

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Larry B. Hyman, Circuit Court Judge

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JUN 08 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ROBERT CARL WARE,

APPELLANT

APPELLATE CASE NO. 2016-000133

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

J. ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

SHERRIE BUTTERBAUGH
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

JIMMY A. RICHARDSON, II
Solicitor, Fifteenth Judicial Circuit
P.O. Box 1276
Conway, SC 29528

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**
2 COUNTY OF HORRY) CASE NO.: 2014-GS-26-04138,
3 2014-GS-26-04139
4 -----

5 January 11-14, 2016

6 **BEFORE:** The Honorable Larry B. Hyman, Jr.

7 -----
8 STATE OF SOUTH CAROLINA,

9 Plaintiff,

10 vs.

11 ROBERT WARE,

12 Defendant.
13 -----

14
15 APPEARANCES:

16
17 George DeBusk, Esq.
18 J. Stephen Grooms, Esq.
19 Attorneys for the State.

20 Grant Smaldone, Esq.
21 Attorneys for the Defendant.

22 Official Court Reporter
23 Natalie Dahl, RPR
24
25

OPENING STATEMENT - MR. DeBUSK

1 hand. These attorneys start moving about in the
2 courtroom, and they will, I promise you, they'll stand
3 in the way when you are trying to see an exhibit, it
4 always happens. I did it when I was practicing law.
5 You get caught up in moment. If you can't see or
6 hear, ~~raise your hand.~~ All of this is for your
7 benefit, for you to receive this information. Just
8 raise your hand and say I can't see, I can't hear or I
9 need a break, and we'll accommodate you.

10 Mr. Grooms.

11 MR. DeBUSK: May it please the Court. I'll take
12 you back not too far long ago, about 18 months, to
13 August 6th and 7th of 2014. A place not too far away
14 in Myrtle Beach, South Ocean Boulevard where
15 16th Avenue South joins it. Right there is a hotel
16 called The Wave Rider. It is kind of an older hotel,
17 sort of a lower part of the beach. It is really not a
18 hotel. All the units are individually owned. I think
19 they call them a condo hotel.

20 In this motel is one unit, . It is neat,
21 tidy, well appointed, very nice appliances, kind of
22 out of character for the neighborhood. In this nice
23 unit was the home of Randy Banks and Sabrina
24 Boatwright, who is present in court. They lived
25 there. Sabrina worked to take care of older folks,

OPENING STATEMENT - MR. DeBUSK

1 and Randy was a plumber. He would put in plumbing in
2 highrises being built. Randy had a problem, too, he
3 had a bad back. He had injured his back sometime
4 before, and he took medication for it, opiate pills,
5 painkillers. He took them whether he had a
6 prescription or not. But he went to work every day
7 paying for that nice house.

8 They have a friend, Robert Ware, the defendant.
9 He was down on his luck, didn't have a place to stay,
10 so Randy and Sabrina let him stay with them. It was
11 not charity, he was paying his way. Sabrina will tell
12 you how he was paying his way. He lived there, but
13 there was a problem there, too. I don't know if you
14 are familiar with the old show called The Odd Couple,
15 Oscar and Felix. Felix was neat and tidy, and Oscar
16 was sort of a messy guy, and that is the way it was
17 with this relationship. The defendant was a little
18 messy. When Randy would go to work, Randy (sic) would
19 stay at home and he wouldn't do any of the housework,
20 messed up the place. Randy didn't like that. He was
21 the Felix, the neat guy, and that caused friction.
22 That friction came to a head on August 6, 2014. Randy
23 told the defendant he had to leave, he couldn't live
24 there anymore, they just couldn't come to terms on
25 this neatness issue.

OPENING STATEMENT - MR. DeBUSK

1 During the course of the day, around 9 o'clock in
2 the evening, the defendant left. Randy and Sabrina
3 had their house to themselves, their nice condo. They
4 lived there until 2 o'clock the next morning, about
5 five hours later. On August 7th, 2014, the
6 defendant came back, said he didn't have a place to
7 stay, so they let him in so he wouldn't be on the
8 street. Within a half hour of that, the defendant
9 shot Randy through the heart killing him. That is
10 what led you here today. That is the crime alleged
11 here, murder.

12 You will hear the cross section of the community
13 that he is guilty of the crime. Mr. Grooms and I are
14 senior solicitors here in Horry County. We work for
15 the Solicitor, Jimmy Richardson. It is our duty to
16 prove him guilty beyond a reasonable doubt. We will
17 prove him guilty by evidence on that stand. You will
18 be hearing that -- I want to give you an idea of what
19 you will be hearing so you know what to look for,
20 because the presumption of innocence is a very
21 important protection, and we take it seriously. We
22 want you to listen to that evidence and be convinced,
23 firmly convinced, of his guilt before you find him
24 guilty.

25 The charge here is murder and possession of a

OPENING STATEMENT - MR. DeBUSK

1 weapon during a crime of violence. The judge will
2 give you the law at the end of the case to apply to
3 the facts, but I'll give you guidelines so you know
4 what to look for when you listen to that evidence.

5 Possession of a weapon, that is pretty
6 self-explanatory. Murder is killing of another with
7 malice aforethought. That is not something that is an
8 everyday term. I'll give you just a little idea of
9 what it is, what to look for. Malice aforethought is
10 not premeditated, it doesn't mean he planned it.
11 Although planning and premeditation can be evidence of
12 malice aforethought. But malice aforethought means
13 that there was evil intent when the fatal blow was
14 struck. At that time, he intended to harm the person
15 he shot and killed. Malice is one of those things
16 that can be proved directly, that's called expressed
17 malice. When you say I'm going to kill someone, that
18 is expressed malice. You'll probably hear some of
19 that. What I specifically want you to look for is
20 from an individual who worked at a liquor store that
21 saw the defendant on August 6th that afternoon
22 before he was kicked out of the house, or at the time
23 he was kicked out of the house.

24 It can be implied. Implied malice from the
25 actions of the defendant. You can't know what is in

OPENING STATEMENT - MR. SMALDONE

1 his mind, but you can look at his actions and decide
2 what he was thinking, things such as preparation. You
3 look for preparation for this crime. You can look for
4 a type of the nature of the injury itself. A shot in
5 the leg might be less indicative of malice than a shot
6 through the heart.

7 You can look at his actions after the crime
8 happened. What did he do? Did he attempt to help, or
9 just flee the area and hide? Those are the things you
10 look for to decide malice aforethought. Again, it is
11 going to come from that stand a few feet from me.
12 Listen to every word carefully, look for those things
13 I mentioned.

14 At the end, I'll talk to you about how all the
15 evidence adds up to murder. All we ask now is for
16 your close attention, and at the end we'll ask you to
17 render a true verdict. Thank you.

18 THE COURT: Mr. Smaldone.

19 MR. SMALDONE: May it please the Court?

20 THE COURT: Yes, sir.

21 MR. SMALDONE: Ladies and gentlemen of the jury,
22 madam foreperson, it might come as a little bit of a
23 surprise to you to learn that throughout the course of
24 this trial it is pretty likely that Robert and I will
25 agree with the State's evidence, probably about 60,

OPENING STATEMENT - MR. SMALDONE

1 70, maybe 80 percent of the time. For example, we'll
2 agree that Robert was staying at the Wave Rider with
3 Randy. Randy is the deceased person. Robert is my
4 client. We'll agree there was some bickering in the
5 hotel room. I call it cabin fever. All parties a
6 little close together, a little too tidy, a little too
7 messy. They were bickering at each other. We'll even
8 agree -- and pay attention -- it was Robert's gun that
9 caused this terrible injury to Randy, and we'll agree
10 that Robert was there.

11 But, ladies and gentlemen, truth lies in that
12 extra 20, 30, 40 percent. I'm not great at math. The
13 truth lies in the details, and the details you will
14 see through the evidence is that Robert didn't mean to
15 kill his friend. Robert didn't mean to shoot Randy.
16 That gun went off during one of their arguments.
17 There was a struggle for the gun. During that
18 struggle, that fatal sad tug-of-war, that gun went
19 off. A single bullet from a .22 caliber rifle hit
20 Randy, and a few moments, minutes -- you'll find out
21 later -- soon afterwards he was dead.

22 Ladies and gentlemen, throughout the course of
23 this trial you'll hear evidence. Basically anything
24 that comes from there is evidence. Evidence can be
25 testimony. Evidence can be exhibits. Evidence can be

OPENING STATEMENT - MR. SMALDONE

1 demonstrations, that is evidence. The evidence in
2 this case will show that earlier on in that day Robert
3 left the apartment. Tensions were high. All three
4 parties a little too close together in that unit. He
5 left the apartment.

6 Now, Robert left the apartment before. He stayed
7 outside before. Before this happened, Robert had
8 Mopeds stolen from him before, and when he stays
9 outside, he feels kind of threatened. You'll learn it
10 is not the best area of town. It is not central
11 Compton, but it is not some place you bring your kids
12 at midnight. So when he left that apartment, or condo
13 or motel, or whatever it is, when he left he had a .22
14 survival rifle. You'll hear a lot about that
15 throughout the course of the case, because it is very
16 important. It is a survival rifle because it is a
17 very unique gun. It's kind of a cheap .22, but it is
18 unique in that there is only four or five parts, and
19 all of them unscrew. You can assemble it probably in
20 30 seconds. I hope I'm describing that well. It is
21 not like a regular gun where it is just a gun, and
22 always going to be a gun unless you get tools out and
23 disassemble it. This gun you just take your hand,
24 unscrew the barrel and receiver, and all of the pieces
25 fit in the stock, which is the butt end of it because

OPENING STATEMENT - MR. SMALDONE

1 the stock is hollow. You put the pieces in there and
2 you put a rubber thing over it, and you can just carry
3 around a stock.

4 When he left the apartment, because he felt
5 threatened before by people stealing his moped, by
6 roaming gangs of bandits or coyotes, like at the
7 Myrtle Beach Airport, when he left that apartment, he
8 put together the gun and put it in a bag so just the
9 barrel is sticking out, not too noticeable. He's
10 walking around the beach area looking for a place to
11 stay. I believe you'll find out, if I'm not mistaken,
12 he propped up against a tree for a little while, but
13 there is too much foot traffic in that area. It is
14 hard to sleep when you are outside and people are
15 walking around. So Robert swallowed his pride, went
16 back to the motel room. I think it was about 1:30,
17 2:00, 2:30 in the morning.

18 He knocks on the door. Randy is awake. Randy
19 had been drinking. Randy opens the door, and Robert
20 comes back in. I believe at first things are okay.
21 There was not much tension. He is welcomed back, and
22 he is glad he wasn't staying out. It was a kind act,
23 I admit that.

24 Tensions ran high again. Within a few minutes,
25 they are yelling at each other. Randy is yelling at

OPENING STATEMENT - MR. SMALDONE

1 Robert. Robert is sitting there. For whatever
2 reason, and we'll never know, during that argument --
3 and it wasn't even a fight, no one was pushing each
4 other, just words, but during those words, Randy
5 reached for Robert's gun that was already put
6 together. He reaches and gets the barrel. Robert --
7 someone is reaching for his gun, not so fast. Just
8 out of spite or, you know, self-defense, whatever it
9 may have been, the tug-of-war match over the gun
10 ensues until a single shot rang out. You've already
11 heard the rest.

12 After that shot rings out, shortly after, Randy
13 collapses. Single shot with a 22. Randy collapsed,
14 and his girlfriend was there, Ms. Sabrina. Sabrina
15 comes out, gets understandably hysterical. No one is
16 blaming her for that. Her boyfriend was hanging out
17 in the living room one minute, and the next -- she
18 didn't see anything -- and the next minute he's in his
19 condition. She has her cell phone, going to call 911
20 or already has, and the details you'll find out later.

21 Robert is sitting there literally holding a
22 smoking gun, brain is in overload mode, and he does a
23 stupid thing. He does something that hopefully I
24 would never do in this situation. He makes a bad
25 call, he panics. He leaves. He leaves his cell phone

OPENING STATEMENT - MR. SMALDONE

1 at the motel, I believe. He leaves. Terrible
2 decision. He's apprehended a short time later.

3 Ladies and gentlemen, like I said, throughout the
4 course of this trial you'll hear evidence, hear from
5 the State's witnesses, and I do intend to call my
6 client to the stand. That is a rare thing for the
7 defense to admit on opening statement because it gives
8 everyone a head start, but I do intend to call Robert.
9 I ask you to pay close attention to everything, all
10 the evidence. Pay close attention to Mr. Ware,
11 because this is the most important thing that Robert
12 has ever said. Robert will say it. Robert can be a
13 bit long winded at times, because he wants to make
14 sure you all hear everything. It is important to pay
15 close attention to Robert because, again, this is the
16 most important thing he's ever said.

17 At the conclusion of this trial, the judge will
18 instruct you on the law. Once you hear the law,
19 you'll understand that this was a terrible accident.
20 No one is happy to be here. But because this was a
21 terrible accident, Mr. Ware is not guilty of murder,
22 not guilty of manslaughter, not guilty of anything.
23 That is the law the judge will charge you at the end
24 of the case. I won't get into the details about it
25 because we'll tell you later.

OPENING STATEMENT - MR. SMALDONE

1 I feel confident that once you hear the facts and
2 you hear the evidence and you hear the law, that you
3 will find Robert not guilty. It doesn't make this any
4 less sad or tragic or terrible, it just means that
5 Robert didn't mean to kill his friend. Ladies and
6 gentlemen, I thank you for your time and ask that you
7 pay close attention to all of the evidence, I'm sure
8 you will. Thank you.

9 THE COURT: Mr. Grooms, call your witness.

10 MR. GROOMS: We call Officer Cox to the stand.

11 (AUSTIN COX, having been duly sworn, testified
12 as follows:)

13 WITNESS: My name is Officer Austin Cox with
14 Myrtle Beach Police Department.

15 DIRECT-EXAMINATION

16 BY MR. GROOMS:

17 Q Would you mind telling the Court where you work?

18 A Myrtle Beach Police Department.

19 Q How long have you been with them?

20 A Almost five years.

21 Q What is your title currently?

22 A Patrol officer, first class.

23 Q Was that the same title you had back in August of
24 2014?

25 A Yes.

AUSTIN COX - DIRECT EXAMINATION

1 Q Did you respond to a call at Wave Rider Motel on
2 August 7?

3 A I did.

4 Q Do you recall approximately what time you
5 responded?

6 A Approximately 2:30 in the morning.

7 Q What was the nature of that call?

8 A It was a shooting incident.

9 Q So when you hear that, you respond -- I imagine
10 that is classified as an urgent call?

11 A Correct.

12 Q Were you the first on scene?

13 A I was not. I was the second on scene.

14 Q Who was the first on scene?

15 A Officer Ryan Logan.

16 Q Were you talking with him on the radio, or did
17 you hear whenever --

18 A I did.

19 Q About how long after his arrival did you arrive?

20 A It was one, maybe two minutes.

21 Q And do you know where Officer Logan is today?

22 A I believe he's out of state.

23 Q Yes, sir, he's in Montana. Regardless, you were
24 there within seconds of him entering the door?

25 A Correct.

AUSTIN COX - DIRECT EXAMINATION

1 Q Who was on scene besides Officer Logan when you
2 got there?

3 A The witness was there.

4 Q And --

5 A Ms. Boatwright.

6 Q Would that be Sabrina?

7 A (Witness nods head.)

8 Q Who was -- how was she acting?

9 A She was hysterical. I mean, she was -- more or
10 less didn't understand exactly what was going on. She
11 was crying. We tried to remove her out of the
12 situation so that we could secure the scene.

13 Q And we'll get to that in a minute. Did you
14 locate the victim in this case?

15 A Yes.

16 Q What was his condition? I know you weren't a
17 doctor, but in your opinion.

18 A He sustained major trauma. I mean, he was
19 bleeding from his mouth, there was blood on his chest,
20 did not have a shirt on, laying on his back
21 unresponsive.

22 Q Did EMS arrive?

23 A They did.

24 Q And did they treat the victim, or attempt to?

25 A Yes.

AUSTIN COX - DIRECT EXAMINATION

1 Q You talked a minute ago about securing the crime
2 scene. Was anyone else allowed in this crime scene,
3 any pedestrians?

4 A No, sir.

5 Q How many entrances were there to this condo?

6 A We used one entrance, which was to the living
7 room area. I believe there was a second door off to
8 the bedroom, but it was not used.

9 Q So you had two officers on scene. Was Sabrina
10 removed from the condo?

11 A Correct.

12 Q So you cleared the scene. At this point, no one
13 is in the condo. Did you watch both doors?

14 A Yes.

15 Q Why did you do that?

16 A To protect the crime scene.

17 Q In layman's terms, could you tell why you protect
18 the crime scene?

19 A To prevent anybody disturbing evidence or
20 anything of evidentiary value.

21 Q Do you remember seeing any shell casings at the
22 scene?

23 A Not initially, until Crime Scene responded.

24 Q Did you see shell casings at that point?

25 A Yes, I did.

AUSTIN COX - CROSS-EXAMINATION

1 Q Did you touch it?

2 A No.

3 Q Left it where it was?

4 A Absolutely.

5 MR. GROOMS: Court's indulgence.

6 (A brief pause in the proceedings.)

7 Q (MR. GROOMS) One last question, Officer Cox. I
8 apologize, this sounds dumb. What county was this in?

9 A Horry County.

10 Q Was this in Myrtle Beach?

11 A It was.

12 MR. GROOMS: Thank you. Answer any questions
13 defense might have.

14 MR. SMALDONE: Beg the Court's indulgence for a
15 moment.

16 (A brief pause in the proceedings.)

17 CROSS-EXAMINATION

18 BY MR. SMALDONE:

19 Q Good morning, Officer Cox.

20 A Good morning.

21 Q To clarify, you responded after the shooting,
22 correct?

23 A Correct.

24 Q You did not see the shooting?

25 A Absolutely I did not.

LESTER COOK - DIRECT EXAMINATION

1 MR. SMALDONE: That is all I have. Thank you.

2 THE COURT: Anything further?

3 MR. GROOMS: No, sir.

4 THE COURT: You may step down.

5 MR. GROOMS: We ask him to be released from the
6 subpoena.

7 THE COURT: Any further need for this officer?

8 MR. SMALDONE: No.

9 THE COURT: You are excused and released from
10 your subpoena.

11 MR. GROOMS: Your Honor, State would call Lester
12 Cook next.

13 (LESTER COOK having been duly sworn, testified as
14 follows:)

15 DIRECT-EXAMINATION

16 BY MR. GROOMS:

17 Q How are you are?

18 A Good, sir. How are you?

19 Q Pretty good. Do you mind telling the Court what
20 your title is with Myrtle Beach?

21 A I'm a sergeant with the Myrtle Beach Police
22 Department assigned to the property crimes section of
23 the investigations division.

24 Q How long have you been with Myrtle Beach?

25 A Almost 15 years.

LESTER COOK - DIRECT EXAMINATION

1 Q What was your role in August of 2014?

2 A Detective working the night shift.

3 Q How long were you a detective?

4 A About eight-and-a-half years, give or take.

5 Q Did you respond to a call at Wave Rider Resort on
6 August 7th?

7 A Yes, I did.

8 Q I'll show you a couple pictures marked 2, 3 and
9 4. Do you recognize these photos?

10 A Exhibit 4 looks like an aerial overview of the
11 South end of Myrtle Beach. I see the Landmark Resort
12 and the Wave Rider which I think is just south of the
13 Landmark Resort.

14 Exhibit 3 is like an overview of the Wave Rider
15 Resort at 16th South and Ocean.

16 Exhibit 2 looks like an aerial view of just about
17 most of Sterling Village, which is off of 13th South
18 and Pridgen Road.

19 Q Thank you. We'll come back to those in a minute.
20 You testified you were responding to the Wave Rider
21 that evening. What was the nature of the call?

22 A There was a call of a male that was shot at the
23 hotel.

24 Q Did you enter the room that night?

25 A Yes, I did.

LESTER COOK - DIRECT EXAMINATION

1 Q Did you locate the deceased?

2 A Yes, sir.

3 Q Was he deceased at that time?

4 A Yes.

5 Q I'll show you a couple more pictures.

6 MR. GROOMS: Court's indulgence. I apologize,
7 Your Honor.

8 (A brief pause in the proceedings.)

9 Q (MR. GROOMS) This is State's Exhibit No. 21.
10 Can you identify this picture?

11 A That is like the living area of the room like the
12 coffee table, and that is the loveseat, and I think the
13 couch right there.

14 Q That is a fair and accurate depiction of that
15 night?

16 A Yes.

17 MR. GROOMS: We ask to publish State's 21.

18 MR. SMALDONE: Without objection.

19 THE COURT: Without objection it is admitted and
20 you may publish.

21 (State's Exhibit 21 was admitted and published
22 to the jury.)

23 Q (MR. GROOMS) Detective Cook, could you tell the
24 jury what was on that table? Were there any items
25 that stuck out to you on that table?

LESTER COOK - DIRECT EXAMINATION

1 A I noticed blood on the corner.

2 Q Which corner?

3 A You have a loveseat like this and a sofa like
4 this, and then the coffee table is right in front of
5 the sofa. On the corner where the sofa is, next to the
6 loveseat, if I'm describing that well.

7 Q I think you are. You are saying there are two
8 couches and the blood is on the corner of the table
9 closest to the red couch; is that correct?

10 A Yes.

11 Q Were there any other items on that table that
12 stuck out to you?

13 A There was a cup and a hat and cell phone, I
14 believe.

15 Q Were you able to determine whose cell phone that
16 was?

17 A I believe it was the defendant's.

18 Q And how did you come to that conclusion?

19 A We initially obtained the defendant's phone
20 number, and Detective Connor contacted me and advised
21 there was a cell phone on the table and asked me to
22 call it. I called it, and he advised me it was
23 ringing. I called the suspect's phone number --
24 defendant's phone number, excuse me.

25 Q Were you able to locate the defendant in this

LESTER COOK - DIRECT EXAMINATION

1 case?

2 A Yes, we were.

3 Q Where was he -- where was the location he was
4 arrested?

5 A Sterling Village No. 3, which is right there at
6 13 South and Pridgen.

7 Q This is State's Exhibit 2; is that correct?

8 A Yes.

9 Q State's Exhibit 2 is where you located him.
10 State's 3, is that the Wave Rider?

11 A Yes.

12 Q And State's Exhibit 4 is an overhead?

13 A Yes, sir.

14 MR. GROOMS: Can I publish to the jury? I saw
15 them earlier. No objection.

16 THE COURT: All right. They are admitted without
17 objection as State's 2, 3, and 4.

18 (State's Exhibits 2, 3 and 4 were admitted and
19 published to the jury.)

20 Q (MR. GROOMS) Could you tell us where the Wave
21 Rider is?

22 THE COURT: Could you have him circle where the
23 Wave Rider is, just for the record?

24 A (Witness complied.)

25 Q (MR. GROOMS) Could you circle where you arrested

LESTER COOK - DIRECT EXAMINATION

1 him at or the neighborhood?

2 A The area in Sterling Village is not actually on
3 this overhead, but it is right off this corner in this
4 area right here off of Pridgen Road, Sterling Village
5 3.

6 Q If you can see that. You see the circles? So
7 the circle towards the beach is the hotel, and the
8 circle towards the corner of the map is where he was
9 arrested, correct?

10 A That's correct.

11 Q When you arrived at the Sterling Village, were
12 you able to locate the defendant?

13 A Yes.

14 Q Was he in a house, vehicle or what?

15 A Pickup truck.

16 Q I'll show you these pictures, State's Exhibit 5,
17 6, 7, 8 and 9. Do you recognize these pictures as the
18 scene of the arrest?

19 A Yes, this is the truck that Connor located him
20 in.

21 Q And what is this a picture of?

22 A These were some ammunition on the ground, I
23 believe .22 caliber, found where he was taken into
24 custody.

25 Q And this picture?

LESTER COOK - DIRECT EXAMINATION

1 A This is the interior of the pickup truck.

2 Q That is State's?

3 A That is Exhibit No. 7. Exhibit 8 is checkbooks
4 with Robert Carl Ware's name on it.

5 Q And State's 9?

6 A Exhibit 9 is a photo from the passenger's side of
7 the pickup truck.

8 MR. GROOMS: We ask that they be entered into
9 evidence as well.

10 MR. SMALDONE: No objection.

11 THE COURT: All right. Those are admitted, 5
12 through 9.

13 (State's Exhibits 5 through 9 admitted.)

14 Q (MR. GROOMS) Detective Cook, is this the truck
15 he was arrested in?

16 A He was arrested next to, yes.

17 Q Okay. The truck he had believed to have been in?

18 A Yes. Detective spotted him in that truck.

19 Q Is this a checkbook you located inside the truck?

20 A I didn't locate the checkbook.

21 Q Did you see this inside the truck, or no?

22 A I don't remember seeing it myself on scene.

23 Q Fair enough. Was this a picture of inside the
24 truck?

25 A Yes.

LESTER COOK - DIRECT EXAMINATION

- 1 Q Is that a green bag?
- 2 A Yes.
- 3 Q Tell the Court what this is a picture of?
- 4 A It's a picture of some ammunition on the ground,
- 5 to me it looked like it was .22 caliber rounds.
- 6 Q Is this outside of the vehicle?
- 7 A Yes.
- 8 Q Last one. Is this a picture of the inside of the
- 9 vehicle?
- 10 A Yes, from the passenger's side.
- 11 Q That you saw?
- 12 A Yes.
- 13 Q Can you tell us what the red bag was?
- 14 A Looked to me like it was a gun case.
- 15 Q You didn't open it?
- 16 A No.
- 17 Q You waited for crime scene?
- 18 A Yes.
- 19 Q Was there a video of this interaction when he was
- 20 arrested?
- 21 A There was an in-car camera from one of the
- 22 officers who detained the defendant.
- 23 Q And you were on scene when he was arrested,
- 24 correct?
- 25 A Yes.

LESTER COOK - DIRECT EXAMINATION

1 Q And have you reviewed that video?

2 A Yes, I did.

3 Q I'll show you what is marked as State's
4 Exhibit 37. This is a copy of the video that I showed
5 you related to what we are talking about, so you have
6 viewed the video of the arrest?

7 A Yes.

8 Q And if this is that video, then it is a fair and
9 accurate description of what happened?

10 A Yes.

11 MR. GROOMS: We ask to publish the video to the
12 jury.

13 MR. SMALDONE: Without objection.

14 THE COURT: You may publish it.

15 MR. GROOMS: Court's indulgence, Your Honor, it
16 is warming up. It will take just a second.

17 Q (MR. GROOMS) While we're waiting. Detective
18 Cook, when the car pulls up, the camera we're getting
19 ready to see, do you see the defendant walk around to
20 the side of the vehicle?

21 A Yes.

22 Q Does it appear that he drops anything?

23 MR. SMALDONE: Object. The best evidence is --

24 MR. GROOMS: Fair enough. We'll watch the video.

25 Q (MR. GROOMS) That is the video of the arrest?

1 A Yes.

2 Q When you walked around the vehicle, did you see
3 him drop anything out of his hands?

4 A It looked like he opened his left hand and
5 something fell out of his left hand.

6 (State's Exhibit 37 published to the jury.)

7 Q (MR. GROOMS) Is that the location where you
8 found the bullets?

9 A Yes.

10 Q What type of bullets were those?

11 A .22 caliber.

12 (State's Exhibit 37 published to the jury.)

13 Q (MR. GROOMS) Did that conclude that portion of
14 your investigation?

15 A I did some additional interviews that evening.

16 Q Other than as far as up to that point?

17 A Yes.

18 Q So you didn't respond back to the room? This is
19 the extent of your investigation?

20 A That is correct. After that, I think I went home
21 sometime after this.

22 MR. GROOMS: Thank you. Answer any questions

23 Mr. Smaldone may have.

24 THE COURT: Bring up the screen.

25

LESTER COOK - CROSS-EXAMINATION

CROSS-EXAMINATION

1

2 BY MR. SMALDONE:

3 Q Good morning.

4 A Morning, sir.

5 Q First of all, to clarify, you did not -- were you
6 at the scene of the shooting?

7 A Did I respond to the scene?

8 Q Did you respond to the scene of the shooting?

9 A Yes.

10 Q But you weren't there during the shooting?

11 A That's correct.

12 Q You don't know what happened from your own eyes?

13 A I didn't witness it, correct.

14 Q And was that your patrol car?

15 A No.

16 Q I were -- where were you in position to that
17 patrol car?18 A I don't remember exactly, but we were behind
19 that. There was two patrol cars, and we were behind
20 those.

21 Q So you were there?

22 A Yes.

23 Q And you saw the video, obviously?

24 A Yes.

25 Q When he raised -- you told him to raise his

LESTER COOK - CROSS-EXAMINATION

1 hands -- or an officer there told him?

2 A Officer Ammons did.

3 Q And he raised his hands?

4 A Yes.

5 Q And the bullets fell out of his hands?

6 A He opened up his hands before he raised them.

7 Q Did -- he didn't try to kick the bullets away?

8 A I didn't see that.

9 Q Because we watched the video, right?

10 A Yeah.

11 Q You didn't see that on the video?

12 A I didn't see that.

13 Q And you didn't see it at the scene either?

14 A No.

15 Q Because the scene is the video?

16 A Yes.

17 Q He didn't try to throw the bullets?

18 A I didn't see that.

19 Q He just dropped them, right?

20 A Yes.

21 Q Okay. That's all. Thank you.

22 THE COURT: Mr. Grooms.

23 MR. GROOMS: We ask that the officer is excused.

24 MR. SMALDONE: I don't believe we'll need him

25 further, Judge.

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 THE COURT: You are released from your subpoena,
2 thank you.

3 MR. GROOMS: May we approach?

4 (Whereupon, a bench conference was had.)

5 THE COURT: They tell me the next witness will be
6 at least an hour, so we'll take a quick break and let
7 you refresh yourself before we start that witness.
8 Let's take a quick break.

9 (The jury exits at 10:35 a.m., and the
10 following is heard out of the presence of the jury.)

11 THE COURT: Anything prior to the jury coming in?

12 MR. GROOMS: Nothing from the State.

13 MR. SMALDONE: Nothing from the defendant.

14 (The jury enters at 10:52 a.m., and the
15 following is heard in the presence of the jury.)

16 THE COURT: We have our jurors and alternates
17 back in the courtroom. Mr. Grooms, you may proceed.

18 MR. GROOMS: Thank you, Your Honor. State calls
19 Sabrina Boatright to the stand.

20 (SABRINA BOATRIGHT, having been duly sworn,
21 testified as follows:)

22 THE CLERK: State your full name and spell your
23 last.

24 THE WITNESS: Sabrina Boatwright,
25 B-O-A-T-W-R-I-G-H-T.

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 DIRECT-EXAMINATION

2 BY MR. GROOMS:

3 Q Good morning.

4 A Good morning.

5 Q How are you doing okay?

6 A Could be better.

7 Q There is water, and if you need a break, let the
8 judge know. How long have you known Randy Banks?

9 A 14 years.

10 Q What was the nature of your relationship?

11 A I was his fiancée.

12 Q You dated for how long?

13 A 14 years.

14 Q Since the time you met him?

15 A Yes.

16 Q Did you live in Myrtle Beach?

17 A Yes.

18 Q What type of work was Randy in?

19 A Commercial plumber.

20 Q How long had he been a commercial plumber?

21 A Before I knew him.

22 Q Was he a hard worker?

23 A Very much so.

24 Q Did he take pride in his work?

25 A A perfectionist.

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 Q Did that translate to the rest of his life?

2 A Yes.

3 Q Very neat person?

4 A Yes.

5 Q Do you describe him as an orderly person?

6 A Yes.

7 Q Was Randy tired at the end of a day's work?

8 A Yes.

9 Q Did he ever have any injuries, to your knowledge,
10 from working?

11 A Yes.

12 Q Tell the jury about these injuries.

13 A He had a very serious -- back injuries and he had
14 broke his wrist and had metal plates in his wrist.

15 Q How did he hurt his back?

16 A He had been in several accidents, and just from
17 lifting heavy items in his job.

18 Q Did he ever -- was there any specific instance?
19 Did he ever fall or --

20 A Fell off a ladder.

21 Q Did he seek a medical professional about his
22 back?

23 A Yes.

24 Q Were you with him?

25 A Yes.

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 Q Do you know if the doctor prescribed him
2 medicine?

3 A Yes.

4 Q During August was he prescribed that medicine?

5 A He was on medication, but it was not prescribed.

6 Q At one point he saw a doctor and got medicine,
7 and when the prescription ran out, he continued to take
8 pain medicine?

9 A Yes.

10 Q How would he get them?

11 A From friends.

12 Q So he would buy them from other people, not from
13 a pharmacist or doctor?

14 A Correct.

15 Q Would Randy take his medicine to go to work?

16 A Yes.

17 Q What would happen if he didn't take it?

18 A He was in severe pain, and I would have to put
19 his socks and boots on.

20 Q Would he take it also in the evenings?

21 A Yes. When he got home, because his back was
22 aching.

23 Q What would happen if he didn't take it at night?

24 A He would sleep a lot of times with his knees up
25 to his chest to remove the pressure from his back or he

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 wasn't able to sleep.

2 Q Was he taking this medication all throughout the
3 time you knew him?

4 A Yes.

5 Q Would it affect his mood or personality in your
6 opinion?

7 A No.

8 Q Where were you living in August of 2014?

9 A Wave Rider Resort.

10 Q How long had you been there?

11 A Six months.

12 Q I'll show you a couple pictures, State's 18, 20,
13 16, 15, 32, as well as 29. Can you tell me if you
14 recognize those pictures?

15 A Yes.

16 Q When you are finished, tell me if you recognize
17 them or not, and I'll ask you about them.

18 A (Witness examines exhibits.) Yes.

19 Q So are these pictures the condo you are talking
20 about?

21 A Yes, sir.

22 MR. GROOMS: We ask to publish them at the
23 appropriate time, and at this time ask to have them
24 entered into evidence.

25 MR. SMALDONE: Without objection.

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 THE COURT: Without objection they are admitted.

2 What are they marked?

3 MR. GROOMS: 32, 15, 16, 20, 18 and 29.

4 (State's Exhibits 32, 15, 16, 20, 18, 29 admitted.)

5 Q (MR. GROOMS) What is this a picture of?

6 A A picture of our coffee table.

7 Q And I'm going to ask you to tell the jury, what
8 are these little marks?

9 A Imperfections.

10 Q That are all around the candle?

11 A Yeah, they are just imperfections of the table.

12 Q And we're talking about these outlined marks?

13 A Yes.

14 Q Okay. And what is this mark?

15 A Randy's blood.

16 Q Thank you. These pictures. 15?

17 A That's the living room and part of the dining
18 room. That is the living room.

19 Q Another picture of the same. This?

20 A Living room. And that is a bookshelf that was
21 over the computer table.

22 Q Was your entire house always this clean and
23 orderly?

24 A Yes, until the defendant moved in.

25 Q You and Randy kept it clean and orderly?

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 A Yes. Yes. The owner had it up for sale, so
2 people would come to look at it, but nobody ever came
3 to look at it. So we had to keep it nice, but that is
4 the way we were anyway.

5 Q Did you know the owner?

6 A Yes, it was Randy's best friend.

7 Q So you felt an obligation, above just being neat,
8 to keep it in order?

9 A Yes.

10 Q Thank you. Was Randy proud of this apartment?

11 A Very much so.

12 Q Was it one of the nicer places you stayed?

13 A Yes.

14 Q When did you first meet the defendant?

15 A Probably four years ago; four, five years ago.

16 Q And I'll ask you to hold on for a minute so the
17 jury can finish looking at the pictures before we keep
18 going. Court's indulgence.

19 (A brief pause in the proceedings..)

20 Q (MR. GROOMS) When did you first meet the
21 defendant?

22 A Probably four, five years ago.

23 Q Around 2010?

24 A Yes.

25 Q How did you meet the defendant?

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 A He was staying with one of our neighbors
2 temporarily.

3 Q Were the defendant and Randy friends?

4 A I considered them friends.

5 Q Were you and the defendant friends?

6 A Yes.

7 Q Was it common for the three of you to ever
8 socialize or do things together?

9 A Yes.

10 Q Did the defendant ever come to your place to hang
11 out?

12 A Yes.

13 Q And would the defendant and Randy ever argue?

14 A Yes. They more or less debated. They were a lot
15 alike, so they were very opinionated.

16 Q When you say they were a lot alike, how do you
17 mean?

18 A Loud and opinionated, I mean.

19 Q They talked loud?

20 A Yes. Randy was hard of hearing because he worked
21 with heavy construction, so he would have to look at
22 you in the face to watch your mouth to make sure -- if
23 you had your back towards him, he couldn't hear you
24 very well at all.

25 Q And the defendant was a loud talker in your

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 opinion?

2 A Yes.

3 Q And both opinionated?

4 A Uh-huh.,

5 Q Would they argue often?

6 A They argued quite a bit.

7 Q Are these arguments just back-and-forth between
8 them, or is there punches being thrown?

9 A No. No. They've never thrown any punches or
10 pushed or anything like that.

11 Q So they were just verbal?

12 A Yes.

13 Q Did they ever turn to punches?

14 A Never.

15 Q Ever turn violent, furniture thrown, anything
16 like that?

17 A Never.

18 Q So more or less what you are saying is they would
19 argue, they just happen to both talk real loud and they
20 were both opinionated?

21 A Yes.

22 Q Do you recall the defendant needing a place to
23 stay in August of 2014?

24 A Yes.

25 Q Did he come to stay with you all?

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 A Yes. He was staying across the street and his
2 moped had gotten stolen and then he ran out of money
3 and couldn't afford the rent, so we let him stay with
4 us.

5 Q So he needed a place to stay quickly?

6 A Yes.

7 Q I'll show you what is marked as State's
8 Exhibit 36, sketch of the condo. This is not
9 scientific, just a rough sketch of the apartment, but
10 does that appear to be an outline of your apartment?

11 A Yes.

12 Q Where would the defendant sleep whenever he
13 stayed with you all?

14 A On the couch. It was a one-bedroom condo.

15 Q And so --

16 MR. GROOMS: Is that all right, Your Honor?

17 Q (MR. GROOMS) Is he sleeping on this couch or
18 this couch?

19 A The long one.

20 Q This one is longer than the other one?

21 A The other one is a loveseat.

22 Q Okay. Was he a nighttime person or daytime
23 person? How would you describe him as a roommate?

24 A We went to work every day, so I'm not really sure
25 what he did all day, but I know that he was up when we

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 got home and stayed up late watching TV.

2 Q Did he help out with the cleaning?

3 A No. When we would come home, like the dishes he
4 used and everything, they weren't washed or anything
5 like that.

6 Q Did this type of stuff, did it upset Randy?

7 A Yes.

8 Q Aggravate him?

9 A Uh-huh.

10 Q Because he took pride in his apartment?

11 A Right.

12 Q What was the arrangement? How was the defendant
13 paying to stay with you all?

14 A With pain medication.

15 Q When you say "pain medication," what are you
16 talking about?

17 A He was prescribed morphine.

18 Q And --

19 A And he would give him one in the morning or one
20 in the evening. Sometimes it was one, and sometimes it
21 was two.

22 Q So he, being the defendant, would give that to
23 Randy as part of the arrangement to stay there?

24 A Right, because he didn't have any money and Randy
25 needed it for work.

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 Q How often would Randy take these pills?

2 A Normally one in the morning before work and one
3 in the evening when he got home.

4 Q Were you working on August 6th of 2014?

5 A Yes.

6 Q Do you remember what you were doing that day?

7 A A caretaker, and I had taken the lady that I
8 worked for to Florence to get -- to see an eye doctor.

9 Q Was Randy working that day?

10 A Yes.

11 Q For those on the jury, how far is Florence from
12 Horry County, roughly?

13 A About an hour and a half.

14 Q So you went to Florence that day. Was Randy
15 working that day?

16 A Yes.

17 Q Did you get a call from Randy that day?

18 A Yes.

19 Q Do you recall approximately what time or time of
20 the day it was?

21 A It was around 5:30.

22 Q So it was in the afternoon?

23 A Yes.

24 Q What was Randy calling you about?

25 A He was calling to let me know he was going to

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 have a talk with Robert about him leaving and for me to
2 come into the back door, the one that came out of your
3 bedroom, that's what we considered the back door, and
4 so that Robert would know that I was there in case they
5 are having the conversation, he didn't want me to
6 interrupt it.

7 Q Is this the back door, or is this the back door?

8 A The one further here (indicates), yes.

9 Q And so while I'm at it, is this the bedroom?

10 A Yes.

11 Q And this is the main entrance?

12 A Yes.

13 Q Did you get a call from the defendant the same
14 afternoon?

15 A Yes.

16 Q What was the nature of that call?

17 A He called just a few minutes after Randy called
18 and asked how far -- if I was close to home and wanted
19 a ride to the liquor store, but I wasn't close to home
20 at that time, so he said he would walk.

21 Q So you continue on your way home. You are just
22 now leaving Florence; is that correct?

23 A Uh-huh.

24 Q So roughly an hour to an hour-and-a-half out.
25 Did you get another call from Randy?

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 A Yes.

2 Q Was he -- tell the Court why he was calling you.

3 A He was just calling to see how close I was to
4 home, and I was close, so he told me he would talk to
5 me whenever I got home.

6 Q Did he say whether he talked to Robert already?

7 A Yes.

8 Q He said that he had?

9 A Yes.

10 Q About leaving?

11 A That's all, he just said that he had talked to
12 Robert.

13 Q And he would talk to you when you got home?

14 A Yes.

15 Q When you arrived home, was the defendant there?

16 A No.

17 Q Do you have an idea as to what time you would
18 have gotten home?

19 A I would have gotten home?

20 Q Yes, ma'am.

21 A It was shortly after 6:00.

22 Q So around 6 o'clock?

23 A Uh-huh.

24 Q When he -- sorry if you already answered this,
25 but was the defendant there when you got back?

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 A No.

2 Q Did you talk to Randy at that time?

3 A We really didn't discuss that at that time,
4 because he just said that he had asked him to leave.

5 Q Okay. Did you carry on with your usual evening?

6 A Yes.

7 Q Did you prepare anything for dinner?

8 A Yes.

9 Q What were you making for dinner that night?

10 A A deer roast with potatoes and onions and
11 mushrooms and gravy.

12 Q Was the roast frozen?

13 A It was frozen. I had to thaw it out.

14 Q So you didn't start dinner immediately?

15 A No.

16 Q Did you straighten out around the condo? Did you
17 do any clothes, anything besides dinner?

18 A Just picked up, and then Randy told me -- you
19 know, because there were dishes, and he told me that he
20 was going to fuss at me about the dishes, but it didn't
21 mean anything because, you know, I was always cooking
22 and would have to wash the dishes, or he would wash
23 them, so he wanted to say something to where Robert
24 might get the idea to do something.

25 Q Before we get into that, did you go into the

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 laundry room at any point?

2 A Yes.

3 Q And what was the reason for that?

4 A Because Robert was going to be leaving. I wanted
5 to be sure that he didn't get any of Randy's belongings
6 mixed into his.

7 Q When you say "belongings," you mean clothes?

8 A Clothes, yes.

9 (State's Exhibits 38 and 39 marked.)

10 Q Sabrina, when you were in the laundry room, did
11 you see this bag?

12 A It was on the right side when you walked in --
13 left side, I'm sorry, when you walked in.

14 Q Whose bag is this?

15 A Robert's.

16 Q Is this where Robert would keep his belongings
17 when he stayed?

18 A Yes.

19 Q Tell me if you recognize this bag.

20 A Yes.

21 MR. GROOMS: For the record, State's Exhibit 39.

22 Witness just identified State's Exhibit No. 38.

23 Q Now, Sabrina, do you know what this is?

24 A I opened it up. I had seen it before, but I
25 opened it up and the survival rifle was in there.

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 Q Why had you opened it up before? Where had you
2 seen it before?

3 A We took Robert to his storage unit to pick up
4 some of his belongings, and he had showed Randy the gun
5 and put it together.

6 Q How did Randy feel about guns?

7 A Randy's mother was shot and killed in front of
8 him when he was four years old, so he didn't like guns
9 in the house, you know, somebody to bring a gun in the
10 house.

11 Q Was he afraid of guns?

12 A He was afraid of other people, you know, with
13 guns, yes.

14 Q Other people with guns. Did he ever hold this
15 gun?

16 A Yes.

17 Q Was that at the storage shed?

18 A Yes, at the storage unit.

19 Q Was that the only time you saw that gun besides
20 that day?

21 A Yes.

22 Q So you hadn't seen it in the house before?

23 A No.

24 Q Had you seen Robert's bag in the house before?

25 A Yes.

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 Q And it was always kept in the laundry room?

2 A Yes.

3 Q So at this point, the defendant is not there.

4 Did the defendant ever return home that evening?

5 A Yes.

6 Q Did he have anything with him when he returned?

7 A He came in with a half gallon bottle of liquor,

8 Vodka.

9 Q All right. I'll show you what has been marked as
10 State's Exhibit 27. Is this the bottle you remember?

11 A Yes.

12 MR. GROOMS: Your Honor, we ask this to be
13 admitted.

14 MR. SMALDONE: Without objection.

15 THE COURT: Without objection it is admitted.

16 (State's Exhibit 27 was admitted.)

17 Q (MR. GROOMS) He came home, had something to
18 drink, what did he do with it?

19 A He opened it up and made him a drink.

20 Q Did you have a drink with him?

21 A Yes.

22 Q What did he do? Was he helping you cook, or
23 what?

24 A No. Randy came out and was fussing, saying --
25 which he told me he was going to do -- because I

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 started running the water to wash the dishes, and he
2 said, You know, don't wash the dishes, I'll wash the
3 dishes. You know, I'm tired of you coming home, we
4 work all day and people just sit around on the couch
5 and don't do anything all day. I'm tired of you coming
6 home and then having to cook and clean. He said, I'll
7 do the dishes. Because he was tired of Robert not
8 helping and picking up after himself, because we were
9 at work all day, and he stayed home.

10 Q This is what you talked about earlier, he told
11 you he was going to do this?

12 A Yes.

13 Q Did he let you know that he wasn't angry at you?

14 A Oh, yeah. Afterwards he came and hugged me and
15 told me -- I mean he already told me he was going to
16 say it and that he didn't mean anything by what he
17 said.

18 Q Had he ever been physical with you?

19 A No.

20 Q Did the two of you often argue?

21 A We would argue like normal couples.

22 Q Did he leave after talking to you?

23 A Yes. He went to visit a friend.

24 Q I apologize. When I say "he," Randy left to
25 visit a friend?

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 A Right.

2 Q What did you do after that? Did you go to the
3 beach?

4 A I started preparing for dinner, preparing the
5 dinner and everything and then went to the beach to
6 look for sharks teeth.

7 Q You left dinner cooking while you left?

8 A Uh-huh.

9 Q Did the defendant go with you looking for sharks
10 teeth?

11 A Yes.

12 Q Do you recall approximately what time this was?

13 A It was getting dark and we had flashlights, I
14 would say it was possibly around 9:00. We weren't
15 there that long, but it was probably around 9:00, 8:30,
16 9:00.

17 Q Were you going to watch fireworks also that
18 night?

19 A With Randy. We went every Wednesday to watch
20 fireworks.

21 Q So did you come home first? Did you walk back to
22 the condo?

23 A Yes.

24 Q To get Randy?

25 A Yes. Yes -- no, Randy was still at his friend's,

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 so the dinner was ready, and so I made his friend a
2 plate and carried it to him. It was like 10 minutes
3 til 10:00, and the fireworks start like exactly at
4 10:00, and he was right just like at the next block
5 over, so whenever I took the food to his co-worker,
6 then we walked to the beach.

7 Q Where was the defendant at this point?

8 A He was still there.

9 Q Why hadn't he left yet? Was he preparing to
10 leave?

11 A He was preparing, had some clothes that he had
12 washed.

13 Q So you went to the fireworks with Randy; is this
14 something you did often?

15 A Every Wednesday.

16 Q Every Wednesday?

17 A Yes.

18 Q Like clockwork?

19 A Yeah.

20 Q Did you have any special procedure? Did you sit
21 at the same place, anything like that?

22 A We always sat at the same place.

23 Q What time were the fireworks?

24 A They start at 10:00, last from 10 after 10:00,
25 10:15. We always sit there at the Landmark, because

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 that is where the walkway was.

2 Q Were you drinking at this point?

3 A At that point, no.

4 Q Do you know when you left, was the defendant
5 still drinking?

6 A Yes.

7 Q When you got back from the fireworks, was the
8 defendant at the condo?

9 A Yes.

10 Q And was dinner ready?

11 A Yes.

12 Q Did everyone eat dinner?

13 A Yes.

14 Q Was everyone in a good mood? What was the -- was
15 the air thick, tensions high?

16 A Randy wanted him to leave.

17 Q So he -- was Randy thinking he would have been
18 already gone?

19 A I would assume so, because he told him earlier.

20 Q Did they get into an argument at that point?

21 A He was just, you know, telling him he was tired,
22 he wasn't helping around the house. If he was going to
23 stay there, he needed to help. Because like I said
24 before, there could be possible people interested in
25 purchasing it.

SABRINA BOATWRIGHT - DIRECT EXAMINATION

- 1 Q Was there any punches thrown in this argument?
- 2 A No, there's never been any punches.
- 3 Q This is what you talked about earlier, raised
- 4 voices back and forth?
- 5 A Uh-huh.
- 6 Q Did you feel like they were on the same page?
- 7 A It was like, you know, what do you say -- about
- 8 the dog who has a bark, but no bite, it was always like
- 9 that.
- 10 Q So a lot of talk between both of them, but that
- 11 would end the conversation?
- 12 A Uh-huh.
- 13 Q Did the defendant leave?
- 14 A Yes.
- 15 Q Did he take his bag with him?
- 16 A Yes.
- 17 Q We're talking about this green bag?
- 18 A Yes.
- 19 Q You watched him leave with that?
- 20 A Yes.
- 21 Q Did you all clean up after dinner?
- 22 A Yes.
- 23 Q Did you clean the entire condo?
- 24 A Yes.
- 25 Q Was this normal?

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 A Yes. I mean, we always kept it clean at night
2 times just in case someone came when we weren't there.

3 Q I'll show you State's 28. Do you recognize these
4 sandals?

5 A Yes.

6 MR. GROOMS: Can we put them in evidence as well?

7 MR. SMALDONE: No objection.

8 (State's Exhibit 28 was admitted.)

9 Q (MR. GROOMS) Were those sandals there when you
10 were cleaning up?

11 A Yes -- oh, cleaning up?

12 Q Let me back up. They got in an argument and he
13 left. You testified that he took the green bag with
14 him. When you cleaned the apartment up, were there any
15 of Robert's -- excuse me, any of the defendant's items
16 still in the house?

17 A No.

18 Q And you are sure of that?

19 A Yes.

20 Q So those sandals would not have been there?

21 A Correct.

22 Q Is that fair?

23 A Fair.

24 Q That is a fair statement?

25 A Yes.

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 Q But you know you watched him leave with the bag?

2 A Yes.

3 Q Fast forward a little bit. Later on that
4 evening, did you and Randy have anything to drink?

5 A Randy had two Icehouses. He always bought two
6 Icehouses every day after work, one for me and one for
7 him, and most time, you know, I wouldn't finish mine,
8 and he may finish mine off or may not.

9 Q Did he take his medication that night?

10 A Yes.

11 Q Do you recall, roughly, about what time you went
12 to bed that evening?

13 A Around 12:00.

14 Q Were you and the victim intimate that evening?

15 A Yes.

16 Q Were you having a nice evening?

17 A Yes. After we cleaned up and Randy took a
18 shower, and it was -- it was like a perfect night. We
19 bragged about the food, and he was so happy that we
20 were finally there by ourselves and he could run around
21 naked. It was wonderful. It is a -- a great memory of
22 the night. It was perfect.

23 Q So he was in high spirits?

24 A Uh-huh.

25 Q You said he was happy that you had the place back

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 to yourselves?

2 A Yes.

3 Q Did he express any anger about the defendant
4 during this?

5 A No.

6 Q Just a good evening?

7 A (Witness nods head.)

8 Q Was your evening interrupted at any point?

9 A Yes. There was a knock at the door.

10 Q Let me point this out to you. Which door are we
11 talking about?

12 A The bedroom door, back door.

13 Q Are you in bed at this point?

14 A Yes.

15 Q So there is a knock at the back door. What time
16 was this?

17 A 2 o'clock.

18 Q Who was at the door?

19 A Robert.

20 Q How do you know this? Recognized his voice?

21 A Right. He knocked on the door, and Randy
22 hollered, Who is it, and he said, Robert, he told him
23 to go to the front door.

24 Q Did he let him in?

25 A Yes.

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 Q So he let him in this door, front door?

2 A Yes.

3 Q And you are in bed at this point?

4 A Right.

5 Q What, if anything, did you hear the victim say?

6 A I had told Randy after Robert had left and we
7 were cleaning up that I had seen a gun in a case. So
8 when Robert came into the -- you know, Randy was like,
9 Well, I guess you couldn't find a place to stay. So he
10 said, Please tell me that you didn't bring a gun into
11 my house, and please tell me you don't have a gun.
12 Randy was loud, and I couldn't -- the bedroom door was
13 opened, but I couldn't really hear what Robert had
14 said. There was just a few words and, you know, at one
15 point Randy said, We could take it outside, which Randy
16 never had, you know -- I only knew him for 14 years and
17 only got in a scuffle with one person.

18 Anyway, he told Robert -- he said, Robert, go
19 ahead and get on the couch. He said, Robert, we love
20 you to death, we're just tired of the disrespect.
21 Just go ahead and get on the couch and we'll talk
22 about this tomorrow. Do you want me to go on?

23 Q If you would like, but probably just to keep you
24 on the right track, I know you could continue talking
25 for hours; I know we met before.

SABRINA BOATWRIGHT - DIRECT EXAMINATION

- 1 Did things calm down after they initially argued?
- 2 A Yes. Because he got on the couch.
- 3 Q So you are in bed, correct?
- 4 A Yes.
- 5 Q Did Randy come back to bed?
- 6 A Yes.
- 7 Q Did you continue in your intimate evening?
- 8 A Yes.
- 9 Q Did he seem angry?
- 10 A No.
- 11 Q Was he cussing saying I shouldn't have let him
- 12 in, or did he say anything about letting him in?
- 13 A No. I did. I said, Randy, why did you let him
- 14 back in? Why? Because I knew he had the gun, and
- 15 Randy said, Sabrina, I can't stand to see anyone out on
- 16 the street.
- 17 Q That was the end of the talk?
- 18 A That was it.
- 19 Q So you go back to your evening. Did Randy go
- 20 back outside to the room at any point?
- 21 A After we were intimate, then he went back into
- 22 the kitchen to get a glass of Sunny Delight.
- 23 Q Before you go any further, how long a break was
- 24 this between letting him in?
- 25 A 10, 15 minutes.

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 Q So from the time he goes back to the bedroom and
2 comes out, it is about 10, 15 minutes?

3 A (Witness nods head.)

4 Q So he goes to the kitchen do get drink of Sunny
5 Delight?

6 A Uh-huh.

7 Q Did you hear in him in the kitchen?

8 A Uh-huh.

9 Q What did you hear?

10 A I just heard the refrigerator door open and
11 close. He didn't say anything to Robert at that time.

12 Q Just normal sounds?

13 A Uh-huh.

14 Q Did you hear ice in a glass, that type of thing?

15 A Yes.

16 Q Did he come back to the bedroom?

17 A Yes. He came back to the bedroom and set the
18 Sunny Delight on the table next to his side of the bed.

19 Q When he came back to the bedroom, was he upset
20 then?

21 A No.

22 Q Did he go back out into the main living area?

23 A (Witness nods head.)

24 Q Do you know why he did that?

25 A He just went back out and said, And another

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 thing, Robert -- and Robert yelled. Randy wasn't
2 yelling, he just said, And another thing, Robert. And
3 he said, Stop it. Stop it. I don't want to hear
4 anymore. And Randy said, But, Robert -- and he said,
5 Stop it. Stop it. I don't want to hear anymore. And
6 Randy said, Robert, and it was bam (witness crying).
7 And I wrapped the sheet around me and I ran to the
8 door, and Randy was at the door. He had his hand on
9 his chest, and he said, Oh, my God, Sabrina, I can't
10 believe he just shot me. And I said, No, Randy. No,
11 Randy. And he said, No, really, Sabrina, he just shot
12 me. And I said, No, Randy, no. And he said, No,
13 really. He looked down and took his hand off his chest
14 and looked up at me, and then he fell backwards. I
15 went down to his feet (witness crying), and then I went
16 up to his head and looked at him. I thought then that,
17 you know -- but anyway, I looked up and Robert is
18 sitting there on the loveseat with a gun pointed at me.
19 There is a pillow there. I got scared, and I took and
20 I ran into the bedroom --

21 Q Sabrina, I'll try to calm you down because we
22 need to give the Court as much detail as possible.
23 Which couch was the defendant on?

24 A The loveseat.

25 Q Can you see this? This is the loveseat, or this

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 is the loveseat? Here?

2 A Yes.

3 Q So the smaller couch?

4 A Yes.

5 Q Do you need a break?

6 A (Witness crying.)

7 MR. GROOMS: Court's indulgence.

8 (A brief pause in the proceedings.)

9 Q (MR. GROOMS) Almost done. Sabrina, do you
10 recognize this picture?

11 A That is in my bedroom, the door in my bedroom
12 going into the living room.

13 Q This was taken after the fact, but is this a fair
14 and accurate representation of looking out of your
15 bedroom?

16 A Yes.

17 MR. GROOMS: We ask to publish 29.

18 MR. SMALDONE: No objection.

19 THE COURT: You may.

20 (State's Exhibit 29 was admitted.)

21 Q (MR. GROOMS) The defendant was on this couch?

22 A The loveseat.

23 Q Where did you meet the victim -- where did you
24 meet Randy, I'm sorry?

25 A At my door.

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 Q Right here?

2 A Yes.

3 Q So this is where he last fell?

4 A Yes.

5 Q So when you are with the victim and you look up,
6 you see the defendant on the beige colored couch?

7 A Yes.

8 Q Where was he sitting on the couch?

9 A Kind of sitting in between like the corner
10 cushion -- I mean not all the way in the corner, just a
11 little bit over.

12 Q That is a view to what you saw?

13 A Yes.

14 Q Except it would be even closer, correct?

15 A Yes.

16 (State's 29 published to the jury.)

17 Q (MR. GROOMS) You had a clear look at the
18 defendant. Are you sure he had a gun?

19 A Yes.

20 Q Did you see the gun?

21 A Yes.

22 Q Did you see the barrel?

23 A Yes.

24 Q Was the gun concealed in any way?

25 A There was like over the --

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 Q The middle section, back end?

2 A The back end, kind of like over that a little
3 bit, but it was pointed at me. Whenever I looked up, I
4 thought he was going to shoot me, so --

5 Q What was over the gun?

6 A A throw pillow.

7 Q A pillow was over the gun, and you could see the
8 barrel pointed at you?

9 A Yes.

10 Q What did you do at that point?

11 A I jumped up and ran into my room and got my phone
12 and ran out the back door. Because we had turned the
13 phone off because he had a tendency calling or texting,
14 so Randy wanted it off so we could have our privacy. I
15 kept trying to turn it on, and I was banging on
16 people's doors and screaming for help.

17 Q Did the defendant offer any help?

18 A No.

19 Q Did -- while you are in the room, did he jump up
20 and come help Randy?

21 A No.

22 Q I apologize. So you are on the phone. Did you
23 already testify -- did you call 911?

24 A I was trying to turn the phone on. I was so
25 nervous and turning it on and banging on people's

JURY OUT - COURT AND ATTORNEYS

1 doors, and finally I got it on.

2 Q Did you call 911 that night?

3 A Yes.

4 Q Sabrina, I'm going to show you another exhibit.

5 This is a CD you reviewed in any office, State's

6 Exhibit No. 1. Is this the 911 call you made?

7 A (Witness nods head.)

8 MR. GROOMS: We ask to publish this to the jury.

9 MR. SMALDONE: I do object.

10 THE COURT: Send the jury out.

11 (The jury exits at 11:32 a.m., and the
12 following is heard out of the presence of the jury.)

13 THE COURT: How long is it?

14 MR. GROOMS: If I remember, it is just at six
15 minutes.

16 THE COURT: Let's hear it. Proffer it and I'll
17 hear from Mr. Smaldone.

18 (State's Exhibit 1 published to the Court.)

19 THE COURT: Okay. What purpose is it offered?

20 MR. GROOMS: Your Honor, the reason this is so
21 important to our case is that she's describing the
22 gun, she's describing the barrel hanging out of the
23 bag. She's also describing the defendant is leaving
24 the scene. We see her state. We know this is
25 directly after the shooting, and instead of helping,

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 and then high-tailing it with the gun not fitting in
2 the bag.

3 THE COURT: Well, I think it is relevant. I
4 think that it meets the test under 403. I believe it
5 is admissible, excited utterance is an exception.
6 I'll allow it. Bring them in.

7 (The jury enters at 11:46 a.m., and the
8 following is heard in the presence of the jury.)

9 THE COURT: You may proceed.

10 MR. GROOMS: Thank you, Your Honor.

11 Q (MR. GROOMS) Ms. Boatwright, when we left off, I
12 was asking you if you listened to the CD, State's
13 Exhibit 1?

14 A Yes.

15 Q And was that a call from -- that you made to 911
16 that night?

17 A Yes.

18 Q And that call that you listened to, that is the
19 actual recording?

20 A Yes.

21 MR. GROOMS: At this time we would like to enter
22 State's 1 into evidence and publish to the jury.

23 MR. SMALDONE: Renew my objection under 403.

24 THE COURT: Noted. State's 1.

25 (State's Exhibit 1 admitted and published to

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 the jury.)

2 Q (MR. GROOMS) Was that the phone call you made
3 that night?

4 A Yes.

5 Q And where were you while making that call?

6 A I was in the condo.

7 Q You were in the condo?

8 A Yes.

9 Q You testified earlier that you went outside --

10 A I went outside and I was trying to -- I was
11 pounding on people's doors and screaming for help and
12 trying to turn the phone on. Finally, I got the phone
13 on, and then I seen him coming up -- down the hallway
14 with the backpack and gun sticking out and then he
15 yelled, It's self-defense, and I was like, No. No, it
16 wasn't, and he just kept walking and left. I ran back
17 in there and was talking to 911.

18 Q Sabrina, so we're clear, you are outside of the
19 room and he came by you, "he" being the defendant?

20 A (Witness nods head.)

21 Q And you said he had his bag with him. Is this
22 the green bag again?

23 A (Witness nods head.)

24 Q Did you see the gun?

25 A Yes, it was sticking out like that much

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 (indicates).

2 Q How was he carrying the bag? Was it like this?

3 A No.

4 Q Over his shoulder?

5 A Over it.

6 Q Kind of like this (indicates)?

7 A Yes.

8 Q You said you saw a gun barrel?

9 A Yes.

10 Q Was it pointing out of the top or bottom end?

11 A The top.

12 Q Sabrina, I'll ask you to show the jury where --

13 if you could mark on here where the defendant was

14 sitting when you came out of the room that night?

15 A Like right there.

16 Q Where was Randy?

17 A He fell back at my door (indicates).

18 Q This is where you were?

19 A (Witness nods head.)

20 Q When you were right there, that is when you saw

21 the defendant with a gun?

22 A (Witness nods head.)

23 MR. GROOMS: Court's indulgence, I apologize.

24 (A brief pause in the proceedings.)

25 Q (MR. GROOMS) Sabrina, this is the tan couch you

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 testified he was on. Are these the pillows that you
2 said was over the gun?

3 A Uh-huh.

4 MR. GROOMS: State's Exhibit 16.

5 MR. SMALDONE: No objection.

6 (State's Exhibit 16 was previously admitted.)

7 A There was one pillow.

8 Q (MR. GROOMS) One pillow was over the gun?

9 A Yes.

10 Q Do you believe he was concealing the gun?

11 A Yes.

12 Q And you are positive the gun was pointing at you?

13 A Yes.

14 Q Would you recognize that gun today?

15 A Yes.

16 Q For identification purposes only, do you
17 recognize that as the gun?

18 A Yes.

19 MR. GROOMS: State's Exhibit No. 10 is
20 identifying the gun, not offering for evidence at this
21 time.

22 Q (MR. GROOMS) Thank you, Sabrina. You did good.
23 Maybe two more questions for you.

24 We're going back a little bit. Whenever you
25 talked to the defendant earlier about the liquor

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 store, did he seem agitated, or was this a normal
2 conversation?

3 A When he wanted a ride?

4 Q Yes, ma'am.

5 A It was a normal, you know, conversation. I
6 wasn't around.

7 Q And last question. You said when he walked by
8 you, he made a comment, what was the comment he made?

9 A Said it was self-defense, and I yelled at him,
10 No, it wasn't. Because I didn't hear -- I mean, Randy
11 was not yelling or anything.

12 Q Did you hear any fighting when they went outside
13 the room?

14 A Nothing.

15 Q Did you hear any yelling -- I know you testified
16 earlier what you heard, but were they yelling?

17 A When he went out, he just said, And another
18 thing, Robert, just like that, and Robert said, Stop
19 it. Stop it. I don't want to hear anymore. And Randy
20 was like, No, but, Robert, and Robert was like, Stop
21 it. Stop it. I don't want to hear it. Randy said,
22 But, Robert, and then it was pop, and I jumped up.

23 Q Did you ever hear Randy say anything about a gun?

24 A No. Randy would have never left it in the house,
25 you know, if the gun was there or if there was a gun

SABRINA BOATWRIGHT - DIRECT EXAMINATION

1 there, no.

2 Q You never heard -- you testified what you heard.
3 You never heard, He has a gun, nothing about the gun,
4 whatsoever?

5 A No. No.

6 MR. GROOMS: Sabrina, thank you. Answer any
7 questions defense might have.

8 THE COURT: Mr. Smaldone.

9 MR. SMALDONE: Can I ask for a brief two-minute
10 recess?

11 THE COURT: Okay. All right. Let's take a brief
12 recess. Mr. Ropp.

13 (The jury exits at 11:59 a.m., and the
14 following is heard out of the presence of the jury.)

15 THE COURT: The purpose of your recess?

16 MR. SMALDONE: To go right across the hall to the
17 restroom.

18 THE COURT: Very well. Please don't speak to
19 anyone until you return.

20 (A recess was taken.)

21 THE COURT: All right. We're back in here. \
22 Bring them in.

23 (The jury enters at 12:05 p.m., and the
24 following is heard in the presence of the jury.)

25 THE COURT: We have everyone back in the

SABRINA BOATWRIGHT - CROSS-EXAMINATION

1 courtroom. Mr. Smaldone.

2 CROSS-EXAMINATION

3 BY MR. SMALDONE:

4 Q You said Randy and Robert never were physical
5 before with each other, correct?

6 A No.

7 Q Randy never beat up Robert?

8 A No.

9 Q And Robert never beat up Randy?

10 A No.

11 Q They just had arguments over -- what were their
12 arguments usually about? Politics?

13 A Stupid stuff like that. If they are watching
14 Gold Rush or something and, you know, Robert might
15 think Todd was great and -- no, Randy thought Todd was
16 great, and somebody else thinks -- it just -- it was
17 debates or just -- you know, it was really -- I mean
18 sometimes it would be something as far as like when
19 people drink, and Randy didn't drink liquor, he drank
20 beer, and so it was just never, ever -- Randy's bark,
21 he didn't have no bite to it.

22 Q Right. But he would yell sometimes at Robert?

23 A And Robert would yell back.

24 Q And Robert would yell back at Randy?

25 A Right.

SABRINA BOATWRIGHT - CROSS-EXAMINATION

1 Q And it is fair to say that they were just -- if
2 Robert knew Randy was on one side, Randy picked the
3 other just to argue, and vice-versa? They just liked
4 to argue?

5 A I mean, more or less debating or just, you
6 know...

7 Q And this was -- was this a daily occurrence?

8 A No.

9 Q Weekly thing?

10 A You know, I mean, just hard to say. It wasn't
11 something every day.

12 Q I understand it was not on a schedule, but would
13 they argue once every year?

14 A Probably every eight times they were together,
15 around each other.

16 Q And they -- he was staying at the Wave Rider?

17 A He stayed with us for four days, but then when he
18 had -- he also lived behind us when we were staying in
19 an apartment and he was staying at Mystic Sea.

20 Q Mystic Sea is right by the Wave Rider?

21 A No, it's down on 21st Avenue South. We stayed in
22 an apartment, and then he stayed over at the Mystic Sea
23 Resort, or whatever you want to call it, before he
24 moved to the Wave Rider. Because I used to stay at the
25 Wave Rider before we moved there.

SABRINA BOATWRIGHT - CROSS-EXAMINATION

1 Q So he was at the Wave Rider before anyone else?

2 A Right, but then he didn't live there.

3 Q Right. I just wanted an understanding. So Randy
4 was drinking that night?

5 A I mean, he had an Icehouse.

6 Q 12 ounce?

7 A He had that, but then I'm sure that he had a few
8 beers. Normally, he drank one beer a day, because that
9 is what our agreement was, but he went to his friend's
10 house, so I'm sure that he had some beers there, but I
11 don't know if he did or didn't.

12 Q And Robert never -- in your presence, to the best
13 of your knowledge, from what you know, Robert never
14 felt threatened by Randy?

15 A No. Robert was bigger than Randy and always
16 thought he was tougher.

17 Q Sure. Sure. And Randy, until this evening -- or
18 that evening, Randy never felt threatened by Robert,
19 right?

20 A No. I mean, Randy wasn't afraid of him, no.

21 Q And taking you back to that night, it is your
22 testimony that the door was closed while Randy went
23 back out, correct?

24 A The bedroom door?

25 Q The bedroom door.

SABRINA BOATWRIGHT - CROSS-EXAMINATION

1 A No. It always stayed opened -- I mean, when we
2 were sleeping, when he came back in for 10, 15 minutes,
3 it was closed. But when he went out to answer the
4 door, it was opened, and then whenever he went out to
5 get the Sunny Delight, it was opened. It was not shut
6 when he came back in and put the glass down and went
7 back out to speak to him, it was still opened.

8 Q Sure. So he went out, but you didn't see what
9 was going on, you just heard what you testified to
10 earlier, Randy saying something, and you heard Robert
11 saying something about like stopping?

12 A Right.

13 Q The lights were off at that point?

14 A No.

15 Q But the lights are off in the bedroom?

16 A Yes.

17 Q And the lights were on in the living room?

18 A Yes.

19 Q And this all happened in the living room?

20 A Yes.

21 Q So is your testimony that you didn't see any of
22 this occur?

23 A I mean, no. I heard all of it.

24 Q But all you heard -- you didn't see it?

25 A No.

SABRINA BOATWRIGHT - CROSS-EXAMINATION

1 Q You heard Randy say something, and you heard
2 Robert say, Stop, correct?

3 A I heard Randy say, And another thing, Robert.
4 Now, if Randy was mad, he would have been yelling it,
5 and then Robert would say, Stop it. Stop it. I don't
6 want to hear anymore. Randy would have hollered, but
7 he was like, No, but, Robert, and he said it again,
8 Stop it. Stop it. It was loud, angry, and then Randy
9 said, But, Robert, and then it was bam. I heard no
10 furniture or anything being thrown around, no fists,
11 nothing.

12 Q So they weren't punching each other?

13 A No.

14 Q Weren't kicking each other?

15 A No.

16 Q Just a single gunshot?

17 A Yes.

18 Q And you didn't see it happen?

19 A No.

20 MR. SMALDONE: I beg Court's indulgence for a
21 moment.

22 (A brief pause in the proceedings.)

23 Q (MR. SMALDONE) They never threatened or fought
24 each other?

25 A Randy told him that night, If you want to take it

SABRINA BOATWRIGHT - CROSS-EXAMINATION

1 outside. That is when he first came in, and Randy was
2 asking him, Please, tell me that you didn't bring a gun
3 in my house, please tell me you don't have a gun. I
4 couldn't hear what he was saying because, you know, I
5 believe the TV was still on in there, but I couldn't.
6 And then I took it that -- Randy let him in so, you
7 know, he said he didn't very a gun, that is the way I
8 took it, because I told Randy before, and that is why I
9 didn't want him to let him back in.

10 Q You never testified that you didn't hear anyone
11 say, I don't have a gun?

12 A No, I did not.

13 Q That is just something you are assuming?

14 A I'm assuming, yes.

15 Q So you have no idea?

16 A No.

17 Q When --

18 MR. SMALDONE: Beg the Court's indulgence, I lost
19 my train of thought.

20 Q (MR. SMALDONE) So when Randy said something to
21 Robert, Let's take it outside, which happens, was that
22 around 2:00 in the morning when he came back in the
23 house?

24 A Yes.

25 Q So that was immediately prior to all the bad

SABRINA BOATWRIGHT - CROSS-EXAMINATION

1 stuff?

2 A Right.

3 Q Robert was in for about 20 minutes before the gun
4 went off; is that your testimony?

5 A Uh-huh.

6 Q So in 20 minutes? All right?

7 A And then he told him, Robert, we love you to
8 death, we're just tired of the disrespect, just get on
9 the couch and we would talk about this tomorrow. Randy
10 came back into the bedroom with me, and then he came
11 back out and got the Sunny Delight, came back, set it
12 down and went back out and said, And another thing, and
13 that is when all of that happened.

14 Q So he had just told Robert that he respects him,
15 love you to death, all of that?

16 A Just tired of disrespect, yes.

17 Q I don't mean to take you back to the shooting.
18 Let's skip a few seconds after that. You call 911
19 right when you saw him standing in the doorway, or was
20 he already on the ground?

21 A When I heard the shot, I put a sheet around me
22 and ran to doorway. Randy met me there, and he was
23 holding his chest and telling me, Oh, my God, Sabrina,
24 I can't believe he shot me, and I kept saying, No,
25 Randy, no. He kept telling me, Yes, Sabrina, he shot

SABRINA BOATWRIGHT - CROSS-EXAMINATION

1 me. I was like, No, Randy, no. And he said, No, here,
2 look. He took his hand off and looked up at me. He
3 said, No, look, here, see, and went like this and
4 looked up at me, and then he just fell backwards. So I
5 went down, and then I went up to his face, and now I
6 don't even remember your question.

7 Q Sorry. I'm not trying to badger you. It is
8 important to know --

9 A No, when I went to his face and looked up and
10 seen Robert with the gun pointed at me, I thought he
11 was going to shoot me too, so I took and ran out the
12 door and snatched my phone off the dresser and ran out
13 into the hallway and was pounding and yelling trying to
14 get people up to help me. I was trying to turn the
15 phone on, and when I got like five doors down, then it
16 started to come on when he was coming out the door with
17 the backpack.

18 Q So that is when your phone -- is that when you
19 got reception or when your phone turned on?

20 A That is when I could dial 911. I mean, I thought
21 I had him on the phone, but evidently I didn't. But,
22 you know, I just remember breathing and being real
23 quiet because he was walking down. I mean that might
24 be whenever I was breathing so funny and the phone was
25 ringing, because I know I got real quiet and, you know,

SABRINA BOATWRIGHT - CROSS-EXAMINATION

1 I just dialed them.

2 Q You were -- is it your testimony that you were
3 asleep and were awoken by them yelling, or you were
4 awake --

5 A We were --

6 Q Doing your thing?

7 A Yes.

8 Q So that just completed, so you were still awake?

9 A Oh, yeah.

10 Q You had seen Robert with a gun before, correct?

11 A At his storage unit.

12 Q Located close by?

13 A On 707.

14 Q So not that close?

15 A No.

16 Q About 15 minutes away?.

17 A 15, 20 probably.

18 Q And after all of this happened, Robert text you
19 something about taking him to a storage unit?

20 A What do you mean? After all this happened?

21 Q After -- I know you got a text at some point
22 about a storage unit, and that was after Randy was
23 shot?

24 A Well, at first I assumed that, but we had turned
25 the phone off so we wouldn't be bothered by him. So

SABRINA BOATWRIGHT - CROSS-EXAMINATION

1 whenever I turned the phone on, all the text messages
2 that you get then pop back up and everything because
3 that is what I thought. But Robert, which I didn't
4 know that, because I was with the detectives or
5 whatever, and I said, Oh, my God, he just texted me,
6 and then they said text him back, so I text back, Where
7 are you, because they were trying to find him because
8 he left, but his phone was --

9 Q At the motel room?

10 A Right, so he couldn't have done that.

11 Q I understand.

12 MR. SMALDONE: Court's indulgence one more time,
13 Judge.

14 (A brief pause in the proceedings.)

15 Q (MR. SMALDONE) It's your testimony that Randy
16 had taken his pill that night?

17 A Yes.

18 Q Did you see him take it?

19 A No.

20 Q Did he tell you?

21 A I just assumed.

22 Q He drank one beer in front of you?

23 A When we were in the bedroom, yeah, and then I had
24 one, but, you know, I never finished them.

25 Q So you saw him drink one beer, and that is

SABRINA BOATWRIGHT - CROSS-EXAMINATION

1 pursuant to your agreement?

2 A It was just that -- when you get off work, he
3 could have an Icehouse, and we would buy two Icehouses,
4 and most of the time that was it.

5 Q Because Randy gets loud when he's been drinking,
6 right?

7 A Randy is hard of hearing anyway, he would have to
8 -- if you were turned around, he couldn't hear what you
9 were saying, he has to look at your lips also, so.

10 Q That is listening?

11 A But sometimes, like most people, they get a
12 little louder whenever they do drink.

13 Q And I want to clarify. You said he has a hard
14 time hearing people, that is listening, but is it your
15 testimony that since he has as hard time hearing, his
16 natural volume is a little higher than normal?

17 A Right, so he can hear his own-self talk.

18 Q And that combined with the drinking, that he
19 tried to cut back on, makes him a little louder than
20 usual? If he's drunk, he's louder than he should be,
21 right?

22 A There were seldom times that I had seen Randy
23 drunk, because he had a tolerance. We were trying to
24 save money, and I just got a vehicle and paying
25 insurance and gas and wanted to do other things, get

SABRINA BOATWRIGHT - REDIRECT EXAMINATION

1 him a vehicle and stuff like that so I didn't have to
2 take him to work.

3 Q He wasn't acting drunk that night?

4 A No. No.

5 MR. SMALDONE: No more questions at this time.

6 REDIRECT-EXAMINATION

7 BY MR. GROOMS:

8 Q You said with Mr. Smaldone that they came in and
9 you said immediately thereafter -- or maybe I
10 misunderstood it -- but was there a break in time from
11 when he first came in to the shooting?

12 A Yes.

13 Q So that is when he came back to the bedroom and
14 then back out, and that was the 10, 15 minutes the
15 first time?

16 A He came in and Randy asked him about the gun,
17 because Randy never knew there was a gun there until I
18 seen it. Then he told him to get on the couch, came
19 back into the bedroom with me, and then he went back
20 out after we were intimate, finished our intimacy, and
21 then got the Sunny Delight, came back in the bedroom
22 and left the door opened the whole time, because the
23 way the bed was sitting you can't see in there, and
24 then that is when he went back out and talked to him.

25 Q That brings me to another question. The bed is

SABRINA BOATWRIGHT - REDIRECT EXAMINATION

1 up against the wall?

2 A This wall over.

3 Q Right here, like that (indicates)?

4 A Yes.

5 Q I think we stated earlier this was taken after
6 the fact?

7 A Right. Right. I do have pictures of it, if you
8 wanted to see how it was before.

9 Q It's okay. We have others as well. I just
10 wanted to clarify where the bed was.

11 One more picture. You recognize this picture,
12 Picture 14?

13 A That's the bedroom.

14 Q Those are the two Icehouses you were talking
15 about?

16 A Yes.

17 Q Is that the cup of Sunny D?

18 A Yes.

19 Q State's 14, I'll enter this into evidence.

20 MR. SMALDONE: No objection.

21 (State's Exhibit 14 was admitted.)

22 Q (MR. GROOMS) Last question. You said Randy came
23 out and said, Another thing, Robert, and he said, I
24 don't want to hear it or --

25 A Stop it. Stop it. I don't want to hear it. And

SABRINA BOATWRIGHT - REDIRECT EXAMINATION

1 then he said, But, Robert. Stop it. Stop it. I don't
2 want to hear it.

3 Q How long between the "but Robert" and "I don't
4 want to hear it" was the gunshot?

5 A Immediately. It was one whole thing. If I'm
6 sitting here and I said -- like you are Robert, And
7 another thing, Robert, then you would tell me to stop
8 it, and then I say, But, Robert, and you would tell me,
9 and it was bam.

10 MR. GROOMS: Okay. All right.

11 MR. SMALDONE: No recross.

12 THE COURT: You may step down. It is 12:30.
13 Let's break for lunch. Be back a quarter of 2:00.
14 That is an hour and 15. I think that is enough. Mr.
15 Ropp, take them to their jury room and help them out.

16 (Whereupon, the jury exits at 12:26 p.m., and the
17 following is had out of the presence of the jury.)

18 THE COURT: Quarter of 2:00, gentlemen.

19 (A lunch recess was taken.)

20 MR. DeBUSK: I believe we're ready.

21 THE COURT: Bring them in.

22 (The jury enters at 1:48 p.m., and the
23 following is heard in the presence of the jury.)

24 THE COURT: Call your witness.

25 MR. DeBUSK: State calls Tony Humes.

ANTHONY HUMES - DIRECT EXAMINATION

1 (ANTHONY HUMES, having been duly sworn,
2 testified as follows:)

3 THE CLERK: State your full name and spell
4 your last.

5 THE WITNESS: Anthony Humes, H-U-M-E-S.

6 DIRECT-EXAMINATION

7 BY MR. DeBUSK:

8 Q Officer Humes, who is your employer?

9 A City of Myrtle Beach Police Department.

10 Q What is your rank?

11 A Private first class.

12 Q And your job description?

13 A Currently assigned to the Crime Scene Unit.

14 Q And back in August of 2014?

15 A I was assigned to the Crime Scene Unit.

16 Q Were you on duty in the early morning hours of
17 August 7?

18 A Yes.

19 Q How long have you been in crime scene?

20 A Up until now, almost four years, a little over
21 four years.

22 Q What does a crime scene specialist do?

23 A We respond to a multitude of calls, pretty much
24 anything a supervisor deems to be necessary, could be
25 larceny from a Coke machine to burglary to recovering a

ANTHONY HUMES - DIRECT EXAMINATION

1 stolen auto.

2 Q You go to crime scenes and collect evidence?

3 A Yes, sir.

4 Q Did you participate in the investigation of a
5 fatal shooting at the Wave Rider Hotel?

6 A Yes, sir.

7 Q How did you become assigned to that case?

8 A I was on duty that evening and overheard the
9 traffic there was a shooting at the motel. I spoke
10 with Detective Quinn. He requested I stay at the
11 annex, which is where our lab is located. I was
12 requested to --

13 Q What is Detective Quinn's role in all of this?

14 A He was the detective that evening.

15 Q So you did what Detective Quinn told you. Where
16 did you go?

17 A I stayed at the annex where our office is and
18 where their office is.

19 Q Building at the old air force base?

20 A Yes, substation.

21 Q That is where your crime scene unit is stationed?

22 A Yes, sir.

23 Q What did you do at that scene?

24 A I received a consent to search form and a
25 cellular form to download the data from the cell phone.

ANTHONY HUMES - DIRECT EXAMINATION

1 Q Of whose phone?

2 A Sabrina Boatwright's.

3 Q Was she cooperative in allowing you to get her
4 phone?

5 A Yes, sir.

6 Q Did you do anything else?

7 A I collected DNA standards from Ms. Boatwright as
8 well.

9 Q Was she cooperative on that?

10 A Yes.

11 Q Consented to that?

12 A Yes.

13 Q What did you do next?

14 A Responded to the Wave Rider Hotel.

15 Q Let me show you State's Exhibit 3 and 4 and ask
16 if you recognize those.

17 A It is an aerial photograph of the Wave Rider.

18 Q Is that the scene you responded to?

19 A Yes.

20 Q Do you remember where that unit was that you
21 responded to, what floor?

22 A The room was located on the third floor. The
23 hotel is shaped in like an L or U. The hotel is in, I
24 guess, the bottom part of the U. On the third floor is
25 the room, Room , on the south side of the hallway.

ANTHONY HUMES - DIRECT EXAMINATION

1 Q Indicate on State's 3 there, circle the area
2 where the room was approximately.

3 A (Indicates.)

4 Q That is where you went in?

5 A Yes.

6 Q Did you take a good look at that room?

7 A Yes.

8 Q Familiarize yourself with the floor plan and all.

9 A Eventually, yes.

10 Q On State's 36, do you recognize this?

11 A That is the layout of the room.

12 Q Is that a fair and accurate representation of the
13 layout?

14 A Yes.

15 Q Would that aid you in explaining to the jury what
16 you did at the crime scene?

17 A Yes.

18 MR. DeBUSK: We move State's 36 into evidence at
19 this point.

20 MR. SMALDONE: No objection.

21 THE COURT: Without objection it's admitted.

22 (State's Exhibit 36 was admitted.)

23 Q (MR. DeBUSK) When you arrived at the scene, was
24 another officer with you?

25 A Yes.

ANTHONY HUMES - DIRECT EXAMINATION

- 1 Q Who was that?
- 2 A Crime Scene Officer Mattison.
- 3 Q Is Crime Scene Officer Mattison still with the
- 4 Myrtle Beach Police Department?
- 5 A No, sir.
- 6 Q Where is she?
- 7 A She took another job and moved back to Ohio.
- 8 Q Let me step back. The Wave Rider Motel, it's
- 9 also shown -- I believe it's circled on State's 4; is
- 10 that correct?
- 11 A Yes.
- 12 Q Is that in the city limits of Myrtle Beach?
- 13 A Yes.
- 14 Q What county?
- 15 A Horry County.
- 16 Q What did you do when you arrived?
- 17 A We first went to the main office to inquire about
- 18 any available video surveillance.
- 19 Q Was there any video surveillance available?
- 20 A There is cameras in the system there, but there
- 21 was no video files for that day or previous days.
- 22 Q Is that because the cameras weren't functioning?
- 23 A Correct.
- 24 Q What did you do after you checked on the cameras?
- 25 A Went up to the room, photographs were taken of

ANTHONY HUMES - DIRECT EXAMINATION

1 the outside of the building, as well as used the
2 camcorder, and we went up to the room at that point.

3 Q What did you do in the room?

4 A We would have walked in and observed the room,
5 took pictures and use of the camcorder as well.

6 Q You did a walk-through and took pictures?

7 A Yes, sir.

8 Q Let's talk about those pictures a little bit.

9 State's Exhibit 15, 20, 32, 18, 16, 28, 21, 27 and 14.
10 Look at these and tell me if you recognize them?

11 A (Witness complied.) Yes.

12 Q What are they?

13 A Photographs of the interior of the room.

14 Q Those are photographs that you or Crime Scene
15 Specialist Mattison took?

16 A Yes.

17 Q Is it like "Madison" like the capital of
18 Wisconsin?

19 A Two T's, Mattison.

20 Q Thank you. I've been pronouncing it wrong.

21 MR. DeBUSK: Those I believe are already in
22 evidence, Your Honor.

23 Q I'll show you further what is marked State's 13,
24 22, 23, 25, 26, 33, 24, 19, 17 and ask if you recognize
25 these?

ANTHONY HUMES - DIRECT EXAMINATION

1 A Yes, these are the scene as well.

2 Q From the same batch as the prior?

3 A Yes, sir.

4 MR. DeBUSK: These are not in evidence.

5 Q (MR. DeBUSK) These are fair and accurate
6 representations of the scene that night?

7 A Yes, sir.

8 Q Taken by you or Crime Scene Specialist Mattison?

9 A Yes, sir.

10 MR. DeBUSK: I'll divide these into two groups.

11 MR. SMALDONE: Group one, without objection.

12 MR. DeBUSK: I'll read them into the record: 25,
13 26, 33, 24, 19.

14 THE COURT: Without objection they are admitted.
15 (State's Exhibits 25, 26, 33, 24, 19 admitted.)

16 MR. DeBUSK: There is an additional group that I
17 understand he'll have an issue on, which is State's
18 13, 22, 23 and 17. They have been authenticated.
19 We're going to move them into evidence, but we'll wait
20 until a moment to offer.

21 THE COURT: You are admitting for identification
22 only?

23 MR. DeBUSK: For identification at this time.
24 We'll move them into evidence at a different time.

25 THE COURT: Okay.

ANTHONY HUMES - DIRECT EXAMINATION

1 Q (MR. DeBUSK) If you could, step down here and
2 explain to the jury what the layout of the unit -- you
3 said it was ?

4 A Yes.

5 Q What was it?

6 A There was two entry doors into the room, one
7 entered into the bedroom, one into the kitchen from the
8 hallway. Upon entering into the kitchen, there was
9 cabinets, refrigerator right there, more cabinets,
10 small bathroom and two couches. This one was a tan
11 loveseat, this was a red or burgundy sofa, coffee
12 table, window back here, and then this was a storage
13 room and there is another area of cabinets with
14 countertop and barstool, and this is the bedroom.

15 Q When you look in the -- take this first. Did you
16 find any firearms, bullets, unfired casings, casings,
17 anything in the apartment?

18 A There was a fired cartridge casing inside the
19 apartment.

20 Q Where did you find it?

21 A Between the two couches, but back here by I think
22 it was a table.

23 Q Let me show you State's 25. Does that show
24 you --

25 A Yeah, it is there, kinda of hidden in the

ANTHONY HUMES - DIRECT EXAMINATION

1 shadows.

2 Q What kind of casing was it?

3 A The head stamp had Rem, R-E-M, appeared to be .22
4 caliber.

5 MR. DeBUSK: May I publish 25? It's in evidence.

6 MR. SMALDONE: No objection.

7 (State's 25 published to the jury.)

8 Q (MR. DeBUSK) I'll show you State's 26. What
9 does that show?

10 A That is the same cartridge casing with the
11 evidence Marker 4.

12 Q Why do you put that identification marker on
13 there?

14 A Group things where it makes it easier to identify
15 things.

16 Q Did you collect that casing?

17 A Yes.

18 Q What did you do with that casing when you
19 collected it?

20 A It was placed in a box with cotton and the box
21 was marked.

22 Q And where did you put it?

23 A Eventually?

24 Q Yes.

25 A It would have went to the property and evidence

ANTHONY HUMES - DIRECT EXAMINATION

1 room.

2 Q Do you know who signed it in?

3 A I believe I did.

4 Q What evidence technician would have received
5 that?

6 A There is three that work in the room. I believe
7 Shadoan is one that accepted it out of the locker.

8 Q From when you collected it in that apartment to
9 when you put it in the locker for Shadoan to collect,
10 did you alter or change it in any way?

11 A No, sir.

12 Q Did you safeguard it?

13 A Yes.

14 Q Did you keep it in safe custody the whole time?

15 A Yes.

16 Q And it was put into evidence?

17 A Yes.

18 Q Next, did you see any blood stains?

19 A There are four areas of blood stains throughout
20 the apartment. There was an area of blood at the front
21 door.

22 Q Was it a large area or a smear, or what?

23 A Seemed like a smear.

24 Q Like transfer from a hand?

25 A Yes.

ANTHONY HUMES - DIRECT EXAMINATION

1 Q What else did you see?

2 A Area of blood on the coffee table.

3 Q Let me show you State's 24. Do you recognize
4 that?

5 A Yes.

6 Q What is that?

7 A Blood on coffee table with adhesive sticker of
8 No. 2.

9 Q What did you collect there from Marker 2?

10 A We used two sterile cotton swabs and distilled
11 water to take a sample of the area.

12 Q For DNA purposes?

13 A Yes.

14 Q Does Marker 2 correspond with the same Marker 2
15 in this photo?

16 A No, sir. Marker 2 in this photo is a cellular
17 phone.

18 Q What is behind the Marker 2?

19 A The red blood stain.

20 Q So coincidentally they are both marked "2" for
21 different purposes?

22 A Yes.

23 Q And behind the Marker 2 is the same blood stain?

24 A Yes.

25 Q What else did -- you have 3 -- I can see the 4,

ANTHONY HUMES - DIRECT EXAMINATION

- 1 and that is the casing?
- 2 A Yes.
- 3 Q What is 1, 2, and 3?
- 4 A Number 1 is a baseball type hat, 2 is cellular
5 phone and 3 is the red thermal cup.
- 6 Q What was in the red thermal cup?
- 7 A An orange substance.
- 8 Q Did you test it or smell it?
- 9 A Sample was collected and placed into a glass jar.
- 10 Q But you didn't do any test on it?
- 11 A No, sir.
- 12 Q Those three were collected as well?
- 13 A Yes.
- 14 Q This is a close-up of the item you just
15 testified, Item 3; is that the cup with the orange
16 liquid?
- 17 A Yes.
- 18 Q State's 20, another angle of the same items?
- 19 A Yes, sir.
- 20 Q State's 18, does that show these items before
21 they were numbered?
- 22 A Yes.
- 23 Q And the blood stain is visible next to the cup?
- 24 A Yes, sir.
- 25 Q State's 16 same general area?

ANTHONY HUMES - DIRECT EXAMINATION

- 1 A Yes.
- 2 Q State's 21?
- 3 A Same general area.
- 4 Q Same table?
- 5 A Yes, sir.
- 6 Q Indicate that general area on the diagram.
- 7 A Right here.
- 8 MR. DeBUSK: May I publish these to the jury?
- 9 THE COURT: Yes.
- 10 MR. DeBUSK: 21, 16, 18, 20, 33, 19 and 24.
- 11 (State's Exhibits 21, 16, 18, 20, 33, 19, 24 was
- 12 published to the jury.)
- 13 Q (MR. DeBUSK) State's 15.
- 14 A That is the tan colored couch looking towards the
- 15 kitchen.
- 16 Q What area of the diagram is that?
- 17 A Looking this way.
- 18 Q And that is the tan colored couch with the "X" on
- 19 it?
- 20 A Yes, sir.
- 21 Q This here?
- 22 A Bookshelf.
- 23 Q Built-in bookshelf?
- 24 A Yes.
- 25 Q State's 28?

ANTHONY HUMES - DIRECT EXAMINATION

- 1 A Pair of flip-flops by the front door.
- 2 Q Which door?
- 3 A Front door, (meaning kitchen entry.
- 4 Q State's 27?
- 5 A Cabinet with a bottle of Vodka.
- 6 Q Where was that?
- 7 A Kitchen area.
- 8 Q And State's 14?
- 9 A That is the bedroom.
- 10 MR. DeBUSK: May I publish 14, 27, 28, 32 and 15?
- 11 THE COURT: Yes, you may.
- 12 (State's Exhibits 14, 27, 28, 32 and 15
- 13 published to the jury.)
- 14 Q These are not in evidence, so please don't show
- 15 them to the jury. What does State's 17 show?
- 16 A The decedent and the coffee table.
- 17 Q That shows his relation to the coffee table?
- 18 A Yes.
- 19 Q You were telling us where you found the blood
- 20 stains; we stopped at the coffee table. Did you find
- 21 them anywhere else?
- 22 A There was some on this wall here.
- 23 Q Were they transferred or drips?
- 24 A Seemed more like drips.
- 25 Q And how about in -- where else did you find

ANTHONY HUMES - DIRECT EXAMINATION

1 blood?

2 A On the carpet here.

3 Q State's 17, does that show --

4 A Shows the scale we put on the wall here.

5 Q State's 22?

6 A Same.

7 Q Shows?

8 A The same wall.

9 Q You see it relatively where it is to the body?

10 A Yes.

11 Q Where was the body located?

12 A Right outside of this bedroom door and this
13 bedroom door.

14 Q Face up or down?

15 A Face up.

16 Q Where was it in relation to the --

17 A The decedent's right arm was on the foot stool.

18 Q Grabbing, or just laying there?

19 A Just there (indicates).

20 MR. DeBUSK: We'll address the issues on that
21 later.

22 Q (MR. DeBUSK) State's 34, could you tell the jury
23 what that is?

24 A That is the bottom portion of the decedent and
25 blood on the floor.

ANTHONY HUMES - DIRECT EXAMINATION

1 Q That shows the blood you indicated on the carpet
2 in this area where the body was?

3 A Yes, sir.

4 MR. DeBUSK: We'll also hold this one in the
5 second group.

6 MR. SMALDONE: I object to those.

7 THE COURT: All right. We'll deal with that
8 later.

9 Q What else did you collect besides those items and
10 the --

11 A There was three cellphones collected out of this
12 room, and the pair of flip-flops or sandals at the
13 kitchen entry.

14 Q Did you take swabs from anything besides the
15 blood stain on the table?

16 A There was four sets of swabs taken with blood,
17 one at the front door, two at the table, three was on
18 the wall, and four was the floor.

19 Q So you collect blood from everywhere you find it?

20 A Yes, sir.

21 Q You said these appeared to be transferred and
22 then drops, drops, and drops?

23 A Yes.

24 Q What else did you do at that scene, if anything?

25 A We took photographs of the decedent and inspected

ANTHONY HUMES - DIRECT EXAMINATION

1 the decedent.

2 Q How did the decedent leave the scene?

3 A He was placed into the coroner's custody.

4 Q So the coroner took care of that part?

5 A Yes, sir.

6 Q I forgot to ask you, did you have a search
7 warrant before you went in there?

8 A Yes. Detective Pearson completed that.

9 Q And brought a search warrant?

10 A Yes, sir.

11 Q Did you observe any injuries on the victim?

12 A A small, round hole in his chest.

13 Q Is there any other injuries, bruises, cuts
14 anywhere else on the body?

15 A It was somewhat hard to tell, but no.

16 Q I think you might have said this, but the casing
17 that you collected and put into evidence, did it have
18 any identifying marks on it, brand or anything?

19 A On the head stamp, the very bottom, of the casing
20 had the letters R-E-M inscribed.

21 Q This was a fired casing?

22 A Yes, sir. There was no bullet.

23 Q Now, I would ask that you open this in the
24 presence of the Court and see if you can identify what
25 is inside?

ANTHONY HUMES - DIRECT EXAMINATION

1 A (Witness complied.)

2 Q For the jury, why do we put so much tape and
3 things on items when we package them as evidence?

4 A Just to prevent any tampering. If someone opened
5 it, you would know.

6 Q So it is so no one can tamper?

7 A Yes.

8 Q This package you just cut open, was that produced
9 by Myrtle Beach or by someone else?

10 A That was produced by us.

11 Q What are the items?

12 A Small box is cartridge casing from the hotel
13 room.

14 Q That box, is that produced by Myrtle Beach or
15 SLED?

16 A By us.

17 Q You are the one that wrote on the box?

18 A Mattison did that.

19 Q But that is the casing you collected?

20 A Yes.

21 Q And you kept it in your custody until it was
22 placed in Myrtle Beach evidence?

23 A Yes.

24 Q And the package outside, is that by Myrtle Beach?

25 A No, sir, that is SLED.

ANTHONY HUMES - DIRECT EXAMINATION

1 Q And the yellow envelope?

2 A No. No.

3 Q So this is the packaging you placed the casing in
4 when you gave it to Officer Shadoan received it?

5 A Yes, sir.

6 Q Let me ask you about that other item. What is
7 that?

8 A It appears to be a fired bullet.

9 Q Now, did you attend the autopsy?

10 A No, sir.

11 Q Did anyone from Myrtle Beach attend it?

12 A Detective Bean and Crime Scene Officer Mattison
13 attended the autopsy.

14 Q If any items collected at autopsy, who took
15 possession of it?

16 A Mattison and Bean.

17 Q And Mattison is the one in Ohio?

18 A Yes.

19 Q When she collected an item, what would she do
20 with it?

21 A Place it in property and evidence.

22 Q And then someone there would have collected it?

23 A Yes.

24 Q What is the policy with Myrtle Beach when it is
25 collected at autopsy before it's put in evidence; how

ANTHONY HUMES - DIRECT EXAMINATION

1 is it preserved?

2 A It would have been placed in an envelope or box
3 or some type of carrier and brought back to the annex,
4 and then taken up to property and evidence storage.

5 MR. DeBUSK: I would like to get these marked
6 separately, if I could.

7 (State's Exhibits 40 through 42 marked.)

8 MR. DeBUSK: State's 41, what is that?

9 A That is the projectile. States.

10 Q 40?

11 A That is the casing.

12 Q With the package you produced, or Mattison?

13 A Yes.

14 Q And State's 42?

15 A The envelope those items were in from SLED.

16 Q To be clear for the jury, until you opened it,
17 Items 40 and 41 were packaged in Item 42, correct?

18 A Yes.

19 MR. DeBUSK: I'll put them inside. Please have a
20 seat.

21 Q (MR. DeBUSK) Did you respond to any other scenes
22 in this investigation?

23 A We responded to the Sterling Village.

24 Q What did you find there?

25 A The defendant's truck.

ANTHONY HUMES - DIRECT EXAMINATION

1 Q Is that the scene where the defendant was
2 arrested?

3 A Yes.

4 Q State's 5 already in evidence, can you identify
5 that?

6 A That is the pickup truck at Sterling Village.

7 Q What processing did you do on that pickup truck?

8 A Search warrant was obtained for it on the ground
9 next to the passenger's side of the vehicle at the
10 front were 11 unfired bullets.

11 Q State's 6?

12 A Yes.

13 Q Is that -- next to Marker 1, are those the
14 bullets that you referred to?

15 A Yes, sir.

16 Q Did you collect those?

17 A Yes.

18 Q Could you take a look and see if it is one of
19 these?

20 A Yes, sir. (Indicates.)

21 (State's Exhibit 43 marked.)

22 Q So State's 43, now marked, is that the packaging
23 which you put the rounds you collected at Marker 1 on
24 State's 6?

25 A Yes.

ANTHONY HUMES - DIRECT EXAMINATION

1 Q What else did you find at the scene of the truck?

2 A Upon entering the vehicle on the floorboard of
3 the passenger's side was a red Marlin rifle bag.

4 Q State's 9, does it show that bag?

5 A Yes.

6 Q State's 39, do you recognize that?

7 A The Marlin bag on the floor.

8 Q You collected that in the pickup truck where the
9 defendant was arrested?

10 A Yes.

11 MR. DeBUSK: We move this into evidence at this
12 time, Your Honor, State's 39.

13 MR. SMALDONE: No objection. THE COURT: Without
14 objection.

15 (State's Exhibit 39 was Admitted.)

16 Q (MR. DeBUSK) Did you see any other bags in the
17 truck?

18 A There was a green bag that was located on the
19 seat.

20 Q State's 7, does that show that bag?

21 A Yes.

22 Q At the location you collected?

23 A Yes.

24 Q State's 38, do you recognize that?

25 A That was the green bag on the seat.

ANTHONY HUMES - DIRECT EXAMINATION

1 Q And the contents, were those in the bag when you
2 collected it?

3 A Yes.

4 MR. DeBUSK: We move State's 39 and contents into
5 evidence.

6 MR. SMALDONE: What is the contents? No
7 objection.

8 THE COURT: Without objection. Mr. DeBusk, how
9 do you plan to track the contents?

10 MR. DeBUSK: I don't know, Your Honor.

11 THE COURT: For the record, I would like for you
12 to identify the contents that is No. 38, so we'll do
13 A, B, C. I want to know what is in the bag so I can
14 track it.

15 MR. DeBUSK: 38A is a shampoo bottle; 38B,
16 tanning lotion; 38C, Old Spice deodorant; D, bar of
17 soap in plastic box; 38E, toothbrush in plastic case;
18 38F, CVS nasal spray; 38G, Oral B toothbrush in
19 original packaging; 38H, plastic water bottle; 38I BC
20 aspirin envelope; 38J is hairbrush; 38K, Bausch & Lomb
21 eye wash; 38L, USB cell phone charger; 38M, small
22 cleaning rag in plastic; 38N, Crown cigarettes; 38O,
23 one small pair of scissors; 38P, 50 cents U.S.
24 currency, two quarters. There is some envelopes of BC
25 powders that apparently came from the envelope, may I

ANTHONY HUMES - DIRECT EXAMINATION

1 put them in the envelope?

2 THE COURT: Yes.

3 MR. DeBUSK: There is a tube of super glue, but
4 it dried to the bag. 38Q, one Pepsi cola cup, and
5 that is the last item.

6 MR. DeBUSK: May I put them back in State's
7 Exhibit 38?

8 (State's Exhibits 38 and 38A through 38Q marked
9 and admitted.)

10 Q State's 38 and contents collected by you at the
11 scene?

12 A Yes.

13 Q When you collected State's 39, was there anything
14 in it?

15 A There was a rifle that was taken apart.

16 Q State's 10, do you recognize that?

17 A Yes. That is the camouflage in color Charter
18 Arms rifle.

19 Q That is the state which you recovered it?

20 A Yes.

21 Q And it was disassembled inside the bag?

22 A Yes.

23 Q Was the bag zipped up?

24 A Yes, it was closed.

25 Q State's 11?

ANTHONY HUMES - DIRECT EXAMINATION

1 A That is a picture with the identification of the
2 rifle manufacturer and the serial number.

3 Q And State's 12?

4 A That is the picture of the magazine inside the
5 weapon with bullets in the chamber.

6 Q And what is the copper color?

7 A The projectile on the end of the cartridge
8 casing.

9 Q The top one of the magazine, basically?

10 A Yes.

11 MR. DeBUSK: State's 10, 11 and 12 we move into
12 evidence.

13 THE COURT: Any objections?

14 MR. SMALDONE: No objection.

15 (State's Exhibits 10 through 12 admitted.)

16 Q (MR. DeBUSK) That is State's Exhibit 44. What
17 is contained in one of these boxes?

18 A A rifle.

19 Q Do you recognize this?

20 A Yes. That is the rifle from the vehicle.

21 MR. DeBUSK: I thought the rifle was tied to the
22 box, but it is not, so we'll mark it separately.

23 THE COURT: Let me see that, please. I have a
24 firearm there.

25 MR. DeBUSK: Yes, sir.

ANTHONY HUMES - DIRECT EXAMINATION

1 THE COURT: Let me see it.

2 MR. DeBUSK: I removed the magazine, Your Honor.

3 THE COURT: All right. Do we have a tie strap?

4 MR. DeBUSK: Pardon?

5 THE COURT: Do we have a tie strap?

6 MR. DeBUSK: I removed the magazine. I'll have
7 that marked as 45.

8 (A brief pause in the proceedings.)

9 (State's Exhibit 45 marked.)

10 Q (MR. DeBUSK) What does Exhibit 8 show?

11 A Picture of a checkbook for Robert Ware.

12 Q Where was that found?

13 A I believe that was inside the green bag.

14 MR. DeBUSK: State moves Exhibits 8, 7, 9, 6 and
15 I believe 5 is already in evidence.

16 COURT REPORTER: They're already in.

17 MR. DeBUSK: State's 8?

18 COURT REPORTER: Yes, sir.

19 MR. DeBUSK: May I publish them?

20 THE COURT: Yes, you may.

21 (State's Exhibits 5, 6, 7, 8, 9 published to
22 the jury.)

23 MR. DeBUSK: For purposes of identification, the
24 magazine removed from the rifle is now State's 45.

25 Q (MR. DeBUSK) Did you find that with the rifle?

ANTHONY HUMES - DIRECT EXAMINATION

1 A Yes, it was inserted into the rifle whenever we
2 found it.

3 Q Did it have rounds in it at that time?

4 A Yes.

5 Q Does it have rounds in it at this time?

6 A No.

7 MR. DeBUSK: State moves 45 into evidence.

8 MR. SMALDONE: Without objection.

9 (State's Exhibit 45 was admitted.)

10 (State's Exhibit 46 marked.)

11 Q (MR. DeBUSK) State's 46, did you collect that
12 item?

13 A It was collected inside the red Marlin bag.

14 Q What is it?

15 A Empty box to Thunderbolt .22 long rifle bullets.

16 Q State's 43 that you collected on the ground, what
17 brand were those, do you recall?

18 A Remington, I believe.

19 Q And boxes were Remington?

20 A Yes.

21 MR. DeBUSK: We move State's 46, if not already,
22 43 into evidence. 43 the casings from the ground and
23 46 the Thunderbolt box.

24 (State's Exhibits 43 and 46 was admitted.)

25 THE COURT: What exhibit is the live round?

ANTHONY HUMES - DIRECT EXAMINATION

1 MR. DeBUSK: 43.

2 Q While we're waiting for the rifle, 44, after you
3 collected it, what did you do?

4 A It was placed into our evidence room.

5 THE COURT: I'll let you go forward. He's
6 offering it. Do you object to the rifle?

7 MR. SMALDONE: I don't object.

8 THE COURT: It's in, but it won't be in the
9 courtroom until I had it secured.

10 COURT REPORTER: The box is already marked as 44,
11 so you want me to mark the rifle also as 44, is what
12 you're telling me?

13 MR. DeBUSK: Yes.

14 (State's Exhibit 44 was marked and admitted.)

15 Q (MR. DeBUSK) When you placed the rifle into
16 evidence, was it the same as the casing placed into
17 the locker?

18 A Yes.

19 Q Do you know who checked that in?

20 A I did.

21 Q Who checked it in from property and evidence?

22 A Shadoan.

23 THE COURT: Ladies and gentlemen of the jury, I
24 have secured this firearm with a safety lock that
25 passes completely through the firing mechanism. It

ANTHONY HUMES - DIRECT EXAMINATION

1 cannot fire. Madam forelady, it is your
2 responsibility when this goes in the jury room, you
3 permit no one to attempt to tamper with that lock or
4 remove that locking mechanism.

5 Q (MR. DeBUSK) What else did you do at the scene
6 with the pickup, if anything?

7 A Photographs were taken.

8 Q Photographs entered into evidence?

9 A Yes, sir.

10 Q Did you do anything else in this case?

11 A We responded to the jail.

12 Q "We," being you and Mattison?

13 A Yes.

14 Q What did you do at the jail?

15 A We were there to collect the GSR kit, obtain
16 photographs of the defendant.

17 Q Exhibit 31, what does that show?

18 A The defendant in his clothing that he was brought
19 in with.

20 Q The clothing you saw on the defendant, did it
21 have blood or anything --

22 A No, sir.

23 Q Did you observe any injuries on the defendant?

24 A No, sir.

25 MR. DeBUSK: State's 31 moved into evidence.

ANTHONY HUMES - DIRECT EXAMINATION

1 MR. SMALDONE: No objection.

2 THE COURT: Without objection.

3 (State's Exhibit 31 was admitted.)

4 MR. DeBUSK: May I publish?

5 THE COURT: Yes.

6 (State's Exhibit 31 published to the jury.)

7 Q (MR. DeBUSK) I think I asked you this, but
8 Mattison went to the autopsy, but you did not?

9 A Correct.

10 Q And the policy would have been any items
11 collected at autopsy is placed into evidence?

12 A Yes.

13 Q One final question. Sorry, I have a lot of
14 exhibits here. State's Exhibit 35, again, the cup with
15 the orange liquid, was any of that spilled on the
16 table, or still contained in the cup?

17 A Still contained in the cup.

18 Q Did the candle on the table appear to be in the
19 center of the table?

20 A Yes.

21 Q And the game box underneath appeared to be
22 centered on the table as well?

23 A Yes.

24 Q Did the table seem to be displaced? Were there
25 any marks in the carpet where the legs might have been?

ANTHONY HUMES - CROSS-EXAMINATION

1 A Not that we observed.

2 Q So it appeared to be in its original position?

3 A Yes.

4 MR. DeBUSK: Please answer any questions defense
5 may have.

6 CROSS-EXAMINATION

7 BY MR. SMALDONE:

8 Q Good afternoon. You said you responded to the
9 hotel room?

10 A Yes.

11 Q How long after the alleged shooting until you got
12 there?

13 A I believe the shooting came out approximately
14 2:00, 2:30, and I responded to the scene at about 4:30
15 4:15, somewhere in there.

16 Q We'll call it two hours, fair?

17 A That sounds good.

18 Q So you don't know what happened in those two
19 hours until you got there, right?

20 A Where?

21 Q To the hotel room.

22 A No.

23 Q Right. Okay. And you said you saw blood in
24 certain spots, correct?

25 A Yes.

ANTHONY HUMES - CROSS-EXAMINATION

1 Q And you said some were certain shapes, and others
2 were other shapes?

3 A Correct.

4 Q But you are not a blood splatter expert?

5 A No, sir.

6 Q You know what the shapes are, right?

7 A Right, the smear or what would appear to be a
8 drop.

9 Q Right. But you don't have any training on what
10 came from what and who is what? You are not Dexter.
11 You are not certified in blood splatter?

12 A No, sir.

13 Q Okay. And did you -- and I'm just asking because
14 I can't remember, did you respond to the truck when Mr.
15 Ware was arrested?

16 A He was not there when I was there.

17 Q So you processed it afterwards?

18 A Yes, sir.

19 Q And you took the gun into custody at that time?

20 A Yes, sir.

21 Q And then what did you do with it?

22 A It remained in my vehicle when we responded to
23 the jail.

24 Q Where did you turn the gun into after that?

25 A Our evidence room at the annex.

ANTHONY HUMES - CROSS-EXAMINATION

1 Q You swabbed Mr. Ware for GSR?

2 A Yes.

3 Q Explain to me what GSR is?

4 A GSR is short for "gunshot residue," and it is a
5 kit to test for any type of powder that would come out
6 of the discharging of a firearm from the casing.

7 Q What kind of powder -- what does the test consist
8 of? What do you physically do to get the test?

9 A It is a kit that is supplied to us, and it has
10 four small vials. One vial for the palm of the hand,
11 one vial for the top, and so on the other hand. And
12 you just swab over or ride over the top of the person's
13 hand.

14 Q And then what do you do after you get the
15 results? After you get the sample, what do you do?

16 A Put it back in the envelope.

17 Q To your knowledge, there has been -- you don't
18 have the results of the GSR kit?

19 A No, sir.

20 Q You were the one that took the firearm into
21 custody?

22 A Yes.

23 Q Did you -- at that time, did you test for
24 fingerprints on that firearm?

25 A No, sir.

ANTHONY HUMES - CROSS-EXAMINATION

1 Q You did not test for any touch DNA on that
2 firearm either?

3 A Yes.

4 Q You did test for touch DNA?

5 A Yes.

6 Q And that result has not come back yet?

7 A No, sir.

8 Q So we have tests out there not come back yet.

9 MR. SMALDONE: I beg the Court's indulgence for a
10 moment.

11 (A brief pause in the proceedings.)

12 Q (MR. SMALDONE) Just to clarify, you did not see
13 what happened that evening, right, with the shooting?

14 A No, sir.

15 Q You got there two hours afterwards?

16 A Yes.

17 Q We'll call it two hours, maybe it's 1:50, 2:10,
18 we'll split the difference, right?

19 A Yes, sir.

20 MR. SMALDONE: Nothing further.

21 REDIRECT EXAMINATION

22 BY MR. DeBUSK:

23 Q When Myrtle Beach patrol officers take over a
24 scene, is it their policy to maintain that scene
25 undisturbed until the Crime Scene Unit arrives?

ANTHONY HUMES - RECROSS-EXAMINATION

1 A No.

2 Q The decedent wasn't moved at that time when you
3 arrived?

4 A I don't know if EMS tampered with it.

5 Q Were there any signs of treatment on him?

6 A No, sir.

7 Q Touch DNA, if you recover touch DNA from an item,
8 would you have any idea to know how long it would have
9 been there?

10 A No, sir.

11 Q It could have been there a year, a day or
12 anything in between?

13 A Quite possibly, yes.

14 MR. DeBUSK: Nothing further. We ask that
15 Mr. Humes be excused.

16 MR. SMALDONE: Just brief recross.

17 RECROSS-EXAMINATION

18 BY MR. SMALDONE:

19 Q What is the process? How do you test for touch
20 DNA?

21 A Using two sterile cotton swabs, with distilled
22 water, like two drops of distilled water on each swab,
23 and you swab over the area that you want to collect the
24 sample from, and then the samples are placed into an
25 envelope.

MELINDA SHADOAN - DIRECT EXAMINATION

1 Q Do you test the whole firearm? Do you -- how do
2 you swab it?

3 A Depends on what you are swabbing. The barrel in
4 this case was swabbed and trigger buttstock area was
5 swabbed.

6 Q To your knowledge, you turned the gun into
7 evidence that day, or was it the next day?

8 A It was later on.

9 Q And to your knowledge, it remained undisturbed
10 for how long?

11 A Undisturbed?

12 Q How long until the next guy got it?

13 A It went to B&E after I was done with it.

14 Q All right.

15 MR. SMALDONE: I don't have any more questions.
16 Thank you. He can be excused.

17 THE COURT: You are excused and released from
18 your subpoena, thank you.

19 MR. DeBUSK: State calls Melinda Shadoan.

20 (MELINDA SHADOAN, having been duly sworn,
21 testified as follows:)

22 THE CLERK: State your name and spell your
23 last.

24 THE WITNESS: Melinda Shadoan, S-H-A-D-O-A-N.

25 DIRECT-EXAMINATION

NICHOLAS BATALIS - DIRECT EXAMINATION

1 MR. DeBUSK: We'll call Dr. Nicholas Batalis.

2 (NICHOLAS BATALIS, having been duly sworn,
3 testified as follows:)

4 THE CLERK: State your name and spell your
5 last name.

6 THE WITNESS: My name is Nicholas Ike Batalis,
7 B-A-T-A-L-I-S.

8 DIRECT-EXAMINATION

9 BY MR. DeBUSK:

10 Q Who is your employer?

11 A Employed by the Medical University of South
12 Carolina in Charleston.

13 Q What do you do?

14 A Forensic pathologist.

15 Q What are your normal duties?

16 A My normal duties include teaching medical
17 students in various stages of training, teaching
18 student doctors training to be pathologists, and
19 specifically with referring to forensic pathology
20 performing autopsies to determine the cause and manner
21 of death.

22 Q Are you a licensed physician?

23 A I am.

24 Q In what states?

25 A In South Carolina.

NICHOLAS BATALIS - DIRECT EXAMINATION

1 Q How long have you been licensed?

2 A I've had an unrestricted license for over 10
3 years, and some sort of license for the last 13 years.

4 Q Let the jury know about your educational
5 background and training.

6 A After completing my undergraduate at Butler
7 University in Indiana, I completed four years of
8 medical school at Indiana University School of
9 Medicine. After that, I moved to Charleston to do
10 general pathology training at Medical University of
11 South Carolina, and after those four years I became
12 nationally certified by the American Board of Pathology
13 and general pathology. I went to perform a one-year
14 fellowship specialty training in forensic pathology at
15 the Dallas County Medical Examiners Office in Dallas,
16 Texas. After that, I became board certified in
17 forensic pathology and then returned to MUSC where I
18 took my current position.

19 Q What is board certification?

20 A Each medical specialty has a governing body that
21 oversees things to help ensure the quality of the
22 physicians that are practicing in that field. So in
23 order to become board certified it involved completing
24 the specified training program and passing a fairly
25 rigorous examination.

NICHOLAS BATALIS - DIRECT EXAMINATION

1 Q How many autopsies have you performed in your
2 career?

3 A Probably somewhere around 2,000 autopsies.

4 Q Have you ever been qualified as an expert in
5 forensic pathology?

6 A Yes, probably between 40, 50 times in South
7 Carolina, along with a couple in North Carolina and
8 Texas.

9 MR. DeBUSK: The State offers Dr. Batalis as an
10 expert in forensic pathology.

11 MR. SMALDONE: No voir dire.

12 THE COURT: All right. Ladies and gentlemen, I
13 find this witness is certified as a forensic
14 pathologist. He's qualified as an expert and giving
15 an opinion in that field.

16 Q (MR. DeBUSK) Dr. Batalis, did you perform an
17 autopsy on Randy E. Banks?

18 A Yes, on August 8, 2014.

19 Q Where did that occur?

20 A At the Medical University of South Carolina.

21 Q What was the condition of the body when you
22 received it?

23 A So we received a call from the Horry County
24 corner who told us that they had a body they would like
25 us to examine and transported the body to MUSC, and

NICHOLAS BATALIS - DIRECT EXAMINATION

1 that is where we examined the body.

2 Q What injuries did you see on the body, if
3 anything?

4 A The major finding in this autopsy was a single
5 gunshot wound of the chest that was just left of
6 midline of the chest.

7 Q Any other external injuries?

8 A There was a very small eighth of an inch, very,
9 very small healing scrape on the right thigh, and a
10 1-inch bruise on the left thigh.

11 Q Were those fresh injuries, or were they old?

12 A The abrasion appeared to be healing. The
13 contusion or bruise, we're not good at dating those,
14 but nothing to indicate that it was a fresh injury.

15 Q Tell me about the chest wound, what happened?
16 What caused that?

17 A So, again, we had a single gunshot wound in the
18 mid-chest just left of midline caused by a bullet
19 entering the chest.

20 Q Did you recover a projectile during autopsy?

21 A Yes.

22 Q What did you do with that?

23 A After we recovered the bullet from the body, we
24 removed it, cleaned the bullet, took a photograph to
25 document it, and then at the conclusion of the autopsy

NICHOLAS BATALIS - DIRECT EXAMINATION

1 we transferred it to an officer from the Myrtle Beach
2 Police Department.

3 Q Do you recognize State's Exhibit 41?

4 A Yes. This is the bullet we recovered from the
5 autopsy along with the envelope with the sticker I
6 labeled.

7 Q So your packaging is in there?

8 A Yes.

9 Q That was State's Exhibit 41 for the record. What
10 internal injuries did that bullet cause?

11 A So, again, the bullet entered the chest just left
12 of midline in the mid-chest. After going through the
13 skin, it went through the chest plate, or sternum, kind
14 of where your ribs come together. After going through
15 the chest plate, it grazed the right lung, and then it
16 went into the sac that surrounds the heart, went all
17 the way through the heart, across the heart, and then
18 embedded itself in the spine.

19 Q What were the results of such an injury be?

20 A So any time you injure the heart, it causes
21 significant damage. Your heart obviously carries your
22 blood and pumps it to the rest of your body. So having
23 defects in the heart leads to significant bleeding
24 along with the defect in the lung. Also, the heart has
25 an electrical circuit that tells it when to beat, and

NICHOLAS BATALIS - DIRECT EXAMINATION

1 so having a gunshot wound go through the heart can
2 throw off the heart so it may not function as well as
3 it normally would.

4 Q What was the result of this injury to Mr. Banks?

5 A As a result of the injury and subsequent
6 bleeding, the gunshot wound led directly to his death.

7 Q Were you able to approximate the trajectory of
8 the bullets?

9 A Yes.

10 Q Could you demonstrate for the jury with this
11 dowel rod and my body the approximate trajectory?

12 A Again; the bullets came in just left of midline
13 about an inch and ended up in the spine so
14 predominantly the bullet was traveling front to back.
15 It was traveling a little bit from the decedent's left
16 to his right, because it came at an inch left and ended
17 midline, and a little downwards. So predominantly
18 front to back, slightly left to right and slightly down
19 (indicates).

20 Q Zero to 15 angle?

21 A Approximately.

22 Q Let me turn it this way (indicates), that is the
23 approximate trajectory?

24 A Correct.

25 Q Was there any indication of the distance from

NICHOLAS BATALIS - DIRECT EXAMINATION

1 where the bullet was fired?

2 A Yes. So when they determined the range of a
3 gunshot, we look at a couple of things. When a gun is
4 fired, it is not just the bullet that comes out. A
5 couple other things can help us to kind of narrow down
6 to see how far the gun was from the body.

7 The first is the soot, the burned up gunpowder
8 that comes from the explosion when the bullet is
9 fired. Depending on the ammunition and the gun, that
10 goes anywhere from 6 inches and a foot. In this case
11 we did not see that, so we would say that the gunshot
12 had to be at least more than a foot.

13 Next thing we look for is stippling. Stippling
14 is where you have pieces of gunpowder that is burned
15 up in the explosion when the gun is fired and flakes
16 of gunpowder that are not burned up in that explosion.
17 They travel through the air and can strike the skin
18 causing small scrapes called stippling. This depends
19 on the weapon and size of ammunition, but anywhere
20 from 3 to 4 feet this stippling can extend.
21 Surrounding the gunshot wound in this case, we had two
22 or three small areas that appeared to be stipplings,
23 so it placed the gunshot within 3, 4 feet, but more
24 than a foot or so from the body.

25 Q You said within 3, 4 feet?

NICHOLAS BATALIS - DIRECT EXAMINATION

1 A , Within 3 or 4 feet, but more than a foot.

2 Q Let me show you State's 30 and ask if you
3 recognize that?

4 A Yes, I do.

5 Q What is that?

6 A This is a fairly up-close picture of the gunshot
7 wound that shows the gunshot wound and two of the areas
8 of stippling that I was referring to.

9 Q All the marks on the skin are not a bullet hole
10 stippling, or just --

11 A No. There are two areas that are stippling and a
12 couple other more brownish lesions of the skin, more
13 like freckles or moles.

14 Q Would you draw a square around the items you
15 believe are stippling?

16 A (Witness complied.)

17 MR. DeBUSK: We admit this, State's 30.

18 MR. SMALDONE: No objection.

19 THE COURT: All right. Admitted without
20 objection.

21 (State's Exhibit 30 was admitted.)

22 Q (MR. DeBUSK) Was there a lot of stippling for a
23 gunshot of that nature?

24 A No, it was sparse in this case, and several
25 things can affect that. The further the gun is from

NICHOLAS BATALIS - DIRECT EXAMINATION

1 the body, the stippling or the gunshot powder causing
2 the stippling will become more disbursed so it becomes
3 a little bit more rare and more spread out. The closer
4 the gun is to the body, it is like a cone as it comes
5 out. So the closer the gun is to the body, you see
6 more stippling and a tighter pattern.

7 Q So in this case, does it indicate that it was
8 closer or farther within that range?

9 A Most likely it would put it towards the further
10 end of the range. So closer to the 3, 4 feet, the
11 outer range that the stippling would be able to be
12 detected.

13 Q I'll show you State's Exhibit 35 and ask if you
14 recognize that?

15 A Yes, I do.

16 Q What is it?

17 A This is a photograph that we took of the body.
18 We refer to this as an as-is photograph. So this is
19 after the body was transported to us. We brought it
20 and put it on our examination table. Before we've done
21 any manipulation, cleaned it, we take the as is-photo.
22 So this is one of the first photos we took of the body
23 before the examination.

24 Q Before any blood or anything was washed off?

25 A Yes.

NICHOLAS BATALIS - DIRECT EXAMINATION

1 MR. DeBUSK: I anticipate an objection at this
2 point.

3 MR. SMALDONE: I object to that under 403.

4 THE COURT: I had an opportunity to look at it,
5 and I'll admit.

6 MR. DeBUSK: Under the same stipulations of black
7 and white?

8 THE COURT: Yes.

9 COURT REPORTER: I'm sorry, what number is that?

10 MR. DeBUSK: State's 35. It will be altered to
11 black and white.

12 Q (MR. DeBUSK) From the entry wound itself, can
13 you tell what size projectile it was?

14 A No, because the skin has different -- elastic
15 fibers running in different directions in different
16 areas of the body. We can't scientifically say based
17 on just the entrance wound the caliber.

18 Q But you did recover that projectile in the spine
19 area?

20 A We did.

21 Q And what would the result of the injury be to the
22 victim in terms of bodily functioning right after he
23 was shot?

24 A With a gunshot wound to the heart, certainly
25 there will be significant bleeding. Just from bleeding

NICHOLAS BATALIS - DIRECT EXAMINATION

1 alone, we would not expect significant movements or
2 activity for more than a minute or two. I have seen
3 people with a gunshot wound to the heart and be kind
4 of -- run down the street or hop a fence, but usually
5 it is a short period of time because of the significant
6 bleeding.

7 Other times, as I mentioned, the heart does have
8 an electrical circuit, and so if the bullet goes to
9 the correct spot and hits the circuit, it could result
10 in sudden death where they would literally drop dead.

11 Q Would the victim have been able to breathe?
12 There was also a lung injury?

13 A Yes, the right lung was hit. He would be able to
14 breathe, but with the bullet through the chest, it
15 alters the pressure so you couldn't take the normal
16 deep breaths, but for the period of survival, whether
17 it was a period of a couple of minutes or few seconds,
18 he could breathe.

19 Q Would these injuries have been fatal?

20 A Yes.

21 Q Based on your autopsy within bounds of reasonable
22 medical certainty, do you have an expert opinion of
23 cause of death?

24 A Yes.

25 Q What is that?

NICHOLAS BATALIS - DIRECT EXAMINATION

1 A The cause of death was due to a gunshot wound to
2 the chest, including the significant bleeding that
3 resulted from the gunshot wound.

4 Q When you do an autopsy, do you do a toxicology?

5 A Yes.

6 Q Did you do a toxicology on Mr. Banks?

7 A I'm referring to the autopsy report that I
8 produced during the course of the autopsy, after
9 completing the autopsy. We submitted samples of blood
10 along with vitreous fluid, so the fluid from the eye,
11 and also a sample of urine. We sent those to a
12 nationally accredited laboratory who does that testing
13 and we interpreted that and included it in our results.

14 Q Were those part of the basis of your opinion?

15 A Yes, they were.

16 Q What did you find in that toxicology screen?

17 A The most pertinent findings were in the
18 peripheral blood. The peripheral blood is what is
19 flowing through your system that would have been
20 affecting his heart and brain, so we compare that to
21 drug levels of people that are alive. The urine and
22 vitreous fluid are there really for specialty testing
23 in certain cases. The peripheral blood was positive
24 for a marijuana metabolite, so a breakdown of
25 marijuana.

NICHOLAS BATALIS - DIRECT EXAMINATION

1 Q So does that mean he may have been smoking
2 marijuana recently?

3 A Recently, but likely not within a couple of hours
4 of death. We do not -- the laboratory did not detect
5 the active drug in marijuana, and that stays in your
6 system usually for a couple of hours.

7 Q THC?

8 A Correct.

9 Q Is that the metabolically active one?

10 A Correct.

11 Q And the metabolite is not the active one?

12 A No, it has no activity.

13 Q All you found was the metabolite?

14 A Correct.

15 Q So he wasn't high on marijuana?

16 MR. SMALDONE: Objection to leading.

17 Q (MR. DeBUSK) Was he high on marijuana?

18 A No.

19 Q What else did you find?

20 A We also detected oxycodone, so this is a narcotic
21 pain reliever. We detected that and also ethanol or
22 alcohol.

23 Q Let's talk about the oxycodone first; what was
24 the level?

25 A The concentration of the oxycodone was 67.3

NICHOLAS BATALIS - DIRECT EXAMINATION

1 nanograms per milliliter.

2 Q Is that within the therapeutic range?

3 A The laboratory includes as part of the report
4 some reference values that basically searched through
5 the literature to determine ranges, and so the
6 reference range for people taking oxycodone is between
7 10 and 200 nanograms per milliliter, so 66 and change
8 would be basically in the middle of that range,
9 therapeutic range.

10 Q Is that therapeutic range something you would
11 expect to see someone who is taking medication as
12 prescribed by the doctor?

13 A Yes.

14 Q So he was within the therapeutic range?

15 A Correct.

16 Q And you said ethanol, what is the level of
17 ethanol?

18 A Blood alcohol level was .147 percent, was his
19 blood alcohol level.

20 Q Can you give the jury the significance of that
21 number?

22 A I believe in South Carolina the legal limit is
23 .08, so he was roughly just under twice the legal limit
24 for his blood ethanol level.

25 Q Does the effect of alcohol vary on people

NICHOLAS BATALIS - CROSS-EXAMINATION

1 according to how much they are used to drinking?

2 A It does.

3 MR. DeBUSK: Thank you.

4 CROSS-EXAMINATION

5 BY MR. SMALDONE:

6 Q You would agree with me, based on your training
7 and experience and education, that the effect of
8 alcohol combined with the effect of opiates is a
9 problem, correct?

10 A It can be in some individuals.

11 Q Well, when I say "a problem," I should clarify.
12 It will enhance the intoxication of either one of
13 those, right?

14 A It could. They both have depressant qualities,
15 so they could potentiate each other.

16 Q Calling your attention to -- it is stippling, not
17 stipling?

18 A Stippling.

19 Q What was the range of the stippling? What range
20 do you believe that the gun was away based on the
21 stippling?

22 A The barrel of the gun would have been no more
23 than roughly 3, 4 feet of the body when it was fired.
24 No closer than 1 foot and, again, probably more towards
25 the 3- to 4-foot range.

NICHOLAS BATALIS - CROSS-EXAMINATION

1 Q How many tests did you perform on the gun?

2 A I did not perform any test on the gun.

3 Q And you would agree stippling is different per
4 gun?

5 A Yes. The stippling pattern will vary based on
6 the weapon and ammunition.

7 Q Is it fair to say that the more powder a gun has,
8 the farther the stippling would go?

9 A There is several things that would affect how far
10 the stippling goes, including the amount of powder,
11 type of weapon and the type of powder, there is
12 different gunpowders as well.

13 Q Isn't it true that generally the longer the
14 barrel -- for a normal gun, the longer the barrel, the
15 shorter the stippling would travel, assuming the
16 caliber is the same?

17 A Beyond -- so the stippling may extend -- trying
18 to think of a way to say this most clearly. The
19 stippling may not extend as far from the end of a
20 barrel of a long gun as a handgun, because basically
21 the explosion is happening further back, and so some of
22 the stippling may basically get deposited in the barrel
23 of the gun or off to the sides as it travels through.

24 Q So your testimony is that all things being equal,
25 generally, and there are exceptions, generally that a

NICHOLAS BATALIS - CROSS-EXAMINATION

1 rifle barrel stippling, all things being equal, is
2 shorter than a handgun's stippling range?

3 A Given that there is a good deal of variation
4 between the weapon and ammunition, but, yes, in general
5 maybe slightly less from a long barrel versus a
6 handgun.

7 Q You would agree, as you said earlier, to clarify,
8 that generally the smaller caliber of the bullet or the
9 weaker -- not -- the weaker the bullet, the most
10 propellant used, the shorter the stippling would
11 travel?

12 A Correct. So more powder and a bigger explosion
13 would cause more gunpowder to be displayed out and
14 propelled further.

15 Q When you say the stippling could travel 3 to
16 4 feet, that is based on all types of firearms you are
17 familiar with?

18 A Correct. When I cite stippling numbers, it is
19 based on a range looking at different resources. I
20 like to really use the broadest ranges to be all
21 inclusive when stating ranges.

22 Q So in this case, we have a .22 caliber rifle, and
23 you would agree with me that the projectile you removed
24 was a .22 caliber, correct?

25 A It would be consistent with that. I'm not a

NICHOLAS BATALIS - CROSS-EXAMINATION

1 ballistic examiner, so I can't say for sure exactly
2 what caliber it was.

3 Q Do you know how many grams it weighed?

4 A I do not. We don't have that type of scale in
5 our suite.

6 Q You would agree that a .22 caliber with a long
7 barrel probably would be shorter than 3, 4 feet,
8 wouldn't it?

9 A I don't think I could confidently make that
10 assumption. You know, again, I don't think I have
11 enough data to get any more specific with the range.

12 Q Well, let's talk about that, though. 4 feet
13 would be the longest for any type of firearm,
14 generally?

15 A In general, correct.

16 Q And what would the shortest be? A foot?

17 A Based on the fact we didn't have any soot, and
18 soot will go up to 6 inches to a foot, and roughly
19 we're dealing with a spectrum and a range, so somewhere
20 between 6 to 12 inches, we're beyond that.

21 Q And we established that in the evidence the gun
22 was a .22 and it had a long barrel, so those are two of
23 the key factors to establish the length of stippling,
24 correct?

25 A Correct.

NICHOLAS BATALIS - CROSS-EXAMINATION

1 Q So we can establish that it probably was on the
2 shorter end of the 3 or 4 foot? Might have been
3 18 inches, right?

4 A It's possible.

5 Q You testified to them that it was 3, 4 feet?

6 A I said the outer range would be 3, 4 feet, and
7 that based on the rarity of the stippling, that this
8 would be likely one at the end of the range.

9 Q End of the range for any gun, ever, right? When
10 you testified, you were saying -- end of the range for
11 any gun, it could be 50 BMG, it could be a 45 ACP; all
12 firearms, right?

13 A Correct.

14 Q You testified to that?

15 A Correct.

16 Q We've established by its very nature this is on
17 the shorter end?

18 A Most likely. You know, without doing some sort
19 of test firing, I don't think I could be any more
20 specific or any more certain than what we said.

21 Q Okay. Okay. With soot -- explain what soot is.

22 A So soot is basically the combusted or burned up
23 gunpowder and debris that results from the explosion
24 when the bullet is fired.

25 Q And the most that could travel is 12 inches,

NICHOLAS BATALIS - CROSS-EXAMINATION

1 generally?

2 A Generally.

3 Q The most it could travel with being seen on the
4 victim would be 12 inches?

5 A Correct.

6 MR. SMALDONE: Beg the Court's indulgence.

7 (A brief pause in the proceedings.)

8 Q (MR. SMALDONE) Based on your report, the entry
9 wound you described it as oval in shape?

10 A Yes.

11 Q And you've seen the bullet? You extracted the
12 bullet?

13 A Yes.

14 Q And you would agree it is pretty deformed and
15 damaged?

16 A Yes.

17 Q It hit the sternum first?

18 A Right at the junction where the ribs joined the
19 sternum, so right at that junction.

20 Q So the first thing it hit was a pretty hard
21 surface?

22 A Correct.

23 Q So it is fair to say that -- let's back up. Have
24 you studied or removed or testified in cases where the
25 bullet was non-jacketed?

NICHOLAS BATALIS - CROSS-EXAMINATION

1 A Yes.

2 Q And you would agree this bullet was not jacketed,
3 right?

4 A Could I see the bullet again, please? Yes, there
5 is no jacket on the bullet we recovered.

6 Q Explain what a jacket would be, what it would
7 look like and what its use on a bullet would be.

8 A So a jacket typically is kind of a yellow or
9 orange metal that wraps around the bullet. They are
10 traditionally made of lead, which is a soft metal. So
11 as they strike tissues, they become deformed. The
12 jackets help the bullet to maintain its form as it
13 travels through the body. So a non-jacketed bullet
14 would be very unlikely to perforate somebody or go all
15 the way through from front to back, whereas a full
16 metal jacket, it is possible to go all the way through
17 the body.

18 Q Part of the reason the bullet is deformed is that
19 it did not have a jacket, maybe the entire reason it is
20 deformed, along with it hitting something?

21 A Correct.

22 Q So it is fair to say that although the bullet
23 traveled one way in the body, because it is so
24 deformed, because that first target was something hard,
25 you can't -- with certainty you can't tell the

NICHOLAS BATALIS - CROSS-EXAMINATION

1 trajectory on the outside, the external ballistics, can
2 you?

3 A I'm not sure I understand your question.

4 Q I'll back up. Because of the bullet's condition,
5 because of the fact that it hit a hard bone first, you
6 can't accurately, with certainty, tell its trajectory
7 outside of the body, correct?

8 A Based on the evidence we see at the autopsy we
9 can determine the relationship of the -- that the
10 barrel of the gun would have been to body when it was
11 fired. Bullets are traveling at a very rapid speed, so
12 they may strike a firm surface, such as the sternum to
13 cause a tumbling and cause the bullet to deform, but
14 generally bullets will maintain along the line of the
15 initial path, generally.

16 The other thing that can help us determine the
17 angle that the bullet was traveling before it hit the
18 body is actually looking at that entrance wound to
19 see -- if it goes straight in, you will tend to see a
20 perfectly symmetrical border because the bullet is
21 basically traveling -- before it hits anything it
22 should be traveling kind of like a football in a
23 perfect spiral, so it should be nice and tight and a
24 perfect abrasion where it punches into the skin. If
25 the bullet is coming at an angle, it strikes that area

NICHOLAS BATALIS - CROSS-EXAMINATION

1 of the skin first causing an abrasion. It helps tell
2 you which direction the bullet was coming from.

3 Q But that is just the direction -- that is just
4 the intersection of the bullet, and you are assuming
5 he's standing straight up?

6 A I did not assume he was in any particular
7 position. I'm assuming -- stating the relationship of
8 the barrel of the gun to the body when the gun was
9 fired. He could be laying down, standing up, I don't
10 know the position of the body.

11 Q I understand, but when you say -- you can testify
12 about how the bullet traveled in the body, correct?

13 A Correct.

14 Q You have -- you would agree that if he was
15 leaning over, leaning back, leaning in a certain
16 direction, that would affect the bullet's trajectory
17 also?

18 A Correct.

19 Q But the way you testified you are assuming he's
20 standing straight up, because you didn't talk about
21 just the way the bullet traveled through him, you had a
22 ruler and you talked about the bullet from the barrel?

23 A The Solicitor was standing up and so he asked me
24 to hold it in his relationship there. If he was laying
25 on the ground, I could have done the same thing. I'm

NICHOLAS BATALIS - CROSS-EXAMINATION

1 not sure, again, where -- the 'evidence in this case
2 tells me the relationship of the barrel of the gun to
3 the body when it was fired.

4 Q The relationship of the barrel of the gun to the
5 body, but that is just the angle from the entrance to
6 the barrel, or the barrel to the entrance; you don't
7 know which way he was standing, which way he was
8 leaning?

9 A I do not know that.

10 Q And you would agree that the way he was standing
11 or leaning would have certainly have affected the angle
12 that the bullet traveled -- let's say this (indicates),
13 if I have this, this is a different angle through my
14 body -- sorry. This is the same angle through my body,
15 correct? I'm not moving the yardstick, and I know it
16 is not going through my body, but --

17 A Correct.

18 Q But if I'm standing like this, the barrel would
19 be here, wouldn't it?

20 A Yes.

21 Q If I'm standing like this, the barrel would be
22 here, right?

23 A Right.

24 Q So you don't know where the barrel actually was?

25 A I do know where the barrel was, it was in the

NICHOLAS BATALIS - CROSS-EXAMINATION

1 same pathway as you described.

2 Q It is here -- it was at the end of the yardstick,
3 assuming that we're talking about the relationship
4 between the barrel and the body, right?

5 A Correct.

6 Q But it was right here, right? For purposes of
7 this demonstration, it is right here?

8 A Okay.

9 Q But you don't know if I lean this way, it's the
10 same angle, it would be the same wound, correct?

11 A Right. And for me, that is the same relationship
12 from the barrel of the gun to the body.

13 Q That's what I'm saying. Good.

14 A That's what I'm saying, too.

15 Q We're on the same page. So you don't know
16 exactly -- let's get rid of this yard stick. In space,
17 where the barrel is, the angle is the same if I'm
18 standing up for here, but if I'm leaning over, the
19 barrel would have to be in a different location?

20 A Right, because it was still coming straight
21 through and change the angle through the body.

22 Q So you don't know the location, is what I'm
23 saying?

24 A I can say the relationship of the barrel.

25 Q To each other, but not one, and not the other?

NICHOLAS BATALIS - REDIRECT EXAMINATION

1 A I don't know the position of the shooter or the
2 gun or the decedent when it was fired.

3 MR. SMALDONE: No more questions.

4 REDIRECT-EXAMINATION

5 BY MR. DeBUSK:

6 Q When I stand here, you are just saying what the
7 trajectory of the bullet through the body was, correct?

8 A Correct.

9 Q You are not saying anything about the shooter
10 being up there on the grassy knoll, you are saying that
11 is the path the bullet took through the body, and it
12 goes back to where the gun was, you are not saying
13 anything about the position of the body when it was
14 fired?

15 A Correct.

16 Q It could have been like this, like this
17 (indicates), but you are just not saying that, you are
18 saying what the path was through the body back to the
19 barrel?

20 A Correct. You are presuming holding it in the
21 correct angle as you bent over, all of those are
22 positions that could have occurred.

23 Q You are not saying anything about what position
24 the person was when they shot, just the path of the
25 bullet that it took through the body from the barrel of

NICHOLAS BATALIS - REDIRECT EXAMINATION

1 the gun?

2 A Correct.

3 Q When you talk about the stippling ranges, your
4 testimony, if I'm not mistaken, is that this was at the
5 far end of the stippling range because the stippling
6 was so sparse?

7 A Correct.

8 Q So this was almost at the spot where the
9 stippling peters out?

10 A Yes.

11 Q So in your experience, 3 to 4 feet is the general
12 range where that peters out; is that correct?

13 A It is a general range. And, again, that is a
14 broad range including all ammunition in firearms.

15 Q And 3 or 4 feet is a range?

16 A Correct.

17 Q So you are giving us a range of 3, 4 feet. It
18 was close to the end of the range, not close to the
19 beginning as a foot or more?

20 A Correct.

21 Q So make sure I have it straight. You know you
22 are outside of a foot because of the soot?

23 A Roughly 6 inches to a foot.

24 Q And you know you have a little stippling, so you
25 are not outside the range where stippling can occur?

NICHOLAS BATALIS - RECROSS-EXAMINATION

1 A Correct.

2 Q But you're closer to the point where stippling
3 doesn't occur because there is so little stippling?

4 A Yes.

5 Q So you are at the outer range of stippling for
6 whatever weapon fired that?

7 A Exactly.

8) RECROSS-EXAMINATION

9 BY MR. SMALDONE:

10 Q It is the outer range of stippling for that
11 particular weapon?

12 A For that particular weapon with that particular
13 ammunition.

14 Q Correct. And because a bullet travels downward
15 or upward, like we talked about earlier, you don't know
16 whether the shooter fired from downward or upward,
17 right?

18 A I do not.

19 MR. SMALDONE: That is all.

20 THE COURT: All right. Any further need for this
21 witness?

22 MR. DeBUSK: No, Your Honor. We ask that he be
23 excused.

24 THE COURT: You are released from your subpoena.
25 Thank you. Any further need for him?

MATTHEW GIFFIN - DIRECT EXAMINATION

1 MR. GROOMS: Yes, sir, Your Honor.

2 THE COURT: You may proceed.

3 MR. GROOMS: State calls Matt Giffin to the
4 stand.

5 (MATTHEW GIFFIN, having been duly sworn,
6 testified as follows:)

7 THE CLERK: State your full name and spell your
8 last for the Court.

9 THE WITNESS: Matthew Warren Giffin, G-I-F-F-I-N.

10 DIRECT-EXAMINATION

11 BY MR. GROOMS:

12 Q Good morning. How are you today?

13 A Well, thank you.

14 Q I appreciate you being here. Where do you live?

15 A Myrtle Beach, South Carolina.

16

17 Q What type of work are you in?

18 A Own and operate a liquor store.

19 Q What is the name of that?

20 A Giff's Liquor.

21 Q Where is that located?

22 A 1490 South King's Highway, Myrtle Beach.

23 Q Do you know if that is located near the Wave
24 Rider?

25 A I believe it is a couple blocks away from the

MATTHEW GIFFIN - DIRECT EXAMINATION

1 beach from the Wave Rider, not exactly familiar with
2 the exact location of the Wave Rider.

3 Q I'll show you what is marked as State's 4. Can
4 you tell me if you recognize that map? Take your time,
5 it is kind of....

6 A Yes, I recognize it.

7 Q Does that show your store?

8 A It does. I'm right here.

9 Q Can I ask you to circle that?

10 A (Witness complied.)

11 Q Thank you, sir. So your store is in pretty close
12 location to the Wave Rider. Do you recognize the
13 defendant?

14 A I do.

15 Q Do you know him as a frequent customer?

16 A Yes, sir.

17 MR. SMALDONE: Objection, improper character
18 evidence.

19 MR. GROOMS: Establishing the relationship
20 between the parties.

21 THE COURT: I'll allow it.

22 Q (MR. GROOMS) Have you spoken with the defendant
23 before?

24 A Yes, sir.

25 Q Would you say you have spoken with the defendant

MATTHEW GIFFIN - DIRECT EXAMINATION

1 numerous times?

2 A Yes, sir.

3 Q And this is over a long period of time?

4 A I would say at least a year.

5 Q Would you say you have spoken to him more than 10
6 times?

7 A Yes.

8 Q And when you spoke to him, was he an outgoing
9 person?

10 A Yeah, he was a nice guy.

11 Q What was your normal conversations?

12 A Basic stuff. I don't try to pry. Generally our
13 customers are in and out in five minutes, how are you,
14 nice weather, that kind of thing.

15 Q Were you working on August 6, 2014?

16 A I was.

17 Q Did this defendant come in your store that day?

18 A He did.

19 Q Where were you when he came in?

20 A When he entered the store, I was in the back.

21 Usually when we saw Robert come in, we greet him. So I
22 came up front to say hi.

23 Q What happened when you said hi?

24 A Hey, Robert, how are you doing, and I didn't get
25 a response from him. He just kept walking through the

MATTHEW GIFFIN - DIRECT EXAMINATION

1 store to get what he needed muttering to himself, you
2 know, I'm going to kill that mother fucker, as he came
3 through the store.

4 Q Was this obviously unusual?

5 A Yes. Highly.

6 Q Did he appear different to you that day?

7 A Yes.

8 Q How would you describe his demeanor, not what he
9 said?

10 A He was cold, he was -- seemed angry, very
11 serious.

12 Q I'll show you what is marked as State's Exhibit
13 No. 47.

14 MR. SMALDONE: I object to that improper
15 character evidence.

16 MR. GROOMS: Let me lay the foundation for this,
17 I apologize.

18 Q (MR. GROOMS) Mr. Giffin, do you keep a record at
19 your store?

20 A I do.

21 Q Do you keep a record of all valid customers?

22 A Yes, sir.

23 Q Why do you keep than record?

24 A We have a discount program that we use to entice
25 customers to come, and we also like to keep track of

MATTHEW GIFFIN - DIRECT EXAMINATION

1 what people are buying.

2 Q So many reasons?

3 A Uh-huh.

4 Q So this is a record that you keep as a normal
5 business record?

6 A Yes, sir.

7 MR. GROOMS: I would like to show this to the
8 witness under the business record exception?

9 THE COURT: All right.

10 MR. GROOMS: State's 47.

11 (State's Exhibit 47 marked.)

12 Q (MR. GROOMS) Do you recognize this?

13 A Yes. This is a sales receipt.

14 Q Who is that to?

15 A Robert Ware.

16 Q Does it have a date?

17 A Top right corner, 8-6-2014.

18 Q August 6, 2014?

19 A Uh-huh.

20 Q Was that the last time you saw the defendant?

21 A Yes, sir.

22 Q This is an accurate record of that day, correct?

23 A Yes, sir.

24 MR. GROOMS: I would like to move State's 47 into
25 evidence.

MATTHEW GIFFIN - CROSS-EXAMINATION

1 MR. SMALDONE: Object.

2 THE COURT: I'll allow it.

3 (State's Exhibit 47 was admitted.)

4 Q (MR. GROOMS) You don't know who he was talking
5 about when he said what he said?

6 A No.

7 Q You just know that he was acting different?

8 A Yes.

9 Q You describe him as cold?

10 A Uh-huh.

11 Q Is that the first time he acted that way around
12 you?

13 A Yes.

14 MR. GROOMS: Thank you. Answer my questions that
15 defense might have.

16 CROSS-EXAMINATION

17 BY MR. SMALDONE:

18 Q So you didn't have a social relationship with
19 Robert?

20 A No.

21 Q You all didn't hang out?

22 A No.

23 Q You're not his brother?

24 A No.

25 Q You are not his friend?

MATTHEW GIFFIN - CROSS-EXAMINATION

- 1 A No.
- 2 Q You're a casual acquaintance?
- 3 A Yes.
- 4 Q Do you know his mama's name?
- 5 A No.
- 6 Q Do you know his daddy's name?
- 7 A No.
- 8 Q Do you know where he was born?
- 9 A No.
- 10 Q What's his favorite meal?
- 11 A No idea.
- 12 Q You don't really know him that well, do you?
- 13 A No.
- 14 Q He just know that he came in your store one day
- 15 and he was in a bad mood?
- 16 A Yes.
- 17 Q He didn't say what made him in a bad mood, did
- 18 he?
- 19 A No.
- 20 Q In fact, did you give a statement to law
- 21 enforcement after this?
- 22 A I did.
- 23 Q Do you recall that statement?
- 24 A Vaguely, yes.
- 25 Q And in that statement you had said that you

MATTHEW GIFFIN - CROSS-EXAMINATION

1 thought originally it was over his moped being stolen,
2 right?

3 A I didn't say that.

4 MR. GROOMS: That is not the correct statement, I
5 object.

6 THE COURT: You can redirect him on that.

7 MR. GROOMS: Thank you.

8 Q You don't recall him saying that?

9 A No.

10 Q But you know he had a moped stolen, correct?

11 A No.

12 MR. SMALDONE: I have a matter of law I believe
13 -- could we approach?

14 THE COURT: Certainly.

15 Whereupon, a bench conference was had out of the
16 hearing of the jury.)

17 Q So you had no clue what set him off?

18 A No.

19 Q Because he didn't talk about it?

20 A Not really.

21 Q So it is your testimony he was in a bad mood that
22 day?

23 A Yes.

24 MR. SMALDONE: That's all.

25 THE COURT: Mr. Grooms.

MATTHEW GIFFIN - RECROSS-EXAMINATION

REDIRECT-EXAMINATION

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BY MR. GROOMS:

Q Did his actions that day make you feel uneasy?

A Yes.

MR. GROOMS: No further questions.

RECROSS-EXAMINATION

BY MR. SMALDONE:

Q Did you report this to law enforcement before or after?

A After.

THE COURT: You may step down. Thank you. Do you need to keep this witness?

MR. GROOMS: No, sir.

MR. SMALDONE: He can be excused. You are released from your subpoena.

MR. GROOMS: It will be our last witness. He's coming from Columbia and we expect him to be here any minute.

THE COURT: Mr. Ropp, we'll see about that. How about take the jury into the jury room. I wouldn't let them sit in a courtroom and wait for a witness.

(The jury exits at 9:49 a.m., and the following is heard out of the presence of the jury.)

THE COURT: We'll be at ease.

(A recess was taken.)

JAMES GREEN - DIRECT EXAMINATION

1 THE COURT: Bring them in.

2 (Whereupon, the jury enters at 10:16 a.m., and
3 the following is had in the presence of the jury.)

4 THE COURT: We have everyone in the courtroom.
5 Call your next witness.

6 MR. DeBUSK: State calls Special Agent James
7 Green.

8 (JAMES GREEN, having been duly sworn,
9 testified as follows:)

10 THE CLERK: Please state your full name and
11 spell your last.

12 THE WITNESS: James Green, G-R-E-E-N.

13 DIRECT-EXAMINATION

14 BY MR. DeBUSK:

15 Q Agent Green, who is your employer?

16 A South Carolina Law Enforcement Division, commonly
17 referred to as SLED.

18 Q What division of SLED?

19 A In the firearms department, forensic services
20 laboratory.

21 Q What do you do?

22 A Firearms examiner.

23 Q How long have you been with SLED?

24 A Since June of 2005.

25 Q Over 10 years?

JAMES GREEN - DIRECT EXAMINATION

1 A Yes, sir.

2 Q Can you give the jury an idea of your
3 qualifications and training to do your job?

4 A I have a bachelor's and master's degree from
5 Charleston Southern University. Went through the South
6 Carolina Criminal Justice Academy, worked for Mount
7 Pleasant Police Department for about three-and-a-half
8 years before I got hired at SLED. When I was hired by
9 SLED, I started their firearm and tool mark course of
10 instruction. It is roughly a two-and-a-half to a
11 three-and-a-half year course of instruction studying
12 under court qualified firearms examiners to do what I
13 do now.

14 Q Have you been qualified as an expert in firearms
15 analysis?

16 A Yes.

17 Q About how many times?

18 A 42 or 43.

19 MR. DeBUSK: We offer Agent Green in the field of
20 firearm analysis.

21 MR. SMALDONE: No objection.

22 THE COURT: He's admitted as an expert in the
23 field of firearms analysis and may give an opinion in
24 that field.

25 Q (MR. DeBUSK) Let me ask you basic questions.

JAMES GREEN - DIRECT EXAMINATION

1 What is a firearm?

2 A Firearms identification is a discipline of
3 forensic science. The most basic question we try to
4 answer is, was a particular bullet or cartridge case
5 fired by a firearm if it was submitted.

6 Q What qualifies as a firearm?

7 A Firearm is a device like a machine that propels a
8 projectile by use of burning gunpowder, so it shoots a
9 thick cartridge.

10 Q Did you perform an analysis in this case?

11 A Yes, sir.

12 Q This is State's Exhibit 44. Do you recognize
13 that?

14 A Yes, sir. State's Exhibit 44 is the Item 3 rifle
15 that was submitted in this case.

16 Q How are you identifying it? By the serial
17 number?

18 A Make, model, serial number. When we get evidence
19 in the firearms department, if it is large enough, I'll
20 inscribe it with a pencil, and I know you can't see it,
21 but it is the lab number, item number and my initials.

22 Q Let's talk about this rifle, if we could. What
23 is its mode of operation, bolt action, lever action?

24 A Semi-automatic rifle.

25 Q This particular model, does it come apart?

JAMES GREEN - DIRECT EXAMINATION

1 A Yes, sir, it does.

2 Q Barrel unscrews?

3 A Yes, sir. The barrel lug comes undone.

4 Q Will it fire without it all attached?

5 A I did not test that. It probably would, but --
6 actually, no, I'm sorry, because when you take the
7 barrel away, you take away from the anvil, so there is
8 nothing for the cartridge to be pressed up against.

9 Q How is it loaded?

10 A There is a magazine.

11 Q I'll show you what is -- it was removed from the
12 rifle. It is State's 45.

13 A (Witness examines exhibit.) State's 45 is the
14 magazine I used in this case -- or submitted in this
15 case.

16 Q The cartridges would go in that magazine?

17 A Yes, sir. You load the cartridge into the
18 magazine, and then you load the magazine to the
19 magazine well, which is where the gun lock is coming
20 through.

21 Q Once you stick the magazine in the cartridge,
22 would it fire at that point?

23 A No, sir, not until you pull back on the bolt and
24 load a cartridge.

25 Q Is this the bolt?

JAMES GREEN - DIRECT EXAMINATION

- 1 A Yes, sir.
- 2 Q Is it required to load a cartridge into --
- 3 A Yes, sir.
- 4 Q -- firing position?
- 5 A Yes, sir.
- 6 Q What is this little lever right there?
- 7 A That is the safety.
- 8 Q If that safety is on, will the gun fire?
- 9 A When I tested it, it would not.
- 10 Q So the safety stops it from firing?
- 11 A Yes, sir.
- 12 Q Without putting the barrel on, putting the
- 13 cartridges in, charging it and having safety off, it
- 14 won't fire?
- 15 A Correct.
- 16 Q I'll ask you about two other items and the
- 17 packaging. The packaging is State's 42, this is
- 18 State's 40, and this is State's 41. I ask if you can
- 19 examine those items.
- 20 A I'll start with the packaging. The packaging is
- 21 actually SLED No. L14-13236, Container A. It has my
- 22 initial on it and a seal on the bottom with my initials
- 23 and date on it. So this is what the evidence was -- or
- 24 part of the evidence. State's Exhibit 41 is the SLED
- 25 Item 8 fired bullet that was submitted in this case.

JAMES GREEN - DIRECT EXAMINATION

1 State's Exhibit 40 is the Item 2 the fired cartridge
2 case that was submitted in this case.

3 Q Let me ask you first about the projectile. Did
4 you compare that to the gun?

5 A Yes, sir.

6 Q How do you do that?

7 A Whenever we get evidence submitted at SLED in the
8 lab, particularly in the firearms department, like this
9 bullet, State's Exhibit 41, I'll look at it first and
10 try to determine its caliber. Obviously if State's
11 Exhibit 41 was a .38 caliber bullet, it could not have
12 been fired in that rifle, so we can immediately
13 discount it without going further. But since State's
14 Exhibit 41 was a .22 long rifle caliber bullet, right
15 caliber for the gun, so I'll examine the gun and make
16 sure it is safe to fire, I don't want to lose any
17 fingers while shooting a firearm, and then I'll shoot
18 in our vertical water tank, a two-story water tank, and
19 shoot down into the water. It slows down the bullet
20 and it doesn't add any markings to it or take away any
21 markings. So whatever markings are on the bullet come
22 from the firearm.

23 At the bottom of the tank there is a colander.
24 We pull the chain up, retrieve our fired bullets. We
25 look at those under our comparison microscope, which

JAMES GREEN - DIRECT EXAMINATION

1 is two microscopes joined together with one optical
2 bridge, see two things at one time. I'll see if the
3 fire markings are consistent, and if it is, we'll
4 start comparing it versus the evidence we have. At
5 the same time you shoot the bullets, we also collect
6 the cartridge cases to compare if we have any sent.
7 So what I did is I test fired the rifle and looked at
8 those tests and compared them to State's Exhibit 41.

9 Q What did you find when you compared it with
10 State's Exhibit 41?

11 A State's Exhibit 41 is unsuitable for
12 identification, meaning I could never tell you what gun
13 it came from due to the damage on it, but there was
14 remaining rifling impressions which was consistent with
15 the rifle. So while I could never say it was fired by
16 that rifle, I could say it could have been fired by
17 that rifle.

18 Q Is it uncommon to have that kind of result with a
19 .22 caliber?

20 A Yes and no. The bullet that was submitted as
21 State's 41 had like a brass plating on it, and many
22 times when you shoot that, the brass plating eats up
23 the markings, it like absorbs the markings, and then it
24 flakes off so all the markings you have kind of goes
25 away with the plating.

JAMES GREEN - DIRECT EXAMINATION

1 Q But the residual markings left were consistent
2 with the gun, but could not be identified with that
3 gun?

4 A Yes, sir.

5 Q And how about the casing you examined?

6 A State's Exhibit 40, as I explained when I test
7 fired the rifle, we get the bullets in the cartridge
8 cases. Once I got done examining the bullets, I looked
9 at the cartridge cases, made sure the rifle was marking
10 consistently, and I look at it versus State's 40. So I
11 had tests from that gun that I know came from that gun
12 because I fired it myself, and then compared it with
13 State's 40, and I concluded that it was fired by the
14 rifle.

15 Q Just to get a little deeper, what is it that you
16 are looking at on the cartridge that you compared to to
17 the gun, or to another fired cartridge?

18 A Whenever a firearm is made, the process of
19 machining the parts is metal making metal. There are
20 tiny microscopic striations left on each individual
21 part that touches the cartridge case, or for that
22 matter the bullet. It differentiates it from that gun
23 to the one after it, to the one before it. So that gun
24 will have an unique signature, almost like a
25 fingerprint, that we're able to identify back to a

JAMES GREEN - DIRECT EXAMINATION

1 single firearm.

2 Q The two casings, the one you received as evidence
3 and the one you created as a test fire, had the same
4 markings?

5 A Correct.

6 Q What is the make and model of that gun?

7 A It is a Charter Arms, is the make, and the model
8 is AR7 Explorer.

9 Q Are you familiar with a Marlin Papoose?

10 A No, sir.

11 Q But that is not a Marlin Papoose?

12 A No, sir, that's a Charter Arms.

13 Q And it collapses. Is this the kind of gun where
14 the receiver and the barrel come off and fit inside the
15 base?

16 A Yes, sir.

17 Q Is there a general name for those?

18 A They are called survival rifles. They were
19 designed for air force pilots to carry in their planes,
20 something that would fit in the small cockpit, and when
21 they were crashed or shot down or whatever, it was
22 connected to their seat and they could undo it.

23 MR. DeBUSK: Thank you. We move 40, 41 and 42.

24 THE COURT: So admitted.

25 (State's Exhibits 40-42 admitted.)

JAMS GREEN - CROSS-EXAMINATION

1 CROSS-EXAMINATION

2 BY MR. SMALDONE:

3 Q Good morning.

4 A Good morning.

5 Q How long have you been working for SLED?

6 A Since June of 2005.

7 Q How many cases have you worked during that period
8 of time?

9 A Thousands. I can't give you a number, but in the
10 thousands.

11 Q How many times have you testified?

12 A 42 or 43.

13 Q Sorry?

14 A 42 or 43.

15 Q All the times for the State?

16 A The last time I was in Horry County I was going
17 to testify for the defense as well, but their questions
18 on cross, but I had been subpoenaed by both prosecution
19 and State -- sorry, prosecution and defense.

20 Q Correct. I didn't catch that either. You
21 primarily testify for the State though?

22 A Yes, sir.

23 Q How many -- how many different tests did you
24 perform on that gun?

25 A Well, I do the basic function test. Like I said,

JAMS GREEN - CROSS-EXAMINATION

1 I don't want to shoot anything that is unsafe. We do
2 the safety checks, make sure they are working properly
3 to kind of make sure there is nothing inherently wrong
4 with the gun. Like if someone says I just held up the
5 gun and it fired, we try to make sure that either that
6 can happen or cannot happen based on our testing. Then
7 we do trigger pull testing, and then we -- you know,
8 the microscopic comparisons.

9 Q Did you do a trigger pull analysis on this gun?

10 A Yes, I did.

11 Q Did you do a stippling test on this gun?

12 A No, sir. That is not in the province of the
13 firearms department.

14 Q Is it not important to determine the range of
15 fire in a case?

16 A In some instances it may, but I'm not sure about
17 each particular case. I don't know what happens in the
18 cases, I just know the evidence I get.

19 Q So you didn't review the medical report in this
20 case, autopsy report?

21 A No.

22 Q So you are just testifying that that bullet came
23 from that gun?

24 A The cartridge case, yes, sir.

25 MR. SMALDONE: Beg the Court's indulgence.

JAMS GREEN - CROSS-EXAMINATION

1 (A brief pause in the proceedings.)

2 Q (MR. SMALDONE) You said you examined the fired
3 projectile in this case from the victim, correct?

4 A I examined a cartridge -- a bullet. I'm not sure
5 where it came from.

6 Q Is it a deformed bullet?

7 A Yes, sir.

8 Q May I see that?

9 A Yes, sir.

10 Q State's Exhibit --

11 A I believe it is 41.

12 Q State's 41, okay. What are things that can
13 deform a bullet like that?

14 A Like State Exhibit 41, like the lead bullet?

15 Q Correct?

16 A Lead is so malleable and soft, a bunch of things
17 can deform it. I've had cases where bullets have hit
18 roads and half of the bullets go. I've had cases where
19 the bullets have entered someone's head and deformed
20 from entering like a hard object like bone. There is a
21 whole bunch of things that can deform a soft, lead
22 bullet.

23 Q It is fair to say that when a bullet is deformed
24 like that its path can change from the original path,
25 correct?

JAMES GREEN - REDIRECT EXAMINATION

1 A I don't know. That is not my area of expertise.

2 Q You are a firearms expert?

3 A Firearms identification, yes, sir.

4 Q So you are just identifying that this bullet came
5 from this gun.

6 A Cartridge case, yes, sir.

7 Q This cartridge case came from the gun, you don't
8 know even if the bullet came from this gun?

9 A No, sir.

10 MR. SMALDONE: No more questions for you.

11 REDIRECT-EXAMINATION

12 BY MR. DeBUSK:

13 Q To be clear, you said the bullet was consistent
14 with that gun, but you could not identify it with that
15 gun --

16 A Yes.

17 Q And you tested the gun to ensure the safety would
18 not go off spontaneously?

19 A Correct.

20 Q Would it go off spontaneously?

21 A Not in my testing, no, sir.

22 Q So the trigger and the safety all functioned as
23 advertised?

24 A Yes, sir. When I examined the firearm, it worked
25 as it was supposed to be.

MOTIONS

1 MR. DeBUSK: May he be excused?

2 THE COURT: Any objection?

3 MR. SMALDONE: No objection.

4 THE COURT: Thank you for your testimony. You
5 may step down and you are excused from your subpoena.

6 MR. GROOMS: The State rests.

7 THE COURT: Very well. Mr. Ropp, take the jury
8 up in the jury room. I have matters to take up with
9 the attorneys.

10 (The jury exits at 10:32 a.m., and the
11 following is heard out of the presence of the jury.)

12 THE COURT: Mr. Smaldone.

13 MR. SMALDONE: At this time I move for a directed
14 verdict generally on all counts, in addition
15 specifically on the murder. I don't believe that
16 there has been any showing of malice aforethought.
17 There has been no direct evidence, no eyewitnesses,
18 nothing linking him, no evidence of intent.

19 THE COURT: Well, of course on a directed verdict
20 motion I must take that evidence in the light most
21 favorable to the non-moving party, in this case it is
22 the State. I'm to determine whether or not a verdict
23 for the State would be reasonably possible under the
24 evidence, again, construed in the light most favorable
25 to the State. We certainly have ample evidence that

THE COURT EXAMINING ROBERT WARE

1 THE COURT: Mr. Ware, let me say this. If at any
2 time before you testify or before your attorney rests,
3 you can certainly change your mind. I'm not
4 encouraging you to one way or the other, but you are
5 not bound by what you tell me now. You can decide
6 before you actually take the stand that you don't want
7 to testify, that is fine. You are not bound by this.
8 My purpose in going through that litany is to make
9 sure you understood your rights.

10 MR. WARE: Yes, sir.

11 THE COURT: Mr. Smaldone, are you ready?

12 MR. SMALDONE: Yes, Your Honor.

13 THE COURT: Let's bring in the jury.

14 (The jury enters at 10:409 a.m., and the
15 following is heard in the presence of the jury.)

16 THE COURT: We have our jurors and alternates
17 back in the courtroom. Mr. Smaldone.

18 MR. SMALDONE: Thank you, Your Honor. Defense
19 calls Mr. Robert Ware.

20 (ROBERT WARE, having been duly sworn,
21 testified as follows:)

22 THE CLERK: State your name and spell your
23 last

24 THE WITNESS: Robert Carl Ware.
25

ROBERT WARE - DIRECT EXAMINATION

1 DIRECT-EXAMINATION

2 BY MR. SMALDONE:

3 Q Spell your last name.

4 A W-A-R-E.

5 Q Mr. Ware, how old are you?

6 A 55.

7 Q Where were you born?

8 A Pascagoula, Mississippi.

9 Q How long have you lived in the Myrtle Beach area?

10 A Approximately -- well, from right now, five to
11 five-and-a-half years, I believe.

12 Q So prior to this incident, how long had you lived
13 here?

14 A Like four years.

15 Q How did you meet Mr. Randy Banks?

16 A I was staying at a friend's place at the opposite
17 end of the building that he was staying at, and I met
18 Sabrina and they told me to come by sometime, so I went
19 over there and we met and became friends.

20 Q Do you remember about what year that was? Do you
21 remember how long ago it was?

22 A Probably five-and-a-half, six years ago.

23 Q Where was this?

24 A 2010, 2011.

25 Q So right when you moved to Myrtle Beach?

ROBERT WARE - DIRECT EXAMINATION

1 A Yeah.

2 Q How well did you know Randy?

3 A Pretty good. We visited and hung out quite a few
4 times, go and do things.

5 Q Right. Would you consider him a close friend?

6 A Yes.

7 Q What was Randy -- describe Randy's personality,
8 what was he like?

9 A Well, he had a strong personality. He was a good
10 guy. He become manic sometimes, you know, especially
11 when he drank, but that was one of the things he
12 respected about me the most, when he would get really
13 loud and aggressive, I would just be right there and
14 say, hey, man, calm down, it's not a big thing, and
15 most people would run away from him.

16 Q Was Randy a big guy?

17 A Yep.

18 Q Who was bigger, you or Randy?

19 A Me.

20 Q How did you start staying at the Wave Rider, what
21 set that in motion?

22 A I had been staying right across Mystic Sea at a
23 condo. It is an efficiency apartment. I talked to
24 another guy named Randy, he was the owner of a lot of
25 those properties, hotels. He had a condo that I could

ROBERT WARE - DIRECT EXAMINATION

1 get that was within my means at the Wave Rider. I
2 lived there for a year and a half.

3 Q So was that the same -- was that room ?

4 A Oh, no. No. That was before. That was a
5 year-and-a-half before that, maybe three quarters of a
6 year. I was staying at the Myrtle Beach Golf and Yacht
7 for a year-and-a-half.

8 Q How did you start staying at Unit ?

9 A I moved out of my apartment at the Myrtle Beach
10 Golf and Yacht into an apartment at Sterling Village.
11 I was renovating it, taking care of it. I had an
12 agreement with the owner that I would stay there while
13 I did the work, and I paid the HOA fees, which was \$700
14 a month. The work was completed, and they had friends
15 that was coming down. It was their father's place, but
16 he had gotten too elderly and disabled. He needed to
17 be taken care of, so they bought the place and took
18 them back home.

19 Anyway, they were using it as a summer house, you
20 know, summer apartment condo. They had friends coming
21 down already before I moved in, and that is why it was
22 getting fixed up. They was going to be there at a
23 certain day. I told them I would be out by that date.
24 Well, I had an apartment set up, you know. I was
25 supposed to move in, paid the deposit and everything.

ROBERT WARE - DIRECT EXAMINATION

1 But at the last minute, last week they gave it to
2 someone else. I guess they got more money for it.
3 That fell through. And then they called and said they
4 are going to be there, you know, like in a week, we
5 need you to go ahead and get situated. I had all of
6 my stuff in storage, but I was just going to stay --
7 somebody wanted me to stay there and not move out,
8 tell them get an eviction, but I don't do that way. I
9 don't work that way. If I give my word, I'm going to
10 do it.

11 So I went ahead and moved out. Sabrina took me
12 around to different hotels and stuff because, you
13 know, I had to wait until Friday to get my monthly
14 check. I'm disabled, and with the money I saved also.
15 Like you say, I'm long winded because I want you all
16 to know everything, you know, everybody.

17 Q Fair enough? The original question was, how did
18 you start staying at ?

19 A Yeah. Well, I ended up staying at a hotel right
20 across the street, and it was Thursday. I thought it
21 was paid through Thursday to Friday, and I wasn't.
22 They wanted weekend rates, so Randy said why don't you
23 just come over and stay over here, and I said okay. He
24 said if you want to, you can pay 30 dollars a day, so I
25 said, yap, okay, that sounds good, you know, just for a

ROBERT WARE - DIRECT EXAMINATION

1 few days. Then the next day I got my check. But that
2 is how I came to stay there.

3 Q So before August 6th, how long had you been
4 staying at Room ?

5 A Three days.

6 Q Have you not had a place to stay before?

7 A A couple of times.

8 Q What would you do those times?

9 A I would stay in my truck for a few days, but one
10 time I stayed over at Randy's, and I think his name is
11 Ben -- yeah, it's Ben. Ben's apartment. Ben had an
12 apartment, and Randy stayed in the front room in the
13 living room, you know, there is a pull-out bed, but I
14 stayed over there on the couch overnight twice.

15 Q Around this period of time before -- around
16 August 6th -- before August --

17 A Years ago.

18 Q -- what was your primary method of
19 transportation?

20 A I sold my truck about six months before, four
21 months before, and I had a moped.

22 Q What kind of truck?

23 A 1998 Chevy Silverado.

24 Q You bought a moped?

25 A Yes, sir.

ROBERT WARE - DIRECT EXAMINATION

1 Q Do you remember what kind?

2 A It was an RX8.

3 Q Who makes that? Do you know -- is that the
4 brand?

5 A RX8, that is what it has on the thing.

6 Q What did it look like?

7 A A friend of mine just needed some money, so I
8 bought it. Still had my truck at the time.

9 Q What did it look like?

10 A It was blue. It was nice little moped. Later
11 on, it didn't run no more, so I had to buy another one,
12 and that is -- both of them were stolen.

13 Q Sorry. Repeat that?

14 A Both of them were stolen.

15 Q Do you know who stole them?

16 A No, I don't.

17 Q When were they stolen?

18 A One a month before I filed a police report at
19 Sterling Village, and the other one I was keeping right
20 on the porch right there by the door.

21 Q Where?

22 A Sterling Village. When I moved out of the hotel,
23 Sabrina came over that morning. It was like 10 o'clock
24 when she left, and I was going to come out at 10:30 and
25 then drive it over there and then go look for some

ROBERT WARE -- DIRECT EXAMINATION

1 apartments, you know, check out some apartments. I
2 stepped out the door, looked down, broad daylight too,
3 I had taken out the safety wire and everything on it,
4 and it was gone. It was stolen. I believe this was
5 Thursday.

6 Q Is that the Thursday prior to this?

7 A No, it was Thursday, the last I stayed there.
8 And Randy said just stay here, you know, because I did
9 not find a place, it was a pretty bad day. That moped
10 was a brand new moped.

11 Q Do you know what kind it was?

12 A I forget. It's been 18 months. It was yellow,
13 had a great white shark on the front of it. People
14 liked it.

15 Q What was -- describe your relationship with
16 everyone those days you stayed at the Wave Rider, was
17 it an intense environment or?

18 A It was not intense. Me and Randy was really good
19 friends. Sabrina, we were really good friends. It was
20 strange, you know, because the reason I didn't want to
21 stay over there is because Sabrina and Randy had been
22 together like 12 years off and on. They argued quite a
23 bit, but, you know, that is a lot of people's
24 relationships are like that, you know.

25 Anyway, they had broken up, and it was over, you

ROBERT WARE - DIRECT EXAMINATION

1 know. Randy was good with that, and he talked to me
2 about it several times. So there was no tension
3 between me and Randy, whatsoever. Me and Sabrina were
4 going to get a place. She had been staying with me
5 over at Sterling Village before all of this happened,
6 and because she didn't have a place to go, and I was
7 getting a new place, I said we'll get a place together
8 until you get your life straightened out. You know,
9 most guys would be mad, you know, their long-term girl
10 was with like their best friend, but it wasn't like
11 that, you know. It was a friendship thing.

12 So there was no tension. We got along great. He
13 was really happy because right off the bat I bought
14 all the food, that didn't happen much. There wasn't
15 nothing in the refrigerator, so I stocked the
16 refrigerator, went to Food Lion every day and bought
17 roasts, sandwich meats, bread, potatoes, carrots,
18 onions, celery, whatever. I stocked a bunch of stuff
19 in there because I knew I would be there like a week
20 so I put a bunch of little stuff. But I always bought
21 a case of beer every day for Randy and Sabrina hoping
22 they was just going to maybe drink half of it, but it
23 ended up being every day. I bought all of the
24 cigarettes for me and Sabrina and snuff for Randy,
25 soda pops, everything, you know. He was really happy

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1 with me, you know.

2 He borrowed a lot of money from me because he
3 needed to. He had just gotten an eviction notice. He
4 was only there for two months, but the guy was going
5 to let -- you would have to know his landlord. He was
6 a really strange character. He was going to have his
7 daughter come down from North Carolina and stay there
8 at the end of August, and that put a lot of pressure
9 on Randy.

10 Q All right. Did you go to the liquor store on
11 August 6th?

12 A Yes, sir.

13 Q What was your mood at the time?

14 A I was upset because my moped, which is my only
15 means to get around, I'm disabled, it causes me great
16 pain to walk. I've been disabled for 12 years now.
17 Anyway, I walked up to the store after I already had
18 gone up to the store once, because when Randy got in,
19 Sabrina didn't bring him home. He wasn't feel good.
20 He was sick and everything, you know, pill sick, you
21 know. He worked that day and had a bad day.

22 So I walked up to the store and got beer, some
23 40-ounce. I gave him one, I drank one. We talked,
24 and he wasn't feeling good, so hot. But he went to
25 the bedroom after awhile just to lay down, you know.

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1 I sat in there and I was thinking and stuff, and I
2 drank the 40. I hollered for him and he asked what's
3 up, and I said, look, if I loan you some money, can
4 you go ahead and get something to make you feel
5 better, and he said, yes, I think I can. So I said go
6 ahead and call, and he did.

7 A few minutes later he had gotten ahold of a
8 friend that had something to help him, and he told me
9 it was OxyContin morphine. I said, okay, what do you
10 need, and he wanted three pills, one for today, one
11 for in the morning and one for Sabrina. So I gave him
12 \$75. He asked for \$75, I gave him \$75. Anyway, he
13 was asking --

14 Q Right. Were you upset when you were at the
15 liquor store?

16 A Yeah, walking up to the liquor store, it was hot
17 out. It wasn't very far, you know, almost like a
18 little angle, almost straight ahead, you know, Food
19 Lion, if you are familiar with the area. Anyhow, I
20 walked up there, went across King's and went to the
21 store. I went to the grocery store first for a pack of
22 cigarettes, some soda pop of some type and went to the
23 liquor store, got a bottle of liquor. When I went in,
24 you know, I was hot. I know Matt and his dad and the
25 other cashier, you know, pretty good. We always get

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1 along real good and talk and joke and stuff.

2 I wasn't feeling too good. I was upset about
3 walking, and I did make a comment about thieves, but I
4 had been making those comments about thieves and
5 stealing, especially mopeds, which is like probably
6 the most stolen thing in Myrtle Beach and, you know, I
7 was upset about it. I told him, Man, I'll kill that
8 guy whoever stole my moped, is what I was talking
9 about. I wasn't talking about nobody else. You know,
10 it was just a comment because I was hot and tired.
11 Then I left, you know, I went back to the apartment.

12 Q All right. Let's talk about August 6th. Do
13 you remember anything about the daytime part of that
14 day? Do you remember what you did that day?

15 A In the morning? I got up when Randy got up when
16 he came in the room and they woke me up and he was
17 upset that I took my last pill, you know, my
18 prescription instead of saving it for him to go to work
19 with. About 3 o'clock in the morning I was hurting
20 bad, so I took it. But he wasn't real upset, just like
21 -- because he was getting -- where he gets his normal
22 stuff from was his boss at work, and he was out or
23 something, I think. Anyway, he went on to work --

24 Q Do you know what time he left for work?

25 A It was around 6:00.

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1 Q A.m.?

2 A Yeah, something like that, 6:30 time, pretty
3 early.

4 Q Did you wake up then, or go back to sleep?

5 A No, I don't sleep a whole lot. I'm a fairly
6 light sleeper. Once I'm up, I'm up all day. It's just
7 a habit I've had all of my life. Anyway, I was wanting
8 to wash the dishes. I told Randy -- because the night
9 before I bought a big roast and other stuff and it took
10 up -- I mean Sabrina cooked it all, wouldn't let me
11 cook anything. Anyway, there was a lot of pots and
12 pans. It was a big meal. It was a nice meal. I was
13 going to do the dishes, and Randy said, no, you are a
14 guest here, you don't ever clean or do dishes, because
15 he was that way. He wouldn't allow that stuff. He was
16 really OCD.

17 Q What do you mean he was OCD?

18 A Clean. He wanted everything clean and in place,
19 okay. He was always funny like that, ever since I
20 known him, which was a good thing, you know, it's not a
21 bad thing, because if you keep up with the mess -- I
22 was a merchant marine a long time, "nobody's mom" was
23 on the boat. You keep up with cleaning immediately, it
24 don't take no time to keep everything in order.

25 Anyway, he didn't want me to wash dishes, you

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1 know, because I bought all of the food. He felt I was
2 a guest. I'm not a guest, I'm giving \$30 a day and
3 I'm living there, you know, while I'm there, that is
4 what I told him. He still wanted Sabrina to do it.
5 So she took him to work, came back before she was
6 going to go to Amanda's mother's, I believe, or her
7 mother-in-law that she had been taking care of, takes
8 her around and cleans up the house and stuff.

9 She came back, and I told her I'll wash the
10 dishes, no problem. I ain't got nothing to do today,
11 I can't get around to look for a place, because she
12 was supposed to be taking me around to look for
13 places. I didn't have a computer, so I can't go
14 online and do searching.

15 Q All right.

16 A She left.

17 Q Do you remember leaving the apartment the night
18 of August 6th?

19 A The first time, or second time?

20 Q Talk about the first time.

21 A The first time, Randy came home, came back from
22 getting his medicine, and he was in a much better mood.
23 He took his medicine and felt a whole lot better. He
24 was happy. Sabrina finally makes it back, and she's
25 there for a little while. He decides he's going to go

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1 to a buddy's motel room a block or two away, I guess
2 just to get out. Sabrina wanted him and her to watch
3 fireworks or go to the beach and just go to the beach,
4 and he didn't want to. He wanted to go to his friend's
5 place. Sabrina wasn't happy about that. He left, and
6 when he left, she was running around the house saying
7 she was going to go to the beach and look for sharks
8 teeth. That is one activity we started doing. It was
9 fun, you know. Actually found some tiger teeth. She
10 found a great white tooth about this long. It wasn't
11 prehistoric, but it was a nice tooth. So we were down
12 there. I brought my head lamp and all the gear and
13 everything to do that. We're there, and it is just
14 past dark, probably 8:30, 8:45. Fireworks were about
15 to begin. They happen every night. I don't know if
16 you all know that, but they do it in the summertime.

17 Q Where are the fireworks?

18 A I forget which pier, but right there you see it
19 from the whole length of the beach.

20 Q So what did you do after you looked for the
21 sharks teeth?

22 A We're still doing that, and Sabrina wants to go
23 get Randy to watch the fireworks. I wanted to just go
24 on back, you know, let them have time together. I've
25 seen them break up so many times that maybe they would

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1 get back together, don't know. I was going to give
2 them some alone time on the beach. I went back to the
3 apartment, and she went to go get Randy.

4 Q What happened when you went back to the
5 apartment?

6 A Sabrina came back a little while later, about 45
7 minutes later when the fireworks were done or whatever,
8 but Randy didn't go to the beach with her. She came
9 back and she was upset about that, but it wasn't a real
10 big deal, that I could tell, you know. We just watched
11 TV. I had a drink.

12 Q What time is this?

13 A Sabrina had a drink when we went to the beach.

14 Q Do you remember what time of day it was?

15 A When?

16 Q When you got back to the room.

17 A Oh, it was probably 15 minutes before the
18 fireworks, 8:45. I believe the fireworks are at
19 9:00 every night.

20 Q So you are back at the motel room around 8:45?

21 A Yes, sir.

22 Q Is Randy there?

23 A No, sir.

24 Q Do you know when Randy comes back?

25 A Around 11:00, 11:30, somewhere in there.

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1 Q Was he gone from 6:00 to 11:00 p.m.?

2 A 7:00 -- 6:00, 7:00.

3 Q So what time did you come back?

4 A Around 11:30, I guess. It was late.

5 Q What happens when Randy comes back?

6 A Nothing much. He just comes back -- yeah. Well,
7 before we went to the beach, I helped Sabrina do the
8 dishes and the pots and pans and all of that stuff, and
9 put all of that stuff up, cleaned up. The place was
10 neat. I mean, even when I took a shower he would like
11 the shower wiped down with a towel, no problem. But
12 everything was done. I mean, the place was spotless.

13 Randy come back and -- that's right, he's
14 puttering around and then he grabs -- he sees
15 everything is done, and I didn't tell him I helped
16 because that would have upset him, it would have made
17 him angry with Sabrina. He was like that. Anyway,
18 everything was done. He can't find nothing wrong with
19 the house. He grabs a vacuum cleaner and starts
20 vacuuming.

21 Q What time was it when he did that?

22 A I don't know, right around -- in between -- it
23 was around 11:30, maybe 12:00. I don't know.
24 11:00 o'clock.

25 Q So he started vacuuming?

ROBERT WARE - DIRECT EXAMINATION

1 A Yeah.

2 Q What did you do?

3 A I knew he was building up with an argument with
4 Sabrina. I didn't want to be there. I didn't want to
5 be around. So he's vacuuming and vacuuming. He's
6 going at it kind of aggressively. It already was
7 vacuumed, already had been cleaned. So I felt that
8 tension in the air, and I went into the laundry room
9 and got my bag, which most everything of mine was in my
10 bag at all times except for toothbrush and razor and
11 all of that stuff.

12 Q Is this the bag, State's 38?

13 A Yes.

14 Q Do you recognize that bag?

15 A Yes.

16 Q This is the bag you took?

17 A Yes.

18 Q So you took your bag at what time?

19 A Probably 11:45.

20 Q Why did you leave?

21 A I didn't want to be there when they would be
22 arguing. I kind of felt like it was coming up, so I
23 just wanted to be away from that. They were both
24 friends of mine.

25 Q How did you know they were going to argue?

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1 A You could tell by the way Randy acts. He was a
2 little bipolar. Once he got into a manic mode, his
3 personality would flip over. You could tell that he
4 was more going at somebody. You know, that is the way
5 he was vacuuming. I just wanted to go.

6 Q So he was aggressively vacuuming?

7 A Yeah. It was loud. It was after 11 o'clock at
8 night. There was no sense in it. The place was
9 perfectly clean. I just wanted to go. It was like
10 tension. You know, I just wanted to get away from it.

11 Q Was a gun in your bag when you left?

12 A It had been in there. Randy knew it was there.
13 Sabrina knew it was there. It was all in stock, bottom
14 of the bag with everything on top of it. There was
15 pants and stuff in there too, shirts, that I don't know
16 where they are at. I would like those to be -- if in
17 the sheriff's stuff I'd like them back.

18 Q What do you mean it was all in stock?

19 A The gun breaks down. It is a survival gun.
20 You've all seen it. I got it from a guy that needed
21 some money, and I told him he could have it right back,
22 and he said, no, I don't want it back. Anyway, I gave
23 him \$50 for it. Anyhow, everything goes in the stock,
24 put the butt on it, and the other ones, a different
25 brand, will even float in the water, totally

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1 self-contained.

2 Q So the gun was -- it is your testimony that your
3 gun was in the stock when you left?

4 A Yes.

5 Q Where did you go when you left?

6 A I was trying to decide where I would stay at
7 night, because Randy didn't want me to leave. When he
8 saw me with the bag and put my stuff in it out of the
9 bathroom, he -- I was thinking about maybe going to a
10 hotel or something, but it was so late I didn't want to
11 waste my money. He grabbed ahold of the bag and pulled
12 it out of my hand. I let him have it. He stopped
13 vacuuming and said, Where are you going, and I say,
14 Man, I'm not staying here tonight, you guys are going
15 to be fighting and stuff. And he said, no. No. No.
16 You ain't going nowhere, you stay here. I'm not having
17 you out there sleeping on the street, and he put it
18 back in the laundry room. I was thinking about that,
19 no, I'm going to go ahead. He started vacuuming again,
20 I went ahead and got my bag and came back out and told
21 him, I'm just going to, you know, hang out tonight. He
22 said all right. All right. If you do, don't come back
23 tonight, I'll see you in the morning. All right, fine.
24 So I left. I went down the street, couldn't
25 decide -- I had taken my Vodka with me. There was

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1 only this much in the bottle, because Randy and
2 Sabrina had a drink or two earlier. Well, I put that
3 in there with it and zipped it up and didn't know if I
4 was going to stay on the beach, you know, just sit on
5 the beach for the night. I don't know where I was
6 going to go, but I went up to the store and got a
7 12-pack of beer and some soda pops and put it all in a
8 bag. It was pretty full -- oh, no -- yeah. Yeah, I
9 did put the 12-pack in there. But behind the Little
10 General, there is a garbage bin on the side. It has a
11 fence on the side. When you come around the hedges,
12 there is a real estate company right there, business
13 office. It is kind of secluded, you know, a quiet
14 spot. I went back there and sat down on the step and
15 just trying to decide what I was going to do. I ended
16 up staying there for probably a couple of hours. I
17 wasn't keeping track of time. I think I stayed there
18 for awhile. There was a lot of traffic back and
19 forth, that is a bad road, you know. There is a lot
20 of bad things happening on that road. There was some
21 -- a few gangs of gentlemen come back and forth
22 through there. It was a dark and secluded spot down
23 on 17 between King's and the beach. I was going to
24 stay at the lot right across there, because there is a
25 few trees in there, but the rest is clear and just sit

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1 down and have my back up against the tree, you know.

2 It is dark, and I have a flashlight and
3 everything. After awhile, I got to thinking, Well,
4 you know, this would be a good spot to get mugged.
5 This one guy kept coming by, and he came back with two
6 other guys with him. I go, No, I'm not going to get
7 robbed again, you know. My bike had just gotten
8 stolen a few days before. I put the gun together real
9 quick, not with any forethought or anything, but if
10 you have it, they see it. If they do threaten you,
11 you let them know you have a weapon! Most of the time
12 they just walk away, you know, get away from you.
13 That was my thinking at the time.

14 So I put it together real quick and put it back
15 in the bag. After a little while, No, I'm not doing
16 this. I was going to put the bag and everything in
17 Sabrina's car and then go to the beach. I went to
18 Sabrina's car probably 2 o'clock in the morning and
19 was going to set it in the back with all of her
20 clothes and stuff, because all of her possessions were
21 in car except what she had over at Amanda's house, I
22 believe, that is what she told me. She didn't hardly
23 have anything at the condo. Like I said, they were on
24 the outs, and she had been staying over at my place.

25 Anyway, I was thinking about sleeping maybe even

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1 in the car, you know. But I definitely wanted the bag
2 in there because it had the weapon in there. Because
3 if I were to go to the beach, the beach patrol would
4 come by and want to look in the bag. I was like,
5 Well, that wouldn't be a good thing. So the door was
6 locked to the car, and so I went up the stairs and
7 knocked on the front door lightly, and there was no
8 answer. So I went back to the bedroom door and I
9 barely knocked. That's all they could have heard
10 (indicates). I was thinking Randy might be asleep and
11 Sabrina would hear it, because she didn't answer the
12 phone when I called earlier and -- or text message.

13 So I knocked and immediately Randy opened the
14 door. He wasn't happy, but after I told him, Man, I
15 was going to stay in the car, but it's locked, can you
16 give me the keys, let me unlock it. And he goes, No.
17 No. No. You're not going to sleep outside, you are
18 going to come on inside. I said all right. He
19 grabbed my bag and started pulling, because I was
20 like -- at first I was like, no. He goes, No. No.
21 No. I came in through the bedroom door. Sabrina is
22 on the bed against the wall. We walk on through.

23 Q Was the gun in the bag when you arrived?

24 A Yes. Yes, it was.

25 Q Was it assembled?

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1 A Yes, it was.

2 Q Did the gun fit completely in the bag?

3 A No. With it zipped up it sticks out, the barrel
4 sticks out about so far, barely noticeable, dark.

5 Q Did anyone see you? I mean, you were walking
6 around Myrtle Beach with the barrel out of the bag?

7 A Just from almost -- just short of about a half a
8 block, not even a half a block away from King's Highway
9 on 17, and I cut through the lot. Once you get to the
10 bottom, you know, it was right there. Once you get to
11 the bottom, that is where Youpon is, and then you come
12 back up and there is an empty lot and the Wave Rider.
13 The guy who owned the condo, his parents had owned
14 large pieces of property on the beach, and they owned
15 that lot and the Wave Rider at the same time.

16 Q Did anyone see a gun sticking out of your bag?

17 A No. No.

18 Q But it did stick out of the bag?

19 A It is hardly noticeable, especially at night, but
20 there wasn't anyone around.

21 Q What happened when you knocked on the door to go
22 back?

23 A Randy answered the bedroom door.

24 Q And what is Randy's demeanor?

25 A Like, Man, what are you doing back? I'm getting

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1 busy. I said, I just want the keys to the car.

2 Q Was he wearing clothing?

3 A Yes.

4 Q What was he wearing?

5 A Swimming trunks.

6 Q You wanted the keys to the car, is that what you
7 said?

8 A Yeah, so I could at least put the bag in the car
9 and maybe sleep in the car. I don't know if I told him
10 I was going to sleep in the car or not.

11 Q Do you know if Randy saw the gun or not?

12 A Yeah.

13 Q Did Randy know you had a gun?

14 A Yeah. We went target practicing quite a few
15 times, all kinds of stuff. That is in the past. But
16 not with that one, but, yeah, he handled the gun
17 before, just a few days before.

18 Q What kind of gun was it?

19 A What?

20 Q What kind of gun did Randy handle?

21 A My gun, the Explorer.

22 Q Do you know if he saw the gun at the time?

23 A Yes. Yes.

24 Q What happened once Randy greeted you in the
25 apartment?

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1 A He emphatically wanted me come in and stay in the
2 living room and stay on the couch. He didn't want me
3 to be back outside.

4 Q All right. you had your bag at the time?

5 A Uh-huh.

6 Q Where did you put your bag?

7 A Between the big couch and the table at the corner
8 of -- there is a loveseat and bigger couch, which I
9 didn't like because it was faux leather.

10 Q Do you recognize this layout?

11 A Yes.

12 Q Is that a fair and accurate representation of the
13 Wave Rider room you were staying in?

14 A Uh-huh.

15 Q So show the jury -- where did you put the bag?

16 A Right here. The bag was there. The end of the
17 bag was pretty much right here, could have been a
18 little back from the table corner, but it was right
19 here.

20 Q All right. Where were you?

21 A I came in, dropped my hat here, came through the
22 loveseat area, set my bag down, got back up, came over
23 and got a glass -- I took the liquor out of the bag,
24 come over here, got a glass out of the cabinet and got
25 some mix out of the fridge and made a drink and set the

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1 liquor back in the cabinet. I came back over and
2 set -- I always sit on the corner of this. It sits
3 higher. It is easier for my legs. I usually sit at
4 the very end of the couch, but the TV was here, and I
5 was going to turn on the TV. I had my drinks and
6 cigarettes.

7 I went to go outside to smoke a cigarette first,
8 because I didn't smoke in the apartment. Randy didn't
9 smoke. He wouldn't mind if I smoked a cigarette or
10 two, but I did it out of respect. I was getting all
11 set up to take my drink outside and smoke a cigarette.
12 While I was doing that, Randy came out of the bedroom,
13 closed the door. Every time he comes out of the
14 bedroom, he closes the door. He's OCD about that,
15 about a lot of things. He has routines.

16 Anyway, Randy came out and got right here. I was
17 sitting here, and he just started in -- exact words
18 were, You know you can't do that, you can't be coming
19 in at 2 o'clock in the morning, except he was very
20 loud. If I got much louder, it would frighten people.
21 That was Randy. He wasn't that bad hard of hearing at
22 all. When he get upset, that is the way, and when he
23 is drinking, he would get very loud, very loud.

24 Q Was he drinking that night?

25 A Yes, he was.

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1 Q Was he acting different?

2 A Yes, he was.

3 Q How so?

4 A He was very aggressive. He was very aggressive.
5 He was upset with Sabrina. He was very aggressive, but
6 they had been getting along pretty good, I guess, but
7 her son and him always had problems, really bad
8 problems, you know. They are older --

9 MR. GROOMS: Object to any relevance about the
10 sons.

11 MR. WARE: It has something to do with this.

12 THE COURT: Let him go -- Mr. Ware, I'll make the
13 rulings.

14 MR. WARE: All right. Sorry.

15 MR. SMALDONE: Wait for the judge.

16 THE COURT: I'll allow it.

17 MR. SMALDONE: Go ahead.

18 A Because of her sons, Randy got upset with certain
19 things. One of her sons, her youngest --

20 Q (MR. SMALDONE) We don't --

21 A -- was staying there, and he was bad about coming
22 in late at night, okay. And Randy had a real problem
23 with that. He spoke to me about it a lot. Randy
24 bounced a lot of stuff off of me. Anyway, he was
25 telling me, You can't be doing this. I understand. I

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1 really didn't want to, you know, be coming in late like
2 that. He was just, you know -- he was going to say his
3 bit no matter what, and he's talking and yelling really
4 loud. And all the sudden, Randy, I'm right here.
5 Don't be yelling at me. Don't be yelling at me, I'm
6 right here. You know, I'm sorry I come in. You know,
7 trying to get him to go ahead and say his piece and get
8 it done, but don't be screaming at me.

9 So he said his piece and everything, and
10 everything was fine. He went on in the bedroom,
11 closed the door.

12 Q How long was he in the bedroom?

13 A I don't know, 10 minutes.

14 Q And were you awake during this period of time?
15 When he was in the bedroom, did you stay awake?

16 A Yeah. Yeah. That cigarette I was going to
17 smoke, I picked it up while Randy was ranting and
18 raving, and I lit it. And after about three puffs, I
19 realized I was smoking a cigarette inside the
20 apartment, so I put it out. And then after that, you
21 know, Randy finished his stuff, because he didn't even
22 notice, but he went back into the bedroom. I went to
23 smoke a cigarette, you know, finish the cigarette off.
24 I went outside, smoked my cigarette, came back in.
25 Probably 10 minutes passed. I was getting all settled

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1 in, and Randy came back out and just was ranting and
2 raving about nothing.

3 Q What do you mean about nothing? I mean, what
4 were the words coming out of his mouth?

5 A He was talking about Kyle coming in late and he
6 didn't want that behavior out of me.

7 Q Was he upset with you?

8 A I couldn't really tell. He was just upset,
9 period. He wasn't acting normal, okay.

10 Q How long have you known him?

11 A About four years.

12 Q Would you know when he's acting normal?

13 A I didn't realize he was so drunk, okay. At first
14 I didn't realize that. I figured he just took the
15 OxyContin or codone, or whatever it was that he took
16 and snorted, that was his favorite way to do that. You
17 know, he wasn't going to be getting drunk because he
18 had to go to work the next day. So he was just ranting
19 and raving, and he did say something about how much
20 longer do you think it's going to be before you leave,
21 you know, get a place, and I told him, Well, you know,
22 I've already paid you in advance for a week and loaned
23 you that money, and you are going to pay me back
24 Thursday when you get paid, you know. I said, That's
25 when I'll get a place. He's like blah, blah, coming in

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1 late, I can't be having this and blah, blah, blah. I'm
2 like, Calm down. Calm down. Quit yelling at me. Show
3 me more respect instead of yelling and screaming. He
4 keeps going on, and I say, What, have I done something
5 wrong to you? Have I treated you badly?

6 Q Who said that?

7 A I did, because I had to speak up to where he
8 could hear me over his hollering, because whenever
9 people are talking like that, you are not talking, you
10 are hollering at each other. You have to raise your
11 voice in order to hear -- them hear you. And I did
12 that, and I said, Have I mistreated you? Have I done
13 something wrong? He realized what I was doing, and he
14 said, No, Robert, you're the greatest. You buy
15 everything, pay for everything, if I need something,
16 you are there. He realized that everything was okay,
17 and so I stopped, and he apologized and went back into
18 the bedroom, no big deal.

19 Q When he went back in the bedroom, did you stay
20 away during that period?

21 A Yeah. I turned on the TV really low, but they
22 can't hear. You can't hear anything pretty much in
23 that bedroom in the living room, you know. If it was
24 loud, but they had the TV on in there.

25 Q How long -- did Randy eventually come back out?

ROBERT WARE - DIRECT EXAMINATION

1 A Yeah.

2 Q How long was he in the bedroom before he came
3 back out?

4 A Five, ten minutes.

5 Q After that five, ten minutes, what happened?

6 A He came out and didn't say nothing to me. He was
7 just looking, and he walked to the edge -- end of the
8 coffee table. I'm on the other end, you know, sitting
9 up. I'm not all the way back, and I'm just drinking my
10 drink and watching TV. He comes in and stopped right
11 there, and he's got a strange -- he's not saying
12 nothing, you know. It's not the way he normally acts.
13 He just looks at me, and I'm looking at him, and he
14 just rushes between the couch and table right up to me,
15 and I'm on the edge of the seat, you know. He rushes
16 right up to me and the bag is right there. He stopped
17 before the bag and puts his hand on the couch and on
18 the table and leans right up to me, and doesn't say a
19 word to me. He just had this crazy look in his eye,
20 you know. I'm like, What the hell, what are you doing?
21 He just got all this bent up look in his face and then
22 he kind of backs up a little bit and looks down, and he
23 looks up at me, and right then I knew he was going to
24 grab the gun. I ain't going to let him have it when he
25 is acting like this. Any other time I would have

ROBERT WARE - DIRECT EXAMINATION

1 handed it to him, you know. Normally any other time
2 it's not together.

3 He does that, and he's just -- he reached down
4 and grabbed the gun, grabbed it by the receiver and
5 puts his hand around it.

6 Q What is the receiver?

7 A Where the action and all of that is, where you
8 load the bullets into the gun. It is the metal part.
9 It comes apart completely and screws in from the bottom
10 when you take off and put it in. The receiver is right
11 there and then there's the barrel.

12 Q I'll show you the gun that was already admitted
13 into evidence. Where is the receiver?

14 A There is the receiver.

15 Q Is this the barrel?

16 A Yes. Where did he grab it? The gun was facing
17 this way, away from me, in the bag, straight up just
18 like this. Do you want to get the bag so I can show
19 you?

20 Q Sure. Sure.

21 A There was more stuff in the bag.

22 MR. SMALDONE: Let the record show the bag was
23 already admitted into evidence. You can come out to
24 show the position of the gun and the bag.

25 A Sorry, guys, but I want everybody to know what

ROBERT WARE - DIRECT EXAMINATION

1 happened. There was clothes and all kind of stuff that
2 was in this bag, but I don't know why the prosecution
3 decided not to do it.

4 /The bag -- I'm sitting right here at the edge of
5 the table, right here. I'm sitting on the edge of the
6 loveseat. The bag is, you know, a little -- anyway,
7 like this (indicates), and it was closed kind of like
8 this, but this was up just like that, because there is
9 clothes and stuff in there. Randy -- I was sitting
10 like right about here. Randy came up to me, and he
11 gets right in my face. He leans over, I mean, just a
12 few inches away from me. He has this crazy look in
13 his eyes, you know, and acting really strange. He
14 looks down, and when he went to grab the gun, he
15 grabbed the front part right here, grabbed ahold of it
16 here somehow, have been with his left-hand
17 (indicates). He grabbed ahold of it and went to pull
18 it out of the bag. At the same time, I wasn't going
19 to let him have it because I'm just not going to let
20 him have it when he's acting like that. You don't
21 grab my stuff anyway, you know, you ask. I grabbed it
22 right here with this hand, this is how it is held. By
23 the way, at the time, I was in much better shape than
24 I am now. I have put on like 70 pounds when I was
25 crippled in jail in three months.

ROBERT WARE - DIRECT EXAMINATION

1 Anyhow, so he's got the gun, and I've got the
2 gun. I'm not wanting it to go anywhere. So he pulls,
3 but he's not saying a word to me. We're not
4 struggling back and forth, it was just, you know, like
5 a tug. I got it, you got it, but you ain't going to
6 have it. He pulled harder, and he pulled harder and
7 pulled me up and pulled me forward. I had to step
8 over the bag. Do you want me to keep going.

9 Q Yeah. Then what happened?

10 A Excuse me.

11 Q You want some water?

12 A Yes.

13 (A brief pause in the proceedings.)

14 A The whole time he hadn't said one word to me the
15 while time. But, you know, it happened quickly. You
16 have to understand that. It all happened boom, boom,
17 boom. He's got the gun and he pulls me up to a
18 standing position, and then pulls me forward over the
19 back, you know. I had to step over the bag. I'm going
20 like, What the hell are you doing, and he doesn't say
21 anything, he just pulls harder, and it is just a
22 straight pull, you know, we're not swinging, fighting,
23 not going crazy or nothing like that, just two big guys
24 having a tug-of-war of something, in this case, the
25 gun.

ROBERT WARE - DIRECT EXAMINATION

1 I pulled back, and his hand slides down to the
2 barrel and then slides back to about midway I guess,
3 and he still has a hold of it. I'm pulling, Man, come
4 on, let go. He did let go, but when he let go, the
5 tension threw me off balance because I'm over like
6 that, so I stepped back, and when I stepped back, I
7 lose my balance because I was trying to move my other
8 foot to get, you know, in shape. I fell backwards.
9 When I fell backwards, I was falling. The gun
10 discharged. I guess my hand just spasmed. It was on
11 safety, I swear to that. It was on safety. I know it
12 was on safety. I didn't think it was loaded because I
13 had -- the magazine wasn't in it. I forgot I had the
14 shell in there when I was behind the store.

15 Q You said the magazine wasn't in it at the time?

16 A No.

17 Q So would you know -- when you say it was on
18 safety, when was it on safety?

19 A At least I thought I had taken it out.

20 Q When was it on the safe mode?

21 A Immediately after I put it together.

22 Q So was this --

23 A It has a safety. It is really strange, it is not
24 a push button like other weapons. It has like an ear
25 sticking out on the right-hand side. This one, it is

ROBERT WARE - DIRECT EXAMINATION

1 kind of hard to push it forward so, you know, when you
2 pull it back you know that it is on safety. It has a
3 good safety. He must have -- when he grabbed the
4 receiver and pulled and his hand slipped, it had to
5 have released the safety.

6 Q Is this the safety you are talking about?

7 A Yes.

8 MR. SMALDONE: May I publish State's 44?

9 THE COURT: No. They can look at it in the jury
10 room.

11 A When it is on safety, it's back. When it is
12 forward, it is on fire.

13 Q I'm sorry, repeat that.

14 A When it is forward, it is on fire. The way he
15 was positioned and everything -- that is the only
16 thing -- I thought about this and thought about this.
17 I'm like, How could it have gone off, and that is the
18 only thing I could -- because I know I didn't knock it
19 off.

20 Q Do you know if your hand was on the trigger at
21 the time?

22 A Yeah, my hand was on there, and I didn't have it.
23 I don't know. I guess it was just in there.

24 Q Was this when you were wrestling for the gun?

25 A Yeah.

ROBERT WARE - DIRECT EXAMINATION

1 Q Did you intend to shoot Randy?

2 A No. No way, whatsoever.

3 Q Did you intend to kill him?

4 A No. He was my friend.

5 Q So after the gun fires, what did you do?

6 A I was in shock that it had gone off. It was
7 really loud inside the condo. It was really loud. I
8 was in shock. I didn't expect it to go off at all, you
9 know. It had gone off, and my arm was -- I don't know.
10 I'm looking at the gun, and then I realized -- well; I
11 just realized -- I looked up and Randy is looking at
12 me, and he still hadn't said nothing. He moved his
13 hand like this and back, back down. Kind of looked
14 down, and he looked back up at me, and he just fell,
15 straight down.

16 About 30 seconds later, 20 seconds, I don't know,
17 few seconds later, Sabrina opens the door and comes
18 out and jumps down besides Randy, because he is on the
19 floor. You know, she's heard this loud noise, and she
20 kneels down beside him, and I didn't realize that he
21 was -- I thought he kind of passed out. I don't know
22 what happened. It is just a little .22, you know.
23 Anyway, she looks at me, and I'm looking at her, and
24 then she starts screaming, Oh, you killed him. You
25 killed him. And I said, No, I didn't. I dropped the

ROBERT WARE - DIRECT EXAMINATION

1 gun, you know. She gets up and she's yelling at me.
2 She has a phone in her hand, and she runs into the
3 bedroom. I don't know what is going on.

4 At this point, I was scared, to be honest with
5 you. I was scared. I was in shock. Randy is laying
6 on the ground passed out. The way my mind was working
7 at the time, I thought he was passed out. I didn't
8 think he was hurt. Looking back at all of this --
9 looking back, it's just strange. I got up, looked at
10 Randy real quick, and I didn't see -- I saw a little
11 -- a little streak, like a scrape. I figured, well,
12 maybe -- when my mind is working over time, I figured
13 that the bullet scraped him and he passed out from
14 fright or something, I don't know. I don't know what
15 happened, but there wasn't bleeding. It wasn't just
16 pumping out blood like a big cut. There wasn't hardly
17 any blood at all. In my mind, I was thinking I'm
18 going to grab my stuff and leave. I know Sabrina is
19 calling 911, I know help is on the way if he's hurt.
20 I've been meaning to pay my storage and all this other
21 stuff. So I wanted to get all of my business done,
22 because I know from being old and being around -- I've
23 done a lot of stuff. I've been in the Navy, Merchant
24 Marines, traveled all over the world and the country,
25 you know. I've been a lot of places. I know a lot of

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1 different things, but I know if there is a shot fired
2 in city limits inside a home -- inside a hotel,
3 especially Myrtle Beach, police are going to be there
4 and put me away before I even know what is going on.
5 That is the least of it.

6 So I put everything back in the bag, zipped the
7 bag up and was going to call them in the morning. I
8 was going to call later to find out how Randy was
9 doing. I left. I saw Sabrina outside. She was
10 outside against the wall sitting down and she was
11 calling 911. I thought she was on the phone with 911,
12 and I just -- and I walked away.

13 Q Where did you go?

14 A I went to Sterling Village, because I had a
15 friend that had a truck there that was unlocked and I
16 could sit in and just figure out what is going on.

17 Q How long were you there?

18 A Until 7 o'clock in the morning when it got light.
19 I was trying to dig around in my bag and find a phone.
20 I had been trying to find a phone in my bag and
21 couldn't find it, so I decided at light I was going to
22 go over to some people's house I know and use the
23 phone.

24 Q What happened around 7 o'clock?

25 A When I was looking around for the phone, I found

ROBERT WARE - DIRECT EXAMINATION

1 all of these loose bullets in the box -- actually the
2 box was opened and it was all over the place in the
3 bag. So I gathered all of them up. I wasn't trying to
4 throw away the gun or anything, because I knew that
5 there was a shooting, you know, that the police was
6 going to be involved with a gun being fired. So I got
7 all the bullets. I left the gun and everything in
8 there, and I was just going to throw them in the
9 dumpster. I come around the end of the truck, and that
10 is when the police come in, and there was a bunch of
11 them, you know, one right after the other. So I'm
12 coming, and I dropped the bullets, just dropped them
13 right there. It wasn't like I was trying to hide them,
14 because there is no gravel or anything, just black
15 asphalt. He asked me to turn around, and I did. I saw
16 the video.

17 Q How long after until you found what happened to
18 Randy?

19 A At the end of the interrogation --

20 Q Who told you what happened to Randy?

21 A I think it was that gentleman there.

22 Q How did you feel?

23 A I couldn't -- I didn't believe it for over four
24 months, until her son was at the jail -- not Ryan, but
25 Kyle -- and he told me. He goes what happened, and I

ROBERT WARE - DIRECT EXAMINATION

1 told him, Man, Randy just -- you know how Randy gets,
2 and it just -- it was an accident, and he said, Yeah,
3 okay. He goes, Mom has lost her mind.

4 MR. DeBUSK: Objection, hearsay.

5 THE COURT: That's hearsay -- Mr. Ware.

6 Mr. Smaldone, you are getting into hearsay and I'm
7 going to sustain the objection.

8 A How is that hearsay?

9 Q We won't get into what other people tell you. Do
10 you remember how far away Randy was when the gun went
11 off?

12 A It wasn't that far. He was like -- I thought he
13 was like right at the end of the table. Could have
14 been a few feet back, but not very far. But, you know,
15 I wasn't far from him, you know.

16 Q How long of a span of time did this happen, the
17 confrontation? How long did that total confrontation
18 from the time he bulked up until you shot?

19 A 20 seconds. I mean, it didn't take long. It was
20 rather quick. It took me a long time to explain. It
21 was fast. It was fast, real fast. It could have been
22 30 seconds.

23 MR. SMALDONE: Beg the Court's indulgence a
24 moment.

25 (A brief pause in the proceedings.)

ROBERT WARE - CROSS-EXAMINATION

1 A Because of all the trauma afterwards, I can't get
2 a fixed time on that.

3 Q I don't have any more questions for you, but if
4 you feel there is anything I haven't asked and would
5 like to say, you can do it, but you certainly don't
6 have to.

7 A Right. Randy was my friend and it was an
8 accident, you know. That's all it was. It was like I
9 couldn't even present the accident at the time because
10 of the actions. I don't know.

11 MR. SMALDONE: I have no more questions for Mr.
12 Ware.

13 THE COURT: Mr. DeBusk.

14 CROSS-EXAMINATION

15 BY MR. DeBUSK:

16 Q When he was laying on the floor, was he
17 approximately by the "X" there (indicates)?

18 A I thought it was closer to the table at the time,
19 because I was in shock. But, yeah, I guess he could
20 have stepped back a few feet.

21 Q Is this about where he was, State's Exhibit 17?

22 A I guess. I thought he was closer to the table.

23 Q You say you didn't see any of that blood on him
24 -- excuse me -- when you looked at him?

25 A I didn't -- I didn't. My mind didn't see any

ROBERT WARE - CROSS-EXAMINATION

1 blood at all. I saw just --

2 MR. DeBUSK: May I publish State's 17?

3 THE COURT: Yes.

4 (State's 17 Published to the jury.)

5 Q (MR. DeBUSK) Let's go back to the diagram here.

6 Where were you sitting when this all began?

7 A I told you, at the end of the coffee table.

8 Q End closest to the side table or --

9 A In the corner.

10 Q Here (indicates)?

11 A Yes.

12 Q Opposite side from where the "X" is?

13 A Yeah.

14 Q Okay. And this bag was between this couch and
15 this table, right?

16 A Yep.

17 Q Is this the couch and the table (indicates)?

18 A Yeah.

19 Q So you are looking straight. Do you know where
20 the bag was sitting?

21 A Yeah.

22 Q Where was the end of the bag closest to you?

23 A At the end of the table.

24 Q So the bag was even with the end of the table?

25 A There, or just a little back from the end of the

ROBERT WARE - CROSS-EXAMINATION

1 table.

2 MR. DeBUSK: May I publish State's 20?

3 THE COURT: Yes.

4 (State's 20 Published to the jury.)

5 Q (MR. DeBUSK) Randy came up between that table
6 and the couch, and the gun was on the ground in the
7 bag, right?

8 A He came and faced me.

9 Q Standing up? Came up, reached down and grabbed
10 the receiver of the gun?

11 A Not quite like that.

12 Q How did he do it?

13 A Like I said, he came in between -- he was
14 standing at the end of the table and just took a few
15 quick steps between the table and the couch, stopped at
16 the end of the bag, and then put his hands on the table
17 and the couch, and then leaned in real close to me.

18 Q So the end of the bag would have been somewhere
19 towards the middle of that large couch?

20 A Oh, no.

21 Q Where was it?

22 A It was probably in the middle to the end -- well,
23 in the middle of the cushion.

24 Q In the middle of the middle cushion?

25 A No. The end cushion, or close to it. Maybe all

ROBERT WARE - CROSS-EXAMINATION

1 the way to that area.

2 Q You are saying the bag closer to you was at the
3 end of that table?

4 A Yeah.

5 Q And that bag is about 2 feet long, so it would
6 have been over here (indicates)?

7 A Let me see it. The bag was right about here,
8 okay. So it is probably about right there.

9 THE COURT: Have him indicate so the jury can
10 see.

11 MR. DeBUSK: Show the jury where.

12 A Okay. Bag was like right about here, but not on
13 this side.

14 MR. DeBUSK: You're moving it back about a foot
15 from your prior testimony.

16 A It was right in here, right at the end of the
17 table. I didn't draw exact things at the moment.
18 Anyway, so it was like right here. Like -- I could
19 reach into the bag, because that is where I had the
20 bottle of liquor at, and I had taken it out. All
21 right. I had to unzip it to do it. So I bent over
22 from this chair, this loveseat, to do that. I got the
23 end of the bag and had to unzip it. I had unzipped it,
24 yeah, just like that. I took the bottle of liquor to
25 make a drink.

ROBERT WARE - CROSS-EXAMINATION

1 Q (MR. DeBUSK) This bag is approximately
2 26 inches -- 28 inches long, correct?

3 A I guess.

4 Q And the gun is approximately 34-and-a-half inches
5 long; is that correct?

6 A I guess.

7 Q Almost 35 inches?

8 A No. Actually 34.

9 Q 35 inches (indicates).

10 A Oh, okay.

11 Q So the end of that gun was at least up to the
12 spot between those two cushions, right? It couldn't
13 have been any closer to you?

14 A I don't know.

15 Q And you were sitting on the loveseat?

16 A Yeah.

17 Q And Randy came up and grabbed the gun, you
18 grabbed the other end, and he pulled you up, right?

19 A Yeah. After he got in my face and acting all
20 strange -- everything he was doing was strange, but
21 when he just rushed in like that --

22 Q You are standing here between the table when he
23 pulled you up?

24 A When he pulled me up, at first. And then he
25 pulled me more, so I had to step over the bag.

ROBERT WARE - CROSS-EXAMINATION

1 Q So you are between the table and the couch, the
2 long couch? Here (indicates)?

3 A In my recollection, yeah.

4 Q And that is where you were when you were playing
5 tug-of-war with the gun? And you said his hand slipped
6 around the receiver, miraculously turning the safety
7 off, and down to the end of the gun?

8 A No miraculously to it. He had a hold of that
9 part of the gun, that is the only way that that could
10 have come off.

11 Q Did he put his hand down here?

12 A Yeah.

13 Q And he's holding the other end of the gun?

14 A At the end. It wasn't all like that.

15 Q Okay, at the end. And then his hand slips off,
16 correct?

17 A Yeah, or he let go.

18 Q So he's standing somewhere towards the end of
19 this table, because you've been pulled up and standing
20 between the table?

21 A Right.

22 Q So he's standing towards the end of the table,
23 close to the end of the couch?

24 A Right.

25 Q And then his hand lets go, and the gun

ROBERT WARE - CROSS-EXAMINATION

1 accidentally goes off, accidentally shooting him
2 directly through the ventricle of his heart; is that
3 correct?

4 A Yeah.

5 Q Accidentally killing shot. What happened to
6 Randy after he gets the killing shot through his heart?

7 A Well, it took a few seconds for me to look up at
8 him. I was --

9 Q What were you looking at?

10 A The gun. I didn't believe it went off.

11 Q You weren't worried about Randy?

12 A I didn't -- you don't think about things that
13 quick. Trust me, if it happens to you, you ain't going
14 to think, oh, dah, dah, dah, dah. No. I looked at the
15 gun just like a firecracker went off in my hand.

16 Q Did Randy come after you?

17 A No. He still hadn't said nothing.

18 Q And he went backwards?

19 A And I looked up. I don't know what he did in
20 that time when I was looking at the gun. I looked up,
21 and he looked at me, and then he looked down and went
22 like this, and then he dropped his arm and he fell.

23 Q So his hands were down when you were looking at
24 him first?

25 A Yeah.

ROBERT WARE - CROSS-EXAMINATION

1 Q And then he raised his hand to his heart?

2 A Well, not to his heart. He just -- I didn't
3 realize he was shot. He just, you know, looked down.
4 I didn't see nothing on him. Well, that is when I saw
5 that angry little mark on him, but -- you know, red
6 mark. Yeah.

7 Q But you didn't see any blood around the red mark?

8 A I didn't -- I just saw a red mark.

9 Q Did you see any blood on the floor here in a
10 crescent shape around the couch?

11 A I wasn't looking at that.

12 Q State's Exhibit 34, did you see any of that
13 blood?

14 A At the time, no. And it was dark, darker in that
15 area too, I believe. In fact, I know it was. You
16 couldn't see none of this, because it was dark. There
17 was only one light on in the living room. It wasn't in
18 the living room, only the kitchen light. It was the
19 kitchen light on, the kitchen light and the TV.

20 Q So you had living room, kitchen and TV?

21 A I believe the TV was on. I can't remember if I
22 turned it on or not.

23 Q You didn't see any blood on that wall?

24 A No.)

25 MR. DeBUSK: Could I publish State's 34 and 22?

ROBERT WARE - CROSS-EXAMINATION

1 THE COURT: Yes, you may.

2 (State's Exhibit 34 an 22 published to the
3 jury.)

4 Q (MR. DeBUSK) Your testimony is you were standing
5 right here at the end of the long couch. Were you on
6 your bag or past your bag when you had your gun?

7 A At first?

8 Q You said you stepped over, was your foot on the
9 back or past the bag?

10 A I guess past the bag. I was out of, you know --
11 I wasn't in an uncomfortable spot.

12 Q You were somewhere past the beginning of the
13 second cushion?

14 A I guess.

15 Q And Randy was down towards --

16 A Pretty sure.

17 Q And Randy was somewhere towards the end of that
18 couch?

19 A Yeah, I imagine.

20 Q Did he ever sit down on that couch?

21 A Not that I remember.

22 Q Did he go backwards to this point? Do you
23 remember him going to that wall?

24 A I really don't.

25 Q You were paying more attention to the gun than

ROBERT WARE - CROSS-EXAMINATION

1 the guy you just shot?

2 A I was shocked that the gun went off. I looked
3 down. What he did didn't register to me at that
4 moment. This happened really fast.

5 Q But he wasn't sitting on the couch when you shot
6 him?

7 A No.

8 Q You were standing somewhere in the middle of this
9 couch where your bag was when the shots went off?

10 A I don't know. I was falling back. I had fallen
11 back, and I don't know where exactly I was in
12 determining to the bag.

13 Q Could Randy have been 3 to 4 feet from the end of
14 the gun that fired?

15 A From the end of the gun? I'm not sure.

16 Q You said you had gone backwards?

17 A I was falling backwards. I wasn't just watching
18 Randy. You know, (indicates) I'm falling. You know, I
19 stumbled, I guess that is a better word. I wasn't
20 paying attention to Randy at the time.

21 Q But no doubt --

22 A I was trying to get my balance.

23 Q But no doubt that you were at the end of this
24 couch, and Randy was down at the end of this long
25 couch?

ROBERT WARE - CROSS-EXAMINATION

- 1 A Yes.
- 2 Q And Randy fell backwards to here?
- 3 A Apparently.
- 4 Q You said the magazine wasn't in the gun?
- 5 A I think it wasn't in the gun. I thought I had
- 6 taken it out.
- 7 Q When it is disassembled, the magazine would be in
- 8 here, correct (indicates)?
- 9 A It was in the bag.
- 10 Q So you said the gun was inside of the stock,
- 11 didn't you?
- 12 A I took the magazine out. When I put -- when I
- 13 grabbed the bag out from when I was sitting outside
- 14 behind the store, in that cubby hole, there is a real
- 15 estate office right there, okay. Anyway, before I
- 16 zipped the bag back up and put everything back in, I
- 17 pushed forward on the trigger guard, it releases the
- 18 magazine, and pulled the magazine out.
- 19 Q You said that the magazine was loose from the
- 20 gun, correct?
- 21 A I believe.
- 22 Q And in your bag?
- 23 A Yeah.
- 24 Q It wasn't in the gun?
- 25 A No.

ROBERT WARE - CROSS-EXAMINATION

1 Q When did you put it back in?

2 A When I what?

3 Q When did you put the magazine back in the gun?

4 A In the truck.

5 Q Why?

6 A I was gathering all the other stuff. I just put
7 it back in it.

8 Q You took it apart when you were in the truck?

9 A Huh?

10 Q The gun, when it was in the truck, the barrel
11 wasn't screwed on, was it?

12 A I had stopped at a place and sat before I got to
13 Sterling Village, and I took the barrel off and set it
14 aside.

15 Q Why?

16 A Because I just didn't want it sticking out at the
17 time, because it sticks so far.

18 Q So somebody could see it in your bag?

19 A I didn't --

20 Q You are saying you could see it in your bag?

21 A I don't think I put it in there.

22 Q Was it not in here and zipped up when the police
23 found it?

24 A Maybe. Yeah, it probably was.

25 Q But this gun that you had taken the magazine out

ROBERT WARE - CROSS-EXAMINATION

1 of, you didn't take the barrel off when you went to
2 Randy's house?

3 A Huh?

4 Q You went to Randy's house and you had that gun
5 with the barrel screwed on, right?

6 A Yeah. I was going to put everything back in the
7 stock.

8 Q But you testified you already had taken the
9 magazine out, right?

10 A Earlier.

11 Q But you didn't take the barrel off?

12 A No. I was going to do that whenever I got to the
13 car.

14 Q Why did you take the magazine? What good is a
15 gun without ammunition? Why keep the barrel if you
16 don't have ammunition?

17 A Because it just -- I just did it. I don't know
18 why I did it.

19 Q Your hat, your phone and your Vodka, mixed drink,
20 sitting at the end of the table, right?

21 A Pack of cigarettes, too.

22 Q You took the cigarettes with you?

23 A I put them in the bag. I put a phone in the bag,
24 but it wasn't mine. So I took it back out. I don't
25 know what I did with the phone.

ROBERT WARE - CROSS-EXAMINATION

1 Q You remember the cigarettes, but you forgot the
2 expensive hat?

3 A Huh?

4 Q You took cheap cigarettes, left an expensive
5 phone and expensive hat, right?

6 A Expensive hat?

7 Q How much did that phone cost you? Did it cost
8 more than a pack of cigarettes?

9 A I got it from somebody for like 20 bucks.

10 Q How much does a pack of cigarettes cost?

11 A Huh?

12 Q How much does a pack of cigarettes cost?

13 A Why? Everyone knows.

14 Q I don't smoke. Tell me.

15 A A couple of bucks.

16 Q So you took two dollar cigarettes and left the
17 \$20 phone?

18 A Yeah.

19 Q Okay. 1.75 liter Vodka, is that what you bought
20 at Giff's Liquors?

21 A I don't know.

22 Q Is it the same brand?

23 A I don't know if I bought that brand, but it looks
24 like it.

25 MR. DeBUSK: State's 27, may I publish?

ROBERT WARE - CROSS-EXAMINATION

1 THE COURT: Yes.

2 (State's 27 was published to the jury.

3 A If it was there at the house, it was my bottle.

4 Q So your testimony is that you only left the
5 apartment that night because you thought that Sabrina
6 and Randy were going to have a fight?

7 A Pretty much, yeah. But that was because of
8 earlier. He was arguing with her. He really got on
9 her case because she left those dishes there all day
10 long. She asked me not to do them. I told her I will
11 do them.

12 Q Wasn't she at work? How could she wash dishes
13 when she was at work?

14 A This is when she came back from dropping Randy
15 off.

16 Q You said you left the apartment to allow them to
17 have a fight?

18 A I didn't want to be around if they were going to
19 be fighting, arguing.

20 Q Randy told you to come back in the morning?

21 A Yeah.

22 Q So you knew you were coming back in morning?

23 A Yeah.

24 Q And morning at that point was five hours, six
25 hours away, but you took your worldly goods and took

ROBERT WARE - CROSS-EXAMINATION

1 them with you?

2 A What worldly goods? That is just the stuff I had
3 then.

4 Q Including what was in the bathroom, which you
5 came back in the morning, but you took everything out
6 of the bathroom?

7 A Because Sabrina was going to take me to the
8 storage building, that is why. I was wanting to get
9 another place, but I ain't got enough money. I have
10 enough money to buy rooms and stuff, but I'm paid up.
11 Me and Randy is fine with each other, all right. I
12 already told you that.

13 Q So you weren't coming back, then?

14 A Yeah, I was coming back in the morning for sure.

15 Q And you could have easily got all of the
16 toiletries -- maybe even used them to take a shower in
17 the morning, right, but you cleaned everything you had
18 in that apartment out, didn't you?

19 A There wasn't much in the bathroom, just my
20 toothbrush and shampoo.

21 Q When you left after the shooting, you left the
22 phone and a hat and your bottle of Vodka in the
23 apartment, but before you left -- knowing you were
24 coming back in the morning -- you took all of your
25 toiletries out of the bathroom?

ROBERT WARE - CROSS-EXAMINATION

1 A I was doing that while he was vacuuming.

2 Q Why?

3 A Because I was just going to gather my stuff up
4 and put it in my bag.

5 Q Why take the toiletries if you are coming the
6 next day?

7 A I didn't know if I was going to get a room.

8 Q Didn't you testify you weren't going to get a
9 room because the night was so far along?

10 A After I was outside.

11 Q Oh, okay.

12 A And I went to the store, found out it was like
13 late, after 12:00 or right around 12:00.

14 Q Were you on any prescriptions at that time?

15 A Uh-huh.

16 Q What were you taking?

17 A I take morphine. I've been taking morphine for
18 at least nine, ten years.

19 Q When was the last morphine -- you take a pill or
20 patch?

21 A Pill.

22 Q When was the last pill you took before the
23 shooting?

24 A I don't know. Probably that morning.

25 Q Where was the prescription bottle that those

ROBERT WARE - CROSS-EXAMINATION

1 pills are kept in?

2 A Not sure.

3 Q Where was it when you were arrested?

4 A I'm not sure. It was empty.

5 Q So you didn't keep up -- so you had taken your
6 very last pill that morning?

7 A I took the last pill that morning.

8 Q How much did you take a day?

9 A Up to six.

10 Q That was your prescription?

11 A You take one 60 in the morning, one in the
12 afternoon and one at night.

13 Q You had taken the last one in the morning?

14 A Then I had the 30s, that was for immediate
15 release if I got -- if something made me start hurting
16 bad, it would stop. You take that and it stops the
17 pain from building to where it can't be overcome by
18 medicine, by normal dosage.

19 Q But you had taken your last one in the morning,
20 you didn't have any more?

21 A Right.

22 Q So you would have thrown away the bottle?

23 A I don't know where the bottle was at.

24 Q You didn't have your afternoon one?

25 A No.

ROBERT WARE - CROSS-EXAMINATION

- 1 Q You didn't have your evening one?
- 2 A No.
- 3 Q At 2 o'clock, you hadn't had your morphine since
- 4 earlier in the morning that prior day?
- 5 A Right.
- 6 Q How were you feeling?
- 7 A Starting to feel bad.
- 8 Q What do you take it for?
- 9 A Extreme chronic pain.
- 10 Q For what?
- 11 A I've had a lot of spinal injury. I have implants
- 12 in my neck, rods about this long, two of them, clips.
- 13 My neck was broken in four places, fractured in four
- 14 different areas.
- 15 Q So chronic pain?
- 16 A And was in a coma for a long time. Like other
- 17 injuries--- I have many injuries.
- 18 Q To get back to it, you hadn't had any morphine
- 19 since that morning, right?
- 20 A Right.
- 21 Q But you had Vodka?
- 22 A It helps, yeah.
- 23 Q You bought a 12-pack of a beer when you left
- 24 Randy's apartment at the store, right?
- 25 A Yes.

ROBERT WARE - CROSS-EXAMINATION

1 Q And you presumably drank all of it?

2 A I didn't drink all of it.

3 Q What did you do with it?

4 A Well, maybe I did drink it all.

5 Q A whole 12-pack of beer plus whatever Vodka you
6 had earlier in the day?

7 A Yeah.

8 Q Were you flying high?

9 A Huh-huh.

10 Q You didn't feel any effect from all of that?

11 A Not really.

12 Q You drank most of a 1.75 of Vodka and 12-pack of
13 beer, and not feel anything?

14 A No. Probably -- I had two, three drinks, and
15 they had a couple of drinks.

16 Q Must be pretty big drinks when the bottle is
17 80 percent empty?

18 A I'm a large man to begin with.

19 Q But you weren't as large then as you are now?

20 A I've drank liquor off and on for 40 years.

21 Q And you drank that 12-pack of beer and most of
22 the bottle of Vodka, and felt fine?

23 A Yeah.

24 Q Didn't even feel a buzz?

25 A Yeah.

ROBERT WARE - CROSS-EXAMINATION

1 Q So much so that you poured yourself another mixed
2 drink when you came back to the apartment?

3 A It was replacing my pain medication, you know. I
4 have a high tolerance because I've taken it so long.
5 It doesn't affect me -- I don't get high from my
6 medicine. Morphine doesn't work that way. I've been
7 taking it for a long, long time.

8 Q You don't get drunk from a 12-pack of beer and
9 1.75-liter of Vodka?

10 A Probably got me a good buzz from 12-pack of beer
11 after a couple of drinks, but all of this other stuff
12 that happened, no, I wasn't drunk.

13 Q What clothes were you wearing?

14 A I was wearing a pair of shorts and shirt.

15 Q Was it an LSU shirt?

16 A I don't know if I changed that shirt or not, but,
17 yeah, I was wearing a shirt, LSU shirt.

18 Q Why would you change your shirt?

19 A I don't know. Why do you change shirts?

20 Q No doubt that is what you were wearing when you
21 were arrested?

22 A Yeah.

23 Q And some time after you shot Randy, you think you
24 might have changed that shirt before you --

25 A You make it sound like I just shot Randy, that

ROBERT WARE - CROSS-EXAMINATION

1 ain't what happened.

2 Q Is this the way you act with Randy?

3 A No.

4 Q Never got mad at Randy, just even keel?

5 A What do you mean?

6 Q Did you have arguments with Randy?

7 A Not really.

8 Q No? You never argued with Randy?

9 A Last time we argued about something was years
10 before -- no, about -- yeah, about a year-and-a-half
11 before, two years.

12 Q Let me ask you another question. You were
13 staying with Randy and Sabrina at the Wave Rider,
14 right?

15 A For a couple of days, yeah. Maybe a week.

16 Q 2:00 in the morning when you didn't want to sleep
17 outside anymore, you came back to them on the Wave
18 Rider property, you said to look for the keys for the
19 car?

20 A I was going to put my bag and stuff in the car,
21 and maybe even sleep in the car because in the morning
22 I was going to the storage.

23 Q Where was the car parked?

24 A In the parking lot.

25 Q Parking lot of the --

ROBERT WARE - CROSS-EXAMINATION

1 A Wave Rider, by the stairs. By the stairs by
2 their room.

3 Q About where was it parked on that, tell the jury?

4 A All right. So the apartment is right here.
5 There is apartments here. There is a hallway. There
6 is stairs. The apartment -- condo takes up this space.
7 I used to live directly below right here for a
8 year-and-a-half. Anyway, Sabrina's car was parked
9 right about here where the white vehicle is, or right
10 here where the building stain is.

11 Q Draw a circle around it, if you would.

12 A Huh?

13 Q Draw a circle around it.

14 A (Witness complied.)

15 Q Is there any doubt in your mind that that is on
16 the property of the Wave Rider?

17 A Of course it is.

18 Q Isn't it true that the magistrate told you to
19 stay off the property?

20 A No.

21 Q So the management of Wave Rider never told you to
22 stay off their property?

23 A Nope. Actually, Randy a couple days before had
24 gone down to the office, because one of the people that
25 worked there said I was not to be on the property.

ROBERT WARE - CROSS-EXAMINATION

1 Randy got upset about that and went down and talked to
2 the manager and told the manager, This is my guest,
3 blah, blah. I was never kicked off that property
4 anyway. I left on my own. I used to live there.

5 Q They told you not to come back?

6 A No, they didn't.

7 Q You are saying that no one from Wave Rider never
8 told you to be on the property?

9 MR. SMALDONE: Object, asked and answered.

10 Q That is your statement, you never were told? It
11 is important.

12 A Huh?

13 Q It is important whether you were told not to stay
14 on the property? You are denying anyone told you not
15 to stay on that property?

16 A Randy went down and told them I would be there.

17 Q That is not my question. Did anyone ever tell
18 you you were not to come back on that property?

19 A I told you this three times.

20 Q Your answer is?

21 A That one maintenance guy, little black
22 maintenance guy that works there, he said, Oh, no, you
23 are not allowed on the property, blah, blah. Sabrina
24 told him no, and Randy told him no.

25 Q Just one guy, a black male?

ROBERT WARE - CROSS-EXAMINATION

1 A Yeah. That same black guy -- I need to clarify
2 this, Your Honor.

3 Q Go ahead.

4 A The same guy, maintenance guy, I reported him to
5 management when I lived there a year-and-a-half,
6 year-and-three-quarters before. I reported him to
7 management because he tried to break into my room while
8 I was in my room, and someone else was in there with
9 me. We're watching TV. He tried to come through the
10 sliding glass door on the pool side. When it was
11 locked, he was looking in. We're both, blah, blah and
12 she's freaking out. I go up to management, I want him
13 fired. It is the same guy.

14 Q Where was the place that you said you were
15 sleeping by a dumpster or real estate office?

16 A I didn't ever say I was sleeping there.

17 Q You said you just got done with a 12-pack --
18 drinking your 12-pack and putting your gun together?

19 A I didn't drink the whole 12-pack there.

20 Q Where did you put the gun together?

21 A There.

22 Q Which is where on this map?

23 A You need a highlighter pen.

24 Q Near the corner of King's Highway and 17?

25 A Close. This is the back of the Little General,

ROBERT WARE - CROSS-EXAMINATION

1 there is a fence and there is big shrubberies that run
2 through here, and the driveway comes up here. The real
3 estate office is behind the Little General. They
4 almost touch they are so close, and there is a house
5 that gets rented out to a lot of people. It is on
6 stilts.

7 Q You know that area well?

8 A Yeah, I lived there for a year and a half.

9 Q But you were still frightened being there of
10 people coming by?

11 A At that time in the morning.

12 Q Frightened enough to have a gun?

13 A A lot of people get robbed right there. A lot of
14 people get picked up and arrested there. I was just
15 sitting there to think. At the time, I wasn't thinking
16 about none of that when I went around and sat down.

17 Q You sat down and stayed in a place that was so
18 bad you had to pull out a gun, take it out of the
19 stock, put it together --

20 A I was thinking about going to the lot.

21 Q Let me ask my question, please. You went to a
22 place where you had such fear of robbery you needed a
23 gun to defend yourself. You took that gun, took the
24 barrel out, screwed it on, put the receiver on, put the
25 magazine in, wrapped it around and sat there with your

ROBERT WARE - CROSS-EXAMINATION

1 gun drinking beer, stayed there when you could have
2 gone to Sterling Village and sat in a car where you
3 felt safe?

4 A It is not a 12-pack. I just remembered it was a
5 quarter.

6 Q But you sat there in the place that was unsafe
7 when you could have walked over to Sterling Village
8 where you felt perfectly safe?

9 A I don't want to do all that walking. It causes
10 me a great deal of pain. I didn't want to walk that
11 far. I was going to stay in the wooded lot and sit up
12 against a tree.

13 Q The beach was even closer, you could have sat
14 there, couldn't you?

15 A No, the beach wasn't even closer.

16 Q You are in the Wave Rider, less than -- short
17 walk to a beach?

18 A About the same.

19 Q But a block and a half --

20 A Either way, it is not closer. Actually, it is
21 further.

22 Q And you felt that you needed to take all of your
23 toiletries out of the bathroom to go sit in that
24 parking lot and drink beer with your gun in your hand?

25 A All of my toiletries? What do you mean "all my

ROBERT WARE - CROSS-EXAMINATION

1 toiletries"? Would you explain to me?

2 Q What property of yours did you leave in that
3 apartment?

4 A I didn't have hardly anything in the bathroom. I
5 kept everything in my bag.

6 Q But you had something in the bathroom?

7 A I had shampoo and toothbrush and toothpaste.

8 Q You needed your shampoo and your toothbrush and
9 toothpaste sitting in the parking lot to drink beer and
10 hold your gun?

11 A Apparently, at the time, I thought it would be
12 good.

13 Q You had a box of Remington Thunderbolt cartridges
14 called a brick, small brick, right?

15 A No. A brick is great big box like --

16 Q A small brick, a 50. A small brick.

17 A A regular box of shells, yeah.

18 Q And those are the same kind of Remingtons that
19 were in the magazine?

20 A They weren't full.

21 Q But those are the same kind of batch of bullets
22 that were inside the gun?

23 A I imagine.

24 Q You put them in the magazine yourself?

25 A Uh-huh.

ROBERT WARE - CROSS-EXAMINATION

1 Q When?

2 A 18 months ago.

3 Q And you were still carrying the box around?

4 A They was in the box in the bag.

5 Q But this gun was at your storage unit at one
6 time, wasn't it?

7 A 18 months? It has been since what happened, I
8 believe.

9 Q Two officers came and talked to you when you were
10 in custody at Myrtle Beach, two crime scene officers?

11 A Yeah.

12 Q Did they want to take a gunshot residue kit?

13 A Oh, you are talking about that? Yeah.

14 Q Did you tell them they didn't have to, that you
15 fired the gun?

16 A I told them you ain't going to get no gunshot
17 residue unless you give me some water to drink. I had
18 been asking for water for quite some time.

19 Q Did they give you water?

20 A They reluctantly did it because I said you ain't
21 getting no sample until I get a drink of water.

22 Q You got your water?

23 A Because of the ill way they were treating me.

24 Q But you got your water?

25 A Uh-huh.

ROBERT WARE - CROSS-EXAMINATION

1 Q Did you tell them they didn't have to take a
2 sample because the gun was in your hands when it was
3 fired?

4 A Yeah.

5 Q Did you tell them that you were showing the gun
6 to Randy when it went off?

7 A No.

8 Q You did not you tell them you were showing the
9 gun to Randy when it went off?

10 A No.

11 Q You deny that statement?

12 A Absolutely.

13 Q Thank you. Now, as you were leaving after Randy
14 was laying with a bullet through his heart, you were
15 leaving his apartment without helping him, right?
16 Didn't make any attempt to approach him?

17 A I didn't know that.

18 Q Did you even approach him to see --

19 A Yeah.

20 Q Was he responsive, conscious?

21 A No. I thought he was passed out. He was out.

22 Q And you didn't see any blood on him?

23 A I didn't notice any blood on him.

24 Q Didn't notice it on his hand, chest?

25 A No.

ROBERT WARE - CROSS-EXAMINATION

1 Q No blood coming out of the chest?

2 A I saw a red mark, that was it.

3 Q All you saw was a red mark?

4 A That is all I noticed.

5 Q But you didn't do anything to see if he needed
6 assistance; you just left?

7 A Yeah. I thought he was asleep, passed out, you
8 know.

9 Q Just as a coincidence, after a gunshot goes off,
10 he falls asleep?

11 A I was in a panic. I was in shock, and my friend
12 is on the floor.

13 Q Do you have narcolepsy?

14 A She's yelling and all this other stuff. So ask
15 your question. Ask it, please, just one time. I'm
16 going to quit answering any of your questions.

17 Q Are you?

18 A If you keep badgering me, yeah.

19 Q But you didn't do anything to provide medical
20 assistance to Randy?

21 A No, I didn't.

22 Q You left?

23 A And I'm sick about that, okay.

24 Q As you were leaving, did you tell Sabrina
25 Boatwright that it was self-defense?

ROBERT WARE - CROSS-EXAMINATION

1 A I said he attacked me.

2 Q He attacked you?

3 A Yeah, is basically what he did.

4 Q I think one of the first things you said when you
5 were testifying is you said when you say you are going
6 to do something, you're going to do it, right?

7 A What do you mean?

8 Q When you were sitting here on this stand and you
9 testified, you said, When I say I'm going to do
10 something, I do it; is that correct?

11 A I don't know what context you are talking about.

12 Q Did you not testify to that within the hour?

13 A I don't know what you are talking about.

14 Q Okay.

15 A Tell me what the question was, and I answered it
16 that way.

17 Q While you were testifying--

18 A Uh-huh.

19 Q -- you said that when you say you'll do
20 something, you'll do it; did you not say that just
21 minutes ago?

22 A When I say I do something, I'll do it? If I give
23 you my word, yeah, I'll do my best to keep my word.

24 Q You are saying you had two Mopeds stolen?

25 A Yes.

ROBERT WARE - CROSS-EXAMINATION

1 Q Four days after your moped was stolen, you were
2 still angry enough about it to threaten the life of the
3 person who stole it?

4 A I don't know who stole it.

5 Q You would have killed them if you knew?

6 A That was -- no. I wouldn't have killed him.

7 Q But you did say that in the liquor store?

8 A Not meant quite the way you are saying it, no.

9 Q How did you say it?

10 A People say things.

11 Q Do they sell deer roasts at Food Lion, venison
12 roasts?

13 A I don't know.

14 Q You bought the roast. You said you bought a
15 roast?

16 A A beef roast.

17 Q Not venison?

18 A No, and there was leftovers in the fridge.

19 Q Now, you say you got up, but Randy had to go to
20 work, right, or Randy was getting ready to go to work
21 on the 6th of August, correct?

22 A Yeah. He woke me up when he came in the room.

23 Q So you are up before 6:00?

24 A Yes.

25 Q And you were up until at least 2:30 when the

ROBERT WARE - CROSS-EXAMINATION

1 shooting happened, right?

2 A You never went to sleep that night.

3 Q Never went to sleep that day from before

4 6:00 until 2:30 that night?

5 A Until the next day.

6 Q But you drank a 12-pack and most of a bottle of
7 Vodka?

8 A I didn't drink a 12-pack, I just remembered all
9 of that. When I was sitting there, it was a quart of
10 beer.

11 Q So it wasn't a 12-pack, it was a quart?

12 A Right. The reason why I didn't get a 12-pack I'm
13 sure is because it would make a lot of mess, you know,
14 with cans. I know it was a quart now.

15 Q Why are you worried about making a mess?

16 A Just -- that, I couldn't remember.

17 Q What kind of mess would a 12-pack make?

18 A A bunch of cans.

19 Q You were sitting next to a dumpster?

20 A No, on the other side of the fence.

21 Q You could have gone around the fence and dumped
22 the cans in the dumpster?

23 A I didn't plan on drinking a lot there. I just
24 sat for a minute to decide what I was going to do, and
25 I just stayed there longer.

ROBERT WARE - CROSS-EXAMINATION

1 Q You had left because of Randy's aggressive
2 vacuuming?

3 A I don't know what time it was when I went back.
4 Do what?

5 Q You left because of Randy's aggressive vacuuming?

6 A I knew he was building up for an argument with
7 Sabrina, that is what it felt like.

8 Q And you cleaned up the bathroom, took your bag
9 out of the storage room, put all your stuff together
10 and Randy told you to come back, but you still took
11 your bag and toted that heavy thing around with you?

12 A There was nothing out of my bag in the store
13 room.

14 Q Your bag was in the store room?

15 A Yeah. It is not a store room, a laundry room.

16 Q Oh, a laundry room.

17 A And a closet.

18 Q Went into the laundry room and closet, grabbed
19 your bag, went to the bathroom, took all your
20 toiletries, put them in the bag and carried all of that
21 stuff around with you for six hours?

22 A It ain't heavy. It's just a pair of pants,
23 shirts, maybe two pairs of pants, I don't know. You
24 all have all of that stuff. It's not heavy at all.

25 Q What time did you leave after you cleaned up and

ROBERT WARE - CROSS-EXAMINATION

1 got your bag?

2 A I don't know. Anywhere from 11:00 to 11:45, I
3 guess.

4 Q Almost midnight?

5 A Yeah.

6 Q Before midnight. And you --

7 A I imagine. It wasn't -- Randy came back and it
8 wasn't long after he came back that he started the
9 vacuuming and stuff, and that was really irritating
10 because the place was spotless.

11 Q What time did you come back?

12 A Must have been -- I mean from the reports and
13 stuff -- around 2:00. I didn't know what time it was.

14 Q So you were gone about two hours, two hours and
15 15 minutes?

16 A I don't know. I guess.

17 Q Where was the store where you bought the beer?

18 A In the same place.

19 Q Same place?

20 A Right there at the corner of King's and 17. I
21 went in to buy a soda pop to where I could make a
22 drink, which I didn't do. Instead, I got the quart of
23 beer and the soda pop and cheap pack of cigarettes.

24 Q So the original plan was to kill off that bottle
25 of Vodka sitting out there by the dumpster?

ROBERT WARE - CROSS-EXAMINATION

1 A Not really.

2 Q No? You said that you didn't want to put the gun
3 in the car because the police might come back and see
4 it?

5 A Huh?

6 Q You said you didn't want to put the gun in the
7 car and leave it there?

8 A I didn't say that. I wanted to put it in the
9 car, and not the gun, just my bag.

10 Q What would you do with the gun?

11 A And everything else in it.

12 Q What were you going to do with the gun?

13 A What do you mean?

14 Q You said you were just going to put the bag in
15 there?

16 A It was in the bag.

17 Q You weren't worried about the barrel of the gun
18 sticking out and someone coming by and seeing that gun?

19 A What, in the car?

20 Q Yeah.

21 A Yeah, it was packed full of clothes. She didn't
22 have no clothes in the place. All her clothes and
23 son's clothes was in the back of the car and in the
24 trunk of the car. Yeah, there was.

25 Q When did you serve in the Merchant Marine?

ROBERT WARE - CROSS-EXAMINATION

1 A Off and on for a long, long time. '80s, '90s and
2 the 2000's.

3 Q When did you first begin?

4 A In the '80s.

5 Q When did you graduate Merchant Marine Academy?

6 A I never went to the academy.

7 Q You never went to the academy? How did you get
8 to be in the Merchant Marine without attending the
9 academy?

10 A You know nothing about Merchant Marines, do you?

11 Q I know in order to be a U.S. Merchant Marine you
12 have to graduate the academy, training?

13 A He doesn't know what he's talking about. Um, no.
14 I used my previous time in the Gulf of Mexico working
15 on small workloads and supply boats. And in the '80s,
16 I started working with Humpas Marine. It is a push
17 boat company in New Orleans. You don't have to have a
18 Z card to work on those boats, but you can get a Z card
19 because of the time you spend on those boats. I worked
20 upper, lower Mississippi River systems and the
21 Mississippi, and east coast Intracoastal waterways all
22 the way from Brownsville to New Orleans. I worked the
23 Great Lakes on those boats, those push boats. Then I
24 went to crew boats, and then I went to supply boats. I
25 went ahead and got a Z card using all the time I had on

ROBERT WARE - CROSS-EXAMINATION

1 those vessels. You go to the Coast Guard building, and
2 you go with the letter of intent from a company, boat
3 company. With that letter of intent and your Z time --
4 or just a letter of intent, you don't even have to have
5 Z time -- go to the Coast Guard and they issue you a
6 ordinary seaman Z card, okay. What else do you want to
7 know? And then you move up from there.

8 Q What federal vessel did you serve on in the
9 Merchant Marines?

10 A Huh?

11 Q What federal vessel did you serve on in the
12 Merchant Marines?

13 A Federal vessel?

14 Q Merchant Marines, they work on federal vessels
15 and federal charter vessels.

16 A I can't remember the last one I worked on. I
17 worked on several, many.

18 Q What were they?

19 A The last one was the Texan.

20 Q Texan --

21 A -- that I worked with with a company for a long
22 time. That was international work.

23 Q International?

24 A Yeah. That is going to other countries, okay. I
25 was always in international waters when I was out on

ROBERT WARE - CROSS-EXAMINATION

1 the Gulf working in the oil field. I did that for
2 several years serving my country that way.

3 Q You said you lit up a cigarette when you sat on
4 the couch -- or, I'm sorry, while Randy came back out
5 and was talking to you, you lit up a cigarette?

6 A Yeah.

7 Q Where did you put it out?

8 A I put it out with -- I dipped my finger in the
9 drink and just took the fire out of it and then just
10 set it there on the table.

11 Q No ashes fell on the table?

12 A No. On my pants, that is when I realized I was
13 inside with a cigarette.

14 Q Let's run through the time line when you came
15 back from sitting by the real estate office until the
16 shooting. You said it was about 2 o'clock?

17 A Uh-huh. When I came back?

18 Q When you came back after sitting by the real
19 estate office, you said you knocked and entered through
20 the bedroom door?

21 A The first time I knocked on the front door. I
22 didn't knock very loud, just loud enough that if
23 Sabrina was up and watching TV in the living room,
24 because I didn't know what time it was, but it wouldn't
25 be too loud, you know. She was always a light sleeper.

ROBERT WARE - CROSS-EXAMINATION

1 I would imagine kind of like me, just that way. But
2 you really couldn't hear anything probably from the
3 back bedroom anyhow, but I knocked (indicates), like
4 that, on the front door.

5 Q Was it about 2 o'clock?

6 A At the back door?

7 Q Yes. When you entered, before Randy was shot,
8 was that the back door at around 2 o'clock?

9 A He pulled me in. He wouldn't have me leaving. I
10 went ahead and relented, and came on in.

11 Q He wasn't in his mania when that happened, right?
12 It was only later when he was shot?

13 A No, he was -- he was -- he was pretty amped up.
14 He was really amped up. He was amped.

15 Q But you weren't afraid when he brought you into
16 the door?

17 A No.

18 Q You said you walked right past him with that gun,
19 right? If you would, run through the time line when
20 you entered with that gun to when you had the
21 tug-of-war. What happened?

22 A Huh?

23 Q Run through the time line from when you entered
24 the door, or Randy pulled you in through the door,
25 until you had the tug-of-war?

ROBERT WARE - CROSS-EXAMINATION

1 A He pulled on the bag and let go --

2 Q You come in, and what happened next?

3 A I came in. Like I said, Sabrina was -- I think
4 the bed was up against the wall, because it seemed like
5 she was up -- in a corner, okay. But she was on the
6 bed --

7 THE COURT: Please answer the question as to the
8 time.

9 A Oh, the time?

10 Q What happened after you came in through that door
11 and you said you went into the living room? What
12 happened after that?

13 A I sat down.

14 Q In the loveseat?

15 A Yep.

16 Q Where was Randy?

17 A And put the bag down.

18 Q Where was Randy?

19 A He was just around, I guess. I wasn't really
20 paying attention. He could have followed me right in.
21 I set the bag down, and I sat down and unzipped it, got
22 the bottle out and went and made a drink.

23 Q What did Randy do and Sabrina? Where were they
24 when you made the drink?

25 A Randy was in the living room.

ROBERT WARE - CROSS-EXAMINATION

- 1 Q Where was Sabrina?
- 2 A She was in the bedroom, door closed.
- 3 Q What happened after that? You made your drink.
- 4 A I sat at the table.
- 5 Q What did you do next?
- 6 A I sat down.
- 7 Q What did Randy do?
- 8 A He was acting -- he was at the other side of the
- 9 table standing up and saying, Well, Robert, I just
- 10 can't have you coming in, and then he started getting
- 11 louder and louder and louder. I want you to say, but I
- 12 just can't have you coming in like Kyle, you know, 2-,
- 13 3 o'clock in the morning. I just can't take that. I
- 14 have to be able to get up and go to work. He was
- 15 already up, he wasn't going to sleep. He just started
- 16 ranting and raving about time and can't be going --
- 17 Q How long do you think he ranted and raved for?
- 18 A I don't know. A couple of minutes.
- 19 Q Then what did he do?
- 20 A Went back into the bedroom.
- 21 Q Door opened or closed?
- 22 A He closed the door. Always closed the door.
- 23 Q What happened next?
- 24 A He came back out in about 10 minutes.
- 25 Q And then what?

ROBERT WARE - CROSS-EXAMINATION

1 A He started ranting and raving again.

2 Q How long did he rant and rave for that time?

3 A Not long, because at the end of it, that is when
4 I told him, hey, what have I done. Have I treated you
5 bad? Have I not done everything and above. And, you
6 know, he realized what he had done. It was wrong for
7 him to rant and rave at me. I can prove I got \$600 out
8 in cash. I can prove I had money in the bank. I can
9 prove I had money on me.

10 Q You had \$600 on you, but didn't get a motel?

11 A No. No. I got it that Friday, and Sabrina and
12 Randy followed me up to the ATM, because Adam drove me
13 up there. I was trying to get a place, at least if not
14 anything, until the end of Labor Day. Because after
15 Labor Day, the prices go down on the places you lease.
16 It is a big thing in Myrtle Beach or anywhere on the
17 beach, you know. I wanted to go to Garden City, but
18 after Labor Day that is when everything dies down.

19 Q What did you have the \$600 for?

20 A And they had something else -- you get Labor
21 Day....

22 Q Listen to the question. What did you get the
23 \$600 for?

24 A For?

25 Q Why did you get \$600 out of the machine?

ROBERT WARE - CROSS-EXAMINATION

1 A Because that one place said they would do rent
2 for -- I forget how much it was, \$500 for two months,
3 but I didn't want two months, but if I came back with
4 cash, and I wanted cash on me.

5 THE COURT: Yes, ma'am, you need a break? I
6 think we're tired, Mr. DeBusk. We're going to take
7 one. Mr. Ropp.

8 (The jury exits at 1:01 p.m., and the
9 following is heard out of the presence of the jury.)

10 THE COURT: Mr. DeBusk, we've plowed this ground
11 three, four times. How much further do you intend?
12 You have worn the jury out.

13 MR. DeBUSK: I have one more question.

14 THE COURT: We'll take a break. The jury has to
15 have one.

16 (A recess was taken.)

17 (The jury enters at 1:10 p.m., and the
18 following is heard in the presence of the jury.)

19 THE COURT: Mr. DeBusk, you have one more
20 question?

21 MR. DeBUSK: Nothing further.

22 THE COURT: Thank you. Mr. Ropp, you may take
23 your jury to lunch. I ask them to be back at 2:30.

24 (The jury exits at 1:11 p.m., and the
25 following is heard out of the presence of the jury.)

ROBERT WARE - CROSS-EXAMINATION

1 THE COURT: Mr. Smaldone, do you have any
2 redirect of this witness?

3 MR. SMALDONE: I plan on some redirect, Judge.

4 THE COURT: All right. We are going to break for
5 lunch. You can do it after lunch, at your own risk.
6 Thank you.

7 (A lunch recess was taken.)

8 MR. DeBUSK: State's 30 and 31 were -- foundation
9 was laid and published, but they were never moved into
10 evidence.

11 THE COURT: I mean, if they were published, the
12 intent was to put them in.

13 (The jury enters at 2:36, and the following is
14 heard in the presence of the jury.)

15 THE COURT: We have everyone in the courtroom.
16 You may redirect, Mr. Smaldone.

17 MR. SMALDONE: I have no redirect.

18 THE COURT: The witness may step down.

19 MR. SMALDONE: Your Honor, the defense calls
20 Mr. Christopher Robinson.

21 (CHRISTOPHER ROBINSON, having been duly sworn,
22 testified as follows:)

23 THE CLERK: State your full name and spell your
24 last for the Court.

25 THE WITNESS: Christopher Nelson Robinson,

CHRISTOPHER ROBINSON - DIRECT EXAMINATION

1 R-O-B-I-N-S-O-N.

2 DIRECT-EXAMINATION

3 BY MR. SMALDONE:

4 Q What is your occupation?

5 A Private forensic consultant.

6 Q Where are you employed or where do you work?

7 A I own my own company, Chris Robinson Forensics.

8 Q What is your title?

9 A I'm the president and owner of my own company.

10 Q Do you have any academic degrees or anything of
11 that nature?

12 A Yes. I received my Bachelor's of Science in
13 Chemistry in Berry College in Rome, Georgia. I began
14 my career in forensics at the Georgia Bureau of
15 Investigation in July of 1998. I worked there as an
16 examiner for approximately 10 years, and I left there
17 and became the director of the crime lab for the City
18 of Atlanta Police Department and held that position for
19 two and a half years. I now have been the president of
20 my own company and owner for the past five years and
21 four months.

22 Q What kind of specialized training do you have in
23 this field?

24 A I'm certified in the areas of firearms analysis,
25 gunshot residue analysis, blood splatter analysis,

CHRISTOPHER ROBINSON - DIRECT EXAMINATION

1 crime scene reconstruction and shooting reconstruction.
2 I took a majority of these courses at Georgia Bureau of
3 Investigation. I also went to the Henry C. Lee
4 Institute in Connecticut where I took numerous courses
5 in these areas.

6 Q Have you ever been certified as an expert before?

7 A Yes, sir.

8 Q What have you been certified as an expert in?

9 A Firearms analysis, blood splatter analysis,
10 gunshot residue analysis, crime scene and firearms
11 reconstruction.

12 Q How many times have you been certificated as an
13 expert?

14 A With any luck, it will be 604 today.

15 Q 604 times?

16 A Yes, sir.

17 Q How many times for the prosecution?

18 A 520.

19 Q 520?

20 A Yes, sir.

21 Q So 84 for the defense?

22 A It will be today, yes, sir.

23 Q What states have you been certified as an expert
24 in? South?

25 A Alaska, South Carolina, Georgia, Mississippi,

CHRISTOPHER ROBINSON - DIRECT EXAMINATION

1 Alabama, Louisiana, Missouri, Iowa, I believe -- and
2 Florida.

3 MR. SMALDONE: At this time I move to enter
4 Mr. Robinson as an expert in the field of firearms.

5 THE COURT: Firearms analysis?

6 MR. SMALDONE: Firearms analysis and shooting
7 analysis.

8 THE COURT: Okay.

9 MR. DeBUSK: Without objection.

10 THE COURT: Without objection. He is so
11 admitted. You may give an opinion in those areas.

12 Q (MR. SMALDONE) Mr. Robinson, have you -- are you
13 familiar with the Charter Arms AR7 rifle?

14 A Yes, sir.

15 Q Can you tell the jury about that rifle?

16 A It is a semi-automatic rifle. It was designed in
17 1953 by Gene Stoner. He is the person that designed
18 the M16 for the military. This particular weapon was
19 designed with the military involved. As you can see,
20 it has a plastic receiver on it. You take the barrel
21 off and the receiver. You can place everything inside
22 the stock of the weapon itself, so if is easier,
23 concealable and carryable for military pilots. This
24 particular gun was taken over in 1973 by Charter Arms,
25 and they began producing this for the civilian market.

CHRISTOPHER ROBINSON - DIRECT EXAMINATION

1 Again, it is just a standard .22 caliber rifle.

2 Q What exactly -- what properties are unique to a
3 .22 caliber rifle? What does that .22 caliber mean?

4 A .22 means that is the diameter of the base of the
5 bullet. When you say "22," that means I take a ruler
6 and put it on the bottom of the bullet, it measures
7 .22 inches across the diameter at the base of the
8 bullet, so that is a .22 caliber.

9 Q Describe the .22's ballistic components and
10 power.

11 A Okay. The muzzle velocity is a 1,080, and the
12 muzzle energy is 90-foot pounds. 1,080 feet per second
13 is roughly 700 miles an hour, and when I say 90-foot
14 pounds, that's like me dropping a 90-pound weight from
15 a foot, and that is what it feels like, just on the
16 small area of the .22 caliber.

17 Q Compared to other types of calipers, how does a
18 .22 rank?

19 A This is the smallest of the small. This is a .22
20 long rifle. Is there a .22 short, and it is the
21 smallest. I mean, this weighs 40 grams, so that is --
22 it's about an ounce and a half, so very, very light.
23 There is no energy to the bullet when you consider it
24 compared to a 9 millimeter, .45s, .40s. Those are much
25 larger. This is extremely small.

CHRISTOPHER ROBINSON - DIRECT EXAMINATION

1 Q Describe the safety features of that Charter Arms
2 AR7.

3 A This has a manual safety. When you engage the
4 safety, it blocks the trigger^l from moving rear-ward so
5 you can't fire the weapon with the safety on. The
6 only, I'll say, concern or bad thing about this weapon
7 is you can't tell if it is loaded. It doesn't have a
8 chamber indicator, so there is no way to know if there
9 was one in the chamber. So if someone were to
10 inadvertently pull the trigger for any reason, you have
11 no way of knowing the weapon was loaded until you
12 pulled the trigger.

13 Q What types of safeties do you see on some other
14 guns?

15 A You have a trigger safety, you have magazine
16 safeties. This will fire with the magazine out of the
17 gun. So generally when the magazine is removed, it
18 will lock the gun up so you can't fire without the
19 magazine in the weapon. Manual safeties, again,
20 trigger safeties.

21 Q Okay. And does this weapon have any other safety
22 features or types of safety other than the one you
23 mentioned before on top?

24 A No, sir.

25 Q Did you somewhere -- first of all, do you

CHRISTOPHER ROBINSON - DIRECT EXAMINATION

1 recognize this? This is marked as State's 44.

2 A Yes, sir. This it is the Charter Arms AR7 that I
3 examined on Monday of this week.

4 Q Monday of this week?

5 A Yes, sir.

6 Q You said you examined the weapon?

7 A I did.

8 Q What types of examinations did you perform?

9 A I checked the safeties of the weapon and found
10 they are functioning properly. The gun will not fire
11 if the safety is disengaged. I did a trigger pull,
12 that is the amount of force it takes that must be
13 applied to the trigger to fire this weapon. I
14 determined that to be an average of 7 pounds, 3 ounces.

15 Q 7 pounds, 3 ounces?

16 A Which is standard for this type of weapon.

17 Q Let's talk about trigger pull. What factors can
18 affect external factors besides the gun? Say, in your
19 opinion, if someone was tugging on the gun, what would
20 that do to the trigger pull?

21 A What happens is in a number of cases that I've
22 worked, people struggle over the weapon and it begins
23 to split the trigger pull in half. When you have a
24 7-pound trigger pull, it becomes three-and-a-half
25 pounds because you are pulling with force. What

CHRISTOPHER ROBINSON - DIRECT EXAMINATION

1 happens is you're pulling with force, I'm pulling with
2 force, so we start to divide the weight by pulling on
3 the weapon.

4 Q And so in layman's terms, explain that a little
5 more.

6 A Okay. Can I see the weapon?

7 Q Yes, sir.

8 A Can I stand up?

9 THE COURT: Certainly.

10 A Grab the barrel here. So when we start pulling
11 on the gun, it splits the difference, as you can see.
12 I'm pulling back and forth, he's pulling forward and
13 forth, and so it divides the weight necessary to fire
14 the weapon.

15 Q And does that always divide it in half?

16 A Not necessarily. It can be a little less or
17 more, but with the testing that we perform at the
18 Georgia Bureau of Investigation, yes, sir.

19 Q So is it your opinion if someone was pulling on
20 the gun, that it would be more likely that it could go
21 off by accident?

22 A Absolutely, yes, sir.

23 Q What other tests did you perform on this weapon?

24 A I was asked to -- based on the evidence that was
25 found at the scene, I was asked to perform a muzzle

CHRISTOPHER ROBINSON - DIRECT EXAMINATION

1 target test and determine how far away the muzzle of
2 the gun was from the victim at the time of the
3 shooting. I was also asked to perform an ejection
4 pattern, how this ejects its cartridge cases.

5 Q What did the ejection pattern test tell you?

6 A It ejects its cartridge cases an average distance
7 of 11 feet forward of the shooter, at about a 13-degree
8 angle. That is what the weapon held at shoulder
9 height.

10 Q If it is not at shoulder height, what happens?

11 A It doesn't really matter. If you hold it at the
12 waist it is -- this gun ejected a very nice average.
13 They were nice tight groupings. So when you lower
14 it -- if you shot from the floor, it would alter the
15 ejection pattern, but at your waist to your shoulder,
16 all those are pretty much the same, so it would still
17 be about 11 feet.

18 Q All right. What is ejected from the gun?

19 A The cartridge case.

20 Q How much does that weigh? Is it light or heavy?

21 A Extremely light.

22 Q Does it easily bounce off of things?

23 A Absolutely.

24 Q So if it is a crowded room, it is your opinion
25 that it could go --

CHRISTOPHER ROBINSON - DIRECT EXAMINATION

1 A It could strike a person, it could strike any
2 kind of material and bounce around, that is correct.

3 Q But that's not the bullet, that is the cartridge
4 case?

5 A That's correct.

6 Q What other tests did you perform?

7 A I asked was to perform a muzzle target test to
8 determine the distance -- that the muzzle of the gun
9 was from the victim at the time of the shooting.

10 Q What area did you test for?

11 A I shot for a 2-inch by 2-inch pattern.

12 Q Why did you test for that pattern?

13 A That was based on the autopsy report and autopsy
14 photograph that was submitted on this case.

15 Q So you said 2-inch by 2-inch?

16 A Yes, sir.

17 Q What did those results tell you?

18 A I did a series of six tests. I shot at 6 inches,
19 and the pattern was 1-inch by 1-inch, so I know that
20 was too close. At 12 inches, it was 2-inch by 2-inch.
21 At 15 inches, it was 2-inch by 2-inch. At 18 inches,
22 it was 2-inch by 2-inch. I shot at 24 inches, the
23 pattern is 5-inch by 5-inch, so I know that is too far
24 out. It is much too wide of a pattern, so the muzzle
25 could not be 2 feet away. One more: At 30 inches

CHRISTOPHER ROBINSON - DIRECT EXAMINATION

1 there was no stippling at all, so there was no
2 stippling, which is bruising of the skin by gunpowder
3 particles. So I know that there is no way that the gun
4 could be fired from anywhere outside of 24 inches away.

5 Q Now, stippling, that is what you are testing for,
6 right?

7 A That's correct.

8 Q What things make up stippling?

9 A Stippling, again, is the bruising of your skin by
10 unburnt gunpowder particles. They strike the skin and
11 bounce off, so they bruise it. They are the friend of
12 any forensic expert because your skin can't change.
13 Once it is bruised, it is bruised. We can shoot into
14 the plastic, which is the standard for the scientific
15 community, and we try to reproduce the pattern that we
16 see on the skin, and this report by a medical examiner.

17 Q I'll show you State's 30. Do you recognize this
18 photograph?

19 A Yes, sir.

20 Q Did you use this photograph in your examination?

21 A I did.

22 MR. SMALDONE: May I publish it?

23 THE COURT: Certainly.

24 (State's 30 was published to the jury.)

25 Q (MR. SMALDONE) Is there stippling on that

CHRISTOPHER ROBINSON - DIRECT EXAMINATION

1 photograph?

2 A Yes, sir, that is what it appears to be.

3 Q And how wide was that based on your observation?

4 A The autopsy report says it was 2 inches at the
5 greatest measure from the wound. It was a two-and
6 three-quarter inch by an inch-and-three-quarter pattern
7 over the maximum distance on both sides.

8 MR. SMALDONE: I beg the Court's indulgence.

9 (Defendant's Exhibits 1 through 6 marked.) -

10 MR. DeBUSK: Without objection, Your Honor.

11 THE COURT: How do you have them marked?

12 MR. SMALDONE: Defense 1 through 6.

13 Q (MR. SMALDONE) I'll show you what is marked for
14 ID Defense 1; do you recognize this?

15 A I do.

16 Q What is this?

17 A The testing that I performed. This is my first
18 shot. This is at 6 inches.

19 Q I'll show you Defense 2; do you recognize this?

20 A Yes, sir. There is my No. 2 test, 12 inches.

21 Q I'll show you premarked Defense 3.

22 A This is my No. 3 shot at 15 inches.

23 Q And this is premarked Defense Exhibit 4 for ID;
24 do you recognize that?

25 A 4 is 18 inches.

CHRISTOPHER ROBINSON - DIRECT EXAMINATION

1 Q And I'll show you Defense 5; do you recognize
2 that?

3 A Yes, 5 is 24.

4 Q And I'll show you Defense 6; do you recognize
5 that?

6 A Yes, 6 is at 30.

7 Q When did you -- when did you make -- when did
8 those happen?

9 A I created these on Monday -- this Monday at the
10 Myrtle Beach Police Department range.

11 Q Have they left your custody since then?

12 A They have not.

13 MR. SMALDONE: I move Defense Exhibits 1 through
14 6 into evidence.

15 THE COURT: I think I already conceded that he
16 has no objection, 1 through 6.

17 (Defendant's Exhibits 1 through 6 admitted.)

18 Q (MR. SMALDONE) Tell me more. Let's do it
19 numerically.

20 THE WITNESS: Can I approach the jury, Your
21 Honor?

22 THE COURT: Certainly.

23 Q (MR. SMALDONE) What did you do to get that?

24 A Basically, it is just what it says. I have the
25 gun, an officer holds a yard stick beside the target.

CHRISTOPHER ROBINSON - DIRECT EXAMINATION

1 He lined my muzzle up 6 inches away. What you see
2 here, I marked the edges of the pattern, so that
3 pattern is extremely tight at 6 inches.

4 Q What is the pattern?

5 A The pattern is the little dimple marks you see in
6 the plastic.

7 (Published to the jury.)

8 A That is stippling of the plastic. Again, this
9 plastic is the scientific standard. We have to use
10 simulated skin, not real skin.

11 Q Do you need this anymore? What did I tell you?
12 What was that test from, I'm sorry?

13 A That was testing with the AR7 using Remington
14 Thunderbolt .22 ammunition, the size used in the case.
15 You have to use the same ammunition, because if you use
16 different ammunition, you alter the evidence itself, so
17 you use the same kind of ammunition, the same weapon.
18 I just shot at a variety of distances that you'll see
19 here to reproduce what I saw on the body.

20 This is at 12.

21 Q Which is that?

22 A Number 2. Again, you see this is marking the
23 edges of the pattern that you see, begins to be more
24 sparse because it is a .22. This is at 12 inches.
25 We'll give these to you.

CHRISTOPHER ROBINSON - DIRECT EXAMINATION

1 No. 3 is Defense Exhibit 3, and that was at
2 15 inches. Again, just a little bit wider. Maybe
3 this is about two-and-a-half inches by 2 inches, but,
4 again, it is right in the range so, therefore, you see
5 the stippling becoming lighter.

6 No. 4 was at 18 inches. This is about
7 3-inches-by-2-inches, roughly. Again, the pattern is
8 well within the approximation so, therefore, when I'm
9 looking at these tests, I'm trying to reproduce the
10 damage that was reported by the medical examiner,
11 which was a two-and-three-quarter by
12 inch-and-three-quarter pattern.

13 So at 24, it jumps up a lot. It is up to
14 5 inches, therefore, I'm outside of the scope and spec
15 of what the medical examiner said and the photographs.

16 No. 6 is nothing. It is just a 30-inch shot,
17 there is no markings on the page because there is no
18 stippling to observe. That is outside where this gun
19 can stipple the plastic, therefore, there is no
20 stippling at 30 inches.

21 Q So based on those tests and your reports and
22 everything we've discussed, how far away -- I'll wait
23 just a minute.

24 (A brief pause in the proceedings.)

25 A With most weapons you can put your hand on the

CHRISTOPHER ROBINSON - DIRECT EXAMINATION

1 back of the plastic and feel the stippling come through
2 the plastic, but this is a .22 so it is so light that
3 it barely peppers the plastic, so can't feel the
4 indentions all the way through the plastic on a lot of
5 these.

6 Q Based on your tests and the knowledge of your
7 case, how far away do you believe that the muzzle of
8 the gun was from the wound or the victim?

9 A Between 12 and 18 inches. Just as you saw it, it
10 is 2 inches, 2 and a quarter, 2 and a half on the 12,
11 15 and 18. That is what we're looking for, that kind
12 of range, that diameter spread. Therefore, in my
13 opinion, it is in the 12 to 18 inches away.

14 MR. SMALDONE: Beg Court's indulgence.

15 (A brief pause in the proceedings.)

16 Q (MR. SMALDONE) To clarify, did you use that same
17 gun?

18 A The exact gun.

19 Q And the .22 Thunderbolt ammunition?

20 A Correct.

21 MR. SMALDONE: Beg the Court's indulgence, let me
22 make sure I don't have anything else.

23 (A brief pause in the proceedings.)

24 Q (MR. SMALDONE) No further questions for you.

25

CHRISTOPHER ROBINSON - CROSS-EXAMINATION

1 CROSS-EXAMINATION

2 BY MR. DeBUSK:

3 Q What is the name of your company again?

4 A Chris Robinson Forensics.

5 Q So how many employees do you have?

6 A Me.

7 Q So you are the company?

8 A Yes.

9 Q How did you and your company part ways with the
10 Atlanta Police Department?

11 A I was terminated because I purchased a piece of
12 software that allowed two systems to talk to each
13 other, and when the bill came in for \$32,000, they said
14 I didn't have authorization. I was the lab manager, so
15 I was let go.

16 Q Were there other incidents? Was there an
17 incident where you shot yourself in the hand?

18 A That was at the GBI in 1999, yes, sir.

19 Q Was there an incident where you allowed
20 unauthorized personnel to do a test when you weren't
21 supposed to?

22 A I don't know about that one. I'm not sure about
23 that one. Into a test?

24 Q People are killed with .22s all the time, aren't
25 they?

CHRISTOPHER ROBINSON - CROSS-EXAMINATION

- 1 A Absolutely.
- 2 Q So they can kill?
- 3 A Absolutely.
- 4 Q You said the trigger pull was seven-and-a-half
5 pounds when you tested it, right?
- 6 A 7 pounds, 3 ounces.
- 7 Q What is the trigger pull on, say -- the factor
8 trigger pull on a Glock like the deputies carry?
- 9 A Six-and-a-half to seven.
- 10 Q Five-and-a-half ounces?
- 11 A Well, depends if they have the connector on
12 there. They have -- it is called a connector, which
13 means it makes the trigger pull heavier for the
14 officers. They come standard from the factory of about
15 a 5-pound trigger pull, but they generally put a
16 connector on officer's, so it is intent.
- 17 Q So the Glock comes from the factory with a
18 five-and-a-half, and it is modified?
- 19 A Yes, sir. Yes, sir.
- 20 Q And you say the trigger pull goes half when
21 someone is pulling?
- 22 A I mean generally.
- 23 Q You still need to have seven-and-a-half pounds
24 for it to fire?
- 25 A You still have to apply the pressure, that is

CHRISTOPHER ROBINSON - CROSS-EXAMINATION

1 correct.

2 Q Once the person lets go of the barrel, the person
3 holding the trigger still has to pull seven-and-a-half
4 pounds?

5 A That's correct.

6 Q So if they are no longer holding the barrel, the
7 person holding that gun has to put 7 pounds, 3 ounces
8 of pressure on it?

9 A Yes, sir.

10 Q A gun doesn't load itself, right?

11 A That's correct.

12 Q So you have to put the clip in the gun?

13 A Yes, sir.

14 Q And you testified, didn't you, that this
15 particular model of gun will not fire if the clip is
16 not in here?

17 A No, it will fire. It will fire. It doesn't have
18 a magazine safety. It does not have a magazine safety.

19 Q But if you put the clip in, you still have to
20 pull the --

21 A That's correct.

22 Q And the safety would have to be off?

23 A That's correct.

24 Q That is safe position?

25 A That's correct.

CHRISTOPHER ROBINSON - CROSS-EXAMINATION

1 Q Let's leave it there. Where are your plastic
2 sheets? How many stippling marks do you see on that
3 picture?

4 A Two that are squared off, could be a couple more
5 over here in this general area. That is really faint.
6 Some of these are faint, but it's very sparse.

7 Q It's very sparse?

8 A It is.

9 Q Would a physician and forensic pathologist be
10 qualified to tell you which of these are stippling
11 marks and which are not?

12 A Sure.

13 Q Here is the 30 inch. Here is 24 inch. How many
14 stippling marks do you see at 24 inches? You are
15 putting it on a light background to be able to see?

16 A I am, yes. One, two, three, four -- I have
17 approximately eight.

18 Q Some of them within an inch of the central bullet
19 hole?

20 A Some are, yes, sir.

21 Q And at some point between 24 and 30 inches, no
22 more stippling would make it to the target, right?

23 A That's correct.

24 Q And at that point where it peters out, the last
25 two stippling marks could be within an inch, could be

CHRISTOPHER ROBINSON - CROSS-EXAMINATION

1 within 5 inches, no way to tell?

2 A That's correct.

3 Q But when it becomes sparse, you are getting at
4 the edge of the zone where stippling can occur?

5 A That's correct.

6 (A brief pause in the proceedings.)

7 Q (MR. DeBUSK) Can't find the pictures. It's not
8 worth fiddling with.

9 This gun, you say it ejects forward and to the
10 right?

11 A That's correct.

12 Q Not 90 degrees like that?

13 A No, sir.

14 Q 13 degrees?

15 A 13 degrees.

16 Q So to go back where the casing was found, you
17 have to turn the gun or its difference between 90 and
18 13 degrees away from the target?

19 A That's correct, yes, sir.

20 Q How much are you paid for your testimony?

21 A \$4,000 for the entire case.

22 Q How many hours did you put into it?

23 A With travel and everything, I probably have over
24 40 hours in the case.

25 MR. DeBUSK: Thank you.

CHRISTOPHER ROBINSON - RECROSS-EXAMINATION

REDIRECT-EXAMINATION

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BY MR. SMALDONE:

Q Based on your test, what is the farthest distance from the muzzle, and explain -- first of all, explain what the muzzle is. I think we talked about it, but I want to make sure. What is the muzzle of a gun?

THE WITNESS: Can I stand up again, Your Honor?

THE COURT: Yes.

A Muzzle, so when I say I test -- when I say muscular, that is the muzzle from the victim, 12 to 18 inches is where I think it is. The maximum distance that any stippling is observed is 2 feet, which is about right here. At 30 inches, there was no stippling at all. So it would have to be within this area to close such as 12 inches, 15, 18 inches.

Q (MR. SMALDONE) So the absolute furthest it can go is what -- farthest from the muzzle?

A 24 is where the stippling stopped, so the muzzle cannot be any further than 24.

MR. SMALDONE: No more questions.

RECROSS-EXAMINATION

BY MR. DeBUSK:

Q So it tapers and ends between 24 and 30 inches, right?

A That's correct.

MOTIONS

1 Q Did you examine the body in this case?

2 A I did not.

3 MR. DeBUSK: Thank you.

4 THE COURT: Anything further?

5 MR. SMALDONE: Nothing further.

6 THE COURT: You may step down.

7 MR. SMALDONE: Defense rests at this point.

8 THE COURT: Would you like him to be excused?

9 You are released from your subpoena. All right. Take
10 the jury out for a moment since defense has rested.

11 (The jury exits at 3:10 p.m., and the
12 following is heard out of the presence of the jury.)

13 THE COURT: All right. Will there be any
14 rebuttal?

15 MR. GROOMS: Yes, sir. We have two rebuttal
16 witnesses, both fairly short.

17 THE COURT: Motions will be reserved until then.

18 MR. SMALDONE: I don't know who the other
19 rebuttal is, but I intend to object to one rebuttal
20 being presented.

21 THE COURT: Okay. Let's hear it now, if you know
22 who it is going to be.

23 MR. GROOMS: We have a witness from the Wave
24 Rider, the HOA president, slash, in charge of
25 everything there, security, you name it, he is the man

MOTIONS

1 to see. He says that Robert came to him a few days
2 before this happened looking for a place to stay. He
3 said, no, you are not supposed to be here. I'm not
4 renting to you, you are not allowed on the property,
5 end of story, please leave. He said he also told
6 Curtis, which is the black guy, tell him he's not
7 supposed to be here, which is the exact opposite what
8 he said, where he said they never told me I can't be
9 here.

10 MR. SMALDONE: Your Honor, I believe that is
11 impeachment on a collateral matter. I believe the
12 matter is collateral.

13 THE COURT: It goes to his credibility.

14 MR. SMALDONE: Judge, I believe it is under
15 Rule 403, hearing that he's been kicked out, there is
16 no --

17 THE COURT: Credibility is a huge evidentiary
18 matter.

19 MR. GROOMS: If we talked about why he was kicked
20 out, that is one thing, but we don't plan to do that.

21 THE COURT: It is offered solely to challenge the
22 credibility.

23 MR. GROOMS: Yes, sir.

24 THE COURT: They are not even going to talk about
25 why he was kicked out. What is the prejudice?

MOTIONS

1 MR. SMALDONE: I just believe that the fact that
2 hearing that he was kicked out might impact -- might
3 look not only on the credibility, but his character.

4 THE COURT: Well, the allegations have already
5 been made. I'm going to allow it.

6 What else do you have, Mr. Grooms, whatever you
7 have in way of rebuttal?

8 MR. GROOMS: Second rebuttal witness, is Crime
9 Scene Humes talked about -- he said that the defendant
10 was showing the weapon to the victim when it went off,
11 that was his statement that we heard in pretrial. It
12 was allowed to come in. It wasn't even asked of the
13 officer, so there is no violation there, but it
14 certainly is in contrast to the story he gave.

15 THE COURT: What do you say about that?

16 MR. SMALDONE: Judge, I'll object.

17 THE COURT: Prior inconsistent statement.

18 MR. SMALDONE: Object that it is collateral.

19 THE COURT: Prior inconsistent statements is an
20 exception to hearsay. It is admissible under Rule 804
21 -- 801D, Prior statement by the witness inconsistent,
22 declarant's testimony, it is not hearsay. I think it
23 is admissible under 403, and 401 is relevant. I'm
24 going to allow it. Let's take a break.

25 (A recess was taken.)

MOTIONS

1 THE COURT: This is my intent. We'll do the
2 witnesses and take care of the motions at break for
3 the afternoon, bring the jury back in the morning and
4 I'll give you Taylor's draft of the charge. You can
5 look it over. We'll meet at 9 o'clock in the morning
6 and discuss it, make any changes and I'll let you
7 argue and charge the jury.

8 Let me see if we can establish something right
9 here. We've talked about this. Is there any evidence
10 of voluntary manslaughter?

11 MR. DeBUSK: No, Your Honor.

12 MR. SMALDONE: No.

13 THE COURT: Both sides agree that will not be
14 charged, okay. All right. Involuntary manslaughter,
15 I think there is evidence to support that charge, I
16 believe. What do you say, Mr. Grooms?

17 MR. GROOMS: I disagree. He's testified nothing
18 about any reckless acts he may have done; if anything,
19 he said it was the opposite.

20 THE COURT: Well, I think any time there is a
21 struggle over a gun, a pulling, that might be enough
22 to establish negligence. I understand that mere
23 negligence in the handling of a dangerous instrument
24 is not enough to establish the requisite of
25 recklessness, but involuntary manslaughter can be

MOTIONS

1 based on an unlawful act, doing an unlawful act which
2 the jury could agree that he was brandishing the
3 weapon around, that is what caused it, or it could be
4 from the -- and that is something that could cause
5 death. Or it could be a lawful act done with reckless
6 disregard for the safety of others. Like he says he
7 was picking up -- he picked up his firearm, don't just
8 pick up my stuff, ask first.

9 Recovery? Could have been lawful, okay. If then
10 the victim is holding it and he's jerking it back from
11 him, jury could see that as rising to the point of
12 recklessness. I think that it could be a finding of
13 involuntary. What gives me most concern is a charge
14 on self-defense. I didn't think there is anything at
15 this juncture to support a charge on self-defense.

16 There is nothing that I have heard that would
17 suggest that he was in fear for life or safety, and
18 certainly based on his testimony the shooting was not
19 an intentional act, therefore, it would give rise to a
20 charge on accident. I know that they are kind of
21 mutually exclusive. There are situations where they
22 don't have to be, and you can get both of them,
23 however, when it is unquestioned, based on the
24 defendant's testimony, that it was an unintended act.
25 He has not testified that he intentionally fired the

MOTIONS

1 gun in self-defense. That self-defense would not be
2 an appropriate charge. I'll hear both of you.
3 Mr. Smaldone, I think it is accident, involuntary or
4 murder.

5 MR. SMALDONE: I mainly agree with you, Judge.
6 I'm looking at my Ralph King Anderson book. Let me
7 find -- I believe there is a case that they are not
8 mutually exclusive.

9 THE COURT: I agree. I can tell you what the
10 case is. I think it is State versus Williams or State
11 versus Burris. I agree with you that many times they
12 are mutually exclusive, but when there is a jury
13 question as to whether the shooting was committed
14 intentionally in self-defense or committed
15 unintentionally, the defendant would be entitled to
16 both charges. In this case, based on your defense,
17 you do not admit or suggest in any of your testimony
18 that he ever intended to shoot in self-defense, it was
19 an accident. It was unintentional, that is what your
20 client has testified to.

21 MR. SMALDONE: Correct. I believe that the
22 arming himself, though -- when Mr. Banks took the
23 weapon and my client grabbed back at the weapon, I
24 believe that can be construed as self-defense.

25 THE COURT: He has not testified that he is in

MOTIONS

1 fear for life or safety? He's not testified that
2 Mr. Banks threatened him. He says he was recovering
3 his property, that is not self-defense.

4 MR. SMALDONE: Judge, I believe when someone
5 grabs a gun from you, it is more -- on its face it's
6 more than just a property loss.

7 THE COURT: He didn't say he grabbed it from him.
8 He said he didn't have the gun. He said that
9 Mr. Banks reached down and picked up the gun. He did
10 not say that he turned it around, pointed it at him,
11 threatened him with it or anything else. Furthermore,
12 he says he never intended to use force against
13 Mr. Banks, that it was unintentional. It was
14 accidental. There is nothing in the evidence that I
15 see upon which a jury could make -- I don't think
16 there is any evidence which a jury could make a
17 finding of self-defense, that is that he was in fear
18 for life and safety, that he intended to do the acts
19 which he did, he responded -- that he responded
20 intentionally, forcefully, that he used deadly force.

21 I don't think -- how about the duty to retreat?
22 You haven't even discussed that. I don't think that
23 there is anything in this record that would suggest
24 that we should give a charge on self-defense.
25 "Accident" is where you have gone with your testimony.

MOTIONS

1 I believe that is where it is. Mr. Grooms, I'll hear
2 you on it.

3 MR. GROOMS: Your Honor, I agree with you on
4 that. I don't think you can have it both ways. I
5 don't think you can say there was an accident, but
6 this wasn't an accident.

7 THE COURT: You can, but it is limited, very few
8 cases have been able to allow that to happen or prove
9 that sort of double charge.

10 MR. GROOMS: Yes, sir. I don't believe the way
11 he's testified would allow for that. I don't think he
12 said anything other than this gun accidentally went
13 off. He doesn't even know how the safety was turned
14 off. He just said it went off as he is falling
15 backwards. I would like to be heard tomorrow morning
16 about the involuntary. I still would respectfully
17 disagree that the reckless act has to be an act by the
18 defendant, an act in and of itself, not someone
19 grabbed a gun, so I grabbed it. It has to be someone
20 committing a reckless act such as waving a gun in the
21 air and it goes off.

22 THE COURT: It can be a lawful act, lawful act,
23 recovery of my property, that is what he said. Don't
24 pick up my property, don't take my property, but ask
25 and I will -- exactly what he said, very close to what

MOTIONS

1 he said; would you agree?

2 MR. GROOMS: Yes, sir.

3 THE COURT: All right. A lawful act then to
4 recover his property, to reach and take his property
5 back. However, if it is done with reckless disregard
6 for the safety of others, that constitutes involuntary
7 manslaughter. Mere negligence in the use of a
8 dangerous instrumentality -- I don't want to confuse
9 this with a Belcher charge, but mere negligence in the
10 use of a dangerous instrumentality is not normally
11 enough to establish a recklessness, that is criminal
12 negligence. The use of that instrumentality has to be
13 reckless in and of itself, but the bar is lowered with
14 a dangerous instrumentality, and what we have here is
15 a situation where the guy picks it up, he grabs the
16 gun and they start a tug-of-war between them. I think
17 that the jury could infer from that, that that was a
18 negligent thing to do.

19 You have someone who has a gun pointing -- if we
20 take everything that he says as true, assuming that,
21 and I'm not suggesting that the jury will do that, but
22 the jury could, and if they did, they could find that
23 when you have someone who is holding a gun and it is
24 pointed at them and you grab the stock, receiver,
25 whatever area, and you start tugging on it, they could

MOTIONS

1 find it to be -- rise to the level of criminal
2 negligence, recklessness. I think they could.

3 I'll hear you further tomorrow, and we'll talk
4 about it. But, normally, the case law would suggest
5 that where there is a struggle for a gun or firearm,
6 courts have given the charge on involuntary, but I'll
7 hear you on it. I'll let you argue that further.
8 Those are just my thoughts at this point on it.

9 Okay. So Mr. -- I'm going to prepare a charge
10 based on the statements I made here. I'll give them
11 to you and let you look at them. Of course I expect
12 both of you to come back in the morning and do
13 changes, that is all right. At least you'll have a
14 framework in which to work. Taylor will send you
15 these electronically if you make sure she has your
16 E-mails. Bring the jury back in.

17 (The jury enters at 3:40 p.m., and the
18 following is heard in the presence of the jury.)

19 THE COURT: We have everyone back. Defense
20 rested, and I believe State has rebuttal witnesses.
21 You may call the rebuttal witnesses.

22 MR. SMALDONE: I'll renew my objection now.

23 THE COURT: So noted.

24 (P. GREGORY WILLIAMS, having been duly sworn,
25 testified as follows:)

P. GREGORY WILLIAMS - DIRECT EXAMINATION (REBUTTAL)

1 THE CLERK: State your name and spell you
2 last.

3 THE WITNESS: Philip Gregory Williams, last
4 name is W-I-L-L-I-A-M-S.

5 DIRECT-EXAMINATION

6 BY MR. GROOMS:

7 Q Good afternoon, Mr. Williams. Could you tell the
8 Court where you work?

9 A I work at Wave Rider Resort.

10 Q What is your title there, or what is your general
11 duties?

12 A Property manager of the Wave Rider. I oversee
13 all operations of the property.

14 Q You also handle security issues?

15 A Yes, sir.

16 Q Were you working there during August of 2014?

17 A Yes, sir.

18 Q If someone wasn't supposed to be on the property,
19 would you be the one to make that call?

20 A Yes, sir.

21 Q Do you know this defendant?

22 A Yes, sir.

23 Q Do you recall him coming to your office or the
24 Wave Rider at any point in August of that year?

25 A Yes, sir.

P. GREGORY WILLIAMS - DIRECT EXAMINATION (REBUTTAL)

1 Q And did he ask you for a place to stay?

2 A Yes, sir.

3 Q Place to rent, excuse me, not to stay. What did
4 you tell him?

5 A Told him no.

6 Q And did you tell him no because you didn't have
7 any rooms?

8 A No, sir. I told him no because we have had
9 problems with him in the past.

10 MR. SMALDONE: Objection.

11 Q And that is as much as needed. There was a
12 reason he wasn't allowed back, correct?

13 A Yes.

14 Q And you told him you can't stay here?

15 A Yes.

16 Q Did you tell your employees the same thing?

17 A Yes.

18 Q Is Curtis a man who works for you?

19 A Yes.

20 Q Does Curtis do maintenance?

21 A Yes, sir, in addition to other things.

22 Q But your testimony is that you told Mr. Ware that
23 prior to this incident?

24 A Yes.

25 MR. GROOMS: That is all I have.

P. GREGORY WILLIAMS - CROSS-EXAMINATION

CROSS-EXAMINATION

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BY MR. SMALDONE:

Q You said this was prior to this incident?

A What was prior to the incident?

Q That you talked to my client prior to the incident?

A He walked into my office, asked for a place to stay and, yes, I did talk to him. I was there.

Q You talked to him?

A Yes, sir.

Q So he was ready to pay for somewhere to stay?

A Yes. He was wanting to stay at the Wave Rider.

MR. SMALDONE: Okay. That's all.

MR. GROOMS: Nothing else.

THE COURT: Any further need for this witness?

MR. SMALDONE: No, sir.

THE COURT: You may step down. You are excused.

MR. GROOMS: State calls Tony Humes to the stand.

(ANTHONY HUMES, having been duly sworn,
testified as follows:)

THE CLERK: State your full name.

THE WITNESS: Anthony Humes.

DIRECT-EXAMINATION

BY MR. GROOMS:

Q I know you have already testified once in this

ANTHONY HUMES - DIRECT EXAMINATION (REBUTTAL)

1 trial, but do you mind telling the Court where you work
2 again?

3 A City of Myrtle Beach Police Department.

4 Q Did you respond to the jail to get a GSR kit from
5 this death?

6 A Yes.

7 Q And when you went to the jail, did you speak to
8 the defendant about this kit?

9 A Yes. He inquired what the kit was for.

10 Q Go ahead and tell the jury what your interaction
11 was?

12 A It was myself and Crime Scene Officer Mattison.
13 We responded to the jail, the defendant asked what the
14 GSR kit was --

15 THE COURT: Could you tell us what that is.

16 THE WITNESS: It is a gunshot residue kit, Your
17 Honor.

18 THE COURT: Thank you. That is all I needed to
19 know.

20 A I believe that is why the defendant asked what it
21 was. It was explained to him, that it is a gunshot
22 residue kit and we would scrub his hands with capsules.
23 He said at that point that it wasn't needed and that he
24 was -- there was a gunshot fired.

25 Q (MR. GROOMS) Did he indicate further anything

ANTHONY HUMES - CROSS-EXAMINATION (REBUTTAL)

1 about this gunshot?

2 A He said that he was showing the decedent the gun
3 when the decedent grabbed the barrel of the gun, he had
4 the other end and a shot went off.

5 Q So he told you that he had the gun?

6 A Yes.

7 Q Showing the gun?

8 A Yes.

9 Q When the victim grabbed it?

10 A Yes.

11 MR. GROOMS: That is all I have.

12 CROSS-EXAMINATION

13 BY MR. SMALDONE:

14 Q How long ago did this happen?

15 A It would have been August 7th of 2014.

16 Q So about a year-and-a-half ago -- year and five
17 months ago?

18 A Yes, sir.

19 Q Fair to say you remember it better that day than
20 now?

21 A Yes.

22 Q Have you seen the recording of that?

23 A Yes.

24 Q How did you sound on that recording?

25 A The audio was not downloaded with the video.

ANTHONY HUMES - CROSS-EXAMINATION (REBUTTAL)

- 1 Q Did you try to download it?
- 2 A I did not personally, no, sir.
- 3 Q Did the audio ever come through?
- 4 A On the downloaded portion?
- 5 Q Is the audio -- did you ever hear the audio?
- 6 A No, sir.
- 7 Q So there is video, but there is no audio, is
- 8 there?
- 9 A That is correct.
- 10 Q Let's talk about the GSR kit. Did you get the
- 11 results from those?
- 12 A No, sir.
- 13 Q Did you swab my client?
- 14 A Yes, sir.
- 15 Q So you never got the GSR results, did you?
- 16 A No.
- 17 Q And he is charged with murder?
- 18 A Yes.
- 19 Q You agree that results for a forensic test is
- 20 pretty important in a murder case, wouldn't you?
- 21 A Yes.
- 22 Q When he told you that Randy grabbed the barrel,
- 23 you had possession of the gun, you were the gun guy
- 24 immediately after?
- 25 A I'm sorry?

ANTHONY HUMES - CROSS-EXAMINATION (REBUTTAL)

1 Q Either before -- right before that or immediately
2 after, you were the guy with the gun?

3 A Yes. We obtained the gun from the truck at
4 Sterling Village.

5 Q So you were the first guy to have it?

6 A Yes, sir.

7 Q On the team with the first guys that handled it.

8 A Yes, sir.

9 Q Did you have gloves when you handled the gun?

10 A Yes.

11 Q Why did you have the gloves?

12 A To prevent any contamination of DNA.

13 Q Or fingerprints, right?

14 A Yes.

15 Q Did you swab the gun to do fingerprints, or did
16 you test the gun for fingerprints?

17 A No, sir.

18 Q But he said he grabbed the barrel, didn't he?

19 A Yes.

20 Q And you didn't swab the gun for fingerprints, did
21 you?

22 A We swabbed it for DNA.

23 Q You swabbed it for DNA. Do you have the results
24 from the DNA?

25 A No.

ANTHONY HUMES - CROSS-EXAMINATION (REBUTTAL)

1 Q You don't have the DNA results? So you are
2 saying that -- tell us about touch DNA.

3 A What would you like to know?

4 Q What is it? You testified earlier that is what
5 you tested the gun for, right?

6 A Yes. The gun was swabbed on the barrel and the
7 butt of the gun, trigger area was for touch DNA, two
8 different tests, two swabs for the barrel, two swabs
9 for the other end. The swabs were sent to the state
10 for processing.

11 Q So you swabbed different areas separately?

12 A Yes.

13 Q Just so you would know what is what, right?

14 A Yes, to keep them separate.

15 Q Right. And he told you where the touch DNA would
16 be, didn't he?

17 A Yes.

18 Q Or where the touch was?

19 A Yes. He said the barrel and he had the other
20 end.

21 Q And you don't have those results?

22 A No, sir.

23 Q You agree murder is a pretty serious thing to be
24 charged with, wouldn't you?

25 A Yes.

ANTHONY HUMES - REDIRECT EXAMINATION (REBUTTAL)

1 Q That is probably the most serious offense you can
2 be charged with, right?

3 A Yeah.

4 Q And you would agree that him touching the barrel
5 or grabbing the barrel, that is the defense in this
6 case, right? You've heard his story. You said he told
7 you he grabbed the barrel, right?

8 A Yes.

9 Q So we don't know if he grabbed the barrel or not?

10 A Right.

11 Q So you admit that they haven't proven beyond a
12 reasonable doubt whether or not he grabbed the barrel?

13 A No. I don't know.

14 REDIRECT-EXAMINATION

15 BY MR. GROOMS:

16 Q If I touch a gun barrel, how long would my DNA be
17 on there?

18 A It would be undetermined. It could be there a
19 day, a month, six months, a year.

20 Q And when you do a DNA test that he's talking
21 about, is that normally to determine a potential
22 shooter?

23 A Just to determine, you know, there was a claim
24 that the decedent touched the barrel, so we swabbed it
25 and sent it off.

ANTHONY HUMES - REDIRECT EXAMINATION (REBUTTAL)

1 Q But you also did it for the defendant to
2 determine whether or not it is his gun?

3 A Right.

4 Q So this is a standard test you do in every murder
5 case?

6 A Yes.

7 Q Well, my point is when you have someone saying it
8 is my gun, I fired the gun, the results of a test
9 showing he fired a gun would be just icing on the cake?

10 A Yes.

11 Q And if someone else touched that gun, say a
12 couple days prior, then the same DNA would potentially
13 be on that gun?

14 A Yes.

15 Q So there would be no way of knowing?

16 A Yes. It could come back as mixed contributors.

17 Q I have one final question. The day you talked to
18 him, did you take notes that day?

19 A Yes.

20 (States Exhibit 48 marked.)

21 Q Can you identify State's 48?

22 A Yes. It's the scene sketch with notes I made.

23 Q These are notes you took that day?

24 A Yes, sir.

25 Q You took them?

ANTHONY HUMES - REDIRECT EXAMINATION (REBUTTAL)

1 A Upon leaving the jail.

2 Q Okay. Could you read the note, top of the
3 corner?

4 MR. SMALDONE: Objection, hearsay.

5 THE COURT: It is a prior consistent statement?

6 MR. GROOMS: Yes, sir.

7 THE COURT: All right. Go ahead.

8 A It says, I'll tell you right now there was a
9 shot, a gunshot, when Kelly said GSR kit. And below it
10 says, I was showing him the gun and he grabbed the
11 barrel, and I had the other end, and the gun went off.

12 MR. GROOMS: We would like to move 48 into
13 evidence.

14 THE COURT: What do you say about that,
15 Mr. Smaldone?

16 MR. SMALDONE: It's not my client's hearsay, I
17 believe it is his hearsay.

18 THE COURT: Send the jury out for a moment.

19 (The jury exits at 3:52 p.m., and the
20 following is heard out of the presence of the jury.)

21 THE COURT: Mr. Grooms, the problem I have with
22 this is this sketch has all sorts of other information
23 that has not been testified to, may have been
24 testified to, is offered in a different format if it
25 has been testified to. In one corner we have this

ANTHONY HUMES - REDIRECT EXAMINATION (REBUTTAL)

1 statement, so I have a problem with that. What do you
2 say about it, Mr. Smaldone?

3 MR. SMALDONE: I agree, Judge. It is -- it's --
4 you know, they might as well have written a statement
5 on a bloody photograph. The statement was already
6 testified to, and also I believe that once he wrote
7 down the statement, if he missed the statement, that
8 is hearsay, it is his hearsay. Even though he's in
9 court, it is his out-of-court statement saying what he
10 says.

11 THE COURT: There is an exception under 801 for
12 prior inconsistent statements -- or prior consistent
13 statements. Once you challenge him -- while this
14 would not have been admissible initially, it would
15 have been hearsay, once you have challenged him -- and
16 I think you have challenged him -- then a document or
17 a statement made prior to the challenge is under an
18 exception for the Rule 801D, I think, to the hearsay
19 rule. It is accepted as a prior consistent statement.

20 Let me hear from you on that, Mr. Grooms. I
21 think I'm right.

22 MR. GROOMS: Your Honor, the only reason we
23 brought it up is because he challenged the statement
24 about the video, implying that he cannot remember what
25 happened back then and if we only had the video, we

ANTHONY HUMES - REDIRECT EXAMINATION (REBUTTAL)

1 could show otherwise. We'll be happy to block out
2 everything else on that piece of paper except for the
3 statement.

4 THE COURT: If it was redacted, I would be
5 inclined to let it in as an exception to 801. But I
6 only will do so if this document is redacted. Perhaps
7 we can put something black over here so where only the
8 note is shown, and I would then allow it to be
9 introduced, but not as a whole. This document has all
10 sorts of information that -- you know, it just hadn't
11 been testified to, and Mr. Smaldone has not had an
12 opportunity to cross anyone on that other information.

13 MR. DeBUSK: Since I'll be doing it, is it
14 admitted subject to the redactions?

15 THE COURT: Yes.

16 MR. DeBUSK: I'll have it redacted and bring it
17 to you tomorrow.

18 THE COURT: Bring the jury back in.

19 (The jury enters at 3:56 p.m., and the
20 following is heard in the presence of the jury.)

21 THE COURT: Ladies and gentlemen -- all right,
22 Ms. Sellers, round them up. Crack the whip.

23 Mr. Grooms.

24 MR. GROOMS: Yes, sir.

25 Q (MR. GROOMS) Very briefly. Your testimony was

ANTHONY HUMES - RECROSS-EXAMINATION (REBUTTAL)

1 that he had the gun showing it to him and it we went
2 off?

3 A Yes.

4 MR. GROOMS: Nothing further.

5 RECROSS-EXAMINATION

6 MR. SMALDONE:

7 Q That is not your testimony, you didn't observe
8 that?

9 A No, sir, I did not?

10 Q You weren't a fly on the wall?

11 A No, sir.

12 Q You are just saying that is what he said?

13 A Yes sir.

14 Q With no audio?

15 A Correct.

16 MR. SMALDONE: All right.

17 THE COURT: Ladies and gentlemen, just before the
18 break the State offered an exhibit that was --
19 sketches and things of that nature, notes of this
20 officer. I am going to have that for you in the
21 morning. It is only appropriate that you have the
22 part that he has testified to, because there can be
23 extraneous matters there, and you haven't heard
24 testimony about it. So what we'll be doing is what we
25 call redacting, blocking out everything except the

ANTHONY HUMES - RECROSS-EXAMINATION (REBUTTAL)

1 matters on that sheet of paper that he testified to,
2 and that Mr. Smaldone had an opportunity to cross him.
3 So that exchange we had earlier involves that.
4 Anything else, Mr. Smaldone?

5 MR. SMALDONE: No, Your Honor.

6 MR. GROOMS: No, sir.

7 THE COURT: You may step down. You are excused.

8 MR. HUMES: Thank you, Your Honor.

9 THE COURT: I believe that the defense now rests;
10 is that right? Defense rested, and the State has
11 rested.

12 MR. GROOMS: Yes, sir.

13 THE COURT: Ladies and gentlemen, I'm going to
14 have an hour or so of things I have to do here. I'm
15 going to let you go home. The evidence is closed.

16 Again, let me caution you, don't talk about this
17 case with anyone or do any research on your own
18 concerning this case. I want you back at the same
19 time tomorrow. Bobby will have something for you. At
20 that time I'm going to allow the attorneys to make
21 their closing remarks to you. The evidence is closed,
22 but I'll let them make their closing remarks, and I'll
23 charge you on the law you can apply, and you will
24 deliberate tomorrow morning. Thank you, Mr. Ropp.

25 (The jury exits at 4:00, and the following is

MOTIONS

1 heard out of the presence of the jury.)

2 THE COURT: All right. Taylor tells me she
3 already E-mailed the charge to you, and that is what
4 we have so far, and of course we'll talk about it in
5 the morning. I want you back here by at least 9:15 so
6 we can put things on the record. Mr. Smaldone, you
7 have rested. You want to renew your motions?

8 MR. SMALDONE: Right. I don't believe I made my
9 motion for directed verdict and that was pursuant to
10 Your Honor's --

11 THE COURT: I thought you did make it,
12 originally?

13 MR. SMALDONE: I made my closing on State's case.
14 I want to renew all of my objections and exhibits and
15 motions.

16 THE COURT: They are noted for the record, and I
17 would not change my ruling. I think they are sound on
18 those.

19 MR. SMALDONE: And renew my motion for directed
20 verdict.

21 THE COURT: For the same reasons, I would deny
22 your motion for directed verdict. I think that there
23 is sufficient evidence taken in the light -- evidence
24 in the light most favorable to the State to support a
25 conviction for murder or a lesser included offense, as

JURY CHARGE CONFERENCE

1 well as the offense of possession of a firearm during
2 a violent crime, and that is an issue that I
3 personally had during this.

4 I intend to place on the verdict form that the
5 jury is only to consider the offense of possession of
6 a weapon during a violent crime if they find the
7 defendant guilty of murder, because the only other
8 offense they'll be charged with is -- as I see it at
9 this juncture -- is involuntary. That is not a
10 violent crime. I think in order to consider the
11 possession in the commission of a violent crime, there
12 has to be a conviction for the murder, not the
13 involuntary. Taylor will send you -- she's worked
14 something up along this line. She'll send it to you
15 and discuss it tomorrow. All right, gentlemen. Thank
16 you.

17 (Whereupon, the proceedings for January 13, 2016
18 concluded. The following was had on January 14, 2016
19 out of the presence of the jury.)

20 THE COURT: Gentlemen, anything we need to
21 discuss? I know that we're going to talk about the
22 charge that Taylor sent to you yesterday, but anything
23 other than that?

24 MR. DeBUSK: No, sir. There was an exhibit you
25 asked me to redact yesterday. I have the redacted

JURY CHARGE CONFERENCE

1 version.

2 THE COURT: All right. I think I talked to the
3 jury about why we were doing that. Mr. Smaldone, is
4 that in keeping with what we decided?

5 MR. SMALDONE: Yes.

6 (State's redacted Exhibit 48 admitted.)

7 (The unredacted exhibit was marked Court's 48.)

8 THE COURT: As I indicated to you, and as most of
9 you know, it is my policy to pass up to the jury a
10 transcript of my charge. I think it helps them.
11 Let's address requests that the State has.

12 MR. GROOMS: Your Honor, we're going to withdraw
13 our request on the involuntary. Case law is on point.
14 I believe -- although we all believe this isn't
15 involuntary at all, the jury could imply with the
16 light most favorable to the defendant that it could
17 have been potentially a reckless act.

18 THE COURT: And I said that on the record
19 yesterday why I felt that an involuntary would be
20 appropriate, based on the evidence and the evidence
21 taken in the light most favorable to the opposing
22 party, which would be the defense. So that takes care
23 of that.

24 All right. Anything else, Mr. Grooms?

25 MR. GROOMS: The only thing that I think could be

JURY CHARGE CONFERENCE

1 added on to is that in a reasonable doubt -- it says
2 reasonable doubt is when it causes you to hesitate,
3 which I believe in the right context makes sense, but
4 that is in the reasonable doubt section, it says it
5 will cause you to hesitate, which the jury can
6 infer -- if I go in the back and I even have to look
7 at evidence, that means I've hesitated, so this must
8 be reasonable doubt.

9 THE COURT: Can you point me?

10 MR. GROOMS: Yes, sir. It is at the very end of
11 the reasonable doubt. It is the last sentence.

12 THE COURT: Okay. Mr. Smaldone.

13 MR. SMALDONE: I'm trying to find it, Judge.

14 THE COURT: Page 7.

15 MR. SMALDONE: 7?

16 THE COURT: Page 7, start there and it goes to
17 the last sentence -- goes over to Page 8.

18 MR. SMALDONE: Judge, these --

19 THE COURT: That's kind of black letter law.

20 MR. GROOMS: It is, Your Honor, but to me it is
21 confusing. If there is another line that says -- it
22 doesn't mean that you don't have the opportunity to
23 review the evidence. It means after reviewing
24 everything, if then you still hesitate in your
25 decision, this is reasonable doubt, not just if you

JURY CHARGE CONFERENCE

1 can't -- if you go back there and hesitate on guilty
2 or not guilty, that is reasonable doubt.

3 THE COURT: I'm going to charge it the way it is,
4 but you can comment on it and tell the jury that you
5 have it and say this is really what it means, anybody
6 would hesitate if you even paused for a moment to
7 think about something. That is -- that is pretty --
8 you know, our court has bounced back and forth over
9 the last, maybe, 10 years about reasonable doubt,
10 firmly convinced is pretty much standard, hesitation
11 language has been preserved. I'll charge that.

12 Do you have any thoughts on that, Mr. Smaldone,
13 otherwise?

14 MR. SMALDONE: If that is your ruling, I'm not
15 going to talk anymore. I'm okay with that.

16 THE COURT: All right. Anything else,
17 Mr. Grooms, on the part of the State?

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

19 THE COURT: All right. Mr. Smaldone, I'll hear
20 from you on behalf of the defendant.

21 MR. SMALDONE: Judge, I do not have any proposed
22 changes. I've reviewed them and it seems pretty black
23 letter.

24 THE COURT: Good. Then we're all in agreement.
25 What I'll do then is I'll charge the jury and I will

COURT ADDRESSES JURY

1 put the onus on you to bring to the Court any last
2 minute changes, or if you change your mind; otherwise,
3 I'll give it to the jury, okay? Okay. Are we ready?

4 MR. GROOMS: Yes, sir, Your Honor.

5 THE COURT: Mr. Grooms, will you waive opening on
6 the law?

7 MR. GROOMS: I would prefer you give them the
8 instructions first.

9 THE COURT: No. No. I mean --

10 MR. GROOMS: Oh, absolutely. I misunderstood,
11 I'm sorry.

12 THE COURT: You have an opportunity to open just
13 as to the law.

14 MR. GROOMS: No, sir.

15 THE COURT: And then Mr. Smaldone would argue
16 fully, and then you could argue fully. But would you
17 waive --

18 MR. GROOMS: Yes, sir.

19 THE COURT: -- on opening on the law? Okay.

20 MR. SMALDONE: Can I ask for a quick bathroom
21 break?

22 THE COURT: We just started, but okay. Let's
23 take a minute. Be back about five minutes.

24 (A recess was taken.)

25 (The jury enters at 9:32 a.m., and the

COURT ADDRESSES JURY

1 following is heard in the presence of the jury.)

2 THE COURT: We have all our jurors back and the
3 alternates in the courtroom. As you may recall on
4 yesterday, we concluded all the evidence in this case,
5 and when we began this case, I tried to give you an
6 idea of the format that we would follow, that we're
7 required to follow.

8 Ma'am, would you move that clipboard? It is kind
9 of in my way. I can't see Ms. Sellers sitting there.

10 Now what we have left is the closing arguments by
11 the attorneys. The first closing will be by Mr.
12 Smaldone and then followed by Mr. Grooms or
13 Mr. DeBusk, I'm not sure which one, but one will do an
14 argument, and then I'll charge you on the law. Let me
15 remind you that during the closings, it's perfectly
16 acceptable for these attorneys to discuss with you all
17 of the evidence that has been presented in this trial,
18 to comment on the evidence as it is -- as it was
19 presented during the trial, and also to comment on the
20 law that they believe I will be charging.

21 As I said, I do things a little differently in
22 that I always prepare a full transcript of my charge
23 in advance. I give it to the attorneys, first of all,
24 so that they will know where I'm coming from as far as
25 the law is concerned, and so that you will have it for

CLOSING ARGUMENT - MR. SMALDONE

1 your use during your deliberations.

2 I tell you that in qualifying with this: What
3 the attorneys say is not evidence. They may comment
4 on the evidence, and I can assure you that these fine
5 lawyers would not intentionally misstate the evidence
6 in a case, but there is always some disagreement as to
7 what evidence may mean, and they can certainly comment
8 on that, but they can't add to the evidence that you
9 heard. You must decide this case based on what you
10 heard from that witness stand and any exhibits that
11 may have been introduced. Likewise, I do not believe
12 that they would misstate the law to you. They
13 certainly can comment on the law that they believe I
14 will charge, but you must be guided by the law that I
15 give you in my final charge, and that law alone.
16 Whether you agree with it or not, that is the law you
17 must apply and you are sworn to that.

18 Now, Mr. Smaldone, are you prepared to go
19 forward?

20 MR. SMALDONE: I am, Judge.

21 THE COURT: Very well. You may argue.

22 MR. SMALDONE: If it please the Court, ladies and
23 gentlemen, madam foreperson. About two days ago --
24 feels more like two months ago -- you heard a lot of
25 things, seen a lot of exhibits. Everything you heard

CLOSING ARGUMENT - MR. SMALDONE

1 is evidence, but remember I said that defense will
2 probably agree with the State on -- between 60 and
3 80 percent with what they say. I'll probably agree
4 with the government on 60 to 80 percent of what they
5 were going to say, that is what I said Tuesday, and
6 that is what I'm saying now. I agree that Robert was
7 staying at the Wave Rider. I agree that tensions were
8 running high that night. I agreed -- remember, I even
9 agreed that that was Robert's gun and Robert was
10 there. That's there, I agree that. We've always
11 agreed with that. We agreed with that on Monday, we
12 agreed with that on Tuesday, Wednesday, Thursday --
13 today is Thursday.

14 Throughout the course of this trial, you have
15 seen so much. I am not going to go through it, you'll
16 see it later, but you have all of this stuff. State
17 has shown you tons of things, a lot of pictures. You
18 have the gun. You have a bag. You have a liquor
19 store receipt, so much. So much that has proven the
20 60 to 80 percent that I agree with them on. They
21 proved that Robert stayed at the Wave Rider, and they
22 proved that Randy died that night. I hate to make
23 light of it, and I'm not going to, Randy died that
24 night and it was tragedy. They proved it was Robert's
25 gun. They proved that Robert did a dumb thing when he

CLOSING ARGUMENT - MR. SMALDONE

1 left. Just a stupid move, terrible friend, maybe a
2 terrible person for doing that. That is what they
3 proved, and they proved it well. They did a good job
4 proving what I already agreed with them on.

5 You have pictures. You have blood and you have
6 Randy's body there lifeless, and you have Robert Ware
7 and he told you how. You have the gun. You have the
8 gunfire. You have a bullet, but we've been saying
9 that all along. The State has to prove beyond a
10 reasonable doubt not just that Robert stayed at the
11 Wave Rider, not just that Randy died, not even that
12 that was the gun. They have to prove that Robert
13 intentionally killed Randy that night. They have to
14 prove that Robert is guilty. That is a tough burden
15 to bear, and I'll talk more about that later, because
16 there is so many facts to discuss.

17 The State called Ms. Boatwright as a witness, and
18 she's -- was emotional then, she's probably emotional
19 now. I would be, too. Her loved one died that night.
20 She blames the guy that was there, human emotion.
21 That's human. I think we're all a little bit human in
22 this case. But she blamed Robert, which I get it.
23 She says that the lights were on in the living room,
24 that she heard them kind of squabbling, but not
25 fighting. She said that Robert said, Stop, just stop,

CLOSING ARGUMENT - MR. SMALDONE

1 Randy. I believe that that's what she heard, what she
2 testified to. And then she testified the last thing
3 that Randy said was, And another thing, Robert.
4 That's the last thing she heard him say. Then she
5 said there was a gunshot that went off right away as
6 if it was part of a sentence. And another thing,
7 Robert -- gunshot.

8 Is that what someone who has a .22 long rifle
9 pointed at them says right before it goes off, And
10 another thing, Robert? You heard testimony that that
11 gun was between 12 and 18 inches away. You heard
12 testimony from their medical examiner that said maybe
13 3, 4 feet. He didn't test that gun. He said guns,
14 that is guns in general, guns are guns. There is a
15 big difference as you have learned about a .22 long
16 rifle, which is the weakest of the weak, according to
17 my expert, and something like a .50 caliber, which is
18 the strongest of the strong.

19 So the .22 caliber small bullet on the small side
20 of the spectrum, and my expert tested that very gun,
21 that same gun as that right there, same gun at the
22 Wave Rider, not a replica. He didn't go to the store
23 and get one like it. He tested that very gun. The
24 powder marks, the stippling, according to the medical
25 examiner, was in a pattern that my expert tested, and

CLOSING ARGUMENT - MR. SMALDONE

1 he said that gun was between 12 and 18 inches away.
2 12 and 18 inches.

3 If someone has a gun a foot away from you, are
4 you going to say, And another thing? Or possibly if
5 we're to believe her testimony, because she didn't see
6 anything at the time, would you say, And another
7 thing, and grab the gun? Another thing, why are you
8 bringing a gun in my house? Another thing, what the
9 hell is a gun in a bag doing in my hotel room that you
10 are crashing in? That is what you heard.

11 You've heard that police responded to the scene.
12 It was bloody. Randy was there, she was there.
13 You'll see photographs of that. They are tough
14 photographs to see. We don't -- hopefully -- walk
15 around every day looking at photographs of blood and
16 dead individuals, especially dead individuals that
17 we've known, loved ones that are sad they are gone.
18 They might be tough to see, and you're going to see
19 them in the jury room. I ask that you don't let those
20 emotions sway you, because you will be charged on the
21 law and you must follow the law. I ask that you use
22 those photos as evidence, but not as emotional pushes
23 in one direction or another.

24 So you've heard that the police took those
25 photographs, tested the crime scene, sort of. As I

CLOSING ARGUMENT - MR. SMALDONE

1 mentioned earlier, you heard that Robert was drinking
2 that night, probably as per usual. You've heard that
3 Randy grabbed the gun, Robert grabbed the gun. Maybe
4 it was out of spite. Maybe it was out of anger.
5 Maybe it was out of self-defense. Maybe it was out of
6 not wanting drunk Randy, who is loud, to have his gun.
7 So Robert grabbed the gun back, and you heard the
8 rest.

9 You heard that when that gun went off, he said it
10 was like a firecracker in his hand. Because a .22 is
11 a weak gun, but as you heard, any gun that goes off in
12 a hotel room or in an enclosed space, it is like a
13 flash bang grenade. He is not at a gun range with ear
14 protection. He wasn't expecting that gun to go off,
15 and it did. He's looking at the gun. What just
16 happened? My gun just went off in my hand, and I
17 don't know what to do. My friend, who is nice enough
18 to let me stay there is in the process of collapsing.
19 This guy convinces himself that he's fine. He got
20 scraped and might have passed out. Clearly not
21 thinking rationally, not thinking like a friend, not
22 thinking like a brother, not being the man of the
23 year, not a murderer, so he left.

24 He didn't mean to kill his friend. He left in a
25 hurry not knowing what to do. That is why he left his

CLOSING ARGUMENT - MR. SMALDONE

1 cell phone there. I believe he left his shoes there
2 too, but he left his cell phone there. It's 2014 at
3 the time, no one goes anywhere without their cell
4 phone. I have my cell phone right now. He leaves his
5 cell phone there, because he didn't mean for any of
6 this to happen. He leaves not knowing what to do.

7 He remembers in a panic mode a little while later
8 that his buddy has a car that is unlocked. That is
9 the kind of person he is, he knows what cars are
10 unlocked. He stays in the car -- a truck, has his
11 bag. It is the morning, stuff in his pockets. The
12 cops get there, reach into his pocket for the keys,
13 .22 shells, and there is tons of them here because he
14 had them in his pockets. He drops them. There's no
15 struggle. That's what happened.

16 State calls experts -- well, one expert, the gun
17 fellow who says that that gun probably -- he said that
18 that cartridge casing came from that gun, and that
19 bullet could have come from the gun. Well, that ain't
20 really the issue, so that's the 60/80 percent I agreed
21 with them on. I can tell you that gun did fire that
22 bullet. They called chain of custody witnesses, that
23 is legal stuff. They called the liquor store owner
24 that sees Robert about 30 seconds a day, said he was
25 in a different mood and he heard that -- because he

CLOSING ARGUMENT - MR. SMALDONE

1 had to walk there and his back hurts, he's mad that
2 some idiot stole his moped. This guy that doesn't
3 know him is up there testifying in a murder trial
4 about his state of mind earlier? Come on, that is
5 desperation. That's about it.

6 Then you heard from Robert. You heard someone
7 who is human. Probably not the side of humanity that
8 we think about all the time. Probably the side of
9 humanity that is bouncing around hotel rooms.
10 Probably the side of humanity that drinks a little
11 much. The side that was giving pills to his friend in
12 exchange for rent. The side of humanity that runs in
13 fear and disbelief and denial and shock when his gun
14 just shot his friend. He's human. Unfortunately, you
15 are not here to decide whether he's human.
16 Unfortunately, you are not here to decide whether or
17 not you're going to get a beer with him later. You
18 are not going to vote on him running for mayor. You
19 are not here to decide anything about whether you like
20 him or not. He's long winded. He makes mistakes. He
21 tries to make himself look good regardless of the
22 situation. He's human.

23 One thing he always said from day one was that
24 Randy grabbed the gun. 18 months have passed, details
25 have become fuzzy, alcohol. Randy always grabbed that

CLOSING ARGUMENT - MR. SMALDONE

1 gun though. It went off. One detail, 18 months, they
2 can't disprove. And then I've mentioned it that you
3 heard from my gun expert who tested the gun that said
4 that gun was 12, 18 inches away. That gun was within
5 length of a struggle, not an assassination. That gun
6 was within arm's length. That gun didn't mean to go
7 off.

8 Ladies and gentlemen of the jury, the State has
9 to do a lot of work in any criminal case. They have
10 to prove beyond a reasonable doubt, not what happened
11 earlier in the day, not that Robert was staying there,
12 not that the gun went off. They do have to prove
13 that, but that is not what we're here for. They have
14 to prove all of this. They have to prove that Robert
15 meant to shoot Randy, that's the issue in this case.
16 That is the crux of this case. That is what you're
17 here to decide. That is that 20 percent that we don't
18 agree on. They can't prove it.

19 They are going to try and try, talk about well,
20 you did this and that earlier that day, not that.
21 That's fine, let them talk. They can't prove what
22 happened that night. They can't prove that Robert
23 intended to shoot Randy. They are going to try. How,
24 could they prove it? Because the judge will instruct
25 you on the law, and he'll say something to the effect

CLOSING ARGUMENT - MR. SMALDONE

1 of you can't really ever prove anything 100 percent.
2 I can't prove that I'm here 100 percent, I might be
3 dreaming, but I'm about 99.9 percent I'm here. You
4 can't prove anything beyond all doubt. What can you
5 do to prove something beyond a reasonable doubt?
6 Well, I don't always have an answer for that. Today I
7 do. Maybe you can start by testing the gun barrel for
8 fingerprints.

9 Remember, day one Robert tells the cop, Randy
10 grabbed the barrel. Day one, Randy grabbed the
11 barrel. What do they do? Okay. I don't want to hear
12 that. I don't care. We're not here to find out what
13 happened, that's the cop talking. We're not here to
14 help you out. We ain't here to investigate your side
15 of the story. We're the government, we just want to
16 prove you guilty, so we don't even really care if
17 Randy touched the barrel because we think that you are
18 there in that hotel room, and if we test that barrel,
19 it might -- you know, what if his fingerprints are on
20 there, what if stuff is on there? We don't really
21 want to know about that, because that is going to mess
22 up our case. We might have to do more work. I'm
23 salary, 40 hours a week, I don't want any overtime.
24 We're not even going to bother to listen to what this
25 poor man said from day one and do a simple test for

CLOSING ARGUMENT - MR. SMALDONE

1 fingerprints. It is like 18th century stuff. But
'2 they did swab it for touch DNA.

3 I didn't know until the end of the case, but they
4 swabbed it for touch DNA in two difference places.
5 Remember, they said that. They swabbed the stock for
6 touch DNA, that is what he said. That is the DNA when
7 you touch something. They swabbed the stock of the
8 gun for touch DNA. Then they swabbed the barrel for
9 touch DNA. So you would know who is grabbing what,
10 where the grab was. Was it there, here? They did a
11 specific test.

12 When you go back to that jury room and you
13 deliberate this case. Look for the test. But you
14 already know the answer, we didn't get it back yet.
15 We didn't get it back yet. That's justice? I know
16 Robert isn't fancy. He talks a lot. He's not
17 pleasant, but doesn't he deserve his test results?
18 Doesn't anyone deserve those test results? They even
19 tested it. On trial for murder, and they don't even
20 have test results, they don't know. No test results.
21 Those test results are pretty important, though,
22 aren't they? Those test results are his story. They
23 are what he's saying. Yes or no. What do we have?
24 Maybe. Maybe?

25 It is a murder case, and they want to convict

CLOSING ARGUMENT - MR. SMALDONE

1 Robert of murder. Maybe? It's maybe? Is maybe
2 enough for reasonable doubt? Good Lord. Maybe?
3 Don't know where the -- the results are probably
4 sitting in a lab somewhere in Columbia.

5 Ladies and gentlemen, this is serious. Serious
6 because you have different levels of proof in
7 different kinds of cases. I was going to write them
8 down, but I think you'll listen. They have the lowest
9 level of proof that any court -- that's called a
10 scintilla of evidence. It is not enough proof for
11 really anything in court. It just means something is
12 there, anything is there. A scintilla of evidence.
13 Nothing can really happen with a scintilla of
14 evidence. Lowest standard of proof.

15 Then you have reasonable suspicion, not
16 reasonable doubt. Reasonable suspicion is enough for
17 a cop to pull you over for speeding, maybe pat you
18 down, but not even go in your pockets. That is
19 reasonable suspicion. Then you have probable cause.
20 Probable cause is enough for a cop to pull you over
21 and if he smelled weed or something, he'll search your
22 car. Probable cause. Then you have a preponderance
23 of the evidence. The reason I'm not writing it down
24 is because I always misspell it. Preponderance of the
25 evidence is in civil cases. If we were here about

CLOSING ARGUMENT - MR. SMALDONE

1 money and Robert hit Randy with his car and Randy had
2 a bad back, we would be here about money.
3 Preponderance of the evidence means more likely than
4 not. It means all things being equal, which way does
5 the scale tip. It means 51 percent. That is the
6 standard of proof in civil cases. It is still high,
7 but still not what we're here.

8 The next is clear and convincing evidence. That
9 is a high standard. That's the standard the
10 government will use if they think you are a bad
11 parent. They can take your kids away permanently
12 based on clear and convincing evidence. Still not
13 enough for here.

14 Here is reasonable doubt, beyond a reasonable
15 doubt. Doubt that makes you hesitate to act. That is
16 the highest standard in any court in the United
17 States, maybe the world. That is a slam dunk, home
18 run, that is a touch down, whatever sports metaphor
19 you want. That is all the way. We're here because
20 they think that they can convict Robert Ware beyond a
21 reasonable doubt of murder with no test results, with
22 nothing that proves that his theory is wrong, that
23 what happened didn't happen, because it did happen.

24 They have a coffee table, drinks still on it.
25 They are saying, Clearly there wasn't a fight because

CLOSING ARGUMENT - MR. SMALDONE

1 the coffee table still has drinks on it. Okay. There
2 wasn't a fight. They are talking about that 60 to
3 80 percent again. There wasn't a fight. There was
4 barely a struggle. There was a quick, And another
5 thing, Robert -- gun went off. According Sabrina's
6 testimony, if you agree to that. There was a quick
7 split second.

8 I submit to you that the drinks might have
9 spilled over if there was a bad enough fight for
10 Robert to pull a gun on Randy. Was there a fight?
11 No. No evidence of a fight. No evidence for Robert
12 to shoot Randy 12 to 18 inches away. There is
13 nothing. Nothing.

14 Ladies and gentlemen of the jury, it's hard --
15 this is the hard part for any attorney because I have
16 been handling Robert's case for awhile. He's been in
17 my hands on some degree. Robert has been in my hands
18 for awhile. The hard part is that I have to give him
19 to you now. After I'm done talking, the State will go
20 and talk about their evidence, the 60 to 80 percent we
21 agree on. I don't get to talk again. Sorry. I don't
22 get to rebut what they say. I don't get to say, wait,
23 hold on. I don't get to do anything. So it is about
24 it. I want to, I promise.

25 I ask that you remember what I say. Listen to

CLOSING ARGUMENT - MR. SMALDONE

1 what they say. I won't be here to answer any
2 questions. I ask that you answer them for me, though.
3 I ask that those questions, those doubts, I ask that
4 you answer them, that way when you have something.
5 Reasonable doubt. Not any question about the law or
6 anything like that, but something not making sense.
7 Something you want to ask me. I can't be here.

8 Ladies and gentlemen, I briefly will remind you
9 that the State has the burden to prove guilty beyond a
10 reasonable doubt, but I think it is important that not
11 only do they have a burden of proving Robert guilty
12 beyond a reasonable doubt, they have the burden to
13 prove that this was not an accident beyond a
14 reasonable doubt. What are they going to do to do
15 that? Are they going to talk about what happened
16 before Robert's actions after? They might.

17 They don't know what happened in that motel room.
18 They don't know what happened in Room of the Wave
19 Rider. They don't know what happened, because there
20 is no evidence to prove Robert guilty of murder.
21 There is evidence to prove that Robert might drink too
22 much, he might be annoying, he might talk too much, he
23 might not live a life that I live, but he's not a
24 murderer, because that was an accident. They can't
25 prove that it wasn't.

CLOSING ARGUMENT - MR. GROOMS

1 Ladies and gentlemen of the jury, those
2 reasonable doubts, hesitations to act, they didn't
3 even try to prove if Randy grabbed that gun. They
4 didn't care, ladies and gentlemen. That is why I ask
5 you to find my client, Robert, not guilty of this
6 charge. He might have bad character traits. We might
7 not want to hang out with him after this, might not
8 call and see what he's up to, but he's not a murderer.
9 He had no reason to kill his friend. It was all an
10 accident. A dumb accident, but an accident, and that
11 is why he's not guilty. Thank you.

12 MR. GROOMS: Ladies and gentlemen, this is not an
13 accident. It is not involuntary. It is a murder.
14 Mr. Smaldone would have you believe that all of this
15 over here is not to be paid attention. These over
16 here are just pictures, nothing of importance. The
17 reason we give you these pictures and these Exhibits,
18 these receipts is to show credibility, because this
19 case is about credibility. We have to prove our case
20 by proving that our witnesses, that our versions of
21 the story, that our crime scene, that our experts
22 match the murder. This case is about whether you
23 believe Sabrina, or whether you believe Robert. It is
24 about whether you believe the crime scene experts, or
25 whether you believe Robert. It is whether you believe

CLOSING ARGUMENT - MR. GROOMS

1 the expert witnesses, his expert witness, our expert
2 witness. I'll show you that both expert witnesses
3 were very close, and I believe that both expert
4 witnesses proved to you that it is a murder.

5 Now, I'm going to take you through each one of
6 these exhibits I don't usually use notes, but there is
7 so many details in this case, I don't want to miss
8 anything, so please bear with me. I may get water here
9 and there for my dry throat, but I'll go through this
10 as quickly and clearly as possible.

11 In talking about credibility, you have to look at
12 the parties. Look at the defendant. You know that he
13 lied numerous times on the stand. I think that is
14 pretty clear. Mr. Smaldone calls them mistakes, but
15 when you say something that is not true, that is a
16 lie. I think we agree that is what that is. He lied
17 about being banned from the Wave Rider. He told a
18 story to Sabrina that night that this was -- in her
19 words he said this was self-defense. In his words, he
20 attacked me, trying to come up with a story real
21 quick. The next morning he's thinking, I have to come
22 up with something better than that. So when crime
23 scene comes he says, I was showing him the gun and it
24 went off; it was an accident. He knows he can't be
25 charged -- he can be charged, but not found guilty.

CLOSING ARGUMENT - MR. GROOMS

1 So we'll go with the accident theory, because
2 saying it is self-defense opens way too many doors, so
3 now he goes with accident. Mr. Smaldone would have
4 you believe that the DNA test is huge, and if only we
5 had that DNA test, the whole case would be blown wide
6 open. But all of that is smoke in mirrors. He came
7 up with that after his client sunk the ship, after his
8 client took the stand and told you, what, for 30, 45
9 minutes this elaborate story about being pulled up
10 over the couch, and coming up over that bag, and then
11 at some point Randy must have let go and the safety
12 magically came off and he fell backwards and a shot
13 went off. Then we put up a witness to say, Didn't you
14 say it was an accident. So he's got to do something
15 to cover for that. He has to jump up and down and
16 say, What about the DNA, what about the gun barrel.

17 Here is the thing, the defendant testified Randy
18 held the gun. He held it at the storage shed. He saw
19 the gun, he held the gun. Sabrina testified he's held
20 the gun before, held it at the storage shed. We agree
21 to that. If you hold the gun, fingerprints are the
22 gun. If you hold the gun, touch DNA could potentially
23 be on the gun. We gain nothing by having a test that
24 tells us what we already know, which both parties
25 already agreed to. Only reason you jump up and down

CLOSING ARGUMENT - MR. GROOMS

1 is that is the last thing you can do.

2 In going through this, I'll try to do it quickly,
3 but I have to cover small things first. I believe
4 Randy had no animosity towards Robert when he let him
5 back in that evening. I believe -- what both parties
6 have told you agrees with that. Sabrina tells you
7 they went to fireworks that night, that they had a
8 wonderful evening, happy to come home. She sat on the
9 stand and bore her soul to you, told you things that
10 are embarrassing. She told you, yeah, he takes
11 prescription pills. He doesn't have a prescription.
12 Yep, we made a deal, he could stay and give us a
13 couple of the pills. She doesn't want to say those
14 things. I told her she had to be honest with you.
15 She told you when she got back that night, everything
16 was great, that her and Randy were just happy to have
17 their place back. They were in the bedroom. She told
18 you that Randy came in and did his naked dance,
19 running around naked, that he was happy to have his
20 place back. This is real stuff. This is stuff she is
21 not making this up.

22 Now, fast forward a little bit. They are having
23 a nice evening there in the evening. She's admitting
24 they were intimate. There is a knock at the door. It
25 is Robert. She doesn't want to let him in. She tells

CLOSING ARGUMENT - MR. GROOMS

1 Randy, Don't let him in. She's already told him about
2 the gun. Don't let him in. But Randy has no
3 animosity. If he did, he would have let him knock at
4 the door. Who cares, I'm in the back bedroom with my
5 girlfriend, let him knock, eventually he will go away.
6 He could have gone up to the door and said, Go to
7 hell, you are not staying here tonight. He didn't do
8 that. He got out of bed with Sabrina, goes to the
9 door, opens the door and says, Come on in.

10 He questions him about the gun. Robert, tell me
11 you don't have a gun. Excuse me. Tell me you didn't
12 bring a gun into my house. He wants to make sure
13 there is no gun in his house. This is a concern that
14 Sabrina just brought to his attention. Again, don't
15 let him in. He believes his friend. We can infer
16 that he didn't say, Yeah, I got a gun. We can infer
17 that this gun barrel -- Court's indulgence -- wasn't
18 hanging out of the bag (indicates). Best case is he's
19 walking into the house, Hey, Bud, can I get a place to
20 stay. Does that make any sense? Does it make any
21 sense to walk around Myrtle Beach like that? This gun
22 wasn't put together -- I'm sorry, this gun was taken
23 apart when he came in that room.

24 He let him in that night, they argued at the
25 door. Even when all he is saying is don't bring a gun

CLOSING ARGUMENT - MR. GROOMS

1 in my house. Come on in. An argument started.
2 Sabrina said she heard him ask about the gun, and she
3 didn't hear a response. She said I was too far away,
4 I couldn't hear what he was saying back. If Sabrina
5 was not credible, she would have made something up
6 there. She would have said, And then I heard Robert
7 say, no, I don't have the gun, the gun is at storage,
8 I left the gun in the other truck, the gun is not
9 here. She didn't say that because she's telling the
10 truth.

11 He comes in the house, they argue. Both sides
12 agree they argued about something. I know for Randy
13 to let him in, he was the peaceful party, Come on in,
14 just don't have a gun. Robert still wants to argue.
15 He says, We're tired of the disrespect. You are a
16 guest in our home. You play by our rules. If you
17 don't want to be neat, if you don't want to do what we
18 have to do in order to stay here, because this place
19 is for sale, it is a friend of theirs, don't stay
20 here. That's all we're asking. Be respectful. Help
21 out with the dishes. Clean up after yourself. Don't
22 lay around all day. These types of things. I don't
23 know what was exactly said, but I know they argued
24 about the lack of disrespect -- the lack of respect.

25 After they argued, at one point Sabrina heard him

CLOSING ARGUMENT - MR. GROOMS

1 say, We can take it outside. They are still at the
2 door, so there was a confrontation there. A
3 confrontation that ticked him off. Randy is still --
4 she said and then things calmed down. Would things
5 have calmed down if there was a gun hanging out of
6 that bag? Because it wasn't. Even after they argued
7 he says, Robert, we love you, let's talk about it
8 tomorrow, take your couch -- get on the couch, however
9 you want to put it. We'll talk about it tomorrow.
10 This is another sign he's the peacekeeper. He's
11 saying let's diffuse this. Here's the couch. I'm
12 going back to bed, going back to what I was doing.
13 Sabrina told you he had no anger, was not upset. He
14 went back to being intimate with his girlfriend, the
15 nice evening he was having.

16 I want to talk a little about this gun. You
17 heard a whole lot, but this gun is important. It is
18 no normal gun. Comes in a nice little red bag. You
19 heard from the firearms expert that it comes in
20 several pieces, that this barrel disconnects and it
21 slides in the butt of the gun, the butt comes off and
22 the magazine comes out and goes in the bottom. This
23 gun cannot be fired inside that bag. It cannot be
24 fired in three, four pieces. It can't be fired
25 without the magazine in it. It has two safeties.

CLOSING ARGUMENT - MR. GROOMS

1 MR. SMALDONE: That is not in evidence.

2 THE COURT: The jury will remember what the
3 testimony was concerning that.

4 MR. GROOMS: Robert would have you believe that
5 this gun was put together while he's out on the
6 street, that he left earlier after they had gotten in
7 an argument about the things we just told you about,
8 lack of respect. So I'm backing up a little bit.
9 He's out on the street with his only belongings,
10 toiletries, gun, what clothes he had. He decides to
11 get a 12-pack and camp out behind or near a dumpster,
12 put his gun together and wait for the -- Mr. Smaldone
13 said in opening -- coyotes or bandits.

14 Ladies and gentlemen, this is Myrtle Beach in
15 August. This is not some terrible neighborhood. This
16 property sits off Ocean Boulevard. If he's concerned
17 about his safety, the logical thing is to walk down to
18 the boulevard, hang out with everyone else, maybe put
19 your bag in that truck that you went to later. It
20 just doesn't make sense. So we have to ask why does
21 he want us to believe that he had this gun together.
22 He had a long time to think about this, he told you
23 himself. He knows there has to be a reason why that
24 gun was already put together, otherwise, he's in the
25 room putting that gun together after an argument, and

CLOSING ARGUMENT - MR. GROOMS

1 that looks like malice, premeditation. That is
2 exactly what happened.

3 When Robert comes back in the room that night,
4 he's ticked off. He has to be. He's been kicked out,
5 out there fending off coyotes and bandits, got his gun
6 put together, drank about a half a gallon of Vodka,
7 drank a 12-pack, or maybe a quart, depending on which
8 one you want to believe. It was a 12-pack for awhile,
9 but when we asked about the cans, he said, Oh, must
10 have been a quart, I didn't want to make a mess. You
11 were sitting by a dumpster. He got frustrated. He
12 got frustrated several times. We saw a small glimpse
13 of his frustration, a very small glimpse of his anger.
14 Think about him that day. No meds. He told you he
15 took his last med in the morning, supposed to take it
16 three times a day. He's now trying to compensate by
17 drinking heavily and, yet, he tells you, I didn't even
18 have a buzz. That is not even possible. No one can
19 drink that much and not have a buzz, I don't care how
20 big you are or how often you drink.

21 He goes back to the room, to the condo. Instead
22 of being allowed in and allowed to go sit on the
23 couch, he gets into another argument, disrespected
24 again. Randy is back there having sex and he's
25 sitting here with no place to go in the morning. All

CLOSING ARGUMENT - MR. GROOMS

1 he has is his toiletries and camping rifle, so he's
2 going to put that gun together. He's not going to be
3 disrespected again. So he puts his gun together while
4 sitting on the couch, takes the barrel out of the bag,
5 takes the clip out, bullets out, loads the clip,
6 screws on the barrel of the rifle, puts the clip in
7 the gun, racks the shell into the chamber, takes the
8 safety off. All of these things have to happen before
9 he can fire that gun.

10 Now, he also conceals the weapon. We know that
11 from a couple different things. We know that after
12 Randy was in bed with Sabrina, he says he got up, went
13 to the kitchen and got him a drink. Both sides said
14 lights on, TV is on. This is not a big apartment. So
15 they would have you believe that Randy walks out of
16 the bedroom, there is Robert and TV on, lights on, oh,
17 there's a gun, no big deal, go get me a drink of Sunny
18 D, fixes him a drink, walks by, there's a gun, no big
19 deal, go back to bed, and he then turns around to say
20 whatever it was that he wanted to say that he didn't
21 finish earlier, we don't know exactly what it was, but
22 he says, Another thing, Robert. He said, Stop, I
23 don't want to hear it. He said, Robert, no, just one
24 thing. Stop, I don't want to hear it. Then a gunshot
25 goes off. Sabrina tells you this is what she heard.

CLOSING ARGUMENT - MR. GROOMS

1 I believe we can believe Sabrina because she told you
2 what she didn't hear in the beginning. At this point,
3 the parties moved much closer to her bedroom, more
4 likely she heard exactly what they said. Defense said
5 that the last thing he heard was, But, Robert. But,
6 Robert. But, Robert, however you want to say it. He
7 goes up and says, But, Robert. Stop, I don't want to
8 hear it.

9 It is important we think about what was said.
10 Stop, I don't want to hear it. What is it Randy --
11 Robert wanted Randy to stop doing? He wanted him to
12 stop talking. I don't want to hear it anymore. I
13 don't want to hear what you have to say. Don't want
14 you talking disrespectful. He didn't say, Stop, get
15 out of my face. Stop, back up. Stop, don't touch my
16 gun. He said, Stop, I don't want to hear it. He's
17 sitting out there, ticked off, already has his gun put
18 together, gun is underneath the pillow, same way when
19 Sabrina walked out. That is why you didn't hear Randy
20 say, You have a gun, why do you have a gun. He didn't
21 say, Stop, Robert, don't point a gun at me. Oh, my
22 God, you have a gun. He didn't say, Sabrina, he has a
23 gun.

24 They would have you believe they got in some
25 tug-of-war match over a gun, but never mentioned a

CLOSING ARGUMENT - MR. GROOMS

1 gun? Never heard a struggle over a gun? What they
2 heard was, Stop, don't want to hear it, bam, gunshot
3 goes off. Randy never saw the gun. He had the gun
4 concealed same way as when Sabrina came out.

5 I want to talk a little bit about Robert's
6 version of events, because there is no way you can
7 believe what he told you, absolutely no way. You
8 don't have to take my words for it. Crime scene tells
9 you no way. His expert's testimony tells you no way.
10 He wants you to believe -- can we bring it down?

11 Right here, Robert would have you believe he's
12 sitting on this tan couch. Randy comes in from the
13 bedroom, all the sudden he snapped, he is manic. This
14 is a guy who is being intimate with his girlfriend.
15 If there is any point to be upset it is not after you
16 are just relaxed, I won't go any further with that.
17 He comes out of this room. Robert would have you
18 believe that he's sitting on the beige couch, Randy
19 charges him right through here, charges him through
20 this area, gets in his face, won't back up. Robert,
21 being a peaceful person, Hey, man, what's up, you are
22 in any space, back up. Does that sound like Robert to
23 you?

24 He would have you believe that this gun bag is
25 lying here pointing this way towards the bedroom.

CLOSING ARGUMENT - MR. GROOMS

1 Randy steps over this bag to get to Robert
2 (indicates). Now, he's in his face, not saying
3 anything. Sabrina told you these two argue all the
4 time. They have loud voices, talk. At what point did
5 we hear that Randy doesn't like to talk? Makes no
6 sense. Now he's speechless?

7 So now he get in Robert's face. This is his
8 story. And for whatever reason, he steps back over
9 that gun. Keep in mind we're talking about maybe a
10 foot of space here. Back up over that gun, grabs the
11 gun like this, or like this. Who in the world grabs a
12 gun like that? But he grabs the gun. Robert doesn't
13 know whether he is manic, or he's mad he touched his
14 property first, naturally grabs the other end of it.
15 And he would have you believe that they have a
16 tug-of-war match like this, that Randy will have the
17 barrel pointed right towards his chest in a tug-of-war
18 match. Makes no sense. If you grab a gun, you push
19 it this way or this way. If it is on the ground and
20 you're worried about the gun, step on the barrel. You
21 don't grab a gun, pull it up and hold it at your
22 chest.

23 He goes further. He says they fight over the
24 gun. Robert is seated at this point. Randy pulls him
25 up over the bag, brings him towards him. Randy is

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1 about 193 pounds, Robert is 230. You can't pull
2 someone up who is bigger than you, it just doesn't
3 work that way. If he was so strong, he would have
4 ripped the gun away. He would have made sure it
5 wasn't pointed at his chest.

6 So he pulled Robert up over this table -- sorry,
7 over the bag, so now at the center of the couch;
8 center of the couch being somewhere in this area.
9 That is being fair to both sides. I would say it was
10 even further down. He pulls him up over the red bag.
11 At this point, he says Randy either lets go or slips,
12 he doesn't know, but he falls back. As he's falls
13 back, the gun goes off. He doesn't know because he
14 never took the safety off, but he knows that -- he
15 doesn't even know if his hand was on the trigger, it
16 just went off magically. He hears a shot and panics.

17 This could not have happened. Two men this size
18 could not fight between this couch and table. If they
19 did, the table is knocked over, candle is knocked
20 over, the glass that Robert had prepared is knocked
21 over.

22 Go back one. Look at the indentions in the
23 carpet. This is not expensive carpet. When you have
24 a coffee table sitting for awhile and it moves, it
25 leaves indention marks. The table has not even been

CLOSING ARGUMENT - MR. GROOMS

1 moved the slightest. Look at the game under the
2 table. Perfectly centered. We talked about this
3 being an extremely neat apartment. This is an
4 extremely neat living room. It has not been struggled
5 over in the least.

6 There was no struggle over the gun, no struggle
7 of a 230-pound man falling back between a roughly
8 12-inch space. If they fought, the table is knocked
9 over, glass is knocked over, candle is knocked over,
10 everything is out of sorts. All right, George, the
11 cup. This cup of liquid here, it doesn't take much to
12 knock over a drink. Most of us do it on a -- not a
13 regular basis I hope, but it happens, doesn't take
14 much. If Robert is being pulled back over to this
15 table, all 230 pounds of him, you don't think that
16 drink gets knocked over? You don't think that table
17 is bumped? You don't think at the very least the
18 liquid comes out? There has been some disturbance and
19 everything falls back into perfect place. Let's say
20 that happened, but it couldn't have. Don't you think
21 the liquid is on the table? There is none. There is
22 no evidence of a struggle. There is no evidence of a
23 tug-of-war. No evidence of an accident. No evidence
24 of a disturbance in this crime scene.

25 Now, Robert would have you believe that despite

CLOSING ARGUMENT - MR. GROOMS

1 his time in the Navy, Merchant Marines and Middle
2 East, that a gunshot went off and he just loses time,
3 doesn't know what happened. He thinks his friend must
4 have passed out from fright. Despite the fact that
5 they've been having a tug-of-war over a gun, his
6 friend just passed out. If you think your friend just
7 passed out, you go check on him.

8 This is the crime scene. We have blood on the
9 wall, blood all over the victim, blood on his clothes.
10 Next, please. Blood all over the table. Remember
11 that this is the same table that this gun and bag were
12 by. Robert packs his things and gets out of there.
13 In order to do that, he sits on the beige couch, table
14 is right here, gun back is here. How does he miss all
15 the blood right in front of him? He couldn't have.
16 How did he miss the blood on the wall? He couldn't
17 have.

18 He tells you when Sabrina comes out and leaves,
19 he goes and checks on the victim. How do you stand
20 over that body and think, oh, he's good, he's just
21 passed out. It was a loud noise for everybody. I
22 better get out of here though, because I've got to pay
23 a storage bill in the morning. He told you that.
24 Now, it took awhile because he kept rambling, kept
25 trying to come up with more. He said I was worried

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1 about, you know, I fired a gun in the city, cops will
2 come, going to take me to jail, won't be able to pay
3 the storage fee in the morning.

4 If you are thinking that clearly, how are you in
5 shock? You are not. You realized you just shot your
6 best friend. I think he had that gun on the couch
7 prepared to shoot him, and now he's done it. Now it's
8 time to get out of there.

9 When Sabrina comes out, he has the gun aimed at
10 her on the chair, on the couch, still sitting on the
11 couch in the center. This is where Sabrina would have
12 been when she checks on the victim. Sabrina looks up
13 and tells you at first she thought it was a joke.
14 This is shock. She can't believe what is happening.
15 She looks up and sees the defendant seated on the
16 couch. He hadn't fallen down in between two tables.
17 He was seated on the couch, rifle pointed at her,
18 pillow over the rifle. She thinks he's going to shoot
19 her. He's not jumping up and saying, Oh, my God, what
20 I have done, because it wasn't an accident. He's not
21 jumping up and saying, Call 911, get him help, because
22 it wasn't an accident.

23 He has that gun pointed at Sabrina and in his
24 head he's making a decision, this is the only witness,
25 do I kill this witness? That is why the gun was

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1 pointed at Sabrina. He didn't pull the trigger, thank
2 God. I think the only reason he didn't is because
3 Sabrina screams, runs out of there, calls 911. Maybe
4 Robert didn't have the same animosity towards Sabrina
5 that he did Randy. For whatever reason, he didn't
6 pull the trigger, and thank God he didn't, because
7 without the testimony, we wouldn't know this is a
8 murder.

9 We'll talk about the blood on the table. George,
10 if you wouldn't mind, go back to Robert's story. He
11 testifies he's on the beige couch, Randy grabs the
12 gun, slips back, pulls him back over the bag, which
13 puts him somewhere right in here. By his own
14 testimony, that is where Robert would be --

15 MR. GROOMS: Judge, would you please ask him not
16 to comment?

17 THE COURT: I'll remove him, Mr. Smaldone.

18 MR. SMALDONE: I told him that.

19 MR. GROOMS: His own testimony is that the bag
20 was parallel to the table and he got pulled up over
21 the bag. We know he was somewhere in the center of
22 the table when he was pulled up over the bag. This is
23 where he is at, the defendant, not the victim. The
24 tug-of-war goes back and forth. No one goes
25 tug-of-war like this. At that point, hand slips from

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1 here, to here (indicates), he lets go, Robert falls
2 back and the gun goes off.

3 We know that makes no sense because the blood is
4 on the corner of the table. If he's -- if Robert's
5 story is true at all, the blood would be here at the
6 very least down here (indicates). How do you have big
7 pools of blood on the corner of the table if he wasn't
8 shot at the corner of the table? All of these lies
9 you can infer that he's hiding something. He doesn't
10 want you to know what he did. He murdered his friend.

11 I'll come back to the crime scene, but I have to
12 talk a little bit about the law. Murder in South
13 Carolina is pretty simple. Murder in South
14 Carolina -- the judge will tell you -- is the killing
15 of another person with malice aforethought. I believe
16 we can agree with number one, someone is killed here.
17 Number two, of a person. That is very clear. We're
18 not done with one and two.

19 Look at number three. What is malice of
20 aforethought, maybe something you never heard, maybe
21 you have. Malice of aforethought is defined as
22 ill-will or meaning to do a harmful act to -- defined
23 as an evil intention, you wish to do harm. You have
24 ill-will in your heart towards another person and we
25 can show that one of two ways, either by expressing,

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1 or expressed malice, which is where you might say, I'm
2 going to kill that guy, or, I killed him, or, I'm
3 going to kill him. Or you might write it down, that
4 is expressed malice. Implied malice can be inferred
5 from your actions. We have a whole lot of malice in
6 this case. It will take me a minute to go through
7 what this means.

8 I'm not sure how the judge's instructions are
9 written, but malice is not something you have for two
10 days and then the crime occurs. It is not something
11 where you have malice in your heart for a half an hour
12 and then the crime occurs. Malice simply has to be in
13 your head, in your heart at the time that you did the
14 act. It happened before, aforethought. You have to
15 have malice when you pull the trigger. That is all
16 that means. There is going to be pages of jury
17 instructions, and it is a whole lot of legal jargon.
18 What it means is you have the malice before you pull
19 the trigger. You have the ill-will in your heart
20 before you pulled the trigger.

21 Possession of a weapon during the commission of a
22 violent crime. That one is as simple as it sounds.
23 If you believe that this defendant committed a violent
24 crime and he did it with a weapon, then that is
25 possession of a weapon during the commission of a

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1 violent crime. So I won't spend a lot of time on it.
2 So you killed someone using an instrument, that is
3 possession of a weapon if that instrument was used to
4 kill that person.

5 You may see a charge on involuntary manslaughter,
6 and I believe -- it doesn't matter what I believe,
7 sorry. Robert had a long time to think about this,
8 long time to come up with his plan. He knows that if
9 this is an accident that will come back to you as,
10 hey, it is an accident, cut him loose. So that will
11 go back with you. Or if what he did was reckless, he
12 shouldn't have grabbed that gun barrel, then give him
13 involuntary, that is an easy decision, maybe I'll do
14 that one, won't be too bad. Don't fall for this.
15 This is a murder. Look at the facts and pictures.
16 Listen to what I've said, listen to what Mr. Smaldone
17 said. This is a murder.

18 Reasonable doubt. Every trial I've ever been in
19 they talk about the different levels of reasonable
20 doubt, what is reasonable doubt, taking kids in
21 custody hearings, a scintilla of evidence. It is used
22 over and over again because it distracts you, makes
23 you think, well, if you can take my kids away, and
24 that doesn't take much, than this is bigger than that.
25 It plays with your head. Reasonable doubt is what you

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1 know what that is. The jury instruction will tell you
2 that. Reasonable doubt is you see something and
3 convinced this is what happened. You are firmly
4 convinced that the facts put forward, testimony put
5 forward leaves you only one reasonable explanation,
6 that is beyond a reasonable doubt.

7 Reasonable doubt is going through all of the
8 pieces of evidence and then saying, well, actually,
9 after I have seen all of this and heard all of these
10 lies, I think something else happened. That is
11 reasonable doubt. If you believe that, then you vote
12 that way. I don't believe that there is any way that
13 that would happen. This is not an accident. I hate
14 to bring this up, but I do. This is not an accident.
15 This is not a oops-the-gun-went-off type of situation.
16 You heard of expressed malice before. You heard about
17 the tension. You heard what Sabrina heard. You heard
18 what Robert did. You heard what Robert didn't do. If
19 this is an accident, you go to your friend. You help
20 your friend; you don't run. You don't aim guns at the
21 only witness. You don't conceal firearms. You
22 don't -- admittedly, the defendant said he was going
23 to be throwing the bullets in the trash, but the cops
24 got there first. Now he wants to tell you that it was
25 some other reason, but I do think he was going to

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1 throw them in the trash; maybe the gun too, we don't
2 know.

3 He didn't act like it was an accident. You don't
4 shoot someone through the heart and it be an accident.
5 These two grown men were not playing tug-of-war. He
6 sure didn't have the gun aimed at his heart, not
7 someone scared of guns, not anyone, would pull that
8 barrel towards him, that is what they want you to
9 believe. He made two different statements. Even that
10 night he told Sabrina that it wasn't an accident. He
11 told her he attacked me, in his words, and left. When
12 he is saying that, he's giving her an excuse. He
13 attacked me, I'm out of here. It is not an accident.

14 The next morning when they come to do the DNA
15 test, they told us what we already know. He tells
16 that guy, You don't even need to do the test, the gun
17 went off. It is my gun. I was showing the victim the
18 gun, and it went off. By his own statement he is
19 giving you two completely different versions, so it is
20 my job to show you the version that makes sense. When
21 we talked about all of these things over here, and I'm
22 not trying to be long winded, I have to get through
23 this. We put things up like receipts, liquor bottles
24 that match receipts. We put up these things to give
25 credibility to the witness who is testifying. You

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1 don't know Matt Griffin, yet Matt Griffin comes in
2 here. You have never seen him before. You want
3 something to show that he's not making this up. So we
4 show you there is a receipt that he keeps as his
5 business record, the bottle that went to it.

6 These are the reasons we put these things up, we
7 have a duty to show you the case. Matt Giffin knows
8 Robert Ware. They are not best buddies, not even
9 friends. He told you they are not friends, but he
10 said that he's dealt with Mr. Ware many times. He
11 said over ten at least. He comes in his store,
12 regular customer and makes small talk, hey, how is it
13 going. Good, how are you? Sure is hot outside.
14 Yeah, man, go to the beach later. Normal conversation
15 that people have in Myrtle Beach.

16 On this day it is different. Matt told you he's
17 sitting in the back. He sees his good customer comes
18 in, pops up, going to say hello. Hey, Mr. Ware, how's
19 it going today? Walks right by him. He said he's
20 cold, distant. Something is not right. This is
21 weird, Robert always talks to him. What is the
22 problem? Says he goes and gets his bottle of Vodka
23 and says, I'm going to kill that mother fucker --
24 sorry for the language, I apologize, I should have
25 warned you. Says, I'm going to kill that guy. I'm

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1 going to kill that mother fucker, as he is getting his
2 bottle. We don't say it just to throw it up here.
3 The reason we put the statement in is that we know
4 that Sabrina called -- got a call from Randy saying
5 where are you? Are you on the way home? I'm going to
6 have a talk with Robert, he has to go. This isn't
7 working out. When you come home, come in the back
8 door in case we're still talking. She says, it's
9 okay, I'm still in Florence; be there soon. Another
10 call from Robert to Sabrina, and she said there was
11 nothing unusual about that call. He called, Hey,
12 Sabrina, how is it going, wondering if you are close,
13 need a ride to the liquor store. Can't do it, in
14 Florence, be home soon.

15 There was no time in between this phone call and
16 this phone call where he was angry. We know after
17 that Randy talked to him, tells him he can't stay here
18 anymore, got to go, not working out. We know then he
19 goes to the liquor store. So this is directly after
20 talking to Randy, after learning he has to find a
21 place to stay, this ain't working out, friend of four
22 years is putting him on the street, or at least giving
23 him a heads up time to go.

24 We know then he goes to the liquor store. Then
25 he's ticked off. He marches up there, got in his head

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1 already, I'm going to kill this guy, how dare he.
2 Matt said he never seen him act like that before. He
3 said it made him he feel very uneasy. No, he didn't
4 call the police. What would he tell the police, some
5 guy is acting weird in here? It is Myrtle Beach.
6 Last time he sees the defendant. We know that this
7 happened hours before the murder.

8 That is an example of expressed malice, when you
9 say things like that. We believe it is particularly
10 important because it happened right after Randy told
11 him, You can't stay here. If you remember when
12 Sabrina got home at 6:00, Randy told her, I've already
13 talked to him, we had our words, he left, he's gone to
14 the store. Shortly after, Sabrina is preparing
15 dinner, thawing out deer meat. Robert comes back.
16 This is a pretty tight window if you think about it
17 because liquor stores close at 7:00. Robert comes
18 back. Guy is out of liquor. Think about the time
19 line when you decide whether that statement is
20 important.

21 Implied malice -- implied malice can be shown in
22 many ways. Just the act of shooting someone alone is
23 implied malice by your actions that you had some
24 ill-will towards this person. When you take a gun in
25 someone's home who hates guns and load the gun and

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1 conceal it on a couch, that is an example of implied
2 malice. You knew what you were doing, it shows where
3 your heart was at, shows that ill-will, evil
4 intentions. You can also look at what he did after to
5 show malice. When someone runs from a crime scene,
6 you can imply malice. When someone points a gun at
7 witnesses, you can imply malice. Concealing a weapon
8 certainly implies malice. Leaving your friend of four
9 years on the ground dying shows implied malice.

10 This is clearly not to scale, not meant to be to
11 scale. It is demonstrative to show you what we
12 believe happened. George, if you would sit right
13 here. So this couch could be a little bigger either
14 way, we're not saying it is a perfect replica. Robert
15 would have you believe that the defendant came across
16 him and grabbed that gun where a tug-of-war match
17 started, pulled him back over the bag and he fell
18 backwards, nothing was disturbed. We went through the
19 photos and showed you it doesn't add up. Robert
20 actually testified, if you remember, that the beige
21 couch sits slightly higher than the red one. Why he
22 said that, I don't know. He said it sits slightly
23 higher. Everything brought before you in the last few
24 days is going to be put together. I'll move the bag
25 and gun so I can demonstrate what happened. Randy

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1 gets out of bed with Sabrina, goes to the kitchen,
2 comes back, puts his drink down. Robert, one more
3 thing. Stop, I don't want to hear it. No, Robert,
4 just one more thing. He's seated towards the end of
5 the table. This being where the blood is. He is
6 seated slightly like this with no shirt on. Coffee
7 table here (indicates).

8 At this point, the gun is already there. He
9 doesn't see the gun or he wouldn't have said, But,
10 Robert. No. No, one more thing. He wouldn't have
11 said that. He never saw the gun. Robert has the gun
12 underneath a pillow, pulls the gun saying stop, I
13 don't want to hear it.

14 Now, he doesn't see the gun. Randy is sitting
15 slightly like this, and a gunshot comes in a
16 trajectory at a slightly downward angle. So when this
17 bullet hits, it is slightly downward. Did I say that
18 correctly?

19 MR. DeBUSK: (Nods head.)

20 MR. GROOMS: We know from the casing trajectory
21 that his expert testified to that this gun -- casing
22 trajectory, for those of you who don't know, is when
23 you fire a shot, the empty casing is thrown from the
24 chamber and another one pops in. So as he's here
25 shooting, the casing comes out slightly forward,

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1 13 degrees, hits off this wall, falls underneath this
2 coffee table. If you were to believe Robert's story
3 that he is pulled up over the bag to here, this casing
4 is bouncing off the wall and would have ended up
5 closer to where the body was. This is big. It shows
6 you he's seated on this couch when he pulled the
7 trigger. Same way he was when Sabrina came out.

8 Now, we know this not only because of the casing,
9 where the casing was found. Keep in mind that the
10 casings were found directly under the table. Here is
11 an overview where No. 4 is between the couches. There
12 is No. 4. Here is a close up of No. 4. You'll see
13 the casing right by the power cord. So the casing
14 shows he was seated. The trajectory shows he was
15 seated, shows he was here, bounces off this wall as it
16 would based on his defense expert's testimony. The
17 blood is here, exactly where it would be if Randy was
18 shot at a slightly downward angle.

19 He's talking to Robert like this, But, Robert,
20 one more thing -- hits him. At this point, blood is
21 dripping from his wound as he's slightly bent over.
22 He stands up, blood hits the table. At some point he
23 realizes he's shot. Even at this point he's not going
24 after him. He's backing out of there, going to
25 Sabrina. He's just been shot. He falls to the

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1 ground, Sabrina comes to him. There is blood in two
2 places, blood that matches. Look at the blood on the
3 table, see the pool of blood, the big drops of blood,
4 this indicates that it fell from above. If you are
5 hit or a through-and-through wound, you'll see it
6 splatter. This indicates it was falling. So you have
7 these drops. When they find Randy, where is the
8 blood? It's on his shorts on one side. This is huge.
9 Blood is not in the center of his trunks, not on the
10 right side. It is right where he started to fall, on
11 his shorts. These are pools of blood.

12 So he's here, he's shot, facing slightly this
13 way, bullet rockets -- or casing rockets him to the
14 corner. As he is shot, blood falls on his leg. He
15 stands up, blood falls on the table. Naturally, as
16 anyone does, he grabs his wound, tries to get to
17 Sabrina, tries to get to help, doesn't make it. He
18 got to Sabrina, said I can't believe he shot me, can't
19 believe he shot me, and falls. There would have been
20 no other chance for the blood to be on his clothing.
21 He's fallen backwards. There were no big pools of
22 blood around the carpet, because he wasn't shot around
23 the carpet. There is no pools of blood down the
24 center of his trunks, because he wasn't standing this
25 way. There is no blood on his right side because he

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1 wasn't standing this way. The trajectory of the
2 bullet could not have been at a downward angle if he's
3 standing this way and Robert is falling back.

4 His entire story has been a lie over and over and
5 over, a very bad lie at that. Because it doesn't add
6 up to the crime scene in the least. Doesn't add up to
7 what either expert said. We'll give you that the
8 bullet was 18 to 24 inches from the end of the rifle.
9 We believe it was the whole time. Never saw the gun.

10 Almost finished, promise.

11 I want you to keep in mind when you are back
12 there that Sabrina said these marks were just stains
13 or imperfections on the table. I think the pictures
14 show that, but I don't want there to be any confusion.
15 Look at the blood on his shorts, the crime scene, look
16 at the lack of a struggle. Think about what Sabrina
17 saw when she comes to Randy as he's laying there
18 dying. Think about the bullet also that Robert was
19 going to throw in the dump. Think about the gun that
20 was put back in the case the way it always is when
21 he's not planning on using it. He wanted you to
22 believe of running bandits or coyotes, whatever it is.
23 He's sitting in the same neighborhood and the gun is
24 apart; one more lie. Think about the blood. Think
25 about the crime scene. Think about what Robert saw

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1 after he shot his friend. If you think that there is
2 any way you can think, I have to pay a bill in the
3 morning, I got to get out of here, but not realize
4 this is like a horror movie, blood over the carpet,
5 blood all over the walls, blood all over your best
6 friend.

7 Sabrina said when she got to him his eyes were
8 rolling in the back of his head, same thing Robert
9 would see. What did he do? Doesn't grab a cell phone
10 to call 911, doesn't help Sabrina, his friend, doesn't
11 help Randy. Grabs his bag, grabs the murder weapon
12 and takes off. He forgets his cell phone, hat, shoes.
13 He has to get out of there, left his best friend, very
14 good friend, dying on the carpet. Think about how
15 close he was.

16 This is the Wave Rider. This is where he was
17 located. He sat in this truck and wants you to
18 believe, oh, I just assumed he passed out, so I'll
19 sleep it off in the truck. I'll put this gun back
20 apart because I don't need it. Never once did he come
21 back that night to check on Randy. Never once did he
22 come back to check on Sabrina. He knew Randy was
23 dead. He saw what he did. He saw the results. Saw
24 his eyes roll back in his head when he left. Now, it
25 is time to come up with a story.

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1 You heard the 911 tapes. The reason we put this
2 stuff in is to show credibility, shows what Sabrina
3 said was true. He is already gone, he left. He got
4 his bag and his rifle, only this time she said the
5 barrel is hanging out of the top, further shows
6 creditability to the State's case. It is our job to
7 put up the facts, and we've done that. It is your job
8 to look at the facts and decide if what we said is not
9 credible, if what we said not true and something else
10 must have happened in that room.

11 Ladies and gentlemen, this is a murder, not an
12 accident. I hope we're past that by now. No
13 involuntarily, not an accident. This was not a
14 reckless act on the part of the defendant. His story
15 is not true; it cannot be true. It is impossible.
16 Only story that makes any sense is what we have given
17 you by also demonstrating what Sabrina heard, last
18 words that were said of both parties. Think about the
19 last words that were said and what that indicates to
20 you. Look at the crime scene photos, indicate what
21 that means to you. Please remember the blood.

22 Find him guilty of murder, because it is what he
23 did. If you believe he's guilty of murder, stand
24 firm. Show the other people how you got there. This
25 is not involuntary. Don't let him off. Find him

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1 guilty of murder. Not involuntary manslaughter,
2 murder. That is what this is. Don't give him a pass.
3 This is a murder.

4 Thank you so much for your time. I know this has
5 been intense for the last few days. It's intense for
6 everybody. We really do truly appreciate your service
7 and appreciate you being here. I just pray that
8 you'll take everything that we've given you in serious
9 consideration to make the right decision, that this is
10 a murder.

11 THE COURT: All right. Ladies and gentlemen, I'm
12 going now to read you my charge. I have to read it to
13 you because the rules require that I give you a
14 verbatim copy of my charge. Please understand that
15 every part of the charge is important. You must look
16 at it as a complete document and not focus in on any
17 particular small part of that document. You must put
18 it all into context when you are reviewing it.

19 During the trial of this case, you and I had
20 certain duties to perform. As trial judge, it is my
21 duty and responsibility to preside over the trial of
22 the case, but I also have the duty to rule on the
23 admissibility of the evidence offered during the
24 trial. You are to consider only the competent
25 evidence before you. If there was any testimony or

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1 evidence ordered stricken from the record in this case
2 during this trial, you must disregard that testimony.
3 You are to consider only the testimony which has been
4 presented from this witness stand, any exhibits which
5 have been made a part of the record in this case and
6 any stipulations or agreements of counsel.

7 I have the additional duty to charge you the law
8 applicable to this case. As a presiding judge, I'm
9 the sole judge of the law of the case and it is your
10 duty as jurors to accept and apply the law as I now
11 state it to you. If you have -- already have an idea
12 as to what the law is or what the law ought to be and
13 it does not agree with what I now tell you the law is,
14 you must abandon that idea because you are sworn to
15 accept the law and apply the law exactly as I state it
16 to you.

17 In every case tried in this court, before a jury,
18 the jury becomes the sole and exclusive judge of the
19 facts in a case. A trial judge cannot intimate,
20 state, comment on or make any statement to a trial
21 jury about the facts in a case. Since you, the jury,
22 are the sole judge of the facts in this case, you are
23 not to infer from what I have said during the progress
24 of this trial and ruling on the admissibility of
25 evidence, or otherwise, or anything that I say now

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1 during the course of these instructions to you that I
2 have any opinion about the facts in this case. The
3 law does not allow me to have an opinion about the
4 facts in this case. This is a matter solely for you,
5 the jury, to determine.

6 As jurors, it is your duty to determine the
7 effect, value, weight and truth of the evidence
8 presented during this trial. The indictments in this
9 case charge the defendant with murder and possession
10 of a weapon during the commission of a violent crime.
11 I'm reminding you that the fact that the defendant was
12 arrested, charged and indicted in this case is not
13 evidence in this case and cannot be considered by you
14 as evidence of guilt in this case, nor does it create
15 any presumption or inference of guilt. These
16 documents simply are the formal written instruments
17 which contain the charges made against the defendant.
18 It is this formal document by which the case is
19 brought into this court.

20 The indictments in this case allege two different
21 offenses against the defendant. The charges are
22 Indictment 2014-GS-26-4138 for murder. Indictment
23 2014-GS-26-4139, possession of a weapon during the
24 commission of a violent crime. Each indictment
25 charges a separate and distinct offense. You must

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1 decide each indictment separately on the evidence and
2 the law applicable to it uninfluenced by your decision
3 as to any other indictment. The defendant may be
4 convicted or acquitted on any or all of the offenses
5 charged. You will be asked to write a separate
6 verdict of guilty or not guilty for each indictment.

7 The defendant has pled not guilty to these
8 indictments, and that plea puts the burden upon the
9 State to prove the defendant guilty. A person charged
10 with committing a criminal offense in South Carolina
11 is never required to prove himself innocent. I charge
12 you that it is an important rule of the law that the
13 defendant in a criminal trial, no matter what the
14 seriousness of the charge may be, will always be
15 presumed to be innocent of the crime for which the
16 indictment was issued unless guilt has been proved by
17 evidence satisfying you of that guilt beyond a
18 reasonable doubt. This presumption of innocence does
19 not end when you begin your deliberations. It
20 accompanies the defendant throughout the trial until
21 you reach a verdict of guilt based on evidence
22 satisfying you of that guilt beyond a reasonable
23 doubt.

24 The presumption of innocence is like a robe of
25 righteousness placed about the shoulders of the

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1 defendant, which remains with the defendant until it
2 has been stripped from the defendant by evidence
3 satisfying you of the defendant's guilt beyond a
4 reasonable doubt. The presumption of innocence is not
5 mere legal theory. It is not just a legal phrase. It
6 is a substantial right to which every defendant is
7 entitled unless you, the jury, are satisfied from the
8 evidence of the defendant's guilt beyond a reasonable
9 doubt.

10 Now, the State has the burden of proving the
11 defendant guilty beyond a reasonable doubt. Some of
12 you may have served as jurors in civil cases where you
13 were told it is only necessary to prove that a fact is
14 more likely true than not true, such as by the greater
15 weight or preponderance of the evidence. In criminal
16 cases the State's proof must be more powerful than
17 that; it must be beyond a reasonable doubt.

18 Proof beyond a reasonable doubt is proof that
19 leaves you firmly convinced of the defendant's guilt.
20 There are very few things in this world that we know
21 with absolute certainty, and in criminal cases the law
22 does not require proof with absolute certainty or that
23 overcomes every possible doubt. If based on your
24 consideration of the evidence you are firmly convinced
25 that the defendant is guilty of the crime charged, you

CLOSING ARGUMENT - MR. GROOMS

1 must find the defendant guilty. If on the other hand
2 you think that there is a real possibility that the
3 defendant is not guilty, you must give the defendant
4 the benefit of the doubt and find him not guilty.

5 What is a reasonable doubt in the law? A
6 reasonable doubt is the kind of doubt that would cause
7 a reasonable person to hesitate to act.

8 There are two types of evidence which are
9 generally presented during a trial, direct evidence
10 and circumstantial evidence. Direct evidence is the
11 testimony of a person who claims to have actual
12 knowledge of a fact, such as an eyewitness. It is
13 evidence which immediately establishes the main fact
14 to be proved. Circumstantial evidence is proof of a
15 chain of facts and circumstances indicating the
16 existence of a fact. It is evidence which immediately
17 establishes collateral facts from which the main fact
18 may be inferred. Circumstantial evidence is based on
19 inference and not on personal knowledge or
20 observation. The law makes no distinction between the
21 weight or value to be given either to direct or
22 circumstantial evidence, nor is a greater degree of
23 certainty required of circumstantial evidence than of
24 direct evidence. You should weigh all the evidence in
25 a case after weighing all of the evidence, if you are

CLOSING ARGUMENT - MR. GROOMS

1 not convinced of the guilt of the defendant beyond a
2 reasonable doubt, you must find the defendant not
3 guilty.

4 Necessarily, you must determine the credibility
5 of the witnesses who testified in this case, and
6 credibility simply means believability. It becomes
7 your duty as jurors to analyze and evaluate the
8 evidence and determine which evidence convinces you of
9 its truth in determining the believability of the
10 witnesses who have testified in this case, you may
11 believe one witness over several, or you may believe
12 several over one. You may believe a part of the
13 testimony of a witness, and reject the remaining part
14 of the testimony of that same witness. You may
15 believe the testimony of a witness in its entirety, or
16 reject the testimony of a witness in its entirety.
17 You may consider whether any witness has exhibited to
18 you any interest, bias, prejudice or other motive in
19 the case. You may also consider the appearance and
20 manner of a witness while on the witness stand.

21 Now, there has been evidence presented that
22 witnesses have made prior statements which are not
23 consistent with the witness' present testimony. You
24 may use this evidence to decide whether to believe the
25 witness. You may use evidence of the earlier

CLOSING ARGUMENT - MR. GROOMS

1 contradictory statements to determine the truth of
2 those statements. It is up to you to decide whether
3 to believe the earlier statements or the testimony
4 given at trial. If a witness is shown to have
5 knowingly testified untruthfully concerning any
6 material matter, you may consider this in determining
7 whether to trust the witness' testimony as to other
8 matters. You may reject all testimony of that
9 witness, or give all or part of the testimony, the
10 weight you think it deserves.

11 The rules of evidence ordinarily do not permit
12 witnesses to testify to opinions or conclusions. An
13 exception to this rule exists for witnesses we call
14 expert witnesses. A witness who by education and
15 experience has become an expert in some art, science,
16 profession or calling may state an opinion as to
17 relevant and material matters in which the witness
18 claims to be an expert, and may also state the reasons
19 for that opinion. You should consider any expert
20 opinion received in evidence in this case, and like
21 any other evidence, give it the weight you think it
22 deserves. If you decide that the opinion of an expert
23 is not based on sufficient education and experience,
24 or you conclude that the reasons given in support of
25 the opinion are not sound, or that the opinion is

CLOSING ARGUMENT - MR. GROOMS

1 outweighed by other evidence, you may disregard that
2 opinion entirely.

3 An expert witness' testimony is to be given no
4 greater weight than that of other witnesses simply
5 because the witness is an expert. Further, you are
6 not required to accept the expert's opinion even
7 though it is not contradicted. When an expert witness
8 is called by either the State or the defendant, he
9 expects to be paid and should be paid. You should not
10 take into consideration the fact that the witness is
11 paid unless there is some evidence or circumstances
12 appearing from the evidence, which would fully and
13 reasonably convince you that the testimony of the
14 witness has been influenced because of the sum which
15 he or she has been paid as a witness.

16 The defendant is charged with murder. The State
17 must prove beyond a reasonable doubt that the
18 defendant killed another person with malice
19 aforethought. Malice is hatred ill-will or hostility
20 towards another person. It is the intentional doing
21 of a wrongful act without just cause or excuse, and
22 with the intent to inflict an injury or other
23 circumstances that the law will -- from which the law
24 will infer evil intent. Malice aforethought does not
25 require that malice exists for any particular time

CLOSING ARGUMENT - MR. GROOMS

1 before the act is committed. Malice must exist in the
2 mind of the defendant just before and at the time the
3 act is committed. Therefore, there must be a
4 combination of the previous evil intent and the act.

5 Malice aforethought may be expressed or inferred.
6 These terms "express" and "inferred" does not mean
7 different kinds of malice, but merely the manner in
8 which malice may be shown to exist, that is either by
9 direct evidence or by inference from the facts and
10 circumstances which have -- which are proved.

11 Expressed malice is shown when a person speaks
12 words which express hatred or ill-will for another, or
13 when the person prepared beforehand to do the act
14 which was later accomplished. For example, lying in
15 wait for a person or any other acts of preparation
16 going to show that the deed was within the defendant's
17 mind would be expressed malice. Malice may be
18 inferred from conduct showing a total disregard for
19 human life.

20 If you find that the State has failed to prove
21 beyond a reasonable doubt that the defendant committed
22 murder, you may consider whether the State has proved
23 beyond a reasonable doubt that the defendant committed
24 involuntary manslaughter. Included within the offense
25 of murder is the lesser offense of involuntary

CLOSING ARGUMENT - MR. GROOMS

1 manslaughter. To prove involuntary manslaughter, the
2 State must prove beyond a reasonable doubt that the
3 defendant unintentionally killed the victim without
4 malice, but while engaged in an unlawful activity not
5 naturally intending to cause death or great bodily
6 harm, or the defendant unintentionally killed the
7 victim without malice while engaged in a lawful
8 activity with reckless disregard for the safety of
9 others.

10 I want to read that one more time to you. To
11 prove involuntary manslaughter, the State must prove
12 beyond a reasonable doubt that the defendant
13 unintentionally killed the victim without malice, but
14 while engaged in an unlawful activity not naturally
15 tending to cause death or great bodily harm, or that
16 the defendant unintentionally killed the victim
17 without malice while engaged in a lawful activity
18 without reckless disregard for the safety of the
19 others.

20 I do not want to place any particular emphasis on
21 that charge or emphasize any agreement on my part as
22 to what your verdict should be. It is that that is a
23 rather complexed theory, and I wanted you to make sure
24 you understood it.

25 "Unintentionally" means that the defendant did

CLOSING ARGUMENT - MR. GROOMS

1 not intend for someone to be killed or seriously
2 injured. Reckless disregard for the safety of others
3 is more than mere negligence or carelessness. Mere
4 negligence or carelessness is failure to use that care
5 which a person of ordinary reason would use under the
6 same circumstances. Recklessness is a conscious
7 failure to use ordinary care. Reckless disregard for
8 the safety of others means that you are not interested
9 in the consequences of your acts or the rights and
10 safety of others.

11 If a person knows or should know that ordinary
12 care requires certain precautions to be taken for the
13 safety of others when using a dangerous
14 instrumentality, such as a gun or car, but that person
15 fails to use those precautions without concern, the
16 person's actions are considered reckless. The State
17 must also prove beyond a reasonable doubt that the
18 defendant's act was the approximate cause of death.
19 Proximate cause is the direct cause, the immediate
20 cause. It is the -- or it is that cause without which
21 death of the victim would not have resulted.

22 There must be a chain of causation from the time
23 of the injury inflicted by the defendant until the
24 time of the victim's death. Proximate cause does not
25 necessarily means that it occurred immediately prior

CLOSING ARGUMENT - MR. GROOMS

1 to death. The violation of a statute if it is the
2 proximate cause of an injury is evidence of
3 recklessness.

4 The defendant has raised the defense of an
5 accident. An act may be excused on the grounds of
6 accident if it is shown that the act was
7 unintentional, that the defendant was acting lawfully
8 and that the reasonable care was used by the
9 defendant. For example, if a person is lawfully armed
10 in self-defense and the gun accidentally discharges,
11 the defense of accident would apply. The burden is on
12 the State to prove beyond a reasonable doubt that an
13 act was not an accident, but caused by the negligence
14 or carelessness on the part of the defendant or by
15 unlawful activity by the defendant.

16 Now, the defendant is charged with possession of
17 a weapon during the commission of or attempt to commit
18 a violent crime. The State must prove beyond a
19 reasonable doubt that the defendant was in possession
20 of a firearm or visibly displayed what appeared to be
21 a firearm during the commission of a violent crime. A
22 fireman means any machine gun, automatic rifle,
23 revolver, pistol or any weapon which is designed to or
24 may readily be converted to expel a projectile. In
25 order to find the defendant guilty of possession of a

CLOSING ARGUMENT - MR. GROOMS

1 weapon during the commission of a violent crime, you
2 must first find the defendant guilty of either
3 committing a violent crime or attempting to commit a
4 violent crime. Murder is classified as a violent
5 crime. The State must prove beyond a reasonable doubt
6 the weapon further advanced or helped in the
7 commission of the crime.

8 Now, there are two possible verdicts which may
9 be -- you may find on each indictment in this case,
10 guilty or not guilty. There is absolutely no
11 significance, whatsoever, in the order which I have
12 stated these possible verdicts. It is simply we have
13 to state one first. Ladies and gentlemen, I'll remind
14 you that your verdict must be a unanimous verdict.
15 Madam Foreperson, when the jury agrees on the verdict,
16 you will write the verdict, simply circle. I have
17 prepared verdict sheets for you., Circle the verdict
18 and sign your name and knock on the jury room door and
19 inform the bailiff that you reached a verdict. At
20 that time, we'll bring you back into the courtroom.

21 I'll have Mr. Ropp take you into your jury room
22 and ask you not to begin deliberations until I have
23 either brought you back into the courtroom and told
24 you to do so, or I have sent the exhibits, a copy of
25 my charge and the verdict forms. If I send that into

CLOSING ARGUMENT - MR. GROOMS

1 you, that means start. Do not start until you have
2 those things.

3 I want to point out a couple of things about the
4 verdict form. There is a different form for each of
5 the charges. It says, As to the charge of murder, we
6 the jury unanimously find the defendant -- and you can
7 circle guilty or not guilty on that. If, and only if,
8 you found the defendant guilty of murder, and I don't
9 suggest that should be your verdict, but if you find
10 him guilty of murder, you stop there. Don't move on
11 to involuntary manslaughter. I have written that on
12 the form.

13 If you find him not guilty, then you may consider
14 the charge of involuntary manslaughter, and then you
15 can find him guilty on that charge or not guilty as
16 well.

17 As to the charge of possession of a weapon during
18 the commission of a violent crime. I have put on here
19 that if you have found him not guilty of murder, you
20 may not consider the offense of possession of a weapon
21 during the commission of a violent crime, because only
22 murder of the possible verdicts -- if you were to find
23 him -- if, and I don't suggest you should, but if you
24 were to find him guilty of involuntarily manslaughter,
25 that is not classified as a violent crime and would

DELIBERATIONS/VERDICT/SENTENCING

1 not support a finding of possession of a weapon. I
2 think I made that clear.

3 Madam Court Reporter, if you would mark this
4 charge as a court exhibit and make sure that the jury
5 gets it into the jury room. Segregate the alternates
6 at this time.

7 (Court's Exhibit 4 marked.)

8 (The jury exits at 11:31 a.m., and the
9 following is heard out of the presence of the jury.)

10 THE COURT: Anything from the State?

11 MR. GROOMS: No, Your Honor.

12 MR. SMALDONE: No, Your Honor.

13 THE COURT: Come forward and make sure Ms. Dahl
14 has all of your exhibits, that they are marked and the
15 proper package is prepared for submission to the jury.

16 (Whereupon, the Court Reporter and attorneys
17 agree to the exhibits admitted to the jury and the
18 jury started deliberating at 11:37 a.m.)

19 (The time is 2:00 p.m., and the following is had out
20 of the presence of the jury.)

21 THE COURT. We have a verdict.

22 (The jury enters at 2:03 p.m., and the
23 following is heard in the presence of the jury.)

24 THE COURT: All right. Madam forelady, have you
25 reached a verdict?

DELIBERATIONS/VERDICT/SENTENCING

1 FORELADY: Yes, we have.

2 THE COURT: Was it an unanimous verdict?

3 FORELADY: Yes, it was.

4 THE COURT: Would you give it to the bailiff,
5 please? All right. Madam clerk, please publish the
6 verdict.

7 THE CLERK: State of South Carolina, County of
8 Horry, on Indictment 2014-GS-26-04138, State of South
9 Carolina versus Robert Carl Ware.

10 As to the charge of murder, we the jury
11 unanimously find the defendant guilty. Signed Sandra
12 Sellers, foreperson, dated 1/14/2016.

13 As to Indictment 2014-GS-26-04139, as to the
14 charge of possession of a weapon during the commission
15 of a violent crime, we the jury unanimously find the
16 defendant guilty. Signed Sandra Sellers, foreperson,
17 dated January 14, 2016.

18 Ladies and gentlemen of the jury, if this is your
19 verdict so signify by raising your right hand.

20 THE COURT: Let the record reflect that each
21 juror has raised his or her hand.

22 Any request for polling of the jury by the
23 defense?

24 MR. SMALDONE: I request that the jury be polled.

25 THE COURT: Individual polling, please.

DELIBERATIONS/VERDICT/SENTENCING

1 him and marijuana. I mean, yeah, this is a horrible
2 injustice.

3 THE COURT: Mr. Ware, the jury has spoken. They
4 have found you guilty. It is not my place or anyone
5 else to question it. I have already ruled hearing the
6 motions for directed verdict. There was evidence that
7 would support this jury's verdict. It was only a
8 requirement of a scintilla, but I find there is
9 certainly evidence, ample evidence, to support the
10 jury's verdict. This is not your first rodeo, as they
11 say. You had several scrapes. You have been
12 convicted, according to your record, of a number of
13 other offenses, although none as serious as this, but
14 this is the most serious.

15 Sentence of the Court is that you be sentenced or
16 confined to the State Department of Corrections for
17 life on the murder, and for the possession of a
18 firearm during the commission of a violent crime or
19 violent felony, I sentence you to five years
20 concurrent. Thank you very much.

21 Ladies and gentlemen, thank you for your service.
22 See them out of the courtroom. All right, gentlemen.

23 MR. SMALDONE: For the record, I renew all of my
24 previous motions, directed verdict, all objections and
25 all motions I made.

WITNESSES

A. M. Cox Myrtle Beach Police Department

DOCKET NO. 2014-GS-26-04138

The State of South Carolina

County of Horry

J. Stephen Grooms

14H03573

COURT OF GENERAL SESSIONS

OCTOBER, 2014 TERM

FILED
HORRY CO

2014 OCT 17 PM 2:12

DATE RECEIVED FROM
GRAND JURY

ARREST WARRANT NUMBER

2014A2620601763

CDR: 0116 16-03-0010, 0020

DOA: 8/7/2014

THE STATE

vs.

Robert Carl Ware W/M

**DOB:
SSN:**

ATTORNEY: W. Thomas Floyd

ACTION OF GRAND JURY

OCT 16 2014

Foreperson of Grand Jury
Date:

VERDICT

Indictment for

MURDER

Jimmy A. Richardson, II, Solicitor

ORIGINAL

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)

INDICTMENT

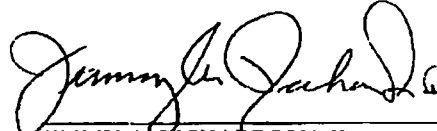
At a Court of General Sessions, convened on OCTOBER 16, 2014, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Robert Carl Ware did in Horry County, on or about August 7, 2014, kill the victim, Randy Banks, with malice aforethought, either express or implied, by means of gunshot, and the victim did die as a proximate result thereof on or about August 7, 2014 in Horry County, in violation of Section 16-03-0010, S. C. 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.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

2016 JAN 14 PM 4:50

COURT DATE
PLED GUILTY/TRIAL

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

379

COUNTY OF
STATE

Horry

VS.

Robert Carl Ware

AKA:

Race: WHITE Sex: M Age: 54

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder

INDICTMENT/CASE#: 2014GS2604138

A/W#: 2014A2620601763

Date of Offense: 8/7/2014

S.C. Code §: 16-03-0010, 0020

CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or 1ewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

J. Grooms

SCB79104

Grooms, J. Stephen

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-13

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-45 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$

\$100

\$

\$12

\$

\$25

\$

\$500

\$

\$25

\$

\$150

\$

\$50

\$

\$40/ca

\$

\$5

\$

\$

\$

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

Melanie Huggins-Ward

Natalie Dahl

Lambert
2152
7-14-16

WITNESSES

A. M. Cox Myrtle Beach Police Department

ARREST WARRANT NUMBER

2014A2620601767
CDR: 0549 16-23-0490
DOA: 8/7/2014

ACTION OF GRAND JURY

OCT 16 2014
Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014-GS-26- 04139

The State of South Carolina

County of Horry

J. Stephen Grooms

14H03573

COURT OF GENERAL SESSIONS

OCTOBER, 2014 TERM

THE STATE

vs.

Robert Carl Ware W/M

DOB:
SSN:

ATTORNEY: W. Thomas Floyd

Indictment for

**POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME**

Jimmy A. Richardson, II, Solicitor

ORIGINAL

2014 OCT 17 PM 2:12

DATE RECEIVED FROM
GRAND JURY

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

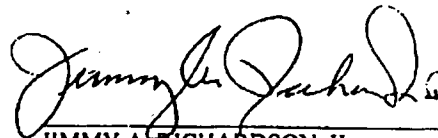
At a Court of General Sessions, convened on OCTOBER 16, 2014, the Grand Jurors of Horry County present upon their oath:

**POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME**

CDR: 0549 16-23-0490

That Robert Carl Ware did in Horry County, on or about August 7, 2014, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. 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.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

FILED
2016 JAN 14 PM 4:50
CLERK

382

STATE OF SOUTH CAROLINA

COUNTY OF Horry
STATE VS.

Robert Carl Ware

AKA:

Race: WHITE Sex: M Age: 54DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Possession of a Firearm During Commission of a Violent Crime

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS2604139A/W#: 2014A2620601767Date of Offense: 8/7/2014S.C. Code §: 16-23-0490CDR Code #: 0549

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADSin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lcwd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Grooms, J. Stephen

SCB79104

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of S days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-200.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-35 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

PTUP

 days/hours Public Service EmploymentObtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

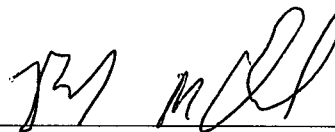
Sentence Date:

[Signature]
 215-21
 1-14-16

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,



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 8th day of June, 2017.

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