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23154

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

R. Markley Dennis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRANDON RASHAD MARSHALL,

APPELLANT

APPELLATE CASE NO 2016-000870

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**THIS EXHIBIT IS ON FILE WITH THIS COURT:
STATE'S EXHIBIT #39 (DVD)**

STATE VS. BRANDON MARSHALL

1 MS. GAY: Okay.

2 THE COURT: Okay. Thank you.

3 MS. GAY: I thought that was ---

4 THE COURT: No, Ms. Gay, you are going to have your
5 chance to put your case in, okay. We are taking a break.
6 The jury has been sitting for an hour-and-a-half. They need
7 a break. Thank you.

8 (WHEREUPON, break was had 4/6/16 3:37 p.m.)

9 (WHEREUPON, resumed 4/6/16, 3:53 p.m.)

10 THE COURT: Let's -- let's put something on the record,
11 because I want to be clear. There is no question that I
12 didn't expect you to say I want you - under Rule 106 - I
13 want you to play it all because you objected to it. That is
14 why I asked you do you still have your objection to the
15 playing.

16 Because clearly the last statement, as I stated in my
17 ruling -- and I didn't want the jury -- I didn't -- I was
18 going to have to respond I have already ruled that that
19 concludes what I was allowing the State to play. So that
20 created a problem, a matter of law. That is why I didn't
21 listen to you before the jury left because that had to be
22 done out of their presence to protect everything.

23 Secondly, there is no question you have every right
24 under Rule 106 to have the rest of it played. But you are
25 going to now move the introduction of three -- excuse me, of

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1 Defendant's Exhibit 2 -- it is not -- I said three. It is
2 two. And then we will play it whenever you want it. That's
3 fine. No problem.

4 MS. GAY: I just need to explain something to him.
5 (WHEREUPON, pause for Ms. Gay to confer with client.

6 THE COURT: Let's bring in our jury.
7 (WHEREUPON, pause for scheduling comments.)

8 THE COURT: Are you planning to have it played?

9 MS. GAY: Yes.

10 THE COURT: Because I asked them to pull it up to ---

11 MS. GAY: Yes.

12 THE COURT: Okay. That's fine. I just wanted to be
13 sure.

14 It is cued now?

15 MR. OSBORNE: Yes, sir.

16 THE COURT: Okay. And you don't object to
17 Defendant's 2?

18 MR. OSBORNE: It is over three hours. And most of it
19 is he is in the room by himself.

20 THE COURT: And you want to play him just sitting
21 there?

22 MS. GAY: Well, Your Honor ---

23 THE COURT: Well, no, you are going to have to make
24 that decision. You are going to ask me to play the whole
25 thing or are you going to ask him to do -- I mean what are

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1 you going to ask to do? Are we going to sit here for three
2 hours? I mean you are the lawyer; ---

3 MS. GAY: Without ---

4 THE COURT: --- you make the call.

5 MS. GAY: Okay. Hold on one second. I mean he is
6 asking to that.

7 THE COURT: Hold on a second (directed to bailiff).
8 Hold on just a second. Thank you. I'm sorry.

9 MS. GAY: Okay. David, he has asked to play the first
10 30 minutes.

11 THE COURT: Okay.

12 MS. GAY: Your Honor, he has asked to play the first 30
13 minutes.

14 THE COURT: That is fine. We will play for 30 minutes.
15 I am prepared to stay as long as you -- whatever portion you
16 need for your cross-examination that is perfectly all right
17 with me.

18 I just -- I am just asking. That is what I want to
19 know. I don't know -- I have never seen that part,
20 obviously. You have. I haven't. And you know the
21 probative value of it. And I don't ask you to tell me why,
22 because that is your trial strategy.

23 Okay. Are we ready for the jury then?

24 MS. GAY: Yes, ma'am -- yes, sir.

25 THE COURT: Okay. All right. We will play 30 minutes

1 starting from the time we publish it until we see 30 minutes
2 run. Is that -- that what you want me to do?

3 MS. GAY: Yes, sir.

4 THE COURT: Okay. So I have an understanding. I will
5 watch the timer.

6 (WHEREUPON, jury enters courtroom 4/6/16 3:57 p.m.)

7 THE BAILIFF: All jurors are present.

8 THE COURT: Thank you very much.

9 Thank you, ladies and gentlemen. I needed a break at
10 the middle. And that is not common. I figured it may be
11 some length to this cross-examination so that is why we
12 broke that at this point. So thank you very much.

13 And, Ms. Gay, now you may cross-examine the witness.
14 You may proceed.

15 MS. GAY: Thank you, Your Honor.

16 THE COURT: You bet. And thank you for allowing the
17 break too.

18 **CROSS-EXAMINATION BY MS. GAY OF DETECTIVE RICHARD**

19 **BURCKHARDT:**

20 Q. Detective Burckhardt, the tape that we were watching,
21 it stopped at -- the one where Mr. Osborne finished his
22 questions. But that is not the end of the tape is it?

23 A. The recording continues to run. It is standard
24 procedure until -- what we try to do it run it until the
25 person that is being interviewed is actually physically

1 removed from the room and it is over with. We try to do
2 that.

3 Sometimes we have technical difficulties in that room.
4 But in this particular case I believe it kept running.

5 Q. And so about five o'clock in the morning is when you
6 stopped talking to him; but about eight o'clock in the
7 morning is when he left the room?

8 A. That is approximately correct I think.

9 MS. GAY: Well, at this time, Your Honor, I would like
10 to ask to admit Defendant's Exhibit 2 which is a portion of
11 the after this part.

12 THE COURT: Let's -- for the purpose of the record
13 Defense Exhibit 2 is the entire balance of the tape. It is
14 my understanding, prior to the jury, that you want us to
15 play 30 minutes of that?

16 MS. GAY: Yes.

17 THE COURT: Okay. That is fine. That -- and the
18 reason I state that is for clarify, because once the jury --
19 and ladies and gentlemen, I will just tell you now things
20 that are played in the courtroom we won't be sending them
21 back to you. But if you want to see them again you have the
22 right to do that. We will bring you in the courtroom and
23 play them for you as long as you need it played and as many
24 times as you need it played should that become necessary.

25 But one of the reasons we can't send it back is because

1 it is not uncommon sometimes all of a disc is not admitted.
2 And that is precisely what we are doing here. So we -- at
3 least at this point.

4 If you change your mind, that is fine. But we will
5 play the first 30 minutes of it then.

6 MS. GAY: Yes, sir.

7 THE COURT: The first 30 minutes is admitted.
8 Defendant's 3, first 30 minutes, is admitted without
9 objection; is that correct?

10 MR. OSBORNE: That is correct, Your Honor.

11 THE COURT REPORTER: Your Honor ---

12 THE COURT: But the balance is still for identification
13 only. Excuse me, two. I said -- I keep saying three.

14 MS. GAY: Defendant's Exhibit 2.

15 THE COURT: I will get it. It is Defendant's 2. Thank
16 you.

17 Thank you very much. See, I like being on her team.
18 She is a good -- she keeps me straight or tries to.

19 (WHEREUPON, Defendant's 3 was admitted into evidence.)

20 (WHEREUPON, a portion of Defendant's 2 was published.)

21 MS. GAY: Your Honor, I believe that is enough.

22 THE COURT: Do you wish to have it stopped?

23 MS. GAY: Yes, sir.

24 THE COURT: All right. Stop it please.

25 (WHEREUPON, video stopped.)

CROSS-EXAMINATION BY MS. GAY OF DETECTIVE RICHARD BURCKHARDT

1 THE COURT: And that is at your request. So only --
2 wait just -- let me rephrase what I previously stated.
3 Instead of -- it would have been 5:37. According to my
4 record what I saw was 5:07 and I said thirty minutes. So we
5 have admitted from 5:07 to 5:21 has been admitted into
6 evidence without objection.

7 Okay. Thank you. All right. Okay. You may continue
8 with your examination. Thank you.

9 MS. GAY: Thank you.

10 Q. All right. Detective Burckhardt, you said that you are
11 now with the Marshall's. How long has it been since you
12 were with the City?

13 A. I retired the end of November of last year.

14 Q. Of '15?

15 A. Yes.

16 Q. And, again, you had worked for the City for how many
17 years?

18 A. Twenty-seven.

19 Q. A long time.

20 A. Yeah.

21 Q. And at this point when you said that you were the
22 detective on duty so you were the one that got the call in
23 the middle of the night to cover this?

24 A. I was actually on duty. We have an evening shift, so I
25 was on the clock so to speak. And I was requested to

1 respond to the scene by the officers after the shooting.

2 Q. And I believe you testified that by the time you got
3 there Henderson already had Mr. Marshall in custody?

4 A. He had him detained in the rear seat of his cruiser,
5 yes.

6 Q. Right. And at the point you were aware that Mr. --
7 that Brandon had spontaneously uttered that he had been the
8 shooter, that he had acted in self-defense, the guy had
9 charged him?

10 A. We didn't get into self-defense. We didn't get into
11 issues of why he shot him at that point. All I was informed
12 was is that the shooter was in custody, he was in the rear
13 seat of Officer Henderson's car.

14 Q. So you don't recall Henderson telling you that?

15 A. He may have. He may have. But that also came from
16 several other witnesses that were present.

17 Q. Right.

18 A. Well, one in particular. Ashley Butler.

19 Q. Right.

20 A. Yeah.

21 Q. And so on the scene when this is going on the -- Mr.
22 Williams was laying on the ground and he had no shirt on;
23 that was one of the things that the solicitor asked you?

24 A. Right.

25 Q. And his torso would have been showing, and he had no

1 shoes?

2 A. I don't recall the shoe issues. But ---

3 Q. Okay.

4 A. --- yeah.

5 Q. Well, you have described the physical description --
6 the difference in the physical description between Mr.

7 Williams and Brandon. And I think you said they were about
8 the same height but one would have had 50 pounds on him?

9 A. Correct.

10 Q. And so the video that we are watching is obviously Mr.
11 Marshall, who at that time weighed 250 pounds?

12 A. That would be approximately, yeah.

13 Q. Okay. And so in terms of body mass Mr. Marshall was
14 much lumpier than Mr. Williams; he was ---

15 A. From my observations of your client and my observations
16 of the deceased victim on the ground it seemed that the
17 defendant had the advantage in weight, if you will, and
18 size. That's -- I'm not -- I couldn't tell you exactly.

19 Q. Well, when you say -- that's an interesting concept,
20 because when you say advantage in weight and size most
21 people that are heavy may not think of themselves as being
22 in an advantage to somebody who is light and lean and has a
23 whole lot of muscle mass. And so Mr. Williams was like
24 that?

25 A. Not necessarily. In my experience, Counselor, it is

1 better -- a number of times in cases and if you go to
2 assaults, if you will, for an example, the larger person
3 generally has the upper hand. That is all I am saying.

4 Q. Well, and in this case as you came through there was --
5 I believe that you testified that somebody -- either you
6 were aware or had been informed that the car that Mr.
7 Williams was driving was running still when they came, when
8 the police officers arrived?

9 A. Yes.

10 Q. And that -- that -- and I think that you also on that
11 night spoke with Ashley Butler?

12 A. We did.

13 Q. In detail?

14 A. Pretty much.

15 Q. And I believe you have made a report about it ---

16 A. Yes.

17 Q. --- as well as other reports that you created for this
18 case?

19 A. Yes.

20 Q. And she -- in terms of what has been testified in this
21 case already she acknowledged that there was this physical
22 fight between her and Mr. Williams in the house?

23 A. She said it was a verbal confrontation to me and that
24 it started to getting physical. How physical, it didn't
25 appear to go beyond borders as -- it didn't appear from her

1 answers to me to be something that was -- I mean it was
2 physical. There weren't punches thrown. It wasn't choking
3 if I'm not -- I don't believe that ---

4 Q. And she wasn't injured; I mean that was one of the
5 things ---

6 A. Right.

7 Q. She didn't have any blood on her, black eye or anything
8 like that?

9 A. Well, you know, she was also attending to.

10 Q. So she had Mr. Williams' blood on her?

11 A. Yeah. She was -- I think she was -- she grabbed shirts
12 and towels when she went outside to try and attend to him
13 and stuff. She would have had some biomatter on her.

14 Q. In terms of the sequence of what happened, she
15 indicates that they -- there was this situation and that she
16 made them leave, she wanted Brandon and Anthony to get out
17 of the house; and I believe that they both went out the
18 backdoor and she shut the door and locked it?

19 A. Yes.

20 Q. And shortly thereafter there was a knock on the door
21 and Brandon said, hey, I need to get my stuff; and she said
22 I have left it on the front porch?

23 A. I think she stated she placed the bag on the front
24 porch with his liquor and other items.

25 Q. Right. And when -- in this area, this housing area,

1 there is -- there is little doors that are on the front. I
2 will show what is Defendant's -- State's Exhibit 1.

3 So this area can you tell us which house is hers? The
4 second one in, is that her house?

5 A. They are not -- they are not numbered. This would be
6 the corner of the building where the crime scene tape is
7 knotted up, if I recall.

8 So you have got Wilson Street out here (pointing). The
9 drive cuts through on the left was the way we entered.

10 Q. So approximately how many feet would you say the width
11 of this building is; maybe 30, ---

12 A. It might ---

13 Q. --- 25?

14 A. It's -- it is possible. I never measured it.

15 Q. So when -- when she said it is around the front she is
16 telling Brandon to go to the front door of the building. I
17 am going to show you State's Exhibit 6.

18 So this -- is this a depiction of the side area of
19 where you would have to go to go around to the front of the
20 building?

21 A. Side is -- well, yeah, off to the right that appears to
22 be the rear doors ---

23 Q. Yes.

24 A. --- where the laundry in hanging. Yeah.

25 Q. So this is the back door, and it is the second door in?

1 A. It is the second door, yes.

2 Q. And then so Mr. Marshall would have -- Brandon would
3 have had to have gone around the front to get to his stuff
4 and then come back, which puts him sort of behind this tree
5 area?

6 A. I don't know exactly how he picked up his items and
7 what route he traveled. I don't think I ever got into that.

8 Q. And then she said that -- she said that after Brandon
9 knocked on the door that sort of very quickly she got
10 another knock on the door -- or from Mr. Williams and Mr.
11 Williams said I need my clothes?

12 A. Yeah, as -- as I was told that I think he had a job
13 interview or something to that effect the next day and he
14 needed his clothes for that to wear the next morning.

15 Q. Right. And so she said that she also, are you
16 aware, that had gotten a text from him that says I want my
17 clothes -- let me -- were you aware of that?

18 A. She may have. Yeah, I am not sure of ---

19 Q. Okay. I will show you State's Exhibit 42. It is kind
20 of the light part down here (pointing).

21 A. Okay.

22 Q. And so from the time he knocked on the door is it your
23 understanding that her testimony was is that she -- or told
24 you that she ran up the stairs to get the clothes and by the
25 time she got some clothes and came downstairs she heard the

1 gunshots?

2 MR. OSBORNE: Objection, Your Honor.

3 THE COURT: What is the basis of the objection?

4 MR. OSBORNE: This is beyond his knowledge.

5 THE COURT: Unless you can establish how we knows the
6 length of time.

7 MS. GAY: He is the one who took the report.

8 THE COURT: That is not his statement. Thank you very
9 much. You are talking about -- now -- now we are getting
10 into hearsay is because all you are asking him to do is what
11 she said, so.

12 MS. GAY: Well, I can withdraw the question.

13 THE COURT: Thank you. Okay.

14 Q. I am going to show you State's Exhibit Number 5. And
15 State's Exhibit Number 5 has some things at the bottom right
16 there. What is that as part of your investigation?

17 A. It appears to be some clothing, some bags.

18 Q. And was there relevance to this clothing in this
19 investigation?

20 A. The only thing I am thinking of, I recall my interview
21 with Ms. Butler and how she had grabbed towels, perhaps some
22 things to aide Mr. Williams when he was outside.

23 Q. Okay. So when you -- the next thing that you did as
24 a part of your investigation was you told Henderson I am
25 going to meet with Mr. Marshall down at our office; and

1 then that's -- did you take him to that 180 Lockwood
2 Boulevard?

3 A. Yeah, the interview was done at headquarters; correct.

4 Q. Okay. And during the interview you -- we saw it. And
5 so, you know, obviously it is there. But there were some
6 pictures that the solicitor showed you specifically. And it
7 was Mr. Marshall Brandon's face. This is Exhibit 33. And
8 that was taken in your presence as a part of your
9 investigation?

10 A. Yes.

11 Q. And then in this one which is Exhibit 32 there was --
12 this is the -- this was also taken in your presence ---

13 A. Yes.

14 Q. --- as part of your investigation? And the solicitor
15 asked you -- I don't know how to make it zoom in. But the
16 solicitor asked you about this area right here around his
17 collar and you said it looked like it had been pulled out?

18 A. Correct.

19 Q. And then we -- this -- State's Exhibit Number 37 is the
20 sort of a close-in of this area on this T-shirt of his that
21 has some red on it; and that, as we know, is where they
22 identified blood that was his?

23 A. They did. The SLED Laboratory did that.

24 Q. Okay. And over here on this one, which is Exhibit 36,
25 on this one do you recall seeing this stuff on the T-shirt

1 like something?

2 A. I don't recall from the interview. I don't know if
3 that is shading or

4 Q. It could be dirt?

5 A. It could be, yeah.

6 Q. And then I believe the solicitor asked you on this
7 Exhibit 35 if some of these pieces of stuff on this -- on
8 the back of his pants could have been grass and you said you
9 weren't sure?

10 A. I wasn't sure.

11 Q. Okay. And during the interview process - and as I
12 said, I am not going to belabor it because we all watched -
13 he was very cooperative, answered all of your questions;
14 about the lawyer part was difficult, but once he started
15 telling you the facts he was very open?

16 A. Appeared to be once we could get past the first issue,
17 yeah.

18 Q. Right. And there was a point where he told you -- and
19 I know the solicitor stopped at times and said, isn't that
20 what he said. But I think we all heard it. He told you
21 about a situation where he bought the gun a few weeks ago
22 and along the -- around that same period of time in the
23 interview he said that he had seen somebody in that project
24 area beat somebody up?

25 A. Yeah, I think he alluded to something like witnessing

1 some assault.

2 Q. Right. And so and that that person lived kind of near
3 there and he asked him some nasty things and they had had
4 some bad words.

5 A. Right.

6 Q. Okay. And he said that it was right around that time
7 he decided to go get a gun; is that your understanding of
8 what he was saying?

9 A. I don't know if he -- yeah, he said they had -- that he
10 was suspicious of an individual we heard about in previous
11 testimony. But the reason for having the gun I can't say
12 exactly he got it because of that reason. I really can't
13 say that for sure.

14 Q. I understand that. And he mentioned that there
15 were receipts in his car, that he and Mr. Williams had
16 gone to Myrtle Beach and that there would be receipts in his
17 car; ---

18 A. Uh-huh.

19 Q. --- and were you aware that during the course of the
20 investigation they found a receipt from Myrtle Beach?

21 A. I may have been advised of that. It wasn't a priority
22 at the time of when this happened, the trip to Myrtle Beach
23 that is ---

24 Q. I would like -- this is 74, State's 74. And can you --
25 if you need me to bring it to you I can. But can you

1 identify this and have you seen this before as a part of
2 your investigation?

3 A. I don't believe -- I mean he told me they went to a
4 range in Myrtle Beach. That appears to be a receipt for a
5 shooting range, Myrtle Beach indoor shooting range.

6 Q. Right. This is just for ID purposes at this point
7 because I don't -- if he could identify it.

8 THE COURT: Well, has this not been admitted?

9 THE COURT REPORTER: It has not.

10 MR. OSBORNE: It has not been admitted, but I am not
11 going to object.

12 MS. GAY: Well, he is not going to object. I would
13 like to admit this, Your Honor.

14 THE COURT: All right. It is admitted without
15 objection.

16 MS. GAY: Okay. Thank you, Your Honor.

17 THE COURT: Do you want to leave it as State's Exhibit
18 74?

19 MR. OSBORNE: Yes, Your Honor.

20 THE COURT: As State's Exhibit 74. Thank you.
21 (WHEREUPON, State Exhibit Number 74 was admitted into
22 evidence.)

23 Q. And as he was going through the interview and telling
24 you what happened there is -- okay, as I said, we all
25 watched it. We are going -- they are going to be able to

1 decide what they think of it.

2 But there's definitely parts of this interview where
3 he said one thing and then says another. You know, he
4 doesn't -- some of his version of the facts on that night
5 even on -- in the interview that you did he has different
6 things that he says along the way that contradict
7 themselves?

8 A. I would say so. There are some, yeah.

9 Q. Right. So he doesn't have just one first version from
10 start to finish as he is moving through -- like the clip is
11 one of those areas where he ---

12 A. Yes, it is.

13 Q. --- says two different things?

14 A. Right.

15 Q. And the number of shots may be that he says two
16 different things?

17 A. Right.

18 Q. How many interviews have you done with people that have
19 been arrested in your career?

20 A. Personally?

21 Q. Yes.

22 A. I would say close to a thousand. Hundreds. I mean we
23 are talking 17 years.

24 Q. Even more than that even?

25 A. Possibly. I never counted.

1 Q. Is it common for somebody to have different things that
2 they say in an interview that are -- that contradict
3 themselves; is that common? Does it happen?

4 A. Everybody has their own personal behavioral makeup.
5 And to answer that question, is it common, yeah. I mean
6 there are people that are deceptive all the time.

7 Part of what we do for a living is in these interviews
8 is try to get through deception. Obviously there's --
9 there's high stakes.

10 I don't know if I am answering the question you are
11 asking. But it is common, yeah. I mean we have to sift
12 through a lot of reasoning on their part, a lot of lies and
13 deceptions so.

14 Q. Or just sometimes they are confused because of the
15 process and the trauma that happened, and that does happen?

16 A. Well, yeah, I mean I am not a medical person to be
17 dealing with trauma issues, but -- or a psychological person
18 for that matter. But, you know.

19 Q. And those types of issues also come up in witness
20 statements like people who aren't charged with things but
21 people who observe things ---

22 A. It has been documented. I understand. Yeah.

23 Q. Yeah, that sometimes traumatic events just make you not
24 remember things exactly the way they happen?

25 A. Sometimes they don't.

1 Q. And if we had had a movie of it and then came back
2 later and had the -- you know, a couple of hours later a
3 statement, it may not even be the same but they were there
4 and -- they are not even defendants, there are just possibly
5 witnesses; it happens?

6 A. I suppose. You know.

7 Q. Well, in this case right at the end of what we were
8 watching you came back in and you talked to him. And, you
9 know, I think you were being very nice about, you know, the
10 fact that you had -- interviewing him. And you actually
11 made the comment friend. Do you recall that in the
12 statement?

13 A. That is probably some of my slang that I have used over
14 the years, yeah.

15 Q. I understand. And I'm not going to ask you to make a
16 judgment call on anything related to credibility ---

17 A. Uh-huh.

18 Q. --- or anything like that. That's not what I'm here
19 for. But in terms of his demeanor and what happened, he --
20 you know, he was talking to you and trying to be helpful;
21 wasn't he?

22 A. I would say, yeah, he provided details. He admitted to
23 shooting the victim. That is very helpful.

24 Q. Uh-huh.

25

1 A. But I also had some other concerns with parts of that
2 same interview.

3 Q. Oh, I can understand.

4 A. And he responded by saying he had options. And ---

5 Q. Well, I understand that he had a lot to say in that
6 interview. And one of the things he said was he felt like
7 there was a lot about how many shots and the man coming at
8 him. He said that he kept telling him to stop. He does say
9 that. Whether he had options or not he said ---

10 A. I had a problem with that too, quite honestly.

11 Q. I understand. And he was arrested. But as far as what
12 you did that night, you -- you believed -- or I won't even
13 say that. The demeanor of my client was cooperative?

14 A. For the most part. We will give him that, yes.

15 Q. Okay.

16 MS. GAY: One moment, Your Honor.

17 THE COURT: Sure.

18 MS. GAY: I have no further questions, Your Honor.

19 THE COURT: Okay. Redirect..

20 MR. OSBORNE: Briefly, Your Honor.

21 THE COURT: Sure.

22 **REDIRECT EXAMINATION BY MR. OSBORNE OF DETECTIVE RICHARD**
23 **BURCKHARDT:**

24 Q. Ms. Gay keeps asking you about cooperative; he was
25 cooperative; he was cooperative. Does cooperative mean

REDIRECT EXAMINATION BY MR. OSBORNE OF DETECTIVE RICHARD
BURCKHARDT

1 truthful?

2 A. Not necessarily.

3 Q. So or does cooperative mean you ask him a question and
4 he gives you an answer?

5 A. It could mean that as well.

6 Q. Okay. All right. This entire interview with him was
7 about what, 36 minutes or so; something like that?

8 A. The actual time we had dialogue?

9 Q. That you were speaking to him.

10 A. Yeah, probably about that.

11 Q. Now Ms. Gay said that during that time that he said a
12 lot of different things. We watched the interview. Names
13 some of those contradictions that he said.

14 She made it out like he had changed his story a number
15 of different times. What are some of the contradictions
16 that you saw?

17 A. Well, one was the magazine -- the gun and the magazine
18 clip from the very first story in the house to what he did
19 with it when he was outside during the course of the
20 shooting.

21 A real concern of mine too was ---.

22 Q. All right, let's stop right there.

23 A. I'm sorry.

24 Q. So tell me if I am right. He first said that he put
25 the clip in the gun when he first saw Ashley and Anthony

REDIRECT EXAMINATION BY MR. OSBORNE OF DETECTIVE RICHARD
BURCKHARDT

1 arguing?

2 A. Correct. Inside the house.

3 Q. And then he later changed it to say that he put the
4 clip in the gun after he was pushed down the third time?

5 A. Correct.

6 Q. Okay. That is a contradiction. But other than that
7 contradiction was there a vast number of stories that he
8 told during that 36 minutes?

9 A. There weren't a whole lot.

10 Q. Okay.

11 A. No, I mean it's -- whether it was a contradiction,
12 there was a number of times he was pushed to the ground was
13 a concern of mine. The way the fire -- the way the shooting
14 actually took place was also a concern of mine.

15 Q. Okay. Let's talk about that. He -- did he ever at all
16 say that it was a continuous round of gunshots?

17 A. No. He states that -- and you saw it in the interview
18 that at the time where he was shot a couple of times and the
19 victim was wheezing, and he positioned himself as if he was
20 laying on the ground.

21 It is my experience in that type of shot, that gunshot,
22 you are getting close to your last breaths. And I am not a
23 medical expert, but I have been around enough of them to
24 know that that's probably what was taking place. And I find
25 it very hard to believe that the victim had the power or the

REDIRECT EXAMINATION BY MR. OSBORNE OF DETECTIVE RICHARD
BURCKHARDT

1 ability to get up and pursue the defendant.

2 Q. Okay. But let's stick with -- he consistently said
3 during the entire 36 minutes that there was a pause; is that
4 fair to say?

5 A. There was a pause.

6 Q. Did he consistently say during those 36 minutes that
7 after he fired those first two or three shots Anthony fell
8 to the ground, ---

9 A. Uh-huh.

10 Q. -- he said some words, stop, stop, don't make me do
11 this, and then fired a second group of shots?

12 A. Consistently, said -- he stated.

13 Q. Did that ever change?

14 A. No.

15 Q. Now in all fairness, she was showing you pictures
16 about, you know, clothes on the steps and things like that
17 and receipts and text message and what not. You are not the
18 case agent are you?

19 A. No.

20 Q. The case agent is right here, isn't he; Detective
21 Krasowski?

22 A. That is correct.

23 Q. That is the man that could ask -- that could answer
24 those questions, right?

25 A. I would probably imagine he could.

REDIRECT EXAMINATION BY MR. OSBORNE OF DETECTIVE RICHARD
BURCKHARDT

1 Q. You interviewed the defendant?

2 A. I did.

3 Q. And then from that point on all of this other
4 investigation that needs to be done is passed on to him?

5 A. It was.

6 Q. Oh, and then she said -- Ms. Gay told you that he
7 seemed confused. Did he seem confused to you?

8 A. No.

9 Q. And I think even once during the 36 minutes that you
10 spoke to him he started to tell the story and said, wait a
11 minute, I forgot something, I left a part out; and then he
12 went back and clarified it?

13 A. He did.

14 Q. Did that seem like he was confused to you?

15 A. No.

16 Q. No further questions, Your Honor.

17 THE COURT: Re-cross, Ms. Gay.

18 MS. GAY: No, Your Honor.

19 THE COURT: Okay. Thank you. You may come down. Do
20 you wish this witness to be excused?

21 MR. OSBORNE: I cannot, Your Honor.

22 THE COURT: Okay. That is fine.

23 You may come down; but you are not free to leave, sir.
24 Thank you.

25 All right. Any additional witnesses for the State?

STATE VS. BRANDON MARSHALL

1 MR. OSBORNE: No, Your Honor, the State rests.

2 THE COURT: Okay. Ladies and gentlemen, at this point
3 there are some matters of law that I need to take up out of
4 your presence.

5 I am going to ask you to go to your jury room for just
6 a little bit, and then we will be with you as quickly as we
7 can. Thank you. Do not begin your deliberations.

8 (WHEREUPON, jury exits courtroom 4/6/16, 4:38 p.m.)

9 THE COURT: All right. Are there any motions from the
10 State at this point?

11 MR. OSBORNE: No, Your Honor.

12 THE COURT: Ms. Gay, be happy to hear from you now.

13 MS. GAY: Thank you, Your Honor. At this time I make a
14 motion for directed verdict on behalf of my client, Mr.
15 Marshall.

16 Even in the light most favorable, Your Honor, I don't
17 believe that the elements are present to support the charge
18 of murder. And of course the charge of possession of a
19 firearm during the commission of a violent felony is
20 dependent on that charge.

21 Your Honor, we have done a few things in this case that
22 we believe you should have ruled for us. One of them was
23 the Jackson v. Denno and the Duncan hearing.

24 Both of those charge -- motions would have gotten to
25 the point where we don't -- we wouldn't -- I mean it would

1 not have gotten to this charge.

2 This is a case where we asserted self-defense. We
3 have -- we believe we have shown elements sufficient to have
4 gotten an immunity under Duncan and that we take --
5 obviously continue to advance our objection to your rulings
6 in that regard, and we think that our directed verdict
7 motion should be granted.

8 THE COURT: Okay. Thank you. Your motion was the
9 Duncan. That doesn't have any really anything to do at this
10 stage. And I think the Curry case dealt with that. Because
11 that is a separate issue altogether. It comes now the issue
12 of self-defense. The Duncan ruling stands on its own, and
13 the reasons I have stated therefore stand on their own. But
14 just for the sake of the record, I continue to maintain the
15 position I have taken.

16 The same is true with respect to the Jackson v. Denno.
17 In fact, that is the reason we stopped -- if you recall and
18 I reiterate the reason I stopped the State's presentation of
19 the statement and waited for you to insist on the balance of
20 it because I believed it was clear that he demonstrated not
21 only an understanding but that he wanted to stop and gave
22 clear statement to that effect and did not want to answer
23 any addition questions. In fact said there's no other --
24 there are no other questions that you can ask me.
25 Demonstrating a complete understanding of what was said,

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1 what had been said. Very coherent in that response. So all
2 the reasons previously stated are reiterated.

3 With respect to the State, obviously the State has
4 proven without any question I think -- because I don't think
5 you challenged it either. If he testifies he is going to
6 state that he shot him and he shot him and it is his claim
7 it is in self-defense.

8 And there is no question the State has to disprove
9 self-defense beyond a reasonable doubt. There is no
10 question about that.

11 But in the light most favorable to the State there are
12 several issues. Number one, who brought on the difficulty,
13 number one. Number two, what would a reasonable person how
14 would they have acted and how would they have responded.
15 And that is an issue that the jury is going to have to
16 decide.

17 Whether or not there was a real perception of fear --
18 and I am paraphrasing what the language I will be charging.
19 But that is the essence of it. Because there is clearly no
20 testimony at this point that he was armed in any fashion.
21 In fact the testimony at this point is that he outweighed
22 the victim, which creates really a disproportionate size; so
23 there is no reason for me to even assume that he had any
24 concern about his safety or well-being. So given all those
25 reasons I would respectfully deny your motion for a directed

1 verdict. Thank you.

2 MS. GAY: Thank you, Your Honor.

3 THE COURT: All right. Now there is a witness that you
4 have available. Do you -- do you plan to call that witness
5 before your client?

6 MS. GAY: Yes.

7 THE COURT: All right. Well, let's go ahead and call
8 that witness and then after that we can stop and I can go
9 through -- I will defer asking the defendant his desire.

10 But as soon as we finish that, Mr. Marshall, I am going
11 to be asking you your decision about whether to testify or
12 not to testify in this case.

13 And we will go through that after that -- after that
14 witness testifies if that is acceptable to you, sir?

15 MR. MARSHALL: Yes, sir.

16 MS. GAY: And I have to find my piece of paper. Hold
17 on one second.

18 THE COURT: Okay. Well, let me know when you are ready
19 for the jury to come back.

20 (WHEREUPON, break for Ms. Gay to retrieve document.)

21 (WHEREUPON, Defendant Exhibit 3, Supplemental Report by
22 Byrne, was marked for identification.)

23 THE COURT: All right. Is the State ready?

24 MR. OSBORNE: Yes, Your Honor.

25 THE COURT: Let's ask the jury to return. Thank you.

STATE VS. BRANDON MARSHALL

1 (WHEREUPON, break awaiting jury.)

2 (WHEREUPON, jury enters courtroom 4/6/16, 4:49 p.m.)

3 THE CLERK: All jurors are present, Your Honor.

4 THE COURT: Thank you very much.

5 Ladies and gentlemen, as you recall when we started
6 this I mentioned to you the only party in this proceeding
7 that had any burden of proof is the State of South Carolina.

8 But I did tell you that while the defendant doesn't
9 have any to prove or disprove he would still have the right
10 to present the testimony of any witnesses he may chose for
11 your consideration.

12 Now, Ms. Gay, as I understand, the defendant does wish
13 to have some witnesses presented; is that correct?

14 MS. GAY: Yes, sir.

15 THE COURT: You may proceed calling your first witness.

16 MS. GAY: I would like to call Officer Byrne.

17 THE COURT: Okay. Officer Byrnes, please, Mr.
18 Robinson, if he is outside. Thank you.

19 THE COURT: Do you anticipate his testimony to be
20 rather lengthy?

21 MS. GAY: No.

22 THE COURT: Okay. Well, we will -- we will probably
23 take this one, and if there is additional we will wait for
24 in the morning. We will take our recess.

25 So let's get this one out of the way if we could. I

1 don't want to keep you too late. But I think that will
2 work -- work out better for us. Okay.

3 (WHEREUPON, the witness was duly sworn.)

4 THE CLERK: Please state your first and last name and
5 spell your last name loudly and clearly into the microphone.

6 THE WITNESS: My name is Lieutenant James Byrne. Last
7 name is B-Y-R-N-E. I am with the Charleston Police
8 Department.

9 **DIRECT EXAMINATION BY MS. GAY OF LIEUTENANT JAMES BYRNE:**

10 Q. Lieutenant Byrne, my name is Melisa Gay. I represent
11 Mr. Marshall. Thank you for coming today. We are today
12 because we are on -- you know, on trial about an incident
13 that happened May 22nd, 2014. Do you could recall that
14 investigation?

15 A. Yes, ma'am, I do.

16 Q. Okay. And were you a part of the investigative team
17 that did things that night?

18 A. I was a part of the initial response.

19 Q. Okay. When you say initial response was that one of
20 the first few guys out there?

21 A. I don't know which number I was out there, but I was
22 during the first responding officers I was part of that
23 group. So I guess, yes, I was part of that initial group of
24 people that responded to the incident; yes.

25 Q. And did you have occasion to make a report that

DIRECT EXAMINATION BY MS. GAY OF LIEUTENANT JAMES BYRNE

1 involved your -- you know, that detailed your involvement
2 that evening?

3 A. Yes, ma'am, I filed a supplemental report to the
4 original incident.

5 Q. Have you had occasion to look at that report recently?

6 A. Not -- not in the last little bit, no, ma'am.

7 Q. If I show you what has been marked as Defendant's
8 Exhibit 3 to refresh your recollection would that help?
9 This is your report.

10 A. Yes, ma'am.

11 (WHEREUPON, document provided to the witness.)

12 A. Thank you.

13 Q. Can you identify that?

14 A. Yes, ma'am, this is the supplemental report that I
15 submitted in relation to this -- this case.

16 Q. And when you were out there that day -- or that
17 evening -- in the morning, it was dark out there except for
18 the illumination of the police lights?

19 A. I believe there were some streetlights out there too.
20 It is a public housing complex, and they are pretty good
21 about keeping streetlights and porch lights and things like
22 that replaced.

23 Q. So I want to direct your attention to an area of this.
24 I believe it is paragraph ---

25 MR. OSBORNE: Objection, Your Honor.

DIRECT EXAMINATION BY MS. GAY OF LIEUTENANT JAMES BYRNE

1 THE COURT: Yeah, ask the question. You can't publish
2 from that report. It is not admissible right now.

3 MS. GAY: I understand.

4 THE COURT: It has not been admitted. Thank you. So
5 just ask your question.

6 Q. Do you recall talking to my client, Mr. Marshall?

7 A. I did not talk to your client, no, ma'am.

8 Q. Do you want to refresh your -- notes to see? Did you
9 hear him speaking even if maybe you weren't talking to him
10 directly?

11 THE COURT: Well, rephrase your question then. Because
12 you said do you remember talking. So restate your question,
13 please, under 611(A), please.

14 Q. Do you remember hearing him say things?

15 A. I did remember him speaking, yes, ma'am.

16 Q. Okay. Not in response to your questions but just
17 speaking?

18 A. That's correct. I overheard his speech.

19 Q. Okay. Do you recall when you overheard his speech that
20 he said that he -- he did shoot him, that he was
21 cooperating, other things that were in your report?

22 A. Looking at the report -- and again, as I noted in this
23 report, the wording is not exact or complete. But what I
24 heard him say was something to the effect of: I shot him,
25 yeah, I shot him, I am cooperating, I am not resisting.

DIRECT EXAMINATION BY MS. GAY OF LIEUTENANT JAMES BYRNE

1 Q. And was there other things that he also said?

2 A. Yes, ma'am: I just don't want y'all to intentionally
3 throw me down or abuse me.

4 Q. All right. And so ---

5 A. Again, that is an approximation of what he -- what he
6 said.

7 Q. Right. And that's -- this report just indicates other
8 things having to do with what you did that evening?

9 THE COURT: Ms. Gay, please don't state anything else
10 about what that report until it is admitted, please, ma'am.
11 Thank you. It is not admis- -- it is not in evidence yet.

12 MS. GAY: It is just for ID -- identification purposes.

13 THE COURT: Yes, ma'am. So don't publish anything what
14 is in there when you ask him questions. Just ask a question
15 without referencing the report, please.

16 MS. GAY: That is all I need you to say for me today.
17 That's it. That is the extent of what I wanted to ask you.

18 THE COURT: Okay.

19 THE WITNESS: Yes, ma'am,

20 THE COURT: Do you want to leave that (referring to
21 exhibit), because it is now ---

22 MS. GAY: Yes.

23 THE COURT: --- part of the

24 All right. You may examine the witness.

25 MR. OSBORNE: Briefly, Your Honor.

CROSS-EXAMINATION BY MR. OSBORNE OF LIEUTENANT JAMES BYRNE

1 THE COURT: Sure.

2 (WHEREUPON, Ms. Gay returns to seat with exhibit.)

3 THE COURT: Ms. Gay, we need to have that back.

4 MS. GAY: I know. I just want to read it while he is
5 doing the cross-examination.

6 THE COURT: Okay.

7 **CROSS-EXAMINATION BY MR. OSBORNE OF LIEUTENANT JAMES BYRNE:**

8 Q. Lieutenant Byrne, okay, so when you heard the defendant
9 make this comment was he in the process of being arrested or
10 handcuffed or was he already in handcuffs?

11 A. I believe he had already been handcuffed. And it
12 appeared that he was being at least detained, likely
13 arrested. There were two officers that were standing with
14 him and appeared -- I can't recall specifically if they had
15 already put the cuffs on or if they were in the process of
16 doing so. But yes, it appeared that they were detaining
17 him.

18 Q. Okay. And the comment that the defendant said was
19 something like I shot him, yeah, I shot him, I am
20 cooperating, I am not resisting, I just don't want y'all to
21 intentionally throw me down or abuse me; is that right,
22 something to that effect?

23 A. Something to that effect, yes, sir.

24 Q. Do you remember him saying anything about because I
25 have got a bad back?

CROSS-EXAMINATION BY MR. OSBORNE OF LIEUTENANT JAMES BYRNE

1 A. Nothing to that -- nothing about his back or anything
2 like that, sir.

3 Q. When they were putting him in handcuffs do you remember
4 him saying something like, easy, my back is hurting?

5 A. No, sir.

6 Q. Do you remember any comment about his back?

7 A. No, sir. The extent of what I recalled was what was
8 documented in that report.

9 Q. Okay. How long have you been a police officer?

10 A. A little over 16 years, sir.

11 Q. And so the extent of what the defendant said in essence
12 was don't throw me down or abuse me?

13 A. That's -- that's correct, sir.

14 Q. In 16 years of police work have you ever run across a
15 defendant who wants to be abused or thrown down?

16 A. No, sir.

17 MR. OSBORNE: No further questions.

18 THE COURT: Redirect.

19 MS. GAY: No, Your Honor.

20 THE COURT: Okay. Officer, you may come down. Do you
21 wish this witness to be excused?

22 MS. GAY: Yes.

23 THE COURT: Any objection to his being excused?

24 MS. GAY: No, Your Honor.

25 THE COURT: Thank you, sir. You are free to leave.

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: You bet.

3 Thank you, ladies and gentlemen. We will take our
4 recess at this point for today. Please remember that you
5 are still not at liberty to discuss this case among
6 yourselves or with anyone else outside of the courtroom
7 including anyone at home.

8 I would anticipate we will complete this case tomorrow.
9 And so after tomorrow, assuming we do, if you chose to talk
10 about it you may do so. But right now still we must refrain
11 from commenting about the case. Don't allow anybody to talk
12 about it in your presence.

13 Don't -- I haven't seen any news coverage on this one.
14 There is some about the other trial that is going on. But
15 please just don't watch any -- if they talk about a trial
16 that is going on in Charleston if -- and there is nothing
17 wrong with that. If you want to record it or get a video of
18 it later you can do so; but don't watch it now.

19 And the reason for that, again, is not that it would
20 influence you but it creates the problem and the inference.
21 And therefore when you -- as we talked, you are deciding
22 this case based on what you -- what you -- goes on in this
23 courtroom and nothing else. And that is very important to
24 preserve the sanctity of that in every respect. And I thank
25 you for your willingness to do that.

1 Have a good evening. I would ask you -- I am going to
2 give you -- I have a hearing tomorrow at 9:30. I should be
3 finished by 10 o'clock easily. It is not related to this.
4 It is a civil matter. So you get to come in a little bit
5 later tomorrow at 10 o'clock. We will still finish tomorrow
6 though. I promise you that too.

7 Probably you will be -- will -- I will go ahead and go
8 out on a limb. We will provide your lunch tomorrow more
9 than likely so we can be sure that we finish it.

10 I would hope that we will be -- the case may be able to
11 be submitted to you by then. But it might not be. But we
12 will provide you lunch. So you will be given -- you will
13 stay here tomorrow until we finish this case.

14 So thank you so much for your patience with the court.
15 Thank you for your attention. Have a good evening. And be
16 back in your jury room by ten o'clock in the morning. Thank
17 you.

18 (WHEREUPON, jury exits courtroom 4/6/16, 4:54 p.m.)

19 THE COURT: Okay. Now you at this point -- and you are
20 not bound by this. But at this point the only other witness
21 would be the defendant; is that correct?

22 MS. GAY: Yes, sir.

23 THE COURT: All right. Mr. Marshall -- and you may
24 remain seated if you wish, or you can stand. Whatever your
25 pleasure, sir. Thank you so much.

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1 You have talked with your lawyers about your right to
2 testify or not to testify; is that correct, sir?

3 MR. MARSHALL: Yes, Your Honor.

4 THE COURT: Have you been able to ask them any
5 questions that you may have concerning that issue?

6 MR. BRANDON: Yes, Your Honor.

7 THE COURT: And in that regard -- and I am not just
8 saying this. Because I have tried over the 22 years a
9 number of cases involving these -- this issue. But I will
10 tell you that you have been very -- very involved in this
11 case.

12 And I appreciate that, because it is obvious that you
13 take it very seriously, as you should. Sometimes I observe
14 people that don't do that.

15 So I commend you, sir, for all that you have done and
16 all the effort and energy you have expended to familiarize
17 yourself with the law and to assist your lawyers. And I
18 know they appreciate that as well.

19 But you understand that there are all sorts of trial
20 strategies. And I am not prying into that. But you have
21 talked with your lawyers about that about whether to
22 testify, not to testify, some of the pluses and minuses of
23 doing that; you all -- you have had the opportunity to
24 discuss that fully with your lawyers as well?

25 MR. BRANDON: Yes, Your Honor.

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1 THE COURT: And after fully talking with your lawyers
2 and after having an opportunity to reflect on what it is
3 that you want to do you have made a decision for yourself;
4 is that correct?

5 MR. BRANDON: Well, for reconsidering do you mind
6 giving me a few minutes?

7 THE COURT: Let me just -- let's do this. I would
8 rather do this. Because let me just share this with you.
9 Because I share this -- you have heard me say to the people
10 in this state -- to this jury, when I qualify them, and I
11 may even say it when I am charging the jury -- that is one
12 of the things that is unique about where you and I live. It
13 is not like that in every country. And that we don't have
14 to say -- you have heard me say that, and I have said it and
15 reiterate it again. We don't have to prove our innocence.
16 We don't have to do a thing. In fact we don't have to say a
17 word.

18 That is not the way it is -- some -- some places you
19 have to prove your innocence. And that's not what we have
20 here. You have talked with your lawyers about obviously if
21 you testify you are going to be subject to cross-
22 examination. You have already witnessed that in the
23 proceeding we had on the Duncan hearing.

24 MR. BRANDON: Yes, Your Honor.

25 THE COURT: You understand. And then of course that

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1 would probably be more in-depth I would think here because
2 we are going to cover more areas than we do -- than we did
3 then.

4 And you understand that if you choose not to, I will
5 tell the jury that they cannot use that against you. Do you
6 understand that?

7 MR. BRANDON: Yes, Your Honor.

8 THE COURT: And that they can't consider that at all
9 and if they did it would be a violation of their oath. And
10 I use that language specifically.

11 That having been said, I am going to allow you -- I am
12 going to let you talk with your lawyers this afternoon and
13 give you a chance to reflect on it overnight. And then we
14 will resume this conversation in the morning before we bring
15 the jury back. Is that agreeable with you, sir?

16 MR. BRANDON: Yes, sir.

17 THE COURT: Very well. Thank you so much, sir.

18 MR. BRANDON: Thank you, Your Honor.

19 THE COURT: We will adjourn this discussion until in
20 the morning. Thank you. And I hope you have a good
21 evening, sir.

22 All right. We will be at ease until ten o'clock in the
23 morning.

24 MR. OSBORNE: Thank you, Your Honor.

25 THE COURT: Thank you.

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1 (WHEREUPON, recess for the evening 4/6/16, 5:01 p.m.)

2 (WHEREUPON, trial resumed Thursday, 4/7/16, 10:16 a.m.)

3 THE COURT: All right. Before we call in the jury,
4 when we took our recess -- let the record reflect Mr.
5 Marshall is present. Good morning, Mr. Marshall.

6 And we were having a conversation I think when we
7 stopped yesterday we were discussing your right to testify
8 and not to testify. And you had asked me for some time to
9 reflect on that. And have I guess -- I don't really care --
10 it doesn't matter; but I assume you had further opportunity
11 to talk with your lawyers about that; is that correct, sir?

12 MR. MARSHALL: Yes, sir.

13 THE COURT: Okay. Are you now today ready to answer
14 that question?

15 MR. MARSHALL: Yes, sir.

16 THE COURT: And what is your decision, sir?

17 MR. MARSHALL: I am going to testify.

18 THE COURT: All right. Are you today under the
19 influence of any alcohol or any medication, sir?

20 MR. MARSHALL: No, sir, but I am very exhausted.

21 THE COURT: Well, I appreciate that. So is everybody
22 in the room. But the fact that you are exhausted, you
23 understand that the case is going forward today -- what
24 would be your desire, to come back another day, sir?

25 MR. MARSHALL: No, sir.

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1 THE COURT: Okay. Well, then you are comfortable with
2 your decision to testify?

3 MR. MARSHALL: Yes, sir.

4 THE COURT: But you are not under the influence of any
5 medication?

6 MR. MARSHALL: No, sir.

7 THE COURT: And you haven't taken any drugs or consumed
8 any alcohol in the last 24 hours?

9 MR. MARSHALL: No, sir.

10 THE COURT: Have you had sufficient time to think about
11 what you -- your decision?

12 MR. MARSHALL: Yes, sir.

13 THE COURT: And are you comfortable with the manner in
14 which your attorneys have advised you concerning your right
15 to testify and not to testify?

16 MR. MARSHALL: Yes, sir.

17 THE COURT: And have they answered any questions or
18 concerns that you may have concerning that?

19 MR. MARSHALL: Yes, sir.

20 THE COURT: And you understand that if you testify that
21 the State will have the opportunity to cross-examine you?

22 MR. MARSHALL: Yes, sir.

23 THE COURT: And that is your desire?

24 MR. MARSHALL: Yes, sir.

25 THE COURT: Okay. One other question. I think once he

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1 testifies the challenge to his statement goes away. Do you
2 understand that?

3 MR. MARSHALL: Yes, sir.

4 THE COURT: You have raised some issues about admission
5 of that statement. Do you understand that?

6 MR. MARSHALL: Yes, sir.

7 THE COURT: And I am not ruling on that. But I believe
8 that will be the case if you tried to appeal that issue
9 after you testify. I think you have now waived it because
10 you have subjected yourself to cross-examination and you
11 could be impeached, as any witness, by a prior inconsistent
12 statement; do you understand that?

13 MR. MARSHALL: Yes, sir.

14 THE COURT: It is still your desire to testify?

15 MR. MARSHALL: Yes, sir.

16 THE COURT: And I understand you are tired. But as I
17 stated, I think if you were to ask each one to be honest --
18 and I have been doing this a little longer than you have. I
19 think I have been on the earth a little longer than you have
20 also. But I know I was bone tired at every trial I had as a
21 lawyer. I don't think there was one that I can think of
22 that I wasn't at the end totally exhausted. Because it is
23 an extremely demanding mental process.

24 And I am sure you -- it is something we are accustomed
25 to. It is not something you are accustomed to doing every

1 day. But to focus for eight hours intensely it tires you
2 out. And I understand that. But you still wish to go
3 forward today with your testimony, sir?

4 MR. MARSHALL: Yes, sir.

5 THE COURT: Very well. Thank you very much, Mr.
6 Marshall. I find that Mr. Marshall has had the benefit of
7 very competent counsel, and he has indicated he is totally
8 satisfied with their discussions concerning his rights in
9 this particular issue.

10 I find that he has made a decision to testify and he
11 makes that decision freely, voluntarily, knowingly and
12 intelligently with all -- understanding fully all of the
13 consequences associated with that decision.

14 Mr. Marshall, whenever we finish and everybody is ready
15 I am going to bring the jury in. And at any time between
16 this moment and when Ms. Gay calls you to test- -- to the
17 stand, you change your mind, just let your lawyers know. I
18 will excuse the jury and we can return to this conversation,
19 okay.

20 And if I don't hear from you and if you take the stand
21 I am going to assume that you stand by your decision. Is
22 that fair?

23 MR. MARSHALL: Yes, sir.

24 THE COURT: Very good. Thank you, sir.

25 Is the State ready to proceed?

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1 MR. OSBORNE: Yes, Your Honor.

2 THE COURT: Ms. Gay, is the defendant ready to proceed
3 now?

4 MS. GAY: Uh

5 THE COURT: I knew ---

6 MS. GAY: Okay.

7 THE COURT: No, no, no.

8 (WHEREUPON, restroom break requested and had 4/7/16, 10:20
9 a.m.)

10 (WHEREUPON, resumed 4/7/16, 10:24 a.m.)

11 (WHEREUPON, Defendant's Exhibit Number 4, progress notes,
12 were marked for identification.)

13 MS. GAY: Okay.

14 THE COURT: Are we ready?

15 MR. OSBORNE: Your Honor, I apologize; I have one
16 issue.

17 THE COURT: All right.

18 MR. OSBORNE: This was just given to us ---

19 THE COURT: Okay.

20 MR. OSBORNE: --- this morning. I have never seen this
21 before. Apparently this is some sort of medical records
22 involving the defendant.

23 THE COURT: Okay.

24 MR. OSBORNE: She has put an exhibit label on it. I
25 don't know if she is planning on introducing it. I just

1 wanted to make you aware of it.

2 THE COURT: All right. Well, whose record -- it is a
3 record prepared by whom?

4 MR. OSBORNE: As best I can tell it is a record
5 prepared by Dr. Buncher.

6 THE COURT: Okay.

7 MR. OSBORNE: And examination ---

8 THE COURT: Of ...?

9 MR. OSBORNE: --- on -- of the defendant in April of
10 2014.

11 THE COURT: Okay.

12 What is your plan with that document?

13 MS. GAY: Well, one of the issues in this case, Your
14 Honor, is my client ---

15 THE COURT: I don't need you to talk about the issue.
16 I understand the issues. What is your plan with that
17 document?

18 MS. GAY: I was going to use it if necessary to refresh
19 his recollection on when he went to the doctor.

20 THE COURT: He didn't prepare the document, so he can't
21 use it to refresh his recollection. It is a purely hearsay
22 document. Once it is authenticated you -- it may be a
23 business record with the exception that you can't have
24 subjective opinions are excluded. But if it is
25 authenticated and it is introduced then he could use it.

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1 But he can't use it to refresh -- he didn't prepare it.

2 MS. GAY: Well, it is his record.

3 THE COURT: He didn't prepare the document.

4 MS. GAY: In terms of authentication couldn't he
5 testify that he went to the doctor and ---

6 THE COURT: He can testify. But what you are doing is
7 using that to verify and support what he is saying. So you
8 have got to have that document admitted. That's -- that's
9 what I am saying to you.

10 MS. GAY: Well, I -- I -- I've explained this ---

11 THE COURT: I tell you what. You go ahead. I am going
12 to be reading it. My feeling is you can't use it or
13 reference it. And if you find -- if you have some case law
14 that allows you to, I would like to see it.

15 So let's -- let's -- you tread in that fashion.
16 Because I assume there is going to be an objection to it.

17 MR. OSBORNE: Yes, Your Honor.

18 THE COURT: Very well.

19 MR. OSBORNE: And one other issue.

20 THE COURT: All right.

21 MR. OSBORNE: The defendant wrote -- that is the
22 letter. The defendant wrote a letter to the victim's
23 mother. Ms. Gay has asked me to provide her with that
24 original -- or that origināl. I have provided it.

25 THE COURT: Okay.

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1 MR. OSBORNE: I don't know if she intends on
2 introducing that. If she does I am going to object to that
3 as well. That is hearsay.

4 THE COURT: Well, if he ---

5 MS. GAY: He wrote it.

6 THE COURT: He wrote it.

7 MR. OSBORNE: He can talk about the letter, ---

8 THE COURT: Well, I ---

9 MR. OSBORNE: --- but I don't think that he can
10 introduce the letter.

11 THE COURT: I don't know -- there is technically --
12 technically it is. But if it contains something it would be
13 the same thing that you did with respect to Ms. Butler, in
14 my opinion, when you introduced her statements of what she
15 said from somebody else. It is technically hearsay, except
16 801(D)(1) says no it is not, it proves a consistent
17 statement that is challenged.

18 And so there is a possibility of that in coming in on
19 that basis. I don't know that yet, but I will just have to
20 wait ---

21 MR. OSBORNE: So under her prior consistent statement
22 after a recent ---

23 THE COURT: To prove -- to prove that this statement --
24 he had a prior consistent statement which confirms that this
25 isn't just something fabricated to support a position.

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1 Under 801(D)(1) I think.

2 MR. OSBORNE: As a result of a recent or new undue
3 influence?

4 THE COURT: I -- that is the only way I could envision.
5 But there is a possibility it could come in under that
6 position.

7 MR. OSBORNE: Thank you, Your Honor..

8 THE COURT: Okay. In terms of that, Your Honor, he has
9 got -- we need to have it marked.

10 (WHEREUPON, Ms. confers with Mr. Osborne.)

11 (WHEREUPON, Defendant's Exhibit 5, 6/10/14 letter in
12 envelope, was marked for identification.)

13 THE COURT: You know, guys, I appreciate this, but let
14 me just suggest something the next time that we all try a
15 case together. That is what typically is done before you
16 come in a courtroom. And you don't wait until you get ready
17 to bring in a jury.

18 Most lawyers do that beforehand. I know I did that.
19 Maybe I was just wrong about that. But that's what I
20 thought we had to do.

21 And I kind of expect that of the lawyers that practice.
22 I don't ask you to do anything I didn't do it when I was a
23 lawyer. But maybe I was totally wrong in that. So but in
24 the future how about talk about those things before, please.
25 Thank you.

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1 I'm not suggesting you haven't, but I just -- it
2 appeared that you haven't.

3 MS. GAY: Yes, sir, I am ready.

4 THE COURT: Okay. Let's bring in our jury. Thank you.
5 (WHEREUPON, jury enters courtroom 4/7/16, 10:29 p.m.)

6 THE COURT: Good morning, ladies and gentlemen. I hope
7 you had a good evening. And I assume your lunch orders have
8 been taken. And we will have those for you when we reach
9 that point.

10 Thank you for your patience. There were some matters
11 of the case we had that was argued. Took a little longer.
12 And then we had some matters of law that we needed to deal
13 with before brining you in. So I appreciate your patience
14 with us and indulgence in that.

15 All right. When we finished Ms. Gay indicated that
16 there was possible another witness.

17 Ms. Gay, does Mr. Marshall wish to present any further
18 witnesses?

19 MS. GAY: Yes, Your Honor, Mr. Marshall -- I would like
20 to call Mr. Brandon Marshall.

21 THE COURT: Okay. Mr. Marshall, you can come forward.
22 (WHEREUPON, the witness was duly sworn.)

23 THE CLERK: Please state your first and last name and
24 spell your last name loudly and clearly into the microphone.

25 MR. MARSHALL: Brandon Marshall, M-A-R-S-H-A-L-L.

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL

1 **DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL:**

2 Q. Mr. Marshall, good morning. We are here today and for
3 your trial. And we talked about a lot of -- you know, you
4 wanted to testify. I told the jury that in my opening
5 argument. And so now you are here.

6 First I would like you to tell them a little bit about
7 who you are. You know, when you were born, what area you
8 are from.

9 A. My birthday is [REDACTED] I was born in [REDACTED]. I am
10 from the Charleston area. I am an electrician. I worked at
11 Boeing prior to this incident. I guess that is about it.

12 Q. Well, how -- when you -- as an electrician what type of
13 training did you have to do that; did you graduate from high
14 school?

15 A. I graduated from a military school that is ran by the
16 National Guard. I received my GED.

17 Q. Okay. And what year was that?

18 A. I believe it was around 2010.

19 Q. So this situation happened in 2014. So you had been
20 working in the electrical field for about four years?

21 A. Yes, ma'am.

22 Q. Now had you been working for Boeing for that whole
23 period of time; had Boeing even been here then?

24 A. No, I worked for Boeing for about ten months.

25 Q. Okay. And did you get that job through a temp agency

1 or on your own?

2 A. On my own.

3 Q. And there has been testimony about the fact that you
4 and Mr. Williams were friends. Can you tell the jury a
5 little bit about when you met him and how?

6 A. From my recollection I believe I met him in February of
7 2014 through a mutual friend named Edras.

8 Q. Okay. And some of what you are going to testify today
9 we have already heard on that recorded statement of yours?

10 A. Yes.

11 Q. So Edras was -- introduced you. And what did Edras
12 tell you about Mr. Williams -- I mean what did he ---

13 MR. OSBORNE: Objection, Your Honor.

14 MS. GAY: Well ---

15 MR. OSBORNE: Hearsay.

16 THE COURT: Sustained.

17 Q. What was your understanding of Mr. Williams?

18 A. My understand I guess was that he was a drinker, he
19 liked to have fun.

20 Q. Okay. And in your life was there something unique
21 about the type of fun you liked to have?

22 A. . I am a homosexual. I like to go out to the clubs
23 sometimes, parties. I like to hang out with people.

24 Q. And what about Mr. Williams?

25 A. Um ---

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL

1 Q. Your relation -- your personal information that you
2 have about him.

3 A. Well, with Anthony we were sexually involved a number
4 of times. We hung out a lot together. He spent the night
5 at my house several times. That's -- that's about it.

6 Q. Had you spent the night at his house?

7 A. Yes, I spent the night to his house as well, as well as
8 his mother's house.

9 Q. And is that the house he shared with Ashley Butler?

10 A. Yes, ma'am.

11 Q. Was he -- did you have information about his sexual
12 proclivity?

13 A. He was bisexual.

14 Q. And what does that mean?

15 A. That means that he has had sex with both genders.

16 Q. And how about you?

17 A. I am homosexual.

18 Q. And so you got to know Anthony Williams and you were --
19 because he was a drinker and he liked to have fun. And can
20 you describe to the jury, there has been some reference to
21 this trip to Myrtle Beach. How did that come about?

22 A. Well, every time we would hang out at Ashley's house it
23 just seems like it always ended in an argument between them.
24 And he decided that -- well, I decided that we could go out
25 of town.

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL

1 We -- originally we were actually just going to hang
2 out at my house. And that seemed like a bad idea because he
3 had brought her over to my house. So I guess I was thinking
4 if he had -- if she had came by or whatever and saw his car
5 outside then that would lead to a problem. As well as the
6 fact that I lived with my grandfather. And that would have
7 been kind of odd as well.

8 Q. So this trip that you took, how many days before the
9 22nd of May did you go to Myrtle Beach; what day did you get
10 there; do you recall?

11 A. We left the previous Friday, and we got back Monday
12 night. We were supposed to come back Sunday. We decided to
13 stay another day.

14 Q. And Ashley was aware, it is your understanding, ---

15 A. She ---

16 Q. --- about the trip?

17 A. She was not aware about us going to Myrtle Beach. He
18 had told her that we were going to Miami. I had also said
19 we were going to Miami.

20 Q. But that wasn't true?

21 A. No, that was not true. We went to Myrtle Beach.

22 Q. And I believe in your statement you talked about how
23 you had gone to the shooting range in Myrtle Beach?

24 A. Yes, we went to a shooting range. I did not fire my
25 weapon. I was supposed to be wearing a wristband from --

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL

1 that my doctor ordered me to wear on my left arm because I
2 have nerve damage in my arm and carpal tunnel in my left
3 hand. So I was supposed to be wearing a wristband. And
4 that was kind of my excuse for not shooting with him at the
5 range. So I allowed him to shoot my gun as well as his.

6 Q. So he took his gun with him?

7 A. Yes.

8 Q. I would like to show you State's Exhibit Number 74.
9 This is in evidence. Can you identify that; can you see
10 what that is?

11 A. That appears to be a receipt from the shooting range in
12 Myrtle Beach.

13 Q. I can barely hear you.

14 A. That appears to be the receipt from the shooting range
15 in Myrtle Beach.

16 Q. Okay. And if you need to look at it closer.

17 (WHEREUPON, Ms. Gay placing document on ELMO.)

18 Q. Okay. I have just got to focus.

19 THE COURT: Why don't you just hand it to him and ---

20 MS. GAY: I was going to say that.

21 Q. Let me show you this. Hand it to you and you could --
22 do you know what date this happened?

23 A. It appears that it was on May 17th, 2014.

24 Q. Okay. So that would have been five days or so before
25 this night that happened May 22nd?

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL

1 A. Yes, ma'am. This was also not my receipt. This was
2 Anthony's receipt. He was not able to use the ammo that he
3 currently had in his possession because of the range's
4 rules.

5 Q. So had to buy some new stuff?

6 A. Yes, ma'am,

7 Q. And so when y'all came back on Monday night he went
8 back to stay at his house with Ashley?

9 A. On Monday night we -- we actually went to my house for
10 about four hours and then we left from my house to -- we
11 went to his mother's house. And then a couple -- I think
12 maybe like 30 minutes to an hour after that then he left and
13 went to Ashley's house.

14 Q. How many days passed between that day and the night
15 that this incident happened that he was killed?

16 A. I guess about three days. Or, well, it seemed like it
17 happened Wednesday night to me. So I guess it was about
18 two-and-a-half days.

19 Q. So it went from -- the thing -- this, the situation
20 when Mr. Williams died, was it Wednesday night?

21 A. Yes, ma'am.

22 Q. And so Monday night you get back; Wednesday night is
23 when this happens?

24 A. Yes, ma'am.

25 Q. Okay. Now when you were -- you covered a few things

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL

1 that were about this. When -- your relationship with Mr.
2 Williams and what was going on with you and Mr. Williams,
3 describe how that weekend in Myrtle Beach went. Was it --
4 was it a good time; was it a bad time?

5 A. It was actually a very -- a pretty good time. We went
6 out to eat several times. We slept in the hotel a lot. We
7 drank a lot of alcohol.

8 Q. Now are you familiar with -- is there any terminology
9 or anything where a man might have a girlfriend and also
10 have a male lover; is there?

11 A. Usually the guys that I am involved with are in the
12 closet. Because I am -- I was in the closet until
13 Monday ---

14 Q. Monday of this ---

15 A. --- which was Monday just a few days ago. So, yeah, so
16 most of the guys I'm involved -- I have been involved with
17 have been in the closet as well. And that is I guess what
18 the term is, on the down low.

19 Q. Okay. On the down low, which would mean that they kind
20 of are involved in both types of things?

21 A. Yes, ma'am.

22 Q. And so on that day when you were coming to his house --
23 oh, I know what I was going to ask you. You said that when
24 you would be together with Anthony and Ashley it would lead
25 to some fights, arguments?

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL

1 A. Yes, ma'am. A few times they have been physical. Not
2 extremely violent, not in my presence at least. And but it
3 is always -- seems like it's always -- turns into an
4 argument.

5 Q. And were you aware of that from being involved with him
6 and knowing what is going on?

7 A. Yes, ma'am.

8 Q. Okay. On the night that this happened or around this
9 time was there some kind of problem where Mr. Williams had
10 had a problem at the -- at the -- on Beaufain Street?

11 A. Yes, sir.

12 Q. And what happened?

13 MR. OSBORNE: Objection, Your Honor.

14 THE COURT: What is the basis of the objection?

15 MR. OSBORNE: I believe that we are getting into issues
16 that we addressed in pretrial, problems that Anthony had.

17 THE COURT: Restate your question again.

18 Q. Are you aware of a problem that Anthony had on Beaufain
19 Street?

20 A. Yes, ma'am, ---

21 THE COURT: Whoa, whoa, whoa, whoa. You are going to
22 have to -- I am not going to allow that because you have got
23 to give me some specificity of what you are speaking to. If
24 you talk ---

25 MS. GAY: Okay. I will rephrase it.

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL

1 THE COURT: Rephrase it so that I know what it is you
2 are asking. Because that question is too broad to allow you
3 to -- you have got to confine it based on prior rulings that
4 we have had in this case.

5 Q. On the night that you got there you said that you were
6 getting in touch with him through text and waiting to hear
7 back from him?

8 A. Yes, ma'am.

9 Q. And can you tell the jury the course of the events.
10 Again, I know we have heard it once on the taped version.
11 But can you tell the jury what happened?

12 A. Yes, ma'am. As I recall it now -- it's been about two
13 years. As I recall it now, I remember I was at home. I had
14 been doing laundry for since that morning, I think about
15 7:00 a.m. So I was pretty exhausted already at that time
16 when I went out that night.

17 I was invited to a cookout earlier that day, but I was
18 several hours late because I was doing laundry and I didn't
19 want to leave until I was finished.

20 I went to my friend's house in West Ashley where the
21 cookout was. And we left. I think I might have been there
22 may be about an hour. We left to go take another friend
23 home in my friend's car and then we went back.

24 But on the way going back, Anthony texted me and told
25 me -- told me that I could come over, that he could have

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL

1 company.

2 Q. And you had been over there before; that wasn't
3 unusual?

4 A. Yes, ma'am.

5 Q. And you had stayed over there; you said that -- that
6 wasn't unusual?

7 A. Yes, ma'am.

8 Q. So when you got there -- I will just show you a few
9 pictures. State's Exhibit 1. Would you have gone in --
10 okay, do you recognize this picture?

11 A. Yes, ma'am.

12 Q. What is this?

13 A. That is the front of Ashley's apartment.

14 Q. Okay. When you got there would you have gone in the
15 front door or the backdoor initially?

16 A. The backdoor.

17 Q. You went in the backdoor?

18 A. Yes, ma'am.

19 Q. Okay. So when you were inside the apartment was it --
20 okay, let me show you State's Exhibit 6. Do you recognize
21 that?

22 A. Yes, ma'am.

23 Q. Can you describe which one is Ashley's apartment?

24 A. The one that is kind of concealed on the other side of
25 the divider.

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL

1 Q. Behind the trashcans?

2 A. Yes, ma'am.

3 Q. Okay. And when you were inside the apartment -- I am
4 going to show you just a few pictures. This is Exhibit 3.
5 And this is -- what is that?

6 A. That is Ashley's kitchen.

7 Q. And there has been reference to you sitting there at
8 the kitchen table. And I think this is the box of chicken
9 right here (pointing). Can you see that?

10 A. Yes, ma'am. And that is also my bottle of water.

11 Q. And bottle of water. So would you have been sitting in
12 this chair (pointing)?

13 A. Yes, ma'am,

14 Q. The chair that is closest to the bottle of water?

15 A. Yes, ma'am.

16 Q. Okay. And then can you describe to us how this
17 apartment is -- is there a wall in between this dining room
18 area and the living room area?

19 A. Yes, ma'am, there is a wall that is divided. Along
20 that wall there is a closet. I guess like a little pantry
21 and refrigerator.

22 Q. So here is State's Exhibit 2. Do you recognize this?

23 A. Yes, ma'am, that is Ashley's living room.

24 Q. So when you were sitting in the chair in the dining
25 room could you have seen in the living room?

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL

1 A. Not while sitting down, no, ma'am.

2 Q. But if you stood up and looked you could have seen?

3 A. Yes, ma'am.

4 Q. All right. So that night when you were there -- and I
5 believe that there has been reference to some drinking and
6 buying mixer.

7 A. Yes, ma'am.

8 Q. Can you describe to the jury how that came about?

9 A. Well, the only reason I even had the liquor is because
10 I had had it to take over to my friend's house for the
11 cookout. However, they did not want tequila. And that is
12 what I had bought. So I ended up still having it when I
13 went to Anthony's house.

14 Q. So I am going to show you State's Exhibit 70. Do you
15 recognize this?

16 A. Yes, ma'am, those are the two bottles of tequila that I
17 took to Ashley's house.

18 Q. And I believe these have been testified to as being
19 found in your trunk ---

20 A. Yes, ma'am.

21 Q. --- after this incident? But on that night when you
22 got there and you wanted to drink this -- and Anthony wanted
23 to drink this too?

24 A. Yes, ma'am,

25 Q. And you decided to leave and go get some orange juice I

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL

1 think it was?

2 A. Yes, ma'am, what had happened was when I first got
3 there Ashley was unpacking some things out of the trunk,
4 taking them inside of the house. And I had asked her if she
5 needed help. She said no, and she told me to go ahead
6 inside. And she said Anthony was in the shower.

7 When I walked into the kitchen Anthony had just been
8 coming down the stairs walking into the living room from the
9 staircase or stairwell or whatever.

10 And I told him I had brought some tequila. And I asked
11 him if they had any orange juice. Because that is what we
12 had been drinking in Myrtle Beach for the majority of the
13 time, tequila and orange juice. And it tasted pretty well,
14 so I wanted it like that again.

15 And they did not have any orange juice. And Ashley
16 told me she would walk to the store and see if they had any
17 at the corner store.

18 She came back and said that they were closed. And she
19 asked if she could drive my car. And I told her no. The
20 reason I told her no I think I told her because my gun was
21 in the car.

22 But the reason I actually told her no was because not
23 only was my gun in the car but also I had all of the
24 receipts from Myrtle Beach that I was supposed to throw away
25 before we came back. And I just I never got around to

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1 throwing them away. And I didn't want her to find the
2 receipts.

3 Q. And one of those receipts that you had in the car was
4 this receipt for the ammunition stuff?

5 A. Yes, ma'am.

6 Q. And so though you may have said something about
7 being -- the gun being in the car you had sort of ulterior
8 motives of why you didn't want her in your car?

9 A. Yes, ma'am. While we were in Myrtle Beach -- I guess
10 this is a side subject. We -- Anthony had told her that we
11 were staying at a friend of mine's house while we were there,
12 while we were supposed to be in Florida. So if she had
13 found the hotel receipts that kind of would have obviously
14 proven that to be a lie.

15 Q. All right. And so you and Mr. -- you and Anthony
16 didn't want her to know that, either of you?

17 A. No, ma'am.

18 Q. So -- okay, so she -- you then go to the store. And I
19 believe there has been testimony that you went to Little
20 Cricket and that they pulled video and that you were buying
21 orange juice at the Little Cricket?

22 A. Yes, ma'am, there was a part I guess that the video
23 left out. They were -- it seemed like they weren't very
24 thorough. I had left ---

25 Q. Are you talking about the Little Cricket video?

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1 Because we just had testimony about it.

2 A. Oh, okay.

3 Q. We don't have video in evidence.

4 A. Okay.

5 Q. But you were there; you acknowledged it?

6 A. Yes, ma'am,

7 Q. And you were -- and Ashley told him that, and you also
8 confirmed that?

9 A. Yes, ma'am,

10 Q. That that is what happened. And then after the --
11 after you came back and you were again sitting at the table
12 drink -- eating the chicken, doing those things, tell us
13 what started happening around you.

14 A. After I was already back in the kitchen they had
15 started arguing. But before I had even gotten into the
16 kitchen, after we had started drinking we was sitting in the
17 living room watching TV and just talking. Anthony's brother
18 texted me. And I had been messaging him on Facebook
19 actually, not text. And I remember him ---

20 Q. I am going to show you State's Exhibit 2 while we are
21 in that room. So you are in this room, all of y'all,
22 discussing some things. And you got a text message from
23 somebody that was related to Anthony?

24 A. Yes, ma'am,

25 Q. His brother?

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1 A. Yes, ma'am,

2 Q. Okay. And I don't really want you to say what he said
3 or what his text said; but what did that cause; what was the
4 result of you getting texts from his brother?

5 A. The comment that it caused from Ashley was her calling
6 his brother gay for asking about my whereabouts.

7 Q. Okay. So she made some kind of reference, derogatory
8 reference, to gay?

9 A. Yes, ma'am,

10 Q. And so after that were you still in the living room; or
11 did you move, or what happened?

12 A. Immediately after that I was still in the living room.
13 Anthony had kind of got upset obviously about her comment.
14 And that was even before she even made the comment about
15 him.

16 But that was -- she -- he felt like that was very
17 disrespectful for her to be talking about his brother in the
18 manner that she was doing. Or of, I guess.

19 Q. Uh-huh.

20 A. So he just kind of -- I guess they start arguing about
21 that first. And I remember I made the comment -- there is
22 this song about killing the vibe or something like that.
23 And I remember I made the comment that they were killing my
24 vibe and that they should stop arguing.

25 Q. And then what did you do?

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1 A. After they continued arguing I got up and went into the
2 kitchen and sat at the table.

3 Q. So you've left the living room now, gone back into the
4 kitchen. And then so what happened while you are in the
5 kitchen? And now we are back in the kitchen.

6 A. I believe I was still texting his -- messaging, his
7 brother actually. And then shortly after that he came into
8 the living room.

9 I think that might have been when she originally went
10 upstairs or whatever. And then I don't know. I didn't see
11 her. I am just assuming that might have been when she said
12 she went upstairs.

13 Q. So you have heard her say that at a certain point she
14 went upstairs and was saying hey, come upstairs soon?

15 A. Yes, ma'am.

16 Q. And then she came back down and said why aren't you
17 coming upstairs and then got more heated?

18 A. Yes, ma'am. I remember -- I heard her say something,
19 and then he just kind of went charging out of the kitchen.
20 I didn't actually hear exactly what she said at that time.

21 But also there is like a pretty big chunk that we
22 missed that also occurred in the living room about her
23 comments towards him as well about us going to Myrtle
24 Beach -- or going out of town together. She didn't know we
25 went to Myrtle Beach.

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1 What had happened is we started -- she started talking
2 about going out of town. She said she was going to go to
3 Myrtle Beach. Which caused me to panic briefly because we
4 obviously didn't tell her we went to Myrtle Beach, and at
5 the time it didn't seem like a coincidence; it seemed like
6 she was insinuating something about us going to Myrtle
7 Beach.

8 But she wasn't referring to us going to Myrtle Beach.
9 She was referring to her going out of town. She said she
10 was going to go out of town with her boyfriend. And
11 obviously Anthony is her boyfriend. So that kind of baffled
12 me.

13 And then it went on from that to Anthony asking her who
14 is going to watch the kids. And she said he was going to
15 watch the kids.

16 And then she went on to say that if he could go out of
17 town with his boyfriend - she was referring to me - that she
18 could go out of town with her boyfriend.

19 And that just kind of pissed him off. He was like -- I
20 think he said -- I don't remember exactly what he said. He
21 just -- he was pissed off. I don't remember his exact
22 words.

23 Q. Okay. You had been dealing with him. You had been
24 intimate with him. You had been on a trip with him. Had
25 you seen him pissed off before?

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1 A. Yes, ma'am. Actually the very first time me and
2 Anthony hung out alone we were drinking in his car, parked
3 outside of Ashley's house. And we were there for quite a
4 few hours until the next morning actually.

5 He got out of his car to take a piss or whatever. A
6 few minutes after that -- I don't know if it is because she
7 saw him or whatever, but she came downstairs and came to his
8 window and started knocking on the window.

9 And she said -- I think she -- she said he is gay
10 because he wanted to sleep outside with -- sleep outside in
11 his car with another guy instead of coming in the house with
12 her.

13 And then he kind of like just fell back asleep.
14 Because he was unconscious. He was already asleep when she
15 came to the car. I was awake. I tried to wake him up, and
16 she said leave him alone, he can hear me, he is awake, he is
17 acting like he can't hear me. And then she went back into
18 the apartments.

19 I shook him until I got him completely awake, and I
20 told him that she had been to the car. And so he went --
21 got -- went into the apartment.

22 He was in there for I think about maybe 10 or 15
23 minutes. And then he came running back out to the car. He
24 came running back out and he threw -- he cranked the car up
25 and threw the car in reverse and just sped backwards out of

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1 the alley.

2 And his car has rims on it, so he thought he dented his
3 rims the way he backed up over the speed bump out of the
4 alley. And then we drove down the street. We stopped at a
5 stop sign. He jumped out of the car, walked around to see
6 if he had dented his rims.

7 Then when he got back in the car he repeatedly punched
8 the dashboard and the roof of the car. And then when I
9 asked him what had happened he said that when he went in the
10 house Ashley called him gay and it pissed him off.

11 He said he -- he beat her up. I didn't ask him
12 specifically what he meant by that. He said he beat her and
13 that he -- she said she was going to call the police. So he
14 ran back to the car and we left. And that was the first
15 time I met his family. We went to his mother's house.

16 Q. Okay. And so at least on one other prior occasion you
17 had seen him get pretty mad at her?

18 A. Yes, ma'am.

19 Q. And I think you said you weren't there so you really
20 don't know what happened, but all you saw was his reaction
21 afterwards ---

22 A. Yes, ma'am.

23 Q. --- and that he pounded on his car and got violent?

24 A. Yes, ma'am.

25 Q. And so on this night when they were arguing and you

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1 said that he came down -- I think that we were at the point
2 where he was -- she is upstairs, and she made these
3 comments. She is -- she has gone upstairs. Now the two of
4 y'all are in the kitchen. What happens after that point?

5 A. I think she was upstairs. I am not actually 100
6 percent sure on that. We were sitting at -- well, I was
7 sitting down. He was standing at the -- I guess you can't
8 see. He was standing at the front part of the table.

9 And I think I heard her say something. I don't know
10 exactly what she said. But he just went charging into the
11 living room. And she kept saying get off of me, you are
12 hurting me ---

13 Q. Now let's go back for a minute. These are things that
14 you are hearing but not seeing ---

15 A. Yes, ma'am,

16 Q. --- because you are sitting in the chair behind the
17 water bottle but you are hearing things going on in a room
18 where there is a wall?

19 A. Yes, ma'am.

20 Q. Okay.

21 A. So I kept hearing her say you're hurting me, you need
22 to get off of me, you are always putting your hands on me.
23 At no point in time did I hear her say he needed to leave.

24 I'm sorry, I felt like I should say that. At no point
25 in time I heard her say that he should leave and anyone

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1 should leave. All I kept hearing her say is he needed to
2 get out of her, that he was hurting her.

3 And then I think -- I think I actually did stand up and
4 look to see what was going on. I think that is when I saw
5 her on the couch. And then I stopped. I sat back down.

6 And then I looked again when I started hearing her
7 screaming even -- it seemed like it was getting more and
8 more dramatic. I got up and I grapped my gun off of the
9 table. And I think I put the clip in it or the clip may
10 have already been in it at that time.

11 I looked into the -- into the living room. And she was
12 on the floor.

13 Q. Okay. Hold on one second. I want to change pictures
14 for a minute. And that is an important thing, because you
15 have listened to the statement that you -- that was recorded
16 for you. And you put your clip in it or the clip was
17 already in it, is different than what is in the recorded
18 statement that we heard from you yesterday.

19 A. No, ma'am. In my statement I also did say -- at -- I
20 first said that I loaded the gun before I got up from -- or
21 while I was getting up from the table.

22 Q. And then you said something else; then you said you
23 loaded the gun outside?

24 A. Yes, ma'am.

25 Q. So today you are under -- you have taken an oath, and

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1 you are telling this jury what is the truth today.

2 A. As I recall it, yes, ma'am.

3 Q. And can you -- so go over again exactly what you think
4 you remember about that moment in time.

5 A. As I was getting up from the table the second time I
6 grabbed the gun and put the clip in it and I loaded the gun.

7 Q. Okay. So now we talked about the gun. We have talked
8 about how we have seen your earlier statement. We have
9 talked about the fact that you didn't want her driving your
10 car, for receipts and gun reasons. Describe to the jury how
11 the gun got on the kitchen table.

12 A. As I was coming back from Little Cricket I took the gun
13 inside with me. It was in the holster. I think at that
14 time the clip was out of the gun. Because I believe -- now
15 I believe that I grabbed it the way it was in my glove
16 compartment which was separated from the gun.

17 Q. Okay.

18 A. The clip being separate from the gun.

19 Q. So is it your testimony to this jury that you out of
20 habit took the two pieces apart when you put it inside of
21 your car?

22 A. Yes, ma'am. My understanding of it is that it is law
23 that you have to have the clip separate from the gun when
24 you have it in your vehicle. So that is how I had been
25 storing it.

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1 Q. Okay. And we are going to just real briefly talk about
2 that. This gun is in evidence in this case. And this is
3 State's 15.

4 A. Yes, ma'am.

5 Q. This is the gun?

6 A. Yes, ma'am.

7 Q. And this gun I believe you testified you bought at
8 Gene's Pawn?

9 A. Yes, ma'am.

10 Q. And there is evidence in this case that establishes
11 like that they verified that, that you had bought the gun at
12 Gene's Pawn?

13 A. Yes, ma'am.

14 Q. And there's timeframes and things that we can talk
15 about about when you bought the gun. But describe to the
16 jury how that process is. Is that -- do they do some
17 background check or something like that?

18 A. Yes, ma'am. They -- the gun was on layaway, first of
19 all. I had -- I bought the gun because I was supposed to be
20 moving to Kentucky early in February. That did not work
21 out.

22 On my returning trip from February -- I mean from
23 Kentucky in February I was in a rest stop. I was using the
24 restroom. It was pretty late. I think it was after 11:00
25 p.m. I was driving back. I stopped to use the restroom.

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1 On the way coming out of the rest area this white guy
2 approached me from behind with a gun in his hand and he told
3 me to keep walking to my car. He then robbed me. I filed a
4 police report ---

5 MR. OSBORNE: Objection, Your Honor. Relevance.

6 THE COURT: I will allow it.

7 A. This -- this is pretty much why I bought the gun. I
8 had been robbed. As soon as I got back to Charleston I was
9 able to start the process of buying the gun.

10 They had to do a background check. I bought the gun on
11 layaway. As soon as I saw it was a -- it was a brand-new
12 one. And I heard things about people pawning guns and it
13 could be crime-related or it linked to some type of crime or
14 whatever, and I didn't want to risk that so I bought a
15 brand-new one. So I had it on layaway.

16 They did a background check. Obviously you can't buy a
17 gun if you have felonies or whatever.

18 Q. Have you ever been in any trouble?

19 A. No, ma'am, not with the law. I have never had any
20 prior charges before this.

21 Q. Okay. And so that day that you had the gun or the day
22 you bought the gun, that is when you got it off of layaway
23 like to pay the balance for it?

24 A. Yes, ma'am. That is why the receipt only says one
25 dollar, because that is how -- that is how they do it here.

1 I don't know why.

2 Q. And so before this day how many -- how long -- you had
3 actually had the gun when you were in Myrtle Beach?

4 A. Yes, ma'am.

5 Q. Before you went to Myrtle Beach about how long had you
6 had the gun before that?

7 A. I think it might have been -- from my re-que-lection
8 (ph) -- from my recollection it couldn't have been more than
9 a week before that.

10 Q. All right. And ---

11 A. Before Myrtle Beach.

12 Q. Okay. So and then on that night you had the gun.
13 Wasn't your testimony on the -- in the recorded statement
14 and what is today to tell the jury, had you ever shot the
15 gun before?

16 A. No. I had never shot the gun before.

17 Q. On May 22nd, that -- '14, that is the first time you
18 had ever shot the gun?

19 A. Yes, ma'am.

20 Q. And on this day your testimony was is that you bring
21 the clip and the gun in together and it is on the kitchen
22 table. Why is it on the kitchen table?

23 A. Well, I don't have a concealed weapons permit; so when
24 I transport my gun it is in my hand because -- I don't know
25 if that's legally correct or not; but my understanding of a

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1 concealed weapons permit is that if you hide the gun from
2 view, that is considered concealed. So I don't conceal my
3 weapon because I don't have a concealed weapons permit. So
4 I always carry it in my hand when I am transporting it.

5 When I got in the house I put it on the table because I
6 didn't -- I guess being in plain sight would have been the
7 best place to have it.

8 Q. Why didn't you just leave it in the car?

9 A. Well, there was this guy that lived across the yard
10 from Ashley's apartment so I guess about 50 feet maybe from
11 her apartment. I had gotten into it with him verbally after
12 he asked me for oral sex. And I just kind of laughed and
13 walked away.

14 I had seen him previously beat this guy like to a pulp.
15 It was pretty -- pretty bad. I found out later on obviously
16 that the guy had a fractured -- part of his face was
17 fractured.

18 I actually called the police that night while I was
19 witnessing it. I did not write a statement for them. I
20 just informed them of what was going on. Because no one
21 else was stopping it from happening. There was people just
22 standing there. No one was stopping it from happening.

23 The guy passed out from -- what I could see -- I was
24 sitting in the car just maybe about 30 feet from where it
25 was happening.

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1 Q. Well, let me -- let's just stop here a minute. That
2 happened right in the area where Ashley ---

3 A. Yes, ma'am, it was ---

4 Q. And it was shortly before this situation for you?

5 A. Yes, ma'am.

6 Q. And so this situation is it your testimony that that
7 affected you and made you feel as if you should be armed?

8 A. Yes, ma'am, definitely.

9 Q. Onto Beaufain Street in the Wilson Street area?

10 A. Yes, ma'am.

11 Q. So and you testified -- I mean your statement that we
12 watched, the one that is recorded, that talks about that
13 incident ---

14 A. Yes, ma'am.

15 Q. --- and how that affected you? So when you made the
16 decision to stand up and get the gun, and your testimony is
17 put the clip in it, why did you do that?

18 A. Well, previously I have witnessed some pretty bad cases
19 of criminal domestic violence, one that resulted in a death.
20 And the other one was pretty close to death.

21 Well, the first one I was about 19 I believe. My
22 friend's mother ---

23 MR. OSBORNE: Objection, Your Honor. Relevance.

24 THE COURT: Sustained.

25 Q. I understand. But there were occasions in your life

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1 that you were thinking of at the time?

2 THE COURT: I sustained the objection. Move on -- you
3 are making statements now. Let's ask questions please, Ms.
4 Gay. Thank you.

5 Q. When you put the clip in the gun did you do anything
6 with the gun inside the house that day?

7 A. Do you mean prior to that or after I put the clip in
8 the gun?

9 Q. After you put the clip in the gun.

10 A. Yes, ma'am, I loaded the gun. I slid the slide back to
11 load the gun.

12 Q. Okay. And was there an occasion for you to do anything
13 with the gun inside of the house?

14 A. No, ma'am.

15 Q. So tell us what happened. I think you said that you
16 were here (pointing), you came into the living room; and
17 initially you said Ashley was on the couch?

18 A. Yes, ma'am.

19 Q. And then -- did she testify what happened afterwards;
20 did she change locations?

21 A. Yes, ma'am. She ended up being on the floor. Anthony
22 was choking her.

23 Q. Okay. Now when you say choking her, tell me where his
24 hands were.

25 A. I do not mean he was holding her down by her arms,

1 because that would not stop her from breathing. He was
2 choking her with his hands around her neck. And then he
3 lifted his right hand and he was about to punch her. And
4 that is when I reacted immediately and told him that we
5 needed to leave.

6 Q. Okay. And when you reacted immediately or told him you
7 needed to leave, did you walk up to him?

8 A. No, ma'am. I was still standing in the doorway. I
9 never approached him at that time nor did I put my hands on
10 him.

11 Q. So everything that was done between you and him in the
12 house was verbal?

13 A. Yes, ma'am.

14 Q. And when you were -- okay, and you said we need to
15 leave. And then what happened?

16 A. He actually stopped. Immediately he got off of her.
17 He just kind of pushed past me. It wasn't like an extremely
18 violent push or anything. He just kind of -- I was in the
19 way. So he just kind of pushed me out of the way and walked
20 out the backdoor.

21 Q. Did you see her try to take a picture and hit him in
22 the head with it or anything like that?

23 A. Not at all.

24 Q. Okay. And your testimony is that you only saw the tail
25 end of it?

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1 A. Yes, ma'am.

2 Q. And so when he pushed past you what happened next?

3 A. He walked out the door. I turned around and I asked
4 her if she was okay. She said, yeah. I left all of my
5 stuff in the house; the gun holster, the bag of liquor;
6 everything was still left in the house that I had there.

7 When I think about it now, I might have actually left
8 my phone on the table as well. I don't know -- I know I
9 ended up having my phone later. But I don't know if I left
10 it on the table or not at that time, if you will.

11 Q. Okay. But you didn't leave the gun ---

12 A. No, ma'am, I ---

13 Q. --- that was in your hand?

14 A. No, ma'am, I don't think that would be a very smart
15 decision for anyone who owns a gun to just leave their gun
16 anywhere.

17 Q. Well, so the question is is that so when you are
18 walking out you still have the gun in your hand which hand
19 would you -- would it have been in?

20 A. My right hand.

21 Q. Okay. And the other stuff, possibly even your phone,
22 was left on the table?

23 A. Yes, ma'am.

24 Q. And so by the time you got out the door was Anthony
25 already out the door?

1 A. Yes, ma'am, he was already out of the door. I walked
2 out of the door after I asked Ashley if she was okay. She
3 said, yes, she's fine.

4 I don't remember if she was crying or anything. She
5 might have been. I walked out of the backdoor. She
6 immediately closed the door behind me and locked the door.

7 Q. Did you hear that, the lock?

8 A. Yes, ma'am.

9 Q. Okay. And that is the backdoor?

10 A. Yes, ma'am.

11 Q. Okay. I am going to show you what's been marked as
12 Number 4. Do you recognize that?

13 A. Yes, ma'am.

14 Q. Is that the backdoor?

15 A. Yes, ma'am.

16 Q. Okay. And so y'all are -- it is also this is daylight,
17 but when this was happening it was dark. And so -- because
18 it is like 2:30 in the morning.

19 So if you go out of the backdoor and it is locked what
20 is going on right around you; what is the world looking like
21 at that time of night?

22 A. It is pitch black. I know the officer said something
23 about the Projects are good at lighting, but that's not true
24 in this case at that time. It was pitch black.

25 Q. Okay. And so what happened next; what did you do?

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1 A. I looked -- I looked around. I saw Anthony go into his
2 car. I saw him cranking up his car. And he started backing
3 up.

4 I knocked on the door and asked Ashley to hand me -- to
5 hand me my holster.

6 Q. Okay. I am going to show you State's Exhibit 7. Tell
7 us about this picture.

8 A. That is the back side of the apartment. That is the
9 corner edge of where the apartment is.

10 Q. And the big blue car?

11 A. That is Anthony's car.

12 Q. And the little silver one?

13 A. That is my rental car.

14 Q. Now when you say he got in his car and cranked it up is
15 that that big blue car that he cranked up?

16 A. Yes, ma'am. It was parked -- at the time it was parked
17 to the further part of the back side of the parking lot.

18 Q. Okay. In the beginning?

19 A. Yes, ma'am.

20 Q. Now did he move his car after he cranked it?

21 A. Yes, ma'am. He started backing up. At that time I
22 thought he was leaving so I turned my attention back to
23 getting my holster. Because that is a part of my gun, so I
24 keep it with the gun. I asked her to hand me my things.

25 She said that she wasn't going to open the back door

1 and that she was going to sit it on the front porch.

2 Q. Okay. When you say your holster, this is Defendant's
3 10 -- I mean State's 10. Is this the holster?

4 A. I believe so. I haven't seen it in two years. And I
5 hadn't owned the gun very long so.

6 Q. Would you like to look at it a little closer?

7 A. No, ma'am, I believe it is the holster.

8 Q. So it was your understated that your stuff was going to
9 be on the front porch?

10 A. Yes, ma'am.

11 Q. And so you went back to the front porch and then -- and
12 picked up your stuff. And then what happened?

13 A. As I was coming back around the back edge of the corner
14 of the apartment I went to either my trunk or my back door.
15 Obviously my -- the officer said it was in the trunk, so I
16 guess I obviously went to the trunk. And I put the alcohol
17 in there. I guess I had to have ---

18 Q. Let me ask you a question. I am going to show you
19 seven again. And this position of this car, this silver
20 car, is this the -- generally the position of your -- of the
21 car that you were driving when all of this was happening?

22 A. No, ma'am.

23 Q. No? Okay. Well, how about this corner right here; is
24 this -- is this where you are referring to the corner
25 (pointing)?

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1 A. Yes, ma'am. Previously my car was parked behind his
2 car. My car was only there after I returned to the scene.

3 Q. Right. And so it would have been a little farther
4 back?

5 A. Yes, ma'am.

6 Q. Okay. And so you go to the front door; you get your
7 stuff; and then what happens?

8 A. I start walking around on the side of the apartment to
9 put my things in the trunk I guess. And I remember grabbing
10 the holster out of the bag because I was preparing to leave.
11 Because I thought Anthony was leaving.

12 And so I was going to put my gun in the holster and put
13 it back in the glove compartment where I always keep it.
14 However, in the act of putting my things in the trunk I saw
15 Anthony coming back from -- coming back from his car --
16 well, getting out of his car and going back to the backdoor
17 of Ashley's apartment.

18 Q. So the bag was -- the tequila and things like that,
19 that ended up in your trunk. But I think what was the --
20 your intent again; what were you going to do with the
21 holster and the gun?

22 A. I was going to put it back in the glove compartment
23 where I usually store my gun.

24 Q. Okay. And that is why you had not put them in the
25 trunk?

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1 A. That's -- yes, ma'am. They don't go in the trunk.

2 Q. I understand. So you heard noises, and then what
3 happened?

4 A. No, I didn't hear any noises. I saw Anthony going back
5 to Ashley's -- Ashley's backdoor. I stopped what I was
6 doing, which was about to prepare to leave. I closed the
7 trunk with the liquor in it and I started walking back to
8 the back side of the apartment.

9 Q. What happened?

10 A. Oh, I started walking back to the back side of the
11 apartment. And as I was rounding the corner I started --
12 well, I guess the back-side corner right there (pointing).
13 I started hearing Anthony kicking and hitting on the door.

14 Q. Now when you say kicking and hitting on the door, what
15 it looked like to you -- I mean you were outside with him.
16 The door is not broken, but what did it appear to you to be?

17 A. It appeared that he was -- it appeared that he was
18 trying to get the door open.

19 Q. And the door was locked?

20 A. Yes, ma'am.

21 Q. Okay. Did you -- was he saying things; was he -- did
22 you hear him talking?

23 A. No, ma'am.

24 Q. Was he saying things to you about what was going on?

25 A. Not at the time. I didn't hear him say anything until

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1 I approached him and started speaking to him.

2 Q. Okay. Then what did he say?

3 A. When I actually got up to him -- since to me it
4 appeared to me that he was kicking -- trying to kick the
5 door open -- since I was standing right next to him -- I
6 know what it looks like when someone is trying to kick a
7 door open. He was not knocking on the door hard. He was
8 kicking on the door.

9 I tried to distract him from the door to try to calm
10 him down so we could leave. I knew he wasn't supposed to be
11 there. I didn't want him to get in trouble.

12 Q. And why did you know he wasn't supposed to be there?

13 A. He was on no-trespass notice.

14 Q. For the Beaufain Street Projects?

15 MR. OSBORNE: Objection, Your Honor.

16 THE COURT: I will allow that.

17 A. Yes, ma'am. He had gotten ---

18 THE COURT: I am not going to allow him to go ---

19 MS. GAY: Okay, don't go into any detail ---

20 THE COURT: --- any detail about that. I will allow
21 that -- that part of -- that is as far as it can go.

22 Otherwise I sustain the objection.

23 MS. GAY: Yes, sir.

24 Q. So you were trying to get him to leave?

25 A. Yes, ma'am. I was trying to calm him down actually. I

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1 knew why he was upset. While we were in Myrtle Beach we had
2 spoken a lot about his emotional pain from his relationship
3 with Ashley. And I understand it completely. So I was
4 trying to calm him down. And, you know, so I understood why
5 he was upset. I was just trying to calm him down.

6 Q. Okay. And then so tell us what happened after that,
7 sir.

8 A. I tried to grab his hand to try to distract him from
9 the door to try to talk to him. It wasn't like violent or
10 forceful. I wasn't tugging on him or anything. I was
11 literally just grabbing his hand.

12 He turned towards me. I recall him saying look what
13 she did to me. I think he said - excuse me - fuck that shit
14 or something like that. That's what I recall him saying.

15 Q. So did he mention that she had hurt him in any way?

16 A. I recall him trying to show me something on his face or
17 chest area maybe.

18 Q. Okay. So when you say you weren't tugging on him or
19 doing anything, you were just trying to -- were you grabbing
20 him and holding him and pulling him?

21 A. I -- not at the time. I was just trying to distract
22 his attention from the door. I had grabbed his hand. Like
23 if any of you have ever been involved with someone that you
24 are emotionally attached to if you see them in distress you
25 are logically going to try to calm them down or try to aid

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1 them emotionally in some kind of way.

2 Q. I understand. So then describe to us what happened
3 next?

4 A. After that I remember telling him it wasn't that
5 important, I understood he was upset. I remember saying
6 just calm down, we need to leave, you are not supposed to be
7 here, I don't want you to get in trouble.

8 He snatched his hand from me and just kind of shoved me
9 like really hard. I don't think -- the first time I don't
10 think I fell down immediately.

11 He kind of charged me and shoved me again. so I
12 obviously fell even further than where I had started to
13 stumble. I slammed down on my butt and back I guess.

14 Q. Now let me ask you a question. When you were -- this
15 area of your butt and your back, had you -- could you tell
16 the jury a little bit about what was going on with body
17 during that period of time?

18 A. Yes, I had previously been in a car accident. And
19 results to the very recent -- and actually it was a couple
20 weeks before this incident. And then I had also been in one
21 that was also pretty bad just a couple of months before
22 that. I was hit by a drunk driver.

23 I was taking physical therapy at the time. I had
24 been -- I have nerve damage in my arms, tendonitis. And I
25 had been getting spinal injections for the inflammation in

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1 my back, the nerves in my spine.

2 Q. So -- so how did -- how did it effect you when you
3 fell?

4 A. Well, I was already pretty weak from the car accident,
5 like physically weak. So obviously being slammed down with
6 my full body weight on my back wasn't very helpful.

7 Q. Well, let's talk about that. You said that you were
8 physically weak. You are a big guy in these pictures.

9 A. Yes, very fat actually.

10 Q. Okay. And I think that there was testimony that you
11 were at least 250. How much did you really weigh?

12 A. I was actually about 286.

13 Q. And you said that during that time you felt weakened
14 because of your injury?

15 A. Yes, ma'am.

16 Q. And had you been doing any exercises or anything?

17 A. No, ma'am. Not in several years actually.

18 Q. Right. And now you have lost some weight?

19 A. Yes, ma'am.

20 Q. And so but your fitness at that time was -- how would
21 you describe it?

22 A. It was pretty bad. It was very bad. Didn't have much
23 strength at all. I definitely wouldn't have been able to do
24 push-ups. I was in a pretty weak state physically.

25 Q. And what about Anthony; we have seen pictures of him;

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1 what kind of state was he in?

2 A. He was pretty -- pretty well -- pretty -- pretty good
3 shape. He was lean. He was pretty strong. Definitely a
4 lot quicker than me and a lot quicker than most people.

5 Q. So physically fit?

6 A. Yes, ma'am.

7 Q. Had you ever seen him do anything with like exercises
8 or anything to see that yourself personally?

9 A. I remember we were playing around in the back of
10 Ashley's yard and he literally -- like we -- like we were
11 playing around like kind of fake wrestling I guess. He
12 literally picked me up, all 286 pounds, picked me up and was
13 about to slam me on the ground. But he didn't actually slam
14 me on the ground.

15 Q. He just was kind of playing with you?

16 A. Yes, ma'am.

17 Q. So back to what you believe was going on on this night
18 in the appearances that were out there, tell the jury again
19 what happened after he threw you on the ground and you
20 landed on the ground.

21 A. Yes, ma'am. I believe at that time that is when my
22 glasses came off of my face. Because I remember not being
23 able to see him clearly after that.

24 Q. Okay. Well, let's talk about that for a minute.

25 Because we have watched this video. And in the video you

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1 say clearly - and I know Mr. Osborne is going to ask you
2 about this -- that the glasses were on your face when you
3 shot him. Is that true?

4 A. No, ma'am. And it is not very logical either.

5 Q. And why is that?

6 A. Because my glasses was on the ground when I left the
7 scene.

8 Q. Okay. And when you left the scene and your glasses
9 were on the ground did they ever -- did you ever get these
10 glasses back?

11 A. No, ma'am. They took them in evidence because
12 Detective Krasowski said that my glasses being on the ground
13 corroborated my story about being slammed on the ground.

14 MR. OSBORNE: Objection, Your Honor. Hearsay.

15 THE COURT: Sustained. The jury disregard the last
16 statement from the witness.

17 Q. And your -- the glasses are in evidence; you are aware
18 of that?

19 A. Yes, ma'am.

20 Q. Okay. I will get to that. So these -- this is Number
21 4. We have talked about this. And that is your -- that is
22 the glasses?

23 A. Yes, ma'am.

24 Q. That are yours?

25 A. Yes, ma'am.

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1 Q. And this is a -- this is Number 6.

2 Number 19. And in State's Number 19 -- do you see that
3 number? What is that number right there?

4 (WHEREUPON, displaying photograph on ELMO.)

5 A. I believe that is Number 4.

6 Q. Okay. So that is the same place?

7 A. Yes, ma'am. And I believe I should tell you --
8 honestly I can't actually see it. I just know that from
9 memory that it is Number 4.

10 Q. Okay. All right. Well, I understand that. It is --
11 we can go closer if you needed to.

12 THE COURT: Why don't you just show him the picture.

13 Q. Here. Let's show you the picture. Do you see what
14 this is?

15 A. Yes, ma'am.

16 Q. Okay. So the time that you landed on the ground when
17 he had shoved you and you had fallen backwards do you recall
18 coming in contact with this tree?

19 A. Eventually I did come in contact with the tree. The --
20 I guess the second time, I fell down. But the third time, I
21 was shoved.

22 Q. Okay. So the second time you fell down, and that may
23 have been when you lost your glasses because your testimony
24 was you couldn't see him after that; but then the third time
25 is when you hit the tree?

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1 A. Yes, ma'am.

2 Q. Okay. And describe to the jury hitting the tree.

3 A. It felt like -- like all the breath had pretty much
4 been knocked out of me. I -- I got slammed up against the
5 tree pretty bad. I -- after I fell into the tree I fell
6 down to the ground.

7 Now I recall -- I recall him being on me after that.

8 Q. Well, let me ask you this: When you've got -- this --
9 where -- okay, describe your body position. So just back
10 up. Just so we can talk about the tree.

11 (WHEREUPON, photograph displayed.)

12 Q. Describe your body position towards this tree. Okay,
13 what is on the ground there?

14 A. Oh, as you can see there are huge roots that come out
15 from the tree. You can also tell there is not very much
16 space between the clothing line and the tree as well.

17 Q. Okay. So what part of the tree did you hit?

18 A. The I guess the trunk of the tree or the ---

19 Q. And what part of ---

20 A. --- base of the tree.

21 Q. Excuse me. And what part of your body hit the tree?

22 A. My back.

23 Q. Okay, that back that had had problems and spinal
24 injections in it?

25 A. Yes, ma'am.

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1 Q. And so how far is that from the backdoor of Ashley's
2 apartment?

3 A. I don't know. I guess maybe 20 feet, 15 feet.

4 Q. Okay.

5 A. I don't know.

6 Q. And you said that this whole area out there on that
7 night was dark?

8 A. Yes, ma'am.

9 Q. And there weren't any lights out there?

10 A. No, ma'am.

11 Q. And you said that -- I believe your testimony was when
12 your glasses fell off you couldn't see him after that?

13 A. Yes, ma'am.

14 Q. Okay. You are wearing glasses today?

15 A. Yes, ma'am.

16 Q. I am not asking -- going to ask you what your
17 prescription is, but do you have to wear glasses to see?

18 A. Yes, ma'am. I am nearsighted. I definitely need my
19 glasses to see. I can barely see without them.

20 Q. Okay. So on this night when your back gets slammed up
21 against the tree what did -- what happened?

22 A. I -- I recall him being on top of me and like -- I
23 don't remember exactly if he was trying to choke or if maybe
24 my neck was hurting for no reason afterwards, but I recall
25 him being on top of me after that. And I think I tried to

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1 turn over to get out of his grasp -- out of his grasp or his
2 grip or whatever. Because I couldn't push him off off me.
3 I wasn't strong enough to actually get him off of me.

4 Q. And so you have looked at the pictures and all of this,
5 and you know where his body is. And you are aware that this
6 body isn't by the tree? Or where would you place this body;
7 is it close to the tree or ...?

8 A. Can you show the other one, the -- from the other
9 angle?

10 Q. Let me look. Here is one. This is 17 that I just
11 showed you. This is seven now.

12 A. Actually I would say that's pretty close to the tree.

13 Q. Maybe 14 feet ---

14 A. Considering that that is his feet down there I would
15 say yes that is actually kind of close to the tree.

16 Q. Okay. But in your -- when you recall it -- because you
17 were there. When you recall it, you recall him being closer
18 to the tree when the shots were fired?

19 A. Yes, because he -- I felt like he was on top of me. I
20 recall him being on top of me. So, yes, he had to have been
21 closer to the tree.

22 Q. Okay. And that is what you today under oath are
23 telling the jury that you recall him being on top of you?

24 A. Yes, ma'am.

25 Q. Despite the fact that he is 14 feet away from the tree

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1 when he -- when his body is found?

2 A. I don't think that is 14 feet.

3 Q. Well, approximately ---

4 A. That looks like it might be about six feet away from --
5 or seven feet away from the tree.

6 Q. Okay. Not right on the tree?

7 A. Yes, ma'am.

8 Q. Okay. So when he -- after you -- been thrown up
9 against the tree and you think he is there (pointing), your
10 testimony is is that you are turning -- like you are -- you
11 are -- you are a big guy?

12 A. Yes, ma'am.

13 Q. Kind of rolling?

14 A. Trying to get -- I couldn't -- I wasn't strong enough
15 to actually push him off of me. I -- I guess -- I guess I
16 might have been trying to avoid using the gun so I was
17 trying to roll out of his grip, trying to push him off of me
18 before it got to that I guess.

19 Q. And how was that, getting up at 287 pounds off the
20 ground?

21 A. Not very easy. As well as the fact that he was on top
22 of me.

23 Q. Okay. So when you pulled out the gun ---

24 A. It was in my hand already. I didn't pull it out.

25 Q. Okay. Describe that to the jury. Why was it in your

1 hands?

2 A. Well, because I had gotten distracted in the act of
3 putting my things in my car to leave. So when I had put the
4 liquor in the trunk that is when I saw him approaching --
5 coming back from his car, going back to the back side of the
6 apartment.

7 So I stopped what I was doing right then and started to
8 go behind him.

9 Q. Okay. And how long did all of this take?

10 A. It might have been two to three minutes. It seemed
11 like it was forever. It seemed like it was longer than
12 that.

13 Q. But it might have been two or three minutes? And then
14 what happened?

15 A. As I was rolling trying to get out of his grasp that
16 got him from around my neck or what I had felt like him
17 being around my neck. And then I remember like swinging
18 back and firing.

19 Q. With your right hand?

20 A. Yes, ma'am.

21 Q. Okay. When you said you got him from around your
22 neck -- you couldn't see what was going on; was it possible
23 that he was backing up?

24 A. My perception of how much time passed between that
25 happening and him -- me feeling him off of my neck I don't

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1 know if he would have had that much time to back up. But I
2 guess that is possible.

3 Q. And so we have seen -- and I will show you State's
4 Exhibit 17. We have seen where the shell casings are.
5 Those are the little dots in the back towards the
6 clothesline.

7 A. Yes, ma'am.

8 Q. And those -- and we have heard testimony that this gun
9 that you had would throw its casings to the right?

10 A. Yes, ma'am.

11 Q. So if that is the case, your right side would have been
12 looking -- would have been facing the apartment corner?

13 A. Yes, ma'am.

14 Q. And so do you have any recollection of how you shot
15 him; was there -- there has been testimony about baam, baam,
16 baam, two shots, then three shots. There's been lots of
17 things said. What under oath today to the jury do you
18 remember about that?

19 A. I recall the shots being all continuous -- all
20 continuously. Because after -- I remember that actually
21 because after the gun stopped firing I kind of freaked out
22 and ran to my car. I didn't know whether I had hit him or
23 not. I didn't know where I hit him. I just know I guess
24 fear was -- fear was a huge factor. I was just trying to
25 get away from him.

1 Q. Okay. Now you are aware that when you did your
2 recorded statement that you said that you think you fired
3 two or three shots and then you fired some more; you are
4 aware of that?

5 A. Yes, ma'am. One thing about that night in my statement
6 or whatever, my frame of mind was not very clear. A lot of
7 things I didn't remember in the sequence that it happened.
8 Some things I didn't remember at all at the time.

9 Q. But -- and you have heard testimony that there was
10 continuous shots?

11 A. Yes, ma'am, from I think three or four people.

12 Q. And when you pulled the trigger your comment was is
13 that you shot every shot until the gun was unloaded?

14 A. Yes, ma'am.

15 Q. And we know that four of them hit him but three of them
16 did not?

17 A. Yes, ma'am.

18 Q. And I believe you said in your statement that you don't
19 even know if the first one or two would have shot -- would
20 have hit him at all?

21 A. Yes, ma'am.

22 Q. Is there anything you want to add to tell the jury
23 about firing the gun?

24 A. That was my first time ever firing a gun. I have never
25 had a reason to fire a gun before that night. So I didn't

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1 have any experience with firearms or the use of firearms.

2 Q. Okay. And when you -- you said that after you -- all
3 the bullets came out of the gun that you got up and ran to
4 your car?

5 A. Yes, ma'am.

6 Q. What was your intent?

7 A. To leave to try to run to get away from him. I didn't
8 know if he was down or if I had hit him. I didn't know
9 exactly what happened.

10 Q. Now one of the things that you had said in your
11 statement was that you felt like at some point he was coming
12 back at you after you had shot?

13 A. Yes, ma'am, I said that in my statement. That might
14 have been possible. I -- I don't recall it now. It has
15 been two years.

16 Q. So what was happening during the process of the
17 shooting? What you told us today is what you remember?

18 A. Yes, ma'am.

19 Q. And all of that time from the time you say you are
20 rolling and you swing the gun in some kind of like upward
21 way?

22 A. Yes, ma'am.

23 Q. How long did that take?

24 A. I think it was pretty fast. I don't know. Usually --
25 well, not usually. I don't have prior experience in

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1 situations like this. But in that specific situation the
2 only thing I could think of was trying to get him off of me.

3 I wasn't thinking about how long it was going to take.
4 I wasn't timing it. I didn't have time to think about it.
5 I felt like if I didn't get him off of me he was going to
6 kill me.

7 Q. Okay. When you say you felt like he was going to kill
8 you, why did you feel that way?

9 A. He seemed like he was in an uncontrollable rage. After
10 the first time me talking to him he wasn't like responding
11 to anything else after that.

12 Q. So you felt like he wasn't listening to reason?

13 A. Not at all.

14 Q. And even though y'all had some kind of intimate
15 relationship you weren't getting through?

16 A. Yes, ma'am. I thought that since -- see, our
17 relationship was more on an emotional level as opposed to
18 sexual. There was some sexual things involved; but our
19 relationship was more emotional, more of an emotional
20 connection. So I figured I could calm him down, get through
21 to him, try to relieve the situation.

22 Q. In the two to three minutes that it took for all of
23 this to occur did you ever consider leaving? Leaving him
24 behind to deal with it?

25 A. No; not before I started getting assaulted, no. Just

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1 because I -- I figured I could try to get him to leave, try
2 to calm him down, try to help him get through what he was
3 going through emotionally.

4 Q. So at the point that he shoved you and you hit your
5 back that was hurt on the trunk of the tree, at that point
6 you were trying to get away from him?

7 A. Yes, ma'am.

8 Q. And it was to some extent he wasn't letting you?

9 A. No, and I kind of didn't really have much else place to
10 go. There was a pretty big tree right behind me.

11 Q. So you felt like blocked by the tree?

12 A. Yes, ma'am.

13 Q. And if he had gotten to you describe for the jury what
14 you believed may have occurred, like ---

15 A. Well, seeing how he did actually get to me I believe
16 that if I didn't stop him he would have killed me.

17 Q. And how would he have -- he didn't have a weapon, ---

18 A. No, ma'am, ---

19 Q. --- so how would he have ---

20 A. --- people ---

21 Q. --- killed you?

22 A. People die all the time from physical assaults,
23 assaults to the head. I could have slammed my head up
24 against the tree. I did slam my head up against the tree
25 when I got slammed into the tree. He could have beaten me

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1 to death with his fist. I mean people die like that all the
2 time.

3 Q. Okay. And certainly we agree that he didn't have a
4 pipe or even the beer can that was out there or anything, he
5 didn't have anything in his hands that he could have used
6 against you; it would have just been him and you?

7 A. Yes, ma'am, he definitely had a strength advantage as
8 well as speed. And he was definitely much more aggressive.
9 I wasn't aggressive at all.

10 Q. Right. And his -- his attitude at that time made
11 you -- how did it make you feel?

12 A. Well, I was scared. At first I didn't think I needed
13 to be scared. I didn't think I was in danger before I
14 started getting assaulted. I didn't think I had a reason to
15 be. I hadn't done anything to -- I hadn't done anything to
16 make him mad. I hadn't assaulted him. I wasn't aggressive
17 with him.

18 I didn't think I was in any danger until I started
19 being attacked. Even after the first time I thought okay he
20 is just angry, maybe I can still calm him down. And then
21 after that it just -- it was an ongoing assault. It didn't
22 stop after that.

23 Q. Which lasted how long again?

24 A. I don't know. Maybe two to three minutes.

25 Q. And then after -- after the firing of the gun you got

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1 up and you got in your car. What did you do?

2 A. I cranked up the car and I reversed out of the
3 driveway. And I started driving up Wilson Street towards
4 Beaufain Street.

5 Q. Did you see the officer responding immediately?

6 A. No, ma'am.

7 Q. Just -- because I -- middle-aged moment. I need to ask
8 you one question. Back when we were talking about what
9 happened in your statement you say I wasn't going to let him
10 hit -- hurt me, I wasn't going to let him hurt me. You said
11 that a couple of different times.

12 But you don't say you're scared. Can you describe to
13 the jury what "I wasn't going to let him hurt me" meant to
14 you at that time?

15 A. Well, he was definitely already hurting me; so I was
16 trying to avoid him from seriously hurting me, like killing
17 me. I didn't tell the detective I was scared because I
18 didn't -- it wasn't -- talking about emotional things - and
19 that is an emotional thing, fear, obviously - I don't really
20 deal with emotions very well with people I don't know or
21 people I don't trust. So I just tried to stick to the facts
22 of what I remembered at the time that happened and I tried
23 to stick to the facts alone.

24 Q. And you know in that statement some of those facts are
25 in -- they are not consistent with each other?

1 A. Or the evidence. Yes, ma'am, I understand that.

2 Q. And so when you said that you weren't going to let him
3 hurt you, you were pretty sure he was going to if you hadn't
4 stopped him?

5 A. Yes, ma'am.

6 Q. And you said that you were concerned that he was going
7 to kill you. But even if he hadn't been able to kill you
8 with his hands he could have done some very serious bodily
9 injury?

10 A. Yes, ma'am. He could have -- he could have fractured
11 my skull. He could have broken my face. He could have beat
12 me unconscious. I mean there are so many different things
13 that could have happened.

14 Q. Right. All right. So back to the car. I'm sorry.
15 But you are in the car and you are leaving, and you don't
16 see Officer Henderson. You never saw him?

17 A. I guess -- I don't know if I can say this or not. When
18 he came in the courtroom I had to ask you who he was. I
19 didn't even know who he was.

20 Q. Right. I understand. So you are going along, and
21 there was a witness that testified that his car and your car
22 sort of came to heads on Wilson Street and then he got out
23 of the way and let you go past and then he said all of a
24 sudden that car stopped and backed up. What was going
25 through your head?

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1 A. Well, honestly, I don't even remember the car being
2 in front of me. I remember something stopping me. I
3 remember -- when I was running it felt like -- like I was
4 just still running from Anthony even though it is obviously
5 not possible that he was still behind me; but I felt like
6 that is why I was running.

7 And then I guess an afterthought is I guess maybe the
8 car lights from the other car maybe snapped me out of that
9 and I -- I was -- after that I was thinking I need to go see
10 if he is okay, I need to go check on him. So I put the car
11 in reverse and I backed up and I went back to the -- to the
12 driveway.

13 Q. Right. And so when you say you felt like he was maybe
14 even going to chase you and that you were still in that
15 adrenaline shock of what would have just happened ---

16 A. Yes, ma'am.

17 Q. --- of being attacked by him?

18 A. Yes, ma'am.

19 Q. And when you came back -- Officer Henderson said that
20 when you came back he said, you know, get on the ground; and
21 you got on the ground?

22 A. Yes, ma'am.

23 Q. And then Officer Shehan came. He is the gentleman that
24 I called. And he said that you said I am cooperating, not
25 to put you -- you know, not to put you on your ---

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL

1 MR. OSBORNE: Objection, Your Honor.

2 THE COURT: Sir?

3 Q.. Why did you say that?

4 THE COURT: Yes, definitely.

5 MS. GAY: I am going to ask the question ---

6 THE COURT: Sustain the objection. Rephrase your
7 question, Ms. Gay.

8 Q. What did you say to him and why?

9 A. I remember them asking me something about if I was the
10 shooter. And I do remember saying, yes, I am the shooter.
11 It was not a spontaneous utterance. He asked me a question.
12 I recall -- I recall -- I don't -- can you show the side
13 image of the side apartment? I am trying to

14 Q. Okay. This one with the cars? Is this what you wanted
15 me to show you?

16 A. No, the other side. From the other angle of my car I
17 think.

18 Q. Oh, one of just your car?

19 A. Yes, ma'am, of me getting -- the angle where I would
20 have been getting out of the car. No, not just my car. I
21 think it points ---

22 Q. I don't think there is another one. I will look.

23 A. Okay.

24 Q.. Go ahead.

25 A. Well, when I got out of the car I recall him -- and it

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL

1 could just be my perception. I recall him being at the
2 beginning corner of where the alleyway starts at off of
3 Wilson Street.

4 And I didn't -- I couldn't see him completely. I saw a
5 figure.

6 Q. Is this the one you want me to show you?

7 A. No.

8 Q. See, I think ---

9 A. That's all right.

10 Q. --- that is the only other car picture. I have a map.
11 Would that help?

12 A. I think so seeing how now I know where Wilson Street
13 is.

14 Q. Okay. This is State's Exhibit 9. Okay. Why don't you
15 tell us what you are talking about.

16 A. I think he said it is between that side over there
17 where the trees ---

18 Q. Here, I will point. Right in this area (pointing)?

19 A. Yes, ma'am, that is kind of where ---

20 Q. Where the trees are?

21 A. A little bit further up. Yes, ma'am. No -- yeah,
22 like right there.

23 Q. Okay. Go ahead.

24 A. I didn't actually see who he was. I just remember
25 him -- or someone saying get on the ground. I immediately

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL

1 got down on the ground.

2 Q. And from that point did you make other statements to
3 other people who talked to you that night on the scene?

4 A. Yes, ma'am. While I was on the ground I remember
5 saying something about I am cooperating, it was in self-
6 defense. I made a few different statements. I think I said
7 something about don't hurt me, I'm not resisting; something
8 along those lines.

9 Q. Okay. And when you said don't hurt me would there have
10 been a reason that you said that?

11 A. Yes, ma'am. My back had already been hurting a lot,
12 and I didn't want to get injured further.

13 MS. GAY: One moment, Your Honor.

14 THE COURT: Certainly.

15 Q. So Brandon, when you said that you just came out of the
16 closet on Monday can you describe to the jury a little bit
17 more about what that means?

18 A. I was not publicly gay I guess up until just a couple
19 of days ago.

20 Q. What do you would mean by that? This is a public place
21 for sure, but ---

22 A. I mean I was not openly gay up until just a couple of
23 days ago. That is something I keep pretty private. I don't
24 really talk about it. It's pretty hard for me to talk about
25 it now.

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL

1 Q. Okay. Now I'm going to show you what's been marked as
2 Exhibit -- Defendant's Exhibit 5.

3 MR. OSBORNE: Objection, Your Honor.

4 THE COURT: What's -- I don't know what Exhibit 5 is.
5 What is the basis of your objection?

6 MR. OSBORNE: It is hearsay and it is not relevant.

7 THE COURT: If you can -- I don't know what it is. You
8 have got to identify it. Mark it as an exhibit for
9 identification only. Don't publish from it and don't ask
10 him any questions about anything. Ask him if he can
11 identify it and then we will see where we go from there.

12 MS. GAY: Okay.

13 Q. Just do you know -- can you identify Defendant Exhibit
14 5 for identification purposes only?

15 THE COURT: No, just -- thank you. Okay.

16 A. Yes, ma'am.

17 THE COURT: All right. Well, what is your question?

18 A. It is the ---

19 THE COURT: No, let's -- go ahead.

20 MS. GAY: You can't say ---

21 THE COURT: I'm sorry. Go ahead.

22 THE WITNESS: I'm sorry.

23 THE COURT: No, go ahead and finish your statement.

24 A. Oh, it is the letter I wrote Anthony's mother.

25 THE COURT: Okay. Next question.

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL

1 MS. GAY: I would like to publish it. Your Honor, he
2 has identified.

3 THE COURT: Sustained objection. What is the purpose?
4 I mean it's -- it's -- you -- we have got to introduce it
5 into evidence first so ---

6 MS. GAY: Can he just ---

7 THE COURT: --- before you publish it.

8 MS. GAY: May I ask questions? You can ask him any
9 question you want, not referencing specifically the letter.
10 You can ask him anything that you want --

11 Ladies and gentlemen, I am going to let you go to your
12 jury room. Let's take a break at this point. Do not begin
13 your deliberations. There are some matters of law that we
14 need to take up. This is probably a good point that we take
15 our recess. Thank you.

16 (WHEREUPON, jury exits courtroom 4/7/16, 11:51 p.m.)

17 THE COURT: All right. What is -- what is the -- I
18 don't know what -- so give me your question so I can rule on
19 it. I don't know what your purposes is, Ms. Gay.

20 MS. GAY: Well, my point ---

21 THE COURT: You can ask him questions, but you don't
22 need to publish the letter. Because the letter has -- the
23 problem -- I don't even know what the letter contains. What
24 is the question? What is the relevance of the letter?

25 MS. GAY: Well, he says to his mother that he is sorry

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL

1 and that he did it and that he was gay.

2 THE COURT: So that contradicts just what he just said.
3 And that is what you wanted to prove that he was -- that
4 he -- he has now made a misstatement, that is why you want
5 it to come in?

6 MS. GAY: No, ---

7 THE COURT: I will be happy for you to put it in that
8 that contradicts what he just said.

9 MS. GAY: I think he is confused about what being
10 public is. THE COURT: Ma'am, this is your client who is
11 not confused. You have prepared him to testify. I was a
12 lawyer for 21 years. He is not confused. He hasn't shown
13 confusion at all. In fact he has really been pretty
14 specific about things.

15 If you want to put the letter in to prove that he --
16 that is an inconsistent statement, I will agree with you.

17 MS. GAY: No, I am just not going to put the letter in
18 at all.

19 THE COURT: That is probably a good idea, Ms. Gay.
20 Thank you very much. All right. How much more examination
21 do you intend to give?

22 MS. GAY: I don't think much more.

23 THE COURT: Okay. Well, if you will ask the questions
24 and not give your testimony and not give your arguments we
25 will be through a lot quicker.

1 Solicitor, that is a hint. Okay. Thank you. We will
2 be at ease for about 10 or 15 minutes.

3 (WHEREUPON, break was had 4/7/16, 11:53 p.m.)

4 (WHEREUPON, resumed 4/7/16, 12:01 p.m.)

5 THE COURT: The State is ready?

6 MR. OSBORNE: Yes, ---

7 THE COURT: And you are ready, Ms. Gay?

8 MR. OSBORNE: Your Honor, in an abundance of caution, I
9 know you had said that he opened the door. And I agree with
10 you.

11 THE COURT: Well, I don't -- Solicitor, I appreciate
12 it. I am not one to let's pre-try things. You are a good
13 lawyer. You make the call. I know you are not going to ask
14 a question that you can't support an argument for. So I
15 trust you.

16 MR. OSBORNE: I think ---

17 THE COURT: But I -- and Ms. Gay will object if need
18 be, and I will deal with it.

19 MR. OSBORNE: Thank you, Your Honor.

20 THE COURT: But in so far as any subject that he has
21 testified to I don't -- again, I am just kind of like I was
22 about the letter; I don't -- I know there was a letter, but
23 I didn't know what was in it or anything about it. I know
24 he went to Myrtle Beach. I don't know anything other than
25 what I've heard people talking about today that they did in

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL

1 Myrtle Beach so.

2 MR. OSBORNE: It is just regarding misconduct. And I
3 think we get into 44(b) motive.

4 THE COURT: Well, -- well, he has put his good
5 character in by stating the good conduct. Because I was
6 wondering when he said that, I hope there is nothing in
7 there. Because he talked about I am a law -- basically a
8 law-abiding citizen, directly and indirectly by his comments
9 about how to deal with a firearm.

10 So I think that is fair game now because he opened that
11 door. Because as I understand the rule, once he talks about
12 his character and his law-abiding nature, to say I didn't do
13 this, then you are free to talk about some other things and
14 ask him questions. How far it goes, I don't know. We will
15 see. Okay.

16 MR. OSBORNE: Thank you, Your Honor.

17 THE COURT: Because at some point while it may be
18 probative the potential prejudice might outweigh the
19 probative value, so I will have to make a 403 analysis of
20 that. Okay.

21 MR. OSBORNE: Thank you, Your Honor.

22 MS. GAY: Well, with that, in light of the fact I have
23 never known any about that I would like an opportunity to
24 ask him about it. I mean myself.

25 THE COURT: Well, you will have -- you know what ---

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL

1 MS. GAY: I know. He has is already testifying ---

2 THE COURT: No, no, no. Ms. Gay, you know you and I
3 have been doing this ---

4 MS. GAY: I am ready.

5 THE COURT: --- since '94, '95 I think. When did you
6 start?

7 MS. GAY: '91.

8 THE COURT: All right. And I started working with you
9 in '94 ---

10 MS. GAY: Right.

11 THE COURT: --- in various capacities. You know that,
12 yeah, you get an opportunity after he has asked him all the
13 questions to give further examination of him. It is called
14 redirect. So that will be fine. You will have a chance.

15 It's got what -- in the civil side we have typically
16 lawyers want to take depositions of everybody in the world,
17 and I have had people say you will have an opportunity to
18 depose them. They will ask their questions and then you can
19 ask all the questions you want under oath.

20 So you will get a chance. Not a problem. I am not
21 going to deny you that. I am not going to say no redirect;
22 I promise you. Okay.

23 Let's bring in the jury.

24 (WHEREUPON, jury enters courtroom 4/7/16, 12:04 p.m.)

25 THE CLERK: All jurors are present, Your Honor.

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL

1 THE COURT: Thank you very much.

2 Thank you very much, ladies and gentlemen.

3 Thank you, Ms. Gay. You may continue your examination.

4 **RESUME DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL:**

5 Q. Brandon, when you and Anthony were drinking tequila
6 that night tell us a little bit about how much you think you
7 drank and the effect it had on you.

8 A. I recall the bottles being about 800 milliliters each.
9 I think I had three mixed drinks out of the bottle.

10 Q. Okay. And you were how much again; how much did you
11 weigh that night?

12 A. About 286.

13 Q. And how long, timeframe, was it from the time y'all
14 started drinking the tequila with the orange juice and
15 the -- and 2:30 in the morning?

16 A. Maybe about three hours, almost four hours.

17 Q. Okay. And when you had the interview with Detective
18 Burckhardt do you recall what time that was, how long after
19 all this was?

20 A. I recall how much time he said passed. I don't recall
21 personally.

22 Q. Okay. Was it with a couple of hours after 2:30 in the
23 morning?

24 A. No, I think it was later than that. I think it might
25 have been about 4:00 or 5:00 a.m.

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL

1 Q. And you saw yourself on the video on the recorded
2 statement; does -- what is your impression of your whether
3 you were intoxicated or not at that time?

4 A. On -- during my actually statement I don't think I was
5 intoxicated, no.

6 Q.. And I am going to show you a series of questions
7 that -- or pictures that are pictures of you. This is
8 State's 32. This is actually the whole body, but/ we will
9 focus on the top. And then I am going to show you State's
10 36. In State's 36 can you tell the jury what this is
11 (pointing)?

12 A. It could be dirt. It could be something else. I know
13 I had done laundry all that day, so it definitely wasn't
14 like I had on a dirty shirt.

15 Q. So earlier that day you would have put on a clean
16 shirt?

17 A. Yes, ma'am.

18 Q. And so this other one, 35, there's been reference to
19 some particles on the pants. What would that have been?

20 A. It could have been grass or dirt. Also those are not
21 cargo pants. Those are basketball gym shorts.

22 Q.. Okay. And this -- this is a picture of your face.
23 This is Number 33. Now you are looking at yourself.

24 A. Yes, ma'am.

25 Q. So can you tell the jury what your thoughts are when

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL

1 you see this picture?

2 MR. OSBORNE: Objection, Your Honor. Relevance.

3 THE COURT: I will sustain the objection to the
4 question. If you want to ask a specific question.

5 Q. Okay. This is you; this is how you looked at the time.
6 But could you tell the jury how your face felt on the date
7 of this happening?

8 A. It -- as -- from what I recall -- I recall having pain
9 in my face and like the back of my head. That's what I
10 recall.

11 Q. Okay. And that is my next set of questions. How come
12 you didn't tell anybody that?

13 A. Well, in light of what had just happened it seemed like
14 quite a minor thing at the time.

15 Q. When you say -- okay, it seemed minor why?

16 A. Because I was alive.

17 Q. Okay. And so ---

18 A. As well as compared to what had just happened.

19 Q. Okay. So nobody asked you ---

20 A. No, ma'am.

21 Q. --- are you hurt, has anything happened to you?

22 A. No, ma'am.

23 Q. You don't recall that?

24 A. No -- I recall no one asking me.

25 MS. GAY: One moment, Your Honor.

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 THE COURT: Certainly.

2 MS. GAY: I have no further questions at this time,
3 Your Honor.

4 THE COURT: You may cross-examine, Solicitor.

5 MR. OSBORNE: Thank you, Your Honor. Beg the court's
6 indulgence.

7 THE COURT: Yes, sir. Take your time.

8 (WHEREUPON, pause for Solicitor.)

9 MR. OSBORNE: Thank you, Your Honor.

10 THE COURT: Certainly.

11 **CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL:**

12 Q. Mr. Marshall, you had just met this victim Anthony;
13 didn't you?

14 A. No, sir, I had met him about three months before this
15 incident occurred.

16 Q. So you had known him for three months and you claim
17 here today that you loved the victim; is that correct?

18 A. Yes, ma'am.

19 Q. You had a sexual relationship with him; ---

20 A. Yes, sir.

21 Q. --- is that correct?

22 A. Yes, sir.

23 Q. You trusted him like no one else; ---

24 A. Yes, sir.

25 Q. --- is that correct? I'm sorry, is that correct?

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 A. Yes, sir.

2 Q. You basically got caught up in a whirlwind of love with
3 this victim; is that correct?

4 A. I don't have anything else to compare it to so.

5 Q. Because you have never felt that way about anyone else,
6 right?

7 A. No, sir.

8 Q. It was a torrid love affair?

9 A. I don't know what that means.

10 Q. It was intense?

11 A. I don't know if I would describe it as intense.

12 Q. It wasn't passionate, was it?

13 A. It was -- it was passionate.

14 Q. It was passionate. But you were keeping your options
15 open, weren't you; you were talking to other men while you
16 had this love for the victim; right?

17 A. No, sir, not sexually.

18 Q. Right. While you were sitting there drinking with this
19 man that you loved like no one else weren't you trying to
20 hook up with another man?

21 A. No.

22 Q. No?

23 MR. OSBORNE: Your Honor, may I approach?

24 THE COURT: You may.

25 Q. I am going to show you what has been marked as State's

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 Exhibit Number 72. Do you recognize that?

2 A. Yes, sir.

3 Q. So didn't you text an individual by the name of Devonte
4 Middleton - What's up brah, I think we should hang out one
5 day - at 12:30 at night?

6 A. Yes, sir.

7 Q. You weren't trying to hook up with him, were you?

8 A. No, sir.

9 Q. If things didn't work out with Anthony that night this
10 is a backup plan, right?

11 A. Definitely not.

12 Q. No. Okay. As you were drinking that night with Ashley
13 and Anthony weren't you sort of playing like you were a
14 little drunker that you were?

15 A. No, sir. I was actually very exhausted from being up
16 about 7:00 a.m. that morning doing laundry.

17 Q. Sleeping. Sleepy, right?

18 A. Yeah. I wasn't intoxicated.

19 Q. Not drunk?

20 A. No, sir.

21 Q. And Anthony had drank less than you, right?

22 A. Definitely not, no, sir.

23 Q. Okay. But that is what you told Detective Burckhardt,
24 isn't it, that Anthony drank less than you that night?

25 A. No, sir, I believe I said he had been drinking out of

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 the white tequila bottle and I had been drinking out of the
2 brown tequila bottle. And I believe he said they were
3 missing about the same amount of liquor.

4 Q. About the same amount.

5 A. And ---

6 Q. But it is on the video though, right?

7 A. Not what you just said, no, sir.

8 Q. All right, now I'm confused. Y'all talked about
9 drinking?

10 A. Yes, sir.

11 Q. You told Detective Burckhardt that y'all were drinking
12 that night?

13 A. Yes, sir.

14 Q. All right. Let's talk a little bit about this romantic
15 getaway to Myrtle Beach. It wasn't exactly a romantic
16 getaway was it?

17 A. It actually was, yes, sir.

18 Q. But that is not what you told everyone is it?

19 A. There was only one person other than me and Anthony
20 that even knew what was going on or why we were going to
21 Myrtle Beach.

22 Q. No, that is not what I meant. What I meant to say was
23 you and Anthony and you in particular had told people that
24 you were going to Myrtle Beach for some other purpose; isn't
25 that correct?

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 A. No, sir.

2 Q. Does PayPal sound familiar to you?

3 MS. GAY: Your Honor, I would object.

4 THE COURT: What is the basis of the objection?

5 MS. GAY: 402. We had this -- or 404. We had this
6 discussion before.

7 THE COURT: Overruled for the reasons -- and I will put
8 them for specifically on the record. But I have discussed
9 it beforehand. I have already indicated. But I will put it
10 specifically now. Overruled.

11 You may proceed.

12 Q. When I say the word PayPal does that help refresh your
13 memory at all as to why you were both going to Myrtle Beach?

14 A. No, sir. It refreshes my memory of what I have read in
15 my Rule 5 about a lie that was started.

16 Q. Rule 5. That is an interesting term. Rule 5 is
17 basically when the State gives all of the information in
18 regards to the investigation to the defense; isn't that
19 correct?

20 A. Yes, sir.

21 Q. And you got that in this case, correct?

22 A. Yes.

23 Q. And you read all of the Rule 5?

24 A. Yes, sir.

25 Q. And you read all of the statements?

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

- 1 A. Yes, sir.
- 2 Q. From the witnesses?
- 3 A. Yes, sir.
- 4 Q. You read all of the SLED reports?
- 5 A. Yes, sir.
- 6 Q. You had your chance to maybe examine some of these
- 7 photographs prior to coming in here, correct?
- 8 A. I believe so.
- 9 Q. Boxes of evidence, correct?
- 10 A. I don't -- I haven't gotten through any of the
- 11 evidence, no, sir.
- 12 Q. All right. So you said that you had gone through the
- 13 Rule 5. PayPal, that doesn't help refresh your memory at
- 14 all in regards to Myrtle Beach?
- 15 A. Not in actual fact, no, sir.
- 16 Q. Okay. So you never told anyone or Anthony never
- 17 mentioned anything about going into Myrtle Beach in
- 18 reference to PayPal, something to do in regards to PalPal?
- 19 A. I cannot attest to anything that Anthony might have
- 20 said to anything about PalPal or why someone would need to
- 21 go out of town to do anything that deals with a internet
- 22 business or whatever PayPal is. I think it is something on
- 23 the internet, right?
- 24 Q. Or scam?
- 25 A. Or what?

1 Q. Or scam?

2 A. Or scam -- oh, well, if something is done over the
3 internet I didn't -- I wouldn't think someone would need to
4 go out of town to do something like that. So I -- not that
5 I know of. Whatever he might have told someone, I cannot
6 attest to. I did not mention anything about that.

7 Q. All right. Because you didn't know anybody in Myrtle
8 Beach that might help with that, did you?

9 A. No, sir.

10 Q. All right. Let's get into the night of the incident.
11 You -- I mean let's put it out there. You didn't go over to
12 Anthony's house trying to kill him that night, did you?

13 A. Definitely not.

14 Q. That wasn't your intention when you went over there?

15 A. No, sir.

16 Q. When you brought the liquor, right?

17 A. Oh, no, sir.

18 Q. You just went over there to drink and hang out -- to
19 drink and hang out, right?

20 A. Well, it was really more to -- I guess we were finding
21 excuses to hang out with each other pretty much constantly.
22 But that was supposed to be to celebrate, you know,
23 starting -- or getting a new job.

24 Q. Okay. And y'all were exchanging text messages back and
25 forth; is that correct?

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 A. Yes, sir.

2 Q. And I'm ---

3 MR. OSBORNE: Your Honor, may I approach?

4 THE COURT: You may.

5 Q. I am showing you State's Exhibit Number 60.

6 A. What is that?

7 Q. Do you recognize this cell phone here?

8 A. From the way it is positioned, no, sir.

9 Q. Okay. Just go ahead and take a look at it and tell me
10 if you recognize this cell phone here. That is your cell
11 phone, isn't it?

12 A. I am not sure yet. It appears to be my cell phone.

13 Q. Okay. You can put it back in the bag. Thanks.

14 (WHEREUPON, witness complied.)

15 Q. All right. When you got there you realized you wanted
16 a drink with the orange juice and they didn't have any
17 orange juice; is that right?

18 A. Yes, sir.

19 Q. And at a certain point you go to the store, you get
20 some orange juice?

21 A. Yes, sir.

22 Q. Then you bring it back?

23 A. Yes, sir.

24 Q. And you made a pretty interesting comment in regards to
25 Detective Krasowski. I guess he didn't do a very thorough

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 job in getting the video for you; is that correct?

2 A. Not for me, ---

3 Q. Okay.

4 A. --- but for his job, no, sir, he did not.

5 Q. He didn't do a good job?

6 A. It wasn't thorough. I'm not saying he didn't do a good
7 job.

8 Q. I gotcha. All right. But when you came back in you
9 had the mixer. When you came back in the apartment you
10 brought more than just the orange juice back in the
11 apartment, didn't you?

12 A. Yes, sir.

13 Q. You brought this gun, didn't you?

14 A. Oh, yes, sir.

15 Q. I'm showing you what's been marked as State's Exhibit

16 15. You brought this in the apartment, didn't you?

17 A. Yes, sir.

18 Q. And you always carry it like this, right?

19 A. No, ma'am.

20 Q. Oh, you carry it like this?

21 A. No, sir, I don't have my hand positioned on the trigger
22 like that or near the trigger like that either. I ---

23 Q. Oh, you have it like that (motioning)?

24 A. My palm ---

25 Q. Right.

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 A. --- is usually on the other side of the

2 Q. Okay. But you carry a gun around with you like that
3 because you don't want to be arrested because you don't have
4 a concealed weapons permit?

5 A. Yes, sir.

6 Q. Okay. All right. So you get inside of the
7 apartment -- well, let me back up one second. You told Ms.
8 Gay, you told Detective Burckhardt you brought this inside
9 the house, the gun, because you saw Da-wan, this other
10 individual not related to this case, get into an argument,
11 correct, and beat someone?

12 A. I had also been threatened by him personally. It
13 wasn't just what I had witnesses him do to someone else.
14 But because of a direct threat to me.

15 Q. Right. You didn't bring the gun in the first time you
16 went in the apartment, did you?

17 A. I don't -- I am not sure, to be honest with you.

18 Q. Okay. All right. Now you are sitting around drinking,
19 and y'all are having a good time?

20 A. Yes, sir.

21 Q. And then Ashley says, well, it is time to go to bat --
22 go to bed, and she goes upstairs; is that correct?

23 A. Honestly, I don't remember her ever making that
24 comment.

25 Q. You don't remember her telling Anthony it is time to go

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 to bed, you have got a job in the morning?

2 A. From my memory, no.

3 Q. Okay. When Ashley is up -- do you even remember Ashley
4 going up stairs?

5 A. If she -- like I said earlier, if she went upstairs it
6 must have been while I was in the kitchen.

7 Q. Okay. But either way, you and the victim are still
8 drinking?

9 A. Yes, sir.

10 Q. You are wearing this white T-shirt ---

11 A. Yes, sir.

12 Q. --- that we have seen photographs of? Anthony is not
13 wearing a shirt?

14 A. No, sir. He was when I originally got there. After we
15 started drinking he removed his shirt.

16 Q. But at some point he took it off?

17 A. Yes, sir.

18 Q. You don't remember a lot in regards to whether Ashley
19 went upstairs and some other little details; but you did say
20 something that was pretty interesting, you remember
21 distinctively - because I heard you say it three times -
22 that you washed that shirt that morning?

23 A. No, I don't think I said I washed that shirt that
24 morning. I said I did laundry that morning.

25 Q. Oh, okay. So ---

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 A. That -- all that day actually.

2 Q. So this shirt was never washed that morning then; is
3 that correct?

4 A. It is possible that it would have been.

5 Q. It is possible that it would have been?

6 A. Uh-huh.

7 Q. In fact you had did so much laundry that morning that
8 it ended up causing you to be late for a cookout I think?

9 A. Yes, sir.

10 Q. All right. So you were drinking with Anthony and at a
11 certain point -- well, let me just ask you. Anthony wasn't
12 intoxicated that night, was he?

13 A. All I can give you is my opinion. I wouldn't describe
14 his behavior as being intoxicated. I would describe it as
15 rage, emotional rage. It could have been because he was
16 intoxicated, but from my opinion he wasn't intoxicated. I
17 think he was just angry.

18 Q. He was not intoxicated?

19 A. From my opinion.

20 Q. Okay. So that's good. Anthony was not intoxicated
21 that night?

22 A. From my opinion, yes, sir.

23 Q. Right. Well, you were there. All right. So now at a
24 certain point there is an argument between Ashley and
25 Anthony, correct?

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 A. Yes, sir.

2 Q. Now you said that this argument then at some point
3 turns physical, correct?

4 A. Yes, sir.

5 Q. And you describe Ashley as being on the ground with
6 Anthony over her?

7 A. At one point, yes, sir.

8 Q. At one point. On his knees over her?

9 A. I know he was down over her. I don't know if he was on
10 his knees or if he was like squatting or -- I don't know the
11 exact position he was in.

12 Q. Had his hand around her neck, ---

13 A. Yes, sir.

14 Q. --- correct? Fist in the air?

15 A. At first it was both hands and then there was fist in
16 the air, yes, sir.

17 Q. Both hands around her neck?

18 A. Yes, sir.

19 Q. Fist in the air?

20 A. Yes, sir.

21 Q. And Ashley makes comments - and correct me if I'm
22 wrong - don't hit me again, get your hands off of me, please
23 don't hurt me?

24 A. I don't remember her saying don't hit me again. I
25 remember her saying you are always putting your hands on me,

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 get off of me; something to that effect.

2 Q. You are always putting your hands on me?

3 A. Something to that effect, yes, sir.

4 Q. All right. So when you swoop in and save the day he is
5 on top of her; neck, fist; ---

6 A. Yes, sir.

7 Q. --- right? So when you come in you have got the gun in
8 your hand; you have already put the clip in; correct?

9 A. Yes, sir.

10 Q. You can't remember whether you had racked it at that
11 point, right?

12 A. I am pretty sure I would have been -- I am pretty sure
13 I would have or else it would have been pointless to put the
14 clip in the gun.

15 Q. Pointless if you plan on shooting on someone; because
16 guns don't work unless you put the bullet in the chamber,
17 right?

18 A. Yes, sir.

19 Q. So when you decided to go in there and confront the man
20 that you love you made sure that that gun was going to be
21 ready to operate, correct?

22 A. Yes, sir, but not to what you are I guess inferring.

23 Q. I didn't put the gun in your hands. You put the gun in
24 your hand and then you racked the bullet; the gun is ready
25 to go; you go into the living room; right?

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 A. I go to the doorway of the living room.

2 Q. And then you yell at him to stop?

3 A. No, I don't think I yelled. I said get off of her, we
4 need to leave.

5 Q. Okay. And then he gets off?

6 A. Yes, sir.

7 Q. Because you came in and saved the day?

8 A. If that is how you want to look at it, I guess.

9 Q. Okay. So Anthony then gets up and then he walks out,
10 right?

11 A. Yes, sir.

12 Q. And you never hear Ashley say y'all get out of the
13 house; Brandon leave; you never hear that?

14 A. I don't recall her ever telling anyone to leave. She
15 was too worried about -- she was too busy getting choked. I
16 don't remember her every saying you need to leave.

17 Q. And you never remember Anthony brushing by you saying
18 I'm going to my mom's house?

19 A. I remembered him pushing by me. I don't remember him
20 saying anything. He just went outside.

21 Q. And then you went to Ashley and said are you okay?

22 A. Yeah, I didn't -- I actually didn't walk up to her. I
23 stayed where I was by the kitchen table at that point.

24 Q. But at this point you had your glasses on, right?

25 A. Yes, sir.

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 Q. So you could see her, right?

2 A. Yes, sir, it was also a lot of light in her kitchen.

3 Q. Well lit. Where was she hurt; where was her injury?

4 A. I don't remember like doing any -- like I don't
5 remember looking to see if she was hurt. I just asked her
6 if she was hurt. I was going to go ahead and leave.

7 Q. You didn't see any injuries, did you?

8 A. I don't recall at this moment.

9 Q. All right. Now in your mind this must have been kind
10 of relieving I guess. Because you said that every time you
11 go over there they are always arguing. Well, now y'all have
12 left together; right?

13 A. No, sir, we were not leaving together. I was going to
14 go home. I do not know where he was going to go.

15 Q. So you didn't want Anthony to go home with you?

16 A. That was not planned, no, sir..

17 Q. I understand it wasn't planned, but it wouldn't -- it
18 wouldn't have been too disappointing for you to have Anthony
19 say, hey, let's go hang out at your house?

20 A. After what I had just seen, actually, I don't think I
21 would have made the suggestion of us going to my house.

22 Q. But you were trying to calm him down and comfort him?

23 A. Yes, sir.

24 Q. Wouldn't it have been best to comfort him at your
25 house?

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 A. Usually we are at my house for a different reason.

2 Q. And you didn't want that that night, did you?

3 A. That wasn't what was supposed to be going on.

4 Q. Right.

5 A. He was supposed to be starting -- starting work the
6 next day.

7 Q. All right. So you go to the back yard and you start to
8 get into your car and then you realize you forgot something,
9 right?

10 A. Yes, sir.

11 Q. You go back to the backdoor, knock on the door; right?

12 A. Yes, sir.

13 Q. Ask for your tequila?

14 A. No, I actually asked her for my gun holster. She
15 brought me my gun holster and the tequila. But I didn't ask
16 her for it.

17 Q. Right, you didn't care about the tequila?

18 A. No, sir.

19 Q. Okay. So she said I am going to leave it on the front
20 porch, right?

21 A. Yes, sir.

22 Q. Just get it and go, Brandon?

23 A. I don't recall her saying that. Actually, I don't
24 recall her saying anything after she said she was going to
25 put it on the front porch.

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 Q. So you went to the front porch, gun still in your hand;
2 correct (motioning)?

3 A. Not like that. But, yes, sir.

4 Q. Down like this (motioning)?

5 A. Yes, sir.

6 Q. Or -- like this (motioning)?

7 A. Yes, sir.

8 Q. Okay. So ---

9 A. Down by ---

10 Q. --- then you ---

11 A. --- your side.

12 Q. So then you go and you pick up the bag that has got the
13 holster in the bag, correct?

14 A. Yes, sir.

15 Q. Then you walk to the trunk of your car or your car and
16 that's -- and you are putting the bag up, correct?

17 A. Yes, sir.

18 Q. Gun is still in your hand?

19 A. Yes, sir.

20 Q. And then you see Anthony walking toward the backdoor?

21 A. Yes, sir.

22 Q. Uncontrollable rage?

23 A. At that time I couldn't tell he was in an
24 uncontrollable rage. I just saw him charging back towards
25 the backdoor.

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 Q. Charging back toward the backdoor.

2 A. I say charge. He was moving in -- at a pretty fast
3 pace.

4 Q. And that is your holster, State's Exhibit 10?

5 A. I haven't seen it in two years. I didn't have the gun
6 that long. It appears to be mine I guess.

7 Q. Okay. So you go to the backdoor. Anthony is at the
8 backdoor. And you try to tell him -- you are trying to
9 comfort him; you are trying to calm him down; right?

10 A. Yes, sir.

11 Q. Because he is in an uncontrollable rage?

12 A. Kicking the door and punching on the door. It appeared
13 he was trying to kick it open.

14 Q. Right.

15 MR. OSBORNE: Beg the court's indulgence.

16 THE COURT: Certainly.

17 Q. All right. I am showing what has been marked as
18 State's Exhibit Number 19. Now I know that this is 9-A.
19 And I will zoom in for you. And you said earlier that 9-B
20 is behind that fence, correct?

21 A. Further to the left, yes, sir.

22 Q. Right. But the -- I mean you can kind of see it up
23 there with the top. The way 9-A is positioned and the way it
24 is set up with the screen door is similar to 9-B, right?

25 A. Yes, sir, except I guess it opens on the opposite side.

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 Q. Okay. Now you said he is kicking at the door, banging
2 at the door, trying to get in; right?

3 A. Yes, sir.

4 Q. Was he kicking at the door like this, (motioning), ---

5 A. I don't remember ---

6 Q. --- on the bottom?

7 A. --- exactly how he was doing it. I recall seeing his
8 legs moving and how loud it sounded. It didn't sound like
9 he was just knocking or anything like that.

10 Q. Right. So you don't recall exactly how he was trying
11 to bang in this door and force in this door, do you?

12 A. I remember him kicking, and I remember how loud it was.

13 Q. But didn't you tell Ms. Gay on direct that you know
14 what it looks like when someone is trying to kick in the
15 door ---

16 A. That's ---

17 Q. --- and he was trying to kick in the door?

18 A. That's what it looked like.

19 Q. Okay, well, then what did it look like?

20 A. It looked like he was trying to kick in the door.

21 Q. In what way; was he kicking at it like this at the
22 bottom (motioning) and banging, or was he kicking at it
23 (motioning)?

24 A. He was really kicking at the door.

25 Q. Okay. Was the screen door open or closed?

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

- 1 A. It was open.
- 2 Q. The screen door was open and he was kicking at it
- 3 forcefully like right around where the doorknob is?
- 4 A. Not quite that high I don't think. It was ---
- 5 Q. Lower than that, right?
- 6 A. A little bit lower than that.
- 7 Q. But on one leg, right?
- 8 A. I think so.
- 9 Q. Was he standing on his left leg or his right leg when
- 10 he was doing it?
- 11 A. I believe he was kicking with his right leg.
- 12 Q. His right leg. And this victim has an MCL and ACL
- 13 surgery to his right leg, didn't he?
- 14 A. Yes, sir.
- 15 Q. In fact he had to walk like this (motioning), didn't
- 16 he?
- 17 A. Definitely not.
- 18 Q. No? You were talking to him at the backdoor; you are
- 19 trying to calm him down?
- 20 A. Yes, sir.
- 21 Q. And then he pushes you?
- 22 A. Yes, sir.
- 23 Q. Do you fall down the first -- with the first push?
- 24 A. Not immediately. He like rushed at me and shoved me
- 25 again. And that is when I fell down.

1 Q. Okay. So the first time he pushes you you just stagger
2 back a little bit, ---

3 A. Yes, sir.

4 Q. --- right? And you tell him to calm down, ---

5 A. No, he was ---

6 Q. --- just to settle down?

7 A. He was actually still rushing me and ---

8 Q. Oh, he was coming after you right then, huh?

9 A. Yes, sir.

10 Q. What did you do to anger him so badly at that backdoor?

11 A. I didn't do anything to anger him.

12 Q. Exactly. You didn't do anything. You are a person
13 that he loves and trust I assume the same way you love and
14 trust him, right? Or is this a one-way street?

15 A. We talked about that a little bit while we were in
16 Myrtle Beach. He had been going through some stuff with
17 Ashley at the time. And he didn't reference that -- that he
18 had feelings towards me. I guess he wasn't good at talking
19 about it like that. He didn't say love. I don't know about
20 trust. We didn't speak about that. So I can't comment on
21 that.

22 Q. So he didn't feel the same way about you?

23 A. In other ways, yeah, he did, actually.

24 Q. All right. So he pushes you the first time. You
25 stagger. And then he charges you. And then he pushes you

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 again. Is that when you fell down to the ground ---

2 A. Yes, sir.

3 Q. --- after the second push? Is that when the glasses
4 fell off of your head after the second push?

5 A. I believe so.

6 Q. All right.

7 MR. OSBORNE: Beg the court's indulgence.

8 THE COURT: Yes, sir.

9 Q. All right. When you fell down the first time where do
10 you fall; do you remember?

11 A. I ---

12 Q. I am showing you State's Exhibit 18. I'm sorry.

13 A. I don't remember exactly. But by my estimate since
14 after the third push I was into the tree it had to have been
15 I guess maybe about six feet in front of where I hit the
16 tree.

17 Q. All right. Slow down just a little bit for me, Mr.
18 Marshall. I am going to take this pointer if you don't
19 mind. When you fell down the first time can you point on
20 there - and that is State's Exhibit Number 18 - where you
21 fell down?

22 A. I can only give you an estimate, because it was dark.

23 Q. We will work with that.

24 A. I believe it might have been in this area right here
25 (pointing).

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 Q. That's right. By the trashcans?

2 A. Yes, sir.

3 Q. Okay. And so that was with the first or second push?

4 A. That was when it -- that was the second push when I
5 actually fell.

6 Q. And your glasses fell off with the second push?

7 A. I believe that is when my glasses fell off.

8 Q. By the trashcans?

9 A. To the right side of the trashcans, yes, sir.

10 Q. Okay. Did you get back up?

11 A. Yes, sir.

12 Q. Okay. You got back up. And is that when you went back
13 towards him and then grabbed a hold of his wrists and you
14 wouldn't let go?

15 A. No, what had happened is I started looking around for
16 my glasses I recall. I do recall grabbing his hand again.
17 I don't remember exactly when. But I do recall grabbing his
18 hand again.

19 Q. You wouldn't let go; that is what you told Detective
20 Burckhardt; right?

21 A. I believe that I did tell him that.

22 Q. And then he shoved you down a third time ---

23 A. Uh, yes.

24 Q. --- and he said something like get the "f" off me?

25 A. I don't recall that. But he did shove me again.

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 Q. But you did tell Detective Burckhardt that when he
2 shoved you the third time you said get the "f" off -- he
3 said get the "f" off me?

4 A. I don't recall that now. That's what I'm saying.

5 Q. Okay. All right.

6 MR. OSBORNE: Your Honor, may I approach?

7 THE COURT: You may.

8 Q. I am going to show you what has been marked as State's
9 Exhibit Number 73. I have got a feeling we are going to
10 have to reference this. So just take a look at that for me.
11 That is a transcript of the interview that you had with
12 Detective Burckhardt.

13 I want you to turn to Page 21 and the last paragraph.
14 If anything I say is not correct, stop me: And he didn't
15 stop. He shoved me on the ground. I got back up. The
16 third time, I grabbed him by the wrist and I wouldn't let
17 go. Then he turns around and he is like get the fuck off
18 me. And he shoved me on the ground again -- or shoved me on
19 the ground.

20 Sorry, not again.

21 When I got back up I am like stop. And he was -- and
22 he still was walking towards me. And I am like stop, don't
23 make me do this. And I shot him either two or three times
24 the first time.

25 Now your testimony here today is that when Anthony

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 pushed you you -- from the moment you got up, right there by
2 the trashcan, he pushed you, you fell back against the tree;
3 is that correct?

4 A. Yes, sir.

5 Q. And when Ms. Gay asked you, well, what is the distance
6 from the body, Anthony's body, to the tree, you said 14
7 feet.

8 A. No, I did not say that.

9 Q. Okay.

10 A. I said about six or seven feet.

11 Q. Right, once she told you it wasn't that far. Then you
12 fell against the back of the -- your back supposedly or
13 allegedly hits the tree; is that right?

14 A. Yes, sir.

15 Q. Okay. And your head even hits the tree?

16 A. Yes, sir, when I fell.

17 Q. And then you fall down, right? Right?

18 A. Yes, sir.

19 Q. And you are on your back?

20 A. Yes, sir.

21 Q. Pause the story for a second. Let's talk about this
22 back injury. And you said that none of the officers asked
23 you about a back injury. They never asked about any injury,
24 did they?

25 A. No, sir.

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 Q. You never told them either, did you?

2 A. No, sir.

3 Q. You never said when you were being arrested: Don't put
4 me on the ground, my back hurts; I have got a back injury?

5 A. I did say something to that effect, but I didn't say I
6 had a back injury.

7 Q. Did the word back ever escape your mouth?

8 A. Yes, sir.

9 Q. Oh, you did?

10 A. Yes, sir.

11 Q. You told them you had a back injury?

12 A. No, I didn't say back injury; but I did say something
13 about my back.

14 Q. Okay. All right. So now we are at the tree with
15 today's story. Anthony rushes you while you are at the tree
16 and you are on the ground, correct?

17 A. Huh?

18 Q. You are on the ground and Anthony rushes at you while
19 you are on the ground, right?

20 A. Yes, sir, it seemed like he was on top of me
21 immediately after I fell.

22 Q. Immediately after you fell he is on top of you; is he
23 on top of you like this (motioning)?

24 A. I don't know.

25 Q. Was he laying on top of you?

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 A. No, he was not laying on top of me.

2 Q. Not laying on top of you. Well, was he on top of you
3 like this then (motioning), like a catcher?

4 A. That is possible. I don't know exactly what position
5 he was in.

6 Q. Even with that ACL and MCL, huh?

7 A. If that's what you're referring to his injuries as,
8 yes, sir.

9 Q. Okay. And now he is on top of you either like a
10 catcher or MMA style, and he is just wailing on you, right?

11 A. No, sir, I never said he was wailing on me.

12 Q. Oh, he is not hitting you; he is on top of you; is he
13 trying to calm you down, ---

14 A. No ---

15 Q. --- don't shoot me, don't shoot me; is that what he is
16 saying?

17 A. No, he didn't -- he wasn't saying anything. He was
18 trying to choke me.

19 Q. Oh, so we are choking you now?

20 A. It felt like he had his hands around my neck.

21 Q. Okay. So he is on top of you choking you again?

22 A. Yes, sir.

23 Q. Okay. And then you roll over on your stomach trying to
24 crawl away from him, right?

25 A. I didn't say anything about crawling. But was trying

1 to roll out of his grip.

2 Q. And with him on top of you you were able to roll over?

3 A. Yes, sir.

4 Q. Okay. Now you are on your stomach; is that correct?

5 A. I don't know if I was all the way on my stomach, but I
6 know I was able to roll over. I don't know if I even rolled
7 over completely.

8 Q. Were you trying to roll -- well, let's just start from
9 the beginning. Your feet I assume, if we are looking at
10 State's Exhibit 18, your feet would be three-dimensionally
11 towards us; correct, with your head being at the base of the
12 tree?

13 A. Yeah, I believe when I fell I -- I could have possibly
14 tripped over one of the roots and maybe that is how I fell
15 with my back directly onto the tree.

16 Q. Okay. But either way, when you rolled over did you
17 roll towards the -- Anthony's apartment, or did you roll
18 away from it?

19 A. If I was positioned like on my back (motioning) I
20 rolled to my left.

21 Q. To your left. So that would be away from Anthony's
22 apartment?

23 A. Um, yes, sir.

24 Q. Okay. Still got your gun in your hand?

25 A. Yes, sir.

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 Q. So you are like this (motioning), and then you rolled
2 over to your left; right?

3 A. Yes, sir.

4 Q. Still got the gun in your hand, right?

5 A. Yes, sir.

6 Q. And then you come back in a backhanded motion, right
7 (motioning)?

8 A. That's what I recall, yes, sir.

9 Q. With Anthony still on top of you?

10 A. Yes, sir.

11 Q. And then you start firing, right?

12 A. That's what I recall, yes, sir.

13 Q. (Pounding on desk.) About that fast?

14 A. I don't know.

15 Q. But it was fast?

16 A. I -- I -- I don't know.

17 Q. And he had to be right on top of you at this point,
18 right; I mean that gun had to be right there on him; right?

19 A. I don't know if he was directly on me when I started
20 firing, but I know it felt like it was pretty fast.

21 Q. Because he was able to hop up like a grasshopper with
22 that bad ACL once he saw the gun, right?

23 A. I don't know what you are referring to as bad, but he
24 seemed normal. But I do remember scars from where he had
25 surgery.

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 Q. Okay. So either he was on top of you and you started
2 firing or he was off of you and started firing; it is one of
3 the two, right?

4 A. Yes, sir.

5 Q. Okay. And then you fired the first two or three shots
6 and then you told him to stop; is that right?

7 A. I remember saying that -- that's not what I recall now.

8 Q. Okay. So isn't it -- and when you say saying that, you
9 are talking about your testi- -- your statement to Detective
10 Burckhardt on the night of the incident?

11 A. Yes, sir.

12 Q. Okay. On the night of the incident on five different
13 occasions during that 35-minute interview didn't you tell
14 Detective Burckhardt I fired the first two shots, told him
15 to stop, pause, then fired a volley of at least four or five
16 other shots?.

17 A. I don't think it was five times that I said that.

18 Q. Okay. Go ahead and refer to State's Exhibit ---

19 A. It is possible I guess.

20 Q. Okay. Go ahead and refer to State's Exhibit 73. Turn
21 to Page Number 8. Middle of the page.

22 Brandon Marshall: After three -- I'm sorry, actually
23 after four warnings that is when I started shooting. I shot
24 maybe two times. He fell on the ground and then he started
25 to get back up again. I started shooting again. I am like

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 just stop.

2 Turn to Page 11. At the very end.

3 Brandon Marshall: He wouldn't stop. He started
4 walking toward me more and more aggressively. And that's
5 when I started shooting. I believe it was two or three
6 shots. And then he was on the ground. He started to get
7 back up again, and I said stop. He continued to get up and
8 so I just kept shooting.

9 At any time any of this is not right, correct me.

10 Turn to Page 21. Second to the last line. Line Number
11 24:

12 I shot him either two or three times the first time and
13 he started to get back up again. And I am like stop. He
14 was still getting up. So I just kept shooting until it
15 stopped.

16 Turn to Page 23. Line 8.

17 Detective Burckhardt: And how many times do you
18 think -- do you think you fired?

19 Brandon Marshall: At first it was either two or three
20 times.

21 Detective Burckhardt: Two or three?

22 Brandon Marshall: And the second time when he was on
23 the ground he started to get back up and I said stop. He
24 just wouldn't stop. He started getting back up and walking
25 towards me. I just kept shooting.

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 And lastly, Page 36. Next to the last paragraph, Line
2 18.

3 Brandon Marshall: The second time and possibly the
4 third time he was still coming toward me when I shot him.
5 But I don't remember exactly where I shot him. I saw the
6 smoke. Then after either the second or third shot he
7 started to get back up and started walking toward me again.
8 At that time I heard him wheezing. I heard what felt --
9 what sounded to me like a punctured lung or something like
10 that.

11 So after those first two shots you heard the victim and
12 it sounded to you like he had a punctured lung, having a
13 hard time breathing; is that correct?

14 A. I don't recall that ---

15 Q. But you kept ---

16 A. --- now.

17 Q. --- shooting him anyways?

18 A. I don't recall it.

19 Q. I didn't hear you say during direct. At what point did
20 you say you messed with the wrong one this time,
21 motherfucker; or you messed with the wrong one,
22 motherfucker?

23 A. That never actually occurred.

24 Q. You were in the backyard with the victim, right?

25 A. Yes, sir.

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 Q. The victim has got a punctured lung. He didn't say it,
2 did he?

3 A. I don't believe anyone said that.

4 Q. You never heard it at all, did you?

5 A. No, sir.

6 Q. All right. So this person that you love and trust like
7 no other is on the ground dying, and then you run to your
8 car and then you leave the area; right?

9 A. Yes, sir.

10 Q. And you never saw Officer Henderson shine his
11 flashlight on you, drawdown on you; anything like that, did
12 you?

13 A. No, sir.

14 Q. You said that Anthony was the one that was being
15 aggressive, not you?

16 A. Yes, sir.

17 Q. Bringing a gun and then putting your hands on an
18 individual, that is not aggressive; is it?

19 A. Well, I guess it depends on the manner of which you --
20 you make physical contact with -- with someone.

21 Q. At the time you weighed 290 pounds, didn't you?

22 A. About that much.

23 Q. Okay. And you are right-handed, right?

24 A. Yes.

25 Q. You fired a gun with your right hand?

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 A. I believe so.

2 Q. Okay. And you said that you have read through all of
3 the Rule 5, all the discovery in this case, all the witness
4 statements and everything else. But you also read up on the
5 law a little bit, haven't you?

6 A. Yes, sir.

7 Q. And you didn't have the advantage of having the Rule 5
8 on the night that you were interviewed with Detective
9 Burckhardt; you didn't know what witness were saying, right?

10 A. No, sir.

11 Q. And you also didn't know what the law was that night,
12 did you?

13 A. No, sir.

14 Q. But you know what it is now, don't you?

15 A. I believe I have an understanding of ---

16 Q. Well, in fact you even wrote me a letter telling me
17 what statutes and what subsections and what paragraphs I
18 should refer to so I can educate myself on the law; right?

19 A. Yes, sir.

20 Q. You weren't injured that night -- you weren't injured
21 that night at all, were you?

22 A. Actually, yes, sir, I was.

23 Q. Okay. And you said you were hurt that night too,
24 right?

25 A. Yes, sir.

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 Q. Okay. I am going to start showing you some pictures.
2 You have the pointer up there. Just point on here where the
3 injury is and where it hurt, okay. State's Exhibit Number
4 36. Where did it hurt?

5 A. I do recall that after I got to the jail I recall
6 feeling pain in my face, my back, and the back of my head.

7 Q. Okay. We will get to that. State's Exhibit 34, did
8 your hands hurt?

9 A. Not from the incident; but, yes, sir, they did.

10 Q. Oh, well, point to the jury; show them where it hurt.

11 A. My hands were like numb.

12 Q. Oh, from the handcuffs?

13 A. Yes, sir.

14 Q. And they moved them up front for you when you asked?

15 A. Yes, sir.

16 Q. State's Exhibit 35. Show us where it hurt.

17 A. The back of my head.

18 Q. Can you go ahead and show the jury. You have the
19 pointer.

20 A. Sure. To the back of my head (pointing). The rear
21 section of my head and my back (pointing).

22 Q. Okay. Anything hurting you down there (pointing)?

23 A. I don't believe so.

24 Q. All right. Let's go to 33. Now this is going to be
25 important here, Mr. Marshall. We really need you to point

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 out to this jury and show them where this serious injury was
2 and where it hurt.

3 A. Well, the blood had to have come from somewhere. I
4 don't recall where. I recall feeling pain in my face.

5 Q. Show us. Show us where the pain in your face was.

6 A. Like around my lip. My face in general. I don't
7 remember exactly where.

8 Q. It could have been anywhere?

9 A. It was my face.

10 Q. You talked about your lip. Is -- do you believe that
11 that is where the blood may have come from; maybe you had a
12 busted lip or something like that?

13 A. That is a possibility.

14 Q. Is that the only possibility as far as where the blood
15 came from? It is your body.

16 A. It could have come from somewhere else possibly. But I
17 was handcuffed so.

18 Q. Yeah.

19 A. So I guess the possibilities are limited of where it
20 could have come from.

21 Q. It could be a busted lip, huh?

22 A. I'm not sure.

23 Q. It's a bad one.

24 MR. OSBORNE: Beg the court's indulgence.

25 THE COURT: Certainly.

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL

1 Q. Mr. Marshall, do you recall during a hearing that we
2 had I asked you a question and I said when did your glasses
3 fall off; and do you recall telling me that your glasses
4 fell off when you were pushed down the first time?

5 A. Yes, sir.

6 Q. But today it is the second time?

7 A. No, sir, I believe when I fell to the ground the first
8 time was on the second push. I didn't hit the ground on the
9 first push.

10 Q. And do you recall telling me that you flew against the
11 tree?

12 A. I do believe I said that.

13 Q. Anthony never threatened when he left that he was going
14 to come back and hurt Ashley, did he?

15 A. He never said anything when he left.

16 Q. Anthony never had a weapon, did he?

17 A. Not that I know of.

18 Q. The only person that had a weapon that night was you,
19 correct?

20 A. Yes, sir.

21 Q. And you carried that weapon with you from the moment
22 you left that apartment until you ended up taking Anthony's
23 life; isn't that true?

24 A. (No response.)

25 MR. OSBORNE: No further questions.

REDIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL

1 THE COURT: Redirect.

2 MS. GAY: One moment, Your Honor.

3 **REDIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL:**

4 Q. Mr. Marshall, we have gone over many things. And I
5 really just want to ask you is there anything else you want
6 to share with the jury about the night ---

7 MR. OSBORNE: Objection, Your Honor.

8 THE COURT: I am not about to allow a narration. Thank
9 you. No.

10 MS. GAY: Okay, well, I mean that's ---

11 THE COURT: I sustain the objection.

12 MS. GAY: No further questions.

13 THE COURT: Thank you. All right. Mr. Marshall, you
14 may step down. Thank you, sir.

15 Any additional witnesses for the defense?

16 MS. GAY: No, the defense rests.

17 THE COURT: Any reply testimony?

18 MR. OSBORNE: Yes, Your Honor.

19 THE COURT: Okay.

20 MR. OSBORNE: The State calls Anthony Williams, Sr.

21 THE COURT: Okay.

22 MS. GAY: Your Honor, I believe there are some motions
23 that I may need to do outside of the presence of the jury at
24 this stage.

25 THE COURT: For what? We haven't concluded the case.

REPLY EXAMINATION BY MR. OSBORNE OF ANTHONY WILLIAMS, SR.:

1 We haven't concluded the case. It is still -- it is still
2 going. You are not at that stage yet.

3 MS. GAY: I thought it was my -- in ---

4 THE COURT: The case has to be over.

5 MS. GAY: Okay.

6 THE COURT: Okay. Thank you.

7 (WHEREUPON, the witness was duly sworn.)

8 THE CLERK: Please state your first and last name and
9 spell your last name loudly and clearly into the microphone.

10 THE WITNESS: First name is Anthony Williams. Last
11 name is spelled W-I-L-L-I-A-M-S.

12 **REPLY EXAMINATION BY MR. OSBORNE OF ANTHONY WILLIAMS, SR.:**

13 Q. Mr. Williams, tell the jury who you are.

14 A. My name is Anthony Williams. I am approximately 49
15 years old.

16 MS. GAY: Your Honor, excuse me. One moment, please.
17 I have a matter of law I would like to discuss.

18 THE COURT: All right. Approach. Talk over here.

19 (WHEREUPON, bench conference was had.)

20 (WHEREUPON, bench conference concluded.)

21 A. And I live in Unadilla, Georgia.

22 Q. I'm sorry, say that again.

23 A. I said I lives in -- I live in Unadilla, Georgia.

24 Q. Okay. And you may have said this, what is your
25 relationship to the victim in this case?

1 A. That is my son.

2 Q. Does your son have any injuries that you know of?

3 A. Yes, sir, he had his right knee was blown out. It got
4 blown out two weeks before he was going into the Navy. And
5 we -- I had got him and brought him back to Georgia with me.
6 And he just wasn't good with the leg. He got the drop foot.
7 In other words he has to pick his leg up to walk without a
8 splint.

9 Q. So he walks with a splint?

10 A. Yeah, but I had the splint at my house. It is still
11 there.

12 Q. Does he have difficulty as a result of that bending his
13 knee?

14 A. Right.

15 Q. Does he have any difficulty getting up and getting
16 down?

17 A. Yes, he does.

18 Q. How would you describe his gait or his walk; is it
19 hindered or is it okay?

20 A. It is hindered because he has to pick his leg up; and
21 if he don't, the foot -- the foot drags. So he have to pick
22 it up. And it is like when he -- when he moves it, it is
23 like this (motioning). You know, like that (motioning). So
24 he has to pick his leg up.

25 MR. OSBORNE: Your Honor, can the witness step down and

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1 demonstrate to the jury?

2 THE COURT: Is not necessary.

3 MR. OSBORNE: Okay. Thank you, Your Honor. No further
4 questions.

5 THE COURT: Cross-examine.

6 MS. GAY: I have no further -- I have no questions for
7 this witness.

8 THE COURT: Thank you. You may step down.

9 THE WITNESS: All right. Thanks.

10 THE COURT: Does that conclude the reply testimony?

11 MR. OSBORNE: Yes, Your Honor.

12 THE COURT: All right. Ladies and gentlemen, that
13 would conclude the evidentiary portion of this process. You
14 are -- still will have to -- we have two remaining parts.
15 While there -- there will be no additional evidence. It
16 still would be inappropriate for you to begin your
17 discussions collectively or individually decide anything.

18 I know you have honored the commitment by maintaining
19 that open mind. You are still there. You have to keep that
20 open mind.

21 I am going to let you go to your jury room. Lunch is
22 here. I think 30, 45 minutes will give you time to eat and
23 take a stretch if you would like to or break and walk. And
24 that will be perfectly all right if they want to step out
25 and walk.

1 I would ask you to be back in your jury room, please,
2 by 1:45. And we will bring you in at that time to finish
3 the trial. Thank you very much. Please retire to your jury
4 room. Enjoy your lunch.

5 (WHEREUPON, jury exits courtroom 4/7/16, 1:01 p.m.)

6 THE COURT: All right. Before we get to motion stages,
7 first, that is my -- how I have dealt with a case and when
8 you must make your motion, Ms. Gay.

9 But for the record, if the court of appeals should say,
10 no, you had to make it, it was deemed attempted to be made
11 and now I will hear in full your motion.

12 I think it -- I think it is protected. I think it
13 doesn't happen until the case is concluded as to the
14 directed verdict. But before we get to that I just wanted
15 to say that that motion is protected for the record. And
16 whatever you state now I will assume that is what you wanted
17 to say when I refused to let you, to keep the case moving.

18 With the respect to the objection to Mr. Williams'
19 testimony, he was not sequestered. It is my opinion and I
20 don't believe the sequestration rule applies to reply
21 testimony because no one could anticipate what was going to
22 be needed to be replied to.

23 And victims and victim's families are certainly
24 entitled to be present throughout the prosecution of a case.
25 I believe that is provided for in the Bill of Rights for the

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1 victim. So that being said, I don't think he was prohibited
2 from testifying.

3 Because it did not come out and as I understand from
4 our discussion on the side, you had not -- you had no
5 knowledge of this prior to today; is that correct, Solicitor?

6 MR. OSBORNE: That is correct, Your Honor. During that
7 break that we had just prior to that testimony I went
8 outside and Mr. Williams approached me and he told me that
9 he believed that it was impossible for his son to have done
10 what the defendant claimed because he had an ACL and MCL
11 surgery on his right knee. That was the first that I had
12 heard of it.

13 THE COURT: Well, that being said, we -- and we have
14 placed it on there. That is preserved because an objection
15 was timely made prior to the commencement of that testimony
16 and the court overruled that objection.

17 And so anything else, Ms. Gay, that you want to
18 supplement the record for purposes of that objection?
19 (WHEREUPON, Ms. Gay confers with client.)

20 MS. GAY: I apologize, Your Honor. I am all of a
21 sudden having a very, very bad migraine. So I ---

22 THE COURT: Well, do you want to wait until you -- we
23 can take a recess and let you calm down. Let's take a
24 recess. Thank you. And I will hear from you when we get
25 back.

1 (WHEREUPON, break was had 4/7/16, 1:06 p.m.)

2 (WHEREUPON, resume 4/7/16, 2:29 p.m.)

3 THE COURT: Okay. All right. You said that you had
4 some -- some additions that you want to make. Do you have a
5 copy of them?

6 MS. GAY: I do, but they are in this computer.

7 THE COURT: Well, how do I make them -- how to have --
8 deal with that and putting it as a court's exhibit?

9 MS. GAY: That is why I was just looking through this.
10 But it is -- I will tell you what it is, and then he can
11 tell me whether or not he wants to object and then I will
12 get the document.

13 THE COURT: Well, why don't you just show it to him?
14 Because if he is going to object you are not going to get
15 the document.

16 MS. GAY: I know, and it won't go. It is so
17 frustrating. It won't go.

18 (WHEREUPON, break was had for Ms. Gay to retrieve charge
19 information from computer.)

20 MS. GAY: So I just need to -- so I am going to step
21 out with this computer for just a second.

22 (WHEREUPON, break was had 4/7/16, 2:32 p.m.)

23 (WHEREUPON, resume 4/7/16, 2:36 p.m.)

24 MS. GAY: They won't send. We tried.

25 (WHEREUPON, break was had for Ms. Gay to retrieve charge

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1 information from computer.)

2 (WHERUEPON, resumed.)

3 MS. GAY: And, Your Honor, I do have one in writing.

4 THE COURT: Well, wait -- well, let me just ask you a
5 question -- I see it (on computer screen). All of these
6 then?

7 MS. GAY: No. I think all of -- most all of them are
8 covered in what you gave me.

9 THE COURT: Well, I think they all are covered in what
10 I gave you.

11 MS. GAY: There's two I believe that I would ask ---

12 THE COURT: Which -- five and six? Which two?

13 MS. GAY: One of them the defendant does not have to
14 waive until ---

15 THE COURT: That is a charge -- that is covered. He
16 can act on appearances, and that is covered by -- you can
17 argue that, but I am not going to state that. That is --
18 first of all, you have it -- look at State -- you don't even
19 have the site for State v. ---

20 MS. GAY: I have it right here, Starnes, the State
21 site. It is 511 S.E. 2nd 907. And I understand that, Your
22 Honor; I do.

23 THE COURT: Understand what?

24 MS. GAY: It is covered.

25 THE COURT: All right. So it is covered. I choose to

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1 say it the way I say it.

2 MS. GAY: I understand.

3 THE COURT: Once the right of self-defense arises, not
4 required to wait on the adversary, equal terms until he has
5 fired.

6 I say -- I even say specifically he's -- he does -- he
7 is entitled to keep shooting after the point that he does.
8 So it is covered. All of that is covered.

9 But if you want to have it specifically you need to get
10 a copy between now and the time that we put it in or at some
11 point in a proper form so I can make it a court's exhibit
12 and I will be happy to include that. But I decline to add
13 those terms. I think they are covered. But I ---

14 MS. GAY: And then ---

15 THE COURT: --- will wait. What's ---

16 MS. GAY: Here. Your Honor, here is the second one.
17 And I do have this in writing. It is in assessing whether
18 the defendant has proven the defendant -- the State has
19 proven the defendant did not act in self-defense ---

20 THE COURT: Just hand me the -- just hand me the ---

21 MS. GAY: Here. This is from State v. Day. It has got
22 a site.

23 (WHEREUPON, document provided to the court.)

24 THE COURT: No. I will agree with you except that is
25 not -- that is not a part of this case. He said he wasn't

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1 drunk.

2 MS. GAY: Well, he was under the influence of
3 marijuana.

4 THE COURT: He said he wasn't drunk. Intoxication is
5 one that is definitely part -- I decline to include that.
6 He wasn't intoxicated. He wasn't any different than he was.
7 And he said he wasn't drunk.

8 So we will make that -- you need to get that all
9 together and then make the package. I decline to do that.

10 MS. GAY: Well, Your Honor, he also was under the
11 influence of marijuana.

12 THE COURT: Ms. Gay, your client said he was -- in my
13 opinion he wasn't drunk; that is what he said, ---

14 MS. GAY: I understand.

15 THE COURT: --- he wasn't intoxicated. So I decline to
16 charge that because that is not covered by the facts.

17 That coupled with the pathologist who said: It affects
18 people differently, I can't tell you how it affected him, it
19 may not have affected him at all.

20 Frankly, to be candid with you, .13 doesn't shock me at
21 all -- we have lowered the legal presumption, which is fine;
22 I don't have a problem; but to say that he is intoxicated to
23 the point that you now get to add that, I just choose not
24 to.

25 THE COURT: What is the State's position?

1 MR. OSBORNE: We would agree, Your Honor.

2 THE COURT: Okay. I mean you are going to be arguing
3 something that your client said was not true. So I'm not
4 going to include -- for the reason -- he is the person --
5 and more importantly, whether the doctor said he was, he is
6 acting on his perception, his understanding; and he doesn't
7 think he is intoxicated.

8 So because of that, there is another reason he is not;
9 because it is all based on his perception of why he is
10 acting. Because there is certainly nothing in the record to
11 suggest that he was in any danger other than he has
12 testified that, yes, there is no question he could have hurt
13 him with his fist. I don't quarrel with that part of it. I
14 mean he has raised that part.

15 But from the standpoint of intoxication, that doesn't
16 have anything to do with it. So for that reason I decline
17 to add it. Okay?

18 MS. GAY: Um ---

19 THE COURT: For those reasons. Excuse me.

20 MS. GAY: Yes, sir.

21 THE COURT: All right. What else?

22 MS. GAY: I think that I need to renew my motion for a
23 directed verdict. That's ---

24 THE COURT: No question. But I just want to get
25 finished the request to charge first.

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1 MS. GAY: That's it.

2 THE COURT: That's it. Okay. All right. I think we
3 covered the ruling on the sequestered witness. And I stand
4 by that ruling. And I think primarily the victim always
5 has -- the victim or victim's family have a right to be
6 present in a courtroom. And this was in reply.

7 I have excluded them in case in chief, but in reply
8 they have a right to hear what -- they have a right to hear
9 what the defendants say. So clearly they had a right to be
10 present. And for those reasons -- and I don't think it
11 really prevents them from it. But those are the reasons.

12 Now the directed verdict I went and did some research.
13 We don't have any specific language and the criminal rules
14 don't even provide for it. But I think we have flipped to
15 where the language that is contained in the civil rules -
16 and this is why I chose to do it - it says -- and we know
17 why at the close of the State's case because the State bears
18 the sole burden of proof and if you fail to present evidence
19 direct or circum- -- substantial circumstantial evidence
20 then you can direct a verdict.

21 But the next stage was -- it says when the party
22 basically had -- and the party, who has the burden of proof
23 in the case, completes all the evidence then you have a
24 chance to make another motion.

25 You -- if you had put in no evidence then I would agree

1 with you we -- you would make another motion. You did.
2 They'd have a reply which is additional evidence from the
3 State. So for those reasons I declined to let you argue
4 your motion at the close of your case. But now I will hear
5 you fully on your position on the State's case, including
6 reply testimony.

7 MS. GAY: Well, Your Honor, initially the motion for a
8 directed verdict indicates, you know, whether or not the
9 elements as presented are established by the State for the
10 charge.

11 And the charge in this case is murder and possession
12 of, you know, a firearm during the commission of a violent
13 felony. And I believe that you said that we didn't -- we
14 shouldn't readdress Duncan. But Duncan is where we start.

15 THE COURT: You can add Duncan again. Duncan has
16 nothing to do with it. And if you ready Curry the court
17 says that. It directs us. It says don't -- don't jumble
18 them.

19 Because Judge Brook -- Judge Goldsmith charged a
20 portion of the statute; and they said, no, it doesn't have
21 anything to do with that.

22 This is a self-defense case. I appreciate your
23 position. You don't need to reargue Duncan because you are
24 protected on that. You differed with my ruling, and that is
25 now covered. But I will be happy to hear from you. But you

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1 want to add Duncan. You have already talked about Duncan.

2 I don't need to you elaborate. We need to go forward.

3 MS. GAY: Well, there were other things ---

4 THE COURT: All right.

5 MS. GAY: --- that, Your Honor, that we made. I know
6 that we made a Jackson V. Denno hearing. I am also aware
7 that my client testified, and we discussed that.

8 But I don't believe that this -- that these facts that
9 my client testified it was a non intentional killing, that
10 it was something that happened in two to three minutes, one
11 of the elements is an intentional killing with malice
12 aforethought.

13 I know that there is a deadly weapon, but I don't
14 believe there is any other evidence of malice. And I
15 don't -- I would argue that the State has not met its burden
16 with regard to the murder charge.

17 THE COURT: Okay. Well, of course I am not even going
18 to mention the inference to be drawn from a deadly weapon.
19 We are prohibited from doing that with that case that was
20 decided. If self-defense is in evidence I can't use that
21 as -- but I can use -- the inference of malice can certainly
22 be drawn from the fact that -- the fact he did an act -- if
23 he didn't have a right to defend himself in the fashion that
24 he did, then he did an illegal act. And so the performance
25 of an act which is not legal is -- a jury can infer malice

1 from that -- from that act alone.

2 But there are lots of inferences to be drawn,
3 reasonable inferences I think, that could support he just
4 chose to do what he did.

5 And frankly, when you think about having the gun in his
6 hand all of the time what is the inference to be drawn from
7 that? I mean this started with him loading it, now by his
8 own testimony, in the house when he breaks -- breaks them
9 up. What in the world was he thinking, because he hadn't
10 been threatened at all at that point.

11 And he hadn't claimed nor -- because there was no --
12 she hasn't claimed. There was no attempt to defend others.
13 And certainly the fact that they left negates that also.

14 And the gun stays in his hand. And he has several
15 opportunities to do that. Why would somebody not just do
16 that. Why would you keep carrying the gun around unless you
17 had a desire to do something that the jury could conclude he
18 wanted to do from the get-go.

19 And possibly -- I don't know, but there is an inference
20 to be drawn from the fact that he wasn't very happy with the
21 actions by the decedent. Because he wanted the decedent for
22 himself according to his testimony. And therein lies
23 another basis for the fact that he committed murder.

24 People did -- unfortunately do it every day. And that
25 is a tragic situation. But all of those I think support --

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1 clearly in the light most favorable to the State support my
2 denying your motion for a directed verdict. Thank you.

3 All right. What else?

4 MS. GAY: That's it.

5 THE COURT: Okay. All right. Are you going to open on
6 the law?

7 MR. OSBORNE: I am going to open on the law, Your
8 Honor. Have we discussed voluntary or ...?

9 THE COURT: I do not know the question, ---

10 MR. OSBORNE: Okay.

11 THE COURT: --- the debate for that. I am charging
12 murder only.

13 MR. OSBORNE: Thank you, Your Honor. May I have just a
14 quick second to adjust the PowerPoint?

15 THE COURT: Sure.

16 MS. GAY: One second, Your Honor.

17 (WHEREUPON, Ms. Gay confers with client.)

18 THE COURT: Ms. Gay, I appreciate you asking him; and
19 that is fine. But I want you to be prepared to argue the
20 legal basis for that, okay. Because you didn't request
21 it ---

22 MS. GAY: No ---

23 THE COURT: --- as his lawyer.

24 MS. GAY: I know. And it was -- that -- that's -- it
25 is not being requested, Your Honor.

1 THE COURT: Okay. That's fine. Let me just say this.
2 I don't disagree with you. There is no testimony that he
3 was angry. All the testimony was from him was that I
4 responded to defend myself, that is the only thing I did, I
5 never -- all -- that was the only reason I fired the gun was
6 to defend myself. I wasn't angry with him, I just wanted
7 him to stop and not hurt me.

8 And I understand that. I don't think that gives rise
9 to manslaughter. And there's no provocation. You can't
10 claim to be self-defense and sufficient provocation to say
11 it is manslaughter, I don't believe. So thank you.

12 But you are not requesting it anyways; is that correct?

13 MR. BRANDON: No, sir.

14 THE COURT: Okay. Thank you, sir. Let's bring in our
15 jury.

16 (WHEREUPON, jury enters courtroom 4/7/16, 2:51 p.m.)

17 THE CLERK: All jurors are present, Your Honor.

18 THE COURT: Thank you very much. Thank you, ladies and
19 gentlemen. I hope you had a good break, and we are ready to
20 continue.

21 When we stopped you had heard all the evidence. And of
22 course as I mentioned to you when you started there remain
23 two portions; one, the last opportunity for the attorneys to
24 speak to you.

25 And unlike the opening statement you have heard the

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1 evidence now and you will have all of the exhibits to
2 accompany to your jury room so you can study those as well
3 when you begin your deliberations.

4 The attorney's remarks I am confident will be very
5 helpful with and beneficial to you as you move into the
6 analysis aspect of this case. So please give them your
7 attention.

8 But please remember while extremely helpful, their
9 remarks are not evidence. Following the closing arguments I
10 will give you the instruction on the law.

11 Thank you again for your attention. Please give that
12 same attention now to the attorneys.

13 Solicitor.

14 MR. OSBORNE: Thank you, Your Honor. May it please the
15 court.

16 THE COURT: Yes, sir.

17 MR. OSBORNE: Ms. Gay.

18 **CLOSING, ON THE LAW, BY MR. OSBORNE:**

19 So the way it is going to work is I am going to talk to
20 you a minute about the law, and then Ms. Gay is going to
21 come up and she is going to give her closing arguments. And
22 then I am going to come back to you and give you my closing
23 arguments.

24 Right now all I am going to do is talk to you about the
25 law. The judge is going to instruct you about the law. If

CLOSING, ON THE LAW, BY MR. OSBORNE

1 anything that I say is different from what the judge tells
2 you, or Ms. Gay, you follow the judge's instructions.

3 The defendant has been charged with murder. There are
4 really two major elements, the killing of another and with
5 malice aforethought. Malice aforethought it's kind of an
6 odd way of saying it. It is an old English term. There's
7 two elements: malice and aforethought.

8 Malice: Malice is hatred, ill will, hostility toward
9 another person. It is an intentional doing with the intent
10 to inflict harm. It can't be an accident.

11 In order to prove malice we have to prove that it was
12 an intentional act to do harm. There's no time requirement
13 to form malice. It can be formed in an instant without just
14 cause or excuse.

15 He is also charged with possession of a weapon during
16 the commission of a violent crime. It's the defendant was
17 in possession of a firearm while he committed a violent
18 crime. Murder is a violent crime.

19 All right. Self-defense. Self-defense is a little bit
20 different. The State has to prove all of the elements to
21 murder, all of the elements to possession of a weapon during
22 the commission of a violent crime.

23 Self-defense is State has to disprove the elements of
24 self-defense. He doesn't have to prove anything. The
25 defense doesn't have to prove a thing. So it is a little

CLOSING, ON THE LAW, BY MR. OSBORNE

1 bit different.

2 All right. So the way I like to explain it is this:
3 When you go to the DMV and you try to get your driver's
4 license you have to do three things: You have to pass an
5 eye test, you have to pass a written test and then you have
6 to pass a driving test.

7 If the DMV is not going to give you a driver's license
8 they have to prove that you did not pass one of those three
9 tests. They don't have to prove you failed all three, but
10 they have to prove you failed at least one.

11 The first, without fault. That defendant has to be
12 without fault. If the defendant's conduct was the type
13 which was reasonably calculated to and did provoke a deadly
14 assault, the defendant would be at fault in bringing on the
15 difficulty and not entitled to self-defense.

16 Imminent danger. The defendant must have been in
17 danger of death or serious bodily injury. It is the type of
18 danger that would warrant a person of ordinary firmness and
19 courage to strike a fatal blow. No other -- no other way to
20 avoid the danger. A duty to retreat.

21 We only have to disprove one.

22 THE COURT: Ms. Gay.

23 MS. GAY: Thank you, Your Honor.

24 THE COURT: Yes, ma'am.

25 **CLOSING BY MS. GAY:**

CLOSING, ON THE LAW, BY MR. OSBORNE

1 It has been a very very long week. I know it has taken
2 a toll on all of us, so I'm sure taken a toll on all of you
3 as well.

4 And when we started this case on Monday - or maybe it
5 was Tuesday when we met with y'all - we discussed, you know,
6 the significance of your roll in this case and how at the
7 end of time you would be the fact finders and that whether I
8 said something, the judge said something, Mr. Osborne, Mr.
9 Bourdon said something, that was more legal and maybe came
10 across a little differently than you expected that in the
11 long run that you, the members of the jury, were the only
12 people in what you thought of the situation that really
13 mattered.

14 One of the things that the judge said in opening
15 remarks was that if I said something or Mr. Osborne said
16 something that is -- you know, that doesn't -- isn't
17 consistent with what you remember in the case then, you
18 know, certainly it is all about what we say and what we are
19 going to be -- what y'all are going to be looking at while
20 you are in there.

21 And what you should have noticed in this process is
22 that there is a whole lot of turning things around on people
23 or witnesses with, you know, one minute say it one minute --
24 way, and one minute you say it another way.

25 Well, but what is so interesting in this case is that

CLOSING, ON THE LAW, BY MR. OSBORNE

1 there is a large amount of physical evidence and that the
2 physical evidence that was taken at the time is not subject
3 now to you can call it Monday-morning quarterbacking. That
4 evidence is in the places that it is in, and that evidence
5 is -- has the significance that it has and had that night.

6 And so even though he or I may want to take a witness
7 on the stand in this trial and pinpoint them into different
8 things, this physical evidence disproves some of what if
9 even any of these people were saying.

10 And when something traumatic happens -- if you remember
11 with the pathologist -- or I think it was an officer. When
12 something traumatic happens people don't always remember it
13 correctly. They don't always remember it correctly right
14 after it happened.

15 But -- but and so what is good in this case is that we
16 do have so much stuff that was there at that scene. And it
17 is because the officers responded immediately and they were
18 right on it.

19 And, you know, Officer Henderson said that he -- you
20 know, it's the City of Charleston. And they had -- one of
21 these -- they mentioned is that they have cameras on, you
22 know, different poles and things. So and they were able to
23 see where my client went to get the orange juice because
24 they were able to see him on one of those pole cameras that
25 is, you know, in our community.

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1 And so the City of Charleston is very aware of
2 different things, and they have people all over the place.
3 And it just so happened that there was an officer, if you
4 recall, right down the street who responded immediately to
5 this situation.

6 And by the time he responded he said that -- I mean he
7 sees the man laying on the ground and then within an
8 instant, minutes, he turns around and there is the gray car
9 with my client in it who is coming out and talking to him.

10 He is saying, you know, stop, get on the ground. And
11 he said who is the shooter. And my client is saying I am
12 the shooter, I am the shooter, I did this, I did this in
13 self-defense, he was charging at me.

14 Other times he says to the officer, you know, don't put
15 me on -- don't put me on the ground. He testified as to why
16 that was, you know, affecting him.

17 And so those -- that is where we are at. Because this
18 man who shot him came -- he thought about leaving, but he
19 decided he couldn't do that. And he came right back and he
20 got out and he said I am the shooter, I did it in self-
21 defense, he was charging at me.

22 And so from that point on it is up to the legal process
23 and the evidence -- people evidence collectors to define
24 what was really going on that night.

25 But when we take those things that Mr. Osborne just did

CLOSING, ON THE LAW, BY MR. OSBORNE

1 and we take the elements of the offenses and we discuss what
2 is going to be told to you about the law we are taking those
3 frameworks and putting it on an incident that happened at a
4 space and time.

5 And, you know, we are taking all of the what we -- what
6 is at now the law and putting it on people's lives and
7 people's conduct and what happened to them that night.

8 And what you find in this case, which is exactly what I
9 told you in the beginning, is that the only person who is
10 testifying tonight who was outside with Anthony Williams who
11 knew and testifies to what happened outside is Brandon. Not
12 Ashley. Not any of the officers.

13 You know, there is some testimony about people hearing
14 shots and things like that. But nobody was there right then
15 when it happened. Nobody was there except him.

16 And so, you know, we talked a lot about who Brandon was
17 and who Anthony Williams was too and how he related to his
18 family and his -- he had kids and things. And that Mr.
19 Marshall testified to you that he didn't intend to hurt him,
20 he didn't intend to kill him; it was just that fast that the
21 decision was made; that, you know, he felt like he had to
22 protect himself.

23 And that is all this is about. Did he make the right
24 choice? No, obviously not. Did he make a choice that was
25 going to mean that he maliciously killed him and murdered

CLOSING, ON THE LAW, BY MR. OSBORNE

1 him? No. He acted in self defense.

2 The facts in this case, the evidence in the case,
3 indicate that the decision -- that he didn't -- okay, when
4 he had a gun in the kitchen and he said, okay, I had the
5 gun, I have taken the gun because I put the clip in it
6 because something weird was going on and I've seen some
7 other things in my life and I was a little intimidated, from
8 that minute until the time when the bullets came out of his
9 gun was within minutes. It was not a long process at all.

10 There was no intentional act of trying to, you know,
11 corner Anthony Williams in in the yard because he is some
12 kind of jilted lover or something and try to -- you know,
13 and take him out. That is not at all what was going on.

14 The process as we take this grid and put it on these
15 facts is that this argument that he was upset about happened
16 between Mr. Williams and his girlfriend and then they left,
17 and they went out the backdoor.

18 You will see all these pictures that we showed you.
19 You will be able to put them around. They went out the
20 backdoor. And my client says that he testified that he
21 heard her lock the door. And so he said at that point he
22 realized that he is missing something, that he has got some
23 property in the house. He knocks on the door and says can I
24 get my stuff.

25 And he has to walk around the front side of the house

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1 to get to the back because she has put it on the front
2 steps. And as he is testifying he is coming around and he
3 is coming around to -- you know, coming out back towards his
4 car and kind of in that area where the tree is.

5 And at that point he hears things. He is up -- he is
6 trying to figure out what is going on. He makes a decision.
7 First of all he says he goes to his car, puts the liquor in
8 the trunk, and then he still has the gun in his hand.

9 Because -- and he told you that he is going to put it
10 in the glove compartment and at -- but at that point he gets
11 distracted and so he decides to go over and find out what is
12 going on with Anthony and see if he can help soothe the
13 situation out, help him figure out some -- you know, a way
14 to leave the area and okay, you know, and not be so
15 emotionally upset.

16 Because he said that he was in an emotional rage and
17 that they had been close and he felt like he could be
18 helpful and he could aide the situation somehow.

19 And from that minute on he tells you that minutes pass
20 for this whole argument and pushing and shoving and things
21 that happened and then -- and then the shots occur.

22 And when he does that what he tells you -- and this is
23 where I said it has so much to do with the physical
24 evidence. And you will see all of this. There is no point
25 in me bringing it up right now. But you'd remember all of

1 these pictures. There is this tree. And there's all these
2 bullet casings off to the right.

3 And the officers and people have testified that when
4 that -- when that gun, which you will take back there,
5 started shooting that he -- that those casings were popping
6 off to the right.

7 But they are not popping directly down on the ground.
8 I mean there is not maybe eight feet of -- or how many ever
9 feet it may be of these things coming out as Mr. -- as
10 Brandon is supposed to be traveling that far. They are
11 popping and jumping along on the grass and possibly getting
12 kicked by people that are walking around.

13 And but what is interesting is that they are all in one
14 area. Because that is what he told you, it was all -- it
15 all happened at one time.

16 Now did he shoot twice? Did he shoot three times? Did
17 he shoot -- we know he shot seven times. Okay. Do you know
18 that not one witness ever said he shot seven times. Nobody
19 who heard any shots heard seven shots.

20 The gentleman who came in who said that he was in the
21 car on the corner and heard two shots he never said he heard
22 seven shots.

23 The lady who was in the window right next door, she
24 never heard seven shots. Ashley, she never heard seven
25 shots. My client never even said seven shots. He said he

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1 emptied the gun.

2 And what he says in his statement and what he says on
3 the stand is that he started shooting and he just kept on
4 shooting because he had never really -- he had never shot a
5 gun before.

6 Now -- and I think that we should know that Mr. Osborne
7 is going to say, well, the malice may have developed right
8 when he shot two shots and then the next thing you know he
9 is coming out and he can't hardly walk and, you know, and
10 all these things and then he shoots more and than that is
11 malicious.

12 Okay, Mr. Marshall testi- -- Brandon testified that it
13 all happened really fast, that he was trying -- once he fell
14 on the ground -- which he had a little bit of grass and dirt
15 on him. Once he fell on the ground he testified to y'all
16 that he had fallen maybe on the roots of the tree. And so
17 he falls back onto the tree.

18 And he believes and it is his -- what he appeared --
19 you know, what is -- what his belief system is - this is one
20 of the things we will get to - is what the appearance that
21 happened to him, what he saw and felt that night that
22 matters; not what we think today really, but what he
23 thought.

24 What he sees is that -- you know, he is up against a
25 tree. And some very strong, you know, person who he is

1 aware is very physically fit is about to pound him.

2 And he said that -- he testified that he thought he was
3 going to die but he could have gotten his head bumped into
4 the tree, he could have gotten his face broken. I mean all
5 of these things. That was what was in his mind at the time.

6 He is up against a tree. There's glasses on the
7 ground. He testified that he cannot see, that he is blind,
8 he didn't -- it was dark outside or -- you know, he's
9 nearsighted he said. He doesn't see very well. He is
10 making decisions in the dark to decide, you know, what he is
11 supposed to do to protect himself.

12 And the next thing you know he takes out the gun and he
13 says -- and this is interesting because this goes back to
14 look at the physical evidence. Look at -- I mean regardless
15 of what -- how many times what people say on the stand, look
16 at the physical evidence.

17 He says he is rolling away and he starts -- and then
18 Mr. Osborne got up and demonstrated it. And he says, oh,
19 and then you take the gun and you shoot it out like this
20 (motioning).

21 Do you remember when the medical examiner, the
22 pathologist, testified and he said that the bullets go like
23 doom, doom, doom, doonk? Up. Doom. Doom, doom, doom.

24 So here is my -- you know, Brandon, saying I am
25 shooting the gun up like that (motioning). He says that the

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1 man is coming at him or is somewhere down in his area near
2 him.

3 And then these bullets we have a bullet that goes up.
4 That goes up from his -- right in this area (pointing) out
5 his back. We have a bullet that kind of goes in and
6 stays there. We have a bullet that comes straight through.

7 So at one point when he -- when this gun was out the --
8 Mr. -- Anthony was right on. Right -- maybe not close, but
9 straight on him. Because the bullet just goes straight
10 through. And then I believe we decided that it had to go --
11 that he had to be turning to go through this shoulder and
12 out that shoulder (motioning).

13 And y'all can enact that any way you want. You know,
14 if y'all want to go say, hey, you know, let's try to figure
15 out how this body was moving in action as these bullets may
16 have hit him. What we know if that one of them is -- the
17 pathologist said that at one point it could have been -- and
18 of course it could not have been. But it could have been
19 that the man who was doing the shooting was down on the
20 ground or lower than him and he is shooting up. Because
21 there shot there is his pants, different things, show that
22 the bullet goes in right here (pointing) and then comes --
23 goes up like that.

24 And so here's -- the bullets are consistent with what
25 Brandon says about the shots. Now does it happen one, two;

1 one, two, three? Or does it happen one, two, three four;
2 one, two -- five, six, seven?

3 Okay, that is what y'all are going to have to decide.
4 Because I think that the problem is is that, as I said, no
5 witness in this case gives a consistent version of what
6 happened.

7 Even the people that are the objective people who are
8 listening to things, and the lady in the window and all the
9 people, they don't even hear the number of seven shots.

10 They don't -- and every person except the guy who said
11 I heard two in a row, every person said they went pam, pam,
12 pam; like kept -- kept going. That there wasn't any stop.

13 So now Brandon he gives a statement saying, well, I
14 shot him and then I shot him again. And then he says
15 afterwards, you know, I think -- I don't know, you know, I -
16 - at that time I was under shock, I was trying to figure it
17 out.

18 He testified that when he is leaving the area in his
19 car it was as if the guy was still chasing him and he didn't
20 even know if -- that he was okay or if he hit him or what.
21 So he came back because he wanted to find out what had
22 happened and he needed to know, you know, what had happened
23 to his friend.

24 And at the end of his statement he is crying in there.
25 He said he was crying. He is physically upset. You know,

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1 emotionally upset about the fact that he killed his friend.

2 And so what is happening is is that we have all these
3 things. And what is very interesting to me -- and this is
4 how it works is that you have two people primarily, Ashley
5 Butler and Brandon Marshall, that were both interviewed and
6 part of this process that evening.

7 You know, but none of them have anything bad to say --
8 there is nothing bad that we said about either of them.
9 They are both people that are -- we will call it credible.
10 They are both people that are credible at that point. They
11 are telling the police different things that happened.

12 She is saying, you know, well, he brought the tequila;
13 he went to get the orange juice. And they checked that out
14 and they find the Little Cricket and they say, yeah; so it
15 checks out what she says it true.

16 And then they say to Brandon, well, Brandon, you know,
17 what did you do. Well, I went to the Little Cricket; I went
18 and got the orange juice. And, yes, that is him. Check.
19 Check. They are both checking out on their credibility.

20 They say, well, where is the gun. The gun is in my
21 car. So yes, yes. They go. They check it out. Yes.
22 Credibility. Credibility.

23 And then boom, all of a sudden we are not supposed to
24 believe anything that Brandon Marshall says but we are
25 supposed to believe everything that Ashley says.

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1 And you see, and that just doesn't make any sense.
2 Because both of these -- credibility becomes a major issue,
3 and the judge is going to talk to you about the definition
4 and what that is about in the court system and the type of
5 factors that you can look at to determine whether or not you
6 believe a particular witness, all of their statement, part
7 of their statement; anything like that.

8 And that becomes something that he is going to describe
9 to you what that is. But, you know, I would submit to you
10 that just as credible as Ashley Butler is, so is Brandon
11 Marshall about what happened that night.

12 And, yes, he did give some inconsistent -- he said a
13 few things in that first statement that are different than
14 what he said on the stand. But his credibility is still
15 right.

16 He believed that he was threatened. He believed that
17 he was facing imminent danger. And he believed that if he
18 didn't act something terrible was going to happen to him.

19 That is what we are here about. And that is what we
20 are talking about.

21 And one -- and it is like back to the physical evidence
22 part of the things that we know. One of the things that we
23 know is really how long it took for this to happen.

24 And the solicitor would have you believe there was this
25 whole, big, old, long argument between them and, you know,

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1 there is all -- and the man couldn't hardly walk, and he
2 would have never been able to push the guy down and all
3 these things that he is going to say.

4 But we know how long it happened because in how short
5 it was. Because when there was a knock on the door he said
6 I want to get my clothes. And Ashley Butler went -- she
7 said, okay. She went upstairs. She got four pieces of
8 clothing or something like that. It is like a pair of pants
9 and a shirt.

10 And she said by the time she got up the stairs -- it is
11 a tiny, little house. You know, it is just a small
12 apartment. By the time she got up the stairs and was headed
13 back down she heard the boom, boom, boom, boom, boom. And
14 that's how fast the whole thing happened.

15 From the time he was -- he was knocking on the door,
16 beating on the door, to the time that the shots were fired.
17 Now this is -- these are things that you have to ask: Was
18 he kicking the door down?

19 Okay, Brandon said that the screen door was open. The
20 screen door was glass or kind of a metal glass door. So
21 there is going to be possibly an assertion that, well, if
22 somebody had been beating on the door like that, well, the
23 neighbor lady would have heard or, you know, broken the door
24 or something like that.

25 Well, it didn't. And Brandon says -- as I said, he was

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1 the only person that was out there. And he said that he was
2 kicking on the door.

3 Now is a person that has had previous problems with
4 their knee able to kick at the door or bang on the door and
5 make noise; you know, that is your choice. I mean, yes.

6 A person -- I mean I think that Ms. -- when the
7 testimony -- the question was asked to Brandon did he limp.
8 He said, no, he walked fine.

9 You know, I don't know what kind of illness he had in
10 his knee. But and I know that the dad said he had had some
11 surgery. But he said he walked fine.

12 And Brandon says that he was beating on the door and
13 causing a problem. That is the best way to put it. He was
14 causing a problem.

15 And the reason that Brandon said that he was trying to
16 give aid and really just try to be -- you know, try to help
17 his friend get out of there is because he was on trespass
18 notice and that he -- you know, okay let's infer what would
19 happen there.

20 Let's say the police came from all of this whatever and
21 he is on trespass notice. He is going to jail. Okay, that
22 is the bottom line.

23 And so in his testimony: I was trying to help him, he
24 was on tres- -- he was on notice.

25 And so he's -- you know, and they talk about -- the

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1 four things they are going to talk about is -- you know, one
2 of them is without fault.

3 And without fault I would assume it is going to be,
4 well, he is the one who stayed there; he is the one that
5 grabbed at his friend.

6 Remember all of this took about three or four minutes.
7 He is the one that grabbed at his friend and grabbed his arm
8 and said I'm not leaving and he is the one that caused this
9 whole problem. That is not true. This was a friend. He
10 wasn't causing a problem. He was trying to get his friend
11 out of there so he wouldn't get arrested.

12 Okay, the second one that they talk about is that there
13 has to be imminent danger. And imminent danger is
14 interesting because there are some things about it that
15 matter.

16 And the judge is going to instruct you on some -- he
17 has shown you the elements of the offense. The judge is
18 going to instruct you on the law.

19 And one of the things is is that -- it can be either
20 actual imminent danger or believed imminent danger. And
21 believed imminent danger is not the same thing as actual
22 imminent danger. And there is actually law that says that
23 the imminent danger doesn't even have to be true. But in
24 the end if it turns out that it wasn't real, it is your
25 perception.

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1 And there's things that he will tell you in his charges
2 that have to do with appearances. What was -- what was the
3 appearance of the circumstance to the defendant at the time.

4 Because, as I said, we are taking our law now and
5 gridding it right on top of these facts about what happened
6 that we have to decide what was going on in the mind of the
7 person who was there. What was going on in the mind of that
8 person is what we have to do.

9 And the law is very clear that if it is -- if he is
10 relying on imminent dangerous as opposed to actual danger
11 that there's things that he can -- that he can -- we can --
12 we can -- it is kind of like there is an extra -- some
13 extra.

14 I mean it is like -- this is how it reads. It says --
15 it says that a person -- it must be shown that a reasonably
16 prudent person of ordinary firmness and courage would have
17 done the same thing.

18 Okay, there is this whole case. We have a closeted
19 homosexual male who has got a down-low relationship with a
20 man whose is involved with another a woman -- with a woman
21 with two kids, who is pudgy.

22 Okay, they can talk about how he's, you know, a big
23 person, has a, you know, a better chance. But comparatively
24 he is fat and the victim is buff.

25 Okay. And so here he is saying that he has already

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1 seen this man get really upset and beat on his car or do --
2 you know, it may cause some damage to his -- you know, have
3 rages.

4 He has already seen that. He doesn't want that coming
5 in his direction. He say that, you know, he -- he has been
6 in an accident. He can hardly even get up when they -- when
7 he falls down. He is -- the pictures of him are -- he is
8 not just 50 pounds more. So he is 80 something pounds
9 bigger than he is now.

10 And so, you know, he is somebody who is not physically
11 fit, feels very threatened by this person. Talks about how
12 is felt threatened by other people in the neighborhood. And
13 has been robbed before. Had, you know, different -- has
14 seen somebody be beat up before.

15 I mean this is who you are dealing with. So as you are
16 dealing with who is this reasonably prudent, homosexual,
17 closeted, down low guy trying to make a decision about his
18 own person safety that minute, that is what we are dealing
19 with here. that is the core of this case.

20 And what -- you know, what -- what was he allowed to do
21 at that point. How was he going to handle himself, you
22 know, in a situation where he is up against a tree, you
23 know, with somebody who he believed because it is dark and
24 he can't see that he believes is coming at him.

25 This is one of the main things: Was the guy six,

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1 seven, eight, nine, ten feet away from him or was the guy up
2 on him? Okay, Brandon is a liar because he says that the
3 guy was on him and he believes that -- and all that. Okay,
4 I understand where this is going. But the problem is is
5 that it is dark out there. Distance, when you are -- when
6 you are -- I mean if I took mine off I can't -- I can't even
7 see your faces.

8 So I mean what -- he said that he needed glasses to
9 see. There was a distortion of what was going on for him,
10 not having glasses.

11 He was making perceptions having to do with sound and
12 things like that. And his decision to, as he said, to roll
13 off -- you know, to roll away from him, I mean we know that
14 he rolled away from him.

15 And we know that he took the gun and went like that
16 (motioning) because that is kind of how it hit the
17 gentleman. That is how -- you know, that is what happens is
18 the bullets kind of go and then he turns and turns away from
19 them. And then the bullet goes this way (motioning).

20 And so, you know, a lot of this, like I said, if you
21 really just look at the physical evidence and piece together
22 what really happened and the physical evidence.

23 So whether he remembers that it is him being on top of
24 him or whether he remembers it as -- differently or -- I
25 remember I asked him could he have been backing up away from

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1 you. He could have been backing up away from him. At that
2 point it was dark. He didn't even know where he was.

3 The question becomes did he have the -- was it lawful
4 for him to believe that this man could do some serious
5 damage to him if he had not acted the way he did. You know,
6 if he had not shot him was the guy going to come back again
7 for the next round.

8 He has already pushed him down three or four times. He
9 has already pushed him up against the tree. He is obviously
10 emotionally agitated for something not having anything to do
11 with my client. Something having to do with Ashley.

12 And in retrospect I am sure Mr. Marshall should have
13 said, oh, you know, maybe I should have just stayed out of
14 this. But he thought he was helping his friend. He thought
15 he was going to prevent him from getting arrested. He
16 thought that he was going to get him out of there. He
17 thought that the relationship that they had would help to
18 get -- to smooth the situation down.

19 And the whole thing lasted a few minutes. I mean
20 that's the bottom line. The whole thing lasted a few
21 minutes. This is not a 20-minute conversation between these
22 people where there was a whole lot of rational thoughts
23 going on. It was quick. It was spontaneous.

24 They were talking about things. He was trying to calm
25 him down. He said, I wasn't mad at him; he wasn't really

CLOSING, ON THE LAW, BY MR. OSBORNE

1 made at me. Until he turned on me.

2 And he said, all of a sudden from the first push to the
3 second push to the third push -- push and the fourth push
4 the intensity of the his rage came at Brandon. And he told
5 you he felt like in a minute his head could go through that
6 tree. And that is why he pulled the trigger.

7 Now one of the things that -- and he pulled it a bunch
8 of times. And the law will say that, you know, that -- is
9 that if he has the right to act once with the bullet then,
10 you know, if you -- if you keep going -- you know, you don't
11 stop and say, well, we are going to break out every single
12 bullet and decide whether or not there was malicious intent
13 on each bullet. This is a continuous course of activity.

14 The most important thing is this -- and that kind of
15 took into that part where it said no other way to avoid the
16 danger or duty to retreat. At the moment from the time
17 Ashley felt -- heard the knock on the door, ran up her
18 stairs to get something and came back down, in that short
19 period of time would he have been able to avoid that --
20 avoid it; would he have been able to prevent what happened
21 that minute from his saying, hey -- hey, Anthony, we need to
22 go; hey, let's -- you know, come on, I really need you to
23 go; you know, knowing in his -- the back of the mind he is
24 trying to help his friend. And the guy turning on him like
25 that would he have been able to avoid it. It is not if he

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1 should have been able to avoid it; it is would he have.

2 And back to what is going on in his own mind and what
3 is going on in the world around him that minute, he would
4 not have been able to avoid what had happened.

5 And in his mind what was coming next was worse. What
6 was coming next to him as he was laying on the ground, as he
7 was trying to go, oh, God, what is going on here. And he
8 said that he said in his statement stop, stop.

9 And, you know, it makes it sound like he was giving
10 the guy a choice on some level. Oh, five minutes later the
11 guy decides to come back; oh, five minutes later the guy
12 comes -- we are talking minutes, seconds here. We are
13 talking instantaneous decisions having to do with a person
14 that was very out of control.

15 He said that it was an emotional rage and it was not
16 directed at him but when it became directed at him he felt
17 like he was going down. He felt like he was getting hurt.
18 There was -- there is no question that he believed that
19 there would have been imminent danger to him.

20 And even if there -- if it is not required by law to
21 show it, he believed it. Because in all appearances this
22 guy had the ability, the -- the strength and the ability and
23 the desire to hurt him.

24 And, you know, you can call it transferred anger. How
25 many times have you ever in your life been upset with one

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1 person and screamed at another person? Or been upset with
2 one person and tried to go after another person or seen it
3 happen on T.V.?

4 You know, when somebody is upset emotionally like that
5 and they turn it on you there is no -- there is no -- who
6 knows what is going to happen. And that is what happened
7 here. He didn't know what was coming next.

8 The last thing I am going to say is that there will be
9 a charge to you -- for you that the judge would say - and
10 this is the most important one of all - and it says the
11 State has the burden of disproving self-defense by proof
12 beyond a reasonable doubt. Okay, it is going to get a
13 little more complicated than that.

14 What is reasonable doubt? Doubt that would cause
15 reasonable people to hesitate to act. So you would have to
16 hesitate to act. You know, and they would have to prove
17 that what he was trying to prove wasn't that.

18 But what it says is if you have a reasonable doubt of
19 the defendant's guilt after considering all of the evidence
20 including the evidence of self-defense then you must find
21 the defendant not guilty.

22 That is the law. You may not agree with that. You all
23 said when you came in here that you could be fair and
24 impartial and you could follow the law. It says if you have
25 a reasonable doubt of the defendant's guilt after

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1 considering all of the evidence including the evidence of
2 self-defense then you must find the defendant not guilty.

3 It says on the other hand - just to be fair - on the
4 other hand if you have no reasonable doubt of the
5 defendant's guilt after considering all of the evidence
6 including the evidence of self-defense then you must find
7 the defendant guilty.

8 When you are back there in your jury room look at the
9 physical evidence. Who lied, who didn't lie, who said
10 things one way and said things another way. Who -- who has
11 a motive to protect themselves. Who may understand the law
12 now after reading -- if Brandon Marshall understands the law
13 better after reading stuff, legal stuff, well, then that is
14 because he is intelligent. I mean you saw that. You know,
15 he is a pretty intelligent guy and trying to figure out, you
16 know, what is -- his own life.

17 And so, you know, he -- what is interesting is is that
18 when Mr. Osborne wants to get up and say, well, he now
19 understands the law of self-defense so now he understands
20 exactly what to tell you people to get y'all, - you know, to
21 acquit him; right.

22 Did you know that on the day of -- the witnesses
23 testified on the day of. And an hour-and-a-half after this,
24 he was saying I shot him in self-defense. He probably
25 didn't even know what self-defense was then.

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1 But he knew this thing, that it meant that he had a
2 right to defend himself and he had a right to take the
3 action necessary to defend himself. And he was saying that
4 30 minutes after it happened.

5 And so what I am telling y'all, ladies and gentlemen of
6 the jury, is that this is a very complicated case. And we
7 have been here for a very long time. And I am about to wrap
8 it up.

9 But I know that -- I trust that y'all will take, you
10 know, diligent time to look over all of this. Look at the
11 physical stuff. Look at the way the stuff is positioned.
12 You know, and where the body is at the time it drops after
13 he is staggering around could be very different than where
14 the body was at the time of the original hit.

15 And it is very consistent with the fact that my client
16 is about -- you know, all of those casings are right to the
17 right of that tree area.

18 Did he have a right to do it; would he have done it
19 differently if he could? Legally he did. And I would
20 believe -- I believe you will find him not guilty.

21 THE COURT: Ms. Gay.

22 Mr. Osborne.

23 MR. OSBORNE: Thank you, Your Honor. May it please the
24 court.

25 THE COURT: Sure.

CLOSING BY MR. OSBORNE

1 MR. OSBORNE: Ms. Gay.

2 **CLOSING BY MR. OSBORNE:**

3 It is 2:30 in the morning in Robert Mills Manor, and it
4 was quiet. That quiet was shattered by the sound of
5 gunshots. Seven gunshots in all. And then a male voice
6 yelled out: You just messed with the wrong one,
7 motherfucker.

8 This defendant made several senseless choices that
9 night. When his friend, Anthony, a man that he claims that
10 he loves like nobody else, was already with his girlfriend,
11 he senselessly chose to grab his gun, put the magazine in
12 the gun.

13 When Ashley left the liquor and the wallet in the bag
14 on the front porch, he grabbed those items. He went to his
15 trunk, still with the gun in his hand. Then he senselessly
16 chose to go confront Anthony at the backdoor.

17 And when Anthony didn't do as he told him to do, he
18 shot him. Over and over. It was nothing more than a
19 senseless murder. His decisions that night should have a
20 consequence.

21 I am not going to make this trial, I am not going to
22 make my closing, about Anthony's fidelity or his sexuality;
23 because quite honestly it is not relevant to this case in
24 one bit.

25 But I will tell you this, the only evidence that you

CLOSING BY MR. OSBORNE

1 heard throughout this entire trial that Anthony was cheating
2 on Ashley with Brandon came from the defendant himself.

3 He wants you to believe that there is just no way that
4 he could have possibly murdered Anthony, he loved him. I
5 would submit to you this: If that love was there like he
6 said, you would have heard more evidence about it than just
7 coming from him.

8 This murder occurred in Anthony's own backyard where he
9 played with his daughter. And that's his daughter's Power
10 Wheel right there (pointing).

11 And I will agree with you Ms. Gay about this. There is
12 only one person now who can tell us everything that happened
13 in that backyard. He made sure of that by pulling that
14 trigger seven different times.

15 But she would seem to imply that you have to take his
16 word for it. And that is simply not the case. And the
17 judge is going to talk to you about credibility.
18 Credibility is for you to decide.

19 In this case you have two wildly different stories
20 about what happened that night. The story that he told
21 Detective Burckhardt on the night of incident and the story
22 that he testified to are so dramatically different you would
23 think they were two different incidents altogether.

24 So you have to ask yourself, okay, well, why is it so
25 different; what fits; what parts of which story that he told

CLOSING BY MR. OSBORNE

1 fits with the evidence and which doesn't.

2 More importantly and most importantly what can be
3 corroborated by other witnesses by the physical? And when
4 they differ, ask yourself why. And the judge told you in
5 the beginning don't check your common sense at the door;
6 take it with you when you are back there in that
7 deliberation room.

8 But I would submit to you this, the closest version of
9 the truth - maybe not the whole truth - but the closest
10 version of the truth that you are going to hear is what you
11 will have with you back there is that interview, that
12 interview that he gave Detective Burckhardt.

13 So let's look at what he told Detective Burckhardt. He
14 said that he saw Ashley and Anthony arguing. Well, that's
15 true. They were arguing.

16 Ashley knew that Anthony had a new job the next day
17 with College of Charleston. She went to bed. She was
18 expecting Anthony to follow. It was a date night that
19 night. And she probably wanted him to come to bed. He
20 didn't. He stayed downstairs. He kept drinking.

21 She got made, and she got angry. She came downstairs.
22 An argument ensued. But Ashley told you her life wasn't in
23 any danger during this argument. Even when it turned
24 physical she never thought that she was going to be hurt or
25 killed.

CLOSING BY MR. OSBORNE

1 And, you know, I understand what he said. He has got
2 to sell it to you, right? He has got to sell it to you that
3 Ashley was in serious danger. Throat choking her. Punching
4 her. If he doesn't sell that to you then the whole chain of
5 events that happens after that doesn't make any sense. It's
6 senseless. So he really needs you to buy that.

7 But the defendant said something else that I want you
8 to take note of that is awfully senseless and awfully
9 peculiar.

10 (WHEREUPON, portion of video played.)

11 When Anthony is in an argument with his wife, his
12 girlfriend, the mother of his child, his first instinct is
13 to grab the gun, put the magazine in.

14 I know he said he didn't rack it here, but on the stand
15 he said he did rack it. It is not enough that he even put
16 the gun in his hand to go confront his friend. He put the
17 bullet in the chamber.

18 Then he went over to his friend and he tried to control
19 him. Control is something that is going to permeate
20 throughout this case. This defendant is controlling.

21 You saw it when he was up there on the stand. He was
22 trying to control his own defense. Ms. Gay is a good
23 defense attorney, but he said: Show me this picture. No,
24 no, no, that is not a good one. Give me another one. Show
25 me another one.

CLOSING BY MR. OSBORNE

1 When he picks up the liquor, all right, the two bottles
2 of tequila with the bag on the front porch, he knocked on
3 the backdoor. He realized that he forgot something, right.
4 And so he gets into his car, realizes he forgot something,
5 goes to the backdoor, knocks on the door. Hey, I forgot my
6 stuff.

7 She puts the bag with the two bottles of tequila and a
8 holster on the front porch. He goes to the front porch. He
9 picks them up. He then goes to his car.

10 Now I want to show you something right here. I am
11 going to ask you -- I am drawing an inference here. We
12 don't know, okay. But I think it is a reasonable inference.
13 I am showing you State's 15, 70, and 10.

14 When he is walking out that backdoor he has got the gun
15 in his hand the whole time, right. He goes to the front
16 porch. He picks up the two bottles of tequila and the bag.
17 And inside the bag is the holster. These are all in his
18 left hand. The gun is in his right hand.

19 He walks from the front porch. He then walks to his
20 trunk. I will give him the benefit of the doubt, maybe he
21 had a key fob. I don't know. He opened up the trunk, okay.

22 When he gets to the truck he puts these two items down,
23 the tequila and the holster. The gun is still in his hand.
24 He looks over. He sees Anthony walking in an uncontrollable
25 rage, right, to the backdoor.

1 This holster is in his right pocket. When Officer
2 Shehan searched him it is in his right pocket. How does the
3 holster get into his right pocket? Picks it up. Puts it
4 down. And then he picks the gun back up.

5 This gun was at some point put down. He made the
6 choice to pick it back up. I heard Ms. Gay say during her
7 opening the gun just happened to be in his hand. Nobody put
8 that gun in his hand but him. He is the one that made that
9 choice to put the gun in his hand.

10 Anthony was banging and kicking at the backdoor. Once
11 again, he has got to sell this one. He needs you to believe
12 that Anthony was going in that backdoor to do harm to
13 Ashley.

14 Remember, he knows what it looks like when someone is
15 trying to kick in that backdoor. But I'm having a hard time
16 visualizing that now. Anthony didn't -- wasn't even wearing
17 shoes.

18 He was kicking like this (counselor demonstrating by
19 making noises) with no shoes? Okay, well, maybe he was
20 backing up. I tried to give it to him. Maybe he backed up.
21 There are steps there, so that would have been problematic.

22 Was he kicking like that? Well, you think he would
23 have remembered that. But he doesn't say that. He says no,
24 he was kicking. So he was doing this (counselor
25 demonstrating by making noise) with his toes.

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1 That allegation right there is not corroborated by the
2 evidence. But if you don't believe that, there is other
3 evidence to show that that is not why Anthony was trying to
4 get into the house.

5 Remember when Ashley said she heard the banging at the
6 backdoor (counselor demonstrating by making noise). Hey,
7 bring me my clothes; bring me my clothes.

8 She then goes up the steps, gets the clothes, comes
9 back down the steps. She hears the gunshots. She drops the
10 clothes and goes to the backyard.

11 Well, how do you know that is true? She kept talking
12 about credibility is so important. Let's corroborate that.
13 How do we know that what Ashley is telling us is the truth?
14 Well, there's the clothes right there right where you would
15 expect them to be.

16 She heard the gunshots. She dropped the clothes. She ran
17 to the backyard to attend to her husband who's dying.

18 But there's more evidence. I want my clothes. Now it
19 is hard -- text messages, I mean who knows; maybe he is
20 screaming this.

21 But I tell you what he is not doing. He is not
22 cursing. He is not exclamation point, exclamation point.
23 He is not I am coming in this door to do you harm. He is
24 saying I want my clothes.

25 Now you might have been - and you will have all of

CLOSING BY MR. OSBORNE

1 these pictures - a little bit confused. The victim's -- I
2 am showing you State's Exhibit 21. The victim's phone and
3 the victim's lighter. It is near that back porch. Well,
4 how did it get there? Well, I would submit to you that it
5 is a reasonable inference to say that -- remember order is
6 important here. He's (counselor demonstrating by making
7 noise). Give me my clothes. That is what Ashley says.

8 Then Ashley says I got a text. He is at the backdoor
9 asking for his clothes and then he is texting it, I want my
10 clothes. Then he (motioning) comes up and grabs a hold of
11 him. Probably dropped the phone when he grabbed a hold of
12 him.

13 But there is even more evidence. Remember the clothes?
14 Well, there is Anthony's wallet inside the clothes. He is
15 driving away. He needs his wallet.

16 All right. So let's just suspend reality a moment.
17 Because I think that is what Ms. Gay wants you to do. And
18 let's say that this defendant that he had no idea what
19 Anthony was doing at the backdoor. Let's just say that.

20 Let's say that he couldn't hear Anthony back there,
21 bring me my clothes. He didn't see Anthony on the phone
22 texting bring me my clothes. He didn't even ask, hey, what
23 are you doing man; let's go.

24 And I suppose Anthony didn't even say, hey, leave me
25 alone, I am just trying to get my clothes. You don't have

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1 to believe that version of events. It is inconceivable.

2 Ashley knew what he was there to do. And Ashley is
3 inside of the apartment. He's trying to convince you he
4 didn't know; and he was right there next to him. He should
5 have known.

6 All right. Now we are getting to the real nuts and
7 bolts of what he said happened on the night of the incident.
8 (WHEREUPON, portion of video played.)

9 All right. That is a lie. So I am going to break it
10 down. Let's go; it doesn't need to be this serious. The
11 only thing serious about Anthony trying to get his clothes
12 in that interaction was the fact that he brought a gun.

13 Shoved him to the ground. And shoved him to the ground
14 again. He grabbed Anthony by the wrist. I wouldn't let go.
15 Once again it is control. He is trying to control Anthony.

16 I think he is probably telling the truth here. I think
17 Anthony probably did tell him get the "f" off of me; I am
18 trying to go to my mom's house; I am trying to get the
19 clothes so I can go to my mom's house where my mom is
20 babysitting my two daughters.

21 When I got back up, stop; don't make me do this. When
22 I got back up. He is telling you right now he was standing
23 when he fired those shots. He wasn't on the ground.

24 He fired twice. And after all, what choice did he
25 have; right? Anthony wasn't going to be told what to do.

1 He was still getting up, so I kept shooting until it
2 stopped. This victim was on the ground. He was still
3 getting up when he continues shooting at him four to five
4 more times.

5 But the defendant says something else that is pretty
6 graphic. But it is pretty important.

7 (WHEREUPON, portion of video published.)

8 How far was Anthony when you fired your first two
9 shots? Detective Burckhardt couldn't even back up far
10 enough. He backed up about six feet. That is as big as the
11 room got. It was about another three feet further. The
12 first shots.

13 Now it is hard to imagine what was going on in
14 Anthony's mind when he had been shot for two to three
15 reasons for no reason -- or two to three shots for no reason
16 and he is on the ground and he is gasping. He is wheezing.
17 He is trying to breathe.

18 I imagine he probably is getting back up. If he stays
19 on the ground he is dead. He has to get back up. He is
20 probably fighting for his life at that moment.

21 Now I will tell you this. We might not know what was
22 going on in his mind but we have a good idea - despite what
23 she says - we have a good idea how his body was position.

24 Remember this is Dr. Batalis' sketch. These shots
25 weren't going boom, boom, boom, boom, boom. Let's look at

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1 them. Let's look at them individually.

2 Now remember one, two, three, four, is not the sequence
3 in which these gunshots were fired. They are just a
4 labeling system. It could be A, B, C, D. It doesn't
5 matter.

6 And also remember this. Remember what he said: When I
7 am examining a body I examine it from head to toe. If -- I
8 look for soot.

9 He said soot that is the stuff that comes out of the
10 gun, right, along with it. And then soot comes out of a
11 gun. It causes damage. Stippling also causes damage.

12 If I see soot then I know that the barrel is two feet,
13 within two feet of the skin when it was fired. If I see
14 stippling then I am thinking, well, it is within four feet -
15 - three to four feet. If I see neither then you can draw
16 the conclusion that it was in excess of four feet.

17 Well, I mean that is verified on what he said, right?
18 He said he was at least six feet, probably more like nine
19 feet away when fired.

20 All right, so let's look at it. Number 2 is the first
21 shot. How do you know that? Because with Number 2 the
22 victim is facing his shooter. And that is what he said. He
23 said, I looked at him; I fired. Baam, baam, baam. Two to
24 three times.

25 They are both 6'2". This shot is coming in on a

1 straight plane, slightly down. That is consistent with
2 shooting right at him. That is this first shot. This shot
3 hits him to the right, okay. That causes his body to turn.

4 There is the second shot. Coming into his clavicle
5 right here, coming on out. Across his trachea. This is the
6 shot that caused the blood in the lungs. This is the second
7 shot. He is bleeding in his lungs. He is having a hard
8 time breathing right now. He falls to the ground.

9 How do you know it? He told you that. But then he
10 even said, remember, I heard him on the ground; it sounded
11 like a punctured lung, having a hard time breathing. That
12 is the only gunshot that does that. So now you know that --
13 that gunshot labeled Number 1 had to be one of the first two
14 shots.

15 This shot (pointing), I will talk about this in a
16 minute. But what you know about this shot is what? He is
17 not facing his shooter. He is turned to the side of his
18 shooter.

19 And now this one (pointing). From the ground up or
20 opposite. I will explain it. All right.

21 The first shot. Again, turning him. The second shot,
22 coming through the clavicle, puncturing his trachea. This
23 direction. He is not charging at Brandon like this
24 (motioning). That is silly. He is turning. He is
25 twisting. He falls to the ground. There is proof. He has

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1 got damage to his knee. He is on the ground now.

2 | Okay, so this one is going to be a little hard to
3 describe. Imagine I am Anthony and you all are Brandon
4 shooting at me. I am about six to nine feet away.

5 I am at this point on the ground. I have fallen on the
6 ground. I have got it on my knee; I have got the bruise
7 there. We are facing Anthony with this image. So you are
8 going to have to flip it, right.

9 Flip it, and he is now trying to get to his door and he
10 is shot again. That might seem like a stretch, but it is
11 not. Listen to what Officer Henderson told you. When he
12 got on the scene how was Anthony positioned? He was curled
13 up like this on -- and I am not going to get down. I might
14 not get back up. But he is down like this (motioning), and
15 then he is in Ashley's arms facing his door. He is not
16 facing his shooter. He is trying to get away from his
17 shooter.

18 And you know this isn't an up close and personal shot.
19 Again, no soot, no stippling. It's a distance shot.

20 All right. Now let's talk about this shot. All right.
21 So there is basically three ways this shot could have
22 occurred, right. First, you know he is facing Brandon when
23 he gets shot here. This isn't bladed or anything like that.
24 This is coming off his right side of his leg, coming down
25 and then up.

1 Three possible ways. Okay, one, Anthony is standing
2 over Brandon. All right. That is possible. Dr. Batalis
3 doesn't know. He can't say. Well, I don't know; I mean
4 maybe the gun was on the ground. He doesn't know.

5 But you know he wasn't on the ground. He said on two
6 different occasions I wasn't on the ground; I stood up; I
7 started firing.

8 If he was on the ground fighting for his life don't you
9 think he would have told that to Detective Burckhardt? I
10 mean that is pretty important; that really helps his self-
11 defense case. He doesn't say that until now. He is on --
12 he is standing up and he is shooting.

13 Option Number 2. Brandon or the victim is laying on
14 the ground and he is standing over him with an angle like
15 that (motioning). That is certainly possible.

16 I would tell you that another possibility was given to
17 you by Dr. Batalis. I asked him. I said, well, is it
18 possible that the victim was on the ground and Brandon was
19 standing over him. And he said, yeah, that is possible but
20 it is also possible that he was bending his knee trying to
21 get up. And I think that's probably what happened.

22 From a distance he is bending his knee. He is trying
23 to get up and then he gets shot again. And then he turns.
24 He is trying to crawl and then he gets shot again. But
25 either way what you do know from the evidence is that the

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1 defendant was standing up when he shot those shots.

2 I thought this was pretty interesting. He even
3 demonstrated to you how the victim was on the ground.
4 Remember? He tells Detective Burckhardt he was wheezing; I
5 could hear him.

6 It is a senseless murder.

7 You heard the 911 call. I am certainly not going to
8 play it again. It is painful. It is tough to listen to.
9 This is a reaction that you would expect when your loved one
10 has just been shot and they are in the backyard and they are
11 dying and they are trying to fight for their life. Ashley
12 gave you the reaction that you would expect.

13 He is a coward. He got in his car and he fled. And
14 now he is lying to you. There is nothing honorable about
15 the fact that he came back. The only reason why he came
16 back was because he saw Officer Henderson out there shining
17 the flashlight, drawing down on him; stop, police, police.

18 And he knew Officer Henderson had his license plate.
19 When he made it all the way to Beaufain, then to pick, then
20 backed up. He is thinking in his mind right there, well,
21 they have already got me; I need to come back; I mean what
22 difference does it make at this point, I will just claim
23 self-defense.

24 And don't let him try to convince you that he didn't
25 know that the cop was there. Saint Nicholas Johnson -- and

CLOSING BY MR. OSBORNE

1 that is why we called him to the stand. He was almost a
2 block away. He saw the police officer. He heard -- he said
3 he couldn't hear exactly what he said. But he certainly
4 heard him. And Officer Henderson was standing right there
5 next to the driver's side car -- door.

6 All right. Ms. Gay has said a lot to you that quite
7 honestly is not in evidence, right. The judge told you that
8 the only evidence in this case is what you hear from the
9 witnesses on the stand, the evidence that is sitting at this
10 table right here. Bad back. Okay, the only evidence that
11 we have of that back is him saying that he had a bad back.
12 All right, if he had a bad back -- I called in expert
13 witnesses. We had SLED expert witnesses one right after the
14 other. The pathologist, Mr. Bourdon handled all of those
15 witnesses. I had the pathologist. All of those were expert
16 witnesses. If he had a bad back she can call an expert
17 witness just like I can.

18 Trespass notice. The only evidence that you have heard
19 of trespass notice came from him. If he was on trespass
20 notice, well, why not just show us the notice. Bring it in.

21 But even if he were on trespass notice -- let's just go
22 with that. So Ms. Gay is trying to tell you that the
23 defendant's idea is that I don't want to get him arrested so
24 I want to - because he is on trespass - so I am going to
25 kill him?

CLOSING BY MR. OSBORNE

1 All right. I am just going to address a couple of
2 other things that she said. This is kind of difficult for
3 me. I have to kind of anticipate what some of your
4 questions might be based on what she said. Because this is
5 it; this is the last opportunity we are going to have to
6 talk to you.

7 She made a mention that no one said that the defendant
8 fired seven times. I'm not sure what that means. I mean he
9 admits that he fired. So I am not sure what that -- where
10 that -- where she is going with that.

11 The defendant's statement is credible. When? What
12 statement? The first one or this one? Because they are so
13 wildly different.

14 Ashley is not credible? Well, I think that is
15 insulting to Ashley. Ashley told the police everything that
16 she knew. And she came in here and she told you. If she
17 had changed her story in any way or it was somehow different
18 then you would have heard about that.

19 She said that I was trying to imply that Anthony can't
20 walk. I mean that is not what I said. And that is not we
21 are trying to tell you.

22 What we are trying to tell you is that this idea up him
23 MMA style on the ground, you know, holding and punching and
24 all of that, it is just not believable based on the
25 evidence.

CLOSING BY MR. OSBORNE

1 And then appearances. This I really like. Why would
2 you -- why would she need to convince you that he had an
3 appearance that he was a danger to someone? If you believe
4 this story that he told you, he is in danger. He is on top
5 of him. That is not an appearance; that is a fact. So why
6 not just go with that?

7 That he beat him on -- that he beat the car. Well, he
8 got in an argument with Ashley if he was so violent he
9 wanted to beat somebody, he could have beat Ashley. But you
10 don't even know that is true. That is just coming from him.

11 And then the hesitate to act part.

12 Reasonable doubt doesn't mean that you can't go back
13 there and deliberate. I mean it almost makes it sound like
14 if you go back there and you are not immediately convinced
15 that you have to find him not guilty. But that is not the
16 way it works. I want you to go back there and deliberate.

17 And I would agree he is a smart man. I think he is
18 probably the smartest man in the courtroom.

19 All right. Let's talk about murder. Again, and I am
20 not going to go through the law. I am just going to tell
21 you how I believe that we proved it.

22 Killed another person. Well, he admitted to that.
23 This case isn't a who done it. It is all about the second
24 element, malice or aforethought.

25 All right. Hatred, ill will or hostility. Well, how

CLOSING BY MR. OSBORNE

1 do you know that? You heard from Ms. Smalls. There is your
2 hatred, ill will or hostility right there.

3 She is sleeping in her bedroom. There's a crack. She
4 is awoken to the sound of gunshots. Yes, she only heard
5 four. That's right. There are only two people that were
6 awake that night; Ashley -- well, three. Ashley, the
7 defendant, and the victim. There are only two alive right
8 now.

9 That defendant and Ashley both say there was a pause.
10 She didn't hear the pause because those first two shots
11 probably woke her up. She rolls over and she hears the next
12 four.

13 And then she hears that unfamiliar male voice yell:
14 You just messed with the wrong one, motherfucker. And then
15 -- and that is her right there (pointing).

16 She hears Anthony's body fall. I asked her. I said,
17 well, was that pretty much where Anthony was located when
18 you saw him fall. And she said, yeah. And that is
19 immediately afterwards.

20 This is where Anthony was shot and killed (displaying
21 photo). And look at the tree. What, nine, fourteen feet
22 away? And there's his glasses at the bottom.

23 Now he told Detective Burckhardt that he was wearing
24 the glasses when he shot. He told us here today that after
25 his second fall they fell off.

CLOSING BY MR. OSBORNE

1 Well, that doesn't quite fit; does it? Because he told
2 us here -- he told us on the stand that when he fell down he
3 fell down by the dumpster, right; but the trashcans. Why
4 aren't the glasses over there? Why are they way over there
5 by the tree about ten feet away. It doesn't quite fit, does
6 it.

7 He was wearing the glasses when he fired the shots.
8 How did they end up on the tree? Because they probably fell
9 off of his head when he was in such a big hurry to get out
10 of there.

11 But either way you know they were on his head when he
12 fired because he told that Detective Burckhardt. If he
13 couldn't see and that was somehow a defense I mean why
14 wouldn't he have told it that night?

15 An intentional doing. She would -- Ms. Gay would
16 almost make it seem like that gun just kept going off, it
17 was like out of control.

18 It is a semi-automatic gun. He made the decision to
19 pull that trigger again, again and again. It is
20 intentional. It is not an accident. You can't fire a gun
21 seven times in there and say I didn't mean to harm him.

22 No time requirement. I know she doesn't like this
23 either, but it is the law. And the law says you can form
24 that malice instantly.

25 I would submit to you when he got pushed down on that

CLOSING BY MR. OSBORNE

1 third time he had had enough. And when he got up he started
2 shooting at Anthony. And then he let him know what he was
3 all about with that last comment that he made to him and the
4 mistake that Anthony made.

5 All right. Without just cause or excuse. There is no
6 excuse for shooting an unarmed man; shooting at him seven
7 times, hitting him four times.

8 All right. So motive. Now this might confuse you when
9 you are back there deliberating. I am not suggesting to you
10 that this defendant went over to Anthony's apartment that
11 night in his mind thinking, well, I am going to kill
12 Anthony. That didn't happen.

13 But that -- but you do have motive, okay. He told it
14 to you; you just messed with the wrong person. That is the
15 motive right there. It is a senseless murder. It happens
16 every single day unfortunately.

17 You stare at a person the wrong way, you say the wrong
18 thing to a person, drive-bys. Those are murders. It
19 happens every single day. This is just another example of a
20 senseless murder. If you find him guilty of murder he is
21 guilty of this too.

22 All right. So self-defense. This is really what we
23 are here for, right. Remember, we don't have to disprove
24 all of these elements. We only have to disprove one,
25 without fault.

CLOSING BY MR. OSBORNE

1 This defendant brought about the difficulty himself.
2 He brought about this difficulty. He created his own peril
3 when he brought a gun to go confront Anthony in the back.
4 If you don't believe me, believe him.

5 (WHEREUPON, portion of video published.)

6 The whole time the gun was in his hand. He brought
7 about his own difficulty. That is not self-defense.

8 All right. The defendant must have been in danger of
9 death or serious bodily injury. If Mr. Bourdon comes up to
10 me right now and pushes me down I cannot shoot and kill him.
11 If he pushes me down again I cannot get up and shoot and
12 kill him. It doesn't work that way. Being pushed down is
13 not in danger of receiving serious bodily injury.

14 Not a single injury. Not a scrape. Not even a small
15 cut that is even visible. I even asked him when he was up
16 there just point to where the injury was. Anywhere, just
17 show us. Not once. He started to stand up. I thought he
18 might. And he said, well, all over; the face, back; you
19 know, everywhere.

20 Now I do want to show you this. Some discussion was
21 made about this shirt, right? You saw that backyard. There
22 was dirt everywhere.

23 All right. If he was on the ground tussling, rolling
24 around on the ground, this shirt would be a heck of a lot
25 dirtier than this.

CLOSING BY MR. OSBORNE

1 All right. And the collar. The collar up here on the
2 top isn't ripped. He had it turned down during the
3 interview. It wasn't ripped. But you will have this back
4 there with you.

5 And then I want to show you the cuttings. You are
6 going to have to look hard. This is the blood. This is the
7 massive amount of blood. Maybe a drop. Maybe two. A drop
8 of blood is no excuse to take a man's life.

9 Anthony, he was 6'2", 200 pounds. The defendant 6'2",
10 290 pounds. Ms. Gay would I guess seem to make you think
11 that that almost hundred pound difference doesn't make any
12 difference.

13 No duty -- or no other way to avoid the danger. He has
14 a duty to retreat. Well, he had plenty of options, right?
15 He had the option when he was at the backdoor. He could
16 have left the gun in the car. He could have left right then
17 like Ashley told him to. After he was pushed down -- or
18 pushed the first time, not even down; he could have left
19 then. After the second time he could have got up and left
20 then. After the third time he was pushed down he -- even --
21 that is even assuming that you even believe that story in
22 the first place. Which I will submit to you you don't have
23 to believe that.

24 I will play one last quick clip.
25 (WHEREUPON, portion of video published.)

CLOSING BY MR. OSBORNE

1 Maybe if I didn't have the gun in my hand maybe I would
2 have went about it differently. Well, he is telling you
3 right now that he had other options. And more importantly,
4 he is telling you that he wasn't in any danger. Because if
5 the gun wasn't in his hand Anthony would still be alive
6 today.

7 All right. Proof beyond a reasonable doubt. It is
8 proof that leaves you firmly convinced. It is not beyond
9 all doubt. All right, there are a few things in life that
10 you know beyond all doubt. It is a high burden, okay. But
11 it is a burden that we welcome. Don't think it is an
12 impossible burden.

13 All right. And I will end it with this. When you are
14 back there deliberating it is perfectly acceptable for you
15 to have sympathy for Ashley, for Anthony and Anthony's
16 family, and for his two daughters. And I would submit it is
17 perfectly acceptable for you to have sympathy for the
18 defendant and the defendant's family.

19 But sympathy should not enter the deliberations. The
20 judge will instruct you on the law, and it is your job to
21 apply the facts of this case to the law.

22 And when you are back there deliberating I am convinced
23 that you are going to come up with one conclusion. This was
24 nothing more than a senseless murder.

25 I am going to ask you to convict him of murder. Thank

CLOSING BY MR. OSBORNE

1 you.

2 THE COURT: Does any member of the jury panel need a
3 break? It shouldn't be much longer. But if you need one --
4 do you need one?

5 JURY PANEL MEMBER: No.

6 THE COURT: Okay. Okay. Maybe 15, 20 minutes maybe.
7 Thank you, ladies and gentlemen. Thank you for your
8 attention. We have now moved into the final phase of this
9 process when it becomes my responsibility to give you the
10 law which of course you promise to accept and apply fairly
11 and impartially to those facts that you will determine in
12 just a moment when I instruct you to retire to your jury
13 room and evaluate and consciously consider all the evidence
14 that you will have and decide what you believe to be the
15 true facts.

16 And then once deciding that, you would take the law and
17 apply it to those facts and render your decision. And when
18 you have done that you will have honored the commitment that
19 you made when we started and both Mr. Marshall and the State
20 will have obtained a fair and impartial determination of
21 this dispute. During this instruction, ladies and
22 gentlemen, there may -- I may use a term defendant. And it
23 is just a term that is used in really all cases, whether it
24 is civil or a criminal dispute.

25 Defendant is simply a term to describe or designate the

1 party against whom a claim is made. And that is the sole
2 significance of it. It is just another way of identifying
3 Mr. Marshall.

4 So please when you hear that term know that it is
5 just -- I am just -- instead of saying Mr. Marshall I am
6 using that term -- terminology. But it has no other
7 significance other than that.

8 As I told you, Mr. Marshall when we started was accused
9 by these two documents that I hold in my hand. And I told
10 you when we were qualifying you they are called indictments
11 and they merely contain the charges against him. One
12 charges him with murder, and the other charges him with
13 possession of a deadly weapon during a violent crime.

14 These are not evidence. They won't accompany you to
15 your jury room. They just simply maintain the allegations.
16 And it is the responsibility of the State to prove those
17 allegations.

18 Because to that -- to those charges Mr. Marshall has
19 rendered a plea of not guilty which then places upon the
20 State the burden of proving his guilt.

21 As I have said throughout, persons such as Mr. Marshall
22 and anyone in this country accused of committing criminal
23 offenses are never required to prove or disprove anything;
24 and they certainly are not required to prove their
25 innocence.

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1 The persons, Mr. Marshall and anyone so accused, is
2 presumed to be innocent. And that presumption is not
3 just -- they aren't just words.

4 Each of you must actively presume that the defendant is
5 not guilty. And the presumption of innocence is maintained
6 at all times throughout the trial of this case and may be
7 removed only when each of you are convinced beyond a
8 reasonable doubt the State has met its burden of proof and
9 established his guilt as to one or more of these crimes.

10 What is a reasonable doubt? A reasonable doubt is a
11 doubt that would make an honest, sincere, conscious juror
12 searching for the truth in a case to hesitate to act or take
13 some action.

14 Proof beyond a reasonable doubt is proof that leave you
15 firmly convinced of the defendant's guilt.

16 Now there are very few things in our life that we know
17 with absolute certainty. And in criminal disputes such as
18 this the law does not require proof that overcomes every
19 possible doubt.

20 If based on your consideration of the evidence you are
21 firmly convinced that the defendant is guilty of one or more
22 of the crimes charged then you must find him guilty.

23 If on the other hand you think he is really -- there is
24 a real possibility that he is not guilty, you must give him
25 the benefit of that doubt and return a verdict of not

1 guilty.

2 Reasonable doubt may arise from the evidence in the
3 case or the lack or absence of evidence in the case. And it
4 up to you to determine whether or not a reasonable doubt
5 exists as to the guilt of Mr. Marshall.

6 I charge you that he is entitled to every reasonable
7 doubt arising in the whole case. And that simply means
8 this: If upon any issue of fact which is essential to a
9 conviction and therefore a verdict of guilty, you should
10 have a reasonable doubt as to how that should be resolved.

11 I would instruct you that it must be and it is your
12 duty to resolve that duty in his favor.

13 Now, ladies and gentlemen, when a case is presented --
14 and the evidence can be presented in one of two ways, either
15 direct or indirect evidence; and sometimes both are used.
16 And the more popular name for indirect evidence is
17 circumstantial evidence.

18 Direct evidence is as the name implies. It generally
19 deals with a sensory perception; I saw something, I heard
20 something, I felt something or the like.

21 And if you are firmly convinced of that particular
22 testimony of that -- about that fact then that would
23 establish that particular fact.

24 Circumstantial evidence is when you prove a number of
25 factors and to that level that you are firmly convinced of

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1 the accuracy of the truth and when you link them either by
2 inductive or deductive reasoning it leads you to a logical
3 conclusion, then you -- that would prove that fact through
4 circumstantial evidence.

5 Of course you -- you are firmly convinced as to each of
6 those facts that you are relying on and firmly convinced of
7 the conclusion.

8 Now I will tell you that the law makes absolutely no
9 distinction between the weight or the value to be given to
10 either direct or circumstantial evidence, nor is any greater
11 degree of certainty required of circumstantial evidence than
12 of direct evidence. You should weigh all of the evidence
13 and decide what you find to be credible and believable.

14 However, the law says to the extend that the States
15 relies on the circumstantial evidence it has to meet a
16 certain test. First, as I have stated, the State as to each
17 of those events or circumstances they are relying on they
18 have to prove each of those beyond a reasonable doubt.

19 Further, these facts must point conclusively to the
20 guilt of the accused and must be wholly, perfectly
21 consistent with each other in every particular respect.

22 I further instruct you, ladies and gentlemen, that the
23 mere fact that the circumstances brought out in a case are
24 strongly suspicious of guilt or that the circumstances are
25 such that the defendant's guilt is probable, that would not

1 be sufficient; because as I told you, it has to be more than
2 being possibly guilty or probably guilty; it has to be proof
3 beyond a reasonable doubt. And that is what is necessary to
4 sustain a verdict of guilty in this particular case.

5 Now the evidence which you are to consider consists of
6 the testimony of the witnesses and the exhibits that were
7 introduced through their testimony during the trial.

8 As I mentioned to you, those exhibits will accompany
9 you to your jury room. There will be some that probably
10 will not go back unless you ask for them. The firearm I
11 typically do not send it back. I think there is a
12 photograph of it.

13 But if you need to look at we will bring you -- we can
14 bring you in the courtroom and you can examine the firearm
15 as well. Not that it is unsafe, but it is just I think a
16 better practice. But if you want to see it, you have ever
17 right to do that.

18 Also, as to those videos that were played, those will
19 have to be replayed in this courtroom. But you -- you may
20 ask for that at any point you wish should that become
21 necessary during your deliberations.

22 Also from time to time you may have heard the parties
23 refer to an exhibit, identify it and said for identification
24 purposes only. If that exhibit was not formerly introduced
25 the fact there was an exhibit that you saw the witness

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1 consider, that will not accompany you to your jury room.
2 That is just the way it is handled. We do it for
3 identification so the record can reference what the person
4 is looking at. And you have heard the testimony about that
5 but the exhibit itself will not come back to you.

6 So but if you need, as I have stated, if you can't
7 agree on what the testimony was concerning that particular
8 item and that becomes necessary we can replay that for you
9 as well should you desire.

10 As I mentioned, my remarks, the attorney remarks, are
11 not to be considered evidence. In fact it is proper for the
12 attorneys each to discuss the evidence, discuss the
13 testimony, and suggest reasonable inferences that you may
14 draw from that testimony; but I would instruct you as to
15 pertains to the testimony and the evidence if their
16 statement is not consistent with your recollection of what
17 the witness said or didn't say, you are instructed to
18 disregard their statement and take your collective
19 recollection. Because you are the sole judges of the
20 evidence in this case, the sole judges of the facts in this
21 case.

22 And I would further instruct you that if any statement
23 that they made about the law differs from the law that I
24 give to you, you are instructed to disregard their statement
25 and take it as I give it to you. I

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1 Because for the purposes of this proceeding today I am
2 the sole judge of the law, and you must take that law and
3 apply it fairly and impartially to those -- to those facts
4 that you will determine.

5 And please remember -- we talked about this when we
6 qualified you. We live in a wonderful country and we can
7 differ with laws every day and we can express our feelings
8 about that and not fear any retaliation for that expression.
9 And you have every right to believe what you wish to believe
10 about the law, what it should be, what you thought it would
11 be; and after we leave today if you choose to continue that
12 belief, that is fine; that is your right.

13 But for the purposes of this proceeding today you must
14 set aside your beliefs about what you thought the law was or
15 what you thought it should be and you must take this law as
16 I give it to you and apply it fairly and impartially to
17 those -- to those facts.

18 I know that you will honor that commitment. And
19 sometimes you wonder, well, why is he saying that. Because
20 everybody -- we are human and we have strong feelings. But
21 you made a commitment that you would set that aside and take
22 the law and apply it fairly and impartially.

23 Please understand something. Remember that nothing
24 that I say during this instruction is to be considered by
25 you as a suggestion of how you are to resolve any of the

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1 factual issues, because that is your job and yours alone.

2 And the order of the instruction means nothing. I had
3 to put it in some order. And consider the charge as a
4 whole, please.

5 During the trial you heard most of the time any
6 objections were done or matters of law were done out of your
7 hearing. There is one situation that occurs, and it is not
8 uncommon; you heard the attorneys object and I either
9 sustained the objection or I overruled the objection.

10 The fact that the attorneys made an objection, that
11 shouldn't enter your discussion. It shouldn't be any part
12 of your consideration.

13 And the fact that I sustained it and didn't allow you
14 to hear it, it would be improper for you to wonder why or
15 what the witness would have said; because if you engage in
16 that thought process you have kind of slipped over into my
17 area of responsibility. That was my job to rule as a matter
18 of law. Typically it dealt with a rule of evidence as to
19 whether or not I would permit that particular testimony.

20 But likewise, in those situations where I overruled it
21 I allowed you to hear it. The fact that I overruled it
22 don't say, well, the judge allowed it, I guess we have to
23 take this as a fact and the truth. If you do then you have
24 kind of let me step over into your area of responsibility,
25 and that's -- that would be improper also.

1 I think that is probably the greatest example that I
2 can give to you of how we work together to resolve these --
3 these issues. I made a decision as a matter of law that I
4 am going to allow that testimony. Now it shifts to you.
5 You decide whether you believe it or not and if so how
6 strongly you believe it.

7 And that is the way it works throughout this entire
8 process. You will analyze the evidence and decide what you
9 believe to be the truth and take the law and apply it. And
10 as I stated, once you have done that you will have honored
11 the commitment.

12 How does one decide the facts of a case as a judge of
13 the facts? I told you when we started you brought
14 everything that you are going to need. And you are going to
15 be asked to use it very shortly.

16 You brought your life's experience, your sense of
17 logic, your sense of reason, your common sense. Because it
18 really is a common sense exercise when we make a decision
19 about whether we believe something or not.

20 And there are many factors that we use in day-to-day
21 life to assist us in making those kinds of decisions. I am
22 going to discuss some of them with you now. But if I don't
23 mention a factor or method that you have used in your
24 lifetime and you have found it to be reliable, please use it
25 when you begin the process of analyzing this testimony.

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1 But some of the factors that you may want to consider
2 when you are determining the credibility or believability of
3 a witness -- witnesses, you may want to consider the
4 appearance of the witness, how did they appear to you,
5 straightforward or hesitate in answering questions. Was the
6 testimony of a witness consistent or was it inconsistent.
7 Was it strengthened or weakened by other evidence in the
8 case. How did the witness come to know the facts that he or
9 she testified to. What was the ability of that witness to
10 know those particular facts or circumstance. Is there a
11 reason for a witness to give testimony which may be helpful
12 or detrimental to one side or the other. In other words was
13 a witness biased or prejudiced in any fashion.

14 In determining and eval -- and making this
15 consideration or determination of what you find to be
16 credible and believable you are given wide latitude, very
17 broad discretions.

18 You have the right to believe many witnesses against
19 one. You have the right to believe one witness against
20 many. You have the right to believe all of a witness'
21 testimony, parts of a witness' testimony or none of a
22 witness' testimony.

23 Now of course you don't make those decisions
24 arbitrarily. But if there is a reason in the evidence or
25 record of this case for taking that position you have that

1 prerogative.

2 Because your objective, your mission so to speak, has
3 to have been -- has been from the start to determine the
4 truth regardless of the source of the evidence.

5 Now let's look at first at the charge of murder. South
6 Carolina Section 16-310 of our Code of Laws defines murder
7 as the killing of any person with malice aforethought either
8 expressed or implied.

9 The State in order to obtain a conviction for the crime
10 of murder must prove beyond a reasonable doubt that the
11 defendant killed another person with malice aforethought.

12 Malice is hatred, ill will or hostility towards another
13 person. It is the intentional doing of a wrongful act
14 without just cause or excuse and with an intent to inflict
15 an injury or under circumstances that the law would infer an
16 evil intent.

17 Malice indicates a formed purpose or design to do a
18 wrongful act under circumstances that exclude any legal
19 right to do it.

20 Further, the malice must be aforethought, which means
21 that the malice must have been conceived in the mind of the
22 defendant prior to the act producing the fatal result.

23 The word aforethought is usually understood to refer to
24 the time when the evil is conceived. Now the law does not
25 require that the malice must exist for any appreciable

1 length of time before the commission of the act. It may be
2 conceived at the very moment the action is taken which
3 results in the death of another.

4 Malice aforethought may be expressed or inferred. But
5 these terms expressed or infer do not mean different kind of
6 malice but merely the manner in which malice may be shown to
7 exist. That is either by direct evidence or by inference
8 from facts and circumstances which are proved beyond a
9 reasonable doubt.

10 Expressed malice is shown when a person speaks words
11 which express hatred or ill will for another or when the
12 person prepared beforehand to do an act which was later
13 accomplished.

14 Malice may be inferred from conduct showing a total
15 disregard for human life. If facts are proved beyond a
16 reasonable doubt sufficient to raise an inference of malice
17 to your satisfaction this inference would be simply an
18 evidentiary fact to be taken into consideration by you along
19 with all other evidence in the case and you may give it such
20 weight as you find it should receive. Because you as the
21 jurors are free to accept or reject this permissive
22 inference depending on your views of the facts.

23 I would instruct you that if malice is present in the
24 mind of the defendant for any length of time before the act
25 then that presence would be sufficient to render the killing

1 murder assuming all of the other elements are present.

2 Now the defendant in this case has raised the defense
3 of self-defense, which is a complete defense and it is
4 established -- if it is established. And you must find the
5 defendant not guilty if such is the case, if you are
6 satisfied beyond a reasonable doubt that it is established.

7 And I would instruct you that the burden of disproving
8 self-defense by proof beyond a reasonable doubt rests upon
9 the State.

10 If you have a reasonable doubt of the defendant's guilt
11 after considering all of the evidence including the evidence
12 of self-defense, then you must find the defendant not
13 guilty.

14 On the other hand if you have no reasonable doubt of
15 the defendant's guilt after considering all of the evidence
16 including the evidence of self-defense then you must return
17 a verdict of guilty.

18 The following elements are required to establish
19 self-defense. First, the defendant must be without fault in
20 bringing on the difficulty.

21 If the defendant's conduct was the type which was
22 reasonably calculated and did provoke a deadly assault, the
23 defendant would be at fault in bringing on the difficulty
24 and would not be entitled to an acquittal based on self-
25 defense.

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1 The second element of the self-defense is that the
2 defendant was actually in imminent danger of death or
3 serious bodily injury or that the defendant actually
4 believed he was in imminent danger of death or serious
5 bodily injury.

6 If the defendant was actually in imminent danger it
7 must be shown that the circumstances would have warranted a
8 person of ordinary firmness and courage to strike the fatal
9 blow to prevent the death or serious bodily injury.

10 If the defendants believe -- if the defendant believed
11 he was in imminent danger of death or serious bodily injury
12 it must be shown that a reasonably prudent person of
13 ordinary firmness and courage would have had the same
14 belief.

15 In deciding whether the defendant was or believed he
16 was in imminent danger or serious bodily injury you should
17 consider all the facts and circumstances surrounding the
18 crime including the physical condition and characteristics
19 of the defendant and the victim.

20 The defendant does not have to show that he was
21 actually in danger. It is enough if the defendant believed
22 he was in imminent danger and a reasonably prudent person of
23 ordinary firmness and courage would have had the same
24 belief. The defendant has the right to act on appearances,
25 even though the defendant's belief may have been mistaken.

1 It for you to decide whether the defendant's fear of
2 imminent danger or death or serious bodily injury was
3 reasonable and would have been felt by an order person in
4 the same situation.

5 The final element of self-defense is that the defendant
6 had no other probable way to avoid the danger or death or
7 serious bodily injury -- the danger of death or serious
8 bodily injury than to act as they did at the particular
9 instance.

10 A person cannot be required to make an exact
11 calculation as to the degree or amount of force which may be
12 needed to avoid death or serious bodily harm. Therefore, in
13 self-defense the defendant has the right to use the force
14 needed to avoid death or serious bodily harm.

15 The force used in self-defense does not have to be
16 limited to the degree or the amount of force used by the
17 victim. The defendant has the right to use so much force as
18 appeared to be necessary for complete self protection in
19 which a person of ordinary reason and firmness would have
20 believed to be needed to prevent death or serious bodily
21 harm.

22 The relative size, ages and weights of the defendant
23 and the victim may be considered in deciding the apparent or
24 actual need for force in self-defense and the amount of
25 force needed.

1 If the defendant is justified in defending himself and
2 in firing the first shot, the defendant is also justified in
3 continuing to shoot until it is apparent that the danger of
4 death or serious bodily injury has completely ended.

5 Now, ladies and gentlemen, if after considering all of
6 the evidence, including the evidence of self-defense, you
7 find beyond a reasonable doubt you find that the State has
8 failed to meet its burden of proof as to one or more
9 elements of what we have talked about for murder, there
10 would be no need to consider the possession of a weapon
11 during a violent crime.

12 On the other hand if you find and conclude from
13 considering all of the evidence, including the evidence of
14 self-defense, that the State has met its burden of proof and
15 you are firmly convinced they have established all of the
16 elements of self -- of murder and disproved self-defense
17 beyond a reasonable doubt then you will consider the crime
18 of being in possession of a weapon during a violent crime.

19 And the State must prove that the defendant was in
20 possession of a firearm or visibly displayed what appeared
21 to be firearm during the commission of a violent crime and
22 has therefore been found guilty of that particular -- that
23 crime.

24 The law defines murder as a violent crimes and
25 therefore would meet the requirements of the statute. The

1 term firearm is defined in this section as a revolver,
2 pistol, or any weapon which will or is designed to or may
3 readily be converted to expel a projectile.

4 I would also instruct you, ladies and gentlemen, that
5 the State must prove criminal intent. And that must be
6 established beyond a reasonable doubt.

7 Criminal intent is always a matter that must be
8 determined by you, as the judges of the facts, by
9 considering the circumstances surrounding the situation.
10 Criminal intent may be inferred from the circumstances shown
11 to have existed, and that is how a jury makes that
12 determination.

13 The State is not required to prove motive. Although
14 the presence or absence of this evidence of motive may be
15 considered in making your determination in this case.

16 Criminal intent is a state of mind that operates
17 jointly with an act in the commission of a crime. Intent
18 includes those consequences which represent the very purpose
19 for which an act is done or known to be substantially
20 certain to result regardless of one's desire.

21 Criminal intent is a mental state of a conscious
22 wrongdoing, and it is up to you to determine from the
23 evidence in this case what the defendant intended to do
24 based on the circumstances which have been shown to have
25 existed. I tell you that as with all other elements in this

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1 case the State must prove criminal intent beyond a
2 reasonable doubt.

3 Ladies and gentlemen, you -- neither you nor I are
4 partisans and advocates for either the State or Mr.
5 Marshall. We are expected to use our common sense, our
6 sense of logic and reason, fairly and impartially in
7 performing the tasks that we are each assigned.

8 And I will confess to you -- we all acknowledge our
9 humanity. I have had a little more practice at trying to do
10 this than you have probably, in being a judge. But I
11 understand as a human being sometimes it takes a lot of
12 effort to set aside those human emotions. Because we -- it
13 is natural. But we have to do that. Because if we don't
14 then we have distorted this whole process.

15 We had -- we don't have any friends to reward nor do we
16 have any enemies to punish. We can't be here about any
17 human emotions, concern, passion, passion, prejudice,
18 sympathy; any of those things. In the right place they are
19 very appropriate. Not here.

20 And so you have -- you will have to do something that
21 you -- I am confident you will do; and that is to very
22 methodically apply your common sense, your sense of logic
23 and reason, fairly, impartially, decide what you believe to
24 be the truth and then once you have decided that apply the
25 law and report your decision.

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1 Mr. Friedman.

2 MR. FRIEDMAN: Yes, sir.

3 THE COURT: To assist you in reporting that verdict I
4 have prepared two verdict forms. I will discuss it with you
5 and the other jurors.

6 They are -- they -- you will note the caption. That
7 means nothing. That is just to facilitate the file. Each
8 of them have two choices. And the order in which they
9 appear means nothing at all.

10 The first one that I will share is: We the jury by
11 unanimous consent -- and they read the same. One is for
12 murder and one is for possession of a deadly weapon during
13 the commission of a violent crime.

14 It says: We the jury by unanimous consent find the
15 defendant Brandon Rashad Marshall on the charge of murder -
16 and this happens to be the one I am reading - the first
17 charge is guilty; the second is not guilty.

18 And then a place for you to sign. It says presiding
19 juror.

20 Whatever your choice I would ask that you place a check
21 in the blank that precedes it and circle it.

22 Let's go over the choices. What will you be saying if
23 for instance you find in this one that the defendant is
24 guilty? You will be saying -- unanimous consent means just
25 what it sounds like. All twelve of you have to agree.

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1 Eleven to one is not sufficient.

2 In fact, I read there was a decision in I think it was
3 California and it was ten to two. Some states have that.
4 But we do not. This -- in the State it is twelve to zero.
5 That's -- that's the required vote.

6 What would you be saying if your -- if your verdict is
7 guilty on the charge of murder? You will be saying that you
8 each have evaluated it and you -- the State has met the
9 burden of proof and established in your mind beyond a -- by
10 meaning that you are firmly convinced that the defendant
11 killed another with malice aforethought and the State has
12 disproved self-defense.

13 Not guilty means that you have decided unanimously that
14 the State has failed to establish all of the elements of
15 murder or established the killing of another with malice
16 aforethought but did not disprove self-defense. And as I
17 stated, it is a complete defense so you would be instructed
18 to return a verdict of not guilty.

19 Either one. Whichever. You are to do that. Date it
20 and sign it. You will have completed that.

21 As to the possession of a weapon during the commission
22 of a violent crime, obviously you don't get to that one
23 unless you have a guilty on the murder. But if you do then
24 you will have to make the same consideration considering
25 whether the State has proven that Mr. Marshall had a firearm

1 and during the commission of a crime. And then if you find
2 unanimously then it would be guilty; if not, not guilty.

3 Let me ask you now if the first 12 of you feel like
4 that you will be able to continue. If anyone feels they
5 can't, please raise your hand. Thank you very much.

6 Mr. Gathers, Mr. Jackson, at this point it appears the
7 first 12 are able to continue. I am going to need to excuse
8 you all to discuss my charge with the attorneys. And it
9 might be necessary to bring you back in. And if we do that
10 then we will return you to the courtroom.

11 I know you are anxious to get started. And you are
12 almost there. But I do need to do that. When I do change
13 you out I am going to ask that the alternates not rejoin you
14 in your jury room.

15 They will take you to another room and I will be in
16 very shortly to discuss how long you need to remain with us.
17 But you may not rejoin the jury. But if we return the jury
18 back you will be brought back in as well.

19 When you start your deliberations -- and when might
20 that happen? You may start when you receive the exhibits.
21 Once you receive the exhibits and the deliberations, start.
22 The only restriction I place on the deliberations is this:
23 If any juror has to leave the table for any reason, you have
24 to stop deliberating until all 12 of you are together.

25 Other than that, ladies and gentlemen, you can proceed

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1 as you deem fit and proper.

2 Thank you so much for your attention. And I will ask
3 you to retire to your jury room and await your exhibits
4 before commencing your deliberations.

5 Thank you.

6 (WHEREUPON, jury exits courtroom 4/7/16, 4:27 p.m.)

7 THE COURT: Any exceptions or additions from the State?

8 MR. OSBORNE: Your Honor, I am looking right now and I
9 didn't see where it said -- and I am trying to find the
10 standard jury charge now for self-defense where it says we
11 only have to disprove one out of the three elements.

12 THE COURT: You have to prove it -- I mean you have to
13 prove -- you have got to prove -- you have got to disprove -
14 - you can prove one or more or whatever; it doesn't matter.
15 But you have to disprove it.

16 You have got a charge that said if they disprove one
17 you can't return a verdict? I think that is a charge on the
18 facts. But be that as it may, that would be the same thing
19 with -- it would be the same thing with murder.

20 I have never charged -- I am not saying it doesn't. I
21 have never seen a charge. I have never seen it where you
22 can give a specific quantity -- quality of -- or
23 quantitative of what you have to prove. You have to
24 disprove all three, and you have to prove -- disprove -- you
25 can disprove one; you can disprove all three.

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1 But to be candid with you, these are lay people and --
2 but I mean I think -- I think the charge is covered. But I
3 will note that you want me to say that all you have to do is
4 just prove one to be entitled that -- and there you would --
5 they would be disproved. I think that's -- that's -- goes
6 for that.

7 MR. OSBORNE: I just looked through it, Your Honor.
8 And I think you were absolutely right the way it is written
9 in the standard jury ---

10 THE COURT: All right.

11 Any exceptions or additional from the defendant?

12 MS. GAY: No, Your Honor.

13 THE COURT: Okay. The one -- I think I covered your
14 one that you did.

15 MS. GAY: You did.

16 THE COURT: I think I -- I didn't specifically use
17 those words. And I did look at that case. The case my
18 fellow brother Charles Wetstone declined the charge of self-
19 defense in that case; and they reversed him, which is fine.

20 But so I think -- I think I addressed it.

21 Thank you very much.

22 MS. GAY: In terms of scheduling where we are at right
23 this minute.

24 THE COURT: Where we are right now is y'all are going
25 to check the exhibits and then leave me a phone and try --

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1 we can get you in case we need you. Thank you.

2 (WHEREUPON, recess 4/7/16 4:38 p.m.)

3 (WHEREUPON, resumed 4/7/16, 4:44 p.m., following note from
4 jury.)

5 (WHEREUPON, Court's Exhibit 4, note from jury, was marked
6 for identification.)

7 THE CLERK: All jurors are present, Your Honor.

8 THE COURT: Thank you very much. Thank you, ladies and
9 gentlemen. I have what is now Court's Exhibit 4. Mr.
10 Friedman, it's fine; if any future if you will sign it
11 presiding. That is no problem. No problem. Just make sure
12 that.

13 Question for me: Is this a death penalty case?

14 And when I qualified jurors -- and that is an
15 understandable question. And you don't do this. I mean I
16 understand that. I assure you it is not. But and if it was
17 you would be -- you would be here through next week and it
18 is a totally different situation.

19 But it allows me to elaborate on something. The death
20 penalty case would be legitimate because you have the
21 responsibility of determining the appropriate punishment if
22 you find the person guilty of that crime.

23 You don't have anything to do with that. That is not
24 your job. That it my job. And that, again, has to be
25 separated. That shouldn't enter into your thought.

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1 I was just telling my law clerk we have in time to time
2 people want to know whether there is insurance. And that is
3 a legitimate lay question. It is not relevant in a civil
4 dispute. Why? Because the jury is tasked with not
5 determining how it will be paid but determining whether
6 there is any compensation due to the party that makes the
7 claim.

8 The same is true here, same analogy really. You all
9 don't have anything to do with the amount of punishment.
10 Your determination is did the State meet its burden of
11 proof. That is what you have to tell me. Based on your
12 determination as to the State -- if the State met its burden
13 of proof then the punishment is left.

14 So that is -- that is what you have to do. So lease
15 understand that. But I think you for your question.

16 We will be sending the exhibits back very shortly to
17 you. Thank you.

18 (WHEREUPON, jury exits courtroom, 4/7/16 4:44 p.m.)

19 (WHEREUPON, jury takes case 5:00 p.m.)

20 (WHEREUPON, note was received from jury and proceedings
21 resumed 4/7/16, 6:26 p.m.)

22 THE COURT: The portions of the charge, the elements of
23 the crime of murder, the elements of self-defense, typically
24 what I do is respond to those and copy those and send those
25 back to them.

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1 MS. GAY: Okay.

2 THE COURT: But Judge Thomas in a decision said that
3 you have to send them all -- the whole charge. Which
4 doesn't make any sense to me because if I bring them back in
5 I am not going to give them the whole charge. Do you have
6 any objection to just sending those provisions?

7 MS. GAY: No.

8 THE COURT: Do you have any objection?

9 MS. OSBORNE: No, Your Honor.

10 THE COURT: Good. And then I bring them in and I tell
11 them that. And then I tell them if there are any additional
12 portions they need to let me know and I will provide -- I
13 will be happy to provide those. So if that suits everybody,
14 that is what I will do.

15 MS. GAY: Yes, sir.

16 THE COURT: Okay. Good.

17 MS. OSBORNE: Yes, Your Honor.

18 THE COURT: Thank you.

19 (WHEREUPON, break was had 4/7/16, 6:28 p.m.)

20 (WHEREUPON, resume 4/7/16, 6:35 p.m.)

21 THE COURT: And this is a point I am going to advise
22 them also so that they are clear, in order to establish
23 murder they must -- you must prove all of the -- all of the
24 evidence of murder beyond a reasonable doubt. To disprove
25 self-defense you must -- you must prove at least -- or

1 disprove at least one to be -- to be able to defeat self-
2 defense.

3 Because I think that is -- that needs to be clarified.
4 Because I think I said all -- I think I said all of the
5 elements. And that is not correct.

6 If they disprove any one -- because in order to be
7 self-defense I think for there to be self-defense it
8 requires all three elements.

9 You can't be responsible, you acted -- you can act as
10 we talked about, on perception. And then there must -- you
11 must have had no other way to avoid it. So if any one of
12 those are disproved then self-defense would fail.

13 MR. OSBOURNE: Thank you, Your Honor.

14 THE COURT: Okay. And I want to say that too, because
15 they are only getting now just a portion of the charge too.

16 All right. Let me make this

17 (WHEREUPON, Court's Exhibit Number 5, note form jury, was
18 marked for identification.)

19 (WHEREUPON, Ms. Gay confers with client.)

20 MS. GAY: Your Honor, just in light of that ---

21 THE COURT: Sure.

22 MS. GAY: We originally had the discussion that that
23 wasn't going -- that language wouldn't be necessary. And I
24 just would like to put an objection out that I don't think
25 that that is appropriate under the circumstances. I read

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1 your charge and I thought the original charge was fine.

2 Just to put that in the record.

3 THE COURT: Well, that's fine.

4 (WHEREUPON, Ms. Gay confers with client.)

5 THE COURT: In response to that, one of the reasons is
6 when I was going over the verdict form I talked about that
7 if it failed on any one of the charges you must return a
8 verdict of not guilty on murder, and I said or that they
9 failed on self-defense. And so I want to make it clear that
10 that is not a carry over to self-defense.

11 That part is not being sent back. Because that was the
12 last part when I was explaining the verdict form. And I am
13 not going to re-explain the verdict form again. So that is
14 my reasoning for that.

15 I am not trying to ---

16 MS. GAY: And what you are going to send back in
17 writing was the stuff, the portions that you had said
18 initially?

19 THE COURT: Absolutely. And you have my self-defense
20 charge.

21 MS. GAY: Yes, I do.

22 THE COURT: And you will have the murder charge in just
23 a minute because I am going to print one for you too. Okay.

24 (WHEREUPON, break was had 4/7/16, 6:38 p.m. to 6:52 p.m.)

25 THE COURT: Let's bring them in.

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1 (WHEREUPON, jury enters 4/7/16, 6:53 p.m.)

2 THE CLERK: All jurors are present, Your Honor.

3 THE COURT: Thank you very much. Thank you, Mr.
4 Friedman. What I have is Court's Exhibit 5. I have
5 attached that to the portions of the charge that you
6 requested.

7 As I understand the jury, you and the jury would like
8 to have the elements of the crime of murder which must be
9 established and then the elements of self-defense that must
10 be disproved?

11 MR. FRIEDMAN: Correct.

12 THE COURT: I have attached them. And you will see
13 murder charge. And that is the portion dealing obviously
14 with -- it has the murder elements. And then self-defense.

15 I want to -- I said something at the conclusion in
16 closing going over the verdict forms. And of course you
17 consider the portions that I am sending back with all other
18 portions of the charge; and if you need any additional
19 portions, just let me know. I will be happy to provide it.

20 But obviously for murder charge, as I told you, the
21 State in order to obtain a conviction for murder must
22 establish each of those elements beyond a reasonable doubt.
23 If they fail on any one then you must return a verdict of
24 not guilty.

25 On self-defense, which they have to disprove, you will

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1 note there are three elements. And unlike the murder where
2 the State doesn't have to disprove all three, all three must
3 be -- if they disprove one beyond a reasonable doubt then
4 the self-defense would fail; just as the murder would fail
5 if they proved all but one of the elements of that charge.

6 So you understand that part of it, that that is
7 necessary for the self-defense to be a complete defense. If
8 they disprove -- if they fail to disprove -- if they fail to
9 disprove any of the -- any of the elements then you must
10 return a verdict of not guilty because the self-defense
11 would have been established beyond a reasonable doubt. Do
12 you understand that?

13 MR. FRIEDMAN: Yes.

14 THE COURT: Okay. Thank you. All right. I will send
15 it back. I have got to make one couple of corrections. I
16 failed to remove some things. But I will send it to you in
17 just a minute. Okay.

18 Thank you so much. Please continue your deliberations.
19 (WHEREUPON, jury exits courtroom, 4/7/16, 6:53 p.m.)

20 THE COURT: On the second page you will see a she and a
21 herself.

22 Are there any exception or additions from the State?

23 MS. OSBORNE: No, Your Honor.

24 THE COURT: Any exceptions or additions from the
25 defendant?

1 MS. GAY: Your Honor, I did object originally to the
2 fact that I think that was a necessary comment. You said
3 why you were doing it. I understand that. But there was an
4 initial objection to it.

5 THE COURT: Okay. That is fine. You are continued
6 with the objection. But I think I really addressed your
7 concern then by establishing what it was that we needed to
8 do.

9 (WHEREUPON, break was had 4/7/16 6:56 p.m.)

10 (WHEREUPON, resume 4/7/16 7:47 p.m.)

11 THE COURT: I am advised the jury has reached a
12 verdict. Is the State ready to receive the verdict?

13 MS. OSBORNE: Yes, Your Honor.

14 THE COURT: Let the record reflect Mr. Marshall is
15 present. Is Mr. Marshall ready to receive the verdict?

16 MS. GAY: Yes, sir.

17 THE COURT: Okay. And let me say to those persons that
18 have been attending this thank you for your respect for this
19 process and for the manner in which you conducted yourself.
20 I know it is difficult for everybody here. And I respect
21 that.

22 And I appreciate that you maintained the proper
23 decorum, and I am going to ask that that continue when we
24 publish the jury verdict. I don't want any outburst from
25 anyone.

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1 And that is -- I think it is a dignified process, and
2 these folks have given up their time and sacrificed for all
3 of us; and we need to show that respect. And I thank you
4 for that in advance.

5 Okay. Let's invite the jury.

6 (WHEREUPON, jury enters 4/7/16, 7:50 p.m.)

7 THE CLERK: All jurors are present, Your Honor.

8 THE COURT: Thank you very much, ladies and gentlemen.
9 I understand that the jury has reached a verdict, Mr.
10 Friedman?

11 MR. FRIEDMAN: Correct, Your Honor.

12 THE COURT: If you would pass the verdict form, please,
13 to the bailiff. Thank you.

14 The verdict forms have been properly completed. Mr.
15 Malone, if you will publish the verdict and ask the
16 defendant to please rise.

17 THE CLERK: The State of South Carolina versus Brandon
18 Rashad Marshall. We the jury by unanimous consent find the
19 defendant Brandon Rashad Marshall on the charge of murder
20 guilty. Signed by the foreperson. Dated April 7th, 2016.

21 Case Number 2014-GS-10-5262, we the jury by unanimous
22 consent find the defendant Brandon Rashad Marshall on the
23 charge of possession of a deadly weapon during a violent
24 crime guilty. Signed by the foreperson. Dated April 7th,
25 2016.

1 THE COURT: All right. Anything from the State for the
2 jury panel at this point?

3 MS. OSBORNE: No, Your Honor.

4 THE COURT: Anything from the defendant?

5 MS. GAY: I would ask you to poll the jury, Your Honor.

6 THE COURT: All right. Ladies and gentlemen, the clerk
7 is going to ask you a question and what he will be doing is
8 asking each of you is that your verdict and is it still your
9 verdict. If you will just follow the clerk's instruction we
10 will be through this very shortly. Thank you.

11 THE CLERK: Ladies and gentlemen of the jury, when I
12 call your juror number please raise your hand to identify
13 yourself. I am going to ask you two questions, and please
14 just give me an answer yes or no.

15 Juror Number 107.

16 THE JUROR: Yes.

17 THE CLERK: Is this your verdict?

18 THE JUROR: Yes.

19 THE CLERK: Is this still your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Juror Number 53. Is this your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Is this still your verdict?

24 THE JUROR: Yes.

25 THE CLERK: Juror Number 128. Is this your verdict?

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1 THE JUROR: Yes.

2 THE CLERK: Is this still your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Juror Number 193. Is this your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Is this still your verdict?

7 THE JUROR: Yes.

8 THE CLERK: Juror Number 194. Is this your verdict?

9 THE JUROR: Yes.

10 THE CLERK: Is this still your verdict?

11 THE JUROR: It is.

12 THE CLERK: Juror Number 197. Is this your verdict?

13 THE JUROR: Yes.

14 THE CLERK: Is this still your verdict?

15 THE JUROR: Yes.

16 THE CLERK: Juror Number 198. Is this your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Is this still your verdict?

19 THE JUROR: Yes.

20 THE CLERK: Juror Number 230. Is this your verdict?

21 THE JUROR: Yes.

22 THE CLERK: Is this still your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Juror Number 269. Is this your verdict?

25 THE JUROR: Yes.

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v

1 THE CLERK: Is this still your verdict?

2 THE JUROR: Yes.

3 THE CLERK: Juror Number 341.

4 THE JUROR: Yes.

5 THE CLERK: Is this your verdict?

6 THE JUROR: Yes.

7 THE CLERK: Is this still your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Juror Number 361. Is this your verdict?

10 THE JUROR: Yes.

11 THE CLERK: Is this still your verdict?

12 THE JUROR: Yes.

13 THE CLERK: Juror Number 366. Is this your verdict?

14 THE JUROR: Yes.

15 THE CLERK: Is this still your verdict?

16 THE JUROR: Yes.

17 THE CLERK: Your Honor, the jury has been polled. The
18 verdict stands.

19 THE COURT: It has. And thank you very much ladies and
20 gentlemen. I am going to ask you to retire -- return to
21 your jury room. I will be with you momentarily. And thank
22 you very much for your service. We appreciate it.

23 (WHEREUPON, jury exits courtroom 4/7/16, 7:51 p.m.)

24 THE COURT: All right. Anything from the State?

25 MS. OSBORNE: No, Your Honor.

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1 THE COURT: From the defendant?

2 MS. GAY: Well, Your Honor, at this time I would make a
3 motion for a new trial. I believe we have presented
4 evidence that would establish self-defense and did -- and
5 that he -- they -- the State had not met the elements
6 necessary and all of the elements necessary to convict of
7 murder. And of course the other charge is dependent on
8 that.

9 I would renew all of my other motions that we talked
10 about including the jury charges that I thought that we
11 should give and other objections that I made along the way.

12 THE COURT: Thank you very much. And I appreciate
13 that.

14 I think that there is no question that I think as I
15 stated in my rulings on your directed verdict that certainly
16 the evidence was supportive of the elements of the crime of
17 murder. It was a jury question.

18 And the elements of the self-defense issue the court
19 certainly would say that there certainly was an abundance of
20 evidence that the defendant acted on what he perceived and
21 his perception. And that is certainly one of the -- one of
22 the elements.

23 But there is overwhelming support for the fact that who
24 was the -- who actually started the problem, who creates the
25 problem. And then even the defendant himself said if I

STATE VS. BRANDON MARSHALL

1 didn't have the gun I could have exercised another -- maybe
2 I would have taken a different approach. And that clearly
3 would be sufficient evidence I believe to create a doubt as
4 to the final element. There was some other way of avoiding
5 it. So therefore I think the evidence clearly supports the
6 verdict of the jury in all instances.

7 And obviously the possession of a firearm, as I told
8 them if they found murder then that almost is -- that is
9 absolutely supported by the -- by the -- by the record.

10 So all of that said, I would rely on the record, rely
11 on my previous rulings. I deny your motion for a new trial.

12 Okay, do we want to sentence tonight?

13 MS. OSBORNE: Yes, Your Honor.

14 THE COURT: All right. I am going to take a break at
15 this point, and I will be back in very shortly. I want to
16 dismiss the jury.

17 (WHEREUPON, break was had 4/7/16, 7:55 p.m.)

18 (WHEREUPON, resume 4/7/16, 8:06 p.m.)

19 THE COURT: All right. Anything further from the
20 State, Mr. Osborne?

21 MS. OSBORNE: Your Honor, I don't have anything to say.
22 You have heard all of the facts of the case. I mean it is
23 simple attack. We are not going to make any recommendation
24 regarding sentencing. We will leave it in your sound
25 discretion.

STATE VS. BRANDON MARSHALL

1 The victim's wife, Ashley Butler, would like to address
2 you at the appropriate time; as would the victim's father,
3 Anthony Williams.

4 THE COURT: I will be delighted to hear from both of
5 them. Yes, sir.

6 MS. OSBORNE: Go ahead.

7 THE COURT: Yes, sir.

8 MR. ANTHONY WILLIAMS, SR.: Yes, I would just like to
9 say that the day my son died I felt it. Okay. I was in my
10 truck asleep. At 2:45 a.m. I thought I heard a -- I thought
11 I heard somebody hit my truck. I jumped up and I looked out
12 that window. That guy was asleep. Looked out that window,
13 and he was asleep. And then I laid back down. I was like
14 what was that, you know. And I laid back down.

15 And then I got the phone call from his mother telling
16 me that, you know, they killed my child. And, you know,
17 immediately I just I fell forward. And my heart just
18 stopped. But, you know, thank God I am still here; because
19 I almost had a heart attack that day.

20 THE COURT: I am sure you did.

21 MR. BRANDON: And I could not shift the gears in my
22 truck. I had to come home like that. It was so hard. So I
23 just ask -- that I thank everyone for all the hard work; and
24 I ask the court to please, you know, please, you know,
25 handle this. And I appreciate you guys all the hard work

1 that you did. Thanks.

2 THE COURT: Thank you, sir.

3 MS. ASHLEY BUTLER: I just want to say I do thank you
4 for working so hard for our family. It was almost two
5 years, and it was very hard for us. And I do thank y'all.

6 And so Brandon, I do not hate you. I forgive you.
7 It's hard for me to say that, but I never wished any harm on
8 him. The only point of me (inaudible word) him was all
9 because we still don't know why it even happened.

10 The past two years have been so rough on me. One of my
11 daughters was five and the other one was one years old when
12 it happened. And they knew Brandon, so I didn't tell them
13 that Brandon killed their father. I just told them that
14 their dad left. And they had to drag my five-year-old to
15 counseling because she did not understand why her daddy just
16 left and never came back.

17 So the family just told her that he was very sick and
18 he passed away. And to this day she still doesn't know the
19 truth. I do not want her to know that a friend can kill
20 another friend.

21 And Brandon, I forgive you. I forgive you. I just
22 want to know why. We still don't know why Anthony is dead.
23 He was a good person. He was. He really was.

24 And I do thank y'all for your hard work, but I just
25 don't understand why. I feel we was robbed of his life. We

STATE VS. BRANDON MARSHALL

1 was robbed of the funeral. We could not have the funeral we
2 wanted. I could not even sit in here to even see the trial.
3 I still don't know what went on. I am so hurt. But I do
4 thank you.

5 And Brandon, I do forgive you.

6 THE COURT: Thank you, ma'am. All right. Anything
7 else from the State?

8 MS. OSBORNE: No, Your Honor.

9 THE COURT: Ms. Gay.

10 MS. GAY: Thank you, Your Honor. Mr. Brandon
11 testified. I think he has some words he would like to say.

12 THE COURT: Certainly. I will be delighted to hear
13 from him. Let me ask. Does -- I know he testified to this.
14 There -- he doesn't have any prior convictions?

15 MS. OSBORNE: No, Your Honor, he doesn't.

16 THE COURT: Okay. All right. Mr. Marshall, I will be
17 delighted to hear from you now, sir.

18 MR. MARSHALL: I didn't mean to do it. I was scared.
19 And I told his mother that. I didn't have anything to gain
20 by writing her that letter and telling her that. I was
21 telling her what happened and I was scared. I
22 couldn't get him off of me. I am sorry.

23 THE COURT: Thank you, sir.

24 Anything else, Ms. Gay?

25 MS. GAY: No, sir.

STATE VS. BRANDON MARSHALL

1 THE COURT: Well, I was just talking with one of the
2 deputies. And I wish I could say that this -- I don't see
3 this very much, but tragically I do. And most of the law
4 enforcement people in this room know this as well.

5 You summed it up best I think, Mr. Marshall, in your
6 statement, if you hadn't had the gun you would have handled
7 it differently.

8 It is a mistake you made. It is a mistake that is made
9 every single day. People arm themselves and they really
10 don't understand the requirements and responsibilities that
11 go with arming oneself, and they have a distorted view of
12 what self-defense is.

13 They don't stress the part about if you have an
14 alternative you have to take it. And nobody talks about
15 that. Everybody talks about -- I think'-- I don't know
16 whether it is the media, political parts push the stand-
17 your-ground. And that is all they talk about, stand-your-
18 ground; I can shoot you. But that is not what the law says.
19 And it is in limited situations.

20 And of course you have preserved that and you had a
21 hearing on that and that is preserved. And I understand and
22 I am not trying to change your mind or -- we just differ on
23 that particular thing. And if the court that reviews this
24 feels otherwise, so be it.

25 But clearly, as I told that jury and as I mentioned in

STATE VS. BRANDON MARSHALL

1 my ruling -- and I don't think you -- the elements of
2 self-defense -- or the elements of the murder are there, and
3 there wasn't any question about that. And the only thing
4 that challenged that was that the State had to disprove
5 self-defense.

6 And clearly the first two I know what you thought you
7 were trying to do; but when he became upset a reasonable
8 person would have said I am going home, see you; if you get
9 arrested you get arrested, but I tried.

10 By persisting you created the problem. That is one
11 view, and I think -- I just think that was clearly a
12 reasonable doubt. And then the other, by your own words, if
13 I hadn't had the gun I would have handled it differently.

14 And hindsight is always 20/20. And it is a shame the
15 mistake that you have made.

16 I have a responsibility of course to render punishment.
17 And the minimum sentence is 30 years for the murder, as we
18 know. But something -- I also have a responsibility to make
19 a statement in a community that you have to think about
20 things.

21 So but I am not going to impose a life sentence on you.
22 I am going to impose a sentence. But I am not going to give
23 you the minimum sentence either. But you will have an
24 opportunity to get out one day. And I wish you well. And
25 the sentence of the court on 2014-5261 which is murder is 40

1 years.

2 He has been in jail for how long, Ms. Gay?

3 MS. GAY: Two years, Your Honor.

4 THE COURT: What is the date of his incarceration; do
5 you know?

6 MS. GAY: 5/22/14.

7 THE COURT: Okay. Credit for time served since
8 5/22/14. The sentence for the possession of a firearm is
9 five years, but I am going to run it concurrent with that.

10 And good luck to you, sir.

11 MS. GAY: Thank you.

12 THE COURT: And good luck to the family too, and God
13 bless you all.

14 (WHEREUPON, Court's Exhibit Number 6, Defendant's Request to
15 Charge, was marked for identification.)

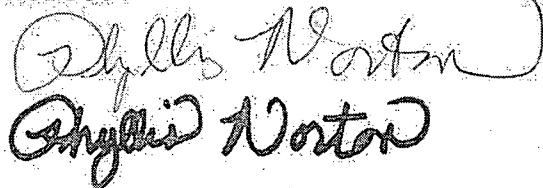
16 (WHEREUPON, trial concluded 4/7/16, 8:16 p.m)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in the Court for Charleston County, South Carolina, on April 4, 2016 to April 7, 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

The block contains two handwritten signatures of Phyllis Norton. The top signature is in cursive and is enclosed within a large, hand-drawn circular flourish. The bottom signature is also in cursive but more compact.

PHYLLIS NORTON, CVR

Date: July 21, 2016

Certified Transcript Provided For: SCCID
Certification Reference #071716

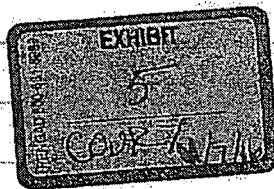
- Please provide definition of the elements of malice.
- Please provide list of elements of crime of Murder that must be proved.
- Please provide element of ~~defense~~ self defense that must be disproved.

James B. Voigt

311

Michael D. Turner 107

April 7th



Murder charge

Section 16-3-10 of the South Carolina code defines "murder" as the "killing of any person with malice aforethought either expressed or implied."

The state must prove beyond a reasonable doubt that the defendant killed another person with malice aforethought.

Malice is hatred, ill-will, or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with intent to inflict an injury or under circumstances that the law will infer an evil intent. Malice indicates a formed purpose and design to do a wrongful act under circumstances that exclude any legal right to do it

Further, there must be malice aforethought, which means that the malice must have been conceived in the mind of the defendant prior to the act producing the fatal result. The word aforethought is usually understood to refer to the time when the evil is conceived. The law does not require that the malice must exist for any appreciable length of time before the commission of the act. It may be conceived at the very moment the action is taken which results in the death of another.

Malice aforethought may be express or inferred. These terms, "express" and "inferred" do not mean different kinds of malice but merely the manner in which malice may be shown to exist. That is either by direct evidence or by inference from the facts and circumstances which are proved. Express malice is shown when a person speaks words which express hatred or ill will for another or when the person prepared beforehand to do the act which was later accomplished.

Malice may be inferred from conduct showing a total disregard for human life. If facts are proved beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case, and you may give it such weight as you find it should receive. You as jurors are free to accept or reject this permissive inference depending on your view of the facts.

If malice is present in the mind of the one doing the killing any length of time before the act, then its presence would be sufficient to render the killing murder.

SELF-DEFENSE

The defendant has raised the defense of self-defense. Self-defense is a complete defense and, if it is established, you must find the defendant not guilty. The state has the burden of disproving self-defense by proof beyond a reasonable doubt. If you have a reasonable doubt of the defendant's guilt after considering all the evidence, including the evidence of self-defense, then you must find the defendant not guilty. On the other hand, if you have no reasonable doubt

of the defendant's guilt after considering all the evidence, including the evidence of self-defense, then you must find the defendant guilty.

The following elements are required to establish self-defense:

First, the defendant must be without fault in bringing on the difficulty. If the defendant's conduct was the type which was reasonably calculated to, and did, provoke a deadly assault, the defendant would be at fault in bringing on the difficulty and would not be entitled to an acquittal based on self-defense.

The second element of self-defense is that the defendant was actually in imminent danger of death or serious bodily injury or that the defendant actually believed he was in imminent danger of death or serious bodily injury. If the defendant was actually in imminent danger, it must be shown that the circumstances would have warranted a person of ordinary firmness and courage to strike the fatal blow to prevent death or serious bodily injury. If the defendant believed he (she) was in imminent danger of death or serious bodily injury, it must be shown that a reasonably prudent person of ordinary firmness and courage would have had the same belief. In deciding whether the defendant actually was, or believed he was, in imminent danger of death or serious bodily injury, you should consider all the facts and circumstances surrounding the crime, including the physical condition and characteristics of the defendant and the victim. The defendant does not have to show that he was actually in danger. It is enough if the defendant believed he was in imminent danger and a reasonably prudent person of ordinary firmness and courage would have had the same belief. The defendant has the right to act on appearances even though the defendant's beliefs may have been mistaken. It is for you to decide whether the defendant's fear of immediate danger of death or serious bodily injury was reasonable and would have been felt by an ordinary person in the same situation.

The final element of self-defense is that the defendant had no other probable way to avoid the danger of death or serious bodily injury than to act as the defendant did in this particular instance.

A person cannot be required to make an exact calculation as to the degree or amount of force which may be needed to avoid death or serious bodily harm. Therefore, in self-defense, the defendant has the right to use the force needed to avoid death or serious bodily harm. The force used in self-defense does not have to be limited to the degree or amount of force used by the victim. The defendant has the right to use so much force as appeared to be necessary for complete self-protection, and which a person of ordinary reason and firmness would have believed to be needed to prevent death or serious bodily harm. The relative sizes, ages, and weights of the defendant and the victim may be considered in deciding the apparent or actual need for force in self-defense and the amount of force needed. If the defendant is justified in defending himself or others and in firing the first shot, then the defendant is also justified in continuing to shoot until it is apparent that the danger of death or serious bodily injury has completely ended.

State v. Brandon Marshall

777

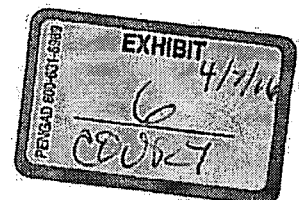
2014 - GS-10-052621
2014 - GS-10-052622

Defendant's Request to Charge No.

Self-defense - drug/alcohol consumption by deceased

In assessing whether the State has proven the Defendant did not act in self defense, I now charge you that the Defendant had the right to judge the conduct of the deceased more harshly than otherwise because of the deceased's alcohol consumption or drug use on the day of the incident.

State v. Day, 535 S.E.2d 431 (2000)



KFN20140505068

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1408318

ARREST WARRANT NUMBER

2014A1010202631

DATE OF ARREST

May 22, 2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

SEP 2 - 2014

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS1005261

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2014

THE STATE

vs.

BRANDON RASHAD MARSHALL

DOB: [REDACTED]

B/M

Indictment for

Murder

FILED

9/23/2014 2:24:20 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on September 2, 2014 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County on or about May 22, 2014, with malice aforethought, BRANDON RASHAD MARSHALL did kill and murder Anthony Williams by means of gunshot, and that Anthony Williams did die in Charleston County as a proximate result thereof on May 22, 2014; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


KELLEY YOUNG
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS

BRANDON RASHAD MARSHALLAKA. Brandon MarshallRace Black/African AmericanDOB [REDACTED] SS# [REDACTED] Sex MAddress [REDACTED]City, State, Zip North Charleston, SC 29405-7587DL# [REDACTED] SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO MurderIn violation of § 16-03-0010, 0020 of the S C Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury (def's initials)The plea is ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State

ATTEST

[Signature] 101325
David L. Osborne, Assistant Solicitor SC Bar #

Defendant

63773
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 40 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service 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. 5/22/14☐ 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 _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other _____

Recipient: _____

*Fine _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90Clerk of Court/Deputy Clerk [Signature]
Court Reporter [Signature]ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.By [Signature]
DEPUTY CLERKPresiding Judge. [Signature]Judge Code 2969Sentence Date 4/7/2016

KFN20140505068

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1408318

ARREST WARRANT NUMBER

2014A1010202632

DATE OF ARREST

May 22, 2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

SEP 2 - 2014

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS1005262

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2014

THE STATE

vs.

BRANDON RASHAD MARSHALL

DOB: [REDACTED]

B/M

Indictment for

Possession of a Deadly Weapon During a
Violent Crime**FILED**

9/23/2014 2:24:20 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on September 2, 2014 the Grand Jurors of Charleston County present upon their oath:

Possession of a Deadly Weapon During a Violent Crime

That in Charleston County, South Carolina, on or about May 22, 2014, the Defendant, BRANDON RASHAD MARSHALL, did possess a handgun or visibly display what appeared to be a handgun during the commission, or attempted commission, of Murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


KELLEY YOUNG
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

BRANDON RASHAD MARSHALLAKA: Brandon MarshallRace African AmericanSex MDOB [REDACTED] SS# [REDACTED]Address [REDACTED]City, State, Zip: North Charleston, SC 29405-7587DL# [REDACTED] SID# 8000122000*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO Possession Of A Weapon During The Commission Of A Violent CrimeIn violation of § 16-23-0490 of the S C Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS☐ Mandatory GPS (CSC w/minor 1st or Lewd Act)The charge is ☒ As indicted, ☐ Lesser Included Offense,The plea is ☐ Without Negotiations or Recommendation,

ATTEST

☒ CONVICTED OF or☐ PLEADS☐ Defendant Waives Presentment to Grand Jury☐ Negotiated Sentence,☐ Recommendation by the State

David L. Osborne, Assistant Solicitor 101325 SC Bar #

Defendant

Attorney for Defendant

63773 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on 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 _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd in equal consecutive weekly/monthly

pmts of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other _____

Recipient _____

*Fine _____

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§14-1-212 (Law Enforce Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

ATTEST: A TRUE COPY

Clerk of Court/Deputy Clerk
Court Reporter

JULIE J. ARMSTRONG (SEAL)

CLERK OF COURT

By _____

DEPUTY CLERK

Presiding Judge

Judge Code

Sentence Date:

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,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 24th day of January, 2017.

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,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 24th day of January, 2017.

RECEIVED
JAN 24 2017
SC Court of Appeals