

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Clifton B. Newman, Circuit Court Judge
Honorable Robert E. Hood, Circuit Court Judge

RECEIVED

MAY 08 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

RICHARD A. CAPELL,

APPELLANT

APPELLATE CASE NO 2016-000475

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBIT # 1 (VIDEO OF INCIDENT).**

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
 The State of South Carolina,)

vs.)

Richard Capell,)

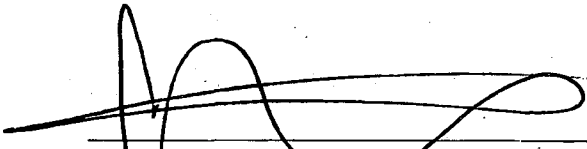
Defendant.)

IN THE COURT OF GENERAL SESSIONS
 Warrant Number: 2015A402040034

NOTICE OF MOTION FOR HEARING
 PURSUANT TO S.C. CODE § 16-11-440(C)

TO: ASSISTANT SOLICITOR JOHN CONRAD

YOU ARE HEREBY NOTIFIED that the above-captioned defendant, through his attorney will move before the Court the week of January 18, 2016 for a hearing pursuant to S.C. Code § 16-11-440(C), and for such other relief as requested in the attached motion.


 Sarah Christine Jurick
 Assistant Public Defender
 1701 Main Street
 Columbia, SC 29201

Columbia, South Carolina

This 13^m day of January 2016

RICHLAND COUNTY
 FILED
 2016 JAN 13 AM 9:34
 JEANETTE W. MCBRIDE
 C.C.P. & G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

The State of South Carolina,)

vs.)

Richard Capell,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
Warrant Number: 2015A402040034

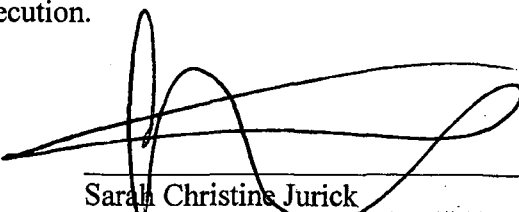
MOTION FOR HEARING
PURSUANT TO S.C. CODE § 16-11-440(C)

The above-captioned defendant, through his attorney, Sarah Christine Jurick, hereby moves that a hearing be heard pursuant to S.C. Code § 16-11-440(C).

1. Defendant was arrested in Richland County on or about February 17, 2015, and charged with pointing and presenting a firearm;

2. The Defendant, through his counsel, requests a hearing pursuant to S.C. Code § 16-11-440(C), as he is immune from prosecution under this provision.

NOW THEREFORE attorney for Defendant moves that this Court conduct a hearing regarding Defendant's immunity from prosecution under S.C. Code § 16-11-440(C) and enter such Order deeming Defendant immune from prosecution.



Sarah Christine Jurick
Assistant Public Defender
1701 Main Street
Columbia, SC 29201

Columbia, South Carolina

This 13th day of January 2016

JEANETTE W. McBRIDE
C.C.P. & G.S.

2016 JAN 13 AM 9:34

RICHLAND COUNTY
FILED

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
 The State of South Carolina,)

IN THE COURT OF GENERAL SESSIONS
 Warrant Numbers: 2015A4020400034

vs.)

IMMUNITY HEARING
 MEMORANDUM OF LAW

Richard A Capell,)
 Defendant.)

MEMORANDUM OF LAW

"The General Assembly finds that Section 20, Article I of the South Carolina Constitution guarantees the right of the people to bear arms, and this right shall not be infringed." S.C. Code, § 16-11-420(c).

I. Richard Capell is entitled to an immunity hearing under the Protection of Persons and Property Act.

Richard Capell is entitled to an immunity hearing under the Protection of Persons and Property Act (the Act), S.C. Code, § 16-11-410 to -450. The Court has established that immunity under the Act is a complete bar to prosecution, and upon motion of either party, must be determined prior to trial. *State v. Duncan*, 392 S.C. 404 (2011).

Additionally, *Duncan* establishes the burden of proof at an immunity hearing is a preponderance of the evidence, with the burden on whoever requested the hearing. *Like wise, we hold that when a party raises the question of statutory immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence.* " *Id.* at 411.)

II. Richard Capell is entitled to immunity under the Protection of Persons and Property Act.

The Act addresses "stand your ground" immunity, codifying that a person has a right to defend himself with force when they are acting lawfully in a place they have a right to be. S.C.

2016 JAN 19 AM 8:44
 JEANETTE W. MCBRIDE
 C. CLERK & S.S.
 RICHLAND COUNTY
 FILED

Code § 16-11-440(c). The elements of self-defense, excluding the duty to retreat, have been applied by the South Carolina Supreme Court to determine if a person qualifies for immunity.

“[A] valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant’s entitlement to the Act’s immunity.” State v. Curry, 406 S.C. 364, 371 (2013); State v. Douglas, 411 S.C. 307, 318 (2014).

a. This incident satisfies the elements of § 16-11-440(c).

Section 16-11-440(c) of the Act reads as follows.

“A person who is:

- (1) not engaged in an unlawful activity and*
- (2) who is attacked in another place where he has a right to be, including, but not limited to, his place of business,*
- (3) has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force,*
- (4) if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in section 16-1-60. S.C. Code § 16-11-440(c)(numbers added).*

The facts of this incident satisfy the above elements as follows.

- (1) Mr. Capell was in the clubhouse of his condominium, a place in which he is lawfully allowed.*

This incident took place at the clubhouse in Point Arcadia, a living complex with it’s own facilities and Homeowner’s Association. All residents and owners have access to the community facilities. Mr. Capell is a homeowner at Point Arcadia and was lawfully in the clubhouse and manager’s office during this incident.

- (2) No physical or illegal threats were made during the prior confrontation.*

Mr. Capell was confronting his condominium manager (Mr. John Bunucci) about his concerns as a homeowner. At the end of this conversation, Mr. Capell threatens legal action, “I’ll see you in court.” He clearly ends the conversation and retreats, closing the door to Mr.

Bunucci's office behind him. There is no unlawful action on Mr. Capell's part initiating the incident.

(3) Mr. Capell had the right to stand his ground and meet force with force when Mr. Bunucci physically and verbally threatens him.

After closing the door to the management office, Mr. Bunucci stormed out after him, yelling "are you threatening me? Because if you're threatening me, I'll fucking have your shit down" while taking several large steps and rapidly decreasing the distance between them. At this point, Mr. Capell, a concealed weapons permit (CWP) holder, pulls his gun out to defend himself.

(4) Mr. Capell reasonably believed pulling out his concealed weapon was necessary to prevent the commission of great bodily injury to himself.

Mr. Capell, 5'6, 150 pounds, and disabled, reasonably believed pulling his gun out was necessary to prevent great bodily injury to himself. In two seconds, Mr. Bunucci closed the distance between them, and heatedly articulated a threat.

Mr. Capell was born with congenital ectopy of the urinary bladder, and birth defects affecting his lower extremities. He has had several abdominal surgeries and hernia operations due to his lack of pelvic bone and stomach muscle. One blow to the abdominal area could cause Mr. Capell great bodily injury. *See Attachment.* Aware of his physical condition and the situation, Mr. Capell believed pulling his concealed weapon was within the bounds of the law and necessary to protect himself.

For the above reasons, Mr. Capell is entitled to immunity under the elements of § 16-11-440(c).

b. This incident satisfies the elements of self-defense.

The South Carolina Supreme Court has emphasized the elements of self-defense, excluding the duty to retreat, should be used to determine if the defendant is entitled to immunity.

Self-defense contains the following elements:

- (1) *the defendant must be without fault in bringing on the difficulty;*
- (2) *the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger;*
- (3) *if the defense is based upon his belief of imminent danger, the defendant must show that a reasonable prudent man of ordinary firmness and courage would have entertained the same belief.*

State v. Fuller, 297 S.C. 440, 442-43 (1989)(excluding the duty to retreat, which is not applicable to immunity).

The incident meets all of these elements as follows.

- (1) *Mr. Capell is without fault in bringing on the difficulty.*

In *State v. Bryant*, the Court stated, "any act of the accused in **violation of law** and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars his right to assert self-defense." 336 S.C. 340, 345 (1999)(emphasis added). The Court in *Bryant* further found that the right to self-defense is restored once one withdraws from the situation. "If, after commencing the assault, the aggressor withdraws in good faith from the conflict and announces in some way to his adversary his intention to retire, he is restored to his right of self-defense. *Id.*; 55 ALR 3d at 1003. "One's right to self-defense is restored after a withdrawal from the initial difficulty with the victim if that withdrawal is communicated to the victim by word or act." *State v. Graham*, 260 S.C. 449 (1973).

Mr. Capell is without legal fault in creating the situation. He did not act unlawfully in his interaction with Mr. Bunucci. While confrontational, his interactions were within the bounds of

a homeowner complaining to his property manager. There were no physical or illegal threats made, and Mr. Capell was in the process of leaving of his own accord.

Even if the court believes Mr. Capell is at fault by confronting Mr. Bunucci, Mr. Capell ends that confrontation by closing the door to Mr. Bunucci's office. He creates a physical barrier between him and Mr. Bunucci, clearly showing his intent to retreat. In accordance with *Bryant* and *Graham*, this act restores his right to self-defense.

(2) *Mr. Capell believed he was in imminent danger of sustaining serious bodily injury.*

The law is clear that one is allowed to act on appearances in defending themselves. In *State v. Fuller*, the defendant testified he saw the victims open the trunk of their car, and that he saw a shiny object in their hands. After he shot them, no weapon was found or recovered. The Supreme Court held the defendant was entitled to a jury charge on appearances, quoting their prior decision in *State v. Jackson*, "*A defendant must show that he believed he was in imminent danger, not that he was actually in such danger, because he had the right to act on appearances, and under the circumstances as they appeared to him, he believed he was in such danger...*" *State v. Fuller*, 297 S.C. 440, 443-44 (1989); *State v. Jackson*, 227 S.C. 271 (1955); *State v. Rivers*, 186 S.C. 221 (1938).

In *State v. Fuller*, the Court found that "words accompanied by hostile acts may, depending on the circumstances, establish a plea of self-defense." 297 S.C. 440, 444 (1989). In *State v. Starnes*, the Court found, "[o]nce the right to fire in self-defense arises, a defendant is not required to wait until his adversary is on equal terms or until he has fired or aimed his weapon in order to act." 340 S.C. 312, 322 (2000); *State v. Hendrix*, 270 S.C. 653 (1978).

Mr. Capell believed he was in imminent danger, due to Mr. Bunucci's words and actions.

Mr. Capell is a small disabled man. He is 5'6, weighs 150 pounds, and was born physically disabled. His ability to defend himself physically is very limited, and one blow to the stomach could cause great bodily injury. Out of concern for his safety and ability to defend himself within the bounds of the law, Mr. Capell became a concealed weapons permit (CWP) holder.

Mr. Capell pulled his concealed weapon and demanded firmly that Mr. Bunucci step back. He did not use deadly force. He did not make additional threats. He stopped what he perceived as imminent danger in its tracks, then retreated when the threat was over. The law does not require that he wait until it is too late to pull his weapon. He believed on appearances that Mr. Bunucci was going to cause him great bodily injury, and he took appropriate action.

(3) *Mr. Capell's actions were those of a reasonable person in his situation.*

Self-defense requires that a person behave objectively, acting in the same manner as the so-called "reasonable man." The reasonable man is defined as "a man of ordinary prudence, firmness, and courage." *State v. Fuller*, 297 S.C. 440, 442-43 (1989). The reasonable man cannot be a coward; he only has access to self-defense at the level an ordinary person would feel threatened. Likewise, he cannot be overly aggressive.

While the law does not allow for personality characteristics that differentiate from the reasonable man, such as cowardice or aggression, it does allow for physical characteristics. It is a reasonable man *similarly situated* to the defendant. The Court has indicated that age, physical condition, and gender should be considered when evaluating reasonableness. *See State v. Hendrix*, 270 S.C. 653, 660 (1978) ("Appellant was sixty-five years of age – some fifteen to twenty years older than his adversary – and hardly a physical match for the younger man.")

In *State v. Dickey*, the Court ruled the appellant was entitled to a directed verdict on self-

defense, overturning his conviction of voluntary manslaughter. 349 S.C. 491 (2011). Mr.

Dickey pointed his gun at the victim as he approached, attempting to get him to stop. Instead of stopping, the victim continued to approach aggressively, causing Mr. Dickey to shoot and kill him. There was testimony that the victim had reached under his shirt such that Mr. Dickey believed he was reaching for a gun, but it turned out the victim was not armed. The court looked to the manner of approach in determining this was an act of self-defense. "Petitioner, in turn, testified the two men were covering ground very quickly and if he turned his back he was afraid of being attacked from behind with no way to defend himself." *Id.* at 496. The Court also looked to the physical characteristics of both parties, finding it relevant that Mr. Dickey was disabled and thus more vulnerable, "there was great disparity in the physical stature and capabilities" and, "In 2001, the Veteran's Affairs Administration classified Petitioner as thirty percent disabled after he was diagnosed with patella syndrome and underwent several corrective operations, leaving his right foot partially paralysed." *Id.* at 497, 501.

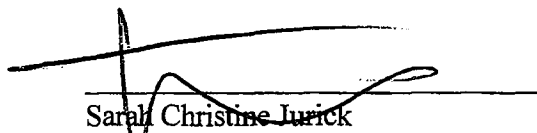
The case at hand is analogous to *State v. Dickey* minus one important part: nobody died. In *Dickey*, the court finds self-defense when the aggressor comes at Mr. Dickey quickly. Mr. Dickey, who is physically inferior and disabled pulls a weapon to defend himself, and the aggressor continues to approach and Mr. Dickey shoots. In this case, Mr. Bunucci approaches Mr. Capell aggressively, closing the gap between them in a matter of seconds. Mr. Capell is physically inferior to Mr. Bunucci, and is severely disabled. Mr. Capell receives full disability due primarily to his physical condition. He was forced to quit his job as an emergency medical technician after being diagnosed with pulmonary mycobacterium avium complex. In addition, Mr. Capell suffers from anxiety attacks and has some mental health issues. He is unable to

defend himself physically, and like Mr. Dickey, he pulls a weapon and demands that Mr. Bunucci stops. Unlike in *Dickey*, Mr. Bunucci stops. Mr. Capell, having de-escalated the situation, holsters his weapon and retreats.

For the above reasons, this incident meets the elements of self-defense. Having satisfied all the elements of immunity under the Act, Mr. Capell is entitled to immunity from prosecution.

THEREFORE, defendant respectfully requests the Court rule him immune from prosecution and dismiss his charge.

Respectfully submitted,



Sarah Christine Jurick
Assistant Public Defender
Attorney for the Defendant

This 19th day of January, 2016

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND)

STATE OF SOUTH CAROLINA)
STATE,)

TRANSCRIPT OF RECORD
15-GS-40-06008

v.)
RICHARD A. CAPELL,)

DEFENDANT.)

January 19, 2016
Columbia, South Carolina

BEFORE :

THE HONORABLE CLIFTON B. NEWMAN, JUDGE

APPEARANCES:

JOHN CONRAD, ESQ.
JOE BERRY, ESQ.
Assistant Solicitors

SARAH JURICK, ESQ.
MAISIE OSTEEN, ESQ.
Attorneys for Defendant

FRANCES B. RAY, RPR
Circuit Court Reporter

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EXHIBITS

STATE'S:

No.	Description	I.D./EVD.
1	Video	36/36

1 THE COURT: You may proceed.

2 MR. CONRAD: Thank you, Your Honor. I
3 believe we're on the record with State versus
4 Richard Capell, docket 15-GS-40-6008. We're here
5 for Defense's motion for immunity. The State is
6 ready to proceed. I believe Defense will go first.

7 THE COURT: All right. Yes, ma'am.

8 MS. JURICK: Your Honor, just in way of a
9 brief opening, obviously we understand this is a
10 hearing, bench hearing. We're here because on
11 February 16th, 2015, Mr. Capell presented a firearm
12 in order to protect himself. After the incident he
13 was charged with pointing and presenting and this
14 prosecution followed. We're asserting that under
15 16-11-440(c) this stand your ground provision and he
16 is 1 from prosecution, and that's what we're
17 presenting evidence on. And our first witness is
18 Susan Mitchell.

19 THE COURT: All right. Come forward
20 please.

21 WHEREUPON,

22 **SUSAN MITCHELL,**
23 having been duly sworn by the Clerk, testified
24 as follows:

25 THE CLERK: Have a seat in the witness

1 stand please. State your name for the record.

2 THE WITNESS: Susan Ahearn Mitchell.

3 THE COURT: Yes.

4 MS. OSTEEN: Thank you, Your Honor.

5 **DIRECT EXAMINATION**

6 BY MS. OSTEEN:

7 Q Ms. Mitchell, thanks for coming here today. How
8 do you know Mr. Capell?

9 A He is my son.

10 Q And I asked you here today so you can provide a
11 little background for us into his disability, about
12 mental history. You told me yesterday how he was
13 the March of Dimes baby, and he was actually born
14 with several birth defects?

15 A Yes, ma'am.

16 Q Can you tell us about those.

17 A Yes. He was a twin and he had multiple birth
18 defects. The most notable one was his abdomen was
19 open in the front, there was no closure. He had
20 severe bilateral club feet and his toes were up
21 against the calfs of each leg, and he was just kind
22 of splayed out. And his positioning during
23 pregnancy was such that his pelvis didn't come
24 together in the front, and it left all the area of
25 his abdomen, including over his exposed bladder

1 open. He immediately underwent casting to correct
2 the orthopaedic problems; and at the time that he
3 was born, they didn't know quite what to do about
4 the abdominal situation so he was later referred to
5 MUSC where a urologist and a plastic surgeon
6 consulted and over his different growth stages they
7 were trying to get as much skin available and trying
8 to close the area over his abdomen that was open
9 trying to seal his bladder. Up until that point it
10 was just multiple fistula all the time that were
11 leaking. They succeeded at about age ten, I guess,
12 with a closure, but the bladder had so much damage
13 that it would not expand; and when the urine would
14 come in, it would reflux back up into the kidneys
15 causing kidney damage. So he underwent more
16 surgeries. Every summer we were either at Emory or
17 USC, and they ultimately decided they couldn't leave
18 the bladder like it was so they put in an ileum to
19 handle the urine. They had to use extensive mesh to
20 cover the abdominal wall, but there really wasn't
21 anything to support it so over the years the mesh
22 had started to erode, the pressure has built up in
23 his abdomen and caused a succession of incisional
24 hernias. It was determined a couple of years ago
25 that he needed to have a total abdominal wall

1 reconstruction which is not something that they do
2 here in South Carolina, and MUSC referred him to a
3 Doctor Heniford up in Charlotte, North Carolina.
4 Ultimately Heniford said that he couldn't and
5 wouldn't handle it and suggested that he go to Duke.
6 In the meantime, Richard has had problems with
7 infections bladder-wise with these hernias, with the
8 skin breaking down. He also has some lung problems.
9 He has bloods on his -- blebs on his lungs and one
10 of these caused a spontaneous pneumothorax back in
11 the '90s and -- or it could have been early 2000s,
12 I'm not real sure, I don't have his medical records.
13 But he ended up in the hospital, it was life
14 threatening. They got him to the hospital in time.
15 While he was in the hospital the -- they were gonna
16 pull the chest tube that was helping clear his
17 lungs, the chest cavity of lungs of air. And they
18 pulled the tube, and when he got up to get out of
19 bed because the physician's assistant wanted to get
20 him up, a second one hit him so he had an extended
21 stay in the hospital. Every time Richard goes in
22 for any procedures, he usually, if they say he'll be
23 there overnight he usually ends up with
24 complications and he's there for a week to two
25 weeks. He has reactions to medications and he has

1 complications with wound healing. At this point in
2 time now he's having mesh erosion. I don't know
3 exactly what the medical records show at the
4 facility where he is, but I know he's had multiple
5 trips to the hospital and he's told me that they are
6 still trying to clip these mesh erosions from him
7 and it's quite painful.

8 He continued to have orthopaedic problems,
9 and then he was working as an EMT with Richland
10 County EMS and they thought that he had been exposed
11 to a TB patient so they sent him for TB treatment.
12 As it turned out, it wasn't tuberculosis. He had
13 developed avium mycobacterium complex which is a
14 lung condition that causes great difficulty for him.
15 He has to be careful with his lung exposures with
16 chemicals. It's nothing that, as I understand
17 anyway, that they can cure. They can mitigate the
18 symptoms that he has, but I'm not sure that it's
19 curable at this point.

20 But anyway, Richard has never wanted to
21 appear less than anybody else physically though he
22 does have bone loss, bone density problems,
23 arthritis. For that reason and the constellation of
24 other problems he has, he started having panic
25 attacks, would sweat profusely, was fighting

1 depression. And when his grandfather died -- I
2 don't live here -- but Richard lived for a while
3 with my father in Columbia. And my dad's health
4 started going down. Richard kind of looked out
5 after him a little bit, and in fact, called me the
6 weeks preceding a bad situation with my dad. I came
7 down to be with him. He was not able to work
8 anymore. He was being treated for depression, the
9 panic attacks, the anxiety. Still having no clear
10 plan of what to do and when to do it with his
11 abdominal issues, and he started having -- I don't
12 want to say psychotic episodes, but manic episodes
13 where he would not sleep for days at a time and
14 think everybody was against him. And he was in
15 constant contact with the Forest Acres Police
16 Department about different issues so they were very
17 well aware of him. And at this point he really is
18 in a pretty fragile health situation right now, and
19 he has to be very careful about lifting, carrying
20 things, falling or getting in a position where he
21 would have a direct blow to his abdomen. And it's
22 kind of put him in a real tenuous mental state.
23 It's the whole constellation of things going on with
24 him.

25 Q Thank you, Ms. Mitchell. That's all the

1 questions I have for you. Please answer any
2 questions the State may have.

3 THE COURT: All right.

4 MR. BERRY: Thank you. May it please the
5 Court.

6 **CROSS-EXAMINATION**

7 BY MR. BERRY:

8 Q Thank-you for being here today, ma'am. I just
9 want to real quickly lay some foundation of some of
10 this knowledge that you have about your son's
11 medical history. You testified intensely about a
12 lot of his birth defects which obviously you were
13 there for that and you acknowledge. Then you
14 testified about his more recent medical
15 complications. How did you obtain information,
16 particularly, about his most recent medical health
17 issues? Were you talking to Mr. Capell's doctor
18 directly yourself, or is this all information your
19 son has told you or how are you getting that?

20 A How recent are you talking because we were -- I
21 took him for a second opinion up to Spartanburg
22 probably the first of this year ---

23 Q Okay.

24 A ---about his abdominal wall.

25 Q You mean 2015? We're ---

1 A Oh, no, 2014, right.

2 Q 2014, okay.

3 A No, '15. This is '16. '15.

4 Q Yes, ma'am. So you accompanied him to his doctor
5 appointments in the beginning of 2015?

6 A Yes.

7 Q So you're there when the doctor was telling you?

8 A Oh, yes, and it was during the examination. And
9 then I get his Humana BOBs, or whatever those
10 explanation of benefits, because all of his mail is
11 coming to me now. And anything with his medications
12 and stuff that goes through his social security
13 disability or Humana, that mail comes through me so
14 I don't have direct knowledge but I do get the
15 mailings from the insurance providers.

16 Q Okay. I believe you testified that aside from
17 some complications recently, most of these issues
18 were all started from birth with Mr. Capell, is that
19 right, or is that fair?

20 A The physical, yes.

21 Q Okay.

22 A The depression and anxiety and that didn't
23 develop until later.

24 Q So most of his, if not all, physical disabilities
25 have been with him since birth, right?

1 A Yes.

2 Q You said Mr. Capell worked as an EMT during his
3 life. When did that job end, do you recall?

4 A Probably early 2000s. He could answer that
5 better than I.

6 Q All right. And do you know if he's had any job
7 since then, any sort of regular employment?

8 A I'm not sure if the rescue squad work that he did
9 reimbursed him for mileage or anything. That was
10 more volunteer but, you know, he was disabled. He
11 ---

12 Q Okay.

13 A The situation with his kidneys and his hernias
14 was such that he couldn't sit for prolonged periods
15 of time. The situation with his orthopaedics, with
16 his triple arthrodesis and bone loss he couldn't
17 walk, and you know, couldn't be on his feet all the
18 time. And with his lung problems there was no way
19 nobody would hire him because he really couldn't do
20 anything on any sustained basis.

21 Q Prior to him working as an EMT did he have any
22 other jobs or careers, or has EMT been his primary
23 career?

24 A That was his longest period of employment. I
25 know me worked with the Department of Corrections

1 briefly. And again, he would have to fill you in on
2 that because once fellas get to be 25 they don't
3 necessarily check in with their moms a lot, what
4 they're doing, or where they are.

5 Q And just so we're clear, the physical aspects of
6 his disability, those were all present at birth; is
7 that fair?

8 A Except for the lung problems, that manifested
9 later.

10 Q Okay. Specifically the problem with his abdomen?

11 A Oh, yes. Oh, yes. He has no protection there at
12 all from birth.

13 Q Okay, thank you.

14 MR. BERRY: Beg the Court's indulgence.
15 Nothing further from the State with this witness,
16 Your Honor.

17 THE COURT: Anything further?

18 MS. OSTEEN: Thank you, Ms. Mitchell.

19 THE COURT: Thank you, ma'am. You can
20 step down.

21 MS. OSTEEN: We would call Mr. Richard
22 Capell.

23 WHEREUPON,

24 **RICHARD CAPELL,**

25 having been duly sworn by the Clerk, testified

1 as follows:

2 THE CLERK: Have a seat in the witness
3 stand please. State your full name for the record.

4 THE WITNESS: Richard Ahearn Capell.

5 **DIRECT EXAMINATION**

6 BY MS. OSTEEN:

7 Q Hi, Mr. Capell.

8 A Greetings.

9 Q Are you a CWP holder?

10 A Up until a few days after my incident with
11 Mr. Bunucci.

12 Q Were you a CWP holder prior to the incident with
13 Mr. Bunucci?

14 A Prior to and at the time.

15 Q And can -- you can legally carry a gun?

16 A Yes.

17 Q When this incident happened where were you?

18 A At Point Arcadia clubhouse.

19 Q Is that some place you have a right to be?

20 A Oh, yes.

21 Q And can you tell me about the incident.

22 A I've been having some ongoing issues with
23 Mr. Bunucci, and I went to go talk with him about
24 them. I received a phone call from a nonprofit
25 organization that I have been in contact with and

1 was seeking some training for advocacy work for the
2 Americans with Disability Acts and so forth and so
3 on. And they told me that he had been calling
4 around making inappropriate phone calls to them and
5 to Pals and other places, and that's what prompted
6 me to go up there and talk to him that day. And I
7 decided I would, you know, explain to him that or
8 try to get him to admit to me about things that he
9 had done and he was being very evasive towards me
10 that day.

11 Q So you were in his office?

12 A Yeah.

13 Q Then what happened?

14 A Well, he was being extremely evasive towards me
15 and that just kind of boiled my blood a little bit.
16 And you know, like anybody that has, you know,
17 property problems with someone, when they're being
18 ignored or they're being evasive towards them they
19 tend to get a little perturbed with them so I said,
20 fine, I'll see your ass in court, slammed my fist on
21 the desk, not him, not at all, I never touched him.
22 Slammed my fist on the desk and then I turned around
23 and started to leave. And as I was leaving, before
24 I could even get the office door closed he's up out
25 of his desk and he's charged towards me towards the

1 door. Now he's becoming a threat towards me and
2 he's yelling, are you threatening me; and I said no,
3 wham, slammed the office door shut and then I
4 started to retreat further. And as I was, I heard
5 the office door open behind me and he became a real
6 threat and I turned around and engaged the threat to
7 stop him. And I was prepared to use deadly force to
8 stop the man if he didn't stop; and when I spun
9 around and identified him, you know, or engaged the
10 threat, he stopped. And once he stopped I didn't
11 have the need to go any further with my self-defense
12 or, you know, no need to shoot him, he stopped.
13 That's -- my intentions was to make the man stop; he
14 did. And I told him to step back; well, I used
15 profanity. But anyway, told him to step back, he
16 stepped back. And he went in his office and I
17 re-holstered my weapon and I went home.

18 Q When he came at you were you scared?

19 A Oh, yeah. I was in fear of, you know, bodily
20 harm. I mean, great bodily harm to be honest with
21 you because of what my mother had explained which
22 you will never get me to anyway. You know, I'm
23 vulnerable to attacks like that. And knowing that I
24 needed surgery and it was not Duke, it's Ohio I have
25 to go have surgery.

1 Q So after you went home what happened?

2 A I had a panic attack and then my door bell is
3 ringing and the door is knocking. I called Forest
4 Acres Police. I said, look, I'm not expecting
5 anybody. They said, oh, it's us, we need to talk to
6 you, can you open the door. I said no, any good
7 lawyer will tell you don't talk to the police. They
8 can never help you, never, never, never talk to
9 police so I didn't.

10 Q But you ended up going to jail for it, right?

11 A That's correct.

12 Q Did you turn yourself in?

13 A I did.

14 Q Okay. I have no further questions. Please
15 answer any State's questions at this time.

16 A Okay.

17 MR. BERRY: Thank you. May it please the
18 Court.

19 THE COURT: Yes, sir.

20 **CROSS-EXAMINATION**

21 BY MR. BERRY:

22 Q Mr. Capell, let me ask you, when you went to talk
23 to Mr. Bunucci what was your specific purpose in
24 entering that office that day?

25 A I was hoping that I would get him to confess to

1 several things he had done to me which I had
2 specifically named, trapping (ph) me into the master
3 deeds and bylaws there and denying access to my
4 service dog in the swimming pool which is a
5 violation of South Carolina Code of Law 43-33-40,
6 which to this day nobody has enforced against that
7 man.

8 Q You say you were trying to get him to confess.
9 What purpose were you getting him to confess? I
10 mean, what good would that do for you to get him to
11 confess?

12 A Well, if he had confessed to me he would have
13 dealt with just the board where we live at. He
14 chose not to do so I chose to take him to court
15 civilly and then file a complaint before taking it
16 to police but that never happened.

17 Q Okay. So would you agree with me when you
18 entered the Mr. Bunucci's office your voice was
19 raised when you were talking to him?

20 A Sure.

21 Q Would you agree with me that when you began
22 addressing Mr. Bunucci that you were
23 confrontational?

24 A I don't know about that. I didn't feel like I
25 was at the time.

1 Q Okay. And Mr. Capell, to your knowledge was this
2 incident recorded in any manner?

3 A I recorded it.

4 Q Okay. How did you record it, sir?

5 A I had an old Motorola Droid cell phone from the
6 Verizon network, put it on airplane mode, and used
7 it as a body camera much like the police should be
8 using.

9 Q Okay. And you said you use it like a body cam.
10 Were you holding it in your hands or where was this
11 camera?

12 A I was wearing a hospital scrub shirt, and instead
13 of it being on my belt it was attached up here.

14 Q Okay.

15 A At an angle like this in plain sight.

16 Q So you would agree that it was towards the top of
17 your shirt then, or towards -- was it more towards
18 the top or middle part?

19 A Center body mass.

20 Q In the center of your body mass, sir? Now Mr.
21 Capell, when you -- would you agree in me when you
22 were talking to Mr. Bunucci that you got pretty
23 close to him in this discussion?

24 A The office was pretty tight so I had no other
25 choice unless I could sit on the stuff that was

1 behind me.

2 Q So you agree that you got extremely close to him?

3 A Sure.

4 Q All right. And you already testified that you
5 slapped your hand on the desk and was that a gentle
6 slamming your hand, or would you agree that was
7 pretty loud and pretty startling?

8 A It was loud, but I mean, he was watching what I
9 was doing the whole time, and you know, for the most
10 part he was. And you know, a person has a right to
11 be aggravated with somebody. That doesn't
12 necessarily mean that they're confrontational.

13 Q All right. Would you agree that you had started
14 to turn to leave the office when Mr. Bunucci
15 initially stood up. Would you agree with that?

16 A When I was leaving the office he -- when I
17 closed, when I went to close the door I saw him
18 charging the door.

19 Q Okay. So to your recollection, do you recall
20 whether Mr. Bunucci stood up before you turned to
21 leave the office or after you turned to leave the
22 office?

23 A I slammed my fist on the desk and I immediately
24 turned. To my knowledge he had not gotten up then.

25 Q Okay.

1 A I took maybe two, maybe three steps because he's
2 got one step that leads up and then I turned around
3 to close the door and he's up on his feet. And he
4 had already gotten the words out of his mouth, are
5 you threatening me. And at that time I yelled out,
6 no, and saw him charging the door and slammed the
7 door shut.

8 Q Okay. Now when you saw charging, can you be more
9 specific about that. Would you say that he was
10 running towards you?

11 A He couldn't run because the office was so packed,
12 so tight. I mean, he was, he was coming though. He
13 was coming with intent. He was not just, you know,
14 leisurely walking. He was, he was moving with
15 intent.

16 Q Well, you say that word intent. Can you tell the
17 Court some of the specific things you noticed that
18 cause you to believe that he was coming towards you
19 with quote, unquote, intent.

20 A He's not known to raise his voice like he did,
21 number one. He, he's a big man. He's intimidating.
22 He outweighed me by a hundred pounds at least at
23 that time. I'm 5'6". According to the police
24 report he's 6'2". He was, he became very
25 intimidating at that time, and you know, and he

1 wasn't casually starting towards the office door.
2 He was coming at, you know, at a fast pace for him
3 so to speak, but he wasn't running.

4 Q Okay. Was Mr. Bunucci's hands raised?

5 A When I closed the door I didn't see his hands. I
6 was looking at his — I was paying attention to this
7 part of him when I closed the door.

8 Q Well, did you see his hands raised when he came
9 through the door?

10 A I didn't see him come through the door. I was in
11 the process of retreating. I had my back turned to
12 the door.

13 Q So your testimony is that your back was towards
14 the door and Mr. Bunucci came through?

15 A My back was towards the door, I was retreating.
16 I heard the door open behind me and I engaged the
17 threat.

18 Q Okay. So your testimony is today your decision
19 to pull your gun was made before you turned around
20 to face Mr. Bunucci? Is that, am I understanding
21 testimony correctly?

22 A I resorted on my training which was to engage the
23 threat.

24 Q So are you saying you don't recall when you made
25 the decision to pull the gun or that you turned and

1 saw Mr. Bunucci and then pulled your gun or were you
2 ---

3 A No, it was so short, such short distance in
4 between us that I made the decision right then and
5 there to engage the target.

6 Q With your back turned to him or while facing him?
7 That's what I'm trying to...

8 A As I was turning I was drawing my weapon.

9 Q Okay. So would it be fair to say your decision
10 to pull your gun was made before you'd actually
11 fully turned around to face Mr. Bunucci, right?

12 A I didn't say that; you did.

13 Q Okay. But I'm asking you, from what I understand
14 from your testimony is you, you had started to pull
15 your gun before you fully turned around and faced
16 Mr. Bunucci; is that what you said?

17 A According to my training he was a threat and I
18 engaged the threat. That's what I did.

19 Q You said that several times, but I'm trying to
20 get you -- we're trying to get the specifics as to
21 when you decided this threat existed. And if you
22 don't recall ---

23 A The threat existed when I slammed the door shut
24 on him and he came through the doorway. He should
25 never have pursued me, especially since he knows I

1 carry a concealed weapon. He should have never
2 threatened me, especially knowing I carry a
3 concealed weapon.

4 Q Okay, all right. And when you did turn around
5 and you pointed the gun towards him, did you see
6 Mr. Bunucci's hands raised at that point? Either in
7 a threatening or passive manner?

8 A He was still in the process of saying something
9 to the extent where he would take me down, and then
10 he realized, I guess, what was taking place and he
11 raised his hands. And you hear him say, did you
12 just pull that off; and I said something to the
13 extent like, you know, yes, I did and I got it on
14 video too. It's called stand your ground as in the
15 stand your ground law.

16 Q So you would agree with me then, if I understand
17 your testimony correctly, that at no point during
18 this confrontation did Mr. Bunucci raise his hands
19 going to strike you?

20 A He did once he realized that there was a weapon
21 drawn on him.

22 Q Okay, so your testimony is that he raised his
23 hand in order to strike you after he saw your gun?

24 A I think I just said he did raise his hands once
25 he realized there was a weapon drawn on him.

1 Q So when his hand was raised was his hand open or
2 closed as in fists?

3 A Well, from what I understand he had one hand down
4 by his left side. The other hand was up 'cause he
5 was pointing down. He just got through saying
6 something to the extent where, if you're threatening
7 me I'll take you down or something of that nature.
8 And then he paused just for a second. You could see
9 his hands raised up and he said, did you just pull
10 that off. And I said, yes, I did, it's called stand
11 your ground law. And I had him on video.

12 Q And when did Mr. — when Mr. Bunucci came through
13 that door about how far were you from him?

14 A Maybe six, eight steps away.

15 Q Okay. And at that point when you turned to face
16 him did you continue to back up or did you stay
17 where you were, or what did you do when your gun was
18 pointed at Mr. Bunucci?

19 A I immediately spun from, you know, this position
20 towards my right, drawing my weapon at the same time
21 and coming in and meeting my left hand with my three
22 fingers down the whole, you know, putting the weapon
23 up, and telling him to step back. And at that time
24 I noticed he did not have anything in his hands and
25 I noticed that his hands were not in a threatening

1 position at that time; however, I chose to do what I
2 did because of the short distance between us. You
3 don't sit there when somebody is holding a knife in
4 their hands at 10 feet away from you and think that;
5 oh, it's just a knife, it's not gonna harm me. They
6 can close that distance and stab you before you can
7 blink your eye.

8 Q Well you just mentioned a knife. Did you see
9 Mr. Bunucci have a knife that day?

10 A No, I did not engage the target as far as pulling
11 the trigger goes because he was not a threat at that
12 moment. He stopped making the threat. The man
13 stopped. My intentions was to make the man stop. I
14 was prepared to use deadly force to make the man
15 stop his charge toward me.

16 Q Okay.

17 A He decided he wanted to live that day.

18 Q All right. And when you say make him stop,
19 you're saying that Mr. Bunucci was still charging
20 you; is that correct?

21 A He, as far as I know took at least two or three
22 steps out of the office towards me from that
23 doorway.

24 Q Was he running or was he walking at that point?

25 A I guess you would say walking. If he was running

1 he would have been at me.

2 Q All right.

3 A We were that close.

4 Q Now you say he did not have any weapons that day.

5 Had you ever known him to carry any sort of weapon,
6 Mr. Bunucci?

7 A Not that I know of. That doesn't mean that he
8 doesn't.

9 Q Okay.

10 A Just because you don't see it, that's what
11 concealed weapon is all about.

12 Q So your testimony is you've never personally
13 known him to carry a weapon?

14 A I've never seen him with one other than, say,
15 work tools which can be used as a weapon. Bare
16 hands can be used as a weapon, no one knows.

17 Q Okay. And I believe -- when I asked you would
18 you agree that you were very confrontational when
19 you went in that office, I believe you disagreed
20 with me. But I believe when you were testifying
21 when Ms. Jurick was asking you questions, you used
22 the language your blood was boiling. Is that what
23 you said or something to that effect?

24 A I don't recall saying that. When did I say that?

25 Q When, during direct when Ms. Jurick was asking

1 questions.

2 A When did I ---

3 Q Just a few minutes ago. Did you say something to
4 the effect of boil and the blood was boiled, got up
5 boiled or something of that effect?

6 A I may have. I mean, can you read the testimony
7 back?

8 Q We can ask the court reporter to read the
9 testimony back if the Court will permit.

10 THE COURT: Who's asking questions now?

11 MR. BERRY: We're trying to refresh Mr.
12 Capell's memory. He asked if the testimony could be
13 read back.

14 THE COURT: So he's asking questions.

15 MR. BERRY: No, I'm asking questions,
16 Judge.

17 THE COURT: Do you request that the court
18 reporter ---

19 MR. BERRY: Yes, please, Your Honor.

20 (Court reporter reads back requested portion.)

21 BY MR. BERRY:

22 Q So by boiling blood you mean you were angry at
23 that point; is that correct?

24 A I would say more frustrated.

25 Q All right. You say Mr. Bunucci was being

1 evasive. What, specifically what responses was he
2 giving you that you felt like he was being evasive?

3 A Let's see, he said Mr. Capell, if have wronged
4 you I don't recall, or something to that extent. I
5 mean, we have the video if you care to play it.

6 Q I think we will here in a little bit.

7 A Okay.

8 Q So, all right, now as far as you and Mr. Bunucci
9 go, in the past, has he ever assaulted you?

10 A (No response.)

11 Q Has he ever attempted to hit you or strike you in
12 any way?

13 A That's irrelevant.

14 Q Did he attempt to -- has he ever attempted to
15 charge and attack you of any sort of manner before,
16 you testified he tried to at this point.

17 A I never confronted him with anything before and
18 he has never charged me or anything like that
19 before.

20 Q And you said, I believe you testified that you
21 had never known him to raise his voice prior to this
22 event; is that correct?

23 A To yell the way he did, that's correct, I've
24 never seen him do that.

25 Q All right. Well, did you ever see him raise his

1 voice before this point at all?

2 A No.

3 Q Just beg the Court's indulgence. Mr. Capell, a
4 couple of more questions. I asked you if you've
5 ever seen Mr. Bunucci raise his voice or did he ever
6 attack you. Had you ever seen him get in
7 altercation with anybody else?

8 A No, but he himself told me a story about being up
9 at the guard house with some of the other residents
10 taking control of the condos back because of drug
11 trafficking or something of that nature, and they
12 all had like yard tools and stuff like that or
13 baseball bats or whatever. I can't remember exactly
14 the words he used, but he's told me about that
15 himself. And you know, the whole reason behind body
16 cameras is the same reason why I used my cell phone
17 as a body camera was so that there'd be no question
18 as to what happened that day. So if you'd like to
19 know how about play the video please.

20 Q And speaking of that video, what did you do with
21 this video that you recorded?

22 A I loaded it to Youtube so that it would be
23 accessible any time anywhere.

24 Q Was this the only video you ever put on Youtube
25 or?

1 A Oh, no, I do lots of videos.

2 Q All right. And prior to you putting this video
3 on Youtube, did you edit it in anyway or is what
4 ended up on Youtube the full video?

5 A Oh, it was straight from the phone straight to
6 Youtube.

7 Q Okay. So you agree there's no missing scenes or
8 loud dialogue or actions from the video, right? It
9 shows the beginning to the end, this whole
10 situation. Is that what you ---

11 A From when I turned the camera on to when I turned
12 the camera off, that's correct.

13 Q Okay.

14 MR. BERRY: No further questions for this
15 witness.

16 **REDIRECT EXAMINATION**

17 BY MS. OSTEEN:

18 Q Mr. Capell, I just have one following question
19 for you. How did the Forest Acres Police Department
20 get that video? Did you give it to them?

21 A I did. They wanted to know what was going on. I
22 sent it to Sergeant Lori Tumblin who is the
23 community relations officer at Forest Acres. I sent
24 her the link to it so that they could see it 'cause
25 they wanted to know what happened.

1 Q Thank you. That's all the questions I have.

2 A Okay.

3 THE COURT: Anything further?

4 MR. CONRAD: Nothing from the State, Your
5 Honor.

6 THE COURT: You may step down.

7 Your next witness.

8 MS. OSTEEN: Your Honor, that's all the
9 witnesses we have.

10 THE COURT: Anything by the State?

11 MR. BERRY: The State calls John Bunucci.

12 WHEREUPON,

13 **JOHN M. BUNUCCI,**

14 having been duly sworn by the Clerk, testified
15 as follows:

16 THE CLERK: Have a seat in the witness
17 stand. State your name please.

18 THE WITNESS: John Michael Bunucci.

19 **DIRECT EXAMINATION**

20 BY MR. BERRY:

21 Q How are you doing today, sir?

22 A I'm good, could be better. Thank you.

23 Q Please briefly tell the Court where you're from,
24 sir?

25 A I'm born and raised in New Jersey, lived in

1 Pennsylvania in the mountains. We couldn't afford
2 New Jersey once we were married, and we moved down
3 here, I guess, the summer of 2006, 2007.

4 Q Okay. And did you work at Point Arcadia before?

5 A I worked there since -- September of 2007 I was
6 hired.

7 Q And were you working there back in February of
8 2015?

9 A Yes, I was, sir.

10 Q What were your responsibilities at that complex.

11 A I was the property manager. I was also the,
12 helped out with maintenance. I was the bookkeeper.
13 I was the licensed pool operator. I kind of did
14 everything I could to fiscally help the homeowner's
15 association.

16 Q So you had an office there?

17 A The office was -- yeah, the main office there.

18 Q Can you describe the main office.

19 A It was kind of small, had an old desk in it.
20 Somebody had given us a computer desk where we had
21 the computer on, rather small, maybe, I don't know,
22 8x10, 8x12.

23 Q And was there -- what about the rest of the
24 buildings? You got the office, was there a lobby,
25 what else was there.

1 A Yes. There was a club house so you would enter
2 to the front door and there was a large area for
3 meetings and people rented it sometimes for parties
4 and everything and then the office was on to the
5 left.

6 Q And did you know Richard Capell at the time?

7 A Yes. When he moved in I guess it had been a
8 year, year-and-a-half ago, somebody in that little
9 cul-de-sac called, said somebody is moving in. And
10 he had, I don't know if it was a washer, dryer, just
11 a washer, I went over there. His mom was there with
12 him, and he was physically unable to help get the
13 washing machine upstairs so I went up and carried it
14 up for him, which I do for anybody that moves in.
15 And in the interim, I gave him, I remember
16 specifically I gave him a wrench to channel lock to
17 the hoses. I said give it back to me, I'm at the
18 office, told him where I was. It was kind of weird
19 was 'cause his mom insinuated they wouldn't be able
20 to do it so I said, not a problem. I went upstairs
21 and hooked up the hoses and said just watch them,
22 make sure they don't leak. I mean, it was the first
23 encounter with him when he moved in.

24 Q And do you recognize Mr. Capell here in the
25 courtroom today?

1 A Yes, he is sitting between the two lawyers over
2 this.

3 Q Can you describe what he's wearing.

4 A He's got a, like, blue suit on with sunglasses
5 on.

6 Q Let the record reflect that ---

7 THE COURT: It does.

8 MR. BERRY: Thank you, Your Honor.

9 BY MR. BERRY:

10 Q Do you remember the day of February 16th, 2015?

11 A Yes, I do, sir.

12 Q What were you doing that day?

13 A That was -- we were having a meeting. It was
14 President's Day so everybody was off. And I
15 remember the -- we had a power outage, we had a
16 lightning strike. I can't remember exactly what
17 happened but the modem and the computer was down and
18 we were having a board meeting that night. And I
19 was trying to, at that point in time when Mr. Capell
20 had come in ---

21 Q Let me stop you. This is the time he comes into
22 your office area?

23 A Right. I was trying to fix the modem and trying
24 to get the computer up and running.

25 Q What time of day is this roughly?

1 A Oh, God, I want to say around lunch time, right
2 before, right after lunch time.

3 Q Was he alone?

4 A I heard the dog, but I don't know if I saw the
5 dog.

6 Q You didn't see his dog?

7 A I was really trying to get this thing going
8 'cause I had stuff to print out on the computer for
9 the meeting that night.

10 Q Okay.

11 MR. BERRY: Now, permission to approach
12 the witness, Your Honor.

13 THE COURT: Yes, sir.

14 BY MR. BERRY:

15 Q Do you recognize this CD?

16 A That's the video that Mr. Capell made.

17 Q Have you had a chance to review this?

18 A Yes, several times, and I had people show me it
19 several times.

20 Q And is this, is your initials watching this
21 video?

22 A Yes, sir.

23 MR. BERRY: Your Honor, permission to
24 bring in the Smart board to hook up the -- I'm gonna
25 have this marked, the CD, that I just handed you,

1 sir, marked State's 1, trial exhibit 1.

2 (WHEREUPON, State's Exhibit No. 1 was
3 marked for identification only.)

4 MR. BERRY: Publish it.

5 THE COURT: You asked for it to be marked
6 as for identification?

7 MR. BERRY: That it's pretrial exhibit 1.

8 THE COURT: What about it?

9 MR. BERRY: I'd offer it into evidence
10 later. I want to show the video first with your
11 permission.

12 THE COURT: You can't show evidence before
13 it is evidence.

14 MR. BERRY: Well, at this time I want to
15 offer State's premarked Exhibit Number 1 into
16 evidence.

17 THE COURT: Any objection?

18 MS. OSTEEN: Not at this time, Your Honor.

19 THE COURT: All right, it's admitted.

20 (WHEREUPON, State Exhibit No. 1
21 was admitted into evidence.)

22 MR. BERRY: And permission to publish?

23 THE COURT: Yes, sir.

24 (State's Exhibit No. 1 was played for the Court.)
25

1 BY MR. BERRY:

2 Q All right. That video that we just watched, is
3 that the video that's the exact same video on that
4 disk that we watched previously? It's been marked
5 State's Exhibit 1, Mr. Bunucci.

6 A I'm sorry, what?

7 Q The video we just watched, is that the same ---

8 A Yes.

9 Q ---as the video and the disk?

10 A Yes, sir.

11 Q State's Exhibit 1, okay. So you remember that
12 incidence?

13 A Much, yeah.

14 Q Can you, in your words, what happened?

15 A I, you know, I've been a manager for quite some
16 time. You know, I don't expect being treated like
17 that by anybody and to get threatened with jail time
18 for something that I had no idea what was going on,
19 was just crazy. And then having, trying to fix the
20 modem, get ready for the board meeting and being
21 just threatened, having -- he was hanging over me.
22 I mean, it was ---

23 Q Let me ask you a question.

24 A Sure.

25 Q You had prior incidents with this defendant? You

1 said you'd known him for a year or so previously.

2 A Yeah, since we moved in.

3 Q What happened to the relationship?

4 A You know, it was fine. You know, he always told
5 me, you know, I carry and everybody knows it and
6 that kind of stuff. I said, that's fine, great,
7 you're a homeowner, you have more than right to
8 carry if you want.

9 Q When you say "carry" you mean carry a weapon?

10 A Carry a weapon, yes. He told me and I said,
11 that's great, great, wonderful. Started out very
12 good relationship. He started a lot with the me --
13 he started a lot telling me about the ADA and all
14 that stuff, you know, the American Disabilities Act
15 and how a lot of people aren't complying to it and
16 --

17 Q Briefly, if I may, what was, what did he want
18 with the dog in the pool? What was going on there?

19 A He approached. He approached one day and asked
20 if the dog could go in the pool with him 'cause the
21 dog is a service dog. And I said, I know the dog is
22 allowed in the pool area, but I was not sure if DHEC
23 would allow the dog in the pool for the reasons why
24 having the dog in the pool because it's a public
25 pool. I said I would have to check on it. We were

1 having a meeting with DHEC with Jim Rich who was
2 head of the water, the public waters I think for
3 swimming pools. I went down and met with him. And
4 he was aware that somebody had questioned having a
5 dog in the pool. And what came out of it is that --
6 you know, I called around to, I think, ABELL (ph)
7 and Pal. These are organizations to help people
8 with handicaps to ask what I can ask him, what are
9 the dogs, is there any way to verify the dogs that
10 they are service dogs 'cause I don't know anything
11 about it.

12 Q Were you asking inappropriate questions?

13 A Not at all. Seemed like everyone I called kind
14 of knew of Mr. Capell. I didn't come out and say I
15 got this guy Mr. Capell here and he's, you know,
16 he's being a scooch and I got to do this, this and
17 that. It was purely for information because my job
18 is to inform the board that, okay, this is his
19 rights and this is what he's allowed to do and this
20 is what to be compliant with the ADA this is what we
21 need to do and -- go ahead.

22 Q Please finish your statement?

23 A And he -- and I believe I did a pretty thorough
24 job of that. We wrote him a letter and basically
25 what it came down to, that the dog was allowed in

1 the pool; but we asked him to use the pool off hours
2 like we do people that want to swim laps to just
3 make sure that the dog is safe in the pool for his
4 safety, the dog safety and for anybody in the pool
5 with him.

6 Q And your understanding that's why he was upset?

7 A I don't know, but I never said, no, he's not
8 allowed in the pool. I always said I don't know,
9 I've never had that question before so I have to
10 find that out.

11 Q What other prior incidents with him? Had he
12 confronted you before?

13 A He was, he was very angry with stray cats. As a
14 matter of fact, in the beginning he said, hey, put
15 this near my window, I got the dogs, the dogs will
16 bark, let me know. If the cats were in the cage —
17 'cause we had several stray cats all around. I
18 mean, I was there for seven-and-a-half years I must
19 have caught, I don't know, two or three dozen cats
20 in traps. And the Richland County Animal Control is
21 real good. They would be over there like in an hour
22 to pick up the cats and they would set the cages for
23 me. As a matter of fact, it got to the point I was
24 using them so much they would actually leave the
25 cage for me to set and then I would set it at night,

1 in the morning call them up, we're having stray
2 cats.

3 Q So he confronted you about the cats and about the
4 bylaws ---

5 A It was getting to the point where there were
6 certain individuals that were actually feeding the
7 cats, and we pleaded with these people. And this
8 has been ongoing since I started there. We pleaded
9 with them, please don't feed the stray cats, if you
10 take away their food source they will go away. And
11 obviously the lady across the street from him kind
12 of took it on herself to feed all the cats in the
13 neighborhood, and I think that really stressed out
14 Mr. Capell.

15 Q So was this the -- this incident we just watched,
16 was that the first time he had gotten angry towards
17 you, around you?

18 A No, a week before he had come in. I had just
19 gotten back from getting supplies 'cause I was
20 working on something. I, specifics I was coming
21 back from Lowes or Home Depo. And I came in, I had
22 my lunch. It was about 12:00 or so. He was like, I
23 have these papers that you need to read. I said,
24 well, I'm on lunch right now, I'll be more than
25 happy to read them. He said, no, you have to read

1 them in front of me. I said, well, I'm on lunch
2 right now. I said I'm more than happy to give them
3 back to you or you want to come back later, whatever
4 you want to do. No, you have to read, I'm your
5 boss, you work for me. I said, you know what, it's
6 lunch time, you need to get out of my office, and
7 that was it. And then I, like a week,
8 week-and-a-half later he came in and did this so.

9 Q To go back to this incident, tell me again from
10 your perspective, just walk me through how
11 everything happened.

12 A We had been receiving emails to the point where
13 he was sending me private emails on Point Arcadia.
14 He said, give me your personal email. I said, no,
15 I'm not giving you my personal email. A couple of
16 the emails were like, this is, I'm sending you
17 personal information, if you tell anybody I'll make
18 sure you're in court. And I reiterated to him that
19 this is the work's email, that the board is in
20 charge of home, of the homeowner's association and
21 that they are privy and they read all these.
22 They're the ones that make the final decision on all
23 these emails. They read them, at least they're
24 supposed to, and I forwarded them to them. Now
25 whether they read them or not, that's up to them,

1 but I can't make, I can't make them. It got to the
2 point where I was not able to make heads or tails
3 about it. A lot of it was just, you know, threats
4 that you have to do this, you have to do that, you
5 know.

6 Q What about the date in question, the incident in
7 question, when he comes into your office, how far
8 away from you was he at the time?

9 A He was pretty much over me.

10 Q Over you?

11 A Like, standing over me.

12 Q How would you describe his tone towards you?

13 A Extremely, extremely aggressive.

14 Q Did you feel threatened?

15 A Of course. I mean, I try my best to, I mean, it
16 went, what, two or three minutes with me saying, you
17 know, I apologize, I don't remember. I mean, what
18 do you do to a person who is irate? You kind of
19 just, okay, you know, all right, all right, and then
20 that's when he started slamming stuff, but you know.

21 Q Did he -- what all did he slam?

22 A He was over me and then he slammed his, like,
23 hands right between me and like the computer. I was
24 working, initially I was working on both trying to
25 get the modem to work so.

1 Q And when do you decide to get up?

2 A After he slammed the things and said — and he,
3 like, stormed out of there and I said, are you
4 threatening me.

5 Q Now why did you get up? Why did you ask him if
6 he was threatening you?

7 A 'Cause he was. And I just, you know, enough is
8 enough, there's only so much, you know. Who made
9 him boss? I mean, it's, you have to deal with
10 everybody civilly. And you know, I mean, there were
11 other people at Point Arcadia, they didn't like me
12 either but at least they dealt with me in a
13 professional manner. And we went, all the
14 grievances went before the board and the board said,
15 John, no, you got to do this, and nobody was ever
16 while I was there treated differently, whether they
17 were — whether I liked them or not, whether they
18 were from Chicago, whether they were from Columbia
19 everybody got treated the same. And that — like
20 when I helped him move in, you know. Property
21 managers don't do that. Property managers sit at
22 the desk and they order people to do stuff, but you
23 know. Point Arcadia is a small hundred unit
24 condominium. They needed all the help they could
25 get. And it was so mismanaged before I got there

1 that they needed somebody to do all the work.

2 Q When you got up from your desk area what was your
3 intent, what were you trying to communicate to the
4 defendant?

5 A That I was gonna calling the cops, that he was
6 going to go down for all this, all the BS that he's
7 pulling.

8 Q So when you said -- it's hard to hear on the
9 video -- but you, I believe you said, are you
10 threatening me, are you threatening me, I'm gonna
11 shut you down, I think it was.

12 A Take you down, in other words, call the cops,
13 have the cops press charges for him threatening me.

14 Q Okay. And when all this is happening about how
15 far away from him were you, if you recall?

16 A Well, you kind of get out of the open. As soon
17 as I threw the door open I had a gun pointed at me.

18 Q And were you going to hit Mr. Capell?

19 A Not at all. I don't hit anybody.

20 Q Where were your hands at the time?

21 A On my side.

22 Q On your side. Did you have any weapons on you?

23 A No.

24 Q Was one concealed?

25 A No, I don't have a concealed weapons permit.

1 Q When he -- so where did he direct the gun? Where
2 he was pointing at?

3 A He was pointed at my chest?

4 Q How long did he hold it there?

5 A I guess, I guess until I turned around 'cause I
6 pointed at him and asked him if he, did you pull
7 that on me.

8 Q Did you see him pull the gun? Did you see him
9 take it out of his holster?

10 A No, no, I believe it was, I believe it was
11 pointed at the door before I even came out. I mean,
12 it all happened so fast. I mean, you're talking a
13 second before the door opened up.

14 Q So as soon as you opened the door --

15 A I felt like the gun was on me. That's why I
16 said, you know, did you just pull, pull that on me?
17 That's when I turned around to call the police.

18 Q And were you in fear for your life?

19 A Yeah. I figured, you know, my thing is to call
20 the police. What was I gonna do, stand there and
21 confront him more? No, turn around, you know, it's
22 you know, just call the police, that's what I was
23 gonna do. I mean, obviously I didn't approach him,
24 you know. It hurt, it sounded like he was running
25 out of the thing and I wanted to tell him that I'm

1 gonna call the cops and so, you know, but I guess it
2 was the dog running, you know, 'cause I didn't even
3 know where the dog was. I don't know if the dog was
4 in the office with us or not.

5 Q When he left your office was he running away or
6 walking away?

7 A He slammed the thing and he just, he bolted out.

8 Q Did you run after him?

9 A I got up and I opened the door to yell at him.

10 Q How many steps was that from getting up?

11 A I mean, maybe two.

12 Q Beg the Court's indulgence. When the door was
13 slammed how close were you to the door?

14 A I was still getting up.

15 Q Still getting up? So how far away from the door?

16 A Like I said, about two feet.

17 Q Two feet away.

18 A Two, you know, two steps so maybe three, four
19 feet my physical; but you know, I mean, I turned
20 my — if I turn my chair probably two feet. It's a
21 very small office.

22 Q Did you feel provoked?

23 A Absolutely.

24 Q No further questions, sir. Please answer any
25 questions defense counsel may have.

CROSS-EXAMINATION

BY MS. OSTEEN:

Q Hi.

A Hi, how are you?

Q Good, how are you?

A I've been better.

Q I would imagine. So just understanding the setup of Point Arcadia, it's a housing development?

A It is condominium property.

Q Condominium property. And the homeowner's association set the rules?

A Well, the master deeds and bylaws set the rules, and then there's rules that the boards over the years have had put in place, and it's up to the board to enforce those rules if they could. Like, some rules, some rules are unenforceable like if somebody is back on, back on the regime fee to buy their property from them. It's kind of -- homeowner's association do not have that kind of money to do that kind of thing. So it was antiquated by all means, it was made in 1974. It was an old master deed and bylaw.

Q And so your position as property manager is as a liaison between the homeowner's association and the ---

1 A Yeah, pretty much.

2 Q ---property owner, the renter?

3 A Along with all the other duties that I have.

4 Q And those other duties included you said
5 collecting fees and property maintenance?

6 A Property maintenance, bookkeeping, pool operator.
7 Anywhere I could save money for the homeowner's
8 association except hiring professional company to
9 come in. It's silly. It's silly if you're paying
10 25,000-dollars for somebody to cut the lawn. It
11 wasn't much lawn to cut so we hired, we hired I
12 believe the president's son to do that. And I would
13 help him when he heeded help.

14 Q And so your office was in the club house?

15 A Yes, to the side. It had its own entrance but
16 you would have to go through the pool to get to it.
17 It was actually built on top of the old deck that
18 they had before I was even there from what I
19 understand.

20 Q So you could get in from side entrance or through
21 the club house?

22 A Right, but that was usually always locked.

23 Q Okay. And residents had access to that ---

24 A Absolutely.

25 Q ---club house all the time, or they could come to

1 your office to ask questions?

2 A Absolutely.

3 Q That's where they would go if they had any
4 issues? They would come to your office?

5 A Yes, we would ask them to put it in writing which
6 Mr. Capell did quite frequently on emails and such
7 and then they would be forwarded to the board and,
8 like I said.

9 Q So talking about this incident in particular,
10 Richard came to your office?

11 A Yes, ma'am.

12 Q And he came in to discuss issues that had been
13 ongoing?

14 A He came there to yell at me at this point.

15 Q Had he brought up the issues of the dog in the
16 pool previously?

17 A That was done prior to the board meeting which
18 was probably a couple of weeks before, and one of
19 the testimony explained that, you know, I had to go
20 through — I had to find out if the dog was eligible
21 'cause I didn't know.

22 Q Right.

23 A And I would never say no to any homeowner if I'm
24 not sure.

25 Q So it was something that was kind of ongoing?

1 A Yes, it was.

2 Q All right.

3 A But he had, excuse me, he had received a nice
4 mail explaining what we had found out and that the
5 dog was eligible to go in the pool because the pool
6 was properly maintained. Even if the dog had an
7 accident you would just have to close the pool
8 normally as if you or I were to have an accident in
9 the pool and just get the chemicals up to code and
10 you're good to go again so...

11 Q And obviously we all saw the video and he was
12 talking about the issues again at a raised voice?

13 A Yes, ma'am.

14 Q And he was kind of asking a lot of questions
15 about it and ---

16 A He was all over the board, yeah.

17 Q Was pretty, pretty insistent about it, about his
18 issue, would you say that?

19 A Well, he kind of went, he was bouncing back and
20 forth to -- it was kind of, you know, it was hard to
21 deal with especially when I'm trying to go get ready
22 for a meeting which I explained to him and that the
23 modem wasn't working, I really got to fix this,
24 there's a board meeting coming and I had to print
25 stuff out for them.

1 Q You were kind of preoccupied?

2 A I was, absolutely.

3 Q And so he was annoying you being there?

4 A Annoying, no. I'm used to being annoyed.

5 Q That wasn't annoying?

6 A That was, that was over the top, ma'am. That was
7 aggression.

8 Q Okay. So after that, while he was in the office
9 you were frustrated with him being there?

10 A I was trying to have a normal level of a
11 conversation like you do with anybody try to calm
12 them down and he didn't want to hear anything of
13 that.

14 Q Okay.

15 A He kept it elevated.

16 Q So now when he hit the table and said that he'd
17 see you in court, that's when he left, right, he
18 turned to go. And that's -- is that when you stood
19 up?

20 A Yes, after that. Yes, ma'am, it's on the video.
21 Actually you can't see it on the video 'cause he
22 was, he slammed the door.

23 Q So he went out of the door and closed it behind
24 him, slammed it behind him?

25 A Yes, ma'am.

1 Q And now on direct you said that you thought that
2 the gun was pointed at you when the door was open?

3 A Yes, ma'am.

4 Q Okay. So when you opened it you immediately saw
5 it?

6 A Yes, ma'am.

7 Q And then so then after that you said, I'll
8 fucking have your shit down?

9 A No, I was saying that as I was opening the door.

10 Q And you yelled at him, I'll fucking have your
11 shit down?

12 A Yes, ma'am.

13 Q While you were coming towards him?

14 A No, ma'am, I was going towards the door.

15 Q So did you stop in the doorway?

16 A I had opened the door, ma'am.

17 Q Okay. So as soon as -- when you came out you
18 came out to confront him about the issue?

19 A I was yelling at him that he was gonna go down, I
20 was gonna call the cops, I noticed that the gun was
21 pulled on me.

22 Q Okay, and it was your intention to confront him
23 about what was happening?

24 A Just air my grievances, you know, just let him
25 know. I would never touch another person, ma'am.

1 Q All right.

2 A I need my job. Subsequently I wind up losing my
3 job because of it, but that's fine.

4 Q So when -- as soon as he said, I think he said
5 back the fuck up, you moved back?

6 A I just stood there and pointed at him.

7 Q And did he turn --

8 A He pulled that -- I said you pulled that on me?

9 No, I turned around and went back in the office --

10 Q Yeah, you turned, right --

11 A He also --

12 Q --and then you left?

13 A Yeah, ranting and raving on the way out I have it
14 on video, this and that.

15 Q And he left immediately after that?

16 A I think he stood there because he was -- I think
17 he was, I think he was upset that I didn't go after
18 him so he was disappointed that he couldn't shoot me
19 'cause he, he came there with the intent to provoke
20 and to pull his weapon.

21 Q Okay. Now you said that there was an incident
22 that happened about a week before, that you had
23 another confrontation with him?

24 A Yeah.

25 Q And at that time he asked you to read paperwork?

1 A Yes, ma'am.

2 Q And now at that time you just asked him to leave?

3 A Yes, ma'am.

4 Q And he left?

5 A Yes, ma'am.

6 Q But on this occasion you never asked him to
7 leave?

8 A I said -- if you heard me -- I tried to call one
9 of the board members. Let me get a board member
10 here, this way we have a witness to it. And that's
11 when he, you know, couldn't get the board member,
12 you know, all the things and I really got to get
13 this done. At that point, frustration and having
14 him looming over me and him slamming the thing, that
15 was a little more than I could take at that point
16 where I was gonna call the police for harassment.

17 Q 'Cause enough is enough, okay. Thank you.

18 A Thank you, ma'am.

19 THE COURT: Anything further from the
20 State?

21 MR. BERRY: Nothing further, Your Honor.

22 THE COURT: You may step down.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: Next witness.

25 MR. CONRAD: No further witnesses from the

1 State, Your Honor.

2 THE COURT: Any reply witnesses?

3 MR. CONRAD: No, Your Honor.

4 THE COURT: All right.

5 MS. JURICK: Your Honor, at the
6 appropriate time I'd like to make some brief closing
7 remarks.

8 THE COURT: Okay.

9 MS. JURICK: I'd also like to hand up -- I
10 sent this to your law clerk and the solicitor this
11 morning. I prepared a memo related to this.

12 THE COURT: All right.

13 MS. JURICK: Your Honor, we're here today
14 because a law abiding citizen defending himself and
15 I'd like go through my memo.

16 THE COURT: You -- who is that? Who are
17 you referring to?

18 MS. JURICK: Mr. Capell. He was a CWP
19 holder and the elements under the Castle doctrine
20 immunity hearing says a person who is not engaged in
21 unlawful activity, which Mr. Capell was not. In
22 Mr. Bunucci's words he said that he afterwards tried
23 to air his grievances. Mr. Capell was airing his
24 grievances to his property manager, which as a
25 homeowner in that area he had a right to do. He was

1 annoying, sure, I wouldn't have wanted to be
2 Mr. Bunucci at that time. But he was not doing
3 anything illegal, he was exercising his rights as a
4 homeowner.

5 THE COURT: Was he the aggressor?

6 MS. JURICK: No, Your Honor.

7 THE COURT: He wasn't?

8 MS. JURICK: He was not. He ---

9 THE COURT: Okay.

10 MS. JURICK: He slammed ---

11 THE COURT: Was he aggressive? ^

12 MS. JURICK: I don't believe so.

13 THE COURT: Okay.

14 MS. JURICK: I think he explained what he
15 was frustrated about. He said, I'll see you in
16 court, which is a threat but not an illegal one.
17 And then he left. He actually put a physical
18 barrier in between them and slammed the door and he
19 walked out. Also, so the person who is not engaged
20 in unlawful activity. One who is attacked in
21 another place where he has a right to be, including
22 but not limited to, his place of business. We've
23 already established and everyone agrees that he had
24 a right to be there and has no duty to retreat and
25 has the right to stand his ground.

1 / THE COURT: Was he attacked?

2 MS. JURICK: He believed that he was going
3 to be.

4 THE COURT: You're arguing to me at this
5 point so. You started reading, then you skipped
6 over the attacked part. Go ahead.

7 MS. JURICK: I'm not trying to skip the
8 attack part, just the part after it says if you
9 reasonably believe it is necessary to prevent death
10 or great bodily injury. And while he was not
11 attacked yet because he was able to stop it, the gap
12 between them closed very quickly. It was a very
13 heated conver-- or heated words when he bust out the
14 door, or Mr. Bunucci did. He yelled at him. Mr.
15 Capell testified he hadn't heard him raise his voice
16 before that, he hadn't gotten angry with him before
17 and he was scared. We heard from his mother about
18 his serious disabilities that he -- one kick or
19 anything to his stomach could cause great bodily
20 injury to Mr. Capell where that's not true for
21 everyone. He's a much smaller man than Mr. Bunucci.
22 You know, he has to have a way to stop something in
23 self-defense before it actually happens, and I think
24 this case is actually sort of similar to the
25 self-defense case State v. Dickie where the guard,

1 you know, the court points out -- I'd actually like
2 to read ---

3 THE COURT: Well, if you're talking
4 self-defense then you're -- then we're not talking
5 stand your ground. We're talking you're convincing
6 the jury about self-defense, not me.

7 MS. JURICK: And I think self-defense is
8 appropriate to talk about here because the case law
9 has used the self-defense element to establish
10 immunity, which it gets to in my memo. But
11 regardless, the court there found or considered
12 factors about disability and about size difference
13 and, you know, said that the man had the right to
14 shoot somebody that was coming at him quickly who
15 turned out didn't have a gun afterward. And if they
16 believe Mr. Capell did not shoot Mr. Bunucci but he
17 was lawfully carrying a gun and he pulled it on
18 someone who he thought was going to seriously injure
19 him. I think that's why we have a concealed weapons
20 in the first place.

21 THE COURT: All right. Yes, sir.

22 MR. CONRAD: Thank you, Your Honor, may it
23 please the Court. Your Honor, the State argues that
24 the defendant is not entitled to immunity under the
25 act. As defense counsel pointed out, the case law

1 on this section believes for pretrial hearing we
2 have to make two separate findings. One is defense
3 has to establish a baseline of self-defense in order
4 to be eligible for immunity; and secondly, has to
5 meet the specifications of the act. In the
6 defense's memo I think they correctly identify that
7 the only section that really is applicable to this
8 scenario is Section 16-11-420 subsection C. And in
9 subsection C the language specifically says that the
10 defendant has no duty to retreat and has the right
11 to stand his ground and meet force with force,
12 including deadly force. Your Honor, in defense, the
13 defense's brief, they go in depth on acting on
14 appearances. And the State would argue that as far
15 as immunity hearing goes, defendant is not permitted
16 to act on appearances. It must fulfill the words of
17 the statute itself which is meet force with force.
18 And I think it was pointedly evident from the video
19 and testimony that the victim in this case,
20 Mr. Bunucci, did not use force upon the defendant;
21 and therefore, because of that he's not entitled to
22 immunity under the act. Similarly, I think a fair
23 viewing of the video and reading of the testimony
24 from both the defendant and the victim in this case,
25 I think a reasonable view of that video would, could

1 very easily lead to conclusion that a reasonable
2 prudent person would not believe that he was under
3 physical attack in the situation of defendant was
4 in.

5 Next, Your Honor, the Defense in their
6 memo talk about self-defense and the first element
7 of self-defense which is whether the defendant
8 brought on the difficulty itself. Defense cites the
9 Bryant case for the proposition that the defendant
10 was not in violation of their, of law, therefore did
11 not bring on the difficulty. Well, I think that a
12 fair reading of the Bryant case is that what it
13 states can act as something that brings on
14 difficulty is inclusive but not exclusive. In other
15 words, while the Bryant case specifically mentions
16 the defendant doing something that violates the law,
17 it does not exclude the defendant doing other acts
18 which are calculated to bring about the difficulty.
19 In support of that notion, Your Honor, the State
20 would offer the case of State v. Strickland 389
21 South Carolina 210. And I can approach, I have a
22 copy of the case.

23 THE COURT: All right.

24 MR. CONRAD: And in this case the specific
25 language which I want to point out to the Court is

1 the case reads, the true role is that the plea of
2 self-defense is not available to one who uses
3 language self-opprobrious that a reasonable man
4 would expect it to bring on the physical encounter
5 and which did actually contribute to bring it on.
6 Your Honor, I bring up that language and I want to
7 point out State v. Bryant is not inclusive; while
8 it's inclusive, it's not exclusive, so here's an
9 example of where the Court of Appeals is saying that
10 even if the defendant does something to provoke the
11 action, which is not in and of itself outside the
12 law, the fact that he's doing this to provoke it,
13 can remove a possibility of a defendant claiming
14 self-defense. In the Strickland case, specifically
15 the words that were at issue, was when a defendant
16 told the victim before the altercation, he said
17 something to the affect to shut your blanking mouth.
18 And the court's specific finding in the Strickland
19 case was that that language was enough to make it a
20 jury question as to whether that language was enough
21 to provoke the victim, and therefore, a cause to
22 blame to be assigned to the defendant for bringing
23 about the difficulty.

24 Case law -- excuse me, the State would
25 submit that a reasonable person could view the video

1 that the Court was shown today and see that the
2 defendant words and his actions were calculated to
3 get the result that he got. In other words, he went
4 in there with intention to provoke the victim and to
5 react in the way that he reacted. Specifically I
6 point out the way the defendant's voice was raised,
7 the way he was acting very confrontational, the way
8 he was threatening to call the police over what is
9 ultimately a civil matter, the way he was in the
10 personal space, very close to the victim, the manner
11 and the volume which he slammed his hand on the desk
12 in the close vicinity to the victim, and the way he
13 slammed that door in the face of the victim. Your
14 Honor, I point to all those things to show that a
15 reasonable person of viewing that video could easily
16 come to conclusion that the victim went to that
17 scene with the intention of provoking a physical
18 confrontation. And to that extent he got what he
19 asked for and because of that the defendant is not
20 entitled to self-defense under immunity, and
21 therefore, immunity because he brought on the
22 difficulty himself.

23 Your Honor, finally, in their memo defense
24 argues that the defendant, if the defendant brought
25 about the difficulty, if the Court finds as such, he

1 successfully retreated, therefore afforded himself
2 the ability to use self-defense. Your Honor, the
3 State would disagree with that. Again, I think an
4 objective and reasonable viewing of this video is so
5 that the defendant was leaving before the victim
6 stood up, and then the defendant aggressively closes
7 that door. He slams the door in the victim's face.
8 And I argue that's not retreat. I would argue the
9 way he aggressively slammed the door was a
10 continuation of the hostilities that the defendant
11 started when he went in the office, and then he was
12 just outside the door with his gun drawn.

13 And so, Your Honor, I think the totality
14 of the circumstances in looking at it, the defendant
15 didn't actually retreat. And even if this was a
16 retreat, I believe the case law which the Defense
17 points out in their memo, requires that the
18 defendant clearly communicate his intention to
19 retreat. The Defense argues in their memo that I
20 believe that closing this door was attempt to
21 communicate his intention to retreat. The State
22 would argue that that was no more of a continuation
23 of hostilities and at no point did the defendant in
24 a verbal manner informed the victim that he was
25 intending to retreat, and therefore, he's not

1 entitled to self-defense.

2 So just to sum up, Your Honor, the State
3 believes just a plain reading of the language
4 subsection C of the act is that requires force to be
5 met with force, and the victim in this case did not
6 use force. The State would submit because it's --
7 the legislature specifically chose those words, put
8 them in this statute, the Defense is not entitled to
9 act on appearances as far as immunity goes. And
10 next, Your Honor, the defendant has to show that he
11 was entitled to self-defense minus the retreat
12 element, and the State would argue particularly
13 looking at State v. Strickland, that defendant
14 definitely was a part of bringing about the
15 difficulty, therefore, is not entitled to
16 self-defense and therefore not entitled to it under
17 the act.

18 THE COURT: All right, any response?

19 MS. JURICK: Thank you, Your Honor. The
20 force with force, I don't understand how that makes
21 sentence. The legislature did intend for immunity
22 hearing. Force with force, what they're arguing,
23 the State suggests that he had to wait until he was
24 actually attacked or actually shot to be able to
25 defend himself as this is why we have immunity

1 clause at all. That doesn't make sense to me.
2 First of all, I don't think that was legislative
3 intent. The law says ---

4 THE COURT: You think the legislative
5 intended for this statute to apply to a pointing and
6 presenting case?

7 MS. JURICK: I do.

8 THE COURT: Based on what?

9 MS. JURICK: If it's gonna apply to a
10 murder, applying to pointing and presenting is a
11 step before that which we want people to stop before
12 people die. I think it's completely a principle
13 that says ---

14 THE COURT: You think the legislature
15 intended to apply if a person were not attacked?

16 MS. JURICK: Yes, I do. It says great
17 bodily injury or death. And if it weren't applying
18 to pointing and presenting then it wouldn't say
19 great bodily injury so. And as far as Strickland
20 goes, the language, language reasonable to bring on
21 force. His example was, shut your blank mouth. I
22 don't think I'll sue you in property management
23 office with homeowner type complaints is the same at
24 all. You know, he had confronted -- they were
25 saying that Mr. Capell came in trying to get a rise

1 out of Mr. Bunucci, but Mr. Bunucci said that
2 Mr. Capell confronted him before and he never
3 reacted like that before. I just, Mr. Capell is
4 entitled to immunity under the act and we rest on
5 that.

6 THE COURT: Well, the burden of proof is
7 on the person seeking to apply the immunity section.
8 The burden of proof is by preponderance of the
9 evidence. The defense has failed to establish by
10 preponderance of the evidence any of the elements of
11 Section 16-11-440(c) except the first section not
12 engaged in an unlawful activity. I guess with the
13 concealed weapons law is as it is, allowing people
14 to randomly carry guns, perhaps he establishes that.
15 Subsection two, a person who is attacked in place
16 where he has a right to be. He was not attacked by
17 anyone. He was the aggressor attempting to incite
18 the property manager. He has, number three, has no
19 duty to retreat, has the right to stand his ground
20 meet force with force including the deadly force.
21 There was no intent by anyone to impose any force
22 upon him. Number four, if he reasonably believes
23 it's necessary to prevent death or great bodily
24 injury. There's nothing in the contact, nothing in
25 the conduct of the defendant in this case that I've

1 observed that demonstrates any reasonable action by
2 the defendant and any basis for having any belief
3 that he needed to use death, great bodily injury or
4 pull a weapon on the victim. He failed to convince
5 the Court by a preponderance of the evidence that
6 he's entitled to immunity.

7 I think the entire hearing in that
8 connection is a waste of time if you believe that he
9 can enter into the property manager's office in a
10 threatening and menacing fashion and pull a gun on
11 him after threatening to get him arrested and sued
12 and all that, and then to expect the law to protect
13 his actions. So I deny the motion.

14 MS. JURICK: Thank you, Your Honor.

15 MR. CONRAD: Thank you, Your Honor.

16 THE COURT: We're gonna take a break in
17 this case and deal with the other people homeowner
18 came here for other actions.

19 (Pause.)

20 (Further proceedings on record absent the
21 defendant.)

22 THE COURT: Someone said something about
23 wanting a transcript.

24 MR. CONRAD: Your Honor, the State would
25 like the transcript before proceeding with trial. I

1 talked to madam reporter and I believe she said she
2 can have it tonight so I don't think — I think we
3 can get started with trial tomorrow, the trial.

4 That's gonna last —

5 THE COURT: How long would this
6 anticipated trial last? We go back to that same
7 situation all over again.

8 MR. CONRAD: I think the State can
9 certainly present its case within a day, Your Honor.
10 I can't imagine this case lasting, if we start
11 tomorrow, lasting any past Thursday. We can very
12 potentially get done tomorrow depending on how many
13 witnesses Defense has.

14 MS. JURICK: Your Honor, we potentially
15 have two witnesses. We can talk it over.

16 THE COURT: All right. We have to ponder
17 the whole thing. The bar convention starts Thursday
18 and that's in Charleston so we spent this day doing
19 this so I don't know whether or not we'll be able to
20 do the trial this week or not.

21 MR. CONRAD: You want us to be back in the
22 morning, Your Honor, or?

23 THE COURT: Yeah, and see what's what.
24 Y'all want a trial on this? Who wants a trial?
25 Everybody?

1 MS. JURICK: Your Honor ---

2 MR. CONRAD: Your Honor, there's an offer
3 on the table, but you know, the State is ready to go
4 forward with trial if defendant doesn't plead.

5 MS. JURICK: Your Honor, I find it
6 unlikely I could convince Mr. Capell to do anything.

7 THE COURT: All right.

8 MS. JURICK: But we are, we talked it over
9 and I believe we're all available next week as well
10 if that's better for scheduling or we can be ready
11 tomorrow.

12 THE COURT: All right, we'll see the way
13 it goes, but it's -- and I don't know what's the
14 status of juries or anything. We started it, I
15 mean, to me it's the kind of case that's going to be
16 over with pretty quickly but you all might stretch
17 it into a couple of days for whatever reason. We'll
18 just have to see how it goes, I don't know, but
19 there are other matters that we scheduled tomorrow
20 as well that will take up some time so, you know, I
21 think you all need to get a fresh start and we're
22 not under the gun time wise to get it done so it's
23 unlikely that we do it tomorrow because I have to --
24 I'm scheduled to be in Charleston by Thursday
25 afternoon. So y'all ponder all that.

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina on this 22nd day of January, 2016.

S/Frances B. Ray

FRANCES B. RAY, RPR

1 State of South Carolina
2 County of Richland

Court of General Sessions

3
4
5 State of South Carolina,) Transcript of Record
6 vs.) 2015-GS-40-6008
7 Richard A. Capell,)
8 Defendant.)

9
10 January 25 - 26, 2016
11 Columbia, South Carolina
12

13 B E F O R E:

14 The Honorable Robert E. Hood, Judge; and a jury
15

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

17 John Conrad, Assistant Solicitor
18 Joseph Berry, Assistant Solicitor
19 Attorneys for the State

20 Sarah Jurick, Esquire
21 Maisie Osteen, Esquire
22 Attorneys for the Defendant

23 Stacy S. Johnson, RPR
24 Circuit Court Reporter
25

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
S - 1	Video Recording	4	97
S - 2	Handgun	79	--
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1 (The following proceedings were held on January 25,
2 2016, beginning at 2:13 PM.)

3 (State's Exhibit Number 1 was marked for
4 identification.)

5 **BAILIFF:** Order in the court. All rise.

6 **THE COURT:** Okay. Thank you. Take your seats.

7 Okay. We're on the record in the State of South
8 Carolina versus Richard Capell. This is Indictment
9 Number 2015-GS-40-6008. The State is present and
10 represented by John Conrad and Joe Berry from the
11 solicitor's office.

12 Are you Mr. Capell?

13 **THE DEFENDANT:** Yes, sir.

14 **THE COURT:** Okay. How are you doing?

15 **THE DEFENDANT:** Hanging in there.

16 **THE COURT:** All right. Good. Welcome. The Defendant
17 is present and represented by Ms. Jurick and Ms. Osteen
18 from the public defender's office.

19 All right. Anything we need to take up before we get
20 into jury selection?

21 **MR. CONRAD:** Your Honor, just a -- just a few things
22 by way of background. Last week this case was called for
23 trial and we had to conduct two hearings in front of the
24 Honorable Judge Newman; a Blair hearing in which Judge
25 Newman found the Defendant competent to stand trial, and a

1 stand your ground hearing pursuant to 16-11-420, and in
2 that hearing Judge Newman found the Defendant was not
3 immune to prosecution. With that, I think those are the
4 two primary pre-trial matters, Your Honor.

5 One minor pre-trial matter. I believe there's
6 recent case law, and the name of the case escapes me,
7 that suggests putting plea offers on the record prior to
8 starting trials. Pursuant to that, the State's offer in
9 this case is -- from the State has been to recommend
10 probation. Defendant has three other pending charges
11 unrelated to this case, which the State would be willing
12 to work out a solution for all his pending charges and
13 recommend probation with a few stipulations as far as
14 his behavior on probation, but it's -- it's been my
15 understanding that Defendant has rejected the offer
16 several different times, but just so it's on the record.

17 **THE COURT:** Who's officially in charge here?

18 **MS. JURICK:** I am, Your Honor.

19 **THE COURT:** Okay, Ms. Jurick. Yes, ma'am.

20 **MS. JURICK:** That is correct. They did offer
21 probation and Mr. Capell is not interested in probation.
22 He would like a trial.

23 **THE COURT:** Okay.

24 All right. Mr. Capell, do you understand that the
25 State has offered you a recommendation of probation?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** Okay. Now the way you -- I'm sure your
3 attorneys have explained this to you, and your attorneys
4 are well-versed in front of this court and know what
5 they're doing, so I feel very confident that they have,
6 but the way negotiations -- cases work, excuse me, not
7 negotiations, the way I work it is if they make a
8 recommendation of probation I'm either gonna give you
9 that or I'm just not gonna do your plea at all, okay? So
10 is that something that you're not interested in?

11 **THE DEFENDANT:** I'm not interested in it.

12 **THE COURT:** Okay. That's perfectly fine. I know
13 nothing about your case other than what I've heard over
14 the past sixty seconds or so. I'm not trying to talk you
15 into it. I just want you to make sure you understand and
16 are aware of what the recommendation is. Does that make
17 sense?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** Okay. And you understand that the
20 maximum possible punishment on this crime if convicted
21 would be up to five years in prison? Do you understand
22 that?

23 **THE DEFENDANT:** I do.

24 **THE COURT:** Okay. Very well. Thank you.

25 All right, Mr. Conrad.

1 **MR. CONRAD:** Your Honor, as far as what the State has
2 remaining, I'd like to -- defense has handed us some voir
3 dire questions. I think we'd like to propose a couple of
4 minor changes to --

5 **THE COURT:** Okay. Can I get a copy, please?

6 **MS. JURICK:** Yes, sir.

7 **THE COURT:** Thank you, Ms. Jurick.

8 **MR. CONRAD:** Under --

9 **THE COURT:** Hold on. Let me do them -- one thing at
10 a time here, Mr. Conrad, or I'll lose where I am.

11 Okay. Does the State have a copy of the Defendant's
12 proposed voir dire?

13 **MR. BERRY:** We do, Your Honor.

14 **THE COURT:** Okay. And what is your position on
15 Number 1?

16 **MR. BERRY:** Your Honor, if I may, to all four of these
17 we feel they're too suggestive in general and we would
18 prefer perhaps more neutral wording, specifically Number 3,
19 perhaps a victim of a crime or even a gun crime, but in
20 general we find all these too suggestive.

21 **THE COURT:** Okay. On Number 3, I would be inclined
22 to ask if anyone has either been a victim of or accused of,
23 either one, a crime involving a gun, okay? I assume that's
24 the information you're trying to elicit, Ms. Jurick?

25 **MS. JURICK:** That is.

1 **THE COURT:** Okay. All right. So I'll do some kind
2 of broad question that says accused of, charged with, or
3 victim of any type of crime related to a gun. And when
4 those people stand up, I'll bring them up front so we'll
5 allow them to give us that information kind of in a
6 semiprivate setting so as to not to taint the jury pool,
7 okay?

8 **MS. JURICK:** Yes. Thank you, Your Honor.

9 **THE COURT:** Okay. Tell me -- the Second Amendment
10 slash gun questions here, what are you going for on that?
11 Help me with that.

12 **MS. JURICK:** Your Honor, we are --

13 **THE COURT:** What are you trying to learn?

14 **MS. JURICK:** We're trying to learn people's feelings
15 about gun rights.

16 **THE COURT:** Okay.

17 **MS. JURICK:** And we have talked about doing something
18 -- if anyone is strongly in support of or against gun
19 rights, but I wasn't sure how to separate it to find out
20 which side they were on.

21 **THE COURT:** All right. Let's think of a way.

22 **MR. BERRY:** Can I chime in, Your Honor?

23 **THE COURT:** Sure. I'm listening.

24 **MR. BERRY:** My thought would be you could ask if
25 anyone strongly -- does anyone have strong feelings about

1 guns and then when they come up, then kind of elicit what
2 those strong feelings are.

3 **THE COURT:** Okay. How about the question, does
4 anybody take a strong position on the -- on firearms or
5 owning firearms, and then let's get them up and I'll kind
6 of flesh it out a little bit and see where that takes it,
7 okay?

8 **MS. JURICK:** That was what we were trying to get at,
9 yes.

10 **THE COURT:** All right. So does that accomplish what
11 y'all would like to accomplish to hopefully gather the
12 information that could be helpful to all sides?

13 **MS. JURICK:** It does.

14 **THE COURT:** Okay. All right. We'll do that.

15 **MR. BERRY:** Thank you, Your Honor.

16 **THE COURT:** So I'll kind of mix one, two and four into
17 one generalized question instead of -- I don't know that
18 all these people are gonna want to stand up and admit that
19 have guns or they own guns and that kind of stuff. That
20 may cause some people to shy away from answering. And
21 then we'll get them up and that way in a little bit more
22 semiprivate setting we may get some more answers out of
23 them that can potentially help. Is that okay with the
24 State?

25 **MR. BERRY:** Yes, Your Honor.

1 **THE COURT:** And Ms. Jurick?

2 **MS. JURICK:** Yes, Your Honor.

3 **THE COURT:** Okay. Good.

4 All right. Any other voir dire besides that?

5 **MR. CONRAD:** None from the State, Your Honor.

6 **THE COURT:** Okay.

7 All right. Anything else we need to take up
8 pre-trial, Ms. Jurick?

9 **MS. JURICK:** Your Honor, we have a couple of other
10 pre-trial motions. First, we just wanted to renew our
11 Rule 5 and Brady and --

12 **THE COURT:** All right. And where are we on Rule 5
13 and Brady, Mr. Conrad?

14 **MR. CONRAD:** Your Honor, I believe -- we conducted a
15 meeting a couple of weeks ago and I'm confident that the
16 defense has everything that's in the State's possession.

17 **THE COURT:** Okay. Very well.

18 **MR. BERRY:** Your Honor, if I may, there is one e-mail
19 I received about thirty minutes ago. We're not planning to
20 introduce it.

21 (Discussion between counsel.)

22 **MR. BERRY:** It's one e-mail that we received from a
23 witness in the case that was sent by the Defendant that
24 we're not planning to currently use, but we did just
25 receive an e-mail.

1 **THE COURT:** Okay. The State has no intention of
2 introducing it; is that correct?

3 **MR. BERRY:** Not in our -- part of our case in chief,
4 Your Honor. Perhaps as reply.

5 **THE COURT:** Okay.

6 **MS. JURICK:** We have no specific objection for the
7 record.

8 **THE COURT:** Great.

9 **MS. JURICK:** And we also -- there's a video that will
10 very likely be introduced during this trial that was played
11 during the immunity hearing. It actually shows the entire
12 incident and Mr. Capell recorded it himself and turned it
13 over the Forest Acres Police Department.

14 **THE COURT:** Okay.

15 **MS. JURICK:** The video is approximately three minutes
16 in length; the first two minutes of it being Mr. Capell
17 yelling at the victim. We believe that that's not relevant
18 and that it's more prejudicial than probative. He comes
19 across as a very annoying and unlikable man, which doesn't
20 have anything to do with the actual pointing and presenting
21 itself, so we've created a shorter video that shows the
22 last fifty-four seconds and shows the entire pointing and
23 presenting incident and we would like that video introduced
24 instead.

25 **THE COURT:** Well, how would the victim not be able to

1 testify about what he said to her prior to alleging the
2 pointing of the firearm? I don't know even know if it is
3 a female victim. I'm sorry if I made that assumption.

4 **MR. BERRY:** Well, of course --

5 **THE COURT:** That question is for Ms. Jurick. Wouldn't
6 the victim be allowed to get up and testify about that?

7 **MS. JURICK:** Yes, I believe the victim could talk
8 about what happened, but actually seeing the video I don't
9 think it has relevance to the actual event.

10 **THE COURT:** Well, how is her testimony relevant if the
11 video isn't? The issue is, is it relevant? It's clearly
12 relevant under 401.

13 **MS. JURICK:** It's prejudicial.

14 **THE COURT:** The issue is does it -- does the
15 prejudicial effect substantially outweigh the probative
16 value, right?

17 **MS. JURICK:** Yes, Your Honor.

18 **THE COURT:** Okay. So help me with that. Why is it
19 more prejudicial than just her testifying then to what he
20 said?

21 **MS. JURICK:** It's a him. And my concern is just that
22 our client isn't shown in his best light and I think that
23 it's hard to overcome and see the actual issue of the
24 pointing and presenting and of the incident that happened
25 that we're here for when you hear two minutes of him

1 yelling and accusing the victim of things, but not actually
2 threatening, just threatening legal action and airing a
3 laundry list of complaints that aren't relevant to whether
4 he pulled it out or not.

5 **THE COURT:** Okay. How close in time are these
6 relevant to the incident? I mean, is it immediately
7 preceding the incident -- the alleged incident?

8 **MS. JURICK:** Immediately preceding, yes, Your Honor.

9 **THE COURT:** But it's not like it's even five minutes
10 before?

11 **MS. JURICK:** The full video is three minutes and the
12 first two minutes is a conversation in which the client is
13 yelling at the victim.

14 **THE COURT:** And he recorded it?

15 **MS. JURICK:** And he recorded it and he turned the
16 whole thing over.

17 **THE COURT:** Okay. Mr. Conrad, what's your position?

18 **MR. CONRAD:** Your Honor, I'd oppose the motion. I'm
19 not -- she just informed me what -- the time point where
20 she wanted to cut it off, so I'm not -- it's not clear in
21 my mind exactly at which point in the video she's talking
22 about, but I can tell you the video is only -- as she said,
23 it's only three minutes long.

24 **THE COURT:** Well, let's just watch it.

25 **MR. CONRAD:** We can do that, Your Honor.

1 **THE COURT:** Why don't we do that? Let's watch it.
2 Has it been marked yet?

3 **MR. CONRAD:** It has been marked, Your Honor.

4 **THE COURT:** Okay. So what number is it?

5 **MR. CONRAD:** It's State's Exhibit 1, Your Honor.

6 **THE COURT:** Have you got that?

7 **THE COURT REPORTER:** Yes, for ID. Uh-huh.

8 **MS. JURICK:** To clarify, the point that I was thinking
9 is he does at some point slam his fist on the desk and I
10 agree that -- I imagine they want that in, so we would
11 suggest cutting it right before that.

12 **THE COURT:** Okay. Well, let's do this. When we get
13 to where you want it cut, say -- have them pause it and say
14 Judge, this is where I think it will be appropriate to cut
15 it. Is that okay?

16 **MS. JURICK:** Yes.

17 **THE COURT:** Okay. Instead of me guessing where you
18 want, just when we get there tell whoever's running it to
19 hit pause and you can tell them to stop it.

20 **MS. OSTEEN:** Your Honor, would you like me to stand up
21 there and actually physically pause it at that point?

22 **THE COURT:** Yeah. Whoever knows how to work the
23 machine is fine with me.

24 **MR. BERRY:** Well, it would be nice to just watch all
25 the way through it to get the full context.

1 **THE COURT:** Well, just let her see -- just let her
2 say stop where they want to stop it. I'm smart enough to
3 get the full context.

4 All right. For the record, at this point in time the
5 Court is reviewing State's Exhibit Number 1, which is an
6 alleged video of the incident, and it's gonna review the
7 video in its entirety and the defense is going to be
8 allowed to pause the video and inform me of where they
9 would like to officially start the video because the
10 conduct that they want excluded under 403 is at the
11 beginning of the video. Is that correct, Ms. Osteen?

12 **MS. OSTEEN:** Yes, sir.

13 **THE COURT:** Okay. Go ahead. Thank you, Ms. Osteen.
14 (Whereupon, State's Exhibit Number 1 was played for
15 the Court.)

16 **MS. OSTEEN:** This is where we would anticipate it
17 starting.

18 **THE COURT:** And what's the approximate time on that
19 Ms. Osteen?

20 **MS. OSTEEN:** 2:35.

21 **THE COURT:** Not 2:35 PM, but 2:35 on the video; is
22 that right?

23 **MS. OSTEEN:** Yes, Your Honor.

24 **THE COURT:** All right.

25 (Whereupon, State's Exhibit Number 1 was replayed for

1 the Court.)

2 **THE COURT:** Okay.

3 All right. So what's the State's position,

4 Mr. Conrad?

5 **MR. CONRAD:** Your Honor, as we've already noticed
6 from last week, and I'm sure that we're gonna deal with
7 this this week, the defense is -- the primary defense is
8 self-defense and it's the State's position when you look
9 at the case law on self-defense, particularly some of the
10 more recent case law, all of the facts and circumstances
11 that are surrounding the event are important things for
12 the jury to consider when considering whether someone
13 lawfully used self-defense and I will argue that cutting
14 off that conversation at the point the defense suggests
15 leaves off a lot of what happens that's directly relevant
16 to what happens right after their cutoff point is,
17 particularly the Defendant's -- what he said, how he said
18 it, how close he was and the threats he was making. I
19 think that's all relevant to how Mr. Bunucci reacted to --
20 when I say Mr. Bunucci, that's the victim, the man with
21 the beard you saw on the video. All of that is relevant
22 information for the jury to consider and in deciding
23 whether the Defendant's claim of self-defense is lawful
24 or not and, therefore, I think it's all highly, highly
25 relevant. And while I would agree it's certainly

1 prejudicial, you know, any evidence that the State seeks
2 to introduce is gonna be prejudicial to a certain degree or
3 another, but I think its probative value far outweighs
4 any prejudicial -- prejudice it leaves on the Defendant.

5 **THE COURT:** All right.

6 **MR. CONRAD:** And I apologize, Your Honor. One -- just
7 specifically the defense's claim of self-defense I think is
8 -- if you look at the case law the State is gonna argue to
9 the jury that the victim was provoked in this case and I
10 think the minute, minute and a half of what happens prior
11 to the Defendant slamming his hand down is very relevant to
12 whether the victim was provoked or not.

13 **THE COURT:** What about that point, Ms. Jurick?

14 **MS. JURICK:** Your Honor, I agreed to leave in that he
15 was in the office and that he did slam his hands on the
16 desk, but it clearly shows him retreating, he closes the
17 door so there's a physical barrier between them, and then
18 he comes out after him, and I think that's all you need to
19 see of the incident. And, you know, he can testify that
20 prior to that that they were having a discussion or an
21 argument, but actually seeing it is, I think, prejudicial,
22 and specifically the types of complaints that he has about
23 a dog swimming in the pool, I think that might overwhelm
24 the actual issue of the case.

25 **THE COURT:** All right. I'm gonna find that it's

1 admissible. This video is directly relevant to the issues
2 at hand and the issues that are gonna come up during the
3 trial. This is the course of conduct of the Defendant and
4 the alleged victim moments prior to the alleged incident.
5 There could be very little things that are more directly
6 relevant and probative than each party's conduct prior to
7 this incident and that the prejudicial effect does not
8 outweigh the probative value. Further, the Defendant
9 recorded it himself and turned it over to law enforcement
10 himself and so under 401 and 403 I deem that the video
11 itself is admissible in the trial.

12 Next issue.

13 **MS. JURICK:** Thank you, Your Honor. We have one final
14 motion, and that is Mr. Capell is actually under order by
15 the probate court right now. There's a commitment order
16 saying that he's mentally ill, which he is appealing, and
17 we had a Blair hearing. I would just ask that mention of
18 this probate court and of him being mentally ill or having
19 mental health issues not be stated in front of the jury.

20 **THE COURT:** Do you have a problem with that?

21 **MR. CONRAD:** Not in our case in chief.

22 **THE COURT:** Okay. All right. So are the lay
23 witnesses in here?

24 **MR. CONRAD:** Our lay witnesses are, Your Honor.

25 **THE COURT:** Okay. The Court's not gonna allow any

1 testimony about any mental health issues that Mr. Capell
2 may or may not have at this point in time. I'm not saying
3 that they won't be admissible later. Sometimes things
4 come out during trial that make the issues that were not
5 relevant in the beginning relevant in the end, but --
6 Mr. Bunucci, raise your hand. Mr. Fowler? Is Mr. Fowler
7 in here?

8 **MR. CONRAD:** He's not here, Your Honor.

9 **THE COURT:** Okay. And Mr. Edwards? Okay. I don't
10 know what you may or may not know about Mr. Capell's mental
11 health, but at this point in time no comment about that
12 would be appropriate. If I -- if you're in the middle of
13 your testimony, and this, of course, goes for the officers,
14 too, from the Forest Acres Police Department, if at some
15 point during your testimony I deem that it becomes
16 relevant, I would stop, send the jury out and explain to
17 you that you could answer the question. So at this point
18 no mention by anybody of any mental health issues whatever
19 may exist or not exist. I'm not saying they're real or
20 they're not real. I'm just saying no one's gonna talk
21 about them. They're not relevant at this point.

22 **MS. JURICK:** Thank you, Your Honor.

23 **THE COURT:** Okay. Anything else, Ms. Jurick?

24 **MS. JURICK:** No.

25 **THE COURT:** Okay. Anything else, Mr. Conrad?

1 **MR. CONRAD:** No, Your Honor.

2 **THE COURT:** Okay.

3 All right. Let's bring the panel up.

4 **THE COURT:** What do we want to do about the tables
5 being open on the bottom?

6 **MS. OSTEN:** If there's any way to get his leg
7 shackles off, that would be great. That's not an option?

8 **THE COURT:** Do we have a belt?

9 **DEPUTY:** We don't have it today, sir. We could have
10 it tomorrow, but as far as right now we can pick them up
11 under his -- I don't think they can see -- they won't see
12 the cuffs. We'll hide the cuffs in his pants.

13 **MS. OSTEN:** The only thing is if he testifies --

14 **THE COURT:** Oh, I'm not gonna let him walk in front
15 of them. Why don't you get a belt and he can wear the belt
16 tomorrow?

17 **DEPUTY:** Yes, sir.

18 (Whereupon, the jury panel enters the courtroom at
19 2:47 PM.)

20 **THE COURT:** Okay. Good afternoon, ladies and
21 gentlemen. My name is Robert Hood. I'm one of your
22 resident circuit court judges and I will be your trial
23 judge for the criminal trial that is starting this
24 afternoon. Let me -- I did not qualify you this morning,
25 so I want to say welcome and thank you for being here.

1 the trial.

2 Now, Mr. Foreman, it will be your duty to preside in
3 the jury room. You will also be the jury spokesperson here
4 in court. It will be your duty to write the verdict. I'll
5 explain that to you at a later time. You don't get paid
6 any extra, your vote doesn't count any more. Somebody has
7 got to be in charge of communicating with the Court and
8 that will be you, Mr. Thomson, okay?

9 Now any exception to the charge from the State?

10 **MR. CONRAD:** No, Your Honor.

11 **THE COURT:** From the Defendant?

12 **MS. JURICK:** No, Your Honor.

13 **THE COURT:** Okay. At this point in time the State
14 will be allowed to make its opening statement and you may
15 proceed, Mr. Berry.

16 **MR. BERRY:** May it please the Court?

17 **THE COURT:** Yes, sir.

18 **MR. BERRY:** Good afternoon. Last year, February 16,
19 2015, the victim in this case, Mr. John Bunucci, was
20 quietly working at his desk, early afternoon, and the
21 Defendant, Richard Capell, storms in his office, comes in
22 to confront Mr. Bunucci, he comes in to pick a fight, he
23 provokes Mr. Bunucci and then he pulls a gun. He came in
24 armed. For that he's charged with the crime of pointing
25 and presenting.

1 Now Mr. Capell had a grievance. Mr. Capell lived at
2 Point Arcadia complex. It's a condo -- condominium complex
3 out in Forest Acres where Mr. Bunucci was the property
4 manager/office manager. Mr. Capell wanted his service dog
5 to swim in the pool with him. Mr. Bunucci had consulted
6 with DHEC and talked to the Board members and let him know
7 you can swim in the pool and your dog can swim with you.
8 We just ask that you do it at certain times to be
9 respective of the safety of other residents.

10 That was not good enough for Mr. Capell and he was
11 still angry. He came in that day and he confronted
12 Mr. Bunucci. He encroaches on his physical status, he
13 taunts him, he's aggressive. He slings his hand on the
14 table, he calls him a criminal, he calls him ignorant, and
15 he slams the door in his face. Now after being provoked,
16 Mr. Bunucci got up to tell him that that's not okay, you
17 can't talk to me like that, but as he did that he walked
18 right into a gun pointed at his chest.

19 Ladies and gentlemen, in South Carolina it's unlawful
20 to point and present a firearm at another person whether
21 the gun's loaded or unloaded. We're going to prove to you
22 today and tomorrow that the Defendant is guilty of pointing
23 and presenting and we're gonna present evidence to you.
24 You'll hear testimonial evidence and you'll have physical
25 and visual evidence. You will hear from the law

1 enforcement officers who took the statements in this case
2 and conducted a search warrant and found the Defendant's
3 guns. You'll hear from Mr. Bunucci, what happened to him
4 that day, you'll hear directly from him. And, lastly, you
5 will get a chance to see for yourself. The Defendant was
6 in the habit of wearing a body camera and you will see a
7 video of exactly what happened that day and at the end of
8 our case my colleague, Mr. Conrad, will come back before
9 you at closing arguments and will ask you to find the
10 Defendant guilty; guilty of pointing and presenting a
11 firearm. Thank you very much.

12 **THE COURT:** Thank you very much, Mr. Berry.

13 Ms. Osteen.

14 **MS. OSTEEN:** Thank you, Your Honor. May it please
15 the Court?

16 **THE COURT:** Yes, ma'am.

17 **MS. OSTEEN:** Enough is enough. On February 16, 2015,
18 Mr. Bunucci had enough. As you just heard, he is the
19 property manager -- or he was the property manager at the
20 Arcadia Point Condominiums, a place where Mr. Capell owned
21 a condominium. When Mr. Capell came to his office that day
22 to voice his complaints, he met with Mr. Bunucci who was
23 busy with something else, preoccupied with a meeting that
24 he was preparing for later that evening, and he was tired
25 of Mr. Capell. Enough is enough.

1 My name is Maisie Osteen and along with my co-counsel,
2 Sarah Jurick, we represent Mr. Capell.

3 Richard, would you please stand up. This is Richard
4 Capell. Thank you.

5 Throughout the next two days you will hear a lot
6 about Mr. Capell. You'll learn a lot about Richard. And
7 one of the things that you will learn is that he is very
8 passionate about the ADA. That's the Americans with
9 Disabilities Act. Specifically, he is really concerned
10 with service animals and the rights afforded their owners.
11 Mr. Capell was born with a disability, with numerous
12 disabilities that you will hear about, and he has relied
13 on the companionship of animals throughout his life.

14 Now Mr. Capell was also a homeowner at Point Arcadia.
15 He'd lived there about a year and a half when this incident
16 happened. Throughout that entire time that he was there,
17 he never enjoyed the use of the pool, which to some might
18 seem little, but you will hear that that was really
19 important to him. Now you will also know that Richard had
20 numerous conversations with the Board, with Mr. Bunucci,
21 about this incident, and he never got an answer that was
22 satisfying.

23 On February 15th -- February 16th, he went to the
24 office to voice his concerns, to voice his problems, and
25 that's when he encountered Mr. Bunucci. You're gonna get

1 to see the video in this case, which it was -- as the State
2 said, it was shot from a cell phone camera on his chest.
3 Because Mr. Capell is vulnerable, because he's living with
4 disabilities, he carries that camera almost everywhere he
5 goes. So he's videotaping a lot of his daily interactions.
6 In addition, because of his vulnerability he always carries
7 a weapon on him. He is a CWP holder, a concealed weapons
8 permit holder, and he uses those precautions to protect
9 himself. You will get to watch the video, so this will
10 all be something that you can make the determination on
11 yourself.

12 He went in and after having a conversation where he
13 was essentially ignored, he got frustrated and he said
14 good, I'll see you in court, and he hit -- he hit his hand
15 on the table, and you'll see it. At that point, Mr. Capell
16 retreats. He walks to the door of the office. You will
17 hear -- you will hear Mr. Bunucci say, "Are you threatening
18 me?" At that point Mr. Capell says, "No", and you will see
19 him close the door. Watch on the camera as he turns away,
20 giving himself more distance from the situation, more
21 distance from Mr. Bunucci. Then you will see Mr. Bunucci
22 throw the door open and yell, "If you are, I'll fucking
23 have your shit down".

24 Now the next moment is what you're here for. The next
25 moment is where your determination of the facts comes in.

1 In that moment, five-six Mr. Capell, a hundred fifty-five
2 pound, disabled man, made a decision because he was scared,
3 and you will be able to see when he turns with his gun
4 drawn -- you won't see the gun because of angles, but both
5 men acknowledge it. You will hear Mr. Capell say, "Back
6 the fuck up". You will see he doesn't move towards him, he
7 speaks authoritatively, he speaks firmly, but he doesn't
8 make a move towards him. You will hear Mr. Bunucci say,
9 "Did you pull that off?", and Mr. Capell repeats himself,
10 "Yes, back up". At that point, Mr. Bunucci puts his hands
11 up a little bit and walks back into the office. Watch
12 those steps, the four steps, he takes back into the office.
13 As soon as he turns, Mr. Capell turns and both men left
14 that clubhouse safely.

15 Enough is enough. Mr. Bunucci was tired of dealing
16 with Mr. Capell and in the video you might see some reasons
17 why, but that moment, that fifteen seconds where Mr. Capell
18 separated himself, tried to deescalate, tried to get away,
19 you will see that he was scared and we would be asking you
20 to look at that moment and really closely decide if he
21 committed a crime or if he was just protecting himself.

22 **THE COURT:** All right. Thank you, Ms. Osteen.

23 You may call your first witness.

24 **MR. CONRAD:** Thank you, Your Honor. The State calls
25 Officer Henry Jackson with the Forest Acres Police

1 Department.

2 HENRY TYLER JACKSON,

3 having been duly sworn, testified as follows:

4 THE CLERK: Thank you. Please have a seat on the
5 witness stand and state your full name for the record.

6 THE WITNESS: Okay. My name is Henry Tyler Jackson.
7 I work for Forest Acres police.

8 MR. CONRAD: May it please the Court?

9 THE COURT: Yes, sir.

10 MR. CONRAD: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. CONRAD:

13 Q. Officer Jackson, you're currently employed by the
14 Forest Acres Police Department?

15 A. Yes, sir.

16 Q. How long have you been working there?

17 A. I began August, 2013.

18 Q. And during that -- while you've been working there,
19 have you undergone any training in regards to being a
20 police officer?

21 A. Yes, sir. I attended the South Carolina Criminal
22 Justice Academy for twelve weeks and then after I graduated
23 there I did field training with a sergeant for another
24 twelve weeks.

25 Q. All right. Are you familiar with the condominium

1 complex called Point Arcadia?

2 A. Yes.

3 Q. And where is that located?

4 A. --

5 Q. You don't have to give me the address.

6 A. Okay.

7 Q. What city is it located in?

8 A. Forest Acres.

9 Q. And what county is Forest Acres located in?

10 A. Richland County.

11 Q. I'm gonna call your attention to the day of February

12 16th of last year, which was 2015. Do you recall that day?

13 A. Yes.

14 Q. Were you working that day?

15 A. I was.

16 Q. All right. And at some point during that day did

17 you have reason to respond out to the Point Arcadia

18 condominiums?

19 A. I did.

20 Q. And do you recall who called the Forest Acres Police

21 Department?

22 A. Yes, it was Mr. Bunucci.

23 Q. All right. And without going into the specifics of

24 what exactly he said, but did he give you a reason as to

25 why he called you?

1 A. Yes.

2 Q. What was that reason?

3 A. That Mr. Capell pulled a weapon on him in their
4 office.

5 Q. All right. And he did give you more details than just
6 that, correct?

7 A. Yes.

8 Q. Did he make any written statements to you about that?

9 A. Yes, sir, he did. He provided that.

10 Q. Did you conduct any further investigation after
11 talking to Mr. Bunucci about this incident?

12 A. Yes, I did.

13 Q. And after that investigation, what -- what action did
14 you feel appropriate as a police officer?

15 A. I felt it was appropriate to draft a warrant for
16 unlawful pointing and presenting a weapon.

17 Q. With who as the defendant?

18 A. With -- against Mr. Capell.

19 Q. All right. And did you draft that warrant the same
20 day as when you responded, February 16th?

21 A. Yes, sir, I did.

22 Q. All right. And after that date, did you have an
23 occasion to watch or review any video of this alleged
24 incident?

25 A. Yes, sir, I did.

1 Q. All right. Was that -- when was that in relation to
2 when you responded to Point Arcadia?

3 A. It was a couple of days after the incident.

4 Q. And when you watched this video, did it substantiate
5 Mr. Bunucci's statements to you or --

6 A. No, sir, absolutely not.

7 Q. So it was -- let me rephrase that question. Excuse
8 me. Did it -- did you see anything in the video that
9 called into question anything Mr. Bunucci had told you?

10 A. No.

11 **MR. CONRAD:** I beg the Court's indulgence. Nothing
12 further from the State for this witness.

13 **THE COURT:** Cross-examination?

14 CROSS-EXAMINATION

15 BY MS. JURICK:

16 Q. Good afternoon, officer.

17 A. Good afternoon.

18 Q. You just testified this incident happened on
19 February 16, 2015?

20 A. Correct.

21 Q. And you said that the warrant was drawn out the same
22 day?

23 A. It was.

24 Q. Are you sure? If I showed you the warrant, would
25 that --

1 A. It was written on that day.

2 Q. Okay.

3 A. It wasn't typed yet.

4 Q. Okay. So the warrant -- if I said the warrant was
5 executed on February 17th, you'd agree with that?

6 A. I'm not one hundred percent sure.

7 Q. And Forest Acres responded to this location on
8 February 16th?

9 A. Yes.

10 Q. Did you respond?

11 A. I did.

12 Q. Did you speak with the victim on February 16th,
13 Mr. Bunucci?

14 A. I did.

15 Q. Did you speak with Mr. Capell?

16 A. No.

17 Q. Did Mr. Capell call Forest Acres Police Department on
18 February 16th to your knowledge?

19 A. To my knowledge.

20 Q. And was Mr. Capell allowed to turn himself in on
21 February 17th?

22 A. To my knowledge.

23 Q. And he did turn himself in on February 17th?

24 A. I believe so.

25 Q. And there's a video in this case. Do you know how

1 Forest Acres got the video in this case?

2 A. I just saw it on Youtube.

3 Q. And Mr. Capell dropped off a copy of it?

4 A. To my knowledge, yes, ma'am.

5 Q. And you've made arrests in the past; is that correct?

6 A. Correct.

7 Q. Have you ever arrested someone for threatening to sue?

8 A. No.

9 Q. If you were called out because someone had threatened
10 a lawsuit, would you make an arrest?

11 A. Per investigation.

12 **MR. JUSTICE:** Thank you. No further questions.

13 **THE COURT:** Redirect?

14 **MR. CONRAD:** Just one quick question.

15 REDIRECT EXAMINATION

16 BY MR. CONRAD:

17 Q. Officer, you said that -- or you testified that you
18 did not speak to Mr. Capell on that day; is that correct?

19 A. Correct.

20 Q. Did you attempt to talk to him?

21 A. We did.

22 Q. All right. And what did you do to try to talk to him?

23 A. We actually went to his apartment or condo door at
24 Point Arcadia.

25 Q. All right. Did he -- did he answer the door?

1 A. No.

2 **MR. CONRAD:** Nothing further from the State of this
3 witness, Your Honor.

4 **MS. JURICK:** Nothing further.

5 **THE COURT:** Okay. Thank you very much. Any objection
6 to this witness being excused?

7 **MR. CONRAD:** None from the State, Your Honor.

8 **MS. JURICK:** No objection.

9 **THE COURT:** Okay. Thank you very much.

10 (Witness excused.)

11 **THE COURT:** Y'all approach real quick.

12 (Proceedings held at the bench; not reported.)

13 **THE COURT:** Okay. Ladies and gentlemen, we're gonna
14 go ahead and stop here for the evening. The next witness
15 is gonna be lengthier than the witness who just went and
16 in the interest of getting everybody out of here at a
17 decent time tonight, we're just gonna go ahead and stop.

18 Now let me give you some rules for tonight. Number
19 one, you're not allowed to discuss the case with anybody
20 in any way, shape or form, okay? That includes anybody at
21 your house, your employer, friends. You can't get on the
22 Internet and blog about it, talk about it. Number two,
23 you are to keep an open mind about the case. You know
24 very little about the case at this point. We're just
25 progressing through at its normal speed. Number three,

1 we're gonna start at 9:30 tomorrow morning, so your
2 bailiffs will tell you what time to be in your jury room.
3 Do not discuss the case, keep an open mind, do not do any
4 research, do not review any news media about the case, and
5 we'll see you tomorrow morning ready to go at 9:30.

6 Thank you very much. Everyone remain seated while the
7 jury is excused.

8 (Whereupon, the jury is excused for the evening at
9 4:06 PM.)

10 **THE COURT:** All right. Anything from the State before
11 we break?

12 **MR. CONRAD:** No, Your Honor.

13 **THE COURT:** From the defense?

14 **MR. JUSTICE:** No, Your Honor.

15 **THE COURT:** All right. Is he in custody?

16 **MS. OSTEEN:** Yes, sir.

17 **THE COURT:** Okay.

18 All right. And, listen. We've got to make sure this
19 is done right. I mean, I can't have all these people
20 coming in and out of the courtroom during my opening on the
21 charge. I've said that in every criminal trial I've ever
22 done. From now on I want the Clerk's office to have that
23 back door locked and I want a sign on the door -- on that
24 door and on this door and on the third door that says "Do
25 not enter this courtroom while the judge is giving their

1 charge", okay? It's not fair for these attorneys to have
2 people coming in and out when they're trying to give their
3 opening statements and I don't want these jurors paying
4 attention to anything other than what they're supposed to
5 be paying attention to.

6 And I say that out of my respect for the attorneys
7 and the preparation they've done and everybody making sure
8 that they have the jury's full and undivided attention. So
9 I want these doors locked when I'm doing the opening on
10 the charge, just like the closing, and I want signs on the
11 door telling people not to enter. We had people entering
12 back there and there's not even a bailiff in the back of
13 the room. So that's nothing on any of the attorneys,
14 that's something that needs to be fixed so that everybody
15 can have the jury's undivided attention, okay?

16 I'll see everybody tomorrow morning at 9:30. Thank
17 you very much for your hard work.

18 **MR. CONRAD:** Thank you, Your Honor.

19 **MS. OSTEN:** Thank you, Your Honor.

20 (Whereupon, the proceedings were concluded for
21 January 25, 2016, at 4:08 PM.)

22 (The following proceedings were held on January 26,
23 2016, beginning at 9:17 AM.)

24 **BAILIFF:** Order in the court. All rise.

25 **THE COURT:** Thank you. Take your seats.

1 Okay. We're back on the record in the State of South
2 Carolina versus Richard Capell. The State is present and
3 the Defendant is present along with his counsel.

4 Anything we need to take up before we proceed,
5 Mr. Conrad?

6 **MR. CONRAD:** Your Honor, right now the State is -- we
7 have two firearms that the State intends to introduce as
8 evidence in this case.

9 **THE COURT:** Okay.

10 **MR. CONRAD:** Just for the record, I'm rendering them
11 safe. They are under lock and key so they cannot be used.

12 **THE COURT:** Okay. Shumard? Would you come down and
13 make sure those weapons are clear and safe and cannot be
14 operated for me, Lieutenant Shumard?

15 **MS. JURICK:** Your Honor, I'm not sure if now is the
16 appropriate time to object to the use of one of those
17 firearms.

18 **THE COURT:** Okay. Well, let's get them safe and
19 then --

20 **MS. JURICK:** Okay.

21 **THE COURT:** I want to make sure everybody's safe
22 before we --

23 **LIEUTENANT SHUMARD:** Your Honor, they're safe.

24 **THE COURT:** Okay. Thank you, Lieutenant. Not that I
25 don't trust you, Mr. Conrad.

1 **MR. CONRAD:** Yes, Your Honor. Thank you.

2 Can we mark these as State's Exhibit 2 and 3, please?

3 (State's Exhibit Number 2 and 3 were marked for
4 identification.)

5 **MR. CONRAD:** Thank you.

6 **THE COURT:** Have you got them marked?

7 **THE COURT REPORTER:** Yes.

8 **THE COURT:** Okay. Do you know which one is which?
9 They're marked now, so for the purposes of your argument
10 do you want to look and see which one you object to?

11 **MS. JURICK:** Well, Your Honor, I'm told that it was
12 a Glock 30 that's involved in this case.

13 **THE COURT:** Okay.

14 **MS. JURICK:** Certainly that's relevant and we
15 wouldn't object to that, but the fact that Mr. Capell owns
16 more than one gun and more than one weapon was retrieved
17 from his house with the search warrant, I'm not sure what
18 the relevance is. I think it's more prejudicial than
19 probative.

20 **THE COURT:** Okay. Hold on. Time out. You understand
21 I don't know your case. So there was one firearm that was
22 allegedly used in the crime. Is that one of the ones
23 marked?

24 **MR. CONRAD:** The State believes so, yes.

25 **THE COURT:** Okay. And which one does the State

1 propose that is? State's Exhibit what?

2 **MR. CONRAD:** Well, Your Honor, truthfully the victim
3 in this case is -- because of the circumstances has been
4 unable to actually identify it. He can identify the type;
5 that it was a semi caliber handgun, but those are two semi
6 calibers, fairly similar looking handguns, so the State
7 is --

8 **THE COURT:** So where did the guns come from?

9 **MR. CONRAD:** They were both recovered via search
10 warrant from Mr. Capell's house.

11 **THE COURT:** Okay. Everybody agrees only one gun was
12 used in the crime; is that correct?

13 **MR. CONRAD:** Yes, Your Honor.

14 **THE COURT:** Okay. All right. So why don't we just
15 pick one and go forward?

16 **MR. CONRAD:** If, Your Honor, the defense is -- I mean,
17 we're willing to stipulate which gun was used. That sounds
18 like that's what they're willing to do. I don't know.

19 **MS. JURICK:** We have no problem with that.

20 **THE COURT:** Well, we certainly don't need an extra gun
21 then if there was only one gun used.

22 All right. One's a 1911 style and one is a Glock
23 style -- I can't tell the Glock. It says Glock 30 Model --
24 Glock Model 30, forty-five caliber. So which one do you
25 want to use, Ms. Jurick?

1 **MS. JURICK:** Your Honor, the second one that you
2 named.

3 **THE COURT:** Okay. So State's Exhibit Number 2 is not
4 going to be admissible. For the record, it is safe and
5 secure and unloaded.

6 Okay. So where can we put this so no one gets it
7 confused? So subject to the proper foundation, of course,
8 State's Exhibit Number 3 is in and only one gun will be in.
9 The fact that there was an extra gun found at the search
10 warrant is not relevant.

11 **MR. CONRAD:** And, Your Honor, for clarification, your
12 ruling is not only is the other gun not relevant as far as
13 evidence, introducing it into evidence, but also when
14 Lieutenant Shumard takes the stand and testifies about the
15 search warrant he shouldn't even refer to it?

16 **THE COURT:** There's no need to even mention the other
17 gun, yes. And, you know, now -- here's what I'm not gonna
18 allow. I'm not gonna allow this discourse of that -- with
19 the alleged victim that that wasn't the gun. I mean, if
20 he can't say specifically what it was, that's fine, but, I
21 mean, I don't want anybody -- you know, all of a sudden
22 it's the whole thing didn't happen. I mean, that hasn't
23 been the theory of the defense at this point in time.
24 I'm just trying to keep the other gun out for any
25 prejudicial effect that it may have. Clearly, the incident

1 is on video and there was a firearm used and the fact that
2 Mr. Bunucci is unable to identify the model and caliber and
3 all that kind of thing, number one, isn't uncommon, but,
4 number two, there were clearly firearms found.

5 Okay. Does that make sense to everybody?

6 **MS. JURICK:** Yes. Thank you, Your Honor.

7 **MR. CONRAD:** Yes, Your Honor.

8 **THE COURT:** Okay. What else, Ms. Jurick? And I
9 didn't mean to cut you off earlier. I just -- one of the
10 things that I need to be responsible for is making sure
11 that firearms in the courtroom are safe, so that was why
12 I just wanted to make sure that was done first.

13 **MS. JURICK:** I understand.

14 **THE COURT:** Anything else?

15 **MS. JURICK:** Not at this time.

16 **THE COURT:** Anything else, Mr. Conrad?

17 **MR. CONRAD:** The State is ready to proceed with the
18 case, Your Honor.

19 **THE COURT:** Okay. Let's go.

20 (Whereupon, the jury enters the courtroom at 9:40 AM.)

21 **BAILIFF:** The jury's present, Your Honor.

22 **THE COURT:** Okay. Thank you very much, Mr. Brown.

23 Good morning, ladies and gentlemen. Welcome back.

24 Thank you for being on time. We will now continue with the
25 State's case. Mr. Conrad or Mr. Berry, you may call your

1 next witness.

2 **MR. CONRAD:** Thank you, Your Honor. The State calls
3 Mr. John Bunucci.

4 **THE COURT:** All right. Please come down and be sworn,
5 Mr. Bunucci.

6 JOHN BUNUCCI,
7 having been duly sworn, testified as follows:

8 **THE CLERK:** Thank you. Please have a seat on the
9 witness stand and state your name for the record and please
10 spell your last name.

11 **THE WITNESS:** John Bunucci, B-U-N-U-C-C-I.

12 **MR. CONRAD:** May it please the Court?

13 **THE COURT:** Yes, sir.

14 DIRECT EXAMINATION

15 BY MR. CONRAD:

16 Q. Good morning, Mr. Bunucci.

17 A. Good morning, sir. How are you?

18 Q. Good. Thank you. Mr. Bunucci, where are you from?

19 A. Born and raised in Orange, New Jersey, sir.

20 Q. And where do you live now?

21 A. I live in Lexington, South Carolina.

22 Q. And so you -- how long have you lived in the South
23 Carolina area?

24 A. Just about nine years or so.

25 Q. All right. And since you've worked in the Columbia

1 area, what occupations have you had? What jobs have you
2 had?

3 A. When I first came down, I worked as a cook at
4 Anthony's Restaurant. They found out I was Italian, so I
5 got hired right away. That being said, I started doing
6 construction work with some of the local guys in my
7 neighborhood, hence, getting a job at Point Arcadia, at
8 first as a maintenance guy, then they found out that I had
9 experience in management and they asked me to be property
10 manager, so I went to go take the classes to get my license
11 to become a licensed property manager.

12 Q. Okay.

13 **THE COURT:** Sir, would you do me a favor and either
14 pull the microphone closer to you or get closer to it?

15 **THE WITNESS:** I'm sorry, sir.

16 **THE COURT:** That's okay. I just want to make sure
17 everybody can hear. Thank you.

18 Go ahead, Mr. Conrad. I apologize for interrupting.

19 **MR. CONRAD:** Thank you, Your Honor.

20 BY MR. CONRAD:

21 Q. And so you said you worked as a property manager at
22 the Point Arcadia condominium complex?

23 A. Yes, I did, sir.

24 Q. About how long did you work there?

25 A. About seven and a half years.

1 Q. And just give the jury a general idea of what your
2 duties were in that job, what your responsibilities were.

3 A. As the property manager there, I assumed the
4 responsibilities -- obviously, the fiduciary
5 responsibilities of the property, but also did part-time
6 maintenance, helped out with the landscaping. What we did
7 is being we had a limited budget, we had a -- I did a lot
8 of the -- a lot of the grunt work. This way we could have
9 the contractors come in. We were trying to resurface all
10 of the condominiums with HardiePlank because they had the
11 old T1-11 on it. That was our main goal while I was there.

12 Q. And, you know, while you were working there, do you
13 recall on average about how many hours of work -- how many
14 hours during the week you would work at the complex?

15 A. Anywhere between thirty-five, forty, sometimes a
16 little longer if there was stuff that had to be done.

17 Q. Okay. And what -- did you have a common reason to
18 interact with the residents?

19 A. Absolutely. I was the liaison -- I was the go-between
20 between the homeowners, the renters, and also the Board.

21 Q. Okay. Just briefly, what's the Board?

22 A. The Board is the Board of Directors, which is elected
23 officials that own there, that would be my bosses, my
24 direct bosses.

25 Q. Uh-huh. When you say they're elected, who are they

1 elected by?

2 A. They're elected by the homeowners.

3 Q. Okay. So the homeowners elect a Board and then the
4 Board is responsible for hiring you? Is that how it
5 worked?

6 A. The original Board hired me.

7 Q. And that's who you reported to?

8 A. Yes.

9 Q. Okay. And let me direct your attention to Mr. Richard
10 Capell. Are you familiar with that gentleman?

11 A. Yes, I am.

12 Q. All right. How are you familiar with him?

13 A. He moved in probably about a year and a half before
14 the incident.

15 Q. Okay.

16 A. He was a homeowner.

17 Q. He was a homeowner at Point Arcadia?

18 A. Yes, he was.

19 Q. Okay. And do you see him in the courtroom today?

20 A. Yes, I do.

21 Q. All right. Can you point him out to the jury?

22 A. He's the gentleman with sunglasses on.

23 **MR. CONRAD:** Okay. If the record can reflect that the
24 victim pointed out the Defendant, please, Your Honor.

25 **THE COURT:** Yes, sir.

1 BY MR. CONRAD:

2 Q. All right. And Mr. Capell, as a homeowner, had you --
3 before February 16, 2015, had you had any interaction with
4 Mr. Capell?

5 A. Oh, yes, all the time.

6 Q. Okay. And would you -- just as a generalization,
7 would you say you interacted with Mr. Capell more or less
8 than the average homeowner?

9 A. Pretty average. In the beginning, I was told somebody
10 was moving into the cul de sac, so I went over there to
11 introduce myself and he needed help because he was unable
12 to carry I guess -- I don't know if it was a washer and a
13 dryer or just the washing machine upstairs, so I helped
14 carry the washing machine upstairs and I gave him a wrench,
15 but his mom said he wasn't able to use a wrench so I had to
16 go upstairs and actually hook up the washing machine up for
17 him and asked him to watch it in case it leaked. That was
18 the first time I met him. And other than that, yes, normal
19 -- normal interaction.

20 Q. So prior to February 16th, would you say that the
21 majority of your interactions with Mr. Capell were normal?
22 Was there anything abnormal about them?

23 A. Probably a couple of months before it started getting
24 a little ugly.

25 Q. Okay. We'll talk about that more in a minute, but --

1 or at any point before February 16th had you ever been in a
2 fight with Mr. Capell?

3 A. Not at all, sir.

4 Q. Had you ever been -- physically assaulted him?

5 A. No.

6 Q. Or had he ever assaulted you?

7 A. No, sir.

8 Q. All right. Had you ever yelled at him prior to
9 February 16th?

10 A. No, sir.

11 Q. All right. And you just mentioned that things were
12 getting a little difficult prior to February 16, 2015; is
13 that correct?

14 A. Yes, sir.

15 Q. What -- just keeping it in broad terms at this point,
16 what do you mean by that?

17 A. Well, Mr. Capell is handicapped and he had a service
18 dog and he started to -- he started to like start baiting
19 people with the "Look, I'm handicapped, my dog's a service
20 dog". He started with the pool, wanting to take the dog
21 into the pool. That was one of his -- his main things.

22 Q. And let me stop you there. So he -- at what point did
23 he originally talk to you about getting his dog into the
24 pool?

25 A. I think it was towards the end of -- end of the

1 summer, prior to that.

2 Q. Okay. So summer of what, 2014?

3 A. Yes, I think. I can't remember exactly.

4 Q. And do you recall what your reaction to -- what you
5 told him in regards to the dog swimming in the pool?

6 A. I said I know that you have a service dog and the dog
7 is allowed in the pool area because it's a service dog, but
8 I wasn't sure about dog being in the pool and said I would
9 have to check with DHEC.

10 Q. And just -- just for clarification, what would you be
11 concerned about with DHEC and the pool?

12 A. Because no one ever asked to take a dog in the pool.

13 Q. Okay. And was there some role in your job that
14 required you to be worried about that?

15 A. Well, I was the -- I was the licensed pool operator.
16 That was one of the things I took on to save money for the
17 Association.

18 Q. Okay. And so was your response to him no, the dog can
19 never go in the pool?

20 A. No.

21 Q. And you -- I believe you just testified that you said
22 that you were gonna have to look into it; is that correct?

23 A. Yes. Yes, I did.

24 Q. And -- and when you said you looked into it more, what
25 did you do or call?

1 A. I was aware with the ADA because I ran transportation
2 in Pennsylvania and we had mostly, you know, people with,
3 you know, missing limbs in wheelchairs, so it was a little
4 different than -- I wasn't sure of his -- I mean, I heard a
5 lot of his physical disabilities and, you know, you hear so
6 much stuff, I go okay, let me just find out for sure. So
7 what I did is I called -- I called down to Mr. Ridge at
8 DHEC, which is -- I think at that time he was in charge of
9 the recreational waters, and we were having a meeting with
10 all the pool operators because we got new -- because they
11 were changing over to make the chlorine better, it was kind
12 of hard on it us because we had to monitor it more, and I
13 spoke to him -- I spoke to him about that. I also called a
14 couple of advocacy groups about handicapped people; one
15 being PAL and the other being ABLE, to ask, you know, okay,
16 how do we know that the dogs are trained, you know, is
17 there a certificate, is there something that we can go on.

18 Q. I'm gonna stop you here, Mr. Bunucci. It sounds like
19 you made a number of calls and you put some effort into it?

20 A. I put a lot of effort.

21 Q. Okay. And did you give Mr. Capell an answer as to,
22 you know, what was the final answer about the dog in the
23 pool?

24 A. Well, since we were -- the only thing that I got out
25 of it is that we were able to ask him what the dog was --

1 what was the dog trained to assist you in, okay, but the --
2 the Board decided that, you know, it's not that big of a
3 deal for -- and DHEC reiterated that it's not that big of a
4 deal if the dog goes in the pool. Because if the dog has
5 an accident, just like a human has an accident in the pool,
6 you close the pool, retest it, add the chemicals, get it
7 back up to snuff. So I wrote a letter to him saying that
8 it's okay for you to take the dog in the pool, but please
9 use your discretion, you know, safety first, make sure that
10 you and your dog are safe, but also that people are safe,
11 too, if they're in the pool, and if you would use it on off
12 hours like we do allow people to swim laps, you know, so
13 they take -- and they swim laps, you know. If you could
14 use it off hours when nobody is using the pool, that would
15 be great.

16 Q. Okay. And so let's -- February 16th of 2015, which is
17 last year, do you recall that day, sir?

18 A. Yes, sir, I do.

19 Q. What were you doing on that day?

20 A. We had -- we had a power outage where the modem was
21 down, I couldn't get the computer going, it was Martin
22 Luther King Day. And so we were having a Board meeting, so
23 I had to get stuff printed for that, I was really working
24 on trying to get the modem to work, trying to get the
25 computer up because I had to get stuff off the computer for

1 the board members that night.

2 Q. And while you were doing this work, where were you?

3 A. I was in my office.

4 Q. All right. Can you just describe to the jury the
5 office; like its size and what's in it?

6 A. Okay. The office is in the clubhouse. As you walk
7 into the clubhouse, it's to the left. It's probably eight
8 by ten, eight by twelve. It's not a very big area.

9 Q. Okay. And were you standing or were you sitting?

10 A. I was sitting trying to get the modem to work.

11 Q. Okay. And -- and while you're doing this work, did
12 anybody come and talk to you or did anybody enter your
13 office?

14 A. Yes, Mr. Capell busted in.

15 Q. Was there anybody else in the office at that point?

16 A. No, sir.

17 Q. Okay. And -- and let me ask you this. Mr. Capell,
18 were you aware of him ever videotaping or recording
19 anything?

20 A. He -- he made sure everybody knows that he videotaped
21 everything.

22 Q. All right. And prior to February 16, 2015, were you
23 aware that he ever carried a gun?

24 A. He let everyone know that he had a firearm and he knew
25 how to use it.

1 Q. All right. And are you aware of whether he was
2 licensed to carry that firearm or not?

3 A. I do believe he did tell us that he had his CWP. I
4 never asked to see it because, you know, you take people's
5 word and he lives there, so as far as I'm concerned there's
6 probably several people that carry there and that's their
7 right as homeowners.

8 Q. On that day, February 16, 2015, were you carrying any
9 weapon?

10 A. No, sir.

11 Q. Did you have a gun?

12 A. No, sir.

13 Q. Did you have a knife?

14 A. No, sir.

15 Q. A bat?

16 A. No.

17 Q. A crowbar or anything like that?

18 A. Nothing.

19 Q. And to your knowledge, did -- did you give Mr. Capell
20 any reason to ever think you were carrying any sort of
21 weapon?

22 A. No, sir.

23 Q. And when Mr. Capell came in, how would you describe
24 his mood?

25 A. Extremely agitated. He busted in saying "What are you

1 criminals up to?".

2 Q. We'll get into the details.. We'll watch the video in
3 a second --

4 A. Great.

5 Q. -- but you would describe him as agitated when he came
6 in?

7 **MS. OSTEEN:** Objection, Your Honor. Leading.

8 **THE COURT:** Sustained.

9 BY MR. CONRAD:

10 Q. And after he came in, what was he wanting to talk to
11 you about?

12 A. Well, he kind of went -- he said I was -- if I -- if I
13 admitted that I said the dog couldn't go in the pool that
14 he wouldn't press charges against me, that I wouldn't go to
15 jail that day.

16 Q. Okay.

17 A. Then he said that if -- is it -- did I or did I not
18 coerce him into buying in here and not give him the master
19 deeds and bylaws.

20 Q. I'm gonna stop you here.

21 A. Okay.

22 Q. So he was angry about the dog in the pool, right?

23 A. One of the things, yes.

24 Q. And I believe you testified just a few minutes ago
25 that you communicated to him about what the dog could do in

1 the pool --

2 A. Absolutely.

3 Q. -- previous to February 16th?

4 A. Yes.

5 Q. And was that communication -- I believe you testified
6 what it was, but did you tell him the dog couldn't go in
7 the pool?

8 A. No.

9 Q. All right. I'm gonna show you, sir --

10 **MR. CONRAD:** If I could approach the witness, Your
11 Honor?

12 **THE COURT:** You may.

13 BY MR. CONRAD:

14 Q. I'm gonna show you what's been marked as State's
15 Exhibit 1. Do you recognize that?

16 A. That's the video of the incident.

17 Q. All right. And have you -- you've viewed this video
18 before?

19 A. Yes, I did. It was on Youtube.

20 Q. Okay. And those -- it looks like a signature or
21 something there. What is that?

22 A. That's my signature, sir.

23 Q. All right. So this is a video you've actually -- you
24 viewed this week?

25 A. Yes, here.

1 Q. And would you say that this video contains an accurate
2 recording of what happened that day?

3 A. Absolutely, sir.

4 Q. And what point of view is this video viewed from?

5 A. From his -- I guess his cell phone that he uses. Like
6 a body camera.

7 Q. Were you making a recording?

8 A. No.

9 Q. Who was the making the recording?

10 A. Mr. Capell was. He records everything.

11 Q. All right. And I believe you just said something
12 about Youtube. What do you mean by that?

13 A. He posted it on Youtube. I found out through Forest
14 Acres police that it was on Youtube and, of course, I had
15 to bear the brunt of everyone in my neighborhood viewing
16 it.

17 Q. And did you go on Youtube and view it?

18 A. Yes, I did.

19 Q. Okay.

20 **MR. CONRAD:** I beg the Court's indulgence.

21 **THE COURT:** Do you want to move it into evidence?

22 **MR. CONRAD:** Yes, Your Honor. Your Honor, at this
23 point the State would move to introduce State's Exhibit 1
24 into evidence.

25 **THE COURT:** Any objection?

1 **MS. OSTEEN:** Just our previous objection. That would
2 be it.

3 **THE COURT:** All right. Noted for the record. The
4 previous pre-trial objection is noted. I understand to
5 what they are referring to and my ruling is the same.
6 State's Exhibit 1 is admitted.

7 (State's Exhibit Number 1, a video recording, was
8 admitted into evidence.)

9 **MR. CONRAD:** And permission to publish, Your Honor?

10 **THE COURT:** Okay.

11 All right. Ladies and gentlemen, if somebody can't
12 see or hear, just raise your hand. Getting these
13 contraptions in the right place so everybody can see can
14 sometimes take a moment.

15 **MR. CONRAD:** Mr. Bunucci, can you see?

16 **THE WITNESS:** I've seen it several times, but I'll
17 watch it again if I have to.

18 (Whereupon State's Exhibit Number 1 was played for the
19 Court and jury.)

20 BY MR. CONRAD:

21 Q. Okay. Mr. Bunucci, let's just clear up -- there was a
22 discussion of some bylaws laws or something in that video.
23 Just briefly explain to the jury what you guys were talking
24 about.

25 A. That's the master deeds and bylaws that every

1 homeowner is supposed to have when they buy a place.

2 Q. And Mr. Capell was accusing you of not giving them to
3 him; is that what he's saying?

4 A. Anybody who asks for it, gets it. That's something
5 that the closing attorney usually gives to the homeowner at
6 that time. When I -- when I bought my house, they gave me
7 my master deeds and bylaws for my homeowners development.

8 Q. Okay. Let's talk about the ending of that video.
9 When you're exiting that door, what do you say, sir? What
10 are you saying?

11 A. I -- I'll have your -- can I say it?

12 **THE COURT:** Yes.

13 A. I'll have your fucking shit down.

14 Q. What did you mean by that?

15 A. Mr. Capell, like I said before, baits people and he
16 threatens people and he makes people look like they're
17 doing something wrong when -- in actuality, when you're
18 doing criminal activities, when you're baiting people
19 and you're trying to get people to -- you know, to say
20 something wrong to you so you can sue them, that's what I
21 meant by I'm gonna call the cops for -- to press charges
22 for harassment. I mean, it was crazy.

23 Q. So when you're exiting that door, what were you
24 intending to do?

25 A. I was gonna yell at him.

1 Q. Were you planning on hitting him or striking him?

2 A. No, sir.

3 Q. Were you running when you came out of that door?

4 A. No, sir.

5 Q. And when you came out that door, what did you see?

6 A. I saw a gun pointed at my chest.

7 Q. All right. Can you see that gun in the video?

8 A. No, you cannot.

9 Q. All right. And who was holding that gun?

10 A. Mr. Capell was.

11 Q. And you said it was pointed at your chest?

12 A. Yes.

13 Q. How was Mr. Capell holding the gun?

14 A. It looked like he was holding it like this so you
15 couldn't see it on camera. Like he was making an effort.
16 Because usually, you know, at firearm range you hold it
17 like that and you support your arm and he was kind of
18 like (demonstrating).

19 **MS. OSTEN:** Objection, Your Honor. Speculation.

20 **THE COURT:** Well, he's not speculating as to what he
21 saw. You can only say what you saw.

22 **THE WITNESS:** That's --

23 **MS. OSTEN:** And I was objecting to his thought
24 process about how he holds a weapon.

25 **THE COURT:** Okay. Overruled. Go ahead.

1 BY MR. CONRAD:

2 Q. Go ahead. How was Mr. Capell holding the gun?

3 A. He was holding it so it wasn't -- so it was out of the
4 -- you know what, it happened so fast, you know, but it was
5 -- it was up. It wasn't like in a normal -- like if you're
6 gonna protect yourself, oh, oh, back off. He was like --
7 he had it already out.

8 Q. So what you're saying is the gun was high and up
9 closer to his shoulder; is that what you're saying?

10 A. Yes, sir.

11 Q. Okay. And at that point what did you feel when you
12 saw that?

13 A. I asked him did he pull that shit on me.

14 Q. Okay. And by "shit" you mean the gun?

15 A. The gun.

16 Q. All right. But how did that -- how did you feel?

17 A. Well, obviously when you have a gun pointed at your
18 chest, you feel extremely anxious, I guess, mad, and I went
19 inside to call the cops.

20 Q. Okay. And did you focus on this gun? Did you get a
21 good look at it?

22 A. You know, I was just like -- I was seeing what he was
23 gonna do. I was watching his eyes, you know.

24 Q. All right. So you -- you were not focussed on the gun
25 itself?

1 A. I looked at the gun and asked did you pull on me. I
2 looked him in the eyes. Because that's how you talk to
3 people, you look in their eyes.

4 Q. Okay. So you weren't too concerned at that point what
5 kind of gun it was?

6 A. No. It was a gun.

7 Q. And what -- did you get a general look at it? Was
8 it --

9 A. It was -- he had showed it to me before in the course
10 of the last, you know, fourteen, fifteen months that he
11 lived there. It was a semiautomatic.

12 Q. A handgun or a rifle?

13 A. A handgun.

14 Q. Okay. If you saw it again today, would you recognize
15 it?

16 A. No. I mean, I came from a bright, sunshiny office
17 with lights on to a dark -- a dark area in the -- in the
18 clubhouse, so I went from light to dark. So, oh, did you
19 -- that's what I said. I was extremely taken aback by it.

20 Q. Okay. So you don't -- I apologize. So you don't
21 think you'd recognize it or --

22 A. I could recognize the style of gun. I mean, you know,
23 I'm not sure of the caliber or exactly --

24 **MR. CONRAD:** If I could approach, Your Honor?

25 **THE COURT:** Yes.

1 BY MR. CONRAD:

2 Q. I'm just gonna show you what's marked as State's
3 Exhibit 3, which is a Glock handgun.

4 A. It certainly like looks it.

5 Q. Okay. But can you say with certainty that was the --
6 the gun he was holding that day?

7 A. It was a gun similar to that.

8 Q. Could you tell if the gun was loaded or not?

9 A. He said he was always ready.

10 Q. All right. But just --

11 A. At that time, he did not say that. He just said back
12 off.

13 Q. Okay.

14 A. Or actually he said back the -- can I say it?

15 **THE COURT:** Yes.

16 A. He said, "Back the fuck off".

17 Q. Okay. Let's -- let's go back to when Mr. Capell
18 originally came into your office. How close did he get to
19 you? We kind of see in the video, but in your estimation,
20 how close did he get to you?

21 A. He was standing over me.

22 Q. By standing over you, would you say that was within,
23 what, two to three feet or outside that?

24 A. Closer than that because the desk is like a triangle
25 shape. I was working on the modem this way, so he was

1 standing -- there wasn't much room, there was a bookcase
2 there, so he had -- there was just enough room for him to
3 stand there. So that's why I was looking up at him because
4 he was right over me.

5 Q. And when -- when he was speaking to you, would you say
6 his voice was -- was it a normal level or was it raised?

7 A. It was raised. He was agitated.

8 Q. All right. So would you say he was yelling?

9 **MS. OSTEN:** Objection, Your Honor. Leading.

10 **THE COURT:** No leading. Sustained. Rephrase the
11 question.

12 **THE WITNESS:** He came -- he came there to confront me.

13 **MR. CONRAD:** I'll move on to the next question.

14 BY MR. CONRAD:

15 Q. What word did you just say?

16 A. He came there to confront me.

17 Q. Okay. And he came in there to confront you?

18 A. Yeah.

19 Q. What -- why do you think he did that? Or do you have
20 any clue?

21 A. He -- I think it was a month or two when he first
22 moved in he had the neighbor's sister's car towed because
23 they parked in his parking space.

24 **MS. OSTEN:** Objection, Your Honor. Relevance.

25 **THE COURT:** Sustained. This line of questioning is

1 based on speculation.

2 **THE WITNESS:** And I --

3 **THE COURT:** He needs to move on, Mr. Bunucci, okay?

4 **THE WITNESS:** Yes, sir.

5 **THE COURT:** Thank you.

6 BY MR. CONRAD:

7 Q. Did you invite him over to your office that day?

8 A. No.

9 Q. Did he -- did we see him knock in the video?

10 A. No, he just came right in.

11 Q. And -- and you said his voice was raised?

12 **MS. OSTEN:** Objection, Your Honor. Leading.

13 **THE COURT:** Overruled.

14 A. Well, you can hear in the video. It's right off the
15 bat. Usually people come -- there's a doorbell outside.
16 He chose not to ring the doorbell. And then most people
17 knock on the door before they come in in case I'm on the
18 phone, you know, whatever. He chose not to do that.

19 Q. And we hear Mr. Capell say in the video something
20 about him showing up with the police. Do you have any idea
21 why he would show up with the police or if there's any
22 legitimate reason for the police to be there?

23 A. Well, he was -- prior to that there was, you know,
24 voice conversations, e-mails, everything alluded to the
25 fact that basically I had to do what he said or else I

1 would be prosecuted. I would -- he was gonna sue me, he
2 was gonna take me to court.

3 Q. Okay. And we hear him calling you a couple of names
4 in the video, too. I think at one point he calls you a
5 criminal; is that right?

6 A. Yes.

7 Q. All right. And what were some of the other things he
8 called you?

9 A. We're gonna plead ignorant, he called me ignorant. I
10 kind of block out the video because I really don't like
11 watching it.

12 Q. During the video, it's pretty quiet, but did you ever
13 tell Mr. Capell to leave you alone?

14 A. I did ask him. I said I've really got to fix this for
15 the meeting, you know. I mean, I'm trying to fix this, you
16 know.

17 Q. And did he -- did he leave after you asked him to?

18 A. He -- I mean, I told him twice I'm fixing the thing.
19 And I tried to call -- because in the video you saw there
20 was a gentleman outside jump-starting one of the other
21 homeowners' car, that was one of the board members. He was
22 outside. He didn't answer his phone when I tried to dial
23 his phone. I was just gonna ask him to come in so - so
24 there was somebody from the board. You know, I'm just an
25 employee, I don't live there. You know, my -- my vested

1 interest is just that I get a paycheck, okay, and I do my
2 job to the best of my ability and, you know, being abused
3 verbally and threatened is not part of my job description.

4 Q. Okay. And prior to Mr. Capell leaving the room, I
5 think we hear like a slam or a knock or something. What
6 was that?

7 A. He slammed his -- he slammed his hands on my computer
8 desk right in front of me.

9 Q. How far away from that was -- from you was that?

10 A. Like I was standing here with the modem and it was
11 right here..

12 Q. And was that quiet or was that loud?

13 A. No, he slammed them pretty hard.

14 Q. Did that startle you?

15 A. Yeah.

16 Q. Okay. And what -- what does Mr. Capell do right he
17 after he slams his hands, if you remember?

18 A. He starts walking away. Fine, I'll see you in court,
19 I think he says or something to that effect, or I'll see
20 you -- tonight you'll get arrested or something.

21 Q. And what did you say he actually physically did
22 though?

23 A. He slammed his hands.

24 Q. No, I mean after -- after that.

25 A. And he started walking out.

1 Q. Okay. And what did you do at that point?

2 A. I asked him if he was threatening me.

3 Q. Okay. And what did you physically do at that point?

4 A. I started getting up. I had to put the modem down and
5 get myself out of a rolling chair.

6 Q. And you asked him if he was threatening you?

7 A. Yes.

8 Q. Okay. And at that point where was Mr. Capell when you
9 asked him that question?

10 A. He was -- he was kind of running to the door.

11 Q. And had you started moving at that point?

12 A. I asked him if he was threatening me and I started to
13 get up, then he slammed the door in my face.

14 Q. Okay. How far away were you from that door when he
15 slammed it?

16 A. A couple of feet, two feet, maybe three at the most.

17 Q. Okay. Would you characterize him closing -- did he
18 just shut the door?

19 A. No, he slammed it.

20 Q. He slammed it. And, again, was that quiet or was that
21 loud?

22 A. It was loud.

23 Q. Okay. And then what did you do at that point after he
24 slammed it?

25 A. I opened the door and said I'll take your -- you know,

1 are you threatening me, I'll take your fucking shit down,
2 and I opened the door and he had the gun pointed to me.

3 Q. We already explained to the jury what you meant by
4 that, but at any point from when you got up from the desk
5 to when you went outside the door did you run?

6 A. No, I -- I have an artificial knee. I really can't
7 run.

8 Q. All right. So you were walking, is that fair?

9 A. I got up as fast as I could, but --

10 Q. All right. And when you were inside the office with
11 Mr. Capell, at any point did you raise your hands?

12 A. No.

13 Q. All right. Either with an open hand or a closed fist?

14 A. (Shakes head.) No, sir.

15 Q. And did you attempt to attack him at any point?

16 A. No, sir.

17 Q. Did you try to hit him at any point?

18 A. No, sir.

19 Q. Did you try to grab him or even physically touch him?

20 A. No, sir.

21 Q. When he came out of the door, how far away was he from
22 you?

23 A. He was approximately -- I believe it was about --
24 because I took like one or two steps and he was -- he was
25 there with the gun pointed at me.

1 Q. Okay. But how far -- when he was holding the gun, how
2 far was he from you?

3 A. Probably three or four feet at the most.

4 Q. And obviously you couldn't see him when the door was
5 closed in your face, slammed in your face. Were you
6 expecting to see Mr. Capell standing there when you came
7 through that door?

8 A. No, I expected him to be on his way out.

9 Q. And if Mr. Capell had continued on his way out --

10 **MS. OSTEE:** Objection, Your Honor. Leading.

11 **THE COURT:** Stop leading.

12 BY MR. CONRAD:

13 Q. About how long would it normally take for someone to
14 get to the exit of the building from your office space?

15 **MS. OSTEE:** Objection, Your Honor. Speculation.

16 **THE COURT:** Overruled.

17 A. I don't know. Between ten and thirty seconds. I
18 mean, it's not that far. It's probably about twenty maybe,
19 twenty-five feet out the door.

20 Q. All right. So it's about twenty-five feet from your
21 office door to the exit of the building?

22 A. That's probably a good assumption.

23 Q. Okay.

24 **MR. CONRAD:** I beg the Court's indulgence.

25 **THE COURT:** Yes, sir.

24 A. And, yes, they are the -- they're the enforcing body.
25 Like if there's a grievance, they go through that.

1 Q. Okay. So the grievance process goes through the HOA,
2 the Board?

3 A. Yes, it comes through me. I forward everything to
4 them.

5 Q. And so you were the property manager?

6 A. Yes, I was.

7 Q. For seven years I think you said?

8 A. About seven and a half years prior.

9 Q. And as you said on direct, it was your job to kind of
10 be the intermediary, the middleman; is that correct?

11 A. Yes.

12 Q. Okay. And now you also said that it was your job to
13 be fiscally responsible and you meant take care of their
14 finances; is that correct?

15 A. Yes.

16 Q. Okay. Now your office, talking about the layout,
17 the jury has seen the video, but you go into the main
18 clubhouse and then your office is kind of in a corner of
19 the clubhouse?

20 A. Yes, it was to the left.

21 Q. And the clubhouse is open to any homeowners?

22 A. Within reason.

23 Q. Yeah. So they rent that property out to the
24 homeowners?

25 A. Yeah, occasionally someone has a party there.

1 Q. You can have a party?

2 A. (Nods head.)

3 Q. Is that where the board meetings are?

4 A. Yes, they are.

5 Q. And the HOA meetings?

6 A. Yes.

7 Q. Do they have neighborhood meetings there?

8 A. They have a yearly homeowners' association meeting
9 where all the homeowners are expected to come and that's
10 where they vote on who's gonna run the Board, they talk
11 about the direction of where the Association is going, how
12 we did that year, what are we gonna do this year, normal --
13 and then they have monthly board meetings and that is open
14 to everybody who is a homeowner.

15 Q. Okay. And your office is -- you have to go through
16 the clubhouse or is there another exit?

17 A. There is another exit through the pool, which is -- I
18 don't know how they -- why they did that, but --

19 Q. Okay. And you encourage people to come to your office
20 to discuss problems?

21 A. Absolutely.

22 Q. And those -- somebody could come to talk about regime
23 fees?

24 A. Absolutely, ma'am.

25 Q. Come to talk about maintenance issues?

1 A. Absolutely, ma'am.

2 Q. Any issues that they're having with the housing
3 property?

4 A. What we do is we ask them to put it in writing so
5 everyone is on the same page so it's not speculative; I
6 said this, he said that.

7 Q. And you said that there's a grievance process,
8 somebody writes out a grievance. Is there a specific form?

9 A. No.

10 Q. No? They just tell you about it?

11 A. Right.

12 Q. And then it goes to the Board?

13 A. Yeah.

14 Q. Have you been grieved in the past?

15 A. Sure.

16 Q. Yeah.

17 A. I was there seven and a half years and you can't
18 please everybody all the time.

19 Q. Yeah. In fact, there are other residents there
20 currently that didn't like you?

21 A. Absolutely not. They -- yes, they did not like me for
22 various reasons.

23 Q. Oh, okay. And obviously with lots of residents it's
24 hard to get along with everyone there?

25 A. Right, but I still have to remain impartial and deal

1 with everybody in a professional manner as I did with
2 Mr. Capell.

3 Q. Okay. Now we talked about Richard and you talked
4 about meeting him when he was moving in?

5 A. Yes, ma'am.

6 Q. And you knew that he had disabilities?

7 A. I didn't realize it at the time, but when he said he
8 needed help getting the washer machine upstairs, he said I
9 can't do it, I have a disability. I didn't ask him what
10 his disability was, it made no difference. I would help
11 anybody do anything that was part of my job.

12 Q. That's very kind of you. Now with this pool incident,
13 you said that he talked to you -- he talked to you about it
14 in the summer of 2014?

15 A. It's -- it started then. He -- he -- you know, there
16 were so many -- so many e-mails about so many different
17 things, I really can't specifically remember exactly that,
18 but he came up one day and said, you know, can my dog go in
19 the pool and I said I wasn't sure. And just to reiterate
20 what I said before, I know the pool area is open to the dog
21 because he's a service dog, but I'm not sure about the
22 water because we never had anybody ask to have a dog in the
23 water.

24 Q. And you didn't respond to him until February 4th about
25 that issue?

1 A. I said I would have to check on it.

2 Q. And you responded on February 4th?

3 A. If that's what the e-mail said, that was probably
4 the --

5 Q. Would you like to see it?

6 A. -- the final draft.

7 Q. Would you like to see it?

8 A. No, I saw it.

9 Q. Okay. So February 4th?

10 A. Right.

11 Q. Now I want to talk about the incident a little bit.

12 When Richard came in you were previously occupied, you were
13 working on something?

14 A. Yes.

15 Q. And you were busy working on something?

16 A. Yes, ma'am.

17 Q. And it was President's Day, wasn't it?

18 A. Yes, it was.

19 Q. And so you were the only one working in the HOA or in
20 the complex?

21 A. I believe -- well, I know the board members were
22 doing stuff. I think Mr. Edwards was helping his son
23 because his son was doing gardening. He's our gardener
24 -- or landscaper.

25 Q. And there was a meeting that night?

1 A. Yes, there was, ma'am.

2 Q. And so you were busy trying to get the computer fixed
3 for that meeting?

4 A. Right, because there was other stuff I had to get off
5 there that wasn't given to the -- stuff comes in the same
6 day or the day before and if it's on a Monday night well,
7 over the weekend people will send e-mails and stuff, so I
8 print them out and give them to the board members so -- so
9 they're privy to it and we could discuss it at the meeting.

10 Q. And you were sitting down at your desk facing your
11 computer?

12 A. Kind of, yeah, catty-corner.

13 Q. Kind of working on the side, too?

14 A. The modem.

15 Q. And there's a desk that separates the other side,
16 right?

17 A. No, ma'am.

18 Q. Is there anything in between there?

19 A. No, ma'am.

20 Q. Okay. So it's open right there?

21 A. Yes, ma'am.

22 Q. Okay. And you're saying that there was a bookshelf?

23 A. A small bookshelf right there.

24 Q. So when residents come in, that's where they stand to
25 talk to you?

1 A. No, ma'am. They usually sit at the chair that's next
2 to the desk.

3 Q. They usually --

4 A. There's a chair to the left.

5 Q. Okay. And you have to go forward, more into the room
6 or --

7 A. As you walk in -- as you walk in, my desk is there and
8 then --

9 Q. And you would turn to talk to them?

10 A. A foot to the left there is a chair.

11 Q. Okay. So you would turn to talk to them when they
12 were in the office?

13 A. I would turn at my desk and speak to them.

14 Q. Okay. Now on the date at issue Richard came in to
15 talk to you about this on-going problem and that frustrated
16 you after a while?

17 A. Ma'am, the -- there was several issues that he came
18 in, so it's kind of hard to stay focussed on one thing
19 because he wasn't staying focussed on one thing. He was
20 jumping back and forth.

21 Q. Okay. And you wanted him to leave you alone?

22 A. I was trying to fix the modem to get ready. He
23 already had -- I think he was upset that we weren't
24 responding to any of the e-mails because the computer was
25 down, I couldn't get any e-mails that day, so. I mean,

1 that's what I'm thinking in my head, total speculation, but
2 -- because he said if you're gonna respond -- if you hear
3 him in his voice "Are you gonna respond to my e-mails or
4 not?" Well, I'm trying to fix the modem, so he didn't.

5 Q. And that's when he told you that he would see you in
6 court?

7 A. No, that was on-going.

8 Q. Okay. You felt after he had talked for a little while
9 that enough was enough?

10 A. No, ma'am. He slammed his hands. It was almost an
11 attack on me.

12 Q. And so that was where it became enough?

13 A. Nobody should be attacked like that verbally or any
14 way. There's no reason for it.

15 Q. And you felt --

16 A. Threatened.

17 Q. -- that it was a threat?

18 A. (Nods head.)

19 Q. Okay. Now at that point Richard turned to leave?

20 A. Yeah.

21 Q. But you --

22 A. Slammed it. Slammed it, I'll see you in court, bla,
23 bla, bla. That's why I said are you threatening me and he
24 said no, slammed the door in my face -- well, not in my
25 face because I wasn't up there, and that's when I came out

1 of the door.

2 Q. And then you came and you threw the door open?

3 A. I opened the door as fast as I could. I didn't slam
4 the door because if I would have slammed the door it would
5 have broken the window that was adjacent to it.

6 Q. Okay. And do you think it's a fair characterization
7 to say that you threw the door open?

8 A. No, I opened the door.

9 Q. Do you remember giving testimony at a hearing on
10 January 19th?

11 A. That was last week?

12 Q. Yes. Do you remember that?

13 A. Yes, I do.

14 Q. And --

15 A. Where he said he was -- his blood was boiling when he
16 came in. I do remember that.

17 Q. And at that time --

18 A. That I threw the door open?

19 **MS. OSTEEN:** May I approach, Your Honor?

20 **THE COURT:** Sure.

21 **BY MS. OSTEEN:**

22 Q. See if this will refresh your memory of your
23 testimony.

24 A. As I threw the door open, he had a gun pointed.

25 Q. Okay. So saying that you threw the door open, that's

1 fair?

2 A. I opened the door as fast as I could, but I didn't --
3 like I said, I still had my hand on --

4 Q. And you went out to confront him?

5 **THE COURT:** Whoa, whoa, whoa. He didn't finish.

6 **MS. OSTEEN:** I'm sorry, Your Honor.

7 BY MS. OSTEEN:

8 Q. You went out to confront him?

9 A. I was yelling at him, yes.

10 Q. Okay. And that's when you yelled "I'll fucking have
11 your shit down"?

12 A. I kind of yelled that as I was coming out the door.

13 Q. Okay. Now you said on direct --

14 **MS. OSTEEN:** Actually, Your Honor, I'm gonna play
15 the --

16 **THE COURT:** Yes, ma'am.

17 **MS. OSTEEN:** Thank you.

18 BY MS. OSTEEN:

19 Q. Now on direct you said that you -- that the gun was
20 pointed at you --

21 A. Yeah.

22 Q. -- when the door was opened?

23 A. Right.

24 Q. Okay.

25 A. I believe it was. Like I said, I came from a dark --

1 I mean, I came to the dark from a lighted office.

2 Q. Uh-huh. Okay. I'm just gonna play this and try not
3 to be in your way too much.

4 (Whereupon, State's Exhibit 1 was played for the Court
5 and jury.)

6 **MS. OSTEEN:** Okay. I'll pause it there. I didn't
7 quite pause it there.

8 (Whereupon, State's Exhibit Number 1 was replayed for
9 the Court and jury.)

10 BY MS. OSTEEN:

11 Q. Okay. So did you take any steps out of the door?

12 A. Yeah, it looks like I took one or two steps.

13 Q. Okay. And then presumably you walked exactly the
14 amount of steps back into the office?

15 A. Pretty much, yes.

16 Q. Okay. Now you knew where Richard lived?

17 A. Yes, I did, ma'am.

18 Q. And so you could have sent officers to his house
19 later?

20 A. (Nods head.) Sure.

21 **MS. OSTEEN:** Thank you. No further questions.

22 **THE COURT:** Redirect?

23 **MR. CONRAD:** Just a few questions, Your Honor. If I
24 could approach the witness, Your Honor?

25 **THE COURT:** Yes, sir.

REDIRECT EXAMINATION

BY MR. CONRAD:

Q. I'm gonna show you -- it looks like an e-mail. Can you tell us what that is, Mr. Bunucci?

A. That's the e-mail that I got approved by the Board to send to Mr. Capell after I found out all the research I had to do.

Q. And what day was that e-mail, sir?

A. That was February 4th.

Q. All right. And was this the e-mail that Ms. Osteen was asking you questions about it before?

A. I believe this is the one she was referring to.

Q. That's the one you're referring to?

A. Yes.

Q. Okay. I'm just gonna ask you out of fairness, the second paragraph, not the whole -- can you read to the jury the second paragraph of that e-mail, please?

A. So to summarize, that one?

Q. Yes.

A. All right. So to summarize -- I'm sorry. So to summarize and in answer to your original inquiry, for all the parties involved and the safety of Point Arcadia as a whole, we ask if you are going to take the dog in the pool if you would be diligent as to take all necessary precautions as to assure your safety, that of your service

1 animal and the residents that may be using the pool at the
2 time. We feel it would be best, like lap swimmers, if you
3 would use the pool when it is unoccupied to minimize any
4 risk that may occur. Early morning is best for this. As
5 you were originally told, your service dog is always
6 allowed in the pool area. Thank you, John Bunucci,
7 manager.

8 Q. And you wrote that, correct?

9 A. Yes, I did.

10 Q. And you said something about approval. What did you
11 mean by that?

12 A. We have a retired school teacher and we also have a
13 -- at this time we had a -- I think she just resigned,
14 but we had a -- we had -- most of the board members were
15 professionals and they would -- they would check my
16 grammar and check my spelling, and I do apologize for
17 that because --

18 Q. So I guess -- not to cut you short, the e-mail was
19 approved by who?

20 A. The Board.

21 Q. Okay. And was this the first time you'd ever replied
22 to Mr. Capell about the dog in the pool?

23 A. I'm -- I cannot recollect, but I know it was an
24 on-going issue and I know -- I know it took some time to --

25 Q. Okay. And Ms. Osteen asked you about whether you

1 were the only one working that day. Let's just be clear.
2 Were there any -- how many people were employed by this
3 homeowners group that was working?

4 A. Myself and a landscaper.

5 Q. So two?

6 A. (Nods head.)

7 Q. Did anybody ever work in that office with you ever?

8 A. The -- we had a -- Mike was the treasurer. He would
9 come in and check stuff. He would have to sign checks
10 because you had to have two signatures on the checks.

11 Q. Well, was the treasurer an employee of the --

12 A. No, he was not. He was a volunteer.

13 Q. Now I believe you told Ms. Osteen that you encouraged
14 residents to come talk to you in your office about issues?

15 A. Absolutely.

16 Q. All right. Did you encourage them to come confront
17 you in your office?

18 A. No. I mean, I have had people confront me before.

19 Q. Did you encourage them to come yell at you in your
20 office?

21 A. No.

22 Q. Did you encourage them to continue to bother you even
23 after you asked them to leave?

24 A. I have asked people to leave before, yes, sir.

25 **MR. CONRAD:** I beg the Court's indulgence. Nothing

1 further from the State, Your Honor.

2 **THE COURT:** Ms. Osteen.

3 **MS. OSTEEEN:** Nothing further, Your Honor.

4 **THE COURT:** Thank you, Mr. Bunucci. You can step
5 down.

6 (Witness excused.)

7 **THE COURT:** Call your next witness.

8 **MR. BERRY:** The State calls Stephen Edwards.

9 **MS. JURICK:** Your Honor, at this point we have a
10 matter of law.

11 **THE COURT:** Okay. Ladies and gentlemen, if you will
12 step to your jury room. Do not discuss the case, keep an
13 open mind, and we'll be back with you in a few minutes.

14 (Whereupon, the jury retires to the jury room at
15 10:34 AM.)

16 **THE COURT:** Yes, ma'am.

17 **MS. JURICK:** Thank you, Your Honor. I guess we would
18 be asking for an overview of this witness's testimony. We
19 do have an incident report that they shared with us and a
20 statement from this witness. The incident report basically
21 says that he's seen Mr. Capell state that he has a CPW;
22 that he had patted his side and said that he has a CPW.
23 That's not an issue, it's cumulative, but I'm not sure
24 what the relevance of that is. The statement also says
25 that Mr. Capell -- I've had several homeowners state to

1 me that they're scared of Mr. Capell because he has a
2 concealed weapon and he seems mentally unstable. Again,
3 CWP is not an issue and we've already discussed that mental
4 health isn't something that's admissible.

5 **THE COURT:** What do you intend on getting out of this
6 witness?

7 **MR. BERRY:** Yes, Your Honor. We're gonna ask him
8 briefly about Mr. Capell's grievances with Point Arcadia.

9 **THE COURT:** The what?

10 **MR. BERRY:** Specifically the grievances with the
11 complex.

12 **THE COURT:** Okay.

13 **MR. BERRY:** Specifically about the master deeds and
14 about the pool situation and to verify what Mr. Bunucci
15 stated. We will also ask about did you know that he
16 carried a weapon. We will not ask him about what other
17 residents knew or felt or feared. That part we won't get
18 into. We'll just ask did you know that he carried a
19 weapon. There was an incident at a board meeting I believe
20 the month prior where the Defendant threw some papers at
21 the witness, but I don't believe we're gonna be getting
22 into that unless they -- it comes up on cross.

23 **THE COURT:** Okay. He'll be allowed to go into the
24 different grievances and stuff going on and the fact that
25 he knew he carried a firearm, but that's it. Don't say

1 anything about mental health or what other people are
2 saying about him, okay, Mr. Edwards?

3 **THE WITNESS:** Yes, sir.

4 **THE COURT:** Okay. Anything else, Ms. Jurick?

5 **MS. JURICK:** We are just -- we'll stand by that that's
6 not relevant and cumulative, but thank you, Your Honor.

7 **THE COURT:** Okay. All right. Well, which part is
8 cumulative?

9 **MS. JURICK:** I mean, we already established that there
10 was a dog issue and that they weren't getting along. I
11 think that's tangential at best. The video shows that he
12 pointed the gun at him, that is what were here for, and
13 we're not really here to go into the details of the
14 grievance process.

15 **THE COURT:** Well, I'm not gonna let them call seven
16 witnesses to talk about the grievance process, but I will
17 let them call one. I think one is reasonable under the
18 circumstances, but I'm not gonna let them go down a dirt
19 road on all this other kind of stuff going on, okay?

20 All right. Bring them back in.

21 **MS. JURICK:** Thank you, Your Honor.

22 (Whereupon, the jury returns to the courtroom at
23 10:38 AM.)

24 **BAILIFF:** The jury's present, Your Honor.

25 **THE COURT:** All right. Sorry about the short break.

1 Once we finish with this next witness, we'll take a longer
2 break and get you some snacks and all that kind of good
3 stuff.

4 All right. You may continue. Where's Mr. Edwards?
5 All right. Come on down, Mr. Edwards.

6 STEPHEN EDWARDS,
7 having been duly sworn, testified as follows:

8 **THE CLERK:** Thank you. Please have a seat on the
9 witness stand and state your full name for the record.

10 **THE WITNESS:** My name's Steve Edwards, E-D-W-A-R-D-S.

11 DIRECT EXAMINATION

12 BY MR. BERRY:

13 Q. Good morning, sir. How are you?

14 A. Great. Thank you.

15 Q. Please tell the jury who you are and what you do.

16 A. I was past president of Point Arcadia. We got a new
17 president this past year. I work for the South Carolina
18 Department of -- excuse me, DHEC, full-time.

19 Q. And what do you do there?

20 A. Environmental health issues. Whatever they need to me
21 to do right now.

22 Q. And -- and how long did you say you lived at Point
23 Arcadia?

24 A. I've been there fourteen years now.

25 Q. Okay. Can you just briefly describe the full complex,

1 how many units, how old the place is.

2 A. Okay. We have -- we have twenty-three buildings. We
3 were built in 1974 and a partial building put on in '75.
4 Of the twenty-three buildings we have a hundred condos.
5 Each condo is a different size and shape; some three
6 bedrooms, some two bedrooms, some three baths, some one and
7 a half baths, a swimming pool and clubhouse. And we used
8 to have a lake. Lake Cary dam broke, as y'all know, and we
9 no longer have a lake there.

10 Q. And back in the beginning of 2015, what was your role
11 at the time?

12 A. I was president. I was president for six years.

13 Q. Six years. What time -- what years was that roughly?

14 A. 2009 to 2015.

15 Q. Got you. And in that time, in that capacity, did you
16 have a chance to meet the Defendant, Richard Capell?

17 A. Yes. I remember meeting Richard Capell, I think,
18 maybe the summer of 2014. He had his dog with him and my
19 son was a -- with me because we were doing yard work and,
20 of course, we stopped to see the dog, it was a curious
21 looking dog, and we asked him questions and so forth and
22 he, you know, let us know what we could and couldn't do
23 with his dog.

24 Q. So roughly how long was he a resident there?

25 A. As far as I know, about a year and a half before he

1 was --

2 Q. Let me ask you this. Were you aware of grievances --
3 any grievances Mr. Capell had with Point Arcadia?

4 A. Yes, sir, I was.

5 Q. Can you tell me briefly about that? Or tell the jury
6 rather.

7 A. I think the two that I know about that were most
8 noticeable was the master deeds and bylaws and the swimming
9 pool thing, and that's what I know, but I don't understand
10 how it became a big issue because I personally told
11 Mr. Capell that any disabled person that lives at the
12 condominiums I live at will have full access to our
13 swimming pool; however, I did have that one little thing,
14 I don't know about the dog in the pool, I don't know the
15 rules, so that's when I delegated John to look that up and
16 give him an answer.

17 **MR. BERRY:** I beg the Court's indulgence, Your Honor.

18 **THE COURT:** All right.

19 BY MR. BERRY:

20 Q. Just a few more questions, sir. Were you aware that
21 Mr. Capell carried a gun on him?

22 A. Yes, I was aware from the first day, I think, we met
23 him. He made sure that at least I knew, and my son knew,
24 you know, about his space and that he had a concealed
25 weapon.

1 **MR. BERRY:** No further questions, sir. Please answer
2 any questions the defense counsel may have for you.

3 **MS. JURICK:** We have no questions.

4 **THE COURT:** Have a great day.

5 **THE WITNESS:** Thank you, sir.

6 (Witness excused.)

7 **THE COURT:** All right. Ladies and gentlemen, let's
8 take a break. We'll take about a ten minute break, a ten
9 or fifteen minute break, to stretch your legs and they'll
10 have some snacks for you. Do not discuss the case in any
11 way, shape or form. We're still very early on in the case,
12 so keep an open mind and we'll see you back in about ten or
13 fifteen minutes. Thank you very much. Everyone remain
14 seated while the jury is dismissed.

15 (Whereupon, the jury retires to the jury room at
16 10:44 AM.)

17 **THE COURT:** Okay. Anything before we break?

18 **MR. CONRAD:** I think we'll just ask if Mr. Edwards can
19 be excused, Your Honor.

20 **THE COURT:** Absolutely. All right. How many more
21 witnesses do you have?

22 **MR. BERRY:** Just one and it should be roughly as brief
23 as the last one.

24 **THE COURT:** Okay. Is that Lieutenant Shumard?

25 **MR. BERRY:** It is, Your Honor. We'll introduce the

1 gun and that's it.

2 **THE COURT:** All right. Will y'all be ready to go
3 right after that?

4 **MS. JURICK:** Yes, Your Honor.

5 **THE COURT:** Okay. Sounds good. Let's take about a
6 ten or fifteen minute break. Let's try to start back at
7 11:00. It's 10:44. Let's start at 11:00.

8 (Recess taken.)

9 **BAILIFF:** All rise.

10 **THE COURT:** Please be seated. Anything before we
11 bring the jury in?

12 **MR. CONRAD:** No, Your Honor.

13 **MS. JURICK:** No, Your Honor.

14 **THE COURT:** Bring them in.

15 (Whereupon, the jury returns to the courtroom at
16 11:07 PM.)

17 **BAILIFF:** The jury is present, Your Honor.

18 **THE COURT:** Welcome back. Call your next witness.

19 **MR. BERRY:** The State calls Lieutenant Shumard.

20 RUSSELL WAYNE SHUMARD,

21 having been duly sworn, testified as follows:

22 **THE CLERK:** Thank you. Please have a seat on the
23 witness stand and state your full name for the record and
24 please spell your last name.

25 **THE WITNESS:** Russell Wayne Shumard, S-H-U-M-A-R-D.

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DIRECT EXAMINATION

BY MR. BERRY:

Q. Where do you work, sir?

A. I'm a lieutenant of investigations at the Forest Acres Police Department.

Q. How long have you been with Forest Acres?

A. Just over twenty-two years.

Q. And this incident happened in Forest Acres?

A. Yes, it did.

Q. Which is Richland County?

A. Correct.

Q. And what are your current responsibilities as a lieutenant?

A. To oversee investigators below me, which at this point I've got three -- I'm sorry, two below me, and a victim advocate. I oversee the -- their daily activities. I review cases first thing in the morning to determine if any follow-up is needed and assign those out to the different investigators and sometimes assign some to myself.

Q. And do you investigate cases?

A. I do.

Q. And were you in this capacity last year, January and February of last year, 2015?

A. I was.

Q. And do you recall this case?

1 A. I do.

2 Q. Did you guys get a search warrant in this case?

3 A. Yes, we did.

4 Q. Why did you do that?

5 A. To attempt to recover items of evidentiary value for
6 this case.

7 Q. And when was this search performed?

8 A. I'm sorry?

9 Q. When was the search performed?

10 A. The search warrant was executed on the 19th of
11 February of 2015.

12 Q. And the paper you're looking at, what is that?

13 A. This is a copy of the search warrant.

14 Q. Does that help refresh your memory?

15 A. Correct.

16 Q. Where was the search performed?

17 A. The search was performed at Cleaton Road, Unit
18 Number India

19 Q. And whose unit was that?

20 A. That is Mr. Capell's condominium.

21 Q. And were you looking specifically for any item?

22 A. Yes, we were.

23 Q. What item was that?

24 A. A handgun.

25 Q. And did you find a handgun?

1 A. We did. Yes, we did.

2 **MR. BERRY:** Permission to approach, Your Honor?

3 **THE COURT:** Yes, sir.

4 BY MR. BERRY:

5 Q. If you could open that box up and just tell me what's
6 inside.

7 A. This is a Glock pistol, a handgun. It appears to be
8 the one that we recovered executing the search warrant.

9 Q. When you execute a search warrant, do you record the
10 serial numbers of any guns that you find?

11 A. Yes, we do.

12 Q. And did you record the serial number on your -- during
13 -- when you executed the search?

14 A. I did, yes.

15 Q. What was that serial number?

16 A. That serial number was -- L, as in Lincoln, M, as
17 in Mike, P as in Papa, 776 on a Glock Model 30. It's a
18 forty-five caliber.

19 Q. And could you read the serial number off of the gun
20 right there?

21 A. The serial number on this pistol is -- I'm sorry.

22 Q. Take your time.

23 A. Lincoln Mike Papa 776.

24 Q. And were there any --

25 **MR. BERRY:** This exhibit is marked State's Exhibit 3

1 and at this time we'd offer it into evidence.

2 **THE COURT:** Objection?

3 **MS. JURICK:** No objection.

4 **THE COURT:** State's 3 without objection.

5 (State's Exhibit Number 3, a handgun, was admitted
6 into evidence.)

7 BY MR. BERRY:

8 Q. This gun is secure, correct?

9 A. Yes, it is.

10 Q. How is it secured?

11 A. It's got some -- the slide is backed open in the
12 locked position and it's got a lock through the magazine
13 chamber.

14 Q. Is it currently loaded?

15 A. It is unloaded and it is secure. I have possession of
16 the key for that lock.

17 **MR. BERRY:** Permission to the publish to the jury,
18 Your Honor?

19 **THE COURT:** Okay. Now, ladies and gentlemen, this
20 weapon has been checked. I have personally checked it and
21 Lieutenant Shumard just checked it and there is no ability
22 for it to fire in the condition that it is in, okay? You
23 don't have to look at it if you don't want to, but they're
24 welcome to publish it to the jury. Anything that I make an
25 exhibit will be with you in the jury room and available for

1 your view, but you're welcome to publish it, Mr. Berry.

2 **MR. BERRY:** Thank you, Your Honor.

3 BY MR. BERRY:

4 Q. And you said this gun is currently unloaded. What
5 about at the time it was recovered?

6 A. When it was recovered, it had a full ten-round clip
7 inserted into the chamber -- or into the handle, if you
8 will, and it had one locked and loaded in the chamber.

9 Q. And a few more questions. We've heard about a video
10 and it's -- your law enforcement agency recovered this
11 video. How did you guys get this video?

12 A. Looking back in my notes, I had received an e-mail
13 forwarded to me by another officer in our department on the
14 18th that was forwarded and in that -- in that e-mail was a
15 link to -- it was a Youtube link and that led us to what
16 the jury saw today.

17 Q. So the Youtube had been e-mailed to your department?

18 A. Correct, and we burnt it to a disk and that's how we
19 were able to secure it.

20 **MR. BERRY:** I beg the Court's indulgence.

21 BY MR. BERRY:

22 Q. When it was on Youtube, was it available for the
23 public to see, was it a private video? Were there any
24 restrictions on who was able to view it?

25 A. Anybody could go right on there and look at it, so

1 there were no restrictions for it.

2 **MR. BERRY:** No further questions. Please answer any
3 questions defense counsel may have.

4 **THE COURT:** Cross-examination?

5 **MS. JURICK:** Thank you.

6 CROSS-EXAMINATION

7 BY MS. JURICK:

8 Q. Investigator Shumard or Detective Shumard?

9 A. Either/or, yes, ma'am.

10 Q. You showed us Mr. Capell's firearm just now; is that
11 correct?

12 A. Yes.

13 Q. And he had a concealed weapons permit?

14 A. Yes, he did.

15 Q. So he could legally carry a firearm?

16 A. Correct.

17 Q. And he could legally carry a loaded firearm?

18 A. Correct.

19 Q. And as a law enforcement detective, investigator, you
20 can also carry a firearm?

21 A. Yes, ma'am.

22 Q. Can you tell us a little bit about your training that
23 allows you to do that?

24 A. My training? Well, we're required to qualify to make
25 sure we're proficient on not only in our accuracy of the

1 firearm, but also with our policies at our department;
2 laws, state laws, Federal laws, and things of that nature.
3 That's about a mandatory once a year kind of thing that we
4 have to do. It's mandatory.

5 Q. And in that training you're taught how to store a
6 firearm?

7 A. Yes.

8 Q. And how to handle a firearm?

9 A. Right.

10 Q. How to load a firearm?

11 A. Uh-huh.

12 Q. How to carry it -- how to carry a firearm?

13 A. Yes, ma'am.

14 Q. And you also know the self-defense laws of South
15 Carolina?

16 A. Uh-huh.

17 Q. You learned that in your training?

18 A. (Nods head.)

19 Q. As a CWP holder, Mr. Capell would have had similar
20 training? Do you agree with that?

21 A. Yes, he's a -- a CWP candidate does have to go through
22 some training. I don't know what that training is. I've
23 never sat in a CWP class and I wasn't in the class with
24 Mr. Capell, so I wouldn't be able to know what he was
25 taught.

1 Q. Certainly, but you agree CWP holders take a written
2 test, they have a shooting test and they carry a license?

3 A. Correct.

4 Q. Okay. And you mentioned how the video came off of
5 Youtube?

6 A. Uh-huh.

7 Q. Did Mr. Capell also turn the video in to the police
8 department?

9 A. I can't recall. I can only recall that I received an
10 e-mail with that link in it.

11 Q. Okay.

12 A. That's what I can recall.

13 **MS. JURICK:** I beg the Court's indulgence.

14 **THE COURT:** Yes, ma'am.

15 **MS. JURICK:** Thank you. No further questions.

16 **THE COURT:** Redirect?

17 **MR. BERRY:** Briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. BERRY:

20 Q. As a CWP holder, you're allowed to carry your gun,
21 correct?

22 A. Correct.

23 Q. Can you carry it everywhere in the state of South
24 Carolina?

25 A. Depending upon -- there's some limitations and

1 restrictions.

2 Q. Some limitations?

3 A. Some.

4 Q. So if a business says you can't bring it here, you
5 can't bring it there?

6 A. Correct. It has to be posted on the door "no
7 concealed weapons".

8 Q. What about pulling it on someone? Are you allowed to
9 pull -- does a CWP allow you to pull your gun on whoever
10 you want whenever you want?

11 A. No, absolutely not.

12 **MR. BERRY:** No further questions.

13 **RE CROSS EXAMINATION**

14 **BY MS. JURICK:**

15 Q. Can CWP holders carry weapons for self-defense?

16 A. Right.

17 Q. And there are laws and situations that would allow
18 them to pull it on someone?

19 A. Correct.

20 Q. And they would learn the laws about that in that
21 class?

22 A. That's right.

23 **MS. JURICK:** Thank you. No further questions.

24 **THE COURT:** Have a nice day.

25 **THE WITNESS:** Thank you, your Honor.

1 (Witness excused.)

2 **THE COURT:** Call your next witness.

3 **MR. CONRAD:** The State rests, Your Honor."

4 **THE COURT:** Okay. Ladies and gentlemen, the State has
5 rested its case in chief. I have a matter of law that I
6 need to take up with the lawyers. Do not discuss the case
7 in any way, shape or form, keep an open mind, and we'll be
8 back with you in just a moment. Thank you very much.

9 (Whereupon, the jury retires to the jury room at
10 11:19 AM.)

11 **THE COURT:** All right. Motions?

12 **MS. JURICK:** Yes, Your Honor. At this time we'd
13 actually ask for the Court's ruling as to whether it would
14 be inclined to submit a jury charge of self-defense based
15 on the video evidence?

16 **THE COURT:** No, ma'am.

17 **MS. JURICK:** Can I present a case on why we believe
18 that it is appropriate?

19 **THE COURT:** Sure.

20 **MS. JURICK:** I have State v. Adkinson. It's
21 280 S.C. 85, 1984. I have a copy of it.

22 **THE COURT:** Okay.

23 **MS. JURICK:** Adkinson found it reversible error
24 when the self-defense charge wasn't given. Quoting
25 State v. Taylor, "If there's any evidence of record

1 from which it can be reasonably inferred that an
2 accused inflicted the wound, but justifiably did so in
3 self-defense, then the accused is entitled to a charge
4 on the law of self-defense". We believe that the video
5 by itself shows that Mr. Capell reacted to a threat and
6 acted in self-defense.

7 **THE COURT:** Okay. What about the elements of
8 self-defense?

9 **MS. JURICK:** The elements of self-defense are that
10 he had to be without fault in bringing on the difficulty.

11 **THE COURT:** How is that -- how have you met that?
12 How have you shown that that is reasonably inferred when
13 he went into the office yelling and screaming?

14 **MS. JURICK:** As stated before, we -- while annoying
15 and rude, threatening legal action is not illegal. He
16 himself closed the door, he exited the office, so he did
17 not create that situation.

18 **THE COURT:** Okay.

19 **MS. JURICK:** And the second element is that there was
20 imminent danger of great bodily injury or the Defendant
21 believed there was. The size difference, the disability,
22 that can be inferred.

23 **THE COURT:** Okay. Who was threatening him?

24 **MS. JURICK:** Mr. Bunucci was threatening him.

25 **THE COURT:** Under what theory of the video?

1 **MS. JURICK:** Huh?

2 **THE COURT:** That he came at him?

3 **MS. JURICK:** Yes, he came at him after he -- he in
4 his own words threw open the door and took several steps.
5 He didn't say several steps, but you can see in the video
6 he took several steps.

7 **THE COURT:** Okay.

8 **MS. JURICK:** And he yelled "I'll fucking have your
9 shit down".

10 **THE COURT:** Okay. What else?

11 **MS. JURICK:** That there's no other way to avoid the
12 danger. Again, the disability, the speed at which
13 Mr. Bunucci was coming towards him and the level of rage,
14 what he was yelling, we would say that Mr. Capell wouldn't
15 have been able to outrun him.

16 **THE COURT:** Well, Mr. Bunucci wasn't running.

17 **MS. JURICK:** I think the video shows that he was
18 closing the gap between them quickly.

19 **THE COURT:** Well, how did he not have the ability to
20 leave?

21 **MS. JURICK:** I don't think he could have -- he was
22 leaving. I mean, he was the one that turned and exited
23 the door and was leaving until Mr. Bunucci came up on him
24 and Mr. Capell pulled the gun out.

25 **THE COURT:** So how did he not have another way to

1 avoid the danger?

2 **MS. JURICK:** I don't believe he could have gotten away
3 from him if it were to have continued.

4 **THE COURT:** The problem is there's none of that in
5 evidence. Do you see what I'm saying? I mean, at this
6 point and stage in the trial you just made about seven
7 assumptions of the facts, none of which are in evidence
8 because your client hasn't testified, if he wants to
9 testify. He doesn't have to testify obviously, but, I
10 mean, we're making assumption after assumption that is
11 not in evidence. So at this point I'm not giving him a
12 self-defense charge.

13 **MS. JURICK:** Thank you, Your Honor.

14 **THE COURT:** Okay. Directed verdict?

15 **MS. JURICK:** The directed verdict would be that the
16 State hasn't met their burden, they haven't disproved
17 self-defense, which we would still submit exists, and
18 move for a directed verdict.

19 **THE COURT:** Okay. At this point under Rule 19 of
20 the South Carolina Rules of Criminal Procedure, your
21 motion for a directed verdict is denied. At this point
22 I'm only concerned with the existence of the evidence
23 and not the weight of the evidence. And if there is any
24 direct or circumstantial evidence reasonably tending to
25 prove the guilt of the accused from which guilt may be

1 fairly and logically deduced, the case should go to the
2 jury. The State has presented sufficient evidence from
3 the evidence of Mr. Bunucci and the video to show that a
4 -- the existence of evidence that a pointing and presenting
5 occurred, so your motion is denied.

6 **MS. JURICK:** Thank you, Your Honor.

7 **THE COURT:** All right.

8 All right. Mr. Capell, stand up, please.

9 All right. Raise your right hand. Do you swear or
10 affirm the information you're about to give this Court to
11 be the truth?

12 **THE DEFENDANT:** I do.

13 **THE COURT:** Okay. All right. Now what's gonna
14 happened at this point -- you can put your hand down.
15 Thank you. You and I need to have a conversation about
16 your right to testify and I'm gonna go over this with
17 you and make sure that you understand it and answer any
18 questions that you may have about it, okay?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** All right. At this time I'm going to
21 explain to you some of your rights. If you do not
22 understand anything I say, please let me know. If you
23 want me to explain anything in more detail, please let
24 me know. Do you understand what I've said so far?

25 **THE DEFENDANT:** I do.

1 **THE COURT:** We have now reached the stage of the trial
2 where you may present your defense. You have the right to
3 claim the protections given to you by the Fifth Amendment
4 to the Constitution of the United States. This amendment
5 states, in part, that no person shall be compelled in any
6 criminal case to be a witness against himself. This means
7 that you cannot be required to testify in this case. You
8 have the right to testify on your own behalf; however, no
9 one can make you. This is a personal right and no one can
10 waive this right except you. If you decide to testify,
11 you will be subject to the same rules that govern other
12 witnesses and you may be examined and cross-examined on any
13 relevant issue in the case. In addition -- I assume he has
14 no convictions for crimes involving dishonesty?

15 **MR. CONRAD:** No, Your Honor.

16 **THE COURT:** Okay. All right. So you have no criminal
17 history, so they wouldn't be able to use any kind of
18 criminal history against you. Do you understand that?

19 **THE DEFENDANT:** I do.

20 **THE COURT:** All right. Now if you decide to testify,
21 this decision on your part must be made freely, voluntarily
22 and intelligently with the knowledge of the protections
23 given to you by the Fifth Amendment and the consequences
24 of your decision. If you decide not to testify, I will
25 tell the jury they cannot give the fact that you did not

1 testify any consideration whatsoever and that there is to
2 be absolutely no prejudice to you because you did not
3 testify. It is left entirely up to you whether or not
4 you testify. You may talk with your attorneys, your
5 family or anyone else, but the final decision will be
6 left entirely up to you. Do you understand what I have
7 explained to you so far?

8 **THE DEFENDANT:** I do.

9 **THE COURT:** Do you have any questions about what I've
10 explained to you?

11 **THE DEFENDANT:** I do not.

12 **THE COURT:** Have you and your lawyers discussed
13 whether or not you should testify in this case?

14 **THE DEFENDANT:** I would like to consult with them for
15 a minute, if I --

16 **THE COURT:** Okay. My question -- I'm gonna let you
17 do that. My question at this point is have you and your
18 lawyers talked about it prior to this moment?

19 **THE DEFENDANT:** It was -- it was told to me it was an
20 option for me to do if I choose.

21 **THE COURT:** All right. Very good. Okay. Now would
22 you like to consult with your lawyers more at this time
23 about whether or not you should testify?

24 **THE DEFENDANT:** I would.

25 **THE COURT:** Okay. All right. You will be given that

1 opportunity. I'm gonna be in the back hall. After y'all
2 talk, somebody just come get me, okay?

3 **MS. OSTEEN:** Thank you, Your Honor.

4 **THE COURT:** All right. Thank you very much.
5 We'll be in recess until they're ready to go.

6 **MR. CONRAD:** Thank you, Your Honor.

7 (Recess taken.)

8 **THE COURT:** Okay. All right. We're back on the
9 record.

10 All right. Mr. Capell, have you had enough
11 opportunity to speak with your attorneys?

12 **THE DEFENDANT:** I have.

13 **THE COURT:** And do you need to speak with them any
14 longer?

15 **THE DEFENDANT:** No, sir, I don't think so.

16 **THE COURT:** Do you understand the protections and
17 consequences of the items I discussed with you earlier
18 concerning your Fifth Amendment right to remain silent?

19 **THE DEFENDANT:** I do, sir.

20 **THE COURT:** And do you wish to testify?

21 **THE DEFENDANT:** I do, sir.

22 **THE COURT:** Okay. Very well. Thank you very much.
23 Have a seat.

24 Okay. Are y'all ready?

25 **MS. JURICK:** Yes.

1 **MS. OSTEEN:** Your Honor --

2 **MS. JURICK:** Sorry.

3 **MS. OSTEEN:** The first witness to be called is Susan
4 Mitchell, Mr. Capell's mother, and I believe the State
5 has --

6 **THE COURT:** Okay.

7 **MR. CONRAD:** Just, Your Honor, I don't -- I'm not
8 sure if Mrs. Mitchel was here yesterday when the Court
9 was instructing about the testimony about the Defendant's
10 mental health. If we can just remind Mrs. Mitchell the
11 Court has ruled she can't testify about --

12 **THE COURT:** I mean, they can go into it. It's their
13 witness.

14 **MR. CONRAD:** Okay.

15 **THE COURT:** I mean, at this point Mrs. Mitchell --
16 where's Mrs. Mitchell? Thank you for being here. How are
17 you, ma'am?

18 **MRS. MITCHELL:** Fine, sir.

19 **THE COURT:** Good. At this point the jury doesn't
20 know anything about any potential -- I'm not saying they
21 are there or they're not there, I'm not qualified, I'm not
22 an expert, but at this point the jury hasn't heard anything
23 about any alleged mental health issues that Mr. Capell may
24 have. So, I mean, his attorneys may strategically decide
25 to ask you those questions, and if they do, that's fine.

1 Is that a part of the plan?

2 **MS. OSTEEN:** No, Your Honor.

3 **THE COURT:** Okay. So at this point we're not gonna
4 say anything about any potential mental health issues,
5 okay?

6 **MRS. MITCHELL:** I understand. Yes, sir.

7 **THE COURT:** If we're in the middle of your testimony
8 and everybody's kind of looking at me like she needs to say
9 something about it, then we'll just stop, but other than
10 that I've just kept that out of the trial. I don't think
11 it's relevant for the jury to make any decision like that
12 based upon anything that may be inappropriate.

13 What else, Mr. Conrad?

14 **MR. CONRAD:** In regard to Mrs. Mitchell's testimony,
15 she testified last week at our stand our ground hearing
16 and if what holds true of last week the majority of her
17 testimony was in regards to Mr. Capell's physical condition
18 and his medical well-being. Some of her testimony last
19 week was about his current medical condition and I'd ask
20 the Court to limit her testimony about his medical
21 condition as it existed on the day of this incident and I
22 think anything that's occurred medically to Mr. Capell
23 afterwards is irrelevant to the case at hand.

24 **THE COURT:** All right. What's your position on that?

25 **MS. OSTEEN:** Your Honor, we're fine. We won't ask her

1 any specific questions about today.

2 **THE COURT:** His physical health needs to be -- stay
3 within the perimeters of the time of the incident being
4 around February 16th of 2015. Do you understand that,
5 ma'am?

6 **MRS. MITCHELL:** Yes, sir.

7 **THE COURT:** Okay. Thank you very much.
8 Okay. Anything else?

9 **MR. CONRAD:** None from the State.

10 **THE COURT:** All right. Let's bring them in.
11 (Whereupon, the jury returns to the courtroom at
12 11:46 PM.)

13 **BAILIFF:** All jurors present, Your Honor.

14 **THE COURT:** Thank you, Mr. Brown.

15 All right. Ladies and gentlemen, the State has
16 rested its case in chief. The defense now has an
17 opportunity to put on a case if they want to. They do
18 not have to because as I told you in the beginning, the
19 burden of proof is upon the State to prove Mr. Capell's
20 guilt to you beyond a reasonable doubt, but the defense
21 may wish to present a defense.

22 And, Ms. Jurick, or Ms. Osteen, do you care to present
23 any witnesses?

24 **MS. OSTEEEN:** Yes, Your Honor, we do. We'd first like
25 to call Mrs. Susan Mitchell.

1 **THE COURT:** All right. Mrs. Mitchell, please come
2 forward and be sworn.

3 SUSAN AHEARN MITCHELL,
4 having been duly sworn, testified as follows:

5 **THE COURT:** Thank you, ma'am. Have a seat on the
6 witness stand. State your full name for the record and
7 make sure you speak up, please.

8 **MS. OSTEEN:** And would you state your name for the
9 record?

10 **THE WITNESS:** My name is Susan Ahearn, A-H-E-A-R-N,
11 Mitchell.

12 **THE COURT:** Yes, ma'am.

13 **MS. OSTEEN:** Thank you.

14 DIRECT EXAMINATION

15 BY MS. OSTEEN:

16 Q. I know you just stated your name, but would you
17 introduce yourself to the jury?

18 A. I'm Richard's mother, Susan Mitchell.

19 Q. And I know that we've heard a lot about Richard's
20 disabilities. Can you tell us a little bit about the
21 disabilities he was born with?

22 A. This was forty-eight years ago. He was a twin and he
23 ended up with multiple birth defects, orthopedic birth
24 defects, abdominal structure birth defects, urology birth
25 defects. At that time I was married to a soldier at

1 Fort Jackson and the Fort Jackson Hospital didn't quite
2 know what to do or how to proceed with him, so they set it
3 up for him to be seen at Walter Reed, but before we could
4 get him up there his father deserted the Army. I think
5 he was -- well, anyway, they put a hold on us and we were
6 not able to go up to Walter Reed and ultimately he was
7 classified as a deserted, so we lost all benefits from the
8 Fort.

9 Q. Can you just really focus on what his physical --

10 A. Sure.

11 Q. -- what Richard's physical issues were?

12 A. He was born with a bladder extrophy that was on --
13 his pelvis didn't come together in the front, so he was
14 essentially open this way with no skin covering the
15 bladder, the stomach, or anything. There was -- we had
16 to keep sterile Vaseline gauze on him all the time and not
17 let it dry out because when it dried the -- and urine was
18 constantly seeping out, there were openings all over his
19 abdomen or what would have been his abdomen, so we had to
20 really keep that Vaseline gauze constantly changed because
21 if it dried and you pulled it off, then any -- it would
22 cause bleeding because there was no covering there,

23 He had -- he was seen by the Moore Clinic for his
24 orthopedic problems and they sent him to M.U.S.C. for the
25 abdominal, bladder, urology problems and plastic surgery,

1 and just it seems like we spent every summer -- I mean, I
2 know we spent every summer at one hospital or another
3 during each growth phase because they couldn't do an
4 immediate fix then.

5 Q. And you said that there was no skin covering. Did he
6 have muscles covering?

7 A. No, there was just the organs themselves and -- and
8 that's part of the problem. There was no structure for
9 them to pull together and give him any sort of protective
10 covering over all his things, so they had to -- they did
11 not physically close him up until he was about eight years
12 old, I guess. I've got medical records, but when they
13 closed him up and tried to get continence of the bladder
14 they discovered the bladder wouldn't expand. And, of
15 course, I was with him all the time and my parents took
16 care of his twin and just any surgeries or consultations
17 or anything I was always the one who took him and I was
18 always the one that was there. Fast-forwarding to now --

19 Q. Well, actually before we go there, can you tell me a
20 little bit about -- I know that there were obviously some
21 physical issues and he was in and out of the hospital a
22 lot, but how else did it affect him as a child?

23 A. He didn't like being different. He didn't like not
24 being able to do the same things other kids did. We had
25 to be very guarded with him physically. He got a lot of

1 teasing when he was in school. He had -- he just had to
2 be very careful and he resented that, I think, but he was
3 a still a boy and, you know --

4 Q. So now -- as you were saying, let's fast-forward.
5 How are you still involved in his medical care?

6 A. The -- as a result of all the surgeries to put him
7 back together and not having any structure in the abdomen,
8 he has been experiencing over the last ten or fifteen years
9 incisional hernias, which comes from not having any muscle
10 or any -- I mean, they put mesh in to try and hold the
11 hernias down, but there's nothing to attach the mesh to,
12 so that's constantly eroding. In January -- well, in 2013,
13 he had had five incisional hernias and they were starting
14 to come more often. And it doesn't necessarily have to be
15 stress that induces it. Sometimes the skin just gets very,
16 very, very thin and they just happen. And in the early
17 part of January 2015, I took him to a bladder specialist
18 in Spartanburg because he had already been to M.U.S.C. and
19 they had referred him to Carolinas Medical Center, who
20 ultimately said he needed a total abdominal wall
21 reconstruction, and that involves multiple disciplinary
22 things and not too many places in the United States do
23 that. They gave us a list of a place in Ohio, there's
24 a place Texas, there was a place in California, and
25 ultimately Richard was trying to schedule to get into

1 Ohio because that was closer to us.

2 Q. And aside from the abdominal issues, were there other
3 physical issues?

4 A. Yes, he had a lot of orthopedic issues when he was
5 small and he has severe bilateral clubfeet.

6 Q. Has that carried through to his adult life?

7 A. Well, he has bone density loss very significantly,
8 particularly in his feet. They had to do a triple
9 arthrodesis to try to get him stable for his --

10 Q. Now triple arthrodesis, can you tell us -- just break
11 that down a little bit.

12 A. Okay.

13 Q. Is it just a surgery on the foot?

14 A. Yes.

15 Q. Okay.

16 A. They fused three bones in his foot to make his gait
17 more stable so he wouldn't fall.

18 Q. Okay. And are there other issues with him that -- as
19 an adult?

20 A. Yes. When he was working as an EMT, they thought he
21 had been exposed to tuberculosis, the crew on his truck,
22 and so they put him out of work for a while and he went
23 to get some testing and they found -- they sent him to a
24 pulmonologist who found that he did not have tuberculosis,
25 but something they called mycobacterial avium complex,

1 which is a pretty serious lung condition.

2 Q. Does that have a more common name?

3 A. They sometimes refer to as hot tub lung.

4 Q. Okay. So what does that mean to him?

5 A. He has diminished lung function. He has to be -- as
6 far as I know, from what the doctors have told us, and
7 when I say us because it's always me going with him,
8 there's nothing that can really cure that. He would be a
9 candidate to go to National Jewish Hospital for them to
10 try some experimental therapy with him, but that -- we
11 didn't follow-up on that because he had later instances of
12 spontaneous pneumothorax where there's a weakness in the
13 lung and suddenly there's a hole that comes and pushes all
14 the air in the chest cavity over to the other side. He
15 actually thought he was having a heart attack, but he
16 ended up in the hospital with that and while he was in the
17 hospital he had a second one. So his lungs are pretty
18 compromised and short of some experimental drug therapy
19 there's really nothing we can do about that. We just
20 don't know.

21 Q. And obviously that effects him physically. How did
22 that affect him in the world as an adult?

23 A. He has to be careful about being around fumes,
24 anything that would cause any sort of lung reaction.

25 Q. Uh-huh.

1 A. He has an inhaler that he -- well, he used to. I'm
2 not sure if he's doing this now because I'm not privy to
3 what's going on with his medical stuff right now, but,
4 anyway, Albuterol treatments and to wear a mask to protect
5 himself from what may be out there as far as catching
6 something himself or -- MAC is not contagious, so it's not
7 a matter of him infecting anybody, but it's more of a
8 self-protection for him.

9 **MS. OSTEEN:** We have no further questions. If you
10 would answer any questions from the State.

11 **THE COURT:** Cross?

12 **MR. BERRY:** Briefly, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. BERRY:

15 Q. Hi. I'm sure it's not easy for you. I just have a
16 couple of questions, okay? Obviously you attended many
17 medical visits with -- with Mr. Capell throughout his
18 childhood, correct?

19 A. Well, up until January 15th of this past year.

20 Q. So you would continue going with him as an adult?

21 A. Yes.

22 Q. Was he able to swim as a child?

23 A. Not initially, no.

24 Q. But later was he able to?

25 A. Later after he was probably sixteen maybe, then he

1 was able to.

2 Q. And you mentioned that Richard worked as an EMT;
3 correct?

4 A. Yes.

5 Q. An emergency medical technician; is that correct?

6 A. Yes, sir. Richland County.

7 Q. Do you know how long he worked for Richland County?

8 A. Several years, I think, but he could answer that
9 better than I can.

10 Q. Did he have other jobs that you're aware of?

11 A. He did some private security work, he worked at the
12 Department of Corrections for a short while.

13 Q. And you said that there was an issue with his lungs
14 that developed later and that's why he left the EMT's; is
15 that correct?

16 A. Right.

17 Q. So it wasn't because of any issues with his abdominal
18 wall or his feet, it was the lungs is why he left the
19 EMT's?

20 A. I can't -- I can't say that with any certainty. I
21 think they were looking at his whole constellations of
22 situations and he applied for disability and was granted
23 Social Security disability on that constellation of
24 problems, so how that figured into that I'm not quite
25 sure.

1 **MR. BERRY:** I beg the Court's indulgence. Nothing
2 further from the State Your, Honor.

3 **THE COURT:** Redirect?

4 **MS. OSTEEN:** Yes, Your Honor. Just briefly.

5 REDIRECT EXAMINATION

6 BY MS. OSTEEN:

7 Q. Talking about his jobs, can you just talk a little bit
8 about how his medical conditions affected his professional
9 life?

10 A. It limited it significantly. When he was "young"
11 young, he wanted to be a jet fighter pilot and after he got
12 a little older he realized 4-F, he couldn't do that. So
13 then he thought he'd go into law enforcement. Well, he
14 ran into the same kind of issues there. But he had an
15 interest in helping people and so he wanted to go to EMT
16 school and I didn't know how that was gonna affect him
17 job-wise, but it was a positive direction for him. So he
18 went to EMT school and then got on with the Richland County
19 EMS and rescue squads doing volunteer work. They realized
20 that he had the potential with these hernias that came
21 about later in his life that he shouldn't be lifting heavy
22 weights, so he would get lifting assistance when at all
23 possible. And he loved doing the EMT work, but when the
24 lung thing happened or the TB, which turned out to be
25 something else, then he was unable to do that as well.

1 Q. And that's when he got the disability?

2 A. Yes.

3 MS. OSTEEEN: Thank you, Your Honor. Thank you,
4 Ms. Mitchell.

5 THE COURT: Recross?

6 MR. BERRY: No, Your Honor.

7 THE COURT: Sir?

8 MR. BERRY: No, Your Honor.

9 THE COURT: Thank you, ma'am. You may step down.
10 Have a nice day.

11 (Witness excused.)

12 THE COURT: Call your next witness.

13 MS. JURICK: Your Honor, at this point we'd call
14 Mr. Richard Capell.

15 THE COURT: All right. Mr. Capell, please come
16 forward.

17 MS. OSTEEEN: Your Honor, may Mrs. Mitchell be excused?

18 THE COURT: Absolutely.

19 RICHARD A. CAPELL,

20 having been duly sworn, testified as follows:

21 THE COURT: Thank you very much. You may have a seat
22 in the witness stand.

23 DIRECT EXAMINATION

24 BY MS. JURICK:

25 Q. Mr. Capell, we just heard your mom speak about some

1 of your physical disabilities and you were commenting to
2 me. Is there anything you'd like to add?

3 A. (Shakes head.)

4 Q. You have to answer out loud.

5 A. Not that I can think of at the moment, no.

6 Q. Okay. That's hard for you to listen to?

7 A. It's not something that I readily admit.

8 Q. I'm sure people are wondering about the sunglasses.
9 Your mom didn't address that.

10 A. I worked nights most of my life. I started off
11 in private security work, I've done some private
12 investigative work, pretty much nightshift most of the
13 time, and developed light sensitivity, sensitivity to the
14 bright lights.

15 Q. And what other ways do you think the things that your
16 mom spoke about your physical disabilities have affected
17 your life?

18 A. There's been goals that I had set for myself that I
19 could not accomplish, that I wasn't able to accomplish,
20 because of discrimination. For example, I was at the
21 military academy -- excuse me. Anyway, I had a goal to
22 graduate as an officer, but because I couldn't work they
23 wouldn't let me. That was one thing that really hurt.

24 Q. And you pride yourself on being an ADA advocate?

25 A. Oh, yeah.

1 Q. Is that something that's come out of this?

2 A. Definitely. That plus my grandmother in World War II,
3 she had polio, and all my life she was disabled and I seen
4 her also discriminated against. And, of course, the ADA
5 didn't come out until 1990. So we never had all these
6 protections even when I was in military school. We didn't
7 have these protections until later on.

8 Q. And we've heard that you record everything. Where do
9 you wear your camera?

10 A. I was wearing a hospital scrub shirt, so instead of
11 it being on a belt clip turned at a angle like these newer
12 phones are -- there's a case up here, I don't know whose
13 it is. I'll try to show you with this case. The phone
14 had a clip on the case and I would wear it right about
15 here, sitting -- clipped this way onto my hospital scrubs,
16 and that served two purpose. Number one, it put it in
17 plain sight and, number two, it's at center body mass so
18 you basically see -- wherever my chest is turned, that's
19 what you see.

20 Q. And, Richard, why do you record everything?

21 A. I used to be a private investigator and also the
22 private security work that I've done, and I did work as a
23 correctional officer as well, and if it wasn't documented
24 in some way, shape or form, it didn't happen. So the
25 best way to document it is the way I think I did it,

1 which is another reason why everybody's screaming for law
2 enforcement these days to have body cameras because of all
3 the mishaps that are happening, so I do it so that later
4 on there's no mistaking as to exactly what happened at
5 whatever incident or whatever -- you know, whatever event
6 it was that I recorded at the time.

7 Q. And you turned this video over to law enforcement?

8 A. Oh, yes.

9 Q. The video they've seen?

10 A. Oh, yes, I did. I turned it in by e-mail to Sergeant
11 Lauri Tumlin and, if I'm not mistaken, I think I turned in
12 a little flash drive of it, too, and I asked for that back
13 and I don't have it yet, but --

14 Q. And we heard that you're a CWP holder?

15 A. Yes.

16 Q. Can you tell us about the process to get your
17 concealed weapons permit?

18 A. Well, since the age of twenty-one I've carried a
19 firearm as a private security officer and had that
20 training, which is very similar to law enforcement
21 training. The CWP came about, I think, in 1996 is when I
22 decided to go for it and so myself and a friend of mine,
23 he and I participate in a lot of things together and get
24 each other through it, so we both decided that we would go
25 get our CWP's and we went to the class together and shot

1 together and got our CWP's together. And the training --
2 we were trained by two state constables that, you know,
3 they enjoyed doing it, so we ended up paying the money and
4 going through the class. The class is eight hours of
5 classroom instruction and followed by some qualification
6 shooting at the shooting range. We did get some practice
7 time in prior to qualification as well, so. And in private
8 security work, just like Investigator Russell -- I mean,
9 Investigator Shumard, excuse me, forgive me -- Investigator
10 Shumard explained it, that they have to recertify every
11 year, once a year, private security work is the same thing.
12 We're certified through SLED as private security officers
13 and we have the same authority of arrest as a deputy
14 sheriff on the property we're paid to protect.

15 Q. And, Mr. Capell, as a private citizen now, did you
16 carry your weapon all the time?

17 A. Pretty much.

18 Q. And why did you carry it?

19 A. For my own protection, self-defense, maybe the defense
20 of others if I happened to be somewhere and see something
21 go down. Working in EMS, I have run into a lot of
22 interesting things.

23 Q. And how long have you lived at Point Arcadia?

24 A. I moved -- let's see. I purchased the place in
25 August of 2013 and moved in in September of 2013.

1 Q. Can you tell us about what happened on February 16th?

2 A. It was a board meeting coming up and I had finally
3 gotten some kind of a reply from the Board after a little
4 over a year of going through Mr. Bunucci and trying to talk
5 to the Board whenever I could and, you know, when I asked
6 Mr. Bunucci, you know, can my service dog be in the pool,
7 he told me not in the pool, but he is allowed in the pool
8 area, but not in the pool. And that was my problem. If
9 he had said sure, your dog can swim there, you pay regime
10 fees, you live here, no problem, I never would have had a
11 problem with it, but because he stated pointblank, flat out
12 my dog cannot be in that swimming pool, that's what I had a
13 problem with, you know. That's a right that I have as a
14 disabled citizen with a service dog and you're denying me
15 that right. You're saying he can be in the area, okay, but
16 that doesn't serve me any general -- what am I gonna do
17 with him? Where am I gonna put him, you know? He's gonna
18 want to be with me. That's his job, you know. A service
19 dog is an extension of you and is allowed to be wherever
20 you are allowed to be, so that was the problem I was having
21 with the homeowners' association and -- and with trying to
22 get a straight answer from Mr. Bunucci, so.

23 Q. And, Mr. Capell, I can tell this is something you're
24 passionate about. When you realized on February 16th that
25 you weren't getting any further with him, what did you do?

1 What did you tell him you were gonna do?

2 A. Oh, I -- I said fine, see your ass in court, slammed
3 my fist down on the desk, on the corner of the desk, and
4 basically kind of like a judge with a gavel, case dismissed
5 or whatever you want to say the judge does. You know, it
6 was basically letting him know I'm done with you, I'm gonna
7 proceed, you know, legal matters, and that's when I turned
8 and walked out of the office.

9 Q. And what was your intent when you walked out of the
10 office? Where were you headed?

11 A. I was going home and I was gonna call Forest Acres
12 Police Department. And I did get a message from Forest
13 Acres Police Department stating that Sergeant Lauri Tumlin
14 was not gonna be able to attend the business meeting that
15 night because I was trying to get her to come to the
16 meeting so I could, again, talk about the situation with
17 her present.

18 Q. Okay. Why did you pull your gun on Mr. Bunucci?

19 A. When I was leaving, he hollered at me, are you
20 threatening me, and it wasn't a threat, I was gonna do what
21 I was gonna do, I told him what I was gonna do, and so I
22 yelled back no and, again, he says are you threatening me
23 and I turned to look, and you can see when I turned to
24 look, you're seeing what I'm seeing, I turned and looked,
25 there he is, he's coming at me, I slammed the door putting

1 a physical barrier between us. At that point, I decided I
2 was gonna continue to my retreat, get out of there, and I
3 got maybe six, eight steps away and I heard the door burst
4 open. And it didn't open like a -- you know, like somebody
5 gently opening the door. I mean, it burst open and at that
6 time -- one of the things I do is IDPA shooting, which is
7 geared towards people that carry concealed carry permits,
8 it's a competitive thing and comradery thing with people
9 that have CWP's, so I -- and they put you in scenarios
10 where you may or may not have to shoot, you know, they put
11 you in shoot or don't shoot scenarios and you've got to
12 decide what to do, which is great because I just reacted.
13 You know, when you're put in a situation where you're in
14 fear of your life or you're in fear of being attacked or in
15 fear of serious bodily harm, you react to your training.
16 You always go back to your training, you resort back to
17 your training. So I spun around towards my right and as
18 I'm spinning towards my right, I draw my weapon from my
19 hip, which was in a holster, and I come up and I meet, you
20 know, eye to eye with my weapon, you know, holding it up
21 eye level. So basically the phone camera's sitting down
22 like this and -- y'all just imagine it's still here, okay?
23 It's gonna fall off because I'm sitting down. And I spin
24 around and come up like this and meet like this. Now you
25 still see him because of the positioning of the camera and

1 I've got the weapon up where I can, you know, see that it's
2 center body mass, which is what we're taught to do.

3 Q. And when you -- when you pulled your weapon out, what
4 did you tell Mr. Bunucci to do?

5 A. I told him to back the fuck up and my intentions was
6 to make the man stop.

7 Q. And what happened?

8 A. He stopped.

9 Q. And then what?

10 A. He finished threatening me and he raised his hand up
11 and said did you just pull that on me and I said yes, I
12 did and I have it on video, too, now step the fuck back,
13 or something of that nature.

14 Q. And then what did you do though? Once you intended
15 for him to stop, he stopped, what did you do?

16 A. Well, what I said and then he turned and went back.
17 He turned his back to me, which if somebody was scared,
18 you've got a gun pulled on him, why would you turn your
19 back to him? He turns his back to me and he goes back into
20 his office and I turn and re-holster my weapon and went out
21 to my vehicle and went home.

22 Q. And you were contacted by the police and asked to turn
23 yourself in. Did you do that?

24 A. I did. You know, I'm just glad that, you know, the
25 incident deescalated the situation to where both of us were

1 . able to go home safely.

2 **MS. JURICK:** Thank you, Mr. Capell. Please answer any
3 questions the State has for you at this time.

4 **THE WITNESS:** Sure.

5 **THE COURT:** Yes, sir.

6 **MR. CONRAD:** Thank you, Your Honor. May it please the
7 Court?

8 CROSS-EXAMINATION

9 BY MR. CONRAD:

10 Q. Mr. Capell, you were just telling us about some of
11 this training that you had. I believe you specifically
12 used the words "you see a threat and react to a threat"; is
13 that what you said?

14 A. I think I said that when you're in a threatened
15 position or you feel threatened, that you always resort
16 back to your training.

17 Q. All right. And I think you told us a little bit about
18 it. You discussed your CWP class and you discussed some
19 other type of case. Tell us more about this other class
20 that you said you attended.

21 A. The IDPA shooting is a competitive shooting. It's not
22 really a class.

23 Q. Okay.

24 A. They put you through scenarios that may happen in real
25 life. They tell you you're walking into a grocery store

1 and everything looks good and everything's going well and
2 you round a corner and, you know, there's a man with a gun
3 at the cash register, what do you do, you know, that sort
4 of stuff. And they put targets set up and you have shoot
5 or don't shoot targets, good and bad targets, and you have
6 to -- in some cases, some of the stages, they call them
7 shooting stages, some of the shooting stages they set up
8 you have your back turned to the stage and they have a
9 buzzer that goes off and you spin around, draw your weapon
10 and decide which are shoot targets, which are not shoot
11 targets and you engage the shoot target and not the not
12 shoot targets, that's what you do, which gives you the
13 ability to spin around and make a quick decision whether
14 or not there's an actual threat there or not, which is why
15 they do that.

16 Q. Okay. So the language you used, the "see the threat
17 reaction", that was not -- was that something that was
18 taught in your CWP class as well or is this -- or is that
19 what you were talking about was primarily to do with this
20 competitive shooting?

21 A. Primarily to do with the competitive shooting, which
22 is geared towards people that have got their CWP's and that
23 carry on a regular basis because much like police officers,
24 they may shoot once a year, but if you've got a concealed
25 weapons permit and you're involved in this IDPA shooting,

1 you shoot about once a month or more.

2 Q. Okay. And you talked about it's a competitive
3 shooting. Would you agree with me when -- when I say that
4 the primary existence of this organization is just to shoot
5 -- to shoot and not to shoot?

6 A. It a handgun centric organization geared toward
7 comradery, you know, for people that have the same kind
8 of interests. You know, I carry a weapon, I want to make
9 sure I'm proficient with it, I want to get into this sport
10 or hobby. Some people call it a sport, some people call
11 it a hobby, it depends, and it's fun, you know, if you can
12 afford it. It's -- you know, they have rules. They also
13 have rules for the disabled, which is another thing that
14 draw me -- made me draw to that sport. So, I mean, it's
15 not just all about shooting. It's also about, you know,
16 meeting people that have similar interests as you.

17 Q. And would you agree with me -- you talked about that
18 this training or this competitive shooting would put you
19 in different scenarios. Would you agree with me that the
20 majority of these scenarios are designed for you to shoot
21 at some point during the scenario?

22 A. Most of them. That's what it's about.

23 Q. All right. Okay. Mr. Capell, let's talk about
24 February 16th, the day this -- this happened. Would you
25 agree with me when you entered that office to talk to

1 Mr. Bunucci that your voice level was raised?

2 A. Raised but not yelling.

3 Q. So your testimony is that you were not yelling, but
4 your voice was loud; is that correct?

5 A. My voice was such that it could not be misunderstood
6 as to what I was saying.

7 Q. Uh-huh. And would you agree with me when I say that
8 you got into Mr. Bunucci's personal space that day?

9 A. I had no choice if I wanted to stand where I was.
10 There was a desk behind me. He even -- sorry, a bookshelf
11 behind me and a desk in front of me, and it's very tight
12 quarters in there because of the way it's set up. And I
13 don't have a photograph of it, I wish I did, but it's
14 tight. He admits it, I admit it. No arguments there.

15 Q. Okay. And would you agree with me that when you
16 slammed your hand on the desk next to Mr. Bunucci that it
17 was loud?

18 A. Very much like when a judge slams a gavel.

19 Q. Uh-huh. And would you agree with me that when you
20 slammed your hand like that any reasonable person would
21 find that fairly startling?

22 A. I don't know. I guess maybe.

23 Q. And would you agree with me that when you slammed the
24 door on your way out of the office that that as well was
25 loud?

1 A. Okay. That was loud.

2 Q. And would you agree with me that when the Defendant --
3 or, excuse me, when Mr. Bunucci approached you he was not
4 running?

5 A. No, he wasn't. It was short quarters.

6 Q. He was not running, correct?

7 A. No, he was not.

8 Q. Okay. And would you agree with me, when he approached
9 you, was his hands raised?

10 A. His left hand was down by his side, his right hand was
11 out to his side and he did the motion like he was pointing
12 down, if I recall correctly. I couldn't see the video just
13 now.

14 Q. At any point during this -- this whole confrontation,
15 did you ever see Mr. Bunucci's hands raised as in with his
16 fists closed?

17 A. No.

18 Q. All right. Were they raised with his hands open, both
19 of them?

20 A. After he realized that I had engaged him, yes, he did.

21 Q. Both of his hands were raised or just one?

22 A. After -- he had one by his side, one up here and then
23 he was -- like he raised both of his hands and showed me
24 his hands were clear and asked me if I just pulled that
25 off.

1 Q. You just mentioned showed his hands clear. Did he
2 have a weapon at that point?

3 A. No, not at that point.

4 Q. Did he have a weapon when you were talking with him in
5 the office?

6 A. Not that I know of. He didn't know I had one either.

7 Q. Okay. So you didn't see him with a firearm; is that
8 correct?

9 A. No, I did not.

10 Q. Did you see him with a knife?

11 A. A pocket knife could have been in his pocket. No, I
12 didn't.

13 Q. Did you see one in his hand or anywhere in the office?

14 A. No.

15 Q. Okay. Did you see any other sort of weapon; a club, a
16 crowbar, an axe?

17 A. Lots of things can be used as weapons; screwdrivers,
18 wrenches, anything, garden tools, baseball bats. Many
19 things could be used. Bare hands can be used as a weapon.

20 Q. Sure. And were any of those items -- other than his
21 bare hands, were any of those items in his hands when he
22 stood up -- when Mr. Bunucci stood up?

23 A. When his hands were what?

24 Q. Were any of those items that you just mentioned in
25 Mr. Bunucci's hands when he stood up?

1 A. I didn't actually see him stand up. If you look at
2 the video, it shows me leaving and then shows me turning
3 around when he says are you threatening me and I said no,
4 you see him charging at the door, and I've already said no
5 once and then I said no again.

6 Q. So your testimony is though when this happened you did
7 not see him stand up?

8 A. I personally did not see him stand up. I was looking
9 at my service dog and exiting to door. He was over here
10 to my right. Now my camera may have picked that up, which
11 means I couldn't see him.

12 Q. I'm not asking what's on the camera. I'm asking what
13 you saw when this happened.

14 A. I didn't see him stand up. I spun -- when I turned
15 around and closed the door, I saw him on his feet charging
16 the door.

17 Q. Okay. You used the word "charge". Explain that,
18 please.

19 A. He was moving with intent, he was moving with a
20 purpose, he was moving fast and not at a slow paced walk.

21 Q. Okay. Your testimony is he was moving at a fast paced
22 walk, but you said he was moving with intent.

23 A. Correct.

24 Q. What do you mean by intent?

25 A. His body language suggested that he was a threat to

1 me. He appeared to be a threat.

2 Q. He appeared to be a threat. And when you slammed that
3 door, Mr. Capell, about how far past the door did you make
4 it before you turned around?

5 A. Six to eight steps.

6 Q. Okay. And at what point did you decide to pull the
7 gun out of your holster? Was it before you turned around
8 or after you turned around?

9 A. I heard the door burst open. Once I heard the door
10 burst open, I reacted and I spun around and as I was
11 spinning around I drew my weapon at the same time.

12 Q. Okay. So your testimony is the gun was already coming
13 out before you made it all the way around?

14 A. That's correct.

15 Q. And when you made it around, did you see any sort of
16 weapons in Mr. Bunucci's hands?

17 A. Not at that time, which is why I did not shoot.

18 Q. All right. And when you spun around, did you see
19 Mr. Bunucci's hands raised like he was gonna attempt to
20 strike you?

21 A. As I said before, his hands were down by -- one hand
22 was down by his left side, the other hand was in -- off to
23 his right side as if he was pointing down, but somebody can
24 close a ten foot gap in about three strides and harm you.
25 And they always tell you, you know, somebody with a knife

1 ten feet away from you is a threat, you take that threat
2 out.

3 Q. But your testimony is he didn't have a knife, right?

4 A. I didn't see one in his hands.

5 Q. Nor any other weapon; is that correct?

6 A. Not -- I mean, there's a lot of things around that
7 could have been used as a weapon, but not in his hands,
8 no.

9 Q. All right. And at any point in you and Mr. Bunucci's
10 previous interactions had you ever known him to carry a
11 firearm?

12 A. No.

13 Q. Okay. What about a knife?

14 A. I can't say that I -- I don't have x-ray vision. I
15 can't see in his pockets.

16 Q. Have you ever been in any sort of physical altercation
17 with Mr. Bunucci?

18 A. No.

19 Q. Has he ever hit you?

20 A. No.

21 Q. Have you ever hit him?

22 A. No.

23 Q. Has he even ever yelled at you prior to this
24 happening?

25 A. Prior to this never, no.

1 Q. Mr. Capell, why did you go to that office that day?

2 What was your goal in talking to Mr. Bunucci that day?

3 A. Did you ask why did I go in the office?

4 Q. Yeah. What was your goal in discussing this situation
5 about the dog and the bylaws with Mr. Bunucci?

6 A. Back when I was a correctional officer, I learned that
7 if you approach a detainee or an inmate, they're inmates
8 there, where people in jail are detainees. But anyway,
9 when you approach an inmate that you've caught breaking a
10 rule, a violation, something of that nature, a lot of times
11 if you can get them to confess to it on their own and give
12 them something else instead of the alternative sentencing,
13 so I was always a strong supporter of alternative
14 sentencing. For example, if you weren't in your cubicle
15 during count, do you want to help him out with cleaning the
16 showers and bathrooms tonight and I'll just overlook that
17 or do you want me to write you up, and most of the time
18 they will take the lesser one. And as you see and hear in
19 the video, I was giving him an option do you want to, you
20 know, handle this with me and the Board or do you want me
21 to get the police involved.

22 Q. Okay. And you just testified that you worked as a
23 correctional officer. How long did you work as a
24 correctional officer?

25 A. About six months.

1 Q. All right. And I believe we heard previous testimony
2 about you working as an EMT.

3 A. Yes.

4 Q. How long did you hold that job, sir?

5 A. I worked as an ambulance attendant for a couple of
6 years and loved it and got my EMT certification in 1994
7 and was certified all the way up until 2012.

8 Q. All right. And I believe, if I understand your
9 testimony correctly just a second ago, the reason you
10 approached Mr. Bunucci in that manner is because you
11 learned that was an effective way to approach people when
12 you were a correctional officer? Is that -- am I summing
13 up what you said correctly?

14 A. Let's say the alternative, giving the man -- a person
15 an option, giving them an easier way out, is what I learned
16 as a correctional officer.

17 Q. And you think your training as a correctional officer
18 where you're in charge of taking care of inmates should be
19 applicable to your dealings with Mr. Bunucci who was a
20 property manager at Point Arcadia? Do you think that's
21 appropriate, sir?

22 A. I was just giving an example of what I was doing. You
23 hear in the video I'm giving him an option. You know, you
24 can do this or you can do this; you can either deal with me
25 or you can deal, you know, with the Board.

1 Q. Would you agree with me that you were confrontational
2 when you approached Mr. Bunucci on February 16th of last
3 year?

4 A. I didn't think I was.

5 Q. Okay. Would you agree that you called him ignorant at
6 some point during this?

7 A. I did. I was very frustrated with the man.

8 Q. Did you call him criminal at some point during this?

9 A. Oh, I certainly did.

10 Q. Did you tell him that you were gonna come back with
11 the police at some point during this?

12 A. Yes. Any time you see somebody burglarize somebody's
13 house, that's what you want to do.

14 Q. Burglarize his house? I'm sorry?

15 A. Yeah, him and Steve.

16 Q. Okay. And when you -- and so you said all those
17 things and you're saying today that that wasn't
18 confrontational?

19 A. No, I was just very frustrated with him. In fact,
20 when I said back the fuck up, that is when you hear me
21 yell. That's my definition of yelling. When I was a
22 candidate at the military academy, you know, you have --
23 like I'm speaking to you now is I want to be direct, I
24 want to be forward, I want to make sure that you do not
25 misunderstand anything coming out of anything my mouth,

1 okay? I'm not speaking softly like this, okay? I'm
2 speaking direct, okay? I'm not yelling, I'm speaking
3 direct, okay? There's a difference. You use your voice
4 and if you become authoritative, which is what I did
5 whenever I felt like I was getting ready to be attacked,
6 and I drew my weapon and engaged him. You have to be
7 authoritative. If you're not authoritative, you don't get
8 the proper response. The proper response was to make him
9 stop and, fortunately, I was able to make him stop without
10 having to shoot.

11 Q. Mr. Capell, how far, if you recall, from the door --
12 the exit of Mr. Bunucci's office to the door that exited
13 the building where you were? Can you give an estimate how
14 far that distance is?

15 A. The total distance from door to door?

16 Q. Yes.

17 A. That's what you're asking?

18 Q. Yes.

19 A. Maybe twenty, twenty-five feet.

20 Q. Okay.

21 A. Maybe.

22 Q. Would you agree with me that if you had -- after you
23 walked through the door, after you left Mr. Bunucci, if you
24 had kept walking at a normal pace you would have been well
25 outside the door before Mr. Bunucci could have ever gotten

1 close to you?

2 A. No, I don't agree with you.

3 Q. But you agree that he wasn't running, right?

4 A. No, he was moving with intent at a fast pace.

5 Q. Mr. Capell, would you agree with me that when you
6 went to that -- Mr. Bunucci's office that day your whole
7 goal was to get Mr. Bunucci to react so you could cause a
8 situation; is that correct?

9 A. My whole goal was to get him to admit to some of the
10 things he had done to me and I was also going after him and
11 Steve for burglarizing my neighbor's unit.

12 Q. Mr. Capell, would you agree with me when I asked you
13 when someone uses a raised voice level, these are all
14 things you've admitted to, gets in someone's personal
15 space, calls him things such as ignorant and criminal,
16 gives threats to come back with the police, slam your hand
17 with a very loud degree, slam the door with a very loud
18 degree, could you possibly see how someone would see that
19 as an attempt to provoke?

20 A. Maybe somebody without the same, you know, training
21 and knowledge and experience that I have possibly, but
22 anyway, that's through interpretation and everybody has
23 their own interpretation of what transpires.

24 **MR. CONRAD:** I beg the Court's indulgence.

25 BY MR. CONRAD:

1 Q. One last thing, Mr. Capell. When you testified
2 previously on this matter, do you recall using language to
3 the effect that when you went to the office that day your
4 blood was boiling?

5 A. I did mention that.

6 Q. Uh-huh.

7 A. I did say that because I was frustrated with the man.

8 Q. So you agree with me that in saying that your blood
9 was boiling you were angry before you ever entered the
10 office?

11 A. No.

12 **MR. CONRAD:** No further questions.

13 **THE COURT:** Redirect?

14 **MS. JURICK:** One question.

15 **REDIRECT EXAMINATION**

16 **BY MS. JURICK:**

17 Q. Mr. Capell, did you go there to the office with the
18 intent to shoot Mr. Bunucci?

19 A. Not at all, no.

20 **MS. JURICK:** That's all. No further questions. Thank
21 you.

22 **THE COURT:** Mr. Conrad?

23 **MR. CONRAD:** Nothing further from the State.

24 **THE COURT:** Thank you, Mr. Capell. You may step down.

25 **THE WITNESS:** Thank you, sir.

1 (Witness excused.)

2 **THE COURT:** All right. Call your next witness.

3 **MS. JURICK:** Your Honor, the defense rests at this
4 time.

5 **THE COURT:** Ma'am?

6 **MS. JURICK:** The defense rests at this time.

7 **THE COURT:** All right. Ladies and gentlemen, I have a
8 matter of law which I need to discuss with the attorneys.
9 You are still not allowed to deliberate in this case. You
10 will return to your jury room. Do not discuss the case,
11 keep an open mind. I'm gonna take up this matter of law
12 and check on your lunch, okay?

13 All right. Thank you very much. Everyone remain
14 seated.

15 (Whereupon, the jury retires to the jury room at
16 12:31 PM.)

17 **THE COURT:** Ms. Jurick?

18 **MS. JURICK:** Your Honor, at this point we'd like to
19 renew all of our previous motions, which includes the
20 immunity hearing on January 19th.

21 **THE COURT:** Okay. All right. The defense has renewed
22 its previous motions. The rulings on them are the same.
23 The motions for directed verdict are denied based upon
24 Rule 19 and the directed verdict progeny. There's
25 sufficient evidence to create a question of fact for the

1 jury to decide this case.

2 Does the State have any reply?

3 **MR. CONRAD:** Your Honor, can I have one minute to
4 confer with a potential reply witness?

5 **THE COURT:** Sure.

6 (Pause in proceedings.)

7 **MR. CONRAD:** The State's gonna offer nothing in
8 rebuttal, Your Honor.

9 **THE COURT:** Okay. All right. Very well.

10 **MS. JURICK:** Your Honor, in addition to renewing the
11 previous directed verdict motions, I'd like to remake a
12 directed verdict motion saying that at this point we
13 believe self-defense has been raised and the State would
14 have a burden to disprove it, which they've not met.

15 **THE COURT:** Okay. And based upon the standard for
16 directed verdict, I'll deny that motion.

17 **MS. JURICK:** Thank you.

18 **THE COURT:** Okay. All right. Let's talk about jury
19 charges.

20 All right. Anybody got any charges they want me to
21 look at?

22 **MS. JURICK:** Yes, Your Honor.

23 **MR. CONRAD:** And just to be clear, Your Honor -- oh,
24 I'm sorry.

25 **MS. JURICK:** Here, I'll hand yours.

1 **MR. CONRAD:** Okay. My request to charge is
2 conditioned upon the Court's decision on the defense's
3 request to charge self-defense.

4 **THE COURT:** Okay. Let's do the simple stuff first
5 and then we'll circle back around to the self-defense,
6 okay?

7 All right. So I will start out with this is the
8 indictment charging the Defendant with pointing and
9 presenting, the fact that he was charged is not evidence.
10 They are the finders of fact and I'm the finder of the
11 law. He is presumed innocent. I then give the Victor
12 versus Nebraska reasonable doubt charge. I then go through
13 direct and circumstantial evidence and I give the new
14 circumstantial evidence charge unless you want the old one.
15 Do you want the old or the new one, Ms. Jurick?

16 **MS. JURICK:** Whichever you --

17 **THE COURT:** Okay. It's really not a circumstantial
18 evidence case, but I'll give the new one just out of an
19 abundance of caution. That's the one that says -- the
20 main difference, not the only difference, but the main
21 difference is to the extent that the State relies on
22 circumstantial evidence, all of the circumstances must be
23 consistent with each other and when taken together point
24 conclusively to the guilt of the accused beyond a
25 reasonable doubt. That's not in the old one. I'm gonna

1 give the new one just out of an abundance of caution, okay?

2 **MS. JURICK:** Thank you.

3 **THE COURT:** Credibility of witnesses. Criminal
4 intent. And then the pointing and presenting part is
5 really short. It says he is charged with pointing or
6 presenting a firearm. The State must prove beyond a
7 reasonable doubt that he presented or pointed at another
8 person a loaded or unloaded firearm. It's very simple.
9 It doesn't have any kind of crazy definitions within it.
10 It's two sentences, okay? Everybody good with that?

11 **MR. BERRY:** I think we are, but do they give a
12 definition of what presented is? It's a pointing case,
13 but -- I don't think we do, but I just wanted to --

14 **THE COURT:** What do y'all want?

15 **MS. JURICK:** I'm fine with what you've just read.

16 **THE COURT:** Okay. I say pointing or presenting. I
17 mean, I'm happy to define present if somebody wants me to,
18 but I don't have to. It's up to y'all.

19 **MR. CONRAD:** We don't think it's necessary, Your
20 Honor.

21 **THE COURT:** Ms. Jurick?

22 **MS. JURICK:** That's fine.

23 **THE COURT:** Okay. I'm not gonna define present.

24 All right. Now -- okay. So I'm on defense's proposed
25 jury charges. Do y'all have your copies there in front of

1 you?

2 **MS. JURICK:** Yes, Your Honor.

3 **THE COURT:** Okay. So Paragraph Number 1 is in,
4 Paragraph Number 2 is in, okay?

5 **MS. JURICK:** Yes..

6 **THE COURT:** All right. The without fault paragraph
7 is in, with contemptuous language is in. I'm trying to
8 line them up and make sure they're the same, okay, so just
9 bear with me for one second. Imminent danger, those top
10 two paragraphs are in. The all the facts and circumstances
11 paragraph is in.

12 Okay. Right to act on appearances. Where did this
13 right to act on appearances come from?

14 **MS. JURICK:** Your Honor, this is all from the Supreme
15 Court suggested jury charges.

16 **THE COURT:** Okay. Here's what I have for right to
17 act on appearances. The Defendant does not have to show
18 that he was actually in danger. It is enough if the
19 Defendant believed he was in imminent danger and a
20 reasonably prudent person of ordinary firmness and
21 courage would have had the same belief. The Defendant
22 has a right to act on appearances even though the
23 Defendant's beliefs may have been mistaken. It is for
24 you to decide whether the Defendant's fear of immediate
25 danger of death or serious bodily injury was reasonable

1 and would have been felt by an ordinary person in the same
2 situation.

3 **MS. JURICK:** Your Honor, that's fine. My apologies.

4 I was cutting and pasting between a few -- .

5 **THE COURT:** You don't need to apologize.

6 **MS. JURICK:** -- but that's fine with us.

7 **THE COURT:** Okay. Words accompanied by a hostile
8 act. Okay. So words accompanied by a hostile act. I
9 read words accompanied by a hostile act may, depending on
10 the circumstances, establish self-defense.

11 Now in the defense's proposed charges, prior
12 difficulties is actually a different category, but there
13 it's meshed in with words accompanied by a hostile act.
14 So starting with the line that says prior difficulties in
15 the defense's proposed charge, I don't know of any prior
16 difficulties that are -- that is in evidence to consider
17 whether a threat existed.

18 **MS. JURICK:** Again, that was my mistake. I was
19 intending to just go off the Supreme Court suggested
20 charge.

21 **THE COURT:** All right. I'm gonna take prior
22 difficulties out.

23 Now the next one that I was gonna read was size and
24 age. The relative sizes, ages and weights of the Defendant
25 and the victim may be considered in deciding whether --

1 in deciding the apparent or actual need for force and
2 self-defense and the amount of force needed, so I'm gonna
3 leave that in, okay? Is there an objection to that?

4 **MR. CONRAD:** No, Your Honor.

5 **THE COURT:** All right. Threats made by the victim,
6 that's the next defense paragraph. That's in. Size and
7 age, I've already said that that's in. Threats by victim,
8 that's just a repeat. That's in. The Number 3, no other
9 way to avoid danger, and I believe that's exactly what I'm
10 reading.

11 Okay. Does the defense request anything else as far
12 as self-defense goes?

13 **MS. JURICK:** No, Your Honor.

14 **THE COURT:** All right. Now on your intent -- intent,
15 that's the exact intent that I read, okay?

16 All right. Now the State has requested a plea of
17 self-defense is not available to anyone who uses language
18 so opprobrious that a reasonable man would expect it to
19 bring on a physical encounter actually would constitute
20 bringing it on.

21 **MR. CONRAD:** Your Honor, and --

22 **THE COURT:** I think I say that.

23 **MR. CONRAD:** You do, Your Honor. The only difference
24 is the word contemptuous versus opprobrious.

25 **THE COURT:** All right. Let me find out where --

1 **MR. CONRAD:** Contemptuous is probably a better word,
2 I'd say.

3 **THE COURT:** Okay. So the one that I have says
4 self-defense is not available to a person who uses language
5 which is so contemptuous that a reasonable person would
6 expect it to bring on a physical encounter and which did
7 actually contribute to the physical encounter.

8 **MR. CONRAD:** Yeah, I'm fine with it.

9 **THE COURT:** That looks like Judge Anderson's use of
10 the word "opprobrious". O-P-P-R-O-B-R-I-O-U-S. I don't
11 know what it means, so I'm not gonna say it.

12 **MR. BERRY:** I had to look it up, Your Honor.

13 **MR. CONRAD:** I did have to look it up myself, Your
14 Honor.

15 **THE COURT:** Okay. How about we stick with
16 contemptuous?

17 **MR. CONRAD:** That's fine.

18 **THE COURT:** Is that okay?

19 **MR. CONRAD:** Yes, Your Honor.

20 **THE COURT:** Any objection from the defense?

21 **MS. JURICK:** No, Your Honor.

22 **THE COURT:** They always told me you don't say a word
23 that you don't know what it means to a jury.

24 All right. Hold on. Let me save this.

25 **MR. CONRAD:** And, Your Honor, I think the State would

1 have one more request.

2 **THE COURT:** In regards to the jury charges?

3 **MR. CONRAD:** Yes, Your Honor.

4 **THE COURT:** Okay. Hold on. Let me pull them back up.

5 **MR. CONRAD:** Sorry.

6 **THE COURT:** That's all right. Well, what do you have?

7 What is your other request?

8 **MR. CONRAD:** Your Honor, this language comes from
9 State v. Bryant and it says an accused who provokes or
10 initiates the assault cannot claim self-defense unless he
11 withdraws from the conflict and communicates his withdrawal
12 by word or act to his adversary.

13 **THE COURT:** Hold on just a second.

14 **MR. CONRAD:** And I do have a cite for the State v.
15 Bryant, if the Court needs it.

16 **THE COURT:** What's the cite, please?

17 **MR. CONRAD:** It's State v. Bryant, 336 South Carolina
18 340. I believe on Page 345. 340, 3-4-0, and what we're
19 citing is on Page 345.

20 **MS. OSTEEN:** Do you have a copy of that?

21 **MR. BERRY:** We don't have the case law. I apologize.

22 **THE COURT:** So what is it you want?

23 **MR. CONRAD:** The specific language is an accused who
24 provokes or initiates an assault cannot claim self-defense
25 unless he both withdraws from the conflict and communicates

1 his withdrawal by word or act to his adversary. And, Your
2 Honor, we're getting the case printed up right now and we
3 can highlight it for you.

4 **MS. OSTEEN:** Your Honor, we have it. If you're doing
5 that for us, we have it.

6 **MR. CONRAD:** Okay.

7 **MS. OSTEEN:** Thank you.

8 **THE COURT:** You're gonna have to give me some more
9 help on where it is. I can't find it.

10 **MR. CONRAD:** Yes, Your Honor. We're getting a copy
11 with it highlighted. I apologize.

12 **MS. OSTEEN:** Is this the exact language? If, after
13 commencing the assault, the aggressor withdraws in good
14 faith from the conflict. Is that what you were looking
15 for?

16 **THE COURT:** Yes, ma'am. I found it. I found what you
17 just said.

18 **MS. OSTEEN:** Okay. Your Honor, I don't know if this
19 adds to the conversation at all, but we don't have a
20 problem with that instruction so much as it seems that
21 it's very similar to the contemptuous language charge,
22 so maybe use that instead or in lieu of.

23 **MR. BERRY:** I think those are separate issues, if I
24 may.

25 **THE COURT:** Don't talk while I read.

1 **MR. BERRY:** I apologize.

2 **THE COURT:** I don't understand why the State wants
3 this charge.

4 **MR. CONRAD:** Specifically, Your Honor, the provoke or
5 initiates an assault can't then claim self-defense unless
6 they fully withdraw and communicate it.

7 **THE COURT:** I think you're mixing multiple languages
8 from this case.

9 **MR. CONRAD:** And I apologize, Your Honor. I guess
10 really a good cite is we've got State v. Jackson, which is
11 384 South Carolina 29, and the case in State v. Jackson
12 purports to be citing State v. Bryant, but it may well be
13 that the State v. Jackson case sums the language up. The
14 actually cite we're going to use is obviously Jackson and
15 the language used is an accused who provokes or initiates
16 an assault cannot claim self-defense unless he both
17 withdraws from the conflict and communicates his withdrawal
18 by word or act to his adversary.

19 I can hand this up as well. So I apologize. We were
20 citing State v. Bryant because the case cites it, but it
21 may very well be that the State v. Jackson changes the
22 Bryant language.

23 **THE COURT:** Well, isn't that a legal issue?

24 **MR. CONRAD:** Which is, Your Honor?

25 **THE COURT:** An accused who provokes or initiates an

1 assault cannot claim self-defense unless he both withdraws
2 from the conflict and communicates his withdrawal by word
3 or act to his adversary.

4 **MR. CONRAD:** Well, I think it is a legal and a
5 factual, Your Honor. I mean, obviously, number one, the
6 State would argue that the victim -- I think a fair viewing
7 of the video would lead that there's ample evidence that
8 the Defendant provoked this confrontation, however you
9 want to term the confrontation itself, and I think it's
10 important that the jury know -- if they agree that the
11 Defendant provoked it, the only way he can then claim
12 self-defense would be if he actually withdraws as the case
13 law requires. And I think, again, a fair viewing of the
14 video would be that he did not either withdraw or clearly
15 communicate his intent to withdraw.

16 **THE COURT:** Okay. I ain't charging that. Number one,
17 because the Court of Appeals' opinion in 2010 is not --
18 it's a mixture of State versus Bryant, number one. And,
19 number two, they're not saying that that's the charge and
20 that's the law. The discussion in that case is whether or
21 not the charge should have been given. I'm gonna give the
22 charge as it is. I think adding that language in there
23 confuses them.

24 All right. Anything else on the charge?

25 **MR. CONRAD:** No, Your Honor.

1 **THE COURT:** Okay. So the State will -- who's going
2 first for the State?

3 **MR. CONRAD:** I think, Your Honor, we're just gonna do
4 one closing.

5 **THE COURT:** You're just gonna do one? Okay. All
6 right. So who's gonna open for the defense?

7 **MS. JURICK:** I am, Your Honor.

8 **THE COURT:** Ms. Jurick?

9 **MS. JURICK:** Yes.

10 **THE COURT:** Okay. And then who's gonna close for the
11 State?

12 **MR. CONRAD:** I am, Your Honor.

13 **THE COURT:** Y'all know there's a rule change, right,
14 that's gonna be coming out any day now on closings? Did
15 y'all know that? Under Rule 21? Yeah, go read it. It's
16 not in effect yet, but it will change every closing
17 argument from this point forward.

18 Do y'all want a few minutes to get something to eat,
19 get your thoughts together?

20 **MR. CONRAD:** Yes, Your Honor.

21 **MS. JURICK:** Yes, Your Honor.

22 **MR. CONRAD:** A few minutes would be good.

23 **THE COURT:** Everybody's been going all morning. Take
24 a few minutes to get a snack, get some food. Let's do --
25 it's 1:00. Let's start back at 1:30, okay?

1 **MS. JURICK:** Thank you, Your Honor.

2 **MR. CONRAD:** Thank you, Your Honor.

3 **THE COURT:** And I'm just doing a normal verdict form
4 that says as to this charge, guilty or not guilty, and a
5 place to sign.

6 (Recess taken.)

7 **BAILIFF:** Order in the court. All rise.

8 **THE COURT:** Thanks. Take your seats.
9 Anything before we get started?

10 **MR. CONRAD:** Your Honor, the State as part of its
11 closing, I -- I'm planning on using our smart board to
12 present some Power Points to the jury. I've given a copy
13 of what we're planning to present to Ms. Jurick. I don't
14 think she has any issues. I have a copy if you'd like to
15 review it.

16 **THE COURT:** I don't need to see it. Somebody's gonna
17 have to teach me to work that video thing because he's
18 gonna have to leave, so if they want to see it somebody's
19 gonna have to teach me how to do it, okay?

20 **MR. CONRAD:** Yes, sir.

21 **THE COURT:** Okay. All right. Ms. Jurick, anything?

22 **MS. JURICK:** No, Your Honor.

23 **THE COURT:** Okay. Sounds good. Bring them in.

24 (Whereupon, the jury returns to the courtroom at
25 1:44 PM.)

1 **BAILIFF:** All jurors present, Your Honor.

2 **THE COURT:** All right. Welcome back, ladies and
3 gentlemen. The Defendant has rested its case and the State
4 has chosen not to call any reply testimony. We're at the
5 point of trial known as closings arguments or closing
6 summations. It's the attorneys opportunity to give you
7 their final thoughts on the case before I tell you what the
8 law is. And due to the order of the trial, Ms. Jurick will
9 go first, okay?

10 Yes, ma'am.

11 **MS. JURICK:** Y'all saw the video. You don't need me
12 to sit here and tell you what it means. You've seen it.
13 I hope you will go back in the jury room and watch it
14 again. I'm gonna sit here and tell you what it means
15 anyway because that's my job, but all that matters is on
16 that video. The last ten seconds, not the entire thing.
17 Watch the entire thing. Mr. Capell is not on his best
18 behavior at the beginning of it. You might find him rude,
19 you might find him annoying, but what you do not see him do
20 is anything illegal. He goes in there and he talks to his
21 property manager about complaints as a homeowner. He
22 threatens legal action. Good, I'll see you in court. He
23 turns around, and you can tell from the camera, he turns
24 around and he walks away. And then you hear it and you see
25 it. Mr. Bunucci storms in after him, throws open the door

1 that Mr. Capell had closed, and he says, "Are you
2 threatening me? Because if you're threatening me, I'll
3 fucking have your shit down", and he comes at Mr. Capell.

4 Mr. Capell, as you heard, is a CWP holder. He carries
5 a weapon on him. He is disabled and he is smaller than
6 him. They've had interactions before, but he's never
7 raised his voice to him before, he's never come after him
8 like this before. He turns around, he stands his ground
9 firmly and he says, "Get the fuck back". You don't see
10 Mr. Capell come towards Mr. Bunucci because he doesn't.
11 He stands there and he speaks with authority "Get the fuck
12 back". And you know what, Mr. Bunucci four, three, two,
13 one gets back into his office. And then that's it. They
14 both walk away. He defended himself when he was scared and
15 that's why he pulled his gun and that's why you're here.
16 And you can see it.

17 This case is unique because it's not he said, she
18 said. All of this testimony, all of these people we've
19 paraded up here and wasted your two days with, that's all
20 not really relevant. It's on video. Those ten seconds,
21 that's what matters. And the Defendant is the one that
22 taped it and he's the one that gave it to the sheriff's
23 department.

24 Now the State would have you believe that he -- you
25 know, they don't get along and he somehow went there with

1 the intent to provoke him and to point the gun at him and
2 to maybe even shoot him. Well, that doesn't make any sense
3 because if Mr. Capell had wanted to shoot him, he would
4 have shot him. You know what he wouldn't have done? He
5 wouldn't have videotaped it and he wouldn't have given that
6 video to the sheriff's department. That's how confident
7 Mr. Capell is that he did what he was supposed to do. If
8 he had the criminal intent, if he had the mindset in that
9 moment to commit a crime and not to defend himself, why
10 would he have given the video to the sheriff's department?
11 That doesn't make any sense.

12 Now Mr. Bunucci also said something about how when he
13 opened the door Mr. Capell already had the gun out, like he
14 was waiting for him, like he had slammed the door to get
15 him to come back, but remember, and count them, four,
16 three, two, one. When he opened that door, he came out
17 and you know that because he had to walk back in. So if
18 Mr. Capell was already standing there with the gun pointed
19 at the door, you'd have to believe that he ran towards a
20 man pointing a gun at him. That doesn't make any sense
21 either. That doesn't happen.

22 The State also might try to say something about how
23 self-defense doesn't apply if you created the situation;
24 that Mr. Capell come there and he created this situation
25 so he can't say he was defending himself. Mr. Capell was

1 rude, he was obnoxious, he did not handle the situation in
2 the best way possible, but he said I'll see you in court,
3 he slammed that door and he was on his way out. He didn't
4 do anything illegal, he didn't do anything physically
5 threatening, he didn't come there to point a gun or to
6 commit a crime. That's it.

7 The judge is gonna tell you the law and listen to the
8 law, it's important, but the main thing that you need to
9 know is very simple. In that moment when he pulled that
10 gun was he committing a crime? Did he have the mindset to
11 commit a crime or was he defending himself because he was
12 scared? What you aren't here to decide is if dogs should
13 swim in pools. That's not relevant. You're not here to
14 decide if that's a reasonable thing to be upset about, you
15 aren't here to decide if he handled it in the best manner
16 possible, you aren't here to decide if that's what you
17 would have done. None of that matters. Just those ten
18 seconds. Just if he felt threatened.

19 Enough is enough. You heard that in opening. Enough
20 is enough. Mr. Capell can be difficult. You can see that
21 in those two minutes. And Mr. Bunucci had the unfortunate
22 job of being the person that those complaints went to. And
23 you heard how the computer was down, there was a board
24 meeting that night and whatever it is, all these things
25 that aren't really relevant, Mr. Bunucci was frustrated

1 with him and he snapped and he came at him in a way that
2 he had never done before because enough was enough. Well,
3 Mr. Bunucci talked about treating people professionally.
4 He didn't do that either. We don't know what he would have
5 done. He hadn't done that before. That's not -- your job
6 isn't to decide if he actually would have caused great
7 bodily injury to Mr. Capell. Your job is to decide if
8 Mr. Capell reasonably given the situation believed that,
9 and he did. We don't know what would have happened. We
10 know that he's bigger than him, we know that Mr. Capell is
11 disabled, that he pulled the gun and that he deescalated
12 the situation and that everyone went home safely. So I'm
13 just asking you to watch the video. Watch those last ten
14 seconds. Don't let all the noise distract you. It's very
15 simple. It was self-defense. Thank you.

16 **THE COURT:** Thank you, Ms. Jurick. Mr. Conrad?

17 **MR. CONRAD:** Thank you, Your Honor. May it please the
18 Court?

19 **THE COURT:** Yes, sir.

20 **MR. CONRAD:** Thank you. Ms. Jurick and I, we agree
21 on a few things, all right, and we disagree on a lot of
22 things. Number one, I agree. You need to watch the
23 video, all right? However, we're gonna disagree on what
24 part of the video was critical. Ms. Jurick told you just
25 to concentrate on that last ten seconds, all right? I

1 suggest to you, I submit, that its critical you pay
2 attention to the entire video, all about three minutes.
3 It's not that long. You have to pay attention. You have
4 to look at all the facts and circumstances that occurred
5 during this incident in order to reach a fair verdict.

6 Now another thing Ms. Jurick and I agree on is yes,
7 in many cases us lawyers are up here arguing about what
8 this person said and what this person said and why this
9 disagrees and this disagrees. Well, none of that really
10 happened in this case because we have this video, all
11 right, so we agree about that.

12 All right. So what is the Defendant charged with?
13 The Defendant is charged with pointing and presenting a
14 firearm. What is that crime? In this state, it is illegal
15 to point your gun at another person unjustifiably, all
16 right? And us lawyers, we talk about something called
17 elements and the elements of a crime are the different
18 things the State needs to prove in order to get a
19 conviction, all right?

20 The elements in pointing and presenting are very
21 simple. Number one, someone has to point or present a
22 loaded or unloaded firearm at another person, all right?
23 Well, think back to the testimony we've heard. I don't
24 think we've heard a single person who testified either
25 that Mr. Bunucci or Mr. Capell disagree that any of those

1 things happened. They all happened. Mr. Capell pointed a
2 gun at Mr. Bunucci. That all happened.

3 So what are we disagreeing about in this case? Well,
4 we heard the defense talk about it. Mr. Capell's here
5 trying to tell you that he was defending himself and that's
6 why he was allowed to pull that gun. Well, self-defense
7 isn't just something that someone can just say oh, I was
8 defending myself and everybody says oh, okay, that's fine,
9 everybody go home. If that were the case, I think we'd
10 have some problems, all right?

11 Now, the Defendant has to prove -- or, excuse me, the
12 State -- the Defendant has to show that he met several
13 elements and then the State has to prove that he did not
14 beyond a reasonable doubt. In self-defense, there's four
15 primary elements, all right? Number one -- and the judge
16 is gonna tell you about this a little later, so if you hear
17 something different from what I say and what the judge says
18 about the law, then you have to go with what the judge
19 says. But, number one, the Defendant must be without fault
20 in bringing about the difficulty, all right? So ask
21 yourself a question. Did Mr. Capell go to that office to
22 provoke the victim? Ask yourself that and we'll -- we'll
23 come back to that, all right? All right. While you're
24 asking yourself think about this. The law in our state
25 does say that you help bring about the difficulty if you

1 say words that are so contemptuous that a reasonable person
2 would expect it to bring about whatever happened after
3 that, all right?

4 So the next element of self-defense is the Defendant
5 actually believed he was in imminent danger of losing his
6 life or sustaining bodily injury or he actually was in such
7 imminent danger. Well, I'm gonna dispense with this part.
8 I don't think we heard any testimony today to show that
9 the Defendant was ever actually in any danger, all right?
10 Mr. Bunucci never got close to him, he never tried to hit
11 him, never -- never said he was gonna try to hit him,
12 nothing of that nature, so I would submit to you that the
13 Defendant was not in actual danger.

14 So what do we have? We have the Defendant telling
15 you he believed he was in actual -- or he believed he was
16 in imminent danger of losing his life or serious bodily
17 injury, all right? Well, what the law says is if the
18 Defendant's telling you he believed he was in actual danger
19 it can't be just because he believed it, all right? A
20 reasonable, prudent person of ordinary firmness and courage
21 would have also entertained the same belief. So think
22 about it. Would a reasonable person in the Defendant's
23 place have believed they were in serious danger in that
24 situation?

25 And, finally, the Defendant had no other probable

1 means of avoiding this danger of losing his own life
2 or sustaining serious bodily injury than to act however he
3 did in that instance. So the other thing you have to ask
4 yourself is did the Defendant have the ability to retreat
5 out of the situation before he felt it was necessary to
6 pull out his gun, all right?

7 So those are the elements and they all have to be
8 shown together. So the Defendant has to be without fault
9 in bringing on the difficulty and he has to believe he was
10 in danger or actually was in danger and a reasonable person
11 -- if he believed a reasonable person of ordinary firmness
12 and courage must have believed the same and there was no
13 other probable means of avoiding the danger. So that's
14 self-defense in our state. So ask yourself has the
15 Defendant shown that he has met those? I submit he hasn't,
16 all right?

17 And why do I say that? Because it's my contention
18 -- or it's the State's contention that the Defendant
19 went into that office for the sole purpose of provoking
20 Mr. Bunucci to react, all right, and when he did that he
21 could not afford himself later of this self-defense
22 argument because he went in there trying to get that very
23 reaction. Why do I say that? Well, again, look at the
24 video. What happens in the video? As soon as Mr. Capell
25 goes in that office he's very confrontational. His voice

1 is raised. He admits that his voice is raised. I submit
2 to you that he's actually yelling, all right? His
3 mannerisms, he's confrontational, he's getting in
4 Mr. Bunucci's face, he's calling him some things, he's
5 saying you're ignorant, you're a criminal, I'm gonna come
6 back here with the police. You know, the -- really it's
7 just a civil matter. I don't know why he felt like he
8 could threaten with police. He's gets in his personal
9 space, he's confrontational, and then he slams his hand
10 on the desk within a foot of Mr. Bunucci, all right, and
11 then he turns to leave and slams the door as loud as he
12 can right in front of Mr. Bunucci. What is all that? All
13 that, I submit to you, is designed to get Mr. Bunucci
14 upset, and that's what happened, all right? And because
15 of that the Defendant can't come in here and cloak himself
16 in self-defense when he caused the situation, all right?
17 And -- and I would also submit based off the
18 Defendant's testimony today he was predisposed to causing
19 confrontations like this. You know, he told you he records
20 a lot of his interactions with the public. Why does he do
21 that? Because he knows he's gonna make some people angry
22 and he wants it on video and that's what happened in this,
23 all right? And the Defendant also talked about this
24 competitive shooting that he does, all right? At first he
25 tried to tell you that what he did was according to his

1 training and then when pressed further he admitted that it
2 really wasn't his CWP training, it was his competitive
3 shooting that he had done and that the competitive shooting
4 wasn't really training, it was just an activity he
5 participated in. He described it. He described it as
6 being in situations where you decide to shoot or don't
7 shoot. In other words, being in situations where you're
8 gonna have to shoot because that's what it is, it's a
9 shooting competition, all right? So I would submit to you
10 that this Defendant, if anything, got that -- those sorts
11 of competitions confused with real life and when he walked
12 in there he thought he felt a threat and he decided to
13 react, all right? But I would submit to you there was no
14 threat and his reaction was not reasonable, all right?

15 And how do we know that? Well, he told you that he
16 was already pulling that gun before he turned around to
17 face Mr. Bunucci. He told you that he never saw a weapon,
18 never knew Mr. Bunucci to carry a weapon, all right, and
19 that he had decided to pull that gun before he turned
20 around to face his threat, to see exactly what it was.

21 And is the Defendant really that vulnerable? We heard
22 a lot of testimony from his mother, and it sounds like he
23 does have some physical problems, but you also heard that
24 he worked as an EMT, he worked as a correctional officer.
25 Is he really that vulnerable that a man walking towards him

1 just a few feet away is enough of a threat to cause serious
2 bodily injury and death? I would submit it's not. So all
3 that was designed to cause the victim to react. In other
4 words, the Defendant brought about the difficulty, all
5 right?

6 But let's look at that a little further. What was
7 the reaction of Mr. Bunucci? What did he do, all right?
8 Well, first, after Mr. Capell slammed his hand on that
9 desk, Mr. Bunucci stood up and then he asked if he was
10 threatening him and Mr. Bunucci raised his own voice, all
11 right, and then Mr. Bunucci takes maybe one step you see
12 in the video towards the door before Mr. Capell slams it.
13 Is that really a threat I ask you? And, oh, by the way,
14 the Defendant sat here and testified that by the time he
15 turned -- regardless of what the video shows, by the time
16 he turned towards the door he didn't really see Mr. Bunucci
17 stand up. So how did he know that was a threat?

18 So Mr. Capell shuts that door in a loud and aggressive
19 manner I would submit and then Mr. Bunucci having this door
20 shut in front of his face decides he's gonna open it. Is
21 that really a threat opening a door that was just slammed
22 in your face? And then Mr. Bunucci takes one to two
23 steps -- you saw the video and you can see it again if
24 you'd like to -- towards Mr. Capell. Meanwhile Mr. Capell
25 is standing with his gun drawn. As he testified, it was

1 already out. Was there really a threat from Mr. Bunucci
2 for serious bodily harm or even death? I would submit no.

3 Ladies and gentlemen, as I said at the beginning, the
4 Defendant is here claiming self-defense. He's claiming
5 that he had a right to pull out his gun and defend himself,
6 all right? But just because he tells you and sits here and
7 tells you he's threatened that doesn't mean he's afforded
8 the law of protection of self-defense. We have to work
9 through all four of those things, all right? We have to
10 decide whether he was without fault in bringing about the
11 difficulty. Of course, he was part of that. He's the one
12 that provoked the situation. Mr. Bunucci through the
13 entire first half of that video all the way up to the point
14 where Mr. Capell slams his hand down is very calm, he's
15 very -- he is dismissive. He even asked Mr. Capell to
16 leave him alone at that point. He's very quiet. You have
17 to listen to hear it. And then he finally doesn't react
18 until the very end after Mr. Bunucci's {sic} been in his
19 face for almost two minutes, yelling, confrontational, all
20 right? So I would submit yes, the Defendant was with --
21 definitely was at fault in bringing about the difficulty
22 of that, all right?

23 And then we have to figure out whether he was in
24 danger, was actually in danger or believed he was in
25 danger. Again, I submit he was not ever in actual danger.

1 Mr. Bunucci never got close to him, he never attempted to
2 hit him, never had a weapon, all right? And so now we have
3 the Defendant -- he just told you, he's telling you he was
4 in danger, all right? But just because he tells you he's
5 in danger doesn't mean you have to believe it, all right?
6 You have to determine whether a reasonable, prudent man of
7 ordinary firmness would also believe he was in danger in
8 that situation, and I would submit he wasn't.

9 Finally, we have to -- we have to show that the
10 Defendant had no other probable means of avoiding the
11 danger. In other words, did the Defendant have the ability
12 to retreat? I believe the testimony from both Mr. Bunucci
13 and Mr. Capell was there was no more than twenty to
14 forty feet between the door of that office and the exit
15 of that building, all right? I asked the Defendant, and
16 he disagreed with me, but I would submit to you that if
17 Mr. Capell had simply just kept walking towards that front
18 door he would have long made it out of that building before
19 Mr. Bunucci, if he even attempted to pursue, which I would
20 argue he wasn't, could ever have gotten closer, all right?
21 So I would say there was another probable means to avoid
22 the danger and that was to continue walking out of the
23 building.

24 Ladies and gentlemen, I think that's about all I need
25 to say at this point. I'd like to thank you for being

1 here and paying attention and listening to all of the
2 witnesses and hearing whatever we had to say. This is
3 the Defendant's and the victim's day in court and I think
4 everybody said their piece. At the end of all this the
5 State is asking you to find the Defendant guilty of
6 pointing and presenting a firearm, all right?

7 On behalf of myself, John Conrad, Joe Berry, my
8 assistant counsel today, and our boss, Solicitor Dan
9 Johnson with the Fifth Circuit, we would ask you to find
10 the Defendant guilty. Thank you.

11 **THE COURT:** Thank you, Mr. Conrad.

12 Okay. Ladies and gentlemen, we have now reached the
13 point in the trial where it's my responsibility to tell you
14 what the law is in South Carolina as it pertains to the
15 issues that have arisen in this case. My voice is a little
16 weak today from allergies, so I'll do my best to make it as
17 interesting as possible.

18 The indictment has charged the Defendant with pointing
19 or presenting a firearm. I remind you that the fact that
20 the Defendant was arrested and charged and indicted in this
21 case is not evidence of anything and cannot be considered
22 by you as evidence of guilt in this case. Nor does it
23 create any presumption or inference of guilt. The
24 indictment is simply the formal written instrument which
25 contains the charge made against the Defendant. It is the

1 formal document by which this case is brought into this
2 court.

3 I remind you that during this trial you and I have
4 certain duties to perform. As the trial judge, it is my
5 responsibility to preside over the trial and I also have
6 the duty to rule on the admissibility of the evidence that
7 is offered during the trial. You are to consider only the
8 competent evidence before you. You are to consider only
9 the testimony which has been presented from this witness
10 stand, the exhibits which have been made a part of the
11 record in this case, and that is it.

12 I have the additional duty to charge you the law
13 applicable to this case. As the presiding judge, I am the
14 sole judge of the law and it is your duty to accept and
15 apply the law as I now give it to you. If you already have
16 an idea as to what the law is or what the law should be and
17 it does not agree with what I now tell you the law is, you
18 just abandon your own idea. In every case tried in this
19 court before a jury, you become the sole and exclusive
20 judge of the facts. I cannot state, comment on or make any
21 statement to you about the facts. Since you, the jury,
22 are the sole judge of the facts, you are not to infer from
23 anything that I have said or done during this trial in
24 ruling upon the admissibility of evidence or otherwise or
25 anything that I say now that I have any opinion about the

1 facts in this case. The law does not allow me to have an
2 opinion about the facts. This is a matter for you to
3 determine. It is your duty to determine the effect, the
4 value and the weight and the truth of the evidence
5 presented during this trial.

6 As I told you in this beginning, the Defendant has
7 pled not guilty and that plea puts the burden of proof on
8 the State to prove him guilty. A person charged with
9 committing a crime in South Carolina is never required to
10 prove himself innocent. It is an important rule of law
11 that a defendant in a criminal trial, no matter what the
12 seriousness of the charge may be, will always be presumed
13 to be innocent unless guilt has been proven by evidence
14 that satisfies of you of that guilt beyond a reasonable
15 doubt.

16 This presumption of innocence does not end when you
17 begin your deliberations, but it accompanies the Defendant
18 throughout the trial until you reach a verdict of guilt
19 based upon evidence that satisfies of you of that guilt
20 beyond a reasonable doubt. This presumption of innocence
21 is like a robe of righteousness placed about the shoulders
22 of the Defendant which remains with the Defendant until
23 it has been stripped from the Defendant by evidence that
24 satisfies you of the Defendant's guilt beyond a reasonable
25 doubt. This presumption of innocence is not a mere

1 legal theory, it is not just some legal phrase. It is a
2 substantial right to which every defendant is entitled
3 unless you are satisfied from the evidence of the
4 Defendant's guilt beyond a reasonable doubt.

5 Now I just told you multiple times that the State
6 has the burden of proving the Defendant guilty beyond a
7 reasonable doubt. I'm going to explain to you what
8 reasonable doubt means. Some of you may have served as
9 jurors in civil cases where you were told that it is
10 only necessary to prove that a fact is more likely true
11 than not true, such as by the greater weight or the
12 preponderance of the evidence. In a criminal case, the
13 State's proof must be more powerful than that. It must
14 be beyond a reasonable doubt. Proof beyond a reasonable
15 doubt is proof that leaves you firmly convinced of the
16 Defendant's guilt. There are very few things in this
17 world that we know with absolute certainty and in criminal
18 cases the law does not require proof that overcomes every
19 possible doubt. If, based upon your consideration of the
20 evidence, you are firmly convinced that the Defendant is
21 guilty, you must find the Defendant guilty. If, on the
22 other hand, you think there's a real possibility that the
23 Defendant is not guilty, you must give the Defendant the
24 benefit of the doubt and find him not guilty.

25 There are two types of evidence in criminal cases,

1 direct and circumstantial. Direct evidence directly proves
2 the existence of a fact and does not require deduction.
3 Circumstantial evidence is proof of a chain of facts and
4 circumstances indicating the existence of a fact. Crimes
5 may be proven by circumstantial evidence. The law makes
6 no distinction between the weight or value to be given to
7 either direct or circumstantial; however, to the extent
8 that the State relies on circumstantial evidence all of the
9 circumstances must be consistent with each other and when
10 taken together point conclusively to the guilt of the
11 accused beyond a reasonable doubt. If these circumstances
12 merely portray the Defendant's behavior as suspicious, that
13 proof has failed. The State has the burden of proving the
14 Defendant guilty beyond a reasonable doubt. This burden
15 rests with the State regardless of whether the State
16 relies on direct evidence, circumstantial evidence or some
17 combination.

18 Now you have to determine the credibility of the
19 witnesses who have testified in this case. Credibility
20 means believability. It becomes your duty to analyze and
21 to evaluate the evidence and determine which evidence
22 convinces you of its truth. You may believe everything a
23 witness says, none of what a witness says or some of what
24 a witness says. You may consider whether any witness has
25 exhibited to you any interest, bias, prejudice or other

1 motive in the case. You may consider the appearance and
2 the demeanor of the witness while on the witness stand.
3 You should use your common sense in determining the
4 credibility of the witnesses.

5 Now in order to establish criminal liability, the
6 State is required to prove criminal intent. Some examples,
7 again, these are examples, of criminal intent are, or
8 might be, purpose, intent, knowledge, recklessness or
9 negligence -- criminal negligence. Criminal intent must be
10 proven by the State beyond a reasonable doubt. Criminal
11 intent is always a matter that must be determined by the
12 jury from the circumstances that surround the situation.
13 There is no way to prove to a mathematical certainty what
14 is in someone's brain. There is no way that medical
15 science can dissect a person's brain and determine what
16 that person had in mind, so the law says that criminal
17 intent may be inferred from the circumstances shown to
18 have existed. This is how you make a determination of
19 whether or not the element requiring intent was present.

20 It is not necessary to establish intent by the direct
21 and positive evidence, but intent may be established by
22 inference in the same way as any other fact by taking into
23 consideration the acts of the parties and all of the facts
24 and circumstances of the case. Criminal intent is a
25 mental state, a conscious wrongdoing. It is up to you to

1 determine what the Defendant intended to do based upon the
2 circumstances shown to have existed. Criminal intent can
3 arise from an action or a failure to act. It may arise
4 from negligence, recklessness or an indifference to duty
5 or consequences that is considered by the law to be the
6 equivalent of criminal intent.

7 Now the indictment before you is for the crime of
8 pointing or presenting a firearm. The State is required
9 to prove that crime to you beyond a reasonable doubt.
10 The State must prove beyond a reasonable doubt that the
11 Defendant presented or pointed at another person a loaded
12 or unloaded firearm.

13 Now the Defendant has raised a defense of
14 self-defense. Self-defense is a complete defense and if
15 it is established, you must find the Defendant not guilty.
16 The State has the burden of disproving self-defense by
17 proof beyond a reasonable doubt. If you have a reasonable
18 doubt of the Defendant's guilt after considering all of the
19 evidence, including self-defense, then you must find the
20 Defendant not guilty. On the other hand, if you have no
21 reasonable doubt of the Defendant's guilt after considering
22 all of the evidence, including self-defense, you must find
23 the Defendant guilty.

24 Here are the elements that are required to establish
25 self-defense. Number one, without fault. First, the

1 Defendant must be without fault in bringing on the
2 difficulty. If the Defendant's conduct was the type which
3 was reasonably calculated to and did provoke a deadly
4 assault, the Defendant would be at fault in bringing on
5 the difficulty and would not be entitled to an acquittal
6 based on self-defense.

7 A subcategory of this is called contemptuous language.
8 Self-defense is not available to a person who uses language
9 which is so contemptuous that a reasonable person would
10 expect it to bring on a physical encounter and which did
11 actually contribute to the physical encounter.

12 The second element of self-defense is imminent danger.
13 The second element of self-defense is that the Defendant
14 was actually in imminent danger of death or serious bodily
15 injury or that the Defendant actually believed he was in
16 imminent danger of death or serious bodily injury. If the
17 Defendant was actually in imminent danger, it must be shown
18 that the circumstances would have warranted a person of
19 ordinary firmness and courage to strike the fatal blow to
20 prevent death or serious bodily injury. If the Defendant
21 believed he was in imminent danger of death or serious
22 bodily injury, it must be shown that a reasonably prudent
23 person of ordinary firmness and courage would have the same
24 belief. In deciding whether the Defendant actually was or
25 believed he was in imminent danger of death or serious

1 bodily injury, you should consider all of the facts and
2 circumstances surrounding the crime, including the physical
3 condition and characteristics of the Defendant and the
4 victim. Do y'all see that light? I'm not doing that.

5 All right. A subcategory of this section, we're under
6 imminent danger, is the right to act on appearances. The
7 Defendant does not have to show that he was actually in
8 danger. It is enough if the Defendant believed he was in
9 imminent danger and a reasonably prudent person of ordinary
10 firmness and courage would have had the same belief. The
11 Defendant has the right to act on appearances even though
12 the Defendant's belief may have been mistaken. It is for
13 you to decide whether the Defendant's fear of immediate
14 danger of death or serious bodily injury was reasonable
15 and would have been felt by an ordinary person in the same
16 situation.

17 Another category of imminent danger is words
18 accompanied by hostile acts. Words accompanied by hostile
19 acts may, depending on the circumstances, establish
20 self-defense. Another category of imminent danger is size
21 and age. The relative size, age and weight of the
22 Defendant and the victim may be considered in deciding
23 the apparent or actual need for force in self-defense
24 and the amount of force needed. Threats by the victim.
25 Threats made by the victim may be considered in determining

1 whether the Defendant actually was or believed he was in
2 imminent danger.

3 The third element of self-defense is this. There is
4 no other way to avoid danger. The final element of
5 self-defense is that the Defendant had no other probable
6 way to avoid the danger of death or serious bodily injury
7 than to act as the Defendant did in this particular
8 instance.

9 All right. We're almost done. Let me say something
10 to you about your deliberations. Deliberation is defined
11 as careful consideration, weighing up, with a view to a
12 decision. The genius of this system is that it allows
13 twelve good men and women from twelve totally different
14 backgrounds, life experiences and perspectives to consider
15 the evidence, talk about it and reach a verdict. We call
16 them deliberations for a reason. You are to consider
17 this evidence in this case carefully and deliberately and
18 discuss it in a calm, thorough and courteous matter. You
19 are not a partisan or an advocate for either side. You
20 are a judge; the judge of the facts. Your sole interest
21 is to find the truth from the evidence you have heard in
22 this courtroom. Listen to the views of each other,
23 consider other people's points and points of view, talk
24 through and discuss the evidence. If you're doing
25 something deliberately, you're not in a big hurry, and

1 you should not be in a big hurry here. This case is very
2 important to both sides and this is their only day in
3 court.

4 When you retire to your jury room, you should discuss
5 the case with each other to reach an agreement if you can
6 do so. Your verdict must be unanimous. Each of you must
7 decide the case for yourself, but only after you have
8 impartially considered the evidence, discussed it fully
9 and listened to each person's view. Do not be afraid to
10 change your mind if the discussion persuades you you
11 should, but do not come to a decision simply because
12 everyone else thinks it's right. It is important that
13 you reach a unanimous verdict, but only if each of you can
14 do so after having made your own decision. Do not change
15 an honest belief about the weight and the effect of the
16 evidence simply to reach a verdict. In other words, do
17 not change your opinion solely for the sake of reaching a
18 unanimous verdict.

19 Okay. Almost done. All right. So what I'm gonna
20 give you, Mr. Foreman, is the verdict form, okay? And
21 you'll be responsible for filling this out. Now I create
22 these verdict forms and the attorneys have seen them. What
23 this says is we, the jury, by unanimous consent, find the
24 Defendant as to the charge of pointing or presenting a
25 firearm, guilty or not guilty, okay? Now I have to put

1 one first and one second. There's nothing about the order
2 in which I put the words. One has to go first and one has
3 to go second. So when you reach a unanimous verdict, fill
4 this out, check the box, knock on the door and tell the
5 bailiffs you have a verdict, okay?

6 All right. Here are some basic rules. So here's
7 what's gonna happen. In about sixty seconds I'm gonna
8 release you back into your room. You're still not allowed
9 to talk about the case. No deliberations, okay? I have
10 one more issue I have to take up with the attorneys. Once
11 I'm done with that, and basically we're gonna make sure
12 that I say everything right now I'm supposed to say because
13 I make mistakes, too, okay? Once I'm done with that, then
14 the alternates will come out of the jury room and the
15 exhibits will come in. So once the exhibits come in the
16 jury room, that is your sign you may begin deliberating,
17 okay? All twelve of you have to be in the room to
18 deliberate, okay? So if somebody needs to smoke, somebody
19 needs to step out and make a phone call, deliberations
20 have to stop. All twelve in the room to deliberate, the
21 alternates out, you can't deliberate until the exhibits
22 come in, okay?

23 Now the video is in evidence. So we're gonna move
24 this contraption, the video machine, to the back hall. If
25 you want to see the video, tell the bailiffs you want to

1 see the video. Normally I let the law clerk -- my law
2 clerk run the video. He had to go do something for me,
3 so I will be running the video if you need it, okay? So
4 we'll show you how to turn the video on and play through
5 it, stop it, whatever you need to on the machine, okay?
6 So I will be there to assist you in regards to the video,
7 okay? The verdict must be unanimous, you all twelve must
8 agree. You know when to start deliberating; when the
9 exhibits come back and the alternates come out. Do not
10 discuss the case. We'll be with you very shortly. Thank
11 you very much.

12 (Whereupon, the jury retires to the jury room at
13 2:25 PM.)

14 **THE COURT:** All right. Any exception to the charge
15 from the State?

16 **MR. CONRAD:** No, Your Honor.

17 **THE COURT:** From the defense?

18 **MS. JURICK:** No, Your Honor.

19 **THE COURT:** Okay. All right. So here's what I want
20 the lawyers to do. Number one, everybody double-check with
21 the court reporter to make sure the right exhibits go back.
22 Number two, make sure Ms. Pat has all of your cell phone
23 numbers, okay? And then whoever can show me how to work
24 that machine, meet me in the back hall and show me how to
25 do it with the machine.

1 All right.

2 (Whereupon, the evidence was received by the jury at
3 2:28 PM.)

4 (Recess taken.)

5 **BAILIFF:** Keep your seat.

6 **THE COURT:** Okay.

7 (Court's Exhibit Number 1 was marked for
8 identification.)

9 **THE COURT:** Okay. We got a note that's been marked
10 as Court's Exhibit Number 1. It says, "Does all or just
11 one point need to be met?".

12 **MS. OSTEEN:** For what?

13 **MR. BERRY:** Presuming --

14 **THE COURT:** I just read them, okay? I'm not -- my
15 initial reaction was -- or response, like all elements of
16 the crime and of self-defense must be met.

17 **MR. CONRAD:** It's rather vague, Your Honor. I mean,
18 I would agree that that's a -- that will be a proper
19 clarification. It's awfully vague, what they're asking
20 for, so I guess we should treat it as for both the crime
21 and for self-defense.

22 **THE COURT:** Or -- I mean, I'm open to suggestions.
23 I'm not saying I'm gonna say that.

24 **MR. CONRAD:** Your Honor, did you send a copy of the
25 instructions back?

1 **THE COURT:** No. One thing I can do is just send the
2 instructions back.

3 **MS. JURICK:** Yeah.

4 **THE COURT:** Do you want me to do that?

5 **MS. OSTEN:** Yeah, I think that would be fine.

6 **MS. JURICK:** I think I would prefer that since we
7 don't know what the question meant.

8 **THE COURT:** Okay. I don't either.

9 **MS. OSTEN:** Shot in the dark.

10 **THE COURT:** I'm not purporting to read minds. I'm
11 certainly fine with sending the charge back if you want
12 me to. There's a charge I have to read them to send the
13 charge back, but that takes twenty seconds. Do you want
14 me to just do that?

15 **MR. CONRAD:** Sure.

16 **MS. JURICK:** Yes.

17 **THE COURT:** Is everybody in agreement with that?

18 **MS. OSTEN:** Okay.

19 **MR. CONRAD:** Yes.

20 **THE COURT:** I have to read them a charge to be able
21 to send the charge back, so if everybody would just be at
22 ease and let me find that charge and get it ready for me
23 to read and then we will bring them back in.

24 **MS. OSTEN:** Thank you, Your Honor.

25 **THE COURT:** On things like that for the future, I

1 wasn't trying to say the only thing I'm willing to say
2 is this. I was just trying to throw out a suggestion.
3 Sometimes those questions come in and they make perfect
4 sense and it's clear what they want and other times it's
5 better to have a discussion about it, and that's what I was
6 attempting to do. I wasn't trying to shut anybody off.

7 **MS. OSTEEN:** Thank you, Your Honor.

8 **THE COURT:** Okay. I've got it. Everybody ready?

9 **MS. OSTEEN:** Yes, Your Honor.

10 **THE COURT:** Okay. Go ahead and bring them in.

11 (Whereupon, the jury returns to the courtroom at
12 3:24 PM.)

13 **BAILIFF:** The jury's present, Your Honor.

14 **THE COURT:** Okay. Mr. Foreman, I have received your
15 note. I have discussed it with the respective parties
16 and we have all come to the conclusion that the best thing
17 to do at this time is just to give you a copy of what I
18 read to you earlier and that way instead of us trying to
19 decipher exactly what you were looking for and going back
20 and forth, the law allows me to give you a copy of the
21 charge. The parties have consented to that.

22 I do need to tell you that during your deliberations
23 you may refer to these instructions to guide your
24 decision-making. You must consider the instructions as
25 a whole and not to follow some things and ignore others

1 and when you reach a verdict just return the instructions
2 to the bailiff, okay? I'm gonna go ahead and give you a
3 copy of the instructions and hopefully that answers your
4 question as I can't -- I can't remember exactly what it
5 said, but I think this should answer all of your questions.
6 Everything that I read to you earlier was directly from
7 this, so you'll have a copy of it to go through as you need
8 to, okay?

9 All right. Thank you very much. You may return to
10 your jury room. Thank you. You can give it to Mr. Brown.

11 (Whereupon, the jury retires to the jury room at
12 3:26 PM.)

13 **THE COURT:** Anything else before we break?

14 **MR. CONRAD:** Your Honor, just -- just one housekeeping
15 thing. I was intending to do this at the end of the trial,
16 but since we're here and on the record --

17 **THE COURT:** Okay.

18 **MR. CONRAD:** Your Honor, as I believe we said at the
19 beginning of this trial --

20 **MS. OSTEEEN:** I'm sorry. I don't mean to interrupt,
21 but --

22 **THE COURT:** Go ahead.

23 **MR. CONRAD:** -- there are other pending charges
24 against Mr. Capell. Just as a matter of notice, the
25 State -- there was an indictment. Originally it was

1 2015-GS-40-6006. The State has amended that indictment
2 and originally that indictment -- this is a charge of
3 harassment. Originally the indictment stated it occurred
4 on December 7, 2014. The State's amended that and changed
5 that to say that the harassment occurred on or between
6 December 7th of 2014 and March 25th of 2015. The case --
7 you know, the State will likely be proceeding to trial
8 on this before too long and we wanted to make sure the
9 Defendant got a copy of this with the dates at issue so
10 there's no problem with notice.

11 **THE COURT:** Okay. Make sure that's on a separate
12 case number, okay?

13 **MR. CONRAD:** And the current case number with the
14 amended indictment is 2015-GS-40-6006. 6006.

15 **THE COURT:** Okay. Thank you. We'll be in recess.
16 (Recess taken.)

17 **THE COURT:** All right. Okay. Bring them in.
18 (Whereupon, jury returns to the courtroom at 3:37 PM
19 to report its verdict.)

20 **BAILIFF:** The jury is present, Your Honor.

21 **THE COURT:** All right. Thank you very much.
22 Mr. Foreman, it's my understanding you've reached a
23 verdict; is that correct?

24 **THE FOREPERSON:** Yes, we have.

25 **THE COURT:** And was it unanimous?

1 **THE FOREPERSON:** Yes, sir.

2 **THE COURT:** All right. Hand it to Mr. Brown, please.

3 **THE FOREPERSON:** (Hanging.)

4 **THE COURT:** Thank you, Mr. Foreman. I find that the
5 verdict is in its proper form and the Clerk may publish.

6 **THE CLERK:** Yes, sir, Your Honor. State of South
7 Carolina, County of Richland, Indictment Number
8 2015-GS-40-6008, State of South Carolina versus Richard
9 A. Capell. We, the jury, by unanimous consent, find
10 the Defendant, Richard A. Capell, as to the charge of
11 pointing or presenting a firearm, on Indictment Number
12 2015-GS-40-6608, guilty. Signed Number 270, David Thomson,
13 Foreperson, January 26, 2016.

14 Mr. Foreman, was this your verdict and the verdict of
15 the entire jury?

16 **THE FOREPERSON:** Yes.

17 **THE CLERK:** Thank you.

18 **THE COURT:** Do the parties request polling?

19 **MR. CONRAD:** No, Your Honor.

20 **MS. JURICK:** No, Your Honor.

21 **THE COURT:** All right. Ladies and gentlemen, that
22 concludes your service in this case. Thank you very much
23 for your willingness to serve this week. You're going to
24 be officially done for the week. We are not gonna ask that
25 you come back for the rest of the week, so thank you very

1 much for your service.

2 Now since the case is over, you are free to discuss
3 this case with anyone that you see fit; however, you also
4 have the right to be free from harassment. So if anybody
5 is bothering you about the case or wants to talk to you
6 about the case after you have told them you don't want to,
7 then just call up to the courthouse and someone will deal
8 with that quickly.

9 Thank you very much. If you will retire to your jury
10 room, they'll have some final words for you and then you'll
11 be excused. Everyone remain seated.

12 (Whereupon, the jury retires to the jury room at
13 3:39 PM.)

14 **THE COURT:** All right. Give me three minutes and
15 we'll be back. Don't go far.

16 (Recess taken.)

17 **THE COURT:** Okay. Post-trial motions?

18 **MS. OSTEEN:** We have no post-trial motions. I would
19 ask if it's possible to do a deferred sentencing on this
20 for potentially around two weeks time. And the reason I
21 ask for this is twofold. One, I'd like to get somebody
22 from the jail here to talk about his medical situation
23 there and the services they're providing and -- as well
24 as the fact that he is under a probate hold and so it will
25 give us a little time to sort out what's the story with

1 the probate hold.

2 **MR. CONRAD:** Your Honor, as far as the probate hold
3 goes, my understanding is -- it's been established for
4 months now is there's a bed waiting -- we're waiting for
5 a bed opening at Correct Care for Mr. Capell to go there
6 and then at that point -- I'm not sure if the next two
7 weeks is gonna provide any clarity to that -- to that
8 situation as far as that goes. And as far as his medical
9 situation, I've talked to the director myself of medical,
10 Mr. Ruffin, I believe, and I knew -- Mr. Capell does need
11 some medical care. I don't know the current timing of it.
12 The State has other pending charges that will need to be
13 resolved before he can go anywhere from Alvin S. Glenn as
14 far as his case goes, so I don't think that's necessarily
15 a bar to sentencing today, but it's in the Court's
16 discretion obviously.

17 **THE COURT:** All right. Where's Mr. Bunucci? What's
18 your schedule the week of February the 16th?

19 **MR. BUNUCCI:** Well, it's -- I don't really have
20 anything planned that week.

21 **THE COURT:** Monday is a holiday, but the rest of the
22 week, is there a time of the day that's better for you or
23 worse for you?

24 **MR. BUNUCCI:** I have to see -- every other week I
25 have a half day on Thursday or I'm off on Friday and --

1 but with this week being a half week --

2 **THE COURT:** Just tell me the week of the 15th what's
3 the best day for you besides Monday?

4 **MR. BUNUCCI:** It would probably be on Tuesday or
5 Wednesday.

6 **THE COURT:** Tuesday or Wednesday?

7 **MR. BUNUCCI:** Yes.

8 **THE COURT:** Okay. And would the morning or the
9 afternoon would be better?

10 **MR. BUNUCCI:** Afternoon would be better, sir.

11 **THE COURT:** Okay. Late afternoon or around like 2:30?

12 **MR. BUNUCCI:** Probably later afternoon.

13 **THE COURT:** 4:00?

14 **MR. BUNUCCI:** That would be fine.

15 **THE COURT:** Is that okay?

16 **MR. BUNUCCI:** Yes.

17 **THE COURT:** Okay. I'm trying to make this as
18 convenient for you since you're the one who has to come
19 back up here that's not required to be here. So 4:00 on
20 Tuesday, February 16th. Will that work for you?

21 **MR. BUNUCCI:** Yes, sir.

22 **THE COURT:** Okay. All right. So his sentencing will
23 be set for February the 16th of 2016, that's a Tuesday,
24 at 4:00, in whatever courtroom I'm in that day. I can't
25 do it the week before because I'm on vacation and the

1 week before that I'm in Charleston, so that's the first
2 available week I'm in Richland. Okay?

3 **MS. OSTEEN:** Yes. Thank you, Your Honor.

4 **THE COURT:** And he stays in custody until then.

5 **MS. OSTEEN:** Right. And, Your Honor, we would like
6 to renew all of our motions.

7 **THE COURT:** Okay. Your motions are noted for the
8 record and my ruling upon them is the same based upon the
9 reasons that I earlier spoke of.

10 **MS. OSTEEN:** Thank you, Your Honor.

11 **THE COURT:** Okay. Good luck.

12 **MR. CONRAD:** Thank you, Your Honor.

13 **MS. OSTEEN:** Thank you.

14 (Whereupon, sentencing was deferred to February 16,
15 2016, at 4:00 PM, and the proceedings were concluded for
16 January 26, 2016, at 3:44 PM.)
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STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Richland	)	2015-GS-40-06008
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
RICHARD A. CAPELL,	)	
	)	
DEFENDANT,	)	

February 16, 2016
Columbia, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

JOHN CONRAD, ASSISTANT SOLICITOR
Attorney for the State

SARAH JURICK, ASSISTANT PUBLIC DEFENDER
MAISIE OSTEEN, ASSISTANT PUBLIC DEFENDER
Attorneys for the Defendant

KAREN AMBROZIAK
Official Court Reporter

1 that.

2 THE COURT: Okay.

3 MS. JURICK: Which Alvin S. Glenn has concerns about
4 being able to get that type of treatment and care for him.
5 So I guess I wanted to be clear that no matter what you
6 sentence him today, he is not going to get out.

7 He has more charges that he has no bond on. He also
8 has this Probate Commitment Order. He will continue to be
9 under the care of the Probate Court until they decide that
10 he doesn't need that. So with all those things
11 considered, we're asking for time served.

12 THE COURT: All right.

13 Ms. Osteen?

14 MS. OSTEN: I'll stand on what Sarah says.

15 THE COURT: Okay. Mr. Conrad?

16 MR. CONRAD: The only reply, I don't think I -- I can
17 really speak much to his medical condition, but I will say
18 when I heard Mr. Capell talking, we heard a lot of stuff
19 about him being a victim, so to speak. I don't think I
20 heard anything close to any sort of remorsefulness over
21 his actions. So I'd ask the Court to take that into
22 consideration.

23 THE COURT: Okay. Mr. Punuchi, I want to explain to
24 you. I usually don't do this, so I'm going to explain
25 this to you so you understand it why I'm not going to just

1 give him the maximum sentence, okay.

2 Because the way SCDC works, because he has credit for
3 329 days, if I gave him a straight five, he may go in and
4 do three to six months maybe and they let him out, and
5 then nobody will be monitoring him, okay.

6 So I'm intentionally not structuring this sentence
7 just giving him the flat five that way because SCDC is --
8 you know, with him having no prior record, they're just
9 going to parole him so fast you can't see straight, okay.

10 So that's why I'm not doing it this way. I don't
11 want him to be in the community unmonitored, so that's why
12 I'm doing it this way. However, there will be an order
13 that says he is not allowed to have any contact with you
14 directly or indirectly, okay. So that will in place.

15 The sentence of the Court is that you be committed to
16 the State Department of Corrections for five years
17 suspended upon the service of three years followed by five
18 years of probation, credit for 329 days, mandatory mental
19 health counseling, no contact with the victim, \$500 to the
20 Public Defender Fund.

21 The defendant is not allowed to possess any firearm
22 by South Carolina or federal law. That means he is to be
23 given credit for 329 days. Good luck.

24 MS. JURICK: Thank you, Your Honor.

25 MR. CONRAD: Thank you, Your Honor.

1 (Whereupon, the proceedings were concluded.)

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WITNESSES

(S) H. T. Jackson
– Forest Acres Police Department

ARREST WARRANT NUMBER

2015A4020400034

**ACTION OF GRAND JURY
TRUE BILL**

Deann Gardner
Foreperson of Grand Jury
Date: **NOV 12 2015**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS4006008

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2015

213

**THE STATE
vs.**

Richard A Capell

**Indictment for
WEAPONS / POINTING AND PRESENTING
FIREARMS AT A PERSON**

SC Code: 16-23-0410
CDR Code: 0122

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

280

SCANNED

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

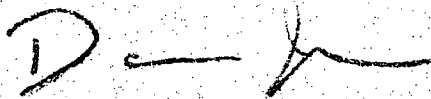
INDICTMENT

At a Court of General Sessions, convened on November 10, 2015,
the Grand Jurors of Richland County present upon their oath:

POINTING AND PRESENTING A FIREARM

That Richard A Capell did in Richland County on or about February 16, 2015, point or present a loaded or unloaded firearm, to wit: a pistol, at one JOHN BUNUCCI, in violation of Section 16-23-0410, 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.


DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATERichland
Richard CapellAKA: _____
Race: W Sex: M Age: _____
DOB: _____ SS#: _____Address: _____
City, State, Zip: Forest Acres SC 29206

DL# _____ SID# _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Painting and PresentingIn violation of § 16-23-0415 of the S.C. Code of Laws, bearing CDR Code # 0122
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The 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:

Solicitor 100051 SC Bar # _____ Defendant 101540 SC Bar # _____
Attorney for DefendantWHEREFORE, the Defendant is committed to the State Department of Corrections ☐ County Detention Center,
for a determinate term of 5 years or ☐ under the Youthful Offender Act not to exceed 3 years
and/or to pay a fine of \$ _____ provided that upon the service of _____ years and payment
of \$ _____ plus costs and assessments as applicable; the balance is suspended with probation for 5
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. 329 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

*Fine: _____ \$ _____
\$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 _____ \$ _____
\$47.12 (Public Def/Prob) \$500 _____ \$ _____
\$14-1-212 (Law Enforce. Funding) \$25 _____ \$ _____
\$14-1-213 (Drug Court Surcharge) \$100 _____ \$ _____
\$50-21-114 (BUI Breath Test Fee) \$50 _____ \$ _____
\$56-5-2942(J) (Vehicle Assessment) \$40/ea _____ \$ _____
\$90.7(SCCJA Surcharge) \$5 _____ \$ _____
3% to County (if paid in installments) _____ \$ _____
TOTAL _____ \$ _____Clerk of Court/Deputy Clerk Jeannette W. McBride
Court Reporter: JohnsonMay 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 FundOther: MENTAL HEALTH COUNSELING
NO CONTACT WITH VICTIM
DIRECTLY OR INDIRECTLY
☒ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge R. Hood
Judge Code: 2164
Sentence Date 2-16-16Δ IS NOT ALLOWED TO POSSESS ANY FIREARM BY S.C. + F.D. LAW.

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,



Laura R. Baer
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 May, 2017.

RECEIVED

MAY 08 2017

SC Court of Appeals