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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BILLY RAY SMITH,

APPELLANT

APPELLATE CASE NO 2015-002543

RECORD ON APPEAL

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State of South Carolina

County of Anderson

In the Court of General Sessions

State of South Carolina,

Plaintiff,

-vs-

Billy Ray Smith,

Defendant.

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2014-GS-04-1276, 1278

2015-GS-04-1382

November 16 through 18, 2015

Transcript of Record

B E F O R E:

The Scott Sprouse, Judge

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Circuit Court Reporter

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1 **November 16, 2015**

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had commencing at
4 approximately 9:43 a.m.)

5 THE COURT: All right. First, Mr. Young, will
6 you state the first matter on the docket?

7 MS. REEVES: Billy Ray Smith.

8 THE COURT: All right.

9 Okay. Mr. Young?

10 MR. YOUNG: Your Honor, if it please the Court,
11 this is a motion on my behalf asking the Court to --
12 well, first of all, Mr. Smith is scheduled for jury
13 selection this morning. On last week, I received a
14 letter from the Office of Disciplinary Counsel as well as
15 the prosecutor with a complaint filed by Mr. Smith or at
16 least signed by Mr. Smith. And based on that complaint
17 and the requirement that I respond to that complaint, I'm
18 asking the Court to continue his jury trial and allow us
19 to appoint a conflict attorney to represent him.

20 The basis of my request, Your Honor, is basically
21 that I believe that because there's a complaint against
22 me and I have to in essence respond to it, and there have
23 not been an official finding at this point in time of
24 whether or not I have done anything wrong or not, it puts
25 us in an adversary position to each other. Based on

1 that, Your Honor, in looking out for Mr. Smith's best
2 interest, I believe it would be best to continue this
3 matter, have a conflict attorney appointed to represent
4 Mr. Smith. And, hopefully, you know, this matter will be
5 resolved in the best for all parties involved.

6 THE COURT: All right.

7 Ms. Reeves?

8 MS. REEVES: Judge, this is the second time
9 this case has been on the trial docket. It was before
10 Judge McIntosh in September. The State would just -- is
11 ready to proceed. We feel like a grievance at the
12 eleventh hour is pretty typical. And it would just
13 postpone -- continuing would just postpone and not
14 actually give the defendant what he wants, which is he
15 stated he wanted a fast and speedy trial. So we're
16 trying to do that for him. I think it just sets a bad
17 precedent if we were to relieve Mr. Young. I understand
18 why he's making his motion, but it does set a bad
19 precedent that if any defendant on the trial docket can
20 file a grievance and get his lawyer relieved, then
21 there's going to be a lot more complaints.

22 THE COURT: Okay.

23 Madam Clerk, would you put Mr. Smith under oath?

24 THE CLERK: Yes, sir.

25 (WHEREUPON, Billy Ray Smith was duly sworn.)

1 THE COURT: All right. Mr. Smith, your
2 attorney has put in the record that you have filed a
3 grievance against him. Is that correct?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Do you want Mr. Young
6 to represent you?

7 THE DEFENDANT: Yes, sir. He's done -- I made
8 a mistake, Your Honor. I can't read and stuff, so I made
9 a mistake on my lawyer. But I did feel like my
10 constitutional rights was being violated by the
11 solicitor. They had issued a warrant on me in '04 -- '08
12 -- I meant the 14 of a convicted felon in possession of a
13 weapon of violent crimes. And when I was charged with my
14 charges, it wasn't a violent crime at that time. And
15 then they was going to serve me with a bogus warrant
16 stating that after eighteen months -- they've had the
17 warrant for eighteen months, fifteen months. And they
18 were going to try to change it to something different
19 after fifteen months, Your Honor. So I think they just
20 wanted to change it where that they could try me under a
21 different state or something. I really don't understand
22 what I'm saying.

23 THE COURT: Well, is the gist of your complaint
24 that this case has been delayed?

25 THE DEFENDANT: Yes, sir, it was delayed and

1 trying to change that warrant for no reason, I mean. And
2 it was a terrible accident, you know. Me and my wife
3 both was ---

4 THE COURT: Okay. Well, we don't need to get
5 into the facts of the case.

6 THE DEFENDANT: Okay.

7 THE COURT: You'll have ample opportunity to
8 explore the facts in court.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Well, so you want Mr. Young to
11 continue to represent you?

12 THE DEFENDANT: Yes, sir. He's been ---

13 THE COURT: Okay. Okay. Well, I'm not going
14 to continue the case. But this is what we will do.
15 Judge McIntosh is qualifying the jury upstairs. When
16 that is completed, they will select the jury on Judge
17 McIntosh -- the case he's going to hear. We're going to
18 do probation revocations here. And then we will go
19 upstairs and select a jury for your case. And your case
20 will begin this afternoon. Okay?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: So Ms. Reeves you have the State
23 ready to proceed this afternoon.

24 MS. REEVES: Yes, sir.

25 THE COURT: Mr. Young, you will continue to

1 represent Mr. Smith in accordance with his wishes.

2 MR. YOUNG: Yes, sir, Your Honor.

3 THE COURT: Okay. Thank you.

4 MR. YOUNG: Thank you.

5 (WHEREUPON, court stood at recess in this case.)

6 (WHEREUPON, State's Exhibit Numbers 1 through 30
7 were marked for identification only.)

8 THE COURT: All right. Before we bring the
9 jury in, I have received a note. If counsel wants to
10 approach. One of the jurors is stating that he's not
11 medically able to continue. And if counsel wants to
12 approach and look at this note.

13 (WHEREUPON, a bench conference was held off the
14 record.)

15 THE COURT: For the record, it's Juror 109. So
16 the only thing that I can do is go ahead and make the
17 alternate a primary juror and then hope everyone can
18 finish the trial. But I know Judge McIntosh asked all
19 the jurors the standard question in qualification, if
20 anyone had any medical condition that they couldn't
21 serve. But apparently this individual is having an
22 issue. So unless -- I can bring him in here and question
23 him if counsel would like me to do that, or I can go
24 ahead and make the alternate a primary. I'll leave it up
25 to y'all.

1 MR. YOUNG: I would ask that you question him
2 as to whether or not ---

3 THE COURT: Okay. Okay.

4 MR. YOUNG: --- to what extent could he sit for
5 a long period of time and if he could do it.

6 THE COURT: Okay. Okay. Well, I'll do that.
7 If you'd go get Juror 109.

8 All right. Mr. Bailiff, since there may be some
9 medical issues with the juror, could we clear the
10 courtroom of all non-participants so this juror can talk
11 to the Court? All witnesses and non-parties. The
12 victim, the alleged victim, has a right to be here.

13 THE BAILIFF: You want to clear out ---

14 THE COURT: Clear everyone out since the
15 witness may be talking -- since the juror may be talking
16 about sensitive information.

17 (WHEREUPON, all witnesses and non-parties exited the
18 courtroom after which Juror Number 109 entered the
19 courtroom.)

20 THE COURT: Okay. Mr. Moore, you are Thomas
21 Moore, Juror 109?

22 THE JUROR: Yes, sir.

23 THE COURT: All right. I have received your
24 note where you state, "I do not think I am stable to do
25 this. I have been crying and upset since we left. I

1 have seizures." Did you indicate to Judge McIntosh when
2 you were qualified that your condition kept you from
3 serving?

4 THE JUROR: No, sir.

5 THE COURT: Why didn't you tell Judge McIntosh
6 that?

7 THE JUROR: I didn't really think about it,
8 sir.

9 THE COURT: Do you feel that you would be able
10 to sit for periods of an hour or one to two hours at a
11 time?

12 THE JUROR: I could probably sit. But as far
13 as thinking about the stuff, I don't think I could -- I
14 had a traumatic brain injury years ago. I went through
15 the windshield of a car, and I have a steel plate from
16 here to here.

17 THE COURT: Okay.

18 THE JUROR: The last ten years or so, stuff has
19 really bothered me as far as emotions. But, I mean, I'll
20 try my best.

21 THE COURT: Well, Mr. Moore, the position this
22 puts the Court in and puts the lawyers in is we had a
23 jury pool that was qualified by another judge. And your
24 name popped up on the list, and they selected the jury
25 based on the information that was provided to them. And

1 what happens when a juror, because of their condition,
2 can't serve, that's why we have an alternate. But if the
3 alternate is made a primary juror, then we proceed
4 without an alternate. And if somebody can't finish, the
5 case has to be mistried and done all over again.

6 Now, if your physical condition makes it to where
7 you don't feel like you would be able to do your duty as
8 a juror, then I'm going to have to take that into
9 account. But I'm just going to ask you point blank. Do
10 you feel like you can do your duty as a juror?

11 THE JUROR: No, sir.

12 THE COURT: Okay. All right.

13 Ms. Reeves, what's the State's position?

14 MS. REEVES: Unfortunately, I think that this
15 juror should be excused. This case actually deals with a
16 pretty traumatic brain injury as well. So as much as I
17 don't like to do that and go with the alternate before
18 we've really even gotten started ...

19 THE COURT: Well, that ...

20 Mr. Young?

21 MR. YOUNG: Your Honor, as it relates to this
22 juror, I would allow Your Honor to use your discretion as
23 to what you do as far as relieving him or not. However,
24 it would be my position on behalf of Mr. Smith that if
25 this juror is not able to be seated on the jury, then I'm

1 going to be making a motion based on the fact that we
2 have now been deprived of a jury of our selection. And
3 even though we have the alternate there, had we known
4 this information beforehand, I would have better been
5 able to utilize our strikes in order to -- because this
6 juror would not have been there in the pool had we known
7 this information at that time.

8 THE COURT: Well, I'm going to -- I've heard
9 your argument, Mr. Young. I'm going to deny that motion.
10 And I will excuse you, Mr. Moore and then just make
11 the alternate a primary and hope that we don't have any
12 issues.

13 The jury's already been sworn, so we are proceeding.

14 And Mr. Young, as you well know, if we get another
15 juror sick or something, we may not be able to finish.
16 I'm always apprehensive when we proceed without an
17 alternate. But that's -- we will proceed. I don't see
18 any other alternative at this point. Okay?

19 Mr. Moore, you are excused. Please refer to the
20 telephone number.

21 (WHEREUPON, Juror Number 109 exited the open
22 courtroom.)

23 THE COURT: Make this a Court's Exhibit.

24 (WHEREUPON, Court's Exhibit Number 1 was marked for
25 identification only.)

1 THE COURT: All right. Mr. Bailiff, if you'd
2 bring our jury in, please.

3 (WHEREUPON, the jury entered the open court at
4 approximately 2:27 p.m.)

5 PRELIMINARY CHARGE

6 BY THE COURT:

7 All right. Ladies and gentlemen, before we start
8 the trial, let me explain our roles in this trial. I am
9 the judge of the law. You must apply the law as I give
10 it to you.

11 You are the judges of the facts. As the judge of
12 the facts, you have the duty to evaluate the evidence
13 that is presented. Evidence is sworn testimony from the
14 witness stand or exhibits that have been entered. You
15 and you alone determine the credibility of witnesses and
16 how much weight to give their testimony.

17 Each attorney will have the opportunity to give an
18 opening statement to outline their positions on the
19 evidence and introduce to you the evidence that he or she
20 plans to introduce during the trial. The attorneys will
21 also have the opportunity to make closing arguments after
22 the testimony has concluded. Keep in mind that the
23 statements of the attorneys are not evidence but merely
24 tools they use to help you understand their respective
25 positions.

1 The State has the burden of proof in this trial. It
2 must prove beyond a reasonable doubt that the defendant
3 is guilty of the offenses charged. If the State fails to
4 meet that burden, then you must find the defendant not
5 guilty. On the other hand, if the State does prove its
6 cases beyond a reasonable doubt, then you must find the
7 defendant guilty. The defendant is presumed innocent and
8 has no burden of proof in this trial.

9 A reasonable doubt is defined as a doubt that would
10 cause a reasonable person to hesitate to act. I'm going
11 to discuss that with you in greater length at the
12 conclusion of the trial. But that is the preliminary
13 definition.

14 A few more things. This is not an endurance
15 contest. We will take breaks as we go along. If any
16 juror needs a break or has an issue, let your bailiff
17 know. The bailiffs are here and the clerk's staff to
18 help you.

19 Like I told you before, it's very important that
20 there be no independent investigation conducted by any
21 member of the jury. You cannot research the law or the
22 facts of the case independently.

23 You also are not allowed to take notes. The reason
24 for that is some people are good note takers and others
25 are not. I was always one of the ones that did not take

1 good notes. So if you're in my boat, I understand. You
2 miss sometimes important parts of the trial. It's called
3 the demeanor of the witnesses which can be something
4 that's important. And you might miss that if your head's
5 buried in a notepad. Also, the other rationale behind
6 that is the deliberations at the end should not be a
7 contest between those who take good notes and those who
8 do not. So that's why you're not allowed to take notes
9 during the proceedings.

10 When we take breaks or in recess, the same
11 instruction that I gave you before lunch is in effect.
12 You cannot discuss the case with anyone. No third
13 parties. And you can't deliberate or talk about the case
14 amongst yourselves. You can talk about anything you want
15 to talk about in the jury room except this case until I
16 tell you to be able to do so at the end.

17 If you encounter one of these attorneys outside in
18 the hallway, they're not going to speak to you. And it's
19 not because they're trying to be rude. It's because they
20 know they can't talk to you.

21 The other thing I want to tell you before we get
22 started is that during the course of a trial, there are
23 objections. Attorneys sometimes make objections to a
24 particular piece of evidence or particular testimony.
25 The fact that I rule one way or the other should not be

1 interpreted to mean that I favor one side or the other.
2 It is my duty as the judge to ensure that each party
3 receives a fair trial.

4 With that said -- and you're going to experience
5 this in just a moment -- there are times when matters of
6 law have to be taken up outside of your presence. That's
7 not to hide things from you. It's just to ensure that
8 each party gets a fair trial.

9 So at this point, I'm going to send you to the jury
10 room. We do have some matters of law to take up outside
11 of your presence. Your first order of business is to
12 elect a foreperson. This will be the presiding juror
13 over your deliberations at the end. It will also be the
14 juror that communicates with the Court. Any
15 communication with the Court should be by written notes.

16 Again, you may not deliberate until I tell you to do
17 so at the end.

18 When you have elected a foreperson, knock on the
19 door and let the bailiff know. And whichever juror is
20 elected as foreperson will sit on the end when you come
21 back.

22 So Mr. Bailiff, if you'll take our jury to the jury
23 room.

24 (WHEREUPON, the jury exited the open court at
25 approximately 2:32 p.m.)

1 THE COURT: Are there any exceptions to my
2 preliminary instructions from the State?

3 MS. REEVES: No, sir.

4 THE COURT: Any exceptions to my preliminary
5 instructions from the Defense?

6 MR. YOUNG: None from the Defense, Your Honor.

7 THE COURT: Okay. All right.

8 It's my understanding, Ms. Reeves, that we have a
9 Jackson v. Denno hearing?

10 MS. REEVES: Yes, sir.

11 THE COURT: All right. You may proceed.

12 MS. MOORE: Officer Tina Eichelberger.

13 **TINA EICHELBERGER,**

14 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MS. MOORE:

17 Q. Officer Eichelberger, by who are you employed?

18 A. Williamston Police Department.

19 Q. And how long have you been at W.P.D.?

20 A. I've been with Williamston P.D. for about two years.

21 Q. Okay. And what's your current position?

22 A. Patrolman.

23 Q. Was that your position in April of 2014?

24 A. Yes, ma'am.

25 Q. Okay. Prior to working at Williamston, where did

1 you work?

2 A. Greenville County Sheriff's Office.

3 Q. How long were you there?

4 A. About seventeen and a half years. Seventeen years.
5 Somewhere in there.

6 Q. Okay. What are your duties and responsibilities as
7 a road patrol officer?

8 A. We respond to calls for service, patrol, be seen,
9 take calls, et cetera.

10 Q. Okay. On April 22nd, 2014, did you have occasion to
11 go to South Hamilton Street?

12 A. Yes, ma'am.

13 Q. For what reason?

14 A. In reference to a gunshot victim.

15 Q. Okay. What, if anything, happened when you arrived
16 there?

17 A. When I arrived there, it was ten p.m. approximately.

18 And upon arrival at the scene, we noticed a white male
19 standing in the middle of the roadway flagging us down.

20 And it was later identified -- he was later identified as

21 Paul, Billy Paul Smith. He said that his mother had been

22 shot. Went inside of the house and immediately noticed a

23 white male and a white female on the sofa the opposite

24 side of the entrance. The male was holding the female.

25 And he said, "My wife has been shot. My wife has been

1 shot," repeatedly.

2 Q. Okay. And aside from yourself, Officer Drennon,
3 Billy Paul Smith, and the man and woman on the couch, who
4 else was present?

5 A. There was also another subject on the scene. He was
6 standing somewhat in the yard. And his identity is --
7 hang on just one second. Let me find it here. His name
8 -- he was identified as David G. Hogg.

9 Q. Okay. When you arrived, was it immediately apparent
10 to you who shot the victim?

11 A. It was not. It was not.

12 Q. Okay. And you said -- I'm sorry. You said the
13 victim was located where?

14 A. She was on the sofa with her husband holding her.
15 And the sofa's the opposite side of the entrance.

16 Q. And her husband is?

17 A. His name -- he was later identified as Billy Ray
18 Smith.

19 Q. Okay. Thank you. And after you arrived in the
20 house, what did you do next?

21 A. When I arrived in the house, I took a protective
22 sweep just of the immediate area just to make sure there
23 was no one else inside of the residence. And I didn't go
24 into the last room because of a big dog that needed to be
25 secured. But I did ask Mr. Billy Ray Smith what

1 happened. And he said someone shot his wife through the
2 front door.

3 Q. Nothing further. Please answer any questions Mr.
4 Young may have for you.

5 MR. YOUNG: No questions, Your Honor.

6 THE COURT: Okay..

7 MS. MOORE: Judge, I'm sorry. Can Ms.
8 Eichelberger be excused?

9 THE COURT: Officer, you can step down.

10 MS. REEVES: Next the State calls Lieutenant
11 Ken Ebernickle.

12 **KENNETH EBERNICKLE,**

13 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

14 **DIRECT EXAMINATION**

15 BY MS. REEVES:

16 Q. Lieutenant Ebernickle, where do you work currently?

17 A. I currently work for Greenville Hospital System Law
18 Enforcement.

19 Q. How long have you been there?

20 A. I've been there this month -- one year at the end of
21 this month.

22 Q. Where were you before?

23 A. Prior to working for G.H.S., I worked for the
24 Williamston Police Department.

25 Q. And what was your position, your last position, with

1 Williamston Police Department.

2 A. My last position there was the lieutenant over the
3 patrol division. I also assisted with administrative
4 duties and investigating.

5 Q. How many total years of experience do you have in
6 law enforcement?

7 A. I have approximately twenty-four years with the City
8 of Anderson and a year and four months with Williamston
9 and one year with G.H.S.

10 Q. While employed at the Williamston Police Department,
11 did you respond to a home on South Hamilton Street on
12 April 22nd of 2014?

13 A. Yes, ma'am. I had arrived on scene at approximately
14 eleven twenty p.m.

15 Q. Okay. And did you speak with anyone at that time
16 when you arrived on the scene?

17 A. I did. I spoke with the officers on the scene,
18 which was Tina Eichelberger. I believe Kevin Marsee --
19 I'm not sure if Kevin was on the scene there. There were
20 several officers there. And I spoke with the defendant,
21 Mr. Smith. And his son was there, which is Billy Paul.
22 And then David Hogg was there.

23 Q. What did you see at the scene once you got there?

24 A. Upon my arrival, I did not enter the crime scene.
25 The victim had already been transported to the emergency

1 room upon my arrival. Officers were standing outside
2 with the three males. And they were performing a G.S.R.
3 kit on the defendant at that time.

4 Q. At the time that you arrived on scene, did you come
5 to understand who had been present when the incident had
6 occurred, when the shooting had occurred?

7 A. I did. Prior -- when I received the phone call to
8 respond from Officer Eichelberger, she had advised me
9 that we had a female who was shot in the head and that
10 her husband was present, had left the scene, returned
11 back to the scene with his son and another gentleman,
12 David Hogg.

13 Q. Okay. And what, if anything, did you do when you
14 were leaving the scene?

15 A. When I was there at the scene, after they had
16 performed the G.H.H. kit on the defendant ---

17 Q. You just said G.H.S. Did you mean G.S.R.?

18 A. I'm sorry. G.S.R. kit. We had decided that I would
19 take the defendant down to the police department for an
20 interview and try to determine what had actually taken
21 place at the home. And I asked the defendant if he would
22 mind riding in with me to the police department, and he
23 agreed.

24 Q. Was he under arrest at that time?

25 A. He was not under arrest.

1 Q. I'm going to show you what's been marked as State's
2 Exhibit Number 1. Can you please tell us what this is?

3 A. This is an advice of rights, a waiver of rights,
4 that I had read to Mr. Smith.

5 Q. Is that the same condition as when you and he wrote
6 on it and signed it?

7 A. It is.

8 Q. Has it been changed or altered in any way?

9 A. No, ma'am.

10 Q. Okay. And what is the date and time when you were
11 speaking with the defendant?

12 A. The date is April 22, 2014, at eleven fifty-eight
13 p.m.

14 Q. Okay. And was Mr. Smith in handcuffs at that time?

15 A. He was not.

16 Q. Did you go over the form with the defendant?

17 A. I did.

18 Q. How did you do that?

19 A. I always read the form to him and then ask him to
20 review the form himself.

21 Q. And who filled in the blanks on the form?

22 A. I did.

23 Q. And whose signature is on the form?

24 A. It's my signature and also the defendant, Billy Ray
25 Smith.

1 Q. And when did you finish reviewing the form with him?

2 A. That was at approximately twelve a.m.

3 Q. And so the date had changed at that point; is that
4 correct?

5 A. It had. It changed to the 23rd.

6 MS. REEVES: Judge, do you care for him to read
7 that, or he can skip that?

8 THE COURT: Put it in the record. Go ahead and
9 put anything in the record.

10 Q. Can you read that for us, Lieutenant Ebernickle,
11 please?

12 A. I can. The form states, "Before we ask you any
13 questions, you must understand your rights. You have the
14 right to remain silent. Anything you say can be used
15 against you in a court. You have the right to talk to a
16 lawyer for advice before we ask you any questions and to
17 have a lawyer with you during questioning. If you cannot
18 afford a lawyer, one will be appointed for you before any
19 questioning if you wish. If you decide to answer
20 questions now without a lawyer present, you will still
21 have the right to stop answering at any time. You also
22 have the right to stop answering at any time until you
23 talk to a lawyer."

24 And then the -- what I also will read to him and
25 then have him to also read, and that's his waiver. And

1 it's, "I, Billy Ray Smith, the undersigned, have read
2 this statement of my rights and I understand what my
3 rights are. I am willing to make a statement and answer
4 questions. I do not want a lawyer at this time. I
5 understand and know what I am doing. No promises or
6 threats have been made to me. No pressure or coercion of
7 any kind has been used against me." And then I'll ask
8 him to sign, and then I'll witness it as well.

9 Q. And can the defendant read and write?

10 A. He can read, yes.

11 Q. And how did you know that? Did you ask him?

12 A. What I do -- of course, I asked Mr. Smith if he
13 could read the form, read and write, and he said that he
14 could. And I asked him to read the first line for me.
15 And he read the first line of the waiver.

16 Q. Okay. Describe the room where you were speaking
17 with the defendant?

18 A. I referred to it as the radio room. It's where we
19 kept the radios for the patrol room. It's also used as
20 an after-hours room for the judge to come in and use it
21 when needed. It's located inside the Williamston Police
22 Department.

23 Q. Are there chairs and desks?

24 A. There's chairs, there's tables, file cabinets. It
25 looks like a typical crowded office.

1 Q. Was the defendant denied use of the restroom or
2 denied anything to drink when you spoke with him?

3 A. He was not.

4 Q. Was he seated and as comfortable as he could be
5 under the circumstances?

6 A. He was. We brought him in -- I brought him in and
7 asked him to have a seat. And that's when I began
8 talking with him.

9 Q. Okay. In your opinion, did it appear that the
10 defendant was drunk or under the influence of anything?

11 A. Mr. Smith appeared to be highly intoxicated. He had
12 also -- I asked him had he been drinking, and he said he
13 had earlier. Said he had had a pint and a couple of
14 beers, I believe. And he also had three prescription
15 bottles in his pocket. And I asked him had he taken
16 those, and he said he had taken some of that medicine
17 earlier in the day. I believe those were Oxycontin,
18 Oxycodone, and I want to say -- it's hard to pronounce.

19 Q. But they were prescriptions for this defendant?

20 A. They were. They were prescribed to him, yes.

21 Q. Did he indicate that he understood his rights?

22 A. He did. And also, in regards to the waiver where it
23 says, "No pressure or no coercion has been used against
24 you," I also go back and explain that and let him know,
25 you know, what that means is that we're not forcing you

1 to give us a statement. We're not beating you. We're
2 not putting you under a bright light. I want you to
3 understand this is your own free will. And he said he
4 understood.

5 Q. And, again, so even though he told you that he had
6 consumed alcohol, he seemed to understand his rights to
7 you?

8 A. He said that he did, yes, ma'am.

9 Q. And how much time approximately had passed then
10 between the shooting itself and then when you were
11 talking to him?

12 A. My understanding the shooting was right around about
13 maybe nine thirty. Around that time. And it was
14 midnight when we finished up the waiver form, so about
15 three hours.

16 Q. And, again, I think you said in the waiver. But
17 were any threats or promises made in order for the
18 defendant to talk to you or sign this form?

19 A. No.

20 Q. Was he intimidated in any way?

21 A. No, ma'am.

22 Q. And was his waiver of rights done voluntary?

23 A. Yes.

24 Q. Did, at that point, the defendant talk to you?

25 A. He did.

1 Q. As a result of your questions to him?

2 A. He did. I had asked him what had happened.

3 Q. And again, this was not a written statement;
4 correct?

5 A. Correct.

6 Q. Okay. So what did he tell you happened?

7 A. He started -- he advised that he heard a truck
8 coming down the road. He said it was a loud, distinctive
9 noise, a diesel truck, and that the front door was open
10 on the house. And that he -- his words was, "Pow." He
11 said he heard, "Pow." And he was very dramatic in
12 describing the pow and what had happened, which I think
13 some of that came from the intoxication probably. But he
14 advised that it was a black diesel, a Dodge, I believe,
15 that had went by the house, fired a shot, kept going.

16 And I asked him did he know who was in that truck.
17 And he at first declined to tell me. He stated that it
18 was a bad guy and that this guy would kill him if he
19 told, and had also threatened to kill his family if he,
20 you know, told on this guy who he was. And I explained
21 to him that the only way that we was going to be able to
22 come to a conclusion to make an arrest on this case, to
23 find out who had shot his wife, and that would be for him
24 to tell us who this person was. And he finally had
25 agreed to tell me.

1 He said that it was a Michael Green. I asked him
2 how he knew Michael Green. He said that when he gets his
3 prescription every month on the Oxycodone, Oxycontin,
4 that he gives Michael Green a hundred pills a month. And
5 that's some type of agreement that he had with Michael
6 Green, that he would get those pills.

7 And he said earlier that day he had been across the
8 street helping work on a boat at a gentleman's house,
9 Chris Guthrie. And said when he seen Michael Green in
10 his yard and had come back across the street, asked him
11 what he wanted, Michael Green said he wanted fifty more
12 -- wanted him to sell him fifty more pills. And he said
13 he couldn't do it, and that's what he got upset about.
14 And at the time, he was -- the defendant was trying to
15 explain that he felt that's why his wife was shot, was
16 because Michael Green was angry about the pills.

17 Q. Did he say anything? Had he seen Michael Green
18 again? I think you just said he had seen Michael Green
19 that day in his yard?

20 A. Said he had seen him earlier in his yard.

21 Q. But how did Michael Green seem after -- did he sell
22 him anything at that point, the defendant?

23 A. He said that he didn't and that the guy left. He
24 said Michael Green left.

25 Q. And what, if anything, did the defendant say about

1 his wife being shot?

2 A. He said that he was sitting there on the couch, his
3 wife was sitting on the couch, I believe, and that the
4 door was standing open. And that's -- he heard the truck
5 come down the road. And he heard the pow from the gun,
6 and the truck kept going.

7 Q. Did he know that his wife had been shot?

8 A. Yes.

9 Q. And how did he assess her condition? Did he tell
10 you?

11 A. I think in the beginning he had originally thought
12 she was okay is what he'd told me. And so he'd left to
13 go get his son. And then he returned back with his son
14 and David Hogg. And I believe his son is the one who
15 called 9-1-1 to report the shooting.

16 Q. Did he say that he had called 9-1-1 at some point?

17 A. I don't recall him saying that.

18 Q. What did you do next after speaking with Mr. Smith?

19 A. After talking with Captain Marsee, we had decided
20 that we would talk with his son in regards to what took
21 place.

22 Q. At some point after speaking with Billy Paul, did
23 you go back and speak again with Mr. Smith?

24 A. We did.

25 Q. Was the defendant under arrest at that time?

1 A. He was not.

2 Q. And was he reminded of his rights at that time?

3 A. He was.

4 Q. Was he threatened or coerced at this point to speak
5 with you again?

6 A. No, he was not.

7 Q. And at this point, did he make more statements to
8 you?

9 A. He did. We had told him that we had talked with his
10 son and that ---

11 Q. I'm going to limit you a little bit. I'm talking
12 about what you had told him. Okay? Just talk about what
13 he told you in response to your questions.

14 A. Okay. When we went back into the room to talk with
15 Mr. Smith, I want to say that maybe Captain Marsee was
16 talking with him. I had got delayed and then come back
17 in. But the defendant was saying -- we'd asked him again
18 to let's talk about what happened, that we'd talked with
19 his son. And then his story changed. And he said he
20 wanted to tell the truth.

21 It was an accidental shooting, that they were at
22 home. He said it was him, his son, David Hogg, Chris
23 Guthrie, and his wife was in the living room. And they
24 were passing around a gun and looking at a gun. Passing
25 it around. And it landed in his -- when it stopped in

1 his son's hand, that's when the gun went off. And it
2 shot his wife, and that it was all an accident.

3 Q. Did he say who took the gun away from the house?

4 A. I believe he told me his son and David had taken the
5 gun and took it down to his own house down in Pelzer.

6 Q. And anything further? Did he tell you he knew where
7 the gun was or anything like that?

8 A. As the interview went on, he did state that his son
9 had taken the gun home, hidden it in the bushes out by
10 the trailer and that he felt like he could show us where
11 that was. Based on the fact that the gun -- what we're
12 now being told is that the gun is laying out in the open.
13 You know, for fear that someone might find that gun, we
14 asked him to go down there with us, to take us and show
15 us where the gun was.

16 Q. Okay. And where was that address?

17 A. I believe -- it's Holiday Street in Pelzer, I
18 believe it is. It's a single-wide trailer located there
19 on the lot. And myself and Kevin Marsee, Captain Marsee,
20 transported the defendant down to the trailer, and he
21 began a search for the gun. We started searching for the
22 gun. We called for additional units to come down there,
23 you know, to help us search. And we wasn't able to
24 locate the gun outside.

25 Q. What, if anything, did the defendant say to you

1 about that?

2 A. He said that the gun must be inside. He wanted to
3 go inside to retrieve the gun. We stopped him, advised
4 him we was not going into the trailer to look for the
5 gun. And so he -- we allowed him to call his son. He
6 said if he called his son, his son would tell him where
7 the gun was located.

8 Q. And did he make that phone call?

9 A. He did make that phone call. He called his son. At
10 the time, I only heard one side of the conversation. And
11 he was telling his son -- he said, "Son, I've come clean.
12 I told them that it was an accident, that I shot her ..."
13 That, you know, "... and that you hid the gun. We need
14 to know where the gun is at." And I think he had claimed
15 that the son said the gun was in the trailer.

16 MS. REEVES: Just one second.

17 Nothing further at this time.

18 THE WITNESS: Thank you, ma'am.

19 THE COURT: Okay.

20 Mr. Young?

21 CROSS-EXAMINATION

22 BY MR. YOUNG:

23 Q. You didn't arrive until eleven twenty; correct?

24 A. Yes, sir.

25 Q. That was about two hours after the alleged shooting

1 took place?

2 A. Yes, sir.

3 Q. And when you arrived, I believe you characterized
4 that Mr. Smith was highly intoxicated?

5 A. He appeared to be, yes, sir.

6 Q. Okay. Could you smell the strong odor of alcohol?

7 A. Yes, sir.

8 Q. At that time when you transported him to the police
9 department, was he placed in handcuffs?

10 A. He was not.

11 Q. Was he seated in the front or the back of your car?

12 A. In the back of the car.

13 Q. Okay. And when you arrived at the police
14 department, was he escorted in?

15 A. Yes, sir. I obviously had to open the door for him
16 and escorted him into what I call the radio room.

17 Q. And did he walk in on his own free will, or did you
18 have a hand on him as he went into the room?

19 A. I don't really recall. If I did have a hand on him,
20 it would have been to help him walk. But it wasn't -- it
21 wouldn't have been a forceful kind of thing because he
22 come voluntarily with us to talk with us.

23 Q. Was he -- at some point in time, was he somewhat
24 unsteady on his feet?

25 A. Oh, yes, sir.

1 Q. Did you inquire of Mr. Smith how far did he go in
2 school and how far was his education?

3 A. I don't recall asking him how much education that he
4 had.

5 Q. Now, you read from what is marked State's Exhibit 1.
6 On that form did you have Mr. Smith to read any part of
7 that aloud to you?

8 A. What I do is have him -- I will have him read the
9 first line out to me, yes, sir.

10 Q. Okay. And did he read that on his own?

11 A. He did.

12 Q. And did he have his reading glasses with him?

13 A. I don't recall.

14 Q. And did he have any trouble reading the line that
15 you asked him to read?

16 A. No, sir, he didn't appear to be.

17 Q. Okay. Well, everything on that form that is labeled
18 State's Exhibit 1, with the exception of Mr. Smith's
19 signature, you wrote everything else on that form?

20 A. I did, yes, sir.

21 Q. And the signature that is reflected as being Mr.
22 Smith's signature is not quite legible, is it?

23 A. No, sir.

24 Q. In fact, it's not even on the line; correct?

25 A. Some of it is. It's half, half and half.

1 Q. When you arrived at the scene, was Mr. Smith freely
2 walking about the property, or was he being held in a
3 section by an officer?

4 A. The best I can recall -- this has been so long ago.
5 When I arrived on scene, the best I can recall they were
6 standing there at the end of the driveway out in the
7 roadway area around the police cars when I got there.

8 Q. And was an officer there with him?

9 A. Yes, they were. There were several officers there
10 as best I recall.

11 Q. Approximately how many officers were there around
12 him?

13 A. Around him?

14 Q. Yes, sir.

15 A. I don't know. I mean, but there were probably -- I
16 know Tina and Drennon was on the scene. I believe -- I'm
17 not sure. Like I said earlier, I wasn't sure if Captain
18 Marsee was there yet or if he -- I think he had actually
19 went back into the police department. George Cremer was
20 there. There was Kevin Glenn, I believe, was there.

21 Q. So around where Mr. Smith was standing next to this
22 police car, there were probably about three or four
23 officers standing with him?

24 A. No, sir, because there were numerous people there.
25 They were -- the son and David Hogg was there as well.

1 So they wasn't, you know, around the defendant. Just
2 around, you know. People were scattered out around. And
3 when you first, you know, arrive on a scene, you're just
4 trying to make a determine as to what's going to be next.

5 Q. And at any point in time during the time -- once you
6 got back to the police department ...

7 A. Uh-huh (affirmative).

8 Q. ... was there any point in time that you felt that
9 Mr. Smith was too intoxicated to speak to you?

10 A. He was -- his demeanor to me, he was very
11 intoxicated. And I didn't know if it was the alcohol or
12 the pills. He had related to me that he had taken -- had
13 had both that day. And I didn't have him at that time to
14 -- we didn't do a statement at that time because I wanted
15 to try to clarify and get to the bottom of what did
16 happen at this house. Too intoxicated to talk with me?
17 No. He was talking.

18 Q. When you say that he didn't do a statement at that
19 time, you mean you didn't put down in writing what he had
20 shared with you?

21 A. Not at first, we did not.

22 Q. But you decided to question him and talk to him when
23 you got back to the police department?

24 A. I did, yes, sir.

25 Q. And during the second time that he was interviewed,

1 I believe you testified that you spoke with the son and
2 then you came back to Mr. Smith to interview him a second
3 time; correct?

4 A. Yes, sir.

5 Q. Did you read him his rights again at that point in
6 time?

7 A. No, sir, we did not read them again but did advise
8 him that he was still under Miranda.

9 Q. Okay. Well, when you left the police department at
10 some point in time to go to the Hamilton Street address,
11 was Mr. Smith put in any handcuffs at that time?

12 A. No, sir. I'm pretty sure, pretty sure not.

13 Q. So when you got out to the Hamilton Street address,
14 Mr. Smith was moving about freely?

15 A. Oh, yes, sir. Yes. We just kind of let him move
16 around and watched him, you know, search for this gun.
17 He'd go to an area, and we'd move to that area because we
18 didn't want him picking the gun up. But, you know, we
19 tried to help him search for it.

20 Q. Thank you.

21 MR. YOUNG: That's all the questions I have.

22 THE WITNESS: Yes, sir.

23 THE COURT: Any redirect, Ms. Reeves?

24 MS. REEVES: No, sir.

25 THE COURT: Thank you, Officer. You can step

1 down.

2 MS. REEVES: Next the State calls Lieutenant
3 Jack Sanders.

4 JACK BROWN SANDERS, JR.

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MS. REEVES:

8 Q. Lieutenant Sanders, where do you work?

9 A. Williamston P.D.

10 Q. How long have you been there?

11 A. A little over two years now.

12 Q. And what is your current position?

13 A. Lieutenant over patrol.

14 Q. And how much law enforcement experience do you have?

15 A. Thirty-six years now.

16 Q. Were you employed as a lieutenant over patrol back
17 in April of 2014?

18 A. No, ma'am. I was a sergeant then.

19 Q. A sergeant over patrol?

20 A. Yes, ma'am.

21 Q. And back in April, April 22nd of 2014, did you have
22 an occasion to talk to this defendant at that point?

23 A. Yes.

24 Q. Anyone else present with you?

25 A. Captain Marsee.

1 Q. And was the defendant advised of his rights at that
2 time when you spoke with him?

3 A. Yes, he was.

4 Q. Did you witness this?

5 A. Yes, I did.

6 Q. Did you use a form to go over his rights with him?

7 A. Captain Marsee did.

8 Q. And describe the room, if you would, where you were.

9 A. We were in what was then the sergeant's office,
10 which is probably about ten-by-twelve with two chairs and
11 a desk and then another chair and a computer.

12 Q. I am going to hand you what's been marked as State's
13 Exhibit Number 2 and Number 3. And I apologize. I
14 actually got the date wrong. What was the date on the
15 form that you were speaking with the defendant?

16 A. April the 23rd.

17 Q. Of 2014?

18 A. Yes, ma'am.

19 Q. And what time was that?

20 A. This was at twenty-one forty-five hours.

21 Q. And, again, you said you were sitting with him in
22 the sergeant's room; is that correct?

23 A. Yes, ma'am.

24 Q. Are there chairs and desks in that room?

25 A. Yes, ma'am. There's two chairs in front of the desk

- 1 and one chair behind the desk.
- 2 Q. Was the defendant in custody at that point?
- 3 A. Yes, ma'am.
- 4 Q. And was he handcuffed?
- 5 A. Not when he came into that office, no.
- 6 Q. He had been at some point?
- 7 A. Yes, ma'am, when he was transported from the County.
- 8 Q. And then when he's sitting in the room with you, he
- 9 had been -- the handcuffs had been removed?
- 10 A. Yes, ma'am.
- 11 Q. And was he seated?
- 12 A. Yes, ma'am.
- 13 Q. Was he denied any comforts, use of the restroom,
- 14 anything to drink, at that point?
- 15 A. No, ma'am.
- 16 Q. And who read those rights to him?
- 17 A. Captain Marsee.
- 18 Q. Okay. And as far as you could tell in your opinion
- 19 at that point, did he seem to understand those rights?
- 20 A. Yes, ma'am, he did.
- 21 Q. Was he intoxicated or under the influence of any
- 22 substances at that point?
- 23 A. He wasn't intoxicated. Now, as to whether or not he
- 24 was taking his prescription medicine, I don't know.
- 25 Q. Did he seem to understand what was going on?

1 A. Oh, yes, ma'am.

2 Q. And how did he indicate on the form, if in any way,
3 that he understood?

4 A. He signed the form.

5 Q. Were there any threats or promises made in order to
6 get him to sign the form and give a statement?

7 A. No, ma'am.

8 Q. Was he intimidated?

9 A. No, ma'am.

10 Q. Did he waive his rights voluntarily?

11 A. Yes, ma'am.

12 Q. And did the defendant give a written statement at
13 that point?

14 A. Yes, he did. Captain Marsee wrote it for him.

15 Q. Okay. And to your knowledge, did Captain Marsee
16 write it accurately as the defendant told it to him?

17 A. Yes, he did.

18 Q. Was it read back to him or handed to him to read?

19 A. Yes, it was.

20 Q. And did the -- so both? It was read back to him ---

21 A. Read back.

22 Q. --- and it was handed to him?

23 A. Yes, ma'am. Both.

24 Q. Okay. And did the defendant indicate that that was
25 his statement?

- 1 A. Yes, he did.
- 2 Q. And how so? How did he do that?
- 3 A. By signing the statement.
- 4 Q. Did you sign the statement as well?
- 5 A. Yes, ma'am, I did.
- 6 Q. And did you sign one page, the last page or every
- 7 page?
- 8 A. Every page.
- 9 Q. And how about Captain Marsee and the defendant?
- 10 A. They all -- we all signed all three pages.
- 11 Q. Were you a witness to the entire process of the
- 12 statement being given?
- 13 A. Yes, ma'am.
- 14 Q. And were you out of the defendant's or Captain
- 15 Marsee's presence at any point?
- 16 A. No, ma'am.
- 17 MS. REEVES: I have nothing further.
- 18 THE COURT: All right.
- 19 Mr. Young?
- 20 MR. YOUNG: No questions, Your Honor.
- 21 THE COURT: Okay. Thank you, Officer. You can
- 22 step down.
- 23 MS. REEVES: The State calls Captain Kevin
- 24 Marsee.
- 25 KEVIN G. MARSEE,

1 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MS. REEVES:

4 Q. Captain Marsee, where do you currently work?

5 A. I am currently employed with the Williamston Police
6 Department.

7 Q. And how long have you been there?

8 A. Almost three years now. It will be three years in
9 January.

10 Q. And what is your position?

11 A. I am currently the captain.

12 Q. What is your total years of law enforcement
13 experience?

14 A. I have thirty-two years in the system, almost
15 twenty-seven years with the City of Anderson as a captain
16 and did a year and a half with law enforcement support
17 division in Greenville.

18 Q. Were you employed with Williamston back on April
19 22nd and 23rd of 2014?

20 A. I was.

21 Q. And at that point, did you go to the -- did you
22 respond to the scene at South Hamilton Street?

23 A. Yes. I was at home and received a telephone call
24 that there had been a shooting on Hamilton Street. So I
25 responded and arrived somewhere around eleven o'clock.

1 Q. At some point, did you go back to Williamston Police
2 Department?

3 A. Yes. When I first got there, George Cremer and
4 Kevin Glenn, who are forensic officers, were on the
5 scene. I was advised there had been shooting, there were
6 some inconsistencies and that we needed to obtain a
7 search warrant. I obtained a physical description of the
8 premises, a brief synopsis about what happened, and I
9 went back to the police department to obtain a search
10 warrant.

11 Q. After getting the search warrant, what did you do?
12 Where was the search warrant for? What was the address?

13 A. South Hamilton Street.

14 Q. And that is in Williamston?

15 A. That's correct.

16 Q. And that's in Anderson County?

17 A. Correct.

18 Q. After obtaining the search warrant, at some point
19 did you return to the Williamston Police Department and
20 speak with Lieutenant Ebernickle?

21 A. Yes. I actually had spoken initially with Ken
22 Ebernickle on the scene just briefly. Ken said he was
23 going to handle the G.S.R.s. And he was also going to
24 speak with any witnesses, and I would take care of
25 obtaining the search warrant. I obtained the search

1 warrant, took it to George Cremer, Kevin Glenn, Deputy
2 McElrath who were on the scene when I got there, returned
3 back to the police department to see what I could do to
4 help Ken.

5 Q. Okay. And I'm sorry, Captain. But we're kind of
6 moving you forward to get to where you spoke with the
7 defendant. So at that point, when you get back to
8 Williamston Police Department from the scene, you left
9 the scene, did someone speak first to the defendant?

10 A. I spoke with Ken who advised me he had spoke with
11 the defendant. I stuck my head in the door. He was
12 speaking to Billy Paul Smith. I looked over and I saw
13 Billy Ray Smith, who was seated in the what we call the
14 radio room. There's no one around him. He was sitting
15 there by himself. There was two exit doors. So I told
16 Ken I would sit with Billy Ray while he talked to Billy
17 Paul. And I also had asked him if Billy Ray had been
18 Mirandized. Ken said he had, that he'd already briefly
19 spoken to him.

20 Q. Okay. So at that point, when you're sitting with
21 the defendant, did you question him?

22 A. When I sat in front of him, he began talking first.
23 He was telling me that a guy, Michael Green, had shot his
24 wife. I told him that his wife had been taken to
25 Greenville Hospital, that she was alive at this point in

1 time, that the last I heard she'd be going into surgery.
2 And I told him that the crime scene was being processed
3 to determine what had happened. And it was inconsistent,
4 what he was telling me, versus what I was being advised
5 was found on the scene.

6 Q. Okay. I'm going to back you up just a little bit
7 and make sure. Was the defendant under arrest at that
8 point?

9 A. He was not.

10 Q. And you said he was in the radio room at the
11 Williamston Police Department; is that correct?

12 A. That's correct.

13 Q. Was the defendant seated and comfortable as far as
14 you could tell?

15 A. He was seated with his back to the door, yes.

16 Q. And was he intoxicated?

17 A. Yes, he was intoxicated.

18 Q. Even though he was intoxicated, did he appear to
19 understand and want to talk to you and understand your
20 questions back to him?

21 A. Yes, he understood, and he continued to talk. He
22 was talking about Michael Green, the fact that Michael
23 Green was trying to get Oxycontin from him because he was
24 obtaining a prescription for that. And, again, I told
25 him that that was inconsistent with what I saw at the

1 scene compared to where his wife was seated. Where she
2 was seated, the gunshot wound that was inflicted and
3 where the front door was located, all those things were
4 inconsistent.

5 Then he changed and started talking about his son,
6 Billy Paul Smith, and David Hogg having broken into a
7 house next door to theirs at Then he said that they
8 had a gun, and the gun had gone off during the time they
9 were fighting. But he changed his story a number of
10 times.

11 The final story was that the gun ended up at the
12 residence of Billy Paul Smith on Holiday road in West
13 Pelzer and that he knew where he put the gun, that it
14 would be outside either in some bushes or in the front
15 yard covered up.

16 Q. Did you go out to that scene?

17 A. Yes. We had a fear for public safety at that time.
18 There was a gun out in the open. So I spoke with Ken who
19 had entered the room during our conversation, and we
20 agreed to go to West Pelzer to see if we could locate the
21 gun. And this was Billy Ray Smith's idea. He said that
22 he could take us to where the gun was.

23 Q. Was the gun found outside?

24 A. No, it was not.

25 Q. And when you were sitting down talking with him at

1 the Williamston Police Department, did you threaten him
2 in any way or make any promises to him to get him to talk
3 to you?

4 A. No, we didn't.

5 Q. Did you intimidate him or did you see anyone else
6 intimidate him?

7 A. No one intimidated him, no.

8 Q. Did he speak with you voluntarily?

9 A. Yes, he did.

10 Q. And, again, you said that you were advised by
11 Lieutenant Ebernickle that the defendant had been read
12 his Miranda rights; is that correct?

13 A. Yes, I was advised that.

14 Q. At a later point, was the defendant arrested?

15 A. Yes.

16 Q. After his arrest, did you speak with the defendant
17 again?

18 A. Yes. I came in the next night after this incident
19 occurred to speak with the defendant.

20 Q. Did you advise him of his of rights at that point?

21 A. I did.

22 Q. I'm going to show you State's Exhibits Number 2 and

23 3. Can you please tell us what those are?

24 A. What's marked as State's Exhibit 2 is the advice of
25 rights sheet that I read to the defendant. And the item

1 marked Exhibit 3 is the statement that I took from the
2 defendant.

3 Q. And can you tell us when again that statement -- and
4 the time on that statement?

5 A. The advice of rights was given on 4/23 of '14 at --
6 I have it marked twenty-one forty-five which means nine
7 forty-five p.m.

8 Q. Was anyone else with you during the time that you
9 were speaking with the defendant?

10 A. Yes. I asked Jack Sanders to accompany me during
11 the interview.

12 Q. And how did you go over the form with this
13 defendant?

14 A. I read him what was on the form. Initially, he
15 started to talking to me, and I told him that I could not
16 speak with him until I advised him of his rights. I
17 covered everything that was on the form. I read each
18 line, and I asked him if he understood what I read to
19 him. He said he did. And I told him that he would have
20 to sign the form that he understood.

21 Q. And who filled in the blanks on the form?

22 A. I filled in everything except for the signature
23 line. That is the defendant's signature line.

24 Q. And who all signed the form again?

25 A. Billy Smith signed the top line. I signed the

1 second line where it says witness. And Jack Sanders
2 signed the third line where it says "witness."

3 Q. And did you sign this form at the beginning of the
4 process or at the end of the process?

5 A. At the beginning of the process.

6 Q. I mean, after you had already gone over the whole
7 form with him?

8 A. Oh. Yes. After I covered everything on this form,
9 I signed this form. The second form marked Exhibit 3,
10 that's the statement that was signed after the process.

11 Q. So the waiver of rights form, has it been changed or
12 altered in any way since you all signed -- all three of
13 you signed it on April 23rd?

14 A. It has not been changed.

15 Q. Can you read that form to us?

16 A. It says interview, advice of rights, place
17 Williamston Police, date 4/23/14, time twenty-one forty-
18 five. "Before we ask you any questions, you must
19 understand your rights. You have the right to remain
20 silent. Anything you say can be used against you in
21 court. You have the right to talk to a lawyer for advice
22 before we ask you any questions and to have a lawyer with
23 you during questioning. If you cannot afford a lawyer,
24 one will be appointed for you before any questioning if
25 you wish. If you decide to answer questions now without

1 a lawyer present, you will still have the right to stop
2 answering at any time. You also have the right to stop
3 answering at any time until you talk to a lawyer."

4 Waiver of rights. "I, Billy Smith, the undersigned
5 have read this statement of my rights and I understand
6 what my rights are. I am willing to make a statement and
7 answer questions. I do not want a lawyer at this time.
8 I understand and know what I am doing. No promises or
9 threats have been made to me, and no pressure or coercion
10 of any kind has been used against me." Signed, Billy
11 Smith. Witness, Kevin Marsee. Witness, Jack Sanders.

12 Q. Can you describe the room where you were and
13 speaking with the defendant in?

14 A. We were in a office that used to be used as a
15 sergeant's office. It has a desk, two chairs in front of
16 the desk, one chair behind the desk, computer on the
17 desk. And behind that is like a bookcase where there's
18 books and papers.

19 Q. Was the defendant denied use of the restroom or
20 anything to drink at that point?

21 A. He was not.

22 Q. Was he as comfortable as he could be under the
23 circumstances?

24 A. Yes, he was.

25 Q. Did he appear to be intoxicated at this time you

- 1 were speaking with him?
- 2 A. No, he did not appear to be intoxicated.
- 3 Q. Did the defendant indicate that he understood his
- 4 rights?
- 5 A. Yes, he did.
- 6 Q. Were any threats or promises made to him in order to
- 7 get him to speak with you or sign the form?
- 8 A. No threats, no.
- 9 Q. No promises?
- 10 A. No promises.
- 11 Q. Any intimidation?
- 12 A. No intimidation.
- 13 Q. Was his waiver of rights voluntary?
- 14 A. Yes, it was.
- 15 Q. After reviewing his rights with him, did the
- 16 defendant indicate he wished to give you a statement?
- 17 A. Yes, he did.
- 18 Q. And was that statement a written statement?
- 19 A. Yes, it was a written statement.
- 20 Q. Who wrote it?
- 21 A. I wrote it.
- 22 Q. And how did it come about?
- 23 A. I told Mr. Smith that I would like to ask him some
- 24 questions and that I would write the statement for him
- 25 and that he could review it after I was finished to

1 ensure that it was exactly what he told me. And that's
2 how the statement was written.

3 Q. So did you write it at the end or as he was speaking
4 to you, you wrote it down?

5 A. As he was speaking to me, I wrote the entire
6 statement as to what he told me.

7 Q. And when you were finished, did you read it back to
8 him or did you give it to him to review?

9 A. Both. I read it to him, and I also gave it to him
10 and told him to read it. And if there were any changes
11 that needed to be made, to bring it to my attention, that
12 I would make the appropriate changes and that we would
13 both initial the place where changes were made.

14 Q. Did he indicate he wished to make any changes to the
15 statement?

16 A. He did not.

17 Q. Did you write it accurately as the defendant told it
18 to you and told you what happened?

19 A. Yes, I did.

20 Q. And how did he indicate that this was his statement?

21 A. He looked at it. He appeared to look at it for
22 quite some time and read it. And then at the bottom, he
23 signed each page of the statement.

24 Q. Who else signed?

25 A. Myself and Jack Sanders both also signed each page.

1 Q. When was the statement completed?

2 A. It was close to midnight. I'm not sure the exact
3 hour, but it was close to midnight.

4 Q. Has it been changed or altered in any way since you
5 took the statement on April 23rd?

6 A. It was not.

7 Q. Is there something on the back? And I'm going to
8 refer you to State's Exhibit Number 2. Is there
9 something on the back of that form?

10 A. Yes, there is.

11 Q. And what is that?

12 A. During the process that I was taking the statement
13 from the defendant, I asked him what he was talking about
14 where he and his wife were seated when this incident took
15 place, if he could draw it out for me. And he did. He
16 took an ink pen that I had, and he drew a diagram of the
17 living room and where he was seated and where his wife
18 was seated.

19 Q. Has that diagram been altered in any way?

20 A. It has not.

21 MS. REEVES: Nothing further.

22 THE COURT: All right.

23 Mr. Young?

24 CROSS-EXAMINATION

25 BY MR. YOUNG:

1 Q. Captain Marsee, were you present when Mr. Smith was
2 -- on the night of the incident when he was read his
3 Miranda warnings?

4 A. The first time with Ken Ebernickle?

5 Q. Yes, sir.

6 A. No, I was not present.

7 Q. So you don't know that Mr. Smith can read anything
8 that night; correct?

9 A. I do not know. I was not present.

10 Q. The next day is when you went and interviewed him;
11 correct?

12 A. I talked to him that night. But as far as the
13 formal interview with the statement and the advice of
14 rights, that occurred on the next day, yes.

15 Q. Okay. So that night before when you went in to just
16 talk to him or keep him company, you did not read him his
17 rights?

18 A. No, I did not.

19 Q. He did not at any point in time read anything to you
20 at that time; correct?

21 A. The defendant?

22 Q. Correct.

23 A. No, he did not.

24 Q. And the following day when you went to interview
25 him, it was approximately twenty-four hours after this

- 1 incident happened; correct?
- 2 A. Correct.
- 3 Q. At that point in time, Mr. Smith was no longer
- 4 intoxicated. Would you agree?
- 5 A. That's correct.
- 6 Q. And you read him his rights; correct?
- 7 A. Correct.
- 8 Q. And he didn't read anything to you then; correct?
- 9 A. The defendant did not read anything to me, no.
- 10 Q. Okay. You didn't ask him to read anything; correct?
- 11 A. No, I did not ask him to read anything, no.
- 12 Q. In fact, you didn't even ask him how far he went to
- 13 school; correct?
- 14 A. Yes, I did.
- 15 Q. How far did he go in school?
- 16 A. According to his statement, he completed the ninth
- 17 grade at Lakeside Junior High School in Anderson.
- 18 Q. The ninth grade at Lakeside Junior High?
- 19 A. Yes. That's what he said.
- 20 Q. But he didn't read anything to you that night;
- 21 correct?
- 22 A. No, he did not read anything to me. No.
- 23 Q. And, in fact, the only thing that he wrote for you
- 24 was his signature; correct?
- 25 A. That's correct.

1 Q. Thank you.

2 MR. YOUNG: That's all the questions I have.

3 THE COURT: Anything further from this witness?

4 MS. REEVES: No, sir.

5 THE COURT: Thank you, Officer. You can step
6 down.

7 Ms. Reeves, do you have any more witnesses?

8 MS. REEVES: No. I'm sorry.

9 THE COURT: Okay.

10 Mr. Young, I'll be happy to hear from you.

11 MR. YOUNG: Your Honor, I would like to ask Mr.
12 Billy Ray Smith to take the stand as it relates to the
13 Jackson v. Denno matters.

14 THE COURT: Okay.

15 **BILLY RAY SMITH,**

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. YOUNG:

19 Q. Mr. Smith, could you please tell the Court, how far
20 did you go in school?

21 A. Seventh grade. I passed to the eighth, and I never
22 went back.

23 Q. And what type of classes were you in in school when
24 you went?

25 A. I don't even remember. Probably math and spelling

- 1 and gym. And that's about -- I can't ...
- 2 Q. Were you able to learn to read and write while you
- 3 were in school?
- 4 A. No, sir.
- 5 Q. Okay. How much -- can you read anything?
- 6 A. Very little.
- 7 Q. Okay. What types of things can you read?
- 8 A. Small words. Big words I can't pronounce. If I'm
- 9 reading something, I have to -- excuse me. I have to
- 10 read over it and guess at what it was.
- 11 Q. On the night of this incident, April 22nd, 2014, did
- 12 you go to the Williamston Police Department to be
- 13 interviewed?
- 14 A. What night?
- 15 Q. On the night of this incident, did you go with the
- 16 officer to the Williamston Police Department in order to
- 17 be interviewed?
- 18 A. Yes, sir.
- 19 Q. And did you do that on your own free will?
- 20 A. Yes, sir. They didn't make me go.
- 21 Q. I'm sorry?
- 22 A. They didn't make me go. I went with him.
- 23 Q. And when you got there, did he read you your rights?
- 24 A. I don't remember.
- 25 Q. Do you remember him having you to read anything?

1 A. No, sir. If he had me to read anything, it would
2 have to be something like a Dick, Jane and Sally book
3 because I can't read a hill of beans. Look at my grades
4 from school.

5 Q. Do you not remember what happened that day because
6 of your medication and the intoxication?

7 A. I don't remember too much of it. I remember what
8 was going on during the day that day, and I remember my
9 wife being shot. And I remember going and telling my
10 son, "Call 9-1-1." He said, "Daddy, you're drunk." His
11 mama's not shot. When we got to the house, he saw she
12 was. And I don't remember after we left his house. I
13 remembered very little until I come to my common horse
14 sense. I then stated what really happened.

15 Q. The following day while you were over at the
16 detention center, do you remember Captain Marsee coming
17 to pick you up?

18 A. No, sir. I don't remember who picked me up.

19 Q. Do you remember going back to the Williamston Police
20 Department?

21 A. Yes, sir.

22 Q. And when you went over there, did they read you your
23 rights again?

24 A. I don't remember. I've had a brain aneurysm. And I
25 have a hard time remembering things. You can tell me

1 your name today, and tomorrow I won't know it. Now,
2 that's the God's truth.

3 Q. Do you recall whether or not you freely and
4 voluntarily spoke with the officers and told them what
5 happened?

6 A. Once I come to where I knew that I could remember
7 something, I went ahead and told them as far as I know
8 the God's truth. I told them where the gun was or where
9 I thought it was, and that it was there eventually. I
10 knew the gun was stolen, but I was still going to buy it
11 as a gift. But, no, I don't remember too much about that
12 day.

13 Q. Thank you.

14 MR. YOUNG: That's all the questions I have.

15 THE COURT: Any questions, Ms. Reese?

16 MS. REEVES: Yes, sir.

17 THE COURT: Okay.

18 CROSS-EXAMINATION

19 BY MS. REEVES:

20 Q. Mr. Smith, you stated that you completed the eighth
21 grade; is that correct?

22 A. I completed the seventh grade, passed to the eighth
23 and never went back.

24 Q. After the eighth grade?

25 A. No, ma'am. I never went back to Lakeside School. I

- 1 went to work. I had to get a job.
- 2 Q. Did you have a job?
- 3 A. Huh?
- 4 Q. Did you work?
- 5 A. I had to work. I couldn't do nothing in school. I
- 6 could use a shovel. My daddy put me unloading trucks.
- 7 Q. How long did you unload trucks?
- 8 A. I don't remember.
- 9 Q. One year? Five years?
- 10 A. I don't remember exactly how long I did that.
- 11 Q. Is that the only job you held?
- 12 A. No. I was a truck driver and automotive mechanic.
- 13 Q. So you were a mechanic?
- 14 A. Uh-huh (affirmative).
- 15 Q. Have you written letters to your daughter in this
- 16 case?
- 17 A. I can read a little bit and write a little bit, yes.
- 18 I tried to -- ninety percent of it has been misspelled,
- 19 I'm sure. But I try my best to write my daughter. You
- 20 can hand a letter to anyone. If half of it's not spelled
- 21 right, it's a bunch of junk unless you really take your
- 22 time to understand what I was trying to say.
- 23 Q. So the answer is, yes, you have written your
- 24 daughter -- written letters to her?
- 25 A. I've tried, yeah.

1 Q. Mr. Smith, are you a drinker?

2 A. Now or then?

3 Q. Then.

4 A. Yes.

5 Q. How long have you been prescribed medication?

6 A. Since '08. I had a -- my left arm was -- I've had a
7 heart attack, a couple of other things. I've been on
8 medications since '08.

9 Q. Can you drive a car?

10 A. Yeah, I can drive.

11 Q. In this case, did the officers read these waivers to
12 you?

13 A. The night of the accident I don't remember what was
14 said to me. I was intoxicated highly. I was so drunk I
15 couldn't even hardly -- I do good to spit and it hit the
16 ground. Me and my wife both had been drinking a lot that
17 day. And that's why I don't remember too much about that
18 afternoon.

19 Q. Okay. But the officers read these statements, these
20 waiver of rights, to you, did they not?

21 A. I don't remember.

22 Q. You don't remember? Do you remember giving four or
23 five different versions of events to the officers about
24 what happened?

25 A. No. I remember -- when I come to my senses, I

1 realized that I was saying a bunch of junk, telling the
2 officers a bunch of shit. Excuse my language, ladies and
3 gentlemen. I'm sorry. Telling them a bunch of junk.
4 And then I come clean and told them the truth.

5 Q. And when you say you came clean and told them the
6 truth, is that in your written statement, State's Exhibit
7 Number 3?

8 A. I don't know. I can't -- some of it I can -- I was
9 and some of it and -- I can read that.

10 Q. I'm not asking you to read it, sir. But is that the
11 form -- is that when you said you came clean? Is that
12 the statement that you gave when you came clean?

13 A. I don't know. I don't know for sure because I can't
14 read it exactly.

15 Q. Okay. And what section -- who did you tell when you
16 came clean? Who was that to?

17 A. I don't remember. I believe it might have been Mr.
18 Marsee, Captain Marsee, I believe. Him and that other --
19 I can't remember the gentleman's name. The other officer
20 sitting beside him.

21 Q. Okay. And is this your signature on State's Exhibit
22 Number 3?

23 A. Yes, ma'am. That's it.

24 Q. That's on the first page. Is that your signature
25 also at the bottom of page number two?

1 A. Yeah, I think so.

2 Q. And is this your signature on the bottom of ---

3 A. That's the same crap, yeah. It looks like my
4 handwriting.

5 Q. State's Exhibit Number 1 and 2, these are also your
6 signatures, are they not?

7 A. This one's not. That's not my handwriting.

8 Q. You're pointing to the filled-in blank where the
9 officer wrote in your name, is that correct, not the
10 signature line? And you're looking at State's Exhibit
11 Number 1.

12 A. This is -- I don't know. That looks like mine. I
13 don't know. This one does. Looks a lot more like mine.

14 Q. On State's Exhibit Number 2?

15 A. Yeah. But that one there, I don't know. That don't
16 look like my handwriting. It might be it. It looks like
17 a B that I might make.

18 MS. REEVES: Nothing further.

19 THE COURT: Anything further, Mr. Young?

20 MR. YOUNG: Nothing further, Your Honor.

21 THE COURT: Okay.

22 Thank you, Mr. Smith. You can step down.

23 MR. YOUNG: Your Honor, that would be all that
24 we would like to present. And the only argument we would
25 make is I stand by my motion that we move to suppress the

1 statement as not being freely and voluntarily given.

2 THE COURT: Okay. Well, Mr. Young, I want to
3 make sure I understand. Which statement are you talking
4 about? Because the Court's been presented with three
5 different -- the statement that Deputy Eichelberger.
6 Then there was an oral statement made to Deputy
7 Ebernickle and then a written statement made to Captain
8 Marsee. Now, Captain Marsee also testified to oral
9 statements being made.

10 MR. YOUNG: The latter two statements is what I
11 am addressing, Your Honor. Not the statement of the
12 report of the crime.

13 THE COURT: Okay. So you're not objecting to
14 Deputy or Officer Eichelberger's?

15 MR. YOUNG: That's correct.

16 THE COURT: Okay. Okay. So you're objecting
17 to anything made to Ebernickle and Marsee?

18 MR. YOUNG: Yes, sir, Your Honor.

19 THE COURT: Okay.

20 Ms. Reeves?

21 MS. REEVES: Judge, I think dealing first with
22 the defendant's oral statement to Lieutenant Ebernickle
23 and then also to Captain Marsee, I would argue that
24 Miranda rights were given. They were not necessary. The
25 defendant was not in custody at that point, and he was

1 being interrogated. But Miranda rights were not required
2 to be given, but they were given just out of an abundance
3 of caution. And then for the defendant's written
4 statement, the defendant was, of course, in custody at
5 that point. And he was being interrogated. And Miranda
6 warnings were given for that one as well.

7 I understand the Court has to look at the totality
8 of the circumstances. I would argue that all of these
9 statements, the oral and the written, were all given
10 voluntarily.

11 The intoxication of the defendant does not
12 automatically equal an involuntary statement. The
13 defendant is an adult. He admits to being a drinker at
14 that time. He had taken his medication as prescribed to
15 him for years and years. He held a job. He drove a car.
16 And on the night in question, he actually drove three
17 point eight miles to his son's house after the incident
18 from his own house. Approximately two hours had passed
19 since the incident had happened and until he was
20 questioned. And the officers thought that while they
21 could tell he was intoxicated, they also thought that he
22 understood his rights. He was coherent. He was alert.
23 And they thought he waived those voluntarily. He was not
24 deprived of anything. He was not threatened or coerced
25 in any way or intimidated. And he was not promised

1 anything. The defendant himself says that he doesn't
2 remember. But when he came clean, he doesn't remember
3 either waiver of rights. It wasn't necessarily blamed on
4 his intoxication. He just didn't necessarily remember
5 either of them.

6 He's claiming that he cannot read, but he has
7 written letters to his daughter. There are misspellings,
8 but he's able to put pen to paper.

9 The waiver of rights as well as his own statement
10 were read to him, and he signed. And he indicated that
11 he understood those things. I would argue that all of
12 these statements, the oral one as well as the written
13 one, were voluntarily given and should be admissible.

14 THE COURT: All right. The Court has heard the
15 testimony. The objections were made to the oral
16 statements made to Officers Ebernickle and Marsee on the
17 night of the incident. And then the other objection to
18 the written statement, which would be part of -- which
19 would be State's Exhibit Number 3, I find that the State
20 has proven by a preponderance of the evidence through
21 testimony that the statements were voluntary. And
22 considering the totality of the circumstances, the
23 statements will be admissible.

24 I would also point out that intoxication is not a
25 bar to a statement coming in so long as the -- there's

1 sufficient evidence that the defendant understood what he
2 was doing. I would cite the case of State versus Saxon,
3 which can be found at 201 S.E.2d 114.

4 So with that on the record, is there anything
5 further before we bring the jury back in?

6 MS. REEVES: Yes, sir. Not on this issue. The
7 defendant has been charged with possession of a handgun
8 after having been convicted of a crime of violence. We
9 have that certified conviction. It is a housebreaking
10 conviction. I believe it's self-authenticated. And I
11 just wanted to -- we, of course, wanted to present that
12 issue to the jury in our opening statement but wanted to
13 know what limitations might be. Would you -- you know,
14 are we allowed to say what the conviction was for or just
15 the fact that it was a crime of violence?

16 THE COURT: Mr. Young, what's the Defense's
17 position?

18 MR. YOUNG: Your Honor, our position would be
19 that they are only required to -- because it is self-
20 authenticated, that they would only be allowed to mention
21 that he has been convicted of a crime of violence.
22 Although we don't have any objections to them stating, if
23 they're relying on the housebreaking charge, because it's
24 a relatively old case, conviction that is ---

25 THE COURT: So you stipulate to that

1 conviction?

2 MR. YOUNG: Yes.

3 THE COURT: Okay.

4 MR. YOUNG: And I think we've already submitted
5 some stipulations.

6 THE COURT: Let me see. I saw that upstairs,
7 but I don't see that right here. Do you have another
8 copy of the stipulation?

9 MS. REEVES: I do. And I have not actually
10 provided Your Honor with it.

11 THE COURT: You may have had it in your hand
12 when you walked up to the bench before.

13 MS. REEVES: We made several copies. And I
14 think the original was upstairs.

15 THE COURT: Okay.

16 MS. REEVES: And I think those are stipulations
17 that -- basically, chain of custody is ---

18 THE COURT: You have eight items listed on your
19 chain of custody. All right. But what I'm hearing now
20 is -- okay. My law clerk found my copy. Okay. What
21 I'm hearing now is you stipulate the housebreaking
22 conviction that she's talking about?

23 MR. YOUNG: Yes, sir, Your Honor.

24 THE COURT: All right.

25 Well, Ms. Reeves, you will be allowed to state that,

1 since it's stipulated, in your opening.

2 MS. REEVES: Thank you.

3 THE COURT: So let's talk about ...

4 Mr. Young, anything?

5 MR. YOUNG: I have just one matter, Your Honor.

6 And we addressed it, I believe, when this matter was
7 called for trial in September but was continued. But I
8 wanted to make sure that the State is still, I guess,
9 stipulating that no 404(b) materials will be utilized
10 unless the door is opened for that material to come in.

11 MS. REEVES: That's correct, Your Honor.

12 THE COURT: All right. That's stipulated for
13 the record.

14 All right. We'll take just a little -- we'll start
15 back at four o'clock. Just a few minutes break and then
16 be prepared to start your opening.

17 (WHEREUPON, court stood at recess for a short break
18 during which Court's Exhibit Numbers 2 and 3 were
19 marked for identification only.)

20 MR. YOUNG: Your Honor, I have one matter
21 before the jury comes in. I want to ask that all
22 witnesses be sequestered short of the investigating
23 officer and the victim.

24 THE COURT: Where's Ms. Reeves? There she is.

25 Mr. Young, state that again for Ms. Reeves' benefit.

1 MR. YOUNG: We're requesting to sequester all
2 witnesses with the exception of the investigating officer
3 and the victim who are entitled, I believe, to be
4 present.

5 THE COURT: Okay. That's granted. So all
6 witnesses with those exceptions would leave the
7 courtroom.

8 (WHEREUPON, the witnesses exited the courtroom.)

9 THE COURT: All right. Do we have all the
10 witnesses out of the courtroom?

11 MS. REEVES: Yes.

12 THE COURT: Except the first witness you're
13 going to call.

14 MS. REEVES: No.

15 THE COURT: Okay.

16 MS. REEVES: The witness is out.

17 THE COURT: Okay. All right.

18 MS. REEVES: Can I have them come in?

19 THE COURT: Well, you can have the first
20 witness. You can the officer, the victim, and, of
21 course, the defendant can be here. But all other
22 witnesses needed to be sequestered.

23 MS. REEVES: Okay. And then the first witness
24 I can also have in?

25 THE COURT: When you call him for testimony.

1 MS. REEVES: Right.

2 THE COURT: When you call him for testimony.

3 MS. REEVES: But not now.

4 THE COURT: I will note Mr. Steel has been
5 elected the foreman of the jury. And I'm going to make
6 this a Court Exhibit.

7 (WHEREUPON, Court's Exhibit Number 4 was marked for
8 identification only.)

9 THE COURT: All right. Mr. Bailiff, if you'd
10 get our jury, please, sir.

11 THE BAILIFF: Yes, sir.

12 (WHEREUPON, the jury entered the open court at
13 approximately 4:01 p.m.)

14 THE COURT: Okay. All right. Ladies and
15 gentlemen, we appreciate your patience. We've had some
16 matters of law that we had to take up. But we are ready
17 to proceed.

18 Is the State ready?

19 MS. MOORE: We are, Your Honor.

20 THE COURT: Okay.

21 MS. MOORE: May it please the Court?

22 THE COURT: Yes, ma'am.

23 MS. MOORE: Mr. Young?

24 OPENING STATEMENT

25 BY MS. MOORE:

1 Ladies and gentlemen, on the night of April 22nd,
2 2014, Sandra Smith was shot in the head by this
3 defendant, her then husband, Billy Ray Smith. On the
4 other side of Williamston, their son, Paul Smith, was
5 sitting at home with his friends when the defendant
6 pulled into his front yard and told Paul that his mother
7 had been shot. Paul got his friend and Billy Ray back in
8 the car and drove them all back to his parents' house
9 where they found Sandra sitting upright on the couch.
10 Despite being shot in the head just above her right eye,
11 she was conscious, holding a bathrobe to her head to stop
12 the bleeding and trying to speak to her son.

13 When officers arrived, the defendant told them that
14 someone shot through the open front door of the home and
15 hit his wife in the head. Throughout that night and the
16 next day, he would change his story not once, not twice,
17 but three times. It was only after the defendant found
18 out that Sandra Smith miraculously survived the shooting
19 that he finally admitted that he was the person who shot
20 her. Shortly thereafter, Billy Ray Smith was arrested
21 for the attempted murder of Sandra Smith, possession of a
22 weapon during the commission of a violent crime,
23 obstruction of justice, and unlawful possession of a
24 handgun.

25 It is our job as prosecutors to prove to you that

1 Billy Ray Smith is guilty of each of those four crimes
2 beyond a reasonable doubt. For us to prove that the
3 defendant is guilty of those crimes, we have to prove
4 certain elements for each of the crimes. And I'm going
5 to walk you through each of those elements now.

6 First, for the defendant to be found guilty of
7 attempted murder, we must prove three things: first, the
8 defendant attempted to kill Sandra Smith, second, that he
9 had the specific intent to kill her, and third, that he
10 acted with malice aforethought.

11 Next, for the defendant to be found guilty of
12 possession of a weapon during a violent crime, we must
13 prove two things: that the defendant committed a violent
14 crime -- in this case, attempted murder -- and that the
15 defendant was in possession of a weapon -- in this case a
16 gun -- when he committed that crime.

17 For the defendant to be found guilty of obstruction
18 of justice, we must prove four things, that the defendant
19 intentionally did any act that prevents, obstructs,
20 impedes, or hinders the administration of justice.

21 And finally, for the defendant to be found guilty
22 for unlawful possession of a handgun, we must prove three
23 things: that the defendant possessed a handgun and that
24 the defendant was previously convicted of a crime of
25 violence -- in this case, six counts of housebreaking and

1 grand larceny from November 6, 1978.

2 Throughout the course of this trial, we will prove
3 that the defendant, Billy Ray Smith, is guilty of each of
4 these elements of each of these crimes beyond a
5 reasonable doubt. And to help us prove our case, you're
6 going to hear a lot of testimony. You'll hear from Paul
7 Smith who saw both his mother and father shortly after
8 the shooting. You'll hear from several law enforcement
9 officers and SLED forensic scientists who collected and
10 tested the physical evidence in this case. And their
11 testimony will prove that this shooting was anything but
12 accidental.

13 You'll hear testimony from the victim's doctor. And
14 finally, you will hear testimony from the victim herself.
15 Sandra Smith, who by all rights should be dead, will tell
16 you exactly what she remembers from the night that Billy
17 Ray Smith shot her in the head.

18 Over the coming days, we ask that you listen closely
19 to the witness testimony, look at all of the evidence
20 presented, use your common sense and judge for yourself
21 how you think things happened that evening. At the close
22 of the evidence, we feel that you will have no choice but
23 to find Billy Ray Smith guilty of all charges.

24 THE COURT: All right.

25 Mr. Young?

1 MR. YOUNG: May it please the Court.

2 THE COURT: Yes, sir.

3 OPENING STATEMENT

4 BY MR. YOUNG:

5 One thing we know about life is that accidents will
6 happen. Accidents will happen.

7 The solicitor just stood here and told you that
8 they're going to prove beyond a reasonable doubt that
9 Billy Ray Smith intentionally attempted to kill his wife,
10 that he possessed a firearm during the commission of a
11 violent crime, and that he did everything intentionally
12 to obstruct the administration of justice.

13 But you see, she didn't tell you the entire story.
14 And that is your job today, to sit here and demand the
15 State of South Carolina to tell you the entire story.
16 And I am sure that when you hear the entire story, you
17 will agree. Accidents do happen.

18 You see, they're going to put witnesses on the
19 stand. It's your job to listen to each one, listen to
20 them tell you or don't tell you about the intentional
21 acts of Billy Ray Smith. Listen to them carefully. Hold
22 the State accountable because they have the burden, not
23 the defendant. He doesn't have to say one thing this
24 entire trial because the State has to prove that he
25 intended to do this.

1 You see, as we go along with this case, you're going
2 to learn that on April the 22nd, 2014, that Billy Ray
3 Smith had some encounters with his son and some of his
4 son's friends involving a gun that was his son's, that
5 his son couldn't get it to work right. Billy Ray Smith
6 helped him to try to figure out why this gun wasn't
7 working properly. Billy Ray Smith switched out the
8 handgun for a shotgun for his son. His son is going to
9 tell you about it if he's telling us the truth. And he's
10 going to tell you that throughout that day what all
11 happened. He's going to tell you there were no arguments
12 that he witnessed between his mom and his dad. He's
13 going to tell you there was no indications, to the best
14 of his knowledge, that there were any problems between
15 them. He's going to tell you that he left that gun with
16 his dad. And his dad came back later on that day calling
17 for help. "Son, your mama's been shot. Your mama's been
18 shot." You see, accidents happen. And that's what
19 you're going to learn when you hear all the witnesses
20 from this witness stand.

21 I ask you to hold true to your oath to listen to all
22 the evidence in this case before you pass any judgment.
23 Scrutinize it. Form your opinion. Go back to your jury
24 room. Discuss it among yourselves. You're going to come
25 back through that door and tell the solicitor, accidents

1 do happen.

2 THE COURT: Ms. Reeves, call your first
3 witness.

4 MS. REEVES: The State calls Billy Paul Smith.

5 BILLY PAUL SMITH,

6 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MS. REEVES:

9 Q. Mr. Smith, can you tell us how old you are?

10 A. How old am I?

11 Q. Yes, sir.

12 A. Twenty-six years old.

13 Q. Where do you work?

14 A. I work at Sun Gro Horticulture.

15 Q. Where did you go to high school?

16 A. Palmetto.

17 Q. Did you graduate?

18 A. No, ma'am.

19 Q. Do you have a GED?

20 A. Yes, ma'am.

21 Q. Who are your parents?

22 A. Billy Ray Smith and Sandra Cowan Smith.

23 Q. Do you have any siblings?

24 A. One.

25 Q. And is that a boy or a girl? A sister or brother?

- 1 A. A sister.
- 2 Q. And how old is she?
- 3 A. She's twenty-five.
- 4 Q. And what is her name?
- 5 A. Sarah Beth Patterson.
- 6 Q. And where does she live?
- 7 A. She lives in Simpsonville.
- 8 Q. And is she married?
- 9 A. Yes.
- 10 Q. Does she have any children?
- 11 A. Two.
- 12 Q. Are you married?
- 13 A. No.
- 14 Q. Are your parents married?
- 15 A. Apparently, I believe still, yes.
- 16 Q. How long have they been together?
- 17 A. I think about twenty-seven years.
- 18 Q. Where were they living in April of 2014?
- 19 A. April of 2014 was Hamilton Street, Williamston,
- 20 South Carolina.
- 21 Q. Is that in Anderson County?
- 22 A. Yes, ma'am.
- 23 Q. Can you describe kind of how their house was laid
- 24 out at the time?
- 25 A. It was a real tiny yard, real close up to the road.

- 1 A little like iron gated porch, yellow of the house.
- 2 Q. How many bedrooms and bathrooms?
- 3 A. Two beds, one bath.
- 4 Q. And is South Hamilton Street -- is that a busy
- 5 street?
- 6 A. It turns into, I think, like a Belton Highway,
- 7 something like that, as you're going toward Belton.
- 8 Q. Did they have neighbors?
- 9 A. Yes.
- 10 Q. Was this -- did they have a lot of close neighbors
- 11 close-by?
- 12 A. The house on the left, I think, was vacant, and the
- 13 house on the right was occupied. And then one about a
- 14 hundred yards away across the street.
- 15 Q. And how close is this house from the downtown area
- 16 of Williamston?
- 17 A. Probably not even one-eighth of a mile.
- 18 Q. Where were you living in April of 2014?
- 19 A. I was living on Holiday Street in Pelzer.
- 20 Q. And where were you living? Was it a house or a
- 21 trailer?
- 22 A. It was a trailer.
- 23 Q. And who did you live with at that time?
- 24 A. It was my Uncle Bobby, my daddy's brother.
- 25 Q. Was he still living in the trailer with you?

1 A. No.

2 Q. But was it his trailer?

3 A. Yes.

4 Q. And where was he?

5 A. He was at a retirement home in Spartanburg, I
6 believe.

7 Q. In April of 2014, where were you working then?

8 A. I was working at Providence Home Care as a home care
9 provider.

10 Q. And did you look after any members of your family?

11 A. I did. My Uncle Bobby before he went to the
12 retirement home and my daddy.

13 Q. And what does it mean -- working for them, what were
14 your duties and responsibilities when work with them?

15 A. In general, cooking, cleaning, doing whatever they
16 needed me to do as far as around the house. Driving them
17 anywhere.

18 Q. And in April 22nd, 2014, was anyone living in the
19 trailer with you?

20 A. Yes. It was David Hogg.

21 Q. And who is he?

22 A. He was a friend of mine from school.

23 Q. And how long had he been living there?

24 A. I want to say a week.

25 Q. On this date on April 22nd, did you see your dad

1 that day?

2 A. Yes.

3 Q. And when did you see him?

4 A. Throughout the whole day, it would have been -- he
5 normally picked me up about ten, clocked me in, and I
6 stayed with him until about two. And once I clocked out,
7 I'd normally helped Chris doing something, you know, or
8 we'd go fishing, something like that.

9 Q. Okay. Who is Chris?

10 A. Chris Guthrie is the neighbor across the street on
11 South Hamilton.

12 Q. Okay. So you knew -- and you pointed when you were
13 saying going fishing. Did you go fishing with your dad
14 that day?

15 A. Yes.

16 Q. Having spent time with your dad on that day, how did
17 he seem to you?

18 A. Well, I mean, he was all right. But, I mean, you
19 can tell when he's irritated or something like that.

20 Q. Were you aware of anything in particular between him
21 and your mom?

22 A. I know they was arguing a little bit about money
23 from time to time.

24 Q. Did your dad own any guns?

25 A. Two shotguns.

1 Q. Do you know what kind of shotguns they were, what
2 gauges?

3 A. Yes. One was a twelve gauge Mossberg A, 500A, and
4 then the other was a single shot, a sixteen gauge.

5 Q. And on April 22nd, 2014, where was that twelve
6 gauge?

7 A. I had it. I had had it in my house.

8 Q. Why?

9 A. Well, I mean, I -- no. I took it from him because
10 he tried to use it a few times.

11 Q. I'm going to stop you right there. You took it from
12 him. Is that what you said?

13 A. Uh-huh (affirmative).

14 Q. What, if anything, did you do with the sixteen gauge
15 that day?

16 A. We pawned it.

17 Q. We? Who's we?

18 A. Me and my daddy.

19 Q. On April 22nd?

20 A. Yes, ma'am.

21 Q. Do you remember about what time that was?

22 A. It was about twelve o'clock.

23 Q. Did you come into contact with another gun on this
24 day?

25 A. Yeah. My buddy David had had two revolvers. One

1 was broken. And after we'd done brought it home, we was
2 trying to get them to work and couldn't figure it out.
3 And my daddy shows up and tells us it's something to do
4 with the bullets. So we went out and got some bullets.
5 And, you know, the bigger black one worked perfect. And
6 I recall him trying to want it, and I refused it. And I
7 guess like in between ---

8 Q. I'm going to stop you. We'll catch up to that.

9 Okay?

10 A. All right.

11 Q. Does your dad know about guns?

12 A. A pretty good bit, yes.

13 Q. Okay. And so you said that the black revolver
14 didn't work; is that right?

15 A. Yeah. We couldn't get it to shoot with the bullets
16 we had.

17 Q. Okay. But did it eventually shoot?

18 A. As soon as we got the longs.

19 Q. Okay. And who went and got different ammunition for
20 that gun?

21 A. It was me, my daddy and David. We went to
22 Foothills.

23 Q. And what is Foothills?

24 A. It's a pawn shop in Williamston.

25 Q. And you bought ammunition there?

1 A. Uh-huh (affirmative).

2 Q. And with the new ammunition, did the gun work at
3 that point?

4 A. Yes.

5 Q. And I believe you already said your dad was
6 interested in having that twenty-two?

7 A. Uh-huh (affirmative).

8 Q. I'm sorry. What caliber was it?

9 A. It was a twenty-two nine-shot revolver, short
10 barrel.

11 Q. And your dad wanted to buy that gun?

12 A. He wanted it, yes.

13 Q. Did you want him to have it?

14 A. No.

15 Q. What did you do later in that day?

16 A. What did I do later in that day?

17 Q. Uh-huh (affirmative).

18 A. Let's see. I mean, at nights I'm normally at home
19 just watching TV and drinking a beer or something like
20 that maybe.

21 Q. Did you see a friend that day?

22 A. As far as -- you mean David? Or Chris, yes.

23 Q. And who's Chris again?

24 A. He's the neighbor across the street.

25 Q. And did you see him that day?

- 1 A. Uh-huh (affirmative)...
- 2 Q. And what did you do with Chris?
- 3 A. We was helping him work on a boat. We was
- 4 installing the little lights, the little LEDs.
- 5 Q. And who was with you?
- 6 A. It was me, David and Chris. And at some point my
- 7 daddy came across the street and, you know, kind of
- 8 piddled with us a little bit, drinking a little bit. And
- 9 I think we had the gun there too, but that's when it
- 10 wasn't working.
- 11 Q. Okay. And about how long did you stay at Chris'?
- 12 A. About until eight o'clock that night from four.
- 13 Q. And how did you get home?
- 14 A. Chris Guthrie took us home.
- 15 Q. And when you say us, who do you ...
- 16 A. Me and David.
- 17 Q. Did you drive a car back then?
- 18 A. Not at this point. I'd had a D.U.I in April. I
- 19 mean, no. May.
- 20 Q. And so did you own a car?
- 21 A. I did before the D.U.I.
- 22 Q. And back then, did you have a drinking problem?
- 23 A. A little bit of one, yes. It was more of drinking
- 24 with my parents. And when I was at home, I'd drink with
- 25 David. Just mainly social.

1 Q. So you said that Chris took you and David back home?

2 A. Yes, ma'am.

3 Q. And where was that again? Where did you live?

4 A. Hamilton -- no. Holiday Street in Pelzer.

5 Q. Did Chris stay or did he leave?

6 A. He left.

7 Q. Okay. What's the next thing that you remember of
8 significance that night?

9 A. Well, we was watching TV, me and David were. I was
10 just about to drink me some Jameson, and my daddy come
11 flying into my yard. He came out talking about, "Your
12 mom's been shot." And he had that black gun in his hand.
13 I took it from him, put it on the kitchen table in my
14 house. And I forced him into his passenger side on his
15 vehicle and made David come with me.

16 Q. How did you see the gun in his hand?

17 A. It was basically pointed at his head, you know, up
18 towards that area. I mean, it was all real fast.

19 Q. Okay. Did you think he was threatening you or
20 himself with the gun?

21 A. I believe it was more himself.

22 MR. YOUNG: Objection, Your Honor. That calls
23 for speculation.

24 THE COURT: Sustained.

25 Q. Did he say anything to indicate he was threatening

1 anyone?

2 A. No. He was just crying and yelling about mama being
3 shot and having it pointed towards himself.

4 Q. And which gun was he holding?

5 A. The black one.

6 Q. That you had talked about earlier?

7 A. Uh-huh (affirmative).

8 Q. And what did you do with the gun?

9 A. What did I do with the gun? I didn't want him to
10 have it. I ---

11 Q. I mean, when he pulls up in your yard?

12 A. Oh, yeah. I snatched it from him and put it on the
13 kitchen table.

14 Q. And then what did you do?

15 A. I forced him into his vehicle, and we drove -- I
16 made David -- all of us went back straight to where Mama
17 was.

18 Q. What kind of vehicle did your dad drive?

19 A. It was a Toyota 4Runner.

20 Q. And how far away is your parents' house from your
21 house on Holiday Street?

22 A. About three or four miles.

23 Q. And how long of a trip does that normally take you
24 to get there if you're driving the speed limit?

25 A. About ten minutes.

1 Q. And who was driving the vehicle that night?

2 A. Me.

3 Q. And were you following the speed limit?

4 A. No.

5 Q. How were you driving?

6 A. I was going probably about eighty, eighty-five with
7 hazzards on blowing through stop signs and red lights.

8 Q. What do you pass along the way to get to your
9 parents' house?

10 A. West Pelzer Fire Department, West Pelzer Primary and
11 then that little gas station sitting on the corner on
12 Hamilton Street.

13 Q. Was your dad saying anything to you at that point
14 inside the vehicle, or were you trying to figure out
15 what's happened?

16 A. I was trying to get my head around it. In the
17 process of calling 9-1-1, I thought -- at the time I
18 thought I'd had them on the phone right before I got
19 there. But the time indicates that it was while I was
20 there. So ...

21 Q. Did he say anything else to you? Did your dad say
22 anything else to you about how your mom was shot?

23 A. No, other than how a bullet went through the front
24 door.

25 Q. And did he know where that bullet come from?

- 1 A. He said somebody drove by and she got hit.
- 2 Q. When you got there, where did you pull in to the
- 3 house?
- 4 A. I ran in to the front porch.
- 5 Q. And how was the door when you got there, the front
- 6 door of the house?
- 7 A. Open.
- 8 Q. What did you see?
- 9 A. What did I see when I came in?
- 10 Q. Uh-huh (affirmative).
- 11 A. My mom holding a green robe to her head. You know,
- 12 she wasn't -- she wasn't really cognizant but responsive
- 13 at the time.
- 14 Q. I think you said that you called 9-1-1?
- 15 A. Uh-huh (affirmative).
- 16 Q. How did your mom look? You said -- describe how she
- 17 looked.
- 18 A. Pale, you know. I mean, she was trying to talk, but
- 19 you couldn't understand a word.
- 20 Q. How did you feel seeing her like that?
- 21 A. I lost it. I really did. I think I was still on
- 22 the phone with 9-1-1 at the time. And I ran back out to
- 23 flag them.
- 24 Q. I'm going to show you some pictures from that night.
- 25 First, Mr. Smith, I'm going to show you what's been

1 marked as State's Exhibit Number 17. Can you tell me
2 what that is a picture of?

3 A. That's the picture of a B&B Pawn Shop ticket where
4 we pawned that sixteen gauge.

5 Q. And what's the date on that ticket?

6 A. April the 22nd, 2014.

7 Q. And the time?

8 A. Eleven fifty-one a.m.

9 Q. Is that what you remember receiving after pawning
10 that gun of your father's?

11 A. Yes, ma'am.

12 Q. I'm going to show you what's been marked as State's
13 Exhibit 4 and 5. Can you tell us what these are?

14 A. This is my daddy's black 4Runner parked in front of
15 the house in which my mom was shot.

16 Q. I'm going to show you State's Exhibit 6, 7, 8, 9,
17 10, 11, 12, 13, and 14. Can you please tell us what
18 these are?

19 A. This is the front entrance of the house.

20 Q. What are those pictures of in general? If you
21 wouldn't mind looking through all of them.

22 A. Basically the scene. The open front door. That's
23 the china cabinet.

24 Q. Don't show them at this point. Are those pictures
25 of your parents' house? Is that what you said?

1 A. Uh-huh (affirmative).

2 Q. And is that how you remember it looking on the night
3 that this incident occurred?

4 A. Yes.

5 Q. I'm going to let you go ahead and flip through all
6 of them so you can make sure that that's the case for
7 each of them.

8 A. Yeah.

9 Q. And is that the way the house looked on the night
10 that this incident occurred?

11 A. Every bit.

12 Q. Okay. And I'm going to finally show you State's
13 Exhibit Number 18. Can you tell us what this is a
14 picture of?

15 A. That's a picture of the trailer I lived in on
16 Holiday.

17 Q. If you don't mind, if you'll hand those back to me,
18 please.

19 A. Sure.

20 Q. And can you see a screen if I show these?

21 A. Yes, ma'am.

22 MS. REEVES: Judge, at this time I would like
23 to move State's Exhibits 6 through -- State's 4 --
24 State's Exhibits 4 through 18 into evidence.

25 THE COURT: Mr. Young?

1 MR. YOUNG: No objections, Your Honor.

2 THE COURT: All right. State's Exhibit 4, 5,
3 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 would
4 all been admitted without objection.

5 MS. REEVES: Thank you.

6 (WHEREUPON, States Exhibit Numbers 4, 5, 6, 7, 8, 9,
7 10, 11, 12, 13, 14, 15, 16, 17, and 18 were admitted
8 into evidence.)

9 Q. Okay. So, Mr. Smith, I'm going to show you first
10 State's Exhibit Number 17. Would you again -- again,
11 State's Exhibit Number 17?

12 A. That's the pawn ticket.

13 Q. That was the pawn ticket?

14 A. Yes, ma'am.

15 Q. Okay. And State's Exhibit Number 4?

16 A. That was the black 4Runner my daddy drove.

17 Q. Okay. Where is it parked? Who drove it to that
18 position?

19 A. I did. And it's parked in the front driveway.

20 Q. And is this your parents' home behind that 4Runner?

21 A. Yes, ma'am.

22 Q. This is State's Exhibit Number 5. What does that
23 show?

24 A. That's another picture of the SUV along with the
25 home and the door wide open.

- 1 Q. State's Exhibit Number 6. What is that?
- 2 A. The entrance and the porch to the home.
- 3 Q. State's Exhibit Number 7?
- 4 A. That shows basically the bathroom and the two
- 5 bedrooms.
- 6 Q. And what is the view when you're standing -- where
- 7 can you see this?
- 8 A. That's in the doorway?
- 9 Q. At the front door?
- 10 A. Yeah.
- 11 Q. This is State's Exhibit Number 8?
- 12 A. That's towards the kitchen, which is the right side
- 13 of the house.
- 14 Q. This is State's Exhibit Number 9.
- 15 A. Again, that's the right side towards the house
- 16 showing towards the kitchen.
- 17 Q. And this little maroon curtain, what's behind that
- 18 curtain?
- 19 A. The kitchen.
- 20 Q. This is State's Exhibit Number 10.
- 21 A. That would be our living room. That would have been
- 22 the loveseat and the two recliners.
- 23 Q. And where is that from the front door?
- 24 A. Towards the left.
- 25 Q. And what is on the couch right there?

- 1 A. That's the robe my mom used to cover her head.
- 2 Q. You said covering her head?
- 3 A. Uh-huh (affirmative).
- 4 Q. This is State's Exhibit Number 11.
- 5 A. That's the living room, again, where she was found
- 6 when I walked in.
- 7 Q. This is State's Exhibit Number 12.
- 8 A. That's her phone. It was a government phone.
- 9 Q. State's Exhibit Number 13.
- 10 A. That shows the front of the living room where the TV
- 11 sat right next to the door.
- 12 Q. Right next to the door inside?
- 13 A. Uh-huh (affirmative). The front door.
- 14 Q. Is the couch -- is the loveseat facing this
- 15 television?
- 16 A. Uh-huh (affirmative).
- 17 Q. State's Exhibit Number 14.
- 18 A. That shows the little barrier between the front door
- 19 and the TV.
- 20 Q. And this is what direction from the front door if
- 21 you're standing in the front door?
- 22 A. If you're standing in front of the front door,
- 23 you're facing straight towards the road and towards the
- 24 car.
- 25 Q. If you're facing inside the home, the TV was on

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1 which side?

2 A. The right.

3 Q. The right?

4 A. If you're facing on the outside.

5 Q. And finally, State's Exhibit Number 18, what was
6 this?

7 A. That was my home that I stayed in at the time.

8 Q. Did your dad have a phone back then?

9 A. All the time. That's the one thing he didn't go
10 without.

11 Q. So he carried it with him?

12 A. Always.

13 Q. Is your dad right-handed or left-handed?

14 A. Right.

15 Q. At some point, did E.M.S. arrive to treat your
16 mother?

17 A. I don't remember the time, but I remember telling
18 them to take her to Greenville.

19 Q. Where did you go after your mom was taken to the
20 hospital?

21 A. I went to the Williamston Police Station.

22 Q. At some point later, did you -- later that night,
23 did you receive a call from the defendant?

24 A. From my daddy? No. Not that -- are you talking
25 about while we're at the home or ---

1 Q. While you were at the police department?

2 A. No. No. While he was at my house, yes.

3 Q. Okay. And at some point, did he tell you -- or at
4 any point did he tell you that he was the one that shot
5 your mother?

6 A. Not over the phone. But he -- like, he calls me and
7 says this, like -- you know, he's telling me that he's
8 done told them every little thing and stuff like that.
9 And he's like, "Just tell them where it's at." And so
10 they took me over there.

11 Q. And what was he talking about?

12 A. The firearm that he had when he came into my home.

13 Q. After your dad was charged with these crimes, did
14 you have a conversation with your father?

15 A. Yes.

16 Q. And in that conversation, did he want you to say
17 something in particular about what had happened the night
18 that this occurred?

19 A. Yeah. He wanted me to say that it was an accident.

20 Q. And did he offer anything to you in exchange for you
21 saying ---

22 A. The use of his vehicle and his bank card.

23 MS. REEVES: No further questions at this time.

24 THE COURT: All right.

25 Mr. Young, your witness.

1 CROSS-EXAMINATION

2 BY MR. YOUNG:

3 Q. Mr. Smith, I want to ask you a few questions to kind
4 of get the time line right. You were working for your
5 father; correct?

6 A. I was working for him, yes sir.

7 Q. And you were his home healthcare giver?

8 A. Caregiver, yes, sir.

9 Q. So you were responsible for staying with him and
10 providing for his care and everything during that time?

11 A. Four hours a day, yes.

12 Q. And this was on a Tuesday; correct?

13 A. I couldn't tell you that.

14 Q. It was one day during the course of the week;
15 correct?

16 A. Yes.

17 Q. It wasn't a weekend day?

18 A. I couldn't even tell you that.

19 Q. So on that day, that day you were scheduled to work
20 for him; correct?

21 A. Uh-huh (affirmative).

22 Q. You have to answer yes or no.

23 A. Yes, sir.

24 Q. Okay. And I believe your testimony was that he
25 would come and pick you up?

1 A. Uh-huh (affirmative), every morning.

2 Q. And bring you back to his house?

3 A. Yes.

4 Q. And that's where you would do your work and stuff;
5 correct?

6 A. I would clock in on his phone, do my work, clock out
7 when the day was done and then go about my day.

8 Q. Okay.

9 A. Like I told her earlier, we would go fishing or
10 something like that.

11 Q. And if he had errands to run or needed errands run
12 ---

13 A. I would go with him.

14 Q. --- you would do that or either go with him;
15 correct?

16 A. Uh-huh (affirmative).

17 Q. And on this particular day, you went with him in
18 order to pay the registration fee for your mother's
19 driving class; correct?

20 A. No.

21 Q. You did not?

22 A. I don't recall that at all.

23 Q. You do not recall telling the officers that you went
24 with him to ---

25 A. On that day we went fishing.

1 Q. Allow me to ask my questions. On that particular
2 day, do you remember telling the officers that you went
3 to the behavior health location with your dad to pay for
4 your mom's D.U.I. classes?

5 A. No. I don't remember that.

6 Q. And at some point in time you said that, I believe,
7 a pawn ticket reflect that around ten o'clock or eleven
8 o'clock, you went to pawn a gun; correct?

9 A. Around those times, yes.

10 Q. Now, if I remember correctly -- if you'd look at
11 States's Exhibit 17, what is the time reflected on that?

12 A. Eleven fifty-one a.m.

13 Q. Eleven fifty-one a.m.?

14 A. Uh-huh (affirmative).

15 Q. When you went to the Williamston Police Department,
16 you talked with the law enforcement officers there about
17 what happened; correct?

18 A. Yes.

19 Q. Gave them a skinny of what you recall happening that
20 day; correct?

21 A. Yes.

22 Q. And at that time, you shared with them that your dad
23 went fishing around two o'clock p.m.; correct?

24 A. The time frames are not for certain, but the events
25 of the day happened.

1 Q. Okay. Well, you gave a statement to the officer;
2 correct?

3 A. Yes, sir.

4 Q. That statement was reduced to writing; correct?

5 A. Yes, sir.

6 Q. And you were given an opportunity to read that
7 statement; correct?

8 A. Yes.

9 Q. And you were able to make any changes that you saw
10 that were incorrect; correct?

11 A. On my second one, yes.

12 Q. You did more than one?

13 A. Yes.

14 Q. And in that statement to the officers, you stated
15 that your dad went fishing around two o'clock. Do you
16 remember that?

17 A. Yeah. I believe that's -- I was estimating time
18 frames. But, yes, he went fishing.

19 Q. And you stated that while he was gone, David Hogg
20 and yourself shot this gun and then took it to B&B Pawn
21 and pawned it; correct?

22 A. No. This is a sixteen-gauge shotgun that my daddy
23 and I pawned.

24 Q. So what you told the officers was not accurate?

25 A. I could not remember this time frame until they had

1 this.

2 Q. So what you told the police officers was not true?

3 A. I guess at the time the time frame was off. But I
4 know I didn't go with David.

5 Q. In fact, in your statement, you stated that you took
6 the gun from your dad because he was going to take it
7 fishing with him; correct?

8 A. I took the gun from my dad because he was going to
9 take it with him to do something other than hunting or
10 fishing with it. He was going to kill himself out there,
11 so I thought at the time, yes.

12 Q. But what you told law enforcement was that he said
13 he was taking the gun fishing; correct?

14 A. I believe so, yes.

15 Q. And that you took the gun from him; correct?

16 A. Yes.

17 Q. And that you and David took the gun to B&B and
18 pawned it; correct?

19 A. Y'all are twisting the guns up. He had two
20 shotguns.

21 Q. You never corrected that ---

22 A. Me and my dad pawned this one.

23 Q. You never corrected that in your statement, did you?

24 A. The twelve gauge is the one I took.

25 Q. Did you ever correct that in your statement to law

1 enforcement?

2 A. It might have been corrected on the second one, but
3 it's been so long, I do not remember that.

4 Q. At what time did you arrive -- did your dad pick you
5 up that day to go to work?

6 A. He normally picked me up about nine or ten.

7 Q. So around nine or ten o'clock is when you went over
8 to his house?

9 A. Uh-huh (affirmative).

10 Q. And what all did you all do?

11 A. Well, according to this time on this ticket, I was
12 still on the clock. So I was with him.

13 Q. Well, what all did you do?

14 A. Well, what all did we do? Well, we sat around at
15 the house for a little bit, like thirty, forty minutes,
16 and decided to go to the pawn shop. We didn't get there
17 until about eleven forty, something like that. Looked
18 around. We was looking at fishing rods, and we decided
19 to pawn his gun. And then Daddy gave -- I think Daddy
20 gave me that money.

21 Q. He gave you the money?

22 A. Uh-huh (affirmative).

23 Q. And when you all came back, what did you do?

24 A. When we got back?

25 Q. Yes, sir.

- 1 A. I finished up a few things around the house, and I
2 know I went to help Chris.
- 3 Q. So you cleaned up around the house?
- 4 A. Inside, yes.
- 5 Q. Cook or whatever you do there at the house?
- 6 A. Uh-huh (affirmative).
- 7 Q. And it was that time that you got off from work?
- 8 A. Yeah, about two.
- 9 Q. About two?
- 10 A. Something like that, yeah. I went across the
11 street.
- 12 Q. And you went across the street to help Chris?
- 13 A. We was starting to go build his lights on his boat.
- 14 Q. And your dad left to go fishing?
- 15 A. He came across the street and asked us did we want
16 to go. I mean, we fished for a little bit. It wasn't
17 much.
- 18 Q. So you did go fishing with him?
- 19 A. Uh-huh (affirmative). Underneath the bridge.
- 20 Q. He didn't go fishing by himself?
- 21 A. Not that particular time.
- 22 Q. Did he go fishing more than once?
- 23 A. He did that several times a day.
- 24 Q. On this day, to the best of your knowledge?
- 25 A. To the best of my knowledge.

1 Q. He went fishing more than once that day?

2 A. I believe so, yes. We even went to Hartwell.

3 Q. And then he went to -- and then at some point in

4 time he came over across the street where you, Chris and

5 David were working on the boat?

6 A. Uh-huh (affirmative).

7 Q. And after that, he left and went home; correct?

8 A. Yeah. That's when he walked across the street, yes.

9 Q. And by that time, he had been drinking; correct?

10 A. Yes, sir.

11 Q. In fact, according to your testimony to police

12 officers, he had been drinking earlier that day; correct?

13 A. Yes.

14 Q. In fact, during the time that you were working for

15 him or providing care for him, he was drinking during

16 that time; correct?

17 A. He didn't start until about twelve, two o'clock,

18 around in there.

19 Q. Around twelve or two o'clock he started drinking?

20 A. Uh-huh (affirmative).

21 Q. And then he went off fishing?

22 A. Yeah.

23 Q. And when you saw him later on that day, I believe

24 your statement says around four o'clock or four thirty,

25 he came over there where you all were working on the

- 1 boat?
- 2 A. Uh-huh (affirmative).
- 3 Q. And he had been drinking then?
- 4 A. Uh-huh (affirmative).
- 5 Q. During that time, you saw your mom earlier that day;
- 6 correct?
- 7 A. I saw her earlier that morning, yes, and while I was
- 8 at the house.
- 9 Q. Had she been drinking that day also?
- 10 A. Yes.
- 11 Q. Chris took you and David home; correct?
- 12 A. Yes.
- 13 Q. He didn't stay and hang out with you?
- 14 A. Chris didn't, no.
- 15 Q. Correct?
- 16 A. Correct.
- 17 Q. And at some point in time, your dad came in
- 18 hysterical about your mom being shot; correct?
- 19 A. Yeah.
- 20 Q. You took the gun from him; correct?
- 21 A. Yes.
- 22 Q. And it is your testimony that that gun was placed on
- 23 your counter or your table?
- 24 A. On my kitchen table.
- 25 Q. On your kitchen table. And then you immediately put

1 your dad in the car?

2 A. Uh-huh (affirmative). The passenger side.

3 Q. And drove over to your dad's house; correct?

4 A. Uh-huh (affirmative).

5 Q. It was at that point in time that you went in to see

6 what was happening; correct?

7 A. Yes.

8 Q. Because you didn't believe what your dad was telling

9 you; correct?

10 A. Correct. As far as somebody shooting in the door.

11 Q. So when you saw it for yourself is when you called

12 9-1-1; correct?

13 A. I already had them on the phone while I was running

14 through the door.

15 Q. You already had them on the phone before you saw

16 that she was shot?

17 A. Yeah.

18 Q. Now, when you talked to law enforcement, you told

19 them that you went in and you saw that your mom had, in

20 fact, been shot, and then you called 9-1-1?

21 A. I was on the phone with them.

22 Q. It's your testimony today that you were on the phone

23 with them?

24 A. Yes.

25 Q. Okay. And at that point in time -- well, let me

1 ask. I believe you testified on direct examination that
2 you believe you were on the phone with them as you were
3 driving over. Isn't that what you said?

4 A. Yeah. Back then, yeah.

5 Q. Okay.

6 A. But on this day, I was also a little intoxicated.

7 Q. And you were talking to the 9-1-1 operator?

8 A. Yes.

9 Q. Telling them what happened; correct?

10 A. "My mom has been shot in the head. I need an
11 ambulance."

12 Q. And at some point in time during that conversation,
13 you were asked, tell me what happened; correct?

14 A. From the operator?

15 Q. From the operator.

16 A. Yeah.

17 Q. And you told the operator that she was shot through
18 the front door; correct?

19 A. I will tell you what my daddy told me.

20 Q. And I believe your testimony on direct examination
21 was that you had lost it; correct?

22 A. As soon as I saw her, yes.

23 Q. You had lost it; right? But when you talked to the
24 operator, you were relatively calm about what happened?

25 A. I wasn't relatively calm.

1 Q. When you called the 9-1-1 operator, did you use your
2 dad's phone?

3 A. No. I used my own.

4 Q. You used your own phone?

5 A. Yes.

6 Q. Did you ever look at your dad's phone that night?

7 A. No.

8 Q. So you don't know if his phone was working that
9 night or not, do you?

10 A. I do know it was.

11 Q. Did you use his phone?

12 A. No. He used it to call me and vice versa regularly.

13 Q. That night, he -- did he call you that night or did
14 he come to your house?

15 A. He showed up.

16 Q. He showed up at your house?

17 A. Uh-huh (affirmative).

18 Q. And at some point in time, you went to the police
19 station; correct?

20 A. At some point in time that night, I did.

21 Q. And your dad called you and told you or asked you
22 where the gun was; correct?

23 A. Yes.

24 Q. And did you go over to let the police officers into
25 your house?

1 A. I did.

2 Q. And you, at no point in time, went back into your
3 house after you left to go check on your mom; correct?

4 A. No. I never went back until they brought me back.

5 Q. Until they brought you back in order for you to go
6 into the house; correct?

7 A. I didn't go in.

8 Q. They went in?

9 A. After I had -- I had to sign a consent.

10 Q. You testified that at some point in time your dad
11 offered you some stuff in exchange for you to say that
12 this was an accident; correct?

13 A. Yes. That was almost a year from the accident.

14 Q. About a year ago?

15 A. The beginning of January, somewhere around in there.

16 Q. Did he do that by way of a telephone call to you?

17 A. Yes.

18 Q. And did he send it to you in writing?

19 A. No.

20 Q. Just by way of a telephone call?

21 A. Yes.

22 Q. But you weren't present when any of this happened;
23 correct?

24 A. What do you mean?

25 Q. Were you present when the shooting took place?

1 A. No. I was in my home.

2 Q. And the pictures you saw today, you testified that
3 that is how the house looked when you got there to check
4 on your mama?

5 A. Yes.

6 Q. Thank you.

7 MR. YOUNG: I have no further questions, Your
8 Honor.

9 THE COURT: Any redirect?

10 MS. REEVES: No, sir.

11 THE COURT: Thank you, sir. You can step down.
12 All right. Counsel approach.

13 (WHEREUPON, a bench conference was held off the
14 record.)

15 THE COURT: All right. We need to correct on
16 the record that Exhibits 15 and 16 are not into evidence
17 at this time. Okay?

18 (WHEREUPON, State's Exhibit Numbers 15 and 16 were
19 removed from evidence.)

20 THE COURT: Ladies and gentlemen, this is a
21 natural breaking point in the case, so I'm going to send
22 you home. We will reconvene the trial at nine o'clock
23 tomorrow morning, so be in your jury room here on the
24 third floor before nine o'clock.

25 Same instruction I gave before. You can't talk to

1 third parties about the case. You can't do any
2 independent investigation. You cannot deliberate amongst
3 yourselves, and you can't talk about it amongst
4 yourselves. I know your families are going to want to
5 know what in the world you spent the day up here doing.
6 But you just tell them you can't talk about it. The
7 judge told you you can't talk about it.

8 So I hope each of you has a good evening, and we
9 will see you in the morning at nine o'clock.

10 Mr. Bailiff?

11 (WHEREUPON, the jury exited the open court at
12 approximately 4:45 p.m.)

13 THE COURT: All right. Anything from the State
14 before we go into recess?

15 MS. REEVES: No, sir.

16 THE COURT: Anything from the Defense before we
17 go into recess?

18 MR. YOUNG: No, sir, Your Honor.

19 THE COURT: Okay. We will go into recess, and
20 we will reconvene at nine o'clock in the morning.

21 (WHEREUPON, court stood at recess for the day at
22 approximately 4:55 p.m.)

23 **November 17, 2015**

24 (WHEREUPON, State's Exhibit Numbers 31 through 39
25 were marked for identification only.)

1 (WHEREUPON, court convened with all parties present,
2 and the following proceedings were had commencing at
3 approximately 9:00 a.m.)

4 THE COURT: Good morning. Is there anything
5 from the State or from the Defense before we bring our
6 jury back?

7 MS. REEVES: No.

8 MR. YOUNG: No, sir, Your Honor.

9 THE COURT: All right. Very good.
10 Mr. Bailiff, you may bring our jury in.

11 MR. YOUNG: Your Honor, I would renew my motion
12 for sequestration.

13 THE COURT: All witnesses will be sequestered
14 with the exception of the ones mentioned yesterday.

15 (WHEREUPON, the witnesses exited the courtroom after,
16 which the jury entered the open court at
17 approximately 9:04 a.m.)

18 THE COURT: Good morning, ladies and gentlemen.

19 THE JURY (in unison): Good morning.

20 THE COURT: And I hope everyone had a good
21 evening.

22 Did any member of the jury have any third parties
23 attempt to talk to them about this case, or did anyone
24 attempt to deliberate or do any independent
25 investigation?

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1 (WHEREUPON, the jurors shook head side to side in
2 the negative.)

3 THE COURT: Very good. Let the record reflect
4 that there are no positive responses.

5 Ms. Reeves, call your next witness.

6 MS. MOORE: Officer Tina Eichelberger.

7 **TINA EICHELBERGER,**

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MS. MOORE:

11 Q. Officer Eichelberger, by whom are you employed?

12 A. Williamston Police Department.

13 Q. And how long have you been at Williamston?

14 A. A little over two years.

15 Q. And what's your current position?

16 A. I'm a patrolman.

17 Q. What was your position at Williamston in April of
18 2014?

19 A. Patrolman.

20 Q. And prior to working at Williamston, where did you
21 work?

22 A. Greenville County Sheriff's Office.

23 Q. Okay. How long were you there?

24 A. Seventeen years.

25 Q. So you've had how many years experience in law

1 enforcement?

2 A. A total of eighteen and a half years.

3 Q. Okay. And what are your duties and responsibilities
4 as a uniformed patrol officer?

5 A. Williamston Police Department.

6 Q. Okay. But what do you do for Williamston?

7 A. Patrol. We answer calls for service, write tickets,
8 traffic stops. Just about anything that's required.

9 Q. Okay. And on April 22nd, 2014, did you have
10 occasion to go to South Hamilton Street?

11 A. Yes, ma'am.

12 Q. Okay. And is that address in Anderson County?

13 A. It is in Anderson County. Williamston City.

14 Q. Okay. And why did you go to that address?

15 A. We received a call from dispatch over the radio
16 stating that we had a possible gunshot victim.

17 Q. Okay. And what type of shooting?

18 A. At the time over the radio, it was given just as a
19 possible gunshot victim. But upon arrival on the scene,
20 we realized that she was shot in the head.

21 Q. Okay. What, if anything, happened when you arrived?

22 A. Excuse me?

23 Q. What, if anything, happened when you arrived?

24 A. When I arrived at the scene, there was a subject in
25 the middle of the road later identified as Billy Paul

1 Smith. He was flagging us down. He said that his mother
2 was inside of the residence and had been shot in the
3 head.

4 Q. Okay. Who was with you when you arrived at the
5 house?

6 A. When I arrived, Officer Ron Drennon was with me.

7 Q. Okay. And aside from yourself and Officer Drennon,
8 who was present at the scene?

9 A. There was also a subject by the name of David Hogg
10 in the yard. And also, upon entrance inside of the
11 house, it was the defendant and the victim.

12 Q. Okay. And when you got inside the house, what did
13 you do?

14 A. When I got inside of the house, I noticed that the
15 defendant was holding the female on the couch opposite
16 entrance -- opposite side of the entrance. And he
17 yelled. He was yelling, "My wife has been shot. My wife
18 has been shot." And I noticed him consoling her. But
19 just to make sure the scene was safe, we looked. It was
20 a small apartment. We did a protective sweep of the home
21 just to make sure that no one else was inside. I
22 immediately called for E.M.S. when I got there.

23 Q. Okay. And what was the victim doing when you
24 arrived?

25 A. The victim was being held by the defendant. And she

1 was breathing. And her eyes were flickering, but they
2 were not open. She was unresponsive at the time.

3 Q. Was she able to speak to you?

4 A. She was not able to speak to me. When I looked at
5 her, I did notice a gunshot wound to the upper right side
6 of her eye in a downward angle.

7 Q. Okay. And what, if anything, did the defendant say
8 to you?

9 A. He just kept saying, "Someone has been shot." I
10 asked him exactly what happened to his wife. He said
11 that someone shot through the door and struck his wife.
12 He said the door was wide open all night long. I did not
13 notice any kind of gunshot projectiles going through the
14 door at all. But he did say that she was shot through
15 the door.

16 Q. And you said they were seated when you came into the
17 house?

18 A. Yes, ma'am.

19 Q. Where were they seated?

20 A. They were seated on the sofa. The sofa is facing
21 the entrance except for it's on the opposite side of the
22 room. They were in the right-hand corner of the sofa.

23 Q. Okay. Officer Eichelberger, I'm showing you State's
24 Exhibits 6, 10 and 14. Do you recognize this photograph?

25 A. Yes, ma'am.

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1 Q. Okay. And what is that?

2 A. That is the number South Hamilton Street. That
3 is the house the incident occurred.

4 Q. Okay. And is that the front entrance? The back
5 entrance?

6 A. That would be the front.

7 Q. Okay. And when the defendant told you that someone
8 shot his wife, was it through the front door or the back
9 door?

10 A. He said through the front door.

11 Q. Okay. I'm now showing you State's Exhibit 14. Can
12 you tell me what that is?

13 A. I'm really not sure. I think going through the
14 front door, is it the wall to the right? Is it the -- to
15 the right of the room, or is it on the left? I can't --
16 I really don't know.

17 Q. Okay. I'm showing you Exhibit 10.

18 A. Okay. I was correct. That is the sofa. And as you
19 go in through the entrance of the house, that sofa is to
20 the left slightly on the opposite wall.

21 Q. Okay. So is the sofa in this picture in the path of
22 the front door?

23 A. It is not in direct path of the front door.

24 Q. Can you see it when you are standing outside the
25 front door?

1 A. If you're standing outside of the front door, you
2 cannot see it. You have to take a step inside of the
3 house to see the sofa.

4 Q. Okay. Thank you. Officer Eichelberger, what, if
5 anything, did you observe about the defendant that
6 evening?

7 A. He was intoxicated. He did speak with very slurred
8 speech. And he just kept repeating, "Someone has shot my
9 wife. Someone shot my wife."

10 Q. Okay. Did you speak with Billy Paul that evening?

11 A. I did speak with him.

12 Q. And after speaking with him, were you able to
13 determine if he was present during the shooting?

14 A. I was -- what he told me at the time is that his
15 father came to his house and said that his mother had
16 been shot. And he didn't believe his father initially,
17 so he got in the car. Which he lives at Holiday
18 Street in Pelzer. He stated he got in his car and drove
19 to the incident location.

20 Q. Okay. I'll stop you there. You were able to
21 determine that he was not there; is that correct?

22 A. Yes.

23 Q. Okay. And what did you do next?

24 A. Well, I spoke with him in reference to that. After
25 contacting E.M.S., you know, we spoke with Billy Paul.

1 And he did state that his father came to his residence
2 and told him that his mother had been shot. He said he
3 didn't believe -- initially believe that his mother had
4 been shot. Therefore, he jumped in the vehicle, and he
5 drove to the incident location. And that is where he
6 called 9-1-1.

7 Q. Okay. So you had multiple stories; is that correct?

8 A. Yes, ma'am.

9 Q. Okay. So what did you do then?

10 A. After then, E.M.S. did come in and pretty much got
11 -- taken care of the victim. And after that -- we tried
12 to get to the story again. And it was the same pretty
13 much but just slightly different.

14 Q. Did you separate the parties at any time?

15 A. We did. We separated them just because of the fact
16 that, you know, it was pretty much unknown exactly what
17 happened at that time. So we did place each person that
18 was on the scene under investigative detention. And that
19 requires putting them in handcuffs and separating them
20 into separate vehicles.

21 Q. Did you read them their Miranda rights?

22 A. Yes, ma'am.

23 Q. But then did you have any further involvement in
24 this case?

25 A. I did not other than reading them their Miranda

1 rights. And I did transport Billy Paul Smith to the
2 police department.

3 Q. Okay. And why did you transport him to the police
4 department?

5 A. Well, I advised everyone on scene that they were not
6 under arrest, but asked them if they were willing to come
7 down to the police department to answer any questions,
8 and they agreed.

9 Q. Did he come voluntarily?

10 A. Yes, ma'am, he did.

11 Q. I have no further questions. Please answer anything
12 Mr. Young may have for you.

13 A. Thank you.

14 THE COURT: All right. Mr. Young, your
15 witness.

16 CROSS-EXAMINATION

17 BY MR. YOUNG:

18 Q. Officer Eichelberger, have you had an opportunity to
19 hear the 9-1-1 tape in this case?

20 A. No, sir.

21 Q. Did dispatch communicate with you any information
22 prior to your arriving at the scene?

23 A. Yes. They did inform us that there was a gunshot
24 victim on scene, a possible gunshot victim on scene.

25 Q. And at some point in time, did dispatch inform you

1 that the caller reported that his mother was accidentally
2 shot, send help?

3 A. Possibly. Possibly. But to tell you that verbatim,
4 I'm not sure, sir.

5 Q. Well, you prepared a report in this matter; correct?

6 A. Yes, sir.

7 Q. And that report is for the purposes of making sure
8 that you remember what happened; correct?

9 A. Yes.

10 Q. And in your report, you wrote, "Dispatch stated they
11 received a call from a subject that stated my mother was
12 accidentally shot."

13 A. Yes, sir, you are correct. And to send help to
14 South Hamilton Street.

15 Q. And, in fact, your testimony was that Billy Paul
16 Smith flagged you down?

17 A. Yes. He was in the roadway.

18 Q. And when he approached you and you approached him,
19 he began telling you what had happened; correct?

20 A. He just said, "My mother's been shot." So I
21 immediately went to the house after that.

22 Q. And when you went into the house, Billy Smith was
23 assisting his wife?

24 A. He was sitting on the sofa with his wife, holding
25 her and yelling, "My wife has been shot."

1 Q. And your testimony was that he was highly
2 intoxicated?

3 A. Yes, sir.

4 Q. Slurred speech?

5 A. He did.

6 Q. And you performed a sweep of the house in order to
7 make sure everything was safe; correct?

8 A. Yes, sir.

9 Q. And during that sweep of the house, you didn't see
10 any signs of any type of struggle or fight taking place
11 in that residence; correct?

12 A. No, sir.

13 Q. Correct?

14 A. During the initial sweep, we're not looking for
15 anything, any struggle. We're just looking to make sure
16 all people on the scene are safe.

17 Q. Once you determined that, was there anything else
18 about that scene that made you feel as though there had
19 been some type of struggle or fight?

20 A. Not at that time. I was not looking for that. I've
21 been trained whenever the victim has been secured -- she
22 was in the ambulance -- we do nothing else just to make
23 sure that scene is safe. And we back out of it and wait
24 on a search warrant.

25 Q. Thank you very much. That's all the questions I

1 have.

2 A. Yes, sir.

3 THE COURT: Any redirect?

4 MS. MOORE: Nothing, Judge.

5 THE COURT: All right. Thank you, Officer.

6 You may step down.

7 Any objection to this witness being excused?

8 MS. REEVES: No objections, Your Honor.

9 THE COURT: All right. The officer is excused.

10 Call your next witness.

11 MS. MOORE: Captain Chris Brewer.

12 **CHRISTOPHER SHANE BREWER,**

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION

15 BY MS. MOORE:

16 Q. Captain Brewer, where are you employed?

17 A. West Pelzer Police Department and Greenville County

18 E.M.S.

19 Q. Okay. How long have you been with West Pelzer

20 Police Department?

21 A. About three years.

22 Q. And what is your current position there?

23 A. I am a captain.

24 Q. What was your position at West Pelzer P.D. in April

25 2014?

1 A. I had just been promoted to captain from the rank of
2 sergeant.

3 Q. And do you have any prior law enforcement
4 experience?

5 A. I do. I've been in law enforcement since 1994.
6 I've worked for Belton Police Department and for Anderson
7 City.

8 Q. How long have you been with Greenville E.M.S.?

9 A. I've been with Greenville E.M.S. approximately eight
10 years.

11 Q. Okay. And what's your current position there?

12 A. I am a paramedic for Greenville County.

13 Q. What kind of training and experience do you have as
14 a paramedic?

15 A. I've been in the military since 1993 as a medic. I
16 am a paramedic with Greenville County as a field training
17 officer. I'm an instructor in both basic and advanced
18 cardiac life support. And I'm the lead instructor for
19 the Army medic refresher course.

20 Q. On April 22nd, 2014, did you have occasion to go to
21 South Hamilton Street?

22 A. I did.

23 Q. For what reason?

24 A. I was called there as backup to help secure the
25 scene and to approach a victim who was involved in a

1 shooting.

2 Q. And why would it matter if the scene was secured?

3 A. Until the scene is secure, E.M.S. is not allowed to
4 go on the scene. So the victim in a shooting case will
5 have to wait until the scene is secure to receive medical
6 aid.

7 Q. And what did you do when you arrived?

8 A. Upon my arrival, I went straight into the residence
9 and went straight to the victim.

10 Q. And what did you notice about her?

11 A. Upon getting to the victim, I observed that she had
12 a head wound and she had a wound above the right eye. I
13 immediately began doing medical interventions to assist
14 her.

15 Q. Okay. Was she sitting up? Was she laying down?

16 A. She was in a seated position but leaning a little
17 bit to the right-hand side on the couch.

18 Q. Okay. Was she responsive at all?

19 A. She was moaning when I initially got to her. She
20 quickly went unconscious after my arrival.

21 Q. And what did you do next?

22 A. As soon as she went unconscious, I observed that she
23 was starting to have some difficulty breathing. So I did
24 a medical intervention called a jaw thrust where I move
25 the jaw forward, displacing the tongue to open the

1 airway.

2 Q. Okay. What could you tell, if anything, about her
3 injury?

4 A. I could tell that there was a small entrance wound
5 to the head. I then did what's called a blood sweep
6 which is where I run my fingers along the head. I
7 observed that I could not find an exit wound during that
8 time, and I continued with the jaw thrust maneuver to
9 help with her airway.

10 Q. Okay. And what happened next?

11 A. While I was doing that, I was able to lean against
12 my mic, give a report to E.M.S. concerning the patient's
13 condition. E.M.S. arrived. I assisted in securing the
14 patient to the stretcher and moving her to the ambulance.

15 Q. Okay. And after she got in the ambulance, what did
16 you do next?

17 A. I assisted E.M.S. just for a very short period. And
18 then I went to the perimeter, and I helped secure the
19 perimeter of the house.

20 Q. Thank you, Officer. I have nothing further. Please
21 answer anything Mr. Young has for you.

22 MR. YOUNG: Thank you, Captain Brewer. You're
23 free to go.

24 THE COURT: Thank you, Officer. You can step
25 down. You are excused.

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1 MS. MOORE: Cindy Turner.

2 CINDY TURNER,

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MS. MOORE:

6 Q. Ms. Turner, by whom are you employed?

7 A. Right now I'm employed with MedShore. They took
8 over from Williamston.

9 Q. Williamston?

10 A. E.M.S.

11 Q. Okay. And how long have you been with MedShore?

12 A. About six months now.

13 Q. Okay. What's your position there?

14 A. I'm a paramedic.

15 Q. How long were you with Williamston E.M.S.?

16 A. Two and a half to three years.

17 Q. And prior to Williamston and MedShore, where were
18 you employed?

19 A. I've also worked for Vital Care, and I've worked for
20 MedShore also in the past.

21 Q. Okay. So about how much E.M.S. experience would you
22 say you have?

23 A. All together probably ten years.

24 Q. And what kind of training have you had?

25 A. I got my paramedic certificate at Greenville Tech.

1 You also have to have basic C.P.R., advanced life
2 support, pre-hospital trauma classes.

3 Q. And when did you get your paramedic certificate?

4 A. I believe it was in 2009.

5 Q. What are your duties as a paramedic?

6 A. To provide emergency care in a pre-hospital setting.

7 Q. Do you have a list of things that you need to follow
8 for every patient or ---

9 A. We have standing orders.

10 Q. Okay. And what are standing orders?

11 A. It's a set of written instructions that we carry
12 that the doctor tells us what to do in each emergency.

13 Q. Okay. Were you employed by Williamston E.M.S. in
14 April of 2014?

15 A. Yes, ma'am.

16 Q. And on April 22nd, did you have occasion to see the
17 victim, Sandra Smith, in an E.M.S. capacity?

18 A. Yes, ma'am.

19 Q. Was anyone working with you that day?

20 A. Yes. My E.M.T. partner at the time, Andrew Barr.

21 Q. And where did you see the victim?

22 A. I believe it was her residence on South Hamilton
23 Street.

24 Q. Okay. What time did you receive the call to respond
25 to that house?

1 A. I'm not sure exactly. I know it was late. It was
2 already dark. Around ten, I think.

3 Q. Okay. If I show you your report from that call,
4 would it refresh your memory?

5 A. Yeah. It looks like we were on scene at twenty-two
6 twelve.

7 Q. That's what time you arrived?

8 A. Yes, ma'am.

9 Q. Okay. Do you know what time you received the call
10 to go to the location?

11 A. Twenty-two oh one.

12 Q. Okay. And where was Ms. Smith located when you
13 arrived?

14 A. She was sitting on the sofa in the living room
15 directly -- a little bit to the left. And when we walked
16 in the door, she was slumped over.

17 Q. Okay. And can you describe her condition to me?

18 A. She was unconscious. She still had a pulse. She
19 was still breathing. She appeared to have a single
20 gunshot wound to the forehead, I believe above the right
21 eye.

22 Q. Okay. Was she moving at all?

23 A. No, ma'am.

24 Q. Did you notice if there was an exit wound?

25 A. No, we didn't find an exit wound.

1 Q. Okay. What was done to treat her injury on the
2 scene?

3 A. We covered the gunshot wound. We moved her from the
4 sofa. Well, we put oxygen on her. We moved her from the
5 sofa to a long spine board to help facilitate getting her
6 out of the residence.

7 Q. Okay. Did you move her at any point in the house?

8 A. Well, we moved her from the sofa to our long spine
9 board. And then from our long spine board, we carried
10 her down the steps to the stretcher, I believe.

11 Q. Okay. And then to the ambulance?

12 A. Yes.

13 Q. Okay. And did you continue to treat her in the
14 ambulance?

15 A. Yes.

16 Q. Okay. What did you do in the ambulance?

17 A. We started an I.V., and we intubated her. We put
18 her on a monitor, and we monitored her vital signs.

19 Q. Okay. Was she breathing on her own?

20 A. She was.

21 Q. Okay. But you said you intubated her?

22 A. Yes.

23 Q. Why?

24 A. Because she was unconscious. I wanted to make sure
25 that she didn't aspirate or anything like and that we

- 1 were pretty much ahead of her airway.
- 2 Q. Okay. And did you use anything to help her breathe?
- 3 A. We used our bag valve mask just to make sure she was
- 4 getting adequate respirations.
- 5 Q. And so you used a bag to help her breathe even
- 6 though she was breathing on her own?
- 7 A. Correct.
- 8 Q. Why would you do that?
- 9 A. Just, like I said, to make sure she's getting
- 10 adequate respirations.
- 11 Q. Okay. Did you monitor her vital signs when she was
- 12 being transported?
- 13 A. Yes.
- 14 Q. Which type of vital signs?
- 15 A. We monitored her blood pressure, her pulse. A
- 16 capnography.
- 17 Q. For a head wound like that, is it typical for
- 18 patients to stop breathing?
- 19 A. It could be, yes.
- 20 Q. It could be?
- 21 A. Yes.
- 22 Q. And how were her vital signs?
- 23 A. Her vital signs stayed pretty stable en route.
- 24 Q. Can you tell me anything about her signs of
- 25 tachycardia?

1 A. I believe that the strip that got uploaded on the
2 computer was the wrong strip. Her heart rate remained
3 stable.

4 Q. Okay. What is a trauma score?

5 A. A trauma score is a score from zero to twelve. It's
6 used to, I guess, rate the severity of the injury.
7 Twelve's high and zero is the lowest possible.

8 Q. So twelve is the worst?

9 A. Uh-huh (affirmative).

10 Q. And zero's the best?

11 A. No. I'm sorry. I said that wrong. Zero's the
12 worst.

13 Q. Zero's the worst. Okay. What was Sandra Smith's
14 trauma score?

15 A. I have an eight on here.

16 Q. And what does that mean to you?

17 A. Well, she's still critical at that point.

18 Q. And what hospital did you transport her to?

19 A. We took her to Greenville Memorial.

20 Q. Why did you take her to Greenville instead of
21 Anderson?

22 A. Greenville is a level-one trauma facility, and
23 they're a little more equipped for that type of injury
24 than AnMed.

25 Q. Okay. What happened when you arrived at Greenville

1 Memorial?

2 A. We were met with a trauma team. We transferred her
3 over to the trauma table. I gave my report to them, and
4 we left.

5 Q. Okay. And what time did you arrive at Greenville?

6 A. It looks like twenty-two forty-eight.

7 Q. When you left Greenville, what did you do?

8 A. We left Greenville. We went back to the scene on
9 Hamilton Street to gather information because we really
10 didn't have any information on her.

11 Q. And how many gunshot wounds have you seen in your
12 time as a paramedic?

13 A. Probably five or six.

14 Q. What types of gunshot wounds were they?

15 A. Most were self-inflicted to the head and to the
16 chest.

17 Q. Okay. And what happened to those patients?

18 A. They died.

19 Q. All of them?

20 A. Yes, ma'am.

21 Q. I have nothing further. Please answer any questions
22 Mr. Young may have for you.

23 A. Uh-huh (affirmative).

24 CROSS-EXAMINATION

25 BY MR. YOUNG:

1 Q. Ms. Turner, as you were describing the condition of
2 Ms. Smith, in your report you refer to -- you said that
3 you smelled the odor of alcohol on her?

4 A. Yes, sir.

5 Q. Thank you. That's all the questions I have.

6 THE COURT: Any redirect?

7 MS. MOORE: No, Judge.

8 THE COURT: Any objection to this witness being
9 excused?

10 MR. YOUNG: No objections, Your Honor.

11 THE COURT: Thank you, ma'am. You are excused.

12 MS. MOORE: Detective George Cremer.

13 **GEORGE CREMER,**

14 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MS. MOORE:

17 Q. Detective Cremer, by who are you employed?

18 A. I'm with the Williamston Police Department.

19 Q. And how long have you been with Williamston?

20 A. A little over two years.

21 Q. Okay. And what is your current position?

22 A. Currently I'm a detective there.

23 Q. And prior to working at Williamston, where did you
24 work?

25 A. Prior to Williamston, I was at the Anderson Police

1 Department where I retired. Prior to that, I was working
2 full time in Anderson as a crime scene technician.
3 Before that I was uniformed patrol with Anderson. About
4 sixteen years prior to that with Anderson County
5 Sheriff's Office in the crime scene division.. And before
6 that, I was with the Seneca Police Department. And prior
7 to that, six years Air Force Security Police.

8 Q. So how many years total in law enforcement?

9 A. Over thirty-five.

10 Q. And what was your position in Williamston in April
11 2014?

12 A. Uniformed patrol.

13 Q. What were your duties and responsibilities as a
14 uniformed patrol officer?

15 A. Patrol the town, answer calls for assistance,
16 traffic stops, ordinance violation. Just usual police
17 stuff.

18 Q. Okay. And on April 22nd, 2014, did you have
19 occasion to go to South Hamilton Street?

20 A. Yes. I was called out.

21 Q. For what reason?

22 A. There had been a shooting incident, and I was called
23 out for assistance.

24 Q. And what did you do when you arrived?

25 A. When I first arrived, my partner was already there.

1 He was standing by, had done some cursory photographs
2 from outside. We were waiting for search warrants. In
3 the meantime, we went ahead and conducted some gunshot
4 residue collection kits and photographed the three
5 individuals out front of the residence.

6 Q. Okay. And who was your partner?

7 A. Officer Wynn.

8 Q. And what individuals did you do gunshot residue and
9 pictures of?

10 A. We did the defendant, Mr. Billy Ray Smith, his son,
11 Paul Smith, and Mr. David Guyton Hogg.

12 MS. MOORE: I beg the Court's indulgence one
13 moment,. Your Honor.

14 Q. After you collected G.S.R., what did you do?

15 A. I believe the search warrant had been signed, and we
16 started doing cursory photographs inside the residence
17 looking for evidence.

18 Q. Okay. Did you find any evidence, a weapon or
19 ammunition, in your search?

20 A. Not to this case as far as weapons and ammunition.
21 We did find some ammunition, but nothing that was small
22 caliber.

23 Q. Okay. Do you have any idea what kind of weapon
24 caused this injury?

25 A. At this time, I do. I believe it was a twenty-two

1 caliber revolver.

2 Q. Okay. And how do you know that?

3 A. We went to the residence over on -- let me see if I

4 can find the address. I was with the sheriff's office.

5 We went to Paul's residence, his trailer. There was a

6 consent to search. And the pistol was recovered in the

7 living room under a couch cushion.

8 Q. Okay. From the information that you had about the

9 victim and the size of her wound, what kind of ammunition

10 did you think you were looking for?

11 A. I was given a call by a crime scene technician from

12 the sheriff's Office, Mr. Roy McElrath. And I asked him

13 what the hole looked like on the victim. And he

14 described a small caliber hole. He said possibly a

15 twenty-two, twenty-five. Something small in diameter.

16 And that gave me a pretty good idea what to be looking

17 for at the residence.

18 Q. Okay. I'm showing you what's been premarked as

19 State's Exhibit 15. Do you recognize this photograph?

20 A. Yes, I do. This would be the green housecoat that

21 was on the loveseat in the living room of the house.

22 Q. Okay.

23 MS. MOORE: At this time, we would move State's

24 Exhibit 15 into evidence, Your Honor.

25 MR. YOUNG: No objection.

1 THE COURT: State's Exhibit 15 will be admitted
2 without objection.

3 (WHEREUPON, State's Exhibit Number 15 was admitted
4 into evidence.)

5 Q. Detective Cremer, I'm showing you what's been marked
6 as State's Exhibit 6. Do you recognize this photograph?

7 A. Yes, I do. That's the front door of the residence
8 we went to.

9 Q. Okay. And State's Exhibit 14, do you recognize this
10 photograph?

11 A. That would be inside the residence coming in the
12 door to the left side.

13 Q. Okay. And that's looking out the front door?

14 A. That's looking out the front door. If you were
15 coming in the front door, that's to the left side. If
16 you're in the residence, it would be -- the front door's
17 right there on the left side of the photograph. That's
18 to the right.

19 Q. Okay. Do you recognize this photograph?

20 A. Yes. This is the loveseat where I was told the
21 victim was at. And that's where that housecoat was
22 photographed earlier.

23 Q. Okay. And can you see that loveseat from the front
24 door?

25 A. Not without leaning in.

- 1 Q. Okay. I'm now showing you State's Exhibit 15. Do
2 you recognize this?
- 3 A. Yes. That's the housecoat you showed me earlier.
- 4 Q. Okay. And what do you know about this housecoat?
- 5 A. It was green in color, and it's bloodstained.
- 6 Q. Okay. This is State's Exhibit 12. Do you recognize
7 this photograph?
- 8 A. Yes, ma'am. It's a cup that was on the coffee table
9 directly in front of the loveseat in the living room.
- 10 Q. Okay. What else is on the coffee table?
- 11 A. There's a smear of blood on it.
- 12 Q. Okay. What else is on the coffee table?
- 13 A. Let's see. There's some pill wrappers, papers.
- 14 Q. Do you know who this cell phone belongs to?
- 15 A. No, I don't know who the cell phone belongs to.
- 16 Q. Where was the cell phone located?
- 17 A. It was right there where you see it in the
18 photograph, beside the coffee table.
- 19 Q. Okay. And where was the coffee table located?
- 20 A. In the living room.
- 21 Q. In front of the couch?
- 22 A. In front of the couch.
- 23 Q. Okay. Were you aware of the witness statements when
24 you took these pictures?
- 25 A. I was aware of a general statement made by the

1 defendant when I was GSR-ing his hands. I asked him
2 where he was at when the shooting was taking place. He
3 answered and said he was ducking. He said, "What would
4 you do if someone was shooting through the door?"

5 Q. Okay. Did you do anything else at that scene?

6 A. We did search the vehicle that was out front. It
7 was part of the search warrant. I believe we found a
8 receipt for a pawn shop in it. It was photographed.

9 Q. Okay. And did you have occasion to go to
10 Holiday Street in relation to this case?

11 A. Yes. That's the defendant's son's house, Paul.
12 That's where we went with the consent to search and
13 recovered the revolver at -- in the living room under the
14 couch cover.

15 Q. Okay. When you initially arrived before you got the
16 consent to search, what did you do?

17 A. We were told that the gun was in the brush or bushes
18 out in the perimeter of the yard. So we searched that
19 area all the way around the residence for a firearm.

20 Q. You did not find one?

21 A. We did not recover a firearm in the brush area, no,
22 ma'am.

23 Q. Okay. Did you photograph or collect anything from
24 that street -- from Holiday Street?

25 A. Officer McElrath photographed and collected the

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1 firearm. We were in the county at the time. And it just
2 seemed better to use their jurisdictional power out there
3 in that location rather than us.

4 MS. MOORE: I beg the Court's indulgence, Your
5 Honor. Judge, my apologies. We need to take a short
6 recess.

7 THE COURT: Okay.

8 All right. Mr. Bailiff, take the jurors out.

9 (WHEREUPON, the jury exited the open court at
10 approximately 9:44 a.m.)

11 THE COURT: We'll take a few minutes.

12 MS. MOORE: Thank you, Judge.

13 THE COURT: Officer, you're under oath, so you
14 can't talk about your testimony while we're taking a
15 break.

16 THE WITNESS: Yes, sir.

17 (WHEREUPON, court stood at recess for a short
18 break.)

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

21 MS. MOORE: We are, Your Honor.

22 THE COURT: Thank you.

23 All right. Mr. Bailiff, if you'd get our jury for
24 us, please, sir.

25 (WHEREUPON, the jury entered the open court at

1 approximately 9:46 a.m.)

2 THE COURT: All right. Ms. Moore, you can
3 proceed.

4 DIRECT EXAMINATION

5 CONTINUED BY MS. MOORE:

6 Q. Detective Cremer, what is a G.S.R. kit?

7 A. It's a gunshot residue collection kit. Basically,
8 what it's used for -- when you discharge a firearm,
9 there's a cloud of powder, primer residue, that comes
10 from the firearm. It surrounds the firearm and then
11 drops down or attaches to different -- either your hands
12 or your gun or clothing when it's discharged. The G.S.R.
13 kit itself is designed to collect those particulates.
14 And then we send that to SLED, and they look at that
15 under a scanning electron microscope to determine whether
16 not the particulates are there to determine whether or
17 not you may have fired or were in close proximity of a
18 firearm when it was fired or discharged.

19 Q. Detective Cremer, is this the kit that you and
20 Officer Wynn performed on the defendant, Billy Ray Smith?

21 A. I'm going to break the seal.

22 Q. Fine with me.

23 A. Yes, ma'am.

24 Q. And how do you know it's the same kit?

25 A. This is my sticker I placed on the kit, and this is

1 my handwriting where I had wrote down the time and the
2 date and Mr. Smith's name for collection.

3 Q. Thank you. What do you do with these kits after
4 they're collected?

5 A. They're sealed, turned in to evidence and then
6 transported to SLED.

7 Q. Thank you, Detective. I have nothing further.
8 Please answer anything Mr. Young may have for you.

9 CROSS-EXAMINATION

10 BY MR. YOUNG:

11 Q. Detective, you photographed all the photos that
12 she's showed us?

13 A. I was present during the photography. Officer Wynn
14 or Officer McElrath took the photographs, but I was
15 present during the photography when it was taken.

16 Q. And did you gather up any of the information or the
17 evidence from the scene?

18 A. I did collect some of the evidence. Officer Wynn
19 collected most of the evidence under my supervision. We
20 worked as a team. I find in large crime scenes it's
21 easier to have one person write and the other one
22 collect. That way things don't get mixed up.

23 Q. And that cell phone that was in the picture, did you
24 collect that?

25 A. I don't recall collecting the cell phone myself.

1 Q. Okay. Did you do any kind of testing of that cell
2 phone or anything?

3 A. Did I? No, I did not. If it was collected, it
4 would have been analyzed either by SLED or somebody else.
5 But I'm not familiar with that particular phone at this
6 time.

7 Q. Thank you. I have no further questions.

8 THE COURT: All right. Any redirect?

9 MS. MOORE: None, Your Honor.

10 THE COURT: Any objection to this witness being
11 excused?

12 MR. YOUNG: No objections, Your Honor.

13 THE COURT: Thank you, Officer. You are
14 excused.

15 THE WITNESS: Thank you, sir.

16 MS. REEVES: The State calls Lieutenant Ken
17 Ebernickle.

18 KENNETH RANDALL EBERNICKLE,

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MS. REEVES:

22 Q. Lieutenant Ebernickle, where are you currently
23 working?

24 A. I currently work for G.H.S. which is the Greenville
25 Hospital System. The police department there.

1 Q. And how long have you been with G.H.S.?

2 A. This month one year.

3 Q. Where were you working before G.H.S.

4 A. Prior to them, I worked for the Williamston Police
5 Department.

6 Q. And what was your position?

7 A. I was the lieutenant over operations. Also assisted
8 with investigating and administrative duties.

9 Q. How long had you been with Williamston Police
10 Department?

11 A. One year and four months.

12 Q. And where were you prior to Williamston?

13 A. Prior to Williamston, I'd worked for the City of
14 Anderson. I worked with them for twenty-three and a half
15 years and retired.

16 Q. What were your duties and responsibilities at
17 Williamston Police Department?

18 A. I was in charge of the patrol division and also,
19 again, assisted with investigating and handled the
20 administrative duties.

21 Q. And were you employed in that position back on April
22 22nd of 2014?

23 A. I was.

24 Q. On that date did you respond to South Hamilton
25 Street?

1 A. I did.

2 Q. And is that in Anderson County?

3 A. It is.

4 Q. And why did you respond to that address?

5 A. I was called by Officer Eichelberger. She had
6 called me that evening and advised me that she had a
7 gunshot victim there on Hamilton Street.

8 Q. And about what time did you arrive?

9 A. I arrived about eleven twenty p.m.

10 Q. And what, if anything, did you do at the scene?

11 A. When I arrived on the scene, you know, it was a
12 crime scene that I'd arrived to. And the victim had
13 already been transported to the emergency room over in
14 Greenville. And so at that time, the decision was made I
15 was going to take the defendant, Mr. Smith, to the police
16 department and talk with him.

17 Q. Were you made aware of the victim's injuries she had
18 suffered?

19 A. I was. I was advised on the phone prior to
20 responding that the victim had a gunshot wound to the
21 head and that the defendant, who was there, had left the
22 scene and then returned back to the scene.

23 Q. Did anyone else go with the defendant to the police
24 department?

25 A. They did not. I took him myself. I asked Mr. Smith

1 if he would ride with me to the police department so that
2 we could talk about what happened and try to determine
3 what happened.

4 Q. Okay. Was he under arrest at that point?

5 A. He was not.

6 Q. And did you speak to the defendant once at the
7 police department?

8 A. I did. I took him there to what we call the radio
9 room. It's where the patrol officers keep their radios
10 stored on charge. The room was also used -- we use it to
11 talk with victims, suspects, whatever, you know, we need
12 to use the room for. It's also used as a spare room for
13 the judge of Williamston after hours.

14 Q. Was he advised of his rights?

15 A. He was.

16 Q. And how did you do that?

17 A. We have a rights form that I read to him and went
18 over that form and had him to sign it.

19 Q. I'm going to show you what's already been entered
20 into evidence. This is Exhibit Number 1. Is this the
21 form that you used with the defendant?

22 A. Yes, ma'am.

23 Q. Has it been changed or altered in any way since the
24 day you used that with the defendant?

25 A. It has not.

1 Q. And did you put the date on that form and the time
2 that you spoke with the defendant?

3 A. I did. And it's April 22nd, 2014, at eleven fifty-
4 eight.

5 Q. And is that a.m. or p.m.?

6 A. I'm sorry, p.m.

7 Q. So, again, was Mr. Smith under arrest at that time?

8 A. He was not under arrest, no.

9 Q. So was he in handcuffs?

10 A. He was not.

11 Q. And did you go over that form with him?

12 A. I did.

13 Q. How did you do that?

14 A. I read him the form and then asked him to read the
15 waiver part and had him to read the first line for me.

16 Q. Who fills in the blanks on the form?

17 A. I filled those in.

18 Q. And who signed at the bottom?

19 A. I signed it as the witness, and then I had the
20 defendant to also sign it.

21 Q. And when did you sign the form?

22 A. It was signed at twelve midnight. And that would
23 have been on the 23rd.

24 Q. Can you read that form to us, please?

25 A. I can. It says, "Before we ask you any questions,

1 you must understand your rights. You have the right to
2 remain silent. Anything you say can be used against you
3 in court. You have the right to talk to a lawyer for
4 advice before we ask you any questions and to have a
5 lawyer with you during questioning. If you cannot afford
6 a lawyer, one will be appointed for you before any
7 questioning if you wish. If you decide to answer
8 questions now without a lawyer present, you will still
9 have the right to stop answering at any time. You also
10 have the right to stop answering at any time until you
11 talk to a lawyer."

12 And the waiver part is, "I, Billy Ray Smith, the
13 undersigned, have read this statement of my rights. I
14 understand what my rights are. I'm willing to make a
15 statement and answer questions. I do not want a lawyer
16 at this time. I understand and know what I am doing. No
17 promises or threats have been made to me. No pressure or
18 coercion of any kind has been used against me."

19 Q. And I believe you said that you let the defendant
20 read a portion of that?

21 A. I do. We'll always ask the defendant can they read
22 and write. And, of course, he said he could. And I'll
23 ask them to read the first line, the first sentence of
24 the waiver form.

25 Q. And did the defendant in this case do that?

1 A. He did.

2 Q. Did you understand he could read and write?

3 A. Yes, ma'am. Also, I ask them to go ahead and finish

4 reading it and review it and if they have any questions.

5 And I also go into detail in regards to the no pressure

6 or coercion used and let him know what that means to us

7 is that we're not threatening him or putting him under

8 the bright light or beating him with a hose, that it's

9 all free and voluntary.

10 Q. So you kind of explain the form in addition to just

11 reading it to him?

12 A. Yes, ma'am.

13 Q. And you did that in this case?

14 A. Yes, ma'am.

15 Q. And I believe you said you were speaking with him in

16 the radio room; is that correct?

17 A. That's correct.

18 Q. And was the defendant able to use the restroom or

19 get a drink of water if he needed to?

20 A. He would have been free to, yes, ma'am.

21 Q. Was he seated in the radio room?

22 A. He was seated. We were seated at a table.

23 Q. And was he as comfortable as he could be under the

24 circumstances?

25 A. Yes, ma'am.

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1 Q. Did he appear intoxicated to you?

2 A. He did.

3 Q. Can you tell us what you observed about his
4 behavior?

5 A. Yes. He -- when I brought Billy from the scene --
6 or Mr. Smith -- sorry -- he had a strong odor of alcohol
7 about his person. And also in the radio room, he had
8 removed the pill bottle from his pocket. And he actually
9 had three prescription bottles in his pocket. And one of
10 those was Oxycodone, Oxycontin. And there was another
11 pill bottle there. And I'm not sure of the name of it.
12 They were all prescribed to him. And he had advised me
13 that he had been drinking that day. I think he stated he
14 had had a pint and a couple of beers and had also taken
15 some of that medication that day. He couldn't tell me
16 how much of the medication that he had taken.

17 Q. When you went over that form with him, did he appear
18 to understand his rights?

19 A. He said that he did. I feel like he did.

20 Q. Even in his condition?

21 A. Yes, ma'am.

22 Q. How much time had passed between the shooting
23 incident and the time you were sitting down to speak with
24 him?

25 A. From my understanding, the shooting was right around

1 about between nine-thirty and ten o'clock. I think
2 closer to ten possibly. And then it was just a couple of
3 minutes before midnight. So about two hours, two to two
4 and half hours.

5 Q. And just to be sure, I think you said in going over
6 the form in any way. But was the defendant promised
7 anything for him to speak with you or were any threats
8 made to him?

9 A. No.

10 Q. Was he intimidated in any way?

11 A. No, ma'am.

12 Q. And did he voluntarily waive his rights and speak
13 with you?

14 A. He did.

15 MS. REEVES: Your Honor, I misspoke. I would
16 like to offer State's Exhibit Number 1 into evidence at
17 this time.

18 MR. YOUNG: No objection, Your Honor.

19 THE COURT: State's Exhibit Number 1 will be
20 admitted without objection.

21 (WHEREUPON, State's Exhibit Number 1 was admitted
22 into evidence.)

23 Q. So after going over his rights, did the defendant
24 speak with you about what had happened?

25 A. He did.

1 Q. And what -- did he give a statement to you in
2 writing?

3 A. No, ma'am. It was just an oral statement.

4 Q. And tell us about what that -- what he said to you.

5 A. When we started to talk about what had happened, of
6 course, I asked him did he know who shot his wife. And
7 he was reluctant to tell me anything about it other than
8 he said that there was a loud truck come down the road, a
9 white dually truck, and that he knew who was driving the
10 truck. But the front door was open on the house, I
11 believe. And that a gunshot went off. And the way he
12 described it, he said, "The truck come by. It was a loud
13 diesel truck." And it was, "Pow." And he was very
14 dramatic in describing this. And he said then he heard
15 the truck continue on down the road. And as I tried to
16 get him to -- asking him about who's driving this truck,
17 he tried to explain -- he was explaining to me that it
18 was a bad dude, I think was his words, that was driving
19 the truck. He was afraid of him. And that the guy had
20 threatened to -- if he tells, the guy would kill him.
21 And so I tried to explain to him that in order for us to
22 make an arrest in this case and to determine who this
23 person was, he was going to have to assist us in this
24 matter. And he did eventually state that he would tell
25 me, he said, but he was reluctant to. But he did state

1 that the guy's name was Michael Green. And I asked him
2 why Michael Green would want to shoot him or shoot his
3 wife. And he stated that once a month when he gets his
4 prescriptions that he sells or gives Michael Green one
5 hundred of his pills. And that Michael Green had
6 approach him about buying more pills from him. And he
7 wouldn't sell him any more pills, so he felt like that's
8 why he was angry at him. And he said that -- I think he
9 said Mr. Green had made the threat that if he didn't give
10 him the pills once a month, he would kill him, he would
11 kill his children and also his grandchildren.

12 Q. Did he indicate he had seen Mr. Green that day?

13 A. He did state that earlier that day he was -- Mr.
14 Smith, the defendant, was across the street at Chris
15 Guthrie's house and working on a boat. Said he seen Mr.
16 Green in his yard. He walked over to talk to Green to
17 see what he wanted. Green wanted fifty more pills from
18 him. And he wouldn't sell him the pills or give him the
19 pills. And he seemed to think that's why -- that's what
20 made him angry enough to come by and shoot through the
21 house.

22 Q. Did he go into detail about after his wife was shot?

23 A. He did. He said that after his wife was -- after
24 she had been shot that he -- I believe he explained that
25 at first he thought she was okay. He left and went to

1 get his son and then returned back with his son and
2 another gentleman, David Hogg, to the scene.

3 Q. Did he indicate before he left his wife that he had
4 called an ambulance?

5 A. In reading over my report, I believe that he had
6 stated that he had called law enforcement maybe on the
7 way down to his son's. But I don't recall him saying
8 that he had called for an ambulance.

9 Q. What, if anything, did you do next?

10 A. At that time we had decided to go and interview the
11 son, Billy Paul Smith.

12 Q. From your conversation with Paul Smith, did you
13 understand how he came to be at the residence of his
14 parents that night?

15 A. Yes. Mr. Paul Smith, the son, stated that he and
16 David Hogg, another gentleman, was at home at their
17 trailer that he rents down in -- I believe it's in West
18 Pelzer on Holiday Street. So they were there watching
19 television, and his father came over and stated that his
20 mother -- that he had accidentally shot his mother and
21 that he needed to come with him. And Paul Smith said he
22 didn't believe him, but he went with him. They went to
23 the house to check on his mom, and his mom had, in fact,
24 been shot. And then the son, that's when he called 9-1-1
25 for an ambulance.

1 Q. Okay. After speaking with Paul Smith, what did you
2 do next?

3 A. After that initial interview, I went back -- myself
4 and Captain Marsee went back to talk with the defendant,
5 Billy Ray Smith.

6 Q. And was Mr. Smith reminded of his rights at that
7 point?

8 A. He was. We did remind him that he had been advised
9 of his rights.

10 Q. And was he threatened or coerced at that point to
11 speak with you again?

12 A. He was not.

13 Q. And so you had said -- who else was with you at this
14 point?

15 A. Captain Marsee.

16 Q. And what did the defendant say?

17 A. We had told him we talked with his son and that --
18 kind of what the son was saying. And then he said, well,
19 what he had said wasn't true. He wanted to be honest
20 with us. He said that she was shot in the house, that it
21 was all an accident, and that he, his son, David Hogg --
22 and I believe he said Chris Guthrie was there. And the
23 wife, of course. And that they were passing the gun
24 around. And when the gun ended up in his son's hand, the
25 gun went off and it struck his wife, the victim.

1 Q. And did he indicate where the gun might be?

2 A. He said at that time that his son and David Hogg had
3 taken the gun to get rid of it.

4 Q. And do you know where? Did he tell you where?

5 A. I think he said they had taken it back to the son's
6 trailer to get rid of it.

7 Q. And so what did you do with that information?

8 A. With that, and talking with him further, he had
9 advised also that his son had hidden the gun outside of
10 the trailer. And so he said he could take us to that
11 gun. And so myself and Captain Marsee transported the
12 defendant down to that residence because we was in fear
13 that, number one, we have a live gun that was laying out
14 in the open and that for all purposes, safety purposes,
15 evidence purposes, it needed to be recovered. So Captain
16 Marsee and I and the defendant went down to the
17 residence, and the defendant began to search the bushes.
18 We was assisting him in looking with him because
19 obviously, if he did located the gun, we didn't want him
20 to touch it. The gun was never located. We called for
21 additional officers to come down and help us search the
22 bushes there as well.

23 Q. And when you didn't find the gun outside, what did
24 you do next?

25 A. We did not locate the gun. And the defendant said

1 that the gun must be inside. He wanted to go inside to
2 get the gun. We wouldn't allow him to go inside the
3 residence, so he had asked to call his son. He said, "I
4 can get him to tell me where the gun is at." And so he
5 did call him. Most of the conversation I heard was one-
6 sided from the defendant. And he was telling the
7 defendant that -- he said, "Son, I've come clean with
8 them. I told them it was an accident. I told them I did
9 it. And you need to tell me where the gun is located."
10 And he had advised us that -- I believe his son had told
11 him the gun was inside.

12 Q. Was the trailer then searched?

13 A. It was. The son was brought down by another officer
14 to the scene, and there was an Anderson County Deputy
15 there assisting with the collection of evidence. And the
16 son give consent to search his trailer. I did not enter
17 the trailer during the search. I was advised that the
18 gun -- that there was, in fact, several guns located
19 inside the residence.

20 Q. And one of those a twenty-two caliber revolver?

21 A. Yes, ma'am.

22 Q. What did you do after finding this gun?

23 A. After the gun was located and they finished up the
24 evidence collection on the trailer, the trailer, of
25 course, was secured back and we went back to the police

1 department.

2 Q. And did you speak with anyone back at the police
3 department?

4 A. When we went back to the police department, we did
5 go back and re-interview the son, Paul Smith.

6 Q. And from your speaking with him, did you understand
7 that he had or had not been with his parents during the
8 shooting?

9 A. From my understanding during the second interview
10 with him, it was pretty much the same. He had stated
11 that he was home watching television with David Hogg and
12 that his father had showed up, come running up. And
13 during this interview, he stated that when his father
14 come running into the trailer, he had a twenty-two pistol
15 to his head. And he was stating that, "I shot your mom."
16 And that Billy Paul kind of rushed him and run at him and
17 grabbed the gun from him. And Billy Paul said that he
18 laid the gun on the table. But my understanding during
19 the search, it was later located at another location.

20 Q. Did you speak with the other male that had been at
21 the scene that night?

22 A. We did. I spoke with David Hogg, interviewed him.
23 He also had corroborated what the son had told us. He
24 didn't corroborate the gun to the head, but he did state
25 that his father, the defendant, did come to the house

1 stating that he had shot his mother and that the
2 defendant carried both of them back to the residence, to
3 the crime scene.

4 Q. So he also denied being at the scene when the
5 shooting occurred?

6 A. He did.

7 Q. Approximately how far away are these two residences
8 from each other?

9 A. I think those -- they're three point eight miles
10 away from each other. It's about a seven- to ten-minute
11 drive.

12 Q. And on the way from South Hamilton to Holiday
13 Street, what do you pass?

14 A. It's mostly residential, business. You go into a
15 business area. Once you get down into West Pelzer,
16 there's a fire department, there's a police department,
17 there's E.M.S. There's numerous places that you could
18 have, you know, asked for help.

19 Q. In between those two residences?

20 A. Yes, ma'am.

21 Q. At some point later in your investigation, did you
22 follow up and go to Foothills Pawn Shop?

23 A. I did. At one point, we were -- I was advised that
24 there was a shotgun that had been pawned at Foothills.
25 We searched there for that. And it was not. But had

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1 been advised that earlier in the day that -- I want to
2 say it was the son that told me that earlier in the day
3 that the defendant had left to go get some more alcohol
4 and also went to get some ammunition for the twenty-two.
5 And so I went to Foothills Pawn Shop. And we had
6 discovered that the salesman there, John Matheney, I
7 believe was his name, who wasn't there at the time, but
8 the owner called him on the phone to find out if he had
9 sold this defendant any twenty-two ammunition. And he
10 stated that he assumed ---

11 Q. I'm going to stop you right there.

12 A. I'm sorry.

13 Q. Do they sell that type of ammunition at the pawn
14 shop?

15 A. They didn't.

16 Q. And did you later speak with that employee, John
17 Beamon?

18 A. I did.

19 Q. Later in your investigation, did you follow up and
20 speak with the victim?

21 A. I did speak with the victim. It was not until May
22 8th was when I did speak with the victim.

23 Q. And where was she when you spoke with her?

24 A. She was at the Greenville Hospital.

25 Q. And how was her condition?

1 A. She was, of course, bandaged. My understanding that
2 she'd lost eyesight in one eye. And she was coherent,
3 talking with me. She just didn't remember anything about
4 the shooting.

5 Q. At that time?

6 A. At that time. And the daughter had asked me -- she
7 had not been advised at that time that it was believed
8 that the defendant had shot her. And so we had talked --
9 I'd talked to medical there about telling her. The
10 daughter wanted me to tell her. And I did tell her. I
11 told her that -- I asked her -- first, I asked her did
12 she know who shot her. And she didn't. And I advised
13 her that her husband -- that it appeared that her husband
14 had shot her. And it surprised me, her reaction. She
15 was not shocked at all. She didn't appear to be
16 surprised that he had shot her.

17 Q. No further questions.

18 A. Thank you.

19 THE COURT: Mr. Young?

20 CROSS-EXAMINATION

21 BY MR. YOUNG:

22 Q. Officer Ebernickle, a couple of things I want to go
23 over with you. First, let me ask you when you took Mr.
24 Smith to the police department, did you -- at that time
25 you saw the prescription bottles that he had; correct?

- 1 A. I did, yes, sir.
- 2 Q. Did you look at them and examine them?
- 3 A. I did.
- 4 Q. They were prescriptions that were prescribed to him?
- 5 A. Yes, sir.
- 6 Q. Did you happen to notice the number of pills that
- 7 were filled with each one of those prescriptions?
- 8 A. You know, I do recall looking at that. I recall
- 9 that it was -- it was a large quantity, appeared to me to
- 10 be a large quantity. I can't tell you the exact number.
- 11 Q. And you stated that Mr. Smith stated that he tried
- 12 to call law enforcement when he was on his way over to
- 13 his son's home?
- 14 A. That's what I have noted that he had stated to me,
- 15 yes.
- 16 Q. Did you examine any cell phones that Mr. Smith may
- 17 have had?
- 18 A. I did not.
- 19 Q. You testified that Paul, Mr. Smith's son, stated
- 20 that his dad came in and said that he had accidentally
- 21 shot his mom?
- 22 A. Yes.
- 23 Q. Okay. I want to go over the time frame of all this
- 24 happening. When you got back to the police department to
- 25 interview Mr. Smith, it was around midnight; correct?

1 A. Yes, sir.

2 Q. And it was around -- and you spoke with him for
3 about forty-five minutes or so?

4 A. Probably, yes, sir.

5 Q. And after that, you and Captain Marsee discussed
6 what you had found out from Mr. Smith?

7 A. Yes, sir.

8 Q. At that point in time, you decided to interview Paul
9 Smith; correct?

10 A. Yes, sir.

11 Q. And at that time, you immediately went in and you
12 talked with Paul?

13 A. Yes, sir.

14 Q. Spoke with Paul for probably about another twenty,
15 thirty minutes or so?

16 A. Probably. I'm not sure of the exact amount of time
17 we spent with him, but ...

18 Q. And then you went back to speak with Mr. Smith;
19 correct?

20 A. Yes, sir. Correct.

21 Q. The first time you spoke with Mr. Smith, he gave
22 this story about a shooting involving a Mr. Green, I
23 believe you said; correct?

24 A. Yes, sir.

25 Q. At that point in time, did you personally stop your

1 conversation with him in order to go and find out if you
2 could find any information regarding Mr. Green?

3 A. No, sir. Honestly, during the interview with him
4 about the story with Mr. Green, I didn't believe him, to
5 be honest. I didn't believe that that was the case. I
6 wouldn't have ruled it out as not being the case, but it
7 didn't appear to be a true story that he was telling. It
8 all seemed to be fabricated.

9 Q. And at this time, you had already noticed that Mr.
10 Smith was highly intoxicated, I believe is what you wrote
11 in your report?

12 A. Yes, sir.

13 Q. Coupled with him taking some medication?

14 A. Yes, sir.

15 Q. So you didn't believe this story, did you?

16 A. I didn't.

17 Q. You went and you talked with the son, and you came
18 back and you shared with Mr. Smith that you didn't
19 believe that previous story and asked him to tell us what
20 happened; correct?

21 A. Yes, sir.

22 Q. And at that point in time, he actually told you that
23 this was an accidental shooting; correct?

24 A. He did.

25 Q. He offered to take you to where the gun supposedly

1 was; correct?

2 A. Yes, sir.

3 Q. And he shared with you that he thought his son had
4 taken the gun and hidden it; correct?

5 A. Yes, sir.

6 Q. So you all went over to the house of the son;
7 correct?

8 A. Correct.

9 Q. Took Mr. Smith over; correct?

10 A. Correct.

11 Q. He wasn't in any handcuffs?

12 A. No, sir.

13 Q. He was walking around; correct?

14 A. Correct.

15 Q. Looking in the brush area, looking for the gun;
16 correct?

17 A. Yes, sir.

18 Q. Couldn't find it after a while; right?

19 A. Correct.

20 Q. So he said, let me call my son and find out where
21 the gun was; correct?

22 A. Yes, sir.

23 Q. In fact, the phone that he used was one of the
24 police officer's cell phones; correct?

25 A. You know, I wasn't sure at the time whose phone he

1 used to make that -- I probably knew then. This -- I
2 mean, we're talking over a year and a half ago. So I do
3 know now I believe it was Captain Marsee's phone being
4 used.

5 Q. And he called his son. And eventually he told his
6 son, I've already told them this was an accidental
7 shooting; correct?

8 A. Correct.

9 Q. We need to know where the gun is; correct?

10 A. Correct.

11 Q. And it was the son who came and said that the gun
12 was in the house; correct?

13 A. Correct.

14 Q. Now, the son indicated, I believe you said on direct
15 examination, that the gun -- the son indicated that the
16 gun was on a table; correct?

17 A. Correct.

18 Q. But when the home was searched, the gun was found
19 someplace else?

20 A. That's my understanding is that it was -- I believe
21 it was located under maybe a couch cushion.

22 Q. I want to go over -- you had an opportunity to
23 interview Paul Smith; correct?

24 A. Yes, sir.

25 Q. And at some point in time, you put his statement in

1 writing; correct?

2 A. Yes, sir.

3 Q. And he shared with you that his dad had been
4 drinking all day that day; correct?

5 A. He did.

6 Q. Stated that he went over to do some work at his
7 dad's house earlier that day?

8 A. I believe across the street. They were there
9 working on a boat.

10 Q. On a boat over across the street?

11 A. Across the street at Chris Guthrie's house.

12 Q. Did he tell you that he went fishing that day with
13 his dad?

14 A. No, sir, I don't think so.

15 Q. But he did share with you that around two o'clock
16 his dad went fishing; correct?

17 A. I think he did tell me that his father had -- I want
18 to say that I was thinking it was the day before or the
19 evening before. But he did state at one point -- someone
20 stated that his father had went fishing.

21 Q. And in his statement he stated that David Hogg and
22 he went to this B&B Pawn to pawn this shotgun; correct?

23 A. Shotgun; correct.

24 Q. And, in fact, at some point in time, there was a
25 pawn ticket that was found; correct?

- 1 A. I would have to look back over the evidence to be a
2 hundred percent on that.
- 3 Q. Do you recall going to B&B Pawn?
- 4 A. Yes, sir. Yes, sir, I did go to B&B Pawn.
- 5 Q. And do you recall obtaining a printout from them as
6 to any pawns that were made on that day?
- 7 A. I think I did recover one from -- I was confusing
8 B&B Pawn with Foothills Pawn. B&B Pawn is located in
9 Belton. I did go to the one in Belton as well and
10 searched for the shotgun.
- 11 Q. And there was a -- you found a pawn ticket in the
12 name of Billy Paul Smith; correct?
- 13 A. I think I did, yes, sir. I'm pretty sure I did.
- 14 Q. You had an opportunity -- well, you had an
15 opportunity to talk with David Hogg?
- 16 A. I did, yes, sir.
- 17 Q. And likewise, he put a statement in writing;
18 correct?
- 19 A. He did.
- 20 Q. And Mr. Hogg shared with you that at some point in
21 time that morning that Billy Paul Smith went with his
22 father to run some errands?
- 23 A. I haven't read that statement since the interview.
- 24 Q. Would you like an opportunity to read it?
- 25 A. Sure. Please.

1 (WHEREUPON, the witness reviewed document.)

2 A. Okay. Thank you.

3 Q. Do you remember it now?

4 A. I do.

5 Q. Okay. Did Mr. Hogg say that he -- that Billy Paul

6 and Billy Smith went and ran some errands that morning?

7 A. It does.

8 Q. And he stated that around -- he was with Billy Paul

9 for the majority of that day; correct?

10 A. Yes, sir, it sounds like he was.

11 Q. With the exception of the window of time that Billy

12 Paul was running some errands with his dad?

13 A. Correct.

14 Q. In fact, he stayed at Billy Smith and Sandra Smith's

15 house to wash dishes and help clean up and stuff while

16 they ran the errands; correct?

17 A. Correct.

18 Q. And then when they came back, he and Billy Paul went

19 to the pawn shop and to the hardware store to do some

20 stuff; correct?

21 A. Correct.

22 Q. And then they went over to, across the street to

23 work on the boat?

24 A. Correct.

25 Q. And then his next time seeing Billy Smith was when

1 Billy Smith came to their residence saying that the
2 mother was accidentally shot; correct?

3 A. Correct.

4 Q. At some point in time during the course of your
5 investigation, did you have an opportunity to interview
6 the guy who lived across the street?

7 A. I did. Chris Guthrie.

8 Q. And he was the guy who they were working on the
9 boat; correct?

10 A. Correct.

11 Q. Well, let me go back to David Hogg for a question.
12 Did David Hogg say that the twenty-two gun, caliber gun,
13 that it was his gun?

14 A. No.

15 Q. Did he state that he was the one who was having
16 problems with the gun and gave it to Billy Smith?

17 A. I do remember them stating there was a gun that they
18 had a problem with. And I know that David had said that
19 he had handled the gun and had moved the gun.

20 Q. But he didn't say -- but it wasn't his gun?

21 A. I don't think so.

22 Q. And part of the conversation -- I believe Billy Paul
23 Smith may have shared with you that the gun was not
24 firing properly, and Billy Smith suggested that they get
25 some good ammo for it?

1 A. That's my understanding.

2 Q. And as a result, Billy Smith went and bought some
3 bullets from Foothills Pawn?

4 A. Correct.

5 Q. They put the bullets in the gun, and the gun worked
6 properly; correct?

7 A. From my understanding, they did fire the gun.

8 Q. And did Billy Paul Smith share with you that he, at
9 some point in time, switched out the twenty-two caliber
10 gun for the twelve-gauge shotgun? Him and his dad
11 switched guns because his dad was thinking about buying
12 the twenty-two?

13 A. I don't recall that taking place.

14 Q. You had an opportunity to talk with Chris Guthrie;
15 correct?

16 A. I did, yes, sir.

17 Q. And Mr. Guthrie stated basically -- he live across
18 the street from Billy Smith; correct?

19 A. He does, yes, sir.

20 Q. On that particular day, did he state how long he was
21 at home, or was he only at home when he was working on
22 the boat?

23 A. Chris? You're talking about Chris?

24 Q. Yes, sir.

25 A. I don't think I ever asked him as to how long he was

1 at home. We had talked about him working on the boat and
2 who had been there at his residence and had he seen the
3 defendant.

4 Q. And at some point in time he did see Billy Smith;
5 correct?

6 A. He did.

7 Q. And at that time he described Billy Smith as being
8 drunk; correct?

9 A. He did. Yes, sir.

10 Q. And you say that he saw the twenty-two gun, twenty-
11 two caliber gun at that time; correct?

12 A. Yes, sir.

13 Q. And I believe he even asked about possibly buying
14 the gun?

15 A. He did.

16 Q. During the course of your investigation, did you
17 ever go to any of the neighboring houses around Billy
18 Smith's house?

19 A. I did not, no, sir.

20 Q. Didn't go to try to see if anybody else in the
21 neighborhood heard or seen anything?

22 A. I personally did not, no, sir.

23 Q. And there was no further investigation into the Mr.
24 Green situation; correct?

25 A. No, sir. I do recall -- you know, we tried to get

1 an address on this Mr. Green. That was during the
2 interview and talking about Mr. Green. But after that
3 and after he had said that he'd come clean on his story,
4 no, there was no further investigation into Michael
5 Green.

6 Q. Thank you.

7 MR. YOUNG: That's all the questions I have.

8 THE COURT: Any redirect?

9 MS. REEVES: Yes, sir.

10 REDIRECT EXAMINATION

11 BY MS. REEVES:

12 Q. Lieutenant Ebernickle, when the -- I believe you
13 said that Paul Smith said he had been at home when the
14 defendant came screeching up in front of his house; is
15 that right?

16 A. Correct.

17 Q. And I believe you said that Billy Paul took the gun
18 away from his father; is that right?

19 A. Correct.

20 Q. And Billy Paul pushed his dad towards the 4Runner,
21 the car that was out front; is that right?

22 A. From my understanding, he kind of rushed him, kind
23 of rushed at him to grab the gun from him.

24 Q. Okay. And once the gun was away from him, did they
25 go into the car?

1 A. Correct. Billy Paul stated that he had laid the gun
2 on the table. And they got into the defendant's car, and
3 the defendant took them back to the residence.

4 Q. And where was Mr. Hogg?

5 A. He went with them.

6 Q. Okay. So had he been in the residence at Holiday
7 Street?

8 A. Yes. They were both inside the trailer watching
9 television, from what they had told me.

10 Q. Okay. And then at some point when everyone's
11 getting into the car, Mr. Hogg gets in as well?

12 A. Correct.

13 Q. Nothing further.

14 A. Thank you.

15 THE COURT: Anything further for this witness?

16 MR. YOUNG: No, sir, Your Honor.

17 THE COURT: Any objection to this witness being
18 excused?

19 MR. YOUNG: No objections, Your Honor.

20 THE COURT: Thank you, Officer. You are
21 excused.

22 THE WITNESS: Thank you, Judge.

23 MS. REEVES: The State calls Corporal Dwayne
24 McElrath.

25 ROBERT DWAYNE MCELRATH,

1 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MS. REEVES:

4 Q. Mr. McElrath, where do you work?

5 A. I work for the Anderson County Sheriff's Office.

6 Q. And how long have you been at the Sheriff's Office?

7 A. Since January of 2005.

8 Q. And what is your current position?

9 A. I am a corporal in the crime scene division.

10 Q. And what does that mean?

11 A. Ma'am? I'm sorry.

12 Q. What does that mean? What are your duties?

13 A. I go out and process crime scenes and collect
14 evidence.

15 Q. Prior to working for the sheriff's office, where did
16 you work?

17 A. I worked for Belton City Police Department.

18 Q. For how long?

19 A. From February of '99 until December of 2004.

20 Q. And what was your position at Anderson County
21 Sheriff's Office back in April of 2014?

22 A. I was a corporal in the crime scene division.

23 Q. Same position?

24 A. Yes, ma'am.

25 Q. And on April 22nd, 2014, did you respond to

1 South Hamilton Street?

2 A. Yes, ma'am, I did.

3 Q. And is that in Anderson County?

4 A. It is. Yes, ma'am, it is.

5 Q. And is it also in Williamston City?

6 A. Yes, ma'am.

7 Q. So for what reason did you respond?

8 A. I was requested by Williamston City to assist in
9 investigating the shooting.

10 Q. And what did you do when you arrived?

11 A. I met with Mr. Cremer and Mr. Wynn, and I told them
12 that I would respond to Greenville Hospital and do that
13 side of the investigation for them.

14 Q. And is that what you did?

15 A. Yes, ma'am.

16 Q. Once at the hospital, what did you do?

17 A. I met with the -- in the E.R., I seen -- I met with
18 the victim. She was being treated by the E.R. staff.

19 And a matter of fact, they were taking her to C.T. when I
20 got there. I followed them to C.T. And after the C.T.,
21 we went up to N.I.C.U., I think it was.

22 Q. What's N.I.C.U.?

23 A. Neuro Intensive Care Unit.

24 Q. And at some point did she finish with the treatment?

25 I mean, at least the -- when she was in neuro I.C.U.,

1 were you with her at that point?

2 A. Yes, ma'am.

3 Q. Okay. And did you do anything with her?

4 A. Yes, ma'am. After the E.R. staff -- after the neuro
5 intensive care unit staff got her settled in and
6 everything, I started my investigation by photographing
7 her, collecting her clothes, photographing and scaling
8 the injuries and collecting a G.S.R. of her hands.

9 Q. So what injuries did you observe to her?

10 A. She had a gunshot wound, what appeared to be a
11 gunshot wound, on her forehead just above, I think it
12 was, her right eye.

13 Q. Did you notice anything about the position of that
14 or anything about the wound at all?

15 A. Let me just refer here to ... It was approximately
16 a half an inch above an eyebrow and one inch right of
17 center of the forehead.

18 Q. Let me show you what's been marked as State's
19 Exhibit Numbers 27, 28, 36 and 37. Are these the
20 pictures you took of the victim that evening?

21 A. Yes, ma'am.

22 MS. REEVES: Your Honor, I'd like to move
23 State's Exhibit Numbers 27, 28, 36 and 37 into evidence.

24 THE COURT: Any objection?

25 MR. YOUNG: Your Honor, we have a matter of law

1 as it relates to ...

2 THE COURT: Mr. Bailiff, if you'd take our jury
3 to the jury room, please.

4 (WHEREUPON, the jury exited the open court at
5 approximately 10:44 a.m.)

6 THE COURT: Mr. Young?

7 MR. YOUNG: Your Honor, as it relates to
8 Exhibit 28, that is a picture that appears to be the
9 knees of the victim that shows what appears to be some
10 bruising. I believe that that is highly prejudicial at
11 this point in time being that there have not been any
12 testimony offered to indicate that there was any type of
13 altercations or that there was any type of incidents that
14 would cause such bruising to her knees. Even in the
15 officer's response just now as to what injuries he
16 observed, the only injury he described to the jury was
17 that of the injury caused by the gunshot wound. I
18 believe by admitting that at this point in time and
19 allowing this witness to testify to it would bring in
20 what I believe to be 404(b) materials. It pretty much
21 starts creeping into information that is not admissible
22 at this point in time.

23 THE COURT: All right.

24 Ms. Reeves?

25 MS. REEVES: I believe Mr. Young is making that

1 assumption. I believe the corporal in this case was sent
2 to take pictures of all the victim's physical injuries.
3 The victim herself said that when she was shot, she fell
4 to her knees. And I believe this corroborates that.
5 There is redness and bruising, and there's an old scab.
6 We are not offering the pictures of any of her other
7 scratches and bruises and scabs that we can't account
8 for. This is the only picture of an injury that we
9 believe is consistent with what she remembers happening.

10 THE COURT: So you are alleging -- and I just
11 want to make sure I understand. The probative value you
12 are asserting this picture has, you are alleging that
13 this corroborates that she fell as a result of the
14 gunshot?

15 MS. REEVES: Yes, sir.

16 THE COURT: Okay. You're not alleging that she
17 was beaten on the knees or ---

18 MS. REEVES: No, sir.

19 THE COURT: Okay.

20 MS. REEVES: I'm not going to get into any
21 prior incidents that the defendant may have committed
22 against the victim.

23 THE COURT: Okay.

24 All right. Mr. Young, I'm going to sustain your
25 objection at this time. I don't find the probative value

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1 outweighs the potential prejudicial effect.

2 Now, Ms. Reeves, if you can lay further foundation
3 for the photos, I may revisit that issue later.

4 But at this point, Mr. Young, I will sustain your
5 objection to Exhibit Number 28.

6 MR. YOUNG: Thank you, Your Honor.

7 Your Honor, I do have another matter before the jury
8 comes in. The solicitor just made reference to the
9 picture supporting the victim's account of what happened
10 or what she recalls happening and things of that nature.
11 And to the best of my knowledge, the only report that was
12 given to me, and a recording that was given to me,
13 indicated that the victim did not have any recollection
14 of what transpired. I believe that there was also
15 testimony from the officer that when he interviewed her
16 that was -- that she did not remember exactly what
17 happened. I have specifically asked of the solicitor's
18 office whether or not she had provided any other accounts
19 as to what transpired or anything along those lines. And
20 we have not been provided with anything.

21 THE COURT: Ms. Reeves?

22 MS. REEVES: I believe the victim will testify,
23 and she can be cross-examined on that.

24 THE COURT: All right. I'm going to overrule
25 your objection at this point. I mean, I haven't heard

1 from the victim yet. And there has been no testimony to
2 that effect. So I believe your objection is premature at
3 this point.

4 MR. YOUNG: Thank you, Your Honor.

5 THE COURT: All right. So the exhibits --
6 you're going to put in Exhibits 26, 36 and 37 at this
7 point?

8 MS. REEVES: 27.

9 THE COURT: 27, 36, and 37?

10 MS. REEVES: Yes, sir.

11 THE COURT: Okay. All right.

12 MS. REEVES: Should I renew my motion for these
13 three when the jury comes back?

14 THE COURT: Yes, ma'am. Yes, ma'am.

15 All right. Mr. Bailiff, if you'll get our jury for
16 us, please, sir.

17 (WHEREUPON, the jury entered the open court at
18 approximately 10:51 a.m.)

19 THE COURT: Ms. Reeves?

20 MS. REEVES: Thank you, Judge. At this point
21 I'd like to move in State's Exhibit Numbers 27, 36, and
22 37.

23 MR. YOUNG: No objections, Your Honor.

24 THE COURT: State's 27, 36, and 37 will be
25 admitted without objection.

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1 (WHEREUPON, State's Exhibit Numbers 27, 36, and 37
2 were admitted into evidence.)

3 MS. REEVES: Thank you, Judge.

4 DIRECT EXAMINATION

5 CONTINUED BY MS. REEVES:

6 Q. Corporal McElrath, I'm going to show you State's
7 Exhibit Number 27. Can you tell me what that is a
8 picture of?

9 A. That's a photograph of the victim at Greenville
10 Memorial Hospital in the N.I.C.U. unit.

11 Q. After she had had a C.T. scan performed; is that
12 right?

13 A. Yes, ma'am.

14 Q. I'm going to show you State's Exhibit Number 36.

15 A. That's a picture of the victim without the bandage
16 showing what appears to be a gunshot wound.

17 Q. And what does this appear to be around this ---

18 A. It looks like swelling, swelling around the gunshot
19 wound above the eye there.

20 Q. Any scabs or anything around there?

21 A. No, ma'am, I don't see any scabs. But there is
22 what's probably consistent with being like some type of
23 powder residue. Or not powder residue, but stippling,
24 what we call -- refer to as stippling.

25 Q. And what is stippling?

1 A. Stippling is -- you receive stippling on a wound of
2 the skin when a firearm is fired closely with -- closely
3 to the victim, to the skin, you'll receive stippling.
4 It's unburnt powder and stuff like that.

5 Q. Where does that burn powder come from?

6 A. It comes from the projectile from the gun.

7 Q. I'm going to show you State's Exhibit Number 37.

8 A. That's a scale photograph of the injury.

9 Q. I believe you said you did a G.S.R. on the victim;
10 is that correct?

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

12 Q. And tell us briefly what that is again?

13 A. A gunshot residue kit. It tests to see if the
14 victim had fired a weapon at any time.

15 Q. And what did you do? Do you collect that from the
16 victim?

17 A. Yes, ma'am, I did.

18 Q. And what did you do with that kit after?

19 A. I sealed the kit and turned it over to the
20 Williamston Police Department.

21 Q. And where, if anywhere, did you go after leaving the
22 hospital?

23 A. I went back to the scene to see if Williamston
24 needed any more of my assistance. While I was there, I
25 was requested to go to another location which was

- 1 actually in the county.
- 2 Q. What was that location?
- 3 A. Holiday Street in Pelzer.
- 4 Q. What did you do at that location in Pelzer?
- 5 A. I done a consent to search looking for the firearm.
- 6 Q. Did you search inside the residence?
- 7 A. Yes, ma'am, I did.
- 8 Q. And did you locate any firearms inside the
- 9 residence?
- 10 A. Yes, ma'am, I did.
- 11 Q. What did you locate in there?
- 12 A. I located a twenty-two revolver -- I think it was a
- 13 High Standard -- and a Mossberg twelve gauge shotgun,
- 14 seven twenty-two caliber rounds and three twenty-two
- 15 caliber shell casings.
- 16 Q. After -- or during your search, did you photograph
- 17 the residence?
- 18 A. Yes, ma'am, I did.
- 19 Q. I'm going to show you what's been marked as State's
- 20 Exhibit Numbers 18 through 26. Are these the pictures
- 21 that you took inside the residence and outside Holiday
- 22 Street?
- 23 A. Yes, ma'am.
- 24 Q. Have they been altered or changed in any way?
- 25 A. No, ma'am.

1 MS. REEVES: Your Honor, I'd like to move in
2 State's Exhibit Number 19 through 26 at this time.
3 Number 18 is already in evidence.

4 MR. YOUNG: No objections, Your Honor.

5 THE COURT: All right. State's Exhibits 19,
6 20, 21, 22, 23, 24, 25, and 26 will be admitted without
7 objection.

8 (WHEREUPON, State's Exhibit Numbers 19 through 26
9 were admitted into evidence.)

10 Q. Corporal McElrath, I'm going to show you State's
11 Exhibit Number 18. Is this the Holiday Street residence?

12 A. Yes, ma'am, it is.

13 Q. And is this the residence that you searched inside?

14 A. Yes, ma'am.

15 Q. This is State's Exhibit Number 19. Can you tell
16 what that is a picture of?

17 A. That would be the living room. As soon as you walk
18 through the front door, the couch. It would be the
19 living room area of the residence.

20 Q. This is State's Exhibit Number 20.

21 A. That would be a closer-up photograph of the couch
22 that has a what appears to be a shotgun from the
23 photograph.

24 Q. Here on this side?

25 A. Yes, ma'am.

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- 1 Q. This is State's Exhibit Number 21.
- 2 A. That's a closer view of the shotgun on the couch.
- 3 Q. Is there anything else?
- 4 A. There is also a baggie laying there that had -- that
- 5 contained seven twenty-two caliber rounds.
- 6 Q. This is Exhibit Number 22.
- 7 A. That's a closeup of the baggie that contained seven
- 8 twenty-two caliber rounds.
- 9 Q. And when you say twenty-two caliber rounds, are
- 10 these bullets? Are these bullets?
- 11 A. Yes, ma'am. They're unfired.
- 12 Q. And they're unfired; is that correct?
- 13 A. Yes, ma'am.
- 14 Q. I'm going to show you State's Exhibit Number 23.
- 15 A. After removing the cushion to the couch, the firearm
- 16 was located between the cushion and the springs.
- 17 Q. This is the same sofa that the shotgun was on?
- 18 A. Yes, ma'am, it is.
- 19 Q. State's Exhibit Number 24?
- 20 A. That's a closeup of the gun itself showing the -- I
- 21 think it's just the make and the model of it, of the
- 22 twenty-two caliber.
- 23 Q. State's Exhibit Number 25.
- 24 A. That's another closeup of the other side. It's
- 25 actually got the model number on it with the serial

1 number to the weapon.

2 Q. And State's Exhibit Number 26.

3 A. After scoring the wheel of the gun, it was opened up.
4 and a photograph was taken of the bullets inside the
5 wheel with the gun.

6 Q. When you say scoring the wheel, what does that mean?

7 A. When we score the wheel of the gun, it's basically
8 to show that the -- what position the wheel was in on the
9 gun when it was located.

10 Q. And in a revolver, how does that gun work? Does it
11 keep -- once it's fired, does it keep a shell casing, or
12 does it spit it out?

13 A. It keeps it.

14 Q. Did you -- the items in the pictures, did you
15 collect any of those?

16 A. In the pictures, yes, ma'am.

17 Q. Let me show you. These are State's Exhibits 32
18 through 35. Are these the items that you collected from
19 the Holiday Street address?

20 A. Yes, ma'am, it is.

21 Q. What did you do with these items after you collected
22 them?

23 A. After the items was collected, they was turned over
24 to the Williamston City Police Department on the evidence
25 sheet.

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1 Q. And how do you know -- when you're looking through
2 those items, how do you know those are the ones you
3 collected?

4 A. The ones that I collected because the -- I have
5 photographs and the serial numbers of the gun, the
6 photographs of the plastic baggie with the seven
7 projectiles or seven live rounds, and also photographs of
8 the three shell casings that was collected.

9 MS. REEVES: I would like to move into evidence
10 State's Exhibit Number 35 only.

11 MR. YOUNG: Which?

12 MS. REEVES: The baggie of seven live rounds.

13 MR. YOUNG: No objection.

14 THE COURT: State's Exhibit Number 35 will be
15 admitted without objection.

16 (WHEREUPON, State's Exhibit Number 35 was admitted
17 into evidence.)

18 MS. REEVES: Nothing further.

19 THE COURT: All right.

20 Mr. Young?

21 MR. YOUNG: No questions of this witness, Your
22 Honor.

23 THE COURT: Any objection to this witness being
24 excused?

25 MS. REEVES: No, sir.

1 MR. YOUNG: No objections.

2 THE COURT: That you, Officer. You are
3 excused.

4 THE WITNESS: Thank you.

5 MS. REEVES: The State calls Lieutenant Jack
6 Sanders.

7 **JACK BROWN SANDERS, JR.,**

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MS. REEVES:

11 Q. Lieutenant Sanders, where do you work?

12 A. Williamston Police Department.

13 Q. And how long have you been there?

14 A. A little over two years.

15 Q. And did you work anywhere before the Williamston
16 Police Department?

17 A. Yes, ma'am. I retired from the City of Anderson.

18 Q. And what is your total years in law enforcement
19 experience?

20 A. Thirty-six years.

21 Q. And what is your position with the Williamston
22 Police Department?

23 A. Lieutenant over patrol.

24 Q. Was that your position back on April 23rd of 2014?

25 A. No, ma'am. I was sergeant then of patrol.

1 Q. And what were your duties as sergeant over patrol?

2 A. Coordinating the schedule and making sure we had
3 people at work answering calls.

4 Q. Did you have some involvement in this case?

5 A. I had the involvement the next day with Captain
6 Marsee to sit down and take a statement from the subject.

7 Q. Were you a witness to that statement being taken?

8 A. Yes, I was.

9 Q. I'm going to show you what's been marked as State's
10 Exhibit 2 and 3. When you spoke with the defendant and
11 took his statement, was he advised of his rights?

12 A. Yes, ma'am, he was.

13 Q. How was he advised of those rights?

14 A. With the advice of rights sheet here.

15 Q. Is it Number 2?

16 A. Yes, ma'am.

17 Q. Who went over that form with him?

18 A. Captain Marsee.

19 Q. And did you witness that?

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

21 Q. Did the captain read the form to him?

22 A. Yes, he did.

23 Q. Where did this interview take place?

24 A. This interview took place at what then was the
25 sergeant's office which is in the Williamston Police

1 Department.

2 Q. And what date and time?

3 A. This was April the 23rd, 2014, at nine forty-five
4 p.m.

5 Q. Was the defendant in the room with you and Captain
6 Marsee?

7 A. Yes, he was.

8 Q. Was he seated?

9 A. Yes, he was.

10 Q. Was he as comfortable as he could be under the
11 circumstances?

12 A. Yes, ma'am.

13 Q. Was he handcuffed?

14 A. No, ma'am.

15 Q. Had he -- was he advised of his rights, and did he
16 seem to understand those rights?

17 A. Yes, ma'am, he appeared to understand the rights.

18 Q. Was he intoxicated?

19 A. No, ma'am.

20 Q. How did he indicate that he understood his rights?

21 A. By signing the advice of rights form.

22 Q. Did you witness him sign?

23 A. Yes, I did.

24 Q. And did you also sign that?

25 A. Yes, ma'am, I did.

- 1 Q. And did Captain Marsee sign it?
- 2 A. Yes, ma'am, he did.
- 3 Q. Were any threats or promises made to the defendant
- 4 to get him to sign the form?
- 5 A. No, ma'am.
- 6 Q. Were any threats or promises made to get him to
- 7 speak to you?
- 8 A. No, ma'am.
- 9 Q. Was he intimidated in any way?
- 10 A. No, ma'am.
- 11 Q. Did he waive his rights voluntarily?
- 12 A. Yes, ma'am.
- 13 Q. And did he give a written statement?
- 14 A. Yes, ma'am, he did.
- 15 Q. Is that written statement, State's Exhibit Number 3,
- 16 in front of you?
- 17 A. Yes, ma'am.
- 18 Q. Who actually wrote that statement?
- 19 A. Captain Marsee actually wrote the statement.
- 20 Q. And did Captain Marsee write that statement as the
- 21 defendant told it to both of you?
- 22 A. Yes, ma'am.
- 23 Q. Well, is it an accurate representation of what the
- 24 defendant said?
- 25 A. Yes, ma'am.

1 Q. Was it read back to him or handed back to him to
2 review?

3 A. It was read to him, and I believe Captain Marsee
4 handed it back to him to read also.

5 Q. Did he have the opportunity to make any corrections
6 if he needed to?

7 A. Yes, ma'am, he was.

8 Q. Did he indicate that that was, in fact, his
9 statement?

10 A. Yes, ma'am, he did.

11 Q. How so?

12 A. By signing said statement.

13 Q. Did he sign on the last page?

14 A. He signed on the first page, the second page, and
15 the third page.

16 Q. Did you also sign those pages?

17 A. Yes, ma'am. First, second and third.

18 Q. How about Captain Marsee?

19 A. Yes, ma'am. First second, and third.

20 Q. Did you witness this entire process?

21 A. Yes, ma'am.

22 MS. REEVES: Nothing further.

23 THE COURT: Mr. Young?

24 CROSS-EXAMINATION

25 BY MR. YOUNG:

Jack Brown Sanders, Jr. - Cross-examination by Mr. Young

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1 Q. Other than participating in this interview, did you
2 do any other investigation or anything in this case?

3 A. No, sir.

4 Q. You weren't asked to canvass the neighborhood or
5 anything?

6 A. No, sir.

7 Q. And were you required to chase down any information
8 on this first story that Mr. Smith gave regarding a
9 Michael Green?

10 A. No, sir.

11 Q. Thank you.

12 MR. YOUNG: That's all the questions I have.

13 THE COURT: Anything further from this witness?

14 MS. REEVES: No, sir.

15 MR. YOUNG: No, sir, Your Honor.

16 THE COURT: Any objection to this witness being
17 excused?

18 MR. YOUNG: No objections, Your Honor.

19 THE COURT: Thank you, Officer. You may leave.

20 THE WITNESS: Thank you, sir.

21 MS. REEVES: The State calls Captain Kevin
22 Marsee.

23 **KEVIN MARSEE,**

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MS. REEVES:

2 Q. Captain Marsee, where do you currently work?

3 A. I am currently employed with the Williamston Police
4 Department.

5 Q. How long have you worked for Williamston?

6 A. I've been there -- in 2016 it'll be three years.
7 January of 2016 will be three years.

8 Q. And your position is a captain?

9 A. I am a captain, yes.

10 Q. And what was your prior law enforcement experience?

11 A. I spent almost twenty-seven years with the City of
12 Anderson Police Department as a captain, and I did a year
13 and a half with Greenville County Law Enforcement Support
14 Division.

15 Q. What are your duties and responsibilities as captain
16 with Williamston Police Department.

17 A. I am the training manager. I keep the existing
18 employees certified and trained. I am responsible for
19 supervising any and all investigations. I handle
20 administration, and I'm acting chief when he's not there.

21 Q. Were you employed in this position then on April
22 22nd, 2014?

23 A. I was.

24 Q. And did you respond to South Hamilton Street on that
25 date?

1 A. I did. I received a call late at night around --
2 well, it was before eleven o'clock. I received a call
3 there had been a shooting and my assistance was needed on
4 South Hamilton Street.

5 Q. And what was the nature of the call?

6 A. I was told that there had been a shooting, unknown
7 situation, there was conflicting stories and that I
8 needed to respond.

9 Q. And what, if anything, did you do once you got on
10 scene?

11 A. When I got on scene, I saw Officer Eichelberger. I
12 saw Officer Cremer. And from speaking with Officer
13 Cremer, I learned that the crime scene needed to be
14 processed. And to do that, we needed a search warrant.
15 Ken Ebernickle arrived a short time later. Officer
16 Ebernickle stated that he would handle conducting any
17 interviews with witnesses while I obtained a search
18 warrant which was to be brought back to the scene.

19 Q. Were there any other people? Did you see the victim
20 when you got to the scene?

21 A. The victim had already been transported to the
22 hospital. On my arrival, I did not see the victim.

23 Q. And any other suspects or people of interest at the
24 scene?

25 A. No. There were three people on the scene. I

1 understand Billy Ray Smith, David Hogg, and Billy Paul
2 Smith were on the scene. I did not specifically see them
3 or talk to them, but I was advised of their presence on
4 the scene.

5 Q. And where did you go after you left the scene?

6 A. I obtained a physical description of the premises.
7 I left. I typed up a search warrant, and I went to
8 locate the judicial officer or a judge to sign the search
9 warrant. Once that was obtained, I took that back to the
10 scene so that the evidence officers could begin
11 processing the crime scene.

12 Q. And then where did you go?

13 A. After completing this, I returned to the police
14 department to see if I could assist Ken Ebernickle with
15 any of his responsibilities. I saw Ken, who was sitting
16 in an office talking to Billy Paul Smith. I saw the
17 defendant, Billy Smith, who was seated in a room
18 described as a judge's office, radio room. I noticed
19 that he was seated alone. Ken was alone inside the
20 police department. I opened the door to Ken's office,
21 and I asked if I could assist him. And I also asked if
22 Billy had been spoken to and Mirandized. He said that he
23 had. And I told Ken that I would sit with Billy while he
24 was talking to Billy Paul.

25 Q. Again, was Mr. Smith under arrest at that point?

1 A. He was not. He was not handcuffed. He was in
2 street clothing. He was seated in that room with his
3 back to an open door.

4 Q. Was he as comfortable as he could be under the
5 circumstances?

6 A. Yes, he was.

7 Q. Could you tell if he had been drinking?

8 A. That was obvious. When I sat down to speak with
9 him, I could smell the odor of alcohol. And he was
10 dramatic in his speech. His speech was somewhat slurred.

11 Q. Did he seem to know what he was doing, though, and
12 respond to any questions that you may have asked him?

13 A. Yes. As soon as I sat down with him -- upon seeing
14 him, he struck up a conversation with me. And at that
15 point in time, I asked him what happened. And he started
16 to describe the circumstances to me.

17 Q. So he started talking with you?

18 A. Yes.

19 Q. When you were speaking with him, did you make any
20 threats or promises to him to get him to continue to
21 speak to you?

22 A. I did not.

23 Q. Did you intimidate him in any way?

24 A. I did not.

25 Q. At that point, did he wish to continue to talk to

1 you?

2 A. Yes, he did.

3 Q. So what did he tell you?

4 A. I asked him what happened. And he told me that a
5 guy named Michael Green had shot his wife.

6 Q. How ---

7 A. I ---

8 Q. I'm sorry. Go ahead.

9 A. I asked if he had seen Michael Green in his house,
10 and I inquired as to why Michael Green would have wanted
11 to shoot his wife. And he began explaining that Michael
12 Green wanted Oxycontin that he obtained by prescription.
13 I asked about the location of where Michael Green was,
14 and he said -- that is, Billy said he was standing at the
15 door when the bullet came past him and struck his wife.
16 I told him at that time that it was inconsistent with
17 what I had briefly observed at the scene. That I hadn't
18 done any detailed processing at this point, but it was
19 inconsistent with what I saw. I also told him at that
20 time that his wife was alive. She was in surgery. I did
21 not know exactly of her condition, but she was alive and
22 would be undergoing an operation. That's what I'd been
23 advised at the time. And at that time, he told me that
24 he thought she was dead. We continued to talk. And at
25 this time he changed his story and said that Billy Paul

1 Smith and another individual, David, had been breaking
2 into houses and that they had a gun. And that there was
3 a fight over the gun, and the gun had gone off and struck
4 his wife.

5 I continued talking to him as he started going into
6 conversation about his medical conditions and different
7 medicines that he was taking. Then he started talking
8 about David and Billy Paul having a gun and them being at
9 Chris Guthrie's house. And then he told me he was
10 sitting beside his wife when a gun went off. He didn't
11 particularly describe who was holding the gun or how it
12 went off.. Ken Ebernickle had walked in during this
13 conversation. And he stopped and said, "I tell you what.
14 I can take you to the gun. I can show you where it is
15 because I saw where they put it."

16 Q. So he was no longer saying that Michael Green had
17 shot his wife?

18 A. That's correct.

19 Q. He was now saying that Paul and David were fighting
20 over this gun?

21 A. All three of them were fighting over the gun.

22 Q. Okay. And it had gone off?

23 A. Correct.

24 Q. And he can take you to the gun?

25 A. Yes.

1 Q. What happened next?

2 A. He expressed concern over wanting to tell on his
3 son. He said he did not want his son to face going to
4 prison. Then he said it was an accident, that his son
5 did this by accident. But he said the gun would be in
6 the front yard of this residence over in Pelzer where his
7 son was staying and that it would be either in the bushes
8 or that it would be covered up in the front yard.

9 Q. Did you go to that location?

10 A. I talked with Ken. We felt it was best to go look
11 for the gun because we had a gun laying obviously out in
12 the open. And given the fact he said he could take us to
13 where it was located, we decided to carry Mr. Smith to
14 Pelzer to locate the gun.

15 Q. And what happened once you got there?

16 A. When we arrived there, I could tell that there was
17 this trailer that sat off the road. There were a lot of
18 bushes surrounding the residence. There was a lot of
19 brush across the street. And it was going to be a rather
20 extensive process to look for this gun. Ken and I, using
21 flashlights, we tried to find out from the defendant
22 exactly where the gun was thrown, but he was very
23 confused about that at the time. And we would start off
24 at one location, then he would say, no, I think it was
25 over here. So we went to three or four different

1 locations trying to find the gun. I called for
2 assistance from other police officers to try to help
3 search the area. Then he changed during this process and
4 began to say, "I think the gun is in the trailer." And
5 he wanted to open the trailer door, but we did not have
6 permission to go inside. And I told him, "Do not open
7 that door of the trailer because that doesn't belong to
8 us, and we can't go in there at this point."

9 Other units arrived on scene helping us search.
10 Then the defendant told me, "I tell you what, I can call
11 my son, Billy Paul. I can tell him that I've come clean,
12 said the shooting was an accident," and that, you know,
13 "He will give you permission to go in the trailer and
14 locate the gun. He can tell you where it is." I gave
15 him my telephone. He was having trouble remembering the
16 telephone number. I took the phone back. He told me
17 what the number was. I dialed the number of his son's
18 phone and put it on speaker. And I heard a conversation
19 between Billy and his son. He said, "I've come clean.
20 I've told them the shooting was an accident. They want
21 to know where the gun is."

22 Q. Did he tell them at that point that he'd come clean
23 about who had shot his mother or the victim?

24 A. Not exactly. There was still some confusion about
25 who actually shot at that time because he was telling me

1 that this was just something he was going to tell his son
2 to get his son's cooperation. I asked, I believe it was,
3 Officer Drennon to bring Billy Paul to the trailer so
4 that we could get consent to search the interior for the
5 weapon.

6 Drennon brought Billy Paul to the trailer, at which
7 time Deputy McElrath obtained consent to search. And he
8 and other forensics officers went inside, did a search.
9 And then they advised me that they had found a gun.

10 Q. What kind of gun was it?

11 A. They told me it a black-in-color twenty-two
12 revolver.

13 Q. And what did you do after finding the gun?

14 A. At that time, we returned to the police department.
15 Several of the officers had to do various paperwork.
16 Inventories, chain of custodies. I helped Ken Ebernickle
17 interview Billy Paul Smith again because there was an
18 inconsistency from what he told us the first time and
19 what we discovered at this time.

20 Q. Before you did that, was the -- when you got back to
21 the Williamston Police Department, was the defendant
22 charged with anything?

23 A. At the time we got back to the police department?

24 Q. Yes, or some point early in the evening.

25 A. After everything was said and done and after all

1 officers had all their paperwork, et cetera, wrapped up,

2 I charged the defendant with obstruction of justice.

3 Q. And after you -- did you arrest him for that?

4 A. Yes, I did.

5 Q. And after his arrest, did you collect anything from

6 his pockets?

7 A. Yes. Once he was arrested and we actually put

8 handcuffs on him, I instructed Melissa Simmons to

9 transport him to Anderson County Detention Center. We

10 did a pat-down and a search of his pockets. And I

11 discovered that there were some twenty-two bullets in his

12 pocket.

13 Q. I'm going to show you -- this is State's Exhibit

14 Number 29 and 30. Can you tell us what those are

15 pictures of?

16 A. State's Exhibit Number 29 is a picture of the

17 defendant, Billy Ray Smith, as he appeared that night,

18 wearing the clothing which is a maroon shirt and black

19 jeans. The second picture is the defendant beside a

20 police car with handcuffs on wearing the same clothing.

21 Q. And is that the clothing that the defendant was

22 wearing when you were searching with him and when you

23 were speaking with him with Lieutenant Ebernickle?

24 A. Yes, it is.

25 Q. I'm also going to show you State's Exhibit Number

1 38. Can you tell us what this is?

2 A. State's Exhibit 38 are ten twenty-two bullets that I
3 had collected from the defendant's front left pocket the
4 morning that he was transported to the jail.

5 MS. REEVES: Judge, at this time, I'd like to
6 move into evidence State's Exhibit Number 29, 30, and 38.

7 MR. YOUNG: No objections, Your Honor.

8 THE COURT: State's Exhibit 29, 30, and 38
9 would be admitted into evidence without objection.

10 (WHEREUPON, State's Exhibit Numbers 29, 30, and 38
11 were admitted into evidence.

12 Q. I'm going to show you State's Exhibit Number 29.
13 Can you again tell us what this is a picture of?

14 A. That is a picture of the defendant as he appeared
15 the night of the incident. And he's wearing a maroon
16 shirt, black jeans, and a hat.

17 Q. And, again, State's Exhibit Number 30?

18 A. That is a picture of the defendant in handcuffs
19 wearing the same clothing that he had on that night
20 beside of a police car.

21 Q. Captain Marsee, I'm going to ask you to open this
22 bag up and tell me if the clothes that the defendant was
23 wearing -- what did you do with those clothes after you
24 arrested the defendant?

25 A. I had instructed Officer Melissa Simmons to go to

1 the jail and pick up these clothes to be delivered to
2 evidence for further examination.

3 Q. Do you see the defendant's clothing in that bag?

4 A. Yes, I do.

5 Q. Would you mind removing -- I suppose -- do you want
6 to just pour them out? You don't have any gloves, do
7 you?

8 A. No, I do not.

9 Q. Okay. If you wouldn't mind, please just remove the
10 maroon shirt and black jeans that you described, and we
11 will have those marked.

12 (WHEREUPON, the witness complied.)

13 Q. And those are the clothes that the defendant was
14 wearing on the night that this incident occurred?

15 A. That is correct.

16 Q. And that came into your possession after he was
17 arrested; is that right?

18 A. They never came into my personal possession. I had
19 instructed someone else to take these to be analyzed.

20 But these are the ones that I had instructed the officers
21 to obtain.

22 Q. And then where they stored after they were
23 collected?

24 A. In our evidence locker. Sergeant Kevin Wynn is
25 responsible for that.

1 Q. And so is that a secure location?

2 A. Yes, it is.

3 Q. Okay. And can anyone come and go in that evidence
4 room?

5 A. No. Actually, Kevin Wynn is the only person who
6 obtains a key to that storage locker. No one else can
7 access it.

8 Q. At some point later after the defendant's arrest,
9 did you speak with him again?

10 A. I did. I came in the next night so that I could
11 speak with the defendant about the incidents that
12 occurred.

13 Q. I'm going to show you State's Exhibit Number 2 and
14 3. How did that come about? When did you speak with
15 him?

16 A. I arrived at the police department the next night.
17 A lot of hours had gone by. Officers needed sleep
18 because several of them had worked in excess of twenty-
19 four hours while working this crime scene. So I came
20 back the next night. I had a lot of responsibilities.
21 And after completing those initial responsibilities, I
22 had asked that Billy Smith be transported back to the
23 Williamston Police Department so I could talk with him
24 about this incident.

25 Q. Can you tell us what Exhibits 2 and 3 are?

1 A. Exhibit Number 2 is an advice of rights form. It's
2 a Miranda form. It's a common form that we use to advise
3 people of what their rights are before we interview them.
4 State's Exhibit Number 3 is a written statement that I
5 took from the defendant, Billy Ray Smith.

6 Q. And are these -- Exhibits 2 and 3, are these the
7 forms that you went over with the defendant on April
8 23rd?

9 A They are.

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

11 A. They have not.

12 Q. And so can you tell us what time that you spoke with
13 him on April 23rd?

14 A. We started the interview at, what I have marked as
15 twenty-one forty-five, which is nine forty-five p.m.

16 Q. And was anyone else with you at this time?

17 A. Yes. I had asked Lieutenant Jack Sanders, who was a
18 sergeant at the time, if he would sit in during this
19 interview.

20 Q. And how was the defendant advised of his rights?

21 A. I took this form -- he initially wanted to speak
22 with me, but I told him I could not talk with him until I
23 advised him of his rights. So I took this form. I read
24 each line to him. Then after reading the top portion, I
25 read the bottom portion to him. I asked him if he

1 understood his rights, and if so, to place his signature
2 on this form.

3 Q. Who filled in the blanks on the form?

4 A. I filled out everything except for where the
5 defendant, Billy Smith, signed the form.

6 Q. And who else signed the form?

7 A. Jack Sanders signed as a witness.

8 Q. And did you also sign?

9 A. I did.

10 Q. Okay. Can you read the form to us, please?

11 A. The top portion says, "Williamston Police
12 Department, interview advice of rights." The place,
13 Williamston Police." The date's 4/23 of 2014. The time
14 twenty-one forty-five. "Before we ask you any questions,
15 you must understand your rights. You have the right to
16 remain silent. Anything you say can be used against you
17 in court. You have the right to talk to a lawyer for
18 advice before we ask you any questions and to have a
19 lawyer with you during questioning. If you cannot afford
20 a lawyer, one will be appointed for you before any
21 questioning if you wish. If you decide to answer
22 questions now without a lawyer present, you still have
23 the right to stop answering at any time. You also have
24 the right to stop answering at any time until you talk to
25 a lawyer."

1 At the bottom, there is a section called Waiver of
2 Rights. "I, Billy Smith, the undersigned, have read this
3 statement of my rights, and I understand what my rights
4 are. I am willing to make a statement and answer
5 questions. I do not want a lawyer at this time. I
6 understand and know what I am doing. No promises or
7 threats have been made to me, and no pressure or coercion
8 of any kind has been used against me." It is signed by
9 the defendant, Billy Smith. I signed as a witness, Kevin
10 Marsee. Jack Sanders signed as the second witness.

11 Q. Did you ask the defendant if he could read or write?

12 A. I did not ask him if he could specifically read or
13 write. I asked him how far he went through school.

14 Q. And how far was that?

15 A. He said he went to the ninth grade and that the
16 final grade completed was at Lakeside Junior High School
17 in Anderson.

18 Q. Can you describe the room that you were in speaking
19 with the defendant?

20 A. The room is commonly used as an office. There's a
21 chair and a desk. And in front of that desk are two
22 chairs that face the desk, and behind that desk is a
23 large bookcase.

24 Q. Was the defendant seated?

25 A. Yes, he was.

1 Q. And was he as comfortable as he could be in those
2 circumstances?

3 A. Yes, he was.

4 Q. Could you tell if he was under the influence of any
5 alcohol or any other substance at that point?

6 A. He did not appear to me to be under the influence of
7 any substances.

8 Q. Did the defendant indicate that he wished to waive
9 his rights?

10 A. He did.

11 Q. Did he indicate that he understood his rights?

12 A. He did.

13 Q. And in your opinion, do you think he understood
14 those rights?

15 A. I believe he understood what his rights were, yes.

16 Q. To get this statement, were any threats made or any
17 promises or was he intimidated?

18 A. No.

19 Q. And did he, in fact, give you a written statement?

20 A. He did.

21 Q. Who wrote the statement?

22 A. I wrote the statement.

23 Q. How did that come about?

24 A. I asked the defendant to tell me what happened, that
25 I would write down what he told me. And that after

1 finishing the statement, that I would let him review it
2 and make any changes that needed to be made. And we
3 would both place our initials on any changes that would
4 be made. And then after that, we would sign the
5 statement.

6 Q. Did you write it accurately as the defendant told
7 you what happened?

8 A. I did.

9 Q. And was it read back to him?

10 A. Yes. It was read back to him, and I also gave it to
11 him to review to make sure that no changes needed to be
12 made. And I told him after reviewing the statement if it
13 appeared correct to him, to place his signature on each
14 page.

15 Q. And did he do that?

16 A. He did.

17 Q. And did you and Lieutenant Sanders also sign those
18 pages?

19 A. We did.

20 Q. When was the statement completed?

21 A. I was close to midnight.

22 Q. And have any changes been made to that statement
23 since?

24 A. No.

25 Q. Referring you to State's Exhibit Number 2, is there

1 anything on the back of that exhibit?

2 A. Yes. During the interview process, the defendant
3 was speaking of where they were seated when the firearm
4 was discharged. And he drew a diagram indicating where
5 they were seated.

6 MS. REEVES: Your Honor, the State would like
7 to move State's Exhibit Number 2 and 3 into evidence.

8 MR. YOUNG: No objections.

9 THE COURT: State's Exhibit Number 2 and
10 Exhibit Number 3 will be admitted without objection.

11 (WHEREUPON, State's Exhibit Number 2 and 3 were
12 admitted into evidence.)

13 Q. Captain Marsee, can you please read us the written
14 statement that the defendant gave you on April 23rd?

15 A. It said ...

16 I have lived in Williamston most of my
17 life. My children went to Palmetto High
18 School. I completed the ninth grade at
19 Lakeside Junior High School in Anderson, South
20 Carolina. My wife is from Starr, and she works
21 at the deli in Walmart in Simpsonville.
22 Yesterday, I went with my son Billy to go to
23 B&B Pawn Shop and the ADSAP place at nine-
24 thirty to ten o'clock a.m. We were in Anderson
25 for a couple of hours. And when we came back,

1 we went to Holiday Road to my son's trailer.
2 My son showed me a twenty-two pistol that he
3 had. We went outside, and we were shooting the
4 gun toward a trash can. Billy told me that he
5 thought something was wrong with the gun. I
6 told him I thought it was the bullets.

7 Before we arrived at his trailer, we had
8 gone to B&B in Anderson, and we also stopped by
9 Foothills Pawn in Williamston to get some
10 bullets. I cannot remember who paid for them.
11 My son showed his I.D. to buy them. David was
12 also at the trailer, and Billy and David had
13 another gun that was a twenty-two. It was also
14 a revolver, and it was silver. It had a bone
15 handle. We shot both the guns, Billy and
16 myself.

17 We shot them with the new bullets until
18 the guns were empty. I wanted the twenty-two
19 that was black in color. David and Billy rode
20 back with me to South Hamilton Street. I
21 wanted to show the gun to my wife because I was
22 going to buy it for her for protection.

23 When we got to Hamilton Street, David and
24 Billy went to work with Chris Guthrie who lives
25 across the street to put lights on his boat.

1 This was around two to three o'clock p.m. I
2 went fishing at Cooley's Dam. I caught two
3 fish. I was gone about an hour and a half. At
4 this time, either Billy or David had the
5 twenty-two that I wanted to buy.

6 I pulled across the street, and I told
7 Billy I wanted to show the gun to his mother.
8 He told me that he wanted to take my shotgun so
9 he could shoot it. I would hold the twenty-
10 two, and he would keep the shotgun. Billy came
11 to the house and got the shotgun. I already
12 had the twenty-two. He left right away and
13 went back to Chris Guthrie's house. Chris
14 Guthrie carried David and Billy home at this
15 time.

16 My wife saw the gun right away. We were
17 not drinking that much at the time.

18 Around seven to eight o'clock p.m., my
19 wife and I started watching TV and drinking.
20 We were drinking Four Loko and Bud Ice, and I
21 was also drinking Rock and Rye. I drank about
22 half a pint. I had also taken some Oxycontin.
23 I took one at six a.m., and I took another at
24 six p.m.

25 I pulled out the gun and started playing

1 with it. I was spinning it around on my
2 finger. I tossed the gun to my wife, and it
3 landed on the couch. She picked it up and
4 began to play with it. She pointed the gun at
5 me and she was saying, "I will shoot you."
6 Then she points it at herself and says, "I will
7 shoot me." Shortly after, she threw it back at
8 me. We tossed the gun back and forth two
9 times. On the second time she threw it at me,
10 when I caught it, the gun went off.

11 When we were playing with the gun, I was
12 seated on the recliner, located to the right
13 side of the loveseat. I drew Captain Marsee a
14 diagram of where I was seated. My wife was
15 seated to my left side on the right side of the
16 loveseat. My wife was wearing some type of
17 pajama suit.

18 After the gun went off, I held my wife's
19 face in my hands. She was breathing. I left
20 right away and took the gun and drove my
21 4Runner to my son's house on Holiday Road.

22 When I got to my son's house, parenthesis,
23 trailer, the door was open. And Billy, my son,
24 and David were sitting in the living room. I
25 told my son, "We got to go. I shot your mama."

1 I gave the gun to Billy, my son.

2 Billy, David, and I went back to South
3 Hamilton. Billy drove the car. Billy called
4 the police and ambulance. I thought when I
5 shot my wife that she was going to die. That's
6 why I panicked and ran to my son's trailer.

7 Q. I'm going to show you State's Exhibit Number 2. Is
8 this the diagram that the defendant was referring to in
9 his statement?

10 A. Yes, it is.

11 Q. And can you tell us what he was stating to you in
12 his written statement?

13 A. He drew that, and he drew that little square to the
14 left, and he put a dot on it.

15 Q. This one?

16 A. Yep. And he said that's where he was seated. And
17 then he drew a longer rectangle to the top of the page,
18 put a dot on it. And he said that's where his wife was
19 seated.

20 Q. And in this photograph or in this diagram, where is
21 the front door?

22 A. The front door would be to the right side all the
23 way outside the diagram he drew. And if you go to the
24 bottom of the page where the darker lines are drawn, it
25 would be that dark dash to the right of -- yes, right

- 1 there.
- 2 Q. That is the front door?
- 3 A. That would be the front door, yes.
- 4 Q. Okay. So this would have been the chair that the
- 5 defendant was sitting in?
- 6 A. Correct.
- 7 Q. And this was the couch that his wife was sitting on?
- 8 A. Yes.
- 9 Q. And this is where they were tossing this loaded
- 10 revolver back and forth?
- 11 A. That's what the defendant told me.
- 12 Q. And he said that after shooting her she was
- 13 breathing?
- 14 A. Yes.
- 15 Q. And then he left her and drove to his son's trailer
- 16 which is how far away?
- 17 A. Close to four miles.
- 18 Q. And he told you he left the gun at his son's
- 19 trailer?
- 20 A. Correct.
- 21 Q. And he said at that point who called 9-1-1?
- 22 A. His son.
- 23 Q. And at some point thereafter speaking with this
- 24 defendant, did you follow up regarding the bullets that
- 25 he said he bought?

1 A. Yes. Ken Ebernickle had spoken to a guy at
2 Foothills Pawn. That guy came -- I don't have the date
3 in front of me. But he did come and look at the bullets
4 that we had. And he had remembered selling them to the
5 defendant.

6 MS. REEVES: Nothing further.

7 THE COURT: All right.

8 Mr. Young?

9 CROSS-EXAMINATION

10 BY MR. YOUNG:

11 Q. Captain Marsee, the first night that you spoke with
12 Mr. Smith, the 22nd, I believe it would have been, I
13 believe your testimony was that it was obvious to you
14 that he was highly intoxicated at that time?

15 A. Yes, it was obvious that he was under the influence.

16 Q. The second time the following day that you spoke
17 with him, he was in the Anderson County Detention Center;
18 correct?

19 A. Correct.

20 Q. And he was transported to the Williamston Police
21 Department?

22 A. He was.

23 Q. And by that time he had, for lack of a better
24 description, dried out?

25 A. Yes. He was in better shape than he was the first

1 time.

2 Q. On the 22nd, did -- when Mr. Smith was telling you
3 about this Michael Green person ---

4 A. Yes.

5 Q. --- you did not believe that story; correct?

6 A. Not at the time because what he was telling me did
7 not match up with the crime scene and the layout of the
8 scene.

9 Q. And you confronted him about that; correct?

10 A. I told him I didn't believe that, yes. I told him
11 there was an inconsistency.

12 Q. And as a result of that, you did not ask any other
13 officers to go out and follow up with Michael Green about
14 anything; correct?

15 A. That's correct.

16 Q. Shortly after getting this version of what happened,
17 you got another version of what happened; correct?

18 A. Very shortly after, yes, sir.

19 Q. And Mr. Smith offered to take you to where the gun
20 was; correct?

21 A. That's correct.

22 Q. And he assisted you in getting in touch with his son
23 in order to get inside of the house to look for the gun
24 after a while; correct?

25 A. Yes, he did.

1 Q. And then the next day you came to interview Mr.
2 Smith, and he gave you this statement that you read
3 today; correct?

4 A. Yes, he did.

5 Q. Thank you.

6 MR. YOUNG: That's all the questions I have.

7 THE COURT: Anything further for this witness?

8 Any redirect?

9 MS. REEVES: Judge, may I just make sure that
10 this exhibit was moved in?

11 THE COURT: Which number?

12 MS. REEVES: Number 38?

13 THE COURT: My records is that that is in
14 evidence.

15 MS. REEVES: Thank you.

16 THE COURT: Mr. Young, is that your
17 understanding?

18 MR. YOUNG: I think so, Your Honor.

19 THE COURT: I've got it over here that 38 was
20 admitted.

21 MS. REEVES: Yes, just making sure. No further
22 questions.

23 THE COURT: Thank you, Officer. You can step
24 down.

25 Okay.

1 MS. REEVES: Judge, may we approach after this
2 witness is excused?

3 THE COURT: Yes, ma'am. Yes, ma'am.

4 (WHEREUPON, a bench conference was held off the
5 record.)

6 THE COURT: Ladies and gentlemen, I'm going to
7 let you break for lunch now. Same instruction I give you
8 every time. You can't talk about the case with third
9 parties, can't conduct independent research and cannot
10 deliberate amongst yourselves. I hope everyone has a
11 good lunch. We will reconvene at two o'clock.

12 Mr. Bailiff?

13 (WHEREUPON, the jury exited the open court at
14 approximately 11:44 a.m.)

15 THE COURT: Okay. Ms. Reeves, Mr. Young, I
16 believe you have a witness.

17 MR. YOUNG: We're going to see if she's here.

18 THE COURT: Is this her? Put her under oath.

19 (WHEREUPON, the witness was duly sworn.)

20 THE CLERK: Do you just want to talk to her?

21 THE COURT: Get her to state her name and what
22 their position is.

23 THE CLERK: If you would, please, just state
24 your name for the record and also spell your last name.

25 THE WITNESS: Christy Padgett. And I'm the

1 adult services coordinator at Anderson-Ocone B.H.S.

2 THE COURT: Okay. Mr. Young, what is it that
3 you're seeking to review?

4 MR. YOUNG: Your Honor, we have requested some
5 records as it relates to the ADSAP program, that we've
6 asked for verification as to whether or not they have
7 those records. And we have not been able to obtain any
8 information because of the privacy laws, that they are
9 not willing to share that information without -- unless
10 the Court orders them to do so..

11 THE COURT: Okay. Is that correct, Ms.
12 Padgett?

13 MS. PADGETT: It is correct.

14 THE COURT: And Mr. Young, what is the purpose?
15 Is this -- there was some testimony, I believe, in the
16 statement that ---

17 MR. YOUNG: That is correct, Your Honor. It is
18 to ---

19 THE COURT: That a trip was made to the ADSAP
20 office, and that's the information you're trying to
21 elicit?

22 MR. YOUNG: Yes, sir, Your Honor.

23 THE COURT: Okay. All right.

24 All right. Ms. Padgett, I will direct you to allow
25 the State and the Defense to review the records. They

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1 are ...

2 And I will instruct each counsel you are under a
3 confidentiality requirement. That information's not to
4 be disseminated to any other party. It's simply for your
5 review. If there is an item in the file that is relevant
6 to that issue of whether a visit was made to the ADSAP
7 office that day, then we'll see if there's any objection
8 to it, and we'll deal with that at that time.

9 Now, Ms. Padgett, if you have your file, I'll allow
10 the parties to view that outside the courtroom. Okay?

11 MS. PADGETT: Okay.

12 THE COURT: Does that cover you as far as your
13 organization's requirements?

14 MS. PADGETT: Yes, sir. But I can probably
15 explain it better than this will make sense to them.

16 THE COURT: Okay. Well, I'm going to allow
17 them to discuss that. You are free to discuss with
18 counsel from the State and -- from the solicitor's office
19 and the Defense counsel. Again, I'm not making any
20 ruling as to the admissibility of this evidence. But I
21 will allow you to review the evidence.

22 MR. YOUNG: Yes, sir.

23 THE COURT: Okay. We'll go off the record.
24 We'll be in recess until 2:00.

25 MR. YOUNG: Thank you, Your Honor.

1 (WHEREUPON, court stood in recess for a lunch
2 break.)

3 THE COURT: Anything from the State before we
4 bring the jury back in?

5 MS. REEVES: No, sir.

6 THE COURT: Anything from the Defense?

7 MR. YOUNG: No, sir, Your Honor. But I do want
8 to -- as far as scheduling is concerned, I briefly spoke
9 with the solicitor prior to us leaving the courtroom.
10 And she shared with me that she had approximately four
11 additional witnesses that probably is going to take us up
12 through the better part of the day. I mean, the rest of
13 the day. So I have some witnesses that are on standby
14 for tomorrow morning. So I just wanted to give the Court
15 the information for scheduling purposes.

16 THE COURT: Well, we'll see where we are.

17 Ms. Reeves, is that correct? You've got four more
18 witnesses?

19 MS. REEVES: It is.

20 THE COURT: Okay. Well, it's two o'clock.

21 Mr. Young, that sounds like you're dead on when we
22 would get to those. I mean, I don't know how long your
23 witnesses are, but ...

24 MS. REEVES: I predict they could be fairly
25 lengthy.

1 THE COURT: Okay. Well, we'll take as long as
2 we need. I'm here all week, and so we'll go -- I'm not
3 going to keep them extremely late in the evening because
4 we do -- we have all day tomorrow, and then we'll keep
5 going this week until we get finished.

6 MS. REEVES: Okay. Well, that's fine. I think
7 I should finish today with no problem. But for his
8 witnesses to be here and all, we just wanted to kind of
9 get that schedule down.

10 THE COURT: And I plan on starting at nine in
11 the morning. So if you've told them nine o'clock, that's
12 accurate.

13 MS. REEVES: Okay.

14 THE COURT: Okay.

15 Mr. Bailiff, if you'll get our jury for us, please,
16 sir.

17 (WHEREUPON, the jury entered the open court at
18 approximately 2:04 p.m.)

19 THE COURT: Okay. Ladies and gentlemen, I hope
20 everyone had a good lunch. We're ready to proceed.

21 Ms. Reeves?

22 MS. REEVES: Thank you, Judge. The State calls
23 Whitney Berry.

24 **WHITNEY BERRY,**

25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

1 DIRECT EXAMINATION

2 BY MS. REEVES:

3 Q. Ms. Berry, where do you work?

4 A. I work for the South Carolina Law Enforcement
5 Division, also known as SLED.

6 Q. And what is your position with SLED?

7 A. I'm a forensic scientist in the trace evidence
8 department.

9 Q. And what do you do as a forensic scientist?

10 A. My specialization in the trace evidence department
11 is gunshot residue analysis. So that's my primary
12 function is analyzing gunshot residue.

13 Q. And you analyze, and then do you write a report?

14 A. Yes, ma'am, I do.

15 Q. And how long have you been a forensic scientist?

16 A. I've been a forensic scientist for SLED for about
17 two and a half years.

18 Q. And can you tell us what trace evidence is?

19 A. Trace evidence is evidence that's microscopic, and
20 it's typically unable to be seen with the naked eye. It
21 can include things such as gunshot residue, paint chips.
22 It can include glass, like particles of glass, fibers,
23 fire debris, baked dye and other sorts of microscopic
24 analysis.

25 Q. Do you know approximately how many times you have

1 done a gunshot residue analysis?

2 A. I probably did about two hundred during my training.

3 And since I've become a qualified analyst, I've probably

4 done an additional eight hundred cases or kits rather.

5 Q. And what is your education or training for this job?

6 A. I have a bachelor of science degree in chemistry

7 from the University of South Carolina. And upon being

8 hired at SLED, I began the in-house gunshot residue

9 training program. It's an approximately nine-month long

10 program that includes various readings on the

11 instrumentation, how it works, the theory of gunshot

12 residue analysis as well as working cases under the

13 supervision of a qualified analyst, observing courtroom

14 testimony and eventually defending my own case in a mock

15 court.

16 Q. Have you testified in a real court before?

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

18 Q. And have you been qualified in court as an expert in

19 forensic science specializing in G.S.R. analysis?

20 A. Yes, ma'am.

21 Q. And how many times have you been qualified?

22 A. Approximately twenty-five.

23 MS. REEVES: Judge, I'd like to move Ms. Berry

24 as an expert in the field of trace analysis.

25 THE COURT: Any objection?

1 MS. REEVES: And G.S.R. residue.

2 MR. YOUNG: No objections, Your Honor.

3 THE COURT: Okay. All right. Ms. Berry would
4 be admitted as an expert in the field of trace analysis.
5 And what was the ---

6 MS. REEVES: Gunshot residue.

7 THE COURT: Trace analysis and gunshot residue.

8 Q. Can you tell us again -- or tell us what gunshot
9 residue is?

10 A. Gunshot residue is the primer residue that comes out
11 of the cartridge of a bullet when it's fired. It is
12 composed of three metal components: lead, barium and
13 antimony. And when they are under the high heat and
14 pressure of a gunshot, all of these solid elements
15 vaporize, and they become molten. So they all meld
16 together. When they land or when they cool in the
17 atmosphere, they can land on a hand or land on different
18 objects in the vicinity. And they're normally molten or
19 round in shape.

20 Q. What does gunshot residue typically consist of?
21 What particles?

22 A. It consists of the elements lead, barium, and
23 antimony. And, again, we look for them in a molten or a
24 round shape. There can also be what we would consider
25 supporting particles that are consistent. So that would

1 be a two-component particle of just lead and antimony or
2 lead and barium or an associated particle which would be
3 a single component particle that would be round such as
4 just round lead or round barium or round antimony.

5 Q. And what are you able to determine from your results
6 of your analysis?

7 A. What we're looking for is the presence of gunshot
8 residue, and we're looking for a population of it. So
9 with gunshot residue, the most conclusive positive would
10 be your three-component particles. And that shows all
11 three of those elements are there and free of
12 contaminants. And they're in the correct shape. And
13 that would indicate that the particles were most likely
14 from a gun because that's pretty much the only way that
15 they would be produced in that configuration without
16 contamination -- contaminate in them. So when we're
17 looking at that, we also look to see if we have some of
18 those consistent or associated particles as well because
19 that can just back up the idea that that's how those
20 particles would have gotten on someone's hands from a
21 gunshot or gunfire.

22 Q. And when you have these particles present, what is
23 that able to tell you about a gunshot residue kit
24 collected from a person?

25 A. It can tell me that the person was in the vicinity

1 to the discharge of a firearm within six hours of the
2 collection time of the G.S.R. kit.

3 Q. And in the vicinity of, what does that mean?

4 A. That could mean it's a person who was holding the
5 gun and fired it. It could mean someone who is standing
6 near a person who is holding the gun and fired it or in
7 the same room if it was a small room. It could also mean
8 that the person was the victim of a gunshot wound. The
9 majority of the gunshot residue is actually going to
10 follow the bullet or projectile towards its intended
11 target. So it's going to go out like a cone from the
12 muzzle end of the gun, and everything in that cone area
13 has the potential to have gunshot residue on it. You can
14 get it on your hands when you hold the gun and pull the
15 trigger with -- for example, a semiautomatic, the
16 ejection port, when it slides back, you can get gunshot
17 residue on your hands there. If you've seen an old
18 western movie with the revolver and they pull the
19 trigger, you see the little plume of gun smoke around
20 their hands. And that's from the cylinder gap, and
21 that's how it can could get on someone's hands who fired
22 it.

23 Q. So would you say it would be common to find gunshot
24 residue on the victim of a shooting?

25 A. Yes, ma'am.

1 Q. Where is gunshot residue commonly found on anyone
2 that was in the proximity of a gun?

3 A. The best evidence we can get would be a gunshot
4 residue collection kit off of the hands of someone who's
5 suspected to be involved in a shooting. For a living
6 person, we in the scientific community accept that
7 gunshot residue is not going to stay on someone's hands
8 for longer than six hours if they're a living person.
9 And that's because gunshot residue is fragile. It's very
10 easy to remove. Rubbing your hands together, putting
11 your hands in your pocket, any kind of normal activity
12 like that has the potential to remove it as well as
13 washing your hands. If you're outside and it's raining,
14 all of these could potentially remove the G.S.R. So on a
15 living person, we don't expect to find it more than six
16 hours after the suspected incident time. On a deceased
17 person, because they're no longer doing any of those
18 activities, it can remain for a longer period of time.

19 Q. How far does G.S.R. normally travel?

20 A. It depends on the caliber of gun, the condition the
21 gun is in, the environmental factors like if it was an
22 indoor or outdoor shooting and what kind the weather was.

23 Q. Can the caliber of the gun influence how far the
24 G.S.R. is traveling?

25 A. It can. Higher caliber ammunition does have more

1 primer in it, so it can go farther. So on a smaller
2 caliber gun, you may only expect to find gunshot residue
3 up to maybe two feet, three feet. And on a larger
4 caliber gun, you might expect to find it maybe six feet
5 away.

6 Q. And is a twenty-two caliber revolver -- is that a
7 higher or lower caliber?

8 A. That is a small caliber gun.

9 Q. Where is G.S.R. most commonly found on a person that
10 has fired the gun?

11 A. It's most commonly found on the hands. Just when we
12 have it sampled or when the officer samples, they sample
13 four different areas of the hands. So they would sample
14 the back of each hand including the fingers, and then
15 they would sample the palm of each hand including the
16 webbing by the thumb. And that would pick up any
17 potential particles that could be on those areas.

18 Q. And I think you said it can rub off when you put a
19 hand in a pocket or something?

20 A. Yes, ma'am.

21 Q. So can you find G.S.R. on clothing as well?

22 A. You can find G.S.R. on clothing either from
23 transfer, like somebody touching after they've already
24 gotten it on their hands, or from someone wearing clothes
25 during the commission of -- or during the firing of a

1 weapon or being near the firing of a weapon, it can
2 deposit there.

3 Q. Do you always find it on someone who has fired a gun
4 or someone who's been shot?

5 A. No.

6 Q. And why not?

7 A. Reasons to not find it on somebody who fired a
8 weapon could include that they've cleaned their hands,
9 that it's been a long enough time since the incident that
10 they've been able to remove it just through normal
11 activity such as sweating. If they were running,
12 different things like that. You could possibly not find
13 it because perhaps the gun didn't deposit any. That's
14 not unheard of where you fire the gun and it doesn't
15 necessarily deposit any G.S.R. There's also -- on the
16 victim, you may not find it because of the distance. If
17 they were an excessive distance away when they were shot,
18 they may not have that gunshot residue on them.

19 Q. Did you receive evidence to examine in this case?

20 A. Yes, ma'am.

21 Q. What evidence did you receive?

22 A. I received three gunshot residue kits -- oh, I'm
23 sorry -- four gunshot residue kits submitted from people
24 associated with this case as well as clothing that was
25 submitted.

1 Q. And did you perform analysis on all of those items?

2 A. No, I did not.

3 Q. And why not?

4 A. May I consult my notes for a moment?

5 Q. Please, if it will help you refresh.

6 A. We did not analyze three of the gunshot residue kits
7 submitted from people in this case per Mike Baskin with
8 the Anderson County Solicitor's Office who stated that he
9 was concerned with one kit more than the others.

10 Q. Okay. Let me show you evidence -- let me show you
11 what's been marked as State's Exhibit 31. I'm going to
12 show you State's Exhibit 39 as well. Are those the items
13 that you did perform analysis on?

14 A. I did perform analysis on State's Exhibit 31. And,
15 yes, I performed analysis on these two items as well.

16 Q. And how do you know that?

17 A. Every case that is logged in to SLED is given its
18 own unique laboratory number. Each item within that case
19 is given its own item number. In this particular case,
20 the gunshot residue kit, which is State's Exhibit 31, is
21 my item number 2. And it has my lab number, the item
22 number, as well as my initials and the date that I opened
23 it. It also has my initials and the date that I sealed
24 it on tamper-evident tape. For the clothing, whenever we
25 sample clothing, we write on the clothing, again, the lab

1 number, the item number and our initials and the date.

2 And I was able to locate my initials, date and those
3 numbers on those pieces of clothing.

4 Q. From those items that you analyzed, were you able to
5 form an expert opinion as to the results of your
6 examination?

7 A. Yes, ma'am, I was.

8 Q. And what were those results for the clothing?

9 A. For the clothing, the long-sleeved maroon-colored
10 button-up shirt, particles of gunshot residue were found.
11 One particle consistent with gunshot residue was found,
12 and one particle associated with gunshot residue was
13 found.

14 Q. And for the jeans?

15 A. And for the jeans, one particle of gunshot residue
16 was found.

17 Q. What does a particle consistent with mean?

18 A. A consistent particle would be a particle that
19 contains two of the metallic elements we're looking for
20 in gunshot residue. So, again, it would be what we would
21 call a two-component particle, so it would be lead and
22 barium or barium and antimony or lead and antimony, a
23 combination like that. And it would have to be round in
24 shape, perfectly round. And for the associated particle,
25 that would be a single component particle. So just round

1 lead or just round barium or just round antimony.

2 Q. And what were the results of your analysis of the
3 gunshot residue kit for the defendant?

4 A. On the gunshot residue kit from Billy Ray Smith, one
5 particle of gunshot residue and one particle associated
6 with gunshot residue were found on the right hand. No
7 primer or gunshot residue was found on the left hand.

8 Q. And what does that mean, an associated particle?

9 A. The associated particle would be your round lead,
10 round barium or round antimony.

11 MS. REEVES: Judge, I would like to admit
12 State's Exhibit Number 31 and 39 into evidence.

13 THE COURT: Any objection?

14 MR. YOUNG: No objections, Your Honor.

15 THE COURT: State's Exhibit Number 31 and
16 Number 39, State's Exhibit 39, would be admitted without
17 objection.

18 (WHEREUPON, State's Exhibit Numbers 31 and 39 were
19 admitted into evidence.)

20 MS. REEVES: No further questions.

21 THE COURT: All right.

22 Mr. Young?

23 CROSS-EXAMINATION

24 BY MR. YOUNG:

25 Q. Is it Agent Berry?

- 1 A. Agent is fine, yes.
- 2 Q. I have a quick question for you. You stated that on
- 3 your item number 2 ---
- 4 A. Yes, sir.
- 5 Q. --- which would be the G.S.R. kit, that you found
- 6 traces of G.S.R. on the right hand; correct?
- 7 A. I found one particle of gunshot residue and one
- 8 associated particle on the right hand, yes.
- 9 Q. And nothing on the left hand; correct?
- 10 A. Correct.
- 11 Q. That is consistent with somebody reaching for a gun
- 12 and a gun going off; correct?
- 13 A. It could be.
- 14 Q. The person would have been in proximity of that
- 15 gunshot going off; correct?
- 16 A. It could be consistent with that sort of scenario,
- 17 yes.
- 18 Q. Now, you received a G.S.R. kit regarding a Billy
- 19 Paul Smith; correct?
- 20 A. Yes, sir.
- 21 Q. And I believe you also got a G.S.R. kit on a David
- 22 Hogg?
- 23 A. Yes, sir.
- 24 Q. Those were not tested at all; correct?
- 25 A. No, sir, they were not.

1 Q. And you also received a G.S.R. kit on a Sandra

2 Smith; correct?

3 A. Yes, sir.

4 Q. And that was not tested at all?

5 A. No, sir, it was not.

6 Q. So we don't know if there -- as it relates to Sandra

7 Smith, we don't know that her hands were in proximity to

8 this gun when it went off or not, do we?

9 A. I couldn't say for sure if they were or not.

10 Q. Because it wasn't tested?

11 A. We're moving away from testing G.S.R. kits off of

12 victims just because we expect to find gunshot residue on

13 the hands of a victim of a gunshot wound. And in this

14 case, this item was logged in as being from a victim.

15 And when I talked to the gentleman at the solicitor's

16 office, he stated that the analysis of that kit would not

17 be needed.

18 Q. Now, you just testified that you would expect

19 gunshot residue to be on the hands of a victim?

20 A. Yes, sir.

21 Q. In a situation or a scenario where that victim is

22 four feet away from a person, you would -- and they are

23 shot in the head or in the abdomen area, you would expect

24 gunshot residue on their hands?

25 A. It's possible. As I mentioned before, when the

1 gunshot residue or rather when the projectile or bullet
2 comes out of the muzzle of the gun, the G.S.R. is going
3 to come out in a cone-like pattern. And anything in
4 front of that cone could have G.S.R. on it. So that
5 could include the hands of the victim even if they were
6 shot in the head.

7 Q. And wouldn't the amount of gunshot residue found on
8 a person determine how close or how far away they would
9 be from that item when it is fired?

10 A. We cannot do distance determination based on whether
11 or not gunshot residue is found on a person's hands.
12 There's no set amount of gunshot residue that can be
13 deposited by a gun or a type of ammunition, so we have no
14 way to say they were closer or farther away.

15 Q. So based on your testimony, we can assume that
16 Sandra Smith's gunshot residue kit would have come back
17 positive that there was gunshot residue on her hands?

18 A. It may have, yes.

19 Q. Thank you.

20 MR. YOUNG: I have no further questions.

21 THE COURT: Any redirect?

22 MS. REEVES: Yes, sir, real quick.

23 REDIRECT EXAMINATION

24 BY MS. REEVES:

25 Q. Would you expect to find gunshot residue on a person

1 that has admitted to either firing a gun or handling a
2 gun?

3 A. Yes, I would.

4 Q. And, again, given that six-hour time frame; is that
5 right?

6 A. Yes, ma'am.

7 Q. And is that why you may or may not do some of the
8 testing that you do?

9 A. It's SLED's policy that we will not analyze a kit
10 collected from the hands for gunshot residue if it was
11 collected after six hours because we can no longer tie it
12 to a specific incident. We also don't really expect to
13 find anything after that amount of time.

14 MS. REEVES: Nothing further.

15 MR. YOUNG: If I could just have one followup?

16 THE COURT: Yes, sir.

17 RECROSS EXAMINATION

18 BY MR. YOUNG:

19 Q. But in this particular case, you only tested that
20 one kit after your consultation with someone from the
21 solicitor's office; correct?

22 A. Yes, sir.

23 Q. And did they share with you that that one kit that
24 they wanted tested was from someone who had admitted to
25 being near or around the gun when it was shot?

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1 A. Not in specific detail. They said that they just
2 wanted the kit from the suspect, Billy Ray Smith,
3 analyzed at this time.

4 MR. YOUNG: No further questions, Your Honor.

5 THE COURT: All right. Anything further from
6 this witness?

7 MS. REEVES: No, sir.

8 THE COURT: Any objection to this witness being
9 excused?

10 MR. YOUNG: No objection, Your Honor.

11 THE COURT: Thank you, Agent. You are excused.

12 MS. REEVES: The State calls Dan DeFreese.

13 **FRANK DAN DEFREESE,**

14 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

15 **DIRECT EXAMINATION**

16 **BY MS. REEVES:**

17 Q. Mr. DeFreese, are you currently employed?

18 A. No, ma'am.

19 Q. Why not?

20 A. I'm retired.

21 Q. Where did you retire from?

22 A. I retired from the South Carolina Law Enforcement
23 Division in Columbia.

24 Q. And how long were you employed with SLED?

25 A. I was in my forty-ninth year at the time of my

1 retirement.

2 Q. What was your occupation or profession within SLED?

3 A. When I worked for SLED, I was assigned to the
4 firearms department within the forensic services
5 laboratory. That's where they do the analysis of firearm
6 and tool mark evidence.

7 Q. Were you also a forensic scientist?

8 A. Yes.

9 Q. Would that have been your job title?

10 A. Yes.

11 Q. And what is -- excuse me. What is firearms
12 identification?

13 A. Firearms identification is the field of forensic
14 science that deals with the identification of firearms
15 and mostly with fired ammunition components. We're
16 principally concerned with the identification of fired
17 bullets and fired cartridge cases back to the firearms in
18 which they were fired or with other evidence specimens.
19 We do also a number of other analyses generally
20 associated with firearms such as safety analysis,
21 trajectory, and anything that encompasses things related
22 to firearms.

23 Q. Was firearms identification part of your job
24 responsibilities with SLED?

25 A. Yes.

1 Q. And what makes identification of a firearm possible?

2 A. Bullets and cartridge cases are marked by the
3 firearms in which they were fired. They're marked with
4 class characteristics, and they're also marked with
5 individual characteristics that are left over from the
6 manufacturer, the firearm, and from the use and abuse of
7 the firearm after it was manufactured. The bullets are
8 gripped by the interior surface of the barrel, what we
9 would call the bore, and by the rifling in rifle firearms
10 which can impart tool marks on the bullets as they pass
11 down the barrel and out of the gun.

12 When the bullets are recovered in sufficiently good
13 condition and the firearm is consistent in its markings,
14 we can identify a particular bullet to the firearm or to
15 the gun barrel from which it was fired. And similarly,
16 cartridges, when they're fired in a firearm, are marked
17 by the firearm in several different ways. They can be
18 marked by the firing pin impression, chamber marks,
19 extractor, ejector, and handling mechanism marks that
20 grip the cartridge at some time during the firing cycle.
21 And we can either state that a cartridge case was fired
22 in a given firearm or that it was loaded into and
23 extracted from a given firearm at some prior time. And
24 this is based on a side-by-side microscopic analysis of
25 the marks generally between the evidence specimens or the

1 evidence specimen and a test specimen fired by a specific
2 gun.

3 Q. What is your educational background?

4 A. Pardon me?

5 Q. What is your educational background?

6 A. I'm a graduate of the University of South Carolina
7 in Columbia.

8 Q. What specialized training have you received?

9 A. After my employment with SLED, I was assigned to the
10 firearms laboratory, the firearms section. And my
11 principle training was received at SLED, that for the
12 first about two and a half years of my employment, I
13 studied the technique of firearms and tool mark
14 identification. I studied them under a gentleman by the
15 name of Millard Cate who established the SLED laboratory
16 when SLED itself was established in its present form in
17 1947. I also studied under Lieutenant Carl Stokes. And
18 after I had studied under their direct supervision and
19 worked cases with them, I began accepting cases on my own
20 and testifying as to my results. I've been doing that
21 since 1969.

22 Q. Approximately how many times have you testified?

23 A. I actually don't know. I don't. We didn't keep
24 records of it for a great many years, but I estimate
25 between six hundred and seven hundred times.

1 MS. REEVES: Your Honor, I would like to move
2 that Mr. DeFreese be qualified as an expert in firearms
3 identification.

4 THE COURT: Any objection?

5 MR. YOUNG: No objections, Your Honor.

6 THE COURT: All right. Mr. DeFreese would be
7 admitted as an expert in firearms identification.

8 Q. Mr. DeFreese, did you analyze evidence involving
9 this case?

10 A. I did.

11 Q. I'm going to show you what's been marked as State's
12 Exhibit 32 through 35. No -- I'm sorry -- 32, 33, and
13 34. Can you tell me if you recognize these items?

14 A. Yes, ma'am, I do.

15 Q. Can you tell us what they are?

16 A. State's Exhibit 33 is a fired twenty-two long or
17 long rifle caliber cartridge case. It has the headstamp
18 F. State's Exhibit 34 contains eight unfired twenty-two
19 long rifle caliber cartridges that are loaded with
20 copper-plated hollow-point bullets. And all of them bear
21 the headstamp F. State's Exhibit 32 is a High Standard
22 Sentinel twenty-two long rifle caliber revolver. It's
23 the correct caliber to have fired the fired cartridge
24 case and could have fired any of the unfired cartridges
25 in State's Exhibit 34.

1 Q. Did you perform analysis on those items?

2 A. I did.

3 Q. Speaking of the gun first, can you tell us what type
4 of gun that is?

5 A. This is a twenty-two long rifle caliber double-
6 action revolver. It has a cylinder that is capable of
7 holding nine cartridges. It can be fired as many as nine
8 times without reloading. It's a manually operated
9 firearm that's capable of either single-action fire or
10 double-action fire. When fired in the double-action
11 mode, a long pull of the trigger will cause the hammer to
12 be cocked, and then when the trigger's sufficiently
13 pulled, the hammer will drop and fire the cartridge
14 that's lined up in the cylinder with the barrel. In the
15 single-action mode, after you have manually cocked the
16 firearm, a much lighter and shorter pull of the trigger
17 will result in its firing. It does not eject cartridges
18 every time it's fired. The cartridges are ejected after
19 all firing has ceased by opening the cylinder as it is
20 now and manually ejecting the cartridges.

21 Q. Does that gun have a safety mechanism?

22 A. It has some internal safety mechanisms that are
23 designed to keep it from firing if it's dropped. It
24 doesn't have an external safety catch, as many double-
25 action revolvers do not.

1 Q. And did you find that gun to be in working order?

2 A. It was in good working order.

3 Q. Can you tell us what type of analysis you performed
4 on that gun?

5 A. Basically, after collecting information about the
6 gun, I used the gun to test fire ammunition to obtain
7 fired cartridge cases that I knew this gun had fired for
8 the purpose of comparing it with the fired cartridge case
9 in State's Exhibit 33. And I did a side-by-side
10 microscopic comparison of the fired cartridge case in
11 State's Exhibit 33 with cartridge cases fired by the
12 revolver, State's Exhibit 32. I found a matching firing
13 pin impression on both from which I concluded that the
14 cartridge casing, State's Exhibit 33, was fired by the
15 revolver, by State's Exhibit 32. All of the other
16 unfired cartridges are the correct caliber for use and
17 could have been fired in State's Exhibit 32, but these
18 were unfired.

19 Q. And did you perform any further analysis on those?

20 A. No, other than observe that they were the same
21 caliber, brand and type of cartridge.

22 Q. And were those all of your results from the evidence
23 that you tested?

24 A. Yes, ma'am.

25 Q. I'm going to show you State's Exhibit Number 35 and

1 38. Can you tell us what those are? Just in general
2 what those appear to be.

3 A. State's Exhibit 38 are ten unfired twenty-two long
4 rifle caliber cartridges loaded with copper-plated
5 hollow-point bullets all bearing the F headstamp. The F
6 headstamp is the headstamp that the Federal Cartridge
7 Company puts on twenty-two long rifle cartridges. These
8 are essentially the same kind of cartridges that I saw in
9 State's Exhibit 34. The same caliber, brand. Same type.

10 Q. And so could those bullets be fired from that gun?

11 A. They could, yes.

12 State's Exhibit 35 consists of seven unfired twenty-
13 two long rifle caliber cartridges that are loaded with
14 copper-plated lead hollow-point bullets and bear the
15 headstamp F and three fired twenty-two long or long rifle
16 caliber cartridge cases that bear the headstamp F.

17 Q. And I understand you did not perform analysis on
18 those three fired casings; is that correct?

19 A. I did not.

20 Q. But the unfired rounds, those seven rounds, are
21 those consistent with what could have been fired from
22 that gun as well?

23 A. They are the correct caliber to have been fired in
24 State's Exhibit 32, and they're the same caliber, brand
25 and type ammunition as the other unfired twenty-two long

1 rifle caliber cartridges in State's Exhibits 34 and 38.

2 Q. In your experience, are you familiar with gunshot
3 wounds?

4 A. Yes, ma'am.

5 Q. And what does a gunshot wound -- can you describe it
6 typically what it might look like if a gunshot wound is
7 received at close range?

8 MR. YOUNG: I'm going to object, Your Honor. I
9 think that's beyond the scope of his expertise that he's
10 been qualified for.

11 MS. REEVES: He hasn't offered an opinion.

12 THE COURT: Lay some foundation for the
13 question, Ms. Reeves.

14 Q. What experience do you have in looking at gunshot
15 wounds?

16 A. Well, for the first part of my career, for about the
17 first thirty years of my career, I also performed crime
18 scene searches on occasion and attended autopsies and
19 also did the preparation of gunshot test patterns for
20 comparison with gunshot wounds in an attempt to try to
21 determine a range of distances in which a gunshot
22 occurred. But, of course, I haven't done that since I
23 retired, but I have done that on many occasions in the
24 past.

25 Q. So you have experience looking at gunshot wounds

1 from different distances?

2 A. Yes.

3 Q. And you can tell us what, in general, a gunshot
4 wound might look like if they were shot at close range?

5 A. The residue that a firearm will leave at a given
6 distance from its target varies -- it varies directly
7 with the distance and starts off with -- for instance,
8 the firearm in close contact with an object -- it can be
9 either someone's body or someone's clothing. When a
10 firearm's in close contact, the air in front of the
11 bullet -- the bullet and the gasses that follow the
12 bullet that propel the bullet out of the gun tend to go
13 inside the wound.

14 MR. YOUNG: Your Honor, I'm going to object.
15 Again, I believe that this is beyond the firearm ---

16 THE COURT: Okay. Mr. Bailiff, could you take
17 our jury to the jury room, please?

18 (WHEREUPON, the jury exited the open court at
19 approximately 2:49 p.m.)

20 THE COURT: Okay. Mr. Young, state your
21 objection.

22 MR. YOUNG: Your Honor, I'm going to object to
23 the line of questioning that's being solicited from this
24 witness. He is qualified as a firearm identification
25 expert. Likewise, he stated in his testimony that he

1 only performed tests as it relates to identifying the
2 shell casings coming from a particular weapon and things
3 of that nature. He has not performed any tests regarding
4 any wound information. He hasn't provided any type of
5 testing as it related to distances as far as gunshots and
6 things of that nature.

7 It's my opinion that the solicitor's office is
8 basically bootstrapping additional information onto
9 somebody that they have had qualified as an expert in one
10 area in order to get him to testify about matters that he
11 has not provided any kind of testing on. So I believe
12 that they're, one, bolstering the evidence using an
13 expert witness who is qualified in a different area in
14 order to try to solicit information or elicit information
15 that he has not performed any direct examination on.

16 THE COURT: Okay.

17 Ms. Reeves?

18 MS. REEVES: I'm going to ask the witness in
19 general what is his experience and does he have
20 experience in this area. I've not asked him to give his
21 opinion, and I will not ask him to give his opinion on
22 this case in particular. I've just asked him in general.
23 He was qualified as a witness in a particular area, and
24 he has testified to his analysis about that. But he has
25 been a SLED agent for forty-nine years. So I think in

1 general his experience can be questioned and asked.
2 We're not limited to just asking an expert witness about
3 his analysis in this case. I think if he has general
4 information to share about what things are generally, his
5 experience, I think he's allowed to testify about.

6 THE COURT: Well, was testing done -- and
7 obviously I don't know what you're getting ready to
8 present. But was testing done on the victim in this case
9 about distance? What are you trying to elicit from this
10 testimony?

11 MS. REEVES: Just what a wound looks like in
12 general.

13 THE COURT: Okay.

14 All right. Mr. Young, do you want to respond to
15 that?

16 MR. YOUNG: Well, my only response, Your Honor,
17 is that, you know, we have a gentleman who has been
18 qualified as an expert in one thing who is offering
19 testimony that, in my opinion, in the eyes of the jury
20 they're going to take -- give it more weight than they
21 would anybody else who would give a general opinion when
22 they have already been allowed to introduce a photo that
23 shows the wound of the victim.

24 THE COURT: Yeah. Mr. Young, I'm going to
25 sustain your objection. A photograph of the wound has

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1 been admitted into evidence. And that is the best
2 evidence of what the wound in this case looked like.

3 And you've already got that into evidence, Ms.
4 Reeves. So I'm going to sustain the objection.

5 MS. REEVES: Yes, sir.

6 THE COURT: All right. Get the jury back in.

7 (WHEREUPON, the jury entered the open court at
8 approximately 2:53 p.m.)

9 MS. REEVES: Your Honor, the State would like
10 to move into evidence Exhibits Number 32, 33, and 34.

11 THE COURT: Any objection?

12 MR. YOUNG: No objections, Your Honor.

13 THE COURT: State's Exhibits 32, 33, and 34
14 would be admitted without objection.

15 (WHEREUPON, State's Exhibit Numbers 32, 33, and 34
16 were admitted into evidence.)

17 MS. REEVES: No further questions.

18 THE COURT: Mr. Young?

19 CROSS-EXAMINATION

20 BY MR. YOUNG:

21 Q. Mr. DeFreese, if I understand your testimony
22 correctly, you were asked to examine what has been
23 labeled as State's Exhibit 32 which is the firearm;
24 correct?

25 A. Yes, sir.

1 Q. And also State's Exhibit 33 which is a fired
2 cartridge; correct?

3 A. Yes, sir.

4 Q. And your determination through your evaluation is
5 that 32 fired 33; correct?

6 A. Correct.

7 Q. Nothing in your testing could establish whether or
8 not that gun was fired with whatever purpose; correct?

9 A. Only that the cartridge case was fired.

10 Q. Thank you.

11 MR. YOUNG: That's all the questions I have.

12 THE COURT: All right. Any redirect in
13 response to that?

14 MS. REEVES: No, sir.

15 THE COURT: Any objection to this witness being
16 excused?

17 MR. YOUNG: No objections.

18 THE COURT: All right.

19 Okay. Thank you, Agent. You are excused.

20 MS. REEVES: The State calls Dr. Alfred Nelson,
21 Jr.

22 **ALFRED NELSON, JR., M.D.**

23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION

25 BY MS. REEVES:

- 1 Q. Dr. Nelson, where do you work?
- 2 A. Greenville Memorial Hospital.
- 3 Q. And what is your position at G.H.S.?
- 4 A. I'm a staff neurosurgeon.
- 5 Q. How long have you been a neurosurgeon?
- 6 A. Since 1985.
- 7 Q. And prior to working at G.H.S., were you employed by
- 8 another hospital?
- 9 A. Yes. I was on the staff of the Medical University
- 10 of South Carolina.
- 11 Q. What medical school did you receive your degree
- 12 from?
- 13 A. Emory University.
- 14 Q. And without embarrassing you, what year?
- 15 A. 1979.
- 16 Q. Where did you do your residence?
- 17 A. Medical College of Virginia in Richmond.
- 18 Q. And are you board certified?
- 19 A. Yes, I am.
- 20 Q. In what area?
- 21 A. Neurosurgery.
- 22 Q. Have you testified before?
- 23 A. Yes.
- 24 Q. In the area -- and have you been previously
- 25 qualified as an expert?

1 A. Yes.

2 Q. In neurosurgery?

3 A. Yes.

4 Q. And approximately how many times have you testified?

5 A. Twenty or thirty times, I guess.

6 MS. REEVES: I would like to offer Dr. Nelson
7 as an expert in neurosurgery.

8 MR. YOUNG: No objections.

9 THE COURT: All right. Dr. Nelson will be
10 admitted as an expert in neurosurgery without objection.

11 Q. Dr. Nelson, could you please tell us what a
12 neurosurgeon does?

13 A. Neurosurgeons take care of the surgical disease of
14 the brain and spinal cord.

15 Q. So who might your patients be?

16 A. Patients with brain tumors, hemorrhages in the
17 brain, spine issues.

18 Q. So do you treat emergency patients as well?

19 A. Yes.

20 Q. On April 22nd into the 23rd of 2014, did you come
21 into contact with a G.H.S. patient named Sandra Smith?

22 A. Yes, I did.

23 Q. And how did she arrive to G.H.S.?

24 A. Well, she was brought by ambulance. When I saw her,
25 she was already in the intensive care unit on a

1 ventilator.

2 Q. And what was the reason she was brought in?

3 A. She came in with a gunshot wound to the head.

4 Q. And how was she? What was her condition when she
5 was brought in?

6 A. If I recall, reviewing my notes, she was not opening
7 her eyes. She was flexing her arms. Was not making any
8 attempts to speak or anything else like that.

9 Q. And did she have a trauma score at that time?

10 A. Well, she had what we call a Glasgow Coma Score,
11 which would be 6T.

12 Q. And what does that mean?

13 A. Well, the Glasgow Coma Score is a head injury score.
14 Fifteen is wide awake, perfectly normal. There are three
15 components to it. You get the motor examination, which
16 is how your arms and legs are moving. It goes from one
17 to six. One is no movement. Six is what we call
18 following commands. That is holding up fingers when
19 asked to. She was a four which means she was flexing her
20 arms. There is a five for speech. Which she was on a
21 ventilator, so that can't work. So she's given a one for
22 that. And that's why it's called 6T. And a one to four
23 for eye opening. And she had no eye opening. So that
24 was a one, so that would give her a six.

25 Q. What did that tell you, if anything, about her

1 condition when she arrived?

2 A. Well, we consider anything below a nine to be a
3 severe head injury. So this was considered to be quite
4 bad.

5 Q. Did Ms. Smith have a C.T. scan?

6 A. She did.

7 Q. And what are those findings?

8 A. Well, it showed a hole in the right frontal bone
9 above her eye with bone fragments and a big blood clot on
10 the right frontal lobe. And it showed what's called a
11 subdural hematoma on the right. And that's blood under
12 bone but outside of her brain pushing the brain over
13 along with the blood in the frontal part of the brain.

14 Q. And you mentioned that pushing of the brain over.
15 Is that called something?

16 A. That's called shift. The center of the brain should
17 be in the center of the skull. And so we measure shift
18 by how far the center of the brain is from the center of
19 the skull in those C.T. scans. And hers was about
20 fifteen centimeters. I'm sorry. Fifteen millimeters
21 shifted.

22 Q. And, again, what would that fifteen-millimeter shift
23 mean?

24 A. Well, that's -- anything over about nine or ten, we
25 consider to be very serious. I've never seen anybody

1 survive a twenty millimeter shift. So this is pretty
2 bad.

3 Q. So, again, you're saying that the swelling in the
4 brain is the blood is sort of squishing her brain?

5 A. Exactly. Pushing the brain from the right to the
6 left.

7 Q. And what happens?

8 A. Well, when that happens, the pressure inside the
9 head goes up. And it keeps blood -- it lowers the blood
10 flow of the brain if the pressure goes up enough so that
11 blood cannot get into the brain, and the brain will die.

12 Q. From the C.T. scan, was there anything that you
13 could tell about her eye?

14 A. I don't recall. I think the eye just had a lot of
15 damage into it from the scan.

16 Q. Could you tell if the bullet actually went into her
17 eye?

18 A. It looked like the bullet probably did not. It
19 probably went above it. But I believe it fractured the
20 -- what we call the roof of the orbit. And there was a
21 big concussive effect from the bullet that would have
22 damaged the eye.

23 Q. And so was her -- what we know as the eyeball, was
24 that intact?

25 A. It did not look like it was. It was a little too

1 swollen for me to really examine.

2 Q. After assessment, what did you decide to do for Ms.
3 Smith?

4 A. Well, I felt she needed an emergency operation to
5 remove the blood clots to lower the pressure in her head,
6 and that's what we proceeded to do right away.

7 Q. Okay. And when was that performed?

8 A. It was about three in the morning or so.

9 Q. What's that surgery called?

10 A. It's called a craniotomy, which means taking part of
11 the cranium or skull bone out and then putting it back in
12 after you do what you need to do.

13 Q. And did you perform that on Ms. Smith?

14 A. Yes. Yes.

15 Q. And can you describe that a little bit further? You
16 took her skull off?

17 A. Well, we made an incision from usually just in front
18 of the ear up over the right side to the middle of the
19 head, pulled the scalp and muscles back and then put in
20 several holes within the bone with a drill. And then a
21 bone cutter allowed us to take about a, I guess, four-by-
22 five-inch piece of the skull out. And we opened the
23 lining of the brain and took out the blood clot that was
24 outside the brain but pushing in and the clot in the
25 front of the brain and stopped all the bleeding. And

1 then we put the piece of bone back in, attaching it with
2 little metal plates and then closed everything up, the
3 skin up. And we put a pressure monitor in.

4 Q. And what would that pressure monitor be there for?

5 A. Oh, that was to measure the pressure in her head to
6 make sure there was no swelling. And I don't believe
7 there was an issue with that fortunately.

8 Q. In your expert opinion, could Ms. Smith have died
9 from this gunshot wound?

10 A. Yes, she could have.

11 Q. And what is the typical mortality rate from gunshot
12 wounds?

13 A. It's really very high. It's about eighty-five to
14 ninety percent for gunshot wounds to the head if you take
15 all comas.

16 Q. And I.S.O. mortality rate, and that means the
17 patient dies; is that correct?

18 A. Yes. Yes.

19 Q. Does the caliber of a gun make any difference in
20 this mortality rate?

21 A. Well, I mean, I've seen people die from twenty-two
22 caliber guns in which the bullet just sort of bounces
23 around inside the head. And I've seen people die from
24 very high-powered guns in which it just destroys
25 everything.

1 Q. Are you familiar if Ms. Smith required an additional
2 surgery after yours?

3 A. I believe she needed the ophthalmology service to
4 remove her eye.

5 Q. And what is that, the fancy name for eye removal.

6 A. Enucleation.

7 Q. Do you know or are you familiar with why her eye had
8 to be removed?

9 A. Well, they apparently wanted to get a good look at
10 the eye. It was ruptured. And my understanding is that
11 if the eye is ruptured, then it releases various
12 molecules into the bloodstream that may cause the body to
13 form an immune response to the other eye and threaten the
14 other eye. And that's one of the reasons why they try to
15 do that.

16 Q. How long was Ms. Smith in the hospital?

17 A. I believe she was in for about six to eight weeks.

18 Q. And when was she released?

19 A. Is it all right if I look at my notes?

20 Q. Yes, please, if that will help you refresh your
21 memory.

22 A. I think discharge was -- actually the discharge was,
23 it says here 9/22/2014. So that's a little bit longer
24 than eight weeks.

25 Q. Okay. And did you continue to see her?

1 A. I saw her obviously every day in the intensive care
2 unit. But after that, I saw her periodically, checked in
3 on her. She was pretty -- at the end of that, the second
4 half of that, she was fairly stable from my point of
5 view.

6 Q. What improvements are you looking for in a patient
7 that suffers a brain injury like hers?

8 A. Well, level of consciousness. If I recall, in the
9 first few days afterwards, she was very agitated. Would
10 not speak or follow commands. And then she slowly
11 started getting better as far as waking up and following
12 commands and speaking and things like that. So she made
13 a fairly significant recovery.

14 Q. Do patients that suffer an injury like Ms. Smith's,
15 do they typically suffer any type of memory loss?

16 A. For a significant head injury, it's not uncommon at
17 all for them not to remember the events around the
18 injury, but that's not absolutely by any means.

19 Q. For an injury like Ms. Smith's, is it possible for
20 her to have been conscious or breathing on her own and
21 trying to communicate after she was shot?

22 A. Yes. I mean, she had a -- you know, the injury
23 caused obviously initially injury to the brain but also
24 tore some blood vessels which caused the blood clots to
25 expand. That has to have taken a number of minutes or

1 so. And so during that period of time, it certainly is
2 not unusual for her to be far more awake and then get
3 sleeper and then comatose as we go along.

4 Q. Considering the mortality rate you mentioned
5 earlier, in your expert opinion is Ms. Smith lucky to
6 have gotten the treatment she did when she did?

7 A. Yes. I think that if it had -- you know, if she
8 hadn't been brought to the hospital right away, she
9 certainly may have died.

10 Q. Nothing further, Doctor.

11 A. Thank you.

12 THE COURT: All right.

13 Mr. Young?

14 MR. YOUNG: No questions, Your Honor.

15 THE COURT: Okay. Thank you, Doctor.

16 THE WITNESS: Thank you.

17 THE COURT: Any objection to this witness being
18 excused?

19 MR. YOUNG: No objections.

20 THE COURT: All right. Doctor, you are
21 excused.

22 THE WITNESS: Thank you.

23 MS. REEVES: The State calls Sandra Smith.

24 **SANDRA SMITH,**

25 - BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

1 DIRECT EXAMINATION

2 BY MS. REEVES:

3 Q. Ms. Smith, how old are you?

4 A. I'm fifty-six.

5 Q. Where did you grow up?

6 A. Starr, South Carolina.

7 Q. Where did you go to high school?

8 A. Crescent.

9 Q. Did you graduate from there?

10 A. I did.

11 Q. Do you have any other advanced degrees?

12 A. Uh-huh (affirmative). I went into the military.

13 After I come out three or four years later, you know,

14 some years later in '92, I went back to Tri-County and

15 got an associate degree as a medical lab tech.

16 Q. Are you married?

17 A. I am.

18 Q. To whom?

19 A. Billy Ray Smith.

20 Q. How long have the two of you been together?

21 A. Since March 1988. Married March 26, 1988.

22 Q. Do you have any children together?

23 A. Two. A son, Billy Paul Smith, twenty-six. Sarah

24 Patterson, twenty-five. She's married.

25 Q. Does she have any children?

1 A. Two. A daughter, Tyler Moon, three, and Emmett is
2 ten months.

3 Q. Did you work when your children were growing up?

4 A. At the beginning, I was at a stay-at-home mom. When
5 Sarah started kindergarten, I got my C.D.L. I was a
6 school bus driver for the same district.

7 Q. Did you work anywhere else?

8 A. McDonald's in between school bus routes.

9 Q. In April of 2014, where were you living?

10 A. It was my day off. I remember that. I was at home.

11 Q. And where were you living?

12 A. South Hamilton Street.

13 Q. Did you work? You just said it was your day off.

14 Where were you working?

15 A. The deli, WalMart deli in Simpsonville.

16 Q. And did the defendant work at that time?

17 A. Disability, a hundred percent disability.

18 Q. Tell us what you remember about the day that you
19 were shot.

20 A. I don't remember all of it. I remember the busy day
21 part, a lot of coming and going. With Bill and my son, I
22 don't remember exactly what they were doing. I remember
23 the dark time more than any part of the day. I remember
24 the evening more. We had some disagreement during the
25 day, Bill and I. And the main thing that I remember it

1 being was about money. I loaned him my bank card. I
2 worked nine-hour shifts at WalMart, so I got an hour
3 lunch break. And so I wanted to spend the hour doing
4 some shopping. Sometimes I wanted to keep it and have it
5 on hand.

6 Q. Where was your bank card?

7 A. He kept it.

8 Q. You said you remember the dark part of the day?

9 A. When it was already nighttime. It was nighttime.

10 Q. And what do you remember about that?

11 A. Well, it was just back to being me and Bill at the
12 house. No one else was around anymore. Billy Paul, I
13 remember he still lived -- he had lived on his own for a
14 few months at least by then. So it was just me and Bill
15 at home. And we were getting along some, not too well at
16 times. What I remember ---

17 Q. What do you remember about that night?

18 A. I remember we were both in the same room. I
19 remember where I was standing by the couch, the loveseat
20 couch.

21 Q. Where was he?

22 A. He was standing, and he had walked over to the china
23 hutch cabinet that was by the entrance into the kitchen.

24 Q. What do you remember next?

25 A. We had been arguing about something. It was loud,

1 but I don't remember what the argument was about. But I
2 remember it got quiet. He got quiet. And then he come
3 from across the room. Before I knew it, he was right up
4 on me and he shot me. I didn't see it coming. I felt
5 it. I remember feeling dazed. I started having problems
6 getting my thoughts together, and I realized something
7 was wrong with my vision. I put my hand over my face,
8 and I looked at my hand and it was covered in blood. I
9 went down on my knees. I remember sitting back on my
10 heels and holding my face like this. And I turned my
11 head, and I saw his legs. He was standing right at me.
12 I saw him walk on past me. I saw the front door open and
13 shut, and I heard the car crank. And he took off and
14 left me.

15 Q. Did you know that the defendant had a gun?

16 A. I don't remember seeing it.

17 Q. Did you want guns in your home?

18 A. No.

19 Q. Would you have handled a gun?

20 A. No.

21 Q. Would you have tossed one back and forth with your
22 husband?

23 A. No, no.

24 Q. Would you have ever pointed a gun at him or at
25 yourself?

- 1 A. No.
- 2 Q. Had you been drinking that day?
- 3 A. Yeah.
- 4 Q. Did you drink often?
- 5 A. I did.
- 6 Q. What about the defendant?
- 7 A. Yeah, him too.
- 8 Q. Do you drink now?
- 9 A. I haven't drank since April the 22nd, 2014. To this
- 10 day, it's -- this is nineteen months I've been sober.
- 11 Q. Did you have a home phone on the day of the
- 12 incident?
- 13 A. I had one of those government phones. I had what
- 14 people would call the Obama phone.
- 15 Q. What about the defendant? Did he have a phone?
- 16 A. He always had a phone. He had an unlimited.
- 17 Q. What does unlimited mean?
- 18 A. Unlimited text, unlimited minutes.
- 19 Q. What do you -- what, if anything, do you remember
- 20 after your husband left?
- 21 A. I don't remember how long he was gone. I remember
- 22 my son coming through the door. I remember him saying,
- 23 "Oh, my God." He went -- I saw him on the phone. He was
- 24 calling 9-1-1. And he turned toward Bill, and he yelled
- 25 at Bill. He said, "You shot my mama. I know it was

1 you."

2 MR. YOUNG: Objection, Your Honor. That's
3 hearsay.

4 THE COURT: Overruled.

5 Q. Ms. Smith, I'm going to show you State's Exhibit 6,
6 8, 10, and 12. Will you take a look at those and tell us
7 what those are?

8 A. It's the front of the house on South Hamilton
9 Street. My house. Mine and Bill's house. This is the
10 inside as you walk in the front door.

11 Q. And I'm going to shout out what number that is, if
12 you don't mind.

13 A. Okay.

14 Q. That was Number 8. And now you're looking at Number
15 10; is that right?

16 A. Uh-huh (affirmative). Number 10 is the recliner
17 chair, loveseat couch, and then another armchair beside
18 the fireplace and a green housecoat on the loveseat
19 couch.

20 Q. And then the last picture. That's Number 12. Yes.
21 What is that a picture of?

22 A. It's the coffee table with some paper on it and a
23 cup.

24 Q. Is that a picture of your phone as well?

25 A. That's a picture of my phone, and there's a package

1 of -- it looks like some kind of packet of pills that you
2 would pull out of the insulation. I mean, the -- I see a
3 shoe. I see a -- it looks like that's some type of
4 afghan. But this is the coffee table.

5 Q. Okay. I'm going to put these up here on the screen.
6 Can you see from there, Ms. Smith?

7 A. (Nodded head up and down in the affirmative)

8 Q. This is State's Exhibit Number 6. Again, can you
9 tell us what that is a picture of?

10 A. That's the front door, the front entrance to the
11 house on South Hamilton Street where me and Bill lived.

12 Q. And this is State's Exhibit Number 12. Is that your
13 phone pictured there on the coffee table?

14 A. Yeah, it looks like it. It looks like the coffee
15 table with papers and a cup.

16 Q. And would that coffee table have been in front of
17 the loveseat in the living room?

18 A. Yes, uh-huh (affirmative).

19 Q. This is State's Exhibit Number 10.

20 A. There's a separator right there that divides the
21 rest of that room from the other half. On the other half
22 is a recliner chair, the loveseat couch and a straight-
23 back chair. The green housecoat's on the loveseat couch.

24 Q. Is that your housecoat?

25 A. It is.

1 Q. And is this about where you said that you were
2 standing in this vicinity?

3 A. I was standing at the nearest arm on that loveseat
4 couch, right where the recliner chair is.

5 Q. And this is State's Exhibit Number 8. Is this the
6 china cabinet that you were referring to?

7 A. It is.

8 Q. The next person you remember seeing after your
9 husband left was your son; is that right?

10 A. I heard a vehicle pull back up, and then Paul walked
11 in.

12 Q. Can you tell us about the injury that you suffered?

13 A. Right here, I felt something hit me right here. And
14 I was trying to figure out what was wrong with my vision.
15 I had a moment's problem getting my thoughts together. I
16 did like this with my right hand, and I looked and my
17 hand was covered in blood.

18 Q. Did you end up losing up an eye?

19 A. I did.

20 Q. Which eye?

21 A. I ended up having to have a second surgery to do
22 something about it. It was explained to me it's called
23 eye sympathy. The good eye would start having sympathy
24 on the bad eye and go blind too. So there was only a
25 short window span when that second surgery had to be

1 performed in order to prevent that from happening.

2 Q. So which eye was wounded?

3 A. This one.

4 Q. And what do you have in its place?

5 A. It's prosthetic.

6 Q. You said a second surgery, so there was a first?

7 A. The brain surgery was the first.

8 Q. Were you ever on life support, or how were you

9 treated in the hospital?

10 A. I remember I was in I.C.U. And my breathing was
11 shallow, so the doctors told my family that they felt the
12 need to put me on a ventilator, that they were going to
13 leave me on it for two weeks because of the shallow
14 breathing and the type of head wound surgery I'd had. So
15 after that, they were going to take me off to see how I
16 maintained brain function or if I lived. And to be
17 honest with you, I definitely believe in an awesome God
18 because intercessory prayer was going up major time over
19 me. And I woke up on the third day of those two weeks.

20 And I do remember asking for Sarah. I remember that it
21 was Sunday, and I was told she was in church and they'd
22 text her to say, "Get up here. Your mama just woke up."
23 Q. What treatment did you receive in the I.C.U. after
24 you woke up?

25 A. I don't remember.

1 Q. Do you remember when you were released from the
2 hospital?

3 A. It was much, much later. I was in the hospital a
4 long time.

5 Q. As a result of your gunshot wound, what problems do
6 you have?

7 A. Depth perception. I have to really be careful how I
8 judge distance. When I'm going down stairs, I hold the
9 stairwell, and I look down at the steps because my depth
10 perception, my judgment's off. And when anyone hands me
11 something, I tell them to make sure my hand is on it,
12 that I've got it before they release it. My vision has
13 changed big time.

14 Q. Can you still smell?

15 A. No.. I've not smelled anything since that day. It's
16 affected my taste. I barely taste my food at all, but I
17 do not smell anything.

18 Q. Have you had some recent issues related to your
19 gunshot wound?

20 A. Yeah.

21 Q. How so?

22 A. October the 3rd I was inside a women's shelter here
23 in Anderson County, the second one I've been in. I was
24 getting ready for a family reunion. And my roommate saw
25 me go rigid in the bathroom and began to hysterically

1 laugh, and then I began to hysterically cry. And I
2 seized out and hit the floor. And I was rushed by
3 ambulance to the hospital. So they did a scan. And
4 there was a Dr. Patel that came and talked about it with
5 my family in my hospital room. And he said the bullet
6 inside my head which the surgeon wasn't able to remove
7 because it fragmented -- and it's still in the head --
8 has caused me to seizure. And he said he was surprised
9 it hadn't happened sooner. But because they can't
10 predict that it won't happen again, they put me on
11 Depakote. So because I seized and I'm on Depakote, I
12 was refused return back to the women's shelter.

13 Q. Thank you, Ms. Smith.

14 THE COURT: All right.

15 Mr. Young?

16 CROSS-EXAMINATION

17 BY MR. YOUNG:

18 Q. Ms. Smith, on that day, April 22nd, 2014, you stated
19 that you had been drinking that day?

20 A. Uh-huh (affirmative).

21 Q. About how much did you have to drink?

22 A. I don't remember. I just know I was drinking some
23 beer.

24 Q. Was it what -- would you consider it to be a lot?

25 A. I don't remember how much I drank.

1 Q. Do you remember how long you were drinking that day?

2 A. Probably only a couple of hours. I don't think I --

3 by the time dark-thirty come, I'd either slowed down or

4 stopped. I don't remember drinking any more later on

5 into the evening.

6 Q. You stated at nighttime when you say all you

7 remember is that Mr. Smith came up to you and shot you;

8 correct?

9 A. (No verbal response)

10 Q. Did you hear him asking you any questions?

11 A. It was more of a mumble and loud mixed with some

12 ugliness to it, so I remember looking at him. He was

13 walking toward the china hutch. And he got quiet, so I

14 got quiet. And then he ---

15 Q. So after you say that he shot you ---

16 A. After he shot me ...

17 Q. --- do you remember him saying anything to you?

18 A. No.

19 Q. When he left, do you remember him saying anything to

20 you as he left?

21 A. I don't remember him touching me. I remember when I

22 was on my knees and sitting on the back of the heels of

23 my feet, I remember turning my head to the side. And he

24 was standing closer to me, like here to here. I saw his

25 legs while I was on the floor. And I saw him -- he

1 stopped by me, stayed by me for a few minutes. And then
2 he headed on out the door, shut the door, cranked up the
3 vehicle and left.

4 Q. And you say that you heard a vehicle come back, and
5 you saw your son come through the door?

6 A. Uh-huh (affirmative). And then Bill come in behind
7 him. But Billy Paul come in first.

8 Q. And do you remember your husband saying anything to
9 you after your son came in?

10 A. No.

11 Q. Do you remember him sitting next to you during that
12 period of time?

13 A. All I remember is Billy Paul coming in. I heard him
14 on the phone.

15 Q. Now, you stated that you had had something to drink
16 that day. Did Mr. Smith -- was he drinking that day
17 also?

18 A. Most of what he drank, he didn't do in front of me
19 because he was in and out so much.

20 Q. He was in and out of the house?

21 A. A lot. And then when he would come home, he was
22 drinking. But I didn't see how much he drank when he was
23 away.

24 Q. Do you recall if he went fishing that day?

25 A. No.

1 Q. When you worked at WalMart, you worked, I believe it
2 was, over in Simpsonville; correct?

3 A. Uh-huh (affirmative).

4 Q. And you lived in the Williamston area?

5 A. Uh-huh (affirmative).

6 Q. Now, Mr. Smith would be the one to come and pick you
7 up from work?

8 A. Right.

9 Q. And did you used to get off during the nighttime
10 hours?

11 A. I was second shift. I was two to eleven.

12 Q. So around eleven o'clock or so, you would get off
13 every evening?

14 A. Uh-huh (affirmative).

15 Q. Or when you worked?

16 A. Right.

17 Q. And Mr. Smith would come and pick you up?

18 A. Uh-huh (affirmative).

19 Q. And the location from your home to your job, it was
20 a pretty good distance away; correct?

21 A. Not more than thirty minutes. Maybe twenty-five.

22 Q. About twenty-five minutes?

23 A. The same distance it would have been -- we figured
24 it out. The same distance it would have been from
25 Williamston to go to the WalMart on Brown Road in

1 Anderson.

2 Q. Okay. All right. Now, you were in the process of
3 getting your driver's license back; correct?

4 A. I ---

5 MS. REEVES: Objection, Your Honor.

6 THE COURT: Counsel approach.

7 (WHEREUPON, a bench conference was held off the
8 record.)

9 THE COURT: All right.

10 Q. Ms. Smith, did you have a driver's license in April
11 of 2014?

12 A. No.

13 Q. Okay. And were you in the process of being able to
14 get started driving again?

15 A. I was going to need a certain amount of money to
16 take to the D.M.V.

17 Q. And at that time, you were going to start hopefully
18 driving yourself back and forth from work to home?

19 A. It hadn't been planned planned out, but it was
20 talked about at random times that it would help on gas
21 and time to not have to make so many trips.

22 Q. Okay. And at one point in time, you and Mr. Smith
23 even talked about relocating closer to your job; correct?

24 A. We lived not far from Highway 8 which ran into 418
25 which ran into Simpsonville. And driving there every

1 day, we saw -- sometimes we'd see homes for sale,
2 sometimes some rentals. So we would just like, "What do
3 you think about this? What do you think about that?"
4 But we never -- we hadn't made any effort or deposit, any
5 kind of looking.

6 Q. Okay. And your daughter, she lives in Simpsonville;
7 correct?

8 A. Uh-huh (affirmative).

9 MR. YOUNG: If I could have one moment. I have
10 no further questions, Your Honor.

11 THE COURT: Okay.

12 Redirect?

13 MS. REEVES: No, sir.

14 THE COURT: Thank you, ma'am. You may step
15 down.

16 MS. REEVES: The State rests.

17 THE COURT: Okay.

18 All right. Mr. Bailiff, would you take our jury to
19 the jury room, please, sir?

20 (WHEREUPON, the jury exited the open courtroom at
21 approximately 3:32 p.m.)

22 THE COURT: The State has rested. Mr. Young?

23 MR. YOUNG: Your Honor, if it please the Court,
24 at this time, I would ask the Court for a directed
25 verdict specifically on the charge of the attempted

1 murder. I do not believe that there's been any evidence
2 that has been presented to support the element of
3 specific intent to kill in this particular case.

4 Likewise, with regards to the obstruction of justice
5 charge, Your Honor, it looks like -- based on the
6 testimony that was presented by the officers as it
7 relates to that particular charge, Mr. Smith was
8 arrested. And for about an hour and a half or so, he
9 gave them different versions of what happened. But then
10 -- but they never did believe it. They never did put any
11 type of credence to the stories that he was telling them.
12 One officer said that it just was totally unbelievable
13 when he was initially interviewing Mr. Smith. The other
14 officer said that he immediately started discrediting him
15 and telling him that that was inconsistent. So there was
16 no reliance on this information whatsoever.

17 And then shortly thereafter, they go and they
18 interview Mr. Smith again. And based on words that they
19 used, he came clean and told them that this was an
20 accidental shooting and took them in order to help
21 retrieve the gun. Even to the point that based on what
22 he shared with them, he believed the gun was outside of
23 the house. When they went and they did an active search
24 of it, came back, and he realized that it might be on the
25 inside of the house, he directed them to, you know,

1 "Let's call my son and check the inside of the house and
2 find out where the gun is." One of the -- I believe it
3 was Captain Marsee even said that Mr. Smith offered a
4 version of what he would tell his son in order to get his
5 son to give them the information as to where the gun was.
6 Nothing Mr. Smith did was trying to obstruct them from
7 investigating the case other than what they say was a
8 highly intoxicated man giving them a very unbelievable
9 story as to what happened. And then within a matter of
10 an hour or so, tells them a more accurate story of what
11 transpired to the extent that and they didn't do any type
12 of investigation regarding the versions of what he
13 claimed happened. The only investigation that they did
14 was taking him to the house to look for this gun and then
15 going into the house -- and bringing the son to back to
16 go into the house and actually find the gun. Other than
17 that, there was nothing that was done to obstruct them
18 from doing their job.

19 So based on that, we would ask the Court to direct a
20 verdict on the charge of the obstruction of justice as
21 well as on the -- for the lack of any type of specific
22 intent to kill with regards to the attempted murder
23 charge. And coupled with the attempted murder charge
24 would be possession of a firearm during the commission of
25 a violent crime.

1 THE COURT: Okay.

2 Ms. Reeves?

3 MS. REEVES: Your Honor, I think there's plenty
4 of evidence to substantiate all four of the charges. I
5 think through testimony we have shown that the defendant
6 shot the victim in the head, that he intended to kill
7 her. He had malice aforethought by using a deadly weapon
8 and presenting that to her and then shooting her in the
9 head. That was obviously a violent act.

10 As far as the obstruction of justice, the defendant
11 finally in his fifth version of events does admit to
12 shooting her and then leaving the residence. He took the
13 gun away. He took it almost four miles down the road and
14 hid it at his son's house. When he was leading the
15 investigators to the house, he was telling them that his
16 son had actually done the shooting, not him. And he was
17 -- it was an intentional act of hiding the gun at his
18 son's house and then returning back to where the victim
19 was.

20 As far as the unlawful sale or delivery of a pistol
21 by a certain person, I think that charge has been
22 stipulated to, that he had had a prior conviction for a
23 crime of violence and that he, by his own admission, was
24 in possession of that handgun on the day of the incident.

25 THE COURT: Now, you just said four charges.

1 We're dealing with three charges.

2 MS. REEVES: I'm sorry. It's two counts.

3 Three charges but two counts within one. That possession
4 of a weapon during the commission of a violent crime is
5 the second count on the attempted murder.

6 THE COURT: Okay. So there's three
7 indictments. Okay. Okay. I just want to make sure that
8 I'm -- okay. And the possession of the firearm is a link
9 to the attempted murder charge.

10 MR. YOUNG: One of them was dismissed.

11 MS. REEVES: There is an additional indictment
12 that we did not go forward on.

13 THE COURT: 77 you say was dismissed.

14 MS. REEVES: Not yet.

15 THE COURT: Okay. You have not prosecuted it?

16 MS. REEVES: Correct.

17 MR. YOUNG: Your Honor, if I may respond with
18 regard to the obstruction of justice?

19 THE COURT: Yes, sir.

20 MR. YOUNG: The testimony supported that Mr.
21 Smith, while he had the gun in his possession when he
22 left the home and went to his son's home, the testimony
23 from the State's witnesses was that the son took that gun
24 from him. And even the officer testified that the son's
25 testimony or version of what happened was that the son

1 took that gun from Mr. Smith. The testimony of the son
2 was that not only did he take the gun and place it on a
3 table, but that he immediately put Mr. Smith in the
4 passenger seat of that car in order to go back to the
5 home. Now, you know, at some point in time, this gun
6 gets hidden under the cushion of the couch, but no
7 evidence whatsoever was presented to indicate that Billy
8 Ray Smith was the person who placed that gun in any type
9 of hiding at the son's home.

10 THE COURT: Okay. All right. All right.
11 We're going to go off the record for just a moment.

12 (WHEREUPON, court stood at ease.)

13 THE COURT: All right. I have heard the
14 testimony. And Mr. Young, I think your arguments go
15 toward the weight of the evidence, not toward the
16 existence of evidence. I think there is evidence in the
17 record to make these jury questions. So I'm going to
18 deny your motions for directed verdict at this time.

19 Now, Mr. Young, do you have any witnesses you could
20 call this afternoon, or are all your people coming in the
21 morning?

22 MR. YOUNG: Your Honor, we have them all coming
23 in the morning at nine o'clock. The one witness that we
24 could possibly have called, he actually went in to work
25 today when we told him that we wouldn't need him until in

1 the morning.

2 THE COURT: Okay. Well, it's almost four
3 o'clock. And that's fine. But I need to have you and
4 your client, please ...

5 Mr. Clerk, would you put Mr. Smith under oath?

6 (WHEREUPON, the defendant was duly sworn.)

7 THE COURT: All right. Mr. Smith, at this time
8 I'm going to explain to you some of your rights. If you
9 do not understand anything that I say, please let me know
10 and I will explain it in more detail. If you answer the
11 question, I will assume that you understood the question.
12 Do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: We have reached the stage in this
15 trial where you may present your defense. You have the
16 right to claim protections given to you by the Fifth
17 Amendment to the Constitution of the United States. This
18 amendment states in part, "No person shall be compelled
19 in any criminal case to be a witness against himself."
20 This means that you cannot be required to testify in this
21 case. On the other hand, you have the right to testify
22 on your own behalf should you choose to do so. However,
23 no one can make you testify. This is a personal right,
24 and no one can waive this right except you.

25 If you decide to testify, you will be subject to the

1 same rules that govern other witnesses. And you may be
2 examined and cross-examined on any relevant issue in this
3 case.

4 In addition, if you have any convictions involving
5 dishonesty or false statement or for crimes punishable by
6 imprisonment for more than one year and this Court
7 determines that the probative value of admitting this
8 evidence outweighs its prejudicial effect to you, the
9 solicitor will be able to introduce your record to attack
10 your credibility.

11 If you decide to testify, this decision on your part
12 must be freely, voluntarily, and intelligently made with
13 knowledge of the protections given to you by the Fifth
14 Amendment and the consequences of your decision to
15 testify. If you decide not to testify, I will instruct
16 the jurors that they cannot give the fact that you did
17 not testify any consideration whatsoever and that there
18 is to be absolutely no prejudice to you because you did
19 not testify.

20 It is left entirely up to you whether or not to
21 testify. You may talk to your attorney, your family,
22 friends or anyone else, but the final decision will be
23 left entirely up to you. Do you understand what I've
24 explained to you?

25 THE DEFENDANT: I think so.

1 THE COURT: Okay. Do you have any questions
2 about anything that I've explained to you? And I'll give
3 you an opportunity to talk to your attorney. I'm not
4 going to ask you to make this decision now. But I wanted
5 to explain your rights and ---

6 THE DEFENDANT: This means that I don't have to
7 actually testify myself, but if I want to, I can.

8 THE COURT: It's entirely up to you, Mr. Smith.
9 You have a right to testify; you have a right not to
10 testify.

11 THE DEFENDANT: But if I do decide to testify,
12 which I'm seriously considering, but that gives an
13 opportunity to bring my whole past history up? Am I
14 correct?

15 THE COURT: Well, you can talk to your attorney
16 about what the State may be able to bring up, but it's
17 possible. Like I explained to you, if you have
18 impeachable offenses and this Court decides that the
19 prejudicial effect -- or the probative value outweighs
20 the prejudicial effect, then the State can introduce
21 that. But you need to talk to your attorney if you have
22 questions about specific things. I can't give you legal
23 advice. But, again, this instruction is merely to make
24 sure you understand that you don't have to testify. On
25 the other hand, you have a right to testify if you choose

1 to do so. And I'm going to give you an opportunity to
2 talk to your attorney. And you don't have to make your
3 decision now. You can inform the Court of your decision
4 tomorrow when we reconvene.

5 Okay. Mr. Young, any -- would you like to talk to
6 your client now before we go off the record?

7 MR. YOUNG: No, sir, Your Honor. I will speak
8 with him. We have already had a conversation about this
9 much like you've had, so I will answer any questions with
10 him about that.

11 THE COURT: Okay. And that's ---

12 THE DEFENDANT: That's the reason I was asking.
13 I haven't been arrested in fifteen years.

14 THE COURT: Okay. Well, don't get into the
15 specific facts.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: I don't need you to get into any
18 facts or anything about the case.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: The only reason I'm talking to you
21 now is to make sure you understand your rights. Okay?
22 That's the only thing. I am not asking for any factual
23 information from you. And if you have legal questions,
24 you need to talk to your attorney about that.

25 THE DEFENDANT: What you're saying to me is I

1 have a right to testify or not testify; am I correct?

2 THE COURT: That's correct. It's entirely up
3 to you.

4 THE DEFENDANT: That's the main question;
5 right?

6 THE COURT: Yes, sir.

7 THE DEFENDANT: That's the main question?

8 THE COURT: That's entirely up to you.

9 THE DEFENDANT: Thank you, sir.

10 THE COURT: All right. I'm going to release
11 the jury now for the day. Is there anything before I
12 bring the jury back in?

13 MS. REEVES: I wanted to ask you one question.
14 The prior conviction of the defendant's that we had
15 stipulated to, we had marked that as a Court's Exhibit.
16 But I think that needs to be a State's Exhibit.

17 THE COURT: All right. Let's mark it as --
18 what number is it? When you stipulated that earlier, it
19 was made ---

20 MADAM COURT REPORTER: Number 3.

21 THE COURT: Number 3. What's the last State
22 Exhibit?

23 MADAM COURT REPORTER: 39.

24 THE COURT: So this would be 40?

25 COURT REPORTER: Yes, sir.

1 THE COURT: Mr. Young, do you have any
2 objection to just making this Number 40?

3 MR. YOUNG: No, sir, Your Honor.

4 THE COURT: Okay. Just make it State's Exhibit
5 Number 40.

6 COURT REPORTER: And it's admitted?

7 THE COURT: Yes.

8 (WHEREUPON, State's Exhibit Number 40, formerly
9 Court's Exhibit Number 3, was marked and admitted
10 into evidence.)

11 THE COURT: All right. Mr. Bailiff, if you'd
12 go get our jury for us, please, sir.

13 THE BAILIFF: All right, sir.

14 (WHEREUPON, the jury entered the open court at
15 approximately 3:49 p.m.)

16 THE COURT: All right. Ladies and gentlemen,
17 we have reached the end of the State's case. This is a
18 natural breaking point, so I'm going to let you go home
19 now for the day. We will reconvene at nine o'clock in
20 the morning. Be here shortly before nine and report to
21 the jury room.

22 The same instructions as you've had before. Do not
23 discuss the case with third parties, do not deliberate
24 amongst yourselves and do not conduct any independent
25 research. I hope everyone has a good evening, and we'll

1 see you in the morning.

2 Mr. Bailiff?

3 (WHEREUPON, the jury exited the open court at
4 approximately 3:52 p.m.)

5 THE COURT: Okay. Anything from the State
6 before we go into recess?

7 MS. REEVES: No, sir.

8 THE COURT: Anything from the Defense?

9 MR. YOUNG: Your Honor, I don't know if you
10 want to utilize this time in order to do any type of
11 charge conference so that whenever we finish in the
12 morning and get ready for cross-exam -- I mean, for
13 closing arguments, we'll be able to go right into that.
14 And we would have whatever law Your Honor is going to ...

15 THE COURT: Well, how long do you think the
16 testimony is going to be in the morning? Because I
17 hesitate to do the charge conference before all the
18 testimony is finished. But

19 MR. YOUNG: If I had to guess, Your Honor, I
20 would think about an hour to an hour and a half..

21 THE COURT: Okay. Well, I can ---

22 MR. YOUNG: And I'm more than willing to wait
23 until after the end of the ---

24 THE COURT: Well, let me do this. Let me tell
25 you what my standard charges are, and then over the

1 evening, either side can, if you want to submit the
2 written requests for charge to me. And then I can take a
3 look at them, and we'll have a break and a conference in
4 the morning.

5 I have a general charge about jury responsibility.
6 I have a general charge on direct and circumstantial
7 evidence, a general charge on reasonable doubt, a general
8 charge on credibility of witnesses, a general charge on
9 presumption of innocence, intent, a general charge on the
10 charge, arrest and indictment not being evidence. I have
11 a general charge on the failure of the defendant to
12 testify if that's what your client decides to do. If he
13 decides to testify, then certainly that would not be
14 applicable. Then we have specific charges on each of the
15 alleged offenses: the attempted murder, obstruction of
16 justice, and the weapons charge.

17 THE DEFENDANT: Your Honor, may I ask you a
18 question?

19 THE COURT: No, sir. No, sir. You need to
20 talk to your attorney.

21 THE COURT: And those are my general charges.
22 And I will just ask each attorney if you have specific
23 charges in addition to those that you'd like for me to
24 charge, just get a written copy of those to my law clerk,
25 and I'll look at them before we reconvene.

1 Now, were the attorneys able to work out the issue
2 of the records? Did you find in the records ...

3 MR. YOUNG: Yes, sir, we were able to work that
4 out.

5 THE COURT: That's resolved.

6 MR. YOUNG: Yes, sir.

7 THE COURT: All right. Very good. Very good.
8 From the -- what was the ...

9 MR. YOUNG: The ADSAP.

10 THE COURT: Ms. Padgett? Ms. Padgett?

11 MR. YOUNG: Yes.

12 THE COURT: Okay. Very good. All right. We
13 will go into recess, and we'll reconvene at nine o'clock
14 tomorrow.

15 MR. YOUNG: Thank you, Your Honor.

16 (WHEREUPON, court stood in recess for the day.)

17 **November 18, 2015**

18 (WHEREUPON, court convened with all parties present,
19 and the following proceedings were had commencing at
20 approximately 10:11 a.m.)

21 THE COURT: All right. Are there any matters
22 from either party before we bring our jury back in?

23 Ms. Reeves?

24 MS. REEVES: Did you want to talk about jury
25 charges now?

1 THE COURT: All right. That was going to be my
2 question. Is there any -- I have had my law clerk print
3 out the offense-specific charges. And if counsel wants
4 to approach and get a copy of that, you can look at it.

5 MS. REEVES: Thank you.

6 THE COURT: I know you're reading, but I will
7 point out that we have modified the standard charge on
8 attempted murder to bring it in line with the court's
9 King case that came out this year, and that the issue in
10 that case was the attempted murder needed to have
11 specific language that a specific intent to kill is an
12 element of attempted murder. So I've modified the bench
13 book charge to make it consistent with the opinion in
14 that case.

15 MR. YOUNG: Your Honor, the Defense position
16 would be that the language regarding the inferred malice
17 -- malice may be inferred by the use of a deadly weapon
18 -- it would be our position that that language should not
19 be included in the instruction, relying on the case that
20 is referenced in the page two of the charge, which is
21 State versus Belcher, 385 S.C. 597, which basically
22 states that if there's any evidence or any information
23 that has been presented that tends to -- if you'll give
24 me a second, I'm going to find the exact language -- that
25 tends to -- presented that would reduce, mitigate, excuse

1 or justify the action, then the language regarding malice
2 being inferred should not be granted because it borders
3 on or it is a charge on the facts of the case. And that
4 is a matter for the jury. So we would ask the Court to
5 delete that language that refers to malice may be
6 inferred by the use of a deadly weapon.

7 THE COURT: Okay. Any further exceptions, Mr.
8 Young?

9 MR. YOUNG: Not to what was presented to us,
10 Your Honor.

11 THE COURT: Okay.

12 All right. Ms. Reeves?

13 MS. REEVES: Judge, I would argue that
14 inference for malice should be charged. I don't think
15 accidents -- I mean, I think -- they didn't say it could
16 never be charged. And the way that Mr. Young is using
17 this case is to say that if you have any excuse
18 whatsoever, then that inference can't be charged. And I
19 don't think that's correct. I think an accident does not
20 fall as an excuse or a mitigation. I think he -- I think
21 there is enough evidence to show that he used this deadly
22 weapon, and it wasn't a self-defense type situation
23 whatsoever.

24 THE COURT: I want to look at the Belcher case.

25 MS. REEVES: I think in that case too, Your

1 Honor, the only evidence ---

2 THE COURT: Have you got a copy of it?

3 MR. YOUNG: Yes. I've provided a copy to the
4 solicitor also.

5 THE COURT: Okay.

6 MS. REEVES: The only evidence in that case of
7 malice was the use of the gun.

8 THE COURT: All right. Mr. Young, I want to
9 hear from you on -- what's your position? I've reviewed
10 the Belcher case again. And this case involves a self-
11 defense allegation.

12 MR. YOUNG: Correct.

13 THE COURT: It involves a homicide in which the
14 defendant argued that the killing was justified.

15 MR. YOUNG: Correct.

16 THE COURT: In other words, it was an
17 intentional discharge of the weapon to kill the victim.
18 And the Court ruled that the inferred malice charge was
19 inapplicable in that situation. What I want to hear from
20 you is does this apply to an accidental shooting
21 allegation. Because from what I'm hearing from your side
22 is this was not an -- your client's alleging that it was
23 not an intentional discharge but it was an accident.
24 That's what you have told the jury. Does this case apply
25 to accidental shootings?

1 And, Ms. Reese, I'm going to give you an opportunity
2 to respond to that.

3 MR. YOUNG: Yes, sir, Your Honor, I believe it
4 does because the language that the Court held was that if
5 there's any evidence that is presented that either
6 mitigates the charge that is presented to the jury,
7 excuse it or justifies it. Now, we're not saying that
8 the accident justifies any type of crime because it is
9 our position that it's excusing the crime. Is that if
10 the jury believed and make a finding that this discharge
11 was done by accident, then they would have excused the
12 crime of attempted murder and found that there was no
13 specific intent for Mr. Smith to kill.

14 In the footnotes of the case -- well, even in the
15 dicta of the case, the Court says that in a homicide case
16 or, in parenthesis, an assault and battery with intent to
17 kill. In the footnotes of the case -- I believe it was
18 footnote six -- that the Court specifically says that it
19 does, in fact, apply to assault and battery with intent
20 to kill type cases, also, which is more in line of a
21 attempted murder charge.

22 Further, in either that footnote or in footnote
23 seven, the Court referenced other states who have made
24 some ruling on this issue as far whether or not inferred
25 intent or inferred -- inferring malice is appropriate.

1 And one of those cases was an assault with intent to
2 murder, I believe is what the charge title was. So it's
3 our position that there have been evidence presented in
4 this case through the State's witnesses, in fact, through
5 the statement that was admitted by Mr. Smith that
6 supports that this incident was an accident for the jury
7 to consider. If the jury accepts that, then it is our
8 position that that is along the lines of reducing,
9 mitigating or excusing the conduct that has been charged
10 in this case. And, therefore, we think it's appropriate
11 not to give a charge that includes inferring malice as
12 appropriate.

13 THE COURT: Okay.

14 Ms. Reeves?

15 MS. REEVES: Judge, unfortunately, I'm going to
16 argue against myself. I think State v. Miller, which was
17 after Belcher, I think it does have language that malice
18 cannot be inferred when there's evidence of mitigation.
19 And I think accident -- the facts in that case show an
20 accident.

21 THE COURT: Yeah. And I'm going to point out
22 too that a case was actually cited in the opinion, an old
23 1920 case, State versus Wilton, where the allegation was
24 accident. So Mr. Young, I'm going to grant your request.

25 MS. REEVES: But -- one second. We have a

1 caveat to that.

2 THE COURT: Yeah.

3 MS. REEVES: We do think that the -- that it
4 cannot be inferred from a deadly weapon, but we think you
5 can talk about that inference from the conduct of a
6 person if that conduct shows a total disregard for human
7 life.

8 THE COURT: I'm going to charge that. I'm just
9 going to delete the sentence, "Inferred malice may also
10 rise when the deed is done with a deadly weapon."

11 MS. REEVES: Okay.

12 THE COURT: I'm going to delete that sentence
13 from the charge.

14 Okay. Anything further?

15 MS. REEVES: Your Honor, yes. We would like
16 voluntary intoxication charged as well.

17 THE COURT: Okay.

18 Mr. Young, any objection to the voluntary
19 intoxication? That is the law.

20 MR. YOUNG: I think that is the law, and I
21 think it's appropriate.

22 THE COURT: There is evidence in the record
23 that intoxication was a factor.

24 MR. YOUNG: Exactly, Your Honor.

25 THE COURT: All right. Do you have a proposed

1 charge, Ms. Reeves, or do you just want the Court to use
2 its standard charge?

3 MS. REEVES: I think you can use the standard
4 charge. I'm pretty sure this is probably it.

5 THE COURT: Okay.

6 MR. YOUNG: At the end of her -- well, you have
7 not been presented her charge, but there is a sentence at
8 the end of her charge that is not part of the standard
9 charge that I will object to.

10 MS. REEVES: Voluntary intoxication does not
11 impair the defendant's ability to act with malice
12 aforethought?

13 THE COURT: All right. This is the standard
14 charge. And it's tied in with an insanity charge. But
15 it says, "Insanity caused by the use of drugs or alcohol
16 may be a defense if the insanity is permanent and
17 destroys the defendant's ability to know right from
18 wrong. However, when voluntary intoxication has not
19 produced permanent insanity, it is not a defense to a
20 crime. A person who voluntarily becomes intoxicated is
21 just as responsible for the acts committed while
22 intoxicated as when the person is not intoxicated."
23 That's the bench book standard charge.

24 MS. REEVES: There's some additional language
25 from State v. Davis, 1983. And that's where this last

1 sentence comes from.

2 THE COURT: All right. Well, hand up a copy of
3 what you ---

4 MS. REEVES: I don't have a copy of the case.
5 I just have the language.

6 THE COURT: The sentence you're wishing to add
7 is, "Voluntary intoxication does not impair a defendant's
8 ability to act with malice aforethought."

9 MR. YOUNG: That is correct, Your Honor.

10 THE COURT: Okay. Mr. Young, you object to
11 that?

12 MR. YOUNG: I object to that primarily because
13 the standard charges that were last published, I believe
14 in 2013, did not include that language although the court
15 in a previous case included that language or allowed that
16 language to be given in the charge that was given at that
17 point in time.

18 THE COURT: Well, what is inconsistent with
19 that sentence and the rest of the voluntary intoxication
20 charge?

21 MR. YOUNG: Well, I think it goes beyond just
22 saying that voluntary intoxication is not a defense and
23 that a person is responsible just as if he was not
24 intoxicated. I think it just goes a step beyond and
25 offers some type of comment that a person that is

1 intoxicated voluntarily could -- that could be a basis
2 for their malice.

3 THE COURT: And Ms. Reeves, what was the case
4 you cited again?

5 MS. REEVES: State versus Davis. It's 1983.

6 THE COURT: Okay. I'll pull that out.

7 MS. REEVES: 278 S.C. 544.

8 LAW CLERK: What was that cite again, Ms.
9 Reeves?

10 MS. REEVES: 278 South Carolina 544.

11 THE COURT: All right. Let's see.

12 Mr. Young, I've reviewed that case, and that is good
13 law. And that is the law, so I'm going to charge that.

14 So anything further? Well, I need to ask you this.
15 Mr. Young, are you requesting any lesser-included
16 offenses?

17 MR. YOUNG: I am not requesting any.

18 THE COURT: Okay.

19 MR. YOUNG: Your Honor, I am requesting that
20 the Court give an instruction on accident. I would ask
21 the Court to give an instruction -- I believe the
22 standard instruction -- there's a standard instruction as
23 it relates to accident.

24 THE COURT: I'll read you the standard
25 instruction. The standard instruction is that "The

1 defendant has raised the defense of accident. An act may
2 be excused on the grounds of accident if it is shown that
3 the act was unintentional, that the defendant was acting
4 lawfully and that reasonable care was used by the
5 defendant in the handling of the weapon." That's the
6 standard accident charge.

7 MR. YOUNG: And I would ask that because that
8 language, "... in the handling of the weapon," because
9 it's in brackets, it's not intended to necessarily, I
10 think, be included. So I would ask that from there to
11 the end of that standard charge not be given, that Your
12 Honor stop at "a reasonable person acting in care ..."

13 THE COURT: Mr. Young, I ---

14 MR. YOUNG: "... that reasonable care was used
15 by the defendant."

16 THE COURT: Mr. Young, I think that the
17 question in the case -- that's a factual question in the
18 case. I mean, as I understand it, your client is saying
19 that the gun was tossed back and forth. And that's a
20 factual question. So I think that's appropriate to
21 charge in this case. There is evidence in the record to
22 support that.

23 MR. YOUNG: Yes, sir.

24 THE COURT: Okay. Anything further?

25 MS. REEVES: No, sir.

1 MR. YOUNG: No, sir.

2 THE COURT: All right.

3 MR. YOUNG: And, Your Honor, for the record,
4 there is the position, in talking with Mr. Smith
5 yesterday and this morning, that we are not going to
6 present any information, any evidence, and that we are
7 going to rest when the jury comes in.

8 THE COURT: Okay.

9 All right. Mr. Smith, would you stand, please?

10 Put Mr. Smith under oath.

11 (WHEREUPON, the defendant was duly sworn.)

12 THE COURT: Mr. Smith, have you had sufficient
13 time to talk to your attorney about whether or not you
14 will testify?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And have you decided whether or not
17 to testify?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And what is that decision?

20 THE DEFENDANT: During my advice from my -- yes
21 sir, I'm going to not testify.

22 THE COURT: Okay. Thank you, sir.

23 All right. Mr. Bailiff, if you'd get our jury for
24 us, please, sir.

25 MS. REEVES: Judge, while they're coming up, do

1 you mind if I pull some evidence? If we're going right
2 in to closing arguments, I'd love to have it.

3 THE COURT: No. Go ahead and get your -- you
4 and Mr. Young both, you can get yourself prepared.

5 (WHEREUPON, the jury entered the open court at
6 approximately 10:39 a.m.)

7 THE COURT: All right. Ladies and gentlemen,
8 we've had an interesting morning. I know all of you got
9 to take a trip to the county office building
10 unexpectedly. And we apologize for the delays, but you
11 can rest assured your staff and security folks have been
12 working as hard as they can to get to the bottom of what
13 happened with the bomb threat this morning. So we
14 apologize that we've been delayed, but we're ready to
15 proceed now.

16 Mr. Young?

17 MR. YOUNG: Your Honor, the Defense rests and
18 will not present any evidence.

19 THE COURT: Okay. Thank you, Mr. Young.

20 So, ladies and gentlemen, we have reached the end of
21 the testimony in the case. And we will now proceed
22 directly into closing arguments.

23 Ms. Reeves?

24 MS. REEVES: Thank you, Your Honor. May it
25 please the Court.

1 THE COURT: Yes, ma'am.

2 CLOSING ARGUMENT

3 BY MS. REEVES:

4 I can tell you all have been paying such close
5 attention, and I appreciate that very much. There was a
6 lot to listen to throughout this trial that has lasted
7 for our third day.

8 At the beginning of the trial, Ms. Moore gave you an
9 opening statement. And in that statement, she said that
10 this incident occurred on April 22nd, 2014. And on that
11 day, this defendant, Billy Ray Smith, tried to kill his
12 wife. And after shooting her in the head, he tried to
13 walk away.

14 As a result of that incident, he was charged with
15 four crimes: attempted murder, possession of a weapon
16 during the commission of a violent crime, obstruction of
17 justice, and the unlawful possession of a handgun.

18 The State must prove all of the elements of these
19 four charges to you beyond a reasonable doubt. It has
20 been our burden in this case to prove it to you. And
21 throughout this case we have welcomed that burden as
22 you've heard the evidence. So let's talk about the
23 evidence against this defendant.

24 Let's first talk about all of his different versions
25 to explain how his wife was shot in the head. First, he

1 said it was an unknown shooter. They were just sitting
2 in the living room. A bullet flew out of nowhere right
3 through their open front door, hit his wife almost in the
4 middle of the forehead. He didn't know who did it, but
5 someone shot his wife. Your mom's been shot. Your mom's
6 been shot. Someone shot my wife.

7 Then later we get a little bit more details, don't
8 we? About how loud this truck was and how it turns out
9 it was actually the defendant's drug dealer, the person
10 he sells his prescription pills to, that was mad at the
11 defendant and actually shot his wife. So as he's dealing
12 drugs, he keeps his front door wide open for a drug
13 dealer to drive by that he's had a beef with that day to
14 shoot in through the front door.

15 We all knew that wasn't really plausible. The
16 police certainly did. He was very dramatic in his
17 retelling of those incidents, trying to fill in those
18 details. He said he had to duck when the bullet came in.

19 But then he was told about the victim's condition.
20 And he was told that she was alive, she hadn't died in
21 spite of being shot in the head. In spite of him walking
22 out, she was alive.

23 So then his story changes. It's different. He's
24 trying to say that maybe his son and his friend, the
25 son's friend, David, were actually fighting over this

1 gun. But then he changes again to say, no. We were all
2 just tossing a loaded gun and passing it around in my
3 house. This is what we did. I gave it to my son. He
4 gave it to David. We were just tossing it or passing it
5 around. But he was sure to say that his son was holding
6 that gun. He wasn't. His son was holding that gun when
7 it went off. Felt terrible about it. Really did.

8 Finally, when he gives his written statement he
9 says, okay. Last story. I'm going to change it again.
10 No one else was actually there. It was just me and my
11 wife. But, again, we were playing this game, as couples
12 do. And I'm sorry to sound sarcastic, but I can't help
13 it. No one does this. No one tosses a loaded gun back
14 and forth with their loved one. So he wants us to
15 believe that he was sitting in a chair and his wife was
16 sitting on a loveseat. And he tossed the gun to her, and
17 she tossed it to him, as couples do. And the last time
18 she threw it to him, he caught it and it went off.

19 Being drunk is an excuse that he's giving you. It
20 is not a defense. The Judge is going to tell you that
21 when he talks to you about the law and what you can
22 consider and can't consider in this case. The defendant
23 was drunk. But being drunk is not a defense.

24 The defendant has given you story after story after
25 story. And he's blaming his drug dealer. He's blaming

1 his son. And finally, he's sort of blaming his wife for
2 throwing the gun back to him. It's really her fault, not
3 his. So those were his versions.

4 Now let's talk about his intentional acts, what he
5 actually did. And these are actually from his -- mostly
6 from his own words. He couldn't possess a gun. This has
7 been admitted into evidence, and you'll have it back in
8 the room with you to deliberate with. This is a
9 conviction that the defendant received in 1978. It's six
10 counts of housebreaking and grand larceny. These were
11 felonies. He received a twenty-year sentence for this.
12 It's written on here. He was not allowed to possess a
13 handgun. But he did get a gun that day. He had a gun
14 that day. He wanted it. He saw it, and he wanted to buy
15 it. He even bought ammo for it. Went to a pawn shop.
16 Was found with ten bullets in his pocket that would have
17 gone in that gun.

18 More of his intentional actions: he pulled out a
19 gun, and he loaded a revolver. He acquired it, had it
20 that day, and pulled it out. And then he fired and shot
21 his wife with it right in the forehead, right above her
22 right and just an inch away from the center. It was a
23 low caliber gun, so he knew he had to be pretty close to
24 her to make that effective. He knew about guns. His son
25 told you that.

1 Then he left her to die. He walked right out the
2 front door. He said he saw her breathing. He knew she
3 wasn't dead. He knew she was conscious. He knew she was
4 on her knees bleeding, but he left. He wanted to get out
5 of there.

6 He chose not to call for help. He had a phone.
7 Always had it on him. Unlimited texting, calling. There
8 was a phone right on the coffee table. You saw a picture
9 of it. He didn't use that. He left his house. He
10 passed across the across-the-street neighbor that he'd
11 just been with that day. There were neighbors on either
12 side of him. He chose to drive three point eight miles
13 away. He could have just as easily driven -- if his
14 phone was not working, he could have just as easily
15 driven to the police department, to E.M.S., to any other
16 neighbor in the ten-minute drive it took him to leave his
17 wife while she was bleeding.

18 He chose not to though. He drove three point eight
19 miles away to his son's trailer where he hid the gun. He
20 couldn't have it home. That's where his wife was.
21 Somebody else shot her. It wasn't me. The only reason
22 to go to his son's house was to leave the gun. That's
23 the only reason.

24 He says his son took it away from him. Sure. It
25 was just a veiled attempt, I suppose, when he got out of

1 the car. Maybe to kill himself, maybe not. But he had
2 the gun. Why else would he go to his son's house? In
3 his own statement he says, "My son took the gun away from
4 me." Of course. That's why he was there. That's why he
5 left it. That's where he wanted to leave it because
6 that's where it had come from. Let me just put that back
7 so nobody else has to find it because I shouldn't have
8 had that to begin with.

9 Then he tells his son or tells the officers that the
10 son hid it. He didn't do it. The son hid it in the
11 brush, in the bushes outside the trailer. I'll take you
12 to it. I'll be real helpful. Now, at this point, he's
13 still telling the officers, my son is the one who shot
14 her. So I'll call my son. I'll do you one better. I'll
15 be very helpful. I'll call my son and tell him that I've
16 come clean, that I shot her. Why don't you tell us where
17 the gun is.

18 That's a pretty good trick. He wasn't really trying
19 to be helpful. He was still blaming it on his son. My
20 son did this. So, officers, I know he can tell you where
21 this gun is because he did it. I didn't do it.

22 The officers were out there searching in the yard on
23 the defendant's made-up story. That gun was never in the
24 yard. He told you story after story after story, but all
25 of these actions were intentional. He intentionally did

1 all these things.

2 In Mr. Young's opening, he told you that the State
3 would not tell you the entire story. We wouldn't tell
4 you the whole story. Of course not. These two have been
5 married for twenty-seven years. This was a snapshot, one
6 day in their life, April 22nd, 2014, arguably -- maybe
7 not arguably -- the worst day in Sandra Smith's life.
8 That was the day her husband tried to kill her. He shot
9 her and left. It's a snapshot into their lives.

10 You heard from the victim, Sandra Smith. You heard
11 her talk about what happened to her. She said it was
12 just the two of them in that house. She can't remember
13 what they were arguing about. She doesn't know. She was
14 shot in the head. She says it was loud and then it got
15 very quiet. Then the defendant came at her and shot her.
16 She felt a blast to her head, and she grabbed it. She
17 went down on her knees. She knows it was the defendant
18 because she saw him come at her and also saw him walk
19 out. She remembers his legs as he walked out the door
20 and closed it behind him. That's what she remembers.
21 Not him coming to help her. Not him saying, I'm going to
22 go call for help. Not him putting a bandage on her head.
23 She had to get her own robe and put it on her head.
24 That's what she remembers, him rushing at her, shooting
25 her, and walking out. She remembers that those words,

1 when it was really loud, were ugly words.

2 She is a strong woman. She was supposed to be on
3 life support for two weeks they gave her. We're going to
4 help her breathe for two weeks. She wasn't done. She
5 woke up after three days asking for her daughter.

6 She was in the hospital from April until September.
7 She had brain surgery. She had a pressure monitor
8 installed, part of her skull removed and then put back
9 in. She lost an eye. She has a prosthetic eye now in
10 her right eye. It's hard to tell.

11 It's not even really a scar there anymore, but she
12 has scars. She has lasting effects from this. She has
13 trouble with depth perception. She can't taste -- or she
14 can't smell anything. Her taste is limited. She also
15 told you she's been having some seizures or had a seizure
16 since then because part of the bullet is still in her
17 brain. The doctor could not retrieve what had
18 fragmented, couldn't get all the parts to it.

19 So Ms. Smith can't remember anything or everything
20 from that day. She can't tell you entirely what that
21 loud, ugly argument was about. She thought there was
22 some -- an argument about money because he liked to keep
23 her bank card. She worked and wanted to go shop on her
24 lunch break, but he kept it. He wanted to control that
25 money, so she didn't have it to use as she wanted to.

1 She didn't have it to spend, as anyone else does, to take
2 a break at work and go shop and look around. He had it.
3 That's what she remembers the argument being about. And
4 just because the victim, Sandra Smith, cannot remember
5 what that argument was about doesn't mean it didn't
6 happen. And he should not get the benefit of saying that
7 there wasn't an argument or accusing her of not being
8 able to remember that argument because he took that
9 memory away. She can't remember that because she was
10 shot in the head. She's lucky to remember what she does.
11 He should not get the benefit of that.

12 I think the defendant will argue that he was trying
13 to help his wife, that she worked pretty far away, that
14 she was going to be driving maybe back and forth, that
15 she needed this gun. That he wasn't just getting this
16 gun for himself. He was going to get it for her.
17 Absolutely not. You heard the victim. She didn't want
18 guns in her house. She wasn't going to carry a gun back
19 and forth to work. She didn't want anything to do with a
20 gun. That is another excuse.

21 Now, let's talk about the other witnesses that you
22 heard from. You certainly heard from many. And their
23 testimony, again, helps support all the defendant's
24 intentional actions.

25 Their son, Paul Smith. His father is the defendant,

1 and his mother is the victim. That's a pretty tough
2 position to be in. So his father shows up and says, your
3 mama's been shot. That was clear. What wasn't clear at
4 first, though, was it an accidental shooting that someone
5 else shot her, or was it the defendant that accidentally
6 shot her? It doesn't really sound to me like Paul wanted
7 to believe that his mother had been shot or certainly
8 that his father had done it. But he also didn't really
9 believe that someone had shot through the front door,
10 much like the other detectives.

11 And he also knew that he had pawned a sixteen-gauge
12 shotgun of his father's that day. And he knew that he
13 had a twelve-gauge shotgun at his own house that was his
14 father's. So he knew that the revolver, the twenty-two
15 revolver, was around. But how did his dad get it? It
16 hadn't been sold to him. He didn't want to do that. So
17 here's Paul trying to figure out how his mother was shot.
18 I don't believe it was somebody from the front door, but
19 how did my dad get a gun? He says, we did not trade
20 those guns. When talking with the officers, they were
21 getting that mixed up. We did not trade these guns. He
22 didn't want his dad to have a gun. He went flying over
23 to his mother's house, driving like crazy. And when he
24 saw her, she was conscious, she was holding that green
25 bathrobe to her head. She was trying to talk to him.

1 She said that Paul lost it right there on his dad. Went
2 after him. He was calling 9-1-1. The defendant
3 certainly didn't.

4 I think there's been some points made about when
5 Paul called for help. Seriously? We're going to pick on
6 him. He didn't know until his dad came up or maybe even
7 until he actually saw his mom that she had been shot.
8 The defendant knew the whole time. It needs to be
9 pointed out that he didn't call, not when Paul called.
10 Paul called for help. Paul called 9-1-1 and got help on
11 the way.

12 He told you that he knew that there had been
13 argument about money between his parents. He even told
14 you that the defendant had offered to pay him some money
15 if he would say that this was an accident. He said he
16 offered him a bank card, his 4Runner, to get Paul to say,
17 you know, this was all an accident when it most certainly
18 was not.

19 You heard from Officer Eichelberger. When she came
20 in the house, where was the defendant? Oh, he was
21 sitting right next to her on the couch, wasn't he,
22 holding her head? Well, that was about the first time we
23 heard that. Now, he's trying to care for her. Now he's
24 trying to show he's a good husband. Now he's sitting
25 next to his wife trying to console her. Still giving

1 that same story about somebody shot through the front
2 door. But she didn't believe that. She knew from the
3 angle of the front door you could not possibly have hit
4 that victim sitting on the couch.

5 You heard from Corporal McElrath how he collected
6 this gun. Don't worry. I'm not going to wave it around.
7 I think you've all seen the pictures of it. This is the
8 gun. It's empty now, of course. This was the gun he
9 found at Holiday Street. I don't care how low of a
10 caliber that is. It's still a gun.

11 He also told you he found a baggie of ammo bought
12 from the defendant at the pawn shop and that the gun was
13 fully loaded at the time with nine bullets in the chamber
14 of that. He also told you he went to the hospital and
15 took pictures of the victim. And I'm sorry. It's early.
16 And you probably -- I hope you don't have weak stomachs.
17 This isn't how she looks today, is it? That's how she
18 looked when she finally got to the hospital. One inch
19 off from the center of her forehead.

20 McElrath told you that these burns around her wound
21 indicate to him that this gun was fired at a close
22 distance. So the plume of smoke that comes out of the
23 end of that gun burned her. That's how close it was to
24 her.

25 Lieutenant Ebernickle told you that, again, the

1 defendant gave many, many different statements to him.
2 But he did, in fact -- the defendant did, in fact, drive
3 three point eight miles away. They established that.
4 That no one else was on scene. The defendant and the
5 victim were the only ones on scene, and the defendant
6 left right after he shot her. And he told you what all
7 the defendant passed along the way.

8 Captain Marsee told you about the written statement
9 he took from the defendant. And, again, you'll have this
10 to consider back in your chambers. This three-page
11 written statement and, of course, the diagram on the
12 back. Because this helpful little diagram shows where
13 the defendant and the victim were sitting when they were
14 playing that game of tossing that loaded revolver back
15 and forth to each other. That's real close. That's a
16 game husbands and wives never play. Never. You don't
17 play that game with anyone. I don't care how drunk you
18 are. You don't toss a loaded gun back and forth between
19 the two of you.

20 This statement goes back with you. And I think the
21 third page is the most telling. This is where he admits
22 to shooting her but says, again, "We were tossing that
23 gun back and forth."

24 Captain Marsee told you that he found -- when he
25 arrested the defendant, he found these ten bullets in his

1 pocket. He wanted that gun. He bought this ammo for
2 that gun.

3 Agent Berry told you that -- SLED told you that
4 there was gunshot residue on the defendant's right hand.
5 And he was right-handed according to his son. She told
6 you that there was gunshot residue of particles on his
7 shirt and off his jeans.

8 She told you that she didn't test the other kits,
9 that she expects to find G.S.R. or gunshot residue on the
10 victim, especially when she already has burn marks on her
11 forehead of how close that gunshot was. She didn't need
12 to test, and it's their policy not to test, gunshot
13 residue on gunshot victims.

14 She also told you that she did not test two other
15 kits. But she also told you from Paul and from David
16 Hogg. Well, she told you there was a six-hour window,
17 right, when G.S.R. is possible to stay on their hands.
18 And they don't even test it after six hours. So six
19 hours, when the shooting was at ten o'clock, moving that
20 to four o'clock. Paul said they had shot guns that day,
21 but it had been more than six hours before the incident.
22 And he wasn't there. That gunshot residue, whether it
23 was there or not, it wouldn't have told us anything. He
24 didn't shoot her. It's unnecessary. The Defense can
25 make all the issue they want about how this wasn't tested

1 for David or for Paul. It is absolutely unnecessary.
2 They didn't shoot the victim. The defendant did, and he
3 admitted it. Absolutely unnecessary.

4 Agent DeFreese, or Mr. DeFreese now, told you about
5 the gun and that the eight rounds in the gun, and more
6 importantly the fired cartridge in the gun, came from
7 that gun, was, in fact, fired from that gun. He also
8 told you how the gun worked. And he's obviously much
9 better at holding that than I am. But he said that there
10 are two ways to fire that gun. It's a double-action gun.
11 That you could pull the hammer back, and then the trigger
12 is easier to pull. Right? But if you leave the hammer
13 up, the trigger is much harder to pull.

14 Now, this gun does not have a safety on it. There's
15 no switch. So when you pull that trigger, it's going to
16 fire. But the pounds of pressure that are required to
17 pull a trigger are no ---

18 MR. YOUNG: Objection, Your Honor. Arguing
19 information not already entered into evidence.

20 THE COURT: Overruled.

21 CLOSING STATEMENT

22 CONTINUED BY MS. REEVES:

23 The pounds of pressure that are required to pull a
24 trigger is way more than would ever be used to catch a
25 gun. First of all, it just shows the ridiculousness of

1 the story. Who's tossing a gun, a loaded gun, back and
2 forth? And if you catch it, if someone tossed a gun to
3 you, you would catch it so you would pull the trigger?
4 Never. No. No, that's not the way you handle guns.
5 That is not handling a gun responsibly like that.

6 It took a long time for the victim in this case to
7 get help that night. E.M.S. told you that they were
8 dispatched at ten oh one, and I believe they didn't get
9 to her until around ten twelve. So the defendant shot
10 her and left, drove ten minutes down the road, assuming
11 he went directly to his son's. We don't really know.
12 Then he had to talk to his son and then come back. Then
13 9-1-1 was called. And then it took them an additional
14 twelve minutes to get to her. She did not arrive at
15 G.H.S. until ten forty-eight. The doctor, Dr. Nelson,
16 told you that, of course, a gunshot to the head could
17 have killed her. Of course, it could have. It was
18 causing swelling to her brain that was actually shifting
19 her brain over. Fifteen millimeters, I believe he said.
20 And he hasn't seen anyone live after a twenty-millimeter
21 shift. She could have died. There is a very high
22 mortality rate for any gunshot wound to the head, no
23 matter the caliber.

24 Those are the things that the witnesses told you
25 that you heard from the witness stand that is evidence in

1 this case that is evidence of the defendant's intentional
2 acts. Yes, you're going to hear -- or you already heard
3 about the drinking. The victim and Paul, they drank. It
4 does make time frames and memories fuzzy. And a year and
5 a half has actually passed since this incident happened.
6 But it's not an excuse for the defendant. Intoxication
7 is not a defense.

8 What is absolutely clear in this case are the
9 defendant's intentional actions on April 22nd, 2014.
10 That is what the evidence shows. That is what actions
11 speak louder than words. The defendant can tell you this
12 was an accident. This was no accident. His actions
13 prove that. What do his actions show? Use your common
14 sense -- that is your best tool in this case -- to figure
15 out who and what you believe. What do his actions show
16 you?

17 It has been our job, again, as prosecutors to show
18 you that Billy Ray Smith is guilty of all four of those
19 crimes that he has been charged with. For us to prove
20 that the defendant is guilty of these crimes, we have to
21 prove each element. And, again, we have to prove that to
22 you beyond a reasonable doubt. But reasonable doubt is
23 not beyond every doubt. But reasonable doubt is a doubt
24 -- the kind of doubt that would make you hesitate to act.
25 I would offer there is no reason to hesitate in this

1 case.

2 To prove attempted murder, I have to show three
3 things: that the defendant attempted to kill Sandra
4 Smith, that he specifically intended to kill her, and
5 that he acted with malice aforethought.

6 Now, the Judge is going to, again, give you the law
7 specifically that you can consider. And I'm going to go
8 over this a little bit with you.

9 Malice can be inferred when you have total disregard
10 for human life. I think the defendant's actions show
11 that. It doesn't mean that he planned this in advance.
12 It just means if it's an intentional act and he intended
13 to kill her. We don't know what another person is
14 thinking unless they say it. And even then, we don't
15 always know if we can believe that. But we don't know
16 what someone else is thinking. So we prove that, we can
17 infer that, by their actions.

18 He acquired a gun that he shouldn't have had. He
19 pulled it out, he aimed at his wife's forehead, and he
20 shot her. He left her on her knees bleeding. Those are
21 his actions. He intended to kill her. That's intent.
22 That's a malice. Total disregard for another human
23 being.

24 The defendant's going to, again, argue that this was
25 an accident. But to show you that, to use that as a

1 defense, he has to prove that the defendant was handling
2 that gun in a responsible way. Was he? No. Tossing a
3 gun back and forth with anyone, especially your wife, is
4 not responsible. A loaded gun you handle with care. You
5 don't throw it at anyone. You don't point it at anyone
6 unless you're going to use it. That's what the defendant
7 did. This was no accident.

8 To prove possession of a weapon during the
9 commission of a violent crime -- luckily that long title
10 speaks for itself. This was a violent crime, attempted
11 murder. And he possessed a handgun when he committed it.

12 Obstruction of justice has four parts to it. That
13 the defendant intentionally did an act that prevents,
14 obstructs, impedes or hinders the administration of
15 justice. The defendant took the gun away from the scene.
16 He hid it. That was an act. He left it at his son's
17 house. He led the officers on a search that was useless
18 -- that was an act -- to find this gun, blaming his son.
19 He even called his son telling him to come clean so the
20 son would tell the officers where the gun was. Those are
21 all acts to impede justice, to prevent justice from being
22 done. It was somebody else; it wasn't me. Those were
23 his intentional actions.

24 Finally, the defendant possessed a handgun. The
25 defendant possessed a handgun, and he had been convicted

1 of a crime of violence. Three elements.

2 There is a huge difference between accident and
3 being repentant. Huge. This was no accident. Accident
4 means you get help. Accident means you assist your wife,
5 your wife who you've lived with for twenty-seven years.
6 You get help for her. She's bleeding. She's in pain.
7 She might die. You're not thinking about saving your own
8 skin. You're not thinking about covering your tracks or
9 moving, hiding evidence. You're thinking about getting
10 the woman that you've promised to love and take care of
11 help. This was every bit of an intentional act.

12 You have heard all of the evidence now. The
13 defendant in this case, Billy Ray Smith, tried to kill
14 his wife, Sandra Smith, on April 22nd, 2014. Don't let
15 him walk away again. He is guilty of each of the
16 elements in these crimes beyond a reasonable doubt. And
17 find him guilty of all four offenses.

18 Thank you.

19 THE COURT: All right. Mr. Young?

20 MR. YOUNG: Your Honor, may it please the
21 Court.

22 CLOSING ARGUMENT

23 BY MR. YOUNG:

24 If I was LeBron James, at this point I would reach
25 in that bowl full of rosin powder, put it in my hands,

1 throw it up in the air, make a cloud of smoke. That's
2 what the solicitor wants you to do. Wants you to look
3 through a cloud of smoke to find something that isn't
4 there.

5 April the 22nd, 2014, the day began, according to
6 Billy Paul Smith, with his dad, Billy Ray Smith, coming
7 to pick him up for work because he worked for his dad as
8 a home healthcare provider. He was responsible for
9 helping to clean up the house, helping run his errands,
10 help him to do other things there around the house until
11 approximately two o'clock.

12 The testimony from Billy Paul Smith and the
13 testimony from the officers who interviewed David Hogg
14 was that they went over to Billy Ray's house. They began
15 doing some work. And according to Mr. Hogg or what he
16 told the officer, Billy Paul and Billy Ray left to run
17 some errands. Billy Ray gave a statement to Captain
18 Marsee that he left with his son to run some errands.

19 They came back. According to Sandra Smith, they
20 were in and out of the house running errands. According
21 to Billy Paul, Billy Ray went fishing. David Hogg said
22 once; Billy Paul said twice. But it's consistent with
23 what Sandra said, that he was in and out of the house.

24 Billy Paul took that witness stand and told you what
25 happened. And not one time did Billy Paul Smith testify

1 to you that on that day, April the 22nd, 2014, that he
2 witnessed his mother and his father have an argument
3 about money.

4 The officer who interviewed David Hogg told us that
5 David Hogg never said anything to them, that while he was
6 there at the house --- because you remember, David Hogg
7 was left at the house to clean the dishes and clean the
8 house while Billy Paul and Billy Ray ran errands. At no
9 point in time did David Hogg hear any arguments between
10 Billy Ray Smith and Sandra Smith regarding any money.

11 As the day goes along, when Billy Paul gets off from
12 work, he and David Hogg goes across the street. Now, one
13 thing that Billy Ray did share with us, which was a
14 little bit inconsistent with what David Hogg told the
15 officer, but both of them said that they brought that
16 gun, that twenty-two caliber pistol, to Billy Ray Smith
17 because they were having problems with it. They couldn't
18 get it to fire. And what did he tell them? It might be
19 the ammo. You may have bad ammo. You need to get some
20 more ammo.

21 And what happened? What happens is that Billy Ray
22 and Billy Paul stopped at Foothills Pawn Shop and bought
23 about six dollars worth of bullets in order to test that
24 gun out. What did they do? They went back, took the old
25 bullets out, put the new bullets in, fired it. And it

1 worked. Billy Ray looked at the gun and said, "Hey, I
2 can buy that for your mama." Why? Because he said he
3 was buying it for his wife's protection. Did you hear
4 anybody on that witness stand say that he wasn't going to
5 buy it for her protection? She's working a second shift
6 job, in the process of getting her driver's license back
7 and would have to drive at night approximately twenty to
8 thirty minutes to get home. Did anybody say that he
9 wasn't looking out for her when he told his son he would
10 consider buying the gun? Then David Hogg told the police
11 officers that he witnessed. Now, I know I keep going
12 back to David Hogg. But they didn't want to put David
13 Hogg on the witness stand, probably because David Hogg is
14 saying things that are a little bit inconsistent with
15 what Billy Paul is saying. Because Billy Paul said that
16 the gun -- that the gun was a gun that David Hogg had.
17 He don't know where it came from. David had it. David
18 just moved into his house. And David had the gun, and
19 they were having problems getting it to work. But
20 according to the officer, David Hogg didn't own that gun.
21 But he said that Billy Ray said he was interested in
22 buying it for his wife. So Billy Paul asked, "Let me get
23 your twelve gauge so that they can shoot."

24 As the day go along, the one thing that we know
25 happens for sure, Billy Ray Smith and Sandra Smith are

1 drinking throughout the day. We know that. Billy Paul
2 said that he saw them drinking. David Hogg told the
3 officer that he saw them drinking. That night when the
4 officers encountered them, they witnessed that they had
5 been drinking. Well, the officers witnessed that Billy
6 Ray had been drinking. But the E.M.S. lady, she put it
7 down in her report that even Sandra had been drinking.

8 Now, the solicitor is right. The Judge will tell
9 you that voluntary intoxication is not a defense. And I
10 don't think at any point in time we have said he was
11 drunk, so you can't hold him responsible. Never said
12 that. But you see, that intoxication is a factor that
13 you have to consider when determining the facts of this
14 case. You can't hang your hat on that, but it's a
15 factor. Because you see, the solicitor stood here and
16 argued that Billy Ray Smith intended to kill his wife.
17 Billy Ray Smith walked out on his wife.

18 Well, reflect back to what Sandra said happened.
19 She said that she heard the noise, felt the pain, saw the
20 blood, fell to her knees. And she saw Billy Ray standing
21 next to her. Then she saw him leave. Could he have been
22 standing there to put the cloth on her head? Could he
23 have been the one to pick her up and put her on the sofa?

24 Well, he didn't call for any help or anything. I
25 asked a number of the officers that were up here, "Did

1 you check the phones? There's one in the picture. Did
2 you look at the phone?" Nobody said anything. Maybe the
3 phones were dead.

4 They talked about, "Well, he had neighbors around
5 his house." Reflect what Billy Paul said. He told us
6 about three houses that were near them. One on one side
7 was vacant. One on the other side had someone there, but
8 he's not sure if they were there or not. And the one
9 across the street about a hundred yards way. Well, guess
10 who lived across the street? Chris Guthrie. You
11 remember they said that David Hogg and Billy Paul went
12 over to Chris house to work on the boat. To put lights
13 on the boat, I believe it was. The officer talked to
14 Chris Guthrie. Chris Guthrie lives a hundred yards away.
15 Said that he saw Billy that day. Billy was drunk. He
16 never said anything about him overhearing any arguing,
17 any ruckus or seeing any problems across the street. But
18 they never asked Chris, were you home that night when
19 Billy Ray left that house.

20 Intention to kill? If he intended to kill her, why
21 not stay in the house until she died? Billy Paul said,
22 "My dad knows about guns." If he intended to kill her,
23 why get a twenty-two when he had a twelve gauge? Why get
24 a twenty-two and allow your son to pawn your other gun?
25 Intended to kill her? No. Accidents happen. But

1 intended to kill her?

2 When he left the house, why didn't he go sit out in
3 his driveway? He drove to his son. Intended to kill
4 her? Why say anything to your son about what happened?
5 Why not just go in? Me and your mama figured we didn't
6 want to buy the gun. Here's the gun back or anything
7 along those lines. Never said anything. According to
8 the testimony, he drives up, obviously at a high rate of
9 speed because Billy Paul said, "I heard the tires
10 screeching out in the yard." Speed up. "Son, your
11 mama's been shot." Intended to kill her? Was that not
12 an attempt to get some help? Understand, we're talking
13 about a guy who is highly intoxicated. His thinking
14 might not be the same as somebody who wasn't highly
15 intoxicated when it comes to, should I stop this place?
16 Should I stop that place? He's going to his son's house
17 to immediately get him. They go right back. He goes in
18 and they call 9-1-1. Maybe he went to his son's house
19 because his phones weren't working to get help for his
20 wife. They come back. Son said, "I didn't believe him."
21 The son told everybody he didn't believe that this
22 happened. Had to see it for himself. You know why?
23 Because he couldn't fathom any problems that would have
24 happened that day between his mom and dad that would lead
25 to this. The solicitor even made the argument a few

1 minutes ago. Did somebody accidentally shoot through a
2 door? Did my dad accidentally shoot her?

3 Billy Paul, when he called 9-1-1, he reported to the
4 9-1-1 operator it was an accidental shooting. When
5 Officer Eichelberger showed up, he tells her it's an
6 accidental shooting.

7 Now, they say, you know, Billy Ray, he's doing these
8 intentional acts and he's hiding, he's obstructing
9 justice. Takes the gun away from the house. Hides the
10 gun. Remember the testimony. He ran into the house with
11 the gun. Billy Paul took it, sat it on a table and
12 immediately left to go check on his mama. But the gun
13 was found under the seat cushion of the sofa. And not
14 one witness that was presented in this case said that
15 Billy Ray Smith put that gun anywhere in that house, on
16 the table or on the seat cushion. And maybe if Billy
17 Paul had not taken that gun from him, he would have taken
18 the gun back over to his house. Obstruction of justice?

19 Then in his highly intoxicated state, goes to the
20 police department and he tells them this is what
21 happened. He lied to them. He lied to them a couple of
22 times about what happened. But they knew from the junk
23 that he was lying to them. I asked the officers, "Did
24 you believe what he was telling you?" "No, we didn't
25 believe it. No. It wasn't even physically possible for

1 it to happen." "Did you do anything to try to pursue

2 it?" "No, because we didn't even believe it."

3 Obstruction of justice?

4 In a matter of two and a half hours, I believe it

5 was, Billy Ray finally told them, this is what happened.

6 I'll take you to where the gun is. He went and they

7 searched. Not one of them felt -- or at least none of

8 them testified that he was leading them on a wild goose

9 chase looking for the gun. He didn't take them across

10 town to look for it. He took them to where he last

11 remembered that gun being at that house.

12 When they couldn't find it outside, what did he say?

13 Let me call my son, and we can get him to tell us where

14 it is. Hmmm. Obstruction of justice? Wait.. When he

15 called his son, he didn't use his Obama phone. He didn't

16 use his unlimited text and call phone. He used the phone

17 of the officer.. Hmmm. Maybe his phone wasn't working.

18 Maybe that's the reason why he went to get help.

19 He come back, and he's with his son at the house.

20 And what is it that Officer Eichelberger tells us that

21 happened? When I walked in, she didn't notice any signs

22 of any type of struggle because she's been trained to

23 identify those things. Seventeen, eighteen years of

24 experience. She also said that when she came in Billy

25 Ray Smith was on the couch comforting his wife.

1 Intending to kill her?

2 You know, Billy Ray know that he shouldn't have had
3 that gun. He's been convicted in the '70s of an offense
4 that wouldn't allow him to have a gun. But he had those
5 weapons around his house all of his life. Shotguns.
6 Tells me that he probably had hunted a time or two.

7 Intended to kill her? No. This was an accident.
8 How do we know? Because Billy Ray told the police
9 officers the day after he was arrested for this
10 obstruction of justice charge. How do we know that even
11 law enforcement believed him? Because they put it in
12 writing. Remember those other stories that he was
13 telling them the night before? They never put that in
14 writing. They never asked him to tell them what happened
15 and they'll write it and have him to read it and sign the
16 next day when he was good and sober. Captain Marsee
17 said, brought him in the room, told him we wanted him to
18 tell us what happened. I'm going to write it as you say
19 it. And we got a three-page statement.

20 Billy Ray said that I was buying this gun for my
21 wife. I was showing it to her. We tossed it back and
22 forth. Oh, you just don't do that with your wife. You
23 don't do that. It's not normal to do that. Look at the
24 exhibit. It's not unreasonable to think that they tossed
25 that gun in that short distance to each other. After

1 all, they had been drinking all day. Their way of
2 thinking may not have been the way of thinking of those
3 of us who may not have drank all day.

4 How do we know they were drinking all day? Not only
5 do they admit it on the witness stand, but it's in the
6 pictures. You'll see the empty liquor bottle sitting in
7 the pictures.

8 So they tossed the gun around. And, you know, Agent
9 DeFreese went over with us that the gun is a double-
10 action or either a single-action. And as he clicked the
11 gun, cocked it back on the single action, said it takes a
12 lighter force to do it. Could that gun not have been
13 cocked when it's being tossed back and forth?

14 Gunshot residue found on the right hand of Billy Ray
15 Smith. Look at the photo of Billy Ray Smith. There's a
16 cast or something on his right hand. Could that not have
17 interfered with him properly catching that gun the way
18 the solicitor wanted him to catch it? The gun goes off.
19 It's an accident. Accidents happen. But you haven't
20 heard one witness on that witness stand that refuted any
21 part of that statement. We've got good law enforcement
22 officers. They read through that statement, and they
23 knew where to go to further investigate it. And we got
24 nothing to refute it. That statement says it was an
25 accident.

1 What else do we have? They put up the SLED
2 witnesses who told us what we already knew. The lady,
3 Agent Berry, said that there was gunshot residue on Billy
4 Ray's hand and on Billy Ray's shirt and on his pants.
5 Well, by God, Billy Ray said the gun went off while it
6 was in his hand. Just as we would expect gunshot residue
7 to be on the victim, we would expect it to be on the man
8 who confessed to the gun accidentally going off.

9 Agent DeFreese testified that the shell casing that
10 was in the gun when they found it is the same shell
11 casing that came out of the gun when it was found. They
12 pulled the casing out of the gun. They got a picture of
13 it.

14 Ladies and gentlemen, accidents happen. Not all
15 accidents are packed neatly in a box where we can just
16 look at it and say, that's not an accident because it
17 didn't happen this way. This is not an accident because
18 it didn't happen that way. Accidents happen the way that
19 they happen.

20 A tragic situation occurred on April 22nd, 2014.
21 Changed these people's lives forever. Accidents do
22 happen. But the evidence that's been presented in this
23 case, it just doesn't show that Billy Ray Smith
24 specifically intended to kill his wife. Even if we
25 believe that there was an argument at some point in time

1 about a bank card, the evidence doesn't support that
2 Billy Ray Smith did anything to mislead law enforcement
3 to prevent them from doing their job.. Every person who
4 is flagged down and questioned about their behavior and
5 about their conduct, be it by law enforcement or be it by
6 our family, be it by our spouses, human nature is that we
7 offer an excuse other than the truth. But most times, it
8 comes around to the truth. We came around to Billy Ray
9 saying that this was an accident.

10 Before I take my seat, it troubles me that the
11 solicitor's office says that Billy Ray Smith attempted to
12 bribe his son to say that this was an accident. Why
13 would he say that? Why would he need to try to bribe
14 him? You see, Billy Paul had already told law
15 enforcement this was an accident. At no point in time
16 did Billy Paul tell the police officers anything else but
17 that this was an accident. When Billy Paul called 9-1-1,
18 he said this was an accident. When he talked with the
19 officer on the scene, he said it was an accident. Why
20 would Billy Ray have to bribe him with a car and a
21 Medicaid card to say that it was an accident? After all,
22 Billy Paul doesn't even drive because of his D.U.I.
23 Billy Paul said that this conversation took place over
24 the telephone. If that conversation would have happened,
25 I would bet you anything if the police officers or

1 somebody would have stood up there and said that it was
2 reported to them that Billy Ray tried to bribe Billy
3 Paul, the solicitor's office would have argued that as
4 its basis for obstructing justice. It just didn't
5 happen.

6 A tragic situation. Accidents happen.

7 THE COURT: Before we begin the charge, we're
8 going to take a short break.

9 Mr. Bailiff, if you would take the jury to the jury
10 room.

11 Ladies and gentlemen, we've got another stage where
12 I instruct you on the law. I'm going to let you go to
13 the jury room and take a little break and stretch your
14 legs before we begin.

15 Mr. Bailiff?

16 (WHEREUPON, the jury exited the open court at
17 approximately 11:47 a.m.)

18 THE COURT: Counsel, I also wanted to give
19 y'all an opportunity to look at the verdict form, so my
20 clerk's printing that out right now. We'll take a short
21 break and let y'all look at it.

22 (WHEREUPON, court stood at recess for a short
23 break.)

24 THE COURT: Thank you. Y'all be seated.

25 MR. YOUNG: Your Honor?

1 THE COURT: Waiting on your client?

2 MR. YOUNG: Yes, sir.

3 THE COURT: That's fine. I don't think all the
4 jurors are ready. I just came on out. Did each attorney
5 review the verdict form, and are there any objections?

6 MS. REEVES: No, sir.

7 (WHEREUPON, the defendant entered the courtroom.)

8 MR. YOUNG: Just one objection that we would
9 take, Your Honor.

10 THE COURT: Yes, sir.

11 MR. YOUNG: That is basically the order in
12 which the choices are listed in the verdict form. I
13 believe the presumption of innocence pretty much requires
14 that not guilty be the first choice as opposed to guilty
15 being the first choice. We would just ask that those two
16 be swapped so there would basically be no subliminal
17 messages to the jury or anything along those lines.

18 THE COURT: That's fine. We'll do that. I'm
19 going to instruct them anyway they're to place no
20 significance on the order that the choices are on the
21 verdict form. But that's fine. I'll have my clerk do
22 that.

23 (WHEREUPON, court stood at ease.)

24 THE CLERK: Just one copy?

25 THE COURT: You can just print one copy, let

1 each attorney look at it, unless each attorney wants a
2 copy.

3 (Off record discussion)

4 THE COURT: All right. Anything from either
5 side before we bring the jury back?

6 MS. REEVES: No, sir.

7 THE COURT: Mr. Young, anything from the
8 Defense? Anything from the Defense before we bring the
9 jury back?

10 MR. YOUNG: No, sir, Your Honor.

11 THE COURT: Okay.

12 All right. Mr. Bailiff?

13 (WHEREUPON, the jury entered the open court at
14 approximately 12:02 p.m.)

15 THE COURT: All right. Ladies and gentlemen,
16 we have come to the point in the trial where I instruct
17 you on the law. My instructions will be somewhat
18 lengthy, but they'll be in three parts. The first, the
19 instructions on general rules that define and control the
20 jury's duties, the second, instructions that state the
21 rules of law you must apply, what the State must prove to
22 make its case, and lastly, some rules for your
23 deliberations.

24 The general rules begin with your duties as jurors.
25 It is your duty to find the facts from all of the

1 evidence in the case. To those facts you must apply the
2 law as I give it to you. You shall not be concerned with
3 what the law should be but what it is. And you must not
4 be influenced by any personal likes or dislikes,
5 opinions, prejudices or undue sympathy. That means you
6 must decide the case solely on the evidence before you in
7 accordance with the law, the very thing you took an oath
8 to do at the beginning of the trial.

9 It is your responsibility and yours alone to
10 determine the facts of this case. I would, therefore,
11 charge you that if during the course of this trial or
12 during this charge you have been given or left with the
13 impression or feeling that I have a personal feeling
14 about the facts of this case or that I favor one side or
15 the other, I would specifically instruct you to disregard
16 that impression. Under our constitution, I am not
17 allowed to have an opinion as to the facts of this case.
18 You should not be influenced by any objections or the
19 Court's ruling on them. You and you alone are the judges
20 of the facts. You determine the facts by evaluating or
21 weighing the evidence that you've heard during this
22 trial.

23 What is evidence? Evidence is the sworn testimony
24 from witnesses and any exhibits that have been entered
25 into evidence. The statements by the attorneys are not

1 evidence. What they have said in opening statements,
2 closing arguments and at other times is intended to help
3 you interpret the evidence, but it is not evidence.

4 There are two types of evidence which are generally
5 presented during a trial, direct evidence and
6 circumstantial evidence. Direct evidence directly proves
7 the existence of a fact and does not require deduction.
8 Circumstantial evidence is proof of a chain of facts and
9 circumstances indicating the existence of a fact. Crimes
10 may be proven by circumstantial evidence. The law makes
11 no distinction between the weight or value to be given to
12 either direct or circumstantial evidence. However, to
13 the extent the State relies on circumstantial evidence,
14 all the circumstances must be consistent with each other
15 and when taken together point conclusively to the guilt
16 of the accused beyond a reasonable doubt. If the
17 circumstances merely portray the defendant's behavior as
18 suspicious, the proof has failed.

19 The State has the burden of proving the defendant
20 guilty beyond a reasonable doubt. The burden rests with
21 the State regardless of whether the State relies on
22 direct evidence, circumstantial evidence, or some
23 combination of the two.

24 What is a reasonable doubt in the law? A reasonable
25 doubt is the kind of doubt that would cause a reasonable

1 person to hesitate to act. Some of you may have served
2 as jurors in civil cases where you were told that it is
3 only necessary to prove that a fact is more likely true
4 than not true such as by the greater weight or
5 preponderance of the evidence. In criminal cases, the
6 State's proof must be more powerful than that. It must
7 be beyond a reasonable doubt.

8 Proof beyond a reasonable doubt is proof that leaves
9 you firmly convinced of the defendant's guilt. There are
10 very few things in this world that we know with absolute
11 certainty. And in criminal cases, the law does not
12 require proof that overcomes every possible doubt. If,
13 based on your consideration of the evidence, you are
14 firmly convinced that the defendant is guilty of the
15 crimes charged, you must find the defendant guilty. If,
16 on the other hand, you think that there is a real
17 possibility that the defendant is not guilty, you must
18 give the defendant the benefit of the doubt and find him
19 not guilty.

20 A reasonable doubt may arise from the evidence or
21 from a lack of evidence. The defendant is entitled to
22 every reasonable doubt that may arise in the case. If
23 upon any issue of fact essential to a conviction and a
24 verdict of guilty of an offense, if you have any
25 reasonable doubt as to how that issue should be resolved,

1 it is your duty to resolve that doubt in favor of the
2 defendant.

3 Suspicion, however strong, is not enough to sustain
4 a conviction. The evidence presented by the State must
5 be substantial evidence that tends to prove the guilt of
6 the defendant beyond a reasonable doubt.

7 As the judges of the facts, you are the sole judges
8 of the credibility, that is the believability, of the
9 witnesses who have testified in this case. In
10 determining their credibility, you may take into
11 consideration many things such as the appearance and
12 manner of the witness on the stand, sometimes referred to
13 as the demeanor of the witness. Was the witness able to
14 see, hear or know the things about which the witness
15 testified? How well was the witness able to recall and
16 describe those things? Did the witness have a cause or
17 reason to be biased and prejudiced in favor of the
18 testimony he or she gave? How reasonable was the
19 witness' testimony considered in light of all of the
20 evidence in the case? Was the witness' testimony
21 contradicted by what the witness had said or done at
22 another time or by the testimony of other witnesses or by
23 other evidence?

24 These are some of the factors you may consider in
25 deciding whether or not to believe testimony. As jurors,

1 you have the right to believe all of the testimony of a
2 witness or none of the testimony of a witness. You have
3 the right to believe a portion of the testimony of a
4 witness and discard the rest. You may believe the
5 testimony of one witness over the many or the many over
6 the one. Most certainly, you do not determine the matter
7 of credibility or believability by counting up the number
8 of witnesses who may have testified on behalf of the
9 parties in the case. Your sole objective is to find the
10 truth. It does not matter whether the truth comes from a
11 witness for the State or a witness from the defendant.

12 Ladies and gentlemen, normally a person cannot give
13 opinion testimony. Normally, a witness must testify as
14 to what they either saw, heard or sensed by smell or
15 something of that nature. However, there is an exception
16 when someone is qualified as an expert. Because of
17 education or experience, they are permitted to give an
18 opinion in certain areas if the Court qualifies them as
19 an expert in that area. The fact that a witness is
20 qualified as an expert in an area to give an opinion on
21 that area does not mean that you are required to accept
22 that opinion. Like any other witness, you may place
23 whatever weight on the person's testimony that you, as
24 the judges of the facts, deem appropriate.

25 The defendant has pled not guilty to these

1 indictments. And that plea puts the burden on the State
2 to prove the defendant guilty. A person charged with
3 committing a criminal offense is never required to prove
4 himself innocent. I charge you that it is an important
5 rule of the law that a defendant in a criminal trial, no
6 matter what the seriousness of the charge may be, will
7 always be presumed to be innocent of the crime for which
8 the indictment was issued unless guilt has been proven by
9 evidence satisfying you of that guilt beyond a reasonable
10 doubt.

11 The presumption of innocence does not end when you
12 begin your deliberations. But it accompanies the
13 defendant throughout the trial until you reach a verdict
14 of guilt based on the evidence satisfying you of that
15 guilty beyond a reasonable doubt. The presumption of
16 innocence is like a robe of righteousness placed about
17 the shoulders of the defendant which remains with the
18 defendant until it has been stripped from the defendant
19 by evidence satisfying you of the defendant's guilt
20 beyond a reasonable doubt.

21 The presumption of innocence is not mere legal
22 theory. It is not just a phrase. It is a substantial
23 right to which every defendant is entitled unless you,
24 the jury, are satisfied from the evidence of the
25 defendant's guilt beyond a reasonable doubt.

1 In order to establish criminal liability, criminal
2 intent is required. For example, the mental state
3 required to be proven by the State for a particular crime
4 might be purpose, intent, knowledge, recklessness or
5 criminal negligence. Criminal intent must be proven by
6 the State beyond a reasonable doubt. Criminal intent is
7 always a matter that must be determined by the jury from
8 the circumstances surrounding the situation.

9 There is no way to prove intent to a mathematical
10 certainty. There's no way medical science can dissect a
11 person's brain and determine what the person had in mind.
12 So the law says that criminal intent may be inferred from
13 the circumstances shown to have existed. This is how you
14 make a determination of whether or not the element
15 requiring intent was present.

16 It is not necessary to establish intent by direct
17 and positive evidence, but intent may be established by
18 inference in the same way as any other act, by taking
19 into consideration the acts of the parties and all the
20 facts and circumstances of the case.

21 Criminal intent is a mental state, a conscious
22 wrongdoing. It is up to you to determine what the
23 defendant intended to do based on the circumstances shown
24 to have existed. Criminal intent can arise from action
25 or a failure to act. It may arise from negligence,

1 recklessness or an indifference to duty or to
2 consequences that is considered by the law to be the
3 equivalent of criminal intent.

4 The indictments in this case charge the defendant
5 with attempted murder, possession of a weapon during the
6 commission of a violent crime, obstruction of justice,
7 unlawful sale or delivery of a pistol to and possession
8 by certain persons. I remind you that the fact that the
9 defendant was arrested, charged and indicted in this case
10 is not evidence in this case and cannot be considered by
11 you as evidence of guilt in this case, nor does it create
12 any presumption or inference of guilt. These documents
13 are simply the formal written instruments which contain
14 the charges made against the defendant. They are the
15 formal documents by which the case is brought into court.

16 The defendant is charged with attempted murder. In
17 order to prove this crime, the State must prove that the
18 defendant attempted to kill another person with malice
19 aforethought, either expressed or implied. Malice is
20 hatred, ill will or hostility toward another person. It
21 is the intentional doing of a wrongful act without just
22 cause or excuse and with an intent to inflict an injury
23 or under circumstances that the law will infer an evil
24 intent.

25 Malice aforethought does not require that malice

1 exist for a particular time before the act is committed,
2 but malice must exist in the mind of the defendant just
3 before and at the time the act is committed. Therefore,
4 there must be a combination of the previous evil intent
5 and the act.

6 Malice aforethought may be expressed or inferred.
7 These terms, expressed and inferred, do not mean
8 different kinds of malice but merely the manner in which
9 the malice is shown to exist. That is either by direct
10 evidence or by inference from the facts and circumstances
11 which are proved.

12 Expressed malice is shown when a person speaks words
13 which express hatred or ill will toward another or when
14 the person prepared beforehand to do the act which was
15 later accomplished. For example, lying in wait for a
16 person or any other acts of preparation going to show
17 that the deed was within the defendant's mind would be
18 expressed malice. Malice may be inferred from conduct
19 showing a total disregard for human life.

20 If facts are proved beyond a reasonable doubt
21 sufficient to raise an inference of malice to your
22 satisfaction, this inference would be simply an
23 evidentiary fact to be considered by you, the jury, along
24 with other evidence in the case. You may give it what
25 weight you decide it should receive.

1 A specific intent to kill is an element of attempted
2 murder. Intent means intending the result which actually
3 occurs, not accidentally or involuntarily. Intent may be
4 shown by acts and conduct of the defendant and other
5 circumstances from which you may naturally and reasonable
6 infer intent. Evidence of the character of the act, the
7 character of the instrument used, the manner in which it
8 was used, and the purpose accomplished and the resulting
9 wounds or injuries may be considered in determining the
10 intent in which the act was committed. Intent may also
11 be inferred when it is demonstrated that the defendant
12 voluntarily and willfully commits an act, the natural
13 tendency of which is to destroy another's life.

14 The defendant is charged with the possession of a
15 weapon during the commission of or attempt to commit a
16 violent crime. The State must prove beyond a reasonable
17 doubt that the defendant was in possession of a firearm
18 or visibly displayed what appeared to be a firearm during
19 the commission of a violent crime. A firearm means any
20 machine gun, automatic rifle, revolver, pistol or any
21 weapon which is designed to or may be readily converted
22 to expel a projectile.

23 In order to find the defendant guilty of possession
24 of a weapon during the commission of a violent crime, you
25 must first find the defendant guilty of either committing

1 a violent crime or attempting to commit a violent crime.
2 Attempted murder is a violent crime. The State must
3 prove beyond a reasonable doubt that the weapon further
4 advanced or helped in the commission of the crime.

5 The defendant is charged with obstruction of
6 justice. The State must first prove beyond a reasonable
7 doubt that the defendant committed an act which
8 prevented, obstructed, impeded or hindered the
9 administration of justice. The State must also prove
10 beyond a reasonable doubt that the defendant did the act
11 with the intent to obstruct justice. The defendant does
12 not have to succeed in the effort to obstruct justice.
13 It is enough if some act is done in furtherance of the
14 attempt to obstruct justice.

15 The defendant's also charged with unlawful sale or
16 delivery of a handgun to and possession by a certain
17 person. It is unlawful for a person who has been
18 convicted of a crime of violence in any court of the
19 United States, the several states, commonwealths,
20 territories, possessions or the District of Columbia who
21 is a fugitive from justice or habitual drunkard or a drug
22 addict or who has been adjudicated mentally incompetent
23 to possess or acquire handguns within this state. A
24 crime of violence means murder, manslaughter, rape,
25 mayhem, kidnapping, burglary, robbery, housebreaking,

1 assault with intent to kill, commit rape or rob, assault
2 with a dangerous weapon or assault with intent to commit
3 any offense punishable by imprisonment for more than one
4 year. A handgun means any firearm designed to expel a
5 projectile and designated to be fired from the hand.

6 I instruct you and emphasize that the fact that the
7 defendant did not testify is not a factor to be
8 considered by you in any way in your deliberation and in
9 your consideration on the questions of the guilt or
10 innocence of the defendant. It must not be considered by
11 you in any manner whatsoever. A defendant has the
12 constitutional right to remain silent, and the assertion
13 of this right must not be considered by you in your
14 deliberations. I repeat, under your oath, you are to
15 draw no conclusion whatsoever from the fact that the
16 defendant in this case did not testify. The fact that
17 this defendant did not testify should not even be
18 discussed in the jury room.

19 The burden of proof, as I have stated to you, is on
20 the State. The defendant is not required to prove his
21 innocence. The burden of proof remains on the State to
22 prove guilt beyond a reasonable doubt.

23 Statements alleged to have been made by the
24 defendant have been admitted into evidence in this case.
25 While the Court has determined that the statements are

1 admissible, I instruct you that you make the ultimate
2 decision of whether or not the defendant made the
3 statements. If the defendant did make the statements,
4 you must determine whether the statements were made by
5 the defendant voluntarily and of his own free will. This
6 means that the statements were not caused by pressure,
7 force, fear, threats, coercion or intimidation or by hope
8 of a promise or leniency or of a reward of any kind.

9 In determining whether the statement was voluntary,
10 you should consider both the characteristics of the
11 defendant and details of the questioning. Some of the
12 factors you must consider are the age of the defendant,
13 the defendant's education or lack of education, the
14 defendant's mental ability or capacity, the defendant's
15 IQ or intelligence, the defendant's background and
16 environment, the place and length of detention, the
17 nature of questioning, the advice or lack thereof to the
18 defendant of his constitutional rights including, but not
19 limited to, the right to remain silent, that any
20 statement could be used against him in a court of law,
21 the right to have a lawyer present, that if he could not
22 afford a lawyer, a lawyer would be appointed to represent
23 him without any cost, and that he could stop making the
24 statement at any time. You must carefully consider all
25 the surrounding circumstances before you give any weight

1 to the alleged statements.

2 The State has a burden of proving beyond a
3 reasonable doubt that the alleged statements were
4 voluntary. If you determine that they were, you may give
5 the statements any further consideration that you deem
6 proper. You must decide what weight, if any, should be
7 given to the statements. If you determine that the
8 alleged statements were not free and voluntary statements
9 of the defendant, you should not consider them at all.

10 Insanity caused by the use of drugs or alcohol may
11 be a defense if the insanity is permanent and destroys
12 the defendant's ability to know right from wrong.
13 However, when voluntary intoxication has not produced
14 permanent insanity, it is not a defense to a crime. A
15 person who voluntarily becomes intoxicated is just as
16 responsible for the acts committed while intoxicated as
17 when the person is not intoxicated. Voluntary
18 intoxication does not impair a defendant's ability to act
19 with malice aforethought.

20 The defendant has raised the defense of accident.
21 An act may be excused on the ground of accident if it is
22 shown that the act was unintentional, that the defendant
23 was acting lawfully and that reasonable care was used by
24 the defendant in the handling of the weapon.

25 Ladies and gentlemen, we are almost to the point

1 where I send you to the jury room to begin your
2 deliberations. This has been a long instruction on the
3 law, but I will leave you with some final thoughts. You
4 were chosen by the parties to be jurors in this case
5 because both sides believed you could be fair and
6 impartial in deciding this case. I instruct you to make
7 use of your life experiences, your good common sense and
8 your sense of logic and reason in evaluating the evidence
9 in this case. You are not partisans or advocates for
10 either side. You have no friends to reward nor any
11 enemies to punish. You are the judges of the facts.
12 Your sole interest is to find the truth from the evidence
13 presented in this case.

14 Be courteous with one another, listen to the views
15 of your fellow jurors. Take the amount of time necessary
16 for you to thoroughly evaluate the evidence. This case
17 is important to both sides as this is their only day in
18 court.

19 Now, Mr. Foreman, I'm going to go over the verdict
20 form with you.

21 THE JUROR: Okay.

22 THE COURT: The verdict form lists each
23 indictment. And it has first attempted murder, then it
24 has two choices, not guilty or guilty of attempted
25 murder.

1 Now, let me say at the outset, place no significance
2 on the order in which the choices are placed on the
3 paper. One simply had to go on the page before the
4 other.

5 If you go to the second page, you have the
6 possession of a weapon during the commission of a violent
7 crime. You have the same choices, guilty or not guilty.
8 Now, on that charge, possession of a weapon during the
9 commission of a violent crime, in order to find the
10 defendant guilty of that offense, you will have first had
11 to have found him guilty of attempted murder. If you
12 find him not guilty of attempted murder, then not guilty
13 would be the appropriate choice on that offense. Those
14 are the two that are under the same indictment and are
15 linked together.

16 MR. FOREMAN: I understand, Your Honor.

17 THE COURT: The third one is obstruction of
18 justice. Same choices. The last one is the unlawful
19 sale or delivery of a pistol to and possession by certain
20 persons and with the same choices.

21 There is a line at the bottom for you to sign once
22 the jury has reached a verdict. Your verdict must be
23 unanimous. All jurors must agree. Okay?

24 Now, what I am going to do is I'm going to have you
25 go to the jury room at this point. Do not begin your

1 deliberations until I send the verdict form back with the
2 exhibits and instruct you to begin your deliberations.

3 So, Mr. Bailiff, if you would take the jury back to
4 the jury room.

5 (WHEREUPON, the jury exited the open court at
6 approximately 12:26 p.m.)

7 THE COURT: Okay. Any exceptions from the
8 State to my jury charges?

9 MS. REEVES: No, sir.

10 THE COURT: Any exceptions from the Defense?

11 MR. YOUNG: No, sir, your Honor.

12 THE COURT: Okay. I would like the attorneys
13 to come forward and make sure all the exhibits are there,
14 and then we'll send those back to the jury room with the
15 jury verdict form.

16 (WHEREUPON, court stood at ease while the attorneys
17 reviewed the evidence.)

18 THE COURT: Okay. Let me make sure on the
19 record. Each attorney's had an opportunity to view the
20 exhibits?

21 MS. REEVES: (Nodded head up and down in the
22 affirmative)

23 MR. YOUNG: (Nodded head up and down in the
24 affirmative)

25 THE COURT: All right. Are all the exhibits

1 present?

2 MS. REEVES: Yes, sir.

3 MR. YOUNG: Yes, sir.

4 THE COURT: Okay.

5 Mr. Clerk, send the verdict form and the exhibits
6 back to the jury and instruct them they may begin their
7 deliberations.

8 THE CLERK: Yes, sir.

9 THE COURT: We will now go into recess.

10 (WHEREUPON, the verdict forms and exhibits were
11 delivered to the jury at approximately 12:32 p.m.
12 after which court stood at recess awaiting the
13 verdicts of the jury.)

14 THE COURT: Okay. Let's go on the record. All
15 right. Counsel, I've been informed the jury has reached
16 a verdict. Anything before we bring the jury in ...

17 From the State?

18 MS. REEVES: No, sir.

19 THE COURT: Anything from the Defense?

20 MR. YOUNG: No, sir, Your Honor.

21 THE COURT: Mr. Bailiff, you can bring our jury
22 in, please, sir.

23 (WHEREUPON, the jury entered the open court at
24 approximately 1:57 p.m.)

25 THE COURT: All right. Mr. Foreman, has the

1 jury reached a verdict?

2 MR. FOREMAN: Yes, we have, Your Honor.

3 THE COURT: Could you hand that verdict to the
4 bailiff, please, sir?

5 (WHEREUPON, the verdict form was handed up to the
6 Court.)

7 THE COURT: Okay.

8 THE CLERK: If it pleases the Court?

9 THE COURT: Yes, sir..

10 THE CLERK: This is the State of South
11 Carolina, County of Anderson in the Court of General
12 Sessions, indictments number 2014-GS-04-01278, 2014-GS-
13 04-01276, and 2015-GS-04-01382. This is the verdict form
14 in the case of the State of South Carolina versus Billy
15 Ray Smith, defendant.

16 On indictment number 2014-GS-04-01278, attempted
17 murder, we, the jury, unanimously find on this indictment
18 that the defendant, Billy Ray Smith, is guilty of
19 attempted murder.

20 Under indictment number 2014-GS-04-01278, possession
21 of a weapon during the commission of a violent crime. To
22 find the defendant guilty of possession of a weapon
23 during the commission a violent crime, the defendant must
24 be also found guilty of attempted murder. We, the jury,
25 unanimously find under this indictment that the

1 defendant, Billy Ray Smith, is guilty of possession of a
2 weapon during the commission of a violent crime.

3 Under indictment number 2014-GS-04-01276,
4 obstructing justice, we, the jury, unanimously find on
5 this indictment that the defendant, Billy Ray Smith, is
6 guilty of obstructing justice.

7 Under indictment number 2015-GS-04-01382, the
8 unlawful sale or delivery of pistol to and possession by
9 certain persons, we, the jury, unanimously find under
10 this indictment that the defendant, Billy Ray Smith, is
11 guilty of unlawful sale or delivery of pistol to and
12 possession by certain persons.

13 This is signed by the foreperson of the jury in
14 Anderson, South Carolina on November the 18th, 2015.

15 Ladies and gentlemen of the jury, if this your
16 unanimous verdict will you please raise your hand?

17 (WHEREUPON, all jurors' hand were raised.)

18 THE CLERK: Your Honor, I believe everybody has
19 so indicated.

20 THE COURT: Okay. Anything from the State
21 before I release the jury?

22 MS. REEVES: No, sir.

23 THE COURT: Anything from the Defense?

24 MR. YOUNG: No, sir, Your Honor.

25 THE COURT: Ladies and gentlemen, we thank you

1 for your service this week. This will conclude your jury
2 service for the week. Anyone needing a statement for
3 work or any questions about their service can contact the
4 clerk of court.

5 Thank you for service. Jury service is so important
6 for our system. Our system could not function without
7 citizens being willing to serve as jurors. So I thank
8 you for that. You are now dismissed.

9 (WHEREUPON, the jury exited the open court at
10 approximately 2:01 p.m.)

11 THE COURT: Okay. We are going to stand down
12 for just a moment. I'll give each attorney an
13 opportunity to gather whatever you'd like to present to
14 me for sentencing purposes. The clerk's getting the
15 sentencing sheets together. So if you want to take about
16 five minutes. And you may have people who wish to
17 address the Court, so we'll be in recess for just a brief
18 period of time.

19 (WHEREUPON, court stood in recess for a short
20 break.)

21 THE COURT: All right. Let's go on the record.
22 Ms. Reeves, I will hear from the State first.
23 And then Mr. Young, I will hear from the Defense any
24 persons you wish to present.

25 Mr. Young, would you and your client -- bring your

1 client and come forward to the rail.

2 (WHEREUPON, counsel and the defendant approached the
3 bar.)

4 THE COURT: All right. Ms. Reeves?

5 MS. REEVES: Thank you, Judge.

6 Judge, the State feels that the maximum sentence is
7 appropriate in this case. The defendant was, of course,
8 given multiple opportunities to plead guilty. And at
9 that point, the State had offered fifteen years. And he
10 chose to have a jury trial. And now we have done that.
11 I think that the verdict has been decided, and I think
12 the victim and her family will tell you how much they've
13 suffered because of this defendant's acts. And they were
14 intentional acts. And I think he meant to kill her. And
15 luckily, she didn't die.

16 THE COURT: Okay. Yes, ma'am. State your name
17 for the record.

18 MS. PATTERSON: Sarah Patterson, P-A-T-T-E-R-S-
19 O-N.

20 THE COURT: Yes, ma'am, Ms. Patterson. I'll be
21 happy to hear from you.

22 MS. PATTERSON: First, I want to state through
23 a daughter's eyes, I will always love my daddy. Over the
24 past nineteen months, my family has been through hell.
25 Along the way, God has put our hearts back together. The

1 tragedy that took place has been horrible. I've slowly
2 watched my mother start to live again, and I've watched
3 my dad slowly die inside. Although I'm torn between both
4 worlds, I stand beside my mother.

5 There has also been victory in this family. My
6 parents are sober and my mother is alive. I've tried to
7 be a daughter regardless of what my dad has done, and it
8 was never good enough. It has been all about him from
9 the beginning.

10 I'm asking that he receive the full sentence and is
11 removed from us as far as possible, the reason being he
12 will never stop. He will never leave my mother alone.
13 Knowing he is locked up gives me peace that my mother is
14 safe and he will remain sober. For twenty-five years, I
15 tried to have a relationship with my dad other than abuse
16 or addiction. It's time for me to let go. It's time for
17 peace for our family. He has had more chances than most
18 fathers and husbands.

19 It's time to stop blaming others and truly face what
20 you have done. I also realize how many times we begged
21 you to change. Saying all of this, I forgive you. I
22 love you, but it's time for this to be over. Today God
23 has broke the chains, and now we can truly heal and have
24 peace in our lives.

25 THE COURT: Okay. Thank you, Ms. Patterson.

1 Yes, ma'am?

2 MS. SMITH: I'm Sandra, initial K., Smith, S-M-
3 I-T-H.

4 THE COURT: Yes, ma'am, be happy to hear from
5 you.

6 MS. SMITH: This has been the most traumatic
7 nineteen months I've ever thought in my life I'd
8 experience and see my family go through. I'm so thankful
9 that I lived through it. I'm glad this wasn't a murder
10 trial. I didn't die physically that day. But any
11 affection and love I had for that man, Bill Smith, it
12 died. It's gone. I forgive because if I don't forgive,
13 it's just going to linger in my heart, the hurt. And I
14 can't do that anymore. I can't bounce off the walls
15 emotionally. And I won't. And I believe by forgiving,
16 me forgiving, is going to help my precious two parents,
17 my brother, my sisters, my two children emotionally to
18 also heal.

19 And like Sarah said, the chain's broken, and it's
20 time for healing. I've had to work on myself. After
21 five months in the hospital, I went into Miracle Hill
22 Shepherd's Gate for safety and accountability. I knew I
23 needed accountability. I knew I had to deal with my own
24 issues. And I've been sober for nineteen month. And God
25 has been doing an emotional healing in me that I want to

1 spread to my family for them to have some peace. If they
2 know I'm okay, they'll be okay. And I do believe with
3 all my heart it should have been guilty like it was
4 today. And I'm in agreement. Yes, I do agree it ought
5 to be a stiff sentence. That's all.

6 THE COURT: Okay. Thank you, ma'am.

7 Any other?

8 MS. REEVES: Would you like to hear his prior
9 record? No other speakers.

10 THE COURT: No others? Okay. Now, I need you
11 -- you anticipated my next question. What is his prior
12 record?

13 MS. REEVES: Your Honor, you already know about
14 the 1978 housebreaking and grand larceny convictions. He
15 had six counts. He had another grand larceny in 1983, a
16 D.U.I. and simple possession from 1990, a D.U.I., failure
17 to stop, and D.U.S. as well as a C.D.V. from 1991.
18 Driving under suspension from '92. Two driving under
19 suspensions for '93. Simple possession of marijuana and
20 assault and batter in '94. In '97 he had -- yes, I'm
21 sorry. In '97 C.D.V.; '99 C.D.V.; 2001 C.D.V. high and
22 aggravated and a C.D.V. And then a 2005 and '06 assault
23 and batteries.

24 THE COURT: Were the C.D.V.s -- was this lady
25 the victim in those C.D.V.s?

1 MS. REEVES: His son was actually the victim.
2 It was a C.D.V. high and aggravated. The rest he was
3 trying to get at his wife, and he kicked in the door and
4 broke his son's arm when he was about nine or ten. The
5 rest did involve this victim, yes.

6 THE COURT: Okay. Thank you, Ms. Reeves.

7 All right. Mr. Young?

8 MR. YOUNG: Your Honor, if it please the Court,
9 Mr. Smith is fifty-five years old. He suffers from a
10 number of health problems that we have presented to the
11 Court previously in our requests for bond reductions.
12 Quite frankly, Your Honor, I think any sentence that is
13 given to him today is the equivalent of a death sentence,
14 given some of the medical problems that he has and given
15 his age. I just ask the Court to be as lenient as
16 possible.

17 The solicitor, her request for the maximum sentence,
18 based on what I heard in her argument is basically
19 because Mr. Smith asked for his constitutional right to
20 be tried for a jury. I don't think that is a basis to
21 punish him or give him a harsher sentence.

22 The solicitor's office did extend a plea offer to
23 him that would have been the equivalent -- or at least
24 the maximum offer was a fifteen-year sentence. The State
25 thought that that was a reasonable sentence when they

1 made that offer. And to give anything more than that, in
2 my opinion, would only be punishing him for exercising
3 his right to a jury trial.

4 When everything that Your Honor have heard, his
5 position has been that this was an accident and not an
6 intentional act. So we would ask the Court to take that
7 into consideration.

8 I'm not sure if Mr. Smith would like to address the
9 Court. But before he addresses the Court, his brother is
10 present in the Court. And we would ask that he come
11 forward and speak to the Judge.

12 THE COURT: Yes, sir. Come around to the front
13 so everyone can hear you. Yes, sir. State your name for
14 the record.

15 MR. SMITH: Nathan Smith.

16 THE COURT: All right. Mr. Smith, I'll be
17 happy to hear from you.

18 MR. SMITH: Yeah. I mean, I know it's a tragic
19 situation. And I don't know what all went on there that
20 night, but, Your Honor, I don't believe in my heart that
21 my brother intended to kill his wife. Now, I know the
22 facts as presented. But, I mean, me and my brother grew
23 up on a farm, and we grew up hunting and fishing. And he
24 knew a good bit about guns. And I mean, I'm pretty sure
25 he knows as much as I do. And if I was trying to kill

1 somebody with a twenty-two, I wouldn't have stopped at
2 one shot. I mean, I would have emptied it, you know.
3 That's a weaker gun.

4 But I just hope, Your Honor, that you can be as
5 lenient on him as possible because he is in bad health,
6 very bad. And I hate to see this happen to him. But,
7 you know, like I said, nobody was there but him and his
8 wife. So they're the only two that knows what happened.

9 THE COURT: Thank you, Mr. Smith.

10 Mr. Young, would your client like to say anything?

11 THE DEFENDANT: Yes, sir.. That night we was
12 both pretty intoxicated. And I was getting the gun for a
13 gift for her. And the gun was in my hand. I'm
14 responsible for it. It was my fault. The gun fired.
15 She was shot. I panicked and went out to get my son.
16 And once I got to where my son was, I really don't
17 remember what was going on from then until I realized
18 that all the blue lights and red lights and stuff was in
19 my yard and what had happened. And that's when I told
20 the truth exactly what had really happened, you know.

21 Actually, the gun did come from my son and David. I
22 was going to purchase it from them two boys for my wife
23 as a gift. It wasn't intentionally. I'd like to
24 apologize to my wife so deeply. And I'm not going to ask
25 for no mercy because I don't deserve none. But Your

1 Honor, as bad as health as I'm in, if you're going to
2 give me thirty, give me a legal injection. That's just
3 the way I feel. And I'm sorry to worry my family so bad.
4 And I hate it. But it was a terrible tragic accident.
5 But I deserve what you're going to give me. So, you
6 know, I'm sorry it cost the State so much, but I actually
7 thought that I might have a chance to be found not guilty
8 because I really had no intentions of shooting my wife
9 that night. None at all. That hadn't even crossed my
10 mind.

11 My son lied. He said that he went fishing with me
12 that day. He did not, Your Honor. He knows it. I went
13 by myself. There were several things that was said that
14 wasn't true. But most of -- a lot of them was true. And
15 they know what was what. And I'm not going to crucify
16 him for how he feels because when him and David -- I was
17 getting the gun for her as a gift. And it was a bad,
18 tragic accident. And I'm so sorry to my family. And I
19 just want them to forgive me. And whatever the Judge
20 wants to do and the courts, I guess I deserve it all.
21 Thank you, sir.

22 THE COURT: Thank you, Mr. Smith.

23 All right. How long has your client been in jail,
24 Mr. Young?

25 MR. YOUNG: Since the date of the incident. I

1 don't know the exact days.

2 MS. REEVES: He's been in since April 23rd. So
3 I have calculated that to be five hundred and seventy-
4 four days.

5 THE DEFENDANT: Eighteen months on the 22nd
6 exactly, Your Honor.

7 THE COURT: So five hundred and seventy-four
8 days time served?

9 MS. REEVES: Yes, sir.

10 THE COURT: I've heard the testimony in the
11 case. And this is a tragic, tragic case. I see a family
12 that's been ripped apart.

13 THE DEFENDANT: Yes, sir. You're right.

14 THE COURT: I see lives that have been
15 affected. And we really are fortunate that this wasn't a
16 murder case. Really, I mean, we've got a lady who has
17 been maimed for life on account of this incident. I'm
18 taking into account the prior record.

19 Mr. Young, I'm very concerned that it's the same
20 victim in the case. However, I'm not going to punish the
21 defendant for exercising his right to a jury trial.
22 That's every citizen's fundamental right is to a jury
23 trial. So that's not being taken into consideration at
24 all. But after hearing the testimony and considering the
25 circumstances this is the sentence.

1 On 2014-GS-04-01278, the defendant would be confined
2 to the Department of Corrections for a term of twenty
3 years. That would be under the condition that he be
4 given credit for five hundred and seventy-four days time
5 served.

6 The second charge under that indictment -- that was
7 on the attempted murder. On the possession of a weapon
8 during a violent crime, he would be confined to the
9 Department of Corrections for a term of five years
10 concurrent.

11 The unlawful sale of a pistol or delivery of pistol
12 or possession by certain person, indictment 2015-GS-04-
13 1382, he will be sentenced to five years concurrent.

14 And 2014-GS-04-01276, obstruction of justice, he'll
15 be sentenced to five years concurrent. And, of course,
16 he gets credit for the five seventy-four days time
17 served.

18 Good luck to you, sir.

19 MR. YOUNG: Thank you, Your Honor.

20 (WHEREUPON, court stood at recess in this case.)

21 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

1

CERTIFICATE OF REPORTER

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I, the undersigned Renee H. Tollison, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the day of 2015.

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This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

April 15, 2016

S/ *Renee H. Tollison*

Circuit Court Reporter

WITNESSES

Williamston Police Dept.

Kevin G. Marsee

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

TRUE BILL

SEP 29 2015

Foreperson of Grand Jury
Date:

Foreperson

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2015-GS-04-01382

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

SEP 29 2015

TERM

THE STATE

VS.

BILLY RAY SMITH

INDICTMENT FOR

**UNLAWFUL SALE OR DELIVERY OF
PISTOL TO AND POSSESSION BY
CERTAIN PERSONS**

SC Code: § 16-23-0030
CDR Code: 2364

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

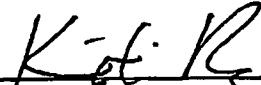
SEP 29 2015

At a Court of General Sessions, convened on _____, the Grand
Jurors of Anderson County present upon their oath:

**UNLAWFUL SALE OR DELIVERY OF PISTOL TO AND POSSESSION BY CERTAIN
PERSONS**

The defendant, Billy Ray Smith, did on or about April 22, 2014, in Anderson County, South Carolina, unlawfully possess or acquire a handgun after having been convicted of a crime of violence in any court of the United States, the several states, the commonwealths, territories, possessions or the District of Columbia or is otherwise a fugitive from justice. All in violation of 16-23-0030 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



KRISTIN W. REEVES
ASSISTANT SOLICITOR

DOCKET NO. 2014-GS-04-01278

WITNESSES

Kevin G Marsee, Williamston Police Dept.

The State of South Carolina**County of Anderson****COURT OF GENERAL SESSIONS****JUL 22 2014****Term****ARREST WARRANT NUMBER**

2014A0420900041 & 2014A0420900043

THE STATE**VS.****Billy Ray Smith****ACTION OF GRAND JURY****TRUE BILL****JUL 22 2014**

Foreperson of Grand Jury

Date:

VERDICT**KWR****Indictment for****Murder/Attempted Murder**

SC Code: 16-03-0029

CDR Code: 3410

**Possession of a Firearm during the commission
of a violent crime**

SC Code: 16-23-490

CDR Code: 0549

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

JUL 22 2014

At a Court of General Sessions, convened on _____, the Grand Jurors of

Anderson County present upon their oath:

Murder/Attempted Murder

That Billy Ray Smith did in Anderson on or about April 22, 2014, did unlawfully with malice aforethought and with the intent to kill, attempted to kill Sandra Smith. This is in violation of 16-3-29 of the South Carolina Code of Laws (1976) as amended.

Possession of a Firearm During the Commission of a Violent Crime

That Billy Ray Smith did in Anderson on or about April 22, 2014 possess a firearm during the commission of a violent crime, to wit: Attempted Murder. This is in violation of 16-23-490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

K. R.
ASSISTANT SOLICITOR

DOCKET NO. 2014GS04 012'16

WITNESSES

Kevin G Marsee, Williamston Police Dept.

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

JUL 22 2014

Term

ARREST WARRANT NUMBER

2014A0420900040

THE STATE

vs.

Billy Ray Smith

ACTION OF GRAND JURY

TRUE BILL

JUL 22 2014

Foreperson of Grand Jury
Date:**VERDICT**

KWR

Indictment for**OBSTRUCTING/OBSTRUCTING JUSTICE**

SC Code: C/L, 17-25-0030

CDR Code: 0118

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF Anderson)

At a Court of General Sessions, convened on JUL 22 2014, the Grand Jurors of Anderson County present upon their oath:

OBSTRUCTING/OBSTRUCTING JUSTICE

That Billy Ray Smith did in Anderson County, on or about April 22, 2014, unlawfully act in a manner which prevents, obstructs, impedes or hinders the administration of justice. This is in violation of the Common Law of the State of South Carolina, Section 17-25-30, Code of Laws of South Carolina (1976 as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR



POLICE DEPARTMENT

INTERVIEW: ADVICE OF RIGHTS

PLACE: Williamston PD
 DATE: 4-22-14 11:58
 TIME: 11:58pm

Before we ask you any questions, you must understand your rights.

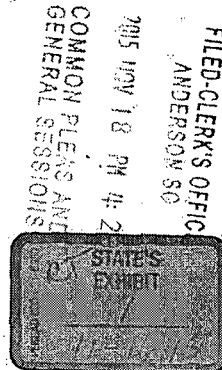
1. You have the right to remain silent.
2. Anything you say can be used against you in court.
3. You have the right to talk to a lawyer for advice before we ask you any questions and to have a lawyer with you during questioning.
4. If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.
5. If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER OF RIGHTS

I, Billy Ray Smith, the undersigned, have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

SIGNED: [Signature]WITNESS: [Signature]

WITNESS: _____

TIME/DATE: 12:00 AM 4-23-2014



POLICE DEPARTMENT

INTERVIEW: ADVICE OF RIGHTS

PLACE: Williamston Police
DATE: 4/23/14
TIME: 2:45

Before we ask you any questions, you must understand your rights.

1. You have the right to remain silent.
2. Anything you say can be used against you in court.
3. You have the right to talk to a lawyer for advice before we ask you any questions and to have a lawyer with you during questioning.
4. If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.
5. If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER OF RIGHTS

I, Billy Smith, the undersigned, have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

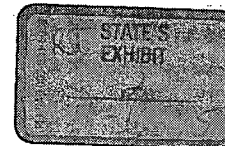
SIGNED: Billy Smith

WITNESS: Karen Mamm

WITNESS: for

TIME/DATE: _____

FILED-CLERK'S OFFICE
ANDERSON SC
NOV 18 PM 4:20
COMMON PLEAS AND
CRIMINAL SESSIONS



VOLUNTARY STATEMENT

DATE 4/23, 20 14, TIME 21:45 M. PLACE Williamston P.D.
 I, Billy Smith, am 53 years old and I live at S Hamilton

I am giving this statement to Kevin Marsue, I.D. _____, who has identified himself as a Police officer

and he has duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all; that any statement I make may be used against me at my trial; that any statement I make may be used as evidence against me in court; that I have the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at any time.

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises or offers of leniency or favors, and without compulsion or persuasion by any person or persons whomsoever:

I have lived in Williamston most of my life. My children went to Salnetta High School. I completed the 9th grade at Scheide Junior High School in Anderson, SC. My wife is Jean Star and she works at the Deli in Wal-Mart in Simpsonville.

Yesterday I went with my son Billy to go to B & B Pawn Shop and the ADSAP place at 9:00-10:00 AM. We were in Anderson for a couple hours and when we came back we went to Noddy Road to my son's trailer. My son showed me a .22 pistol that he had. We went outside and he was showing the gun toward a trash can. Billy told me he thought something was wrong with the gun. I told him I thought it was the bullets. Before we arrived at his trailer we had gone to B & B in Anderson and we also had stopped at Foothill Pawn in Williamston to get some bullets. I cannot remember who paid for them, my son showed his F.D. to try them. David was also at the trailer and Billy and David also had another gun that was a .22. It was also a revolver and it was silver.

I have read this statement consisting of _____ page(s) of which bears my signature, and I do affirm that all facts and statements contained herein are true and correct.

Billy Smith
 Signature of person making voluntary statement

The above warnings were given by and this voluntary statement was taken by

Kevin Marsue
 (This must be one and the same person as named above)

Witness



Date 4/23/14

Page No. 2

STATEMENT OF:

It had a lone handle. We shot both the guns Billy and myself. We shot them with the new bullets till the guns were empty. I wanted the .22 that was black in color.

Daniel and Billy rode back with me to 5 Nimitz Street. I wanted to show the gun to my wife because I was going to buy it for her for protection. When we got to Nimitz Street, Daniel and Billy went to work with Chris Guthrie, who lives across the street, to put lights on his boat. This was around 2:00-3:00 PM.

I went fishing at Cedar Dam, I caught 2 fish. I was gone about an hour and a half. At this time either Billy or Daniel had the .22 that I wanted to buy.

I pulled across the street and I told Billy I wanted to show the gun to his mother. He told me that he wanted to take my shotguns so he could shoot it. I would fold the .22 and he would keep the shotguns. Billy came to the house and got the shotguns I already had the .22. He left right away and went back to Chris Guthrie's house. Chris Guthrie carried Daniel and Billy home at this time. My wife saw the gun right away. We were not drunk that much at the time.

I read 2:00-8:00 PM my wife and I started watching TV & drinking. We were drinking Four Seasons & Budweiser and I was also drinking Rock & Rye. I drank about half a quart. I had also taken some Oxycodone. I took one at 6:00 AM and I took another at 6:00 PM.

Billy Smith

John L.

Julia

STATEMENT OF:

Date

4/23/14

Page No.

3

I pulled out the gun and started playing with it. I was spinning it around on my fingers. I tossed the gun to my wife and it landed on the couch. She picked it up and began to play with it. She pointed the gun at me and she was laughing saying "I will shoot you". Then she points it at herself and says I will shoot me. Shortly after she threw it back to me. We tossed the gun back and forth 2 times. On the second time she threw it at me when I caught it the gun it went off.

When we were playing with the gun, I was seated on a recliner located to the right side of the love seat. I drew Capt. Marsee a diagram of where I was seated. My wife was seated to my left side on the right side of the love seat. My wife was wearing some type of pajama suit.

After the gun went off I held my wife's face in my hands. She was breathing. I left right away and took the gun and drove my 4 overwheeler to my son's house on Ripley Road. When I got to my son's house (Trailer) the door was open and Billy, my son, and David were sitting in the living room. I told my son we got to go, I shot your mama. I gave the gun to Billy, my son. Billy, David and I went back to 5 Hamilton. Billy drove the car. Billy called the police and ambulance. I thought when I shot my wife that she was going to die that's why I panicked and ran to my son's trailer.

Billy Smith

J. K. K.

RECEIVED

NOV 29 2016

SC Court of Appeals

391

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "David Alexander", written over a horizontal line.

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 29th day of November, 2016.