLIVERA

1 anything, I guess. So, that's what my brother was asking.

2 Again, I used to work for a maintenance man
3 company and I used to be a on-site manager for about four
4 years for this company. And I was taking care of these
5 apartment buildings. And my boss always advised me if
6 what -- if any moment there were a car parked in an area
7 where it were not allowed, always call the police and have a
8 report from them. And after that, the same police call the
9 tow truck driver -- a tow truck company and do some
10 paperwork, and then if it's necessary, tow the car away
11 after, again, maybe three warnings or a warning or
12 something.

13 They told me, never tow a car like that, you
14 have to receive a warning, or some type of paper or
15 something, to let the owner of the car know he's breaking
16 any law, whatever. Where it's not -- I find this case, this
17 will apply to us. But it didn't happen.

18 Q Well, it's very clear your brother didn't want
19 that car towed?

20 A I don't think that anybody would be happy to have
21 his car towed.

22 Q I understand. I just want to make sure there's no
23 language barrier here, that you and I are communicating.
24 Your brother told the tow truck driver, he's not towing that
25 car?

WITNESS-NELSON OLIVERA

1 A No. We was asking him, you know, usually, we were
2 asking him, you know. After he told me, I did the talking.
3 We were almost begging him not to tow the car away because
4 it was Christmas Eve and my brother was about to go.

5 Q And you were asking Mr. Oates to release the car
6 and your brother is armed with that pistol?

7 A My brother maybe pulled the gun out of his
8 waistband maybe for three or four seconds, then he put it
9 back on.

10 Q Okay. You told this investigator on -- about a
11 week after this incident, that Nelson stated that the
12 subject ran to his truck, closed the door and appeared very
13 nervous. Were you being truthful when you told her that?

14 A Yes, but he, the tow truck driver, he was -- he
15 looked nervous. I don't know if -- we never seen him in our
16 life, but he don't look relaxed. So, he just run to his
17 car. But at that moment my brother -- I didn't know that my
18 brother have a gun.

19 Q Okay. And nothing prevented either you or your
20 brother at that point in time from just calling 911 to
21 resolve any dispute there might have been?

22 A No. Because it was no argument, it was no bad
23 words, it was no fight. So, why call 911 if there's no
24 fight, if we can talk to him without -- bring him to a
25 common sense. There's no reason, there's no violence.

WITNESS-NELSON OLIVERA

1 Q Right. And you all didn't need 911 because Carlos
2 had this?

3 A Well, you can suppose that, but, no. No, we.
4 don't -- we, again, I don't know how to explain. Maybe the
5 translator lady can explain better what I mean, because I
6 don't want you to twist the statement.

7 Q Okay. We'll get to that in a minute.

8 THE WITNESS: Gentleman, excuse me. But is there
9 any way possible that a translator can help me?

10 THE COURT: I'm sorry, I couldn't understand you.

11 THE WITNESS: Yeah. There is any way possible
12 that a translator, an interpreter can help me?

13 MR. THORNTON: I've got one here ready, Judge.

14 MR. NEWMAN: If it'll aid in getting some answers.

15 THE COURT: I think so. Do you have one?

16 MR. THORNTON: All right. Thank you, Your Honor.

17 THE COURT: We will need to have her sworn.

18 THE CLERK: Yes, sir.

19 Thereupon,

20 REBECCA MCCANN

21 was called as a translator, having been first duly sworn,
22 translated as follows.

23 THE TRANSLATOR: Yes, I do.

24 THE COURT: And your name is, for the record?

25 THE TRANSLATOR: Rebecca, R-E-B-E-C-C-A, McCann,

WITNESS-NELSON OLIVERA

1 M-C-C-A-N-N.

2 MR. THORNTON: Your Honor, just for record
3 purposes, Ms. McCann showed me her paperwork this
4 morning. Not that I didn't already know this, but she
5 is on the approved list of translators and she's got
6 her letter from the Supreme Court.

7 THE BAILIFF: She requests to sit next to him,
8 Your Honor.

9 THE COURT: Okay.
10 Okay. And you may ask your next question.

11 MR. NEWMAN: Yes, sir.

12 BY MR. NEWMAN:

13 Q You didn't need a translator any of the times
14 you've talked to the TV and radio stations; is that correct?

15 A Correct.

16 Q And you didn't feel you needed translation when
17 you were speaking with Detective Sergeant Viens?

18 A No.

19 Q All right. And you told Detective Viens that your
20 brother pulled a gun out of his pants and demanded that the
21 subject release the car?

22 A Yes. My brother said, Don't take my car away.
23 But my brother never pointed or aimed the gun at him.

24 Q Okay. And you stated to Detective Viens that
25 Mr. Oates ran to his truck, closed the door and appeared

WITNESS-NELSON OLIVERA

1 very nervous? And if you want to read it, if that helps
2 you. This line right here.

3 A Yes, it's true. But at that moment my brother had
4 not shown his pistol.

5 Q He hadn't shown his pistol yet, that would come
6 later?

7 A The driver was nervous before, but my brother
8 still hadn't shown his -- him his pistol.

9 Q Okay. When he showed him his pistol, did that
10 calm the driver down?

11 A He was in his car -- in his vehicle. He seemed
12 very nervous, moving some keys and touching some papers.
13 And in that moment -- and at that moment, that's when I was
14 talking with the driver. And that's when I heard the sound
15 of the pistol.

16 Q His brother's pistol?

17 A Yes.

18 Q Being racked?

19 A I didn't see it, but I heard the sound.

20 Q Heard it? Yes?

21 A Yes.

22 Q Okay. And Nelson stated that he thought the
23 subject was looking for his keys. That's not a question.
24 And he stated his brother still had his gun in his hand?

25 A No, I don't remember. Show me the paper that I

WITNESS-NELSON OLIVERA

1 wrote that. I haven't seen it. (In English.)

2 Q Well, I'm asking you about the -- Sergeant Viens
3 right now. Is that correct?

4 THE TRANSLATOR: Viens?

5 BY MR. NEWMAN:

6 Q Viens. I'm sorry. I apologize. That is what I'm
7 asking. He, that would be you, Nelson, stated, his brother
8 still had his gun in his hand?

9 A (In English). I never said that.

10 Q Okay. So the sergeant was incorrect when she said
11 that?

12 A (In English). Probably she misunderstood.

13 Q Okay. On the night of this incident, you gave a
14 written statement to law enforcement, correct?

15 A (In English). Yes.

16 Q And I'll show you this, dated 12/24 of '10; and
17 ask you if this is your written statement?

18 A Yes, that is, yes.

19 Q When you were giving your statement you were being
20 accurate and truthful, correct?

21 A There had -- I was in shock at that moment and
22 don't remember all of the details. And I -- but I was
23 saying something in few words.

24 Q All right. You wrote, my brother pulled his gun
25 and told him to leave the car?

WITNESS-NELSON OLIVERA

1 A Yes.

2 Q Okay. Then when the guy saw my brother with the
3 gun in his hand the guy handed the keys and said, Do it.

4 A And then he said that he had some keys in his
5 hand. No. The driver probably saw the pistol, but the
6 driver of the tow truck had some keys in his hand, and then
7 I asked him that these keys, what are they for? And he told
8 me to take off the lock, to open the lock.

9 Q Okay. Did he also give him a fork-shaped
10 mechanism?

11 A (Through the interpreter). He gave me some keys.

12 Q And did you also take a fork-shaped mechanism?

13 A (Through the interpreter). I don't remember that,
14 only the keys.

15 Q Okay. Let me show you this. This device right
16 here found by the boot.

17 A (Through the interpreter). Yes.

18 Q Okay. Y'all took that too?

19 A (Through the interpreter). I don't remember very
20 well, but perhaps.

21 Q Okay. To be clear in your testimony that you gave
22 the State, you said that you were standing on the little
23 step of the tow truck talking to the driver?

24 A Yes.

25 Q Carlos was also standing there talking to the

WITNESS-NELSON OLIVERA

1 driver; was he not?

2 A No.

3 (Through the interpreter). And Carlos was
4 behind me on the street.

5 Q Okay. So, Carlos never went up to the tow truck?

6 A (In English.) No.

7 Q And it's clear that you bent down when Mr. Varedi
8 was holding the flashlight, and you were bending down trying
9 to figure out how to unlock the device?

10 A (Through the interpreter). Yes.

11 Q That's correct?

12 A (In English.) Yes.

13 MR. NEWMAN: I believe I'm about finished. If I
14 may check with co-counsel, there may be a follow-up or
15 two. Thank you, sir.

16 Thank you, Your Honor.

17 THE COURT: Any redirect?

18 MR. THORNTON: None, Your Honor. I ask that he be
19 excused and allowed to remain in the courtroom?

20 MR. NEWMAN: No objection, sir.

21 THE COURT: Thank you. You may step down.

22 MR. THORNTON: Your Honor, may we approach?

23 THE COURT: All right.

24 (Off-the-record discussion held.)

25 MR. THORNTON: Claudia Olivera.

WITNESS-NELSON OLIVERA

1 Your Honor, I'm going to ask our translator to go
2 ahead and have a seat down in the witness box.

3 THE COURT: All right.

4 MR. THORNTON: Interpreter will be needed.

5 Thereupon,

6 CLAUDIA OLIVERA

7 was called as a witness, having been first duly sworn,
8 was examined and testified as follows:

9 WITNESS: Yes.

10 THE CLERK: Please be seated. State your name and
11 spell it for the Court.

12 THE WITNESS: My name is Claudia Olivera,
13 C-L-A-U-D-I-A O-L-I-V-E-R-A.

14 DIRECT EXAMINATION

15 BY MR. THORNTON:

16 Q Ms. Olivera, do you know Carlos -- or did you know
17 Carlos Olivera?

18 A (Through the interpreter.) Yes.

19 Q Were you related to him?

20 A (Through the interpreter.) Yes.

21 Q How?

22 A (Through the interpreter). He is my
23 brother-in-law.

24 Q And did you see Carlos on December the 24th,
25 Christmas Eve of 2010?

WITNESS- CLAUDIA OLIVERA

1 A (Through the interpreter). Yes.

2 Q Did Carlos come to visit you on Christmas Eve, you
3 and your husband Nelson?

4 A (Through the interpreter.) Yes.

5 Q Did he bring his children or his family with him?

6 A (Through the interpreter.) Yes.

7 Q Can you please tell the jury what you remember
8 from the time Carlos got there, until the end of the evening
9 on Christmas Eve, 2010?

10 A (Through the interpreter.) Yes. How shall I
11 explain this?

12 Q Start from the time Carlos got there?

13 A (Through the interpreter). My brother-in-law,
14 Carlos, arrived with his wife and their children to visit us
15 for a few minutes. And to -- to -- to give one another
16 hugs. I was in the bathroom and my -- my husband came to
17 tell me, come, come say -- come greet my brother, because he
18 has -- he will be here five minutes or so. Now, let's see.
19 I got dressed and I came down, and I greeted him -- them.
20 And they knocked on the door and -- excuse me. It was my
21 brother-in-law, Steve -- excuse me. It was my neighbor.

22 Q Let me stop you for one second, what neighbor
23 knocked on the door?

24 A Steve.

25 Q Is that Steve Varedi?

WITNESS- CLAUDIA OLIVERA

1 A (Through the interpreter). I don't know his last
2 name.

3 Q Okay. Is it your Steve that lives right next to
4 you?

5 A (Through the interpreter). Yes.

6 Q Thank you. Go ahead.

7 A (Through the interpreter). My brother-in-law and
8 Diane and I and my husband -- I went -- I went out, because
9 I didn't know what was going on. And they were taking the
10 car. And then later -- and afterwards -- and then my
11 husband came with the keys to take -- to take off the lock
12 on the car.

13 Q Right. Let me stop you for a second and ask you a
14 couple of questions.

15 When you say "they were taking the car," do
16 you mean towing the car or a tow truck was going to tow the
17 car?

18 A Yes.

19 Q And are we talking about Carlos' minivan?

20 A (Through the interpreter). Yes.

21 Q You said that you -- you testified that Nelson had
22 some keys to take off the lock?

23 A (Through the interpreter). Can you please repeat
24 that?

25 Q Yes. Earlier, a moment ago, you said -- I think

WITNESS- CLAUDIA OLIVERA

1 you said, Nelson got some keys to take off the lock; is that
2 correct?

3 A Yes. (Through the interpreter). Yes.

4 Q And did Nelson go and attempt to take off the lock
5 or the boot?

6 A (Through the interpreter). Yes, yes.

7 Q I would like to show you what's been marked as
8 Exhibit 4. Is that a picture of Carlos' van with the lock
9 on it?

10 A (Through the interpreter). Yes.

11 Q Where did -- did Nelson go over to the van to take
12 the lock off?

13 A (Through the interpreter.) Yes.

14 Q Where were you?

15 A (Through the interpreter). When my husband came
16 to take off the lock I said to him, Did you -- did he give
17 you the keys and he said, Yes. And I said, Oh, thank God.
18 And at that moment there was traffic. I was on the side --
19 on the side where they were going to take off the lock, by
20 my husband. And Steve, my neighbor, was shining the light.
21 My brother-in-law was in front of me on the other side, and
22 we were more or less like this. And I say help me, help me
23 to direct the traffic.

24 Q And when you say your brother-in-law, you mean
25 Carlos?

WITNESS- CLAUDIA OLIVERA

1 A (Through the interpreter). Yes.

2 Q Did Carlos help you direct traffic?

3 A (Through the interpreter). Yes, yes, we were, the
4 two of us.

5 Q And explain, if you can, where were you and where
6 was Carlos in relation to the tow truck?

7 A (Through the interpreter). I'm going to imagine
8 or suppose that you are Carlos.

9 Q Okay.

10 A (Through the interpreter). My husband was here,
11 trying to take off the -- to open or take off the lock. I'm
12 going to imagine that Steve was there shining the light.
13 Carlos was saying to me, Tell the cars to pass. And we were
14 like this. And we were indicating or directing the cars to
15 pass. I was waiting when he was directing the traffic. And
16 there were four or five cars on my side and some three cars
17 where he was.

18 We finished. And he came -- he came three or
19 four steps towards me, and Preston got out very, very
20 quickly, very fast. And just -- he came behind him
21 shooting. My brother-in-law put his hands on himself and he
22 fell. And he continued, Preston, followed him and he came
23 close to him to kill him.

24 I tried to hide behind the van, and I was
25 looking for my husband and -- or -- and my children and

WITNESS- CLAUDIA OLIVERA

1 others. And thank God nothing happened. I just felt my
2 back, because I thought that did to me also, and there was a
3 lot -- there was a lot of dust, and I couldn't find my
4 husband. And I thought that maybe he was dead also.

5 My husband looked like this around quickly
6 and saw his brother and he ran. And then the children were
7 out there quick at that point. And Preston pointed the gun
8 at me and at everyone, and he pointed the gun to my
9 husband's head. My husband was -- was trying -- he was
10 disconsolate, trying to help his brother.

11 I went inside with the children and the --
12 and Diane's children. And I said to my daughter -- and that
13 she call 911. I stayed with the children, I was trying to
14 get them to calm them down and tell them that everything is
15 okay, that your -- your -- your dad is fine. And I thought
16 that my brother-in-law was okay. No, no, nothing -- nothing
17 has happened to him.

18 And I tried to -- I tried to get near, but
19 Preston said -- Preston told me not to move, because he had
20 the gun, don't move or I'll shoot. And then I looked and
21 saw that there was a gun -- a pistol. And then the police
22 arrived.

23 Q All right. Let me stop you for a minute. I'm
24 sorry, and back up just a little bit and ask you a couple of
25 questions. You testified, and don't let me tell you what

WITNESS- CLAUDIA OLIVERA

1 you said. If I say it wrong, please correct me. Did you
2 see Preston Oates shoot Carlos?

3 A (Through the interpreter.) Yes.

4 Q Was Carlos facing Preston or walking away?

5 A (Through the interpreter). I don't -- I said that
6 we -- that we were directing traffic, and then he came this
7 side. And Preston got out and he shot -- he shot him from
8 behind, in his back and everything -- the shots were from
9 behind, from his back.

10 Q So, Preston shot him in the back?

11 A (Through the interpreter.), Yes, and then he fell
12 and then my brother-in-law fell. He didn't stop shooting.

13 Q Even after Carlos fell he continued to shoot; is
14 that what your testimony is?

15 A (Through the interpreter). Yes, he continued
16 shooting.

17 Q Was it just one shot or many shots?

18 A (Through the interpreter). Many, several.

19 Q Was Carlos arguing with Preston, or was he helping
20 you direct traffic?

21 A (Through the interpreter). He was just directing
22 the traffic.

23 Q Was the tow truck blocked in, or could it have
24 driven away?

25 A (Through the interpreter). The tow truck could

WITNESS- CLAUDIA OLIVERA

1 leave.

2 MR. THORNTON: The Court's indulgence, please,
3 Your Honor.

4 Your Honor, I have no further questions.

5 Ms. Olivera, please answer any questions Mr. Newman
6 and Mr. Colongeli may have.

7 THE COURT: Cross-examination?

8 MR. NEWMAN: Thank you.

9 CROSS-EXAMINATION

10 BY MR. NEWMAN:

11 Q Hello, Ms. Olivera. When Carlos came to your
12 house on Christmas Eve with his children, did you know if he
13 had this on him?

14 A (Through the interpreter.) No.

15 Q Okay. You didn't know he had it tucked in his
16 waistband?

17 A (Through the interpreter.) Can you repeat?

18 Q Yes. What I'm asking is, you didn't know that --
19 did you know that your brother had this pistol, this very
20 pistol, in his waistband when he came into your house?

21 A (Through the interpreter.) No.

22 Q Okay. As Nelson had testified, did you hear it
23 when Carlos racked this gun and put a bullet in it?

24 A (Through the interpreter.) No.

25 Q Okay. Did you see the gun when it was laying in

WITNESS- CLAUDIA OLIVERA

1 the street?

2 A (Through the interpreter). Yes.

3 Q Okay. And it was a gun that looked just like
4 this?

5 A (Through the interpreter). I don't remember, but
6 there was a gun.

7 Q All right. Do you know why Carlos had the gun on
8 Christmas Eve, with his children in your house?

9 A (Through the interpreter). No.

10 Q You do not? All right.

11 MR. NEWMAN: Thank you.

12 MR. THORNTON: No redirect, Your Honor. Thank you
13 very much, ma'am. I ask that she be excused and
14 allowed to remain if she wishes.

15 THE COURT: Without objection?

16 MR. NEWMAN: Without objection.

17 THE COURT: She may be excused but stay in the
18 courtroom if she desires.

19 (Witness leaves the stand at

20 12:26 p.m.).

21 MR. THORNTON: Dhayan Olivera.

22 THE COURT: Come forward and be sworn, please.

23 Thereupon,

24 DHAYAN OLIVERA

25 was called as a witness, having been first duly sworn,

WITNESS-DHAYAN OLIVERA

1 was examined and testified as follows:

2 WITNESS: I do.

3 THE CLERK: Please be seated. State your name and
4 spell it for the Court.

5 THE WITNESS: My name is Dhayan Olivera. That's
6 D-H-A-Y-A-N O-L-I-V-E-R-A.

7 MR. THORNTON: Your Honor, may I approach the
8 witness?

9 THE COURT: You may.

10 DIRECT EXAMINATION

11 BY MR. THORNTON:

12 Q Ms. Olivera, do you know -- forgive me, you and I
13 have talked before. You know I have to ask you some
14 probably silly questions. But do you know Carlos Olivera?

15 A Yes, I do.

16 Q And who was he to you?

17 A My husband.

18 Q And how long were you married?

19 A Sixteen years.

20 Q And were you married to Carlos Olivera on or about
21 December the 24th, Christmas Eve, of 2010?

22 A Yes.

23 Q And were you with Carlos on Christmas Eve?

24 A Yes.

25 Q Who else was with you?

WITNESS-DHAYAN OLIVERA

1 A My son, Carlos Junior, my daughter, Carla Olivera,
2 my daughter, Jessica Olivera, and our baby, Joseph Olivera.

3 Q And were all of the children with both you and
4 Carlos the Christmas Eve?

5 A Yes.

6 Q Did you at any time go over to see your
7 brother-in-law Carlos' older brother, Nelson?

8 A Yes.

9 Q And obviously, you've been in the courtroom,
10 you've heard the testimony. Were you present when Carlos
11 was killed?

12 A Yes.

13 Q Could you tell me what happened from the time that
14 you arrived at Nelson's house until the police got there?

15 A We went inside the house. We say, Merry Christmas
16 to everybody. Then Carlos and Nelson went to the kitchen to
17 talk. I stay with Claudia at the living room. Somebody
18 come and knock at the door. They told Nelson and Carlos
19 that a tow truck was going to take the van. On that time,
20 Nelson, Carlos and I went outside.

21 Q Okay. And let me ask you a question. I know you
22 said someone came to the door, did you -- did you know
23 Mr. Varedi or Steve Varedi before this?

24 A No.

25 Q Okay. Go ahead. What happened when you went

WITNESS-DHAYAN OLIVERA

1 outside?

2 A We went outside and Carlos turned on the car to
3 move it, because he was going to move it. And then he
4 couldn't. They went to talk with Preston Oates. And they
5 told him to please, let us go. We has been here for a few
6 minutes, it's Christmas Eve. And I just started to say,
7 please, it is Christmas Eve, come on, let us go.

8 At one point he say -- I didn't saw what he
9 did because he was inside the truck.

10 Q And when you say "he was inside the truck," who do
11 you mean?

12 A Preston Oates was inside his truck.

13 Q Okay.

14 A Then he say that if we wanted the van to not get
15 towed we have to pay three hundred right there, or it's
16 going to be 400 tomorrow. And then we continue to say, come
17 on, let us go, it's Christmas Eve.

18 One time a woman came outside -- outside and
19 that -- she lives in front of Nelson's house. And she say,
20 Why you don't call the police? And Carlos told her that it
21 was not necessary to call the police. She went to her
22 house. And then when I saw Claudia close to us, and the
23 kids were outside too, Carlos told me, Go tell the kids to
24 get inside, everything is fine. I went with -- to the kids
25 and told them, Get inside.

WITNESS-DHAYAN OLIVERA

1 I went back close to Carlos, and they were
2 talking. They were to yes, to please let us go. At one
3 point Carlos told me, Go say to the woman to not call the
4 police, everything is fine. He's is going to let us go. I
5 went to the lady's, I don't know her name, and I say, My
6 husband is telling me to tell you that to not call the
7 police, everything is fine. I asked to the girl and
8 talked -- I talked for, I think, one minute. And when I was
9 going to the van I saw Preston Oates come outside of his
10 van -- his car with a gun. So I say, Carlos, run. He was
11 like standing up, going to let the cars pass.

12 Q All right. Let me stop you and ask you something:
13 "Standing up letting cars pass," do you mean directing
14 traffic, or...

15 A Yes.

16 Q Okay. Go ahead.

17 A And then he looked at me and he turned his back to
18 Preston Oates and he start running. And then I just saw
19 flashing of the gun and he fall to the ground after -- after
20 you -- how do you say it -- after he shook a few times. And
21 then he walked -- Preston Oates walked to Carlos when he was
22 in the ground and continued shooting.

23 Q So, did he shoot one time or many times?

24 A Many times.

25 Q And you said from what your testimony was, he shot

WITNESS-DHAYAN OLIVERA

1 him from behind?

2 A From behind.

3 Q And that he shot him even after Carlos was down?

4 A Yes.

5 Q What happened after that?

6 A After, I run to Carlos. He was facing down so I
7 flipped him.

8 Q All right. Let me ask you something, was he --you
9 said that you flipped him; was he laying face down?

10 A Yes.

11 Q Go ahead.

12 A Then I start calling him and Preston was on one
13 side, pointing to everybody, don't come over. At one
14 point -- at one time I was so angry, I started looking for
15 Carlos' gun and he didn't have it with him. Usually he puts
16 his gun on his waist, kind of going to the back. So -- but
17 he didn't have it.

18 Q Now, let me stop you. Do you know -- did Carlos
19 have a concealed weapons permit?

20 A Yes.

21 Q And did he have it at the time?

22 A Yes.

23 Q Meaning was it valid at the time?

24 A Yes.

25 Q Okay. Go ahead.

WITNESS-DHAYAN OLIVERA

1 A So, then, Nelson, he comes over where I was. I
2 was with Carlos, and he saw him and he went and say, Why you
3 kill my brother to Preston Oates? He point his gun at him,
4 and he say --

5 Q All right. Now, let me stop you for a second. It
6 gets confusing when you say "he" and "him." So, when Nelson
7 went over and asked -- and yelled at Preston about -- go
8 ahead.

9 A Nelson asked Preston why he killed Carlos. And
10 he -- Preston Oates was telling him, Don't come over or I'm
11 going to kill you. At one point I stand up and went close
12 to Preston Oates and I yell at him, You kill him. You are
13 going to hell. He told me, Yes, Preston Oates, he told me,
14 Yes, I know I'm going to hell.

15 Q So what happened after that?

16 A The kids, that was Robertito -- Roberto Junior,
17 Carlos Junior, Carla, Ezarus, (phonetic) they were outside,
18 and there was a lot of people outside, and he was pointing
19 the gun to a lot of people, to everybody. And he was
20 saying, Don't come close or I'm going to shoot.

21 I call 911, my kids called too. Nelson
22 called too, and the police come over and that's -- that's
23 practically what I can say without crying.

24 MR. THORNTON: Your Honor, Court's indulgence,
25 please.

WITNESS-DHAYAN OLIVERA

1 THE COURT: All right.

2 MR. THORNTON: Ms. Olivera, thank you very much,
3 ma'am.

4 I have no further questions, Your Honor.

5 BY MR. THORNTON:

6 Q Please answer any questions Mr. Newman has.

7 THE COURT: Cross-examination?

8 CROSS-EXAMINATION

9 BY MR. NEWMAN:

10 Q Good afternoon, Ms. Olivera, and I'm sorry for
11 your loss?

12 A Thank you.

13 Q Do you need a translator when I ask you some
14 questions?

15 A I'm good.

16 Q Okay. If you feel you need one --

17 A I'm good.

18 Q -- just stop and tell me, okay?

19 A Okay.

20 Q Do you recognize this as Carlos' pistol?

21 A Yes.

22 Q And he usually kept it loaded?

23 A Yes.

24 Q All right. And did he keep it -- Carlos was
25 right-handed, correct?

WITNESS-DHAYAN OLIVERA

1 A Yes.

2 Q Did he keep it in his waistband?

3 A Yes, sometimes in the back.

4 Q Kind of like that?

5 A Sometimes.

6 Q Did he ever keep it up front?

7 A No.

8 Q Okay. Off to the side. And Carlos had this gun
9 on him Christmas Eve with your children?

10 A Yes.

11 Q Okay. And did you -- you didn't hear any of the
12 conversation between Mr. Oates and your husband, did you?

13 A No. My husband, he's very -- he was very
14 specific, so he -- he talks very -- he used to talk very
15 soft.

16 Q Okay. And at one point a neighbor of Nelson's,
17 Ms. Reba Bryant, came from across the street and basically
18 told Carlos, Hey, same thing happened to me a while back.
19 Just call the police, they'll take care of everything?

20 A Yes.

21 Q Okay. And Carlos told her it wasn't necessary, go
22 mind her own business?

23 A No.

24 Q Okay. Told her it wasn't necessary?

25 A He say, No, don't worry.

WITNESS-DHAYAN OLIVERA

1 Q In fact, when Ms. Bryant left he sent you over to
2 tell Ms. Bryant don't call the police?

3 A At one point when she was outside I went to put
4 the kids inside the house. When I come back I stayed over
5 there. And he tell me to go tell that woman to not call the
6 police.

7 Q Okay.

8 A So I went.

9 Q Okay. And when Carlos was on the ground and the
10 pistol was on the ground at no time did Mr. Oates attempt to
11 stop you, a neighbor, or Nelson from rendering aid to your
12 husband; is that correct?

13 A No. Because he was so busy protecting himself.

14 Q Right. But y'all were able to do what you could
15 for Carlos?

16 A I didn't know that he didn't have the gun. So I
17 run to Carlos. I didn't care if he shoot me. I just run.

18 Q And Nelson was there as well, and a neighbor came
19 as well, correct?

20 A Yes.

21 Q All right. And we heard on the 911 call that
22 folks called and asked for an ambulance. On the call, was
23 not Mr. Oates telling people to stay away from that gun that
24 was in the road?

25 A Yes, I did hear the recording.

WITNESS-DHAYAN OLIVERA

1 Q Okay.

2 MR. NEWMAN: I beg the Court's indulgence?

3 Thank you, Your Honor.

4 THE COURT: Any redirect?

5 MR. THORNTON: None, Your Honor. I'd ask that she
6 be excused. She needs to go check on her kids.

7 MR. NEWMAN: No objection.

8 THE COURT: You may be excused.

9 A Thank you.

10 THE COURT: Short witness or not, before lunch?

11 MS. CONCANNON: I think we can get through two
12 short witnesses before lunch.

13 THE COURT: Okay.

14 MS. CONCANNON: Thank you, Your Honor. State
15 calls Elizabeth Reyes.

16 THE COURT: Please come forward to be sworn.

17 Thereupon,

18 ELIZABETH REYES SORTO

19 was called as a witness, having been first duly sworn,
20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. CONCANNON:

23 Q Could you state your name and spell it for the
24 Court?

25 A Elizabeth Reyes Sorto. Elizabeth,

WITNESS- ELIZABETH REYES SORTO

1 E-L-I-Z-A-B-E-T-H, Reyes, R-E-Y-E-S, Sorto S-O-R-T-O.

2 Q Thank you. Good afternoon, Ms. Sorto. Where do
3 you currently live?

4 A I live at

5 Q And did you live at on Christmas
6 Eve of 2010?

7 A I did.

8 Q Okay. Do you remember Christmas Eve of 2010?

9 A I do.

10 Q Does something stand out about that night in your
11 mind?

12 A Yes. It was very traumatic experience. I had
13 never experienced before.

14 Q Okay. Could you go into what you remember from
15 that night?

16 A I -- me and my family --

17 THE COURT: Let me interrupt you just one minute.
18 I need to ask both of you that you would try to raise
19 your level a little bit more of your voices. And maybe
20 if you get closer to the microphone.

21 MS. CONCANNON: I'll project, Your Honor. Thank
22 you. My apologies.

23 A On that night me and my family came back home from
24 eating dinner and we witnessed some arguments going that
25 night. There was a tow truck, a van, and just a lot of

WITNESS- ELIZABETH REYES. SORTO

1 people outside yelling. They were pleading saying something
2 about a boot. Please take it out. It's Christmas Eve.
3 They were just some of the guys, there were flights --
4 lights, I'm sorry -- flashing on the tow truck. So I
5 couldn't really see all the faces. But we knew some of the
6 neighbors there, so I knew they were there. One of the guys
7 was pleading, and then there was a lady coming out from
8 Nelson Olivera's house, also pleading to take the boot off
9 because it was Christmas Eve.

10 So, at that point in time one of the guys
11 just got up on the side rail of a -- of the tow truck, and
12 started also telling the driver of the tow truck to please
13 just let it go. That it was Christmas Eve, to just let the
14 boot go. And they were just getting very argumentative and
15 just going back and forth.

16 BY MS. CONCANNON:

17 Q Where were you when all of this was going on?

18 A I was -- we had just pulled up into our driveway
19 when this was happening. My husband went into the house to
20 drop off the leftovers that we had from the restaurant that
21 day. And both myself and my two children were in the car
22 just waiting for him while he did that. I had pulled my
23 windows down so I could kind of hear what was going on.

24 Q Okay. Sorry to interrupt you. So you hear the
25 begging and the pleading to release the tow -- to release

WITNESS- ELIZABETH REYES SORTO

1 the van; and then what do you hear?

2 A Then, all of a sudden, my husband came back out
3 and asked me to -- to move our other vehicle so other people
4 can park in our driveway. And I said, yes, let's move the
5 vehicle up. So as he left out to go park my car, because we
6 were in my family car, to move my car up to the driveway, to
7 the garage, I started to pull my window down. And then as I
8 was pulling it down or pushing it down I hear gunshots. I
9 hear gunshots and then I turn around and I froze and --

10 Q When you say you hear gunshots, how many gunshots
11 did you hear at first?

12 A Probably about two.

13 Q So was it after two that you turned around?

14 A No. I was already turning around. I just -- it
15 was just in that time that my window was going down. And
16 then I just saw the driver -- the guy -- I saw the car from
17 the tow truck open, and the guy, I guess, was down already
18 walking towards our direction just shooting at somebody
19 walking.

20 Q Okay. When you say "the guy," do you mean Preston
21 Oates, the man holding the gun shooting?

22 A Right. The tow truck.

23 Q The tow truck driver?

24 A (Nods in the affirmative).

25 Q Okay. Did you -- do you remember what direction

WITNESS- ELIZABETH REYES SORTO

1 he was shooting when you turned around and looked?

2 A Well, where we lived it's towards the exit and
3 there were -- he was coming towards our direction. So,
4 his -- I mean, his face was facing towards me on the drive
5 -- on the road.

6 Q Okay. And is your house -- in relation to the
7 Olivera's residence, where is ?

8 A I am not directly across, but one house from
9 Nelson Olivera.

10 Q Okay. And were you able to see the direction that
11 the person who was being shot, the direction that person was
12 going?

13 A He was also walking -- walking towards me.

14 Q Okay. Was Preston Oates behind him while he was
15 shooting him?

16 A Yes.

17 Q Okay. Did you see that person fall?

18 A Yes.

19 Q Did you see anything else after Carlos Olivera
20 fell to the ground?

21 A Additional shots pointed to the ground.

22 Q Okay. Additional shots by Preston Oates towards
23 the ground?

24 A Yes.

25 MS. CONCANNON: Ms. Sorto, I have no further

WITNESS- ELIZABETH REYES SORTO

1 questions for you at this time. If you can answer any
2 the Defense may have.

3 THE COURT: Cross-examination?

4 CROSS-EXAMINATION

5 BY MR. NEWMAN:

6 Q Hello, Ms. Reyes. Are you aware that there's a
7 video of this incident?

8 A I am, yes.

9 Q Okay. If you happen to be mistaken about certain
10 things, would the -- would you agree that the video would be
11 better than your memory of this incident?

12 A I would, yes.

13 Q Okay. Did you know Carlos Olivera?

14 A Who?

15 Q Carlos Olivera?

16 A No, I did not. I know his brother.

17 Q Okay, Nelson?

18 A Yes.

19 Q Okay. And do you know anything other than the, I
20 guess, the begging or pleading -- or I think you wrote in
21 your statement, the screaming to take the boot off of the
22 car. Did you write that in your statement?

23 A I probably did. It was four years ago, so --

24 Q I was going to -- I'm sorry, do you recognize
25 that?

WITNESS- ELIZABETH REYES SORTO

1 A Yes, that is my handwriting.

2 Q Okay. You said, Guy on the side of his truck was
3 also screaming to take the boot off?

4 A Yes.

5 Q Okay. Would it be fair to say that you don't know
6 exactly what was going on in the cab area of that truck?

7 A No, I do not know.

8 Q Okay. And there -- we've seen pictures of your
9 neighborhood. There are no street lights, are there?

10 A No.

11 Q It's -- and it was pretty dark that night; was it
12 not?

13 A Correct.

14 Q All right. And you were at , , and is
15 Ms. Reba Bryant's house, correct?

16 A Correct.

17 Q Okay. And you said they kept repeating the same
18 thing, Take the boot off of the car. And there was another
19 one standing on the side of the truck. And there was one
20 standing up on like the step of the truck?

21 A There was one on the step of the truck by the
22 window of the driver. And there was another guy somewhere
23 around the car. I don't know if he was standing -- to be
24 honest with you, I don't remember.

25 Q Okay. But you do remember a guy up on that ramp

WITNESS- ELIZABETH REYES SORTO

1 of that truck?

2 A Yes.

3 Q Okay.

4 MR. NEWMAN: One moment, please.

5 BY MR. NEWMAN:

6 Q The shots that you heard, did they come one right
7 after another?

8 A Yes.

9 Q Very rapidly, boom, boom, boom, boom, boom?

10 A I don't really remember. It just happened so
11 fast.

12 Q Very fast?

13 A Very fast.

14 Q Thank you.

15 MS. CONCANNON: No redirect, Your Honor.

16 THE COURT: All right. Thank you. You may step
17 down.

18 Next witness?

19 MS. CONCANNON: The State calls Edwin Sorto.

20 THE COURT: Please come forward to be sworn.

21 Thereupon,

22 EDWIN SORTO

23 was called as a witness, having been first duly sworn,

24 was examined and testified as follows:

25 WITNESS: Yes.

WITNESS - EDWIN SORTO

1 THE CLERK: State your name and spell it for the
2 Court.

3 THE WITNESS: My name is Edwin Sorto. E-D-W-I-N
4 S-O-R-T-O.

5 DIRECT EXAMINATION

6 BY MS. CONCANNON:

7 Q Good afternoon, Mr. Sorto. Where do you currently
8 live?

9 A

10 Q And were you living at on
11 Christmas Eve of 2010?

12 A Yes.

13 Q And is your wife Elizabeth Reyes Sorto?

14 A Yes.

15 Q Do you remember Christmas Eve of 2010?

16 A I'm sorry?

17 Q Do you remember Christmas Eve of 2010?

18 A I do.

19 Q Okay. Can you tell the Court what you remember
20 about that night?

21 A We were coming back from dinner, and then we were
22 pulling into our driveway. My kids stayed in the house --
23 in the car. So I was going in and out, grabbing some
24 personal belongings, and I could see someone disputing with
25 a tow truck driver. And I didn't pay too much attention to

WITNESS - EDWIN SORTO

1 it. And I was going back and forth. And then I kind of
2 don't remember too much. But as I was going in and out I
3 could hear a dispute. And when I finally went in -- back to
4 the car, I -- we were leaving and we heard gunshots. And
5 then I stopped. I believe I got out of the vehicle and
6 went -- I saw in the direction where the tow -- tow truck
7 was, and I saw someone shooting to the ground.

8 Q Did you see the initial shots or no?

9 A I did not see the shots, no.

10 Q How many shots do you think that you heard?

11 A Four or five maybe.

12 Q Okay. And you saw a man shooting towards the
13 ground?

14 A Yes.

15 Q What did you do after you saw the man shooting
16 towards the ground?

17 A I wanted to go help and so I -- my wife was
18 worried and she said, No, let's get out of here, and so we
19 left. As I was leaving I called 911.

20 Q Okay.

21 MS. CONCANNON: I beg the Court's indulgence.

22 (Pause.)

23 MS. CONCANNON: I have no further questions for
24 you at this time, Mr. Sorto. If you could answer any
25 the Defense may have.

WITNESS - EDWIN SORTO

1 THE COURT: Cross-examination?

2 CROSS-EXAMINATION

3 BY MR. NEWMAN:

4 Q Hi, Mr. Sorto.

5 A How are you doing?

6 Q My name's Jared Newman. I don't think we've met
7 before. Your wife is Elizabeth Reyes?

8 A Yes.

9 Q Would you agree with her description of the
10 account that the shots were bam, bam, bam, rapid succession?

11 A Yes.

12 Q Have you had a chance to review your statement?

13 A Yes.

14 Q Okay. And I know that it's been three, three and
15 a half years ago. You said that as you were moving your
16 vehicle you heard gunshots and then got out of the vehicle?

17 A Correct.

18 Q All right. Do you know what the dispute was
19 about?

20 A I most likely thought that it was about towing.

21 Q The towing?

22 A I did hear, you know, the family pleading with
23 the, I guess, with the tow truck driver, to please let --
24 let the vehicle go, that it's Christmas.

25 Q And in , there's no on-street parking; is

WITNESS - EDWIN SORTO

1 that correct?

2 A That is, yes.

3 Q And there are signs that say that vehicles will be
4 towed if they're parked on the streets, correct?

5 A Yes.

6 Q There were signs in 2010 that said that, correct?

7 A I don't recall.

8 Q Okay. Did you know that Carlos Olivera had this
9 pistol?

10 A No.

11 Q Okay. In fact, it is dark in your neighborhood;
12 is it not?

13 A Yes, it is.

14 Q And it was dark that night?

15 A Yes.

16 MR. NEWMAN: Okay. Thank you. I don't think I
17 have any further questions.

18 MS. CONCANNON: No redirect, Your Honor.

19 THE COURT: Thank you. You may step down. The
20 witness excused from the subpoena?

21 MR. THORNTON: We ask that he be excused, Your
22 Honor.

23 THE COURT: Thank you. You may leave. Lunch?

24 MR. THORNTON: Your Honor, may we approach?

25 THE COURT: Sure.

WITNESS - EDWIN SORTO

1 (Off-the-record discussion held.)

2 THE COURT: Okay, ladies and gentlemen, we're
3 going to take a lunch break until about 2:15. Don't
4 let anybody talk to you about the case during the lunch
5 break. You don't talk to anybody about the case during
6 the lunch break. I'll see you back at 2:15. Thank
7 you.

8 THE BAILIFF: This way please.

9 The jury is clear, Your Honor.

10 (Jury exits the courtroom at 1:00 p.m.)

11 THE COURT: Out of curiosity, is the schedule
12 about where you figured we'd be?

13 MR. THORNTON: Yes, sir. My goal today, Judge, is
14 to get -- we were actually -- my goal today was to get
15 through, I think, 15 to 16, and we're about to start
16 number ten. Now, there's one in there that's fairly
17 long, but I hope to end on today, because there's a lot
18 of video, it would be most likely Mr. Adams with the
19 State.

20 MR. NEWMAN: Okay. Show them the video.

21 MR. THORNTON: So there's not really going to be
22 much cross-examine of him anyway. So I'm hoping to get
23 through with that one tonight. But we are right on
24 schedule, Judge.

25 THE COURT: All right. We'll be in recess until

WITNESS - EDWIN SORTO

1 2:15.

2 (Lunch recess taken. Proceedings continued in
3 Volume 4.)

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CERTIFICATE PAGE

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STATE OF SOUTH CAROLINA:

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COUNTY OF BEAUFORT:

6

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

8

DATED this 25th day of November, 2014.

9

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11



12

MONA L. MANLEY

13

Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
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1 PROCEEDINGS

2 THE BAILIFF: Jury is entering, Your Honor. Time
3 is now 2:18.

4 THE COURT: Welcome back, ladies and gentlemen.
5 I believe that State's ready to present another
6 witness?

7 MS. CONCANNON: We are, Your Honor. Thank you.

8 The State calls Vincent Pullicino. P-U-L-L-I-C-I-N-O.
9 Thereupon,

10 VINCENT PULLICINO

11 was called as a witness, having been first duly sworn,
12 was examined and testified as follows:

13 THE WITNESS: I do.

14 THE CLERK: Please be seated. State and spell you
15 name for the Court.

16 THE WITNESS: Name's Vincent Pullicino. Last name
17 is P-U-L-L-I-C-I-N-O.

18 DIRECT EXAMINATION

19 BY MS. CONCANNON:

20 Q Mr. Pullicino, am I pronouncing that correctly?

21 A That's correct.

22 Q Thank you. Where are you employed?

23 A Currently, with the Fairfax County Police
24 Department in Northern Virginia.

25 Q Were you working with Fairfax Police Department in

WITNESS - VINCENT PULLICINO

1 2010?

2 A I was not.

3 Q Where were you employed in 2010?

4 A Out of the Beaufort County Sheriff's Office.

5 Q Okay. And were you employed with the Sheriff's
6 Office, more specifically, on Christmas Eve of 2010?

7 A I was.

8 Q And what capacity did you work in the Sheriff's
9 Office?

10 A Sheriff's Office, I spent about five and half
11 years there as a patrol deputy. Did a couple of years in
12 narcotics investigation. And I was on the SWAT team as
13 well.

14 Q What capacity were you working with the Sheriff's
15 Office on Christmas Eve of 2010?

16 A I was working for patrol Southern Enforcement
17 Division.

18 Q Were you on duty that night?

19 A I was.

20 Q Did you respond to an incident on in
21 Bluffton?

22 A I did.

23 Q When you responded to that scene, what did you
24 observe?

25 A Upon arrival at the scene I observed numerous

WITNESS - VINCENT PULLICINO

1 people in the street at . People were
2 screaming, yelling, and they were directing my attention to
3 the victim who was lying on the ground.

4 Q Mr. Pullicino, I'm about to show you three
5 pictures.

6 MR. NEWMAN: No objection to those three proposed
7 exhibits from the State.

8 THE COURT: All right.

9 BY MS. CONCANNON:

10 Q Mr. Pullicino, I'm going to show you what's been
11 marked State's Exhibit 7. Can you please tell us what that
12 picture shows?

13 A That's a picture of the victim and the tow truck
14 and victim's vehicle.

15 Q What about State's Exhibit 8?

16 A Again, that is the picture of the victim's car.
17 It looks like there's a boot on it, the victim on the ground
18 and the tow truck.

19 Q And State's Exhibit 9?

20 A This is a picture of the victim and the tow truck.

21 Q Do these pictures accurately depict the scene that
22 night?

23 A Yes.

24 Q Did you, in fact, take these photographs?

25 A I did.

WITNESS - VINCENT PULLICINO

1 MS. CONCANNON: Your Honor, at this time the State
2 moves State's Exhibit 7, 8 and 9 into evidence.

3 THE COURT: Admitted without objection.

4 *(Whereupon, State's Exhibit No(s). 7, 8 and 9*
5 *marked for identification and received in evidence.)*

6 MS. CONCANNON: Permission to publish to the jury?

7 THE COURT: Sure.

8 BY MS. CONCANNON:

9 Q Mr. Pullicino, you arrived on scene and what did
10 you observe?

11 A I observed the victim lying down. I believe that
12 he was laying on his back. I then observed that -- in my
13 peripheral vision I observed the Defendant standing in the
14 yard.

15 Q The Defendant, could you describe what this man
16 looked like?

17 A He was a white male, approximately 6 feet tall.

18 Q Do you see him -- my apology. Do you see him in
19 the courtroom today?

20 A I do.

21 Q Can you please identify him?

22 A Yes. He's at the defense side, one with the blue
23 tie, black suit.

24 MS. CONCANNON: May the record reflect the witness
25 pointed at the Defendant?

WITNESS - VINCENT PULLICINO

1 THE COURT: So noted.

2 BY MS. CONCANNON:

3 Q What did you observe about the Defendant when he
4 was standing there?

5 A I observed that he could be on his cell phone with
6 his right hand. And he had a black handgun in his left
7 hand.

8 Q Were you communicating with him, or what were you
9 doing with him?

10 A I think at that time I challenged him. I
11 identified myself and told him to drop the gun and to lay
12 face down.

13 Q Did he drop the gun and lay face down?

14 A Yes.

15 Q Mr. Pullicino, I'm showing you what's been marked
16 State's Exhibit 12. Can you identify that?

17 A Yes, that is the gun that the Defendant was
18 holding.

19 Q The gun the Defendant was holding. And does that
20 fairly and accurately depict the gun after he placed it on
21 the grass?

22 A Yes.

23 Q Thank you.

24 MR. NEWMAN: No objection.

25 MS. CONCANNON: At this point the State moves

WITNESS - VINCENT PULLICINO

1 Exhibit No. 12 into evidence.

2 THE COURT: Admitted without objection.

3 *(Whereupon, State's Exhibit No(s). 12 marked for*
4 *identification and received in evidence.)*

5 BY MS. CONCANNON:

6 Q And after Mr. Oates placed his gun on the ground,
7 what did you observe next?

8 A Well, he placed the gun on the ground, and that's
9 when I -- I placed him in handcuffs. I then observed that
10 there was an additional handgun in the middle of the street.

11 MR. NEWMAN: Without objection.

12 BY MS. CONCANNON:

13 Q Mr. Pullicino, again, I am approaching with what
14 has now been marked State's Exhibit 14. Can you please
15 identify that for the Court?

16 A That's the gun that I saw in the middle of the
17 street.

18 Q Does that fairly and accurately depict the gun
19 when you found it?

20 A Yes.

21 MS. CONCANNON: At this point, the State moves
22 Exhibit No. 14 into evidence.

23 THE COURT: Admitted without objection.

24 *(Whereupon, State's Exhibit No(s). 14 marked for*
25 *identification and received in evidence.)*

WITNESS - VINCENT PULLICINO

1 BY MS. CONCANNON:

2 Q After you saw this gun laying in the street, what
3 did you do then?

4 A I then went over to check on the victim.

5 Q When you say you went to check on the victim, can
6 you elaborate?

7 A Basically, to see if there was any more signs of
8 life and to see -- just basically process the scene more.
9 Just visually scanning the scene.

10 Q Mr. Pullicino, I'm going to show you what's been
11 marked State's Exhibit 13. Can you please identify what
12 that is a picture of?

13 A That's a picture of the victim.

14 Q Is that how he appeared when you arrived?

15 A He was. The only thing different was that I
16 believe it was his brother that was holding him, it looked
17 like, on the ground.

18 Q When you arrived on scene, he was being held by
19 his brother?

20 A Yes, that's correct.

21 Q Okay. And this picture does not depict that?

22 A No.

23 Q Okay.

24 MS. CONCANNON: At this point, the State moves
25 Exhibit No. 13 into evidence.

WITNESS.- VINCENT PULLICINO

1 MR. NEWMAN: That is with objection.

2 THE COURT: Without objection?

3 MR. NEWMAN: With objection.

4 THE COURT: What's the objection?

5 MR. NEWMAN: Yes. There are two other photographs
6 up there.

7 THE COURT: That's the objection?

8 MR. NEWMAN: Well, it's also prejudicial. It's a
9 more close-up photograph. They've got photographs in
10 evidence and it's not relevant to show anything that
11 the other two photographs don't show.

12 MS. CONCANNON: Your Honor, that was the reason we
13 want it in. It's closer. It's shows more detail. It
14 shows exactly what is in the scene when Mr. Pullicino
15 arrived.

16 THE COURT: I'll overrule the objection. It's in
17 evidence.

18 *(Whereupon, State's Exhibit No(s). 13 marked for*
19 *identification and received in evidence.)*

20 MS. CONCANNON: Thank you, Your Honor. Permission
21 to publish to the jury?

22 THE COURT: Certainly.

23 BY MS. CONCANNON:

24 Q Now, Mr. Pullicino, you stated this is not how
25 Carlos was when you arrived, correct?

WITNESS - VINCENT PULLICINO

1 A That's correct.

2 Q After you went to go check on Mr. Olivera, were
3 you the only one there or were there other law enforcement
4 officers around?

5 A There was another officer with the victim.

6 Q Okay. Had anybody else arrived on scene?

7 A Yes.

8 Q Could you --

9 A Sergeant Hardy had arrived on the scene as well.

10 Q Okay. Did anybody arrive on scene to -- any
11 medical personnel or whatnot?

12 A Yes. Medical arrived on scene to check out the
13 victim, check out his status.

14 MS. CONCANNON: Okay. I have no further questions
15 for you at this time. If you could answer any that the
16 Defense may have.

17 CROSS-EXAMINATION

18 BY MR. NEWMAN:

19 Q Let me make sure I get it right. You work for the
20 Fairfax -- City of Fairfax?

21 A Within Fairfax County.

22 Q Fairfax County? So, you would still be a -- I
23 could still call you Deputy Pullicino?

24 A It's is actually Officer.

25 Q Officer Pullicino, in fact, when you arrived on

WITNESS - VINCENT PULLICINO

1 this scene it took the responding officers a pretty fair
2 amount of time to get there, didn't it?

3 A Yes.

4 Q Around nine minutes from dispatch to arrival?

5 A That sounds about right.

6 Q Okay. And that's kind of a long response time.
7 I'm not getting on you for it, I just.

8 A No, no. I mean, it depends on what's long, I
9 guess.

10 Q Wasn't like you were on scene in a minute two
11 seconds or something like that?

12 A No.

13 Q It took a little while to get there?

14 A Right.

15 Q And would it be fair to say when you got there
16 there was a good amount of chaos and confusion, that you had
17 to assess what was -- figuring out what was going on, what
18 you're walking into?

19 A That's right.

20 Q Okay. And you knew that there were multiple 911
21 calls of gunshots fired, possibly man down, gunshot victim,
22 things like that?

23 A Right.

24 Q All right. And just from being a trained officer,
25 walking into a scene like that, you're kind of on point,

WITNESS - VINCENT PULLICINO

1 aren't you? Because you don't know what you're walking
2 into?

3 A That's correct.

4 Q Okay. And when you saw Mr. Oates, did I hear you
5 say, or was it in a report, that he had a cell phone and he
6 had his hands -- his gun in the air -- his hands in the air,
7 basically?

8 A I don't recall if specific -- I know his cell --
9 he was on his cell phone. I don't know if the gun was by
10 his side or in the air. It was one or the other. Again, I
11 just can't -- I don't recall which.

12 Q Okay. And did you have your pistol drawn?

13 A I did.

14 Q Why did you have your pistol drawn?

15 A Because I don't know what was going on. He had a
16 pistol in his hand and I wanted to make the scene safe from
17 --

18 Q Okay. And in your training, if Mr. Oates had
19 pointed that pistol at you or made some kind of fast moves,
20 you would have dropped him, wouldn't you?

21 A I would have shot him, that's correct.

22 Q Okay. These pictures are illuminated, I'm
23 assuming with flash. Wasn't it, in fact, so dark out there
24 that they actually had to bring a fire truck in with one of
25 those big light racks on it to be able to process the crime

WITNESS - VINCENT PULLICINO

1 scene?

2 A I do recall that, yes.

3 Q Okay. And do you recall that when you get there
4 it was pretty dark?

5 A It was fairly dark, but there was several of the
6 street lights there.

7 Q Okay. And you learned that in State's Exhibit 14,
8 the pistol that was found in the road, the Glock
9 semiautomatic pistol, belonged to Carlos Olivera?

10 A Ask the question again, please.

11 Q Did you learn that that pistol, you can take a
12 look at Number 14. This is the pistol that's found in the
13 roadway?

14 A Right.

15 Q Did you learn that that belonged to Mr. Olivera?

16 A I did.

17 Q Okay. And this pistol that State's 12 -- this is
18 the pistol that Mr. Oates surrendered upon your command; is
19 that correct?

20 A That's correct.

21 Q All right. And Mr. Oates was compliant with your
22 commands?

23 A He was.

24 Q All right. And at the time you did not arrest him
25 you took him -- you just detained him; is that correct?

WITNESS - VINCENT PULLICINO

1 A That's correct.

2 Q Ascertain what's going on?

3 A That's correct.

4 Q Okay. What type of service pistol do you use?

5 A Now or what was --

6 Q Let's say when you were with Beaufort County, when

7 this went on.

8 A I was using an H&K 40 USP handgun.

9 Q Okay. Are you familiar with the Glock handgun?

10 A I am. Somewhat.

11 Q Okay. I might ask another officer that carries a

12 Glock.

13 A Okay.

14 Q And through your training at -- did you have to go

15 through the police academy again in Virginia?

16 A I did, sir.

17 Q Okay. So you've been a graduate of both the South

18 Carolina Criminal Justice Academy and then the one in -- or

19 whatever Virginia calls theirs?

20 A Yes.

21 Q Okay. And did they train you in the use of deadly

22 force?

23 A Yes.

24 Q All right. And is this consistent with your

25 training, if somebody has the opportunity, ability, and

WITNESS - VINCENT PULLICINO

1 places you in jeopardy, that you're entitled to use deadly
2 force?

3 A That's correct.

4 Q One moment, please, I think I'm finished.

5 MR. NEWMAN: Thank you, sir.

6 MS. CONCANNON: Nothing further from the State,
7 Your Honor.

8 THE COURT: Thank you. You may step down.

9 THE WITNESS: Thank you.

10 MS. CONCANNON: The State would ask that this
11 witness also be excused?

12 THE COURT: Without objection?

13 MR. NEWMAN: Without objection, yes, sir.

14 THE COURT: You're excused.

15 Call your next witness.

16 MS. CONCANNON: Thank you. State calls Deputy
17 Erick Hardy.

18 THE COURT: Come forward and be sworn, please.

19 Thereupon,

20 ERICK HARDY

21 was called as a witness, having been first duly sworn,

22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MS. CONCANNON:

25 Q Deputy Hardy, can you please state your full name

WITNESS - ERICK HARDY

1 and spell it for the record?

2 A Yes, ma'am. It's Erick Hardy, E-R-I-C-K
3 H-A-R-D-Y.

4 Q Thank you. I see you're in a uniform today; where
5 are you currently employed?

6 A With the Beaufort County Sheriff's Office.

7 Q Were you employed with the Sheriff's Office in
8 2010?

9 A Yes, I was.

10 Q In what capacity were you working with the
11 Sheriff's Office in 2010?

12 A As a shift supervisor, assistant shift supervisor
13 sergeant in Bluffton.

14 Q Were you working the night of Christmas Eve 2010?

15 A I was.

16 Q Do you remember responding to an incident on
17 in Bluffton?

18 A Yes, ma'am.

19 Q Okay. Can you please tell the Court what happened
20 when you responded to that incident location?

21 A Yes, ma'am. When I arrived at ,
22 in that general area, responding to a shots fired call.
23 Upon arrival I noticed the deputy was standing with a
24 gentleman, later identified as Preston Oates, in the yard
25 across from where a tow truck was parked, basically. At

WITNESS - ERICK HARDY

1 which time I directed Mr. Pullicino to take pictures --
2 Deputy Pullicino to take pictures of the incident location.

3 There was an individual that was lying
4 motionless in the roadway, along with a gun, black in color
5 gun, that was lying in the roadway. Another black in color
6 gun was located in the yard where Mr. Oates was standing
7 with Deputy Pullicino. When I directed Deputy Pullicino to
8 go take photographs I remained with Mr. Oates at the time
9 through the duration.

10 Q Through the duration of what?

11 A Basically he was, I guess, he was involved in a
12 shooting incident that took place there. He was detained at
13 the time. Meaning, he was handcuffed. I stood with him, I
14 Mirandised him. He started explaining what happened. I
15 stopped him in the middle of that and Mirandised him.

16 Q Okay.

17 A He explained --

18 Q I'm sorry to interrupt you for a second. You said
19 you Mirandised him. Did you -- do you do it by memory or
20 did you use some sort of printed Miranda rights form?

21 A Issued a Miranda card which I have with --

22 Q Do you have it on you?

23 A Yes.

24 Q Yes. If you can read that to the Court, please.

25 A Sure.

WITNESS - ERICK HARDY

1 Q And is this the actual card you had in 2010?

2 A Yes, it's the same one.

3 Q Okay. Thank you.

4 A So, I read him Miranda warning and explained that
5 he had -- he had the right to remain silent, anything you
6 say can and will be used against you in a court of law. You
7 have the right to talk to a lawyer and have him present with
8 you while you are being questioned. If you cannot afford to
9 hire a lawyer one will be appointed to represent you before
10 any questioning, if you wish. You can decide at any time to
11 exercise these rights and not answer any questions or make
12 any statements.

13 I also explained the waiver that's on the
14 card that states: Do you understand each of the rights I
15 have explained to you? Which he acknowledged he did. Also
16 having these rights in mind, do you wish to talk to us now?
17 Which he acknowledged he did.

18 Q So Mr. Oates acknowledged he understood his
19 rights, but that he was going to waive them and agree to
20 speak with you?

21 A That is correct.

22 Q Okay. Did you, in fact, speak with Mr. Oates
23 after that?

24 A I did. He began to explain on his own accord to
25 the events that transpired.

WITNESS - ERICK HARDY

1 Q Okay. Where were you all when this conversation
2 was taking place?

3 A We were in the yard. I'm trying to describe it,
4 because I don't recall the residence numbers. But across
5 the street from where he had his tow truck parked, on the
6 left-hand side, if you're facing into the roadway basically.

7 Q Did your conversation end in that front yard, or
8 did it continue elsewhere?

9 A It continued elsewhere. I had transported him, or
10 we walked basically to my patrol car that was parked on the
11 end of the road. And when I secured him in the backseat of
12 the patrol car it continued. Basically the conversation
13 continued with him.

14 Q Okay. Is your patrol car equipped with video and
15 audio recording capabilities?

16 A Yes, it is.

17 Q It is? Do you know if the conversation that Mr.
18 Oates and you had was continued in the car, is that on video
19 and audio?

20 A Yes, ma'am, it is.

21 MR. NEWMAN: May we approach briefly, Your Honor?

22 (Off-the-record discussion held.)

23 MR. NEWMAN: Thank you, Your Honor.

24 BY MS. CONCANNON:

25 Q Deputy Hardy, I'm going to show you what's been

WITNESS - ERICK HARDY

1 marked State's Exhibit 15. Can you please tell the Court
2 what that is?

3 A Yes, ma'am. It's going to be a DVD recording of
4 the in-car audio and camera of the patrol vehicle that I was
5 operating the night of the incident.

6 Q And prior to your testimony today, did I ask you
7 to review this audio and video clip?

8 A Yes, ma'am, you did.

9 Q And did you, in fact, review it?

10 A In fact, I did, yes.

11 Q Okay. How do you know this was the video that you
12 reviewed?

13 A I signed it on the bottom and also printed my name
14 below that.

15 Q And is this a fair and accurate depiction of
16 your -- of the transport with Mr. Oates?

17 A Yes, it is.

18 MS. CONCANNON: At this point, the State moves
19 Exhibit 15 into evidence.

20 THE COURT: Admitted subsequent to the sidebar
21 stipulation.

22 MR. NEWMAN: That is correct, Your Honor, yes.

23 THE COURT: Okay.

24 *(Whereupon, State's Exhibit No(s). 15 marked for*
25 *identification and received in evidence.)*

WITNESS - ERICK HARDY

1 MS. CONCANNON: Permission to publish?

2 (Video playing.)

3 BY MS. CONCANNON:

4 Q Deputy Hardy, what we are hearing, this is from
5 your in-car video?

6 A Yes, ma'am.

7 Q Is there anyone else inside the patrol car besides
8 you and Preston Oates?

9 A Inside the vehicle, no, ma'am.

10 Q Okay.

11 (Video playing.)

12 BY MS. CONCANNON:

13 Q Deputy Hardy, did you all just leave
14 ?

15 A Yes, ma'am.

16 Q And where are you traveling to now?

17 A I'm traveling to the Hilton Head office, which was
18 located at the time at Lagoon Road -- off of Lagoon Road, on
19 the south end of Hilton Head.

20 Q And again, it's just you and Preston Oates in your
21 patrol car at this time?

22 A Yes, ma'am.

23 Q Thank you.

24 (Video playing.)

25 BY MS. CONCANNON:

WITNESS - ERICK HARDY

1 Q Deputy Hardy, that's just a portion of the video.
2 Do you remember what transpires in the rest of -- the last
3 portion of the video?

4 A Essentially, I just deliver him to the Hilton Head
5 office substation where he could meet with investigators.

6 Q Okay. Did you have any other interaction with
7 Preston Oates or any other investigation in this case?

8 A No, ma'am.

9 MS. CONCANNON: I have no further questions for
10 you at this time.

11 THE COURT: Cross-examination?

12 CROSS-EXAMINATION

13 BY MR. NEWMAN:

14 Q Deputy Hardy, I saw just what I thought was a
15 little bit of a smile on your face when you first hear your
16 voice on the tape?

17 A No.

18 Q You didn't? If you're like me, I'd just go, "That
19 doesn't sound like me when I'm talking."

20 A I'm usually bewildered when I hear my voice.

21 Q Yeah.

22 A Not much of a smile.

23 Q Okay. And I know that scenes like this are
24 chaotic and all of that. Kind of looking in the 20/20
25 hindsight, would it not have been a lot better to just get

WITNESS - ERICK HARDY

1 Mr. Oates out of the area ASAP? And I'm not trying to
2 second guess you, I just --

3 A Yeah. And that's what it would be. I don't know.
4 I mean, it played out the way it played out. We were trying
5 to ascertain what was going on and trying to do what we had
6 to do at the time.

7 Q Okay. And I thought I heard on the audio portion
8 of the video an actual tapping sound?

9 A Yes.

10 Q And you agree that there was a tapping sound?

11 A I do.

12 Q Okay. You just weren't in a position to see what
13 --

14 A That's correct, behind me.

15 Q -- what they were doing? All right. And when --
16 Mr. Oates, I'm assuming is handcuffed behind his back in the
17 backseat of your patrol car?

18 A Yes, sir.

19 Q So he's pretty vulnerable. He's not able to do
20 anything; is that correct?

21 A He was restrained, yes. That is correct.

22 Q Okay. And he basically related to you that a gun
23 was pulled on him; is that correct?

24 A At some point, yes, he said there was a gun that
25 was involved in it.

WITNESS - ERICK HARDY

1 Q Okay. And he said that he saw the sights on the
2 gun?

3 A I don't recall him saying that to me.

4 Q Okay. I thought that's what I heard him say on
5 there. I might not have.

6 A He may have, I just don't recall specifically on
7 it.

8 Q Okay. And at that point, even under detention,
9 you gave Mr. Oates his Miranda warnings. You told him, You
10 don't -- you don't have to say anything, partner. If you
11 do, you can get a lawyer if you want to; is that correct?

12 A That is correct.

13 Q All right. And he had no problem cooperating with
14 you; is that correct?

15 A That's correct.

16 Q And he apparently cooperated with Deputy
17 Pullicino, that told him to put the gun down, to get on the
18 ground, and he done that?

19 A I can't comment on that. I arrived afterwards.

20 Q Okay. Okay. But at no time did he tell you, You
21 think I'm in trouble. I think I need a lawyer. I don't
22 really want to talk to you?

23 A That's correct.

24 Q Okay. And he related as best he could what
25 happened; is that correct?

WITNESS - ERICK HARDY

1 A That's correct.

2 Q All right. And it wasn't your job to -- I mean,
3 certainly you're going to listen if somebody wants to talk.
4 But you know you're not going to be the investigator on the
5 case, and it's not your job to do the interviewing; is that
6 correct?

7 A That's correct.

8 Q Okay. But if a subject wants to talk to you, it
9 never hurts to listen?

10 A That's correct.

11 Q Okay. And, in fact, he did -- did talk with you
12 and did not have any hesitation in doing that?

13 A That's correct.

14 Q Was his -- I don't know, for lack of a better
15 word, at the time you got him to the Hilton Head office do
16 you think he had calmed some? Hard to tell?

17 A Yeah. It was a tense situation all the way
18 around. So, his demeanor, I don't know that he relaxed or
19 anything like that. He was cooperative throughout.

20 Q Okay. Was cooperative. And what type of -- what
21 type of weapon do you carry, sir?

22 A Forty caliber Glock.

23 Q Okay. Is it a model 27?

24 A Twenty-three.

25 Q A 23? Does it have a safety on it?

WITNESS - ERICK HARDY

1 A No.

2 Q Okay. When you rack the slide, assuming there's a
3 full magazine in it, when you rack the slide it feeds a
4 bullet in and the hammer's cocked back, and that gun is
5 ready to fire; is that correct?

6 A I believe that it's going to be hammerless, but...

7 Q It's going to be hammerless?

8 A Yes.

9 Q Okay. Okay. But it's ready to go. All you got
10 to do is pull the trigger?

11 A That's how we carry, yes.

12 Q Okay. And have you been trained at the academy in
13 tactical situations involving people that are armed?

14 A Yes, generally speaking, yes.

15 Q Okay. And would it be fair to say that the person
16 has the opportunity and the ability and places you in
17 jeopardy, that you can use lethal force if necessary?

18 MR. THORNTON: Objection, Your Honor.

19 MR. NEWMAN: It's within his training. If he
20 doesn't know, he doesn't know.

21 MR. THORNTON: And I apologize for being out of
22 turn, Judge, since Ms. Concannon and I would ask the
23 Court to allow me to speak on him. If he wants to ask
24 him what an officer is trained to do, or what an
25 officer is trained to do. First of all, he's asking

WITNESS - ERICK HARDY

1 hypothetical. Second of all, he's asking for a person,
2 what is a person to do. Not every person is a trained
3 officer. And what a trained officer is taught to do
4 may be different than what a person is.

5 I just think if he's going to limit it to, As a
6 trained officer, are you allowed to use force when
7 necessary? I think that's a legitimate question. But
8 beyond that, I think it's -- it's not.

9 THE COURT: I'll sustain the objection.

10 BY MR. NEWMAN:

11 Q All right. Let me ask this hypothetical: If I'm
12 -- got a gun out, and I tell you to get out of your car and
13 I step back, what are you going to do?

14 MR. THORNTON: Objection, calls for a conclusion.

15 BY MR. NEWMAN:

16 Q What would your training tell you to do?

17 THE COURT: Hang on a second. Hang on a second.
18 I've still got an objection.

19 MR. THORNTON: He's calling for legal conclusions,
20 Judge. He's trying to get him to say -- and he's also
21 calling for hypotheticals. This is not -- you know,
22 it's not proper to ask hypotheticals of a witness like
23 this.

24 MR. NEWMAN: This is a trained, experienced
25 officer.

WITNESS - ERICK HARDY

1 THE COURT: I'm going to sustain the objection.

2 BY MR. NEWMAN:

3 Q Have you ever been forced out of your car at
4 gunpoint?

5 A No, I have not.

6 Q And at the scene you heard Mr. Oates at least
7 express to somebody; Sorry for your loss. I'm sorry it had
8 to be this way; is that correct?

9 A I'm sorry?

10 Q On the recording that we just heard Mr. Oates said
11 to somebody, Sorry for your loss and I'm sorry it had to be
12 this way?

13 A I don't recall if he did or not.

14 Q Okay. And if it's on the audio, it's on the
15 audio, correct?

16 A If it is, it's -- I don't recall that part, but if
17 it's on the audio, I don't dispute it.

18 Q Okay.

19 MR. NEWMAN: One moment, please.

20 THE COURT: Sure.

21 BY MR. NEWMAN:

22 Q And at this time when you transported Mr. Oates he
23 was merely under detention, he was not under arrest; is that
24 correct?

25 A That's correct. Unless somebody else had placed

WITNESS - ERICK HARDY

1 him under arrest. I didn't place him under arrest.

2 Q Right. To your knowledge, he was not under
3 arrest. He was being detained, and he would have had to
4 agree to be taken to the -- he agreed to be taken down to
5 the -- what do you all call it?

6 A The substation.

7 Q The substation on the south end?

8 A Yes.

9 MR. NEWMAN: Okay, thank you.

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

12 THE COURT: Thank you. You may step down.

13 MS. CONCANNON: And we would ask that Deputy Hardy
14 be excused?

15 MR. NEWMAN: Without objection.

16 THE COURT: Yes. You may be excused from your
17 subpoena. You may step down.

18 MS. CONCANNON: The State calls Steven Manley.

19 THE COURT: Come forward to be sworn, please.

20 THE CLERK: Please state and spell your name for
21 the Court.

22 THE WITNESS: Steven Barry Manley.

23 Thereupon,

24 STEVEN BARRY MANLEY

25 was called as a witness, having been first duly sworn,

WITNESS - STEVEN MANLEY

1 was examined and testified as follows.

2 DIRECT EXAMINATION

3 BY MS. CONCANNON:

4 Q Mr. Manley, could you please spell your name for
5 the court reporter?

6 A Sure. First name is Steven, S-T-E-V-E-N. Middle
7 name Barry, B-A-R-R-Y. Last name Manley, M-A-N-L-E-Y.

8 Q Thank you, Mr. Manley. Where are you currently
9 employed?

10 A I work for Beaufort County EMS.

11 Q Did you work for Beaufort County EMS back in 2010?

12 A Yes, ma'am.

13 Q In what capacity do you work with the Beaufort
14 County EMS?

15 A I am a paramedic.

16 Q A paramedic?

17 A Yes, ma'am.

18 Q Do we sometimes hear that referred to as an EMT?

19 A EMT -- paramedic is just a more advanced level.

20 Q More advanced level. Could you explain that a
21 little bit?

22 A Sure. You're allowed to use cardiac drugs if
23 needed, treat pain if needed, any advanced procedure that
24 may save a life.

25 Q Okay. And you are a paramedic, not an EMT?

WITNESS - STEVEN MANLEY

1 A Yes, ma'am.

2 Q Thank you. Were you working on Christmas Eve of
3 2010?

4 A Yes, ma'am.

5 Q And did you report to an incident location on
6 ?

7 A Yes, ma'am.

8 Q Could you please tell the Court about that
9 incident?

10 A Sure. Do you have a copy of the paperwork or
11 anything I could review?

12 Q Yes.

13 MR. NEWMAN: I would like to see a copy as well.

14 I have not been provided one in discovery.

15 BY MS. CONCANNON:

16 Q Mr. Manley, I'm handing you a copy of your report.

17 A Yes, ma'am.

18 Q Is that a typical report that you would file after
19 an incident?

20 A Yes, ma'am.

21 Q Okay. Would you please tell the Court why you
22 responded to that night?

23 A Called for gunshot victim.

24 Q Have you responded to gunshot victims in the past?

25 A Yes, ma'am, quite a few.

WITNESS - STEVEN MANLEY

1 Q Quite a few? Okay. And what did you see this
2 night when you responded?

3 A If you will just give me one second to review, I
4 would appreciate it. Thank you.

5 Victim was laying on the ground. We go check
6 a pulse, make sure that there is a pulse. If any, proceed
7 with advanced life skills. There was no pulse and no
8 breathing. A monitor is placed on the patient to see if
9 there's any electrical activity, which there was none. And
10 usually we'll either listen for lung sounds or a heart beat.
11 And there was none, as well.

12 Q Mr. Olivera, the victim in this case, did he have
13 any signs of life when you arrived?

14 A No, ma'am.

15 Q I have no further questions for you at this time.

16 A Thank you.

17 Q If you can answer any that Mr. Newman might have.

18 MR. NEWMAN: I have no questions. Thank you for
19 your work.

20 THE WITNESS: Yes, sir.

21 THE COURT: Thank you, sir. You may be excused.

22 WITNESS: Yes, sir.

23 THE COURT: Call your next witness.

24 MR. THORNTON: John Adams.

25 MR. NEWMAN: Again, if we could approach, Your

WITNESS - STEVEN MANLEY

1 Honor?

2 (Off-the-record discussion held.)

3 THE COURT: Do you want to stretch? Take a
4 stretch.

5 Ladies and gentlemen, this apparently is going to
6 be a video of some sort shown or heard. It's going to
7 last about an hour or so. Do you want to take a break
8 now? Take a ten-minute recess, ladies and gentlemen.

9 THE BAILIFF: Thank you, Your Honor.

10 (Recess taken at 3:21 p.m.)

11 THE BAILIFF: Let's come to order, please.

12 THE COURT: Let's bring the jury out.

13 THE BAILIFF: Yes, sir.

14 Your Honor, the jury is entering.

15 (Jury enters the courtroom at

16 3:38 p.m.)

17 THE COURT: Welcome back, ladies and gentlemen. I
18 believe the State is ready to call, perhaps the last
19 witness of the day?

20 MR. THORNTON: Yes, sir, this will be a longer
21 witness, but it should be the last one of the day, Your
22 Honor.

23 THE COURT: Okay. Call your witness.

24 MR. THORNTON: The State calls John Adams.

25 THE COURT: Come forward to be sworn, please, sir.

WITNESS - DETECTIVE JOHN ADAMS

1 Thereupon,

2 DETECTIVE JOHN ADAMS

3 was called as a witness, having been first duly sworn,

4 was examined and testified as follows:

5 WITNESS: I do.

6 THE CLERK: Please be seated. State your name and
7 spell it for the Court, please.

8 THE WITNESS: My name is John Adams. Last name is
9 A-D-A-M-S.

10 DIRECT EXAMINATION

11 BY MR. THORNTON:

12 Q Mr. Adams, is it proper to call you Detective
13 Adams?

14 A Yes, sir.

15 Q Detective Adams, where do you work?

16 A With Beaufort County Sheriff's Office.

17 Q Did you work for the Sheriff's Office here in
18 Beaufort County in December of -- specifically, December the
19 24th, 2010?

20 A I did, sir.

21 Q And what did you do for them?

22 A I was an investigator for the Sheriff's Office.

23 Q Basically, the same thing you're doing now?

24 A Yes, sir.

25 Q All right. Did you have occasion to talk to

WITNESS - DETECTIVE JOHN ADAMS

1 Preston Oates on December the 24th of 2010?

2 A I did, sir.

3 Q And did you interview him at the substation?

4 A I did, sir.

5 Q And do you see Preston Oates, the person that you
6 interviewed, in the courtroom?

7 A Yes, sir, I do.

8 Q Where is he, sir?

9 A He is wearing the blue tie at the Defendant's
10 table.

11 Q Detective Adams, I'm going to show you what's been
12 marked for identification as State's Exhibit 16. Do you
13 recognize that item?

14 A Yes, sir.

15 Q What is it?

16 A It's a copy of the videotaped interview from that
17 night.

18 Q All right. So this interview you did was audio
19 and video-recorded?

20 A Yes, sir.

21 Q And how did you know, by the way, this is the
22 disc?

23 A I watched it just a few hours ago. And it has my
24 initials on it.

25 Q And is it a true and accurate copy of your

WITNESS - DETECTIVE JOHN ADAMS

1 interview?

2 A Yes, sir, it is.

3 Q All right. And you said that that was audio and
4 video-recorded; is that correct?

5 A Yes, sir.

6 Q Now --

7 MR. THORNTON: Your Honor, at this time I'd ask --
8 and we have a copy of it already preloaded. I'd ask
9 State's Exhibit 16 be moved into evidence.

10 MR. NEWMAN: Subject to the conditions that were
11 discussed at sidebar.

12 THE COURT: It's admitted under those conditions.

13 ATTORNEY1: Thank you, Your Honor.

14 *(Whereupon, State's Exhibit No(s). 16 marked for*
15 *identification and received in evidence.)*

16 MR. THORNTON: Your Honor, if we would, I'm going
17 to go ahead and publish it. At this time I'd like to
18 go ahead and start with -- don't start the actual
19 playback just yet.

20 BY MR. THORNTON:

21 Q Mr. Adams, if you could would you tell us --
22 probably it's pretty obvious to everybody, but who is that
23 that's on camera right there?

24 A That's Mr. Oates.

25 Q All right. And is that in the substation in

WITNESS - DETECTIVE JOHN ADAMS

1 Hilton Head, did you say?

2 A In the old substation on Hilton Head, it's 7
3 Lagune Road.

4 Q All right, sir. And is this the videotape that
5 you had spoke of, that you eventually conducted an interview
6 with Mr. Oates?

7 A Yes, sir.

8 Q Now, is there some time frame here, prior to you
9 actually starting the interview, where Mr. Oates is seen on
10 camera?

11 A Yes, sir.

12 MR. NEWMAN: May I?

13 THE COURT: Yes, sir.

14 (Video playing.)

15 MR. NEWMAN: May I, Your Honor?

16 MR. THORNTON: Do you want to approach?

17 MR. NEWMAN: Yeah, we can.

18 (Off-the-record discussion held.)

19 MR. THORNTON: May I proceed, Judge?

20 THE COURT: You may.

21 MR. THORNTON: Thank you, sir.

22 (Video playing.)

23 BY MR. THORNTON:

24 Q Mr. Adams, I see here that, obviously, Mr. Oates
25 is in a room by himself. At some point do you come in and

WITNESS - DETECTIVE JOHN ADAMS

1 Mirandise him?

2 A Yes, sir.

3 Q And did you Mirandise him off a card or with a
4 form or by memory; how did you do it?

5 A It was a form.

6 Q Okay. And is that the standard form that you
7 always use?

8 A Yes, sir.

9 Q And was that all done on videotape?

10 A It was, sir.

11 MR. THORNTON: Mr. Hightower, if you could go to
12 that part of the videotape, please.

13 (Video playing.)

14 BY MR. THORNTON:

15 Q Now, this is obviously -- Detective Adams, is that
16 where you've Mirandised him, he signed the Miranda form?

17 A Yes, sir.

18 Q And at -- then a couple of minutes after this --
19 after a couple of minutes of small talk you actually begin
20 the interview process; is that correct?

21 A Yes, sir.

22 MR. THORNTON: All right.

23 (Video playing.)

24 BY MR. THORNTON:

25 Q Detective Adams, as you are going through one of

WITNESS - DETECTIVE JOHN ADAMS

1 the things that you're doing is asking him details. Is that
2 why you keep stopping him to try to -- similar to what we do
3 in court, when you're trying to have a witness go through
4 everything over and over again. Whether it's a suspect or
5 not; is that true?

6 A That is correct, sir.

7 MR. THORNTON: All right.

8 BY MR. THORNTON:

9 Q Let me apologize, I should have asked you this
10 earlier: Obviously, there's somebody else in the videotape
11 with you, there's another officer; who is that officer, sir?

12 A That's Investigator Albertin also with the
13 Sheriff's Office.

14 Q All right. And she was clearly in there when you
15 Mirandised the Defendant; is that correct?

16 A Yes, sir.

17 Q All right. And was she ever in there alone with
18 him outside of your presence, during any of the questioning?
19 Or was the vast majority of the questioning appears to be
20 by you; is that correct?

21 A That's correct, sir.

22 Q All right. Thank you. And I'm sorry, I should
23 have asked you that.

24 (Video stopped at 4:37 p.m.)

25 MR. NEWMAN: Your Honor, if we can approach?

WITNESS - DETECTIVE JOHN ADAMS

1 THE COURT: Yes, sir.

2 (Off-the-record discussion held.)

3 BY MR. THORNTON:

4 Q Detective, this is kind of a, I guess, strategic
5 question is probably a way to phrase it. But just kind of a
6 question in general: One of the things I saw you doing or
7 had the Defendant in this case doing, Mr. Oates, was to draw
8 or sketch out a diagram. Is that just for the purpose of
9 keeping him engaged in conversation? Or may it sometimes
10 help you? I mean, what's the purpose generally of doing
11 that?

12 A Just to gain additional information. Obviously
13 Investigator Albertin and I were not at the scene.
14 Therefore, we're trying to get as much information as
15 possible.

16 Q And does that help assist you in trying to figure
17 out what he's talking about?

18 A Yes, sir.

19 Q Okay. And it could be not just this case, but any
20 case?

21 A Absolutely.

22 Q Thank you, sir.

23 A couple of questions, let me ask you this. I'm going
24 to show you --

25 MR. THORNTON: Judge, actually, can I have one

WITNESS - DETECTIVE JOHN ADAMS

1 moment? I need to get these marked real quick. Your
2 Honor, I'll withdraw. Mr. Newman and I probably need
3 to take a sidebar. But rather than do that and take
4 more time we can wait until the end of this witness to
5 do that.

6 THE COURT: All right.

7 MR. THORNTON: Go ahead.

8 (Video playing.)

9 MR. THORNTON: And while he's doing that, this
10 interview continued on through three clips, correct?

11 THE WITNESS: Yes, sir, ten seconds.

12 (Video playing.)

13 MR. NEWMAN: Your Honor, if we could approach?

14 (Off-the-record discussion held.)

15 BY MR. THORNTON:

16 Q Mr. Adams, there's a space in there where you then
17 have Mr. Oates sit. And basically you ask him at some point
18 to fill out a written statement; is that correct?

19 A Yes, sir.

20 Q And basically his written statement is parts of
21 this long interview everybody has sat through, but that
22 basically is what you ask him to do at the end of this; is
23 that correct?

24 A Yes, sir.

25 Q And is that the vast majority of your involvement

WITNESS - DETECTIVE JOHN ADAMS

1 in this case?

2 A It is, sir.

3 Q All right. And again, and were you there present
4 the entire time he was being interviewed by yourself? And
5 -- in other words, Sergeant -- I think, is it Sergeant
6 Albertin --

7 A Yes, sir.

8 Q -- was not interviewing him at any other time?

9 A That is correct, sir.

10 MR. THORNTON: Thank you, I have no further
11 questions. Mr. Adams, if you would, please answer any
12 questions Mr. Newman has.

13 THE COURT: Cross-examination?

14 CROSS-EXAMINATION

15 BY MR. NEWMAN:

16 Q Investigator Adams, one of the techniques that you
17 use when interviewing people is get them to go through a
18 story several times; isn't that correct?

19 A Yes, sir.

20 Q And you're looking for inconsistencies or things
21 that might have been changed, and you want to do follow-up
22 questions?

23 A Yes, sir.

24 Q Okay. And is it -- is it not unusual that people,
25 when they run through stories, think about different things

WITNESS - DETECTIVE JOHN ADAMS

1 or forget sequencing and then get reminded of it?

2 A That's correct, sir.

3 Q All right. And sometimes suspects are
4 deliberately trying to lie to you, and that's one way you
5 can figure out things or follow up with further questions,
6 correct?

7 A Yes, sir.

8 Q All right. And then other times witnesses are
9 clearly befuddled. They've witnessed something traumatic,
10 that had multiple components to it, and they forget
11 sequencing?

12 A That's true, sir.

13 Q Okay. And that could be completely innocent?
14 It's not because that someone's trying to hide something
15 from you. It's -- they're confused?

16 A It is possible, sir.

17 Q Okay. Okay. And it was clear, at least from what
18 y'all said, that Mr. Oates had been through a recently
19 traumatic event?

20 A Absolutely, sir.

21 Q Just an hour -- a little -- some time before?

22 A Yes, sir.

23 Q Okay. And at no time did Mr. Oates say, I want to
24 stop, I want an attorney, anything like that?

25 A No, sir.

WITNESS - DETECTIVE JOHN ADAMS

1 Q Okay. Very good. Very good. Now, did you have
2 anything else to do in this investigation?

3 A No, sir.

4 Q Such as search the crime scene area?

5 A No, sir.

6 Q Take photographs?

7 A The only other thing, sir, was I did a GSR kit.

8 Q Okay. And that's where you take basically
9 swabbings that a laboratory can test whether or not
10 somebody's fired or handled a pistol?

11 A Yes, sir.

12 Q And did you take GSR from Mr. Oates?

13 A Yes, sir.

14 Q And did he consent to that?

15 A He did.

16 Q And he admitted firing pistols, so you would
17 probably expect to find gunshot residue on his hands?

18 A Yes, sir.

19 Q Okay. Thank you, sir. I don't believe I have any
20 other questions.

21 MR. NEWMAN: Unless -- do you have anything?

22 MR. THORNTON: No. Beg the Court's indulgence, I
23 think we're about finished, Investigator Adams.

24 MR. NEWMAN: I'm sorry, just briefly.

25

WITNESS - DETECTIVE JOHN ADAMS

1 BY MR. NEWMAN:

2 Q This interview occurred on December 24th, correct?

3

4 A Yes, sir.

5 Q And at the conclusion of the interview Mr. Oates
6 was let go. Y'all let him go home, correct? Or let him
7 leave the station?

8 A I honestly can't remember, Mr. Newman. But I
9 believe so.

10 Q He was not arrested that night?

11 A He was not.

12 MR. NEWMAN: Okay. Thank you, sir.

13 MR. THORNTON: No redirect, Judge. Ask that he be
14 excused and allowed to go back to work. All of the
15 officers are on telephone standby in case one party or
16 the other needs them. But I would ask he be excused?

17 MR. NEWMAN: No objection.

18 THE COURT: You may be excused.

19 THE WITNESS: Thank you.

20 MR. THORNTON: Judge, looking at the clock, it is
21 at 5:00. That would be -- the request of the State
22 would be that Mr. Adams is the final witness for today.

23 THE COURT: I suspect that the jury would agree.

24 MR. THORNTON: Yes, sir.

25 THE COURT: Ladies and gentlemen, 9:15 in the

WITNESS - DETECTIVE JOHN ADAMS

1 morning. But remember, don't let anybody talk to you
2 about the case; you don't talk to anybody about the
3 case. Don't read anything, don't listen to anything.
4 If anybody tries to talk to you or if you inadvertently
5 flip a TV station and something is on about this case,
6 turn it off, switch the channel. You have to decide
7 this case based on what's happened in this courtroom.

8 When you come back in the morning, ladies and
9 gentlemen, I would like for you to try and see if you
10 can select a foreperson to represent the jury. If you
11 can't do it, I can do it. I don't want you to get in a
12 fuss or fight over going to be the foreperson. But if
13 you can, try to do that when you come back in at 9:15 in
14 the morning.

15 Anybody got a problem with that? Are we okay?
16 9:15. I'll see you then, ladies and gentlemen.

17 (Jury exits the courtroom at
18 5:10 p.m.)

19 THE BAILIFF: Jury's clear, door's closed, Your
20 Honor.

21 THE COURT: Anything we need to talk about before
22 tomorrow?

23 MR. NEWMAN: No.

24 MR. THORNTON: I don't think so, Your Honor. I
25 think we'll be -- we'll have everybody here lined up

WITNESS - DETECTIVE JOHN ADAMS

1 again, and I'll try to keep them as quick as I did
2 today. So, as far as I can tell, we are right where we
3 need to be on number of witnesses.

4 THE COURT: All right. See you at 9:15 in the
5 morning. The Court is adjourned.

6 MR. THORNTON: Thank you.

7 (Court adjourned for the day at
8 5:10 p.m.)

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CERTIFICATE PAGE

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CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 25th day of 'November, 2014.



MONA L. MANLEY

Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
(850) 893-6662
mmanley@sccourts.org

COLLOQUY

1 PROCEEDINGS

2 MR. THORNTON: Mr. Colongeli, are you ready to go
3 on the record with this?

4 MR. COLONGELI: We're fine, sir.

5 MR. THORNTON: Oh, we're not going to --

6 MR. COLONGELI: No. It's not an issue, thank you,
7 sir.

8 MR. NEWMAN: Not an issue.

9 MR. THORNTON: Here you go.

10 MR. NEWMAN: Judge, when the Solicitor calls
11 Captain Bromage, he is going to seek to introduce a --
12 this is a video recording? Is it video or audio?

13 MR. THORNTON: Audio. I'm sorry, just audio.
14 Just an audio recording.

15 MR. NEWMAN: We agree to the chain on it. We
16 agree to what it is. We do not object to it, subject
17 to redactions that the Solicitor and I have agreed on.

18 MR. THORNTON: For record purposes, Your Honor, we
19 both have copies, minus an unofficial transcript. They
20 actually had it transcribed. Regardless, we both
21 matched it up, and we will -- we will all be watching,
22 just to make sure. And then, you know, they will get
23 up and say, if there's an issue, Mr. Hightower will be
24 playing as much as he did yesterday. And basically,
25 the way we're going to handle it is, if it comes to

COLLOQUY

1 something -- to a part that we both agree is not
2 relevant to this case, it will be paused. I'll ask the
3 witness a question, and Mr. Hightower will fast forward
4 it to the next place that we need to start. But
5 basically, the same procedure as we did yesterday.

6 THE COURT: Let me ask y'all a question. I can't
7 recall. Did we place on the record the Defendant's
8 position regarding his -- the voluntariness of his
9 statement? I just couldn't remember if we did it on
10 the record or we talked about only.

11 MR. NEWMAN: I believe we did when we were on --
12 in the smaller courtroom on Monday.

13 MR. THORNTON: We did, Your Honor. That was my
14 one, you know -- one, and again, I didn't want to waste
15 the Court's time. But that was the one issue was to
16 make sure that it was placed on the record, and that
17 made a finding. And my recollection was that Mr.
18 Newman, for the purpose -- and he was very specific.
19 It was for the purposes of your determination, waived
20 the -- or consented to the voluntariness of it, but not
21 as the jury's determination. Since that ultimately is
22 their decision.

23 THE COURT: All right. We ready for the jury,
24 then?

25 MR. THORNTON: We will be, Your Honor, in one

COLLOQUY

1 second. I would like to approach to talk about a
2 scheduling matter with Mr. Newman and Colongeli.

3 THE COURT: All right.

4 (Off-the-record discussion held.)

5 THE COURT: Are you ready now?

6 MR. THORNTON: Yes, sir. I'm sorry, Judge. We do
7 have one matter on the record.

8 May it please the Court. Your Honor, the State
9 would intend to introduce --

10 Your Honor, the Court's indulgence for just one
11 moment, I'm sorry.

12 Judge, I believe I'm going to solve this matter for
13 you, without having to go onto the record. Mr. Newman
14 had an objection to a piece of evidence that we have. I
15 don't think it's worth having to have an argument over
16 it. So, the State will withdraw it and we're ready for
17 the jury if the Defense is, Judge.

18 MR. NEWMAN: Yes, sir.

19 THE BAILIFF: Your Honor, the jury is entering.

20 THE COURT: Good morning. Welcome back, ladies
21 and gentlemen. I apologize for keeping you waiting
22 this morning. It's my understanding the jury has
23 selected a celebrity look-alike -- excuse me, Juror 187
24 to serve as foreperson?

25 THE JUROR: Yes, sir.

COLLOQUY

1 THE COURT: Is that you?

2 THE JUROR: (Nods in the affirmative).

3 THE COURT: And some people believe that you have
4 a resemblance to some celebrity. That's a wise
5 decision the jury's made here.

6 I believe we're ready to resume with the
7 presentation of evidence of the State. Solicitor?

8 MR. THORNTON: Yes, Your Honor. Thank you.
9 Brandon Cooler.

10 THE WITNESS: I do.

11 THE CLERK: Would you please state your name and
12 spell it for the Court, please.

13 THE WITNESS: My name is Brandon Cooler,
14 B-R-A-N-D-O-N C-O-O-L-E-R.

15 Thereupon,

16 BRANDON COOLER

17 was called as a witness, having been first duly sworn,
18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. THORNTON:

21 Q Mr. Cooler, who do you work for, sir?

22 A Beaufort County Sheriff's Office.

23 Q And what do you do for Beaufort County Sheriff's
24 Office?

25 A I am a criminal investigator.

WITNESS - BRANDON COOLER

1 Q And did you work for the Beaufort County Sheriff's
2 Office on or about December the 24th of 2010?

3 A I did.

4 Q And did you do the same job for them, or something
5 else?

6 A The same job.

7 Q Did you have an occasion to go out to the crime
8 scene located on -- ?

9 A I did.

10 Q I'm sorry. And did you do anything in particular
11 while you were there?

12 A I processed the crime scene.

13 Q And by "processed the crime scene," does that
14 involve collecting items of evidence, or potential items of
15 evidence, I guess I should say?

16 A Yes, it does.

17 Q All right. I'm going to show you first what's
18 been marked --

19 MR. NEWMAN: Your Honor, I'm going to show you --
20 just to save time. I've been shown a series of
21 photographs. The Defense has no objection to any those
22 being introduced through the witness.

23 MR. THORNTON: Thank you, Your Honor.

24 BY MR. THORNTON:

25 Q I'm going to show you what's been marked -- and

WITNESS - BRANDON COOLER

1 these are a little out of order. I'm going to try to give
2 them to you in numerical order. They are, for the record
3 purposes, State's 5, 10, 11, 19, 20 and 21. If you will go
4 through them one at a time, identify the number of the
5 exhibit and tell me what it is if you recognize it.

6 A Exhibit 5 is a photograph of a vehicle tire with a
7 boot on it. An orange-colored boot with an evidence marker
8 number ten, and a gold tool laying beside the tire.

9 Exhibit No. 10 is a Toyota Sienna mini-van
10 with a South Carolina license plate on it.

11 Exhibit No. 11 is a photograph of a South
12 Carolina permanent truck tag, . That was on the back
13 of the tow truck.

14 Exhibit No. 19 is a photograph of the back of
15 a tow truck, with an evidence placard number 11 on it, with
16 a set of keys beside the evidence placard.

17 Exhibit No. 20 is a photograph of the inside
18 of the tow truck.

19 And Exhibit No. 22 is a photograph containing
20 evidence placards 4, 5, 6, 7, 8 and 9, where you're marking
21 shell casings at the scene.

22 Q Are all those pictures a fair and accurate
23 depiction of , as it appeared that night while
24 you were there?

25 A They are.

WITNESS - BRANDON COOLER

1 Q And have they been altered or changed in any way?

2 A They have not.

3 MR. THORNTON: Your Honor, again, I would move --
4 and this is State's 5, 10, 11, 19, 20 and 21 into
5 evidence.

6 THE COURT: I will admit it without objections.

7 (Whereupon, State's Exhibit No(s). 5, 10, 11, 19,
8 20 and 21 marked for identification and received in
9 evidence.

10 *(Whereupon, State's Exhibit No(s). 5, 10, 11, and*
11 *19-21 marked for identification and received in*
12 *evidence.)*

13 BY MR. THORNTON:

14 Q Now, I've looked at Exhibit 21, which you've
15 identified as the placards, obviously, 4, 5, 6, 7, 8 and 9.
16 Those are the shell casings?

17 A Yes, sir.

18 Q And I count six placards. Were there six shell
19 casings out there?

20 A There was.

21 Q Was that the only shell casings found?

22 A Yes.

23 Q And did you collect those shell casings?

24 A I did.

25 Q Exhibit 20, you said, appears to be the inside of

WITNESS - BRANDON COOLER

1 the tow truck?

2 A Yes.

3 Q Is that the tow truck that's been identified in
4 this case as being driven by Preston Oates?

5 A It is.

6 Q And I noticed that the -- there are a set of keys
7 in the ignition of that tow truck; is that correct?

8 A Yes, sir.

9 Q And when you got there, was the truck running or
10 not running?

11 A It was running.

12 Q And did you at some point turn it off?

13 A I did.

14 Q So, the keys were in it and the motor was running?

15 A Yes, sir.

16 Q I'm going to hand you what has been marked for
17 identification as State's Exhibit 30. It's an envelope
18 containing several other smaller envelopes. Could you
19 identify the contents of those individual envelopes?

20 A Six of the envelopes are the six shell casings I
21 collected on that evening.

22 Q And did you submit those to SLED for comparison?

23 A I did.

24 Q Go ahead, sir.

25 A And the final one are projectile fragments that

WITNESS - BRANDON COOLER

1 was collected.

2 Q And were those also submitted to SLED?

3 A They were.

4 Q In fact, the envelop that I handed those to you in
5 has the SLED evidence tape around it; does it not?

6 A It does.

7 Q And do those appear, other than that they were
8 tested at SLED, do they appear to have been altered or
9 changed in any way?

10 A They do not.

11 MR. THORNTON: Your Honor, I would ask that
12 State's Exhibit No. 30, containing six spent shell
13 casings collected at the scene, and the fragments
14 collected from the victim, Carlos Olivera, be admitted
15 into evidence?

16 MR. NEWMAN: Without objection.

17 THE COURT: Without objection, they are admitted.

18 *(Whereupon, State's Exhibit No(s). 30 marked for*
19 *identification and received in evidence.)*

20 BY MR. THORNTON:

21 Q I'm going to hand you what has been marked for
22 identification, it's been talked about several times, as
23 State's Exhibit No. 25, identified as belonging to the
24 victim in this case, Carlos Olivera. Can you identify what
25 is in that box, please?

WITNESS - BRANDON COOLER

1 A In this box is a Glock 22 -- model 22, .40 caliber
2 handgun with a 15-round magazine, it appears, and 15
3 projectiles.

4 Q All right. So, when you collected -- are you the
5 one who collected that at the scene?

6 A I did.

7 Q And -- so, you said, it has a 15-round magazine
8 and there were 15 rounds with it?

9 A Yes.

10 Q All right. And just so that, it's been talked
11 about, but just so that -- you're the one that collected it.
12 Was there one in the chamber when you picked it up?

13 A There was.

14 MR. THORNTON: And, Your Honor, for the Court's
15 information, because I'm moving these into evidence
16 shortly, they are safe -- they have been safe pursuant
17 to court procedures, there has been a gun lock placed
18 on them.

19 THE COURT: All right.

20 BY MR. THORNTON:

21 Q Has this been -- other than it was sent to SLED
22 and tested, has it been altered or changed in any way?

23 A It has not.

24 MR. THORNTON: I'd ask, Judge, that State's
25 Exhibit No. 25 be moved into evidence.

WITNESS - BRANDON COOLER

1 MR. NEWMAN: Without objection.

2 THE COURT: Motion granted without objection.

3 *(Whereupon, State's Exhibit No(s). 25 marked for*
4 *identification and received in evidence.)*

5 BY MR. THORNTON:

6 Q I'm going to hand you what's been marked as
7 State's Exhibit 24, item identified as Preston Oates' gun.
8 Could you see if you can identify that for me?

9 A This is a Glock handgun, Model 27, .40 caliber
10 with a -- appears to be an 8-round magazine and one .40
11 caliber round.

12 Q And how many shell casings did you find at the
13 scene?

14 A Six.

15 Q Was there one in the chamber of that gun, as well?

16 A There was.

17 Q And has that gun, other than it was sent to SLED
18 for testing, has it been altered or changed in any way?

19 A It doesn't appear so.

20 MR. THORNTON: Your Honor, I would move Preston
21 Oates' gun, State's Exhibit No. 24, into evidence at
22 this time.

23 MR. NEWMAN: Without objection.

24 THE COURT: Admitted without objection.

25 *(Whereupon, State's Exhibit No(s). 24 marked for*

WITNESS - BRANDON COOLER

1 *identification and received in evidence.)*

2 BY MR. THORNTON:

3 Q I'm going to hand you what's been marked for
4 identification as State's Exhibit 27. Can you identify what
5 is in State's Exhibit 27?

6 A It is a brown in color wallet, leather wallet, and
7 a gray ID holder.

8 Q And who were those items collected from?

9 A They were collected from Olivera, the victim.

10 Q The victim, Carlos Olivera?

11 A Yes.

12 Q Have those been altered or changed in any way?

13 A They are not.

14 Q And they appear in the same condition as they did
15 the night that Mr. Olivera was murdered?

16 A They do.

17 MR. THORNTON: Your Honor, at this time I would
18 move State's Exhibit No. 27 into evidence.

19 MR. NEWMAN: Object under Rule 401, general
20 relevancy. It doesn't go to prove anything one way or
21 the other.

22 MR. THORNTON: Identity of the victim, which I
23 know has not been argued. Also, Judge, one of the
24 things in there is this concealed weapons permit, which
25 does indicate to the jury that he lawfully possessed

WITNESS - BRANDON COOLER

1 and carried a firearm.

2 MR. NEWMAN: Well, we object to the
3 characterization "lawfully possessed." When you have a
4 CWP, you can't pull a gun out. That's against the law.
5 However, we believe under general relevance -- there's
6 no question who the decedent is, there's no question in
7 this case.

8 THE COURT: I understand the argument. Overruled.
9 I'll admit it.

10 *(Whereupon, State's Exhibit No(s). 27 marked for*
11 *identification and received in evidence.)*

12 MR. NEWMAN: We don't concede it's relevant, but I
13 don't object.

14 BY MR. THORNTON:

15 Q Item No. 26. I'd ask you if you can identify
16 State's Exhibit 26 for identification?

17 A This is a Uncle Mike's Sidekick nylon holster.

18 Q And where was that found?

19 A It was located in the tow truck.

20 Q All right. Has it been altered or changed in any
21 way?

22 A It has not.

23 MR. THORNTON: I ask that it be admitted into
24 evidence, Judge, as State's, I believe, 26.

25 THE COURT: Admitted over objection.

WITNESS - BRANDON COOLER

1 MR. NEWMAN: Thank you.

2 *(Whereupon, State's Exhibit No(s). 26 marked for*
3 *identification and received in evidence.)*

4 BY MR. THORNTON:

5 Q I'll hand you what's been marked for
6 identification as State's Exhibit 29. Ask you if you can
7 identify that?

8 A This is the gold in color tool that was located by
9 the front driver's side tire of the minivan, the victim's
10 minivan.

11 Q And does it appear in substantially the same
12 condition?

13 A It does.

14 Q Has it been altered or changed in any way?

15 A No.

16 MR. THORNTON: Your Honor, I'd ask at this time
17 that State's No. 29 be moved into evidence.

18 MR. NEWMAN: Without objection.

19 THE COURT: Admitted without objection.

20 *(Whereupon, State's Exhibit No(s). 29 marked for*
21 *identification and received in evidence.)*

22 BY MR. THORNTON:

23 Q Hand you what been marked as State's Exhibit 28
24 for identification, and ask you if you can identify that,
25 please?

WITNESS - BRANDON COOLER

1 A There are a set of keys that I located on the back
2 of the tow truck, on the flat bed.

3 Q And do they appear in substantially the same
4 condition they did on that night?

5 A They do.

6 Q And have they been altered or changed in any way?

7 A They have not.

8 MR. THORNTON: Your Honor, I'd ask that State's
9 Exhibit, I believe that's 28, be moved into evidence.

10 MR. NEWMAN: Without objection.

11 THE COURT: Without objection.

12 *(Whereupon, State's Exhibit No(s). 28 marked for*
13 *identification and received in evidence.)*

14 MR. THORNTON: Your Honor, the Court's indulgence,
15 please, one moment.

16 BY MR. THORNTON:

17 Q Thank you very, much, Mr. Cooler, I have no
18 further questions for you. Please answer any questions
19 Mr. Newman may have.

20 THE COURT: Mr. Newman?

21 MR. NEWMAN: Thank you.

22 CROSS-EXAMINATION

23 BY MR. NEWMAN:

24 Q Are you familiar with the -- as a law enforcement
25 officer enforcing the laws of this State, with the

WITNESS - BRANDON COOLER

1 requirements under the concealed weapons permit statute?

2 A Yes, sir.

3 Q Okay. And isn't it, in fact, that it's unlawful
4 that if I -- and I do have a CWP, if I have a weapon on me,
5 it's unlawful for me to display that weapon; is it not?

6 A Yes.

7 Q The only time I can take it out is if I've got to
8 use it?

9 A Yes.

10 Q All right. And it would likewise be unlawful to
11 not only display the weapon, but to rack a shell into the
12 chamber?

13 A Yes.

14 Q Now, you processed the crime scene that night.
15 And it's my understanding that the scene on Edgefield was
16 very dark?

17 A It was.

18 Q In fact, it was so dark that y'all had to get a --
19 I believe it was a fire truck?

20 A Yes, sir.

21 Q That had a -- I don't know what they're called,
22 but a big rack of lights on it, to be able to process the
23 scene?

24 A Yes.

25 Q Okay. And these -- in State's Exhibit 21,

WITNESS - BRANDON COOLER

1 placards 4 through -- 4 through 9, are the shell casings,
2 correct?

3 A Yes.

4 Q And they're all located in one general area in
5 Reba Bryant's driveway? She lived across the street. She
6 was the lady that lived at , across the street from
7 Mr. Varedi's house?

8 A They were located at .

9 Q Okay. All in this area?

10 A Yes.

11 Q Okay. And these keys, these would have been the
12 keys that were found on the back of the flat bed of the
13 truck?

14 A Yes.

15 Q Okay. And from the investigation, it was pretty
16 clear that once Mr. Oates retreated to his vehicle. The
17 only time that he got back out of his vehicle, is when he
18 took action against Carlos Olivera?

19 A I'm sorry?

20 Q Have you viewed the video in this case?

21 A I have.

22 Q Okay. That when Mr. Oates retreats to his tow
23 truck.

24 A Uh-huh. (Indicating affirmatively.)

25 Q On the video you see Nelson and Varedi holding a

WITNESS - BRANDON COOLER

1 flashlight that appeared like they're trying to remove this
2 disabling device?

3 A I can't really recall. It's been a while since I
4 watched the video.

5 Q Okay. Is it clear from your investigation that
6 Mr. Oates never placed that spanner wrench, and never placed
7 those keys on the flat bed of that tow truck?

8 A I couldn't say who placed them there.

9 Q And you did the crime scene?

10 A I just processed the crime scene, yes.

11 Q I believe this is the -- and I'll show you, this
12 is State's 25.

13 A Uh-huh. (Indicating affirmatively.)

14 Q This is the Model 22 Glock semi-automatic pistol?

15 A Yes, sir.

16 Q All right. And when it was found, it had this
17 clip in it?

18 A Yes, sir.

19 Q And it had, I believe, 15 rounds of full metal
20 jacket?

21 A Yes, sir.

22 Q And I note one round is expended, and that was
23 done by SLED in testing the weapon, correct?

24 A Yes, sir.

25 Q Okay. And they just put it right back in to show

WITNESS - BRANDON COOLER

1 that this is the one we used?

2 A Yes, sir.

3 Q All right. So, this clip holds 15?

4 A Yes, sir.

5 Q All right. You put all 15 in, you can't put any
6 more. Put the clip in the gun, it locks by, I guess, a
7 clicking sound, that you know it's locked?

8 A (Nods in the affirmative).

9 Q And when you rack it, one will pick up from here,
10 be in the chamber, and this gun's ready to fire; is that
11 correct?

12 A Yes, sir.

13 Q Okay. And I note this gun doesn't actually have
14 an external hammer, does it?

15 A No, sir.

16 Q Okay. So, it's ready to fire. And I note it does
17 not have a safety, other than what's called a trigger
18 safety? Do you want me to ask a firearms guy that?

19 A Yes.

20 Q Is this the kind of gun y'all carry?

21 A Yes, it is.

22 Q Same model?

23 A Same model.

24 Q Okay. So, you're not familiar with the trigger
25 safety?

WITNESS - BRANDON COOLER

1 A I am familiar with it. There's a trigger safety
2 on it, but two internal safeties, from my understanding of
3 how the gun works as well.

4 Q Okay. So this gun's ready to go, ready to the
5 fired?

6 A Yes.

7 Q And, it was -- in fact, I'll ask the SLED guy, but
8 it was found in working condition, to your knowledge?

9 A (Nods in the affirmative).

10 Q And in doing the crime scene, y'all actually got a
11 warrant for Mr. Oates' truck; is that correct?

12 A Yes, sir.

13 Q Okay. And I note nowhere in any of the interviews
14 did you ask him, Can we just look in your truck? Y'all just
15 went ahead and got a warrant? Not your call? That's not
16 your call?

17 A Not my call.

18 Q Okay. And in processing the truck, there's been
19 testimony that one or both of the Olivera brothers were
20 actually -- had opened the door, put their hands on the
21 windows, were up on -- the truck has a step to get up. Is
22 this -- we're talking about a pretty large truck?

23 A Yes.

24 Q Had a step to get up; is that correct?

25 A Yes.

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1 Q All right. Yet you did not try and take any touch
2 DNA from the door or window of that truck; is that correct?

3 A That's correct.

4 Q You didn't take any fingerprints from the door or
5 window of that truck?

6 A No, we didn't attempt to.

7 Q What's that?

8 A I said, No, I did not attempt to.

9 Q I didn't hear the last one.

10 A I did not attempt to, try to.

11 Q And wouldn't it have been better police practice
12 to process that scene, because that would corroborate facts
13 and circumstances in this case, the Olivera's touch DNA or
14 fingerprints were found on the windows of that truck and on
15 the mirror and siding?

16 A At the time, no. We were -- everyone was in
17 agreeance that they were on the truck. That would have just
18 proved that at some point -- it wouldn't have given us a
19 timeframe or anything like that, of when they were there.

20 Q Okay. So, you were satisfied that one or both of
21 the Olivera brothers had been up in the window of that
22 truck?

23 A At the time that I processed it, yes.

24 Q Okay. And there's been testimony from both the
25 recorded interview of Mr. Oates and live testimony from.

WITNESS - BRANDON COOLER

1 Nelson Olivera that there was a concern Carlos had about
2 paperwork being issued by the tow truck driver. Are you
3 familiar with that?

4 A I'm not.

5 Q And in briefing to do the crime scene, were you
6 informed that the -- either Carlos or Nelson or both, made
7 it a point that they did not want the police called?

8 A I can't recall that.

9 Q Okay. And I notice on State's Exhibit 10. This
10 is a picture of the minivan that was in question?

11 A Yes.

12 Q Okay. And that is "sheriff's line, do not cross,"
13 correct?

14 A Yes, sir.

15 Q And that indicates the meets and bounds of your
16 crime scene?

17 A One stage of it, yes.

18 Q Okay. One stage of it. But it's an inner area
19 that you don't want people in or out of, except for trained
20 investigators that are looking to collect evidence of what
21 happened?

22 A Yes.

23 Q Okay.

24 A It's against our personnel.

25 Q Okay. And one of the things your department never

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1 did to this van, they never looked or searched in this van,
2 did they?

3 A No, we did not.

4 Q So, we don't know what was inside that minivan?

5 A No, sir.

6 Q No clue?

7 A Couldn't say.

8 MR. NEWMAN: I believe that I'm about finished,

9 Your Honor. One moment, please.

10 THE COURT: Sure.

11 BY MR. NEWMAN:

12 Q I just noted from the -- I guess, whatever State's
13 Exhibit is, that Mr. Olivera's wallet, you inventoried that
14 wallet, correct?

15 A I believe so, yes.

16 Q All right. And along with CWP it also had a
17 Regions check card and \$187 in cash inside the wallet?

18 A From what I can recall, yes.

19 Q I've got your report. If you want to refresh your
20 recollection, sir, this is a copy of it. I know it's been a
21 while?

22 A That is correct.

23 Q Okay. And in retrospect, do you think it would
24 have been a good idea to have looked in the minivan?

25 A I can't really say.

WITNESS - BRANDON COOLER

1 Q Okay. That's a hard question, I understand.

2 Thank you.

3 MR. THORNTON: No redirect, Judge. Thank you.

4 Ask that he be excused?

5 THE COURT: Without objection?

6 MR. NEWMAN: Without objection.

7 THE COURT: You may be excused.

8 Call your next witness.

9 MR. THORNTON: Thank you, Your Honor. Captain Bob
10 Bromage.

11 Thereupon,

12 ROBERT EDWARD BROMAGE

13 was called as a witness, having been first duly sworn,

14 was examined and testified as follows:

15 WITNESS: Robert Edward Bromage.

16 DIRECT EXAMINATION

17 BY MR. THORNTON:

18 Q Captain Bromage, who do you work for?

19 A Beaufort County Sheriff's Office.

20 Q And did you work for the Beaufort County Sheriff's
21 Office in December, specifically, December the 24th of 2010?

22 A I did.

23 Q And what did you do, and what do you still do for
24 the Sheriff's Office?

25 A I am a captain with the sheriff's office. I do

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1 investigations.

2 Q And were you -- were you doing investigations or
3 acting as an investigator in December of 2010?

4 A I was. I was a manager of the criminal
5 investigation branch.

6 Q And do you, as part of that job, sometimes
7 interview suspects or interview people involved with
8 potential crimes?

9 A I do.

10 Q And did you do an interview of one Preston Oates
11 in the case we're here about today?

12 A I did.

13 Q I'm going to hand you what's been marked as
14 State's Exhibit 22 for identification. Ask if you can
15 identify that disc?

16 A That is a disc of the interview I conducted on
17 12/27 --

18 Q Is that an audio -- I'm sorry, I apologize. Go
19 ahead.

20 A Audio disc.

21 Q All right. So, it is audio only; is that correct?

22 A Audio only, yes, sir.

23 Q And how do you know that's the disc?

24 A I initialed it.

25 Q And did you review this at my request?

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1 A I did.

2 Q And is it a true and accurate copy of the
3 interview you did with Mr. Oates?

4 A It is.

5 Q Has it been altered or changed in any way?

6 A No, sir.

7 MR. THORNTON: Your Honor, at this time the State
8 would move to introduce State's Exhibit 22 into
9 evidence?

10 MR. NEWMAN: That's subject to our conference.

11 THE COURT: All right. It's admitted under those
12 conditions.

13 *(Whereupon, State's Exhibit No(s). 22 marked for*
14 *identification and received in evidence.)*

15 MR. THORNTON: Thank you, your Honor. Your Honor,
16 it'll take just a moment, and we'll have it ready.

17 MR. NEWMAN: Your Honor, I've spoke with
18 Mr. Colongeli. I'm going to excuse myself for one
19 minute. I'll be back in about three minutes.

20 MR. THORNTON: Your Honor, before we start the
21 tape, I do want to go ahead and cover one base real
22 quick.

23 BY MR. THORNTON:

24 Q Captain Bromage as part of your discussions --
25 part of your interview of Mr. Oates in this case, did you do

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1 what they call Mirandise him?

2 A I did.

3 Q And did he seem to understand his rights?

4 A He did.

5 Q And did you do it off a card? Did you do it off a
6 form? How did you do it?

7 A I did it off a card.

8 Q All right. And do you have that card with you?

9 A I sure do.

10 Q All right. And would it be the same card?

11 A It would be. Yes, sir.

12 Q All right. Could you please read the rights the
13 same way you would have read them to Mr. Oates on that day?

14 A Let me read them from the card.

15 You have the right to remain silent. In
16 which case he answered, yes, he understood. Anything that
17 you say can and will be used against you in a court of law.
18 He implied he understood. You have the right to talk to a
19 lawyer and have him present with you while you're being
20 questioned. He understood that right. If you cannot afford
21 to hire a lawyer one will be appointed to represent you
22 before any questioning, if you wish. He also acknowledged
23 he understood that. And do you have -- and you do
24 understand each of these rights I've explained to you? And
25 he also indicated that he did.

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1 Q And is that actually referenced in the audio tape,
2 as well?

3 A It is.

4 Q All right. And did he, at any time, since
5 obviously we won't be watching him on video, did he seem at
6 any time to not understand his rights or understand what you
7 were telling him?

8 A He clearly understood.

9 Q And did he agree to talk to you?

10 A He did.

11 Q And is that what's referenced on this audio tape?

12 A It is.

13 Q All right. Thank you very much.

14 (Audio playing.)

15 MR. THORNTON: Judge, I apologize. As usual, if
16 something could go wrong with the electronics, it will.
17 If the Court will indulge me for just a moment?

18 MR. THORNTON: Sorry, Judge. We should be good to
19 go now.

20 (Audio playing.)

21 MR. THORNTON: Captain Bromage, let me ask you a
22 couple of questions I wanted to look at.

23 A Okay.

24 Q You mentioned just a second ago about -- something
25 about in the interview, and I realize it's audio, it's not

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1 video, we don't get to see it. But you mentioned something
2 specifically about code of regulations or vehicle parking
3 code, things like that. In other words, not -- what you're
4 talking about, is it fair to say it's not the HOA's rules,
5 this is more like State law, correct?

6 MR. NEWMAN: Your Honor, I have an objection to
7 this. And if we're going to get into this, I don't
8 believe it's proper to do in front of the jury. But he
9 ain't right on the law. And I think that the Solicitor
10 is going to try and get him to give some kind of legal
11 opinion, that this vehicle was legally parked. That's
12 absolutely incorrect. I can go over all the law with
13 them. But I don't think it's proper testimony. I
14 object to it. And I object to this witness.

15 MR. THORNTON: Your Honor, my point was to ask him
16 what he was referencing. I wasn't going to get into
17 more detail now. Before I get into any more detail, if
18 Mr. Newman has a problem with it, I can always go into
19 it later. You know, we can argue the legal point
20 outside the presence of the jury is fine. I'll just
21 move on for now, and we can get to it later.

22 MR. NEWMAN: I'd just ask that it be stricken. He
23 ain't a lawyer.

24 THE COURT: I'm sorry?

25 MR. NEWMAN: I just ask that we move on from all

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1 of that. If the Solicitor wants to argue that outside
2 the presence of the jury, that's fine.

3 THE COURT: Okay.

4 MR. THORNTON: That's what I just said, Judge.

5 We'll move on.

6 THE COURT: All right.

7 MR. THORNTON: Your Honor, Court's indulgence for
8 one moment.

9 THE COURT: It turns out it may be a good time,
10 Solicitors, for us to take a break anyhow.

11 MR. THORNTON: Yes, sir. Thank you. We'll get
12 everything --

13 THE COURT: Let's take a 10-minute recess. And I
14 remind you it's too early to begin discussing the case.

15 (Whereupon, a brief recess was taken at 11:10
16 a.m.)

17 THE COURT: Do we need to address that issue?

18 MR. THORNTON: Judge, I'll withdraw the line of
19 questioning. I thought it was just me asking the
20 captain the question just to, you know, just basically
21 the same procedure yesterday. I'll withdraw the
22 question and I won't get into it anymore. I will come
23 up with a different question to ask. I think we have
24 ten minutes until the next break, and then I'll go from
25 there.

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1 MR. NEWMAN: Judge, I just want to put on the
2 record that in a previous hearing in this matter Judge
3 Dennis did, in fact, rule that this was an illegally
4 parked vehicle in his order filed March 6, 2012. These
5 issues came up, and I would ask to -- since the officer
6 is putting in his opinions about what is legally and
7 illegally parked based on that, I'd ask to either
8 charge the jury or that I be allowed to ask him that
9 Judge Dennis did, in fact, find this was an illegally
10 parked vehicle.

11 MR. THORNTON: Judge, my position was if I -- you
12 know, I understand what Mr. Newman's issue is. You
13 know, the fact is this is in an interview with the
14 Defendant. You know, and as Mr. Newman has pointed out
15 in previous cases and different hearings, they say all
16 kinds of things in the interview. I think you will
17 charge the jury on what the law is and is it relevant
18 in this case.

19 My position would be, frankly, regardless of
20 whether the vehicle was parked illegally or not, clearly
21 Mr. Oates was under the impression that he should be
22 towing cars because he says he has a contract, which I'm
23 not disputing, with the HOA. So I don't know that it's
24 all that relevant to begin with.

25 MR. NEWMAN: I want that one issue cleared up with

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1 the detective, to unring it from the jury's mind. And
2 that's what I was just asking. As to that issue, Mr.
3 Bromage -- in fact, Judge Dennis had ruled that this
4 was an illegally parked vehicle. That's the law of the
5 case. And when it was appealed, the State didn't
6 appeal that issue. Of course, it's not on appeal
7 anymore. It's the law of this case. And I've got the
8 explanations as to why. But I don't think the Court
9 wants to go into all that. But I don't want to belabor
10 the point in front of the Court or the jury.

11 But I don't want them left with an impression
12 somewhere in the back of their mind, that he shouldn't
13 have even been there, the Defendant.

14 MR. THORNTON: As an alternative, maybe this will
15 handle Mr. Newman's issue with it. What I don't want
16 is some discussion of Judge Dennis and he's issued a
17 ruling, when you're going to be issuing what the law is
18 in the case. You know, there may be an alternative to
19 that, to say something to the effect of -- if this -- I
20 don't think it's necessary. If you're trying to unring
21 it, it's just going to bring more attention to it to
22 begin with. I don't think that we really rang the bell
23 to start with.

24 But if the Court decided that they needed to give
25 some instruction to the jury, I am -- or to have some

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1 instruction given to the jury, I'm perfectly willing to
2 ask the Detective, Detective Bromage -- "Well, Captain
3 Bromage, regardless of what your opinion in this
4 statement is of State law, clearly Mr. Oates had a
5 contract with the towing company and was out there
6 pursuant to what he believed his duties were. Which I
7 think is fair. And I think that that handles it without
8 talking about former findings of Judge Dennis.

9 But frankly, I don't know that they are the law of
10 the case. Because that dealt strictly with the Castle
11 Doctrine here. And I don't know what the ramifications,
12 you know, as far as -- that was strictly on the issue of
13 whether we could prosecute or not. Not for the trial of
14 the case itself. So, you know, that would be my issue
15 in instructing them that another Judge at another time
16 found such and such.

17 I'm perfectly willing to ask that question of
18 Captain Bromage. And frankly I think that covers it,
19 without getting into what the law is or is not as to
20 this case, when that's Your Honor's job.

21 MR. NEWMAN: I still think that it needs to be
22 addressed. I think it could be done simply that it's
23 -- he can ask him a simple question, Are you aware that
24 it's been found that the vehicle was in fact, despite
25 whatever your opinions are on the law, the vehicle was,

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1 in fact, illegally parked. And I think it can be done
2 on cross-examination.

3 THE COURT: Well, let's think about it now.

4 MR. NEWMAN: And I wouldn't go into it any further
5 than that.

6 THE COURT: Well, the State's issue is that Judge
7 Dennis was ruling in a different portion of the case.

8 MR. NEWMAN: And I believe that's a disingenuous
9 argument, because Judge Dennis made findings of fact as
10 to what happened. It doesn't matter whether it's in a
11 trial for the issue; doesn't matter if it's in a
12 preliminary hearing pretrial. He made a finding of
13 fact that the vehicle was illegally parked.

14 The State has not appealed that. And due to that,
15 I mean, they're kind of interjecting the Defendant's
16 character. There may be something in there -- well, he
17 was putting a boot on a car that he didn't have a right
18 to do. I don't know what the jury thought.

19 THE COURT: I understand what your concern is.
20 The State's offered a method to do it, but I'm not sure
21 that I agree that your method of using Judge Dennis'
22 order is the appropriate way to do it.

23 MR. NEWMAN: Well, that's what I can limit it to,
24 just, The fact is Captain Bromage is, despite whatever
25 your opinion was in the interview, the vehicle was, in

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1 fact, illegally parked.

2 MR. THORNTON: Judge, I don't know that I agree
3 that it was illegally parked, I mean, that's my point.
4 And I don't know that the Captain does either. Because
5 he says that there is --

6 THE COURT: Well, let's think -- what we really --
7 is it -- I was not privy to the order that y'all are
8 referring to, and don't know how the Judge arrived at
9 that. But was it illegally parked? I don't know.

10 MR. NEWMAN: Yes, yes. There's signage out there.
11 That's the State's theory on that is through this
12 convolution. They've got a retired highway patrolman
13 pulling some stuff. They're -- the roads were
14 dedicated to the County. Not for maintenance purposes,
15 but dedicated for law enforcement purposes the
16 appropriate sign -- in other words, a deputy sheriff
17 could come in there and write you a speeding ticket.
18 Because this is a -- the whole neighborhood is private,
19 all right?

20 They put out their signage that the Sheriff's
21 Office, local police you know, they're in the town of
22 Bluffton, they weren't at the time, can enforce traffic
23 regulations. It allowed them under the statutes to put
24 up their own signage, regulate their own speed limits
25 and regulate their own parking. The Edgefield Community

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1 is a planned urban development, which in the covenants
2 and restrictions disallow on-street parking. Now,
3 property owners' associations can't make crimes.
4 They're saying, essentially, it comes under State law,
5 that the State laws apply, and they do. Except State
6 law -- they're going to say you can park a vehicle
7 unless otherwise posted within 18 inches of a curb.

8 This place is otherwise posted. There's no
9 on-street parking in the whole thing. The properties
10 owners' association, by virtue of the covenants and
11 restrictions, can enforce that civilly by towing. It's
12 like a private parking lot in the City of Charleston or
13 a parking area. They can put up signs, "Violators will
14 be towed." And they have to follow what the towing
15 regulations are. And there's no argument, I believe,
16 from the State, that any of those laws were violated in
17 this instance.

18 So, civilly you could not write a person a State
19 traffic ticket for illegal parking unless you go on the
20 signage issue. But civilly you can have the vehicle
21 towed because the covenants and restrictions civilly
22 say, you cannot park on-street. You can tow vehicles
23 that are in violation of that private party owner. And
24 we have numerous, back and forth emails, and I can show
25 them to the court, between Stacy Jacobs and Sergeant

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1 Jason Covington that go over the towing regulation. And
2 the Sheriff's Department apparently has approved that.

3 So it's disingenuous to come up with this
4 convoluted reasoning about 18 inches from a curb, unless
5 otherwise posted. So, I strongly disagree with the
6 State's argument, that if they think the vehicle's
7 somehow legally parked. And those are the things Judge
8 Dennis found on that.

9 THE COURT: Let me hear from the Solicitor.

10 MR. THORNTON: Thank you. Your Honor, Mr. Newman
11 pretty much made the argument for me. There's
12 certainly an argument to be made that once they
13 accepted, or dedicated for whatever, for lack of a
14 better, is the fact that law enforcement has
15 jurisdiction, that if there's a conflict between State
16 law and the covenants, obviously, the State law's going
17 to trump that.

18 Interestingly enough, Mr. Newman brought up the
19 signage, and I'll let him correct me on this part if I'm
20 wrong. But the signage at the front of it, they also
21 cite to the 23 code which just deals with parking lots.
22 So I don't even think their signage is correct. But,
23 again, we're again about minutia. I'm fine staying away
24 from it. But just like Mr. Newman doesn't want me to go
25 into it anymore, I don't want him focusing on it and

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1 somehow lending credence to Mr. Oates and what he did
2 that day any more than he wants me taking credence away
3 from Mr. Oates. Which is why I'm trying to come up -- I
4 tried to come up with a version of, A, I'll stay away
5 from away from it and won't ask anymore questions about
6 it. B, I'll ask -- just regardless, based on his
7 interview, that Mr. Oates had a contract with the HOA in
8 Edgefield and that he was out there pursuant to what he
9 believed his duties were. That would be my -- other
10 than that, Judge, I don't want to belabor the point any
11 more.

12 MR. NEWMAN: If the Solicitor will do as he says.
13 He's an honorable man and I trust that he will. And
14 not attempt to argue in any way in closing arguments
15 that the vehicle may have been legally parked, then
16 maybe we can stay away from it.

17 MR. THORNTON: I have no problem with that. The
18 only thing I would say in closing, if I said anything
19 at all, is it's not relevant. It's not relevant to the
20 issues here at hand.

21 MR. NEWMAN: I don't even want him to mention it.

22 MR. THORNTON: I can do that. That's not a
23 problem, Judge. I've got lots of other stuff to talk
24 about.

25 THE COURT: Cuts both ways.

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1 MR. THORNTON: I'll stay away from the word, you
2 know, from whether it was legally parked or not. But
3 then I would expect Mr. Newman to stay away from
4 whether it was legally parked or not.

5 THE COURT: Cuts both ways. I couldn't prohibit
6 him from talking about it, if you want to talk about
7 it.

8 MR. NEWMAN: Let me think about it.

9 MR. THORNTON: I'm happy to give Mr. Newman what
10 he wants on that one, Judge, as long as he's bound by
11 the same rule.

12 THE COURT: All right. So, where are we with this
13 witness?

14 MR. THORNTON: Your Honor, I -- depending on how
15 Mr. Newman wants to -- or whatever -- how -- his final
16 opinion is on trying to resolve this, we're at the
17 next portion. We've got about ten minutes, another
18 short -- you know, I'll ask another question, something
19 obviously unrelated to this. And I think we have one
20 more stopping point after that.

21 Other than that, we're letting it roll through.
22 Dillon, 30 minutes? Roughly 30, 35 minutes on this
23 witness, Judge. And then I do have two, what I believe
24 from Mr. Newman in my discussions with him, would be
25 very short witnesses, who basically did testing. Since

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1 we're not -- there's no chain argument, they should be
2 up and down, I think, relatively quickly.

3 MR. NEWMAN: That's correct. And I stipulate that
4 they are who they are, and they're qualified to say
5 what they're qualified to say.

6 THE COURT: Okay.

7 MR. THORNTON: So, you know, they literally are
8 probably five-minute witnesses each. Then I would ask
9 to break for a long lunch for the jury so we can deal
10 with the witness that we need to proffer.

11 THE COURT: So, we're down to a couple of
12 witnesses?

13 MR. THORNTON: I'm probably down -- I'm certainly,
14 less than ten witnesses left, Judge. And I think it's
15 probably less than five. But I have to go look at it.

16 MR. NEWMAN: Most of which we anticipate is short.
17 Pathologist, obviously, I think the Solicitor intends
18 to make that his last witness. And that will be a
19 little more lengthy, from both direct and cross, I
20 would assume.

21 MR. THORNTON: My thought on it, Judge, would be,
22 after we determine the proffer issue and you determine
23 whether it's admissible or not, I will either have one
24 or two witnesses after lunch. And again, I'd ask the
25 Court's indulgence if that changes a little bit. I

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1 have got to regroup to make sure I've covered
2 everything. But barring that, that would be it. But
3 those would both need to be after lunch, would be my
4 request?

5 THE COURT: All right. Let's -- to give
6 Mr. Newman a chance to think. Is it possible we could
7 go ahead and make a decision about the issue we just
8 talked about a few minutes ago? The traffic issue,
9 parking issue. If you would go ahead and do this, and
10 if need be call the witness back. Or are you just
11 going to see if you're going to make a decision as to
12 how it's going to be covered in closing, one way or the
13 other?

14 MR. NEWMAN: Yes, sir. If you'll grant me on
15 that, we can revisit that. We've got about another 30
16 minutes left of the interview. I should be able to
17 think about that while I'm listening.

18 THE COURT: Okay.

19 MR. NEWMAN: And maybe -- I suggest that we
20 approach before I do my cross-examination of my witness
21 and we can deal with that.

22 THE COURT: Let's do that then.

23 Let's bring in the jury.

24 (Jury enters the courtroom at 11:36 a.m.)

25 THE BAILIFF: Your Honor, the jury is entering.

WITNESS - ROBERT BROMAGE

1 THE COURT: Welcome back, ladies and gentlemen. I
2 believe we are now ready to resume examination of the
3 witness?

4 MR. THORNTON: Yes, sir.

5 (Audio playing.)

6 MR. THORNTON: Your Honor, I apologize. We need
7 just a moment.

8 THE COURT: All right.

9 (Pause.)

10 MR. THORNTON: Your Honor, I think we are going to
11 need a couple of minutes. It shouldn't be more than
12 about five. I'll leave that to Your Honor's
13 discretion. I don't think there's anything that needs
14 to be discussed. I just -- I'll agree to Mr. Newman's
15 concern. I just need a few minutes.

16 THE COURT: Would y'all want to be at ease in
17 place, or would you like to return to the jury room at
18 ease? If you need to stand and stretch, feel free to
19 do that.

20 MR. THORNTON: Your Honor, may we approach?

21 (Off-the-record discussion held.)

22 MR. THORNTON: Your Honor, I think we got the
23 technical difficulties ready.

24 THE COURT: Ladies and gentlemen, by agreement of
25 the parties we're going to suspend the testimony of

WITNESS - ROBERT BROMAGE

1 this witness for a few moments and let the witness step
2 down.

3 MR. THORNTON: Ask he be allowed to remain in the
4 courtroom, Judge. We've got two short witnesses we can
5 call instead.

6 THE COURT: You can stay in the courtroom, but you
7 may want to take your belongings. And call one or two
8 other short witnesses while some technical matters are
9 being handled. Solicitor?

10 MR. THORNTON: Thank you, Your Honor.

11 MS. CONCANNON: The State calls James Green.

12 Thereupon,

13 JAMES GREEN

14 was called as a witness, having been first duly sworn,
15 was examined and testified as follows:

16 THE WITNESS: Yes, ma'am.

17 THE CLERK: Be seated please. Please state and
18 spell your name for the Court.

19 THE WITNESS: James Green, G-R-E-E-N.

20 DIRECT EXAMINATION

21 BY MS. CONCANNON:

22 Q Mr. Green, where do you work?

23 A I'm employed by the South Carolina Law Enforcement
24 Division, commonly referred to as SLED.

25 Q What do you do for SLED?

WITNESS - JAMES GREEN

1 A I'm a forensic firearms examiner in the Forensic
2 Sciences Laboratory.

3 Q Did you have to have some special training and
4 schooling to become an expert in that?

5 A Yes, ma'am. There's approximately a three and a
6 half, four-year course of instruction studying under court
7 qualified examiners.

8 Q And how long have you been employed with SLED in
9 this department?

10 A Nine years.

11 Q Have you testified in the court before?

12 A Yes, ma'am.

13 MS. CONCANNON: At this point, the State would
14 move Mr. Green as an expert in ballistics and firearms.

15 THE COURT: It's my understanding that --

16 MR. NEWMAN: I'm sorry, I just stipulated to that.
17 He's an expert to give his opinion in what he's
18 trained, ballistics and firearms.

19 THE COURT: Ballistics and firearms. The Court so
20 qualifies him.

21 And I'll just briefly tell you, ladies and
22 gentlemen, what we've done here. Normally witnesses are
23 not permitted to offer opinions about matters. They are
24 restricted to testifying about things they've heard or
25 seen or smelled. Exceptions are made for individuals

WITNESS - JAMES GREEN

1 who are deemed experts, based on their experience and
2 training. And they're permitted to offer their opinion
3 in the area of their expertise. As I'll tell you later,
4 their testimony is to be taken by you as the testimony
5 of any other witness, you give it the weight that you
6 decide it deserves.

7 MS. CONCANNON: Thank you, Your Honor.

8 BY MS. CONCANNON:

9 Q Mr. Green, were you asked to examine and test any
10 evidence in this case?

11 A Yes, ma'am.

12 Q And what were you asked to test?

13 A I was given some fired cartridge cases, a fired
14 bullet, and some other fired components, and two pistols.

15 Q Okay. Mr. Green, I'm going to hand you what's
16 been marked -- what has been admitted as State's Exhibit 30.
17 Are those the casings you tested?

18 A Ladies and gentlemen of the jury, what I'm doing
19 is when evidence is submitted to SLED, particularly the
20 firearms department, each individual item of evidence, if
21 it's large enough, it is marked with our ID number, our lab
22 number and our initials. And that's what I'm doing, is I'm
23 simply looking through the evidence to make sure this is the
24 stuff I examined.

25 Yes, ma'am. This is the -- Items 1 and 2,

WITNESS - JAMES GREEN

1 under SLED Items, 1, 2. I'm trying to see. And the
2 items -- SLED Items 7 through 12 on State's Exhibit 30, yes,
3 ma'am. These are all the fired components I examined.

4 Q Okay. Thank you. You also mentioned some
5 firearms you tested as well. State's Exhibit 25 and State's
6 Exhibit 24, are these the two firearms you tested?

7 A Yes, ma'am. State's Exhibit 24 is the SLED Item 6
8 pistol. And State's Exhibit 25 is SLED Item 5, pistol.

9 Q Thank you. So when you tested these firearms were
10 they both found to be in working order?

11 A Yes, ma'am.

12 Q Okay. What were your findings regarding the shell
13 casings in these firearms?

14 A What we do when we get firearms submitted is we
15 test the firearms to make sure they're safe to fire, make
16 sure they're functional. And then we'll test fire them to
17 recover components that were fired from those pistols. We
18 know because we fired them ourselves. So what I did in this
19 case, what we do in every case, and we microscopically
20 compare them with these under a comparison microscope. And
21 that lets us observe two objects simultaneously under
22 different -- different lighting angles to see the
23 microscopic structures we're looking for. I did that in
24 this case and the -- I'm sorry, what was the State's Exhibit
25 for the fired components?

WITNESS - JAMES GREEN

1 Q The shell casings?

2 A Yes, ma'am.

3 Q It was No. 30.

4 A State's Exhibit 30, the cartridge cases, were SLED
5 Items 7 through 12 cartridge cases, were all fired by the
6 State's Exhibit 24, for SLED Item 6 pistol.

7 Q Okay. State's Exhibit 24 was regarding the -- was
8 identified as the Defendant's handgun?

9 A Yes, ma'am.

10 Q Thank you.

11 MS. CONCANNON: Beg the Court's indulgence?

12 BY MS. CONCANNON:

13 Q Your report mentions a fired bullet jacket, it was
14 fired by Courtney Chase (phonetic). What did you attempt to
15 test with this item?

16 A Similar with the fired cartridge cases, when we
17 fired the firearm submitted -- we also recovered the fired
18 bullets. And we looked at those microscopically as well.
19 What we'll do is we'll test fire the firearm and then we'll
20 look at the cartridge casing and bullet against each other
21 to make sure the firearm is marking reliably. And then
22 we'll look at those against similar evidence specimens.

23 The SLED Items 1 and 2 are fired bullets, the
24 bullet jackets. I did look at those versus test fires from
25 both the State's -- the pistols the State submitted in this

WITNESS - JAMES GREEN

1 case. And the answer was inconclusive, which is a fancy
2 word for, I can't tell or I don't know.

3 Glock barrels mark well, but they're
4 inconsistent in their marking. So, I was unable to
5 determine if SLED Items 1 and 2 were fired bullets the State
6 submitted in this case, were fired by either one of those
7 pistols.

8 Q Okay. But you were able to determine the six
9 casings came from State's Exhibit 24, the Defendant's
10 handgun?

11 A Yes, ma'am.

12 MR. THORNTON: I have no further questions for you
13 at this time.

14 CROSS-EXAMINATION

15 BY MR. NEWMAN:

16 Q I apologize, I didn't get your name, sir.

17 A James Green.

18 Q Agent Green; you deal with firearms and
19 ballistics; is that correct?

20 A Firearms on this occasion, yes, sir.

21 Q And I'm going to show you what's been marked as
22 State's 21. You probably haven't seen any of the
23 photographs in this case?

24 A I have not, no, sir.

25 Q Do those look consistent with the shells, or are

WITNESS - JAMES GREEN

1 they too small to tell?

2 A It's too small to tell. But I can see fired
3 cartridge casings, but I can't tell what they are or what
4 caliber they are.

5 Q Scientifically, just looking at that, sir?

6 A No, sir, no picture.

7 Q Okay. Very good. And this item right here, this
8 is a Glock .40 caliber?

9 A Yes, sir.

10 Q Okay. And I see some writing and markings on
11 that. Are those your --

12 A Actually, no, sir. Those are from evidence
13 processing.

14 Q Okay. Okay. And in fact you test fired -- I'm
15 assuming this weapon went to evidence processing first and
16 then came to firearms?

17 A Yes, sir.

18 Q Because you were going to have to actually handle
19 the gun to fire it in a test fire chamber?

20 A Yes, sir. Usually, we get evidence last, after
21 every other department handles it, because they know we're
22 going to touch it.

23 Q You're going to have to handle it?

24 A Yes, sir.

25 Q And you're going to have to take the bullets out

WITNESS - JAMES GREEN

1 and inspect the clip and inspect the mechanism?

2 A Yes, sir.

3 Q To determine that it's a working firearm?

4 A Correct.

5 Q And this was found to be a working firearm?

6 A Yes, sir.

7 Q And it was loaded to capacity?

8 A I don't know. If I may refer to my notes?

9 Q Sure. Generally, when we get firearms, they're
10 unloaded when we get them. But sometimes they still -- they
11 will unload the firearm itself, but they'll leave the
12 magazine loaded. And that is -- let's see. When I received
13 Item 5, SLED Item 5, which is State's Exhibit 25, which is
14 the Glock model 22 you've got in your hand.

15 Q Okay.

16 A The pistol itself was unloaded, but the magazine
17 was loaded with 15 unfired cartridges.

18 Q Okay. And when this weapon -- obviously, with the
19 gun lock on it, this is with the bolt slid all the way back?

20 A Yes, sir, it's locked to the rear.

21 Q And there's a catch that holds it in place --

22 A Right.

23 Q -- that you have to, I guess, this mechanism --

24 A Locks up --

25 Q -- you drop that, and the slide will come forward?

WITNESS - JAMES GREEN

1 A That's correct.

2 Q All right. Now, when this gun -- let's assume the
3 slide was forward, when this -- I would pull it back this
4 way to load a shell from the chamber?

5 A From the magazine, yes, sir.

6 Q From the magazine.

7 A You pull the slide all the way back to the rear,
8 and let it go on its own force, and it would strip the top
9 cartridge off the magazine and load it into the --

10 Q Feed it in there?

11 A Yes, sir.

12 Q Assuming it didn't jam?

13 A Correct.

14 Q Okay. And that makes a pretty distinctive noise?

15 A Yes, sir.

16 Q All right. But with that noise and with this
17 pistol, if I'm in an argument with you and I pulled this out
18 and racked the slide, what do you think my intentions would
19 be?

20 MR. THORNTON: Objection, Your Honor, it's
21 hypothetical.

22 MR. NEWMAN: It's an expert witness.

23 MR. THORNTON: It calls for him to reach a
24 conclusion about what do you think someone else's
25 intentions are.

WITNESS - JAMES GREEN

1 THE COURT: I'll sustain the objection.

2 BY MR. NEWMAN:

3 Q But it makes a very distinctive noise (making
4 noise with gun)?

5 A Yes, sir.

6 MR. NEWMAN: I believe I don't have anything else.

7 THE COURT: Any redirect?

8 MR. NEWMAN: We're good. Thank you.

9 THE COURT: I'm sorry. Redirect?

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

12 THE COURT: Thank you. You may step down. May
13 the witness be excused? Any objection?

14 MR. NEWMAN: Yes. No objection.

15 THE COURT: You may be excused from your subpoena.
16 Thank you.

17 And you may call your next witness.

18 MS. CONCANNON: Thank you, Your Honor. State
19 calls Catherine Leisy.

20 Thereupon,

21 CATHERINE LEISY

22 was called as a witness, having been first duly sworn,
23 was examined and testified as follows:

24 THE CLERK: Please state and spell your name for
25 the Court.

WITNESS - CATHERINE LEISY

1 THE WITNESS: Catherine Leisy, L-E-I-S-Y.

2 DIRECT EXAMINATION

3 BY MS. CONCANNON:

4 Q Ms. Leisy, where are you currently employed?

5 A I work with the South Carolina Law Enforcement
6 Division, more commonly known as SLED.

7 Q And what do you do at SLED?

8 A I am a forensic scientist, assigned to the DNA and
9 serology unit.

10 Q Okay. And I believe the Court has already
11 stipulated that you are an expert in forensic science?

12 THE COURT: That is correct. So stipulated.

13 MS. CONCANNON: Thank you, Your Honor.

14 BY MS. CONCANNON:

15 Q Were you asked to test some items of evidence in
16 this case?

17 A I was.

18 Q And what did you test?

19 A I received a set of swabs that were identified as
20 SLED Items 5.1, 5.2 and 5.3, that were taken from a Glock
21 handgun. I also received a blood standard, identified as a
22 known standard for a Carlos Oliveras, a buccal swab or a
23 cheek swab taken from Nelson Olivera, and a buccal swab from
24 a Preston Oates.

25 Q And what did you do with these items you received?

WITNESS - CATHERINE LEISY

1 A I developed DNA profiles from two of the three
2 swabs that were taken from the gun, and then compared those
3 DNA profiles to the known profiles of the individuals whose
4 standards were submitted.

5 Q And what were your findings?

6 A I determined that from SLED Item 5.1, which was
7 identified as a swab taken from the exterior of the Glock
8 handgun, that there was a mixture of at least two
9 individuals, and that Carlos Olivera, Nelson Olivera and
10 Preston Oates are all excluded as possible contributors to
11 that mixture.

12 From SLED Item 5.2, which was identified as a
13 swab taken from the magazine of a Glock handgun, I
14 determined there was also a mixture of at least two
15 individuals. That Carlos Olivera cannot be excluded as a
16 possible contributor. The probability of randomly selecting
17 an unrelated individual who could have contributed, is
18 approximately one in three. And that Nelson Olivera and
19 Preston Oates can be excluded as possible contributors. And
20 I determined that there was no human DNA obtained during my
21 testing of the rounds that were identified as SLED Item 5.3.

22 Q Which Glock were you referencing when you were
23 referencing your SLED numbers?

24 A That's -- it was our SLED Item 5. I'm not
25 familiar with this piece, the exhibit number on that. It

WITNESS - CATHERINE LEISY

1 was a Glock .22.

2 Q Okay, that would be State's Exhibit 25.

3 Can you explain what touch DNA is?

4 A When we refer to touch DNA we're speaking to skin
5 cells that are transferred from your body onto an object
6 when you come in contact with it. So, even something as
7 simple as opening a door, when your hand comes in contact
8 with the doorknob you can leave skin cells, and enough skin
9 cells for us to potentially develop a DNA profile. When we
10 test items for touch DNA, we're simply looking for skin
11 cells that have been transferred to that particular item,
12 through contact with different people.

13 Q Is it easily transferable?

14 A It is.

15 Q Is it unusual if you test an item and you not find
16 any touch DNA?

17 A It depends on the item. It's not unheard of.
18 Some items retain DNA more readily, and it depends on how
19 much contact is made, how long an item is held, how firmly
20 it has to be held. There are a lot of factors that go into
21 it.

22 Q Okay. And all that, the holding it, how long it's
23 held, whatnot, that can remove the touch DNA?

24 A It can remove it. If someone -- let's say the
25 mouse I use at my computer, I leave my DNA on it all day

WITNESS - CATHERINE LEISY

1 long. If someone comes along and uses it some of my DNA may
2 be removed by their contact with it. Again, you're going to
3 find DNA on pretty much everything that anyone comes in
4 contact with. Anyone who touches it can leave their DNA,
5 and anyone who touches it can remove someone else's.

6 MS. CONCANNON: Okay. I have no further questions
7 for you at this time.

8 CROSS-EXAMINATION

9 BY MR. NEWMAN:

10 Q Likewise, if somebody touched your mouse, they
11 might not only take some of your DNA from it, but contribute
12 some of their DNA to it?

13 A That is possible, yes, sir.

14 Q Okay. I want to make sure that I heard it right.
15 I know what the report said, I just want to make sure it's
16 clear. This is the gun that has been identified as Carlos
17 Olivera's pistol. And if you need to look at the SLED box
18 with the case number. I want to make sure when I ask you a
19 question we're talking about the right pistol.

20 A The gun itself was never in my possession, but I
21 do recognize the SLED case and item numbers that reflect a
22 Glock handgun was tested.

23 Q Okay. And that would be your item?

24 A It would be our Item 5, SLED Item 5.

25 Q I've got a SLED item -- all right, 5. And then

WITNESS - CATHERINE LEISY

1 was your SLED Item 5.2 the swab taken from the magazine of
2 that particular pistol?

3 A Yes, sir.

4 Q All right. And 5.3 from the rounds associated
5 with that particular pistol?

6 A Correct.

7 Q And 5.1, a swab, likewise, from that particular
8 pistol that's been identified as Carlos Olivera's?

9 A Correct. Based again, on the SLED case numbers
10 and item numbers, those swabs were taken by one of our
11 evidence processing technicians, then forwarded to me for
12 DNA processing.

13 Q Okay. And if I get the sum and substance of your
14 testimony correct, as to the Defendant Preston Oates, he is
15 excluded as a contributor to any DNA that was found on that
16 pistol?

17 A Based on the DNA profiles I was able to develop,
18 that's correct, sir.

19 Q Okay. And that's -- you're out, I can say it's
20 not him?

21 A As far as that particular profile, I can't exclude
22 him, say definitively a particular person never touched this
23 gun. But based on the DNA profile that I developed I feel
24 it's appropriate to exclude him as a possible contributor.

25 Q Thank you.

WITNESS - CATHERINE LEISY

1 MS. CONCANNON: Nothing further from the State.

2 THE COURT: All right. Thank you, ma'am. You may
3 step down and you may be excused from your subpoena.

4 THE WITNESS: Thank you.

5 THE COURT: Thank you.

6 MR. THORNTON: Your Honor, we would be ready, if
7 the Defense is, to go back and resume Captain Bromage's
8 interview at this time.

9 MR. NEWMAN: That's correct.

10 THE COURT: All right.

11 MR. THORNTON: Ask Captain Bromage to retake the
12 stand, Your Honor?

13 THE COURT: May I remind you, you're still under
14 oath.

15 Thereupon,

16 CAPTAIN ROBERT BROMAGE

17 was recalled as a witness, having been previously duly
18 sworn, was examined and testified as follows:

19 (Audio playing.)

20 DIRECT EXAMINATION

21 BY MR. THORNTON:

22 Q Now, Captain Bromage, as you are going through
23 this interview, you know, one of the things that you just
24 testified to, and correct me if I'm wrong, but one of the
25 things you just said was, well, you know, but I thought you

WITNESS - CAPTAIN ROBERT BROMAGE

1 see these three lunatics coming at your car and why didn't
2 you drive off? Now, is that indicative of you believing
3 that the victim in this case and his brothers are lunatics?
4 Or even if you believe Mr. Oates is telling the truth about
5 that there were three men running at his car?

6 A Not at all.

7 Q All right. Is that basically an interview an
8 technique that you can use?

9 A It's reportability and getting him to feel
10 comfortable to talk more.

11 Q All right. And is that in an effort to get him to
12 provide you with more information?

13 A Yes, it is.

14 Q It's not indicative, is it, of you believing what
15 he has to say necessarily?

16 A Not at all.

17 Q Okay. Thank you.

18 (Audio playing.)

19 MR. THORNTON: Pause for a second. Thanks.

20 BY MR. THORNTON:

21 Q Captain Bromage, let me ask you a quick question,
22 and I apologize we've had some technical issues we've worked
23 out. And I should have asked you this earlier: One of the
24 things that -- you were not in here obviously, what the jury
25 saw was another interview that was videotaped. And they

WITNESS - CAPTAIN ROBERT BROMAGE

1 were in a room, I believe they said at the substation in
2 Hilton Head. Where did this interview take place; do you
3 recall?

4 A This interview took place in my office on Lagune
5 Road, which are now vacated, where Shelton Cove and Hilton
6 Head are.

7 Q All right. And one of the things you talked about
8 was, that it was on tape, and obviously I'm asking you this
9 because we couldn't see it on video, was that it was not a
10 hostile interview environment? Can you describe, is it just
11 a normal office?

12 A Office with a desk, a few chairs across from the
13 desk, and he's sitting in one of the chairs and I sat in
14 mine.

15 Q All right. And would you have been dressed that
16 day similar to what you are today?

17 A In a shirt and tie. I normally don't wear a
18 jacket.

19 Q All right, sir. And was there anyone else in the
20 room with you, other than yourself and Mr. Oates?

21 A No, sir.

22 Q All right, sir.

23 MR. THORNTON: Your Honor, the Court's indulgence,
24 please, one moment.

25

WITNESS - CAPTAIN ROBERT BROMAGE

1 BY MR. THORNTON:

2 Q One other question, Captain Bromage: When the
3 first interview that was done -- and I'm not speaking of --
4 obviously, you're one of the lead investigators in this
5 case; would that be fair?

6 A Yes.

7 Q Or at least the supervising investigator?

8 A Supervising investigator.

9 Q One of the interviews took place in -- with, I
10 believe it was Erick Hardy, which was basically an in-car
11 type video/audio. And then that was done on the 24th, I
12 believe. And the next one that the jury saw dealt with --
13 was also was the 24th, which was Detective Adams. When was
14 this done? What was the date on yours?

15 A This was the 27th at about 2:55 p.m.

16 Q All right. So this was three days later,
17 approximately?

18 A It was, yes, sir.

19 Q Okay. Thank you, sir.

20 (Audio playing.)

21 BY MR. THORNTON:

22 Q Captain Bromage, just a second ago, it was
23 probably -- forgive me, it's going to sound like a silly
24 question, especially considering how long I've known you.
25 But, you know, there was a -- you heard a pounding on --

WITNESS - CAPTAIN ROBERT BROMAGE

1 sounded like a pounding on the table. Now, was that you
2 pounding on the table?

3 A That was Mr. Oates.

4 Q All right. So you were not in anyway trying to
5 intimidate Mr. Oates or anything?

6 A No. He was just making -- making a statement,
7 that's all.

8 Q Thanks.

9 (Audio playing.)

10 BY MR. THORNTON:

11 Q Captain Bromage, after this interview, is that
12 substantially what you did involving this case, as far as
13 your direct contact with Mr. Oates?

14 A It is.

15 MR. THORNTON: Your Honor, I believe we have a
16 matter we need to approach about. Mr. Newman talked
17 about it earlier.

18 THE COURT: If you would like to stand, ladies and
19 gentlemen, please feel free. If you'd like to stand
20 and stretch. So...

21 (Off-the-record discussion held.)

22 MR. THORNTON: We're done with that. I have
23 nothing further for Captain Bromage. Captain Bromage,
24 please answer any questions Mr. Newman has for you.

25 CROSS-EXAMINATION

WITNESS - CAPTAIN ROBERT BROMAGE

1 BY MR. NEWMAN:

2 Q Just how hostile does a hostile interview get?

3 A I don't understand that question, sir.

4 Q Well, you said this wasn't a hostile interview?

5 A No. It was a very relaxed environment.

6 Q What do you do in a hostile interview?

7 A I've never been in one.

8 Q You'd mentioned hostile.

9 A It sounds like a hostile environment is what I'm
10 referring to. It's on the ground somewhere out in public,
11 being interviewed by a policeman standing over him. This
12 was not the case here.

13 Q Okay. In fact, you called, I believe,
14 Mr. Colongeli, you called Mr. Oates at his house and asked
15 him if he would come in to be re-interviewed by you, the
16 supervisor of investigators?

17 A That sounds correct.

18 Q And Mr. Oates came there voluntarily, to talk to
19 you?

20 A He did.

21 Q And you seem to focus on a couple of things
22 throughout the interview that you believe are
23 inconsistencies. Now, you were not the lead investigator on
24 this case; is that correct? Angela Viens was?

25 A Correct. She was the lead investigator, I was her

WITNESS - CAPTAIN ROBERT BROMAGE

1 supervisor.

2 Q In fact, you had just come in from out of town.

3 You hadn't even been out to the crime scene?

4 A I was not at the crime scene, and I was not out of
5 town. I was at my home.

6 Q Okay. You'd just come back on duty, you'd been
7 off for a few days; is that not correct?

8 A That sounds correct, yes. It was three and a half
9 years ago.

10 Q Okay. Okay. Okay. And over lapses of time,
11 whether it's three days or three years, people forget
12 things. People put things out of order; is that correct?

13 A Yes, sir.

14 Q Even detectives --

15 A Sure.

16 Q -- who were trained to take down things
17 accurately, still get it wrong; isn't that correct?

18 A Yes, they can, sure.

19 Q Okay. So let's add a pressure element. You have
20 a lot of focus on different things, good 20/20 hindsight
21 that Mr. Oates could have done. Would it be fair to ask you
22 certain questions -- you're familiar with these guns?

23 A I am.

24 Q It's the same gun y'all carry, isn't it?

25 A It's similar. That's the gun that Carlos was

WITNESS - CAPTAIN ROBERT BROMAGE

1 waving.

2 Q Okay. And this is Carlos Olivera's pistol?

3 A I don't need to hold it, sir, thank you, unless
4 you give me some gloves.

5 Q Okay. You don't even want to hold the gun, you
6 want to be cautious. So, if I pointed this gun at you, and
7 I racked the slide and point it at you, what are you going
8 to do? Right now, what are you going to do? One, two,
9 three.

10 MR. THORNTON: Objection, Your Honor. It is a
11 hypothetical. It's a completely improper question.

12 THE COURT: I'll sustain the question.

13 MR. NEWMAN: Please, Your Honor, the basis of that
14 is, that's exactly what he asked Mr. Oates. Well, why
15 didn't you do this, why didn't you do that. And I want
16 to know why this detective believes that's important.
17 Because he can't answer it. He doesn't know what he's
18 going to do.

19 THE COURT: Sustain the objection.

20 BY MR. NEWMAN:

21 Q All right. And you don't want me to point this at
22 you, do you?

23 A I think that's a bad idea, sir.

24 Q I do too.

25 A Thank you.

WITNESS - CAPTAIN ROBERT BROMAGE

1 Q And you had asked Mr. Oates repeatedly, I know you
2 let him go off and talk about all kind of wild things, and
3 then you re-focused him. You'd asked him repeatedly that he
4 had never made a statement that a gun was stuck in his face;
5 isn't that correct?

6 A I did.

7 Q And you believe that was a glaring inconsistency?

8 A I still think it is, sir.

9 Q Okay. And I -- did you ever listen to the 911
10 call?

11 A I had not at that point.

12 Q Have you listened to it now?

13 A I have not heard it. So, if you want to play it
14 for me, I'll be glad to give you an opinion on that, too.

15 Q All right. Would you believe me if I told you
16 that he tells the dispatcher, a guy just stuck a gun in my
17 face on the 911 tape?

18 A If you're telling me, counselor, I certainly would
19 believe it.

20 Q All right. So you didn't inter -- this big
21 inconsistency about pointing the gun, all you had to do was
22 listen to the 911 call and it wouldn't have been an
23 inconsistency, would it?

24 A I listened to the interview with Laurel Albertin,
25 Sergeant Albertin, Sergeant Adams. And he made a figurative

WITNESS.- CAPTAIN ROBERT BROMAGE

1 statement on, you don't know what a coward is until a gun's
2 pointed at your face. And he left it alone.

3 Q But he said it there.

4 A And talked about it with me in detail.

5 Q Because you're asking him in detail.

6 A I asked him in detail, because I want to know what
7 happened that night.

8 Q You're the senior investigator?

9 A I am their captain.

10 Q You're their captain. You aren't anymore,
11 correct?

12 A That's correct. I was disciplined. Thank you.

13 Q Now, he says it on the 911 tape. You don't know
14 anything about that, because you didn't listen to the 911
15 tape, as an experienced investigator, correct?

16 A That's correct.

17 Q He says it to Alverton and to Adams in that
18 interview one time, that they stuck a gun in his face.

19 A Like a passing thought, when he's being figurative
20 about it. That's my take on it.

21 Q I understand. That's your take on it.

22 A Sure.

23 Q But, in fact, what you think is a major
24 inconsistency ain't.

25 A To you. It's a major inconsistency to me, with a

WITNESS - CAPTAIN ROBERT BROMAGE

1 lot of experience in dealing with people that are lying.

2 Q All right. What about the -- when he told you he
3 either heard or saw or both the rack being slid?

4 A He said to Alverton and Adams, I heard the rack.
5 I heard the racking of the gun. He said to me he saw the
6 serial number, which was on the bottom side of that gun
7 right there.

8 Q That's what we're looking at right here?

9 A That is correct. He said that to me. He did not
10 say it to them whatsoever. I didn't hear it at all. I
11 think in one of the statements he said -- I'll leave that
12 alone.

13 Q So, was the gun racked?

14 A I believe it was. I believe there was a round in
15 the chamber. So, that stands to reason. I believe the
16 brother of the victim actually says that as well.

17 Q When did the brother of the victim say that?

18 A In one of the statements.

19 Q As I recall he's only said that here in open
20 court. Were you informed of what the brother of the victim
21 stated here in court?

22 A No, I was not. No, I was not. He made that early
23 on in case preparation.

24 Q How come it's not in any of the reports?

25 A He made it to the Solicitor's office.

WITNESS - CAPTAIN ROBERT BROMAGE

1 Q Excuse me. You're saying the Solicitor's office?

2 A He made the comment to the Solicitor's office in
3 trial preparation. And that's all I can tell you.

4 Q Okay. And you keep asking Mr. Oates about
5 choices. And you asked him: Why in the hell didn't you
6 just, you know, get out of there, correct?

7 A That's correct.

8 Q And his first choice to avoid this confrontation,
9 was to go in the cab of his truck and lock his door?

10 A That's what he told me, yes, sir.

11 Q All right. Second choice, he couldn't really
12 drive off because he had two men standing on his door, one
13 armed, correct?

14 A That's what he's telling me.

15 Q So you don't think that the guys were standing on
16 the cab of the truck?

17 A I think at one point they were definitely standing
18 on the cab. I think there was other witnesses that saw them
19 there.

20 Q Okay.

21 A But the key -- because his truck was on, he did
22 get in the truck. He could have driven off. That's my
23 opinion. I wasn't out there though.

24 Q You weren't out there and you didn't have that
25 decision to make at gunpoint, did you?

WITNESS - CAPTAIN ROBERT BROMAGE

1 MR. THORNTON: Objection, Your Honor. If Mr.
2 Newman could stop interrupting the witness and let him
3 answer.

4 THE COURT: Sustained.

5 BY MR. NEWMAN:

6 Q Go ahead and finish. I'm going to ask you that
7 same question.

8 A I wasn't out there. I don't know how long it took
9 for these three people to run up to his truck. It sounds to
10 me like he had plenty of time to get in the truck, shut the
11 truck. Why not drive off. Why not hit 911 on the phone
12 he's got in his hand? And then he said it wasn't in his
13 hand.

14 Q That's not a call you can make, is it? You
15 weren't there.

16 A It's certainly something for me to evaluate,
17 whether he's telling the truth or not. He has great detail
18 from the beginning of the statement, how people are coming
19 out. And at one point he say -- he says something about
20 this third person, go get the shotgun. He says something
21 about this person. And when I asked him, he said, I
22 couldn't see. I couldn't even see what the guy looked like,
23 I think. And then he gets into some detailed description,
24 like blue pants and a white shirt, shoulder length hair, but
25 he didn't see this person.

WITNESS - CAPTAIN ROBERT BROMAGE

1 Q He is telling you the same thing that he told him
2 about the pony tail, that he really didn't see this person.
3 This was dark in this incident too.

4 A I couldn't see him, he said. I distinctly
5 remember just hearing that, as a matter of fact.

6 Q Now, as to these gunshots, have you watched the
7 video?

8 A I have.

9 Q Okay. And all of those shots are fired in the
10 span of approximately three seconds?

11 A Sir, it's probably been three years since I've
12 seen the tape. If you want to play it for me, I could watch
13 my watch and tell you exactly how long it is. But I don't
14 remember it being that fast. But it could have been.

15 Q Okay. So, you're judging someone's truthfulness
16 on an incident, the critical incident, that lasted three
17 maybe five seconds, correct?

18 A I'm also judging it on his illusion of military
19 training and everything else he's leading into. And it's --
20 it's -- it's, oh, I'm on an adventure. I just don't get it.
21 You ask him a question, he goes into details or sensation.
22 There's no record of me being in the military. I went to
23 basic training at Fort Stewart. Fort Stewart doesn't have
24 basic training. So, I know he's lying up front.

25 Q Let's focus on the incident, okay. Yeah, he says

WITNESS - CAPTAIN ROBERT BROMAGE

1 some things out there that make him look like a left-handed
2 monkey wrench. That is out there, okay. That is not what
3 he's on trial for though, is it?

4 A No, sir.

5 Q He's on trial for the actions he took during an
6 armed assault; is that not correct?

7 A That's what he's on trial for, sir.

8 Q All right. And now, we have no doubt that that
9 gun was racked, chambered, ready to go, with bullets in it?

10 A Ready to go back in his waistband, the last time I
11 checked. I don't know. And again, if I believe anything
12 he's saying, you got to go by what the other witnesses are
13 saying too, and evaluate the entire thing.

14 Q Why don't you go with what Nelson Olivera says?
15 How many statements did Nelson Olivera give?

16 A He gave a couple.

17 Q And he lied all through them, didn't he?

18 A I don't know that he lied all through them.

19 Q Well, he didn't lie in the first one, when he said
20 that we pulled a gun on him. My brother had the gun in his
21 hand the whole time, as the detective took it down.

22 A I -- if you'd show me a statement where I could
23 see, My brother had it in his hand the whole time, I would
24 like to see that, please.

25 Q I'm going to read out what it says. All right.

WITNESS - CAPTAIN ROBERT BROMAGE

1 All right. You saw Nelson Olivera's handwritten statement
2 on 12/24, correct?

3 MR. THORNTON: Your Honor, I object.

4 MR. NEWMAN: He's the Captain of the
5 investigation.

6 THE COURT: Hold on one second. Hold on one
7 second.

8 MR. THORNTON: Mr. Olivera has already testified,
9 he was cross-examined by Mr. Newman. If Mr. Newman
10 wants to talk about Mr. Olivera's statements he should
11 have done that when Mr. Olivera was on the stand. He
12 didn't do that. Unless this officer took the statement
13 from him, he's not in a position to even talk about it,
14 unless he authored the report. The same thing with
15 this alleged statement to a detective. You know, Mr.
16 Olivera was on the stand. Mr. Newman had an
17 opportunity to cross-examine him and he did. And he
18 talked about inconsistencies in his statement. But if
19 this officer didn't author those reports, it's not a
20 proper question, it's hearsay.

21 MR. NEWMAN: But he's not hearsay, number one, Mr.
22 Olivera has testified and been cross-examined about
23 these issues. Number two, Your Honor, this detective
24 is coming off saying that he's the chief of
25 investigation, although he wasn't the lead

WITNESS - CAPTAIN ROBERT BROMAGE

1 investigator. But that he has opinions on my client's
2 veracity, which I think are improper for him to have
3 anyway. He has opinions on that and I'm entitled to
4 cross-examine him on the opinions. Such as, he never
5 said that he had a gun pointed at him before. And lo
6 and behold, we hear the 911 tape, and that's the first
7 thing he says. So, it goes to his veracity and to his
8 investigation and to his opinions.

9 THE COURT: You're the one who asked about his
10 opinion, though.

11 MR. NEWMAN: And I'm asking about it.

12 THE COURT: And I sustain the objection.

13 MR. THORNTON: Thank you, Your Honor.

14 BY MR. NEWMAN:

15 Q So, you did not read Angela Viens' report?

16 MR. THORNTON: Objection, Your Honor. Still not a
17 proper question. It's Angela Viens' report that he's
18 talking to. This is not this officer's report. Same
19 objection.

20 MR. NEWMAN: He says he's the lead -- or the
21 captain of investigations. Hold up, please.

22 THE COURT: I sustain the objection.

23 MR. NEWMAN: I mean, they're not calling their
24 lead investigator in this case.

25 MR. THORNTON: Objection, Your Honor. I'd ask

WITNESS - CAPTAIN ROBERT BROMAGE

1 counsel's comments be stricken. Whether I call a
2 witness or don't is my call and not his.

3 THE COURT: Sustain the objection and ask that it
4 be stricken -- order it to be stricken. I'm sorry.

5 BY MR. NEWMAN:

6 Q Now, would you deny that this incident that lasted
7 only several minutes was probably tense?

8 A Oh, I think there was probably some amount of
9 stress involved. It sounds like there was.

10 Q Okay. And would you deny that based on Carlos
11 Olivera's actions that Mr. Oates was forced to make certain
12 decisions, whether or not you agree with those decisions?

13 A I'm not going to agree with that statement,
14 Counselor. Not at all. I have my opinion. You can ask my
15 opinion, I'd be glad to give it to you.

16 Q I don't want your opinion. The last time I asked
17 you that I didn't like the answer.

18 A Okay.

19 Q Do you agree it, was a stressful situation?

20 A I do agree there's some stress involved, yes, I
21 do.

22 Q Do you agree that events were rapidly unfolding
23 and fluid?

24 A It sounds like it took about several minutes,
25 according to your client. Several minutes of this going on.

WITNESS - CAPTAIN ROBERT BROMAGE

1 Fumble with the keys, doing this, doing that.

2 Q Sure.

3 A Getting the gun out of the glove box.

4 Q Let me ask you that: Why was Nelson Olivera
5 trying to unlock that boot and not Mr. Oates?

6 MR. THORNTON: Objection, Your Honor. How in the
7 world would Captain Bromage know what -- or what Nelson
8 Olivera was or was not doing on the night in question?

9 BY MR. NEWMAN:

10 Q Okay. So you --

11 THE COURT: Sustained.

12 BY MR. NEWMAN:

13 Q You weren't at the scene and you don't frankly
14 know what in the hell happened, do you?

15 A Well, I have my idea.

16 Q You have your opinions, but you don't know,
17 correct?

18 A No, I don't know, no.

19 Q And you weren't there?

20 A Right.

21 Q And you didn't have to make decisions that night?

22 A Right.

23 Q You didn't have to make the decisions with a gun
24 trained on me?

25 A Gun trained on me?

WITNESS - CAPTAIN ROBERT BROMAGE

1 Q Yes.

2 A That's suggesting he had a gun pulled on him,
3 which I don't agree with. I don't think the gun was ever on
4 him. That's what I'm telling you.

5 Q And that's why I'm asking you about Mr. Olivera's
6 statement.

7 A The gun may have been out at one point. The gun
8 was not on him. According to what I'm getting from him,
9 he's telling ten different stories.

10 Q And that's --

11 MR. THORNTON: Objection, Your Honor.

12 MR. NEWMAN: That's why I want to cross-examine
13 him on that. Because it's right in here.

14 MR. THORNTON: Objection, Your Honor. Mr. Olivera
15 was here and testified.

16 THE COURT: I sustain the objection for the same
17 reasons as before.

18 MR. NEWMAN: I guess all I can do is note my
19 objection, Your Honor. I respect the Court's ruling
20 and I have to deal with it, but I do have to make the
21 objection.

22 THE COURT: I understand.

23 MR. NEWMAN: All right.

24 BY MR. NEWMAN:

25 Q And you do agree with your statement in here that

WITNESS - CAPTAIN ROBERT BROMAGE

1 Mr. Oates held a contract to tow vehicles from the Edgefield
2 Association?

3 A I do and he did. We verified that.

4 Q Okay. Would it be fair to say that your opinions
5 in this case are based on 20/20 hindsight?

6 A Based on evaluating the facts, the witness
7 statements back a few years ago, by the statements of the
8 Defendant, the lies he was telling me, sensational stories,
9 his mannerisms about how he held the gun and changed it one
10 hand to another. I don't even do that. I don't understand
11 where this comes from. So, it sounds like hypervigilance.
12 That's what I'm saying. Sounds like he made this happen, in
13 my opinion.

14 He could have just driven off immediately,
15 and that's all he had to do, call 911. And we're there,
16 we're taking care of the problem. That's what I was trying
17 to convey to your client. I don't think he got that. They
18 were not instantaneously on his running board, I don't
19 think. He gets to the car, has the phone in his hand,
20 according to his statement. Could have called 911. Do I
21 think that would have been the appropriate thing to do? For
22 a citizen, yes, it is. He's not a police officer.

23 Q Is Carlos Olivera a police officer?

24 A No, he's not.

25 Q Why didn't he call 911?

WITNESS - CAPTAIN ROBERT BROMAGE

1 A That's a good question.

2 Q That's a great question.

3 A I can't ask him that question, can I, because he
4 was gunned down in the street.

5 Q You can ask his brother that question?

6 A I believe his brother was asked that question.
7 And I don't know what his answer was.

8 Q Okay. Where is that in the report? I've never
9 seen that.

10 A Mr. Newman, I don't know where that is.

11 Q Because it's not there? If you show it to me.

12 A You show it to me.

13 Q You're the investigator. I'm not playing those
14 kind of games with you. You're on examination. I'm not
15 here to answer questions, sir, you are.

16 MR. THORNTON: Objection, he's now badgering the
17 witness.

18 THE COURT: Sustained. Let him finish answering
19 the questions, Mr. Newman.

20 MR. NEWMAN: I would ask the witness to be
21 instructed not to ask me questions or to have me
22 produce things. That's not my job.

23 THE COURT: Well, let's do that also at this
24 point. You need to respond to the question by
25 answering the question.

WITNESS - CAPTAIN ROBERT BROMAGE

1 THE WITNESS: Yes, Your Honor.

2 A Your question is?

3 BY MR. NEWMAN:

4 Q Well, my question is: You seem to review certain
5 things when it helps you, and don't have no idea at certain
6 things that hurt your opinion, and that's all it is?

7 A If I'm presented with the report I can review it
8 right here. And if it's in there, why didn't you call 911,
9 I can find it for you.

10 Q All right. These are the complete reports of the
11 Sheriff's Office in this case. Now, you were looking
12 specifically for what?

13 A You asked me if Mr. Olivera called 911.

14 Q Yes.

15 A Are his statements in English or in Spanish? I
16 don't know. I have to look.

17 Q Well, obviously you haven't read them. They're
18 all in English?

19 A It's been a while since I read what I did in this
20 case.

21 Q Well, is it not important here to recall or relate
22 accurately and truthfully?

23 A I reviewed thoroughly my portion of the
24 investigation.

25 Q Well, you are having opinions on things that

WITNESS - CAPTAIN ROBERT BROMAGE

1 weren't your --

2 A Based on my interview --

3 Q Can I finish my question?

4 MR. THORNTON: Your Honor, I do have an objection,
5 if -- whenever Mr. Newman needs to finish his question
6 first.

7 THE COURT: Finish your question. Go ahead.

8 BY MR. NEWMAN:

9 Q You're basing --

10 MR. NEWMAN: Every time I ask him he has an
11 opinion on something. And I'll ask him a specific
12 thing from the report and the witness tells me, I don't
13 know, I haven't seen it. Show it to me. So I think
14 it's fair game, if he's basing an opinion on what he
15 claims there. Show me.

16 THE COURT: So, what is the question now though to
17 the witness?

18 MR. NEWMAN: The question now is -- the witness is
19 looking for is. I had asked why didn't Carlos Olivera
20 call 911? I get a flippant response, well, I couldn't
21 talk to him because he's dead. So I asked him, well,
22 why didn't his brother call 911 or instruct somebody to
23 call 911?

24 MR. THORNTON: That would be my objection, Your
25 Honor. It's misleading the witness. The witness was

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1 not here during testimony. I've already entered
2 Nelson's 911 call into evidence. It's one of the 911
3 calls that were testified to by Nelson Olivera. I
4 think it's incredibly disingenuous for Mr. Newman to
5 get up here and ask an office to look through hundreds
6 of pages of reports to find -- you know, telling him,
7 well, he didn't call 911, when I've already put it in
8 evidence. It is one of the 911 calls that Mr. Olivera
9 testified he made.

10 MR. NEWMAN: That again is tragically misleading,
11 Your Honor. The question is: In this situation,
12 before it unfolded. I understand Mr. Oates called 911
13 after it. Mr. Olivera called 911. Reba Bryant did.

14 THE COURT: You need to respond to me with the
15 objection.

16 MR. NEWMAN: My question is: Prior to this
17 incident accelerating, why didn't either of the
18 Oliveras dial 911. Mr. Bromage told me, Well, Carlos
19 -- he couldn't ask Carlos, I understand. I asked him
20 about Nelson and he said, Well, I believe we asked
21 Nelson about that. And that's nowhere in the reports.
22 I want him to find it. If he's making a statement
23 saying that, I believe Nelson Olivera, he was asked
24 about why didn't he dial 911. That's nowhere in any of
25 the police reports. And if it is, I want him to find

WITNESS - CAPTAIN ROBERT BROMAGE

1 it so I can question him on it. Because I think,
2 frankly, I think he just made that up.

3 THE WITNESS: I didn't make anything up.

4 THE COURT: I'm real confused. Hold on just one
5 minute. I thought that there was a 911 call.

6 MR. NEWMAN: Yes. Let me take the confusion out.
7 Where I'm asking about, before this situation escalates
8 to the point where it escalated. When they first
9 approached. When the Olivera brother first came out
10 and there's a boot on the car. And somebody tells him,
11 Why don't you call 911? And they told her to go away.

12 THE COURT: Okay. Fine. And the relevance
13 though, of whether or not that call was made by the
14 brother is what?

15 MR. NEWMAN: I asked the detective, prior to the
16 fatal incident, while they're discussing the boot on
17 the car, why didn't they just call 911. And he
18 provided an answer, I believe, that was asked of
19 Mr. Olivera.

20 THE COURT: How could this witness possibly know
21 why the brother did or did not call?

22 MR. NEWMAN: Well, what I want to know is how
23 could he possibly know -- what he's telling me is
24 documented in the report they would have asked him.
25 Why didn't you call 911 prior to this happening?

WITNESS - CAPTAIN ROBERT BROMAGE

1 That's what he's saying. That was what his answer is.

2 THE COURT: He thought that there was a report
3 that said that?

4 MR. NEWMAN: Yes, prior to. Not responding after
5 the fatal incident.

6
7 THE COURT: But once again, if somebody did ask
8 the witness that -- the brother that, wouldn't that all
9 be hearsay?

10 MR. NEWMAN: No. Mr. Olivera's testified. The
11 detective is telling me, when I'm asking him a
12 question, why didn't Nelson Olivera call 911 prior to
13 the fatal incident? And he says --

14 THE COURT: How could he know?

15 MR. NEWMAN: -- I believe we asked him that.
16 Well, okay, let's find that out.

17 THE COURT: If anybody ever asked him that
18 question?

19 MR. NEWMAN: Correct. Why didn't y'all just say,
20 hey, guys, instead of running up there, instead of
21 taking a pistol out, sliding it, why didn't y'all just
22 call 911? Call the police, as Reba Bryant suggested.

23 THE COURT: The objection is?

24 MR. THORNTON: Your Honor, the objection --
25 there's about eight objections in there. Number one,

WITNESS - CAPTAIN ROBERT BROMAGE

1 the first question, and I'm sorry, I wasn't quick
2 enough on the draw. I'm getting tired of having to
3 jump up every 30 seconds is, he can't testify what
4 their thoughts, or why someone did did or didn't do
5 something in the past.

6 Number two, even if there is a report, I don't
7 believe there is. I don't know that Mr. Olivera was
8 ever asked that. We have hundreds of pages of reports
9 here. I don't remember that. But even if the captain
10 -- whether the captain's correct or not, that he might
11 have seen that in a report or didn't see it. He
12 couldn't testify to it anyway, because I can assure you
13 it's not in a report he did. So if he didn't prepare
14 the report, he didn't interview Mr. Olivera, and he
15 didn't ask that question, then he couldn't answer even
16 if it is in a report.

17 If it will save us some time and further drama,
18 I'll stipulate that nobody bothered to ask Mr. Nelson
19 Olivera, why didn't you originally call the police.

20 I apologize, I was very confused, because I thought
21 Mr. Newman was alleging that there was no 911 call from
22 Nelson Olivera, when clearly, there is. But for those
23 reasons, Judge, and probably two or three others I can
24 come up with, it's a completely improper line of
25 questioning.

WITNESS - CAPTAIN ROBERT BROMAGE

1 THE COURT: And I sustain the objection.

2 MR. NEWMAN: Hold on, please.

3 BY MR. NEWMAN:

4 Q And you've not reviewed, recently, any witness
5 statements in this case?

6 A I have not.

7 Q You've not reviewed the extensive photographs
8 taken in this case?

9 A Not in a long period of time.

10 Q And you've not listened to the 911 calls?

11 A I have not.

12 Q And you've not recently viewed the recording of
13 the incident?

14 A I have not reviewed the recording of the incident
15 in probably three years or better.

16 Q And you did not interview any witnesses in this
17 case, other than Mr. Oates?

18 A I was present for a few, just -- no, I didn't -- I
19 wasn't the primary interviewer.

20 Q And these are the bases of your opinions?

21 A Yes.

22 Q And ultimately, you don't get to make the call in
23 this case, do you?

24 A No, I can't -- no, sir, the Sheriff will make the
25 calls as far as what charge or anything else. So, I was out

WITNESS - CAPTAIN ROBERT BROMAGE

1 of that.

2 Q Okay.

3 MR. NEWMAN: I believe that I'm finished, Your
4 Honor. Let me just check with Mr. Colongeli.

5 THE COURT: Okay.

6 MR. NEWMAN: Thank you, Your Honor.

7 THE COURT: Any redirect?

8 MR. THORNTON: No, sir, no redirect. Thank you.
9 I'd ask that Captain Bromage be excused?

10 THE COURT: Any objection?

11 MR. NEWMAN: Absolutely none.

12 THE COURT: Okay. Let me see counsel at a quick
13 sidebar.

14 (Off-the-record discussion held.)

15 THE COURT: All right. Ladies and gentlemen,
16 we're getting ready to take a lunch break. And for
17 you, I'm going to ask you to be back at 15 minutes
18 until 3:00. It's a long lunch break for you, not for
19 us. We have some things we must do outside your
20 presence. So I'll ask you to be back in the jury room
21 at 15 till 3:00. And remind you, it's too early to
22 begin discussing the case. Don't let anybody talk to
23 you about the case, and you don't talk to anybody about
24 the case. See you back at 15 minutes until.

25 THE BAILIFF: Thank you, Your Honor.

WITNESS - CAPTAIN ROBERT BROMAGE

1 The jury is clear, Your Honor.

2 THE COURT: I will be -- we will be in recess
3 until 2:00 o'clock. 2:00 o'clock, we're going to come
4 back.

5 MR. THORNTON: Yes, sir. thank you, Your Honor.

6 THE COURT: Handle some matters outside of the
7 presence of the jury.

8 (Lunch recess taken.)

9 (Proceedings continued in Volume 6.)

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WITNESS - CAPTAIN ROBERT BROMAGE

1
2 CERTIFICATE
3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the foregoing
8 proceedings and that the transcript is a true and complete
9 record of my stenographic notes.

DATED this 25th day of 'November, 2014.

10
11 
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1 In the Court of Common Pleas for the
2 State of South Carolina, County of Beaufort

3

4 Case No.: 2014-GS-07-00359

5 State of South Carolina,

6 Plaintiff(s),

7 vs. Transcript of Record

8 Preston Ryan Oates,

9 Defendant(s).

10

11

12 VOLUME 6

13

14

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16 June 18, 2014

17 Beaufort, South Carolina

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21 TIME: 2:06 p.m. - 4:30 p.m.

22 BEFORE:

23 The Honorable Judge Brooks P. Goldsmith

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APPEARANCES

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COLLOQUY

1 PROCEEDINGS

2 MR. THORNTON: The State is ready when the Defense
3 is, Judge.

4 THE COURT: Let's come to order. I believe that
5 the State indicates that he has his proffered witness?

6 MR. THORNTON: Yes, sir. I do have Dr. Salas
7 here.

8 THE COURT: Is the Defense ready?

9 MR. NEWMAN: Yes, sir.

10 THE COURT: Go ahead.

11 MR. THORNTON: Thank you, Your Honor. Dr. Amanda
12 Salas, please.

13 MR. NEWMAN: If it please the Court, Your Honor,
14 so I can have it on the record, we object to this
15 witness being called in this case.

16 THE COURT: Why?

17 MR. NEWMAN: We object to this witness even being
18 proffered in this case. We have been provided
19 absolutely no discovery, beyond a CV, of what this
20 witness will testify to. This is now the third day of
21 trial that we're going to hear something that we may
22 have to prepare for and/or secure our own expert
23 witness in. And based on those -- based on -- the
24 Solicitor disagrees with me on Rule Five, but under --
25 under the Fifth Amendment to the Constitution, under

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1 Due Process and under Brady, Davis versus Alaska, Cowes
2 versus Whitley, and various cases on disclosure and
3 discovery, particularly expert witnesses in a criminal
4 trial, that I'm not even prepared at this proffer,
5 because I will be hearing for the first time what this
6 witness will have to say.

7 I sent an email on Thursday. We were first
8 notified of this Wednesday afternoon. I sent an email
9 to Dr. Salas' number, that -- it was the number I could
10 find listed, on Thursday. I'm sorry, I sent it on
11 Wednesday, and let her know that I had gotten a phone
12 number and they told me that this mailbox was full,
13 wasn't able to leave a message.

14 Dr. Salas was kind enough to send me an email at
15 10:02 p.m. on June the 12th, apologizing for the
16 difficulty in reaching her and providing her, and I
17 won't state it out, but I believe it was a cell number
18 or an access number for Dr. Salas.

19 She writes, as far as discussing projected
20 testimony, I will write a report to share it with the
21 Solicitor, who can make it available to you. She
22 requested access to interview my client. I had to
23 respectfully decline that, for markedly obvious
24 reasons. And I did state to Dr. Salas in the email
25 that I would like to give you the opportunity to

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1 discuss your projected testimony. Please favor me with
2 a reply. If you wish not to talk to me, that certainly
3 is your option, and I would respectfully request a
4 reply either way.

5 And she did reply to me and told me she would be
6 more -- and if I get it wrong, you tell me -- more
7 comfortable, but she would prepare a report and give it
8 to the Solicitor for, I guess, his option to whether he
9 would share that with me or not. If there is a report
10 done, I've not seen it. As I said, I'm not even
11 confident at this point to be able to cross-examine
12 this witness without any prior notice of this witness.

13 It's my understanding, if testimony is allowed,
14 she will be the second to the last witness in this
15 case. And I just, Judge, respectfully, I just can't do
16 that on the fly. Especially over, what I anticipate,
17 are probably complicated issues dealing in -- I
18 understand you're a psychiatrist?

19 THE WITNESS: I am a psychiatrist.

20 MR. NEWMAN: In the psychiatric world. Judge,
21 this is so far in the eight ball, I can't even properly
22 examine her here in court, even during the proffer.

23 THE COURT: Well, thank you. Mr. Solicitor.

24 MR. THORNTON: Your Honor, the State's position is
25 this: There's nothing in Rule 5, that requires me to

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1 provide witness lists, whether they be expert or lay
2 witnesses, to Mr. Newman. I'm obviously very familiar
3 with that Rule. But I went back and checked, just to
4 make sure after Mr. Newman raised that as an issue.
5 Nor under Brady do I think I would have been required
6 to provide this information.

7 I will tell you -- you know, there is some South
8 Carolina case law on it, specifically dealing with
9 witnesses that -- State versus Nicholson, 366 South
10 Carolina 568. Defense is not entitled to a witness
11 list. And in that case, they also disclosed a witness,
12 I think it was a week ahead of time, and that was
13 argued that that was -- the Defense had an issue with
14 that. And that basically, the Court said that even had
15 they -- even if you did that as a professional
16 courtesy, I don't ever have to give them witness lists,
17 until I'm told by the Court to call them out, or that
18 the Court calls them out, Your Honor.

19 So, the State's position is, that we -- again,
20 there is no issue with Rule 5 or Brady in this case.
21 As a courtesy to Mr. Newman, and I know he disagrees
22 with this, and that's fine. But as a courtesy to Mr.
23 Newman, I didn't try to wait until the minute I would
24 call Dr. Salas. I told him at pretrial meeting he and
25 I and Mr. Colongeli had on Wednesday of last week.

COLLOQUY

1 I told them not only who Dr. Salas was, but that
2 she was a psychiatrist. I told them that I expected
3 her to use her testimony with regard to the Cutro case.
4 I even gave him the case, you know, in which I will
5 attempt to put it under, so that he would know and
6 could be prepared for that.

7 You know, frankly, Judge, I don't have to lay out
8 my entire trial strategy to Mr. Newman. It doesn't
9 work that way. Had she generated a report, I would
10 have given it. I believe on Saturday, this past
11 Saturday, she sent a very brief: I have reviewed the
12 following things. And it's basically, I think a one-
13 or two-page document. I forwarded that immediately --
14 I talked to Mr. Colongeli this morning. I forwarded it
15 by email, I think to all parties. I think, I actually
16 had Mr. Newman and Mr. Colongeli, but I certainly
17 forwarded it. I think that I did that Sunday. I got
18 it sometime on Saturday, I was out of town, but I did
19 it on Sunday.

20 You know, Judge, I'm proffering the testimony, I
21 informed the Court about this on Monday. I haven't
22 tried to hide anything, but I don't have to telegraph
23 my entire trial strategy to the Defense. That's not
24 the way that I read the case law, be Brady Rule 5 or
25 anything else. So that's why I'm here. If the Court

COLLOQUY

1 allows me to proceed, I will proffer the testimony.
2 And the Court may not let it in anyway, and I realize
3 that. It's an unusual situation, but I felt it
4 incumbent upon the State to take this measure.

5 THE COURT: I'm going to take Defendant's motion
6 under advisement and hear the proffer. But whether the
7 testimony will be allowed or not is a separate
8 question. And I understand the objection is even to
9 the proffer.

10 MR. NEWMAN: Yes, sir.

11 THE COURT: But all of the reasons offered by the
12 State to disallow this witness is taken under
13 advisement. So, all of those issues I'll have to rule
14 on later.

15 MR. NEWMAN: Yes, sir. And in that as well,
16 Judge, he's listed documents and things that he's
17 reviewed on the list, 27, investigative reports, status
18 reports generated by Robert Hedden and Steve Murphy,
19 that's never been turned over to us, and some
20 documentation of the prior incidents, generated by
21 Investigator Deason, and Mr. Hightower. Likewise, we
22 have not been provided documents, and apparently
23 Dr. Salas have been provided them.

24 MR. THORNTON: And those three folks work for us,
25 Judge. That's all internal work product generated at

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1 my request. Those are things that are generated by --
2 it says Investigator, but Investigator Rogers, he is an
3 investigator with our office, as is Mr. Hightower, who
4 you've seen, who's seated right over here. As is Steve
5 Murphy, who is the head of that part of our office.

6 The items generated specifically by Mr. Hightower
7 would not be admissible in court anyway. They are
8 previous incidents, which we've taken a lot of great
9 detail and even in the Defendant's own statements, when
10 he mentions them, we have redacted them and taken them
11 out. So, I don't believe they're entitled to internal
12 work product generated by me. I realize it says
13 "Investigator," but they are with our office.

14 THE COURT: Right. As I said, I'll take all of
15 these issues raised by the Defendant as to the
16 appropriateness of this witness under advisement and
17 proceed with the proffer.

18 MR. THORNTON: Thank you, Your Honor.

19 MR. NEWMAN: Thank you. And with that, we do --
20 just so I can state it so it's clear, if we do
21 cross-examine the doctor, we will question her, we are
22 not waiving our objection by doing so, sir.

23 THE COURT: That would certainly be my
24 understanding.

25 MR. NEWMAN: Thank you.

WITNESS - DR. AMANDA SALAS

1 MR. THORNTON: Thank you, Your Honor.

2 Thereupon,

3 DR. AMANDA SALAS

4 was called as a witness, having been first duly sworn,

5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. THORNTON:

8 Q Dr. Salas, what are you a doctor of?

9 A I'm a medical doctor with specialty in psychiatry,
10 specifically child and adolescent and forensic, in addition
11 to adult psychiatry.

12 Q All right. And -- forgive me, is that -- are you
13 an M.D.?

14 A I am.

15 Q And what is the difference between, say, an MD and
16 a Ph.D. when it comes to psychiatry?

17 A A Ph.D. is not a psychiatrist, an M.D. is not a
18 psychologist. They are two different tracts for training.
19 You would have to go through the tracts separately, if you
20 wanted to become a psychologist and you had a medical
21 degree. You'd have to go through a Ph.D. tract if you were
22 a psychiatrist wanting to become a Ph.D. But I did four
23 years of medical school to earn my medical degree. And then
24 I went into a psychiatry residency program. You take three
25 years of adult psychiatry training, and then I did two years

WITNESS - DR. AMANDA SALAS

1 of fellowship in child and adolescent psychiatry. And then
2 I did an additional year in forensic psychiatry.

3 So, at the end of all of that training, I'm
4 able to diagnose and treat and provide an understanding for
5 psychological issues as it relates to the someone's
6 behaviour or a treatment plan that they may need to target
7 the diagnosis that we may be working with and talking about
8 a clinical setting. And as far as forensic psychiatry, be
9 able to offer medical expert opinions, where there's a
10 psychiatric issue that overlaps with a legal question.

11 Q You've mentioned some of the schooling you've
12 already done, and the degrees that you hold. Do you -- are
13 there any board certifications and things like that in
14 psychiatry?

15 A Absolutely. And I hold board certification in
16 general psychiatry, child and adolescent psychiatry, and
17 forensic psychiatry.

18 Q And have you ever been declared an expert in court
19 and testified before?

20 A Yes..

21 Q Have you actually testified in that very witness
22 stand?

23 A Yes, I have.

24 Q And do you -- is this an occasion where you
25 testify all the time for the State or all of the time for

WITNESS - DR. AMANDA SALAS

1 the Defense, or do you do both?

2 A I'll provide testimony for the Defense or for the
3 State or actually on behalf of the Court, when I have been
4 hired as a neutral party. Just because I'm retained to
5 review materials, does not mean that I end up making it
6 actually to court to provide testimony. So, whoever has
7 retained me is the party that will usually communicate the
8 issues that they may have brought to question, and want some
9 clarification about what is going on. And then they decide
10 whether or not they want to move me forward in what legal
11 processes are going on, to bring that opinion forward to the
12 Court.

13 Q Okay. Did -- in the previous hearing that you
14 testified, where you were sitting in that very chair, were
15 you testifying for the State or were you testifying for --
16 on behalf of the Defendant in that case?

17 A In that case, I was testifying after being
18 retained by the Defendant's attorney.

19 Q All right. Doctor, have you -- do you do any
20 publications or teaching as part of your practice?

21 A I have in the past. I don't do as much teaching
22 and I haven't had recent publications.

23 Q Have you had publications before?

24 A Yes, in the past, during my training.

25 Q And have you taught actually, forensic psychiatry

WITNESS - DR. AMANDA SALAS

1 or psychiatric classes? Forgive me, I don't know the
2 terminology. Have you taught college or above level?

3 A I have taught residents pertaining to forensic
4 psychiatric issues. I was not active in terms of, at this
5 point in time, going around as an academic psychiatrist,
6 where I stay purely academic in a teaching model. But when
7 I have been in an academic setting, I certainly have
8 provided educational teaching materials, on the job
9 training, et cetera, for people in that setting.

10 Q And are you at this time, in fact, a practicing,
11 forgive me, I hope that I don't get it wrong, practicing
12 psychiatrist?

13 A Yes.

14 Q And do you have a practice here in Beaufort
15 County?

16 A Yes, that is one location.

17 MR. THORNTON: Your Honor, I'd ask that Dr. Salas
18 be declared an expert in the field of forensic
19 psychiatry?

20 THE COURT: Do you wish to voir dire on her
21 qualifications?

22 MR. NEWMAN: I have insufficient background
23 information to voir dire the witness, Your Honor, so
24 I'm at a loss.

25 THE COURT: I'll grant you that.

WITNESS - DR. AMANDA SALAS

1 MR. THORNTON: Thank you, Your Honor.

2 BY MR. THORNTON:

3 Q Dr. Salas, since, obviously, there's no jury here,
4 this is a proffer situation, so I will to be a little bit
5 more brief than I might be in front of the jury.

6 Have you -- have you reviewed many documents
7 at the request of my office?

8 A Yes, I have reviewed many, many variety of
9 documents.

10 Q All right. And did I -- did we ask you to do that
11 in order to provide us some information about one Preston
12 Oates?

13 A Yes. It was a request to be able to shed some
14 light and understanding on some psychological and
15 psychiatric issues, as it related to Mr. Oates.

16 Q And at one point, did you review a report from the
17 Department of Mental Health?

18 A Yes.

19 Q And did that Department of Mental Health report
20 contain any specific findings with regard to Mr. Oates?

21 A Yes, it did.

22 Q And what were those findings?

23 A It found that he was competent to stand trial, and
24 it also assigned diagnoses of mood disorder, not otherwise
25 specified, as well as narcissistic personality disorder,

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1 which was, I believe, their principal diagnosis, after they
2 had conducted their review, as well as some medical
3 diagnosis, as well.

4 Q Right. Doctor, can you tell the Court what is a
5 narcissist and what makes a person a narcissist?

6 A There is a difference between someone who is a
7 narcissist as a lay person might come to use that term or
8 understand that term, from someone who has narcissistic
9 traits, versus what we call narcissistic personality
10 disorder, which is a formal diagnosis in the field of
11 psychiatry and mental health. And when you look at
12 differentiating the difference between a trait versus a full
13 personality disorder, what we're looking at is, do the
14 symptoms that you use to define that personality disorder,
15 are they something that carry over into more than one avenue
16 of a person's life to create challenges, whether they're
17 social problems that go on, whether it's problems on the
18 job, problems in their education. You look and see how
19 pervasive those symptoms are.

20 And specifically, when you're talking about
21 narcissistic personality disorder, you are look at someone
22 who has impairments in their functional capacity in life, in
23 their relationships, in their job situation, perhaps also in
24 an academic situation. And it pertains to an individual has
25 an overinflated sense of self-importance, of arrogance.

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1 There is a lack of ability to empathize with others. They
2 may even believe that they are superior to others, and have
3 little regard for someone else's feelings. And there is
4 oftentimes a finding where there's a deep need for
5 admiration by others, to feed their narcissism.

6 It's not that you just have one or two of
7 these qualities, or that it only comes out in the nature of
8 a very limited number of interactions, but it's actually
9 when it becomes pervasive, and it is kind of seeping into
10 all avenues of your life. And even superficial
11 relationships that we then find somebody who's moved forward
12 from just having traits of an issue, into having a
13 diagnosable disorder, such as narcissistic personality
14 disorder, which is identified in the MUSC report.

15 Q Dr. Salas, to shorten that up a little bit, so is
16 it fair to say that what your testimony is that, this is
17 different than somebody who just thinks a lot of themselves?

18 A It is very different. This is not an overly
19 confident individual, that just has a small sense of greater
20 confidence than the average person. It's more pervasive and
21 there's more functional impairment.

22 Q Have you reviewed, by the way, the videotaped
23 interviews of Preston Oates?

24 A Yes.

25 Q And did you -- did you come to a -- to a

WITNESS - DR. AMANDA SALAS

1 reasonable degree of the medical certainty, did you come to
2 your own belief as far as the accuracy of the diagnoses of
3 narcissistic personality disorder?

4 A When I went through the materials that were
5 presented, as far as it goes to observing the interactions
6 that were audio-recorded on December 24th of 2010, and
7 then -- I'm sorry, audiovisual there, and then an audio
8 recording from December 28th of 2010, what I found is that
9 you could take the diagnostic criteria for narcissistic
10 personality disorder and you could identify at least, I
11 believe, it's five out of however many, nine or ten,
12 different criteria. You could find enough qualifying
13 examples to understand why MUSC's report would have had a
14 diagnosis of narcissistic personality disorder.

15 Because in that approximately three to four
16 hours worth of material, you could find it -- examples of
17 those personality traits, to raise it to a level of being a
18 disorder that made, in my mind, it very reasonable to a
19 medical degree -- to a reasonable degree of medical
20 certainty, accuracy in the diagnosis that was set forth in
21 the MUSC report.

22 Q Doctor, what happens to -- what happens if you
23 challenge a narcissist or challenge a narcissist's
24 authority?

25 A Well --

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1 MR. NEWMAN: I would -- Your Honor, I guess, I
2 object to that question being broad like that without
3 specifics. And I understand that this is a --

4 MR. THORNTON: I can rephrase, Judge.

5 THE COURT: All right.

6 BY MR. THORNTON:

7 Q All right. Doctor, you've just said that you
8 agree with the diagnosis, as far as the criteria that
9 Preston Oates would suffer from a narcissistic personality
10 disorder; is that correct?

11 A Yes. In that I can take the material presented
12 from MUSC, and based on the materials that I have reviewed,
13 find enough qualifying factors to understand that he, in
14 those examples, would meet criteria for the narcissistic
15 personality disorder. But it is with the reservation that I
16 do not have access to interview Mr. Oates one-on-one, to
17 have an opportunity to even explore that further, to see if
18 there might be more examples.

19 Q Okay. Do narcissists at that level -- and when I
20 say "that level," I mean, that the personality disorder, not
21 just, you know, I think Mr. Newman made the comment at one
22 point that, you know, probably every trial lawyer that gets
23 up in front of people and tries a case might be a little bit
24 narcissistic. But to a level of having a personality
25 disorder, are there certain characteristics that those

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1 people with that would generally share when their authority
2 is challenged?

3 A I think I followed that.

4 Q I hope so. Probably it was a really poorly
5 phrased question.

6 A Let me see if I can clarify the question, first.
7 But are you asking for someone who has the symptoms that I
8 have identified in the materials that I've reviewed, that
9 when a person with those types of symptoms, to lead to those
10 types of conclusions, when that individual would perhaps be
11 challenged, what could we expect from having challenged that
12 ego structure?

13 Q Yes.

14 A Okay.

15 Q You phrased that much better than I did.

16 A I try. I want to make sure that I completely
17 understand that. When you challenge somebody who has a
18 narcissistic personality disorder, there was a time when we
19 believed in psychiatry that a narcissistic personality
20 disorder individual actually had a fragmented or a fragile
21 sense of self, but what we have learned, and what all the
22 data indicates now, is that they actually have a very intact
23 sense of self.

24 When you put forth a challenge to that ego
25 structure you can get a variety of responses. Sometimes

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1 it's very defensive, and sometimes it moves forward to a
2 level of aggression. But ultimately, there is a
3 preservation of this overinflated sense of self and
4 grandiosity, that leads to the outcome of the behaviour that
5 nine times out of ten it's unlikely that they are going to
6 bow out of the power struggle of being challenged.

7 Q In other words, if you challenge them, they're not
8 going to back down?

9 A It is unlikely that they are going to back down
10 when you challenge their perceived authority.

11 Q Did you see in the materials that you reviewed and
12 looked at, I know -- let me just try to speed this along,
13 because I know we got -- you know, we're going to have a
14 jury waiting on us at some point. Did you also look at
15 police reports, incident reports, witness statements, as
16 well as the video and audio recordings?

17 A Yes, I did.

18 Q And in your review of those, what types of
19 behaviors did you note, or what types of things did you
20 observe from the video, that would support that conclusion
21 on your part?

22 A So, some of the things that I've noted, if there's
23 specific examples where, when Mr. Oates was not being led,
24 or no one was asking a direct type question, then he
25 spontaneously generated ideas that would reflect an

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1 overinflated sense of self. That he was -- even to the
2 point of, at times, it appeared that he was fishing for
3 somebody to stroke his ego and give him the admiration that
4 one might need.

5 There were times that he appeared to think of
6 himself as an equivalent with the investigators that were
7 engaged in the interview process, on more than one occasion.
8 And these are all traits of arrogance, self-centeredness and
9 cocky attitudes that we do associate with the narcissistic
10 personality disorder. And there are specific examples that
11 I can give, or I can hold it.

12 Q Let me ask you a couple of specifics. And please,
13 if I'm not correct, please correct me.

14 What about the situation in a room? He's on
15 videotape, picking up trash out of the room, rearranging the
16 furniture. Does that mean anything to you in this context?

17 A It doesn't mean anything to me in terms of the
18 context of, would that attribute -- that behaviour, in and
19 of itself, be attributed to a narcissist. But from an
20 understanding of behaviour, it did show to me that he was
21 very much in control of himself at that moment in time. And
22 that he was one who did feel that he was in control of
23 himself, and that he wasn't in a situation where he felt out
24 of control.

25 Q And as far as the grandiosity comments you made

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1 earlier, would that be the things -- the statements that he
2 made, such as the adventure he had in Istanbul, and running
3 5 miles in seven minutes, which I think would be an Olympic
4 record, if that was accurate. Things like that?

5 A Yes.

6 Q And again, if someone with these tendencies is
7 challenged -- well, actually I have asked you that, and I
8 don't want to belabor the point. In a situation where a
9 narcissist is challenged, do they attempt to orchestrate a
10 situation themselves? In other words, if they have such
11 this need for control that you've talked about, do they try
12 to generate control of the situation?

13 A In general they see themselves in control, even at
14 times when they are not in control. There's such a
15 distorted sense of reality where events around them are seen
16 through a distorted lens of their own importance that is
17 self-assigned, that they will, from an observer, it's as if
18 they are on a stage and the people that are around them are
19 there to support their own self-centered grandiosity. That,
20 other people may find confusing because it doesn't make
21 sense to someone who is either not accustomed to that
22 personality structure or is unfamiliar with an individual
23 who is in that moment of their narcissism, being of
24 paramount presence, to somebody who's not familiar with that
25 individual.

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1 But ultimately a narcissist, for them, their
2 world is their -- is the stage on which they stand. And all
3 spotlights shine down on them. And the rest of us are here
4 to stroke their egos and to give out their admiration, and
5 to accept what they say, and not challenge what they may
6 purport to be true from their perspective.

7 Q And do sometimes narcissists respond with violence
8 when they are challenged?

9 A Yes.

10 Q Now, after reviewing everything you reviewed, with
11 specifics to this case, does it appear to you that a lot of
12 this situation was brought on -- by "this situation," I mean
13 the shooting of Carlos Olivera, was brought on by behaviors
14 of Preston Oates?

15 A I can't say what was an initiating point to say
16 brought on, being a derivative of Preston Oates. But what I
17 can say is that from the materials that I have reviewed I
18 find that within reasonable medical certainty Mr. Oates
19 certainly would have support, from the documents I reviewed,
20 to have a narcissistic personality disorder. And that a
21 person with narcissistic personality disorder is likely what
22 we see, from the materials I have reviewed, to escalate a
23 situation as opposed to diffuse the situation when that
24 opportunity to diffuse presents itself.

25 Q So, they would rather escalate than diffuse?

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1 A Their tendency is out of reflection of the
2 arrogance, in their inflated sense of self and grandiosity,
3 a belief that they are always in control; that even in their
4 distorted sense of fairness and distribution of justice,
5 more likely to move forward with a defensive and into an
6 active aggression, as opposed to a submissive retraction to
7 deescalate something.

8 Q Thank you very much, Doctor.

9 MR. THORNTON: Judge, although that's a pretty
10 abbreviated version, that is the type of testimony that
11 I would elicit, if allowed to do so. And I'll reserve
12 arguments until Mr. Newman, if he wishes to
13 cross-examine.

14 CROSS-EXAMINATION

15 BY MR. NEWMAN:

16 Q You didn't hear the testimony of Captain Bromage,
17 did you?

18 A No, sir.

19 Q I was going to ask you for a diagnosis.

20 In the narcissistic personality disorder, if
21 I'm getting from what you say, this has to be long-term and
22 documented and show patterns of grandiosity, lack of empathy
23 and things like this, by early -- or late adolescence; is
24 that correct?

25 A The personality structure is usually developed in

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1 adolescence. You can usually find traits in early
2 childhood, early adolescence. And it solidifies, which is
3 why the majority of our personality disorders are not
4 diagnosed until someone is age 18.

5 Q Okay. And noted in the DSM, that many highly
6 successful individuals display personality traits that may
7 be considered narcissistic. It's only when these traits
8 become maladaptive is it flushed out; is that correct?

9 A Yes, there are.

10 Q So there are a lot of narcissistic people that are
11 around?

12 A There's a lot of narcissism that is present. But
13 not everyone who displays narcissistic features is going to
14 meet diagnostic criteria for a narcissistic personality
15 disorder.

16 Q Okay. What type of decisions did Mr. Oates need
17 to make when this was being pointed and racked up?

18 MR. THORNTON: Objection, Your Honor. Calls for
19 facts that are in dispute. He's asking her to accept
20 the premise that his client's telling the truth, and
21 stating it as a fact.

22 BY MR. NEWMAN:

23 Q Assuming it was racked and assuming it was pointed
24 at him, what's he going to do?

25 THE COURT: Overruled.

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1 A When someone has a gun that's racked and pointed
2 at them I would expect that we would all make different
3 decisions. And I'm not going to actually predict the
4 behaviors that are going to come from a moment of being
5 presented with an unexpected situation. So, I can't say
6 what one person versus another is going to do under
7 circumstances that you present.

8 Q Okay. And your testimony is going to relate to
9 personality and to a personality characteristic?

10 A It is going to relate to an understanding of
11 narcissistic personality disorder. If there's another line
12 of questioning that somebody wants me to elaborate on more
13 than what I've already elaborated on, I'll be happy to do
14 so.

15 Q Are you in control right now?

16 A Not at all. At least I don't feel like I'm in
17 control.

18 Q When you've used words in your testimony and, I
19 guess, you have to, I'm not sure if I'm wrong, tell me.
20 I've heard -- I wrote down "a lot of times, "sometimes,
21 "unlikely", "more likely". You haven't given us any
22 exactings {sic} on how a narcissist versus a non-narcissist
23 is going to react to something?

24 A When somebody reacts there's no way to predict.
25 So, in mental health what we talk about the difference

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1 between responding versus reacting. And so, when somebody
2 reacts that doesn't necessarily have any type of predictive
3 value. And I don't have any ability to predict an
4 individual's behaviour or their thought process, or what
5 someone is going to say, or what they're going to do.

6 But what we can do is, when we find a pattern
7 of behaviour we can anticipate what one is more or less
8 likely to do. If you want a prediction you have to go to
9 somebody who can read palms or do crystal ball type stuff.
10 And although psychiatry does seem to be that nebulous to
11 some people. And I get that, because it's really hard to
12 find two psychiatrists who have similar opinions. I get
13 that. But there is a science behind it. And it actually
14 has a lot of objectivity, that when you are accustomed to
15 looking at gray, then we do have the ability to move forward
16 and be way more consistent with identifying diagnoses and
17 understanding what we would call a prognosis or an outcome
18 based on the information that one would have when they find
19 an accurate diagnosis. So...

20 Q Have you reviewed the video of this incident?

21 A Is there a video of the incident itself?

22 Q Yes.

23 A I have not seen a video of somebody recording
24 whatever exchange happened on that particular night. I
25 haven't seen anything that gives clarity on specifically in

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1 the moment, that charges came out of that particular moment.

2 But if you have that, I'd be happy to review it.

3 Q Well, I'm trying to figure out ultimately what
4 your opinion is going to be. Are you trying to say that
5 Mr. Oates, because of this personality characteristic, was
6 predisposed to act the way he did when he was challenged by
7 the Olivera brothers?

8 A I'm not going to make a statement of what somebody
9 would or would not have done in that particular moment.
10 That has not even been asked of me. So, what I see has been
11 the pattern of how the conversations and what I've been
12 tasked with doing, is shedding light on understanding
13 narcissistic personality disorder from the information that
14 I have been provided. Is that likely to be a diagnosis that
15 was made with accuracy from the MUSC report or not. And
16 from the materials that I have been provided, were there
17 elements, if that diagnosis is accurate, that would shed
18 light in understanding as to how one would understand the
19 behaviors in the materials that I have reviewed.

20 Q I'm asking about the behaviors that occurred on
21 December 24th of 2010, at about 8:24.

22 A As it pertains to the material that I have
23 reviewed, which is the audiovisual interrogation, I'm not
24 someone who can go back and say that in that particular
25 moment this happened in an exchange or something. I can't

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1 go back and assign something when I don't even know, me
2 personally, from what I have reviewed, what had happened.
3 Now, if there is something that -- if there is a document or
4 a visual piece of material that shows very clearly, three
5 brothers and one man having a conversation and I can see and
6 hear what is going on and understand the whole dynamics of
7 that scenario, then perhaps I can come to a reasonable
8 degree of medical certainty type opinion, as to what would
9 influence one thing or another.

10 In the meantime, what has been asked of me,
11 and what I have found, is that the diagnosis assigned from
12 MUSC appears to be accurate for the situation in what
13 someone would be diagnosing Mr. Oates with, if they did have
14 access to interview him, in understanding the behaviors that
15 came out of those interrogation at that time.

16 Q The interrogation, not the incident?

17 A Now, where it comes into the incident, if somebody
18 has a narcissistic personality, would they be more or less
19 likely to escalate or de-escalate a situation, you can
20 assign that information to the incident, or you can choose
21 to not. But I personally can't go back as a professional
22 and throw speculation into a circumstance when I don't have
23 any material to say that, yes, this is objectively what
24 happened, that it's clear in front of me, where someone's
25 asking me to do a behavioral analysis of something that has

2 What I can look at is I can look at the 911
3 tapes and give an opinion about what statements were made
4 and what might those statements mean. Or I can look at the
5 interaction as it went on under the A-V recordings for the
6 December 24th interrogation, and give statements and
7 opinions as to what one action or another might mean for
8 that. But that's because, in those recordings, there's
9 actual material for me to objectively look at.

23 Q That is my whole point of that question; is what
24 you can't do.

25 All right. So, basically you're going to

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1 shed light into a personality trait or characteristic of
2 Mr. Oates?

3 A That has been identified through the MUSC report,
4 and through the materials that I have been provided, state
5 that in these materials there is reasonable -- my opinion to
6 a reasonable degree of medical certainty is that there is
7 support for that diagnosis. And if someone had asked me
8 what would happen with that diagnosis and how one would be
9 more or less likely to respond under a certain circumstance,
10 I'll answer that question for someone as well. If
11 there's --

12 Q Well, what's the answer in this case, to that very
13 question you posed?

14 A As to whether someone would be more or less likely
15 to escalate a situation when they feel that there is a
16 personal challenge, when you have an individual narcissistic
17 personality disorder they are more likely to respond by
18 increasing the opportunity for confrontation in an act of
19 aggression. Whereas somebody without that personality
20 disorder is less likely to respond by increasing aggression
21 or conflict.

22 Q Well, aren't there just some mean SOBs that don't
23 have many -- that will punch your lights out in a second and
24 they don't have a narcissistic personality disorder, they're
25 just mean snakes?

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1 A Punching your lights out is a little different.
2 Because not everyone with narcissistic personality disorder
3 is going to engage in an aggressive physical confrontation.
4 But I kind of liken it to, the police department is made up
5 of a wide variety of people. There are some officers that
6 you meet, when they get called to a scene, somebody's going
7 to jail.

8 Q Oh, yes.

9 A There are some officers who, you know, when they
10 get called to the scene, they're going to do something
11 different and deescalate, where someone else might escalate.
12 And I think that that is the understanding that is really
13 the answer to that type of question of, when you have
14 someone with a narcissistic personality disorder, under the
15 police type scenario, somebody's going to go to jail,
16 especially if you challenge them.

17 Q Okay. And you're prepared to testify that
18 Mr. Oates took the actions that he did in this case, because
19 of his personality disorder?

20 A That he took the actions that he did?

21 Q In this case.

22 A Yes. Yes. But his personality disorder --

23 Q He had a propensity?

24 A -- is such that would be something that would
25 influence him to, when he's responding, not when he's

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1 reacting, but at a point of response, a person with a
2 personality disorder identified as narcissistic will respond
3 in a way that escalates, and leads to a potential act of
4 aggression. Whereas somebody who does not have that
5 personality disorder is less likely to have that happen when
6 they are responding.

7 Q At what point in this incident, a little after
8 8:00 on December 24th, 2010, at what point did Mr. Oates
9 react, and at what point did he respond?

10 A I don't think that's a decision that I would get
11 to make. I think that that's a decision that is based --
12 for the jury to decide, at what point do they see an act as
13 being -- this is something that they identify as the moment
14 in time where someone would move from a response into a
15 reaction.

16 Q Okay. And are you familiar with the elements and
17 law of self-defense?

18 A I'm not familiar with much in law, quite honestly.
19 That's not my training. I know that self-defense is
20 something that somebody can plead.

21 Q And that's the biggest ego mechanism right there,
22 preservation of your own life?

23 A Preservation of life is very important.

24 Q It's back in the reptilian part of the brain.

25 A You see that in animals.

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1 Q The reptilian brain?

2 A I don't know about the brains of reptiles, but
3 perhaps.

4 Q Okay. So your testimony is here to help the jury
5 to decide that Preston Oates had a character trait, that
6 made him more of a propensity to act the way he did in this
7 particular case?

8 A That he has narcissistic personality disorder.
9 And that someone with a narcissistic personality disorder
10 has these types of symptoms, et cetera. And this is what
11 one can expect to happen when you have someone with a
12 narcissistic personality disorder.

13 Q Okay. Let me ask you the question, and you can
14 explain all you want. And we'll ask it as yes or no.

15 A Okay.

16 Q Then you can explain it.

17 Your testimony is going to be that because of
18 the personality trait or characteristic disorder --

19 A Okay.

20 Q That because of that trait, he acted in accordance
21 or within, he had a propensity to act the way he did in this
22 case?

23 A So is that -- are you asking if that's what I'm
24 going to testify to?

25 Q No, ma'am. I asked you a yes or no question.

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1 Certainly you can explain.

2 A So -- because what I'm hearing is that there are
3 some parts that I feel are misleading, which leads me to say
4 no. To answer your question, that's not what I'm going to
5 testify to. An understanding of a narcissistic personality
6 disorder that Preston Oates has been identified as having.
7 And that when Preston Oates is responding that, yes, we
8 would see a typical pattern, or at least suspect a typical
9 pattern. But when he's reacting, you get what you get, just
10 like you would with anybody else. And it's not for me to
11 determine when someone is responding, versus when they are
12 reacting, when I don't have the information I've already
13 presented, to be able to help somebody say, this looks more
14 responsive, this looks more reactive. But again, I don't
15 see that as the role that I have in determining what was a
16 response from what was a reaction.

17 Q Okay. And with the information that you currently
18 have, you could not form any type of opinions within your
19 ethical guidelines in psychiatry and forensic psychiatry?

20 A As far as?

21 Q Reaction.

22 A Response versus reactions?

23 Q Yes.

24 A I can't tell somebody at this point, no. To
25 answer your question, no.

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1 Q Okay. Sometimes we can answer yes or no.

2 A I apologize, but I do live in a gray world. So it
3 becomes more preferable.

4 Q To bring that up, there's much disagreement in the
5 psychiatric community over multiple issues; isn't that
6 correct? Some treatises go one way, some go the other way?

7 A There's a lot of targeting that happens when
8 you're talking about disagreements. There are times where
9 board certified clinicians will disagree when presented with
10 the same information. And it really, from my perspective,
11 depends on whether you're what we call a lumper, you put
12 things together, or if you're a splitter, and you like to
13 tease them out and make them separate.

14 And so, at a basic level of understanding how
15 there can be so many disagreement, because it just really
16 boils down to the one percent splitter, is kind of how we
17 look at it in our world.

18 Q Okay. And has anybody peer-reviewed your
19 projected testimony in this case?

20 A As far as a peer review, I haven't discussed my
21 testimony with anyone to get a peer review. Again, so, no,
22 there's no peer review for the work that I do in a forensic
23 world to go consult. That's not even the standard of
24 methodology.

25 Q Okay. How would you validate your opinions in

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1 this case?

2 A Validate that he has narcissistic personality
3 disorder?

4 Q No, that -- my question's ultimately, it sounds
5 like what the State wants out of you. You and I are talking
6 two different languages right now, I think?

7 A Perhaps.

8 Q I'm asking whether you're going to give opinion
9 testimony on this narcissistic personality disorder, and
10 whether or not, likely, maybe, that Mr. Oates acted in
11 conformity with that when he struck the fatal blow in this
12 case. And I think what you're telling me is, no, all I want
13 to do is tell you, he's got a narcissistic personality
14 disorder. And I can tell you that by listening to the
15 interviews, by using at least five of the DSM criteria as to
16 that. And that people that have that, when challenged, are
17 more likely to not back down and react with violence with a
18 challenge?

19 A Yes.

20 Q Okay. Done. Thank you.

21 MR. THORNTON: No redirect, Your Honor.

22 THE COURT: I would like to ask the witness one
23 question.

24 MR. THORNTON: No objections from the State,
25 Judge.

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1 THE COURT: Any objection?

2 MR. NEWMAN: I've already objected, Judge. Maybe
3 I'll object to it after you ask it.

4 THE COURT: Well, no, we'll do it the regular way.
5 I'll ask it and then you can object before she answers
6 it.

7 MR. NEWMAN: I don't know what the question is, so
8 I don't have a problem with the Court wanting to
9 examine.

10 THE COURT: How many different personality
11 disorders are recognized by the DSM-V?

12 THE WITNESS: It's more than five.

13 THE COURT: Yes, there's supposed to be IV or V?

14 THE WITNESS: Well, we're on the DSM-V now. I
15 can't tell you exactly how many are in the DSM-V,
16 because even though it was published in May of 2013, no
17 one has implemented it. As far as clinically, we're
18 still under the DSM-IV at this point in time. And so,
19 under the DSM-IV, there are ten -- I believe there are
20 ten. They're divided into clusters. So, you have
21 cluster A, which is not the issue at hand, and that has
22 three. Cluster B has four, and that is where this
23 particular personality disorder falls, and cluster
24 three has three personality disorders.

25 THE COURT: Okay. Any objection to the question

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1 and the response?

2 MR. THORNTON: None from the State, Your Honor.

3 MR. NEWMAN: No, sir.

4 THE COURT: Any follow up questions?

5 MR. THORNTON: No, sir.

6 THE COURT: From the Defense, as a result of my
7 question?

8 MR. NEWMAN: No, Your Honor.

9 THE COURT: Thank you. You may step down.
10 Your arguments?

11 MR. THORNTON: Your Honor, and again, let me start
12 off by saying, I know this is an unusual type
13 situation, as far as the type of witness and what the
14 request will be. Which is why, frankly, I brought it
15 up to you. And I realize Mr. Newman and I dispute
16 whether I should have brought it up to him earlier.
17 But frankly, that is why I brought it up to him
18 pretrial, and why I brought it up to Your Honor on
19 Monday. You know, and I've told -- I've discussed it
20 with the folks that are with me on this case. And, you
21 know, I do think that it sheds some light, Judge, for
22 the jury on --

23 THE COURT: The witness knows she shouldn't leave
24 yet, I guess?

25 WITNESS: I'm just going to step out.

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1 MR. THORNTON: Yes, sir. Yes, sir. She knows
2 that she may be called, depending on what -- what your
3 ruling is.

4 THE COURT: Okay.

5 MR. THORNTON: I mentioned this in a pretrial
6 conference, and I won't belabor the point, because
7 we've kind of already debated a lot of this in
8 chambers. But basically, Your Honor, I think that it
9 does two things: One, it sheds some light or
10 potentially could shed some light on behaviors that
11 are, frankly, not what your average person will do. If
12 it's the State's position that Mr. Oates escalated this
13 rather than leaving, similar to what Captain Bromage
14 was telling him, you know, it just doesn't make any
15 sense. Why didn't you do this? Why didn't you take
16 off?

17 Well, I realize that I asked some inartful
18 questions, and basically Dr. Salas has answered why you
19 do that. Because someone who suffers from narcissistic
20 personality disorder, is more likely to escalate than
21 not escalate. I understand completely Mr. Newman's --
22 well, the argument he's already made, the one I'm
23 assuming he's about to make, which is his character
24 propensity. You know, he did everything that he could
25 do to try to get her to use the magic words character

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1 and propensity -- or character trait and propensity.

2 I realize that this type of evidence rides to that
3 line, Your Honor, and as it did in Cutro. And I've
4 already mentioned this one to you, Judge, State versus
5 Cutro, which dealt with Munchausen by proxy, 365 South
6 Carolina 366. And I've got a copy of that case, Judge,
7 which I'll give to Mr. Newman also.

8 THE COURT: I've been looking at it.

9 MR. THORNTON: Yes, sir. In case you need a paper
10 copy, Your Honor. You know, in that case, they used it
11 for motive evidence also, which is basically a fancy
12 way of saying why somebody does what they do, Your
13 Honor. The other issue, I would be offering it for
14 that, to help explain why Mr. Oates will do -- what the
15 State's position is that he did on the night of
16 December 24th, 2010. The other thing, as you know,
17 Your Honor, Mr Newman has made that -- I realize we'll
18 wait until, you know, frankly, probably closing
19 arguments and your charge. Mr. Newman's already
20 mentioned self-defense and what you would do in a case
21 of this. And so, clearly, self-defense is going to be
22 an issue in this case.

23 And one of the elements, as Your Honor knows, is
24 self-defense, that you could have no fault in bringing
25 on the difficult. And if Preston Oates, because he

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1 suffers from narcissistic personality disorder, if he
2 escalates instead of deescalates, then he is part of
3 the problem. And he helps bring on the situation that
4 ultimately resulted in the death of Carlos Olivera.
5 And in my opinion that would be one way the State could
6 defeat the defense of self-defense. And as Your Honor
7 knows, it's my burden to do that beyond a reasonable
8 doubt.

9 So, those would be the two reasons, Your Honor, I
10 think it should be admissible, and we're requesting the
11 Court to admit it. That would be my position, Judge.
12 Again, I don't want to belabor it. We've already kind
13 of gone over it in chambers. And I recognize that it's
14 a tough call for Your Honor, because it does ride that
15 line with character. And, obviously, Judge, we'll live
16 with whatever ruling you make. But I did feel it
17 incumbent upon the State to bring it forward.

18 Thank you, Your Honor.

19 THE COURT: Mr. Newman?

20 MR. NEWMAN: If it please the Court, Your Honor.
21 This is the great fear of putting up testimony like
22 this in this type of case. You put up cases that you
23 know, they'll -- they had another issue going on in
24 Cutro, and that was the joinder of the two charges.

25 They had two specific medical doctors testify

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1 about shaken baby syndrome in that case. And there
2 wasn't any defense of self-defense or anything like
3 that in the Cutro case. They were using to show how
4 the two children that were in her care died as a result
5 of the same actions. And they were able to get in a
6 diagnosis of that, very much, and very limited. I
7 don't think Cutro has been followed since or applied in
8 another case.

9 The case that glaringly strikes out and uses
10 language, is the State versus Larry Don Nelson, found
11 at 501 Southeast 716, Supreme Court 1998. The Supreme
12 Court reversing the Court of Appeals. The Court of
13 Appeals found that -- and, of course, we're dealing
14 obviously with 404B issue on evidence of character.
15 Defendant has placed no evidence -- nothing into
16 evidence at this time. Defendant has not put his
17 character at issue at this time. And therefore, under
18 404 says that you can't use it. But what happens in a
19 case like Nelson, that likewise was, by the Supreme
20 Court of South Carolina, these are the danger in these
21 type cases.

22 Nelson was charged, I believe, with criminal
23 sexual conduct on a minor. And the police went to
24 Nelson's home and served a search warrant. They found
25 children's dolls, children's books. And this is an

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1 adult male living alone. Pictures of young girls,
2 like, in the newspaper where they have the underwear
3 section, just bizarre things like that. And they put
4 those into evidence over the Defense's objection to try
5 and show a motive for the crime.

6 What the Supreme Court said, what you really did
7 right there, is you said he is a pedophile. And since
8 he's a pedophile, he's more likely to engage in the act
9 which the State is charging him with. And that is a
10 severe danger because we need to limit our evidence to
11 the facts at hand.

12 What I'm hearing from this witness as to action
13 and reaction, she doesn't know when Mr. Oates' actions
14 came from a reaction to a response. I forget the exact
15 words, I think I wrote them down. And in her
16 testimony, there's no predictive value on it. I'm
17 sorry, reaction and response. She said she -- no
18 predictive value. She cannot talk about this incident,
19 so we're going to go out where the general thing is,
20 basically, Mr. Oates is an SOB, so he acted in
21 accordance like an SOB would act. And that is really
22 forbidden in criminal law, the rule prohibits the case
23 law -- forbids it. To kind of put it through motive,
24 and the way the Court of Appeals found it in the
25 pedophile case, that those items, although they

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1 reflected poorly on the Petitioner's character, its
2 relevance shows Petitioner's motive to commit the crime
3 for which he was charged.

4 The Supreme Court said, character means a person's
5 disposition or propensity to engage or not engage in
6 various forms of conduct. Such evidence could only
7 invite the jury to infer that Petitioner was acting in
8 conformity with his character traits, when he committed
9 the crimes which has been charged. This is an improper
10 basis upon which to determine guilt, or should not have
11 been admitted. And I've got the full Nelson case for
12 you.

13 THE COURT: I have it on my screen.

14 MR. NEWMAN: Okay. In this case, motive is not --
15 although, it can be used to show, this is not -- what
16 they're trying to do is show the motive was character
17 trait, not the motive for self-defense. The other
18 thing about not bringing in the difficulty on his
19 conduct, I think I understand, if Mr. Oates, they were
20 alleging he was drunk and maybe that brought on the
21 difficulty.

22 We all know from the facts and what we've seen,
23 Mr. Oates was, there's no doubt, he was confronted by
24 the Olivera brothers. Nelson Olivera admitted that the
25 State's witnesses that would testify the -- anyway,

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1 let's just leave it with Nelson. They admitted that,
2 they came upon him, he admitted his brother produced a
3 gun. There was a variance whether the gun went away,
4 but he admitted that he racked the slide in the gun.

5 So, as to not at fault in bringing about the
6 difficulty. And through the character traits, that's
7 pretty thin for the State to try to get in. I believe
8 that it would be absolutely reversible error to put in
9 the Defendant's character trait for the purposes for
10 which the State says it needs it. And you have Nelson,
11 so I'll leave that to you, unless you have any further
12 questions on that, Your Honor?

13 THE COURT: Anything in reply?

14 MR. THORNTON: No, sir, Judge. We'll stand on the
15 arguments we've made, thanks you.

16 THE COURT: All right. And as to Defendant's
17 motion, first of all, I believe I took under
18 advisement, related to the timeliness of notice of this
19 witness. And the fact that this is an expert witness,
20 I find that the Nelson case really governs that. I
21 find that the State is not required to do that,
22 therefore, it's denied, the Defendant's motion to
23 suppress the testimony.

24 As to the testimony itself, I find that it is
25 propensive testimony, and under Nelson and under Rule

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1 404 should not be allowed. Referring to a few things
2 that the witness said, she could not say that the
3 Defendant, in fact, brought this on. She also said
4 that people with this personality disorder may have a
5 tendency, and are more likely to be aggressive than
6 passive. All of those things -- all those things cause
7 me to conclude that this is propensiveness or character
8 testimony, and I would be required to disallow it.

9 Because under the rules, as you know, if the Court
10 finds it to be relating to the Defendant's character
11 and his propensity to commit a crime, the Court cannot
12 allow that testimony.

13 All right. What else? What's next?

14 You need to take a five-minute break?

15 MR. THORNTON: I appreciate it, Judge. I need to
16 retool and I will inform Dr. Salas, since she's left
17 the room. And if you will please get my next witness
18 ready.

19 THE COURT: All right. We will take a five-minute
20 recess.

21 MR. THORNTON: Thank you, Your Honor.

22 (A brief recess was taken.)

23 THE COURT: Bring the jury in.

24 MR. NEWMAN: While they're coming in if the State
25 wishes to put up the doctor's background, or even a

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1 limited background, I don't mind. I do not challenge
2 her credentials as a forensic pathologist, and to
3 testify in accordance with her specialty.

4 MR. THORNTON: I'll do it limited. I still might
5 like to do some, but I will do a limited. Thank you,
6 Your Honor.

7 MR. NEWMAN: And I do not intend to voir dire the
8 witness on that.

9 THE COURT: Okay.

10 THE BAILIFF: The jury is entering, Your Honor.

11 (Jury enters at 3:19.)

12 THE COURT: Welcome back, ladies and gentlemen.
13 And I apologize for the delay. We're ready to resume
14 with the presentation of evidence by the State.

15 MR. THORNTON: Thank you, Your Honor. Dr. Ellen
16 Riemer.

17 Thereupon,

18 DR. ELLEN C. RIEMER

19 was called as a witness, having been first duly sworn,
20 was examined and testified as follows:

21 THE WITNESS: My name is Dr. Ellen Riemer. And
22 the last name is spelled R-I-E-M-E-R.

23 DIRECT EXAMINATION

24 BY MR. THORNTON:

25 Q Dr. Riemer, who do you work for?

WITNESS - DR. ELLEN C. RIEMER

1 A I'm employed by the Medical University of South
2 Carolina.

3 Q And what do you do for the Medical University of
4 South Carolina?

5 A I'm a forensic pathologist.

6 Q What does that mean?

7 A I am a physician with training in -- subspecialty
8 training and expertise in forensic pathology.

9 Q And does that mean as a forensic pathologist, do
10 you do autopsies?

11 A Yes, I perform autopsies in order to determine the
12 cause and manner of death.

13 Q And did you go, obviously, to Medical School for
14 that?

15 A Yes. I went to medical school. And after medical
16 school I did residency training in pathology, which I did at
17 Columbia University College of Physicians and Surgeons in
18 the City of New York. And following that I did subspecialty
19 fellowship training in forensic pathology at the Office of
20 Chief Medical Examiner for the State of Maryland, in
21 Baltimore. And subsequent to that I did a second fellowship
22 in cardiovascular and pulmonary pathology.

23 Q And, Dr. Riemer, as part of your duties in
24 performing autopsies, how many autopsies do you think you've
25 performed?

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1 A Well, I haven't had to keep track of an exact
2 number, but in the ballpark of three thousand in my career.

3 Q And have you ever been qualified as an expert to
4 come in and testify as a forensic pathologist, as an expert
5 witness before?

6 A On numerous occasions.

7 MR. THORNTON: Your Honor, at this time I would
8 ask that Dr. Riemer be recognized as an expert in the
9 field of forensic pathology?

10 MR. NEWMAN: Stipulate to her qualifications.

11 THE COURT: So qualified.

12 MR. THORNTON: Thank you, Your Honor.

13 BY MR. THORNTON:

14 Q Dr. Riemer, as part of your duties at MUSC, do you
15 perform autopsies currently?

16 A Yes.

17 Q And did you perform an autopsy on or about
18 December the 25th, so Christmas Day of 2010?

19 A Yes.

20 Q And did that autopsy -- was that of the victim in
21 this case, Carlos Olivera?

22 A Yes.

23 Q All right. Doctor, let me ask you a question:
24 What is -- when the autopsy procedure, what exactly is it
25 that you start doing? Do you look for evidence of injury?

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1 What do you do?

2 A Well, my -- the autopsy examination begins with an
3 external -- an external examination which I am basically
4 examining the deceased from head to toe, looking for any
5 abnormalities on the body, or any evidence of injury, any
6 evidence of natural disease. And I document any findings
7 that I might observe.

8 And after completing -- doing a complete
9 external examination, then I proceed to do an internal
10 examination, which is basically a specialized surgical
11 procedure where I open up the body and examine all of the
12 internal organs. And in the event that there is gunshot
13 wounds to the body I track each one of them, where they
14 entered and where they exited, and what kind of internal
15 damage a bullet may have done. And I document all of that.
16 And then I -- after completing the autopsy I determine, to
17 the best of my ability, the cause of death and the manner of
18 death.

19 Q I was going to just ask that. So, you determine
20 at some point the cause and manner of death, once you've
21 reviewed everything; is that correct?

22 A That's correct.

23 Q All right. In this case, in the case of Carlos
24 Olivera, did you find evidence of injury?

25 A Yes.

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1 Q How did -- what type of wounds, first?

2 A The deceased had six gunshot wounds to his body.

3 Q All right. Now, Doctor, would it be helpful for
4 you when you're discussing, you know, the entry and exit of
5 wounds and trajectory, would that be a fair word to use, of
6 where the bullet path was?

7 A Yes.

8 Q Would it be helpful for you to use some type of
9 demonstrative to show where these went?

10 A Yes.

11 Q And did you at my request, earlier today, come in
12 and prep a mannequin with the entry and exit wounds?

13 A Yes. I inserted probes in the appropriate
14 locations.

15 Q And would it be helpful for you to review that now
16 for the jury?

17 A Yes.

18 MR. THORNTON: Your Honor, I'd ask that Dr. Riemer
19 be allowed to step down and have the mannequin brought
20 up. It's for demonstrative purposes only, Judge. I
21 won't be entering it into evidence.

22 THE COURT: Certainly.

23 BY MR. THORNTON:

24 Q And, Dr. Riemer, if it would be simpler for you, I
25 can point to each of them, and you can stay where you are.

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1 Or if you'd rather come down and do that yourself, I'll
2 leave that up to you.

3 A Okay.

4 MR. NEWMAN: So that I have a clear view, Judge,
5 may I stand over there?

6 THE COURT: Certainly.

7 BY MR. THORNTON:

8 Q All right. And you said that there were a total
9 of six wounds; is that correct? Six bullet wounds?

10 A Well, six gunshot wounds.

11 Q I'm sorry, six gunshot wounds.

12 And did you prepare a report, as part of your
13 work?

14 A Yes.

15 Q All right. And if you need to refer to your
16 report, please do. But I'm going to use your report, so we
17 can go one at a time. Did you label these gunshot wounds A,
18 B, C, D, E and F?

19 A Yes, I give them a -- it's basically the name of
20 the gunshot wound. So I -- when I'm writing my report I can
21 keep them straight and know which one is connected to --
22 which entrance is connected to which exit. And so I give
23 them labels just by letter, A, B, C. In this case, A, B, C,
24 D, E, F. But that doesn't indicate the order in which the
25 victim received the gunshot wounds, they are just

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1 arbitrarily assigned a letter.

2 Q So, in other words, you're not -- when you go A,
3 B, C, D, E, F, that's not first through the last shot.
4 That's just as you get to those you assign them a letter?

5 A That's correct.

6 Q All right. Dr. Riemer, with regard to the first
7 gunshot wound that you note in your report, A is a gunshot
8 wound to the neck; and would that be this wound?

9 A Yes. It's on the right side of the back of the
10 neck.

11 Q And I realize that the material on this is a
12 little bit different than the material -- the soft material
13 that these rods are through. So, it would appear that you
14 have a -- part of the piece of the paper that says "exit,"
15 would that mean the exit wound associated with that?

16 A Yes.

17 Q All right. Could you please describe what that
18 wound is?

19 A Okay. That is a through-and-through gunshot
20 wound, which entered the right side of the back of the neck,
21 and along the wound path, went through the muscle and soft
22 tissue of the neck. And then as it -- it went towards the
23 front and through the right side of the cheek until it
24 exited on the right cheek.

25 Q So, the entrance is back here at the back of the

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1 head, and the exit wound is out the front; is that correct?

2 A Yes.

3 Q In the right cheek?

4 A Yes.

5 Q All right, ma'am. I have gunshot wound B, gunshot
6 to the abdomen. Now, would that be, Dr. Riemer, would that
7 be this wound?

8 A That's correct.

9 Q All right. And which way was the entrance, which
10 way was the exit, and what was the bullet path?

11 A Okay. The entrance was on the right side of the
12 abdomen, as you can see there. And it went through the skin
13 and subcutaneous tissue, which is basically like the fat and
14 supportive tissue underneath the skin. And exited the right
15 side of the abdomen. So it's kind of going in a tangential
16 manner across the body.

17 Q So, basically then, this is the entrance, and this
18 is the exit.

19 A That's correct.

20 Q So, it's at a downward angle across the body?

21 A That's correct.

22 Q So, the bullet traveled in this direction. If I
23 was facing this way, it goes in here and comes out here.
24 So, in essence, it's like a graze?

25 A Yes. I only call something a graze if it actually

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1 doesn't penetrate the skin. But it's a tangential gunshot
2 wound.

3 Q I'll go with your language, you are the expert,
4 ma'am. Going to gunshot wound C, it says, gunshot wound
5 to -- oh, I'm sorry. I apologize. Please, what is gunshot
6 wound C?

7 A Gunshot wound is an entrance wound that's on the
8 middle of the back.

9 Q Now, this gunshot wound to the middle of the back,
10 does that mean that the entrance is at the middle of the
11 back?

12 A Yes. The entrance is on the middle of the back.

13 Q And where does that exit?

14 A That exits on the front of the torso, pretty much
15 at the middle. Like, you can see kind of below the -- right
16 at the middle and lower part of the chest.

17 Q So, this C we're talking about goes in directly
18 into the center of the back and comes out pretty much the
19 center of the chest?

20 A Yeah. It's not exactly the center. The entrance
21 wound is -- it's one half inch to the left of midline. So,
22 very close to the center. And then the exit wound is one
23 quarter inch to the right of midline. So it's -- you know,
24 from -- it's basically right in the center.

25 Q Now, is there anything -- is there anything

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1 unusual about the exit wound on item C -- or gunshot wound
2 C?

3 A Well, the exit wound, which is on the front of the
4 torso, on the front of the trunk, has features of a shored
5 exit wound.

6 Q Now, what does a shored exit wound indicate to
7 you, in your expert opinion?

8 A A shored exit wound indicates that while the
9 bullet was exiting the body it was basically traversing the
10 skin and it's been -- I think it's been, I think it's a --
11 some drying or abrasion on the margins of the exit wound, if
12 the skin is pressed up against a hard object.

13 For instance, if an individual's standing
14 face, like flush against the wall, or if the individual is
15 lying face down on the ground, or perhaps if the
16 individual's wearing a very tight piece of clothing it can
17 also lead to shoring.

18 Q So, would it be -- and I know you can't say for
19 sure, but would it be consistent -- the shored exit wound be
20 consistent with the victim in this case, Carlos Olivera,
21 being -- lying flat on asphalt when he was shot through the
22 middle of his back?

23 A Yes.

24 Q The next gunshot wound that you have listed, D.

25 A Okay. The gunshot wound that I labeled D is on

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1 the left side of the back. So, it's kind of all -- no,
2 that's the lower one, yes.

3 Q Okay.

4 A So, the left side of the back, and that went into
5 the back, and then went through the armpit. It actually --
6 this model was a -- is a little thinner person, so there's
7 not as much tissue. And so it was hard to get it to come
8 out. It didn't actually exit and then go back into the arm.

9 Q So, it basically exited underneath the armpit?

10 A Well, it continued under the skin of the armpit,
11 and then exited on the front of the left arm. So that was
12 the wound path, and I was able to track that through the
13 body.

14 Q And the entrance wound is here in the left back?

15 A The left lateral, like on the side of the back.

16 Q All right, ma'am.

17 A Okay.

18 Q E, gunshot wound to right arm?

19 A Okay. Another gunshot wound that I labeled E, is
20 on the back of the right arm. And that went through the
21 skin and soft tissue of the arm, and then went through the
22 humerus, which is the long bone of the upper arm, okay,
23 between the shoulder and the elbow.

24 Q Is that this wound here represented by this?

25 A Yes, right. So, everybody realizes that there's a

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1 bone in the middle of the arm, and this bullet actually went
2 through the humerus, it's -- the name of the bone is the
3 humerus, before exiting on the front of the right arm.

4 Q All right. Dr. Riemer, the sixth gunshot wound,
5 and again, the sixth one you notated. You're not saying
6 it's the sixth --

7 A It's the gunshot wound that I labeled F.

8 Q Yes, ma'am, the one you labeled F.

9 A Okay. That is one that is on the left side of the
10 upper back. So it's on the left side of the back, just
11 like --

12 Q Represented here?

13 A Yes. And so, that's the one that's upper. And
14 that bullet went into the -- into the chest cavity, went in
15 from the back, and then went into the left lung. And
16 continued towards the front, but didn't exit the body. So,
17 this bullet didn't exit. Unlike the other bullet, this
18 bullet terminated or basically got stuck in the sternum,
19 which is the breast bone, like the hard bone between the
20 left and right sides of the chest.

21 Q Dr. Riemer, first of all, let me just go back over
22 these since there is six of them.

23 Would it be fair to say that there is then
24 only one shot that is not to the back of Carlos Olivera?

25 A Yes.

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1 Q And when I say to the back, I mean the side, not
2 just to the back?

3 A The posterior aspect.

4 Q The posterior aspect. Which would be this wound
5 here, which is just going left to right across his body and
6 somewhat down; is that correct?

7 A Yes.

8 Q Every other wound is to the back side of him?

9 A Yes.

10 Q And you indicated that the wound to -- basically,
11 almost -- and I realize this is for demonstrative purposes,
12 but almost the center of his back is a short exit, which is
13 only when the body is laying on a hard surface -- or excuse
14 me, pressed up against a hard surface?

15 A Yes.

16 Q Can you tell me, obviously, there are wounds that
17 have different levels of damage to tissue inside; is that an
18 accurate statement?

19 A Yes.

20 Q Were there any number of wounds in this particular
21 case that were more -- you would consider more fatal than
22 the others? I realize anything can be fatal from bleeding,
23 but were there some wounds on here that you would consider
24 more likely to result in fatality, or quicker than others?

25 A Yes. Well, of the six gunshot wounds some of the

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1 wounds were associated with greater internal damage.

2 Q All right. What about C, to the middle of his --
3 Carlos' back?

4 A Yes. That gunshot wound to the middle of the back
5 did a lot of internal damage. It went through the ninth
6 thoracic vertebrae, which is the -- a bone that surrounds
7 the spinal cord, so the backbone. And then it actually went
8 through the thoracic spinal cord and continued through the
9 liver. And as it's going towards the front, continued
10 through the pericardium, which is the envelope that
11 surrounds the heart. And then went through the right
12 ventricle of the heart, as well as the right main pulmonary
13 artery, before exiting the front of the torso.

14 Q And was there another particularly damaging shot,
15 as far as lethality or organs?

16 A Well, the gunshot wound that I labeled F. That's
17 the one on the left side of the upper back, went into --
18 went through the left third rib on its way in and then went
19 through the left lung before getting stuck in the
20 pericardium. And that's -- so, it did -- it went through
21 the left lung and caused a lot of internal bleeding from the
22 injury to the lung.

23 Q All right. And so it created a lot of internal
24 bleeding. Do you recall, or did you reference in your
25 report, was there a large amount of internal bleeding or

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1 blood in the chest cavity? Or -- I'm sorry, I may have used
2 a poor choice of words, the thoracic cavity?

3 A Well, let me just review my notes.

4 Yes, there is an abundance of blood in the
5 various cavities of the chest, including 40 milliliters of
6 blood in the pericardial cavity. So, the pericardial space
7 is really very small, and that surrounds the heart. So,
8 40 milliliters doesn't sound like a lot, but that's all
9 bleeding from the heart, and the injury to the heart.

10 And then in the chest cavity, the left chest
11 cavity had 1,000 milliliters of blood, which is a whole
12 liter. That's a liter of blood. It's like a quart. It's a
13 little more than a quart. And then in the right pleural
14 cavity there was 600 milliliters of blood.

15 Q Doctor, the shot to Carlos Olivera's back, with a
16 shored exit wound, would that -- are you able to tell
17 whether that would have paralyzed him or not? Or would
18 likely be paralyzed him or not. You said something about it
19 went through, my nonmedical technology, I understood spine?

20 A It went through the spinal cord. So as a result
21 of that gunshot wound, the individual would have lost
22 control of his lower body below that level of the spinal
23 cord. So he would have not have been able to stand and
24 would have had problems using his bladder, and anything
25 below the level, that level of the spinal cord.

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1 Q Thank you, Doctor. Doctor, just a couple of other
2 questions: Would you consider the wound to Carlos' back
3 that you've labeled, I believe, C, as something likely to
4 cause fatality or likely to be fatal?

5 A Very rapidly.

6 Q And what about F, with the damage to the heart
7 from entering in from the upper left side of Carlos' back?

8 A Is that actually, the gunshot wound I labeled F,
9 actually did not damage the heart. It's gunshot wound C --

10 Q I apologize.

11 A -- damaged the heart. But the gunshot wound F
12 damaged the left lung, and that would have been sufficient
13 to cause death from the abundance of bleeding in the left
14 chest cavity.

15 Q Doctor, what is the cause of death in this case?
16 What did Carlos Olivera die of?

17 A Multiple gunshot wounds.

18 MR. THORNTON: Your Honor, the Court's indulgence,
19 please, one moment?

20 THE COURT: Sure.

21 BY MR. THORNTON:

22 Q Doctor, the other thing that you talked about, and
23 you said one thing you are an expert to determine is the
24 cause of death, the other is the manner of death. You said
25 the cause of death is six gunshot wounds. Although I'm sure

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1 it's obvious, what is the manner of death in this case?

2 A The manner of death is homicide.

3 Q I have no further questions. Please answer any
4 questions Mr. Newman has.

5 CROSS-EXAMINATION

6 BY MR. NEWMAN:

7 Q Good afternoon, Dr. Riemer. My name is Jared
8 Newman. I don't think we've met before. Let me start with
9 the first things last. I see you're also a JD?

10 A That's correct.

11 Q So, your science overlaps with the law a little
12 bit, in explaining testimony in the court?

13 A Well, it is -- it's helpful to me as a forensic
14 pathologist to have had some legal background.

15 Q Right. Right. I would absolutely agree, that
16 that's -- I think that's excellent. And with that
17 background and, of course, with the background as a forensic
18 pathologist I don't want the jury to be confused. When we
19 say the word "homicide," homicide just means when one person
20 kills another, correct?

21 A That's correct.

22 Q It doesn't mean whether it's a -- like a police
23 officer shooting, it's a justifiable homicide. When the
24 State executes somebody, that death is listed as a homicide;
25 is it not?

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1 A That's correct. Or, it means it's death of one
2 person at the hands of another.

3 Q Okay. And it doesn't rule out self-defense or any
4 other legal issues like that, does it?

5 A That's correct.

6 Q Okay. Thank you. I just wanted to make sure we
7 were clear. And I know you were given a -- just a thumbnail
8 to do a history. You do not do a detailed investigation
9 into the crime scene, things like that; isn't that correct?

10 A That's correct. I just rely on the information
11 that I'm given. And I put some information in a report, but
12 I don't verify.

13 Q It's unverified. It's usually just about a
14 paragraph to say, this is what was told to me and this is
15 why --

16 A That's right. It's a thumbnail history that was
17 told to me -- that was basically why the autopsy was being
18 done.

19 Q Okay. The -- I note in your report as to all of
20 the wounds, and correct me if I'm wrong. You note that
21 there is no gunpowder residue or stippling?

22 A That's what I was able to observe; that's correct.

23 Q And what that tells you in the forensic world,
24 that these would be what are called "distant gunshot
25 wounds"?

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1 A Well, I don't use the word "distant," I use
2 indeterminate.

3 Q Because you can go out to -- I guess, you
4 explained to me?

5 A If you'd like me to explain why I use the word
6 indeterminate versus distant?

7 Q Right. Because the gunshot residue is going to
8 end at some point?

9 A That's correct.

10 Q And when you get beyond that point, you're not
11 able to tell if it's from right here or right here?

12 A That's correct. But I say indeterminate because
13 even if it's at very close range, if there's an intermediate
14 object that could absorb the stippling, so it's not
15 deposited on the skin.

16 Q Right. Such as someone had a pillow or something?
17

18 A Yeah, exactly. So if there was like a pillow or a
19 heavy down jacket or a book or something like that, that
20 could, theoretically could be 2 inches away, and not leave.
21 So that's why I say indeterminate, because I can't say for
22 certain, based on all the findings on the body, that and if
23 it was at -- if it was shot at a distant range.

24 Q Okay. And you examined the clothing as well; is
25 that correct?

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1 A Yes.

2 Q And you examined the clothing for?

3 A Visually.

4 Q Visually?

5 A I didn't do any special tests on the clothing.

6 Q Right. But if you saw what was obvious soot on
7 there, you would ask them to have it tested?

8 A Well, I would have mentioned there appeared to be
9 soot on the clothing, but it wasn't that I observed or
10 concluded in my report.

11 Q Okay. So, you examined the clothing and you saw
12 no obvious signs of any type of soot on the clothing?

13 A Correct.

14 Q Okay. Now, as to the shored exit wound, and you
15 described that as -- although you don't use the term in your
16 autopsy report under gunshot wound C, you described it as an
17 exit defect with dried edges on the anterior aspect; is that
18 correct?

19 A Yes.

20 Q All right. And a -- because it's dried blood, you
21 say it's more likely that the -- that the skin is up next to
22 an object, could be a wall, could be pavement, to get the
23 shoring affect, correct?

24 A Yes.

25 Q All right. But that's not the only reason why

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1 there may be dried blood, is there?

2 A It's not -- well, when I said dried edges, it's
3 not dried blood. I'm talking about after I cleaned up all
4 the blood.

5 Q Okay.

6 A So it's basically an abrasion on the skin, that
7 has dried, but it's -- it's a shored exit wound.

8 Q Okay. Were you made aware that immediately two
9 persons came to Mr. Olivera's aid, and two persons and maybe
10 another attempted CPR on Mr. Olivera?

11 A I didn't -- I wasn't -- I don't recall having been
12 made aware of that.

13 Q Okay. And you probably weren't. I mean, it's not
14 in your thumbnail history, and that's probably not something
15 they would have -- unless they specifically told you that.
16 And if they told you that, you would have noted that?

17 A Perhaps.

18 Q Okay. Could the shoring that you've described
19 come from CPR?

20 A No.

21 Q Okay. Then you would expect, if the bullet exited
22 the body, correct? And we're talking about wound C.

23 A Yes.

24 Q With the shorted exit. And it exited the body
25 when it was on something?

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1 A When the skin was on the -- it -- the bullet hit
2 some resistance upon exiting. And I don't know if it was on
3 anything. If there was some resistance to the bullet while
4 it was exiting to cause the shoring around the exit wound.

5 Q Okay. So, if he were laying facedown on the
6 pavement and the bullet came through and it came out of the
7 body, when we rolled the body over we would expect to see
8 damaged bullet fragments or chunking in the pavement; isn't
9 that correct?

10 A I don't know. It's possible.

11 Q Well, a bullet came out of him, where did it go?
12 If the theory is he was face down on the pavement and the
13 bullet exited him, where's the bullet?

14 MR. THORNTON: Objection, Your Honor. This is
15 beyond the scope of what the doctor's here to testify
16 for. She's a pathologist. He's calling her to
17 speculate where a bullet may have gone into pavement or
18 not. I don't think it's -- it's not within her
19 expertise that she's testifying, which is forensic
20 pathology.

21 MR. NEWMAN: I believe it's exactly within her
22 expertise into what she testified to, that it was on a
23 hard surface. It's just a common sense question.

24 THE COURT: You may proceed with your questioning.
25 Overruled. Go ahead.

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1 A Well, bullets travel at a high velocity, and it's
2 possible, it is possible that upon exiting it could have
3 scooted along the pavement for some reason. I don't know
4 what happened to the bullet and I -- but bullets don't
5 always just stop, you know, after -- they sometimes travel
6 even after they exit a body.

7 BY MR. NEWMAN:

8 Q Well, I think what the Solicitor was trying to get
9 you to opine, so that he can argue that when that shot was
10 fired Mr. Olivera was facedown on the ground, okay?

11 So, what I'm trying to ask is, you've got
12 that situation, if the body's down like that, where's it
13 going to skip off to? It can't, can it? You should be able
14 to roll the body over and find the bullet in the pavement or
15 chunks with severe damage and they found nothing?

16 A Well, that's fine. I really don't have an opinion
17 on whether it was there or not. Or whether it would have
18 had to be there or whether it could have continued to travel
19 some distance.

20 Q Okay. So, the shoring didn't necessarily have to
21 come from being facedown on the pavement, correct?

22 A It doesn't have to -- have to come from being
23 facedown on the pavement.

24 Q Great. That's what I was --

25 A I just said that it was pressed up against a hard

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1 surface.

2 Q Okay. And have you seen the video of the shots in
3 this case?

4 A No..

5 Q Okay. And were you aware that based on the video
6 the shots were fired in rapid succession, say three to four
7 to five seconds, maybe?

8 MR. THORNTON: Objection, Your Honor. Now,
9 Mr. Newman is testifying. It's up to the jury to
10 determine how quick or how -- you know, the video's in
11 evidence. It speaks for itself.

12 MR. NEWMAN: Well, I want to ask her a
13 hypothetical as an expert.

14 THE COURT: And that's in her area?

15 MR. NEWMAN: Yes.

16 THE COURT: All right.

17 BY MR. NEWMAN:

18 Q Let's assume that between the three to five second
19 span these bullets were fired in rapid succession. Let's
20 assume that. The torso wounds, would that not tend to have
21 the effect to make the body twist, with the energy that is
22 going through.

23 A It doesn't have to.

24 Q Can it?

25 A I don't know.

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1 Q Okay.

2 A I mean, if a person still has some volition, it's
3 possible they can move. Or they could shift in one
4 direction or another, from a little energy -- from energy
5 going through the body from a gunshot wound. But I can't
6 speak what affect any of the gunshot wounds may have had on
7 the movement of the body, except as I mentioned earlier,
8 gunshot wound C, which severed -- went through the spinal
9 cord, would have caused the body to collapse, so he would
10 have lost the ability to control his legs.

11 Q And that may have been the last shot, may have
12 been -- you have no idea in which order the shots were
13 fired, do you?

14 A I have no idea.

15 Q Okay. And the Solicitor used "grazing," you used
16 not grazing. It's the abdomen wound was -- assuming no
17 bleed out, was not a life threatening wound?

18 A That's correct.

19 Q It didn't damage any spinal cord, nervous system?

20 A It didn't go through any vital structures.

21 Q Okay. And the directions, except for the grazing
22 wound, it's somewhat of a downward angle, entering and
23 exiting at a somewhat downward angle, on the right?

24 A Yes.

25 Q Except for those wounds, other than the elevation,

WITNESS - DR. ELLEN C. RIEMER

1 the wounds are mainly within -- parallel to each other. Not
2 exactly. A little bit off here and there. But no radical
3 departure from like one, two, three, four?

4 A They're all going from back to front, yes.

5 Q I understand that. I asked you about the
6 relativity.

7 A Well, you know, it depends what you consider
8 relative. But, yes, they're not as at -- as tangential an
9 angle as the gunshot wound to the abdomen was.

10 Q Correct. In retrospect to --

11 A Yes, relative to that and relative to each other,
12 they are relatively -- they are relatively parallel.

13 Q Right. That's what I'm asking?

14 A That's what I'm answering you. I just wanted to
15 qualify that.

16 Q And that's fine. And I appreciate that.

17 I'm going to check with my co-counsel, I
18 think I'm about finished.

19 MR. NEWMAN: But if you'll and the Court will give
20 me one moment. Thank you, Doctor.

21 That's all I have of the Doctor. Thank you, Your
22 Honor. And, thank you, Doctor.

23 MR. THORNTON: Thank you very much, Doctor.

24 Judge, I have no further questions of Dr. Riemer, and
25 ask that they be excused and allowed to go back to

WITNESS - DR. ELLEN C. RIEMER

1 Charleston?

2 MR. NEWMAN: That's without objection. Thank you,
3 Doctor.

4 THE COURT: Thank you, Doctor, you may be excused.

5 WITNESS: Okay.

6 THE COURT: Call your next witness.

7 MR. THORNTON: Your Honor, with that, the State
8 rests.

9 THE COURT: The State rests. I need to see the
10 attorneys at sidebar.

11 (Off-the-record discussion held.)

12 THE COURT: Well, I'm sorry, I need to see you all
13 again.

14 (Off-the-record discussion held.)

15 THE COURT: As you just heard, the State has
16 rested which, of course, means the State has presented
17 to you all of the evidence that the State intends to
18 present to you, at least at this time. And in
19 conference with the attorneys, it's likely the State
20 will not present any additional evidence. We're going
21 to let you go for the day. Come back in the morning.

22 I don't always get this right. But I'm getting
23 ready to guess what may happen, I may be wrong. We may
24 come in in the morning and the attorneys may be ready
25 just to go ahead and make closing arguments.

COLLOQUY

1 The Defendant may waive his right to testify, and
2 he has the right to do that. And the Defendant may not
3 put up any evidence, I don't know. We'll find all that
4 out in the morning. But if the Defendant does not
5 present evidence, the attorneys will make their closing
6 arguments to you first thing in the morning.
7 Otherwise, you'll hear testimony. Is anybody going to
8 have a problem being here at 9:30 in the morning?

9 Now, is anybody going to have a problem not
10 looking at their TV or getting on-line or trying to do
11 any research about this case? Or about what's been
12 happening in here? Is anybody going to have a problem
13 with it, I need to know. Because you can't do that.
14 You cannot do research, you can't read the newspapers,
15 you can't look at a TV, you can't let anybody talk to
16 you about the case. Anybody have a question about any
17 of that?

18 Ladies and gentlemen, you're excused until 9:30
19 tomorrow morning. Thank you.

20 THE BAILIFF: Thank you, Your Honor.

21 (The jury exits the courtroom.)

22 THE BAILIFF: The jury is clear, Your Honor.

23 THE COURT: Well, I need to talk to your client, I
24 might as well do it now, about his right to testify.

25 MR. NEWMAN: Yes, sir.

COLLOQUY

1 THE COURT: Or do you want to make your motions
2 first? You want to make your motions? Sorry, maybe
3 I'm stepping out of turn here.

4 MR. NEWMAN: I guess to keep everything in order
5 we might as well do the motions first.

6 THE COURT: All right.

7 MR. NEWMAN: If it please the Court, Your Honor.
8 I think that the Court is aware this is not a
9 who-done-it case. This is purely a case of whether the
10 Defendant acted in self-defense, was entitled to act in
11 self-defense, under the laws of South Carolina, and the
12 facts and the evidence presented thus far.

13 Your Honor, based on the law of self-defense, the
14 elements of it, Mr. Oates made three attempts to avoid
15 or retreat this situation. We believe that there is no
16 evidence that shows that Mr. Oates brought the
17 difficulty of this situation upon himself.

18 We believe that Mr. Oates -- the evidence can only
19 show that when that pistol was produced and round in
20 the chamber under the threatening circumstances, by
21 having his keys taken from him, having the locking
22 mechanism, all of the requisites that he was in
23 reasonable fear of death or great bodily harm, in that
24 Mr. Oates did try to take a retreat.

25 We would argue that under South Carolina law, even

COLLOQUY

1 though that he has no duty anymore to retreat, and that
2 even if he did, he made a -- an effort to do so, and
3 was not able to safely retreat, was not able to be done
4 in complete safety. And the Defendant had no other
5 choice to act in the manner or the way that he acted.

6 Your Honor, in this case the State's gone to great
7 efforts about shots to the back and all of that. And
8 turning the Court's attention to the number of shots,
9 to State versus Hendrix. In State versus Hendrix the
10 situation basically was a stand-off with people holding
11 shotguns at each other, and the decedent was
12 momentarily distracted by somebody calling his name and
13 he turned around. And in that case the Defendant in
14 that case not only shot with buckshot, shot the
15 decedent, shot him four times and kept shooting him
16 until he went to the ground.

17 And the Supreme Court took away the niceties.
18 This is not a duel that the people were facing each
19 other. They also did that in State versus Sarnes.
20 There are no niceties. If you have the right to act in
21 self-defense and it's necessary, that you don't have to
22 wait until the opponent gets the drop on you, gets an
23 equal edge or a better advantage on you. That you can
24 act at the first reasonable opportunity to act, and you
25 can keep firing, and justify the firing until the

COLLOQUY

1 threat is completely eliminated.

2 We believe those cases actually apply in this
3 case. I don't think there's any evidence Mr. Olivera
4 violated a number of laws. Firstly, displaying a
5 weapon, which he was trained not to do under a
6 concealed weapons permit certification. The weapon was
7 not only brought out, the weapon was racked, so there
8 was clear intent that someone intended to cause you
9 harm.

10 The State has characterized this as an incident --
11 as an argument that has ended. And I think there's
12 only one conclusion that can be drawn from the facts,
13 is that when you look at it, the argument had not, and
14 Mr. Olivera, unfortunately, being the architect of his
15 own demise, produced this pistol. Mr. Nelson Olivera
16 was attempting to work the spanner wrench he doesn't
17 know how to work, attempting to put keys in it. And by
18 his own admission, tells his brother about that. And
19 the telling thing is Mr. Nelson Olivera testified and
20 told us that, he is not leaving there without his van.
21 He is not leaving there without the minivan.

22 And that Mr. Oates, through the interviews, has
23 said that he was ordered out of the truck. It makes
24 perfect sense, they could not get that boot off the
25 truck, even with Mr. Varedi helping with the light.

COLLOQUY

1 That Mr. Olivera ordered Mr. Oates out of that vehicle,
2 and that's when Mr. Oates at the first opportunity and
3 the safest opportunity -- he didn't want to have a fire
4 fight inside the cab of the truck -- to strike the
5 fatal blows that were precipitated by the actions --
6 the criminal actions of the brother.

7 And it's disingenuous to say that somebody is that
8 outraged and mad, and makes a statement like, I am not
9 leaving here without my van, produces a pistol and
10 racks it, you know, with a round in the chamber, that
11 he's not going to just turnaround and say, Oh, okay,
12 it's over, I'm leaving, tow the car off, keep the boot
13 on it, whatever you want to do.

14 He was hell bent and determined that that boot was
15 coming off of that car, ordering Mr. Oates out of that
16 vehicle. I think that's the only inference that you
17 can get from the evidence. The multitude of shots is,
18 under the law, of no matter. The fact that there is --
19 there was clearly one to the abdomen and the rest are
20 to the back. Your Honor has seen that the shots were
21 fired in very rapid succession by the way of the video.
22 Also telling, scientifically, that Mr. Oates did not
23 approach this body and shoot him execution style. One,
24 the shots are captured on the video, the shots are all,
25 when you see the fire marks, are all relatively

COLLOQUY

1 parallel to the ground.

2 Pathologist testified the shots within themselves,
3 except for the first shot, that I believe Mr. Oates
4 could have described as when he was coming out of his
5 truck, is from a slightly up to down angle. All of the
6 rest are relatively parallel. And whether or not the
7 body spun pneumatically with the hydrostatic forces of
8 the ammunition.

9 Further telling, the bullet casings are all in
10 relatively the same position as if the gun was fired
11 from one position? In other words, the --
12 scientifically, the theory of expecting that
13 Mr. Olivera's testimony that Mr. Oates advanced upon
14 him and shot him while he was on the ground. The
15 gunshot wounds were all less than -- or not gunshot
16 wounds, the shell casings are all less than a quarter
17 of a driveway, front to back at the worst, which
18 indicates that they were all fired from the relative
19 same position. Which is also backed up within one to
20 maybe one and a half steps, is backed up by what we see
21 on the video capture of Mr. Varedi's security camera.

22 The State must, and we have case law to you that
23 we will be arguing about in the charge conference. The
24 State must, when a case for self-defense is raised and
25 clearly it was raised in this, their burden of proof is

COLLOQUY

1 to disprove self-defense, each and every element of it
2 beyond a reasonable doubt. And if they don't do that,
3 State versus Dicky tells us, and State versus Starnes,
4 and State versus Hendrix, are all cases where the
5 Supreme Court found that the trial Judge should not,
6 under those facts, have allowed those statements to go
7 to the jury, because self-defense was evident, from the
8 evidence that was adduced, when the State did not
9 produce sufficient evidence to disprove self-defense
10 beyond a reasonable doubt.

11 Therefore, we move that the charge of murder in
12 this case be dismissed because of the State's entire
13 failure to prove -- to disprove self-defense. Thank
14 you, Your Honor.

15 THE COURT: Thank you, Solicitor. Mr. Stone?

16 MR. THORNTON: Thank you, Your Honor. Your Honor,
17 first, just so we're all clear on what the status of
18 the law is, and Mr. Newman may have just misspoke or I
19 may have misheard him. State versus Curry, Your Honor,
20 which is found at 406 South Carolina 364. It's a 2013
21 Supreme Court case. In order to prove/disprove
22 self-defense, the State only has to disprove one of the
23 elements of self-defense. We do not need to disprove
24 every element of self-defense. If we do one, then that
25 will be sufficient.

COLLOQUY

1 Your Honor, about 99.999 percent of Mr. Newman's
2 argument presupposes that not even everything that his
3 client said was true. Because his client couldn't even
4 keep his statements, in and of themselves, accurate.
5 Only if you believe the best possible parts of
6 everything that Mr. Oates said in his interviews, is
7 what Mr. Newman's saying is true. You had witnesses
8 who got up and testified that the Defendant advanced on
9 Carlos Olivera as he was walking away, and shot him.

10 The pathologist just got done testifying that
11 there is one shot crossing his front and five shots to
12 his back. She also said "relatively parallel." Which
13 is why I got out the mannequin and had the diagram
14 drawn. Some of them are at a downward angle. The one
15 to the back is almost a straight-through shot, Your
16 Honor, and obviously Mr. Newman and I absolutely
17 disagree.

18 I think Mr. Oates absolutely walked up to Carlos
19 Olivera's prone body, and fired a shot into his back.
20 It's a shored exit wound. There's only one way you get
21 a short exit wound, and everybody that's been in this
22 business knows how you get one. It's when the body is
23 placed against a flat surface -- it was a flat, hard
24 surface. There's only one flat, hard surface out there
25 that makes any sense to those injuries, and that's

COLLOQUY

1 because he was laying on the pavement, which is backed
2 up by what some of the witnesses testified to.

3 Additionally, the video is grainy at best. I know
4 that I put it in. It's not like I had any choice.
5 It's grainy. But what I see are two muzzle flashes.
6 And I see Preston Oates getting down out of his truck
7 as he fires. Which is what he says in one of his
8 interviews.

9 You then don't see any more muzzle flashes, Judge.
10 And the reason you don't see any more muzzle flashes is
11 because his hand has dropped down. Because he's now
12 firing down. Which is also backed up by what the
13 witnesses said, and also backed up by what the
14 pathologist just got done saying.

15 I think the record is replete with testimony,
16 physical evidence, both independent and eyewitness,
17 that puts that, Preston Oates, did on December the
18 24th, 2010, with malice aforethought, kill Carlos
19 Olivera. Again, you know, we know he did it, we just
20 don't know the why. Is it self-defense or not?
21 Clearly, there is disputed evidence in the record.
22 It's --

23 MR. NEWMAN: I agree with you.

24 MR. THORNTON: Sorry, Judge.

25 Clearly, we think -- that the State feels like it

COLLOQUY

1 should go to the jury, Your Honor.

2 THE COURT: And I think this is for the jury, and
3 for those reasons, deny the motion. Other motions from
4 the Defendant or anybody?

5 MR. NEWMAN: At this time, Your Honor, there are
6 no other motions. And if I may have a minute to confer
7 with counsel and my client?

8 THE COURT: Sure.

9 (Off-the-record discussion held.)

10 MR. NEWMAN: Your Honor, it is our intention to
11 rest. I'll probably formally do so when the jury comes
12 back, but for practical purposes we rest. At this time
13 I would also say for the reasons restated for me
14 resting the case, I renew my motions for a directed
15 verdict in this matter. And with that, we are ready to
16 have colloquy.

17 It's my understanding you will need to ask some
18 questions of Mr. Oates, as to whether it's his decision
19 as to whether he wants to testify or not testify.

20 THE COURT: Of course, for the record, I
21 understand those motions that you've just made, that
22 are renewing your motion for a directed verdict, we
23 have to deny it for the same reasons previously stated.

24 MR. NEWMAN: Yes, sir.

25 THE COURT: Mr. Oates, at this time I need to

COLLOQUY

1 explain to you certain of your rights. I need to tell
2 you that if you don't understand anything that I say,
3 let me know. If you want me to explain things further,
4 let me know. Do you understand what I'm saying so far?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: We have now, or at least will in the
7 morning, have reached the stage in this trial where you
8 have the right to present your defense. And I tell you
9 that you have the right to claim the protections given
10 to you by the Fifth Amendment of the Constitution of
11 the United States of America, which states in part as
12 follows: No person shall be compelled in any criminal
13 case to be a witness against himself. And this means
14 that you cannot be required to testify in this case.
15 You have the right to testify; however, no one can make
16 you testify. This is a right that you have, a personal
17 right of yours, and no one can waive this right, except
18 you.

19 If you decide to testify you will be subject to
20 the same rules that govern other witnesses, and you may
21 be examined and cross-examined on any relevant issue in
22 the case. In addition, if you have any convictions
23 involving dishonesty or false statement or crimes
24 punishable by imprisonment for more than one year. And
25 the Court determines that the probative value outweighs

COLLOQUY

1 the prejudicial effect to you; the Solicitor would be
2 able to introduce your record to attack your
3 credibility.

4 If you decide to testify, the decision on your
5 part must be made freely and voluntarily, with the
6 knowledge of the protections given to you by the Fifth
7 Amendment and the consequences of your decision to
8 testify. If you decide not to testify, I will instruct
9 the jurors that they cannot give that fact, the fact
10 that you do not testify, any consideration whatsoever.
11 And that there should be absolutely no prejudice to you
12 because you do not testify. It's left entirely up to
13 you as whether or not you testify. You may discuss
14 this with your attorney, family, friends, with anyone
15 else. But the final decision is left entirely up to
16 you. Do you thus far understand what I'm saying?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Do you have any questions about what
19 I'm saying?

20 THE DEFENDANT: Not at this moment, Your Honor.

21 THE COURT: Have you had an opportunity to discuss
22 these matters with your attorneys?

23 THE DEFENDANT: I have, Your Honor.

24 THE COURT: Have you yet made a decision about
25 whether or not you wish to testify?

COLLOQUY

1 THE DEFENDANT: I have, Your Honor.

2 THE COURT: And your decision is?

3 THE DEFENDANT: I decline.

4 THE COURT: You decline. All right. Thank you so
5 much.

6 THE DEFENDANT: Thank you, Your Honor. May I sit?

7 THE COURT: (Nods in the affirmative).

8 Specific requests. Does anybody have any specific
9 request to charge?

10 MR. THORNTON: I do, Your Honor. I think -- I'm
11 sorry, Judge, can you give me just one moment, I'm
12 going to try to give everybody a copy real quick.

13 THE COURT: What I could do, if it helps at all, I
14 will get someone to give you all a copy of what I
15 normally propose in the issue of self-defense.

16 MR. THORNTON: Yes, sir. That would be helpful.

17 THE COURT: So you all can look at it and see what
18 you want to select and take out. It's fairly lengthy,
19 the charge itself is.

20 MR. NEWMAN: That would be a good starting point.
21 But, quite frankly, I would need to go back. We ended
22 a little bit sooner than I thought we would. I
23 appreciate that from the State and help from the
24 technical system to look at that. But that would be a
25 helpful starting point. So, maybe I could look at your

COLLOQUY

1 self-defense and it would cover everything that I would
2 want to ask.

3 I think frankly Judge, I think that is the key
4 issue of the case. As long as the jury is charged the
5 credibility of the witnesses. And we would ask -- I'm
6 sure the Court has an updated charge on murder and
7 things like that, pursuant to State versus Belcher. We
8 don't believe the State would be entitled to any kind
9 of inference in this case, about the use of a deadly
10 weapon or anything like that.

11 THE COURT: Yes.

12 MR. THORNTON: I agree, Judge. I wouldn't seek to
13 introduce that -- or sorry, not seek to introduce it.
14 I wouldn't argue it, nor would I ask you to charge it.

15 THE COURT: And I would not, so...

16 You indicated, Solicitor, you may have something
17 else?

18 MR. THORNTON: Your Honor, and this is just,
19 forgive me, Mr. Newman has not brought this up yet.
20 I'm very much assuming he's going to, but I would think
21 that the biggest fight, and depending on what your
22 self-defense charge is going to be, is whether there's
23 going to be a lesser included charge or not. At least
24 that's my assumption. Obviously, the State feels like
25 the record is replete with information that the

COLLOQUY

1 Court should -- not to step on your toes, but there's
2 this mandatory language out there in the case law,
3 which I can find for Your Honor, that says that it
4 shall be charged, unless there's no evidence from which
5 you could find a lesser included offense.

6 So the State's position would be, and I can go
7 into more detail if necessary, Judge, would be that the
8 proper charge would be both on murder and voluntary
9 manslaughter. And I've got case law, which if the
10 Court will give me just a moment and I'll grab it.

11 MR. NEWMAN: We have a unique problem in this
12 case, however, Your Honor. We were faced with three
13 and half years with the charge of voluntary
14 manslaughter. And the day of trial, the State
15 dismissed that charge, and we don't believe that
16 because of those facts -- we will have to research
17 further, under these unique circumstances, with the
18 State actually dismissing that, they can't come back
19 and say, well, actually, we do want that. It is over
20 for them.

21 MR. THORNTON: Obviously, Judge, my position would
22 be, Mr. Newman made the request that -- and he's right,
23 that I needed to elect to go with one or the other, and
24 that's what we did. And we went there. And it's a
25 little bit disingenuous for Mr. Newman to get up and

COLLOQUY

1 say that we waited till the day of trial when it was
2 filed under seal at his request like three months ago
3 this is not a last minute thing that the State has
4 done. Mr. Newman knew this was coming. We discussed
5 it. He knew about it well in advance. And I
6 consented.

7 I'm not saying Mr. Newman did something. I agreed
8 with it because of all the publicity, to do that. And
9 I do not think that he can then come in and say, you
10 need to elect something and we do elect, because that's
11 proper, and then try to pin on us because he can't get
12 voluntary manslaughter.

13 MR. NEWMAN: Well, Your Honor, not only that,
14 because there is a judicial estoppel here. They've had
15 judicial proceedings that they have dismissed. We now
16 believe that they are estopped from trying to get a
17 second bite of the apple.

18 THE COURT: You're going to try to do some
19 research between now and tomorrow morning on that
20 issue?

21 MR. NEWMAN: Yes, sir.

22 THE COURT: Okay. I guess I have got another
23 question along the same lines: What about State versus
24 Starnes, a 2010 case, have you all looked at that? On
25 the issue of whether or not -- the facts of that case

COLLOQUY

1 are real close to this case. .

2 MR. NEWMAN: They are.

3 THE COURT: State versus Starnes. And I thought
4 it said that you couldn't charge on -- as manslaughter.

5 MR. THORNTON: Your Honor, I will look at -- what
6 we have got before you is State versus Hayward and
7 State versus Gillian. And I will obviously do some
8 more research between now -- and I'll look again at
9 Starnes.

10 THE COURT: This is 388590, it's a 2010 case. The
11 facts are real close to this. And they seem to say in
12 that case -- and they went into great length talking
13 about the difficulty the Courts have had, the trial
14 Courts, I guess they're talking about, in deciding
15 whether to include charges of manslaughter if you're
16 going to have a self-defense charge.

17 MR. THORNTON: Yes, sir. And I believe -- I want
18 to say it's State versus -- I want to say it's State
19 versus Gillian, Judge, that deals with it -- I had a
20 different take on that. But I'll be happy to do some
21 research on that.

22 THE COURT: You all do that, please. It means
23 today, I read it the other day. But it seems to say
24 that these cases really are fact specific. You just
25 want to look at each case to decide whether you're

COLLOQUY

1 going to include manslaughter. And look at the facts
2 in the Starnes case. They are real close to the facts
3 in this case.

4 MR. THORNTON: Yes, sir.

5 THE COURT: But you all look at it.

6 Now, what else, as far as -- well, let me tell you
7 what I need. I need somebody to do something for me.

8 MR. THORNTON: Yes, sir.

9 THE COURT: The person -- the team with the most
10 resources, how is that?

11 MR. NEWMAN: That would be great, Your Honor.

12 MR. THORNTON: I'm assuming that means me. Your
13 Honor, I've got four interns from law school, they're
14 staring over there right now. They are itching to do
15 something. So, I'm happy to have them take care of it.

16 THE COURT: This is going to be the easiest job
17 they've ever had to do. I need a proposed verdict form
18 that would include the lesser charge -- the charge of
19 manslaughter. If we don't use it, then we don't need
20 to worry about it. We can just hand the jury the
21 indictments and let them put on these indictments,
22 guilty or not guilty.

23 MR. THORNTON: Yes, sir.

24 THE COURT: But let's have it ready so we'll be
25 ready to go.

COLLOQUY

1 MR. THORNTON: Yes, sir, I'll have that taken care
2 of.

3 THE COURT: Anything else? Let me see if I can
4 get somebody to make copies of these, and I'll let you
5 all look at them.

6 MR. THORNTON: Your Honor, this is something that
7 I have passed up. Your charge may cover it, but since
8 I had it out I've passed it up, and I've given it to
9 Defense Counsel.

10 THE COURT: As best as I can tell this concludes
11 the business of the Court today, except for you getting
12 those copies to me. And, I guess, somebody's working
13 on that right now?

14 MR. NEWMAN: Yes, sir.

15 MR. THORNTON: Yes, sir.

16 THE COURT: All right.

17 MR. THORNTON: Thank you, Your Honor.

18 THE COURT: Court's adjourned until 9:15 tomorrow
19 morning.

20 (Court adjourned for the day.)

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CERTIFICATE PAGE

1
2 CERTIFICATE3
4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the foregoing
8 proceedings and that the transcript is a true and complete
9 record of my stenographic notes.

10 DATED this 25th day of November, 2014.

11 

12 MONA L. MANLEY

13 Official South Carolina Court Reporter

14 Circuit Reporter for the 14th Circuit

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1 In the Court of Common Pleas for the
2 State of South Carolina, County of Beaufort
3
4 Case No.: 2014-GS-07-00359
5 State of South Carolina,
6 Plaintiff(s),
7 vs. Transcript of Record
8 Preston Ryan Oates,
9 Defendant(s).

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VOLUME 7

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June 19, 2014

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Beaufort, South Carolina

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22 BEFORE:

23

The Honorable Judge Brooks P. Goldsmith

24

25

APPEARANCE PAGE

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2

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THE COURT: If I recall yesterday I asked both of you all to look at the State versus Starnes 2010 case and see if that -- how this case differed, if at all, from this case.

7

Solicitor, what does the State say?

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MR. THORNTON: Yes, sir.

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For brevity sake, would I be correct in thinking that the Court's main concern under Starnes is -- Starnes is the prong of voluntary manslaughter dealing with heat of passion? In other words, I think that if what some of the Defendant says is true, if he's alleging what he would call an unprovoked attack with a weapon or attempt with a weapon, then I think that would justify -- that would be a justification under the first prong of voluntary manslaughter. So can I confine my argument just to heat of passion?

19

THE COURT: At least, at this point, certainly.

20

MR. THORNTON: Yes, sir.

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Judge, in Starnes, I agree with the Court 100 percent after looking at that again, that it's a -- it's a very fact-specific case by case. And the way I read Starnes is it says that just because someone says that they are afraid or there is some evidence that

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1 they are afraid, that in and of itself is not enough to
2 justify heat of passion, which would lead to a
3 voluntary manslaughter charge. There has to be some
4 out of control element, for lack of a better word.

5 Your Honor, here is what I would say. And, again,
6 I'll try to be brief. These are some quotes from the
7 Defendant, Judge. And let me preface this, I know that
8 the Court knows this, but I'll preface this by saying
9 I'm not saying I believe some, any or all of this, but
10 this is what is in the record.

11 The Defendant was asked why he didn't call the
12 police. He said at the time he was, quote, in the heat
13 of the moment, he was trying to gain his composure. He
14 told John Adams in his interview he was scared and
15 freaking out. He got really scared. When you get that
16 little pain right here by your sternum which presses
17 inward. He talks about being nervous.

18 Other witnesses brought out by Mr. Newman on
19 cross-examination who had made statements in the past,
20 basically, that they noticed the Defendant was nervous.
21 Nelson Olivera said that he was nervous or appeared
22 nervous.

23 The Defendant made a statement, it happened in
24 just a snap, an instant. The Defendant stated it was
25 panic fire. The Defendant stated he remembered a voice

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1 in the back of his head and said I'm going to die and
2 then he saw his muzzle flash. He referred to the
3 incident as a high stress environment.

4 Individually, Judge, I don't think any one of
5 those would -- would raise it to the level under
6 Starnes. But I do think collectively it is at least
7 some evidence that he, you know, he used it was a snap,
8 it was an instant, he's hearing the voice in the back
9 of his head saying you're about to die. And I don't
10 have the exact line, but I believe one of the things he
11 testified to -- or excuse me, the interview that was
12 put into evidence said was, you know, it was an
13 instant, he just reacted.

14 All of which would be indicative of not calm,
15 cool, collected thought, but would be evidence of heat
16 of passion provoked by the -- there's no question, you
17 know, all of that came about because what he says is
18 that he pulled -- or that, excuse me, that the victim
19 was in process of draw.

20 So the -- I think the -- really the only -- the
21 argument that I see is whether those types of
22 statements that have been introduced into evidence
23 collectively rise to the level of heat of passion. And
24 that's the argument that I have, Judge.

25 Thank you, Your Honor.

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1 THE COURT: All right.

2 MR. NEWMAN: May it please the Court, Your Honor.

3 There's been a lot of law changes after State
4 versus Belcher has come down, particularly in
5 homicide-type cases. The two elements required would
6 be heat of passion and sufficient legal provocation.

7 Based on the facts of the case we don't believe
8 that the legal provocation prong goes, because it's
9 clear the acts of the decedent and his brother were --
10 would be sufficient legal justification in order to
11 strike the fatal blow. The Court in Starnes has said
12 that fear does not equate heat of passion.

13 The Defendant also told the investigators at the
14 first interview with less reflective time to thought
15 that when he was ordered out of that car he said, flip
16 a coin, I've got to act. And he made a conscious
17 decision to unfortunately/fortunately take the action
18 that he had to take and preserve his life under the
19 circumstances then and there existing.

20 The other problem that Starnes cautions about, and
21 you're right the fact pattern is extremely similar, is
22 that when you have a case of self-defense -- and, of
23 course, Starnes asked for the voluntary manslaughter.
24 We are objecting to it. It blurs the line of what
25 self-defense is. If one acts in self-defense, one is

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1 making a deliberate choice. Whether that choice is
2 right or wrong or proven, one is making a deliberate
3 choice to act in the manner in which he did under the
4 circumstances there and then existing.

5 And we do not believe that that -- fear alone is
6 not -- does not rise to heat and passion. And we would
7 submit there was no sufficient legal provocation. If
8 there's anything in this case, it's legal
9 justification, and that's a determination under the law
10 of self-defense whether there was sufficient legal
11 justification, not provocation, in this case.

12 Mr. Oates made at least one attempt to retreat,
13 one attempt to signal a neighbor by telling her he's
14 got a gun. And testimony has come out that a gun was
15 produced, a racket of slide -- slid open. And
16 according to Nelson Olivera's statement his brother
17 told him, I am not leaving without my car.

18 So the question in this case, we believe, is just
19 a pure self-defense case. The State wants to blur the
20 lines down and say, well, this was some type of
21 argument and maybe the Defendant snapped and that gives
22 him a justification to escape a murder charge but not a
23 manslaughter charge, which very much blurs and goes to
24 the detriment of the Defendant in the case where the
25 sole issue is self-defense. There are no other issues

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1 in this case when it comes down to it. Credibility of
2 witnesses I'd give you, but that's a factual
3 determination for the jury, not a legal conclusion.

4 So we also have the State dismissing and actually
5 indicting him of that, making a conscious decision to
6 dismiss that indictment. And we believe, therefore,
7 that they are -- have taken a judicial position that
8 this case is a murder case or nothing. But I do not
9 think, and I think Starnes is very clear, fear alone --
10 because Starnes tried to raise those same things
11 saying, well, I was scared, snapped, much of the same
12 arguments the Solicitor put forth on statements that
13 Mr. Oates may have made. Mr. Starnes' attorneys tried
14 to make that to the Supreme Court to say that it should
15 be justified. The Supreme Court said, No, he acted as
16 he did. He may have been in fear, which actually is
17 one of the elements of self-defense, that you're in
18 reasonable imminent fear of losing your life or great
19 bodily injury.

20 So under the circumstances and facts of this case,
21 and I do agree that the fact pattern is very much
22 similar, all this would do in this case is serve to
23 dilute the defense of self-defense and ask the jury to
24 reach a compromised verdict. We have not challenged
25 that Mr. Oates took the actions that he took. We just

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1 pointed out the facts under which he took them.

2 If there's anything further, sir, I'd be happy to
3 address it.

4 THE COURT: Mr. Newman, if you would, yesterday
5 you indicated that one of your reasons is because that
6 their -- the State should be judicially estopped from
7 doing -- from seeking a manslaughter charge since they
8 dismissed it. Okay. Do you have any authorities to
9 support that argument?

10 MR. NEWMAN: The judicial estoppel is where a
11 party opponent takes a position and then materially
12 changes his position to the detriment. That is the
13 rule. It is unclear in South Carolina. I could not
14 find any cases that have applied it in criminal court,
15 I just don't think it has come up. So I've found no
16 law that says that it specifically does not apply. But
17 I found no law either, Your Honor, that it does apply.
18 I think that would be a matter for the Court to
19 determine.

20 However, you can also go back on fundamental
21 fairness and fair -- structural fairness of a trial
22 under the Constitution that the State has materially
23 altered its position to the detriment of the Defendant.
24 Clearly what they're seeking is a compromised verdict.
25 Clearly what they're seeking is to dilute self-defense.

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1 THE COURT: One other thing. The State is arguing
2 that the series of collective statements of the
3 Defendant constitute collectively heat of passion
4 using, I believe, mostly from the Defendant's
5 statements themselves, that it was in the heat of the
6 moment; he was trying to regain his composure; he was
7 freaking out; it was a highly stressful situation; he
8 thought he was about to die, that all of that combined
9 can constitute heat of passion.

10 MR. NEWMAN: Your Honor, we believe all of that
11 combined would constitute the element that we asked.
12 The State has to disprove that he was in fear for his
13 safety, and I think that Starnes addresses that exactly
14 on point. Merely being in fear does not constitute a
15 heat of passion to where the will is overborne.

16 Mr. Oates also gave statements that he made a
17 conscious decision. He had to act as he did. If he
18 had to step out of that truck, that he had to step out
19 firing. Those are all conscious decisions made. And
20 the problem that we have here is you have the twin
21 thing of dilution of the matter of self-defense. You
22 also have -- we do not concede that there was
23 sufficient legal provocation. At least three felonies
24 were committed against Mr. Oates. Under our laws
25 that's sufficient legal justification, not provocation.

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1 I can't point a gun at you and threaten you and
2 say that I provoked you when you killed me. Clearly I
3 provoked you, but I was not acting lawfully. I was not
4 acting -- I was actually acting in a criminal manner
5 causing you to make a rational choice on the act. Do
6 you try to flee? Do you shoot? Do you duck? Do you
7 advance? What do you do? These are choices that you
8 have to make. Those are conscious rational decisions
9 when you're faced with a man with a pistol that's
10 during an armed assault, during an armed robbery,
11 during the point of presenting a firearm, during the
12 crime of illegally displaying a weapon by a concealed
13 weapon holder and forcibly taking property. Because
14 that's not -- that's not legal provocation, that's
15 legal justification as we act.

16 THE COURT: But isn't there evidence as to the
17 contrary of what you just -- contrary of what you said
18 just a moment ago. There is some evidence that the
19 victim, the deceased, did not do these things.

20 MR. NEWMAN: If there's evidence of that, then it
21 would be murder. He would have no justification. He
22 would have no justification or provocation.

23 THE COURT: Provocation.

24 Solicitor?

25 MR. THORNTON: Your Honor, two very quick points.

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1 One, State versus Pittman, and I apologize, I
2 think I handed that up to the Court. It's 373 South
3 Carolina 527. Supreme Court held that an overt
4 threatening act or physical encounter can constitute
5 legal provocation. So I -- that -- I just, you know,
6 since I didn't address that first I did want to go
7 ahead and address that. I think that -- that is pretty
8 clear, actually, Your Honor, that this -- that that
9 prong would be satisfied in this case.

10 The only other thing I would say is basically
11 something that you just said, Your Honor. This case,
12 it's not about weighing whether -- I don't believe the
13 vast majority of what Mr. Oates says, but that's not
14 what the test is. The test is, is there any evidence.
15 So if there is evidence, and I agree with Mr. Newman,
16 there is evidence that he coolly reflected. But there
17 is also evidence that he did not and that he was
18 freaking out, that it was panic fire, all those things
19 that I just listed. That's what the test is: Is there
20 any evidence.

21 The other thing I would point out, Judge, is in
22 Starnes, I understand that there are some similarities,
23 but the biggest difference is in Starnes -- and again,
24 please, Judge, I know you've read it and, you know, I
25 think I'm getting this right -- all they said was --

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1 all that the Defendant said was, I was scared.
2 Whereas, here you've got acts. It was panic fire. I
3 was firing panicked. I was freaking out. I just
4 reacted. It was a snap. It was an instant. I got
5 that pain in the middle of my chest. I think that is
6 substantially more than just, I was scared, which is
7 what you had in Starnes.

8 And, again, Judge, I know I've made those
9 arguments. But that would be my argument, is the test
10 is not is there conflicting evidence, the test is is
11 there any evidence to support the charge.

12 MR. NEWMAN: We believe, Your Honor, the format of
13 Starnes, particularly with the self-defense issue they
14 are making in Starnes, Starnes actually wanted that by
15 saying he was in fear -- excuse me, Your Honor, I'm
16 reading something.

17 In Starnes that was a charge that the Defendant
18 wanted. I believe Starnes is just right on point in
19 this case, that they're taking a series of statements
20 made in an interview that lasted over an hour. We're
21 talking about an event that took approximately three
22 minutes, and we're talking about a precise event that
23 only took three to four seconds.

24 So Mr. Oates may have said he was freaking out,
25 but when he stepped out of that truck he made a

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1 conscious decision to act the way he did based on the
2 facts and circumstance that he was facing then. And
3 that way it's either self-defense or it's not
4 self-defense, it's as simple as that. This is simply
5 to blur the trial by giving the jury some kind of out.
6 And we just do not believe that it's appropriate and do
7 object to it.

8 THE COURT: All right. I find that on the issue
9 of manslaughter that there is evidence sufficient to
10 constitute the provocation, the legal provocation,
11 which deals with the threatening that is argued by the
12 State. As to the issue of heat of passion, I
13 distinguish this case from Starnes because of the
14 collective argument made by the State. I'm going to
15 allow a lesser included charge of voluntary
16 manslaughter.

17 MR. NEWMAN: If Your Honor pleases, just for the
18 record, I understand you have ruled. The Defendant
19 does object to the ruling. I just wanted that noted
20 for the record.

21 THE COURT: Certainly.

22 MR. NEWMAN: Also I would ask that we're making no
23 waivers of that objection if we argue our case to the
24 jury on to -- as to the -- why a manslaughter charge
25 should not apply. And I further would ask in closing

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1 to be able to refer to the nolle pros indictment on
2 manslaughter.

3 MR. THORNTON: Your Honor, I think that referring
4 to a nolle pros indictment is completely improper. I
5 wouldn't be able to talk about how the grand jury has
6 already found probable cause in this case, ladies and
7 gentlemen, because, you know, it's completely improper.
8 Especially when one considers that that was done in
9 order to upgrade the charge unless Your Honor's going
10 to be able to instruct them on the law that says that
11 the nolle prosing of an indictment carries no weight in
12 this trial, because you can find as a matter of law
13 voluntary manslaughter and the dismissing of the
14 indictment was merely ministerial.

15 If, you know, if we're going to get into dragging
16 all that out I just think that's a -- I think it's very
17 confusing to the jury that you're going to charge them
18 now that you've ruled on voluntary manslaughter, and
19 then Mr. Newman can say, Well, they've already
20 dismissed that, so you shouldn't pay attention to it.
21 You are the judge of the law; you have indicated they
22 should be able to consider voluntary manslaughter.
23 Whether they do or -- whether they find that is up to
24 them. But the fact that they can consider it is up to
25 Your Honor, and I think that's an improper tact on

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1 Mr. Newman's part. While I understand it, I think it's
2 improper to try and somehow lessen your role as a
3 finder of the law saying that, well, you shouldn't
4 consider voluntary manslaughter because the State
5 already dismissed it.

6 THE COURT: I'd be glad to hear your brief now.
7 But I'd just like to hear --

8 MR. NEWMAN: In all fairness, that's what they
9 did. They originally filed a manslaughter charge in
10 this case. That's what he was originally arrested for.
11 He sat with that charge for three and a half years.
12 The State changed it to murder, dismissed the
13 manslaughter. And now the State wants the manslaughter
14 because it knows that it can't prove murder.

15 THE COURT: I'm going to deny your request. And
16 the reason is this, is that I'm telling the jury on the
17 one hand that the indictment doesn't count, that they
18 can't consider the fact that the Defendant was indicted
19 or arrested, that that just doesn't have anything to do
20 with anything. And so I think that it would be, in
21 fact, confusing to turnaround and get back into it was
22 dismissed but you can still consider it. So for those
23 reasons I'll deny that request.

24 MR. NEWMAN: Yes, sir.

25 Next -- over our exception, respectfully.

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1 THE COURT: Sure.

2 MR. NEWMAN: And Your Honor, I also need to make
3 it clear that there needs then to be a specific jury
4 charge that addresses that the defense of self-defense
5 as a complete defense applies to the lesser charge as
6 well with equal force.

7 MR. THORNTON: I have no objection to that. I do
8 object to several of the jury charges, which we can get
9 into when the Court is ready, that Mr. Newman gave me
10 this morning. Sorry, Judge, I do not take any
11 exception to -- I think it does apply to both.

12 THE COURT: I don't think there's any question.
13 It certainly does.

14 MR. THORNTON: Yes, sir.

15 THE COURT: Now, what about jury charges?

16 MR. NEWMAN: I've handed the Solicitor a copy of
17 proposed charges, of course in addition to your
18 standard charges on -- from the actual elements of the
19 defense by credibility of witnesses and the like. And
20 I do have several objections to the State's as
21 submitted, a couple of proposed jury charges.

22 THE COURT: All right. I guess that we should
23 actually take up the State's first, and I have
24 misplaced my charge. Hang on one second.

25 Is the State still requesting separately that the

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1 Court charge State's 1, 2, 3 and 4?

2 MR. THORNTON: Your Honor, I don't -- these were
3 prepared, obviously, before Court. We got -- and I do
4 apologize in the heat of trying to get these things
5 done I don't think based on what your -- you didn't
6 rule on it, based on what I kind of read from the
7 Court, you're not going to let Mr. Newman talk about
8 armed robbery. He has -- and although he has submitted
9 a jury charge on armed robbery. So I believe we
10 submitted robbery charge under State versus Jackson, we
11 would not need that. Because I don't think armed
12 robbery applies in this case, and I think you've
13 already found that based on my arguments.

14 I think that overall, Judge, as long as it's the
15 standard jury charge, and forgive me I read it
16 yesterday, as long as there's nothing in there that
17 relates to anything specific about that we have to
18 disprove every element, because as the Court knows, we
19 only have to disprove one. And that was State versus
20 Curry. So I'm fine with your normal charge, Your
21 Honor, on self-defense. Frankly, that's my -- and if
22 the Court will allow me indulgence for one moment.

23 Your Honor, if you're not going to go --
24 Mr. Newman has several -- just about every one of his
25 charges, in the first three or four anyway, deals with

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1 additional charges on self-defense, which I think
2 really overemphasizes it. If we're going with your
3 standard charge, I'll withdraw any of my charges, the
4 duty to retreat, excessive force.

5 However, if you're going to charge Mr. Newman's --
6 you know, he wants to charge just pieces of Hendricks
7 and not the whole pie. So if we're going to charge his
8 parts of Hendricks, then I want the excessive force,
9 which is ordinarily one is not justified in shooting or
10 employing a deadly weapon after the adversary has been
11 disarmed or disabled. So I either want us to charge
12 all the parts of Hendricks or none of it. And I think
13 that Mr. Newman's charges are, frankly, overemphasizing
14 it. But I will be happy to withdraw the additions that
15 I have and just let you do the standard charge, Judge.

16 THE COURT: All right. Thank you.

17 MR. THORNTON: Yes, sir.

18 MR. NEWMAN: I think where we are as to robbery
19 issues, the evidence that has now been introduced is
20 there was a robbery. The robbery does not have to
21 involve, as the Solicitor says, a permanent intent to
22 deprive. Under State versus Williams in 1960 that's
23 been followed a -- that the question of depriving of
24 the property would be a question for a jury. All it
25 has to be is an armed assault where the property is

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1 removed. And the intent does not necessarily have to
2 even be -- occur during the robbery; it can occur
3 after.

4 However, armed robbery is defined under State
5 versus Williams as an armed assault where property is
6 removed. Williams dealt with a case where a gun was
7 taken from a highway patrolman during a resisting
8 arrest. Guy ran off, they caught him. Ultimately, the
9 pistol was found laying in a field and he said, Well, I
10 wasn't trying to steal the pistol from the patrolman.
11 He was trying to kill me. I tried to take it from him
12 and he threw it in the field. And the Court ruled that
13 that is -- that's not an element, it's a -- it's merely
14 a jury issue as to that.

15 Clearly, we have an armed assault. Clearly, we
16 have several felonies that were going on. Clearly
17 there is a presenting of a firearm. And I think those
18 are relevant. The Court is, you know, when we go down
19 to manslaughter, those are all relevant defenses to the
20 taking of life if you're protecting yourself from an
21 armed robbery, an armed assault, removal from a
22 vehicle, pointing at the same, violation of a concealed
23 weapon permit law.

24 THE COURT: All right. So as to the issue of
25 whether or not -- well, let me look. You don't have a

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1 specific -- well, you do have a specific charge on
2 robbery, don't you?

3 MR. NEWMAN: Yes, sir. The State versus Barrett,
4 that's another case we've relied on. Robbery involved
5 the taking of property through force or threats of
6 force, then the robbery is classified as a crime of
7 violence. And you have that, property was taken here
8 under the facts developed as the Solicitor said,
9 whether you believe those facts or not, under force or
10 threat of force, but they have been raised.

11 THE COURT: And State versus Williams, have you
12 looked at that, that case law?

13 MR. THORNTON: I have not, Your Honor. I -- you
14 know, all I can -- at this point, if Mr. Newman is
15 giving me a copy, Judge, if you'll give me a couple of
16 minutes, I'll be happy to look at it.

17 THE COURT: All right.

18 (Reviewing documents.)

19 MR. THORNTON: The State versus Williams, as he
20 said, dealt with a patrolman whose gun was taken. And,
21 basically, the only evidence that it wasn't a felonious
22 intent was that the person said, I didn't mean to -- I
23 wasn't going to permanently deprive him of it. In
24 other words, there was no other evidence of that.

25 In this case all the evidence that has been

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1 submitted including the evidence by his own client was
2 they got the keys to remove the boot off of his own
3 property. In other words, every piece of the puzzle in
4 this case is that there was no intent. There's no
5 evidence to the contrary. In that case they never even
6 found the pistol. In this case the items were not
7 removed from the immediate scene. They were -- I've
8 got the boot key that's right there as well as the keys
9 that are in evidence. One of them was on the back of
10 the Defendant's tow truck, and the other was in the
11 road right behind the tow truck next to the vehicle.

12 So Williams is distinguishable. And they also, by
13 the way, talked about that it was specifically -- they
14 were specifically discussing other cases involving the
15 removal of weapons from officers. Totally different in
16 this case, Judge. But in that case what they worried
17 about was, how do you determine the felonious intent to
18 permanently deprive the owner. They made it a jury
19 question because there certainly was evidence both
20 ways. He took it, removed it, and they never found it.
21 And on the opposite side of that you have a Defendant
22 saying, but I didn't intend to deprive him of it. In
23 this case everybody said they were getting the keys to
24 remove the boot from their own property. I mean, there
25 is no question in this case that there was no permanent

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1 intent.

2 And there is -- there isn't a jury issue because
3 the evidence looks at it the exact same way. There's
4 no question that everything was left there, everything
5 was done there, and they were just getting the items if
6 you believe his -- Mr. Oates' version that they took
7 them from him and had them by the vehicle, by the van
8 obviously the boot key and then the keys on the back of
9 the tow truck. Clearly, there's no intent to deprive
10 him at all of it. They're simply trying to get their
11 property free.

12 Thank you, Your Honor. I think that's why it's
13 distinguishable.

14 THE COURT: No, I just asked -- posed this
15 question to Court and maybe to the Solicitor as well.
16 If I point a gun at you and take your car keys and
17 throw them in the street, I've committed no crime,
18 whatsoever, that's indictable?

19 MR. NEWMAN: I guess pointing is presenting.

20 THE COURT: What about forcibly taking their keys
21 from them and throwing them down the road?

22 MR. NEWMAN: I don't know.

23 THE COURT: At any rate, I find that there is not
24 a robbery in this case because of the issue of no
25 intent to permanently deprive.

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1 All right. What's next? I guess that we are
2 really now talking about Defendant's request to charge.

3 MR. THORNTON: Yes, sir.

4 THE COURT: The first one I have relates to
5 continuing to shoot.

6 MR. NEWMAN: That's correct.

7 THE COURT: And I'm sorry, Solicitor, your
8 position on that?

9 MR. THORNTON: Your Honor, I think that's covered
10 in the standard charge that you gave us yesterday.
11 Again, my fear is -- and I understand, obviously, why
12 Mr. Newman wants to overemphasize self-defense, but the
13 State feels like your standard charge is going to cover
14 it.

15 But if we're going to charge part of Hendricks, we
16 need to charge all of it, which also includes the
17 phrasing that I gave the Court earlier. I'm happy to
18 withdraw that request if we're just going to stick with
19 the standard charge, which I think covers these.

20 MR. NEWMAN: Your Honor, my response to that is
21 the three charges out of Hendricks, basically three,
22 they're broken up, they can be merged into one. I
23 don't have an objection to these under the
24 circumstances that those three charges are given to
25 having the State's excessive force charge changed just

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1 a little bit. Ordinarily one is not justified in
2 pulling deadly force after the adversary has been
3 disabled. And as long as the, however it comes in,
4 that the person is justified in firing the first shot
5 and he can continue to shoot. And I do think that the
6 charge does not address what is clear in the State
7 versus Hendricks and is -- it says, "A Defendant does
8 not have to wait until his opponent is on equal terms
9 or wait to gain an advantage and may take the
10 opportunity to just disable his opponent at the first
11 opportunity."

12 And what's been made a big thing by the State is
13 the shooting in the back. There's nothing in the law
14 that requires a person to be shot face-to-face and the
15 charge on that. In fact, Hendricks what happened is he
16 was pointing a shotgun and the guy had a shotgun and
17 the guy turns around when he was called and was shot
18 four times in rapid succession with buckshot from a
19 shotgun. So his defense was, I'm sure the State's
20 going to argue, he was shot in the back, he was shot in
21 the back. It matters not if self-defense is justified
22 if you are able to spring and gain an advantage on the
23 opponents. And I think that law is very clear. You
24 don't have to let him get the drop on you as the old
25 language says.

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1 MR. THORNTON: Your Honor, I think that it comes
2 very close to charging directly on the facts of the
3 case, and I think it's excessive. And I, like I said,
4 I don't want to belabor the point, Judge, I think your
5 standard charge covers it. I think it's going to lead
6 to a lot less confusion on the jury and overemphasizing
7 self-defense one way or the other.

8 MR. NEWMAN: Our courts, Your Honor, have
9 cautioned that self-defense charges need to be crafted
10 for the circumstances under which they are used. Your
11 charge, I know a lot of it we wouldn't use, is crafted
12 for a myriad of things, battered person's syndrome,
13 defense of others, contemptuous language. So those are
14 where the courts have crafted the self-defense charges
15 to the facts of the case by applying the law to it.

16 The Solicitor has made a big deal in this case
17 that the shots were in the back. I think he's going to
18 argue you can't have self-defense, how can you have
19 self-defense if shot in the back. That's disingenuous,
20 you absolutely can.

21 THE COURT: Okay. Thank you.

22 Anything else on the issue of jury charges to be
23 decided?

24 MR. THORNTON: Your Honor, he does have several
25 more in here that we haven't covered. I didn't know if

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1 we --

2 THE COURT: I'm sorry.

3 MR. THORNTON: I've got several under the -- what
4 appears to be several requests to charge under the
5 Protection of Home and Properties Act, which I think
6 are barred by State versus Curry. I don't think he,
7 you know, that's a -- obviously Mr. Oates has already
8 had a bite at that apple, Judge. He's already been
9 denied that by Judge Dennis at a previous hearing. And
10 my understanding, forgive me if I misquote the law,
11 Judge, but I believe that State versus Curry it says
12 that "Once statutory immunity under the act has been
13 denied statutory language should not be charged to the
14 jury."

15 And I think I handed that up to Your Honor
16 yesterday. I'll be happy to get another copy, Judge,
17 if I need to.

18 MR. NEWMAN: All right. It doesn't quite say it
19 in that manner. It says that particular one what the
20 Court was afraid of that involved a claim of
21 self-defense in a case where a person was not in one of
22 these enumerated places. He could be in his home, his
23 business or was occupying a vehicle, but it's even more
24 Mr. Oates had a right to the vehicle. They also found
25 that the decedent at least is on equal terms of that,

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1 had a right to be. And the shooting is in an apartment
2 that is neither the Defendant nor the decedent's home,
3 they just happened to be there. And I think that was
4 the Court's fear on that.

5 South Carolina legislature, and this was not asked
6 to charge, has clearly put down its intent that "no
7 person or victim of a crime should be required to
8 surrender his personal safety to a criminal act nor
9 should a person be required to needlessly retreat an
10 intrusion or attack." That is the same, virtually the
11 same, but stating more specifically on the duty to
12 retreat. Because in your duty to retreat it says that
13 the Defendant would have no other probable means to
14 escape without taking the action that he did, or no
15 probable means that he's not at increased risk. That's
16 all -- that is a codification of that, and that is not
17 actually in the Person and Properties Act.

18 THE COURT: But I believe it is under the
19 collective act. But it's under declarations and
20 findings of contempt.

21 MR. NEWMAN: Of the legislature.

22 THE COURT: You all realize that that was my case,
23 don't you?

24 MR. THORNTON: I did not, Judge.

25 MR. NEWMAN: State versus Curry.

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1 THE COURT: Curry was not -- I tried that case.

2 MR. NEWMAN: Your Honor, Julie Kate with our
3 office actually argued that case on the State's behalf,
4 she's right behind us. We have two people that were
5 involved in that case.

6 THE COURT: Let me ask both of you. There's --
7 has there been another case clarifying that issue in
8 Curry? And I take it there must not be or you all
9 would have brought it to my attention. It's not, but
10 it seems to me that Curry, while Curry talks about the
11 full extent of this -- of the act will have to be
12 determined on another day. Justice Pleicones goes
13 ahead and gives consent and agrees with the majority,
14 and he makes it clear that he thinks what the majority
15 is saying is that you can't charge self-defense and
16 charge under the act because it's too confusing.

17 MR. THORNTON: I think what he's -- you revert
18 back to common law principal which would be common law
19 self-defense, Your Honor, that would be the State's
20 position.

21 THE COURT: Isn't that what he's saying in the
22 case?

23 MR. NEWMAN: Well, as I said, the common law
24 principal is embodied in Curry and the other cases make
25 it clear. You know, when Judge Dennis originally ruled

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1 on this he did not have the benefit of a lot of these
2 cases that have recently come out. Judge Dennis, quite
3 frankly, said that we could not argue self-defense
4 during the immunity hearing because immunity and
5 self-defense are apples and oranges. And said, quite
6 frankly, that we're -- we decided on self-defense,
7 throw it out. But he said he couldn't do it, because
8 immunity and self-defense were apples and oranges.

9 And our courts have now said that no, you must
10 consider the common law principles in conjunction when
11 deciding immunity. So the common law principles of
12 self-defense are not altered or changed by the immunity
13 statute, necessarily. And the provisions that I put
14 out do not alter or amend the common law. If deadly
15 force is used against you, you can be presumed to have
16 a reasonable fear of deadly weapons used against you.
17 That is no more than an extension of the common law.

18 If you are being removed or attempted to be
19 removed from an occupied vehicle, that's carjacking.
20 We would request a charge on carjacking if testimony
21 came out that or evidence came out that he was ordered
22 out of the car at gunpoint or threat of gunpoint. We
23 believe that constitutes the crime of carjacking. But
24 I don't believe that either of the charges do anything
25 to put the common law in derogation.

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1 THE COURT: All right. And Solicitor, what is
2 your position on Defendant's request to charge the
3 Statute 16-2314, pointing or presenting.

4 MR. THORNTON: Sorry, Your Honor, I'm trying to
5 find that one.

6 THE COURT: I think it's the last one, the last
7 act.

8 MR. THORNTON: It's not the last one. I have the
9 occupied vehicle.

10 (Discussion is held off the record.)

11 MR. NEWMAN: In my copy -- I collated that myself,
12 I didn't have that last one in Solicitor's copy, or I
13 may have done that on purpose, I'm not sure.

14 MR. THORNTON: Your Honor, I'll basically go with
15 the same argument about I think it excessively talks
16 about self-defense. It's already covered in your
17 standard charge. I will not make the same motion or
18 same argument I made as to armed robbery. I understand
19 there is certainly evidence in the record that could be
20 construed that it was presented. I don't think there's
21 anything other than Mr. Oates statement that it was
22 pointed, but I'll grant that there's evidence in the
23 record. But I do think that overemphasizes it. The
24 victim in this case was not charged because he's dead.

25 And I think that including the last part, which I

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1 agree is a correct statement of that statute that says
2 "This shall not abridge at the right of self-defense,"
3 that has nothing to do with if somebody else points or
4 presents a firearm at you. That's if you are pointing
5 or presenting a firearm, and you are the one using it
6 as self-defense. What Mr. Newman is attempting to use
7 that for is that, well, somebody points a firearm at
8 me, that doesn't abridge my right of self-defense. And
9 that has nothing -- that's the exact opposite of what
10 the intent of the law is in that case.

11 So I think it is confusing to the jury. I do
12 think that it's a -- I don't think it's a misstatement
13 of the law. I think it's correct under the statute. I
14 think it's a misuse of it in this situation. Thank
15 you, Your Honor.

16 MR. NEWMAN: Certainly this is an issue, Your
17 Honor, of self-defense. Someone presents a gun to you,
18 that's a felony. If I take out my gun and pull it out,
19 show it to you and slide the rack back, I've committed
20 a felony. I've committed a felony and violated
21 16-23410. It's a -- it's a direct quote out of the
22 language out of the statute. And the facts certainly
23 support that here by even the State's own witnesses
24 that that occurred.

25 THE COURT: And Solicitor, what about the occupied

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1 vehicle; have you addressed that one?

2 MR. THORNTON: Your Honor, I think all that falls
3 under Curry. I mean, the occupied vehicle, that -- the
4 cite that he uses, I think, is directly to the
5 Protection of Home and Properties Act. I think Curry
6 handles all that. I think you just revert back to the
7 normal self-defense charge under common law. Because
8 occupied vehicle, all that is is actually specifically
9 spelled out in that statute.

10 MR. NEWMAN: And if that be, Your Honor, we merely
11 request that you substitute that charge for the
12 carjacking statute that it's unlawful to remove or
13 attempt to remove another person against his will from
14 his occupied vehicle by force or threat of force. And
15 that, likewise, is a violent felony under South
16 Carolina law.

17 And there is evidence before this jury, albeit
18 from the Defendant it's still evidence, that he was
19 ordered from the car at gun point to remove that
20 disabling device. That would constitute the crime of
21 carjacking.

22 MR. THORNTON: Your Honor, the State's only
23 argument to that would be the same we made before.
24 Just because there's evidence of something doesn't
25 necessitate that the Defendant gets a charge on it

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1 because he claims it. In other words, what we're
2 dealing with when you're charging the jury is,
3 generally speaking, what the status of the law is as it
4 relates to the Defendant. You're already going to be
5 charging the jury that he has a right to defend
6 himself; that he has a right to self-defense; that if
7 someone is threatening him, he's in immediate fear of
8 his -- serious bodily injury or his life if the
9 ordinary reasonable person of ordinary firmness and
10 courage would feel the same way; if he wasn't at fault
11 in bringing on the difficulty and if he had no other
12 probable means of escape, he can take a life.

13 I mean, they're basically just adding anything
14 they could possibly think of. Well, we want occupied
15 vehicle. If you won't do that, we want carjacking,
16 because he said the guy was ordering him out of his
17 car. All of those things are already covered under
18 self-defense, which Your Honor is already giving, you
19 know, a fairly lengthy charge on. And if you include
20 the Hendricks language it's an even longer charge on
21 just self-defense, which covers all of these other
22 issues.

23 They're basically just bootstrapping hoping to,
24 you know, waylay the jury with 800 charges dealing with
25 the alleged armed assault by the victim. It's covered

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1 by self-defense and anything over that or beyond that
2 is overemphasizing it to the jury, Your Honor.

3 MR. NEWMAN: Your Honor, the State is -- it is so
4 disingenuous by the State to say that. Our courts have
5 made clear if 20 witnesses say one thing and one
6 witness gets up and say another thing, may not even be
7 very credible, it's still evidence before the jury. In
8 fact, the State argued that, I don't believe the
9 Defendant, but he said, I was in fear, I made a snap
10 decision, this and that. Now he uses the argument,
11 well, just because the Defendant says he was ordered
12 out of the car. Picking and choosing what he wants to
13 believe, that is a fundamental question for the jury.

14 What the State wants is if the jury is not charged
15 properly on the law, it wants to go just say on a
16 school ground, no, he was shot in the back, therefore,
17 you're liable. And that is not the law in the case.
18 And I would anticipate that the State is going to argue
19 that the shooting in the back ad nauseam to the jury,
20 because it's basically the only thing they've got. The
21 carjacking that -- Mr. Oates said it, I didn't put
22 Mr. Oates' statement into evidence, the State did it.
23 And that statement was, I was ordered from the car.
24 That's a crime of carjacking. Being ordered against
25 your will from your vehicle with use of force or deadly

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1 force. And the State wants to ignore all of that.

2 Let's have a full and fair presentation in this.
3 The jury has a lot of things to consider and the
4 violent felonies committed by the Oliveras are one of
5 the things that they need to consider. And the sole
6 issue in this case was self-defense. The State wants
7 to dilute and limit that, I understand that. But
8 Hendricks is a correct and current charge on the law
9 taken together, and there's certainly evidence out
10 there that's all the standard is that it has to be.
11 The Defendant has requested it, and it's the correct
12 and current charge on the law.

13 THE COURT: All right. Anything else regarding
14 jury charge --

15 MR. THORNTON: No, sir.

16 THE COURT: -- from the State? From Defense?

17 MR. NEWMAN: Yes, sir.

18 As to the State's charges, we object to --
19 certainly object to No. 1, that's verdict shifting.
20 Under Sandstrom versus Montana a Defendant must show --
21 defendants never, that's under criminal law, defendant
22 never has to show anything. So that charge that's from
23 an old case, the State versus Jackson in 1955, and
24 presumptions against defendants were allowed in
25 criminal law. United States Supreme Court, the South

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1 Carolina Supreme Court under their constitutions
2 respectively have said that that's legal trash, that
3 you cannot have any presumptions against a Defendant.
4 No. 1, while it was a correct charge in 1955, in 2014
5 it is way bad.

6 As to the State's charge No. 2, do not mind that
7 being charged as long as it's in conjunction with the
8 three State versus Hendricks charges, which is
9 basically three sentences. It's not this long
10 belabored charge. I would add that, you know, if the
11 State wants to have one there, even one that's not
12 justified, I would say they got shooting -- employing
13 deadly force after an adversary has been disabled.

14 I would put, however, if and when a person was
15 justified in firing the first shot, he's justified in
16 continuing to shoot until the apparent danger has
17 ceased. When considering self-defense, the Defendant
18 does not have to wait until his opponent is on equal
19 terms with him, does not have to wait for his opponent
20 to gain an advantage on him, and may take the --
21 take -- may be able to disarm his opponent at his first
22 opportunity. Then when considering that, does not
23 necessarily matter where a Defendant was struck. The
24 law does not require a decedent to be face-to-face or
25 on equal terms when the fatal blow is struck so long as

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1 the force used is justified under all the
2 circumstances. So if the State's No. 2 is charged in
3 conjunction with the Hendricks charge, I have no
4 objection.

5 As to State's No. 4, that the State must disprove
6 only one element of self-defense to apply, I believe
7 that is the purpose and that is covered in your general
8 charge.

9 That's all I have on the State's charges. And I
10 do have some, I guess, editing from the standard
11 self-defense charge that you have in your book.

12 THE COURT: Okay. What is that?

13 MR. NEWMAN: The editing would be, Your Honor,
14 on -- I believe that the section as to contemptuous
15 language does not need to be placed in there under the
16 charge. The testimony from Nelson Olivera to
17 Mr. Oates, quote, presented as a gentleman, he was
18 good, thought he was a good man. Elizabeth Reyes told
19 me she heard Nelson and Carlos yelling, quote, at the
20 tow truck driver. And Steve Varedi who's the closest
21 to this incident said that he heard nothing standing at
22 the back of the tow truck. So I don't believe that
23 this contemptuous language needs to be in there because
24 there's no evidence.

25 THE COURT: Okay. What else?

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1 MR. NEWMAN: As to the mutual combat, I believe
2 that needs to be deleted. The State has not presented
3 any mutual contact. I believe the battered person's
4 syndrome obviously is inapplicable to the facts of this
5 case.

6 And on 298 I see, Your Honor, and if I'm wrong --
7 I see where you have victim scratched out in most
8 places and put deceased or the decedent. I would ask
9 that the Court use those terms because it's yet to be
10 established whether or not he was the victim in the
11 case.

12 I would also add on 298 at the very end, you
13 should consider all the facts and circumstances
14 surrounding the crime including actions of Defendant
15 and victim. I would ask that we again, much like we
16 don't use decedent any more, that surrounding the
17 incident that occurred --

18 THE COURT: Sorry. Where are you? Are you on
19 page -- which page?

20 MR. NEWMAN: I'm on 298, sir. And if you'll go to
21 the right tab on appearances and go up one, two, three
22 lines. I would just ask that the word incident, at
23 this point, be substituted.

24 THE COURT: I'm following -- I'm not following
25 you, because I can't find the place that you are

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1 talking about that you want to substitute. Tell me
2 again, is it on 298?

3 MR. NEWMAN: It's on 298. It says -- is your 298
4 the same as mine?

5 THE COURT: It should be. What line? Tell me
6 what line again on 298.

7 MR. NEWMAN: If you go to right tab on
8 appearances, if you will go up one, two, three lines.

9 THE COURT: Oh, I'm sorry. I was going up from
10 the bottom of the page.

11 MR. NEWMAN: I apologize, Your Honor.

12 I agree with the Court on the victim -- victim of
13 crime. I think that that's tantamount to a charge on
14 facts. And then, of course, battered person's syndrome
15 obviously would not apply in this case. I don't think
16 intoxication would apply in this case either. I don't
17 think there's any evidence anybody in this case was
18 under the influence of any drugs or alcohol or any
19 other substance.

20 I do believe under the business of self-defense
21 that it should be charged that the Defendant was in his
22 or her place of business. His tow truck is his
23 business, and he was in the cab of his tow truck
24 executing his duties under his contract for the
25 specific property that he was hired to enforce the

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1 parking regulations. So I think the business does
2 apply.

3 MR. THORNTON: Up until now Judge that's the only
4 thing I would argue with. That's not a business, it's
5 a vehicle. He just got finished trying to get included
6 a carjacking statute. I don't think that applies.
7 Other than that, I don't -- I do not disagree with
8 anything Mr. Newman has asked for.

9 MR. NEWMAN: The State has specifically put in the
10 license plate number of the vehicle indicating that
11 there's a permanent plate and it's a South Carolina
12 registered commercial vehicle, and we believe that was
13 his place of business and he was on the J-O-B at the
14 time.

15 THE COURT: All right.

16 MR. NEWMAN: Much the same as a cab driver would
17 be in his place of business driving a cab.

18 Increased risk of harm I believe should be
19 charged. Lawful guest, obviously, wouldn't apply. And
20 battered person's syndrome wouldn't and defense of
21 others. Everything else I would agree with.

22 THE COURT: Okay. Anything else regarding
23 charges?

24 MR. THORNTON: No, sir, Judge. Other than to say,
25 and I apologize, I know we've taken up a good bit of

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1 time this morning, but I definitely, and I'm sure
2 Mr. Newman would, we would like to know before we get
3 started what the Court is going to rule. But I have
4 nothing further.

5 I did prepare to request the verdict form, which
6 I'll hand now to Mr. Newman and hand it up to the Court
7 to see if anybody wants any changes made. And, Judge,
8 I assume that the Court will, like every other circuit
9 court judge I've ever been in front of, say, ladies and
10 gentlemen of the jury it takes, you know, it matters
11 not which I put first or second. So, you know, guilty
12 is first on both of them. But I would assume that you
13 would have taken care of that anyway. I point that out
14 to the Court to see if there's any concern.

15 MR. NEWMAN: You asked, Your Honor, if there's
16 anything left on jury charges. I did have one thing
17 left before we proceed to the jury form.

18 THE COURT: All right.

19 MR. NEWMAN: I -- I haven't tried a case, I don't
20 think, in front of you before on these particular
21 charges. The old charge talks about a failure of a
22 Defendant to testify. Did -- and I don't know if your
23 standard charges have that. Some of the judges don't
24 have that. I would ask that that be replaced with the
25 Defendant has exercised his right not to do it. If you

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1 have a right not to do something, you certainly can't
2 fail to do it.

3 THE COURT: I see what you are talking about, I
4 think. But the actual charge I would use would not say
5 that. It would merely say the fact that the Defendant
6 did not testify.

7 MR. NEWMAN: Thank you, Your Honor. There are
8 some old charges that still charge it as a failure to
9 testify. That's all that I have on the jury charges.

10 As to the verdict form I do have an objection as
11 to the wording of the verdict form.

12 THE COURT: All right. Okay.

13 MR. NEWMAN: As on Count 1, if you go to the
14 voluntary manslaughter, it says, "If not guilty,
15 proceed to lesser included charge of voluntary
16 manslaughter." One, the lesser included is a comment
17 on any penalty, which is strictly forbidden for a jury.
18 And if not, proceed, the jury doesn't necessarily have
19 to proceed to the voluntary manslaughter if it's a not
20 guilty. In other words, the jury can say you're not
21 guilty of murder, now you're forcing me to consider
22 voluntary manslaughter when I found the Defendant not
23 guilty completely.

24 THE COURT: Well, what do you propose to say?

25 MR. NEWMAN: I propose to say that as to -- you're

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1 going to have to say, you can consider one charge or
2 another, murder; guilty, not guilty, or voluntary
3 manslaughter; guilty, not guilty. Simple as that. And
4 you can't have both. You must consider on one or the
5 other.

6 This is making the jury feel like, okay, we just
7 found him guilty. Now, we're going to proceed to
8 talk -- let's talk about the voluntary manslaughter.
9 They may not want to. You're also telling them it's a
10 lesser included offense, but you're talking about
11 possible penalties or punishments that may diminish
12 their role in this case, and I think that is strictly
13 prohibited. There's an easy way to do it just put find
14 guilty or not guilty of murder, or guilty or not guilty
15 of manslaughter, but it can't be both. Simple as that.

16 THE COURT: I mean, I'm certainly going to tell
17 the jury they couldn't do both. Mr. Thornton, let me
18 hear from you.

19 MR. THORNTON: Judge, this is a standard form we
20 use in just about every case we do, and you're going to
21 tell the jury about a lesser included offense. I mean,
22 you're going to instruct them in and on your jury
23 charge that there's a lesser included offense of
24 voluntary manslaughter. I mean, that's actually going
25 to be charged by you. So I don't see how -- I mean, I

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1 think this is very clear and very -- frankly, I was
2 surprised that that was the argument made. Because if
3 you don't, you're going to get -- I knew you were going
4 to tell them that they should only find one.

5 This says, you know, consider the murder first.
6 If they find him not guilty, proceed to manslaughter.
7 And then it says, guilty or not guilty under
8 manslaughter. I don't think it forces them to do
9 anything other than they do need to consider each
10 charge independently. Because if they find him guilty
11 of murder, then they can stop. If they find him not
12 guilty, then they would go to the lesser included
13 offense.

14 I don't see where that part is objectionable at
15 all, Your Honor. I think it's very clear. It's a
16 standard jury form that I'm familiar with and most
17 judges use. So I -- but I disagree with Mr. Newman
18 that that forces the jury to do anything. And you are
19 going to instruct them that voluntary manslaughter is a
20 lesser included offense of murder.

21 MR. NEWMAN: And I would object to the jury
22 instruction on that. You can instruct on manslaughter.
23 But when you get into lesser included, you're starting
24 to talk about penalties. This actually forces the
25 Defendant to sit through two not guilty verdicts, and

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1 that is -- this is just highly improper. I don't --
2 really don't have a wit about the State's argument that
3 it's standard. A lot of standard things are wrong. We
4 had permissible -- we had presumptions against
5 Defendants for years.

6 THE COURT: Here is what I'm going to do. On this
7 form on that issue I'm going to ask the draftsman to
8 remove from that that line the words after guilty --
9 after if not guilty, delete those words over to the
10 beginning of voluntary manslaughter on that line. But
11 insert, you may consider the charge -- excuse me, you
12 may consider --

13 MS. SWANSON: And, Your Honor, if I may address
14 the Court.

15 So if not guilty, you may consider --

16 THE COURT: You may consider.

17 MS. SWANSON: -- voluntary manslaughter?

18 THE COURT: Yes. Which is actually what I would
19 be telling the jury --

20 MS. SWANSON: Yes, sir.

21 MR. THORNTON: Yes, sir.

22 THE COURT: -- that they may consider.

23 MS. SWANSON: If not guilty, you may consider
24 voluntary manslaughter, period. And then as to
25 voluntary manslaughter, we the jury?

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1 THE COURT: Yes.

2 MS. SWANSON: Okay. Thank you, Your Honor. I'm
3 printing that right now.

4 THE COURT: Anything else?

5 MR. THORNTON: Nothing from the State, Your Honor.
6 We're printing that. We'll have it -- well, we got a
7 printer downstairs. We will be back up here with it in
8 probably five minutes or less.

9 THE COURT: Well, I hate to keep the jury waiting.
10 We probably need to take a break, don't we?

11 MR. NEWMAN: I believe that we do, and I --

12 MR. THORNTON: It wouldn't hurt, Judge.

13 MR. NEWMAN: I think the Solicitor and I, he asked
14 and I would ask as well, as to what the Court is going
15 to charge. I think that we're at a little bit of a
16 loss as to --

17 THE COURT: Well, we'll charge murder, voluntary
18 manslaughter, possession of a weapon during the
19 commission of a violent crime, the standard -- the
20 self-defense, of course, that we talked about. I
21 haven't finished -- I haven't finished on the -- what
22 else is going to be omitted or added as you all have
23 been arguing this morning. I haven't ruled on that
24 yet. But the rest of it is just the standard stuff.

25 MR. NEWMAN: I understand that. I guess we will

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1 just await your ruling on the other stuff.

2 THE COURT: Okay.

3 MR. THORNTON: Thank you, Your Honor.

4 THE COURT: All right. Let's take five minutes.

5 (Brief recess.)

6 MR. THORNTON: Your Honor, one, hopefully, final
7 thing. Mr. Newman and I have just had a discussion. I
8 don't think we ever -- he had wanted to take a few
9 minutes to decide whether he in closing or I should
10 mention legally versus illegally parked vehicle. And I
11 think he and I have come to the agreement neither one
12 of us is going to mention it. He may at his
13 discretion, obviously, get into the fact that Mr. Oates
14 was there towing a vehicle pursuant to a contract he'd
15 done with the HOA, which I think was, you know,
16 admitted into evidence without objection.

17 THE COURT: Okay.

18 MR. THORNTON: So I'm fine with that, Your Honor.
19 But I think both of us are going to stay away from the
20 legalities of whether the vehicle was legally or
21 illegally parked. We'll just let the jury -- they have
22 some information on that, and we'll let them draw their
23 own conclusions.

24 MR. NEWMAN: That's fine with me. That's all I
25 intend to reference, that he held a contract with the

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1 HOA.

2 THE COURT: All right. As to the jury charges,
3 the Court denies the State's request for charge, the
4 specific request for charge handed up by the State. As
5 to the Defendant's specific requests for charges that
6 have been handed up to the Court, the Court denies
7 those also. And so what you'll probably want to do,
8 folks, is have copies of those filed with the clerk's
9 office and marked as exhibits.

10 MR. THORNTON: Yes, sir.

11 THE COURT: As to what the Court is going to
12 charge in addition to the things the Court has already
13 advised the parties they were going to charge, the
14 Defendant's request on a self-defense charge, defense
15 of one's premise is denied.

16 Anything else?

17 MR. THORNTON: Nothing from the State, Your Honor.

18 THE COURT: Ready for the jury?

19 MR. NEWMAN: As to the charges under State versus
20 Hendricks, are those granted? Excepted?

21 THE COURT: Those were the Defendant's specific
22 request for charges.

23 MR. NEWMAN: Yes, sir.

24 THE COURT: Those are denied.

25 MR. NEWMAN: The -- I'm assuming that I would be

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1 allowed to argue that position.

2 THE COURT: You argued -- argue what?

3 MR. NEWMAN: Argue that it matters not. If you're
4 entitled to the use of self-defense, it matters not
5 where the blows strike. You don't have to be
6 face-to-face. You don't have to be on equal terms.
7 That is the law on self-defense. You can shoot a
8 person in the back, legally, if that's the time and
9 opportunity that you make.

10 MR. THORNTON: Judge, I don't want the jury to be
11 confused, but I'm not trying to hamstring Mr. Newman
12 either. I want to leave that in your discretion. I
13 just think that when we get into these legal things and
14 we start charging on the law, it doesn't -- none of us,
15 except you, can charge on the law. But when we start
16 talking about the law, if it doesn't coincide with your
17 charge I think it creates jury confusion.

18 MR. NEWMAN: If I argue that, it's a correct
19 proposition of law, is it not?

20 THE COURT: It won't be specifically charged by
21 the Court.

22 MR. NEWMAN: But I want to argue it's a correct
23 proposition of the law, is it not?

24 THE COURT: I'm not sure I can say that. What I'm
25 saying is what I'm going to tell the jury the law is it

MOTIONS

1 may not be included -- it may not contradict, but it
2 may not confirm what you're saying. So what I'm going
3 to tell the jury is this, before you all begin arguing
4 I'll tell you that what the attorneys say to you about
5 the facts of the case is not evidence. You decide what
6 the facts of the case are, ladies and gentlemen. And
7 what the attorneys say about the law is not necessarily
8 the law. I'll tell you what the law is.

9 MR. NEWMAN: I just think what the Court would do
10 if the jury comes back with a question about shooting
11 in the back. I just think that we're hamstrung,
12 because that is the current and correct law in South
13 Carolina.

14 THE COURT: But I've already denied your request
15 to specifically charge that.

16 MR. NEWMAN: I understand, Your Honor.

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

18 THE BAILIFF: Yes, Your Honor.

19 (Jury enters the courtroom.)

20 THE COURT: Did you want to rest on the record?

21 MR. NEWMAN: I don't mind the Court telling the
22 jury that the Defense has now rested and we're now
23 ready to proceed.

24 THE COURT: Good morning, ladies and gentlemen.
25 Welcome. I need to apologize to you again. I had no

MOTIONS

1 idea we would have you sitting in there over an hour
2 waiting on us. But at any rate, we are ready to resume
3 with the trial of the case.

4 The Defendant has also rested, which means as I
5 told you yesterday, that the Defendant has elected and
6 the Defendant is entitled to not present evidence.
7 Because as I told you, the Defendant is not required to
8 present any evidence.

9 The attorneys are getting ready to make their
10 closing arguments to you where they are most likely
11 going to say -- tell you, here's what I remember, I
12 remember witness so-and-so said so-and-so and I think
13 that the facts of this are so-and-so and so-and-so.
14 What the attorneys say to you about the facts of the
15 case are not necessarily the facts of the case. You
16 remember what the facts of the case were. You decide
17 what the facts of the case are.

18 The same thing applies to the law. The attorneys
19 may very well say, Here's what I think the law is, the
20 law says, A, B, C and D. I tell you what the law is.
21 If the attorneys say something that's different than
22 what I say, you must accept the law as I give it to
23 you.

24 Having said all of that, we'll now have closing
25 arguments.

STATE'S CLOSING

1 STATE'S CLOSING

2 MR. THORNTON: Thank you, Your Honor. May it
3 please the Court and Mr. Newman.

4 Christmas Eve 2010 right here in Beaufort County,
5 Carlos Olivera and his family went over to his
6 brother's house. They were going to talk about
7 Christmas. You heard the testimony when it came from
8 the witness stand, some from relatives of the victim in
9 this case, Carlos Olivera. They talked about him
10 coming in and going to drop off presents, was going to
11 be there for a few minutes. And by the end of the
12 night Carlos Olivera was dead.

13 Do you remember when I got up in opening and it
14 was very brief, may have not been exactly what you
15 expected, we talked about the difference between
16 television and real life. And I told you that a lot of
17 this case wasn't going to be in dispute. This is not a
18 who done it. We know who did it. Preston Oates did
19 it. You know who the victim is. The victim is Carlos
20 Olivera. You know how it was done, the means with
21 which it was done. He was shot six times. And Preston
22 Oates pulled the trigger all six times.

23 You know one thing that kept coming up in this
24 trial, Mr. Newman talked about -- and, again, I know
25 the Judge has already said it, but something that most

STATE'S CLOSING

1 lawyers say in every closing, what the lawyers tell you
2 is not evidence. What we tell you about the law isn't
3 the law. You decide what the evidence is. If there's
4 something you want played back, we have a court
5 reporter. This is a court of record, and everything
6 that any witness has said has been taken down. You can
7 have that replayed. If I say something or if
8 Mr. Newman says something that is not what you remember
9 or you want that played back, we have the ability to do
10 that. Because you are the finders of fact, not us.

11 The same token, the Judge tells you what the law
12 is and you have to accept that. And you'll talk all
13 about law when we talk about that in a few minutes. If
14 I say something that disagrees with that, you have to
15 ignore what I tell you about the law, because that's
16 the Judge's job. Just like the finding of the fact is
17 your job.

18 But one of the things that Mr. Newman kept talking
19 about -- all these guns, ladies and gentlemen, have
20 been rendered safe. He talked about the victim's gun
21 and how -- I don't know if you all remember this and
22 how he asked everybody about all the bullets that were
23 inside of it. You remember that? He kept talking
24 about, you know, it's got a full clip. And it is --
25 it's fully operational, and it had a full clip in it.

STATE'S CLOSING

1 You know why? Because he didn't fire it. Carlos
2 Olivera died with six gun shot wounds and never fired a
3 shot. Not one. There were six shell casings found at
4 that scene. There's pictures of them in evidence.
5 There's six shell casings and every one of them came
6 from Preston Oates' gun, because he was the only one
7 out there shooting. And he was the only one who killed
8 anybody.

9 Evidence, ladies and gentlemen, comes from that
10 witness stand and comes from exhibits. All the
11 exhibits that you saw the Judge admit into evidence, we
12 put stickers on, and asked those same questions. And
13 I'm sure that a lot of you got bored with me asking
14 about has it been altered or changed in any way and
15 moved it into evidence; all of those are available.
16 I'm going to be showing some clips in a minute, the
17 things that the State feels are important. But you
18 have the ability to review anything you wish, any video
19 you wish, any testimony you wish.

20 Let's talk about the evidence in this case,
21 because this is my last chance to talk to you. When
22 I'm done it'll be Mr. Newman's opportunity to talk to
23 you. And then I won't be able to speak with you again.
24 The Judge will charge you on the law, and then you're
25 going to have to make your decision in this case.

STATE'S CLOSING

1 Steve Varedi got up to testify, neighbor. Watched
2 all of you throughout the entire trial to the extent
3 that I could and between dealing with witnesses,
4 everybody paid attention, and you all know what the
5 witnesses testified to. You all know what Mr. Oates
6 told you on his interviews. Steve Varedi has security
7 cameras at his house. I played them for you once. I'm
8 going to play them for you again here in a minute.
9 They captured the incident. They captured the murder
10 of Carlos Olivera at the hands of Preston Oates.

11 Is the footage great? Absolutely not, it isn't.
12 But there are certain things that the State is going to
13 ask you to look at. Just like Mr. Newman did.
14 Remember when he got up and talked about, Well, this is
15 only three seconds. It was five seconds to try to get
16 everybody to agree how long it is. That's your job.
17 You get to look at the tape and determine how long it
18 is.

19 And now that you've heard the evidence, ladies and
20 gentlemen, and you've seen this, you know that that's
21 Preston Oates pulling up in his tow truck.

22 (Video playing.)

23 MR. THORNTON: You need to watch this, ladies and
24 gentlemen, and you may need to play it again later when
25 you're in your deliberations. Please take note of the

STATE'S CLOSING

1 activity that has been occurring up there. And as you
2 watch this and as you view all of the evidence, keep in
3 mind what seems to make other evidence more or less
4 likely in considering which witnesses are telling the
5 truth. And we'll talk about credibility in just a
6 minute.

7 (Video playing.)

8 MR. THORNTON: Ladies and gentlemen, as I said,
9 what I tell you is not evidence; what Mr. Newman tells
10 you is not evidence. There's one interesting thing
11 that the State's position is that film shows. How many
12 muzzle flashes did you count? You see three. How many
13 bullets are fired? Six. That's not disputed. We know
14 there were six shells fired by Preston Oates at Carlos
15 Olivera. Where are the other three muzzle flashes? It
16 is likely, ladies and gentlemen, that they are blocked
17 by the flat bed of that tow truck as Preston Oates
18 fired into the ground at the prone body of Carlos
19 Olivera. Why is that likely? Because that's what the
20 witnesses told you.

21 How many witnesses got on that stand and said, He
22 was firing as Carlos was walking away; he was firing
23 from behind into his back? After he fell, he continued
24 to fire. Is what you just saw with only three of six
25 muzzle flashes visible with the gun up here

STATE'S CLOSING

1. (indicating)? Watch for the arm drop. Is that what
2 happened? That's your job to decide what evidence when
3 looked at as a whole makes other evidence more or less
4 likely. Because ladies and gentlemen, you can't just
5 look at one piece, you have to look at everything. You
6 have to look at all the evidence. That's why the Judge
7 always instructs you, you haven't heard all the
8 evidence yet, don't begin your deliberations. The
9 reason is because you need to look at every single
10 piece and how it relates to every other piece of
11 evidence.

12 Nelson Olivera got up and testified. Mr. Olivera
13 got up and Mr. Newman certainly attempted to point out
14 that there were inconsistencies in his testimony.
15 Fine. Put Mr. Olivera to the side. What about
16 Claudia? Claudia seemed very consistent when she
17 testified through the interpreter. Do you remember
18 what she said? What she said was if I was Carlos,
19 Preston was over here in the truck, Carlos, one, two,
20 three, four, and she started shooting from this
21 direction. Do you remember that? Do you remember when
22 we did that little demonstration? Where is the only
23 bullet not fired into the back of Carlos Olivera?
24 Right here at a downward angle right across the front
25 like it came from an elevated position, from a tow

STATE'S CLOSING

1 truck as he walked by. Does that make more sense based
2 on what was testified to, based on what the
3 pathologist, an independent expert, testified to?
4 Because that's the only bullet not in the back. There
5 are no front shots. Not one. There is one shot that
6 is not in the back that cuts across the side at a
7 downward angle. Is that plausible based on what
8 Claudia told you? The State's position is that's
9 exactly what it is.

10 Diane, what did she testify to, Carlos' widow?
11 From the back. After he fell Preston Oates walked over
12 and shot him, kept firing even after he hit the ground.
13 What about the Elizabeth Sorto, Ms. Reyes who is now
14 Sorto and Mr. Sorto, what did they tell you? Didn't
15 see the body on the ground. But they saw Preston Oates
16 firing into the ground. Again, don't base it on what
17 I'm telling you they said. If you disagree with that,
18 have it replayed.

19 How many witnesses got up there and told you
20 Preston Oates was firing into the ground? How many
21 muzzle flashes did you see? How many wounds to the
22 back did the pathologist find at MUSC? All of the
23 evidence has to be looked at.

24 DNA, we ran the DNA, you heard the DNA expert get
25 up and testify that talked about touch DNA. Mr. Newman

STATE'S CLOSING

1 made sure he got up and said, but Preston's DNA wasn't
2 on the victim's gun. Well, the victim's DNA wasn't on
3 the outside of the gun, it was on, I believe, the
4 magazine, but it was on one part and not on the other.
5 You remember the first thing that she said was, all of
6 them were excluded from the first Glock. Well, how
7 does that happen? Well, it's touch DNA. Sometimes
8 it's on there; sometimes it's not. You remember that
9 testimony.

10 Ballistics, gentleman from SLED testified all six
11 of these shell casings came from Preston Oates' gun.
12 It's not disputed. There's no question.

13 What about the pathologist, Dr. Riemer? When she
14 gave her expert opinion she talked about all of the
15 bullet wounds, six of them. Only one that's not in the
16 back comes right here (indicating). Every other one is
17 in the back. And she also talked about that short exit
18 wound. How do you get a short exit wound? There's
19 only one way, body's pressed up against a hard flat
20 surface.

21 If every witness that saw it tells you that Carlos
22 Olivera is laying on the asphalt as Preston Oates fires
23 into his body and the pathologist, completely
24 independent of the scene, didn't go to scene,
25 Mr. Newman actually asked her that. You just -- the

STATE'S CLOSING

1 history that you provided, that's just a synopsis of
2 what they tell you, you weren't there. Completely
3 independent. Finds a short exit wound that only occurs
4 when a body is pressed up against a hard surface, like
5 pavement.

6 Well, where is the mysterious bullet, Mr. Newman
7 asked the pathologist who was not at the scene. What
8 difference does it make? You know that's how the
9 bullet got there. You know Preston Oates shot him.
10 You know he was laying on the asphalt, because there's
11 no other explanation. What other hard surface would he
12 have his front pressed up against to, even by the
13 Defendant's own statement?

14 He didn't say he ran over and jumped on a car or
15 car hood or had a book placed in front of him. He was
16 laying on the asphalt when Preston Oates fired a bullet
17 in the middle of his back. Also interesting was the
18 trajectory. Do you remember when I had the mannequin
19 out here and I asked the doctor, and she said she had
20 prepared it. That's so we know it's accurate,
21 according to her report.

22 Short exit wound. A couple of things that are
23 interesting about this. Number one, where's the
24 placement from behind? It is in the middle of the
25 back. And what is the trajectory? Is this something

STATE'S CLOSING

1 that is down at an angle like this (indicating), or is
2 it something that is almost straight on? This is
3 almost a straight up and down shot. There is
4 approximately one inch of difference. What does that
5 mean? That means the gun had to be almost
6 perpendicular to the back. Now, if the person was
7 standing up that would mean you'd have to fire it level
8 with that wound because that's what trajectory is. But
9 if the person was laying down that means you have to be
10 standing over them when you fire the bullet.

11 Do you remember what Preston Oates kept saying in
12 his interview? We're going to talk about those in just
13 a second. He kept talking about couldn't figure out
14 what shot it was. Well, after two shots, I knew he was
15 disabled. I heard the gun hit the ground. I heard him
16 hit the ground. He was no threat. I took a breath.
17 Then it was, well, it wasn't two shots, it was three
18 shots. Then it wasn't three shots, it was four shots.
19 Well, maybe the fifth shot. It doesn't matter.

20 It doesn't matter if this shot was the second or
21 the sixth shot, because according to Preston Oates when
22 he went down, when Carlos went down, of course he says
23 he's on his back looking at the sky, when he went down
24 onto his belly, when he was laying in that street, even
25 Mr. Oates says he was no longer a threat. But you know

STATE'S CLOSING

1 after he was laying down there Preston fired one more
2 shot into his back. That is the only way that you get
3 a short exit wound.

4 One of the things Mr. Oates says is, you know,
5 he's so nervous because according -- now, keep in mind,
6 the only person that says that Carlos Olivera ever
7 pointed anything at Preston Oates is Preston Oates,
8 through his interview. Everybody else says there was
9 no issue. He was walking away or walking by when
10 Preston Oates murdered him. Preston Oates said, you
11 know, he took all of this great care and he was very
12 sneaky, because Carlos is in his window and he knows
13 he's got his gun because he's seen the silver tab. So
14 I've got to be, you know, I've got to get my gun out of
15 the glove box. And I put paperwork over there and I've
16 done all these things.

17 So you took the time to close your glove box? So
18 you took the gun out, you took your papers out and you
19 took time to close the glove box in between your sneaky
20 attempt to get your gun ready, because there's somebody
21 staring in your window at you? Is that more or less
22 likely based on the other evidence? Keys are in it.
23 It was running the entire time. All he had to do was
24 drive away.

25 Credibility, very important in any case,

STATE'S CLOSING

1 especially in a case like this. Credibility is a fancy
2 way of saying believable. Do you believe the witnesses
3 or do you not? It's kind of what I've been talking
4 about. Is the evidence, the physical evidence, the
5 independent folks, the expert witnesses, is their
6 testimony and the testimony of the witnesses and the
7 statements of Mr. Oates, are they made more or less
8 likely when you look at all of them together?

9 Begging, pleading and free to leave. Do you
10 remember I kept asking all the witnesses who were there
11 that, was there fighting? No, that's -- well, I heard
12 begging. I heard pleading. We were just asking that
13 the boot be -- do you remember Mr. Olivera, you know,
14 everything was fine. We thought Mr. Oates was going to
15 be reasonable. We didn't have any problem. Do you
16 remember what he said on his 9-1-1 call; he killed my
17 brother for no reason. He killed my brother for no
18 reason. When you're talking about credibility, you
19 should look at credibility of everybody including the
20 Defendant who has given several statements.

21 (Video playing.)

22 MR. THORNTON: I saw the silver plate, do you
23 remember that? Well, if that's not what happened,
24 Solicitor, then how in the world did he know that
25 there's a silver plate on that trigger guard? Well,

STATE'S CLOSING

1 interestingly enough, something, you know, Mr. Newman
2 kept asking that question, this is Mr. Oates' gun.
3 This is a Glock 2, and it's got the same silver plate
4 on it and it doesn't have a full magazine, because it
5 had about six shots fired out of it that night to
6 murder Carlos Olivera.

7 Interestingly enough, he gave several different
8 statements. He could see the rifling in the barrel.
9 It was a 357 or a 40. He could see the silver plate.
10 But do you remember when he gave his statement and
11 said, I heard it, and the question was asked.

12 (Video playing.)

13 MR. THORNTON: And that's where he says he is no
14 longer a threat. I'm going to play you one in a
15 minute, if the technology works, where Mr. Oates tells
16 that he heard, not saw, heard the gun being racked.
17 Now, was the gun racked? Clearly it was, had one in
18 the chamber. Carlos' gun had one in his chamber. His
19 brother told you he heard it and it was racked. But he
20 also said that it wasn't pointed at him, and that's
21 very, very important. That's a huge difference that
22 we're going to talk about in a minute.

23 (Video playing.)

24 MR. THORNTON: My apologies, that's the same one
25 we've already done. What he says is, and we can dig it

STATE'S CLOSING

1 back up if you want to hear this if this disagrees with
2 what your recollection is, is that he hears it.

3 (Video playing.)

4 MR. THORNTON: What he says is, I can hear the
5 racking of the slide. And he's asked, Could you tell
6 which of the two of them that you say was on the
7 running board had it. And he said, Well, it had to be
8 No. 2, because No. 1 had both of his hands on the
9 window. That is what his testimony was, through the
10 interview.

11 So in that statement he didn't even know which one
12 had the gun for sure, he was having to deduce it. But
13 here, miraculously, he can see the rifling in the
14 barrel. He sees the number plate. He goes from -- he
15 just said, Laurel Albertin asked, so in this case there
16 were two, because he just got finished saying, I
17 remember two shots. And he says, no, in this one I
18 remember three. So just a second ago he's talking
19 about shots four and five. But in every one of them he
20 says, I can play them again, he says after the second
21 shot -- after the first shot and then the second shot I
22 saw his eyes. How in God's name do you see the
23 victim's eyes if every shot you shoot is to the back?
24 He turned around and I looked in his eyes.

25 You know, one statement he says, I saw his throat

STATE'S CLOSING

1 and I saw him take a breath. But then he says it's
2 panic fire. He can't make up his mind in his own
3 statements. His own statements are inconsistent much
4 less not consistent with the facts of this case.

5 What makes sense in this case, ladies and
6 gentlemen? If Carlos Olivera was going to shoot
7 Preston Oates, why the complicated -- he had to reach
8 in, unlock the door. He had to step back, grab the
9 handle. He had to pull the door open. He was in draw.
10 Well, then how did he get shot on this side going this
11 direction (indicating)? Was he turned like this
12 (indicating) and opened the door behind him with his
13 gun, because that's what he'd have to do for that to
14 make any sense.

15 And no matter which way Preston Oates tries to
16 place him, how did he see his eyes if after this shot,
17 and that's the only way you could even have him not
18 back away from you is if this was the first shot.
19 Every other shot is to his back, including at least one
20 you know of while he's on the ground defenseless.
21 Because his gun has slid six to 8 feet from him.

22 (Video playing.)

23 MR. THORNTON: So if you can see his chest and
24 you're looking into his eyes, why are five of your six
25 shots in his back?

STATE'S CLOSING

1 (Video playing.)

2 MR. THORNTON: That's not what everybody else
3 says. That's not what the pathologist shows.

4 (Video playing.)

5 MR. THORNTON: Now, that's a real important
6 statement because that comes after he talks about -- he
7 claims Carlos Olivera racks one right at his face.
8 Remember, he's standing in the window and the lady he
9 says that's he's trying to talk to is back here and
10 Carlos is, you know, magically concealed the gun so she
11 can't see it any more or she can't see it and Preston
12 doesn't see it. What did he just tell you? Well, I
13 wasn't in fear for my life at that time. That's real
14 important because he's claiming self-defense. And if
15 you're not in fear for your life, you don't get
16 self-defense. So the only way self-defense even
17 applies is if you believe that Carlos Olivera then
18 tried to force him out of the car if it's just about
19 the racking, if that's what you believe happened, which
20 clearly it did.

21 Now, the State's position is he did not point it
22 at him. He didn't see it. His brother heard it. But
23 if he -- if that's all that occurred, by his own
24 statement he doesn't get self-defense, because he
25 wasn't in fear, he was still trying to negotiate.

STATE'S CLOSING

1 (Video playing.)

2 MR. THORNTON: The mysterious knife fight in
3 Istanbul where Preston runs 5 miles in seven minutes,
4 why is that important? It's credibility,
5 believability. This is an interview dealing with a
6 murder.

7 (Video playing.)

8 MR. THORNTON: So now we're running a kilometer
9 and beating taxi cab drivers to get them to take us to
10 the airport.

11 (Video playing.)

12 MR. THORNTON: The no comment G10 classified
13 version.

14 (Video playing.)

15 MR. THORNTON: Because asking a detective about
16 her wedding ring is perfectly reasonable under the
17 circumstances when you're talking about a murder case.

18 (Video playing.)

19 MR. THORNTON: The \$4 billion lunch.

20 (Video playing.)

21 MR. THORNTON: Credibility, ladies and gentlemen,
22 demeanor, it's important. It's important in any case.
23 It's especially important in this case. The Defendant
24 has claimed self-defense. In order for self-defense to
25 be true, you have to have four things; the Defendant is

STATE'S CLOSING

1 without fault in bringing on the difficulty; the
2 Defendant actually believes he's in imminent fear; and
3 that imminent fear has to be of a serious bodily injury
4 or death that a reasonable person in the same
5 circumstances would hold the same belief; that the
6 Defendant has no probable means of avoiding the danger.

7 Now, it is the State's burden to prove Preston
8 Oates guilty. It is also our burden, once he claims
9 self-defense, to disprove self-defense. He doesn't
10 have to prove a thing. That's the State's job. But I
11 only have to disprove one of those elements and he
12 doesn't get self-defense, he's not entitled to it if
13 that's what you find. If you find that I disproved
14 self-defense, one element, one of those four, beyond a
15 reasonable doubt, then he's not entitled to it.

16 Now, what does beyond a reasonable doubt mean? It
17 doesn't mean beyond any doubt -- and the Judge is going
18 to give you some very detailed instructions about
19 that -- it means beyond a reasonable doubt. Don't know
20 if this the exact language the Judge is going to use or
21 not, but if you are firmly convinced of the Defendant's
22 guilt, then he's guilty.

23 Now, the interesting thing about self-defense in
24 this case is if you believe beyond a reasonable doubt
25 Claudia or Dianne or both, Preston Oates is not

STATE'S CLOSING

1 entitled to self-defense. Why not? Because their
2 testimony is that Carlos Olivera was gunned down as he
3 walked away. You can't be in reasonable fear of
4 imminent danger if someone is walking away from you.
5 Even if you believe that Carlos Olivera was in draw
6 despite the fact that there's no physical way that
7 could happen the way Preston Oates said it does, if
8 that's what you believe you still have to analyze every
9 single bullet that came out of Preston Oates' gun.

10 There is no magic number, ladies and gentlemen.
11 There is no magic number of bullets. Again, the Judge
12 will correct you if I make an error on the law, but the
13 law says you're entitled to shoot more than one bullet.
14 You're entitled to shoot up until your target is
15 disabled or disarmed. Every time Preston Oates talked
16 about, even under his version, even if you believe
17 after watching that and listening to those statements,
18 even if you believe that, even by his own words, when
19 Carlos hits the ground he no longer has a gun. It
20 shoots six to 8 feet away. Then why did he have to
21 shoot him in the back while he laid on the ground?
22 Even if that one round was fired after Carlos was
23 disarmed or disabled, Mr. Oates doesn't get
24 self-defense. If that's what you find as the jury
25 beyond a reasonable doubt.

STATE'S CLOSING

1 But in order to even get there you've got to
2 believe what he's telling you, because what the other
3 witnesses said was, he fired on him as he was walking
4 away. There was no fight at the time. There was no
5 issue. He was walking by. What does this wound look
6 like? Does that look like somebody was shot as they
7 were walking this way (indicating) by the tow truck?

8 (Video playing.)

9 MR. THORNTON: Just to remind you all, this is the
10 only shot on the left and it came from behind.

11 (Video playing.)

12 MR. THORNTON: There were six. Five of them are
13 in the back; one of them is while he's laying on the
14 ground, at least.

15 You know Carlos Olivera, and I've talked with his
16 family about this, should not have racked a round in
17 his gun and had it at his side. That was not proper.
18 In fact, it's against the law, but he didn't deserve to
19 die for it. He didn't deserve to be shot in the back
20 by Preston Oates on Christmas Eve. And this case isn't
21 about Carlos Olivera. It's not about liking concealed
22 weapon permits or not. It's about Carlos Olivera as a
23 victim and whether you think anything he did justifies
24 self-defense for Preston Oates. That's what it's
25 about.

STATE'S CLOSING

1 But, ladies and gentlemen, I will leave you with
2 this. Preston Oates is not a Black Ops G10 Istanbul
3 \$4 billion lunch person. What he is, is he's a liar
4 and he's a coward and he's a murderer.

5 MR. NEWMAN: Your Honor, object and move to strike
6 the last statement. The Defendant's character is not
7 at issue, cannot be put in issue and may cause grounds
8 for a mistrial. I request those be stricken and
9 Solicitor refrain from that.

10 THE COURT: I'll deny the motion.

11 MR. THORNTON: Thank you, Your Honor.

12 And because of his cowardness in shooting Carlos
13 Olivera in the back over and over and over again in
14 front of his wife, in front of his brother, as Nelson
15 Olivera said, for no reason, the State asks that you
16 find him guilty. Thank you.

17 MR. NEWMAN: You can leave that guy there for a
18 minute.

19 MR. THORNTON: Do you want him?

20 MR. NEWMAN: Yes, he can stay there for a couple
21 of minutes, and I'll let you all --

22 MR. THORNTON: Thank you, Your Honor.

23 THE COURT: Yes, sir.

24 Mr. Newman?

25 MR. NEWMAN: Is there a Charles Slaybaum in the

STATE'S CLOSING

1 courtroom?

2 MAN IN COURT: Yes, sir.

3 MR. NEWMAN: Okay, thank you.

4 DEFENSE'S CLOSING

5 MR. NEWMAN: My brother pulled his gun out and
6 told him to leave the car. When you lack evidence,
7 what you do is you try and sell character. That is
8 what he is talking about, first shot, second shot. You
9 saw how quick those shots went. He's up there
10 answering the detectives questions. Does he say goofy
11 stuff? Sure. And that's all the State has got. If
12 they make him look like that, they think that you will
13 not like him if he tells fancy tells things like that.

14 But he told 9-1-1 dispatch, a guy just stuck a gun
15 in my face. Cool reflective thoughts, think about
16 that. He told the second set of detectives, racked the
17 gun. Doesn't matter whether he saw it, heard it or
18 both. He probably doesn't know which. But the State's
19 asking you to analyze a situation that occurred within
20 seconds when Mr. Olivera ordered Preston Oates while
21 armed with a deadly weapon out of his vehicle. The
22 State wants you to believe that there's nothing wrong
23 going on here. He just came out and they were towing
24 our car. We showed the tow truck driver a gun, and he
25 was real nice. He gave us the keys. Why didn't the

DEFENSE CLOSING

1 tow truck driver come out and boot it? No, they were
2 going to take it off. They had the muscle. They had
3 the gun. They were going to make a point.

4 And you see in the video, you see, the whole time
5 at the cab of that truck directing traffic, as the
6 State wants to tell you, is Carlos Olivera. The keys
7 are taken. You see one person walk back to the boot on
8 the mini van. And they're fiddling with it and
9 fumbling with it, and you see him look up fiddling and
10 fumbling with it. And what did Nelson Olivera say that
11 his brother told Mr. Oates? I am not leaving without
12 my car. I am not leaving without my car. Get out of
13 the car.

14 Remember now, we've got a lot of time to
15 deliberate. That means to take your time to analyze,
16 to look at evidence, process facts. This is how much
17 time Preston Oates got, get out of the car, get that
18 thing off my car.

19 Now, they want to say at some point Preston Oates,
20 he holstered his weapon. He racked his weapon, there's
21 a live round in there, you're going to put it on
22 yourself? There's no safety, ladies and gentlemen.
23 You're going to stick that back in your pants, in your
24 pocket? No, you're going to keep it out. You are the
25 man. You are the man. Get out of that car. Get that

DEFENSE CLOSING

1 boot off. Reaches up, pulls it out, turns to step,
2 where does he get hit? There were a couple of shots.
3 Mr. Oates testified -- didn't testify, but in many of
4 his statements, that he came out one, two, first one is
5 coming out his the truck. One, two with an upper
6 angle.

7 What this mannequin does not account for, at all,
8 is he's facing Mr. Oates. Takes a shot. He spins.
9 His head doesn't turn. Wouldn't you keep your eyes,
10 even if you're stepping off saying get out of the car
11 and unlock this thing, you're going to pretty much keep
12 your eyes on your prize.

13 The State makes a great noise about being shot in
14 the back, things like this. If you're acting in
15 self-defense as in times of war, you don't have the
16 opportunity to turn around so I can shoot you before
17 you shoot me.

18 And the State tells you, what was Carlos Olivera's
19 intent? I just wanted to get that boot off. What's
20 your intent? What's your intent? That boot was still
21 on that car. The mission had not been accomplished.
22 This is by far from ended, because Carlos Olivera said,
23 I'm not leaving without my car. Come on. Get out of
24 that truck. Let's get it.

25 This nonsense about being shot in the back and all

DEFENSE CLOSING

1 of that, the problem with that is you're entitled to
2 use self-defense. You're entitled to keep shooting
3 until the threat is eliminated. That's a call that the
4 person that's under dire stress gets to make. The
5 Solicitor wants you to say he got him in the back.
6 Which one of these wounds were fatal? What does the
7 lady from the autopsy tell you? She don't know. Was
8 this fired first? Was this fired first? I don't know.
9 She doesn't know because it's bam, bam, bam. First two
10 shots go off in the cab of the truck, that's why you
11 can't see them. Then the next -- the first three, the
12 next three you see very parallel lines from the same
13 position. The cab of the truck is what blocks the view
14 when he steps to the flat bed.

15 The medical examiner said the wounds, these wounds
16 except for this one (indicating), maybe this one
17 (indicating) coming from the top of the truck. They're
18 all parallel to the truck. And if this guy is on the
19 ground and Mr. Oates is shooting and if he was shooting
20 down, those muzzle flashings would be going in a
21 downward direction, not parallel. How are they all
22 parallel; he would have had to get over the back and
23 shoot him. But that doesn't work. That doesn't work
24 physically. It doesn't work with what the evidence
25 says.

DEFENSE CLOSING

1 The pictures of the shell casings are within about
2 a quarter span of the driveway. They're all right with
3 each other. Okay. And what happens -- I'm left-handed
4 so I'll do it this way -- when you shoot these guns,
5 there's an ejection port. Bullet goes in and it spits
6 some of the shells out. So to get shells in a
7 relatively same position you have to be in relatively
8 the same amount of -- excuse me, the same position. If
9 you go advance and shoot somebody, there's going to be
10 a shell casing thrown out, obviously, a lot lower, up
11 near the body. There are no shell casings there.
12 There's not a one.

13 There's another problem with that theory. And
14 that's a problem of gun shot residue, of soot.
15 Remember when the pathologist testified, I asked her
16 about what is a distance wound. She said, We don't use
17 that term anymore. We use the term undetermined, and
18 that means from about anywhere past about 4 feet.
19 Because if you saw those muzzle flashes, you don't
20 usually see those in the daytime, but at night the
21 gases that explode, you have a long muzzle flash. You
22 saw about how long those were. All along in that flash
23 are soot and powder residue that comes out, and it
24 attaches to a body or clothing or whatever surface it
25 comes in contact with.

DEFENSE CLOSING

1 So how -- and I'll give you Mr. Oates is a little
2 taller than I am, so his body's not that far off the
3 ground, how are we going to do this without -- without
4 getting any powder residue? Because if you do this,
5 and I'll make up for the height, even if you do that,
6 the body is that far off of the ground. How are you
7 going to do that? What did she tell you? I
8 specifically asked her on the examination of the
9 clothing, did you find any powder residue? And her
10 answer was, No. These are all being determined, i.e.,
11 about four, four and a half feet shots. So that
12 doesn't work.

13 She still can't tell you, even if that was the
14 shot, which one was fatal. She said there was a -- I
15 forget the name of it -- a wound that indicated that it
16 was pressed up against something, and she said that
17 may, probably. And she also said it could be caused by
18 tight clothing. The State has not introduced any
19 clothing.

20 And the State, and the State alone, has the burden
21 of proof in this case. Mr. Oates has no burden
22 whatsoever. In fact, the Judge in the trial or in
23 the -- when he charges you he's going to charge you
24 that the burden always remains on the State of South
25 Carolina to prove their case. The Defendant -- which

DEFENSE CLOSING

1 we all could be in his position one day. Who knows if
2 somebody charges us, we may. We may not be able to
3 prove that we were innocent or prove that we were
4 someplace else. We make the State do that.

5 The State had their own doubts in this case. They
6 brought Bob Bromage up to work on Mr. Oates a little
7 bit in a nonhostile interview where Bromage calls him
8 an f'ing liar and things like that. And I'm trying to
9 figure out -- and I asked Mr. Bromage, he said, Well,
10 he didn't say anything about a gun getting stuck in his
11 face in that first interview. I said, Did you listen
12 to the 9-1-1 tape? Well, I didn't listen to that. Did
13 you read Mr. Olivera's statement? No, I didn't do
14 that. He didn't talk to any witnesses. Didn't talk to
15 anybody. He came in there and made a snap decision,
16 because on that night after a skilled, experienced
17 investigator, the chief investigator in this case, who
18 the State chose not to call, had all of the facts, had
19 the evidence, had the statements. And what did he do?
20 Based on all of that and her investigation, he sent him
21 home and he went home.

22 And if you will remember from Bromage's interview,
23 one of the very first things the captain says is, Yeah,
24 man, stuff is getting tough out there. We're taking a
25 lot of heat. And then they charge him. They were

DEFENSE CLOSING

1 satisfied this was a case of self-defense. Ask
2 yourself if Mr. Oates had been a police officer towing
3 a vehicle or writing a ticket on a vehicle and an armed
4 assailant and an accomplice walked up to him and racked
5 a round and the police officer shoots him, do you think
6 he'd be charged?

7 It's like Pullicino said, he was the deputy that
8 worked here and worked on in Fairfax, Virginia and
9 trained at two police academies: If that happens, we
10 are trained we're going to have to drop him. You have
11 to. Every culture since the recording of time has
12 recognized the right of self-defense.

13 Mr. Oates did not bring on this difficulty. He
14 didn't ask to be here. This was a tough place to be.
15 Nobody wants to be here. I'm sure y'all don't want to
16 be here. I don't. Mr. Oates doesn't. The Olivera's
17 family doesn't. We don't deny that this is a tragedy.

18 Who was the architect that started drawing this
19 tragedy? And when you draw a gun on somebody -- the
20 State is asking you to believe that Mr. Oates should
21 have -- should have reacted differently. They're
22 asking you to judge this in a 20/20 hindsight. Even
23 Bromage said, Well, you could have done this, why
24 didn't he call 9-1-1. Do you know why, when that boot
25 was on the car, why didn't Mr. Olivera call 9-1-1 and

DEFENSE CLOSING

1 say, Hey, I don't think this guy should be towing me?
2 Could you send me out a deputy? He didn't do that.

3 In fact, a neighbor walked over, Ms. Rita Bryan.
4 The State didn't call her either. From across the
5 street at , Hey, guys, just call 9-1-1, they'll take
6 care of it. And they told her to mind her own
7 business. Nelson denied that. He said we told her,
8 Hey, everything is okay. They sent her home. They
9 didn't want 9-1-1. They did not want 9-1-1.

10 Because I asked Nelson about the papers in his
11 vehicle. Yes, my brother wanted to make sure there's
12 no paperwork linking him to that vehicle. Well, it was
13 in that vehicle, it was in the crime scene right within
14 the crime scene tape, in the area that Deputy Cooler
15 said, Investigator Cooler, yeah, this is our area.
16 This is where we searched things. They never checked
17 this van. But it was enough. They, the Oliveras, did
18 not want the van towed. That they didn't want the
19 police summoned. And they didn't want any paperwork.

20 That reminds me of one thing that I forgot on --
21 one other reason why the pathologist's case doesn't
22 hold water. Assuming that Mr. Olivera's body was
23 laying down, I asked her, Because that's what's called
24 a through-and-through wound, in and out, where did the
25 bullet go? She kind of looked like that is a pretty

DEFENSE CLOSING

1 good question, let me think of an answer. Because you
2 know crime scene 101, roll the body over, check. If
3 that was a through-and-through you'd see a chunk in the
4 pavement and bullet fragments. She said, Oh well,
5 maybe it -- maybe it skipped off somewhere, under all
6 of this mass of body maybe it skipped off. It just
7 flat out didn't happen. She was mistaken.

8 Different witnesses hear different things at
9 different times. Elizabeth Reyes heard from one, two,
10 three houses down and across the street, she heard the
11 Olivera's brothers pleading and arguing and screaming,
12 I think is what she said, at the tow truck driver. And
13 that they were up on the little step in his face
14 confronting him. She heard that from three houses
15 down.

16 What did Steve Varedi, the guy with the camera,
17 where was he? You see him in that video. He's the guy
18 standing right there in the driveway looking at the
19 whole thing. What did he tell you that he heard?
20 Whatever they were talking, they were talking quiet, I
21 didn't hear anything.

22 So how do you reconcile that? You've got
23 Ms. Reyes' husband, Mr. Sorto, likewise, three houses
24 down and across the street, he's in his car, and he
25 says he's backing his car down the driveway and he

DEFENSE CLOSING

1 hears the gunshots and he gets out of his car and he
2 sees someone shooting downward. You saw how long those
3 gunshots took. By the time he heard it from that
4 distance and by the time he got out of his car the
5 shooting was done.

6 The same thing with Mr. Oates. He doesn't know
7 shot 2, shot 3. He went out and eliminated the threat.
8 He's entitled to do that. That is what self-defense
9 is. It sounds gory, but if someone is bent on putting
10 you into a fatal situation, you are entitled to react.
11 If there had been no reaction in this case based on the
12 circumstances that Mr. Oates was faced in the darkness
13 of night out there -- remember how dark it was to view
14 the crime scene. I think you may have seen Mr. Oates
15 in the car and you see this huge truck, they had to
16 bring the fire truck with huge racks of lights out
17 there. And you have Ms. Reyes who thinks she can see
18 something from three houses over and across the street.

19 There is, in this case, a textbook case of
20 self-defense. These cases are unfortunate. But when a
21 criminal aggressor is presenting, brandishing a
22 firearm, ordering you and telling you, I am not leaving
23 without that car, it forces you to make a decision.

24 The Judge in this case is going to charge you on
25 the law of murder, which is an unlawful killing with

DEFENSE CLOSING

1 malice aforethought. That means you came here to do
2 what you did. Mr. Oates intended to do what he did,
3 but not with malice aforethought, with two people
4 taking criminal actions, armed with a weapon that he
5 knows is loaded because it has been racked. The Judge
6 is going to charge you that there's another crime that
7 Mr. Oates could be, doesn't have to be, guilty of. And
8 that's manslaughter. And that's acting in sudden heat
9 of passion. In other words, you could snap upon a
10 sufficient legal provocation, that somebody has
11 provoked you. And the word on that is legal
12 provocation.

13 Mr. Olivera's actions were not legal. The State
14 has even admitted once you take that firearm and rack
15 it, that's a felony in this State. You can go to
16 prison for that. That is a crime. So there is no
17 legal provocation in this case. What there is is legal
18 justification to use self-defense. Self-defense
19 applies to both of those charges, murder or
20 manslaughter. You have a right to use self-defense.
21 It doesn't matter whether it's murder or whether it's
22 manslaughter.

23 You know, the State had their reasonable doubt
24 weighted on this case. It is replete with reasonable
25 doubt. But one of the other things that the State has

DEFENSE CLOSING

1 to do -- Mr. Oates does not have to prove he acted in
2 self-defense. He does not have to prove that. The
3 State must disprove each and every element of
4 self-defense or one of the elements. They must
5 disprove it beyond a reasonable doubt. When I talk
6 about judging things in 20/20 hindsight, we can all be
7 critical because we have the luxury of time. We have
8 the luxury of not having a weapon pointed or
9 represented to us.

10 One of the things I always like, I love college
11 football. On college football Saturdays you're
12 watching the game and you see a quarterback do
13 something stupid and you go, Why didn't he throw it,
14 the receiver was wide open over here. And you're going
15 to say, Oh, when you look at the tape, the linebacker
16 is looking through the A-gap and you've got a corner
17 and a safety coming after you. One Mississippi. Two
18 Mississippi. Three Mississippi. You got to make a
19 decision. Am I going to get crushed? Do I take the
20 sack? Do I throw it out of bounds? Do I try and run?
21 And we can criticize that quarterback, Well, why didn't
22 he see that guy over here, because I had people bearing
23 down on me. That's the luxury of time. That
24 quarterback doesn't have that luxury of time. He's got
25 to act.

DEFENSE CLOSING

1 In a situation with a gun, you don't act you'll be
2 dead. If Mr. Oates hadn't acted in this case you'd
3 probably be here today. You'd be here trying
4 Mr. Olivera for murder, and the State would have told
5 you he was trying to jack him with a gun, pointing and
6 presenting a firearm. He had an accomplice with him.
7 He was trying to take property, trying to undo a boot.
8 Mr. Oates acted, was forced to act, and he's here. Not
9 the other way around.

10 As much as the State wants -- as much as the State
11 wants, facts are a stubborn thing. The fact that
12 there's this jacking going on and this gun pointing,
13 taking of the keys, violently snatching the keys and
14 the tool, and we know they did. The keys and the
15 tools, you can see in the photograph one is on the flat
16 bed of the truck and Mr. Oates never gets out of the
17 truck till we see the muzzle flashes and then it's
18 over. Carlos Olivera is guarding it. The State is
19 going to ask you, Well, why didn't he retreat? He
20 didn't retreat because he's got a guy with a gun
21 standing up on his running board guarding him the whole
22 time. He wasn't directing traffic. This wasn't 278
23 with a wreck out there. He was being guarded while
24 Nelson was over there fiddling trying to figure out
25 which key opened that disabling device.

DEFENSE CLOSING

1 John Adams, because facts are a stubborn thing,
2 the second president of the United States before this
3 country was fully formed took on a case that had a
4 public outcry to it. It was -- he represented the
5 captain that was in charge of the squad of the Boston
6 massacre where soldiers, three soldiers, shot and
7 killed several members of the Commonwealth. And it
8 was -- everybody was up in arms and it was horrible.
9 Adams' own people, he law clients said, Why are you
10 taking this case? And he said, Because I've looked at
11 the facts. Yes, it's unpopular. Popular opinion wants
12 to find one way, but you know facts are a stubborn
13 thing. They had to fire upon these citizens that were
14 agitating them and coming at them with an armed
15 resistance, and they were acquitted. Adams still lost
16 half his law practice. But he said years later that's
17 one of the greatest things he's done in defense of
18 liberty of this country is represent an unpopular act,
19 because facts are a stubborn thing.

20 In this case, the acts of aggression came from
21 this pistol. When this pistol was branded, Mr. Olivera
22 announced he didn't -- he was not leaving without his
23 car. Negotiations went on a little bit. Hey, I'll try
24 and call my boss. I'm not leaving without this car.
25 When he racked that slide, that was the declaration of

DEFENSE CLOSING

1 war. And Mr. Oates had to figure out what the rules of
2 engagement are to save his life.

3 He negotiated as long as he could. He was ordered
4 out of the safety of his car and he took rapid and
5 decisive action. And that's the only thing that saved
6 his life in this case. The State has to prove to you
7 beyond a reasonable doubt that he did not act in
8 self-defense. If you have a reasonable doubt as to
9 whether he acted in self-defense, then he's not guilty
10 of either of the charges. It's as simple as that. The
11 State deliberated. They let him go that night and the
12 next day and the next until the heat was on. Thank
13 you.

14 THE COURT: Thank you, Mr. Newman.

15 Ladies and gentlemen, I'll remind you that the
16 fact that the Defendant was indicted in this case,
17 arrested, charged are not evidence in the case and
18 cannot be considered by you as evidence in this case,
19 nor do these facts create any presumption or any
20 inference of guilt. As I told you before, these
21 documents are simply the formal written instruments
22 that contain the charges against the Defendant. It's
23 the document that brings the case into Court. The
24 Defendant has pled not guilty to these indictments, and
25 that plea puts the burden upon the State to prove the

JURY CHARGE

1 Defendant guilty.

2

3 I'll tell you that a person charged with a
4 criminal offense in this state is never required to
5 prove himself innocent. I'll tell you that this is an
6 important rule of law that a Defendant in a criminal
7 trial no matter the seriousness of the charge may be
8 will always be presumed to be innocent of the crime for
9 which the indictment was issued unless guilt has been
10 proven by evidence that satisfies you of that guilt
11 beyond a reasonable doubt.

12 The presumption of innocence does not end when you
13 begin your deliberations but it accompanies a Defendant
14 throughout the trial until you reach a verdict of guilt
15 based on evidence satisfying you of that guilt beyond a
16 reasonable doubt.

17 The presumption of innocence is like a robe of
18 righteousness placed about the shoulders of the
19 Defendant which remains with the Defendant until it has
20 been stripped from the defendant by evidence that
21 satisfies you of the Defendant's guilt beyond a
22 reasonable doubt.

23 Presumption of innocence is not mere legal theory.
24 It is not just a legal phrase. It is a substantial
25 right to which every Defendant is entitled unless you