

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lancaster County

William Jeffrey Young, Circuit Court Judge

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MICHAEL E. HYATT,

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000901

APPENDIX

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1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF LANCASTER
4 2010-GS-29-1589 and 2010-GS-29-1590
5

6 State of South Carolina

7 vs.

8 Michael Hyatt and Aaron Hyatt
9

10
11 Lancaster, South Carolina

12 January 6-10, 2014

13 Before the Honorable Brian Gibbons
14

15 APPEARANCES

16 For the State: Andy Cook

17 For the Defendants: William Frick and Mark Grier
18

19 Reported by: Michael C. Watkins

20 Official Court Reporter
21
22
23
24
25

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VOIR DIRE

1 THE COURT: Solicitor, are you ready to call your case?

2 MR. COOK: Yes, sir, Your Honor. Docket number
3 2010-GS-29-1589, State of South Carolina versus Aaron Hyatt,
4 he's charged with attempted murder, and also case number
5 2010-GS-29-1590, State of South Carolina versus Michael
6 Hyatt, also charged with attempted murder.

7 THE COURT: Now, ladies and gentlemen of the jury
8 panel, you may have heard, the solicitor indicated that we
9 have begun the case called the State of South Carolina
10 versus Aaron D. Hyatt and Michael E. Hyatt, both charged
11 with attempted murder. Before we select a jury there's
12 several questions which I will ask you and you have already
13 been sworn earlier so remember when you respond to these
14 questions you have been sworn to tell the truth. All right.
15 And before we actually start all of the questions it's good
16 for y'all to put the faces with names that I may call out.
17 The defense -- do you have a list of witnesses? All right.
18 I'm going to go ahead and read out the witnesses which the
19 State and the defense may call. Just because I read-the --
20 names doesn't mean they're actually going to be called, they
21 may or may not be called but I'm going to tell you every
22 possible witness who may be testifying in this case because
23 one of the questions I'll ask you deals with whether or not
24 you know the witness or have a personal or professional
25 relationship with our witness. In addition after I call out

VOIR DIRE

1 the names of the witnesses, if any of these witnesses are
2 present I'll ask that they please stand and face the jury
3 panel and then I'll have the lawyers introduce themselves to
4 the panel. First witness that is indicated is Kamil
5 Nassrah. Harlan -- is Mr. Nassrah present? That is Mr.
6 Nassrah in the back, raise your hand, sir. The next witness
7 is Harlan Donnell Melton, that's Mr. Melton. Thank you,
8 y'all can be seated. Randy Morgan in the back formerly of
9 the Lancaster County Sheriff's Office. Danny Bennett.
10 Danny Bennett is not present, formerly of the Lancaster
11 County Sheriff's Office. Steven Marshall formally of the
12 Lancaster County Sheriff's Office. Craig Lily, he's with
13 the Lancaster County Sheriff's Office. All right. Ken
14 Taylor with the Lancaster County Sheriff's Office. Jeff
15 Steele and Jeff Hilton with the Lancaster County Sheriff's
16 Office. Okay. Also listed as possible witnesses would be
17 Steve Garris. Terry Bowers. Michael Hyatt and Aaron Hyatt.
18 And these gentleman are seated over there with their
19 attorneys. And at this point in time I'll ask the defense
20 lawyers if you will stand and introduce yourselves.

21 MR. FRICK: My name is William Frick, I'm an attorney
22 and I practice criminal defense law in Lancaster and
23 Fairfield Counties.

24 MR. GRIER: I'm Mark Grier. I have been practicing law
25 in Lancaster County since 1991.

VOIR DIRE

1 THE COURT: And Mr. Frick, you represent?

2 MR. FRICK: Mr. Aaron Hyatt.

3 THE COURT: And Mr. Grier?

4 MR. GRIER: I represent Michael Hyatt.

5 THE COURT: All right. Thank you. And solicitor, if
6 you will introduce yourself?

7 MR. COOK: My name is Andy Cook and I'm assistant
8 solicitor of Lancaster County. I will be handling the case.
9 You may see my boss, elected Solicitor Mr. Doug Barfield who
10 may be in the courtroom at some point and also Assistant
11 Solicitor Randy Newman may be there at some point.

12 THE COURT: Okay. So here is some questions
13 concerning --

14 MR. GRIER: Judge, prior to that may I speak with the
15 solicitor for one second prior to hearing your questions?

16 (Break in proceedings.)

17 MR. GRIER: Thank you, Your Honor.

18 THE COURT: There's a bunch of questions I need to ask
19 you ladies and gentlemen so be patient, and remember that if
20 the question applies to you I need you to please stand and
21 I'll ask you some more questions from there. The first
22 question, has anyone ever been related by blood or marriage
23 to either Aaron D. Hyatt or Michael E. Hyatt or Kamil
24 Nassrah? If so, please stand. No response. Has anyone
25 ever had a close personal or social relationship with either

VOIR DIRE

1 Aaron Hyatt, Michael Hyatt or Kamil Nassrah? If so, please
2 stand. Yes, sir, what's your juror number?

3 THE JUROR: Mitchell Blair.

4 THE COURT: All right, juror number 11, Mitchell Blair.
5 Yes, sir?

6 THE JUROR: I used to work with him.

7 THE COURT: All right. Thank you, sir. Do you think
8 that would effect your ability to be fair and impartial in
9 this case?

10 THE JUROR: No.

11 THE COURT: All right. Thank you. Yes, sir, your
12 juror number?

13 THE JUROR: 103.

14 THE COURT: Juror number 103, Mr. Plyler?

15 THE JUROR: He works with me, too.

16 THE COURT: You know him?

17 THE JUROR: He worked with me.

18 THE COURT: Currently works with you?

19 THE JUROR: No.

20 THE COURT: All right. Do you think that would effect
21 your ability to be fair be impartial in this case?

22 THE JUROR: No, it wouldn't.

23 THE COURT: All right. Thank you, sir. All right.
24 Next question. Has anyone ever been related by blood or
25 marriage to any of the people that I have listed, or has

VOIR DIRE

1 anyone ever had a close personal or social relationship with
2 any of the people which I listed at the outset of the
3 questions? If so, please stand.

4 THE JUROR: I used to take care of --

5 THE COURT: You used to take care of who?

6 THE JUROR: Mr. Morgan's mother at the care center that
7 I used to work at before I became a registered nurse.

8 THE COURT: Okay. Would that effect your ability to be
9 fair and impartial in this trial?

10 THE JUROR: No, sir.

11 THE JUROR: My mother worked at the sheriff's office a
12 few years so I'm familiar with the deputies that may be
13 called as witnesses.

14 THE COURT: Your juror number?

15 THE JUROR: Jordan Rogers.

16 THE CLERK: 110.

17 THE COURT: Given that fact, sir, do you think that
18 would effect your ability to be fair and impartial in the
19 trial?

20 THE JUROR: No, sir.

21 THE JUROR: I do know CSI Investigator Jeff Steele.

22 THE COURT: What is your juror number, ma'am?

23 THE JUROR: Fourteen.

24 THE COURT: Would the fact that you know that person,
25 would that effect your ability to be fair and impartial in

VOIR DIRE

1 this case?

2 THE JUROR: I do think so, yes.

3 THE COURT: I'll disqualify you for the trial of this
4 case. Has any member of the jury panel ever been -- yes,
5 sir, juror number?

6 THE JUROR: 17.

7 THE COURT: Okay. Mr. Caskey?

8 THE JUROR: Yes, sir.

9 THE COURT: Yes, sir?

10 THE JUROR: Mark Grier is kin to me by blood kin,
11 something like second or third cousins or something.

12 THE COURT: That was my next question. Would that
13 effect your ability to be fair and impartial in this case?

14 THE JUROR: No, sir.

15 THE COURT: The next question -- I'm glad you picked up
16 on that, Mr. Caskey -- has any member of the jury panel ever
17 been represented by any of the attorneys involved in this
18 case or by their lawyer firm, or do you have a close
19 personal or social relationship or related to the attorneys
20 in any way? If so, please stand. Mr. Caskey responded.
21 Yes, sir, juror number?

22 THE JUROR: 104 --

23 THE COURT: Yes, sir?

24 THE JUROR: -- Mr. Plyler. I actually as a junior in
25 high school job shadowed Mr. Grier one day. And I'm also

VOIR DIRE

1 first cousins with the Lancaster County Sheriff.

2 THE COURT: Okay. Sheriff Faile?

3 THE JUROR: Yes, sir.

4 THE COURT: Would that effect your ability to be fair
5 and impartial in this case?

6 THE JUROR: Probably. He's family through marriage
7 too, so I think it would.

8 THE COURT: All right. I'll disqualify you from the
9 trial of this case. Has any member of the jury panel formed
10 or expressed an opinion about any issue or matter involved
11 in this case? If so, please stand. Is any member of the
12 jury panel aware of any bias or prejudice toward either the
13 State or the defendants in this case? If so, please stand.
14 No response. Is there any member of the jury panel that was
15 a member of the grand jury which issued the indictment in
16 this case? No response. Is there any member of the jury
17 panel who is a member of or contributing to any group which
18 has as its primary concern the promotion of law enforcement
19 or victims rights. These groups would include but certainly
20 would not be limited to MADD, SADD or CAVE, which stands for
21 Citizens Against Violent Crime, Police Association, Troopers
22 Association, Fraternal Order of Police. So if this question
23 applies to you please stand. No response. Is there any
24 member of the jury panel who has a religious, philosophical
25 or moral reason why they could not be a fair and impartial

VOIR DIRE

1 juror in this case? If so, please stand. No response. Has
2 any member of the jury panel read or heard any discussion or
3 publicity about this case? If so, please stand. Has any
4 member of the jury panel ever been a member of or work with
5 civilian or military law enforcement? If so, please stand.
6 Is any member of the jury panel or their immediate family
7 related by blood or marriage to any member of law
8 enforcement? If so, please stand. Gentleman in the back,
9 yes, sir?

10 THE JUROR: Number 52. My dad is a police officer.

11 THE COURT: For who?

12 THE JUROR: Lancaster City.

13 THE COURT: Would that effect your ability to be a fair
14 and impartial juror in this case?

15 THE JUROR: No, sir.

16 THE COURT: Thank you, sir. Yes, sir, your juror
17 number?

18 THE JUROR: Number seven, sir.

19 THE COURT: Mr. Bass?

20 THE JUROR: Yes, sir. I have a cousin who is a
21 sheriff's deputy in another county and another state but he
22 is related to me and it would not effect my judgment.

23 THE COURT: Thank you, sir. Yes, ma'am?

24 THE JUROR: Number 41. My brother-in-law is a
25 sheriff's officer in New Jersey, he is now passed away.

VOIR DIRE

1 THE COURT: Okay.

2 THE JUROR: And it wouldn't have an affect.

3 THE COURT: Thank you very much. Anybody else? Has
4 any member of the jury panel or their immediate family been
5 a victim of any crime of violence, and if so what type of
6 crime was it? So if you've been a victim or a member of
7 your immediate family has been a victim of any violent crime
8 please stand. Juror number again?

9 THE JUROR: 41.

10 THE COURT: Yes, ma'am. What happened?

11 THE JUROR: My husband, someone put a gun to his head
12 many years ago.

13 THE COURT: All right. Would that effect your ability
14 to be fair and impartial in this case?

15 THE JUROR: No, sir.

16 THE COURT: All right. No further response. Has any
17 member of the jury panel been a witness to any crime? If
18 so, please stand. No response. Has any member of the jury
19 panel ever served on any jury in any court, and if so what
20 was the verdict, if any? Please stand if you've served on a
21 trial jury before, any type of court. Okay. We'll go from
22 my left to my right. Yes, sir, over there?

23 THE JUROR: Juror number 7.

24 THE COURT: Yes, sir.

25 THE JUROR: I served on a couple of just traffic court

VOIR DIRE

1 trials and they were both adjudicated guilty.

2 THE COURT: Would that effect your ability to be fair
3 and impartial in this case?

4 THE JUROR: No, sir.

5 THE COURT: All right. Thank you. Yes, sir?

6 THE JUROR: Juror number 98. A murder trial, it was
7 probably about five or six years ago.

8 THE COURT: Here in Lancaster County?

9 THE JUROR: Yes.

10 THE COURT: What was the verdict?

11 THE JUROR: Guilty. I was an alternate juror.

12 THE COURT: Would that effect your ability to be fair
13 and impartial in this case?

14 THE JUROR: No.

15 THE COURT: Thank you. Yes, sir?

16 THE JUROR: Number 9, it was guilty about five years
17 ago. -

18 THE COURT: Juror number 9. What type of trial was it?

19 THE JUROR: It was a guy and a little girl. -

20 THE COURT: Okay. And it was a guilty verdict?

21 THE JUROR: Yes.

22 THE COURT: Would that effect your ability to be fair
23 and impartial in this case?

24 THE JUROR: No, sir.

25 THE COURT: All right. Gentleman in the black coat,

VOIR DIRE

1 yes, sir?

2 THE JUROR: I actually served on five different juries
3 in New York City. Three were settled out of court before
4 they went to trial, two went to verdict, one was not guilty,
5 one was guilty.

6 THE COURT: Would that fact effect your ability to be
7 fair and impartial in this case?

8 THE JUROR: I do not think so.

9 MR. GRIER: What was his number?

10 THE COURT: What was your juror number again, sir?

11 THE JUROR: 127.

12 THE COURT: Juror number 127. Green sweater, yes, sir?

13 THE JUROR: Juror number 17. I was on a trial about
14 ten years ago for a DUI and we found the gentleman not
15 guilty.

16 THE COURT: Would that effect your ability to be fair
17 and impartial in this case?

18 THE JUROR: No, sir.

19 THE COURT: ~~Thank you.~~ Yes, ma'am?

20 THE JUROR: It has been more than ten years ago, it was
21 a burglary trial, guilty.

22 THE COURT: And what's your juror number?

23 THE JUROR: 140.

24 THE COURT: Would that effect your ability to be fair
25 and impartial?

VOIR DIRE

1 THE JUROR: No, sir.

2 THE COURT: Thank you. Yes, sir?

3 THE JUROR: Juror number 45. I served on a DUI case
4 about ten years ago.

5 THE COURT: What was the verdict, do you remember?

6 THE JUROR: Not guilty.

7 THE COURT: Would that effect your ability to be fair
8 and impartial in this case?

9 THE JUROR: No.

10 MR. COOK: What was your number, sir?

11 THE JUROR: Forty-five.

12 THE COURT: Yes, sir?

13 THE JUROR: Kenneth Furr. I don't know my number.

14 THE COURT: That's juror number 38, yes, sir?

15 THE JUROR: I served on a DUI case about 15 years ago.

16 THE COURT: All right. Do you remember what the
17 verdict was?

18 THE JUROR: Not guilty.

19 THE COURT: Would that effect your ability to be fair
20 and impartial in this case?

21 THE JUROR: No, sir.

22 THE COURT: Thank you. Yes, ma'am in the back?

23 THE JUROR: 142.

24 THE COURT: Okay. Ms. Wallace, yes, ma'am?

25 THE JUROR: It was on a robbery.

VOIR DIRE

1 THE COURT: All right.

2 THE JUROR: They had to do another trial.

3 THE COURT: Okay. Would that effect your ability to be
4 fair and impartial?

5 THE JUROR: No.

6 THE COURT: Thank you. Yes, ma'am?

7 THE JUROR: I don't know my number. Aujeannette
8 Mickles.

9 THE COURT: Juror number 85. Yes, ma'am?

10 THE JUROR: It was assault and battery like four years
11 ago, I think not guilty.

12 THE COURT: Would that effect your ability to be fair
13 and impartial in this case?

14 THE JUROR: No, sir.

15 THE COURT: All right. Thank you, ma'am. No further
16 response.

17 (Break in proceedings.)

18 THE COURT: Next question. Would any member of the
19 jury panel be more likely to believe the testimony of one
20 who claims to be a victim of a crime over the testimony of a
21 defendant by the mere fact that one witness claims to be a
22 victim and that another witness is accused of a crime? If
23 so, please stand. No response. Does any member of the jury
24 panel have any legal education or legal training? If so,
25 please stand. No response. Has any member of the jury

VOIR DIRE

1 panel ever been called as a witness in a trial or
2 participated in a trial in any way other than being on a
3 jury, because you have already answered that question. But
4 if you have testified as a witness or participated in a
5 trial in some other way, please stand.

6 THE JUROR: 15. I witnessed a wreck and I had to go
7 testify.

8 THE COURT: Would that effect your ability to be fair
9 and impartial?

10 THE JUROR: No.

11 THE COURT: Okay. Thank you. All right. Yes, sir?

12 THE JUROR: I was in a wreck in 1990 and we had a
13 lawsuit against the insurance company, so I don't know if
14 that applies to what you were saying.

15 THE COURT: That's juror number 17. Would that effect
16 your ability to be fair and impartial in this case?

17 THE JUROR: No, sir.

18 THE COURT: Has any member of the -- I think I have
19 asked this but I'll ask it again. No, I've already asked
20 that. Does any member of the jury panel know of any reason
21 whatsoever why he or she should not serve as a juror in this
22 case with particular emphasis being placed on your ability
23 to be fair and impartial to both the State or the defendant?
24 If so, please stand. Does the State have any additional
25 questions or voir dire?

VOIR DIRE

1 MR. COOK: None from the State, Your Honor.

2 THE COURT: Does the defense have any additional
3 questions?

4 (Break in proceedings.)

5 MR. GRIER: Thank you, Your Honor. No further
6 questions.

7 THE COURT: Mr. Clerk, we are ready to strike a jury.

8 (Break in proceedings.)

9 THE CLERK: Juror 121, James Simmons. What say the
10 State?

11 MR. COOK: Please swear the juror.

12 THE CLERK: Defendant?

13 MR. GRIER: Please swear the juror.

14 THE COURT: Juror 57, Jennifer Iberg. What say the
15 State?

16 MR. COOK: Please swear the juror.

17 THE CLERK: Defendant?

18 MR. GRIER: Please strike the juror.

19 - - THE COURT: Before we go any further, Mr. Clerk, let me
20 interject. Ladies and gentlemen of the jury, if you're
21 selected to be on this trial jury when you go back to your
22 jury room before I give you any other instructions, don't
23 talk about the case, you don't know anything about it so I'm
24 ordering you not to discuss anything about this case at all
25 until I give you further instructions later on in the other

VOIR DIRE

1 courtroom over there. Okay? Go ahead.

2 THE CLERK: Juror number eight, Henry Bass. What say
3 the State?

4 MR. COOK: Please excuse the juror.

5 THE CLERK: Juror 103, Tracy Plyler. What say the
6 State?

7 MR. COOK: Please excuse the juror.

8 THE CLERK: Juror 127, Richard Steinmesser. What say
9 the State?

10 MR. COOK: Please seat the juror.

11 THE CLERK: Defendants?

12 MR. GRIER: Please strike the juror.

13 THE CLERK: Juror number nine, Raymond Beckham. What
14 say the State?

15 MR. COOK: Please seat the juror.

16 THE CLERK: Defendants?

17 MR. GRIER: Please excuse the juror.

18 THE CLERK: Juror 58, Donna Immel. What say the State?

19 MR. COOK: Please seat the juror.

20 THE CLERK: Defendants?

21 MR. GRIER: Please swear the juror.

22 THE CLERK: Juror 55, Jarred G. Horne. What say the
23 State?

24 MR. COOK: Please seat the juror.

25 THE COURT: Defendant?

VOIR DIRE

1 MR. GRIER: Please swear the juror.

2 THE CLERK: Juror 123, Marion Spero. What say the
3 State?

4 MR. COOK: Please seat the juror.

5 THE CLERK: Defendants?

6 MR. GRIER: Please excuse the juror.

7 THE JUROR: Juror 47, Jeremy Heller. What say the
8 State?

9 MR. COOK: Please seat the juror.

10 THE COURT: Defendants?

11 MR. GRIER: Please swear the juror.

12 THE CLERK: Juror 91, Shaun Murphy. What say the
13 State?

14 MR. COOK: Please seat the juror.

15 THE CLERK: Defendants?

16 MR. GRIER: Please swear the juror.

17 THE CLERK: Juror 34, Norma Estridge. What say the
18 State?

19 MR. COOK: Please seat the juror.

20 THE CLERK: Defendants?

21 MR. GRIER: Please swear the juror.

22 THE CLERK: Juror 112, Elizabeth Rushing. What say the
23 State?

24 MR. COOK: Please seat the juror.

25 THE CLERK: Defendant?

VOIR DIRE

1 MR. GRIER: Please excuse the juror.

2 THE CLERK: Juror 15, Chrystal Bryant Clark. What say
3 the State?

4 MR. COOK: Please seat the juror.

5 THE CLERK: Defendants?

6 MR. GRIER: Please excuse the juror.

7 THE CLERK: Juror 150, Jerry York. What say that
8 State?

9 MR. COOK: Please seat the juror.

10 THE CLERK: Defendants?

11 MR. GRIER: Please excuse the juror.

12 THE CLERK: Juror 124, Ronald Springs. What say the
13 State?

14 MR. COOK: Please seat the juror.

15 THE CLERK: Defendants?

16 MR. GRIER: Please swear the juror.

17 THE CLERK: Juror 87, Travis Montana. What say the
18 State?

19 MR. COOK: Please seat the juror.

20 THE CLERK: Defendant?

21 MR. GRIER: Swear the juror.

22 THE CLERK: Juror 38, Kenneth Furr. What say the
23 State?

24 MR. COOK: Please swear the juror.

25 THE CLERK: Defendants?

VOIR DIRE

1 MR. GRIER: Please swear the juror.

2 THE CLERK: Juror 84, Charles Menzel. What say the
3 State?

4 MR. COOK: Please seat the juror.

5 THE CLERK: Defendants?

6 MR. GRIER: Please swear the juror.

7 THE CLERK: Juror 17, Jaskell Caskey. What say the
8 State?

9 MR. COOK: Please excuse the juror.

10 THE CLERK: Juror 98, Joseph Pavone. What say the
11 State?

12 MR. COOK: Please seat the juror.

13 THE CLERK: Defendants?

14 MR. GRIER: Please excuse the juror.

15 THE CLERK: Juror 131, Sydnie Stroble. What say the
16 State?

17 MR. COOK: Please seat the juror.

18 THE CLERK: Defendants?

19 MR. GRIER: Please swear the juror.

20 THE CLERK: Juror 134, David Therkelsen. What say the
21 State?

22 MR. COOK: Please seat the juror.

23 THE CLERK: Defendants?

24 MR. GRIER: Please excuse the juror.

25 THE CLERK: Juror 125, Milton Stalls. What say the

VOIR DIRE

1 State?

2 MR. COOK: Seat the juror.

3 THE CLERK: Defendants?

4 MR. GRIER: Please strike the juror -- seat the juror,
5 excuse me.

6 THE CLERK: Did you seat him?

7 MR. GRIER: Yes. Please swear the juror.

8 THE COURT: We'll do two alternates, the State gets two
9 strikes and the defense gets four strikes.

10 THE CLERK: Juror number 28, Fran Doceti. What say the
11 State?

12 MR. COOK: Please seat the juror.

13 THE CLERK: Defendants?

14 MR. GRIER: Please excuse the juror.

15 THE CLERK: Juror 118, Shaun Satterfield. What say the
16 State?

17 MR. COOK: Please seat the juror.

18 THE CLERK: Defendants?

19 MR. GRIER: Please swear the juror.

20 THE CLERK: Alternate two. Juror 108, Andrew Rathbone.
21 What say the State?

22 MR. COOK: Please seat the juror.

23 THE CLERK: Defendants?

24 MR. GRIER: Please swear the juror.

25 THE COURT: All right. Any matters of law concerning

VOIR DIRE

1 jury selection from the State?

2 MR. COOK: Nothing from the State, Your Honor.

3 THE COURT: From the defense?

4 MR. GRIER: None from the defense.

5 THE COURT: All right.

6 (The remaining panel was excused and court
7 resumed in the courtroom.)

8 THE COURT: What I'm going to do is bring the jury in,
9 swear them and send them home for the day and we will hear
10 motions and everything else this afternoon. Bring the jury
11 in.

12 (The jury returned to the courtroom and was
13 sworn.)

14 THE COURT: Thank you, Madam Clerk. Ladies and
15 gentlemen of the jury, I've got you in here, it's that time
16 of day where we would normally break for lunch, but the good
17 news is there's some matters of law I need to take up
18 with the attorneys and some other matters I need to deal
19 with this-afternoon, so I'm actually releasing you for the
20 day. Okay. You don't have to come back after I release you
21 here shortly. You need to be back -- I'm very aware of the
22 weather issues in the morning, I know it's not supposed to
23 have any precipitation but it's supposed to be really,
24 really, really cold. I don't know which of you may live in
25 outlying areas but you may have some driveway issues or road

VOIR DIRE

1 issues particularly with the rain that we've had. So being
2 aware of that, number one I want you to check back after
3 6:00 today on the number on the call-in card or something
4 about changes as far as the weather is concerned, but if it
5 doesn't be here tomorrow morning in your jury room at 10:15.
6 I'm going to give about an hour or so delay, hour and a half
7 delay so we can make sure everybody gets started. My plan
8 is to get the trial started tomorrow at 10:30 while
9 everybody is fresh and ready to go forward and we will go
10 accordingly. Okay? Now, it's very important that you
11 listen to me when I tell you and I order that you not have
12 any discussions with anybody whatsoever about anything
13 involving this case. Certainly you can tell your family
14 member or spouse or whatever that you got picked for jury
15 duty and that you're sitting on a trial but you don't tell
16 them anything about this case, you haven't heard from either
17 the State or the defense. You are not to do any independent
18 research in this case, and you're not to go on Facebook or
19 Twitter or Instagram and say all this kind of stuff, you're
20 just not supposed to do it. Okay. And I'm ordering you
21 not to do that. While I have you here, of course, I'll advise
22 you more later on when we start the trial, you are not --
23 you can't talk about the case at all until you've received
24 all of the evidence and until I have instructed you to begin
25 deliberating, so just do not do that. Remember, you just

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1 took an oath to comply with that. Okay. So if nothing else
2 what we'll do is y'all be here tomorrow morning at 10:15,
3 but just in case there's a weather issue that happens
4 between now and 6:00 just call back at 6:00, and if you hear
5 the message -- you'll have just one message mainly for the
6 other jurors that they are not needed tomorrow, if you hear
7 that general message you know you're needed at 10:15 in the
8 morning. Anything else, Madam Clerk?

9 THE CLERK: No, sir, I think that's it.

10 THE COURT: Okay. Y'all are free to leave.

11 (The jury left the courtroom.)

12 THE COURT: Anything else before we break for lunch?

13 MR. COOK: No, Your Honor.

14 THE COURT: Let's break for lunch, let's reconvene at
15 1:30, does that sound good?

16 (A lunch break was taken.)

17 THE COURT: I understand there's motions for the Court.

18 For the record before we pursue any other motions I will

19 state for the record, this is part of the file, that there

20 was a motion held in chambers, a motion in limine dealing

21 with defense moved for ten preemptory strikes rather than

22 the allotted eight per statute, moving that on

23 constitutional grounds, I denied that motion. I'm just

24 saying that to preserve that issue on the record. Anything

25 else you want to be heard on on that?

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1 MR. FRICK: Your Honor, just so I can put it on the
2 record in case for some reason that doesn't make it -- it's
3 part of the file so it should go forward if anything happens
4 here but it was my motion as you stated to have ten
5 preemptory strikes, a total of 20 for the defense because
6 it's attempted murder and quite frankly I can't fathom why
7 the statute allows you to have ten strikes if you get a
8 breach of trust but not ten if you have attempted murder,
9 and so based on an equal protection argument under the
10 Constitution of the United States and in the State of South
11 Carolina I made the motion for us to have ten for a total of
12 20.

13 THE COURT: And Mr. Grier, you join in the motion?

14 MR. GRIER: I join the motion, Your Honor.

15 THE COURT: And the State's position, which I heard
16 back in chambers, did you want to state anything else under
17 the State's position?

18 MR. COOK: Nothing further, Your Honor.

19 THE COURT: The statute says what it says, that's
20 clearly the intent of the legislature, I considered the
21 constitutional basis for it and I'll deny your motion. All
22 right. What else do I need to deal with today?

23 MR. FRICK: Your Honor, I think procedurally I know my
24 client gave a couple of statements, I think Mr. Grier's
25 client gave at least one statement, I do think we need to go

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1 forward with a Denno hearing to determine the voluntariness
2 of any statements that the State intends to introduce.

3 THE COURT: All right. Do you intend to introduce some
4 statements, Solicitor?

5 MR. COOK: Yes, sir, I do, Your Honor.

6 THE COURT: All right. I will be glad to hear from
7 you, if you would call your witness.

8 MR. COOK: Please the Court? Your Honor, the State
9 calls Investigator Danny Bennett to the stand.
10 The witness, DANNY BENNETT, was first duly
11 sworn and testified as follows, on:

12 DIRECT EXAMINATION

13 BY MR. COOK:

14 Q. Please state your name for the record.

15 A. Danny Bennett.

16 Q. Are you currently employed by the Lancaster County
17 Sheriff's Office.

18 A. I'm retired from the sheriff's office.

19 Q. When did you retire?

20 A. Last day of last year.

21 Q. How long were you in the sheriff's office --

22 A. -- or a year ago.

23 Q. How long were you in law enforcement before you
24 retired?

25 A. A little over 13 years.

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1 Q. Were you working in the sheriff's department
2 September 16th of 2010?

3 A. Yes, sir.

4 Q. Did you respond to Merle Lane that day?

5 A. I did.

6 Q. Is that in Lancaster County?

7 A. It is.

8 Q. The following day did you go to the hospital in
9 Columbia in an attempt to take a statement from Michael
10 Hyatt?

11 A. I did.

12 Q. At that time did he give you a statement?

13 A. No, sir.

14 Q. Okay. Why didn't he give a statement that day?

15 A. He stated that he really didn't feel up to it, and also
16 that he wanted his son present when he gave his statement.

17 Q. Did he ultimately give a statement to you?

18 A. Yes, sir, he did, the next day.

19 Q. Where was he when he gave you that statement?

20 A. It was at the old Lancaster County Sheriff's Office.

21 Q. Did he come in voluntarily or was he compelled to be
22 there that day?

23 A. He came in voluntarily.

24 Q. Okay. Before he gave a statement did you present him
25 with his Miranda Rights?

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1 A. I did.

2 Q. Did you go through each one of them?

3 A. I did.

4 Q. Did you tell him he had the right to remain silent?

5 A. I did.

6 Q. Did you tell him anything that he says can and will be
7 used against him in a court of law?

8 A. I did.

9 Q. Did you inform him that he had the right to talk to a
10 lawyer and have one present while he was being questioned?

11 A. I did.

12 Q. Did you let him know that if he couldn't afford to hire
13 a lawyer one could be appointed at no cost?

14 A. I did.

15 Q. Did you let him know that if he decided at any time to
16 exercise his rights he could stop answering questions?

17 A. I did.

18 Q. Did he indicate to you that he understood those rights
19 as you read them to him?

20 A. He did.

21 MR. COOK: May I approach the witness, Your Honor?

22 THE COURT: Yes.

23 Q. Is this a copy of the Miranda Rights that you presented
24 to Mr. Hyatt?

25 A. It is.

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- 1 Q. Is that your signature at the bottom?
- 2 A. It is.
- 3 Q. Do you recognize the other signature?
- 4 A. Hyatt's signature, yeah.
- 5 Q. Was it clear to you that -- in your opinion did
- 6 Mr. Hyatt understand what he was doing?
- 7 A. Yes.
- 8 Q. Did he indicate to you that he could read and write the
- 9 english language?
- 10 A. I'm sorry?
- 11 Q. Did he indicate to you that he could read and write the
- 12 english language?
- 13 A. Yes, sir.
- 14 Q. Okay. To the best your knowledge was Mr. Hyatt's
- 15 statement given freely and voluntarily?
- 16 A. It was.
- 17 Q. Was he coerced in any way to give you a statement?
- 18 A. No, sir.
- 19 Q. I'll show you a copy of the statement. The statement
- 20 itself is typed. Did you type that or did Mr. Hyatt type
- 21 that?
- 22 A. I typed it.
- 23 Q. Is that your signature at the bottom?
- 24 A. It is.
- 25 Q. Who else's signature is at the bottom?

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1 A. Mr. Hyatt's.

2 Q. Where his signature is, can you read that line above
3 where he signed, what it was that he was verifying that he
4 agreed with?

5 A. It just said I have read or had read to me the
6 statement consisting of one page and it is true and correct
7 as best I can recall and have received a copy of the
8 statement.

9 MR. COOK: Nothing further from Investigator Bennett.
10 Answer anything that Mr. Grier has for you.

11 THE COURT: Okay. Mr. Grier?

12 MR. GRIER: Thank you, Your Honor.

13 CROSS EXAMINATION

14 BY MR. GRIER:

15 Q. How many statements did Mr. Hyatt give, written
16 statements?

17 A. To my knowledge this is the only one that I have.

18 Q. Okay. And when was the warrant drafted on this case?

19 A. I'm not sure, but I believe the warrant was issued
20 before he and his son came to the sheriff's office which
21 would be the time that he gave this statement.

22 Q. Well, do you think at the time he gave the statement he
23 knew he was under arrest or that he had already been
24 arrested at the time?

25 A. I don't think he had been arrested at that time.

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1 Q. Okay. In your conversations with him when he was in
2 the hospital or on the 21st when he showed up at the office,
3 did he through you or through anybody that you might know
4 have reason to believe that he was going to be arrested for
5 attempted murder prior to giving this statement?

6 A. I don't have any knowledge of that, that may have come
7 from another investigator.

8 Q. Okay. Well, were you -- this tells us a little bit,
9 the narrative on the 21st, as far as I know that's the only
10 thing -- can I read this to you or do you want to look at
11 it?

12 A. Sure.

13 Q. It's on morning of 9-21-10, Lieutenant C. Rogers.

14 A. Uh-huh.

15 Q. Well, I'm going to read this and then I'm going to hand
16 it to you and see -- or you can find it, however you want to
17 deal with that. The report says, "The morning of 9-21-10
18 Lieutenant C -- that's the Christy Rogers -- was informed
19 that both Michael and Aaron Hyatt were in the lobby of the
20 LEC. Lieutenant Rogers was aware that the Lancaster County
21 Sheriff's Office had arrests warrants on both subjects.
22 Lieutenant Rogers and Investigator Deese spoke with Aaron
23 Hyatt while Investigator D. Bennett interviewed M. Hyatt and
24 Lieutenant Rogers advised Aaron Hyatt of his Miranda rights.
25 Aaron Hyatt told Lieutenant Rogers that he had heard that he

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1 was going to be arrested and if he was going to be arrested
2 he may as well have an attorney with him. So at this time
3 the interview with Aaron Hyatt was stopped and he was served
4 with an arrest warrant for the charge of attempted murder."
5 Did something similar happen with Michael Hyatt that day?
6 He came in and gave his statement --

7 A. I thought they came in at the same time. I may be
8 wrong but I think they came in at the same time. But see, I
9 didn't deal with the other parties.

10 Q. Well, Aaron Hyatt said that if he's going to be
11 arrested he wanted an attorney, right? Well, didn't all of
12 that happen prior to Michael Hyatt coming in and making his
13 statement, too?

14 A. Well, like I said, I don't know anything about what
15 happened with Aaron Hyatt because I didn't deal with him.

16 Q. Okay. All right. Well, it says Deese and Rogers spoke
17 with Aaron Hyatt, Bennett interviewed Michael Hyatt. And
18 so, you know, when you interviewed him he had not been
19 served with a warrant, Michael Hyatt had not, correct?

20 A. I don't believe so.

21 Q. Okay.

22 A. As far as I remember he had not.

23 Q. So he didn't know a warrant -- he didn't know with any
24 certainty with all of the evidence that we've got that a
25 warrant was already issued for him, correct?

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- 1 A. Would that have been his opinion?
- 2 Q. Yeah.
- 3 A. It very well could have been.
- 4 Q. All right. So at any rate you did interview him and
- 5 this statement is a result of that interview?
- 6 A. The statement that I took it is, yeah.
- 7 Q. All right. Now, look at that statement for me if you
- 8 would or, you know, you could look at yours. Maybe yours is
- 9 different than this one. Let's take a look at it.
- 10 A. It shouldn't be. Let's see.
- 11 Q. So you say that's Mr. Hyatt's signature on there?
- 12 A. It is.
- 13 Q. Okay. Well, how many witnesses are there on it?
- 14 A. Just mine.
- 15 Q. How many spots are there -- it says witnesses. How
- 16 many places are there for witnesses on there?
- 17 A. There's a place for two.
- 18 Q. Well, why wouldn't you have two witnesses then?
- 19 A. I was the only one that took the statement.
- 20 Q. Well, I know, but this is your document, isn't it?
- 21 A. Yes, sir, that's my witness.
- 22 Q. And do you think the procedure --
- 23 A. I witnessed his signature that he signed that paper
- 24 that it is his statement.
- 25 Q. But your own document anticipates that you're going to

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1 have two witnesses on it, doesn't it?

2 A. That's what's on the form, yeah. You can have more
3 than one if you wanted to.

4 Q. I'm sorry, what?

5 A. I said you can have more than one if you wanted to.

6 Q. But it didn't, did it?

7 A. No.

8 Q. It's your form and it has only got one witness on it,
9 doesn't it? Okay. Did Mr. Hyatt tell you anything about
10 his -- did he talk about his medical condition on this day
11 and whether he was under any medication or anything, you
12 know -- did you ask him? I don't see anything in there
13 about if he was taking any narcotics. The man had been
14 shot, hadn't he?

15 A. Yeah.

16 Q. Don't you imagine, what, four or five days after the
17 fact he probably was still under some pretty good treatment,
18 maybe some narcotic drugs at that time?

19 A. Are you asking me? I don't know.

20 Q. Well, you didn't ask him, did you?

21 A. I asked him if he was willing to give this statement.

22 Q. But did you ask him if he was under the influence of
23 any drugs that might impair his ability to really appreciate
24 what he was doing?

25 A. I don't remember if I did or not.

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1 Q. Okay. All right. Thank you.

2 A. He wasn't showing any signs of it or I would have.

3 THE COURT: Anything further, Mr. Grier?

4 MR. GRIER: That's all. Thank you.

5 THE COURT: Anything further?

6 REDIRECT EXAMINATION

7 BY MR. COOK:

8 Q. Investigator Bennett, on the coversheet where you
9 advised him of his Miranda Rights, on the second line on
10 there it says, "Are you under the influence of any drugs or
11 alcohol?" And there's a yes or no. Is there a box marked
12 there?

13 A. Yes, sir.

14 Q. Is it marked yes or no?

15 A. It's marked no.

16 Q. It's marked no indicating that he was not under the
17 influence of drugs or alcohol at the time?

18 A. Right, that's part of the Miranda.

19 MR. COOK: Nothing further, Your Honor. Thank you.

20 THE COURT: All right. Argument? Thank you, sir, you
21 can step down. Do you have any other witnesses on this?

22 MR. COOK: Not with regard to Michael Hyatt, no, sir.

23 THE COURT: All right. Argument, Solicitor?

24 MR. COOK: Jackson v. Denno, Your Honor, is an
25 examination for voluntariness. Mr. Hyatt came in, he and

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1 his son, of their own free will, were not compelled to be
2 there. He signed the form advising him of his Miranda
3 rights, he also signed the bottom of the statement which he
4 gave to Investigator Bennett. I know the issue that his son
5 declined to give a statement, although they're father and
6 son, Mr. Hyatt is his own man and he can make his own
7 decisions whether or not he's going to give a statement.
8 Whether or not his son gave a statement has no affect on
9 what Mr. Hyatt did. He was well aware of what was going on.
10 He filled out all of the questions asked of him by
11 Mr. Bennett, he signed both papers and came on his own free
12 will and I ask that you make a ruling it was a voluntary
13 statement given to Investigator Bennett.

14 THE COURT: Thank you. Mr. Grier?

15 MR. GRIER: Your Honor, I think the sheriff's
16 department designed this form to be witnessed by two people
17 to verify that, in fact, they complied with their own
18 procedures. They failed to have this document witnessed
19 properly as is anticipated through the Lancaster County
20 Sheriff's Department's own procedures according to the
21 document, on the face of the document. I think it fails on
22 that ground. Most certainly, you know, if Mr. Hyatt chooses
23 to testify they can cross examine him if he desires to put
24 himself in play, Your Honor, and this man had been shot a
25 few days beforehand. I understand that he might have signed

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1 a document, but Officer Bennett didn't seem very confident
2 that he had actually ascertained from Mr. Hyatt whether or
3 not he was under the influence of drugs or alcohol. And so
4 if you mark a box that's been prepared by law enforcement --
5 this whole document is prepared -- typed by law enforcement,
6 my client didn't handwrite nothing. But if you prepare a
7 document and ask somebody to sign it and they have gone
8 through a traumatic life-threatening experience and are -- I
9 think, you know, it's just intuitive that he's still under
10 the influence of -- or that he's being treated and probably
11 under heavy narcotics and you ask him to sign a document and
12 he checks a box saying that he's not under the influence,
13 well, maybe he's being under the influence of some narcotics
14 contributes to him signing a box of a statement that is
15 prepared by the sheriff's department but it is not properly
16 executed. And I believe it ought to be -- that they should
17 not be able to use this statement based on that.

18 THE COURT: All right. Y'all get -- anything further,
19 Solicitor?

20 MR. COOK: Yes, Your Honor. As far as the two
21 signatures, Your Honor, there's nothing that says -- it has
22 a place for two, there's nothing that says that two people
23 have to do. It's not a will, there's no guidelines as far
24 as how many people have to witness the actual statement.
25 This hearing is just for voluntariness. He could have been

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1 on drugs but when he was asked he said no. And Investigator
2 Bennett wasn't sure whether or not he asked him but that was
3 three and a half years ago. He did a lot of them after then
4 between then and now and he probably doesn't remember
5 whether or not he asked them, but the best indication of
6 whether he did is at the time he filled out the correct form
7 and marked the box, so the best indicator of his knowledge
8 at the time is what he actually filled out on the day he did
9 it versus what he remembers right now. Nothing further,
10 Your Honor.

11 THE COURT: Will y'all let me look at the statement so
12 I can see what we're talking about? Give me a moment while
13 I look up some stuff.

14 (Break in proceedings.)

15 THE COURT: Well, based upon the testimony and evidence
16 presented I find the statement was freely and voluntarily
17 given and I will allow its admission as to that defendant,
18 Mr. Mike Hyatt. What is the next issue, gentlemen?

19 MR. FRICK: --Your Honor, one, I would like to clarify --
20 which statement we may be talking about on Mr. Aaron Hyatt?
21 It looks like I've got at least two written statements --
22 well, I guess three if you count the non-statement. It
23 looks like there is a statement that he gives to Deputy
24 Lilly that looks like it's right after the incident. I
25 think there's a more detailed statement still on the scene

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1 but later that day to Investigator Marshall, and then I've
2 just got just an unsigned, I would like to lawyer, Miranda
3 form from when he goes up to the sheriff's department.
4 Additionally on the scene there are what I would call
5 statements from my client where there's the in-car camera,
6 they're talking to him after the incident and then there is
7 some reenactment. I just want some clarification as to what
8 the State intends to try to introduce so I know which one
9 I'm talking about.

10 THE COURT: All right. Solicitor?

11 MR. COOK: I find these are two statements. One
12 statement was the one that was given on the scene to
13 Investigator Marshall, the one that was given to Deputy
14 Lilly was a half page short statement that was given
15 immediately after --

16 THE COURT: That's just the written statement, the one
17 on the scene was a verbal statement?

18 MR. COOK: There were multiple ones on the scene, one
19 that was given to Deputy Lilly who was the second responder
20 on the scene.

21 THE COURT: Is that a written statement or verbal
22 statement?

23 MR. COOK: It was a written statement. I do not have a
24 Miranda form and I do not intend on using that statement.
25 That's why Deputy Lilly is not here, that's why we are not

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1 doing a Denno as far as voluntariness of that statement.

2 However on the scene that day Aaron Hyatt also gave a
3 statement to Investigator Marshall to which he was given a
4 Miranda form which is a roughly three page statement that I
5 plan on using at trial. As far as he went to --

6 THE COURT: You mentioned there was one later, where
7 was the one later?

8 MR. COOK: The one later, on the 21st when he went to
9 the sheriff's department with Michael Hyatt and -- when
10 Michael Hyatt gave the statement we just dealt with Aaron
11 Hyatt didn't give a statement.

12 THE COURT: Why do you want to introduce that one?

13 MR. COOK: He didn't give one that day.

14 THE COURT: You don't plan on -- okay.

15 MR. COOK: The last one, which was actually
16 chronologically -- back date to -- the day of the incident
17 after everything has gone on Investigator Jeff Steele from
18 CSI took a video recorded statement of Aaron Hyatt given a
19 reenactment of what happened. We are considering that as a
20 separate statement versus the one he gave on the scene to
21 Investigator Marshall given the fact that the video
22 statement includes a lot more information than the written
23 statement.

24 THE COURT: So the videotaped statement was videotaped
25 when?

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1 MR. COOK: The day of the incident after Michael Hyatt
2 and Kamil Nassrah had been taken out by EMS. At this point
3 Aaron was the only person on the scene, investigators were
4 there and because CSI was there and they had a camera so
5 they decided to take a video statement.

6 THE COURT: So the two statements that you're intending
7 on introducing, both of them happened on the day of the
8 situation.

9 MR. COOK: Correct.

10 THE COURT: The first one was a written one given to
11 Investigator Marshall and the second is the video recorded
12 statement given to Investigator Steele.

13 MR. COOK: Right.

14 THE COURT: The other ones you are not introducing.

15 MR. COOK: Right, because they're saying the same
16 thing.

17 THE COURT: Does that answer your question then?

18 MR. FRICK: Yes, sir, it does.

19 THE COURT: Then are you ready to proceed then on the
20 hearing concerning those statements?

21 MR. COOK: I am. State calls investigator Steven
22 Marshall.

23 The witness, STEVEN MARSHALL, was first duly
24 sworn and testified as follows, on:

25 DIRECT EXAMINATION

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1 BY MR. COOK:

2 Q. Please state your name for the record.

3 A. Steven Marshall.

4 Q. Who are you currently employed with, Mr. Marshall?

5 A. Hail Gold Mine.

6 Q. Are you currently with the Lancaster County Sheriff's
7 Office?

8 A. No, sir.

9 Q. Excuse me, were you previously with the sheriff's
10 office?

11 A. Yes.

12 Q. When did you leave the sheriff's office?

13 A. I think it's been about three years ago now.

14 Q. Were you working for the Lancaster County Sheriff's
15 Office September 16th of 2010?

16 A. Yes.

17 Q. Do you remember taking a statement from Aaron Hyatt
18 that day?

19 A. Yes.

20 Q. Do you remember presenting Mr. Hyatt with his Miranda
21 rights?

22 A. Yes.

23 Q. Let me show you this form. Did you go over this form
24 with Mr. Hyatt?

25 A. Yes, I did.

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- 1 Q. Okay. Is this your signature at the bottom?
- 2 A. Yes, it is.
- 3 Q. What name is signed beside yours?
- 4 A. It looks like Aaron Hyatt.
- 5 Q. And beside all of these, do you remember telling him he
- 6 had the right to remain silent?
- 7 A. Yes.
- 8 Q. Do you remember telling him that anything he says can
- 9 and will be used against him in a court of law?
- 10 A. Yes.
- 11 Q. Indicate that he had a right to speak to a lawyer and
- 12 have one present while he was being questioned?
- 13 A. Yes.
- 14 Q. Did you inform him that if he couldn't afford to hire
- 15 an attorney one would be provided for him at no costs?
- 16 A. Yes.
- 17 Q. Did you tell him that he could exercise those rights at
- 18 any time and not make anymore statements?
- 19 A. Yes.
- 20 Q. Do you believe he understood what you said?
- 21 A. Yes.
- 22 Q. Was he under the influence of any drugs or alcohol at
- 23 the time?
- 24 A. No.
- 25 Q. Could he clearly understand the english language?

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1 A. Yes.

2 Q. Do you remember what time you took the statement?

3 A. Not right off.

4 Q. Well, you filled it out on time, what time does that
5 say?

6 A. 5:40 p.m.

7 Q. What was the date of that statement?

8 A. 9-16 of 2010.

9 Q. 9-16-10. Is that the same date that this incident
10 allegedly occurred?

11 A. Yes.

12 Q. So you were on the scene when he gave you the
13 statement?

14 A. Yes.

15 Q. Do you remember where you were on the scene when he
16 gave it to you?

17 A. Actually in my patrol vehicle, which was a truck at the
18 time, my patrol vehicle.

19 Q. In your opinion did he give this statement freely and
20 voluntarily?

21 A. Yes.

22 Q. Was he coerced in any way to give the statement?

23 A. No.

24 Q. One question. You were also involved in the video when
25 he gave you this statement on video. Was the video before

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1 he gave you this statement or was it after he gave you this
2 statement?

3 A. The video statement was after he gave me this
4 statement.

5 Q. Okay. The handwriting on this statement, is this your
6 handwriting or is this someone else's handwriting?

7 A. I'm pretty sure it's my handwriting.

8 Q. Okay. At the bottom -- can you tell if every single
9 page is written in the same handwriting?

10 A. Yes.

11 Q. At the bottom of each page did Mr. Hyatt sign it?

12 A. I see it on the first and the third, I don't see it in
13 the middle.

14 Q. So to your knowledge he had a chance to review all of
15 your handwriting as to what he told you to make sure it was
16 an accurate --

17 A. Yes..

18 Q. -- recitation of what you told you?

19 A. Yes..

20 Q. Okay. All right.

21 MR. COOK: No further questions. Answer anything
22 Mr. Frick might have for you.

23 THE COURT: All right, Mr. Frick?

24 CROSS EXAMINATION

25 BY MR. FRICK:

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1 Q. When did you get on the scene?

2 A. I'm not sure. There were several other officers there
3 when I arrived.

4 Q. Were you the on-call investigator or you just respond
5 the to the scene, or how --

6 A. I just responded to the scene. I can't recall if I was
7 on call or not.

8 Q. How did you end up being the one getting the statement
9 then?

10 A. Just lucky, I guess.

11 Q. When you got there was there a suspect or was anybody
12 in custody?

13 A. Not that I recall. The -- not that I recall.

14 Q. Y'all were still trying to figure out what happened.

15 A. Yeah.

16 Q. So was Mr. Aaron Hyatt taken into investigative
17 detention, or was anybody taken into investigative
18 detention, or do you recall?

19 A. No--I don't think anybody was.

20 Q. He wasn't handcuffed?

21 A. No.

22 Q. All right. Was he in any way injured or seemed under
23 the influence of anything -- anything that caused you pause
24 in talking to him about the situation?

25 A. No.

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1 Q. Okay. And he was willing to give you a statement?

2 A. Yes.

3 Q. That's when you took him to your truck and did the
4 Miranda, went through this form?

5 A. I believe the first time we sat down in my vehicle we
6 just talked verbally and after that is when I took the
7 written statement. He was offered Miranda and give a
8 written statement.

9 Q. About how long did y'all talk?

10 A. I'm guessing ten or 15 minutes maybe, that's just a
11 guess on my part.

12 Q. So the statement we got, I've got about three pages, I
13 think. Do you have a copy of it up there?

14 A. I don't have a copy but I know what it is.

15 Q. I know everybody does their statements a little bit
16 different. Are you a I ask you a question, write it down
17 and write down your answer, or do y'all talk about it and
18 then come up with a statement, he reviews it and then signs
19 it? How did you conduct this statement?

20 A. I think I asked the questions and while he was giving
21 me his rendition of what happened I was writing it, and then
22 after we got through with my last question I handed it to
23 him, let him review it and he and I both would sign it.

24 Q. So this is verbatim essentially from what his responses
25 were? And I guess they were your questions.

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1 A. Yeah.

2 Q. Your car wasn't equipped with a video camera, that
3 statement is not --

4 A. No.

5 Q. Now, we do have some recorded statement, I think we've
6 called it a reenactment.

7 A. Yeah.

8 Q. Do you recall that?

9 A. I actually recall a recorded statement that was done
10 from Officer Morgan's patrol car, and then a recorded
11 statement that was videoed after that. But I'm not sure how
12 the recorded statement came out in Randy's car because it
13 seemed like there was some kind of problem with the
14 recording device.

15 Q. And I think all we're talking about right now is the
16 other statement that I guess CSI recorded? I don't know --

17 A. Yeah, okay.

18 Q. What we're calling the reenactment..

19 A. Uh-huh.

20 Q. How did that come about? How did you get to the point
21 where you were doing a reenactment? Is that what it was? I
22 know we keep calling it a reenactment.

23 A. Basically I think all of the vehicles were still in
24 place and the scene was pretty much set up just like it was,
25 I guess, when the original incident happened. So basically

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1 we just let Mr. Hyatt kind of walk through where everybody
2 was and what they were saying and what they were doing in a
3 recorded video statement.

4 Q. And if I recall there were several deputies still on
5 the scene.

6 A. Yes.

7 Q. And I think at least -- I think Bailey and Crump were
8 asking questions. I can't remember if everybody else was
9 asking questions, I think you asked some questions. Is that
10 correct, is that a fair assessment?

11 A. Yes.

12 Q. In proximity to this statement, the one that happens at
13 5:40, the written-down statement, when does this reenactment
14 take place?

15 A. I would be guessing, I'm just guessing maybe 30 minutes
16 later but that's strictly a guess on my part.

17 Q. Had anything changed in the investigation between that
18 statement and when y'all asked Mr. Hyatt -- Mr. Aaron Hyatt
19 to do this reenactment?

20 A. To my knowledge it had not.

21 Q. No one had gone and gotten an arrest warrant.

22 A. No.

23 Q. No one was being held in custody.

24 A. No.

25 Q. Mr. Hyatt, was he free to leave?

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1 A. Yes, sir.

2 Q. Did he choose to leave?

3 A. No.

4 Q. Did he ask to leave?

5 A. No.

6 Q. Where did he go in this intervening time? I'll go with
7 you, probably sounds about right, 30 minutes or so, where
8 was he?

9 A. Well, when we would get out of my vehicle he would just
10 go stand in the area.

11 Q. Were any of the other folks still on the scene? When I
12 say folks I mean either the victim in this matter or
13 Mr. Michael Hyatt, were either of those still there?

14 A. Not to my knowledge. I may be wrong about that but I
15 believe -- I know the -- I know at least one was
16 transported, I believe both may have been transported at
17 that time of the statement.

18 Q. In fact, you're aware that one was hit in the head and
19 one was shot, right?

20 A. Yes.

21 Q. Do you recall which was which? Do you recall who had
22 the head wound and who had the gunshot wound?

23 A. I think Mr. Hyatt was the victim of a gunshot and -- I
24 guess Michael Hyatt, and Mr. Nassrah was the victim with the
25 head wound.

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1 Q. All right. Best of your recollection they had left?

2 A. Best of my recollection.

3 Q. Or taken by EMS.

4 A. Yes.

5 Q. And Aaron Hyatt didn't ask to go with his dad?

6 A. No. He didn't ask me to go with his dad.

7 Q. Could have talked to somebody else, it just wasn't you?

8 A. It just wasn't me.

9 Q. That's fine. Before y'all -- how did y'all ask him to
10 do the reenactment? How did that come about if you recall?

11 A. And like I say I don't really recall, but I'm guessing
12 here that Captain Bailey asked him since the scene was still
13 pretty much, you know, like it was with the vehicle setup I
14 think he just asked him if he would mind showing us what he
15 was talking about and where people were placed.

16 Q. All right. I don't know if you took the other
17 statements on the scene but there were some other witness
18 statements on the scene. Did you take any of those?

19 A. There was another -- a Mr. Truesdale statement. I was
20 with, I believe, Officer Morgan. I don't have the paperwork
21 in front of me, and I will be honest with you, I don't
22 recall when that statement was taken. I don't know if it
23 was on the scene or maybe the next day, I don't recall.

24 Q. I guess what I'm getting at here, if there was anybody
25 else that gave a statement Mr. Aaron Hyatt is the only one

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1 that was on the scene that gave a reenactment. Did y'all do
2 a reenactment with anyone else?

3 A. No.

4 Q. You did one with him because simply he was one that was
5 there and the one that was still there?

6 A. Yes.

7 Q. Prior to him doing that did anybody re-Mirandize him?

8 A. I don't recall.

9 Q. There's no written form at least.

10 A. Okay. And like I say, I don't recall.

11 Q. I'm asking, I'm sorry, I didn't mean to --

12 A. I think the only Miranda I did was when I did the
13 written statement.

14 Q. You don't recall anybody pulling out a card and
15 refreshing the Miranda or anything?

16 A. I don't recall that. Now, it may have happened but --

17 Q. That's fine. At any point at anytime time did he say,
18 "Look, I'm tired of talking to y'all, I want to stop?"

--19 A. No.

20 Q. At any point at any time did he say he was tired or
21 hungry or thirsty or wanted to take a break?

22 A. No, not that I recall.

23 Q. Okay. At any point did he say, "Look, my dad has been
24 shot, I want to go to the hospital with him?"

25 A. No, not that I recall.

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1 Q. So it is your assessment that his second statement
2 during the reenactment, the Miranda was still continuing?

3 A. And it may have been -- Investigator Crump could have
4 read it off his card, I don't recall. But yes, my original
5 Miranda when I was talking with him, yes.

6 Q. Okay. Were you the one who was really asking the
7 questions during that reenactment or was it just a --

8 A. I know I asked some questions but I think it was maybe
9 Captain Bailey and Investigator Crump as well.

10 MR. FRICK: Thank you, sir. That's all of the
11 questions I've got.

12 THE COURT: Any redirect?

13 MR. COOK: Briefly.

14 CROSS EXAMINATION

15 BY MR. COOK:

16 Q. I didn't really get into the video statement the first
17 time. When Aaron Hyatt was doing the reenactment, was he
18 pretty adamant to give a statement? Was he being

19 cooperative? ...

20 A. Yes.

21 Q. So he walked all around to show everybody where
22 everything was?

23 A. Yes.

24 Q. But in your opinion it was all voluntary, nobody forced
25 him to do anything?

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1 A. Oh yeah.

2 MR. COOK: Nothing further.

3 THE COURT: All right, you can call your next witness.

4 Thank you, sir, you can step down.

5 MR. COOK: State calls Investigator Jeff Steele.

6 The witness, JEFF STEELE, was first duly sworn

7 and testified as follows, on:

8 DIRECT EXAMINATION

9 BY MR. COOK:

10 Q. Can you please state your name for the record?

11 A. Jeff Steele.

12 Q. Are you currently employed by the Lancaster County

13 Sheriff's Office?

14 A. Yes, sir, I am.

15 Q. What do you do for the sheriff's office?

16 A. I am a crime scene investigator.

17 Q. How long have you been doing CSI work?

18 A. Just CSI work for about five years.

19 Q. Did you respond to Merle Lane on September 16th of

20 2010?

21 A. Yes, sir, I did.

22 Q. Did you record Aaron Hyatt giving a statement to other

23 investigators on the scene?

24 A. Yes, sir.

25 Q. Who instructed you to take a video of it?

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1 A. Captain Bailey.

2 Q. Okay. Do you keep a camera in your van or -- what type
3 of camera did you have?

4 A. Just a video, hand-held Sony video camera.

5 Q. Is it a department issued video camera?

6 A. Yes, sir.

7 Q. So in your opinion, you're filming it -- I know you
8 didn't Mirandize Aaron Hyatt.

9 A. No, sir, I didn't.

10 Q. Did it seem he was voluntarily going along with
11 deputies and showing what happened?

12 A. Yes, sir.

13 Q. That he was cooperative and looked like he wanted to
14 tell his side of the story at the time?

15 A. Yes, sir.

16 Q. Did you see anybody threatening him or coerce him to
17 make him continue showing everybody what happened?

18 A. No, sir.

19 Q. Do you remember how long the statement was?

20 A. No, sir, I don't recall that.

21 Q. So do you remember how the reenactment ended? Well,
22 did he ask to leave or were they just done asking questions?

23 A. They were just asking him to just tell them what he
24 said happened that particular day while he was doing it on
25 video.

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1 Q. So once he felt like he had given a good depiction of
2 what happened that he said that was it?

3 A. Yeah.

4 MR. COOK: All right. Nothing further. Answer
5 anything Mr. Frick might have for you.

6 THE COURT: All right, Mr. Frick?

7 CROSS EXAMINATION

8 BY MR. FRICK:

9 Q. Investigator Steele, in this your role was simply video
10 recording it, correct?

11 A. Yes, sir.

12 Q. You didn't ask any questions?

13 A. No, sir.

14 Q. Who asked you to video record it?

15 A. Captain Bailey come over and said Mr. Hyatt had
16 volunteered to go out there and just tell us what his side
17 of the story was, what he said happened that day.

18 Q. But you weren't a party to any of this conversation
19 where Captain Bailey says that Mr. Hyatt volunteered that,
20 were you?

21 A. No, sir. He just came over and told me, he said, "I
22 need you to video this statement, Mr. Hyatt wants to show us
23 what happened."

24 Q. Was any part of the statement a Miranda statement? Was
25 he Mirandized on camera?

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1 A. I can't recall that. I haven't seen that video in
2 awhile so I really can't recall that.

3 Q. Of your recollection today you don't remember what was
4 on there and what's not?

5 A. No, sir. I know that Mr. Hyatt is there doing and
6 showing everything but I can't remember everything that was
7 said.

8 Q. And, of course, you didn't Mirandize anybody, did you?

9 A. No, sir.

10 MR. FRICK: Thank you, sir. That's all of the
11 questions I have.

12 THE COURT: Anything further?

13 MR. COOK: Your Honor, I've got a copy of the video if
14 you would like to watch it just for your opinion on whether
15 or not he was giving it voluntarily. The video is about 12
16 minutes long if you would like to watch it just so you could
17 see.

18 MR. FRICK: I think we can stipulate he's not
19 Mirandized on camera if that's what the thrust of the issue
20 is.

21 THE COURT: I guess that's really the only issue I see
22 is whether or not the initial Miranda that Marshall gave
23 carried over to this.

24 MR. COOK: Your Honor, as far as Jackson v. Denno is
25 concerned, Jackson v. Denno is a concern of Miranda, it's

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1 voluntariness and I submit that you can see on the video
2 that Aaron Hyatt is voluntarily giving a statement.

3 THE COURT: Let me look at the video. Can y'all play
4 it up here on this thing?

5 (The DVD was viewed.)

6 THE COURT: Anything else from the State?

7 MR. COOK: Nothing else from the State, Your Honor.

8 MR. FRICK: Thank you, Your Honor. The defense calls
9 Aaron Hyatt.

10 The witness, Aaron Hyatt, was first duly sworn
11 and testified as follows, on:

12 DIRECT EXAMINATION

13 BY MR. COOK:

14 Q. Mr, Hyatt, spell your first name for us.

15 A. A-a-r-o-n.

16 Q. Hyatt?

17 A. H-y-a-t-t.

18 Q. All right, Mr. Hyatt. Now, you've been sitting in here

19 while we were talking about these statements that you gave,
20 correct?

21 A. Yes, sir.

22 Q. The first statement, the written statement, did you
23 give that statement to Investigator Marshall?

24 A. Yeah. We done that in his truck that day.

25 Q. All right. You heard him say he read you your Miranda

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1 statements.

2 A. Yeah.

3 Q. Were you aware of what those were?

4 A. In that truck, yeah.

5 Q. Did you agree to give him a statement at that time?

6 A. Yes, sir.

7 Q. Had anybody placed you under arrest?

8 A. No, sir.

9 Q. Had anybody put you in handcuffs?

10 A. No, sir.

11 Q. Had anybody said that you were a suspect in anything?

12 A. No, sir.

13 Q. Did you volunteer to give a second statement?

14 A. No, sir. Well, they asked me. And prior to them

15 asking me that I had asked if I could leave because I was

16 worried about my dad, they flew him out of there.

17 Q. Where was your dad at the time that this was going on?

18 A. When I made the statement with Deputy Marshall they'd

19 ~~done air carried him. Once I got out of the truck with him~~

20 my brother and my cousin was on the scene and I asked I

21 think it was Crump, I'm not sure, there were so many cops

22 out there I couldn't tell you, I asked one of them if they

23 knew how he was and they said they didn't know yet. I went

24 over there and talked with my brother and I said, "We need

25 to see if we can get out of here and go down there to the

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1 hospital and see what was going on." And that's when Bailey
2 come up to me and told me that I needed to do this
3 reenactment before I left.

4 Q. Before you did the reenactment, did anybody give you
5 your Miranda statements again?

6 A. No, sir.

7 Q. Did you feel like you could have said, "No, I don't
8 want to do that. I'm just going to leave and go check on my
9 dad?"

10 A. No, sir.

11 Q. Did you feel like at any time you could have just left
12 the scene?

13 A. No, sir.

14 Q. Okay. Even though you weren't technically under
15 arrest.

16 A. Well, I was under the assumption the way that I was
17 being treated and the way that things were going I wasn't
18 going nowhere until they were done.

19 Q. Did they place handcuffs on you at all that day?

20 A. No, sir.

21 MR. FRICK: Thank you, sir. Answer any questions the
22 Solicitor asks you.

23 THE COURT: Solicitor?

24 CROSS EXAMINATION

25 BY MR. COOK:

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- 1 Q. Okay. You said you had asked to leave?
- 2 A. Yes, sir.
- 3 Q. Do you remember asking to leave on video?
- 4 A. No. I didn't ask -- this was before the video.
- 5 Q. Was anybody mean to you out there?
- 6 A. They weren't mean but they were to the point.
- 7 Q. Well, I mean, on the video it looked like they were
- 8 being pretty friendly to you. Do you disagree?
- 9 A. They were being professional.
- 10 Q. But when you gave the statement you knew that you
- 11 didn't have to -- did you know that you didn't have to say
- 12 anything else?
- 13 A. No, sir.
- 14 Q. Okay. Anybody force you to say anything?
- 15 A. They didn't force me to do it, no, but they was pretty
- 16 persistent about me doing it.
- 17 Q. So you concede nobody forced you to give that,
- 18 statement.
- ~~19 A. They were persistent about me giving it.~~
- 20 Q. Did you ever actually try to leave?
- 21 A. Yes. I asked them if I could leave and they told me
- 22 they needed me to do that.
- 23 Q. Did you physically ever start walking off, leaving
- 24 trying to leave the scene.
- 25 A. No. Because I was constantly surrounded by police

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1 officers.

2 Q. Were you surrounded by police officers because they
3 were surrounding you or were they all out there on the scene
4 doing their investigations?

5 A. They were standing around me.

6 Q. Were they standing around you because they were
7 positioning where the parties and the incident were?

8 A. When I got out of that truck with Mr. Marshall they
9 were standing around me because that Melton fellow was still
10 on the scene.

11 Q. In the video you were kind of running the show, weren't
12 you? You were telling everybody where everybody was?

13 A. That's what they asked me to do and I done what I was
14 asked to do.

15 Q. Any officer ever touch you, do any physical type of
16 pressure on you?

17 A. No.

18 Q. Nobody -- you were never handcuffed.

19 ~~A. No.~~

20 Q. Okay. Nobody ever told you you were under arrest.

21 A. No.

22 Q. From your opinion were they still investigating -- had
23 they decided who was the suspect at the time you gave your
24 statement?

25 A. I can't answer that.

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1 Q. So when you were giving this reenactment everybody was
2 pretty cordial?

3 A. They were just being professional. They asked me
4 questions and I answered them.

5 Q. But how long did the reenactment -- how long did it
6 last?

7 A. I don't know, it lasted a little bit. And some of that
8 wasn't on the tape, some of it started before the tape
9 started.

10 Q. Have you seen the tape?

11 A. Yeah, I've seen the tape.

12 Q. How long after you finished giving that statement did
13 you go check on your dad?

14 A. As soon as they let me leave I left.

15 Q. Where did you go?

16 A. I went straight to my house and then straight to
17 Columbia.

18 Q. So about how long after you finished giving that
19 statement to the time you left the scene?

20 A. Not long. I couldn't give you an exact time, I
21 couldn't tell you exactly what time it was when I got to the
22 hospital, things were going way too fast that day to tell
23 you what time anything happened.

24 Q. How did you leave the scene?

25 A. I left in that green pickup truck.

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1 Q. The truck that was being processed by CSI?

2 A. Yeah.

3 Q. So as soon as you finished that statement you took that
4 truck that they were --

5 A. As soon as -- yeah, I'm pretty sure. I'm not sure, I
6 might have took that truck, I might have rode with my
7 brother. I got down there -- my brother was with me, so I'm
8 not sure if I left the truck and we come back and got it the
9 next day, because it's been three years. I'm not sure about
10 that part.

11 Q. But you were so ready to leave that you don't remember
12 how you left?

13 A. Not exactly. I know that I left as soon as that
14 recording was over.

15 Q. Some way you left.

16 A. I know that.

17 Q. Any officers threaten you to give that statement?

18 A. They never threatened me.

19 MR. COOK: Okay. No further questions, Your Honor.

20 MR. FRICK: Nothing further, Your Honor. Thank you.

21 THE COURT: Thank you, sir, you may step down.

22 MR. COOK: Your Honor, I would ask that you watch the
23 rest of the video including the second clip. There's a part
24 on there where Captain Bailey thanks him for giving the
25 statement. Given his demeanor on the video I submit it was

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1 voluntary. Mr. Hyatt was cordial with law enforcement, he
2 wasn't in a frantic trying to leave, he was very thorough
3 walking around to give the statement and everybody on the
4 scene -- nobody was in a rush. He wasn't threatened, he
5 wasn't coerced to give the statement, he gave it
6 voluntarily. He may not have wanted to give it at that time
7 but he did and nobody forced him to do so. Like I said, at
8 the end of the video you can see everybody is thankful and
9 thanks him at the end and then you don't see him leave. But
10 like I said earlier, the question for the Denno hearing is
11 whether it was a voluntary statement. He said he wasn't
12 forced, he wasn't threatened and he gave a statement to law
13 enforcement.

14 MR. FRICK: Well, Your Honor, whether they said thank
15 you or not has nothing to do with it. They could have beat
16 the statement out of him and then thanked him for it, that
17 doesn't make it a voluntary statement. The question comes
18 down to my client tells you hat they were cordial and
19 professional, that's fine. The question is whether or not
20 he was in custody, not whether he's under arrest, not
21 whether they had developed really a suspect at that time, is
22 he in custody, could he have left, and that's what the thing
23 comes down to, whether or not he felt like he could have
24 just hopped in his car and driven off and the answer to that
25 is clearly no. I doubt they let him take off in that green

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1 truck because they were processing it, I don't think they
2 let him take off in it. So it comes down -- the
3 voluntariness issue is whether someone could have stopped
4 the interview and left. He tells you in his own words, "I
5 gave them the written statement," which was clearly
6 Mirandized. The second statement is kind of a continuation
7 but not. You heard Steven Marshall say that it was some 30
8 minute break or so before they do the reenactment.
9 Investigator Bailey, Investigator Crump, we've got -- I
10 don't think Danny Bennett asked any questions but he was
11 standing out there, Christy Rogers was out there. You've
12 got a bunch of cops standing around you and they're saying,
13 "Why don't you do this reenactment?" You see from the video
14 it cuts on almost as the reenactment occurs, there is no
15 reaffirmation of the Miranda statements. He's not told that
16 this is something that could be used against him in court
17 and that's what it really comes down to, whether you have
18 knowledge that what you're saying is something that's going
19 to be evidence against you. -- Well, that's what we're here
20 for. It wasn't voluntary as in they tied him down and beat
21 the statement out of him, but it was not voluntarily because
22 his dad is shot, flown out to the hospital, he's asking to
23 leave, they don't let him go until he gives this statement,
24 that's why it's not voluntary and that's why it should be
25 excluded.

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1 THE COURT: What's the purpose, Solicitor, of
2 introducing the videotaped statement when you already have
3 the three paged written statement?

4 MR. COOK: The video is 12 minutes long and it's a more
5 detailed account of Aaron Hyatt's story. Essentially it is
6 a similar statement but it --

7 THE COURT: Does the video statement corroborate the
8 written statement?

9 MR. COOK: It does but there's more detail. You can
10 read the written statement and it's similar, but there are
11 details in the video statement that aren't included in the
12 written statement that if Aaron Hyatt does testify that you
13 could use for impeachment purposes. And back to what
14 Mr. Frick said about being Mirandized and -- whether or not
15 something is voluntary is a different issue from whether or
16 not they are in custody and being Mirandized. Being in
17 custody versus doing something voluntarily is not the same
18 thing. He was Mirandized and it could possibly carry over
19 but that's not the issue, it's not even if he's in custody,
20 it's whether or not that statement was elicited voluntarily
21 and he gave it and I submit he did give it voluntarily.
22 Whether or not he was in custody or not, that's not the
23 issue. But as far as the two statements, one is a lot more
24 detailed account of what happened, so technically they're
25 not the same statement because one includes facts that

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1 aren't in the other one even though they are similar and
2 some parts are the same. So I would submit they are two
3 separate statements and that I need both of them.

4 THE COURT: All right. Anything further?

5 MR. FRICK: Well, Your Honor, just on that. If it
6 wasn't a custodial interrogation there wouldn't be any
7 question about it, that's the first question when we look at
8 this. The Miranda is the tool that we use to confirm
9 whether or not a person is advised of their 5th Amendment
10 rights, but whether or not you were free to leave, whether
11 it's custodial. Custodial is much more than simply having
12 handcuffs on you, it was whether you could leave and whether
13 you knew that you didn't have to talk so I would disagree
14 with that assessment that that doesn't matter, that's
15 exactly what the question is. The safeguards were not put
16 in place with the Hyatts not advised, and quite frankly I
17 think the Court sees that it's cumulative and therefore it
18 wouldn't be necessary.

19 THE COURT: All right. Well, I find the statements
20 were freely and voluntarily given and I will allow their
21 admission.

22 MR. COOK: Thank you, Your Honor.

23 THE COURT: What's the next issue?

24 (A recess was taken.)

25 THE COURT: Are we ready to proceed on the next

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1 pretrial issue?

2 MR. COOK: We are. Your Honor, one thing I would like
3 to introduce during the trial is on the 13th of September,
4 three days prior to the incident, there was an incident
5 report taken out by the sheriff's department by Deputy Randy
6 Morgan who was also the responding officer on the 16th,
7 there was an issue between victim Kamil Nassrah and Michael
8 Hyatt. I suspect that the objection would be it's a prior
9 bad act and couldn't bring it in, however it was only three
10 days prior and as a result of that incident the magistrate,
11 Judge Thomas, issued an escort for Kamil for the next two
12 days just so there wouldn't be a problem, and the proximity
13 of time to the incident I think is relevant. There is also
14 the case law that says in assault and battery cases, doesn't
15 necessarily say attempted murder and murder cases, that
16 prior difficulties between the parties can be used to show
17 the conflict. And if you watch the rest of the reenactment
18 video Aaron Hyatt even references the incident on the 13th
19 ~~claiming that that's a stem while this happened.~~ And I
20 would ask that I'm allowed to talk to Deputy Morgan and
21 Kamil and Mr. Melton about that incident while they're on
22 the stand instead of being objected to during the course of
23 trial about prior bad acts and that not being admissible. I
24 believe that it should be admissible because under Lyle
25 evidence as far as motive, but primarily as the span of

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1 time, it's still a part of the same series of events given
2 that event led to the magistrate issuing the escort for
3 Kamil for that road for the purpose of getting hay, which
4 was how this incident occurred on the last day on the 16th.
5 I think it should be admitted, not necessarily the incident
6 report not put into evidence but being able to question the
7 witnesses on the stand about the acts.

8 THE COURT: So it's a Lyle motion, got it.

9 MR. GRIER: Judge, the facts are in dispute about that
10 incident. And they allege -- the alleged victim in the
11 attempted murder case alleges our clients locked him in a
12 field, our clients deny that they locked him in a field.
13 Are we going to have two trials on that? I mean, Rule 404
14 for bad acts say prior bad acts may be admissible to show
15 motive, identity, the existence of a common scheme or plan,
16 the absence or mistake of accident or intent. And, you
17 know, I don't think --

18 THE COURT: Well, I guess looking at your argument
19 then, let's extrapolate while we're thinking out loud, ~~extrapolate~~
20 evidence of other crimes, wrongs or acts are not admissible
21 to prove, bla, bla. It may, however, be admissible to show
22 motive, the existence of a scheme and plan or intent. Well,
23 it specifically those three, what the State is offering to
24 -- if the State intends to offer that just three days prior
25 the alleged victim contacted law enforcement about words or

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1 exchanges between the two and was concerned so much for his
2 safety that he requested all of that, wouldn't that tend to
3 show intent? Wouldn't that tend to show a common scheme or
4 plan? Wouldn't that intend to show motive on behalf of your
5 client to get back at them for doing that? Talk to me about
6 that.

7 MR. FRICK: Your Honor, I would agree if the incident
8 report didn't say that when they got there the victim in the
9 case was not locked in the field and these two denied any
10 part in the activity. For them -- under Lyle and 404B for
11 them to be able to talk about it as a prior bad act they've
12 got to show by a preponderance of the evidence that
13 something occurred. I don't think that this does that,
14 there were no charges taken out, it's simply an incident
15 report that gets filled out any time law enforcement gets
16 called. Now, it may be res justii in the case but I don't
17 think it comes in under 404B because I don't see how it does
18 falls under any of those categories. First and foremost I
19 don't know if you've got a bad act. There's an alleged act
20 but no proof other than an allegation.

21 MR. COOK: Your Honor, from the State's point I don't
22 even need to get into what the alleged act that they did and
23 why law enforcement was called. My main point is to point
24 out that law enforcement -- just the fact that law
25 enforcement was called about a situation between the two.

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1 I'll stipulate right now that I won't ask what he allegedly
2 did to them, just the fact that they had a dispute between
3 the two of them and law enforcement was involved and why
4 they were arguing with each other. It's -- you know, that
5 event led to the magistrate issuing an escort for Kamil
6 Nassrah, and then that escort was the same officer who came
7 the day on the 13th, he escorted him, the next day he didn't
8 and the next day he ended up showing up to a shooting match.

9 THE COURT: Because he wasn't there allegedly at that
10 time.

11 MR. COOK: Exactly. The State's theory, one of them,
12 rests upon the fact that the one day that they didn't go out
13 with an escort all of this happened and the escort was
14 initially ordered based upon the event on the 13th.

15 THE COURT: But what was the bad act which generated
16 the escort?

17 MR. COOK: That they were -- Mr. Nassrah alleges that
18 when they let him out of the gate that -- they said it
19 wasn't locked at the time and it wasn't locked when law
20 enforcement came out, that Michael Hyatt wanted to fight him
21 because they wouldn't stop going up and down the road and
22 dust flying up. And Aaron Hyatt referenced in the video
23 statement this is what it all stems from, he says that. The
24 bickering on the 13th it all stems from dust on the road,
25 and that's what they were arguing about on the 13th and

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1 that's what they were arguing about on the 16th.

2 THE COURT: Let me read this to you, gentleman, before
3 y'all respond, under a common scheme or plan scenario. For
4 the common scheme or plan exception to apply a close degree
5 of similarity or connection between the bad act or the crime
6 is necessary. So under the State's version of events the
7 victim is going to say that the defendant threatened to hurt
8 me then and so I had to go get a police escort, I got that
9 and the day I didn't have the escort he hurt me. So how
10 does that not apply is what I'm asking? And I'm looking at
11 the Cheeseboro case and Raffaldt case.

12 MR. GRIER: Well, I think Lyle references actual
13 convictions on other cases, and, you know, this is like --
14 you know, this is -- are we going to have two trials? Are
15 we going to have a trial over whether they locked him in the
16 pasture, number one? It can all be resolved by saying, you
17 know what, there was a dispute about the road that had been
18 raised by the Hyatts over the alleged victim speeding down
19 the road, that was causing a problem of dust and there was a
20 confrontation about that prior to it. I think that's -- I
21 don't know if the State agrees to that but we would
22 stipulate to that, I believe.

23 THE COURT: All right. So you're just wanting to get
24 in that a magistrate ordered, that's the dispute? I think
25 your victim can testify that he had bad words with the

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1 defendant and that the defendant had threatened to whip him
2 or do whatever, whether the defendant agrees with that
3 version of the facts or not. I think he could testify about
4 that without the necessity of a pretrial hearing. That's
5 his right as a victim.

6 MR. COOK: That was my motion, instead of being
7 objected to during the course of the trial as an
8 introduction of a prior bad act go ahead and put on the
9 record that that's not considered inadmissible evidence,
10 that's what I'm saying, Your Honor, to stipulate --

11 MR. FRICK: I think we have to object. If we object
12 now -- because this is a motion in limine -- if we object
13 now we're going to have to object on the record, otherwise
14 it's not preserved.

15 THE COURT: What I'm saying is -- all right. Are you
16 wanting to take it to the next level where you actually have
17 the officer testify that he was supposed to be, you know,
18 escorting the victim in and out of the pasture or whatever?

19 MR. COOK: He can say that during his direct during the
20 trial. I guess I'm kind of concerned on what the issue is.

21 THE COURT: Again, this is a pretrial hearing and I
22 don't know what's going to come and what the ebb and flow of
23 a trial, y'all know how it goes. You know, the fact -- hold
24 on a second. The fact that the victim is going to testify,
25 that the defendant -- when I say the defendant I'm referring

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23 a trial, y'all know how it goes. You know, the fact -- hold
24 on a second. The fact that the victim is going to testify,
25 that the defendant -- when I say the defendant I'm referring

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1 to Michael Hyatt, that Mr. Michael Hyatt, according to the
2 victim's testimony, if he's going to say, "The defendant had
3 threatened me just three days before and because of that" --
4 I think he can say that and, I mean, and I don't know what
5 the objection would be. Object, that's not the truth, but
6 that's not a founded objection. The jury has to determine
7 what the truth is. A witness can say what the defendant
8 said, the defendant has a Sixth Amendment right to confront
9 the witness and try to cross examine him and that kind of
10 thing. I don't think that needs a preliminary ruling of
11 something coming in. Now, on the other hand if you're going
12 to talk about how, "As a result of those words I called law
13 enforcement and law enforcement thought it was bad enough
14 for an escort to be issued," that's where you cross the line
15 and get into whether or not that's relevant or whether that
16 will confuse a jury under 404B, that's where I'm getting to.
17 Do y'all understand what I'm saying?

18 MR. GRIER: Yeah, Judge. If he's going to say a judge
19 ordered it, that's certainly hearsay in itself.

20 THE COURT: I'm going to keep that out. Your client --
21 your client, excuse me -- Solicitor, your victim or your
22 witness can testify that he had had words, that the
23 defendant had approached him and threatened to beat him up
24 for kicking dust up on the road, that's sufficient. That
25 looking at it from the State's standpoint creates motive for

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1 this act.

2 MR. COOK: All right. Thank you, Your Honor.

3 THE COURT: But I'm not going to allow you to go in to
4 further things, that a magistrate issued this order, that
5 kind of thing. Because number one, it's questionable as to
6 what the prior bad act was as they're talking about, and
7 number two, it would just confuse the jury as to what the
8 ultimate issue is. Okay?

9 MR. GRIER: And part of that also is we don't know for
10 certain that the reason for the escort is only because of
11 that event that did or did not happen on three days prior.

12 THE COURT: I don't know what the reason for the escort
13 is. And if the jury hears that they're going to be talking
14 about that same thing, what's the reason for the escort and
15 that would put questions for them as to the victim's
16 credibility as well as the defendant's credibility.

17 MR. GRIER: Well, there have been complaints from this
18 defendant prior to the event three days before about the
19 road.

20 THE COURT: I'm sure you were fixin' to tell me that
21 which is what I'm getting at. I'm sure that's probably
22 going to come out as well and that's why -- we don't want to
23 mislead the jury and confuse them and that's why we have 404
24 in the first place to kind of gate keep out that kind of
25 stuff. But certainly the victim can testify as to his

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1 version as to why he thinks this happened.

2 MR. COOK: Your Honor, just for clarification, it would
3 still be proper for me to ask Deputy Morgan if he escorted
4 him, if he escorted Kamil Nassrah two days prior, he
5 provided the escort without why he was providing it --

6 THE COURT: Then the next question is, "Why did you
7 provide the escort? Because the magistrate told me to. Why
8 did the magistrate tell you to?"

9 MR. COOK: Well, he can simply say -- I don't
10 understand why he wouldn't be able to simply say, "Yeah, I
11 provided an escort, I escorted him out there." I think
12 that's -- what I'm asking is if you're saying now you can't
13 ask that question -- obviously it's hearsay to say the
14 magistrate said I needed to do this, but him testifying,
15 "Yes, I provided an escort for Kamil that day," how that
16 couldn't come in.

17 THE COURT: All right. Mr. Grier?

18 MR. GRIER: Why do we even need any evidence of the
19 escort at all, I mean, you-know, if that didn't happen the
20 day that this confrontation happened?

21 MR. COOK: And that's the State's theory, the reason it
22 didn't happen is why this incident occurred and that's the
23 whole crux of it is the two days prior when he had an escort
24 everything was fine, the one day he didn't this happened.

25 THE COURT: I thought I had made my ruling earlier when

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1 I said that that would confuse and mislead the jury. I
2 don't really find any evidence of the common scheme and plan
3 based upon these arguments at this point in time. So my
4 preliminary ruling -- and, of course, it's subject to being
5 changed because it may come up again during the trial with
6 the ebb and flow of a trial, but my preliminary ruling is to
7 find out that that is irrelevant and I'm not going to allow
8 that in, that would be unfairly prejudicial to the
9 defendant.

10 MR. COOK: Thank you, Your Honor.

11 THE COURT: Or more prejudicial than probative, that's
12 the magical language under Rule 403. All right. What else?

13 MR. FRICK: Your Honor, I think at this time we have to
14 move forward on the motion that Mr. Grier and I filed some
15 time ago on this case under 16-11-440 for immunity from
16 prosecution, I guess.

17 THE COURT: Y'all specifically referencing subsection C
18 I imagine?

19 MR. FRICK: Yes, sir...

20 THE COURT: It wasn't a household, it wasn't in a
21 vehicle.

22 MR. FRICK: Yes, sir. I was just trying to -- it was
23 sort of on his property and sort of near my guy's car but I
24 think the statute as a whole --

25 THE COURT: Subsection C is a person who is not engaged

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1 in unlawful activity who is attacked in another place where
2 he has a right to be. You're talking that subsection?

3 MR. FRICK: Yes.

4 THE COURT: I just wanted to be sure. Okay. Well, do
5 y'all want to present testimony on that? State? We'll let
6 the State go first even though it's a preponderance of the
7 evidence standard. State, go ahead.

8 MR. COOK: State calls Kamil Nassrah.

9 The witness, KAMIL NASSRAH, was first duly
10 sworn and testified as follows, on:

11 DIRECT EXAMINATION

12 BY MR. COOK:

13 Q. Please state your name for the record.

14 A. Kamil Nassrah.

15 Q. Okay. How old are you, Mr. Nassrah?

16 A. Sixty-two.

17 Q. What type of educational background do you have?

18 A. I have three years of college.

19 Q. What do you do for a living currently?

20 A. I'm sorry?

21 Q. What do you do for a living?

22 A. I farm and I have my own business.

23 Q. What type of business?

24 A. I run a convenience store.

25 Q. Were you on Merle Lane September 16th of 2010?

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- 1 A. Yes, sir.
- 2 Q. Why were you on Merle Lane?
- 3 A. I have a piece of land over there that I'm renting and
- 4 I cut hay off it.
- 5 Q. Who do you rent that land from?
- 6 A. Sandra and David, I can't remember.
- 7 Q. That's okay, that's fine. That field down on Merle
- 8 Lane, is that in Lancaster County?
- 9 A. Yes, sir.
- 10 Q. Is it technically the Heath Springs area?
- 11 A. Heath Springs area, yes.
- 12 Q. But it's in Lancaster County?
- 13 A. Lancaster County.
- 14 Q. How many times a year do you farm that field?
- 15 A. I go in twice in the summertime for about three days
- 16 each time, cut the hay, move it and that's it.
- 17 Q. What type of crew do you take out there, what type of
- 18 machinery? Is it a big operation?
- 19 A. It's a couple of tractors and cut the hay, come back
- 20 the next day, tedder it, third day bail it and take the hay
- 21 back home.
- 22 Q. It's about a three day job each time you go out there?
- 23 A. Three days maximum, four if I have good weather.
- 24 Q. You were farming September 16th of 2010?
- 25 A. Yes, sir.

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1 Q. Was it the first day or the last day of the harvest I
2 guess you would call it?

3 A. That would have been the last day to harvest that
4 field.

5 Q. Okay. So what type of road is Merle Lane?

6 A. A dirt road, very narrow, only one vehicle can go
7 through it. A tractor up in there is very hard, it's very
8 narrow.

9 Q. Now, Merle Lane, when you got to the end of Merle Lane,
10 does it run into another road or where does it end up?

11 A. To the hay field, that's it.

12 Q. So once you drive down Merle Lane to get to the hay
13 field there's nowhere else to go, it's a deadened?

14 A. There's nothing after that.

15 Q. About how long do you think that road is?

16 A. Three or 400 yards.

17 Q. So it's not like a 10-mile stretch.

18 A. No, it's very short.

19 Q. How many houses are on that road?

20 A. I think four, I'm not 100 percent sure. It was either
21 three or four, I'm not sure.

22 Q. Do you know Michael Hyatt?

23 A. Yes, sir.

24 Q. Does he live on that road?

25 A. Yes, sir.

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1 Q. If you're going out to the field would his house be on
2 the left or your right?

3 A. If I'm going toward the field?

4 Q. Yeah, to the field.

5 A. It would be on the right.

6 Q. So if you're leaving the field --

7 A. It would be on the left.

8 Q. Okay. What is your standard procedure -- when you
9 leave the field and you're packing up for the day what do
10 you do to pack up and leave? Is there a gate or is it open
11 or --

12 A. Pack up, lock the gate, make sure it's secured the lock
13 because of people, don't want anybody in it, and then we'll
14 leave, that's it. It has got double gates and we have to
15 put the chain around it and lock it.

16 Q. Okay. So when you were leaving Merle Lane on the 16th
17 what were you driving?

18 A. I was driving my truck hooked up to a trailer loaded
19 with hay.

20 Q. What type of truck is it?

21 A. It's a Ford F-350 diesel.

22 Q. It's a diesel?

23 A. Yes, sir.

24 Q. A pretty loud truck?

25 A. Yes, sir, diesel is loud.

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1 Q. And your crew that's coming out, you're driving. Are
2 you at the front, are you at the back? At the end of the
3 day on the 16th when you're leaving, who all has left when
4 you leave?

5 A. I was leaving, my helper was behind me on the tractor
6 and usually the last person leaving locks the gate.

7 Q. Did you lock the gate or did your helper?

8 A. My helper locked the gate.

9 Q. What's your helper's name?

10 A. Donnell Melton.

11 Q. As you're leaving locking up and Donnell is locking up
12 the gate, are you in front of Hyatt's house or are you a
13 little bit past it?

14 A. I'm in front of Mr. Hyatt's house.

15 Q. On the 16th did you see Michael Hyatt outside of his
16 house?

17 A. Yes, sir, he was in the yard.

18 Q. Did he say anything to you?

19 A. ~~I didn't~~ I didn't even look at him. I was just watching for my
20 helper to lock the gate and --

21 Q. Did you get out of your truck?

22 A. I stuck my head out of the window watching my helper
23 and make sure he was okay.

24 Q. Was he saying anything to you?

25 A. He was talking, I just didn't even look that way. I

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1 just wanted to go home.

2 Q. Was your truck running at the time?

3 A. Yes, sir.

4 Q. So it's your truck and you've got the hay in the back
5 of your truck?

6 A. In the back of the truck the hay.

7 Q. Donnell is behind you in the tractor?

8 A. In the tractor pulling a piece of equipment.

9 Q. So you said earlier it's a dirt road?

10 A. It's a dirt road.

11 Q. You've got some pretty heavy machinery. When you go
12 down the dirt road does it kick up some dust?

13 A. If it's very dry you might create just a little bit of
14 dust, yes.

15 Q. Have you had an issue with the Hyatt's about dust?

16 A. Yes, sir.

17 Q. Had you had an issue with them that week?

18 A. Yes, sir.

19 Q. How much earlier in the week was it?

20 A. How much?

21 Q. That same week that you had a run-in with the Hyatt's
22 about dust.

23 A. Three days before that.

24 Q. They were mad at you about kicking up dust on the road?

25 A. That day, no, they didn't say anything about the dust.

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1 That day I opened the gate, went inside and when I got out
2 and finished cutting the hay the gate was locked with a
3 different lock on it, I couldn't get out.

4 Q. When you -- did you see Michael Hyatt or Aaron Hyatt
5 out there when you tried to leave?

6 A. They were in the yard, Michael Hyatt and his son were
7 in the yard.

8 Q. Was there some type of confrontation between you?

9 A. No. I backed up my tractor and I called the police
10 because I couldn't get out, so I called the police.

11 Q. So back to the 16th, you're leaving, after Donnell
12 locked up the gate and you're about to leave you say Michael
13 Hyatt -- is he in his yard or is he in the porch? How far
14 away from the road -- do you remember how far he was away
15 from the road?

16 A. Maybe 20 -- 20 feet or 30 feet.

17 Q. Okay. Did he have anything in his hand?

18 A. Any what?

~~19 Q. Did he have anything in his hand or was he --~~

20 A. I did not look.

21 Q. Okay. So after you passed by Mr. Hyatt's house it's on
22 your left, correct?

23 A. Yes.

24 Q. You keep driving.

25 A. I kept on driving.

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1 Q. After you passed his house what happened?

2 A. I drove a little bit, I was almost to the end of the
3 dirt road when Aaron Hyatt pulled in in front of me.

4 Q. How did you know it was Aaron Hyatt? Are you familiar
5 with him?

6 A. He pulled in and he got out of his truck and --

7 Q. What kind of truck was he driving, do you remember? Do
8 you remember what color it was?

9 A. I can't remember. It was sort of a greenish older
10 model truck.

11 Q. So he pulled up in front of you?

12 A. Yes, sir.

13 Q. Did he try to go around you?

14 A. You can't go around me, it's a very narrow road, only
15 one vehicle can go.

16 Q. So is there any way for you to drive around Aaron Hyatt
17 to get out?

18 A. I can't even back up.

19 Q. Did Aaron Hyatt get out of his truck. . . .

20 A. Did what?

21 Q. Did Aaron Hyatt get out of his truck?

22 A. Yeah, he stepped out of the truck. He stayed next to
23 his truck and he was shouting-like and I get out and I said,
24 "Please move your truck, I would like to leave."

25 Q. Was there a confrontation? Did he threaten you?

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1 A. He said something about, "Your days are numbered.

2 Where is your escort now?" So I knew there was something

3 going on so --

4 Q. When he pulled up was he just kind of just gradually

5 driving down the road or did he come up pretty fast on you?

6 A. Yeah. He came up pretty fast, he almost hit me.

7 Q. How far was the front of his truck to the front of your

8 truck?

9 A. Maybe three feet, four feet.

10 Q. It was pretty close? So did you get out of the truck?

11 Did you open -- when you were talking to Aaron Hyatt from

12 your truck to his truck, where were you?

13 A. I opened my door and I stepped on the side-steps on my

14 truck, I was still in my truck. Here is the door, I am

15 right here and I asked him to back up so I could leave.

16 Q. As you were asking him to leave what happened?

17 A. He was shouting and cussing and telling me that my days

18 are numbered, "Where is your escort now."

19 Q. Do you remember what happened next?

20 A. I reached for my phone to call the police.

21 Q. Were you able to call the police?

22 A. No, sir.

23 Q. Why not?

24 A. I got hit.

25 Q. Where did you get hit?

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1 A. I thought I was shot. I was hit on my head.

2 Q. At the time did you see who hit you?

3 A. No, sir.

4 Q. So you weren't sure what it was but you felt something
5 in the back of your head?

6 A. In the back of my head.

7 Q. Did you get out of the truck? Do you remember getting
8 out of the truck?

9 A. When I got hit I fell to the ground and I started
10 running because I felt I was shot.

11 Q. Where did you run to?

12 A. I ran to the front of my truck.

13 Q. In between your truck and Aaron's truck?

14 A. Between Aaron's truck and my truck.

15 Q. Were you dazed? Were you kind of dazed after getting
16 hit in the head?

17 A. Yes, I was dazed. I was covered with blood.

18 Q. After you got out between the trucks, did you see

19 anybody else besides Aaron out there?

20 A. I started crawling and running and I heard Aaron
21 saying, "Kill him daddy, kill him." So I looked back to see
22 and I saw Mike Hyatt with an object in his hand raised again
23 and --

24 Q. So Aaron is yelling, "Kill him daddy." Who is Aaron
25 Hyatt's daddy? Who is Aaron Hyatt's father?

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- 1 A. I'm sorry?
- 2 Q. Who is Aaron Hyatt's father that he is yelling, "Kill
- 3 him daddy." Who is his daddy?
- 4 A. I don't understand what you said.
- 5 Q. Aaron Hyatt said, "Kill him daddy?"
- 6 A. Yes, sir.
- 7 Q. Who is Aaron Hyatt's father?
- 8 A. Who is he calling?
- 9 Q. Who is his father?
- 10 A. Oh, Mike Hyatt, I'm sorry.
- 11 Q. So you turn around and you see Mike Hyatt?
- 12 A. Yes.
- 13 Q. And he's holding a stick or something?
- 14 A. I couldn't exactly see. I was covered with blood but I
- 15 know he had something in his hand high coming at me.
- 16 Q. He had it raised?
- 17 A. Yes.
- 18 Q. Was he coming towards you?
- 19 A. Yes, sir.
- 20 Q. What did you do?
- 21 A. I pulled the gun.
- 22 Q. Where did you have a gun?
- 23 A. In my sack.
- 24 Q. What type of gun is it?
- 25 A. It's a .380 Beretta.

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- 1 Q. When you pulled the gun what did Mike Hyatt do?
- 2 A. He kept on walking toward me.
- 3 Q. What did you do when he kept coming towards you?
- 4 A. I shot to the ground and I told him to stop.
- 5 Q. So the first shot you shot into the ground.
- 6 A. The first shot I shot to the ground.
- 7 Q. Did he stop?
- 8 A. No, sir.
- 9 Q. What did you do then?
- 10 A. I shot him.
- 11 Q. Where did you shoot him?
- 12 A. I don't know.
- 13 Q. Did he stop then?
- 14 A. Yes, sir.
- 15 Q. After you shot Mike Hyatt, did you know what Aaron
- 16 Hyatt was doing at the time?
- 17 A. Something about a gun. I told him not to move, stay
- 18 right there.
- 19 Q. Did you think -- did Aaron Hyatt come towards you?
- 20 A. No, I don't believe he did.
- 21 Q. But you held him off. You told him to stay where he
- 22 was.
- 23 A. I told him not to move.
- 24 Q. So at that point you've still got your gun out? ,
- 25 A. I still have the gun in my hand.

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1 Q. After you got hit in the back of the head, did you ever
2 get back in your truck?

3 A. I had a hat on and it was full of blood and I couldn't
4 see. I had something to wipe my face and my shirt was
5 bloody. At that time I was on this side of the truck.

6 Q. You were on the passenger side of the truck?

7 A. The passenger side so I would always keep tissues and
8 paper towels in the truck so I was looking for some type of
9 towel to stop the bleeding.

10 Q. Do you remember when Deputy Morgan pulled up?

11 A. Yes.

12 Q. Do you remember where you were when Deputy Morgan
13 pulled up?

14 A. What he was wearing?

15 Q. No, where you were. Where were you in relation to your
16 vehicle when Deputy Morgan pulled up?

17 A. At that time I fell to the ground and -- somewhere on
18 the ground.

19 Q. You said you were wearing a hat.

20 A. Yeah.

21 Q. Do you remember what kind of hat it was?

22 A. A John Deere hat, that's what I wear.

23 Q. Okay. So you're on the scene and you said you fell
24 down. Do you remember where you were when you fell down?

25 Were you sitting against something?

PRETRIAL MOTIONS

1 A. In front of the preacher's house there was what we --
2 where I was stopped it was in front of the preacher's house.

3 Yes, sir.

4 Q. That's the preacher's driveway, where his driveway runs
5 in to Merle Lane?

6 A. Yes, sir.

7 Q. And that's where you -- you were there from the time --

8 A. That's where I fell until Officer Morgan arrived.

9 Q. Were you in that same spot when EMS came?

10 A. I'm sorry?

11 Q. Were you in that same spot when EMS arrived?

12 A. Yes, sir.

13 Q. Were they able to treat you locally or did you have to
14 be taken somewhere?

15 A. I was flown to Charlotte.

16 Q. In a helicopter?

17 A. Yes, sir.

18 Q. What hospital did you go to.

19 A. CMC.

20 Q. What type of treatment did you receive?

21 A. I had an open wound about that big in the back of my
22 head.

23 Q. Okay. Did they have to sew it up, put staples, do you
24 remember?

25 A. Staples.

PRETRIAL MOTIONS

1 Q. Do you know how many?

2 A. 39.

3 Q. Any other type of treatment, medication, they saw for
4 you?

5 A. I had to stay awake for awhile and make sure I don't
6 fall asleep just in case.

7 Q. Have you got any scars from it?

8 A. Yes, sir.

9 MR. COOK: Nothing else right now, answer anything they
10 might have for you.

11 THE COURT: Mr. Grier?

12 CROSS EXAMINATION

13 BY MR. GRIER:

14 Q. Mr. Nassrah, how long have you been knowing Michael and
15 Aaron Hyatt?

16 A. How long had I been knowing Mike Hyatt?

17 Q. Yes, sir.

18 A. I believe since I was farming that field.

19 Q. —How long had you been farming that field?

20 A. Four or five years.

21 Q. Had you ever had any conversations with them about the
22 speed limit on that road prior to this 2010? Let me clarify
23 something, when you say four or five years, you had been
24 farming it four or five years prior to 2010?

25 A. Yes.

PRETRIAL MOTIONS

1 Q. This happened in 2010, you had been farming it about
2 four or five years already?

3 A. Yes, sir.

4 Q. Okay. Just want to make sure, it's three or four years
5 ago now.

6 A. Right.

7 Q. Now, had there been issues about the drive and the dust
8 prior to that year?

9 A. Three months prior to the incident Mike Hyatt followed
10 me to the field and he wanted to fight me and I told him I
11 don't fight. My girlfriend was with me and he said I need
12 to learn how to respect people, I told him I respected
13 everybody. And he said something about he was raising
14 chickens and my dog is killing his chickens. I told him I
15 don't have a dog, I live 20 miles from here. And he said,
16 "There's a dog in here and it's killing my chickens." I
17 told him I don't have a dog.

18 Q. Well, cut to the chase. Nothing came up about that
19 road prior to the day that Mr. Hyatt got shot and you got
20 hit in the head, you never knew there was an issue about
21 dust on that road?

22 A. That's why I said three months before that.

23 Q. Well, you didn't say there was any issue about the dust
24 three months beforehand, you said that he came up wanting to
25 fight.

PRETRIAL MOTIONS

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1 A. That was three months prior to the incident.

2 Q. Okay. And that was because he was saying you didn't
3 respect him going up and down the road fast and throwing
4 dust on his house?

5 A. Something about the chickens.

6 Q. Okay. So nothing came up about the dust prior to the
7 day y'all had the physical confrontation.

8 A. He did say something about dust and I told him, "I
9 can't help it, I have to come to the field." And he said,
10 "You drive too fast." And I said, "How can I drive too
11 fast?" The top speed on the tractor is 14 miles an hour and
12 carrying equipment you have to go slower, and that's on a
13 highway 14 miles an hour. And I said, "How fast I'm going?"
14 And he said, "You're going fast." I said, "I can't go
15 fast." That was it.

16 Q. Well, how fast will your truck go?

17 A. My truck?

18 Q. Yeah?

19 A. Where? On the highway.

20 Q. On a dirt road?

21 A. I don't believe I can drive my truck 10 mile an hour.

22 Q. Okay. It just don't go any faster?

23 A. Can I go any faster?

24 Q. Will your truck not go any faster than 10 miles an hour
25 on a dirt road?

PRETRIAL MOTIONS

1 A. It could but you will probably end up wrecking it in
2 the tree or flipping it somewhere.

3 Q. Okay. Well, so you don't think there's any speed you
4 could go where it wouldn't throw dust up.

5 A. I'm sorry?

6 Q. You couldn't go any speed -- if you're moving you're
7 throwing dust up, you couldn't go slow enough to keep the
8 dust from flying up.

9 A. Not if it's dry and hasn't rained in a long time.

10 Q. Okay. Well, on the date of this incident --

11 A. I'm sorry?

12 Q. On the date of the incident that we're here about today
13 you've locked the field up.

14 A. No, my helper locked the field up.

15 Q. Your helper has locked the field up. Now, how far --
16 that's a good little piece away from the Mr. Hyatt's house
17 where you come out of that field, isn't it? It's down at
18 the end of road? It's down the end of Merle Lane?

19 A. To the end of Merle Lane?

20 Q. Yeah. The gate that you come out of onto Merle Lane?

21 A. The gate is at the end of Merle Lane.

22 Q. So it's several hundred yards down from Mr. Hyatt's
23 house.

24 A. Several hundred yards?

25 Q. I'm asking.

PRETRIAL MOTIONS

1 A. No, it's probably 70 feet or 80 feet.

2 Q. All right. So you're in your truck, you've got your
3 hay on your truck.

4 A. I've got my hay on the trailer.

5 Q. Well, on the trailer, right. You're pulling the
6 trailer with your truck, the hay is on the truck, you leave
7 the field. And do you stop in front of Mr. Hyatt's at that
8 point?

9 A. I have to leave room for my helper to pull in for this
10 tractor and the hay to be out of the field so he can lock
11 the gate.

12 Q. Okay. And so why do you have to stop?

13 A. Why I have to stop?

14 Q. Yeah. Why did you stop? Why didn't you just go on out
15 of there? You were right in front of Mr. Hyatt's house and
16 you're stopping? Why are you doing that?

17 A. Because I have to wait for my helper to make sure we
18 lock the gate and we're leaving.

19 Q. So you don't trust your helper to lock the gate?

20 A. I trust my helper. I have to make sure my helper is
21 behind me and everything is okay. We follow each other all
22 of the time.

23 Q. All right. So you've got to stop in front of
24 Mr. Hyatt's house, you couldn't have gone on down the road
25 another 100 yards and waited on your helper to catch up with

PRETRIAL MOTIONS

1 you to avoid whatever bad blood is going on. You couldn't
2 do that?

3 A. What, sir?

4 Q. You couldn't have pulled down on -- instead of stopping
5 in front of Mr. Hyatt's house you couldn't have pulled on
6 down the road and waited on your helper on the tractor.

7 A. I probably could have, but --

8 Q. Okay. All right. Well -- all right. So you say you
9 didn't have any words with Mr. Michael Hyatt there while you
10 were stopped there in front of his house?

11 A. No, sir.

12 Q. Okay. Your helper comes up with the tractor?

13 A. Yes, sir.

14 Q. Did he have words with Mr. Hyatt?

15 A. I don't believe so.

16 Q. Okay. He pulls up, you pull off --

17 A. Yes, sir.

18 Q. -- to leave. You have had no words with Mr. Hyatt.

19 A. No, sir.

20 Q. Your helper has had no words with Mr. Hyatt that you
21 know of.

22 A. Not that I know of.

23 Q. How do you know when your helper is behind you?

24 A. I'm sorry?

25 Q. How do you know when your helper is behind you?

PRETRIAL MOTIONS

1 A. I looked in the mirror.

2 Q. You could see around that truck with the mirrors with
3 that hay on it the way it was?

4 A. Yes, sir.

5 Q. So you pull up and it's not very far up there, and then
6 in comes Aaron Hyatt.

7 A. Yes, sir.

8 Q. And what do you do? What is your reaction to him being
9 right there in front of you?

10 A. I have to stop. I'm going so slow there's nothing I
11 can do.

12 Q. All right. Well, who got out of the truck first?

13 A. Aaron.

14 Q. Okay. Did you get out of your truck then?

15 A. I wait to see what he was going to do.

16 Q. You waited to see what he was going to do. Okay. And
17 what did he do?

18 A. He just stayed by his truck and he was shouting at me.

19 Q. And then what did you do?

20 A. I opened the door and stepped on the side steps in the
21 door right there beside me and I asked him to please back up
22 so I can leave.

23 Q. Okay. Now, you're talking about the running board?

24 A. Yes, sir.

25 Q. You already had a gun on you.

PRETRIAL MOTIONS

1 A. I'm sorry?

2 Q. You already had a gun on you.

3 A. Who?

4 Q. You.

5 A. Yeah.

6 Q. At that point.

7 A. I have a permit, I always carry a gun.

8 Q. You always carry a gun.

9 A. Yes, sir.

10 Q. Okay. So you didn't -- did you hold that gun out, pull
11 that gun out at that point?

12 A. No, sir.

13 Q. You didn't do that?

14 A. Why would I do that?

15 Q. I'm asking you whether you did it or not.

16 A. No, sir.

17 Q. Maybe you were mad at somebody? He's blocking the road
18 and you're pissed off?

19 A. It's not the first time he blocked the road.

20 Q. It's not the first time he blocked the road.

21 A. No, sir.

22 Q. Okay. So when do you notice that you've been hit in
23 the head?

24 A. I'm sorry?

25 Q. I said where are you at when you notice you've been hit

PRETRIAL MOTIONS

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1 in the head?

2 A. Standing on the running board.

3 Q. You're standing on the running board. Okay. And
4 you're facing directly in front of you?

5 A. I'm sorry?

6 Q. You're facing directly in front of you? Okay. This is
7 your truck, I'm standing on the running board, I'm you and I
8 guess my door is open and I'm having words with Hyatt, I'm
9 talking to him.

10 A. Right.

11 Q. Asking him to leave or to move. Okay. Is that what's
12 going on when you got hit in the head?

13 A. Yeah.

14 Q. So you're looking at him.

15 A. Yes, sir.

16 Q. Okay. And do you have a scar? Where did you get
17 struck? Do you have a scar?

18 A. Right, back of my head right there.

19 Q. So is that the back or the side of your head, kind of
20 both maybe?

21 A. Right here, side back.

22 Q. All right, Mr. Nassrah. What is the next -- are you
23 still on the running board? Do you loss consciousness? How
24 do you get between the trucks or whatever?

25 A. I fell to the ground.

PRETRIAL MOTIONS

1 Q. You fell to the ground. Now, that would have been a
2 good time for somebody to really pound you with a club if
3 they would have had that in mind, wouldn't it?

4 A. I don't know.

5 Q. If I would have -- if I was angry enough to strike
6 somebody and I had them down on the ground, wouldn't that be
7 the time to go after them?

8 A. I don't know. I fell --

9 Q. Well they didn't, did they?

10 A. I fell to the ground and I was running and crawling on
11 four.

12 Q. So you were crawling?

13 A. Running on crawling on four.

14 Q. So you still haven't got no gun out yet.

15 A. No, sir.

16 Q. Why hadn't you got your gun out already?

17 A. Take the gun and do what? I didn't know what was going
18 on yet.

19 Q. --All right.. You had your hat on still.

20 A. Yes, sir.

21 Q. Your hat stayed on through all of this?

22 A. I don't know.

23 Q. Well, the first thing you remember -- you literally are
24 on the ground. Do you crawl around to the front of the
25 truck, or how do you get there around to the front?

PRETRIAL MOTIONS

1 A. I crawled in front of the truck.

2 Q. You feel like -- are you trying to get away from
3 something or are you --

4 A. Yes, sir. I thought I was shot, I thought I was
5 running away from somebody.

6 Q. So that is your purpose for crawling around. Do you
7 crawl under the door or do you remember?

8 A. I don't know.

9 Q. All right. Well, at any rate you get to the front of
10 the truck before you -- and then who do you see in front of
11 you?

12 A. Mike Hyatt.

13 Q. Okay. Mike Hyatt is -- how far from you is he?

14 A. I'm sorry, I can't hear you, sir.

15 Q. I'm sorry, I walked away from you and I apologize. How
16 far is he away from you Mr. Nassrah?

17 A. I don't remember.

18 Q. Okay. Well, you know, what is he doing?

19 A. It can't be more-than the width-of the truck.

20 Q. Okay. True. What's he doing? What is Mike Hyatt
21 doing when you see him?

22 A. He's coming toward me.

23 Q. Are you standing up the next time you see him?

24 A. When I turned around I was standing up.

25 Q. Okay. And he's coming towards you at that point?

PRETRIAL MOTIONS

1 A. Yes, sir, and I was running backwards.

2 Q. Still hadn't got your gun pulled?

3 A. No. I had my gun pulled by then.

4 Q. Do you remember at what point you pulled your gun?

5 A. When I turned around and I saw Mr. Hyatt in front of me
6 that's when I pulled the gun.

7 Q. Okay. All right. What's the first thing you recall
8 being said between you and Michael Hyatt? What's the first
9 thing that was said by Michael Hyatt?

10 A. I don't remember him saying anything.

11 Q. I don't recall you saying he said anything. You
12 testified that Aaron said something.

13 A. I heard Aaron saying, "Kill him daddy, kill him."

14 Q. Did you say anything?

15 A. No, sir.

16 Q. Michael Hyatt is coming at you.

17 A. Coming at me?

18 Q. Yes.

19 A. Yes, sir.

20 Q. He wasn't very far away from you, how long would it
21 have taken him to get to you?

22 A. I don't know.

23 Q. So you shoot in the ground one time.

24 A. I'm sorry, I can't hear you.

25 Q. You shoot in the ground one time. You shot in the

PRETRIAL MOTIONS

1 ground.

2 A. I shot to the ground one time.

3 Q. Okay. He keeps coming?

4 A. Yes, sir.

5 Q. And so you shot him?

6 A. Yes, sir.

7 Q. Did you intend to shoot him?

8 A. I intended to stop him from killing me, yes, sir.

9 Q. After Michael Hyatt is shot he drops the axe handle, or
10 do you recall?

11 A. I don't recall.

12 Q. Does he just go on to the ground?

13 A. Yes, sir.

14 Q. And what does Aaron do, do you recall?

15 A. All -- I heard him saying something about a gun and I
16 shouted, "Do not move."

17 Q. Well, do you -- who went into the passenger side of
18 your truck?

19 A. Who is what, sir?

20 Q. Who went into the passenger's side of your truck?

21 A. Who went to the passenger?

22 Q. Yes, sir. Who went into the passenger's side of your
23 truck? The passenger door got opened some time during this
24 fracas, didn't it?

25 A. Yes, sir. I know I did.

PRETRIAL MOTIONS

1 Q. You did?

2 A. I was looking for tissues.

3 Q. You were looking for tissues?

4 A. Yes, sir.

5 Q. You had another gun in that glove box, didn't you?

6 A. I'm sorry?

7 Q. You had another gun in the glove box didn't you, a .22?

8 A. Yes, sir.

9 Q. So you had no intention of getting that gun?

10 A. No. Why?

11 Q. Well, you had your helper right there with you, didn't
12 you?

13 A. I'm sorry?

14 Q. You had your helper right there with you, didn't you?

15 A. And?

16 Q. And he didn't need a gun?

17 A. That's my gun, nobody touched my gun.

18 Q. Well, do you know what ultimately -- do you know how

~~19 many guns that were found on the scene period all parties?~~

20 You never knowed?

21 A. I have no idea.

22 Q. Did they find a gun on any of the Hyatt's, do you know?

23 A. I have no idea.

24 MR. GRIER: That's all. Thank you.

25 THE COURT: Mr. Frick?

PRETRIAL MOTIONS

1 CROSS EXAMINATION

2 BY MR. FRICK:

3 Q. Mr. Nassrah, please tell me your last name. I don't
4 want to mispronounce it.

5 A. Spell my last name?

6 Q. No, say it for me.

7 A. Nassrah.

8 Q. Do you know Mr. Aaron Hyatt?

9 A. Yes, sir.

10 Q. Did you have dealings with him prior to this situation?

11 A. Dealings?

12 Q. Yes, sir. Any trouble with him? Had you had trouble
13 with him?

14 A. He stopped me, like I said, three months before that.

15 I was leaving the pasture and he jumped in front of the

16 truck which my girlfriend was driving and I was on the

17 tractor behind it and he stopped her. Then he come up to

18 the tractor and Mike Hyatt was standing in the yard with the

19 a rifle in his hand.

20 Q. Okay. On this day in question had you seen Aaron Hyatt
21 at all prior to y'all meeting in the road?

22 A. No, sir.

23 Q. Any conversations with him at all prior to y'all
24 meeting in the road?

25 A. That day? No, sir.

PRETRIAL MOTIONS

1 Q. When y'all met in the road who got out of their truck
2 first?

3 A. Aaron Hyatt.

4 Q. Did he say anything to you?

5 A. Yes, sir.

6 Q. What did he say?

7 A. "Your days are numbered. Where is your escort? Where
8 is your protection?"

9 Q. Did he have any visible weapons?

10 A. I don't recall. I don't believe he did.

11 Q. You didn't see anything. He was not brandishing a
12 weapon at you.

13 A. No, sir.

14 Q. Where were you when does that? When he's standing
15 there saying, "Your days are numbered," where were you?

16 A. When he pulled in or after?

17 Q. Well, you tell me, that's my question.

18 A. When he pulled in I was in my truck, then he got out of

19 his truck and started shouting. I opened my door standing...

20 on my running board I asked him to please back up because he
21 was maybe 15 or 20 feet from the beginning of that truck.

22 Q. Okay. Did he do it?

23 A. No, sir.

24 Q. What did he do?

25 A. He kept on talking and shouting.

PRETRIAL MOTIONS

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- 1 Q. Did he approach you?
- 2 A. No, sir.
- 3 Q. He was standing at his truck?
- 4 A. No, next to his truck.
- 5 Q. So outside the driver's door.
- 6 A. Outside the driver's door next to his truck.
- 7 Q. Okay. What did you then do? What next did you do?
- 8 A. I was reaching for my phone to call the police.
- 9 Q. Did you call the police?
- 10 A. No, sir.
- 11 Q. You were still standing on the running board?
- 12 A. Yes, sir. I was still standing on the running board
- 13 because I was hit.
- 14 Q. You got hit in the head, back of the head.
- 15 A. Yes, sir.
- 16 Q. And I think you said -- where did you say your scar
- 17 was?
- 18 A. Right here.
- 19 Q. Right there?
- 20 A. Yes, sir.
- 21 Q. You were on your driver's side when this occurs?
- 22 A. Yes, sir, I was driving.
- 23 Q. I understand. But when you get hit in the head where
- 24 were you standing?
- 25 A. On the running board.

PRETRIAL MOTIONS

1 Q. Still on the running board?

2 A. Yes, sir.

3 Q. Did it knock you to the ground?

4 A. Yes.

5 Q. Did you receive another blow at that time or did you
6 get up?

7 A. I believe there was only one hit.

8 Q. Just one hit. Okay. Where did you go after you were
9 hit?

10 A. I run in front of the truck between my truck and
11 Aaron's truck running away from whatever hit me.

12 Q. Okay. At any point were you in the between the two
13 cars on the ground?

14 A. Running, crawling and trying to get away.

15 Q. And you made it up to what, that little driveway where
16 Mr. Truesdale's house or -- Truesdale?

17 A. A little bit past my truck, which it's a very narrow
18 road.

19 Q. Did you see Mr. Aaron Hyatt anymore?

20 A. I wasn't focused anymore on Mr. Aaron Hyatt. When I
21 heard Aaron Hyatt saying, "Kill him daddy," I was trying to
22 see what's coming, what hit me.

23 Q. I know this was not the focus of your attention, but
24 you said you hear him say that. Is it behind you, in front
25 of you, any idea?

PRETRIAL MOTIONS

1 A. Sir, I did not.

2 Q. You had your .380 in your waistband? Where was your
3 gun?

4 A. At my side right there.

5 Q. Do you have a holster? How are you carrying?

6 A. I had it in my belt.

7 Q. At any point when his truck is in front of your truck
8 and he's yelling at you, did you pull a gun on him?

9 A. No, sir.

10 Q. At anytime did you point a gun at him?

11 A. No, sir.

12 Q. Even though you had this gun, even though he's
13 threatening you you don't --

14 A. He did not threaten me. He was shouting at me that my
15 numbers are dead, where is your escort. He did not threaten
16 me.

17 Q. You did not perceive that as a threat? I'm just
18 asking.

19 A.. No, sir.

20 Q. I'm going to see if I can get this to show up. The
21 field that you were in, where is it on Merle Lane?

22 A. The end of the road.

23 Q. Very end of the road.

24 A. You can't go no further.

25 Q. Do you see what I've got in front of you? It's not the

PRETRIAL MOTIONS

1 best picture in the world, I apologize. Do you recognize
2 that? Can you tell what that is?

3 A. It says Merle Lane.

4 Q. Do you believe it not to be Merle Lane?

5 A. I have no idea. I've never seen the picture from --

6 Q. Does this look like where Merle Lane ends in your field
7 again?

8 A. That looks like the field, yes, sir.

9 Q. Let's got down just a little bit. What is that?

10 A. It kind of looks like a trailer.

11 Q. Do you know whose trailer that is?

12 A. I'm sorry.

13 Q. Do you know whose trailer that is?

14 A. If it's Merle Lane it should be Mr. Hyatt.

15 Q. You believe that would be Mr. Hyatt's trailer? I think
16 you're correct on that. You told Mr. Grier that you had to
17 pull down in front of his trailer so your guy could get out
18 with the tractor. Is that the not what you said?

19 A. I had to pull out so we could close the gate, yes, sir.

20 Q. Well, how long is your trailer?

21 A. My trailer is 26 feet plus my truck.

22 Q. So there was no way possible for you to pull out of the
23 field, pull down for the tractor so your guy could lock the
24 gate without being in front of Mike Hyatt's trailer?

25 A. I don't believe I was in front of Mike Hyatt's trailer

PRETRIAL MOTIONS

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1 I was in front of his property. I don't know if I was in
2 front of his trailer, I was in --

3 Q. Fair enough. So the trailer does not cover the entire
4 piece of property.

5 A. I don't know the property but I can see where the
6 property.

7 Q. Correct me if I'm wrong, but you're saying you're
8 around where I'm marking red right there?

9 A. I honestly can't tell you exactly where it was but
10 somewhere I had to pull far enough so we could leave and
11 lock the gate.

12 Q. But your testimony is that you pulled in front of Mr.
13 Hyatt's property?

14 A. I pulled it off to pull in there if I was -- I can
15 probably --

16 Q. You told Mr. Grier you were in front of this man's
17 house, you're telling me you're in front of the property.
18 What's the answer?

19 A. The answer is I pulled enough to lock the gate, the
20 property and all of that. Now, where I pulled in exactly I
21 don't know. I pulled in for my truck and trailer, the
22 tractor and the piece of equipment to clear the gate, I
23 can't go out and measure.

24 Q. So when Mr. Grier asked you and you said that you
25 pulled in front of Mike Hyatt's trailer that's not correct?

PRETRIAL MOTIONS

- 1 That's what you told him.
- 2 A. I said I didn't pull in front of his trailer, sir.
- 3 Q. You fired two shots, correct, from your .380.
- 4 A. Yes, sir.
- 5 Q. First shot was in the ground?
- 6 A. Yes, sir.
- 7 Q. Do you remember where that was when you fired the shot?
- 8 A. Where?
- 9 Q. Yes, whereabouts? In the road, in front of your truck,
- 10 in that other driveway.
- 11 A. It's all within one or two feet. If I was --
- 12 Q. It's a narrow road, I understand.
- 13 A. It's a very narrow road. It's not a foot wider than
- 14 your vehicle probably.
- 15 Q. So you don't know where you were when you fired the
- 16 shot?
- 17 A. I was on this side of my truck past the truck.
- 18 Q. The passenger side of your truck?
- 19 A. Either right to the side of my truck on the passenger
- 20 side or maybe a foot past it or two, I don't know. I was
- 21 not measuring and seeing.
- 22 Q. I certainly understand that. But the first shot you
- 23 were point at the ground firing at the ground.
- 24 A. Yes, sir, to the ground.
- 25 Q. When did you fire the second shot?

PRETRIAL MOTIONS

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- 1 A. It had to be after the first shot.
- 2 Q. Were you standing in the same place?
- 3 A. I don't believe so. I don't recall but I don't believe
- 4 so, because I kept on backing up and he kept on coming.
- 5 Q. Backing up towards your truck?
- 6 A. No, backing up toward the preacher's driveway..
- 7 Q. The driveway. Okay. All right. Were you hit anymore?
- 8 A. No, sir.
- 9 Q. When this is going on, do you see Aaron Hyatt anywhere?
- 10 A. I can barely see.
- 11 Q. Did you see Michael Hyatt anywhere?
- 12 A. I did not see him after I fell to the ground. I was
- 13 losing conscious and I kept on saying, "Don't go to sleep,
- 14 stay awake."
- 15 Q. So you're shooting a gun and don't know what you're
- 16 shooting at?
- 17 A. I'm sorry.
- 18 Q. You're shooting the gun and have no idea where the
- 19 bullets are going or-what?
- 20 A. Say that again, sir.
- 21 Q. Explain to me -- you said you're going in and out of
- 22 consciousness, you can't see but yet you're shooting a gun
- 23 at somebody.
- 24 A. No. After I shot the second shot --
- 25 Q. Okay.

PRETRIAL MOTIONS

1 A. -- you asked me did I see Mr. Hyatt after he fell and I
2 said I did not see him.

3 Q. No, I didn't ask you that, that's what you answered.

4 A. Okay, sir.

5 Q. My question is first of all when you're in the driveway
6 after you fired the first shot but before you fired the
7 second shot do you see Aaron Hyatt anywhere?

8 A. I wasn't looking at Aaron Hyatt, sir.

9 Q. Okay. Where were you looking?

10 A. I was looking at Mike Hyatt coming at me.

11 Q. Is he coming towards you?

12 A. Yes, sir.

13 Q. I guess towards -- from what would have been the
14 direction of his property towards you?

15 A. We weren't in front of his property. That would have
16 been my truck -- my driver's side truck coming this way
17 towards me and I'm going to move this way.

18 Q. Okay. So he's coming around the truck across Merle
19 Lane towards you?

20 A. Yes, sir.

21 Q. Then you fired the shot?

22 A. The second shot.

23 Q. Okay. Were you aiming and any general direction or
24 just trying to fire a warning shot?

25 A. The first one or the second one?

PRETRIAL MOTIONS

- 1 Q. Second one.
- 2 A. The second one I was firing at Mike, yes, sir.
- 3 Q. He's hit, he falls, right?
- 4 A. I guess.
- 5 Q. Where did you go?
- 6 A. I was just standing in there until I fell to the
- 7 ground.
- 8 Q. Okay. Where is your worker when all of this stuff is
- 9 going on?
- 10 A. I have no idea.
- 11 Q. At what point do you go back to your truck?
- 12 A. Before I passed out.
- 13 Q. After the second shot?
- 14 A. Oh absolutely, after the second shot.
- 15 Q. You go back to your truck. Okay.
- 16 A. The passenger's side?
- 17 Q. Yes, sir, that's what I was getting to. You do have a
- 18 .22 in that glove box, right?
- 19 A. Yes, sir.
- 20 Q. Now, do you recall when law enforcement got there?
- 21 A. Yes, sir.
- 22 Q. Okay. About how long after you were laying down do you
- 23 mean. A few minutes, a long time?
- 24 A. I have no idea.
- 25 Q. Probably seemed like a long time. All right. Did you

PRETRIAL MOTIONS

1 talk to law enforcement that day?

2 A. That day?

3 Q. Yes, sir.

4 A. Which law enforcement?

5 Q. What county were you in?

6 A. I had an officer escort me in and out that day.

7 THE COURT: Let me interject here, I don't want to take
8 away anybody's right for cross examination or the
9 prosecution, but the issue before the Court today is stand
10 your ground.

11 MR. FRICK: Yes, sir.

12 THE COURT: I don't understand why we're going into all
13 of this other stuff --

14 MR. FRICK: Because I'm trying to get to the
15 credibility of the witness and I'm going to tell you an
16 argument when I have some other evidence.

17 THE COURT: All right. Well, let's move it on.

18 Q. Did you talk to law enforcement?

19 A. I'm sorry?

20 Q. Did you talk to the cops after you got hit?

21 A. After I got hit?

22 Q. Yeah.

23 A. No, sir.

24 Q. You didn't talk to the cops that day?

25 A. Did I what?

PRETRIAL MOTIONS

1 Q. Did you give a statement to law enforcement about what
2 occurred on Merle lane?

3 A. I don't believe so.

4 Q. Never?

5 A. I don't believe so, I don't recall.

6 Q. Do you recall if they took any photographs of you on
7 that scene?

8 A. I'm sorry?

9 Q. Did anybody take any pictures of you?

10 A. I don't recall, sir..

11 Q. Have you seen any pictures of you?

12 A. I haven't seen any pictures.

13 Q. Okay.

14 MR. FRICK: Thank you, sir. That's all of the
15 questions I have right now.

16 THE COURT: Redirect, please? No?

17- MR. COOK: Briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. COOK:

20 Q. Okay. Mr. Nassrah, Mr. Frick asked you about a
21 statement.

22 MR. COOK: May I approach, Your Honor?

23 THE COURT: Yes, sir.

24 Q. Do you recognize this signature?

25 A. Yes, sir.

PRETRIAL MOTIONS

1 Q. Whose signature is that?

2 A. Mine.

3 Q. Do you know what this form is?

4 A. My statement.

5 Q. Well, he asked you if you remembered. But clearly you
6 signed this paper. You said this is a statement?

7 A. If I signed it it's my statement.

8 Q. Do you possibly remember talking to Investigator Crump
9 that day?

10 A. I'm sorry.

11 Q. Do you possibly remember talking to Investigator Crump
12 that day? I don't know if you know Crump, but giving a
13 statement to one of the officers on the scene?

14 A. On the scene?

15 Q. Yeah.

16 A. At the sheriff's department I gave one two days after
17 the incident. If I did give a statement at the scene I
18 don't recall. And I don't believe I signed it if I did, I
19 wasn't --

20 Q. Okay. Just make to sure, the signature on this paper,
21 did you say that was your signature?

22 A. That's my signature.

23 MR. COOK: Nothing further from the State, Your Honor.

24 THE COURT: Thank you, sir, you may step down. Any
25 further witnesses that the State intends to call for the

PRETRIAL MOTIONS

1 purpose of this statute?

2 MR. COOK: Yes, sir, Your Honor, State calls Mr. Harlan
3 Donnell Melton.

4 The witness, HARLAN DONNELL MELTON, was first
5 duly sworn and testified as follows, on:

6 DIRECT EXAMINATION

7 BY MR. COOK:

8 Q. Will you state your name for the record?

9 A. Harlan Donnell Melton.

10 Q. What do you do for a living?

11 A. I'm a farm technician.

12 Q. You work for Mr. Nassrah?

13 A. Most of the time, yes, sir.

14 Q. Okay. How long have you worked for Kamil?

15 A. Since 2006.

16 Q. Were you working for him September 16, 2010?

17 A. Yes, sir.

18 Q. Were you working with him out there on Merle Lane?

19 A. Yes, sir.

20 Q. Had you been working out there with him all of that
21 week?

22 A. As far as I can remember, yes.

23 Q. Were you out there with him on the 13th when law
24 enforcement came?

25 A. I wasn't there at the immediate time he called the law,

PRETRIAL MOTIONS

1 but he called me to bring him some bolt cutters to remove a
2 lock that someone else had put on there to keep him in.

3 Q. Do you know Michael Hyatt?

4 A. Not personally.

5 Q. Do you know Aaron Hyatt?

6 A. Not personally.

7 Q. Do you know of them?

8 A. Yes, sir.

9 Q. Did you know of them previous to the incident on
10 September 16, 2010?

11 A. Just hearsay from other folks.

12 Q. September 16, 2010 were you the last one to leave the
13 field?

14 A. Yes, sir.

15 Q. Who else was out there with you when you were closing
16 up?

17 A. Me and Kamil were the last two to leave. My brother
18 had helped us haul a couple of loads and he had already
19 left.

20 Q. All right. So when you are packing up it's just you
21 and Kamil out there.

22 A. Yes, sir.

23 Q. Are you in front of Kamil or out in back of Kamil in
24 relation to the gate?

25 A. I'm behind Kamil. When we went through the gate I come

PRETRIAL MOTIONS

1 out behind him and then I had to get off the trailer and
2 shut the gate.

3 Q. All right. So you were driving -- tractor -- was there
4 a trailer behind the tractor?

5 A. A hay rake.

6 Q. About how big is a hay rake?

7 A. I would say at least 20 foot wide.

8 Q. It was a pretty big --

9 A. It's good size.

10 Q. So it was Kamil in his truck with the hay on the back
11 tractor and the rake; is that right?

12 A. Yes.

13 Q. You were coming out of the field to the left with the
14 trailer.

15 A. Uh-huh.

16 Q. Do you know whose trailer that is?

17 A. Michael Hyatt.

18 Q. When you pass by you're heading out of Merle Lane back
19 to wherever y'all were going, did you see Michael Hyatt
20 outside?

21 A. I don't know right at that moment. He had been out
22 there so much, we had come up the road so many times I don't
23 know if it was that exact moment, but he had been out there
24 earlier in that day sitting in the swing with a rifle in his
25 hand.

PRETRIAL MOTIONS

- 1 Q. Did you ever see him with a stick?
- 2 A. Yes.
- 3 Q. Did you see him with a stick in his yard?
- 4 A. Yes, sir.
- 5 Q. Okay. Did he ever have a phone in his hand or holding
- 6 up to his ear when you passed by?
- 7 A. Not that I know of. I don't remember.
- 8 Q. That's fine. On the 16th when y'all were passing by
- 9 you said he was out there, did anybody go in his yard? You
- 10 go in his yard?
- 11 A. No, sir.
- 12 Q. Did Kamil go in his yard?
- 13 A. No, sir.
- 14 Q. Did you say anything to Mike Hyatt?
- 15 A. No, sir.
- 16 Q. Did you see or hear Kamil say anything to him?
- 17 A. No, sir.
- 18 Q. When you were in front of Mike Hyatt's house, was your
- 19 tractor running?
- 20 A. Yes, sir.
- 21 Q. Was it loud?
- 22 A. Pretty loud.
- 23 Q. So you said Kamil -- you didn't hear Kamil say anything
- 24 to Mike?
- 25 A. No, sir.

PRETRIAL MOTIONS

1 Q. After y'all passed the house what happened?

2 A. I was behind Kamil following him and all the sudden
3 everything just stopped so I had to stop too or hit the
4 truck, and I seen Michael Hyatt come running by.

5 Q. Did he come running down the road -- was he in his car
6 or was he on foot?

7 A. He was on foot running with a stick in his hand, a big
8 stick.

9 Q. So after he passed by you what did Mike Hyatt do?

10 A. He went to the left side of the trailer on the driver's
11 side, when he did that I realized something was fixin' to
12 happen so I jumped off the tractor and went to the other
13 side.

14 Q. So did you see Mike Hyatt hit Kamil?

15 A. Yes, I did.

16 Q. Where did he hit him?

17 A. In the head, back side of the head, somewhere back
18 there.

19 Q. Where was Kamil?

20 A. He was standing on the running board of his truck.

21 Q. Okay. When you were on the tractor, could you see why
22 Kamil stopped?

23 A. No, sir.

24 Q. You got off the tractor, you got off on to your right?

25 A. I got off on the left side of the tractor because you

PRETRIAL MOTIONS

1 can't get off the right side, and I ran around the front of
2 the tractor to the right side of the truck and ran up to the
3 passenger door.

4 Q. So Mike runs past you and you saw him hit Kamil, then
5 you go to --

6 A. As soon as he ran by me I jumped down and ran, he hit
7 him about the time I was there opening the door.

8 MR. GRIER: I couldn't hear that response.

9 THE COURT: Sir, could you repeat that? And talk loud,
10 please.

11 A. As I got off the tractor Mike ran by. I got off the
12 tractor, I ran to the passenger door of the truck and he was
13 in the process of hitting Kamil then.

14 Q. So where were you standing when you saw Mike hit Kamil?

15 A. I had the passenger door open looking through the truck
16 looking directly at him.

17 Q. Okay. So you were within 10 feet or so and saw it?

18 A. Exactly.

19 Q. Where was Aaron Hyatt?

20 A. Still in front of Kamil's truck, somewhere in that
21 general area.

22 Q. Was he -- did he have a vehicle with him?

23 A. Yes, a green Ford 100 or something like that, an older
24 one.

25 Q. So you were on the passenger side looking through

PRETRIAL MOTIONS

1 seeing Mike Hyatt hit Kamil. Did Kamil fall?

2 A. Yeah, he went to the ground.

3 Q. So after Kamil went to the ground what did you see

4 Kamil do?

5 A. I couldn't see him immediately so I stopped what I was

6 doing, I went around to the front of the truck and he was

7 coming around.

8 Q. All right. Was Mike Hyatt following him?

9 A. Yeah.

10 Q. Did he still have the stick in his hand?

11 A. Yeah.

12 Q. Did he hit Kamil again?

13 A. I didn't see him hit him again.

14 Q. Did you see Kamil pull a gun?

15 A. Yeah.

16 Q. Did you see him shoot it?

17 A. Yeah.

18 Q. How many times did he shoot it?

19 A. Twice. _____

20 Q. Did you see him shoot Mike?

21 A. Yes.

22 Q. Was it the first or second shot?

23 A. Second shot.

24 Q. Where did he shoot the second time?

25 A. Somewhere in the ground in the area. You hear a

PRETRIAL MOTIONS

1 gunshot and you see dust, I don't know exactly where it was
2 in the ground.

3 Q. In your opinion was he aiming that at Mike when he shot
4 the first time?

5 A. No, it was a warning shot.

6 Q. The second shot was -- did the second shot hit him?

7 A. Yes, sir.

8 Q. After Mike got shot what did Mike do?

9 A. Fell to the ground like a sack of bricks. Sounded like
10 all of the air come out of him, it was over for him.

11 Q. So he dropped?

12 A. He was through, he was finished.

13 Q. Do you know what Aaron was doing at this time?

14 A. He was picking the stick up. He threw a hammer at me,
15 picked the stick up so I grabbed the wrench.

16 Q. So before he picks the stick up he grabbed a hammer, he
17 threw a hammer at you and then picked the stick up?

18 A. He threw the hammer, I don't know if he was trying to
19 hit me or not. I think he was just acting stupid throwing
20 things. I know a hammer come whizzing by and he grabbed the
21 stick.

22 Q. The stick that Mike Hyatt had prior to being shot?

23 A. Yes, sir.

24 Q. So now that Mike is on the ground, where is Kamil?

25 A. He's off to my right over there in the grass driveway

PRETRIAL MOTIONS

- 1 area just a few feet.
- 2 Q. Was he hurt?
- 3 A. Yes, sir, he was hurt. He was hurt pretty bad.
- 4 Q. So you had a wrench in your hand.
- 5 A. Uh-huh.
- 6 Q. And when did you grab that wrench?
- 7 A. Whenever Mr. Hyatt started throwing things.
- 8 Q. Mr. Hyatt. Which Hyatt?
- 9 A. Aaron.
- 10 Q. Do you remember where you were when law enforcement
- 11 arrived?
- 12 A. I was trying to keep the pressure on the wound to
- 13 Kamil's head.
- 14 Q. So you are attending to Kamil?
- 15 A. Yeah. He had already -- I was trying to keep him from
- 16 bleeding out. Mr. Morgan came and started giving commands
- 17 to everybody to sit down.
- 18 Q. Well, in the time between when Aaron picked the stick
- 19 up and you attended to Kamil, did Aaron come towards y'all?
- 20 Was there a standoff between you and Aaron until officers
- 21 got there?
- 22 A. Yes. I was standing directly in front of him with the
- 23 wrench, he had a stick or whatever he had in his hand. I
- 24 wasn't going to let him come over closer.
- 25 MR. COOK: Well, nothing further. Answer anything that

PRETRIAL MOTIONS

1 they might have for you. Appreciate it.

2 THE COURT: Mr. Grier?

3 CROSS EXAMINATION

4 BY MR. GRIER:

5 Q. Mr. Melton, you're on the tractor. How far behind

6 Mr. Nassrah would you ordinarily follow?

7 A. Coming out of there it wouldn't be far, just a few
8 feet, it wasn't slow.

9 Q. Did y'all stop in front of Mr. Hyatt's house?

10 A. We stopped right there at the general corner of his
11 property, we had to so I could lock it up.

12 Q. Do you know where the corner of his property is?

13 A. Not particularly, but he has got a yard so it's right
14 there nearby.

15 Q. Can you see his house? Like how far from the trailer
16 is that? Not very far?

17 A. Not very far.

18 Q. You think it's the distance of this courtroom from the
19 back wall to the

20 A. I did not measure it, I don't know.

21 Q. Well, I know you didn't measure it but you've got
22 eyeballs, don't you?

23 A. Can you judge an inch from a mile away?

24 Q. No. I'm just asking you to compare distances. Is it
25 approximate in any way to this distance that I'm pointing

PRETRIAL MOTIONS

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1 out?

2 A. Perhaps maybe.

3 Q. You said that you jumped off the left side of the
4 tractor, correct?

5 A. That's the only way you can get off of it.

6 Q. And did you run around the front of it?

7 A. Yes, sir.

8 Q. You ran past all of those bails of hay, but Michael
9 Hyatt has already blown past you.

10 A. He's an old guy, he's slow.

11 Q. Well, I'm old too but I'm not slow. You think he's
12 slow -- so he runs slow?

13 A. I'm pretty sure he's not --

14 Q. You think he runs slow then, don't you?

15 A. He's not an olympic sprinter.

16 Q. Well, I know that. But he's running, or moving as fast
17 as he could.

18 A. Yeah.

19 Q. --So you jump off and go around, you go behind the
20 trailer and up the right-hand side, you're looking through
21 the windows of the vehicle.

22 A. I opened the door.

23 Q. You opened the door of the vehicle. And what do you
24 see happen?

25 A. I see Kamil getting hit in the head with a stick.

PRETRIAL MOTIONS

1 Q. That's it. What is Kamil doing when he gets hit in the
2 head?

3 A. He's falling.

4 Q. He what?

5 A. He is falling.

6 Q. Before he gets hit in the head -- my bad. Before he
7 gets hit in the head what is he doing?

8 A. I don't know.

9 Q. So you don't warn him?

10 A. That was my intentions but by the time I got there he
11 was getting hit.

12 Q. You've got a slow old man running up the left-hand side
13 of the truck and you run around the ride-hand side of the
14 truck, run over, open the door to warn him instead of just
15 running up behind Mr. Hyatt and warning him.

16 A. Yeah.

17 Q. And Mr. Nassrah is standing -- or where is he?

18 A. He's standing on the running board of his truck.

19 Q. Standing on the running board of his truck. And
20 Mr. Hyatt gets to him, you've already run up there and
21 around and opened the door and looked and then boom, and
22 Mr. Nassrah is standing there and gets hit in the head.

23 A. As soon as I opened the door it was happening.

24 Q. Okay.

25 A. It has been three and a half years, you can't expect me

PRETRIAL MOTIONS

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1 to remember every second.

2 Q. That ain't our fault. Do you see enough to let
3 everybody know what part of the stick that he hit him with?
4 Was it the end of it, was it close?

5 A. He had it in his hand like that on the end, it was a
6 longer end that was sticking up out of his hand.

7 Q. One time?

8 A. As far as I know that's all he hit him is once.

9 Q. And what did you do when you saw that happen?

10 A. I come back out of the truck and went around towards
11 the front.

12 Q. Well, Kamil is crawling on the front, right?

13 A. Yeah.

14 Q. You can't get over there to help him?

15 A. I can't do anything, it's too late, he's already been
16 hit.

17 Q. I'm talking about after he's been hit, you said he
18 crawled around in front of the truck. Have you got a wrench
-19 in your hand at that time already?

20 A. No at that time. I didn't get a wrench until Mr. Aaron
21 started throwing things.

22 Q. Well, do you recall giving a statement back in 2010?

23 A. I recall writing a statement but I can't give you a
24 word for word recall of that.

25 Q. Well, do you still remember the events clearly about at

PRETRIAL MOTIONS

1 the time Mr. Nassrah was hit?

2 A. Fairly well, yes, sir.

3 MR. GRIER: That's all.

4 THE COURT: Mr. Frick?

5 MR. FRICK: No questions for this witness.

6 THE COURT: Anything else from this witness?

7 MR. COOK: Nothing further, Your Honor.

8 THE COURT: All right. Thank you, sir, you can step
9 down. Anything further from the State on the statute, or
10 witnesses you intend to call?

11 MR. COOK: I call Deputy Randy Morgan.

12 The witness, RANDY MORGAN, was first duly sworn
13 and testified as follows, on:

14 DIRECT EXAMINATION

15 BY MR. COOK:

16 Q. Please state your name for the record.

17 A. My name is Randy Morgan.

18 Q. Are you currently employed by the Lancaster County

19 Sheriff's Office?

20 A. No, I'm not, I'm retired.

21 Q. When did you retire?

22 A. December of 2010.

23 Q. Were you working at the sheriff's department in
24 September 16 of 2010?

25 A. Yes, I was.

PRETRIAL MOTIONS

- 1 Q. Did you respond to Merle Lane that day?
- 2 A. Yes, I did.
- 3 Q. What type of call was it?
- 4 A. It was a 1075, a shooting incident.
- 5 Q. Were you the first responder?
- 6 A. Yes, I was.
- 7 Q. Were you familiar with Merle Lane prior to the 16th?
- 8 A. Yes.
- 9 Q. Had you been out there earlier that week?
- 10 A. Yes.
- 11 Q. Why did you go out there earlier that week?
- 12 A. We received a call that Mr. Havener (sic) was in the
- 13 field doing some hay cutting and when he went to leave the
- 14 gate was locked.
- 15 Q. Did you see Michael or Aaron Hyatt out there that day?
- 16 A. Yes, I did.
- 17 Q. Was there some type of confrontation between the
- 18 Hyatt's Mr. Nassrah?
- 19 A. Yes, sir.
- 20 Q. That was -- do you remember what date that was?
- 21 A. Say again?
- 22 Q. Do you remember what the date was of that incident?
- 23 A. No, I do not. I can't recall that.
- 24 Q. It was a few days prior?
- 25 A. Yes.

PRETRIAL MOTIONS

1 Q. Same week, though.

2 A. Same week because, maybe what, Tuesday or Wednesday.

3 Q. So on the 16th when you got the call, what were you
4 doing at the time when you got the 1075 call?

5 THE COURT: Let me interrupt there. Going back to the
6 previous objection prior to us starting this whole thing
7 about the stand your ground, is that what you intend on
8 asking the deputy tomorrow?

9 MR. COOK: I'm unclear on the question.

10 THE COURT: All right. The 404B analysis, is that what
11 you intend to ask of this witness tomorrow as to his
12 involvement of this situation before you get to the date of,
13 is that what you intend on asking him?

14 MR. COOK: Yes, Your Honor.

15 THE COURT: All right. Mr. Frick or Mr. Grier, any
16 objection to that testimony?

17 MR. GRIER: I don't think he can do it based on what
18 your ruling is up to this point.

19 THE COURT: No. My ruling was that a judge had issued
20 a request for an escort, that was my ruling.

21 MR. GRIER: That he could not say that.

22 THE COURT: That's correct.

23 MR. GRIER: Oh, okay.

24 THE COURT: The fact that he responded to the incident
25 prior, you know, a couple of days prior because the gate had

PRETRIAL MOTIONS

1 been locked while he was out in the field and that he was
2 aware of a confrontation between the defendants and the
3 victim, I don't see how that's prejudicial.

4 MR. GRIER: Well, I mean, he would be testifying to
5 hearsay.

6 THE COURT: I want to go ahead and deal with this now
7 since we kind of know what he's going to say tomorrow and
8 y'all can renew your objection tomorrow if he asked it that
9 way and that will give y'all time to prepare accordingly.

10 MR. GRIER: I mean, that's going to be outright hearsay
11 right there if he says I was told this by anybody.

12 THE COURT: Well, he didn't say that.

13 MR. GRIER: Well, I thought that he did, so --

14 THE COURT: I thought what the witness said was -- what
15 he said was that he had gone out there a couple of days
16 before and he'd received a call -- I don't know if that's
17 hearsay or not, he hadn't said that part.

18 MR. GRIER: That's what I was referring to.

19 THE COURT: Okay. -- But he'd gone out there because the
20 gate was locked, he was dispatched out there because the
21 gate was locked while victim was in the field. All right.

22 MR. COOK: Your Honor, the basis for that testimony is
23 to foundation, that he knows the parties.

24 THE COURT: Is to establish malice, I understand, I'm
25 trying to look at it from both standpoints. I understand

PRETRIAL MOTIONS

1 why you're trying to get that, the simmering of the three
2 days of the ongoing dispute. My question is I still don't
3 know whether I'm going to let it in or not, I just wanted to
4 kind of gauge an idea based upon my preliminary ruling is
5 that kind of what you're asking tomorrow.

6 MR. COOK: Yes, Your Honor.

7 THE COURT: Mr. Frick, did you want to be heard on
8 that?

9 MR. FRICK: Not really. I would just say if I would
10 object to it I still have to continue to object to it.

11 THE COURT: Right. I understand. I'm just doing that
12 while it's fresh on my mind so you can prepare accordingly
13 for tomorrow. Go ahead.

14 BY MR. COOK:

15 Q. Deputy Morgan, when you first got the 1075 call, do you
16 remember what you were doing at the time?

17 A. That I was on a traffic stop.

18 Q. When you initiate a traffic stop in your patrol

19 vehicle, was there a camera in the car that you were
20 assigned at that time?

21 A. Yes. The system is set up, at any time you activate or
22 cut on the blue lights the recording device comes on
23 automatic.

24 Q. Because you were on a traffic stop, were your blue
25 lights initiated during that traffic stop?

PRETRIAL MOTIONS

1 A. Yes.

2 Q. So it would be a video recording of when you got the
3 call, correct?

4 A. Yes.

5 Q. Do you know if that video was still running when you
6 responded to Merle Lane?

7 A. Yes. Because I physically have to cut the recorder off
8 mashing a stop button, but since it was a 1075 or a shooting
9 incident I responded to a code three which are blue lights
10 and sirens, it was continuously recording the whole time I
11 responded.

12 Q. So the camera was running from the time you got the
13 call all of the way up until you responded to Merle Lane?

14 A. Yes.

15 Q. When you first pulled up to Merle Lane who did you see?
16 Or what did you see when you pulled onto Merle Lane?

17 A. When I pulled up just to Merle Lane I noticed to the
18 right it was an older model Ford pickup, I believe it was
19 green, and the Hyatts were standing behind the pickup. And
20 to the left of that pickup there was a white large Ford
21 pickup with a trailer on it, and I noticed the victim was to
22 the left and Mr. Melton was to his right. To the left --

23 Q. Who do you mean when you say victim?

24 A. Kamil.

25 Q. At the time did you have any idea what had gone on

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1 there?

2 A. No, I did not.

3 Q. All right. But you saw an injury to Kamil.

4 A. Yes, I did.

5 Q. Where was his injury?

6 A. He was hit on the left side of his head, a large wound
7 was on his head.

8 Q. Total how many people were out there when you pulled
9 up?

10 A. Four.

11 Q. The video that is in your car, did you turn that video
12 over to the sheriff's department?

13 A. Say again?

14 Q. The video that was recorded by your patrol car, did you
15 turn that video over?

16 A. Yeah. It was turned in to evidence.

17 Q. Okay. So what was your main objective when you got to
18 the scene, what was your main objective?

19 A. My main objective is secure the scene and make sure
20 that everybody was taken care of.

21 Q. Okay. Did you have any idea who the aggressor was at
22 that point?

23 A. No, I did not.

24 Q. Did you call EMS or did EMS automatically respond?

25 A. I believe they were already dispatched on a 1075.

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1 Q. How many injured parties were there?

2 A. It was myself, and then --

3 Q. Injured parties at the scene, how many people were
4 there?

5 A. Oh, okay. I'm kind of hard of hearing, I have got a
6 hearing aide but the batteries are going down in it. There
7 was two injured parties.

8 Q. Who were those two people?

9 A. Michael Hyatt was shot, and Kamil.

10 Q. But you didn't have any idea who was suspect and who
11 was victim.

12 A. No, I did not.

13 Q. How long were you out there by yourself until backup
14 responded?

15 A. A few minutes, maybe two minutes at the most, two or
16 three minutes.

17 Q. And that's all on the video? Best of your knowledge
18 that's on the video in you car?

19 A. Yes, sir.

20 MR. COOK: Nothing further. Answer anything they might
21 have for you. Thank you.

22 THE COURT: Mr. Grier?

23 MR. GRIER: No questions.

24 MR. FRICK: No questions, Your Honor.

25 THE COURT: Thank you, sir, you may step down.

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1 Solicitor?

2 MR. COOK: Your Honor, as far as the video from Deputy
3 Morgan's car, I've spoken to Mr. Frick and Mr. Grier and
4 stipulate to show part of the video just to give the jury an
5 idea of what was going on when Deputy Morgan responded until
6 backup came. Up to that point nobody gives a statement
7 that's incriminating, just simply shows where the parties
8 were in relationship to the vehicles that were on the road
9 and it can show him coming down Merle Lane, it gives them an
10 idea of what the scenery is, what it looks like. I don't
11 know if they want to object now but we can find a suitable
12 place on the video, it's just going to give them an idea of
13 what he saw when they were coming up.

14 THE COURT: But do you have any other evidence other
15 than whatever cross examination you may do to any defense
16 witnesses as to the stand your ground issue.

17 MR. COOK: No, sir, Your Honor, nothing as far as stand
18 your grand.

19 THE COURT: Mr. Grier?

20 MR. GRIER: I'm going to defer to Mr. Frick, he's our
21 resident immunity lawyer he. I think he's got the most
22 cases pending.

23 MR. FRICK: Doug Barfield and I do.

24 MR. GRIER: That's true. He's got the most --

25 MR. FRICK: We have one that said, "That ain't how you

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1 do it," but that's pretty impressive.

2 (Break in proceedings.)

3 MR. FRICK: Your Honor, I'm not going to offer my
4 client or any testimony, but as you see in the Duncan case
5 there was a lot of stipulation on letting in -- because the
6 rules are a little relaxed in one of these hearings, letting
7 in statements and other stuff. I have talked to the
8 solicitor about what I would intend to introduce. I am
9 going to ask you to consider my client's written statement,
10 I suppose you probably need a copy of that and I'll give you
11 my copy, I think that's the statement that we had already
12 discussed in the Denno hearing. Judge, I'm going to ask you
13 to also consider Mr. Nassrah's statement, that was the
14 purpose of my cross examination so you can see what his
15 statement versus his testimony. I think you're in the
16 unique situation in this particular trial of determining
17 weight of evidence as well so you can determine whether
18 immunity should be granted or not, so that's why I talk
19 about credibility of the witnesses. I certainly understand
20 at trial that's not your purview, that's the jury's purview
21 so I ask you to consider his statement. I have two
22 photographs of him at the scene that were provided to me by
23 the solicitor's office that I ask you to consider. And then
24 I have a map of the scene as drawn by one of the CSI
25 persons. What you will note on here and what I'm asking you

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1 to consider, and I've talked to -- whatever in the heck your
2 name is, I keep calling him Andy -- Mr. Cook, I have talked
3 to Mr. Cook about this. What I'm asking you to look at is
4 here in the driveway are all of the evidence markers is
5 where it has all been found, that's where the shell casings
6 are, that's where the blood droppings are. You will note
7 that on the driver's side of the victim's car it says blood
8 splatter, and then when you look at the SLED report that I
9 asked you to consider, the serology analysis of it, the swab
10 shows no blood indicated. It shows on the two markers on
11 the driveway that that is the victim's blood. It also shows
12 that the blood that's found on the axe handle is Mr. Michael
13 Hyatt's so that would be the evidence that I would
14 introduce. I will be glad to give you any further argument
15 if you would wish for it at this time.

16 THE COURT: Well, let's go ahead and do the argument
17 because obviously I'm going to have to take it under
18 advisement for the evening.

19 MR. FRICK: I would also ask you to -- and I think
20 you've already seen it, basically the reenactment by my
21 client, that would be the evidence that I would offer in
22 this case.

23 MR. GRIER: And Your Honor, I deferred to Mr. Frick to
24 go first, but I would also like to offer my client's
25 statement in lieu of testimony and stipulate that he would

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1 testify consistent with that. You've already read it so I
2 thought it was already in consideration.

3 THE COURT: Well, let me hear argument then, first for
4 the defense and then I'll hear from the solicitor at the
5 end.

6 MR. FRICK: Your Honor, I think once you view the
7 evidence and you weigh the evidence as I believe is in your
8 purview in this particular hearing --

9 THE COURT: Preponderance of the evidence.

10 MR. FRICK: -- Your Honor, you will see that there are
11 many inconsistencies in what the victim says as to what
12 occurs. One of the main ones is in his statement he says
13 he's still at the driver's side inside the car when he gets
14 hit in the head, yet he magically gets out of the car and
15 according to his statement is rolling around between the two
16 vehicles and then ends up in the driveway, yet none of the
17 blood is found on the driver's side, none of the blood is
18 found in the between the two cars, it's all found on the
19 side which corroborates what Mr. Michael Hyatt and Mr. Aaron
20 Hyatt have said where the incident took place. Your Honor,
21 there really is no testimony that my client did anything
22 other than arriving at the scene, which I understand the
23 State will argue accomplice liability, hand of one, hand of
24 all and that's what draws him into this, but there's no
25 evidence that he had any weapons, no evidence that he drew

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1 any weapons. And I understand that sounds more like a
2 directed verdict motion than a motion for this, but since
3 they've drawn him in I think I have to show you this as
4 well, that he wasn't involved in whatever the difficulty
5 was. He goes there because, as you read in the statement,
6 he hears his father in a confrontation with the two
7 witnesses who testify and he comes over to try to head off
8 any problems, and when he gets there as you see in this very
9 narrow road he's confronted by someone who pulls out a gun
10 on him and that was the victim in this case who pulled out
11 the gun which he testified to today that didn't even happen.
12 Yet, you've got my client's statement that it did occur and,
13 of course, all of the evidence that I think takes away from
14 the credibility of State's arguments and lends its
15 credibility to the defenses side. Judge, in summation I
16 think that whatever occurred on behalf of both of these
17 gentlemen was one, my client goes over there in an attempt
18 to defend his father, and then when he gets over there all
19 of the sudden he's the one who needs defending and
20 Mr. Michael Hyatt is the one who comes down the road to
21 defend his son. I think the evidence suggests that whatever
22 striking occurred of the victim, which we don't dispute it
23 did occur, occurred in the driveway after everyone had
24 gotten to that side of the road, and therefore I think both
25 of these gentlemen should be accorded immunity pursuant to

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1 16-11-450.

2 THE COURT: Got it.

3 MR. GRIER: I would just briefly chip in, I don't
4 believe he alluded to the inconsistent evidence which I
5 think was clearly from his illustration of the map and
6 Mr. Nassrah's testimony about stopping in front of and then
7 waffling on that and in some respects would go to the
8 credibility as far as him pulling out to watch the gate,
9 which is several hundred yards away and being in front of
10 his house. And also as to Mr. Melton, the improbability of
11 being on a tractor, seeing a guy running by you with a club,
12 jumping off the tractor, cutting behind the trailer and
13 around the trailer and running and opening the door, and
14 then seeing Mr. Nassrah's truck as opposed to simply running
15 after the guy who's running with -- and warning Mr. Nassrah
16 that there is some imminent danger. It's just not credible.

17 THE COURT: All right. Solicitor?

18 MR. COOK: Thank you, Your Honor. First, Mr. Frick
19 handed you a SLED analysis that item 15 on there was a swab
20 from the axe handle, talking about the blood from the axe
21 handle, that was from the handle where Michael Hyatt was
22 handling the axe, it doesn't have anything to do with the
23 blood. As far as the blood where it was located in the
24 driveway, there were -- he said there was no blood indicated
25 on the driver's side but into the driveway to the right

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1 side. Mr. Nassrah was hit in the head, he had a hat on, the
2 blood would have to seep through the hat, come down him and
3 then hit the ground. It's not a blow -- a flesh wound to
4 the head automatically when the blood falls on the ground,
5 he was hit with a hat that would have to soak through it and
6 then come out, so it would take a minute anyway for the
7 blood to hit the ground. Where the blood is is consistent
8 with where Mr. Nassrah said he traveled after being hit and
9 by the time he would get out and be on the ground that makes
10 sense. As far as Aaron Hyatt's involvement, you see in the
11 statement Aaron Hyatt said he was on the phone with his dad
12 when he left the house. If he was on the phone with his
13 dad -- he said he was on the phone until he kept up to where
14 he ran into Kamil. If he was on the phone with his dad he
15 knows that Kamil and Harlan are -- they're way out so
16 there's no need to do anything, they're already leaving. He
17 has nothing to do with already leaving and he pulls almost
18 three to four feet up to his truck knowing that it's a
19 one-way road and there's nowhere for him to go. If he
20 doesn't block him in none of this occurs, they keep on
21 driving, go out and leave wherever they were going to go
22 with the hay. Also the statement from Kamil saying that
23 Aaron is saying, kill him, kill him, which is the direct
24 evidence for malice aforethought which is needed for
25 attempted murder, that's what he was charged with. And

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1 that's why his involvement comes into play as far as hand of
2 one, hand of all is that he encouraged and blocked them in
3 and they intended on Mr. Nassrah being killed. Mr. Grier
4 referenced saying three to four -- 300 yards from the gate
5 of the field to Mr. Hyatt's house. The diagram that
6 Mr. Frick handed up to you shows the field to the house and
7 then another portion of land from Mr. Hyatt's house and the
8 driveway where all of this occurred which is 174 feet. That
9 area looking down on the satellite image is very close in
10 size to the distance between the gate and Mr. Hyatt's house.
11 It's not 300 yards, it's not 900 feet, and you can clearly
12 determine that looking at the satellite image versus the
13 diagram that Ken Taylor marked off and did from the bumper
14 of Aaron Hyatt's truck all the way to the back of the rake
15 that was attached to the Harlan Melton's tractor, so the
16 proximity is very close in regard to the gate and the house
17 and the house and the driveway. Inconsistency as far as
18 pulling up in front of Mr. Hyatt's house, he never said --
19 he said he pulled up in front of Mike's place, his property,
20 he never said, "I'm exactly in front of his front door, I'm
21 right up in his driveway." He said, "I was in front of
22 Mike's place." Almost all of that land going from that
23 driveway back to the gate is Michael Hyatt's property and
24 that can be construed ten different ways on where it
25 actually is in regard to the gate to the driveway. That's

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1 his land and he said that's what he was in front of, he said
2 he pulled enough just to get the tractor out, then he pulled
3 a little bit too far. Did he need to pull up that far?
4 Maybe not. In regard to Harlan Melton, when he got off the
5 tractor to go up to Michael Hyatt, was it the smartest thing
6 to do to go to the passenger's side? Probably not. But
7 does that mean he didn't do it? No. He said he saw exactly
8 what Kamil said happened, he was arguing with Aaron and then
9 he gets hit in the back of the head. Harlan Melton says he
10 saw him get hit in the back of the head. And he says he's
11 on the passenger's side, and when Randy Morgan pulls up
12 that's where he's at, he's on the passenger side with Kamil.
13 And Kamil's bloody hat is sitting over there where all the
14 blood is. Obviously there's inconsistencies because that's
15 why we're having a trial. If everybody agreed on it we
16 wouldn't be doing this, but that's a jury question. There's
17 more than a preponderance of the evidence from what you've
18 heard today to not grant the immunity of prosecution based
19 on self-defense.

20 THE COURT: What I'm going to do, gentlemen, is take
21 this issue and this matter under advisement. I'll render a
22 ruling tomorrow morning. Anything else prior to tomorrow?

23 MR. COOK: Yes, Your Honor. We discussed it back in
24 chambers, but as far as satellite images I have I plan on
25 using during opening statements that I ask you to take

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1 judicial notice of --

2 THE COURT: Mr. Frick has indicated he didn't have a
3 problem with it. Mr. Grier, you weren't privy to that
4 conversation.

5 MR. GRIER: I don't think I have an issue with it.

6 THE COURT: Anything else?

7 MR. COOK: Nothing from the State, Your Honor.

8 (Court adjourned for the evening and resumed at
9 10:30 a.m., on Tuesday, January 7, 2014.)

10 THE COURT: All right. We are on the record. Any
11 other issues before I announce my decision on the immunity
12 issue?

13 MR. COOK: Nothing further from the State.

14 THE COURT: Anything from the defense?

15 MR. GRIER: No, Your Honor.

16 MR. FRICK: Nothing from the defense.

17 THE COURT: All right. Well, I reviewed the statements
18 and other evidence submitted by the defense in support of
19 their motion for immunity. Balancing that testimony and
20 evidence versus the victim and the State's witnesses'
21 testimony and evidence, I find that the defense has not met
22 its burden to establish immunity and therefore I deny to
23 grant immunity per the statute.

24 MR. COOK: Thank you, Your Honor.

25 THE COURT: All right. Well, we're still waiting on

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1 two more jurors, as soon as they get here we will start so
2 we'll just stand down until then.

3 (Break in proceedings.)

4 THE COURT: All members of the jury are present. Are
5 y'all ready? All right. Bring in the jury.

6 (The jury returned to the courtroom.)

7 THE COURT: All right. All members of jury are
8 present. Ladies and gentlemen, good morning. I hope you
9 had a good and warm evening last night as well as this
10 morning. I know it's cold out there and I appreciate y'all
11 being on time as we get started today. Before we begin the
12 trial I do want to tell you just a couple of things and
13 charge you kind of like how what to expect so you'll know
14 what to expect as we proceed today, and in doing this I have
15 some prepared remarks that I'll give you. And again like
16 you remembered or recall yesterday when I was talking to all
17 of you in the jury assembly room I know there's nothing
18 worse than a talking head just sitting out here and reading
19 things while you are supposed to pay attention, but the
20 reason I do that, it is very important what I say because I
21 am giving you the law that you have to follow as you apply
22 the law I give you to the facts as you find them to be so I
23 want to make sure and get it right. So that's why from time
24 to time I'll be looking down and looking at my notes as I
25 address you, so we'll start that at this time. Now, I want

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1 to tell you that this trial is probably going to be
2 different from what you might expect. Many people don't
3 have a chance to attend actual court sessions as you are
4 doing now. They may think that from watching TV and seeing
5 things in the movies or reading books that trials are always
6 full of high drama, intense action and riveting
7 circumstances. Now, while all of these things may be true
8 at times, this trial is not for entertainment. It's a
9 fundamental part of our democracy. It's a search for the
10 truth in an effort to make sure that justice is done between
11 the parties before the Court. Now, searching for the truth
12 and making sure that justice is done is often a slow and
13 deliberate process, and it's a repetitive process some
14 times, the opposite of what you may have seen in the movies
15 or on TV or read in books. This courtroom, ladies and
16 gentlemen, is a place of honor dedicated to the protection
17 and preservation of citizens' rights to what many have
18 called the greatest justice system ever created. The
19 attorneys appearing before you are advocates for the parties
20 they represent, but first and foremost they are officers of
21 this court, sworn to uphold the integrity and fairness of
22 the judicial system and to help you in your search for the
23 truth. You should expect them to be professional, competent
24 and ethical in the representation of their client's
25 interest. And remember, ladies and gentlemen, that

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1 yesterday before I released you you took an oath to try this
2 case and reach a fair verdict, and you are also expected
3 therefore to be professional, reasonable and ethical. Thank
4 you for accepting this important responsibility of jury
5 service and for your contribution today to our system. Now,
6 I thought it also might be helpful to explain to you
7 basically how a trial proceeds. First, the State will make
8 an opening statement to you, and an opening statement is not
9 evidence, it's simply an outline to help you understand what
10 that party expects the evidence will show. The defendants
11 may, if they wish to, present an opening statement but they
12 don't have to for reasons that I will explain later. Now,
13 following opening statements you will hear testimony and
14 evidence in the case. This will consist of testimony from
15 witnesses as well as physical exhibits which may be
16 introduced into evidence. Following the completion of
17 testimony the attorneys will again have an opportunity to
18 make what is called a closing statement, or summation or
19 ~~closing argument to you. This is an opportunity for the~~
20 attorneys to summarize their case from their respective
21 points of view, and again, their arguments, however, are not
22 evidence. Now, following the closing arguments or
23 statements by the attorneys I will then instruct you on the
24 law of South Carolina as it pertains to the issues that have
25 arisen in this case. When I have completed my instructions

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1 to you you will then be permitted to begin your
2 deliberations in order to reach a verdict, not before then,
3 only after then. Now, as I indicated yesterday this is a
4 criminal case brought by the State of South Carolina. The
5 State has charged each defendant with attempted murder, the
6 charge against each defendant is contained in these
7 indictments. Now, these indictments are not evidence of
8 anything, they're simply the description of the charge made
9 by the State against each defendant. Each defendant has
10 pled not guilty to the charge and is presumed innocent
11 unless and until proven guilty beyond a reasonable doubt by
12 the State. Now, a reasonable doubt is the kind of doubt
13 that would cause a reasonable person to hesitate to act. A
14 defendant has the right not to testify and never has to
15 prove innocence or present any evidence, the burden of proof
16 is always upon the State of South Carolina. Now, the
17 following things that you may hear are not evidence and you
18 must not consider them as evidence in the deciding the facts
19 of this case. Statements and arguments of the lawyers,
20 questions or objections by the attorneys, testimony that I
21 may instruct you to disregard. Now, ladies and gentlemen of
22 the jury, you are now the jury in this case and I want to
23 take a few additional minutes to tell you something about
24 your duty as jurors and to give you some more instructions,
25 and at the end of the trial like I just indicated I will

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1 give you more instructions on the law which will control
2 your deliberations. It's going to be your duty, ladies and
3 gentlemen, to decide from the evidence what the facts are,
4 what happened. You and you alone are the judges of the
5 facts. You will hear the evidence, you will decide what the
6 facts are and then you will apply those facts to the law
7 which I will give to you. You should consider the evidence
8 separately as to each defendant. That is how you will reach
9 your verdict, ladies and gentlemen. In doing so you must
10 follow the law whether you agree with it or not. The
11 evidence will consist of the testimony of witnesses,
12 documents and other things that may be received as exhibits,
13 and any facts to which the lawyers agree which I may
14 instruct you to accept. Now, ladies and gentlemen, you
15 should not take anything that I may say or do during the
16 trial as indicating what I think of the evidence or what
17 your verdict should be. Now, there are rules of evidence
18 which control what can be received into evidence. When a
19 lawyer asks a question or offers an exhibit into evidence
20 and the lawyer on the other side thinks that it's not
21 permitted by the rules of evidence, that lawyer may object.
22 If I overrule the objection the question may be answered or
23 the exhibit may be received. If I sustain the objection the
24 question cannot be answered and the exhibit cannot be
25 received. Now, whenever I sustain an objection or overrule

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1 an objection or deny a motion to admit or stuff like that,
2 you must ignore the question or the existence of the exhibit
3 and you must not guess what the answer would have been or
4 what the exhibit would have shown. Sometimes it may be
5 necessary for me to request that you leave the courtroom
6 while I discuss matters of law with the attorneys that may
7 come up during the trial. If this occurs while you're back
8 there don't speculate about what we're talking about or the
9 reason why you were asked to leave the room. This is simply
10 a procedure that the law requires when certain legal issues
11 arise. There also may be occasions when I ask the attorneys
12 to approach the bench so I can discuss a legal issue with
13 them in private. Now, I will do this as often as possible
14 rather than making y'all come back and forth in and out of
15 your jury room so you won't have to leave the courtroom more
16 than is absolutely necessary. Now, again, if I ask the
17 attorneys to step up to the bench or if I ask you to leave
18 the courtroom, don't think that anybody is trying to hide
19 anything or keep anything from you, this is simply a
20 procedure used by all lawyers and by all courts to determine
21 and decide legal questions. Now, ladies and gentlemen, in
22 deciding the facts of this case you may have to decide which
23 witnesses to believe or which witnesses not to believe. You
24 may believe everything a witness says or only part of it, or
25 perhaps none of it. Now, it's very important that you pay

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1 very close attention during the trial of this case, you're
2 not going to be allowed to take notes concerning the
3 testimony of witnesses. For this reason please pay close
4 attention to what the witnesses testify to so that you will
5 be able to accurately discuss the facts during your
6 deliberations. Now, at the end of the trial you will have
7 to make your decision based on the evidence presented. You
8 won't have a written transcript of the trial back there to
9 consult, and ladies and gentlemen, it's very difficult and
10 time consuming for my court reporter to read back or play
11 back lengthy testimony, so please pay close attention as the
12 trial proceeds. Now, until I advise you to begin your
13 deliberations at the end of the trial you must not discuss
14 this case with anyone, including your fellow jurors. I told
15 you that yesterday before you left but I'm reemphasizing it.
16 Don't talk about it with friends, family members or anybody
17 else involved in the case. Don't have any face to face
18 discussions or those on phone, email, Facebook, Twitter, all
19 of that stuff that's going on right now, Instagram. Don't
20 use your cellphone or any other electronic device to
21 research the issues involved in this case, or Google about
22 the parties involved or the attorneys involved, just don't
23 do that. During breaks obviously you can discuss other
24 things but nothing about the trial, and again, the reason we
25 do that is to keep you on track. You must decide the facts

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1 of this case based upon the evidence received in this
2 courtroom and only in this courtroom. Now, after the case
3 is submitted to you you will discuss it then in the jury
4 room with your fellow jurors. The attorneys and the
5 parties, just like I told you yesterday, cannot talk to you
6 at all. So even if you see anyone involved in this case and
7 they don't even say hello, don't get mad at them, they're
8 just following my instructions. Again, I say that because
9 when we take lunch breaks you may see somebody out doing
10 that so don't talk to them. Now, today is going to be
11 different, we are actually ordering in lunch for you today
12 so we can have a shorter lunch. I have some business I have
13 to attend to later this afternoon so we won't have a full
14 day of testimony. Now, it's important, ladies and
15 gentlemen, that you keep an open mind and not decide any
16 issue in this case until all of the evidence has been
17 presented, the parties have made their closing arguments and
18 I have instructed you on the law in the case. The last
19 thing I'm going to tell you, it's your ~~solum~~ responsibility
20 to determine the guilt or innocent of each defendant, and
21 your verdict must be based solely on the evidence as it is
22 presented to you in this trial and on the law as I instruct
23 you during and at the close of the trial. State ready to
24 proceed with opening statements?

25 MR. COOK: State is ready, Your Honor.

OPENING STATEMENTS

1 THE COURT: All right.

2 MR. COOK: Please the Court?

3 THE COURT: Yes, sir.

4 MR. COOK: Good morning. On September 16th of 2010,
5 Kamil Nassrah, the gentleman sitting right here in the dark
6 coat and glasses, and his crew were out at his hay field
7 located at the end of Merle Lane out in the Heath Springs
8 Community. They were farming hay, Kamil rents that land out
9 from somebody, he's leased it out for years, he has farmed
10 that fields for years. Merle Lane is a one-lane dirt road
11 that leads out to the field, it is a dead-end when you get
12 out there, and that's going to be important about this dirt
13 road, it's going to come into play. So Kamil and his crew
14 were out there, they had been out there all week, it's the
15 last load of the season, they're done, they've cut it down,
16 bailed it up, it's on the trailer, they're ready to go. The
17 crew is gone except for Kamil and his helper, Donnell Melton
18 who is sitting beside him. Donnell is his right-hand man,
19 he helps him out, tends to his farm, helps him out with
20 anything he needs, they're the last two out there. Kamil is
21 driving his F350 truck, he's got the trailer behind it and
22 the bailed hay, Donnell is driving a tractor with the rake.
23 If you're not familiar with a rake, it's a big piece of farm
24 equipment used to till up, plow the hay and bail it up. So
25 they've got their two rigs, they pull out of the gate and

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1 ready to leave the field. They stop, headed out of Merle
2 Lane. Michael Hyatt, who is seated at the far table, he
3 lives on Merle Lane, he lives in a mobile home, if you're
4 coming out of the field up on the left, they stop near the
5 front of his property. Kamil is in his truck. Donnell goes
6 back to lock the gate sitting out near Mike's house. Kamil
7 doesn't get out of the truck, he's waiting on Donnell to
8 make sure everything is in proper order before they leave
9 for the season. Donnell locks the gate, they're headed out,
10 it's time to go home or wherever they're going to take the
11 hay. They pass by Michael Hyatt's house. Michael Hyatt is
12 standing out in the yard, they say he's got a big stick in
13 his hand and he's yelling at them. Why is he yelling at
14 them? Well, it's a dirt road, Kamil and his crew go up and
15 down and they kick up dust, they can't help it and it
16 happens and the Hyatts hate it, they're tired of them
17 kicking up dust. It's that simple. They're tired of them
18 going up and down the street. Well, on this day Kamil and
19 Donnell, they pass by Michael Hyatt, he's out in the yard,
20 nobody says a word to him, they're on their way out. Well,
21 after they pass by the house here comes a light green Ford
22 truck flying up in front of them, Aaron Hyatt gets out of
23 the car -- and Aaron Hyatt is seated at this table, Aaron
24 Hyatt is Michael Hyatt's son -- he pulls up within feet of
25 the front of Kamil's truck, pulls up the truck, gets out,

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1 starts yelling at Kamil. Kamil opens the door, is standing
2 on his running board and tells him, "Get out of the road, I
3 have got to get out of here." He won't let him leave, Kamil
4 is trapped. He's driving a 350 diesel truck with a trailer
5 on the back, tractor behind him on a one way road. There's
6 nowhere to go. Aaron Hyatt's truck is this far from the
7 front, he is stuck. Well, Kamil doesn't want to deal with
8 it. He knows them, they've had issues before, he doesn't
9 want to deal with Aaron so he gets his cellphone out to call
10 law enforcement. Well, Kamil never got to call law
11 enforcement because as soon as he gets this phone out Kamil
12 is going to testify that he feels like he gets shot in the
13 back of the head, at the time he didn't know what hit him,
14 but something hit him in the back of his head and he falls
15 out of his truck. Kamil crawls in between the front of his
16 truck and Aaron's truck and when he comes to his senses he's
17 not in a daze anymore he sees Michael Hyatt standing in
18 front of him with a big wooden stick raised above his head.
19 Kamil, who has got a concealed weapons permit, he runs a gas
20 station, farms, he's got a concealed weapon, he keeps a
21 pistol in his waistband, he pulls it out and tells Michael
22 Hyatt to back up, stop. He's got blood coming down his
23 face, he's dazed and he sees Michael Hyatt coming at him
24 with this big stick he says, "Mike, stop." He doesn't stop
25 coming, he shoots one time in the ground and Michael Hyatt

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1 didn't stop, he kept coming at him. Kamil shoots one more
2 time, actually shoots Michael Hyatt in the side. Now, it's
3 going to be an odd case where the defendant is actually the
4 one who got shot, but Kamil shot him so he wouldn't be hurt
5 anymore. Kamil was in a position where if he didn't shoot
6 Michael Hyatt he would have killed him and he thought he was
7 going to kill him, he'd already hit him in the back of the
8 head one time. And that's -- pretty much that's the story
9 from my point of view. That's what Kamil is going to tell
10 you, that's what Donnell is going to tell you, that's what
11 they saw, that's what happened. Now, I never said that
12 Aaron Hyatt touched anybody and I'm not going to tell you he
13 touched anybody, he never did. Let me explain why he's up
14 here too. Just so y'all are clear, Michael Hyatt is the
15 father, Aaron Hyatt is the son, and I'm going to try to keep
16 this up here for you as much as I can because even reading
17 the file I got confused so you know who everyone is all the
18 time and you don't get confused. Okay. Now, I've got the
19 law up there. ~~This isn't the time for me to explain the law~~
20 to you, but if you're going to go through this trial you
21 kind of need to know what you're looking for. Now,
22 attempted murder is pretty much what it says it is,
23 attempted murder. They didn't actually murder him because
24 they are still here. He tried to, they wanted to but they
25 didn't, that's why it's an attempt. The second reason is

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1 the person who with the intent to kill attempts to kill
2 another person with malice aforethought, either expressed or
3 implied, commits the offense of attempted murder, and we
4 will go through at the end what all of those words mean.
5 But you can pretty much use your common sense, attempted
6 murder, he tried to kill him, he was unsuccessful. Now,
7 like I said earlier, Aaron Hyatt never touched anybody, not
8 going to tell you he did and nobody is ever going to say he
9 did. He's up here under what's called an accomplice
10 liability theory. Now, what does that mean? In South
11 Carolina we call it hand of one, hand of all. This is one
12 explanation of what it means is one who joins with another
13 to accomplish an illegal purpose is liable criminally with
14 everything done by his confederate incidental to the
15 execution of the common design and purpose. That is kind of
16 confusing. But the gist of it is you're working with
17 somebody and you know what is going on, you're just as
18 guilty as the person who did it. Now, Aaron Hyatt didn't
19 throw a blow but he laid the groundwork for his dad to
20 because he pulled that truck up in front of Kamil's truck
21 and Kamil had nowhere to go. One more little explanation.
22 If a crime is committed by two or more persons who are
23 acting together in the commission of a crime then the act of
24 one is the act of both. The act of Michael Hyatt is the act
25 of Aaron Hyatt. If Aaron Hyatt doesn't block him in Kamil

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1 is riding down the road taking his hay wherever he is going
2 to take it and Michael Hyatt never has a chance to touch
3 him. So that's why they're both here, and we submit that
4 Aaron is just as guilty as his dad is. So you're going to
5 hear from Kamil, you're going to hear from Donnell and you
6 will hear from law enforcement. You will hear from the
7 first responding officer, Deputy Randy Morgan. I even got a
8 videotape of what he saw when he first came up and you will
9 see part of that. You will hear from CSI, two officers who
10 went to canvas the scene and got physical evidence, so
11 you'll hear people testify on the stand and what they
12 actually saw and you'll also see some physical evidence of
13 where it was laid out. And you're going to see where the
14 evidence fell in the relation to the trucks and where
15 everybody said everything happened, and it's going to match
16 up with what Kamil and Donnell say. Because the story they
17 tell is the truth, and quite frankly the only one that makes
18 sense and you'll understand later on. You'll hear from
19 them, I'm not going to go through all of it right now, but
20 they'll tell you what happened, and you'll see everything,
21 where it all lines up. Now, like I said, they're both
22 charged with attempted murder, they worked together to do
23 it. Aaron blocked them in, Mike hit him in the head. Now,
24 I'll get back up at the end after you've heard everything
25 and I'll ask you to find a verdict of guilty for both of

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1 them for attempted murder. I'll just ask you to use your
2 common sense. It's not a difficult case, and you'll see
3 that, everything will unfold. I just ask you to pay
4 attention and be fair to the State and be fair to the
5 defense, but I'm going to come back and ask you for a
6 verdict of guilty for both. Thank you.

7 THE COURT: Thank you, Solicitor. Mr. Frick?

8 MR. FRICK: Thank you, Your Honor. I know what you're
9 thinking, "Oh boy, another power point presentation. Yay."
10 Well, I promise to keep it brief. And I also need to
11 explain to you while I'm coming up here with my fancy
12 technology, while I don't consider myself old I am just old
13 enough to have started my career in courthouses that don't
14 have acoustics nearly as well as this, so if you think I'm
15 yelling at you, I'm really not, it's just this is the way I
16 got trained so I sometimes raise my voice and it's to make
17 sure I can be heard in some of the older courthouses I
18 practiced in, including my own home courthouse back in
19 Fairfield, although I think I've tried more cases in this
20 courtroom than probably anybody sitting in this room.
21 Ladies and gentlemen, I represent Aaron Hyatt, and this is a
22 slightly unusual case because we've got two folks sitting
23 here accused of the same thing, and a lot of times Mr. Grier
24 and I find ourselves on the opposite sides of these issues
25 but we're kind of together on this. We are representing

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1 independently but we have the same goal to show you that the
2 State's case doesn't hold water. And the solicitor can come
3 up here and vouch for his client and testify all he wants in
4 his opening statement, but you're going to hear the facts in
5 a second and you get to determine whether that's what
6 happened or not. And I know the Judge has already talked
7 about it and I'm going to go back over it because it's very
8 important. You are the sole judges of the facts. You get
9 to go back after this is over with and you've heard all of
10 the evidence and make a determination as to what happened
11 that day on that little tiny dirt road. How do you do it?
12 Well, you know how this works, this part is the same as you
13 see on TV. Folks are going to get up here on this witness
14 stand, they'll put their hand on the Bible and they're going
15 to swear to tell the truth. Now, I tell you just because
16 someone gets up there and swears to tell the truth doesn't
17 mean that you've got to believe that they're telling you the
18 absolute truth, that's what y'all are here for. You get to
19 look at them on the stand, you get to examine their
20 demeanor, how they testify, what they say and determine
21 whether you think they're telling you the truth or not. You
22 don't have to accept it just because you heard it up there.
23 You can determine whether someone has any bias for saying
24 what they're saying, whether they're motivated by something,
25 maybe they work for somebody and that could have

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1 repercussions if they don't say what they say up there, you
2 get to consider all of these things. So you're going to
3 hear testimony and you're going to see some physical
4 evidence. Now, don't know what all is going to get
5 presented in this case. I know what's been collected, I
6 don't know what's going to get in to evidence. But you're
7 going to see some physical evidence and they're probably
8 going to be a video for you to look at right after the scene
9 so you can determine what happens. That's what you need,
10 and as I told you you can believe either -- under the
11 physical evidence, you can believe all, part or none. And
12 here is one thing I do agree with the solicitor on, I want
13 you to pay attention to where the stuff is in relation to
14 the stories that you hear, because that's what's going --
15 all it's going to come down to, are you going to believe him
16 or are you going to believe us? That's it, ladies and
17 gentlemen, it's just a swearing contest. And so the only
18 thing you can do is look at where the evidence actually is
19 and determine which side it supports. And I suggest to you
20 that all of the evidence is on the other side and it doesn't
21 support the State's theory and you will find that both Aaron
22 and Michael are not guilty. How does this work? Probably
23 seen this on TV, too, and this is one part that's kind of
24 right. The State has got to prove their case beyond a
25 reasonable doubt. Okay. Now, that don't mean beyond all

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1 doubt, it's not beyond a shadow of a doubt, sometimes you
2 hear that, that's not correct. It's is there any other
3 reasonable explanation about what happened? They've got to
4 show you competent evidence, not just evidence, competent
5 evidence, and competent evidence is believable evidence.
6 Again, that's where you come in to determine whether the
7 evidence is competent or not. Did Michael and Aaron do what
8 the State say they did? Now, let me tell you what it's not.
9 It's not, "I've been sitting there and I see Aaron is
10 wearing a Gamecock pullover and well, I don't really like
11 that so maybe he did do it." It's not, "I've been looking
12 at him and he kind of looks like he might have done this."
13 It's not even it's possible, it's not he might have, it's is
14 there any other reasonable explanation. That's the
15 standard. It is a high burden. If you've ever found
16 yourself in civil court it's slightly different, it's called
17 the preponderance of the evidence, it's more likely than
18 not. If that's what you believe then the State has not
19 proven their case, it's a much higher burden when we get to
20 this level. As you've heard and going to hear several times
21 again, we're here for an attempted murder case. What has
22 the State got to show you? The State has got to show you
23 that Mr. Hyatt has attempted to kill in this case
24 Mr. Nassrah with malice aforethought. Now, they've also got
25 to show you that there was some kind of intent to do bodily

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1 harm. Now, what else does that include? It's got to be a
2 wrongful act. Now, Mr. Nassrah got hit in the head, he got
3 injured, that's an uncontroverted fact in this case, you're
4 going to hear that from both sides here. He was hit in the
5 head. Michael Hyatt was shot in the gut. Was it a wrongful
6 act, though? Because you know what? If somebody points a
7 gun at you you ain't got to wait to find out whether they're
8 going to shoot you or your son. If you feel there's danger
9 we have got this handy dandy thing called self-defense.
10 Now, first and foremost, and this is where the State is
11 going to tell you that we don't have self-defense, is you
12 can't be at fault, you can't have caused the problem. Okay.
13 Y'all get to determine who caused the problem here. Are you
14 or someone else in imminent danger, are you or somebody else
15 pointing a gun at either him or him, right, that's what it
16 comes down to. Do you believe there was imminent danger and
17 is there any other way to avoid it? Are you blocked in on a
18 little narrow road with someone pointing a gun at you and
19 you've got no other alternative? Here is the other thing on
20 it. If you believe that we have shown that there is
21 evidence of self-defense, the State has to disprove it. Not
22 "I kind of think maybe it's self-defense." No. The State
23 again has to show you evidence beyond a reasonable doubt
24 that self-defense does not apply. That's what it comes down
25 to, ladies and gentlemen. Did what happened on that road

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1 occur because these two men had no other alternative? Who
2 was at fault in bringing the action? If you're sitting at
3 home and you get a phone call and it sounds like your dad is
4 having some trouble and you hop in your car to go find out
5 what's going on and find yourself on the other end of a gun,
6 did you cause the problem? The State is going to tell you,
7 yeah, and that's the only reason that Aaron Hyatt is here.
8 Michael Hyatt sees his son at the end of that gun and
9 decides he needed to take action. Does that mean that he
10 caused the problem? The State tells you yeah. Well, I'm
11 telling you that I believe at the end of this case you're
12 going to see that the evidence does not stack up on the side
13 of the State, they have not proven and they cannot disprove
14 that these two gentlemen didn't do exactly what they had to
15 do, and that is defend themselves and each other. And I
16 will ask you at the end of this case to render a verdict of
17 not guilty. Thank you very much.

18 THE COURT: Thank you, Mr. Frick. Mr. Grier?

-19 MR. GRIER: Thank you, Your Honor. May it please the
20 Court?

21 THE COURT: Yes, sir.

22 MR. GRIER: Solicitor, ladies and gentlemen of the
23 jury, I hope you got your long johns on today coming in
24 here. I don't have a fancy power point presentation. I'm
25 the kind of old guy when you look around the courtroom as

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1 far as lawyers go, my client has got a couple of years on me
2 but I still do it the old fashioned way, so Mr. Frick and
3 Mr. Cook have their power points but I'm just going to speak
4 to you. Thank you for your service. We are not asked to do
5 a lot in exchange for the benefits we get as citizens of
6 this country, and serving on a jury is one of the most
7 important things that we can do. Paying taxes is an
8 important thing but serving on jury duty is a necessity
9 because we have a reality that is fractured in this case.
10 The only people that know what happened out there are the
11 people that saw it and were present, and you're going to
12 hear different versions of that today. But you are actually
13 going to find the facts, you're going to determine what
14 happened out there because there has to be a legal
15 determination of it and this is the best system for
16 determining that and resolving these issues when the facts
17 are in dispute. So you've got an awesome responsibility and
18 you've got -- you're an officer of the court just like I am,
19 you're a temporary officer of the court. You take an oath
20 and you're sworn to uphold jury duty just like me and
21 Mr. Cook and Mr. Frick are, so I am simply an advocate for
22 my client. The judge -- you're the determiner of the facts,
23 the Judge determines the law and he has already explained
24 all of that to you. But you're going to have to listen to
25 the explanation of the law and we're going to get into a

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1 little bit of that in this conversation. The Judge told you
2 to withhold any deliberations and he'll probably remind you
3 of that during lunch and if we break, and it's doubtful -- I
4 don't know whether we'll get finished today or not, but you
5 will be reminded do not deliberate. Because if you start
6 forming impressions before all of the evidence is in, you
7 know, you can psychologically get tuned in and focused on
8 one thing and ignore the rest. And if you make your mind up
9 at the onset then justice is not going to be served unless
10 you hear everything and deliberate together as a group, so I
11 ask you to do that. And the importance of it is this, the
12 State has a lot of advantages in trials. They get to go
13 first. They have taken my client, Michael Hyatt, and Aaron
14 Hyatt, dragged them in front of you for the hanging, told
15 you they have done all of these terrible things, read out
16 the indictment and you're like, "Whoa." First impressions
17 can be prejudicial. And so the State gets to make all of
18 those first impressions and the defense has to have some
19 protections from that. We do not -- the State gets to go
20 first in argument, they get to go last. They get to present
21 all of their evidence up there. You get to hear all of that
22 before the defense has the opportunity to respond to that.
23 And in exchange for the State having those advantages the
24 designers of our system believe that it was necessary and
25 our constitution guarantees that the defendant will have

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1 protections from the awesome powers of the State, and that
2 design is what we call the State's burden of proof. Our
3 clients are cloaked in innocence, they're presumed innocent
4 and only you can remove that cloak of innocence if you
5 believe the State has proved their case beyond a reasonable
6 doubt. Now, you often hear, okay, so and so is on trial,
7 the Hyatt's are on trial. Well, I will tell you the State
8 is on trial because they have the burden of proof, and
9 really when everything is boiled down to its most common
10 denominator it boils down to has the State met their burden
11 of proof, have they proved guilt beyond a reasonable doubt?
12 I don't think they're going to get very close in this case,
13 but they have that burden of proof and that is to protect
14 the defendant's from the first impressions and from the
15 advantages from the State. Mr. Frick mentioned something
16 and I would just like to talk about it briefly, about the
17 different types of trials, civil trials versus criminal
18 trials. And in talking with jurors -- and I find confusion
19 about that often times when people ask me questions about
20 court they confuse the civil burden of proof and the
21 criminal burden of proof. In a civil case somebody is
22 asking somebody for money. Okay. You know, it boils down
23 to that, they're suing for money. And if you're suing
24 somebody for money, well, nobody's liberty is going to be at
25 stake, and the preponderance of the evidence is the standard

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1 more likely than not. So imagine the scales of justice, if
2 Mr. Nassrah was suing the Hyatts for his medical bills or
3 something, all he would have to show is more likely than
4 not, tip the scales, I mean, tip the scales ever so slightly
5 in his favor, boom; payday if he proves that to the jury, if
6 that burden of proof is met. In a criminal case we're
7 talking about taking away somebody's liberty, and that is
8 the most precious thing that any of us have. If we've got
9 our liberty we can get out and we can make money. And so a
10 lot more is at stake when your liberty is at stake, and that
11 is the fundamental reason that the burden of proof in a
12 criminal trial like this one is beyond a reasonable doubt.
13 Now, what is a reasonable doubt? The Judge is going to give
14 you the law and -- what's called the jury charges, you will
15 hear us talk about the jury charges. But what he is going
16 to tell you, I believe, is that a reasonable doubt is the
17 kind of doubt that would cause a reasonable person to
18 hesitate to act. A reasonable doubt is the type of doubt
19 that would cause one to hesitate to act, and in this case
20 hesitate to convict because of a reason. The Judge will
21 tell you if at the conclusion of this trial and when you're
22 deliberating and when you've heard all of the evidence if
23 you are firmly convinced of the guilt of our clients then
24 you must convict. However, if you believe there is the real
25 possibility that they might be innocent then you must

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1 acquit. So if there's a real reason based on the evidence
2 that they might not be guilty then you must acquit. Now,
3 this is kind of the fourth phase of this case. This case is
4 going on four years old. The first phase was back in 2010
5 on the scene when the officer arrives and he has got a man
6 laying over there shot and he has got a guy over there by a
7 fence post with his head cracked open, blood coming down.
8 He doesn't know who is at fault, he doesn't know who is
9 responsible. He secures the scene, separates everybody,
10 sorts all of that out, other people are arriving and all of
11 that and there is no arrest at that point immediately. They
12 start doing their investigation, but to arrest someone
13 you've got to have probable cause and probable cause is a
14 mere suspicion. Phase one, mere suspicion. And ultimately
15 and law enforcement heard both sides of this, they
16 determined, they believed one side rather than the other is
17 really what it boils down to, really the same thing you're
18 going to do today. They believed one account versus the
19 other account. That's enough to arrest somebody, and they
20 chose to arrest the Hyatts. They could have chosen to
21 arrest and charged Mr. Nassrah and he could be the one
22 sitting over here at the defense table based on the evidence
23 that you're going to hear today. Second phase -- that's the
24 arrest phase. Second phase is what we call -- actually in
25 this case there could be four arrests, we had a preliminary

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1 hearing. The Judge sat probably right up here when they did
2 it and heard the State present their evidence, defense can't
3 put up anything, and said. "Okay. Well, they said it,
4 that's enough evidence to have a suspicion. Okay. I'm
5 going to find probable cause," again, a suspicion of guilt,
6 that's all. If Mr. Nassrah had been sitting there based on
7 what the Hyatt's account they would have found probable
8 cause for that, too, I believe that day. It's just somebody
9 saying we believe that version. The Hyatts version doesn't
10 get presented at that phase. It was presented to the grand
11 jury, and I don't want to get into a bunch of mumbo jumbo,
12 but that's 18 folks that hear every case and just hear the
13 evidence and determine based on the State's evidence whether
14 there's enough evidence against the defendants to create a
15 suspicion. So we've been through three phases where the
16 police have determined they had a suspicion of guilt and a
17 judge has determined that they had a reasonable reason they
18 had to have a suspicion, and the grand jury said that they
19 had a reasonable reason to have suspicion. All that is just
20 based on the State's version. Today the defense gets to
21 have their day in court and you get to determine not whether
22 there's just a suspicion of guilt, not whether the Hyatts
23 might be guilty, not whether you think they probably are
24 guilty, if you thought they probably were guilty then that
25 would be enough evidence to award money in a civil case.

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1 Not might, not probably, but you determine whether they
2 might not be guilty is really what you'll determine. And
3 ladies and gentlemen, I believe that after you've heard all
4 of the evidence that is what you will -- the conclusion you
5 will come to. Thank you for your service and look forward
6 to trying this case.

7 THE COURT: Thank you, Mr. Grier. Is the State ready
8 to proceed?

9 MR. COOK: The State is ready, Your Honor.

10 THE COURT: Call your first witness.

11 MR. COOK: State calls Kamil Nassrah.

12 The witness, KAMIL NASSRAH, was first duly
13 sworn and testified as follows, on:

14 DIRECT EXAMINATION

15 BY MR. COOK:

16 Q. Please state your name for the record.

17 A. Kamil Nassrah.

18 Q. How old are you, Mr. Nassrah?

19 A. Sixty-two.

20 Q. What type of education background do you have?

21 A. I'm sorry?

22 Q. What type of educational background do you have?

23 A. I have three years of college.

24 Q. What do you do for a living?

25 A. I own a convenience store and I farm.

TESTIMONY OF KAMIL NASSRAH

1 Q. Okay. Why were you on Merle Lane September 16th of
2 2010?

3 A. I have a field that I cut hay off and I went down to
4 cut hay.

5 Q. Do you own that field?

6 A. No, I'm renting it.

7 Q. How long have you rented that field?

8 A. I have I believe five or six years or something like
9 that.

10 Q. Now, Merle Lane where the field is, is that in
11 Lancaster County?

12 A. Yes, sir.

13 Q. That's in the Heath Springs Community?

14 A. Yes, sir.

15 Q. How many times a year do you go out and farm that land?

16 A. We sometimes go out twice a year usually in May, end of
17 May and toward the end of September, middle of September or
18 end of September, it all depends on the weather.

19 Q. Okay. Describe Merle Lane for me, where your field is
20 located.

21 A. It's a narrow dirt road, short, not long at all.

22 Q. Is it wide enough for two cars?

23 A. No, sir, barely wide enough for one vehicle.

24 Q. All right. If you turn onto Merle Lane from a -- if
25 you're traveling on Merle Lane, how does it end?

TESTIMONY OF KAMIL NASSRAH

1 A. It ends at the field. The field is the end of Merle
2 Lane.

3 Q. Okay. On the 16th you were farming?

4 A. Yes, sir.

5 Q. Was that the first day you were out there that week or
6 had you been out there previously?

7 A. I was out there three days prior to that.

8 Q. Okay.

9 A. I went out to cut the hay first, you cut the hay the
10 first day.

11 Q. So three days prior was there an incident that---

12 A. What?

13 Q. Was there an incident earlier that week involving the
14 Hyatts?

15 A. I didn't hear the question.

16 Q. I'm sorry. Was there an incident earlier that week
17 involving yourself and the Hyatts?

18 A. The first day I went and cut the hay, yes, sir. I went
19 in, I opened the gate and I left it open and drove my
20 tractor to the field and I cut the hay, usually takes about
21 three hours, and started leaving and the gate was locked.

22 Q. Did you lock the gate?

23 A. No, sir. I didn't think I locked it so I figured maybe
24 I did, I don't know. So I got off the tractor, got my keys
25 to open it and it was a different lock on it.

TESTIMONY OF KAMIL NASSRAH

1 MR. FRICK: Your Honor, I'm going to object to this
2 line of questioning on the 404B and 403, the grounds
3 previously stated in pretrial.

4 MR. GRIER: I join it.

5 THE COURT: The objection is overruled.

6 Q. When you went to the gate to check the lock, was
7 anybody there?

8 A. At the gate, no. But there was a truck parked in front
9 of Mike Hyatt's blocking the road completely.

10 Q. Did you see Michael Hyatt out there that day?

11 A. No, sir.

12 Q. Did you see Aaron Hyatt that day?

13 A. No, sir.

14 Q. Did you call law enforcement?

15 A. I got on my tractor immediately, I backed up the
16 tractor to the middle of the field because there's trees on
17 both sides of the tractor. I figured something is wrong. I
18 backed up my tractor to the middle of the field and I called
19 the law.

20 Q. Now, getting back to the 16th, what happened when you
21 left the field that day?

22 A. At the field?

23 Q. When you left the field on the 16th.

24 A. Yes. Before I left home I called the sheriff's
25 department and I asked for an escort because I was provided

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- 1 an escort to go to the field every time I go in and out.
- 2 Q. Okay.
- 3 A. And the sheriff met me and I drove to the field.
- 4 Q. On the way in?
- 5 A. On the way in.
- 6 Q. Was he with you on the way out?
- 7 A. I'm sorry?
- 8 Q. Was there a sheriff's deputy with you on the way out of
- 9 the field?
- 10 A. Yes, sir.
- 11 Q. On the 16th?
- 12 A. On the 16th.
- 13 Q. On the day of the incident?
- 14 A. On the day of the incident.
- 15 Q. When you're locking up the field, what's the standard
- 16 procedure to close up the field?
- 17 A. Close up the field?
- 18 Q. Right.
- 19 A. When we finish?
- 20 Q. Uh-huh.
- 21 A. We usually leave all together and get out, and whoever
- 22 is the last one coming out we would lock the gate, it's a
- 23 double gate, and put the chain around it and lock it.
- 24 Q. Who was the last person to leave on the 16th?
- 25 A. It was Donnell Melton.

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1 Q. Who is Donnell Melton?

2 A. He works for me.

3 Q. Can you point him out in the courtroom?

4 A. The gentleman sitting right there in the black jacket.

5 Q. Was it just the two of you or were there other people
6 out there with you when you were closing up?

7 A. Earlier we had three other trucks loaded with hay and
8 left, maybe ten minutes earlier or 15 minutes earlier.

9 Q. So when you were leaving, was it just you and Donnell?

10 A. Just me and Donnell.

11 Q. Who actually physically locked the gate?

12 A. Who actually locked the gate? Donnell was behind me,
13 he was the last one and he locked the gate.

14 Q. Where were you when he was locking the gate?

15 A. In my truck in front.

16 Q. What type of truck was it?

17 A. It was an F350 big truck.

18 Q. Was there a trailer attached or was it just a truck?

19 A. I had a long trailer attached to it; it was loaded with
20 hay double stacked.

21 Q. In proximity to Mr. Hyatt's house, where were you
22 stopped waiting on Donnell?

23 A. I can see Mr. Hyatt's property joining the field, so
24 the truck and the trailer is probably 70 feet, maybe more,
25 and the tractor and the rake attached to it and all of that.

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1 We have to pull up quite a bit to get out of the gate to
2 lock it.

3 Q. Position wise you've got the gate and then whose cars
4 are in line?

5 A. The gate tractor and hay, rake, then my truck with the
6 trailer in the front.

7 Q. When you're waiting on Donnell to lock the gate, do you
8 actually see Michael Hyatt?

9 A. No, sir.

10 Q. Do you know Michael Hyatt?

11 A. I'm sorry?

12 Q. Do you know Michael Hyatt?

13 A. Yes, I do.

14 Q. How do you know him?

15 A. He worked for my neighbor for awhile before he got
16 fired, and then he lives right there, I seen him several
17 times when I go in. He followed me to the field one time
18 and he told me he wanted to fight me and I told him I don't
19 fight.

20 MR. FRICK: Your Honor, objection, that's 404B.

21 THE COURT: Overruled.

22 Q. All right. You're in your truck, the gate is locked.
23 At that point do you leave?

24 A. Yes, sir.

25 Q. Just tell us what happens as -- you're leaving the

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1 field and you pass Michael Hyatt's house?

2 A. I pass the house.

3 Q. Is it on your right or left?

4 A. As we are leaving his house it would be on the left.

5 Q. Did you ever get out of your truck at any point?

6 A. No, sir.

7 Q. Did you speak to Michael Hyatt?

8 A. No, sir.

9 Q. What was -- was Michael Hyatt in the yard?

10 A. I believe he was in the yard.

11 Q. Do you know what he was doing?

12 A. No. I tried not to look that way, I just kept on
13 driving.

14 Q. As you kept on driving what happened?

15 A. I almost got to the end of the road and a green older
16 model truck pulled in and almost hit me and stopped, so I
17 had to stop.

18 Q. Who was driving that truck?

19 A. Aaron Hyatt.

20 Q. How do you know Aaron Hyatt?

21 A. He opened the door and he got out of the truck but he
22 stayed next to the truck.

23 Q. When you first saw him, did you know Aaron Hyatt?

24 A. Yes, sir. I seen him several times in front of his
25 dad's house and he threatened me several times.

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1 Q. About how far from the front of your truck did he stop
2 his truck, just estimate?

3 A. Maybe three our four feet.

4 Q. Did he say anything to you when he got out of the
5 truck?

6 A. Yes, sir.

7 Q. What did he say to you?

8 A. He told me my days are numbered. "Where is your
9 escort? Where is the police to protect you now?"

10 Q. Did you get out of the truck?

11 A. I did not get out of the truck. I opened the door and
12 I stood at the running board and I asked him to back up so
13 we can leave.

14 Q. Was there not enough room for you to drive around him?

15 A. No, sir, there's no way.

16 Q. Would it have been possible for him to move? Was there
17 anywhere for him to go?

18 A. He just pulled in to the dirt road, there wasn't a few
19 feet.. I can't back up. I have my tractor and rake and I
20 have my truck and load it with hay and there's no way he can
21 back up. It's a very, very narrow road, I don't believe
22 it's more than eight feet wide maybe.

23 Q. All right. Well, now that Aaron is blocking you from
24 leaving the road what did you do next?

25 A. Well, when he shouted at me that my days are numbered

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1 and all of that I figured there was trouble, so I reached
2 for my phone to call the police.

3 Q. Did you call the police?

4 A. I couldn't, I was hit.

5 Q. Where were you hit?

6 A. In the back of my head.

7 Q. Have you got a scar, have you got anything to show
8 where you got hit?

9 A. Yes, sir. It opened my head about that big.

10 Q. So the back of your head?

11 A. That right there.

12 Q. Do you know what hit you?

13 A. No, sir. I thought I was shot.

14 Q. You thought you were shot?

15 A. Yes, sir.

16 Q. Did you ultimately get out of the truck?

17 A. I fell not completely to the ground but I fell to the
18 ground and I started -- I didn't know what happened, it
19 happened so quick, I started running to the front of the --
20 truck to get away between my truck and Aaron's truck.

21 Q. Let me back up just a minute. You're calling --
22 attempting to call law enforcement --

23 A. I'm sorry.

24 Q. When you're attempting to call law enforcement --

25 A. Yes, sir.

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1 Q. -- did you hear anybody coming or --

2 A. Did I what?

3 Q. Did you hear anybody coming up behind you?

4 A. No, I didn't hear anything. The truck is so loud you
5 can't hear much at all. It's a diesel truck, it's an older
6 model diesel truck so it is loud.

7 Q. The truck is like -- do you have any issues with your
8 hearing?

9 A. Now I do.

10 Q. Well, back to the point where you're running, crawling
11 out of the truck. Walk us through what happened, what you
12 remember, what happened.

13 A. I heard somebody shouting and it was Aaron, "Kill him
14 daddy, kill him."

15 Q. When you say, "Kill him daddy," Aaron Hyatt saying
16 that, who was he referencing?

17 A. At the time I did not know until I turned around to see
18 who is coming at me and I saw Mike Hyatt.

19 Q. What was Mike Hyatt doing?

20 A. Coming toward me, had his hands up holding an object.

21 Q. What type of object?

22 A. A stick.

23 Q. What happened next?

24 A. I pulled my gun and I told him to stop.

25 Q. Where did you pull a gun from?

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- 1 A. I have a permit to carry a gun, I keep it at my side.
- 2 Q. What kind of gun is it?
- 3 A. It's a Beretta 380.
- 4 Q. So what happened after you pulled your gun out?
- 5 A. I pulled my gun out, I told him to stop, he did not, I
- 6 fired a shot to the ground --
- 7 Q. Did it hit him?
- 8 A. -- to make him stop, into the ground, and he kept on
- 9 coming at me.
- 10 Q. What happened next?
- 11 A. I shot him.
- 12 Q. Where did you shoot him?
- 13 A. I don't know. I shot him.
- 14 Q. Are you sure it hit him?
- 15 A. Yes, sir, I am.
- 16 Q. When you pulled your gun out on Michael Hyatt, was that
- 17 the first time you pulled your gun out that day?
- 18 A. That's the first time I pulled my gun, yes, sir.
- 19 Q. After you shot Michael Hyatt, what happened after that?
- 20 A. I heard Aaron say something to the affect, "I'm going
- 21 to get my gun," or, "I've got a gun," and I told him not to
- 22 move. I believe I said it once or twice, "Do not move."
- 23 Q. So you're kind of having a standoff with Aaron, so
- 24 you're holding Aaron off with the pistol?
- 25 A. I'm sorry, I don't know.

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1 Q. Let me rephrase it. So did you think Aaron was coming
2 at you afterwards?

3 A. I don't know if he was coming at me. I heard him say
4 it, something to the effect, "I got a gun, I'm going to get
5 a gun." I told him not to move.

6 Q. Did you call law enforcement? How did law enforcement
7 arrive, do you have any idea?

8 A. I honestly don't remember.

9 Q. Do you remember what was going on when law enforcement
10 did arrived?

11 A. Barely. I was almost going in and out of consciousness
12 but I kept on saying to myself, "You can't go to sleep. If
13 you go to sleep they're going to kill you."

14 Q. Do you remember what you were wearing that day?

15 A. Just a regular jeans and shirt.

16 Q. Were you wearing your hat?

17 A. I wear a hat all of the time in the field.

18 Q. What type of hat?

19 A. Just a summer hat. Most of the time it's a John Deere
20 hat, a John Deere hat.

21 Q. When Deputy Morgan arrived what happened then?

22 A. I put my gun down, and honestly I don't remember after
23 that.

24 Q. At what point -- you put the gun down. At what point
25 did you put the gun down?

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- 1 A. When I saw the law.
- 2 Q. Did you feel you were safe at that point?
- 3 A. Yes, sir.
- 4 Q. Were you treated by EMS that day?
- 5 A. I'm sorry.
- 6 Q. Take your time. Were you treated by EMS that day?
- 7 A. Yes, I was.
- 8 Q. Were you treated locally or were you taken somewhere
- 9 else?
- 10 A. I was flown to Charlotte.
- 11 Q. Do you remember what hospital you went to?
- 12 A. CMC.
- 13 Q. Do you remember what type of treatment you received?
- 14 A. They did all kinds of tests and they had to put 39
- 15 staples in my head and told me to stay awake for awhile and
- 16 then to go to sleep.
- 17 Q. What kind of treatment did you receive? Just standard
- 18 medication or --
- 19 A. I was there for awhile, I don't really remember what
- 20 they did. All I know is I finally went home. I had staples
- 21 in my head and they told me to come back and take them out.
- 22 Q. Do you remember how long you stayed in the hospital,
- 23 how many days?
- 24 A. I was released late that night.
- 25 Q. I'm going to show you one thing. Do you see this image

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1 on your screen? Can you see that?

2 A. Yes, sir.

3 MR. COOK: Can everybody see that on the screen?

4 Q. Does this look familiar? I think you can see it right

5 there. I will do this one. The big green spot in the top,

6 is that your field? Does that look about right?

7 A. That green spot?

8 Q. Right.

9 A. Yes, sir.

10 Q. Is that Merle Lane coming up to it?

11 A. Yes, sir.

12 Q. Can you point out where Aaron Hyatt -- I mean, excuse

13 me, Michael Hyatt's house is? Can you identify where the

14 house is?

15 A. His house?

16 Q. Uh-huh.

17 A. It's the one right there.

18 Q. The one right there in the middle.

19 A. Yeah... The one next to the road not too far from the

20 field.

21 Q. Okay. Where were you when all of this occurred? Where

22 did this incident occur in relationship to this house?

23 A. The incident?

24 Q. Uh-huh.

25 A. To the entrance to the dirt road.

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1 Q. Okay.

2 A. The beginning of the dirt road and the hay field and
3 the end of the dirt road.

4 Q. That's a different picture. Right there in the middle
5 where that white spot is, is that where the dirt road
6 starts?

7 A. Where's it at?

8 Q. See the white spot right in the middle? On the far
9 left there's a house, do you see that?

10 THE COURT: Can you mark it, Solicitor? Can't you mark
11 that? There you go.

12 Q. Do you know what that is?

13 A. That looks like the trailer, the mobile home.

14 Q. Michael Hyatt's?

15 A. Yes, sir.

16 Q. Okay. What's that area right there? Is that where all
17 of this occurred?

18 A. Yes, sir.

19 Q. That's where you met Aaron Hyatt? That's where you ran
20 in to Aaron Hyatt?

21 A. Yes, sir.

22 MR. COOK: No further questions for you right now,
23 answer anything they might have for you. Okay?

24 MR. GRIER: Your Honor, may we approach?

25 THE COURT: Yes, sir.

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1 (Bench conference was held.)

2 THE COURT: All right. Ladies and gentlemen of the
3 jury, we're going to take a brief recess at this time. It's
4 a good midmorning recess for y'all to go to the restroom, to
5 grab a cup of coffee or something to drink or whatever and
6 we'll reconvene in about ten minutes. While you're on your
7 break don't discuss the case, don't talk about it, you've
8 only heard from half of one witness so there's nothing to
9 talk about. Okay. Remember that, and we'll bring you back
10 in here just as soon as possible so have a good break.

11 (The jury left the courtroom.)

12 MR. GRIER: Judge, are we in recess?

13 THE COURT: Yeah, we're in recess. You can step down.

14 MR. FRICK: Your Honor, I would just ask you to remind
15 the witness he can't talk to anybody.

16 THE COURT: Right. You're still under oath, you're
17 still subject to cross examination, you have to sit over
18 there by yourself. Okay. Don't talk to anybody.

19 (A recess was taken.)

20 THE COURT: Are you ready?

21 MR. GRIER: Yes, Your Honor.

22 THE COURT: All right. Let's bring the jury in.

23 (The jury returned to the courtroom.)

24 THE COURT: All members of the jury are present. And
25 Mr. Grier?

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1 CROSS EXAMINATION

2 BY MR. GRIER:

3 Q. Mr. Nassrah, how are you today?

4 A. Thank you, sir.

5 Q. How old are you, Mr. Nassrah?

6 A. Sixty-two.

7 Q. What kind of business are you in, Mr. Nassrah?

8 A. Convenience store and farming.

9 Q. Have did you previously own -- or do you own Buford
10 Express? Do you own a convenience store in Buford
11 Crossroads?

12 A. I used to a long time ago.

13 Q. How long has it been since you owned that store?

14 A. I believe I sold it in '99.

15 Q. Okay.

16 A. '98 or '99, I'm not 100 percent sure.

17 Q. All right. And you have another store or now.

18 A. Yes, sir.

19 Q. ~~How long had you been farming on Merle Lane before the~~
20 incident occurred?

21 A. Either four or five years, might be somewhere around in
22 there.

23 Q. So you were acquainted with the Hyatts?

24 A. I'm sorry.

25 Q. You were acquainted, you knew the Hyatts?

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- 1 A. I knew of the Hyatts.
- 2 Q. Well, had you met them before?
- 3 A. I'm sorry?
- 4 Q. You testified that you had previously met them before.
- 5 A. I had met them before.
- 6 Q. Was your meeting with them ever on a social basis?
- 7 A. Social.
- 8 Q. Yeah.
- 9 A. No, sir.
- 10 Q. Campfires, nothing like that out there in the country?
- 11 A. No, sir.
- 12 Q. All right. When -- now, your field is at the very end
- 13 of Merle Lane. Do you know how long Merle Lane is from Lola
- 14 was where it is, right? Or excuse me -- where is Merle
- 15 Lane? What road does it come out on, do you know?
- 16 A. I honestly don't know.
- 17 Q. Whatever road it comes out on, how long is it from --
- 18 A. I don't know.
- 19 Q. Okay. All right. Well, Mr. Hyatt's house is -- where
- 20 would you describe it? About midway between -- would you
- 21 describe it as being about midway between --
- 22 A. No, sir, almost at the end.
- 23 Q. Almost from the end. Okay. So how far from the end?
- 24 A. Almost at the end.
- 25 Q. Okay. So it's right there at the gate where you come

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1 out of your pasture.

2 A. Yes, sir. I am not 100 percent sure it's joining the
3 pasture or not, but if it does not join it's very close.

4 Q. There has been some issues about dust from you taking
5 your equipment in and out of that field with the Hyatts.

6 A. Yes, sir. He mentioned that I'm creating dust.

7 Q. Now, did he ask you to slow down?

8 A. I'm sorry?

9 Q. Did he ask you to slow down? What did he ask you to do
10 to prevent that dust?

11 A. He asked me to slow down.

12 Q. Okay. Did you?

13 A. I can't go fast even if I wanted to, sir. A tractor
14 maximum speed on a highway not pulling any equipment is 14
15 or 15 miles an hour. On a dirt road pulling equipment I can
16 barely go through it, I don't believe I can go more than six
17 miles an hour or seven.

18 Q. Well, my question was did you slow down when he asked
19 you to slow down?

20 A. Yes.

21 Q. So you cannot move heavy equipment if it's dry without
22 causing dust to come up?

23 A. I've never seen any dust come up.

24 Q. You never saw dust come up?

25 A. Some dust comes up from the tires but not coming out.

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1 There may be dust coming out maybe that high off the ground
2 sometimes.

3 Q. Okay.

4 A. The county has sprayed that dirt road with some kind of
5 chemical, they sprayed all dirt roads with some kind of
6 chemical that prevent dust a few years back.

7 Q. Well, Mr. Hyatt lives right there next to the road,
8 doesn't he? I mean, it's not much more than the width of
9 this courtroom off the road; isn't that right? About that
10 close?

11 A. I guess so.

12 Q. And you can slow a vehicle down to a crawl as a
13 courtesy to somebody, couldn't you?

14 A. Sure you can.

15 Q. Did you do that? Would you take a step of slowing down
16 when you were going in front of his house?

17 A. I have to slow down even if I don't want to when I get
18 close to his house. The gate is right there and the gate is
19 locked so I'm always stopped.

20 Q. So your tractor will only do 14 miles an hour you say?

21 A. Fourteen or 15 miles an hour.

22 Q. What kind of tractor is that?

23 A. I have a John Deere and I have Massey Cobalt.

24 Q. And about what year is it?

25 A. The newest one is 2000 -- it might be 2003/2004, and

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1 the other one is 1995.

2 Q. I've got a '61 International Forester with four gears
3 on it that will do 40 miles an hour. How many gears have
4 you got on your tractor?

5 A. There's no tractor that goes 40 miles an hour, sir.

6 Q. Well, okay. I'm a liar.

7 A. I'm sorry, I did not accuse you of anything.

8 Q. Well. All right. How many gears have you got on your
9 tractor?

10 A. Four gears.

11 Q. Four gears? Okay. And you go through four gears to
12 get to 14 miles an hour on your tractor?

13 A. Yes, sir.

14 Q. Okay. Now, when it's not pulling anything it will only
15 do 14 miles an hour?

16 A. Yes, sir.

17 Q. All right. Now, your truck -- you haul this hay on
18 your trailer. And how long is that trailer?

19 A. The bed itself is 26 and then you got the neck and all
20 that, it's probably 35 or 36, somewhere in there.

21 Q. The trailer is 35 or 36 feet long?

22 A. Maybe longer.

23 Q. And what kind of truck is that? You say it's a Ford --

24 A. Ford F350.

25 Q. It's a big old truck. Dually?

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- 1 A. I have a dually and a single.
- 2 Q. On the day -- both of those trucks are going up and
3 down that road when you are taking out your hay, right?
- 4 A. Yes, sir.
- 5 Q. Now, how fast will that truck go?
- 6 A. The truck goes fast as any truck.
- 7 Q. So you can go from -- really, it can go very fast if
8 you wanted to, but when you are pulling hay you don't go
9 70 miles an hour down a one lane dirt road, we know that.
- 10 A. You can even got 55 on a highway if you want to when
11 you're pulling that.
- 12 Q. You can do 20 though, can't you?
- 13 A. I'm sorry.
- 14 Q. You can do 20 pulling miles an hour pulling hay, can't
15 you?
- 16 A. Yes, you can.
- 17 Q. Okay. Mr. Nassrah, I would ask you to look at this
18 picture and see if you can identify that picture.
- 19 A. That is ~~my truck~~ and my trailer.
- 20 Q. Okay. Do you know where that picture was taken? It
21 looks like it was taken on a one lane dirt road somewhere,
22 doesn't it?
- 23 A. Yes, sir.
- 24 Q. Now, is that -- do see any dust in that picture?
- 25 A. Yes, sir.

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- 1 Q. Okay.
- 2 A. Who is driving that truck, sir?
- 3 Q. I don't know. I'm saying -- it's your equipment,
4 right?
- 5 A. It's my truck. It says 9/16, I was not driving that
6 truck if that's the right date.
- 7 Q. But it's your vehicle.
- 8 A. It's my vehicle, sir.
- 9 Q. You're not driving it, but somebody else that works for
10 you is driving it, right?
- 11 A. Not works for me, I only have one employee.
- 12 Q. Well, you just testified this is your truck.
- 13 A. Yes, sir. I have friends who comes and help me.
- 14 Q. Okay. This hay is being transported under your
15 supervision from your property, right?
- 16 A. Yes, sir.
- 17 Q. On the day that this happened.
- 18 A. Yes, sir.
- 19 Q. This isn't when this confrontation happened, is it?
- 20 A. If that's --
- 21 Q. This isn't the moment. You were in a different truck
22 actually.
- 23 A. Yes, sir.
- 24 Q. But, I mean, you can clearly see that dust is coming up
25 in that picture, can't you?

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1 A. Yes, sir.

2 Q. It's a dusty road.

3 MR. GRIER: Your Honor, I would offer this as a defense
4 exhibit.

5 THE COURT: Any objection.

6 MR. COOK: No objection.

7 THE COURT: Without objection it's introduced as
8 Defendant's Exhibit Number 1.

9 (The photograph was received as Defendant's 1.)

10 A. I see some dust coming up, yes.

11 MR. COOK: I would ask to publish it to the jury.

12 THE COURT: Any objection from the State?

13 MR. COOK: No objection.

14 THE COURT: You can publish the photo. Y'all can just
15 pass that along as you see fit. Make sure you listen,
16 though, while you're looking at it.

17 Q. Now, Mr. Nassrah, the Hyatts are getting pretty angry
18 about the dust problem because that's what they're saying
19 but you don't see it as a problem.

20 A. I don't see them angry about the dust. I see them
21 angry three days prior about the chicken, the dog killing
22 their chicken and they said it's my dog and I told them I
23 don't have a dog. And they say, "The dog is on the property
24 and it's killing my chicken," I told them, "I don't have a
25 dog."

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1 Q. Well, you don't even live near there, do you? You
2 don't live near there.

3 A. No, sir. I live probably 20 or 25 miles away from
4 there.

5 Q. Are you sure you're not confusing -- weren't they
6 accusing say Mr. Truesdale's?

7 A. I'm sorry?

8 Q. Didn't they say Mr. Truesdale's dog killed their
9 chicken?

10 A. I said Mr. Truesdale?

11 Q. No.

12 A. I'm sorry.

13 Q. Did the Hyatts not tell you that Mr. Truesdale's dog
14 killed their chicken?

15 A. No, sir, they said my dog. I don't have a dog.

16 Q. Okay. Now, Mr. Nassrah, on September 16th of 2010
17 pulling out the last load of hay from the field, how many
18 loads of hay come out of that field? How many trailer loads
19 of hay come out of that field?

20 A. Five.

21 Q. Did you say?

22 A. Five. I believe five.

23 Q. Okay. Did all of it come out that day on the 16th?

24 A. Yes, sir. I normally take them out in my own truck one
25 at a time, but that day because I had an escort and they

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1 told me I have to move quick, move it out of there I called
2 several friends and they came and helped me and got them out
3 that same day. It usually takes more than one day.

4 Q. But when this incident happened your helper had locked
5 the gate and that field was done for the year.

6 A. That was done for the year, yes, sir.

7 Q. You pull out with the loaded trailer, and where do you
8 pull when you pull out?

9 A. Pulled down a dirt road.

10 Q. Pull out of the pasture and you pulled down a dirt
11 road. Now, you pulled up in front of Mr. Hyatt, didn't you?

12 A. I go back enough to have room for the tractor and the
13 trailer to get out and shut the gate.

14 Q. Where was that in relation to Mr. Hyatt's house?

15 A. I really can't pinpoint exactly. If you told me how
16 far the house from the gate I will tell you.

17 Q. Did you pull directly in front of Michael Hyatt's house
18 when you pulled out?

19 A. Not directly in front, no.

20 Q. Well, do you remember testifying yesterday in our
21 pretrial hearing?

22 A. Yes, sir.

23 Q. Do you recall Mr. Cook asking you as you're leaving
24 locking up and Donnell is locking up the gate --

25 A. Yes, sir.

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1 Q. -- "Are you in front of Mr. Hyatt's house or are you a
2 little bit past it?" Do you recall what your response was
3 yesterday? You don't? Well, that was line five. Do you
4 want to read your response, line six? Do you see it at line
5 six?

6 A. Yes, sir.

7 Q. What does it say?

8 A. It says in front of it.

9 Q. "I am in front of Mr. Hyatt's house," doesn't it?

10 A. Yeah.

11 Q. So why today don't you want to admit you were in front
12 of Mr. Hyatt's house?

13 A. I did not admit or not admit, I said we pulled. I
14 don't know exactly where when you pull how far is it. It is
15 pretty close, almost if not definitely adjacent to the
16 field. If you tell me how far it is I can tell you how far.

17 Q. Today you don't want to say you pulled in front of the
18 house because you didn't have to pull in front of house, did
19 you?

20 A. I'm sorry, sir, I could not hear you.

21 Q. I'm sorry, I will slow down a little bit.

22 A. Please.

23 Q. You said yesterday you pulled right in front of the
24 house. Okay? Right?

25 A. He asked me the question several times, I don't know

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1 about yesterday. And it's -- I can see the house. I told
2 him I can see the property, I'm right there when I pulled, I
3 have to pull --

4 Q. Okay.

5 A. -- past the gate, yes, sir.

6 Q. Okay. You had words for Mr. Hyatt while you were
7 pulled in front of his house, didn't you?

8 A. I don't believe so.

9 Q. You don't believe so?

10 A. I honestly don't believe so. I don't believe so.

11 Q. You and your helper both had words for Mr. Hyatt. You
12 finished up with your hay field and you were going to give
13 him a piece of your mind before you got out of there. You
14 were carrying a gun, weren't you? You weren't scared.

15 A. If I wasn't scared I wouldn't ask for an escort, sir.
16 I was scared for my life. He threatened me three days
17 earlier in front of the officer. He told me he would take
18 me in the woods and I would never come out.

19 Q. Mr. Nassrah, you've got a gun in your belt that day,
20 don't you?

21 A. It does not matter, sir.

22 Q. Pardon?

23 A. It does not matter.

24 Q. It does not matter?

25 A. He hit me and almost killed me and I had a gun.

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1 Q. Why did you stop in front of his house?

2 A. I don't believe I stopped in front of his house. I
3 have to pull out of the gate to lock the gate, sir.

4 Q. Okay. So you don't remember it the same way you did
5 yesterday, right? Okay. All right. Now, Mr. Nassrah, your
6 lawyer yesterday -- I say your lawyer, the State's lawyer
7 yesterday, right after you say you're in front of his house,
8 the State's lawyer asked you on the 16th did you see Michael
9 Hyatt outside of his house. You testified earlier today you
10 didn't see him?

11 A. As we are leaving when -- I stop in front of the gate
12 to lock it I cannot see everything, as we were leaving
13 driving off Mr. Hyatt was in the yard. Isn't that what I
14 said, sir?

15 THE COURT: No, sir, don't ask questions, just answer
16 the questions. Thank you.

17 Q. The State's lawyer asked you if you saw Mr. Hyatt just
18 a few minutes ago and you said no. True? Well, what did
19 you say yesterday in response to "On the 16th did you see
20 Michael Hyatt outside of his house?" What's the response
21 right after you were asked about being in front of his
22 house, what did you say?

23 A. What was that question, sir?

24 Q. On the 16th.

25 A. When on the 16th, at what time on the 16th?

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1 Q. Okay.

2 A. I saw Mike Hyatt several times on the 16th because we
3 were in and out several times. I was escorted with the
4 police and he was in his yard.

5 Q. So you did see him.

6 A. Sir?

7 Q. So now you're saying you did see him.

8 A. It all depends on when. The question is did I see him.

9 All day?

10 Q. Did you see him --

11 A. Did I see him all day, yes.

12 Q. How many times did you see him?

13 A. Did I see him when it was a certain time?

14 Q. How many times did you see him?

15 A. I don't remember, I was in and out. I remember -- I
16 recall he was in his yard the one time and then the police
17 officer told me that they were gone, you had to go in the
18 car. He asked me how long I have left before we leave and I
19 told him about --

20 MR. GRIER: Your Honor, that's not responsive to my
21 question.

22 THE COURT: All right.

23 A. I'm sorry.

24 Q. All right. Mr. Hyatt, do you -- excuse me,

25 Mr. Nassrah, do you recall giving a statement to law

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1 enforcement?

2 A. I don't recall. I was asked that question yesterday.

3 Q. Okay. Well, yesterday you said you didn't give a
4 statement, didn't you?

5 A. I don't recall giving a statement until the attorney
6 showed me that there was a statement on the 16th.

7 Q. Let's move on to the confrontation. You're pulling
8 out, you've passed -- you've come out of your field, you've
9 waited for you tractor man to lock up, get behind you,
10 you're pulling on out, you've gone -- we've already talked
11 about Mr. Hyatt's house, whether or not you were in front of
12 it. You're past that and in comes Aaron Hyatt.

13 A. Yes, sir.

14 Q. You got your gun in your belt already?

15 A. Yes, sir.

16 Q. You don't have a holster for it?

17 A. Never wore a holster.

18 Q. You wear a gun in your belt all of the time -- I mean,
19 certainly you weren't allowed in here with it. I don't --
20 suppose, but --

21 A. For the last 37 years.

22 Q. Have you got another gun in the truck?

23 A. Yes, sir.

24 Q. Well, you don't recall giving a statement back on the
25 date of the incident to law enforcement?

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- 1 A. On the 16th?
- 2 Q. Yes, sir.
- 3 A. I don't recall, sir. I wasn't barely conscious.
- 4 Q. Okay. So is your memory a little bit cloudy about the
- 5 events of that day?
- 6 A. I'm sorry?
- 7 Q. Is your memory cloudy about the events of that day?
- 8 A. After I got hit and the police officer arrived I was
- 9 told that I passed out.
- 10 Q. Okay. What were the first words that were said between
- 11 you and Mr. Hyatt -- Mr. Aaron Hyatt, and who said them?
- 12 A. When Mr. Hyatt got out of his truck he was shouting
- 13 stuff and I couldn't hear him, I opened the door and I stood
- 14 on the side steps on the running board and so I asked them
- 15 to leave.
- 16 Q. You made the first statement to him before he said
- 17 anything to you.
- 18 A. No, sir. I just said he was shouting and I couldn't
- 19 hear exactly what he was saying so I stepped out on the
- 20 running board and he was saying something to the fact, "Your
- 21 days are numbered. Where is the escort? Where is your
- 22 police?"
- 23 Q. You gave a statement on the 16th. I'm going to show
- 24 you something. Do you recognize that document?
- 25 A. I have to read it.

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1 Q. Okay.

2 A. It looks like a document I signed, yes, sir.

3 Q. Do you want to read it? You can take a minute or I can
4 just ask you what I want to ask you about it. You made a
5 statement on the 16th about what Aaron Hyatt said, didn't
6 you?

7 A. I'm sorry?

8 Q. I'm walking away from you, I should be pointing at you.
9 You gave a statement that day about what Aaron Hyatt said to
10 you.

11 A. I said I don't remember.

12 Q. In that statement. Okay. That's got your signature on
13 it, right? Okay. I've highlighted -- the first thing that
14 I've highlighted. Do you want me to read what this
15 statement says?

16 A. Please.

17 Q. "Aaron Hyatt jumped in front of mine, jumped out of his
18 truck started and yelling, 'Your days are numbered and you
19 ain't going nowhere.' I couldn't go anywhere." Is that
20 right? Is that what that statement says? It says what it
21 says.

22 A. That's what it says.

23 Q. Now, today you're saying, "Where is your escort? How
24 come you ain't got nobody to protect you?"

25 A. And?

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1 Q. You know, that's not what you said contemporaneous with
2 this event.

3 A. I might not have said everything. I was in complete --
4 I was almost unconscious, sir.

5 Q. Well, it sounds a lot better to say that he said you
6 ain't got your escort and your police escort than it does to
7 say that alone.

8 A. Sir, I don't even remember giving that testimony.

9 Q. Well, you signed the statement, didn't you?

10 A. Yes, sir, it's my signature. I don't remember. It's
11 my signature. Have you ever got hit in the head sir?

12 Q. Yes, sir, I have.

13 A. Do you remember everything at the time?

14 THE COURT: Go on to the next question, Mr. Grier.

15 Q. Well, you feel like it's important to say that today
16 and you didn't think it was important enough to talk about
17 this police escort on this day.

18 A. I don't know if it's important. You're asking me a
19 question and answers.

20 Q. All right, Mr. Nassrah. You testified today and --
21 well, you testified today --

22 A. I'm sorry?

23 Q. I'm in the middle of the question. After Aaron said
24 whatever and -- is he saying that to you when you're stepped
25 outside of your truck and on the running board?

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1 A. Yes, sir.

2 Q. So you're on your running board, this conversation is
3 going on.

4 A. Do what?

5 Q. This conversation is going on while you're standing on
6 your running board of your Ford F350 truck.

7 A. Yes, sir.

8 Q. And you've got a gun in your pocket over there --
9 excuse me, in your belt and you pull that gun on Mr. Hyatt,
10 didn't you, right there on the running board, didn't you?

11 A. Are you accusing me of --

12 Q. I'm asking you a question, I get to ask questions.

13 A. No, sir. I did not pull my gun at all.

14 Q. Did you feel like there was trouble? He just said,
15 "Your days are numbered." Did you feel threatened?

16 A. I felt threatened and I tried to call the police, yes,
17 sir.

18 Q. Okay. And so -- well, do you -- so you got out of your
19 truck and on the running board.

20 A. I did not get out of my truck, sir.

21 Q. You got on your running board.

22 A. I was standing on my running board.

23 Q. You call that being in your truck?

24 A. One foot on the running board, one foot in the truck.

25 I don't know what you call it, sir. I'm sorry but it's not

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1 out of my truck. You can call it half way in and half way
2 out.

3 Q. Okay. All right. Well, on the 16th you gave a
4 statement about these events apparently, didn't you? All
5 right. Do you recall saying immediately after -- you say he
6 said, "Your days are numbered, you ain't going nowhere. I
7 couldn't go anywhere, his truck stopped me from leaving and
8 there was a tractor behind me, I was stuck. I took off my
9 seatbelt and got my cellphone out. I stuck my head out and
10 looked out the window of my truck to see what Aaron was
11 doing because Aaron was walking towards the back of his
12 truck."

13 A. Okay.

14 Q. "I believe I dialed the number nine on my phone and I
15 was hit in the head -- in the back of my head with
16 something." So in your statement you say you stick your
17 head out of the truck and looked and now you say you were
18 standing on the running board. Did you stick your head out
19 the window and look --

20 A. I stuck my head and see because he stopped getting out
21 of my truck, and when he stepped out of his truck completely
22 and start looking in the bed of his truck I stood up on the
23 running board to see what is he getting or is he doing.

24 Q. Okay.

25 A. I'm not changing my statement, sir, I'm just telling

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1 you exactly what happened.

2 Q. Well, you didn't say anything about being on a running
3 board back when you were giving the statement four years
4 ago.

5 A. I don't really recall giving that statement, sir, I was
6 unconscious almost.

7 Q. When you recall Aaron saying -- okay. Sorry. You get
8 hit, you're standing on the running board and after your hit
9 what's the first thing you recall?

10 A. What do you mean by recall?

11 Q. Where are you? Where do you first remember being after
12 you got hit in the head?

13 A. Falling down from the hip, not completely down but
14 falling down and start running.

15 Q. Okay. Falling down and what?

16 A. Started running.

17 Q. And started running. Okay. You fall down and you get
18 up right there?

19 A. Halfway up and running and that's all I can remember,
20 sir. All I know is I thought I was shot and I was running
21 away from the direction.

22 Q. All right. So Mr. Hyatt hits you with this axe handle
23 is what this turned out to be, right?

24 A. That's what they said.

25 Q. Is what we understand that to be. You're on the

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- 1 running board, you're on the ground, you're on the ground,
2 right?
- 3 A. Not completely. I don't think I was completely on the
4 ground.
- 5 Q. You were totally defenseless?
- 6 A. I'm sorry?
- 7 Q. You're totally defenseless. You've been hit the back
8 of the head, off your running board and you're on the ground
9 you are on --
- 10 A. My feet is on the ground, yes, sir.
- 11 Q. Your feet are on the ground?
- 12 A. I was on the ground, not on the running board no more.
- 13 Q. I understand, you're on the dirt.
- 14 A. Yes, sir.
- 15 Q. Outside of the door, I assume.
- 16 A. Yes, sir.
- 17 Q. Are you flat out on the ground or are you crawling?
- 18 A. No. I don't believe I was flat out at all.
- 19 Q. Okay. From that position weren't you defenseless?
- 20 A. Was I defenseless?
- 21 Q. Yeah.
- 22 A. I didn't think about the defenseless, I was running for
23 my life. I thought I was shot, I wanted to run away from
24 the direction where it came from.
- 25 Q. But somebody trying to kill you had you in a pretty

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1 good spot to just go ahead and finish you off, didn't they?

2 A. I don't know. I'm not Mr. Hyatt, sir.

3 Q. You don't know? You don't think you were vulnerable
4 after you got hit in the head and you're on the ground and
5 somebody is there with a pickaxe that you're now saying is
6 trying to kill you, you don't think that was a good time to
7 finish you off?

8 A. I don't know, sir. I can't speak for Mr. Hyatt.

9 Q. Did you crawl somewhere? Did you crawl while you were
10 on the ground?

11 A. Did I crawl?

12 Q. Crawl.

13 A. I believe somehow I crawled a little bit, maybe I ran.

14 Q. Okay. You ran around the door, or you were past the
15 door? Do you recall?

16 A. I do not recall, sir.

17 Q. All right. But you end up on the opposite side of the
18 truck from where you say Mr. Hyatt hit you.

19 A. Yes, sir.

20 Q. And that's where you ended up shooting him, kind of on
21 the opposite side of that truck a little bit to the front
22 beside it, correct?

23 A. I don't believe it was on the opposite side of the
24 truck.

25 Q. Okay. Where do you believe it was at?

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1 A. I believe it was in front of the truck.

2 Q. Do you think it was directly in front of the truck?

3 A. I don't recall, sir. I was running between my truck
4 and Aaron's truck.

5 Q. Okay.

6 A. Between the two trucks.

7 MR. GRIER: Your Honor, we're trying to stipulate to a
8 piece of evidence here to save some time.

9 (Break in proceedings.)

10 MR. GRIER: Judge, I would move that yesterday's
11 proceedings -- transcript of yesterday's proceedings be
12 placed into evidence. We've got testimony or if you want me
13 to truncate it to the --

14 THE COURT: The entire proceeding or just his
15 testimony?

16 MR. GRIER: Well, we would have to work on getting that
17 testimony during a break or something in but we could do
18 that and present it and stipulate and agree on that if that
19 would be the proper way to avoid confusion.

20 THE COURT: Let's handle that outside the jury's
21 presence, that may be a matter of law. Are you through with
22 your cross?

23 MR. GRIER: I'm finished.

24 THE COURT: Okay. I hate taking a break during the
25 middle of a witness but I've got some hungry jurors over

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1 there and we've got food in the back getting cold. Okay.
2 So we will take a lunch recess at this point in time.
3 Ladies and gentlemen of the jury, don't talk about the case.
4 Again, you've only heard two-thirds or maybe three-fourths
5 of one witness, there's many other witnesses and other
6 evidence which may come in so don't talk with the case.
7 Before I excuse you for lunch recess, Mr. Kenneth Furr,
8 where are you, sir? Mr. Furr, I'm appointing you as the
9 foreman of the jury. It will be your duty to preside over
10 the deliberations in the jury room. It will be your -- you
11 will be the spokesperson for the jury here in court, and it
12 will also be your duty to write the verdict. However, it
13 can't be your verdict alone, it has to be a unanimous
14 verdict which I will tell all of you about later on. But it
15 will be your duty to write it on the verdict form and I will
16 give you further instructions about that at the conclusion
17 of the case. Okay? Y'all have a good lunch, we'll get you
18 back here in 30 or 45 minutes will be good, then we will go
19 from there. Okay.

20 (The jury left the courtroom.)

21 THE COURT: Mr. Victim, don't talk to anybody about the
22 case or your testimony. Okay. You can't even talk to the
23 solicitor about your testimony. You can go.

24 (A lunch break was taken.)

25 THE COURT: Mr. Grier, you were moving to -- right

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1 before we recessed for lunch you made a motion to introduce
2 into evidence the transcript of testimony from yesterday's
3 pretrial matter of two witnesses, those witnesses being the
4 victim and --

5 MR. GRIER: Your Honor, at this point it would just be
6 the one because we haven't used the transcript yet in the
7 cross examination of that second witness.

8 THE COURT: If he wants it to come in and the State
9 doesn't object you can go ahead and proceed.

10 MR. COOK: I don't have any objection.

11 MR. GRIER: I can introduce it. I actually have it in
12 my hand right now rather than -- if I can have it -- go
13 ahead and put into evidence and take it back to my desk to
14 make any notes with.

15 THE COURT: That's fine, we can go ahead and do that.
16 So it is all coming into evidence without objection by the
17 State then. Defense number 2 is going to be the transcript
18 of testimony of the victim, and defense number three is
19 going to be the transcript of testimony of -- I forget the.

20 MR. GRIER: Of Mr. Harlan Donnell Melton.

21 THE COURT: Mr. Melton. That's without objection.
22 Correct, Solicitor?

23 MR. COOK: Yes, sir.

24 (The two transcripts were received a
25 Defendant's 2 and 3.)

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1 (The jury returned to the courtroom.)

2 THE COURT: All members of the jury are present. And

3 Mr. Frick?

4 MR. FRICK: Thank you, Your Honor.

5 CROSS EXAMINATION

6 BY MR. FRICK:

7 Q. Mr. Nassrah, good afternoon.

8 A. Good afternoon, sir.

9 Q. Has anything come up on your screen in front of you?

10 A. Yes, sir.

11 Q. Is it up? Okay. I think the solicitor showed you
12 something that looked like that as well. Does that look
13 familiar to you?

14 A. I believe so.

15 Q. What does that look like to you?

16 A. Merle Lane.

17 Q. Can you mark with your finger with an X or a dot or
18 however where your field is approximately. Do I need to
19 move it over?

20 A. I don't see it.

21 Q. What is that right there? Is that the intersection of
22 Merle and some road?

23 A. That don't look like a field there, that's looks like a
24 highway.

25 Q. I didn't say that was a field, Mr. Nassrah, I'm asking

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1 if that's the intersection of a road, correct? That's Merle
2 Lane and the main road?

3 A. I believe so, yes, sir.

4 Q. All right. So if we had down this way -- let me get
5 that off there. Do you see your field now?

6 A. Yes, sir.

7 Q. Can you mark where it is?

8 A. It's right here.

9 Q. Okay. The gate to your field on Merle Lane, is it on
10 Merle Lane? Or where is the gate approximately, can you
11 tell?

12 A. I really don't know exactly where is it at, somewhere
13 in here.

14 Q. Okay.

15 A. Somewhere in here.

16 Q. Okay.

17 A. It's a field, then you have to drive between the trees
18 and the end of trees is where the gate at the road.

19 Q. But it's all of way at the end of the road, you can't
20 any further.

21 A. Do what, sir.

22 Q. You can't go any further on Merle Lane, that's the
23 field, right?

24 A. Right where the gate is?

25 Q. Yes, sir?

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1 A. That's where the field starts, yes, sir. I mean, I'm
2 assuming. I don't own the property, I never surveyed it,
3 that's where the gate is.

4 Q. Mark where you believe Mr. Hyatt's house is.

5 A. I don't believe I see it in here.

6 Q. Approximately where is it then?

7 A. I don't know, sir, I don't see the house.

8 Q. You don't see the house. Do you see this that the
9 solicitor showed you before and you identified as
10 Mr. Hyatt's house?

11 A. It's very small, I cannot see it.

12 Q. I know. That's a small screen and I understand.
13 You're not trying to be evasive, I understand, it's a small
14 screen. I understand. Well, what I mark right there, do
15 you agree with me that's where Mr. Michael Hyatt's house is?

16 A. I believe so. If it's a house that's where it is, it's
17 the first house.

18 Q. And you said that your gate is somewhere around here,
19 right?

20 A. I'm sorry?

21 Q. You said that the gate to the field is approximately
22 where I put that quasi dot.

23 A. I'm not sure. I said it's -- all I know is there is a
24 driveway --

25 Q. Then let me ask you this. Is the gate right here? Is

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1 it in the middle of Merle Lane?

2 A. Is that Merle Lane?

3 Q. You just identified it as Merle Lane. Are you telling
4 me it's not now?

5 A. Sir, if I'm on Merle Lane I can exactly show you, but I
6 cannot show you -- I don't know where the dirt road, where
7 the field, where the gate, I'm sorry.

8 Q. Well, you didn't have any problem when Mr. Cook asked
9 you about it, how come all the sudden you don't understand
10 what I'm asking you about it? What's the problem?

11 A. I don't have a problem.

12 Q. Well, this morning you can completely identify it and
13 now you're telling me you don't know what it is?

14 A. I did not quickly identify the gate at all, sir. It's
15 the gate at the end of the dirt road?

16 Q. Okay. It's the end of the dirt road, we've established
17 this, right? The gate is at the end of the dirt road,
18 correct?

19 A. You tell me where the end of the dirt road --

20 Q. Is that it?

21 A. I don't know, sir. Is that it? I don't know. I can't
22 give you an answer if I don't know.

23 Q. Okay. So your answer is you don't even know what
24 you're looking at here, right?

25 A. I can't see where the dirt road, where the field is

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1 connected.

2 Q. Okay.

3 A. Can you show me? And if you can't I don't know.

4 Q. Let's see what the fine folks at Google can do for us.

5 Okay. Can you see there? Do you see something on your
6 screen right now?

7 A. Yes, sir.

8 Q. What is that showing you?

9 A. The gate, I'm assuming, is somewhere in here.

10 Q. Somewhere in there.

11 A. Yes, sir.

12 Q. Okay. All right. You pulled out of there and pulled
13 down the road.

14 A. Yes, sir.

15 Q. You've testified previously you pulled in front of
16 Mr. Hyatt's house. You testified previously you pulled up
17 and you could see his property, but your testimony is you
18 pulled out of the gate, right? Well, did you pull all of
19 the way down here or did you pull here? Where did you pull? ---

20 A. I pulled enough to clear the gate with my truck,
21 trailer tractor and the hay rake, sir. Where is that
22 exactly? I don't know where that is exactly. If I'm there
23 at the dirt road we can --

24 Q. Were there trees to your left when you pulled out?

25 A. I don't recall, sir.

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- 1 Q. So what you're saying is you did not come down here and
2 pull here, that's what you're saying?
- 3 A. I don't believe so, sir. I pulled out of the gate,
4 sir, to wait for my help to get there, I can't tell you
5 exactly where. It's just enough to clear the trailer, the
6 truck, the trailer and the hay rake.
- 7 Q. Okay. And you deny saying yesterday that that was in
8 front of Mr. Hyatt's house.
- 9 A. I don't know. I don't know if it wasn't -- I can't
10 tell you if it was in front of it, before it, after it, I
11 don't know.
- 12 Q. You do recall driving past that house, right?
- 13 A. I have to pass that house to go out, that's the only
14 way in and out.
- 15 Q. Okay. And when you passed the house you said you did
16 or did not see somebody in that yard?
- 17 A. When I passed the house?
- 18 Q. Leaving. Not coming in, when you were leaving.
- 19 A. Leaving the property, yes, I believe Mike Hyatt was in
20 the yard.
- 21 Q. You believe he was in the yard. Okay.
- 22 A. I try not to look or anything, I don't want to have no
23 contact with either, I just kept on going.
- 24 Q. Sure. All right. You drive down a little further and
25 then something is blocking you, correct?

TESTIMONY OF KAMIL NASSRAH

1 A. Mr. Aaron pulled in.

2 Q. Previously we'd identified this as the driveway of a
3 neighbor where most of this took place; is that correct?

4 A. That is correct.

5 Q. Where were you sitting? Where was your vehicle
6 sitting?

7 A. My vehicle?

8 Q. Yes, sir, when you got blocked in.

9 A. Right there at the driveway, maybe two or three feet
10 before, three feet after, I don't know.

11 Q. You recognize Aaron Hyatt.

12 A. Yes, sir.

13 Q. Did you recognize him that day?

14 A. Yes, sir. When he got out of the truck, yes, sir.

15 Q. He comes toward you?

16 A. No, sir.

17 Q. He stayed at his truck.

18 A. No. He stepped out of the truck.

19 Q. Has he stepped out of his truck? Does he stay beside...
20 his truck or approach you or what?

21 A. He stepped out of the truck and he starts shouting.

22 Q. Okay.

23 A. I couldn't exactly make out what he was saying. I
24 stepped on my running boards, then he started shouting and
25 then he starts looking towards the bed of his truck.

TESTIMONY OF KAMIL NASSRAH

1 Q. Okay. Did he go that way and grab something?

2 A. I don't recall.

3 Q. Okay. You were standing -- you're standing on the
4 running board of your F350 diesel pickup truck, correct?

5 A. One foot on the running board, one foot inside the
6 truck.

7 Q. The truck is still running?

8 A. Yes, sir.

9 Q. Did you ever cut your truck off?

10 A. I don't believe so, no.

11 Q. I think you said it's a diesel engine, it's pretty
12 noisy, right?

13 A. Yes, sir.

14 Q. When you're standing on the running board, you can
15 understand what Aaron Hyatt is saying to you?

16 A. Can I understand what he's saying?

17 Q. Yes, sir.

18 A. He is closer to what you and I were right there.

19 Q. And he is telling you your days are numbered and
20 whatever else?

21 A. Where is your escort, where is --

22 Q. Where is your escort, that's right, the statement we
23 hear of this morning. Okay. When are you struck then?

24 A. I'm sorry?

25 Q. When are you struck? That's when you're stuck in the

TESTIMONY OF KAMIL NASSRAH

1 back of your head, right?

2 A. Yes, sir.

3 Q. Where is your scar?

4 A. Where?

5 Q. Yes, sir.

6 A. Somewhere in there.

7 Q. Okay. And was it -- do you know, was it the back of
8 your head, the top of your head, the side of your head, do
9 you know?

10 A. Sir, it's right there. I don't know what you call
11 that.

12 Q. That's what -- quite frankly I don't see anything right
13 there so you tell me.

14 A. You don't see anything?

15 Q. No, sir.

16 A. Sorry.

17 MR. FRICK: Your Honor, I would ask that he come down
18 so the jury can inspect.

19 THE COURT: Solicitor?

20 MR. COOK: No objection.

21 THE COURT: Thank you, sir. If you will please go
22 stand in front of jury under better lighting.

23 Q. Just show them approximately where your scar is, tell
24 them where your scar is.

25 A. Somewhere in here, sir.

TESTIMONY OF KAMIL NASSRAH

1 Q. It's right there. Okay. All right. Thank you, sir
2 that's all I need. Appreciate it. You were struck while
3 you're standing on your running board still?

4 A. I'm sorry?

5 Q. He hit you in the back of the head while you're
6 standing on your running board?

7 A. Yes, sir.

8 Q. Okay. Do you have any idea who struck you in the back
9 of the head? I know what you know now, but at the time did
10 you know what was going on?

11 A. No, sir.

12 Q. Did you fall immediately?

13 A. Sir, you're asking me a question did I fall
14 immediately. I got struck in the head, I don't know, I
15 can't answer that question.

16 Q. Well, here is the problem I've got, Mr. Nassrah.

17 A. I fell to the ground. I'm telling you what I can
18 remember, sir.

19 Q. Okay.

20 A. Is it immediately? I don't know.

21 Q. Okay. Did you lay on the ground, did you stagger?

22 A. I did not lay on the ground.

23 Q. All right. At some point were you on the ground
24 between the two trucks?

25 A. Laying on the ground?

TESTIMONY OF KAMIL NASSRAH

1 Q. Yes, sir.

2 A. Not laying on the ground. I was running, I don't
3 believe I was -- I don't remember exactly, I don't believe I
4 was laying on the ground.

5 Q. Okay.

6 A. If you're talking about immediately or later, or I mean
7 you're asking me a question in general. Is it immediately
8 after I got struck or later on?

9 Q. I'm trying to establish the chain of events. You're
10 standing on your running board, you get hit. You don't end
11 up laying on the driver's side of your truck, you're over in
12 the driveway on the other side of the road. How do you get
13 there?

14 A. I ran away from where I got hit. When you get hit the
15 first thing you say to yourself is to run away from where
16 you got hit with, and that's why I ran away to the other
17 side.

18 Q. Okay. And you're certain you were standing -- the door
19 opened standing on the running board when you were struck.

20 A. Yes, sir.

21 Q. You had your pistol on you the whole time?

22 A. Yes, sir.

23 Q. You had it when you were out in the field, it's just
24 something you have on.

25 A. Yes, sir.

TESTIMONY OF KAMIL NASSRAH

1 Q. At this point you have not drawn your weapon at any
2 time?

3 A. When?

4 Q. Right after you got hit. I apologize, that wasn't a
5 fair question.

6 A. That's okay.

7 Q. While you're in the vehicle when you see Mr. Hyatt,
8 Mr. Aaron Hyatt, you don't draw your weapon out.

9 A. No, sir. I have no reason to.

10 Q. Don't tell him, "I've got a gun, back up."

11 A. I'm sorry?

12 Q. You don't tell him that you've have got a gun, "Get out
13 of my way."

14 A. No, sir.

15 Q. Don't fire a warning shot?

16 A. No, sir. If I don't pull a gun I can't fire a warning
17 shot.

18 Q. It would be difficult. All right. You had one other
19 person out there in the field with you at that time.. Harlan
20 was the other guy out there is the only other person out
21 there with you? How many other people were out there when
22 you're locking up?

23 A. Just me and Donnell.

24 Q. And he's behind you on the tractor?

25 A. Yes, sir.

TESTIMONY OF KAMIL NASSRAH

1 Q. Right behind you on the tractor?

2 A. Yes, sir.

3 Q. You've got a trailer with a load full of hay. The
4 trailer is loaded with hay.

5 A. Yes, sir.

6 Q. I'm going to show you a picture. Does any of that look
7 familiar to you?

8 A. Yes, sir.

9 Q. Do you recognize that truck?

10 A. That's my truck.

11 Q. Is this the hay?

12 A. Yes, sir.

13 Q. What's that?

14 A. That's the truck that pulled in in front of me with
15 Aaron Hyatt.

16 Q. Aaron's truck, at least for the purposes of that day.

17 A. Yes, sir.

18 Q. As far as you knew at that time. This is what it
19 looked like, right, that day right at the incident.

20 A. Yes, sir.

21 Q. All right. The tractor with your coworker following
22 is -- it's not visible in this picture, is it?

23 A. No. Something is --

24 Q. There's something back there but it doesn't look like a
25 tractor back there.

TESTIMONY OF KAMIL NASSRAH

- 1 A. I don't know what it is.
- 2 Q. But the tractor is back behind this trailer, correct?
- 3 A. The tractor would have been behind the trailer.
- 4 Q. Okay.
- 5 MR. FRICK: Your Honor, at this time I would move that
- 6 this be in evidence as Defense Number 4.
- 7 THE COURT: Any objection?
- 8 MR. COOK: No objection.
- 9 THE COURT: Without objection it's admitted as Defense
- 10 Number Four.
- 11 (The photograph was received as Defendant's 4.)
- 12 Q. After everything that happens in the driveway, you've
- 13 been struck, you fired the -- you fire a warning shot?
- 14 A. Yes, sir.
- 15 Q. You say he's approaching, you fire at him, correct, at
- 16 Michael Hyatt?
- 17 A. I'm sorry?
- 18 Q. You fired twice, right?
- 19 A. I fired a warning shot to the ground.
- 20 Q. The second shot --
- 21 A. At Michael Hyatt.
- 22 Q. -- is intended for Michael Hyatt.
- 23 A. I'm sorry?
- 24 Q. You're shooting at Michael Hyatt.
- 25 A. Yes, sir.

TESTIMONY OF KAMIL NASSRAH

1 Q. He's coming at you?

2 A. Yes, sir.

3 Q. Do you know what he has in his hand?

4 A. I saw a stick. I couldn't recognize exactly what it is
5 but I know what it looked like.

6 Q. Is your truck still running?

7 A. I believe so.

8 Q. At that point you say you hear Aaron Hyatt say, "Kill
9 him, Daddy, kill him," correct?

10 A. Yes, sir.

11 Q. Okay.

12 A. At that moment -- you mean at which moment, sir?

13 Q. Well, I guess when you're over there on the ground.
14 It's your story, not mine.

15 A. I'm asking you a question about the incident. You said
16 at that moment.

17 Q. Okay. Well, when did you say it?

18 A. At which moment?

19 Q. When did you hear him say it?

20 A. After I got hit and I was running I heard Aaron Hyatt
21 saying, "Kill him, Daddy, kill him."

22 Q. Okay. All right. At some point do you get back to
23 your car -- after the event has occurred, you've been
24 struck, you fired your shots, do you go back to your truck?

25 A. Did I go back to my truck?

TESTIMONY OF KAMIL NASSRAH

- 1 Q. Yes, sir.
- 2 A. I went looking for tissues, paper towels to stop the
- 3 bleeding, to the passenger's side.
- 4 Q. To the passenger's side?
- 5 A. Not to the driver's side.
- 6 Q. Yes, sir. I'm going to show you another picture.
- 7 A. Sure.
- 8 Q. What is that?
- 9 A. That's my truck.
- 10 Q. Okay. Is that the passenger's side?
- 11 A. Yes, sir.
- 12 Q. Is that the glove box?
- 13 A. Yes, sir.
- 14 Q. Did you get the glove box open?
- 15 A. Yes, sir.
- 16 Q. This is how you left it, correct? Is this an accurate
- 17 depiction of how you left the vehicle?
- 18 A. I don't know how I left it, sir, I couldn't barely see.
- 19 I don't know how I left it or if anybody was in it after.
- 20 that, I don't know.
- 21 Q. But you opened the door?
- 22 A. I believe I opened the door, yes.
- 23 Q. You opened the glove box?
- 24 A. And the glove box.
- 25 Q. And I see some tissue.

TESTIMONY OF KAMIL NASSRAH

1 A. Uh-huh.

2 Q. And you've got a .22 caliber in there, too, don't you?

3 A. I always keep a small caliber for coyotes and stuff
4 because we're out in the field, yes, sir.

5 Q. Well, what does a .22 in the glove box do for you if
6 you are in the middle of the field? Never mind.

7 MR. FRICK: I move this in as Defendant's Exhibit
8 Number 5.

9 MR. COOK: No objection.

10 THE COURT: Without objection Defense 5.

11 (The photograph was received as Defendant's 5.)

12 Q. At any point during the event -- I'll just summarize it
13 as the event -- does Aaron Hyatt have a weapon in his hand?
14 Do you see him with a weapon in his hand?

15 A. I couldn't see it.

16 Q. Okay. So he did not point a weapon at you.

17 A. I'm sorry?

18 Q. He did not point a weapon at you.

19 A. I don't know, I did not see.

20 Q. Okay. All right. Well, he didn't point a gun at you
21 while you were standing there or a stick or anything else
22 while he was at his truck.

23 A. I'm really sorry, I cannot hear you, sir. Did he what?

24 Q. You said you did not see him with a weapon.

25 A. No, sir.

TESTIMONY OF KAMIL NASSRAH

- 1 Q. Okay. You did not see him with a weapon before all of
2 this took place while he was standing at his truck, correct?
- 3 A. No, sir. He was looking at the back of his truck.
- 4 Q. You do not see him afterwards with anything.
- 5 A. Afterwards, which is --
- 6 Q. After the event, I'm sorry, I jumped way ahead.
- 7 A. After the event I heard him saying something about a
8 gun.
- 9 Q. Heard him say something about a gun?
- 10 A. Yes, sir.
- 11 Q. How do you know it was him?
- 12 A. How do I know it was him?
- 13 Q. Yeah. Do you know him well enough to recognize his
14 voice?
- 15 A. I believe I recognized Aaron's voice, he threatened me
16 several times. I know what his voice is like, sir, you
17 don't forget.
- 18 Q. All right. Mr. Grier asked you a little bit about this
19 but I'm going to show you this. Look through all three
20 pages, we don't have to read it verbatim, just glance over
21 it. Do you recognize what that is?
- 22 A. It's my signature.
- 23 Q. Okay. But what is it?
- 24 A. Suspect rights, Miranda warning.
- 25 Q. Okay. What's the next page? Does it look familiar to

TESTIMONY OF KAMIL NASSRAH

1 you? Yes or no.

2 A. I don't know.

3 Q. Do you have any idea what that piece of paper is? From
4 your recollection, not reading from the top, as I hand it to
5 you do you recall ever seeing that piece of paper before?

6 A. No.

7 Q. Okay. Do you recall talking to law enforcement on the
8 day of the event?

9 A. That was before they picked me up and took me to the
10 hospital and they were talking. I don't know, people were
11 talking. There were a lot of people talking.

12 Q. There were a lot of folks out there.

13 A. I'm sorry?

14 Q. There were a lot of folks out there. Who did you talk
15 to on this statement, do you know?

16 A. I can't remember. I just -- they were talking and I
17 was answering whatever, I don't remember.

18 Q. You don't recall this statement?

19 A. No, sir.

20 Q. Do you deny giving a statement?

21 A. No.

22 Q. Okay. Let me see it back for a second. You don't
23 recall saying that you were sitting in your car with your
24 head out the window when you got hit?

25 A. Do what, sir?

TESTIMONY OF KAMIL NASSRAH

1 Q. You don't recall telling law enforcement on that day
2 that you were sitting in your car with your head out the
3 window when you were struck?

4 A. In my car?

5 Q. The truck. You don't remember?

6 A. Sitting in my truck, is that what it said?

7 Q. Uh-huh.

8 A. Can I see that, please?

9 Q. Here. Why don't you read through it, not out loud,
10 just glance through it.

11 A. Where is it, sir?

12 Q. All right. "He started yelling, 'Your days are
13 numbered.' I couldn't go anywhere. His truck stopped me
14 from leaving, there was a tractor behind me, I was stuck.
15 Took off my seat belt, got my cellphone out, I stuck my head
16 out and looked out the window of my truck." Does it say
17 that right there?

18 A. That's right, I looked out my truck.

19 Q. "I took off my seatbelt and got my cellphone out." So
20 are you telling me now that you've still got your seatbelt
21 on while you were standing on the running board?

22 A. Can you read that again, sir?

23 Q. Sure. "I stuck my head out and looked out the window
24 of my truck." Let's see, I'm getting my lines mixed up. "I
25 couldn't go anywhere, the truck stopped me from leaving,

TESTIMONY OF KAMIL NASSRAH

1 there was a tractor behind me. I was stuck. I took off my
2 seatbelt, got my cellphone out, I stuck my head out."

3 A. Got myself what?

4 Q. "Cellphone out. I stuck my head out and looked out the
5 window of my truck to see what Aaron Hyatt was doing."

6 A. Right. Okay.

7 Q. So were you still sitting in the truck or were you
8 standing?

9 A. That's not what you asked me. You asked me if I got
10 struck while I was still in the truck and the statement said
11 that I did. Did it say it in there? I didn't see that.

12 Q. "I believe I dialed the number 9 on my phone and I was
13 hit on the back of my head with something."

14 A. Okay. Did it say I was struck while I was still
15 sitting in the truck?

16 Q. That's what I'm asking you. What is your testimony?

17 A. You said it's in here. You said do you remember saying
18 it in here. I don't see it in here.

19 Q. Okay.

20 A. Is it in here or is it not?

21 Q. Does it say you were standing on the running board of
22 your truck?

23 A. Yes, sir. Does it say I was sitting in my truck when I
24 was struck? You told me that's what it said.

25 Q. Wait a minute. If you're saying that it says it's on

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1 the running board and I am saying the other thing, it
2 doesn't say either one of them, how are either one of us
3 right?

4 A. No, sir. You said in the testimony I said I was struck
5 in the head while I was sitting in my truck.

6 Q. Okay. See where I've got my finger right here?

7 A. Uh-huh.

8 Q. Read that line.

9 A. "I do not know how I got" -- I can't.

10 Q. Hold it.

11 A. "I do not know how I got out of my truck. I was
12 standing on the running board, one foot on the running
13 board," I said that several times already, "and one foot
14 still in the truck. You even asked me if I was in and out
15 and I said I don't know what you call it, is that in and
16 out? Am I correct, sir?

17 Q. All right. Mr. Nassrah, whatever you say, sir. But
18 you said on the 16th you don't know how you got out of your
19 truck.

20 A. Sir, you get struck and your head is opened that wide,
21 you expect me to remember how I got out of the truck?

22 Q. You somehow remembered how to give them this statement.

23 A. What does the statement say, sir?

24 Q. I have tried to show it to you, you refuse to read it.

25 A. You're asking me too many questions and you're not

TESTIMONY OF KAMIL NASSRAH

1 telling me what you want me to say.

2 MR. FRICK: Your Honor, at this point I would move this
3 statement into evidence as a prior inconsistent statement.

4 THE COURT: Any objection from the State?

5 MR. COOK: No objection from the State.

6 THE COURT: Without objection the document is admitted
7 into evidence as defendant's next in order.

8 (The statement was received as Defendant's 6.)

9 THE COURT: Sir, you're doing fine, I know you're
10 frustrated, just answer the question that's asked and don't
11 ask the lawyer questions. If you answer the question that
12 is asked this will go by a lot quicker and a lot more
13 smoothly. Okay?

14 THE WITNESS: Yes, sir.

15 THE COURT: Thank you, sir.

16 MR. FRICK: Beg the Court's indulgence one moment.

17 THE COURT: Yes, sir.

18 (Break in proceedings.)

19 Q. Let me show you one more picture, Mr. Nassrah. Do you
20 recognize anything in this picture?

21 A. I believe that's the head of the part of my truck and
22 the trailer. That's my tractor, this is Mike's truck.

23 Q. This is the way it was on that day in question?

24 A. I don't know.

25 Q. As you leave the field is what I'm talking about.

TESTIMONY OF KAMIL NASSRAH

1 A. As we leave the field he was behind me. How far, how
2 close --

3 MR. GRIER: Judge, I can't hear him, the mic. has
4 gotten turned.

5 THE COURT: Just try to speak loud. They need to talk
6 loud to you and you need to talk loud to everybody else. Go
7 ahead.

8 A. I'm sorry.

9 Q. It's all right, I had you turned sideways. So this is
10 the tractor and that's your trailer.

11 A. That's my trailer, yes, sir.

12 MR. FRICK: Your Honor, at this time I would move this
13 in as defense next.

14 THE COURT: Without objection defendant's next in order
15 is admitted into evidence.

16 (The photograph was received as Defendant's 7.)

17 MR. FRICK: Thank you, sir, that's all of the questions
18 I have.

19 THE COURT: Any redirect, Solicitor?

20 MR. COOK: Just briefly. May I approach, Your Honor?

21 THE COURT: Yes, sir.

22 (A bench conference was held and a recess was
23 taken.)

24 THE COURT: All right. Redirect?

25 MR. COOK: Thank you, Your Honor.

TESTIMONY OF KAMIL NASSRAH

1 REDIRECT EXAMINATION

2 BY MR. COOK:

3 Q. Mr. Nassrah, the statement that Mr. Frick was showing
4 you, that was just entered into evidence, does this look
5 like the same thing?

6 A. The what?

7 Q. The statement that you were shown, does it look like
8 the same one that Mr. Frick just showed you? And there's
9 some different stuff highlighted on mine.

10 A. Yes, sir.

11 Q. You agree this is a copy of your statement?

12 A. Yes, sir.

13 Q. Okay. Can you tell us when the statement was given,
14 can you read that?

15 A. Date 09-16-10.

16 Q. September 16th of 2010?

17 A. Yes, sir.

18 Q. And your signature is at the bottom?

19 A. Yes, sir.

20 Q. Is this statement handwritten or is it typed?

21 A. It's typed.

22 Q. On September 16th, did you have a typewriter or a
23 computer with you out at the scene?

24 A. No, sir.

25 Q. So you personally didn't type this.

TESTIMONY OF KAMIL NASSRAH

1 A. No, sir.

2 Q. So you orally gave this statement to somebody from law
3 enforcement.

4 A. Yes, sir.

5 Q. But after you gave the statement to the best of your
6 knowledge they captured what you had told them and that's
7 why you signed it, correct?

8 A. They were asking all kinds of questions. I really
9 don't remember who -- whatever they asked me I was answering
10 the questions.

11 Q. So -- and I know you signed it and it's true and
12 correct, but there is a possibility because you didn't
13 personally write this something may not be exactly recorded
14 the way that you recited it to law enforcement.

15 A. I don't remember.

16 Q. Well, where I'm going with this is Mr. Grier and
17 Mr. Frick are talking about you got your head out the window
18 and looking forward, you say you were on the running board
19 looking out. That's not exactly the same thing but you
20 didn't actually write this statement, correct?

21 A. No, sir.

22 Q. Another issue in the statement when you were asked how
23 far out in the field you went and where you stopped when you
24 were leaving the field. They told you that yesterday you
25 testified that you stopped in front of Mr. Hyatt's house.

TESTIMONY OF KAMIL NASSRAH

1 A. That was a completely different question, sir.

2 Q. Okay. Well, today you testified and said that you
3 pulled out far enough that your truck, the hay, the tractor
4 and the rake could fit out of the gate.

5 A. Yes, sir.

6 Q. What I have underlined in blue, this is from your
7 statement on September 16th. Can you read that?

8 A. "Me and Harlan Melton stayed behind to lock the gate.
9 After we locked the gate we start out on the road about
10 150 feet past Mike Hyatt's house.

11 Q. Okay. Stop right there. So on the 16th -- and this is
12 all right after this happened you said the same thing you
13 said today is you came out of the gate, stopped and about
14 150 feet later you passed Michael Hyatt's house, correct?

15 A. (Inaudible.)

16 Q. Okay. So what you said on the 16th is consistent with
17 what you said today that there was --

18 MR. FRICK: Your Honor, is he testifying for the --

19 THE COURT: Sustain the objection, leading question.

20 MR. COOK: Nothing further from the State, Your Honor.

21 THE COURT: All right. Thank you, sir, you may step
22 down. Let me see the lawyers up here real quick.

23 (Bench conference was held.)

24 THE COURT: All right. Ladies and gentlemen, earlier
25 today I indicated that I had some personal business matters

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1 that I needed to take care of this afternoon, that time has
2 come. My plan was to run until 3:00 p.m. today, however the
3 next witness which the State intends on calling may take
4 longer than that, so I don't want to get in a situation
5 where the witness can't talk to anybody between now and
6 tomorrow morning when we reconvene, I don't like
7 piece-mealing testimony and so we will just deal with that
8 first thing in the morning. So what I'm telling you is I
9 will excuse you for the rest of the day. When you go home
10 this evening don't talk to your spouse, to your girlfriend,
11 boyfriend, friend, Facebook, whatever, Instagram, about the
12 trial, about what's going on. Don't do any independent
13 research on it, don't Google our names, my name, the
14 lawyers' names or witnesses, don't do any of that, you
15 cannot do that. Your deliberations are controlled by the
16 evidence in this courtroom and only in this courtroom. All
17 right. Having said that tomorrow morning I think everybody
18 has kind of gotten used to the cold so there probably won't
19 be that delay, let's try -- I want you in your jury room
20 tomorrow at 9:30 so we can start. I anticipate running a
21 little bit later in the afternoon tomorrow so we can try to
22 wrap this case up this week. Okay. So be in the jury room
23 tomorrow morning at 9:30, y'all have a good evening.

24 (The jury left the courtroom.)

25 THE COURT: Anything else before we adjourn for the

TESTIMONY OF KAMIL NASSRAH

1 day? All right. See y'all in the morning, be ready to roll
2 at 9:30.

3 (Court adjourned for the evening and resumed at
4 9:30 a.m. on January 7th, 2014.)

5 THE COURT: Any issue before we bring the jury in?

6 MR. COOK: None from the State.

7 MR. GRIER: None from the defense.

8 THE COURT: Bring them in.

9 (The jury return to the courtroom.)

10 THE COURT: Let the record reflect all jurors are
11 present. Good morning members of jury, hope you had a good
12 evening, not as cold a morning, although I did have to stop
13 by Advanced Auto and buy my son a new battery this morning.
14 And I didn't like jumping off my car this morning at 6:45 in
15 the morning, so bear with us. All right. Are y'all ready
16 to proceed?

17 MR. COOK: I think we are ready, Your Honor.

18 THE COURT: All right. State can call it's next
19 witness.

20 MR. COOK: State calls Donnell Melton.

21 The witness, HARLAN DONNELL MELTON, was first
22 duly sworn and testified as follows, on:

23 DIRECT EXAMINATION

24 BY MR. COOK:

25 Q. State your name, please.

HARLAN DONNELL MELTON

- 1 A. Harlan Donnell Melton.
- 2 Q. Do you go by Harlan or Donnell?
- 3 A. Either one.
- 4 Q. How old are you, Mr. Melton?
- 5 A. I am 41.
- 6 Q. What do you do for a living?
- 7 A. I'm a farm technician.
- 8 Q. You work for Kamil Nassrah?
- 9 A. Yes, sir.
- 10 Q. How long have you worked for Kamil?
- 11 A. Since 2006, but I took a break in between a little
- 12 while here and there.
- 13 Q. What do you do for Kamil generally?
- 14 A. I maintain farm equipment, take care of the animals,
- 15 make sure all of the stuff on the farm was going right.
- 16 Q. Do you know Michael and Aaron Hyatt?
- 17 A. Not personally. I know who they are when I see them.
- 18 Q. Were you working with Kamil on September 16, 2010?
- 19 A. Yes, sir.
- 20 Q. Do you remember what you were doing that day?
- 21 A. Cutting hay, bailing hay.
- 22 Q. Where at?
- 23 A. On Merle Lane.
- 24 Q. Can you see this image on your screen?
- 25 A. No, there ain't nothing on there.

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- 1 THE COURT: Touch it.
- 2 A. Okay. Yes, sir.
- 3 Q. Can you make a mark on your screen with your finger
- 4 where the field is? Can you tell?
- 5 A. (Witness complies.)
- 6 Q. Okay. So that's Kamil hay field?
- 7 A. Yes, sir.
- 8 Q. All right. How long were y'all out there?
- 9 A. It had been pretty much since the dew dried that
- 10 morning because you can't bail hay until it dries, so by the
- 11 time they dew dries until 3:30 or 4:00, or something like
- 12 that.
- 13 Q. The 16th, was that the first time y'all had been out
- 14 there that week?
- 15 A. No, sir.
- 16 Q. Y'all had been out there all week?
- 17 A. Yes, sir, two or three days.
- 18 Q. Okay. Were you working with Kamil every day that week?
- 19 Had you been out there with the crew each time?
- 20 A. Yes, sir.
- 21 Q. Were you out there on the 13th?
- 22 A. I wasn't there at the time of the gate locking incident
- 23 but I came later.
- 24 Q. On the 16th who were the last people to leave the
- 25 field?

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1 A. Kamil left in front of me, I was the last one out of
2 the gate.

3 Q. What's your standard procedure when you're finishing up
4 for the day -- what all do you have to do before you can go
5 home?

6 A. Well, we had to load the last load of hay, strap it
7 down, then I had to reattach the rake. And after we did all
8 of that we came out of the gate, he pulled up far enough for
9 me to get out and waited on me to lock the gate.

10 Q. So it's just you and Kamil out there at this time?

11 A. Yes, sir, everyone else had left.

12 Q. What was Kamil driving?

13 A. A white F350 dually pulling a trailer load of hay.

14 Q. What were you driving?

15 A. I was driving a Komodo Tractor with a hay rake behind
16 it.

17 Q. How big is this -- can you tell the jury how big this
18 rake is?

19 A. The length of it is probably 15 or 20 feet, and the
20 length of the tractor is probably 15 feet or so.

21 Q. So it's a pretty big rig?

22 A. It's pretty long, yes, sir.

23 Q. So Kamil is leading out and you are behind him?

24 A. Yes, sir.

25 Q. When you come out -- can you mark where the gate is on

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1 that field? Do you know where the gate comes out that turns
2 into Merle Lane?

3 A. That's not it. It's right in there, right at the
4 corner of the field where it transitions from the green to
5 not green.

6 Q. Okay.

7 A. It's right in there somewhere. Right before that
8 little driveway that curves out, it's right there at that
9 driveway.

10 Q. All right. So how far did y'all pull out before you
11 locked the gate?

12 A. It was at least -- I would say over 100 feet away from
13 the gate because the length of the truck and the tractor and
14 all of the implements and the trailer and all, it's pretty
15 long.

16 Q. So you say 100 feet. Are you measuring from the front
17 of Kamil's truck to the gate?

18 A. At least, yes, sir. That's a pretty long rig, the
19 rake, all of that, it's long.

20 Q. With your finger can you mark where Michael Hyatt's
21 house is? Can you circle it?

22 A. I'm thinking that's it right there.

23 Q. So you've got the gate marked and you've got Michael
24 Hyatt's house marked.

25 A. Yes, sir.

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1 Q. Can you make a mark where Kamil stopped when y'all came
2 out of the gate? Can you guess about where he was?

3 A. While I was locking the gate?

4 Q. Right.

5 A. It wasn't all the way up to his house, I'm pretty sure
6 we were in front of his property though because I'm not sure
7 where his property line is.

8 Q. Roughly right there?

9 A. Yeah. It's hard to judge distance on a little map.

10 Q. I know, I understand. So Kamil's truck -- if you were
11 sitting in Kamil's truck when he stopped and you looked out
12 the driver's side, would there be trees or would it be
13 Michael Hyatt's house?

14 A. I can't say for sure because --

15 Q. You were at the back?

16 A. -- I was all the way behind him. I couldn't tell what
17 was directly in his driver's window. He could probably see
18 the house but he was probably still in front of the trees.

19 It's hard to say.

20 Q. Well, I'll ask you this, how far did you have to walk
21 from your tractor back to the gate to lock it?

22 A. 20 feet, 30 feet.

23 Q. So not far.

24 A. Not far.

25 Q. So after you locked the gate and back on the tractor,

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1 what do y'all do next?

2 A. Proceed to leave.

3 Q. When you leave, do you pass Michael Hyatt's house?

4 A. Yes, sir.

5 Q. Did you see Michael Hyatt?

6 A. Yes, sir.

7 Q. What was he doing?

8 A. He was standing in his yard with a large axe handle
9 piece of wood, some kind of stick in his hand.

10 Q. Did he say anything to you?

11 A. Not that I recall.

12 Q. Did you say anything to him?

13 A. No, sir.

14 Q. Did you hear Kamil say anything to him?

15 A. No, sir.

16 Q. Did you stop your tractor in front of his house?

17 A. No, sir.

18 Q. Did Kamil stop his truck in front of his house?

19 A. No, sir.

20 Q. All right. So y'all kept riding past Michael Hyatt's
21 house.

22 A. Yeah.

23 Q. What happened next?

24 A. About right here at this driveway, right in there,

25 Aaron Hyatt had blocked the road with his --

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1 Q. Stop right there. At that -- did you come to a stop?

2 A. Yes, sir.

3 Q. Why did you stop?

4 A. I didn't really know at the time. I couldn't see what
5 was directly in front of me because all I could see was a
6 trailer with hay on it and I had to stop all of the sudden.
7 I knew something was wrong because it just don't stop like
8 that.

9 Q. Once you stopped behind the hay, what happened next?

10 A. Mr. Michael Hyatt come running by the tractor, kind of
11 looked and I seen him come by.

12 Q. Was he on your left or your right?

13 A. My left.

14 Q. Was he in his truck? Was he running? What was he
15 doing?

16 A. He was on foot. I can't really say he was running but
17 he was moving on pretty good by me on foot.

18 Q. So after Michael Hyatt comes past you what do you do?

19 A. I locked the tractor down where it wouldn't roll and I
20 jumped off, it takes a second or two, jumped off, ran in
21 front of the tractor to the passenger side door of the
22 truck.

23 Q. Ran up to the passenger side door of whose truck?

24 A. Kamil's truck.

25 Q. When you got up there what did you see?

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1 A. He was being attacked by Michael Hyatt, he was hit in
2 the head with a piece of wood.

3 Q. Did you see Kamil get hit?

4 A. Yes, sir, I did.

5 Q. Where was Kamil when he got it?

6 A. He was kind of half in and half out of his truck
7 standing up looking forward.

8 Q. Where were you when you see this?

9 A. Passenger door of the truck -- passenger door of the
10 truck opening it.

11 Q. Were the doors opened?

12 A. I opened them.

13 Q. So how far are you from Kamil when he gets hit?

14 A. The width of the truck.

15 Q. Okay.

16 A. Closer than me and you.

17 Q. Okay. What did Kamil do when he got hit?

18 A. Kind of went down, down towards the ground. The truck
19 is high, after you go down so far you can't see so I don't
20 know if he was laying flat or scrambling or what.

21 Q. Because you're on the opposite side of the truck.

22 A. I was on the opposite side of the truck.

23 Q. What happened next?

24 A. He comes back into view in front of the truck and he
25 was bleeding pretty bad already.

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1 Q. Where was he bleeding from?

2 A. From the head, the top of his head, up there somewhere.

3 Q. Are you still at the passenger's side of Kamil's truck?

4 A. Yes, sir, I'm on the passenger's side. I don't recall
5 if I'm still standing inside, you know, where the doors open
6 or I had done moved away, but I know I'm on the right side
7 of the truck.

8 Q. All right. Now that you've come up to the truck, what
9 is in front of Kamil's truck?

10 A. Aaron Hyatt's green Ford.

11 Q: How close is Aaron's truck to Kamil's truck?

12 A. I could probably extend my arms and touch both of them.

13 Q. Where is Aaron?

14 A. He's right there near his truck. He's not in it but he
15 is outside of it standing near it right there somewhere.

16 Q. So you're at Kamil's passenger side, Aaron is at his
17 truck. So where is Michael Hyatt right now?

18 A. He's coming around following Kamil. Kamil is coming
19 between the two trucks and he's coming right with him.

20 Q. Does Michael Hyatt still have the stick in his hand?

21 A. Yes, sir.

22 Q. And I know it's kind of small but let me do this
23 picture. All right. Do you recognize where this is now?

24 A. Yes, sir.

25 Q. Will you circle Michael Hyatt's house?

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1 A. (Witness complies.)

2 Q. Can you circle where Aaron Hyatt's truck was?

3 A. His truck was right here in these little trees right
4 there because Kamil's truck stopped right there.

5 Q. Okay. So which way did Kamil go when he's going in
6 between the trucks?

7 A. His truck is parked like this. He comes from this side
8 and goes between the two trucks that way.

9 Q. Okay. So he goes toward -- is that a driveway?

10 A. Yes, sir. That's a driveway to this house right here.

11 Q. So he starts moving towards that driveway.

12 A. Yes, sir.

13 Q. So Michael Hyatt is here with the stick, Kamil is here.
14 What happens next?

15 A. Well, he pulls the gun out, tells him to back up, stop,
16 whatever he said, I'm really not for sure his exact words.

17 Q. Where did Kamil pull a gun from? Did you see Kamil
18 pull the gun?

19 A. Yes, sir.

20 Q. Where was the gun?

21 A. It was in his -- it was either in his pocket or his
22 waistband, I don't even know. I wasn't paying attention to
23 exactly where he had his stuff, but it was on his right side
24 somewhere.

25 Q. Well, had Kamil had the gun out prior to that?

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- 1 A. No, sir, other than to pick it up and put it in his
2 waistband.
- 3 Q. Was that the earlier in the day, or when was it?
- 4 A. It was during the day some time or another, I don't
5 remember particularly the time.
- 6 Q. From the time he stopped right here at this location,
7 when was the first time you saw the gun?
- 8 A. Are you talking about when he stopped from that point
9 until I saw the gun?
- 10 Q. Right.
- 11 A. It was just a few minutes. It was after he'd been hit.
- 12 Q. Did you see him shoot the gun?
- 13 A. Yes, sir.
- 14 Q. How many times?
- 15 A. He shot once into the ground, and then after Michael
16 Hyatt wouldn't stop coming towards him he shot again.
- 17 Q. Where is Aaron while all of this was going on?
- 18 A. He is still right there beside his truck, right in the
19 general area -- I'm watching this. I can't watch that all
20 at the same time so I'm not sure if he moves a few feet
21 either way or whatever, but he's still right there in the
22 area.
- 23 Q. Did you hear Aaron say anything?
- 24 A. I couldn't tell what was -- there was a lot of shouting
25 and stuff going on.

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1 Q. When Kamil shoots Mike. Where did he shoot Mike?

2 A. To me it looked like he shot him dead in his gut, but
3 from a side view you can't really tell this way or that way.
4 He shot him below the ribs somewhere.

5 Q. What did Mike do when he got shot?

6 A. He fell.

7 Q. Did he fall flat on the ground?

8 A. He fell kind of on his side, I heard him go, "Ugh."

9 Q. After Mike is shot, falls down, what happens next?

10 A. He lays there for a little bit and Aaron runs over to
11 his side, and he's there for a few seconds, maybe up to a
12 minute, he finally helps him up and takes him to the back of
13 Aaron's truck. After that I didn't look at him anymore.

14 Q. After Kamil shot Mike in the stomach, where did Kamil
15 go?

16 A. He kind of was over here. Next to these trees there's
17 a little old fence there, he was kind of near it.

18 Q. Was Kamil obviously injured?

19 A. Yes, sir, he was injured pretty bad.

20 Q. Did you see his injury?

21 A. Yes, sir.

22 Q. Where was it?

23 A. It was kind of in this area right here.

24 Q. Was it -- can you describe the injury?

25 A. It was a cut probably that long and it had already

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1 spread open wide enough to where I could lay my finger in
2 it. I was trying to put pressure on it to keep it from
3 bleeding too bad.

4 Q. So you're taking care of Kamil over here and Aaron is
5 taking care of Michael over here.

6 A. Yes.

7 Q. During the course of that time was there any other
8 altercation or threats between anyone?

9 A. It was kind of a standoff. Because Aaron had picked
10 up -- he either picked up the stick that his dad had or
11 picked up something, anyway and he had -- I know at one time
12 he had a hammer and he threw it across the truck sort of in
13 this area here. I don't know if he was trying to hit Kamil
14 or me, I don't really know. Whenever he picked up whatever
15 he had I went to the back to the truck and grabbed a wrench,
16 a big wrench about this long and --

17 Q. When did you grab that wrench?

18 A. It was after he'd been shot. Because I didn't know if
19 Aaron Hyatt was going to come and try to finish what he had
20 started or not, but I wasn't going to stand by and just take
21 it, you know.

22 Q. Right. Where is the gun at this point?

23 A. I'm not sure. After the shot I didn't see the gun
24 anymore.

25 Q. Did you ever threaten anybody?

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1 A. No. I made myself known that I would defend myself if
2 he came near me.

3 Q. Did you ever chase Aaron Hyatt?

4 A. No, sir.

5 Q. Did you ever chase Michael Hyatt around?

6 A. No, sir.

7 Q. Where were you when law enforcement arrived?

8 A. I was standing beside Kamil trying to apply pressure to
9 the wound to keep him from bleeding real bad.

10 MR. COOK: Thank you, Mr. Melton. Answer anything that
11 they might have for you. Okay?

12 THE WITNESS: Yes, sir.

13 THE COURT: Mr. Grier?

14 MR. GRIER: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MR. GRIER:

17 Q. Mr. Melton, you've worked for Kamil since 2006 and you
18 took a break some time in there, it doesn't matter. But how
19 long have you known Kamil?

20 A. Since I started working for him.

21 Q. Okay. Does he always carry a gun?

22 A. He has one most of the time, yes, sir.

23 Q. On this particular day the State's lawyer asked you
24 about it. Did I understand you to say he took the gun out
25 and put it in his waistband, in his band?

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1 A. He had to at some point or another.

2 Q. Well, did you hear Mr. Nassrah say he carried one all
3 of the time?

4 A. I don't have to know he said it because I could see it.

5 Q. He said he carried it on him all of the time.

6 A. Most of the time he does.

7 Q. But at some point this day he takes it out and puts it
8 in his waistband while y'all are out in the field or
9 something? Y'all are out there getting hay, he goes, gets
10 the gun and puts it in his waistband?

11 A. I'm assuming so, it got there somehow.

12 Q. Well, was that like right --

13 A. I'm sure he had it while he was in the tractor bailing
14 hay. I can't say he put it in there at 9:45 a.m. or not, I
15 can't say that because I don't know.

16 Q. Why would he take it out and put it in on him while he
17 is bailing hay?

18 A. Because he had been harassed and bullied by Aaron
19 Hyatt.

20 Q. Okay. So he -- that was the reason for it, he doesn't
21 just keep one on him.

22 A. He keeps one on him for self-defense.

23 Q. Okay.

24 A. I've never saw him pull it out.

25 Q. Okay. So when he was going to leave that field he was

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1 going to have a gun on his waistband because he felt he'd
2 been threatened and harassed by our clients.

3 A. Yes, sir, he had felt threatened.

4 Q. Okay. Is it your testimony that from where Kamil
5 pulled out before you -- when you were pulling out of the
6 field, Kamil pulled out to wait on you that he could see
7 Michael Hyatt's house probably from where he was sitting to
8 wait on you?

9 A. Probably he could see it. I can't say what that man
10 saw because --

11 Q. Okay. Well --

12 A. -- I don't know what he was looking at.

13 Q. Okay. Well, could you see Michael Hyatt's home from --

14 A. I could only see the truck and trailer in front of me.
15 I'm not particularly sure if I looked that way and could see
16 his house or not, you know, that wasn't on my mind.

17 Q. So you pulled out of the field, you locked the gate and
18 Kamil was waiting on you and then y'all take off.

19 A. Yes, sir..

20 Q. And didn't stop?

21 A. Not in front of his house, we stopped in front of that
22 driveway.

23 Q. Well, you know, and you had to stop when he stopped.

24 A. We had to stop.

25 Q. You didn't voluntarily stop at any point.

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1 A. No, sir.

2 Q. You and Mr. Nassrah didn't stop and have words with
3 Michael Hyatt at any point on that last trip out of the hay
4 field until that confrontation happened.

5 A. No, sir, not at all.

6 Q. Okay. Well, you gave a statement -- I assume you did
7 and I'm going to ask you if you did.. Do you recognize this
8 document, Mr. Melton?

9 A. That is the statement that I was verbally giving to
10 Investigator Crump. That was Investigator Crump's
11 handwriting I assume because that's his name, that's not my
12 handwriting.

13 Q. Okay. So that is not your handwriting?

14 A. No, sir.

15 Q. But you were questioned, I assume -- where were you at
16 when you were questioned, do you recall? Were you in the --

17 A. I was sitting in a patrol car I'm thinking. I don't
18 really know what kind of vehicle it was, I don't remember.

19 I was inside a vehicle.

20 Q. You were questioned on the scene and this resulted from
21 that questioning, correct?

22 A. Yes, sir.

23 Q. Okay. Do you recall -- well, do you recall being
24 asked, "Is there anything you would like to add to the
25 statement in responding? None of this would have happened

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1 if Mike wouldn't have stopped us and his son didn't block
2 the road." What does that mean?

3 A. Let me see that, please.

4 Q. Yeah. Okay.

5 A. Well, Aaron is the one that stopped us, maybe he
6 switched the names or whatever. Aaron was the one that
7 stopped us --

8 Q. Okay.

9 A. -- in the road in front of us.

10 Q. Well, do you know --

11 A. I didn't write this so I can't say how he put it down.

12 Q. And I understand you didn't write it. But this
13 statement says -- and you signed it -- that none of this
14 would have happened if Mike hadn't stopped us and his son
15 didn't block the road. Doesn't that imply that you stopped
16 and had something happen with Mike before his son blocked
17 the road?

18 A. Again, I did not write that.

19 Q. So you deny that --

20 A. Under the duress I was in maybe I didn't read it
21 correctly how he wrote it, I don't know. It's been three
22 and a half years.

23 Q. But you made a statement in the police car, right, or
24 in a car -- it wasn't in y'all's cars. Were there any other
25 cars there? It wasn't in a private citizen's car or

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1 anything.

2 A. No, sir, it was a county car.

3 Q. By law enforcement. Okay. Do you remember getting
4 phone calls while you were in there, or being on the phone
5 and talking to people while you were in that police car?

6 A. Yes, sir. I talked to my wife and I think I talked to
7 Kamil's girlfriend.

8 Q. Well, do you remember -- okay.

9 A. I think I did. I don't know if I was in the car when I
10 talked to her but I don't remember.

11 Q. Okay. Do you recall saying on the phone to whoever you
12 are talking to, "Don't say anything about this?"

13 A. I can't remember a conversation I had on the phone
14 three and a half years ago.

15 Q. Okay. So you didn't do any preparation for today to
16 refresh your memory or anything about it?

17 A. I have no reason to, I'm not on trial.

18 Q. Well, I mean, you're trying to take away a man's
19 freedom, don't you think you need to be able to have
20 confidence in what you're saying today?

21 A. I do have confidence in what I'm saying today.

22 Q. Well, you're saying you don't remember.

23 A. You're asking me about a conversation I had on the
24 phone, it had nothing to do with that man hitting that other
25 man in the head with a stick.

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1 Q. Oh, you don't think it has anything to do with it?

2 A. That happened after the fact, how would that have
3 anything to do with it?

4 Q. Well, do you recall saying, "I can't talk because they
5 record what you're saying in these police cars?"

6 A. Again, I state that I don't remember the conversations.

7 Q. Okay. Did you ever see -- once this confrontation
8 happened -- once you left the hay field and you're leaving,
9 did you ever see Michael Hyatt or Aaron Hyatt with a gun?

10 A. I'm not sure if I saw one that day, but I have seen one
11 while we were passing and he was sitting in his swing
12 outside there with a lever action rifle in his hand.

13 Q. Okay. On his own property in his swing.

14 A. Yes, sir.

15 Q. But you're not sure whether you saw one this day.

16 A. I don't remember if it was that day or a previous day.

17 Q. Okay. Anybody point a gun at you? Did Michael Hyatt
18 or Aaron Hyatt -- do you think you would remember if they
19 would have pointed a gun or pulled a gun?

20 A. I would have remembered if he pointed it at me.

21 Q. You don't think you would remember if they had one?

22 A. I said he had one. He was sitting in his swing with a
23 lever action rifle in his hand.

24 Q. Mr. Melton, I said that day. Do you remember what day
25 I am talking about? I'm talking about the day this

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1 confrontation and the reason we're in this courtroom, I'm
2 talking about that day now. Okay?

3 A. Okay.

4 Q. All right. Did you see a gun?

5 A. I'll answer this question again for you. I don't
6 remember if it was that day I saw the gun or a previous day.

7 Q. Okay. Once you left the hay field that last time that
8 year, that day, and this -- whatever happened from the time
9 you left that hay field until this incident was over and the
10 police arrived, did you ever see Michael Hyatt or Aaron
11 Hyatt with a gun?

12 A. From the time we left the hay field until Kamil got hit
13 in the head I did not see Michael Hyatt with a gun.

14 Q. Did you see Aaron Hyatt with a gun?

15 A. I did not see a gun.

16 Q. Okay. All right. When you left the hay field that day
17 for the last time, did you see Michael Hyatt with any type
18 of weapon?

19 A. Yes, sir.

20 Q. Okay. And what did he have?

21 A. That big stick.

22 Q. What was he doing with it?

23 A. He was standing outside in his yard shaking it like.

24 Q. Okay. You didn't stop as a result of him doing that?

25 A. No, sir.

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1 Q. Okay. All right. Well, you have to stop. You're on
2 the tractor and you have to stop.

3 A. I have to.

4 Q. You don't know why you are stopping exactly at that
5 time.

6 A. Not at that particular second I do not know why we are
7 stopped.

8 Q. Michael Hyatt comes running by you or moving, whatever,
9 however he was moving.

10 A. He was coming by me, yes, sir.

11 Q. Did he appear to be moving as fast as he could?

12 A. He was going pretty good for his age, I guess.

13 Q. Okay. Now, you're right behind the trailer with the
14 hay on it. You're on your tractor when he runs by?

15 A. Yes, sir. I'm still sitting in the seat.

16 Q. So he's passed you. And how long is that trailer?
17 33 feet, I believe that's the testimony, something like
18 that, in that neighborhood?

19 A. Yeah, something like that, close.

20 Q. All right. And is he carrying anything?

21 A. Yes, sir.

22 Q. Do you see it?

23 A. Yes, sir.

24 Q. Now, do you recall which hand he was carrying it in?

25 A. Not particularly, no. He had it in his hands.

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1 Q. I understand.

2 A. He could have had both hands on it.

3 Q. Okay. He did or he may have?

4 A. He could have. I mean, you know, three and a half
5 years is a long time to remember which hand somebody has got
6 something in.

7 Q. Mr. Melton, I know it has been a long time. Okay. So
8 Mr. Hyatt has passed you. How long after he passes you does
9 it take you to get off of the tractor?

10 A. Just a couple of seconds.

11 Q. All right. And you've got to get off on the left-hand
12 side.

13 A. Yes, sir.

14 Q. Now, your testimony a minute ago was you jumped off,
15 ran around the front of the tractor behind the trailer and
16 up the right-hand side of that truck, opened the door?

17 A. Yes, sir.

18 Q. And at that point you see Mr. Michael Hyatt strike
19 Kamil.

20 A. Yes, sir.

21 Q. Now, Kamil is, if I recall correctly, standing part in
22 and part out of the truck, perhaps one foot in the truck.
23 But his body is outside of the truck on the running board.

24 A. Yeah.

25 Q. Doesn't it kind of have to be?

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1 A. If you've got one foot out part of you is probably
2 outside of the truck, yeah, I guess so.

3 Q. Okay. And why didn't you just follow Michael Hyatt and
4 try to prevent what appeared to be -- I mean, you could have
5 run up behind him. He's an old man not moving that fast
6 apparently, you feel like -- could you run a lot faster than
7 him do you think?

8 A. I doubt it. I have a steel rod in my leg, I can't even
9 straighten out my arm anymore. I should be on disability
10 but I try not to be a burden to the government.

11 Q. I respect that, thank you as a tax payer. So you ain't
12 that fast either.

13 A. Not particularly.

14 Q. Okay. But you're able to after Michael Hyatt passes
15 you and runs 35 or 40 feet, get off that tractor, run around
16 the front of the tractor and run to the front of the tractor
17 and open the door, and it has taken all of that time for
18 Michael Hyatt to get up and come in and whack Mr. Nassrah.

19 A. Is that a question? I guess I don't understand.--

20 Q. Yeah, it was an attempted question. You're able to --
21 you probably run about the same speed Mr. Hyatt does, but
22 you're able to do all of that in the same time it takes Mr.
23 Hyatt to get up there and hit Mr. Nassrah, right?

24 A. After I'm on the right side of the trailer I don't see
25 what that man is doing. I don't know if he stopped,

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1 hesitated, I don't know.

2 Q. Well, you know you got a man running up beside you with
3 a stick and you know Kamil is in front of you. Don't you
4 feel like you could have -- the thing to do would have been
5 to try to warn --

6 A. You're asking me to make an assumption, I can't do
7 that. I don't know if this way would have been faster, that
8 way would have been faster, unless you do both you can't
9 really tell.

10 Q. Well, you knew there was a gun in the glove box up
11 there, didn't you?

12 A. No, sir.

13 Q. You didn't?

14 A. No, not to my knowledge. I mean -- I knew there had
15 been but I don't know if there was one then at that point.

16 Q. Why do you go open the door then, the passenger door?

17 A. I don't know, man.

18 Q. You don't know?

19 A. Can you remember an idea that was in your head three
20 and a half years ago?

21 Q. Okay. I just want to try to figure out a reason that
22 you might have done that, and I can't see one except that
23 you were going after that gun that was in the glove box.

24 A. So now you're saying that I was going for a gun?

25 Q. I'm saying that that would make sense to me and you

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1 can't give me another reason that makes any sense to me.

2 A. That's because I don't know what idea was in my head at
3 that time.

4 Q. Okay.

5 A. If I would have wanted a gun I would have used mine.

6 Q. You had one?

7 A. Yes, sir.

8 Q. On you at that time?

9 A. Not at that particular time but I had one. If I would
10 have wanted to shoot I would have kept my gun.

11 Q. Well, you didn't have it with you, and if you wanted
12 one you had to get one, didn't you?

13 A. No. I don't have to have a gun, I'm not a killer.

14 Q. All right. Good enough. Well, the first contact that
15 you saw between Michael Hyatt and Mr. Nassrah was Mr.
16 Nassrah being hit in the head with that stick.

17 A. Say that again.

18 Q. The first contact, touching, hitting, anything, the
19 only thing you saw happen was Michael Hyatt hitting Mr.
20 Nassrah, correct?

21 A. I saw that. I'm not saying that that's the only thing
22 I saw.

23 Q. Well, what else did you see? I'm talking about when
24 Mr. Hyatt is at Mr. Nassrah while Mr. Nassrah is on the
25 running board with a foot in the truck, what else do you see

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1 going on?

2 A. I saw them shout at him, whatever, you know.

3 Q. There was some shouting going on between those two?

4 A. No, not between those two. The first thing that I saw
5 Michael Hyatt do was hit him with the stick.

6 Q. Okay. And I want to know everything that you recall
7 that you observed at the door of Mr. Nassrah's truck between
8 Michael Hyatt and Mr. Nassrah, and that's basically all you
9 saw was him getting hit with a stick.

10 A. I saw him get hit with a stick and go down out of my
11 sight.

12 Q. And what does Michael Hyatt do then?

13 A. After I see Kamil get back up and come around to the
14 front of the truck he's still following him with that stick.

15 Q. Well, he's got Mr. Nassrah down on the ground, doesn't
16 he?

17 A. Coming around the front of the truck, I don't know if
18 Kamil was laying down on the ground. It's not like he's
19 laying down, he's scrambling trying to move fast to get away
20 from him.

21 Q. You don't recall Mr. Nassrah saying he was crawling
22 some? You didn't see Mr. Nassrah crawling?

23 A. He was on the other side of the truck, the seats and --
24 the view is kind of obstructed.

25 Q. All right. You can't see what happens when he goes

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1 down. But do you get out and go around the truck to try to
2 help him, or what do you do?

3 A. I didn't go all the way around the truck, no, sir, I
4 did not. Because by the time I get out of the door they're
5 coming around the front.

6 Q. All right. Well, the statement, and you signed it,
7 right? Question: Tell me about the events 9" -- this says
8 I believe 9-15-10 -- "on Merle Lane that led to the contact
9 with law enforcement." Do you want to read it or do you
10 want me to ask you a question about it and you can read it?

11 A. Sure, I'll read it.

12 Q. Do you want to read your response? I think it's
13 everything, it's a paragraph, about five or six lines.

14 A. Okay. My response was "We, Kamil Nassrah and I were
15 coming out of the hay field with this last load of hay at
16 about 4 p.m. and as we passed by Mike's house he came out to
17 the edge of the road waiving a big stick at Kamil but we
18 kept going with Kamil driving the truck and me following him
19 on the tractor. About 100 yards past Mike's Kamil slammed
20 on brakes so hard that I almost hit the hay bails, and
21 suddenly Mike came driving up behind me in his red Ford
22 truck and ran past me. After he got out of the truck and
23 pulled Kamil out of his truck and hit him with a stick."

24 Q. Okay. I think there's another question and we can ask
25 you about that later. Well, so -- I mean, you just read it

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1 what you said on that day and you said Michael Hyatt pulled
2 Mr. Nassrah out of the truck and then hit him. I mean
3 that's what somebody says you said, don't they? That's not
4 what you saw?

5 A. I didn't write that. He got the date on it wrong, how
6 can he not mess something else on it?

7 Q. So this statement is not what you told law enforcement.

8 A. That's way I was telling them. If I say something and
9 another man don't write it down exactly word for word I
10 mean, you know.

11 Q. Okay. So you didn't see Michael Hyatt pull Mr. Nassrah
12 out of the truck and then hit him.

13 A. He hit him in the head with a stick, plain and simple.

14 Q. Okay. Did he pull him out of the truck?

15 A. He could have. That's three and a half years, man, I
16 can't remember ever touch that somebody makes.

17 Q. Okay. Well, did you read the statement?

18 A.. Yes, sir.

19 Q. All right. Well, did you know on the date that you
20 made the statement that it wasn't --

21 A. That says the 15th, that's the day before it happened.

22 Q. Okay. Well, did you notice that that was wrong that
23 day?

24 A. No, sir, I did not.

25 Q. But your testimony now is that Michael Hyatt did not

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1 pull him out of the truck.

2 A. I'm not saying he did or he didn't. I know he hit him
3 in the head with that stick.

4 Q. Okay. Well -- all right.

5 A. I saw that.

6 Q. Okay. You didn't hear any of the words said -- I don't
7 believe you could have heard any of the words said between
8 Mr. Nassrah and Aaron Hyatt at the front of that truck --

9 A. No, sir.

10 Q. -- you just -- you didn't know anything was going on
11 until you see Michael Hyatt. That's the first sense that
12 you've got that something was happening.

13 A. Yes, sir. I knew something was wrong when he stopped
14 the way he did.

15 Q. When he what?

16 A. I said I knew something was going on when he stopped.

17 Q. That was unusual for him to stop like that.

18 A. Yes, slam on brakes with 15 tons of hay on the back of
19 the truck -- or 15,000 pounds, excuse me. . . .

20 Q. Okay. You've been getting hay out of that field for a
21 few years.

22 A. Many times.

23 Q. Before this, I mean.

24 A. Yes, sir.

25 Q. Have you continued? Do you still work --

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1 A. I haven't been back since that day.

2 Q. What do you know about the issue of this dust that the
3 Hyatts had a problem with?

4 A. I live on a dirt road, I know about dust, that dust is
5 not bad at all.

6 Q. Okay.

7 A. I'm pretty sure there was a lot of gravel on that
8 driveway and it does create some dust, you know, it's not
9 like in a gold mine where you can't see what's behind you.
10 It's dusty, yeah.

11 Q. Well, Mr. Melton, how far do you live from the road
12 that the dust -- from the dirt road?

13 A. My front door is approximately 150 feet from the road.

14 Q. How far do you think Mr. Hyatt's front door is from
15 that road? A lot closer than that, isn't it? Maybe
16 50 feet?

17 A. It's 100 feet or so I'm guessing, I can't tell you
18 exactly. ..

19 Q. I know, I don't think we know exactly. Okay.

20 MR. GRIER: One second, please.

21 (Break in proceedings.)

22 MR. GRIER: Your Honor, I would move that the statement
23 that I cross-examined Mr. Melton about his statement be
24 placed into evidence.

25 MR. COOK: No objection.

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1 THE COURT: Without objection introduced as defendant's
2 next in order.

3 (Melton's statement was received as Defendant's
4 8.)

5 MR. GRIER: That's all, thank you.

6 THE COURT: Mr. Frick?

7 MR. FRICK: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MR. FRICK:

10 Q. Mr. Melton, at the time of this incident you've been
11 working for Mr. Nassrah for what, three or four years? You
12 said 2006.

13 A. Four or five years, yeah.

14 Q. Do you still work for him?

15 A. Yes, sir.

16 Q. Regular?

17 A. Yes, sir.

18 Q. In fact, you said you take care of his animals and take
19 care of his farm, correct?

20 A. Yes, sir.

21 Q. Clarify for me now, at the time you had been working
22 for him about three or four years, are you saying you didn't
23 know where he kept his .380?

24 A. I told you he wears it most of the time.

25 Q. Where did he wear it?

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- 1 A. On his belt, around his pants, waistband.
- 2 Q. Well, how come when Mr. Grier asked you where he pulled
- 3 it out from you didn't know where it was?
- 4 A. Sometimes it's in his pocket and sometimes it's in his
- 5 waistband, you know.
- 6 Q. Okay. All right.
- 7 A. What does that matter?
- 8 Q. Huh?
- 9 THE COURT: Sir, don't ask questions, just answer the
- 10 questions as asked.
- 11 Q. Are you aware that he has another gun?
- 12 A. He's probably got hundreds of guns. Why do you want to
- 13 ask me that?
- 14 Q. When y'all go out in the field does he have another
- 15 gun?
- 16 A. Not to my knowledge.
- 17 Q. Not to your knowledge?
- 18 A. No.
- 19 Q. I thought you said he would wear that .22 too. Yeah or
- 20 no.
- 21 A. I couldn't hear you.
- 22 Q. Nobody can hear in this trial. There's a .22 in the
- 23 glove box, right?
- 24 A. I don't know.
- 25 Q. You've got no idea. When he got up here -- you were

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1 here, you heard him testify yesterday, he said he keeps a
2 .22 in the glove box for when the coyotes come after him.

3 A. Maybe he does but I didn't see it.

4 Q. Been working for a man for three or four years and
5 don't know he keeps a .22 in his glove box, same side of the
6 truck you decided you needed to go to, right? But you don't
7 know that gun is there.

8 A. Not particularly, no. My gun was in the other truck.

9 Q. Okay. That's fine. How far behind the trailer with
10 the hay were you trailing behind approximately? I know you
11 didn't measure it.

12 A. Not far, I mean, you know.

13 Q. I know you -- on the front end of this thing you've got
14 a big old --

15 A. It's a long spear, yes, sir.

16 Q. So you're far enough behind that when you put on brakes
17 on the tractor it doesn't run up into the bail but you're
18 close.

19 A. It's still a couple of feet between me and him. I
20 didn't actually hit him but I thought I was going to.

21 Q. I'm going to show you what's been marked Defendant's
22 Number 7. Does any of that stuff look familiar to you?

23 A. Yes, sir.

24 Q. What have we got here? Try to speak in the microphone.

25 A. We have got Mr. Hyatt's truck and in front of -- that

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1 is the rake, in front of that is the tractor, in front of
2 that I see hay bails on the trailer.

3 Q. That tractor in the middle there, that's the one you
4 are sitting on?

5 A. Yes, sir.

6 Q. I know it's not exactly because it's further back, but
7 is that basically what you're looking at when you're sitting
8 on the tractor?

9 A. I see the hay, yes, sir.

10 Q. I mean, you can't really see what is going on at the
11 front of the truck, you just see a big giant bail of hay in
12 front of you, don't you?

13 A. Yes, sir.

14 Q. And then you're saying Mr. Hyatt comes running on this
15 side, correct?

16 A. Yes, sir.

17 Q. But you hop off the tractor and go around to this side,
18 to the passenger side.

19 A. Yes, sir.

20 Q. Did you have your gun with you that day?

21 A. I had it before the incident, yes, sir.

22 Q. I mean, on your person, on the tractor, where was it?

23 A. It was in another truck.

24 Q. So you didn't have it in the field with you?

25 A. Not on my person, no, sir. It's kind of hard to ride a

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1 bumpy tractor with a gun in the waistband.

2 Q. Probably not a good idea either. All right.

3 A. And that tractor right there rides rough.

4 Q. What made you decide that you needed to hop off the
5 tractor?

6 A. You see a man come running by with a stick, what are
7 you going to do, just stand there and let them watch
8 somebody -- watch them beat somebody to death?

9 Q. Well, it sounds like that's what you did.

10 A. Is he dead?

11 THE COURT: All right. Let me -- Mr. Witness, I know
12 you don't want to be here and I know you're testifying, but
13 please stop asking questions of the lawyers, just answer the
14 questions that the lawyers ask. And please, lawyers, let's
15 not get combative with the witnesses. I'm not saying you
16 are, but you know where this can go.

17 MR. FRICK: I understand. Thank you.

18 Q. You hop off of the truck and instead of --

19 A. I hop off of the tractor.

20 Q. I'm sorry. You hop off of the tractor and instead of
21 following this man that you perceive to be an imminent
22 threat you go around the other side, correct?

23 A. Yeah.

24 Q. Okay. Where was that crescent wrench at that time?

25 A. It was on the back of the truck I'm pretty sure. I

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1 think it was in the tool box or laying in the bed.

2 Q. And when did you grab that?

3 A. After Mr. Hyatt had been shot.

4 Q. Okay. At no time did you have it before?

5 A. No, sir.

6 Q. In the incident. I'm sure at some point in the day you
7 probably worked on something, but during the incident you
8 didn't have it in your hand.

9 A. No, sir. Not during the shooting anyway.

10 Q. Okay. You get to the passenger side in time to see Mr.
11 Nassrah getting struck in the head.

12 A. Yes, sir.

13 Q. And he's -- I'm going to show you State's Number 5. Is
14 this what you're looking at basically?

15 A. Yes, sir.

16 Q. That's the passenger side-view, you've opened up the
17 door.

18 A. Yes, sir.

19 Q. Mr. Nassrah is standing over there.

20 A. Yes, sir.

21 Q. And you see him struck in the side, back of the head.

22 A. Somewhere around there.

23 Q. That's fine. Okay. All right. And then what did you
24 do? Did you stay right here?

25 A. I come back out of the truck and I was in that general

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1 area after that.

2 Q. You went towards the front of the truck?

3 A. Yes, sir.

4 Q. Let me show you another one, this is Defense Number 4.

5 So you leave the passenger side and you come up around here

6 to the front.

7 A. Yeah. I would say that's pretty close to where I was

8 at along in there.

9 Q. So you're now standing at the front of the truck.

10 Where is Mr. Nassrah in relation to this picture? I know

11 it's not the best view.

12 A. He's already coming around. After he's getting up he's

13 coming in between these two trucks, he is coming that way.

14 Q. So he's here running that way kind of.

15 A. He's trying to get away.

16 Q. Trying to get away.

17 A. Yes, sir.

18 Q. Okay. Still conscious, not laying on the ground.

19 A. He's not unconscious yet.

20 Q. You tell Mr. Grier that you have already seen that

21 there is a significant amount of blood, is that your

22 testimony?

23 A. Yes, sir. By the time he gets around there he's

24 bleeding pretty good.

25 Q. Pretty good bleeding. And that occurs while he's right

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1 there in front of the truck, I guess, maybe even towards the
2 driver's side, correct?

3 A. Well, he's right there somewhere, man, I can't tell you
4 inches to millimeters or whatever, you know.

5 Q. I understand and I'm not trying to get you to be that
6 specific because I know you can't be.

7 A. He's in that area between the two trucks.

8 Q. He's in the middle of the trucks kind of in the middle
9 of the road?

10 A. Somewhere along there.

11 Q. Okay. Where is Aaron Hyatt?

12 A. I wasn't focusing on him very much at that particular
13 time, but he's somewhere near his truck right around in the
14 area somewhere.

15 Q. Well, I'll show you again, this is Number 4 again.

16 That truck there, is that his, that green one?

17 A. Yes, sir.

18 Q. Is he standing up here towards the front where all of
19 the action is going on or is he further back?

20 A. He's a little further back this way I'm pretty sure.

21 Like I said, I wasn't directly focusing on him because
22 there's something going on here.

23 Q. Well, do you see him with anything in his hand at that
24 time, gun, knife, stick, the hammer?

25 A. I saw the hammer. I'm not sure if it was at that

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1 moment or ten seconds later or a minute later, I'm not sure
2 exactly the time frame. But he did throw a hammer out of
3 that tool box, off the back of that truck anyway.

4 Q. At you or near you?

5 A. He threw it in our direction.

6 Q. In your direction? Okay.

7 A. Well, in the direction of Kamil more or less I'm pretty
8 sure, I don't know. His aim sucked.

9 Q. But he didn't hit you.

10 A. He didn't hit me.

11 Q. It didn't come near you, did it?

12 A. I didn't feel any wind off of it if that's what you're
13 asking me.

14 Q. Of course Mr. Grier went over the statement with you.
15 You maintained that this is just not accurate.

16 A. There's a minor discrepancies probably because I didn't
17 write it.

18 Q. Well, I mean, are you saying the police made it up for
19 you?

20 A. No. He asked me questions and I answered them. Just
21 because I say one word it doesn't mean he wrote that word.
22 I mean, I don't know, man, I don't know.

23 Q. Well, how do you misconstrue, "He pulled Kamil out of
24 the truck?"

25 A. You're saying --

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1 THE COURT: Hang on, y'all don't talk over each other.

2 It's hard for him to type down everything when you're

3 speaking at the same time. Thank you. Go ahead.

4 A. I'm sorry. Ask me again, I'm sorry.

5 Q. That's all right. That's all right. The statement

6 says that you say, the statement says that you say that

7 Kamil is pulled out of the truck, you're saying that's not

8 what you said, right?

9 A. Maybe I did say that to him. I'm not sure what I said

10 on that night, maybe I did, maybe I didn't. I don't

11 remember, man.

12 Q. All right.

13 A. I can't go word for word something that happened three

14 and a half years ago, I'm sorry.

15 Q. Well -- all right. And you say -- let me -- I'm going

16 to show you three pictures. Take a look at it, it's

17 basically the same stuff, but look at all three of them.

18 A. Okay. That's the back of Kamil's truck with the

19 trailer attached.

20 Q. Uh-huh.

21 A. That's the back of Kamil's truck --

22 THE COURT: Speak in the microphone, please.

23 A. And that's the back of Kamil's truck, there's the

24 wrench that I had. That is it, that's the wrench.

25 Q. Is that where you left it? Did you put it back in the

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1 truck?

2 A. Yes, sir, I put it back.

3 Q. When did you put it back in the truck?

4 A. I'm not sure if it was right after the incident or
5 after the law officers got there. I'm not sure when I put
6 it back but I know I did lay it back in there in the truck.

7 Q. But you put it back in that location, nobody else put
8 it back there.

9 A. I'm pretty sure no one else touched it. I'm not
10 sure -- I can't stand there and watch a wrench all day. I
11 don't know if anyone else touched it or not.

12 Q. I understand.

13 MR. FRICK: Your Honor, I would move these in as the
14 next three Defendant's Exhibits.

15 THE COURT: Collectively or individually?

16 MR. FRICK: Individually.

17 THE COURT: Any objection?

18 MR. COOK: No objection.

19 THE COURT: Without objection the next three--
20 photographs will be the next three defendant's exhibits
21 collectively.

22 (The photographs were received as Defendant's
23 9, 10, 11.)

24 Q. Was that where you got the wrench from?

25 A. It was on the back of the truck, either there or in

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1 that silver tool box. I'm not particularly sure where I got
2 it from.

3 Q. After all of the stuff starts calming back down, I
4 guess there was a -- you said in your statement there was a
5 standoff for a little while.

6 A. Yes, sir. He had something in his hands and I had
7 something in my hands.

8 Q. But no one went towards each other?

9 A. Nobody touched each other. After the gunshot the fight
10 was over, there was no more physical --

11 Q. And, in fact, I think you say in your statement that
12 the only two folks that are involved in any kind of physical
13 altercation were Mr. Nassrah and Mr. Michael Hyatt, was that
14 correct?

15 A. Those are the only two people that came in contact with
16 each other.

17 Q. You had said here today that you had -- you were
18 helping Mr. Nassrah with his injury; is that correct?

19 A. I was trying to apply pressure, I don't remember what I
20 had, a paper towel, I don't remember what I had in my hand.
21 But I was -- I had put it on his head and tried to stop the
22 bleeding a little bit.

23 Q. But you don't remember whether it was a regular towel
24 or a napkin or --

25 A. I don't know.

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1 Q. Do you know what happened to that?

2 A. No, sir.

3 Q. Okay. Did you throw it away? Do you have any idea
4 where it went?

5 A. I have no clue.

6 Q. Did you continue to apply pressure until EMS got there
7 or --

8 A. After Deputy Morgan got there I think there was a point
9 that I wasn't applying pressure. I'm not really sure, man,
10 you know, adrenaline rush and all of that, I'm not sure if I
11 wasn't to trying to apply pressure. I think I remember
12 saying something to Officer Morgan, "Could you uncuff his
13 hands from behind him so he could hold it on his head?" I'm
14 pretty sure that I said that. Because it kind of upset me a
15 little bit that he was going to let him sit there and let
16 him bleed like that.

17 Q. Did law enforcement uncuff him?

18 A. I don't remember. I don't think he did, not at that
19 time.

20 Q. In fact, I think when that's going on you were actually
21 sitting beside Mr. Nassrah, aren't you?

22 A. I was there close to him. I don't know if I was
23 sitting, standing, kneeling with Kamil.

24 Q. Let me show you this. Do you recognize anything in
25 that picture?

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1 A. I think that's Mr. Morgan, and I think that's Kamil,
2 and I'm pretty sure that's me.

3 Q. Do you recall that being the scene once Deputy Morgan
4 got there?

5 A. I recall, yeah, this looks right, yeah. It has got to
6 be right, it's a photograph.

7 Q. Okay. All right.

8 MR. COOK: No objection.

9 MR. FRICK: Your Honor, I would offer this.

10 THE COURT: All right. Without objection it's the next
11 defendant's exhibit.

12 (The photograph was received as Defendant's
13 12.)

14 Q. So this is the two of y'all sitting there after law
15 enforcement has got there, no one is applying treatment to
16 Mr. Nassrah. In fact, he is handcuffed, correct?

17 A. No, sir.

18 Q. Were you handcuffed?

19 A. No, sir.

20 Q. In fact, it looks like you're on your cellphone.

21 A. I don't guess.

22 Q. I don't know if you can see it on there, it kind of
23 looks like it to me, you tell me if you disagree.

24 A. It looks like I've got something in my hands, looking
25 like it. It probably is a phone.

HARLAN DONNELL MELTON

1 MR. FRICK: Your Honor, I would like to publish this to
2 the jury.

3 THE COURT: Any objection?

4 MR. COOK: No objection.

5 THE COURT: All right. Y'all can just pass the photo.
6 around.

7 (Break in proceedings.)

8 Q. Just briefly. I think Mr. Grier touched on it but I
9 wanted to follow-up at some point. You were in the back of
10 Deputy Morgan's patrol car, correct?

11 A. I don't remember if I was in the back seat or front
12 seat.

13 Q. You were in his vehicle?

14 A. I was in his vehicle, or somebody was. I don't know if
15 he was in the vehicle.

16 Q. How did you get in that vehicle?

17 A. How did I get in it?

18 Q. Uh-huh.

19 A. I opened the door and sat down.

20 Q. Okay. Thank you. Who put you in there?

21 A. Nobody put me in there.

22 Q. Okay. You know what I'm asking. Were they putting you
23 under arrest?

24 A. No, sir.

25 Q. Then who invited you to go into his car?

HARLAN DONNELL MELTON

1 A. I am not sure, I don't really remember.

2 Q. Did you just decide you wanted to sit in his car?

3 A. No.

4 Q. How did you get in there?

5 A. I guess somebody said, "Please sit down and have a talk
6 with me."

7 Q. Do you remember whether it was one of the deputies or
8 investigators or something?

9 A. I don't remember who said that or who wanted to talk or
10 who invited me to sit or what, I don't remember.

11 Q. You still had your cellphone at that time? You were
12 making phone calls?

13 A. No one took anything from me.

14 Q. But you were making phone calls while you were in
15 there?

16 A. I might have received a call, made a call, I don't know
17 how it went, whether I did or someone called me.

18 Q. But you were speaking on your phone.

19 A. I had spoke on my phone personally.

20 Q. Spoke to about three different people, I think. You
21 don't dispute that.

22 A. I don't dispute talking to anyone.

23 MR. FRICK: Thank you, Mr. Melton. I believe that's
24 all of the questions I have.

25 THE COURT: Any redirect, Solicitor?

HARLAN DONNELL MELTON

1 MR. COOK: Yes, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. COOK:

4 Q. Mr. Melton, I want to go back to this map here for a
5 second. They were asking you about your statement, asked
6 you about Michael Hyatt coming up, you said he pulled up
7 behind you?

8 A. In that red Ford truck.

9 Q. Can you circle his house again?

10 A. Here.

11 Q. And you said on direct that Kamil's truck is right
12 here.

13 A. Yes, sir.

14 Q. Is that fair to say?

15 A. Yes, sir. In that general area, yes, sir.

16 Q. So your truck would be -- your tractor would be right
17 here?

18 A. Yeah, I was behind him. I don't know how far back it
19 was.

20 Q. So Michael Hyatt's house is circled, he drove from his
21 house and pulled up behind you?

22 A. Yes, sir.

23 Q. So it was his truck, your tractor, Kamil and then
24 Aaron?

25 A. Yes, sir.

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1 Q. And y'all were blocked in?

2 A. Yes, sir, from the front and back.

3 Q. About how far do you think it is from where Michael
4 Hyatt pulled his truck to his driveway?

5 A. Couldn't be more than 100 yards, 50 yards or 100 yards,
6 it's not very far.

7 Q. They talked about this issue awhile about Kamil's gun,
8 and I asked you earlier, said, "Did you see him pull a gun?"
9 And I think that question was misunderstood. Did you see
10 him put the gun in his waistband that morning or did you
11 just assume he had a gun?

12 A. I know he has a gun, I know he carries a gun. I'm not
13 saying I know what time he put it on his waistband, I don't
14 know.

15 Q. You mean he may have put it in there at breakfast?

16 MR. FRICK: Your Honor, I object to the solicitor
17 continuing to lead the witness.

18 THE COURT: I'm going to overrule the objection and
19 allow him to do that so we can get this witness off the
20 stand. Go ahead.

21 Q. The first time you saw him with that gun that day was
22 when?

23 A. I'm not sure. When you look at someone you don't
24 necessarily look for a gun, you don't look to see if he's
25 got it or don't got it. I know he carries a gun. I can't

HARLAN DONNELL MELTON

1 say I saw him put it in there this time or that time or
2 whatever time. I know when he pulled it out.

3 Q. When was that?

4 A. After he got hit in the head.

5 Q. They also asked you about being in Mr. Morgan's patrol
6 car. You don't remember who you talked to?

7 A. I can't put a face on who I was talking to. I could
8 read that paper and see the name Crump on it so I know his
9 name is Crump. As far as picking him out of a lineup I
10 can't do that, I don't know.

11 Q. When you're on your cellphone, do you know who you were
12 talking to?

13 A. I know I talked to my wife and I talked to Kamil's
14 girlfriend, and it seems like I had to call my brother and
15 tell him that I was going to be late getting there or
16 something like that. I don't remember if I was in the car
17 when I made that call and I decided to call him. I know I
18 talked to someone when I was in the car.

19 Q. Did you tell them what happened?

20 A. Yes, sir, part of it.

21 Q. Why did you just tell him part of it?

22 A. I'm pretty sure I told them part of it. I can't
23 remember the conversation, I don't know.

24 MR. COOK: Nothing further of this witness, Your Honor.

25 THE COURT: All right. Thank you, sir, you may step

HARLAN DONNELL MELTON

1 down. All right. You can call your next witness,
2 Solicitor.

3 MR. COOK: Your Honor, do you mind if we take a brief
4 recess?

5 THE COURT: We can take a mid-morning break at this
6 point in time. Ladies and gentlemen, we're going to take a
7 brief recess at this time. Like I told you several times,
8 don't discuss the case, you've only heard two witnesses so
9 far and there's more to come, so please step back to your
10 jury room and we'll reconvene here shortly. Okay?

11 (The jury left the courtroom.)

12 MR. COOK: Couple of issues before we bring the jury
13 in.

14 THE COURT: Yes.

15 MR. COOK: The next witness I intend to call is Deputy
16 Randy Morgan who is the first responder. His in-car camera
17 was on during the entire scene, the video is about an hour
18 long. And we discussed that the best thing to do is just
19 show the entire video because we've alluded to stuff on the
20 stand that is actually captured on the video and this just
21 gives everybody the best idea of what actually happened. So
22 the way I intend to question Mr. Morgan is briefly about
23 what he was doing that day and then get into how the video
24 and then publish the video to the jury.

25 THE COURT: Okay. And there's no objection to the

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1 video being shown?

2 MR. GRIER: No, Your Honor.

3 MR. FRICK: Your Honor, we have reviewed the video and,
4 of course, Mr. Grier and I have both talked about one of the
5 witnesses. I think the other part of the video is an
6 additional reenactment of my client or questioning so I
7 think it would all come in. I would tell you that those
8 little earphones right there do work somewhat, you have to
9 point them at that little thing up there but it may help
10 some of the jurors if they cannot hear.

11 (The jury returned to the courtroom.)

12 THE COURT: All right. All members of the jury are
13 present. Solicitor, call your next witness.

14 MR. COOK: Please the Court? Your Honor, State calls
15 Deputy Randy Morgan.

16 The witness, RANDY MORGAN, was first duly sworn
17 and testified as follows, on:

18 DIRECT EXAMINATION

19 BY MR. COOK:

20 Q. Can you please state your name for the record?

21 A. My name is Randy Morgan.

22 Q. I know I called you Deputy Morgan but you don't have on
23 law enforcement attire. Do you still do law enforcement?

24 A. Yes. I work for Bovine Security and we provide
25 security for the gold mine in Kershaw, but I'm retired from

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1 the sheriff's office now.

2 Q. Okay. When did you retire from the sheriff's office?

3 A. December of 2010.

4 Q. All right. How long were you at the sheriff's
5 department?

6 A. Ten years, seven months.

7 Q. All right.

8 A. Exactly.

9 Q. So you were working for the sheriff's department on
10 September 16th of 2010?

11 A. Yes, I did.

12 Q. And did you respond to a call on Merle Lane?

13 A. Yes, I did.

14 Q. Is that in the Lancaster County?

15 A. Yes, it is.

16 Q. How did you become aware of a situation on Merle Lane
17 on the 16th?

18 A. I was in a traffic stop in the town of Heath Springs
19 and the call was given out there had been a shooting on
20 Merle Lane.

21 Q. Okay. What's the code for a shooting?

22 A. 1075.

23 Q. So you heard a 1075 on the radio while you're on a
24 traffic stop?

25 A. Yes, I did.

TESTIMONY OF RANDY MORGAN

1 Q. When you initiate a traffic stop -- let me back up.

2 Was your patrol car equipped with a camera?

3 A. Yes, it was.

4 Q. Are there certain times that the camera automatically
5 comes on?

6 A. Yes. The system is designed when you activate the blue
7 lights the recording device comes on.

8 Q. So you were on a traffic stop. Were the blue lights
9 on?

10 A. Yes, it was.

11 Q. So to your knowledge was the camera recording at that
12 time?

13 A. Yes, it was.

14 Q. Okay. So you're on a traffic stop, hear a 1075. What
15 did you do?

16 A. I immediately ended that traffic stop and advised --
17 and I forgot the subject -- to just go ahead, that I've got
18 to go to another call. I didn't state to that person what
19 the call was involved.

20 Q. Okay. So what was your next move? After you heard the
21 call did you head towards Merle Lane?

22 A. Yes, I did. I called dispatch and advised I was in
23 route, code three.

24 Q. What is a code three?

25 A. Code three is blue lights and sirens.

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1 Q. So the blue lights were still on from the initial
2 traffic stop?

3 A. Yes, it was.

4 Q. And to your knowledge was the camera still recording?

5 A. Yes, sir. The system is designed that I would
6 physically have to stop the recording device and I would
7 physically have to cut it off.

8 Q. So it automatically cut on but you have to cut it off.

9 A. Yes.

10 Q. From the time you left the traffic stop when you first
11 cut the lights on and you got to Merle Lane, how far were
12 you time wise?

13 A. Three or four minutes because I was real, real close.

14 Q. So you get to Merle Lane. What type of road is Merle
15 Lane?

16 A. It's a small dirt road.

17 Q. One lane or two lane?

18 A.. One lane.

19 Q.. You pulled down Merle Lane. What do you see when you
20 get there?

21 A. Well, I got on Merle Lane, I pulled up behind an older
22 model Ford pickup and I believe it was green in color.

23 Q. How many people were out there when you got there?

24 A. Four.

25 Q. Did you recognize these people?

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1 A. Yes, I did.

2 Q. Can you tell us who they were?

3 A. Yes, I knew who they were.

4 Q. Who were they?

5 A. It was Michael Hyatt, Aaron Hyatt, Kamil Nassrah and I
6 learned later it was Mr. Melton out there.

7 Q. Had you ever seen Mr. Melton before?

8 A. No.

9 Q. You knew these people. How did you know -- how were
10 you familiar with these people?

11 A. Just a few days earlier in the week we had another call
12 out on Merle Lane.

13 Q. Did you respond to that call?

14 A. Yes, I did.

15 Q. What was the nature of that call?

16 A. A subject was locked inside a pasture where he had been
17 cutting hay.

18 Q. Where was that pasture located?

19 A. On the end of Merle Lane.

20 Q. When you responded to that call, who did you see?

21 A. Well, my first contact was Michael and Aaron Hyatt on
22 Merle Lane. There was a Ford pickup -- an older model Ford
23 pickup was across the road and the Hyatts said that it had
24 broken down and they couldn't get it cranked.

25 Q. Was the truck between -- do you know where Michael

TESTIMONY OF RANDY MORGAN

1 Hyatt's house is on Merle Lane?

2 A. Yes, I do.

3 Q. If you're going towards the hay field is it on the
4 right or left?

5 A. Right-hand side of the road.

6 Q. This green truck, was it between -- where was the truck
7 located on the road?

8 A. Just right north -- east of Michael Hyatt's home there
9 at the yard.

10 Q. Well, you say east. Would east --

11 MR. FRICK: Your Honor, I would object to the relevance
12 on this line of questioning. I think we have established
13 what the solicitor wants to establish, I don't know why the
14 direction of the truck has anything to do with anything. I
15 think we need to move on.

16 THE COURT: I think I know where he's going so I will
17 overrule the objection.

18 Q. I know these people don't know -- if you're looking at
19 Michael Hyatt's they don't which way is east or west. Was
20 it on down the road past Michael Hyatt's house?

21 A. No.

22 Q. Who else was out there on the 13th?

23 A. Kamil Nassrah.

24 Q. What did Kamil tell you?

25 A. Okay. After the Hyatts got the truck cranked then I

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1 proceeded -- and Deputy Lilly come up then, and I went on
2 down to the gate area. Okay. Kamil was coming out and he
3 said --

4 MR. GRIER: Your Honor, I -- you know, this is a
5 question asking for hearsay is exactly what he's asking for,
6 what he is asking. If he wants to ask what Kamil said he
7 needs to ask Kamil what he said.

8 THE COURT: I will overrule the objection. Go ahead.
9 A. Say it again now.

10 THE COURT: Ask the question again now. Go ahead.

11 Q. What was Kamil doing when you got to the hay field?

12 A. Say again now --

13 Q. What was Kamil doing when you made contact with him on
14 the 13th?

15 A. He was coming out of the hay field.

16 Q. Was the gate locked when you got there?

17 A. No.

18 Q. It had been unlocked?

19 A. Yes.

20 Q. Was that the end of that incident? Did you make a
21 report, or what happened?

22 A. Yes. I made the report and advised him of his rights
23 and how to get a copy of a report.

24 Q. In terms of the Hyatts, did you make any contact with
25 them again after you made the report?

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1 A. Yes, sir, I did.

2 Q. Why did you contact the Hyatts?

3 A. I was contacted by David Belk at the sheriff's office
4 that Mr. Nassrah and the landowner, I believe is Blanton,
5 had gone to the sheriff's office and they had got a report
6 of the original incident that day and I guess the homeowner
7 wanted to put Michael and Aaron Hyatt on notice of trespass
8 not to go back on their property.

9 Q. Did you advise them that they were --

10 A. Yes. Later that day I went back out and spoke with the
11 Hyatts and informed them they were put on notice of trespass
12 not to be back on the lady's property.

13 Q. Back to the 16th, three days later, you pulled up you
14 said behind the green Ford truck?

15 A. Yes, sir.

16 Q. Where was everybody when you pulled up? Just kind of
17 layout and tell us what you saw and what you did as far
18 as --

19 A. Okay. When I arrived on the scene the road was
20 blocked, I couldn't proceed any further. And I saw Michael
21 and Aaron Hyatt was at the rear of the Ford truck, and Mr.
22 Nassrah and Mr. Melton were to the left of the white 350
23 Ford truck to the left of it.

24 Q. Left. You're facing it, so it would be the passenger's
25 side?

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1 A. Yes, sir.

2 Q. Was anybody injured?

3 A. Yes.

4 Q. Who was injured?

5 A. Michael Hyatt and Mr. Nassrah.

6 Q. Did anybody have a gun when you got there? Did you see
7 a gun?

8 A. There was a gun laying to the left of Mr. Nassrah in a
9 grassy area.

10 Q. Did you call for backup?

11 A. Backup was already on the way. Anytime we have a 1075
12 EMS and backup responded to a code three.

13 Q. When you got there did you have any idea who was the
14 victim and who was the suspect or are you just --

15 A. No.

16 Q. What was your main objective when you arrived on scene?

17 A. To secure the area and just control the scene, and I
18 just control evidence, keep evidence secure until
19 investigation arrived.

20 Q. So while you're securing the scene, are the blue lights
21 still on in your car?

22 A. Yes.

23 Q. So to your knowledge was the video still recording?

24 A. Yes.

25 Q. Okay.

TESTIMONY OF RANDY MORGAN

1 MR. COOK: Your Honor, I've already got the video in
2 here if there's no objection to the publishing it?

3 THE COURT: Are we offering that as an exhibit as
4 State's Exhibit 1?

5 MR. COOK: I would offer the video as State's Exhibit 1
6 (sic), the video of Deputy Morgan's in-car camera.

7 THE COURT: Any objection?

8 MR. FRICK: No objection.

9 MR. GRIER: No objection.

10 THE COURT: All right. Without objection the video is
11 introduced as State's Exhibit Number 1 (sic).

12 (The video was received as State's 21.)

13 THE COURT: And you wish to publish the video at this
14 point in time?

15 MR. COOK: I do, Your Honor.

16 THE COURT: All right. Ladies and gentlemen of the
17 jury, in this beautiful new courthouse y'all have a monitor
18 there in front of you so if you will refer to the monitor as
19 you watch the video. For those of you who may be difficult
20 to hear we have hearing devices or earphones if you would
21 like to wear those to help you hear any audio and they're
22 right there and they work pretty well. So does anybody want
23 one of those? Okay.

24 (The video was played.)

25 MR. COOK: Your Honor, before I continue asking Deputy

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1 Morgan any questions we've got an issue we need to address
2 outside of the presence of the jury.

3 THE COURT: All right. Well, this will be a good time
4 to go ahead and take a lunch recess. So ladies and
5 gentlemen of the jury, we are going to break now for lunch,
6 I would like you back in your jury room at 1:45. While you
7 are at lunch recess do not discuss the case, don't talk
8 about the case even with yourselves because you haven't got
9 all of the evidence yet. Okay. We will see you back at
10 1:45.

11 (The jury left the courtroom.)

12 THE COURT: All right. Yes, sir?

13 MR. COOK: Your Honor, Monday afternoon during the
14 immunity hearing you made a preliminary hearing about the
15 introduction of Judge Thomas issuing an escort for Mr.
16 Nassrah. Well, in the video it clearly addressed that
17 issue, they talk about it, you can hear Deputy Morgan
18 saying, "I escorted them, Judge Thomas told me to." This
19 video has been -- Mr. Frick and Mr. Grier have had this
20 video, they did not object to this being introduced to the
21 jury, it's on there, it's out there now, they know there's
22 an escort. And I ask that I'm able to ask Deputy Morgan
23 about the circumstances surrounding this escort, along with
24 Deputy Lilly who can also be heard talking about the escort
25 situation on the video. It's already out there, they've

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1 heard it and I think without objection they found out there
2 was an escort that I could question them about those
3 circumstances.

4 THE COURT: Well, in addition in the statements that I
5 read in support of the defense motion for immunity, which
6 are in evidence from what I understand, all of these other
7 statements and everything mentioned the fact of an escort
8 and that kind of thing as well. However, my ruling is going
9 to stay intact, I'm going to decline to reissue my opinion
10 about that. I still think having the deputy testify about
11 it in live testimony would be unfairly prejudicial to the
12 defendants so I respectfully deny your motion to reconsider
13 my ruling. It is -- you know, it's all throughout the
14 statements and I don't know what they heard and I couldn't
15 make sense of any of the audio, it was all muffled, but I'm
16 not going to revisit that. Go ahead.

17 MR. COOK: Your Honor, secondly, I understand the
18 ruling that I cannot directly ask Deputy Morgan about that.
19 However, since that video is into evidence that would be
20 admissible for me in closing to reference, and I don't see
21 any reason I couldn't reference that audio as it is placed
22 into evidence --

23 THE COURT: I think in closing you can talk about, you
24 know, that you heard the deputy say he had been out there
25 just three days previously for a locked gate, you know, and

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1 a feud between the people and that kind of thing. And you
2 can try to argue that if the attempted murder charge
3 survives past directed verdict, you can talk about how maybe
4 this simmered with the defendants for the couple of days
5 until this incident happened, that's argument. But you
6 cannot refer since there's not going to be any live
7 testimony pursuant to my ruling about a magistrate issuing
8 an order, you cannot refer to that in closing. Okay?

9 MR. COOK: I just -- well, it's in evidence and that's
10 why -- it wasn't redacted, the video wasn't cut short and
11 they were aware that was in the video.

12 THE COURT: It's in a written statement, it's in the
13 video where the audio is muffled but it's not going to be by
14 way of live testimony from a witness, because again, doing a
15 balancing test under 403 I find it's unduly prejudicial.
16 All right. That's the ruling of the Court. Any other
17 matters of law before we break? All right. We'll reconvene
18 at 1:45.

19 (A lunch break was taken.)

20 THE COURT: All right. All members of the jury are
21 present. Good afternoon, ladies and gentlemen. We will
22 resume where we left off. Solicitor?

23 MR. COOK: Please the Court, Your Honor?

24 THE COURT: Yes, sir.

25 MR. COOK: Let the record show that before we broke for

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1 lunch we just finished watching Deputy Morgan's in-car
2 video, I don't have anymore questions of Deputy Morgan at
3 this time. Please answer anything that Mr. Grier and
4 Mr. Frick have for you. Thank you.

5 THE COURT: Mr. Grier, any questions?

6 MR. GRIER: Yes, sir.

7 CROSS EXAMINATION

8 BY MR. GRIER:

9 Q. What is your title now?

10 A. Say again?

11 Q. You work at Hailes Gold Mine now?

12 A. Yes.

13 Q. Okay. Still call you officer or Mr. Morgan?

14 Mr. Morgan?

15 A. Whatever you want to call me.

16 Q. Well, Mr. Morgan --

17 THE COURT: Let me interrupt, Mr. Grier. I don't think
18 any of the audio equipment is working.

19 (Break in proceedings.)

20 Q. Mr. Morgan, the video that we watched just a few
21 minutes ago, all of that video was taken out of your dash
22 cam, out of your patrol vehicle?

23 A. Yes, sir, it was.

24 Q. Because you pulled up -- there was a pile coming in
25 behind you, you were blocked in to, right?

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1 A. Yes, sir.

2 Q. Can you tell us who all is on that video, all of the
3 different people talking are, or would you like me to just
4 ask you direct questions about that? Do you know or recall
5 the sequence of who is on that video? Obviously you're
6 pulling in and, you know, you're the first on the scene and,
7 you know, all of the immediate investigation is set up and
8 all of that, nobody is really being questioned or anything.
9 But what I'm really getting at is the sequence of there was
10 an interview conducted in your vehicle, or at least one,
11 correct?

12 A. Yes.

13 Q. Do you know who was interviewed in your vehicle? I
14 don't believe you even did the interviews, did you, or maybe
15 you did the initial one?

16 A. No, sir.

17 Q. Okay. So you didn't --

18 A. Investigations took over. And I believe as far as I
19 can recall -- it has been three and a half years ago, as-I
20 believe Mr. Melton was interviewed in my vehicle.

21 Q. Okay.

22 A. Just I think.

23 Q. As far as inside of that vehicle it appears he's the
24 only one that's interviewed, that's your interpretation?

25 A. As far as I can recall.

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1 Q. Okay. And there's nothing that you watched -- you
2 watched the video -- that would change your impression that
3 he was the only one interviewed in the vehicle.

4 A. That's correct.

5 Q. All right. And the other, not an interview but
6 whatever, the other person on the video that's standing in
7 the front is Aaron Hyatt in that last video?

8 A. Yes.

9 Q. And I guess is giving a statement, we'll call it a
10 statement, a video statement there as well. He's being
11 asked questions and he's making statements.

12 A. Yes, sir.

13 Q. So the only two interviews of individuals that we saw
14 were inside the vehicle Mr. Melton, Harlan Melton, in the
15 front of the vehicle Aaron Hyatt, correct?

16 A. Yes. As far as I know, yes.

17 Q. Okay. Now, how long have you known Mr. Nassrah?

18 A. Well, just a few days. That's the first day that I
19 had -- I knew he ran a store in Pleasant Hill at one time
20 but that's all. As far as a one on one --

21 Q. Well, I'm just saying if you saw him on the street or
22 did you trade with him or anything prior to this or go into
23 that store?

24 A. No, sir.

25 Q. How about at Buford Crossroads? Didn't he have a store

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1 at Buford Crossroads? If he did were you aware of it?

2 A. Say again now.

3 Q. Did he have a store at Buford Crossroads that you're
4 aware of?

5 A. No, sir, I'm not aware of that.

6 Q. And as far as, had you only met the Hyatts a few days
7 before as well?

8 A. Yes.

9 Q. You didn't make any arrests?

10 A. No, sir.

11 Q. You secured the scene, wrapped that up, remained on the
12 scene -- well, you couldn't exactly drive out for quite
13 awhile, could you?

14 A. No.

15 Q. How long did you remain on the scene?

16 A. Until we cleared up and that was after 6:00, I know
17 that.

18 Q. Okay. You've already testified that your job was to
19 secure the scene, that means first of all secure --

20 A. Personal safety, my safety and the safety of all.

21 Q. Exactly. And then as far as procedurally, is there a
22 protocol for immediate attention -- it appears to me that
23 you secured your protection, which I totally respect and I
24 wouldn't be wanting to roll up on the scene like that.

25 A. I wanted to secure the scene and protect the evidence

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1 was the big thing.

2 Q. Well, it seemed that the second thing that you were
3 concerned about was the medical situation and getting that
4 attended to.

5 A. Yes, sir.

6 Q. And then the third priority is to attend to making sure
7 that the evidence remains secure.

8 A. Yes, sir.

9 Q. From the time you came on that scene nothing changed as
10 far as the location of those trucks, the doors open, doors
11 closed, nothing moved that you're aware of?

12 A. To my knowledge nothing was disturbed until CSI and the
13 investigators come on, nothing.

14 Q. Okay. What I see on the video is the Hyatts at the
15 back of Aaron Hyatt's truck principally, you kind of move
16 them over there and Aaron is over on the -- facing, you
17 know, on the camera to your left some and then you get him
18 over there, get his dad over there, get them on the truck,
19 they stay put throughout that whole time of the
20 investigation. They never went back to Mr. Nassrah's truck
21 or anywhere back there.

22 A. No, sir.

23 Q. Okay. You can see that on the video, can't you?

24 A. Yes, sir.

25 Q. Because it's continuous. You roll in and then, you

TESTIMONY OF RANDY MORGAN

1 know --

2 A. I did have to instruct Aaron just to go back a few
3 times, you saw that on the video.

4 Q. To take care -- yes, sir, saw it. Now, Mr. Nassrah and
5 Mr. Melton were over to the left, that's the Truesdale
6 driveway I believe we say? It belongs to the Truesdales.
7 At any rate, that little drive off to the left of the scene,
8 they're over there and they don't leave that spot or go back
9 to the vehicle after you arrive; is that correct?

10 A. No, sir.

11 MR. GRIER: Okay. Thank you.

12 MR. FRICK: Just briefly.

13 THE COURT: All right, Mr. Frick?

14 MR. FRICK: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MR. FRICK:

17 Q. Mr. Morgan, were you the responding officer on that
18 incident on the couple of days earlier, the 13th?

19 A. Yes.

20 Q. Okay. When you got there, did you make contact with
21 Mr. Nassrah?

22 A. Yes, sir.

23 Q. Okay. And I know that the vehicle was in the road and
24 you had to deal with that situation, but you got down the
25 road and talked to Mr. Nassrah. Was he still in the fence?

TESTIMONY OF RANDY MORGAN

- 1 A. No, sir. He was coming out of the fence.
- 2 Q. So he had --
- 3 A. The gate was open and he was coming out.
- 4 Q. He's coming out of the fence and the Hyatts are down
- 5 there with the truck where you were, correct?
- 6 A. No, sir. I left the truck scene, the trailer and I
- 7 went down. Officer Lilly was there with the Hyatts and I
- 8 just went on down to where the gate area was.
- 9 Q. Okay. But the Hyatts were still down there, they
- 10 didn't go up there with you and you didn't meet them up
- 11 there at that gate.
- 12 A. No.
- 13 Q. Okay.
- 14 A. Mr. Nassrah is the only one I spoke with at the gate
- 15 area.
- 16 Q. Okay. And he was already out.
- 17 A. Uh-huh.
- 18 Q. All right. Then jumping back to the 16th. You're the
- 19 responding officer, I know there were a lot of folks on the
- 20 scene but you do an incident report --
- 21 A. Yes.
- 22 Q. -- just kind of a summation of what you saw and what
- 23 you did, right?
- 24 A. Yes, sir.
- 25 Q. Do you recall who all -- you kind of kept tabs with who

TESTIMONY OF RANDY MORGAN

1 comes in to the scene; is that correct?

2 A. Deputy Lilly was in charge of the people going and
3 coming in to the scene, he put up the crime scene tape and
4 established that.

5 Q. Okay. Let me show you something here. Do you
6 recognize this? You can hold it if you want to.

7 A. Yeah.

8 Q. Is that your incident report?

9 A. Yes.

10 Q. On the second page, this is what I'm looking at right
11 here. Is this a summation of who came in and out of the
12 scene?

13 A. Yes, sir.

14 Q. Can you tell us who the officers and other personnel
15 was that was coming in and out of the scene?

16 A. You want me to read them all?

17 Q. Yes, sir, please.

18 A. Deputy Morgan, Deputy Steele, Deputy Lilly,
19 Investigator Bennett, Deputy Well, Investigator Marshall,
20 Sheriff Faile, Investigator Rogers, Captain Hilton, Captain
21 Bailey, Deputy Taylor, Investigator Crump, Lee Blackmon with
22 SLED. Okay. I guess EMS responders were on the crime
23 scene. Jamie Demby, Craig Robinson, Mike Dazzo?

24 Q. I don't know.

25 A. Lewis Roman, and David Hobnet?

TESTIMONY OF RANDY MORGAN

1 Q. Works for me. Thank you, sir. Y'all kind of have to
2 keep up with everybody who goes in and out just so you can
3 show that everybody who was in there was supposed to be in
4 there and no other folks get in there, right?

5 A. Yes. Now, Officer Lilly was in charge of that going in
6 and out as far as that.

7 Q. Okay. All right. But that's -- to your recollection
8 that's the assessment --

9 A. As far as I know.

10 Q. Okay. That's fine. When you get there you've got two
11 folks that are hurt, one person with the wound to the head
12 and one person with a gunshot wound, correct?

13 A. Yeah.

14 Q. At that point in time you were -- you were just trying
15 to assess the scene, correct?

16 A. Yes, sir.

17 Q. You hadn't figured out who a primary aggressor was, you
18 just --

19 A. No, sir, I did not.

20 Q. And I think you said EMS -- I think the solicitor asked
21 you when you got a 1075 EMS automatically comes?

22 A. Well now, on those type of calls I am confident that
23 EMS was dispatched to that.

24 Q. Okay. Well, they got there, right?

25 A. Yeah, sure.

TESTIMONY OF RANDY MORGAN

325

1 Q. And we see on your video that I believe it's Mr.

2 Nassrah that gets transported out, right?

3 A. Yes, sir.

4 Q. I don't see Mr. Hyatt, but did he get transported out?

5 A. Yes.

6 Q. By EMS?

7 A. Yes.

8 Q. In fact, I think a helicopter flew in for both of them,
9 didn't they?

10 A. Yes, sir.

11 Q. It was just on the video, I saw one of them but I know
12 it was cutting on and off. I'm not saying you cut it, don't
13 get me wrong now, I'm not saying you cut anything out, but
14 both -- I just want to clarify it, did -- both of those were
15 removed by helicopter.

16 A. Both was treated by EMS and transported, yes.

17 Q. Once the investigators got there you kind of turned it
18 over with them. You assist in taking some statements but
19 you don't collect the evidence, right?

20 A. No, just pass information on.

21 MR. FRICK: Thank you, sir. That's all of the
22 questions I have.

23 MR. COOK: No further questions, Your Honor.

24 THE COURT: All right. Thank you, sir, you may step
25 down. Thank you very much. Call your next witness.

TESTIMONY OF CRAIG LILLY

1 MR. COOK: State calls Deputy Craig Lilly.

2 The witness, CRAIG LILLY, was first duly sworn

3 and testified as follows, on:

4 DIRECT EXAMINATION

5 BY MR. COOK:

6 Q. Please state your name for the record.

7 A. Craig Lilly.

8 Q. Who is your employer?

9 A. The Lancaster County Sheriff's Office.

10 Q. How long have you been with the sheriff's office?

11 A. A little over five years.

12 Q. What are your general duties for the sheriff's office?

13 A. At this time?

14 Q. Sure.

15 A. I'm a training officer with the professional standards
16 unit.

17 Q. Were you working September 16th of 2010?

18 A. Yes, sir.

19 Q. Did you respond to Merle Lane that day?

20 A. Yes, sir, I did.

21 Q. What type of call was it?

22 A. 1075, a shooting call.

23 Q. Were you first on the scene?

24 A. No, sir. I was the third officer that arrived that
25 day.

TESTIMONY OF CRAIG LILLY

1 Q. Besides law enforcement, who else was on the scene when
2 you got there?

3 A. Aaron Hyatt, Michael Hyatt, Mr. Nassrah and Mr. Melton,
4 and Deputy Morgan that is.

5 Q. Besides law enforcement, did you know the parties on
6 the scene when you got there? Were you familiar with them?

7 A. I was familiar with the Hyatts from earlier that week.

8 Q. What happened earlier that week that you gained
9 familiarity with the Hyatts?

10 A. The call that was given out that Deputy Morgan
11 responded to that I also responded to, locked gate call.
12 When I got there Deputy Morgan was talking to the Hyatts, he
13 went to speak to Mr. Nassrah I guess down at the end of the
14 field which I never spoke to at the time. I stood by with
15 the Hyatts as Deputy Morgan spoke with Mr. Nassrah.

16 Q. That incident you referred to, were the parties
17 involved, allegedly Mr. Hyatt and Mr. Nassrah, were they
18 both -- were they the two parties on the incident on the
19 13th?

20 A. Yes.

21 Q. Back to the 16th when you got to the scene, what was
22 your role as far as investigation or casing the scene? What
23 did you do?

24 A. Well, when I responded to the scene I was the third
25 officer on scene. I approached Deputy Morgan and

TESTIMONY OF CRAIG LILLY

1 Investigator Steele to find out what the situation was.

2 Once I left them I went over and spoke to the Hyatts for a

3 second. As soon as EMS arrived that's when I started

4 cording off the crime scene so nobody else would go into the

5 crime scene or disturb any evidence and started the crime

6 scene log.

7 Q. When you prepare the crime scene log as you just heard

8 Deputy Morgan testify all of the names that are on that

9 list.

10 A. Yes, sir.

11 Q. Are you responsible for keeping up with those names on

12 this case, is that one of your duties?

13 A. Right. I wrote down who actually enters the crime

14 scene.

15 Q. Is it who actually comes into the crime scene or is

16 there something somebody has to do to be able to add to that

17 list?

18 A. No. If somebody steps under that crime scene tape

19 their name is added to that list.

20 Q. Does it necessarily mean that they did something on the

21 scene?

22 A. No, sir, it does not.

23 MR. COOK: Nothing further from Deputy Lilly. Thank

24 you.

25 THE COURT: Mr. Grier?

TESTIMONY OF CRAIG LILLY

1 MR. GRIER: I've got no questions.

2 THE COURT: Mr. Frick?

3 CROSS EXAMINATION

4 BY MR. FRICK:

5 Q. Just quickly. The incident on the 13th, you stayed
6 with the Hyatts, right?

7 A. Yes, sir.

8 Q. Both of them? Were both of them there?

9 A. I believe both of them were at the residence while
10 Deputy Morgan went to the end of the road to speak with Mr.
11 Nassrah.

12 Q. You didn't see them go to the end of the road and
13 unlock the gate.

14 A. No, sir, I did not.

15 MR. FRICK: That's all.

16 THE COURT: Thank you, sir, you can step down. Call
17 your next witness.

18 MR. COOK: State calls Investigator Ken Taylor.

19 The witness, KEN TAYLOR, was first duly sworn.
20 and testified as follows, on:

21 DIRECT EXAMINATION

22 BY MR. COOK:

23 Q. Please state your name for the record.

24 A. My name is Ken Taylor.

25 Q. Who is your employer?

TESTIMONY OF KEN TAYLOR

- 1 A. Lancaster County Sheriff's Office.
- 2 Q. What do you do at the sheriff's office?
- 3 A. Currently I'm assigned to our crime scene
- 4 investigations unit.
- 5 Q. CSI?
- 6 A. Yes, sir.
- 7 Q. How long have you been with CSI?
- 8 A. I've been with the crime scene unit just a little over
- 9 four years.
- 10 Q. Just overview, what does CSI do?
- 11 A. We, of course, investigate any crime scene. Usually
- 12 we're trying to look more so for physical evidence, and in
- 13 most cases we're called out on burglaries, assaults,
- 14 homicides, things of that nature. We don't come out on
- 15 every call, again, more minor calls they generally don't
- 16 call us out, just something that usually involves a little
- 17 more time spent on gathering evidence, collecting evidence
- 18 or processing some evidence.
- 19 Q. Did you respond to Merle Lane September 16th of 2010?
- 20 A. Yes, I did.
- 21 Q. What type of call was it?
- 22 A. It went out as a shooting call.
- 23 Q. When you arrived on the scene who all was there, do you
- 24 remember?
- 25 A. Quite a few people were there. My Lieutenant, Christy

TESTIMONY OF KEN TAYLOR

1 Rogers, coworker Crime Scene Investigator Jeff Steele was
2 there, Deputy Morgan, I believe Deputy Lilly was there,
3 Mr. Aaron Hyatt, Mr. Michael Hyatt. Mr. Nassrah, I believe,
4 had already been transported by the time I got there.

5 Q. I'm going to show you --

6 A. No, excuse me, I think I've got it in reverse. Mr.
7 Nassrah was getting ready to be transported, I think
8 Mr. Hyatt had already been transported by the time I got
9 there.

10 MR. COOK: Approach the witness, Your Honor?

11 THE COURT: Yes, sir.

12 Q. I show you this diagram. Does this look familiar to
13 you?

14 A. Yes.

15 Q. Can you identify what that is?

16 A. Yeah. This is a sketch drawing that I did to try to
17 depict the overall view of the scene.

18 Q. Does it look altered in any way from when you made it?

19 A. No, sir.

20 Q. What does that diagram show?

21 A. This shows a small portion of Merle Lane which is a
22 dirt road coming in from the paved roadway, which would be
23 off to the right of this particular drawing, leading toward
24 the residence of Michael Hyatt at [REDACTED] Merle Lane.

25 Q. Okay. When you got to the scene, how many vehicles --

TESTIMONY OF KEN TAYLOR

1 non-law enforcement vehicles were on Merle Lane?

2 A. There were, I believe, three pickup trucks, one tractor
3 and a trailer and another implement for I think bailing or
4 bundling hay.

5 Q. Does that diagram show all of those vehicles?

6 A. Yes.

7 Q. The first vehicle, which would be closest to -- can you
8 see this image on this screen?

9 A. Yes, sir, I can.

10 Q. The top right corner, is that Horton Rollins Road, is
11 that familiar to you?

12 A. I'm not familiar with it but I --

13 Q. Would that be the entrance to Merle Lane?

14 A. Yes, sir, coming of Horton Rollins, correct.

15 Q. The vehicle that's closest to the entrance of Merle
16 Lane, what vehicle was there?

17 A. That was a I believe a green colored -- no excuse, me,
18 yeah, a green colored truck that was purportedly driven by

19 Mr. Aaron Hyatt.

20 Q. What was the next vehicle?

21 A. The next vehicle was a pickup truck pulling a trailer,
22 it was purportedly driven by Mr. Nassrah.

23 Q. Was it going in the same direction as the green truck
24 or was it headed out of Merle Lane?

25 A. It was headed out of Merle Lane back toward the main

TESTIMONY OF KEN TAYLOR

1 paved road, whereas the truck that was supposed to be
2 Mr. Aaron Hyatt's was pointed in the other direction
3 directly toward it.

4 Q. What is the next vehicle in line going down Merle Lane?

5 A. It's going to be a tractor pulling a farm implement.

6 Q. What's behind the tractor?

7 A. Behind that is another pickup -- a final pickup truck
8 supposedly or purportedly driven by Mr. Michael Hyatt.

9 Q. Did you measure the distance of how far it was from the
10 back of Aaron Hyatt's truck, the green truck, to the back of
11 the last truck in that caravan of vehicles?

12 A. Yes, sir, we did.

13 Q. How far was it?

14 A. We measured it to be 144 feet and five inches.

15 Q. Okay. Can you see this map on your screen up there
16 right in front of you?

17 A. It's not on my screen here, no, sir.

18 Q. Tap the screen.

19 A. There it is.

20 Q. With your finger can you make a line on that map where
21 the back of Aaron Hyatt's truck would be.

22 A. It should be roughly about right there.

23 Q. Okay. Can you make another line where the back of
24 Michael Hyatt's truck, the red truck in the back, where it
25 would be?

TESTIMONY OF KEN TAYLOR

1 A. It would be approximately there.

2 Q. And how far did you say that was?

3 A. 144 feet, five inches.

4 MR. COOK: Your Honor, the State moves to introduce
5 this diagram into evidence as --

6 MR. GRIER: Your Honor, I would like to have a short
7 cocounsel --

8 THE COURT: Okay.

9 (Break in proceedings.)

10 MR. FRICK: Judge, can we take up a matter outside of
11 the jury's presence quickly?

12 THE COURT: Okay. Ladies and gentlemen of the jury,
13 now is one of those times where I need to take up matters of
14 law outside of your presence, if you would please retire to
15 the jury room, don't talk about the case.

16 (The jury left the courtroom.)

17 MR. GRIER: I think we have a stipulation, Your Honor,
18 that we have no objection to -- am I right -- there will
19 be -- this sketch indicates there is blood on the fender and
20 there ain't no -- there is not blood on the fender. Okay.
21 So we have no problem with it as long as that is redacted.
22 And provided that there's no testimony or evidence or the
23 hemi sticks that they attempted to test the blood with on
24 the scene and there's not going to be evidence about that.

25 THE COURT: You're not asking him about that?

TESTIMONY OF KEN TAYLOR

1 MR. COOK: I'm not going to introduce the fact that
2 they tested for blood on the spot where the diagram
3 indicates there was blood. I'm not going to introduce it.

4 THE COURT: If y'all hand me a sharpie I will mark
5 through it with y'all looking so we can get it on the record
6 that everybody agrees with what the exhibit is redacted.
7 Now, does the document redacted satisfy the defense request?

8 MR. GRIER: That is fine with me, Your Honor.

9 THE COURT: All right. Thank you. Then the State is
10 going to offer this in as the State's next in order?

11 MR. COOK: Yes, sir.

12 (The diagram was received as State's 18.)

13 (The jury return to the courtroom.)

14 THE COURT: All jurors are present. Sorry about that,
15 ladies and gentlemen. Remember, I told you Monday I try not
16 to make y'all get up and down too often but we did have a
17 matter we needed to take up outside of your presence and we
18 have done that so we can resume where we are. Solicitor?

19 MR. COOK: Thank you, Judge. The State moves for
20 Investigator Taylor's diagram be put into evidence.

21 MR. GRIER: No objection.

22 THE COURT: Without objection entered into evidence as
23 State's Number 2?

24 MR. COOK: I ask that I publish this to the jury.

25 THE COURT: Any objection.

TESTIMONY OF KEN TAYLOR

1 MR. GRIER: No objection.

2 THE COURT: All right. Pass it around.

3 BY MR. COOK:

4 Q. Investigator Taylor, did you locate any firearms on the
5 scene?

6 A. Yes, we did.

7 Q. How many?

8 A. Two.

9 Q. Did you locate a .380?

10 A. Yes, we did.

11 Q. Where was that?

12 A. It was, I believe, on the ground near a fence post just
13 off of the edge of the gravel road.

14 Q. Do you know who that gun belonged to?

15 A. It's my understanding, I believe, it belonged to Mr.
16 Nassrah.

17 Q. You said -- was Kamil still on the scene when you got
18 there or was he leaving?

19 A. He was being treated at the time and getting ready to
20 be transported out.

21 Q. When he was being treated, do you know how far the gun
22 was from where he was?

23 A. I think it was just within a few feet I believe, if I
24 recall.

25 Q. Where was the other gun you found?

TESTIMONY OF KEN TAYLOR

1 A. We found another smaller caliber pistol in the glove
2 box in the pickup truck that I believe Mr. Nassrah had been
3 driving.

4 Q. What caliber?

5 A. I think it was a 25 caliber, not 100 percent certain on
6 that. It should be in a narrative in the one of the reports
7 there, but I think it was a 25 caliber.

8 Q. It was in the glove box when you arrived?

9 A. Yes.

10 Q. Did you find any shell casings on the scene?

11 A. Yes, we did.

12 Q. How many?

13 A. If I recall I believe we found two.

14 Q. What caliber were they?

15 A. 380.

16 Q. I really don't know a lot about guns, but can you
17 explain what a shell casing actually is?

18 A. Yeah. The casing is just basically the part left
19 behind of the whole cartridge once the bullet is fired. We
20 may call it a bullet, a cartridge, a cartridge casing, but
21 the casing or the cartridge casing as it's referred to
22 sometimes is the empty, the brass empty or whatever material
23 it's made of, but it's going to be the empty portion that's
24 left behind. It's either retained in the gun or ejected
25 from the gun.

TESTIMONY OF KEN TAYLOR

1 Q. So ejected from the gun?

2 A. Yes.

3 Q. So how does it -- how far can it go -- how far can the
4 casing be from where it was fired?

5 A. It depends. It depends on the gun, depends on -- I'm
6 sure there are a lot of factors. It may depend on the type
7 of ammunition, may depend on the terrain of where the empty
8 casing was ejected by the semiautomatic handgun, a lot of
9 factors there.

10 Q. Where are these two shell casings located?

11 A. Both of these casings -- one was found, if I can recall
12 and I believe it's going to be on our diagram, the location
13 of it there -- one was found just a few feet from the left
14 rear tire, I think, of Aaron Hyatt's pickup truck, and a
15 second one was found down below the fence post which was
16 near where Mr. Nassrah was seated on the ground when I
17 arrived. I think all in all they were probably about 25 or
18 so feet from each other where the two casings were found in
19 that same area.

20 Q. How far were the casings in relation to Kamil?

21 A. I think one was about 25 feet below him and I think the
22 other one was about 25 or 26 feet to the -- I'm going to say
23 to the east back toward Mr. Aaron Hyatt's pickup truck.

24 Q. Okay. Did you recover any articles of clothing?

25 A. Yes, we did.

TESTIMONY OF KEN TAYLOR

1 Q. What all did you recover?

2 A. I believe we recovered a pair of pants, a shirt and a
3 hat I believe it was.

4 MR. COOK: Beg the Court's indulgence for one moment.

5 THE COURT: Okay.

6 (Break in proceedings.)

7 Q. Investigator Taylor, did you recover this hat?

8 A. Yes.

9 Q. Can you identify what type of hat that is?

10 A. That's a John Deere brand hat.

11 Q. Did you process this?

12 A. We collected it.

13 Q. Okay. Where has this hat been since September of 2010?

14 A. In our evidence functions room, and I think that one
15 may have gone to SLED, I'm not 100 percent sure.

16 Q. Do you remember where this hat was on the scene?

17 A. Yes. It was on a fence post beside where Mr. Nassrah
18 was found when I arrived.

19 Q. To your knowledge was this Mr. Nassrah's hat?

20 A. I believe it was.

21 Q. Can you state what side of the hat -- there appears to
22 be a stain of something, what side of the hat it's on?

23 A. It appears to be more on the left side of the hat.

24 Q. Is it more towards the front or the rear of the hat?

25 A. Predominantly toward the left side, it appears to be

TESTIMONY OF KEN TAYLOR

1 from the front brim moving back towards the rear.

2 Q. Did you locate any blood on the scene?

3 A. Yes.

4 Q. Where did you locate blood?

5 A. Where Mr. Nassrah was found seated on the ground when I
6 arrived just off to -- looking at the direction he was
7 facing probably would have been more toward his right down
8 in the gravel. There were several drops of what appeared to
9 be blood down in the gravel, down in the soil there right in
10 the general area where he was at.

11 Q. You said the area he was facing. If you were in Mr.
12 Nassrah's position facing, what would he be looking at?

13 A. When I arrived he was seated on the ground I believe
14 facing back toward the paved road, what is that, Horton
15 Rollins I believe, facing back in that direction.

16 Q. Okay. Can you still see on your screen?

17 A. Yes.

18 Q. I know it's kind of zoomed out a little bit, but can
19 you make a mark where you found blood?

20 A. Yes, sir. It was just off of the gravel road, there's
21 a second mark there kind of down in that area, the second
22 mark to the left.

23 Q. Where is that blood in relation to the shell casings
24 you found?

25 A. One of the casings was found pretty close to it, right

TESTIMONY OF KEN TAYLOR

1 in within several inches of that. The second casing was
2 found up closer to Mr. Aaron Hyatt's pickup truck.

3 Q. One is farther towards the truck, one is closer to
4 Kamil.

5 MR. COOK: Beg the Court's indulgence one moment.

6 THE COURT: Okay.

7 (Break in proceedings.)

8 Q. I know you don't have it in front of you, Investigator
9 Taylor, the diagram you prepared, did you indicate where you
10 found these markings of blood on the casings?

11 A. Yes, I believe so.

12 Q. Did you search Aaron Hyatt's vehicle?

13 A. Yes.

14 Q. What did you find in there?

15 A. I don't think we found anything of any evidentiary
16 value that I recall.

17 Q. Let me backtrack just a little bit. The blood that you
18 found on the ground, when you're training with CSI is there
19 any way you could tell what direction the blood was going,
20 or where the blood came and what direction?

21 A. Sometimes you can. In this particular instance because
22 of the soil, the loose gravel and the sandy soil there in
23 the driveway it was really hard to make a determination on
24 most of that. There was one drop that did appear to have
25 some kind of directionality and without a copy of my

TESTIMONY OF KEN TAYLOR

1 narrative I can't recall what we actually determined. But
2 again, even with that not knowing whether it dripped off
3 someone as they were moving or if it was a limb that was
4 swinging or something like that that it may have what's
5 called cast-off blood, it may cast it off in that particular
6 direction. But there was just that one drop that had any
7 indication of directionality. Again the rest of it landed
8 in rocks and sandy area and it just didn't lend itself good
9 to make any determination on that.

10 Q. Okay. You said you had three spots of blood that you
11 located?

12 A. Actually I noted on my drawing here, let's see. I
13 believe I have noted five locations here on the drawing
14 again over in the gravel area of the roadway.

15 Q. Do you have any idea the area around the -- how large
16 an area where all of that blood it is encompassed?

17 A. Probably in an area up to eight feet in length and
18 maybe three feet in width, just a swath or a path.

19 Q. So a pretty confined area?

20 A. Yes.

21 Q. When y'all got there there wasn't blood splattered all
22 over the gravel road.

23 A. No, sir, that was the only place where we really
24 noticed where some drops appeared to have come off there.

25 MR. COOK: No further questions for him, answer

TESTIMONY OF KEN TAYLOR

1 anything that they may have for you.

2 THE COURT: All right, Mr. Grier?

3 MR. GRIER: Your Honor, Mr. Frick is going to lead on
4 this one if that's in the Court's discretion.

5 THE COURT: All right. Mr. Frick?

6 CROSS EXAMINATION

7 BY MR. FRICK:

8 Q. Are you the one that took the pictures on this one? I
9 can never get it straight whether it's you or --

10 A. I took some of the pictures.

11 Q. Okay. All right. I'm going to show you some pictures.
12 Just look through them and tell me if you recognize -- as a
13 group just tell me.

14 A. Yes, sir, I recognize the pictures.

15 Q. What are they?

16 A. They are pictures of spattered stains on the ground and
17 in the gravel that we believe was blood drops.

18 Q. Okay. That's the stuff that Solicitor Cook was asking
19 you about?

20 A. Yes, sir.

21 Q. Those are the makers that you were talking about? I've
22 got 9, 10, 11, 13 and 14, right?

23 A. Yes, sir.

24 Q. And then I've got another picture here, what does that
25 look like to you?

TESTIMONY OF KEN TAYLOR

1 A. That is some of same markers, some of the same
2 locations, kind of an overall shot of it.

3 Q. Is that all of these just showing you where it was
4 located?

5 A. Yes. All except for number 14, number 14 is not in
6 that particular shot.

7 Q. Do you know where 14 was then? Can you tell where it
8 would be in this picture?

9 A. Yes, sir. Just above number nine, just in this area
10 here.

11 Q. Okay. So it's still kind of in the area?

12 A. Yes, sir.

13 Q. 14 just hadn't been put down on there?

14 A. Yeah. I think when we took that one and then we
15 continued looking and we spotted the final one and just put
16 another marker down after we had already taken that picture.

17 MR. FRICK: I would move these in as the next six
18 defense exhibits.

19 MR. COOK: No objection.

20 THE COURT: Without objection they're received as the
21 next six exhibits.

22 (The photographs were received as Defendant's
23 13-18.)

24 Q. Was Mr. Nassrah out there when you got there or had he
25 already been transported?

TESTIMONY OF KEN TAYLOR

1 A. He was on scene when I arrived, they were readying him
2 to transport him about the time I got there.

3 Q. Okay. I'm going to show you Defendant's Number 12.
4 Was he still in that situation or was he in a different
5 situation?

6 A. When I arrived he was sitting there leaning against
7 that fence.

8 Q. Okay. Did you go up and observe him?

9 A. No, I did not.

10 Q. Do you know who did if anybody?

11 A. No, I don't.

12 Q. I'm going to ask you briefly on these. You put some
13 kind of I would call it a ruler thing here. What is that?

14 A. That's what it is, it's just a scale just to show
15 dimensions.

16 Q. Okay. These are not very large spots we're talking
17 about; is that correct?

18 A. Probably from just a few millimeters up to about five
19 or six millimeters.

20 Q. Millimeter is not real big, is it?

21 A. No, sir.

22 Q. I know they taught me the metric but I can't remember.
23 We're talking about an area not too much bigger than
24 somewhere around there?

25 A. Ah --

TESTIMONY OF KEN TAYLOR

- 1 Q. I don't know, you tell me.
- 2 A. Each group in those photos is probably about anywhere
- 3 from about an inch and a half or smaller.
- 4 Q. Okay. All right. It wasn't just you looking for these
- 5 spots, everybody is looking for spots?
- 6 A. Myself and Investigator Steele.
- 7 Q. Y'all are the CSI team, correct?
- 8 A. Yes, sir.
- 9 Q. Trained.
- 10 A. Yes, sir.
- 11 Q. Gone to school for it.
- 12 A. Yes, sir.
- 13 Q. Out there looking in this gravel.
- 14 A. Yes, sir.
- 15 Q. Y'all looked on the road.
- 16 A. Yes.
- 17 Q. Looked everywhere.
- 18 A. Yes.
- 19 Q. And if you'd seen something else that looked like one
- 20 these are the dots you would have put a marker on it?
- 21 A. Yes, sir.
- 22 Q. Okay. These are the dots you found.
- 23 A. Yes, sir.
- 24 Q. I see a lot of blue granite, it looks like there's some
- 25 pink granite out there too. This is a difficult scene to

TESTIMONY OF KEN TAYLOR

1 try to find blood splatter, would you agree?

2 A. It was rocky, it was gravel and sand.

3 MR. FRICK: Judge, I'm not going to ask that they look
4 at all of them right now, they'll see them later, but I just
5 want to pass one picture, Number 13.

6 THE COURT: All right. Any objection to that?

7 MR. COOK: No objection.

8 THE COURT: Okay. And again, ladies and gentlemen, at
9 the conclusion of the case when you are actually
10 deliberating you will have all of these items with you in
11 your jury room but for right now you can just pass them
12 around.

13 Q. I'll ask you because the solicitor brought it up. This
14 is the hat we're talking about? And I know we don't have it
15 in evidence but I think Mr. Cook is going to take care of
16 that.

17 A. Okay.

18 Q. Is that correct? That's the hat that was on the scene?

19 A. Yes.

20 Q. This is the hat that we say was Mr. Nassrah's?

21 A. Yes.

22 Q. This is the area that you're saying I guess is blood?

23 A. Appears to be blood, yes, sir.

24 Q. Do you know where this hat was located?

25 A. It was hanging on a fence post whenever I arrived.

TESTIMONY OF KEN TAYLOR

1 Q. When you got there.

2 A. Yes, sir.

3 Q. Okay. Got no idea how it got there, that's just where
4 it was.

5 A. No, sir.

6 Q. In fact, let me ask you about that. When y'all get out
7 on the scene do y'all move stuff around? I know -- we've
8 got a whole bunch of pictures of stuff, do y'all go out
9 there and photograph the scene as is?

10 A. We typically try to. Sometimes if other responders, be
11 it fire, EMS, other officers, things like that, they may
12 either deliberately or inadvertently move something before
13 we get there to document that, but we generally as a
14 practice try to document everything as is as it's found.

15 Q. Okay. When you got there do you recall whether --
16 there were a couple of trucks out there, right? Couple of
17 vehicles out there.

18 A. Yes.

19 Q. Let's see. The second vehicle is what I'm going to
20 call it, I think you have it marked here on Number 18 as Mr.
21 Nassrah's truck.

22 A. Right, yes, sir.

23 Q. Do you recall for lack of a better term, the state of
24 that vehicle? Were the doors opened, closed?

25 A. I really don't remember. I don't remember what it was

TESTIMONY OF KEN TAYLOR

1 like when I got there. I was one of the last ones to get
2 there.

3 Q. Okay. We've got some photographs out there. Would
4 that be you I need to ask about or do I need to ask
5 Mr. Steele?

6 A. Mr. Steele and I both took photographs. Again, I was
7 about the last one of our folks to get there so I couldn't
8 say chronologically which one would have been taken first.

9 Q. Okay. I'm going to show you State's Number 12 again.

10 A. Yes, sir.

11 Q. The vehicle here, is that what we're calling Mr.
12 Nassrah's vehicle?

13 A. Yes, I believe it is.

14 Q. It appears to me that the passenger side door is open.

15 A. Correct, sir.

16 Q. Was it that way when you got there?

17 A. I don't recall. I don't remember.

18 Q. Okay. All right. Jeff is in this one so it has got to
19 be you. Take a look at that photograph, does that
20 photograph look familiar?

21 A. Yes.

22 Q. Is that one that you likely took?

23 A. Most likely. Mr. Steele is in the photograph so most
24 likely I took this one.

25 Q. What is that a picture of?

TESTIMONY OF KEN TAYLOR

1 A. That is a picture looking back toward Mr. Aaron Hyatt's
2 truck and Mr. Nassrah's truck and evidence marker eight with
3 a scale marker in the gravel beside it.

4 Q. Okay. All right. To your knowledge had anybody moved
5 these vehicles from where they were when the incident took
6 place?

7 A. Not that I'm aware of.

8 Q. This is the distance they were apart.

9 A. Yes.

10 MR. FRICK: Your Honor, at this time I move this
11 photograph in as the next Defendant's Exhibit.

12 MR. COOK: No objection.

13 THE COURT: Without objection defendant's next in
14 evidence.

15 (The photograph was received as Defendant's
16 19.)

17 Q. I'll go ahead and ask you about these two, you will
18 either tell me you know them or you don't. Take a look at
19 these two photographs.

20 A. Again, I recall the scene. I couldn't say whether I
21 took these or Investigator Steele.

22 Q. Okay. But you were on the scene, is that what it
23 looked like when you were out there?

24 A. Yes, sir,

25 Q. What does that show?

TESTIMONY OF KEN TAYLOR

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1 A. This again shows Mr. Aaron Hyatt's green pickup truck
2 and Mr. Nassrah's white pickup truck pulling the
3 trailer-load of hay.

4 Q. Okay. And it seems to be down that driveway we've been
5 talking about; is that right?

6 A. No. It's not down the driveway that comes off to the
7 side, this is on Merle Lane. All of these vehicles were up
8 on Merle Lane.

9 Q. I'm sorry, I'm talking about whoever took the pictures,
10 is this from --

11 A. Yes, sir. From standing down the driveway, yes, sir.

12 Q. What does this look like?

13 A. And this would be showing the same two vehicles looking
14 back toward -- this is going to be Deputy Morgan's patrol
15 car from where he pulled up just at the off-shoot of that
16 driveway.

17 Q. This road I'm looking at here, is that Merle Lane?

18 A. This should be Merle Lane.

19 Q. All right. And this is the driveway we have been
20 talking about.

21 A. Yes.

22 Q. Okay. I'll show you these two.

23 MR. FRICK: Two more photographs, Your Honor.

24 MR. COOK: No objection.

25 THE COURT: Without objection defendant's next in order

TESTIMONY OF KEN TAYLOR

1 are admitted into evidence.

2 (The two photographs were received as

3 Defendant's 20-21.)

4 Q. Two more, you can tell me you're familiar with them or
5 not. I'm going to show these two photographs.

6 A. I do not recall taking those.

7 Q. Okay. But you said Mr. Nassrah was still on the scene.

8 A. Yes.

9 Q. And I think you told me you didn't go up there, so you
10 can't tell whether this is an accurate depiction or not.

11 A. No. I didn't get too close to him. Again, I think EMS
12 was tending to him and they were getting ready to transport
13 him while I was there.

14 Q. That's fine, thank you, sir. I'll show you this
15 photograph.

16 A. Yes.

17 Q. Do you know what that is?

18 A. Yes, sir. That is the Beretta pistol that we collected
19 on the scene I believe it is. Yeah.

20 Q. Okay. You saw the pistol, this is what it looked like
21 on the scene, I mean.

22 A. Yes, sir, that looks like it.

23 Q. Okay. I'm going to move this one into evidence.

24 MR. COOK: No objection.

25 THE COURT: Without objection defendant's next in order

TESTIMONY OF KEN TAYLOR

1 admitted into evidence.

2 (The photograph was received as Defendant's
3 22.)

4 Q. Now, Mr. Taylor, I'm no gun expert but it appears to me
5 that the hammer is back on this thing.

6 A. Yes, sir, it does look to be that way.

7 Q. Did you do any analysis? Did you look at this gun or
8 was that Mr. Steele?

9 A. I think I dusted it for -- no, excuse me -- yeah. I
10 believe I dusted it for prints and took some swabs from it
11 once we got it back to our office, and I believe I unloaded
12 it as well.

13 Q. Do you know how many bullets it had in it, if any?

14 A. It is in my narrative. I think it had one in the
15 chamber and if I recall maybe six. Without looking at the
16 narrative I can't recall.

17 Q. I can take care of that without any problem. Is that
18 your narrative?

19 A. Yes, sir, I believe it is.

20 Q. What can you tell me about this gun?

21 A. Model 84 .380 caliber. It was found beside an item
22 marker marked as item number two in the photographs. I
23 unloaded it there on the scene, it had one cartridge in the
24 chamber and six cartridges in the magazine.

25 Q. What does one in the chamber mean?

TESTIMONY OF KEN TAYLOR

1 A. It had a live cartridge in the chamber that would have
2 been next in line to have been fired.

3 Q. And if the hammer is pulled back is it ready to go?

4 A. It would appear unless the safety is on or something.

5 I don't know, again, without -- but it appears from the
6 picture to be cocked. And again, if it's a semiautomatic
7 once it's fired it's going to cock once, it loads the next
8 one in anyway, it's going to do that automatically.

9 Q. Until it runs out or jams.

10 A. Generally, yeah.

11 Q. Okay. Did you make any determination about the
12 condition of the gun when it was found? Is this thing
13 jammed, is it ready to fire or did you make a determination?

14 A. I don't recall anything on that.

15 Q. Okay. Is there anything in your report there?

16 A. No, sir, not that I can recall. Again, other than just
17 having one in the cartridge -- excuse me, one in the chamber
18 and six cartridges in the magazine.

19 Q. Can I see your report for a second?

20 A. Yes, sir.

21 Q. It wasn't in your report, it's in Mr. Steele's.

22 A. Okay.

23 Q. I always get y'all's stuff confused, I'm sorry. I'm
24 about done showing you pictures, but I'm going to show you
25 three more pictures.

TESTIMONY OF KEN TAYLOR

- 1 A. Yes, sir.
- 2 Q. Does that look familiar to you?
- 3 A. They do. I believe these are photographs that I took.
- 4 Q. What are they pictures of?
- 5 A. I believe they're the inside front passenger area of
- 6 Mr. Nassrah's pickup truck.
- 7 Q. Okay. Now, it looks kind of like it was the glove box.
- 8 A. Yes, sir.
- 9 Q. Was the glove box opened or closed or do you remember?
- 10 A. If I recall it was closed.
- 11 Q. Okay. All right. Somebody opened it, I think. Was it
- 12 you or did somebody else do it?
- 13 A. When we searched it I opened it and searched the inside
- 14 of the glove box.
- 15 Q. This is the condition you saw it in.
- 16 A. Yes, sir.
- 17 Q. There is a marker.
- 18 A. Yes.
- 19 Q. There's something beside that marker.
- 20 A. It was a stain that we thought might be blood.
- 21 Q. Where you swabbed it.
- 22 A. Yes.
- 23 Q. Are you aware of the results of that swab?
- 24 A. I think there was a SLED report on that, I don't recall
- 25 for certain what their answer was on it right now without

TESTIMONY OF KEN TAYLOR

1 actually seeing the report.

2 Q. Okay. I can show you that report if you don't mind.

3 A. Sure.

4 MR. FRICK: And your Honor, I want to move these three
5 into evidence?

6 MR. COOK: No objection.

7 THE COURT: Without objection the three photographs
8 defendant's next in order.

9 (The photographs were received as Defendant's
10 23-25.)

11 Q. Do you remember the marker number of what that one was?

12 A. No, sir, I do not.

13 Q. I'm going to hand you a sheet. Is that the one that
14 lists all of your evidence and how SLED numbered it?

15 A. Yes, sir, it looks like it is.

16 Q. Okay. Do you see on there -- don't tell me what the
17 number is, do you see on there a number that correlates with
18 that swab I was just asking you about?

19 A. I believe I do.

20 Q. I'm going to hand you a report. Do you know what that
21 report is?

22 A. Yes. That is a report back from SLED.

23 Q. Dealing with blood?

24 A. Yes, sir, swabs.

25 Q. Do you see where they did something with that marker

TESTIMONY OF KEN TAYLOR

1 number?

2 A. Yes, sir.

3 Q. What were their results?

4 A. The results say blood indicated, see DNA analysis.

5 Q. What does it say about that marker?

6 A. They labeled it as marker number eight and we had
7 listed it as a swab from the glove box door of Ford truck.

8 And according to the SLED report it says, "DNA profile
9 developed from item 8, 11 and item 12 matches the DNA
10 profile of Kamil Nassrah."

11 Q. That's a pretty high probability, I'm not going to ask
12 you to get into that.

13 A. Yes, sir.

14 Q. But it's his blood.

15 A. According to the report, yes, sir.

16 Q. So I went through all of that to ask you one question,
17 the stuff we see right here and that dot right there that
18 y'all collected is Mr. Nassrah's blood on the glove box in
19 his truck?

20 A. According to SLED's report, yes.

21 Q. All right. Two more pictures and I promise this is
22 going to be it. Do you recognize those?

23 A. Yes.

24 Q. Did you take those?

25 A. I believe I did.

TESTIMONY OF KEN TAYLOR

1 Q. What are those pictures of?

2 A. It's going to be the front driver's side of I believe
3 Mr. Nassrah's pickup truck.

4 Q. Okay. That's what it looked like when you got there?
5 I know there was a marker on there.

6 A. Yes.

7 Q. You put that little ruler marker on there.

8 A. Yes.

9 Q. As far as the state of the vehicle, aside from that
10 that's what it looked like when you arrived and took the
11 picture.

12 A. Yes.

13 MR. FRICK: Two more.

14 MR. COOK: No objection, Your Honor.

15 THE COURT: Without objection two more photographs
16 defendant's next in order received into evidence.

17 (The two photographs were received as
18 Defendant's 26 and 27.)

19 MR. FRICK: That's all the questions I have, please.
20 answer anything Mr. Grier has.

21 THE COURT: Mr. Grier?

22 MR. GRIER: Very briefly.

23 CROSS EXAMINATION

24 BY MR. GRIER:

25 Q. I always want to find out what your official title is.

TESTIMONY OF KEN TAYLOR

1 A. Crime Scene Investigator.

2 Q. Investigator Taylor, two guns found on the scene,
3 that's it?

4 A. Yes.

5 Q. You would know if there are any others. That's it.

6 A. Yes.

7 Q. One of them is one that you're aware that Mr. Nassrah
8 has stated that he shot Mr. Hyatt with, correct?

9 A. It's my understanding.

10 Q. And number two, that is in the glove box of his
11 vehicle --

12 A. Yes.

13 Q. -- is where it was located.

14 A. Right.

15 Q. Now, you testified about the dusting the Beretta .380.

16 Now, did you dust the .22 in the glove box?

17 A. I don't know if we did. I don't think we did any
18 further processing on that gun.

19 Q. So we don't -- was there any determination made that
20 you're aware of of who may have handled that .22 in any
21 respect?

22 A. Not that I recall.

23 Q. Did you conduct any GSR, any gun residue, on anybody on
24 the scene here? Who would have had that responsibility?

25 A. Generally either myself or Investigator Steele or

TESTIMONY OF KEN TAYLOR

1 possibly -- or Lieutenant. I just don't recall right off
2 hand which one of us may have collected from anyone at that
3 time. It should be in a narrative somewhere.

4 Q. So you can't testify as to whether GSR was performed on
5 Mr. Nassrah or Mr. Melton?

6 A. I don't recall collecting.

7 Q. But you did request the tests for --

8 A. I'm aware that a GSR kit was sent to SLED and processed
9 that had been collected from Mr. Nassrah, I just can't
10 recall which one of us collected it at the time. Again, it
11 should be on one of our narratives somewhere.

12 Q. Well, would the SLED report show who the GSR was
13 performed on as well?

14 A. Yes, sir. The SLED report will state who it was
15 collected from.

16 Q. Do you want to examine that document and see who it was
17 performed on?

18 A. Yes, it does. The SLED report does state the one GSR
19 kit was collected from Kamil Nassrah.

20 Q. Any other indication that GSR was performed on anybody
21 else?

22 A. Not that I am aware of.

23 Q. So you don't know if Mr. Melton -- there's no -- it
24 doesn't appear that any of Mr. Melton's -- a GSR was
25 performed on him or at least --

TESTIMONY OF KEN TAYLOR

1 A. I'm not aware of any.

2 MR. GRIER: Okay. Thank you, that's all.

3 MR. COOK: Briefly, Your Honor?

4 THE COURT: Yes, sir.

5 REDIRECT EXAMINATION

6 BY MR. COOK:

7 Q. Investigator Taylor, the SLED report that Mr. Frick
8 showed you they did the analysis on the blood on the glove
9 box?

10 A. Yes.

11 Q. That report -- you also sent the blood from the markers
12 in the driveway, correct?

13 A. I believe so, yes, sir.

14 Q. Do you remember sending what you had marked as evidence
15 marker as number 9 and number 11 to SLED?

16 A. Yes.

17 Q. I'll show you this report, items analyzed and it lists
18 the blood from the driveway on there?

19 A. Yes, sir. Swab from marker number 11 in the driveway.
20 and swab from marker number 9 in the driveway.

21 Q. Those are the ones they asked you earlier. Do you know
22 remember where those were located in reference to Kamil
23 Nassrah?

24 A. Just a few feet from him.

25 Q. Okay. Under the analysis, does it say who SLED

TESTIMONY OF KEN TAYLOR

1 determined that blood belonged to?

2 A. According to SLED the DNA profile matched the profile
3 of Kamil Nassrah.

4 Q. Okay. Does it say what the odds are that that blood
5 belonged to him?

6 A. It says the probability in randomly selecting an
7 unrelated individual having a DNA profile matching these
8 items is approximately one in 140 quadrillion.

9 Q. Okay. 140 quadrillion?

10 A. Yes, sir.

11 Q. Pretty confident that's Kamil blood?

12 A. Pretty confident.

13 MR. COOK: Nothing further, Your Honor.

14 MR. GRIER: Your Honor, if I may, just one briefly.

15 THE COURT: All right.

16 RECROSS EXAMINATION

17 BY MR. GRIER:

18 Q. From the SLED report that you've examined, the only
19 blood that was found on anything that was determined to
20 belong to anybody was from Mr. Nassrah, correct?

21 A. No. I believe on one of the SLED reports there is one
22 additional.

23 Q. Okay. Does that report indicate any blood found by --

24 A. No, sir. This particular one you have here is on the
25 GSR kit.

TESTIMONY OF JEFF STEELE

1 MR. GRIER: Thank you.

2 THE COURT: Thank you, sir, you may step down. You can
3 call your next witness.

4 MR. COOK: State calls Investigator Jeff Steele.

5 The witness, JEFF STEELE, was first duly sworn
6 and testified as follows, on:

7 DIRECT EXAMINATION

8 BY MR. COOK:

9 Q. Please state your name for the record.

10 A. Jeff Steele.

11 Q. Who is your employer, Mr. Steele?

12 A. Lancaster County Sheriff's Office.

13 Q. What's your role at the sheriff's office?

14 A. I am a crime scene investigator.

15 Q. You're Mr. Taylor's partner?

16 A. Yes, sir.

17 Q. Did you respond to Merle Lane on September 16th of
18 2010?

19 A. Yes, sir, I was.

20 Q. What was your general role that day?

21 A. To process the scene.

22 Q. When you say to process the scene, what all does that
23 include?

24 A. Anything from collecting physical evidence to video and
25 photography, just generally anything in reconstruction.

TESTIMONY OF JEFF STEELE

1 Q. Did you photograph the scene that day?

2 A. I took a few photographs, yes, sir.

3 MR. COOK: May I approach the witness, Your Honor?

4 THE COURT: Yes.

5 Q. I've got a series of photos. Look at these and see if
6 you can remember taking these photographs.

7 A. These top few I definitely took, and these were taken
8 by Investigator Taylor.

9 Q. What does this picture show?

10 A. It shows Mr. Hyatt's green truck and the dually truck
11 of Mr. Nassrah's.

12 Q. What about this one?

13 A. This shows the white dually truck of Mr. Nassrah, the
14 green truck of Mr. Hyatt and the area where the firearm was
15 located.

16 Q. Okay. Can you tell us what this shows?

17 A. This is a photo of Mr. Nassrah with his injury to his
18 head.

19 Q. Can you tell us about this photo?

20 A. This is a photo that was taken after Mr. Nassrah was
21 released from the hospital showing where the injury had been
22 repaired.

23 Q. Where was that photograph taken?

24 A. Out of the old sheriff's office.

25 Q. Do you know how long after the incident you took that

TESTIMONY OF JEFF STEELE

1 photo?

2 A. No, sir, I do not.

3 Q. Is that an accurate depiction of what you saw that day
4 when you took the picture?

5 A. Yes, sir, it was.

6 Q. Can you tell us what you see in this picture?

7 A. This is a picture of Mr. Hyatt's truck. Deputy Morgan
8 and the -- Mr. Hyatt that had a gun shot wound to the left
9 side of his abdomen area.

10 Q. What does this picture depict?

11 A. This is an axe handle that was in the back of the green
12 pickup truck of Mr. Hyatt.

13 Q. Which Mr. Hyatt?

14 A. Aaron Hyatt.

15 Q. Okay. All right.

16 MR. COOK: Your Honor, State moves to introduce these
17 into evidence.

18 MR. FRICK: No objection.

19 MR. GRIER: No objection.

20 THE COURT: Without objection introduced as the State's
21 next in order.

22 MR. COOK: It's 1-17.

23 (The photographs were received as State's
24 1-17.)

25 (A bench conference was held.)

TESTIMONY OF JEFF STEELE

1 Q. Investigator Steele, did you collect an axe handle that
2 day on the 16th?

3 A. Yes, sir.

4 Q. Let me show you what this -- there's a tag on here.

5 A. Yes, sir, that's from me.

6 Q. Okay. Did you process this piece of evidence?

7 A. Yes, sir, I did.

8 Q. Can you tell us what it says, what's wrapped up?

9 A. What this is?

10 Q. What's in this --

11 A. This is an axe handle here inside the wrapping.

12 Q. All right. When you took this from the scene, what's
13 the process from when it gets to the scene to when it gets
14 into the evidence room at the sheriff's department?

15 A. It's just transported there securely by either myself,
16 Ken Taylor or Lieutenant Christy Rogers. Once it gets there
17 it's submitted into evidence and assigned out to us to be
18 processed.

19 Q. Okay. Is it in the same condition it ~~was~~ the day of
20 the incident to the best of your knowledge?

21 A. Excuse me?

22 Q. To the best of your knowledge was it in the same
23 condition as it was the day of the incident?

24 A. Yes, sir, besides me processing it.

25 Q. By processing it, what does that entail?

TESTIMONY OF JEFF STEELE

1 A. On that particular I used some swabs to swab some
2 reddish brown stains that were found on one end, those were
3 sent to SLED. And then on the other end I use Ruthenium
4 Tetroxide, a RTX developer to try to develop latent prints
5 and black powder in an effort to locate latent prints on the
6 item.

7 MR. COOK: Your Honor, I would ask if I could publish
8 this piece of evidence to the jury.

9 MR. GRIER: I have no objection to it other than --

10 MR. FRICK: He can open it up I believe but I don't
11 know if he needs to pass it around.

12 THE COURT: All right. You can open it up, Solicitor,
13 if that's what you wanted to do.

14 MR. COOK: Yes, sir. I'm not going to hand it to them.

15 Q. I'm going to keep this bottom piece on here so I don't
16 have to touch it. Did you find this at the scene?

17 A. Yes, sir.

18 Q. Where was it located?

19 A. I can't remember which end -- I processed both ends for
20 latent prints but I can't remember if one end had reddish
21 brown stains on it that were swabbed.

22 Q. How long would you say this axe handle is?

23 A. How long ago has that been?

24 Q. How long is it?

25 A. Two feet, two and a half feet.

TESTIMONY OF JEFF STEELE

1 Q. This was in Aaron Hyatt's truck?

2 A. Sir?

3 Q. This was in Aaron Hyatt's truck?

4 A. Yes, sir, in the bed portion.

5 Q. Can you tell us what it's made of?

6 A. Wood.

7 Q. All right.

8 MR. COOK: I would ask that be admitted into evidence
9 as State's Number 19.

10 MR. GRIER: I thought we had done that, I'm sorry.

11 THE COURT: Without objection from defense "admitted"
12 into evidence as State's next in order.

13 (The axe handle was received as State's 19.)

14 Q. Investigator Steele, can you identify this?

15 A. Yes, sir. It was a hat found on the scene.

16 Q. Okay.

17 MR. COOK: Your Honor, State moves to introduce the hat
18 into evidence as Exhibit Number 20.

19 THE COURT: All right. Without objection it's entered
20 as the next State's Exhibit.

21 (The hat was received as State's 20.)

22 Q. Investigator Steele, did you make any video recordings
23 of the incident?

24 A. Yes, sir, I did.

25 Q. What type of camera did you use?

TESTIMONY OF JEFF STEELE

1 A. A Sony handheld camcorder.

2 Q. Is it a department issued camera?

3 A. Yes, sir, it is.

4 Q. Did you put a copy of that into evidence?

5 A. I did.

6 MR. COOK: Your Honor, I would ask to admit
7 Investigator Steele's video, it's a seven minute video to
8 canvass the scene to show where everything was and let that
9 be published to the jury.

10 THE COURT: All right. Any objection?

11 MR. FRICK: No objection.

12 THE COURT: We will do that after a break. We'll take
13 a midafternoon break. Y'all don't discuss the case.
14 Mr. Witness, if you will just stay there, we'll take about a
15 ten minute recess and don't talk about the case, see you
16 shortly.

17 (The jury left the courtroom and a recess was
18 taken.)

19 THE COURT: All right. All members of the jury are
20 present. Solicitor?

21 MR. COOK: Please the Court? At this time I would
22 publish Investigator Steele's video of the scene.

23 THE COURT: All right, that's without objection.

24 (The video was played for the jury.)

25 Q. Investigator Steele, when did you take that video?

TESTIMONY OF JEFF STEELE

1 When did you take that video?

2 A. That day.

3 Q. Did you also take another video?

4 A. Excuse me?

5 Q. Did you take anymore videos that day?

6 A. Yes, sir, I did. A reenactment -- Mr. Hyatt had
7 volunteered to give a statement of what he said happened
8 that day and it was also videoed.

9 MR. COOK: Your Honor, the State would like to move
10 that video into evidence, the reenactment.

11 MR. FRICK: Same objection I had in the Denno hearing
12 pretrial.

13 THE COURT: Okay. Well, objection is overruled, you
14 can publish the video.

15 MR. GRIER: Your Honor, for the record I would stand
16 with Mr. Frick on that objection.

17 THE COURT: You're protected.

18 MR. COOK: Your Honor, it started on the wrong part.

19 THE COURT: Ladies and gentlemen, I hate to do this but
20 it would be best if y'all would just go on back to your jury
21 room and relax while we get all of that done. All right.
22 Don't talk about the case, don't discuss anything.

23 (The jury left the courtroom.)

24 THE COURT: All right. All members of the jury are
25 present. Solicitor, you've got it working.

TESTIMONY OF JEFF STEELE

1 MR. COOK: Please the Court?

2 (The video was played.)

3 MR. COOK: That's all we have for this witness.

4 THE COURT: Okay. Mr. Frick?

5 CROSS EXAMINATION

6 BY MR. FRICK:

7 Q. Good afternoon, Investigator Steele, how are you doing?

8 I want to show you Defense Number 22. Do you recognize
9 that?

10 A. Yes, sir, I do.

11 Q. What is that?

12 A. That's a firearm located at the scene.

13 Q. Okay. All right. Did you have any further dealings
14 with this weapon?

15 A. No, sir, I didn't.

16 Q. Well, did you prepare a supplement in this case?

17 A. Yes, sir.

18 Q. It looks like in the top part here you're talking about
19 the gun, don't read it, just glance right through and see if
20 you can see what I'm talking about. Do you see where you're
21 talking about the gun?

22 A. Yes.

23 Q. Is it -- I mean, you didn't take it back to the lab and
24 do any analysis on this.

25 A. No, sir, I did not.

TESTIMONY OF JEFF STEELE

1 Q. Your observation of it was on the scene?

2 A. Yes, sir.

3 Q. Okay. What did you observe about it? And you can have
4 the report if you need to.

5 A. I mean, I don't really need to read it. When I looked
6 at it it appeared that the trigger may have been depressed
7 slightly back, meaning it could be in a bad caution
8 situation if it would have fired, and the trigger is in the
9 firing position, it's just back.

10 Q. And you have had a good deal and training and
11 experience, you're CSI, correct?

12 A. Yes, sir.

13 Q. And you deal with firearms, correct?

14 A. Yes, sir.

15 Q. Did that indicate anything to you as far as the
16 condition of the gun or what had happened with the gun or
17 what was going on with the gun?

18 A. No, sir. I just knew that it was in a position that it
19 looked as if it could fire.

20 Q. All right. Could you tell if it whether it had
21 misfired or jammed or anything like that?

22 A. No, sir. It did not appear to be misfired or jammed,
23 there wasn't no indication of that.

24 Q. All right. But it was ready to fire.

25 A. Yes, sir. In my opinion, yes, sir.

TESTIMONY OF JEFF STEELE

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- 1 Q. Okay. Nothing else -- there was another gun on the
2 scene, right? Do you recall?
- 3 A. No, sir.
- 4 Q. All right. You didn't have anything to do with the .22
5 that we've talked about?
- 6 A. I didn't collect that, no, sir.
- 7 Q. That's fine. Who got there first, you or Ken Taylor?
- 8 A. I did.
- 9 Q. When you got there -- I'm trying to figure out. All
10 right. On State's Number 5, that's Mr. Nassrah's truck,
11 correct?
- 12 A. Yes, sir.
- 13 Q. That's the passenger view.
- 14 A. Yes, sir.
- 15 Q. The door is open.
- 16 A. Yes, sir.
- 17 Q. Was it like that when you got there?
- 18 A. I can't recall when I got there, if you look back at
19 the photos.
- 20 Q. Okay. Well, this is another photo.
- 21 A. Okay.
- 22 Q. That's Number 4.
- 23 A. That's the passenger door and it is shut at that time.
- 24 Q. You don't remember which one was taken first, do you?
- 25 A. No, sir. Because I don't remember if I took this one,

TESTIMONY OF JEFF STEELE

1 that may have been Investigator Taylor.

2 Q. All right. I guess what I'm getting at, when y'all get
3 on the scene y'all take it as it is, right? I mean,
4 responding folks may do stuff but when y'all get there you
5 photograph things, look at things, this is how we found it,
6 correct?

7 A. Yes, sir.

8 Q. Okay. Then y'all at -- once you've documented, is that
9 when you start going through and collecting evidence or
10 manipulating things so to speak?

11 A. Yes, sir. You assess the scene and then you begin to
12 start collecting. You photograph as soon as possible so
13 that nothing will be moved, nothing tampered with, nothing
14 with anything.

15 Q. Okay. When you got there was Mr. Nassrah still there?

16 A. Yes, sir.

17 Q. Did you go look at him?

18 A. Yes, sir, I did.

19 Q. Close up?

20 A. Yes, sir.

21 Q. I mean, you walked up and saw him sitting --

22 A. Yes, sir.

23 Q. I'm going to show you Defense Number 12. That was kind
24 of where he was?

25 A. Yes, sir.

TESTIMONY OF JEFF STEELE

1 Q. Okay. I'm going to show you what's State's Number 5.

2 Did you take this picture?

3 A. Yes, sir, I did.

4 Q. Okay. All right. Is this the injury we're talking
5 about?

6 A. The injury is kind of toward the back, you know, crest
7 part of the head to the side here.

8 Q. Okay. That looks like some kind of indentation right
9 here. Are we talking about the same spot?

10 A. Well, all of this area is kind of damaged. It's kind
11 of hard to see with all of the hair and I didn't get in real
12 close, I shot it as good as I could from a distance.

13 Q. Okay. All right. Had anybody wiped him clean or done
14 anything before you got there to your knowledge?

15 A. Not to my knowledge, no, sir.

16 Q. Was anybody applying any pressure to that wound when
17 you got there?

18 A. No, sir, they were not.

19 Q. Did you find any bloody rags or anything laying around
20 him or near him?

21 A. No, sir, I did not.

22 Q. I think the solicitor -- this is the one I can lay
23 hands on, State's Number 4. That's the back of Mr.
24 Nassrah's head, correct?

25 A. Yes, sir. And the injury is right up in here.

TESTIMONY OF JEFF STEELE

1 Q. And this was taken not the day of the injury, a little
2 bit after?

3 A. After he received his medical attention and got back
4 out, yes, sir.

5 Q. You took this photograph?

6 A. Yes, sir, I did.

7 MR. FRICK: I believe that's all I've got for you.
8 Thank you, Mr. Steele.

9 THE COURT: Mr. Grier?

10 MR. GRIER: Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MR. GRIER:

13 Q. Who took the axe handle into evidence? Did you take it
14 into evidence?

15 A. No, sir, Investigator Taylor.

16 Q. But you did some testing on it?

17 A. Yes, sir, I did.

18 Q. And do y'all kind of jointly put your stuff together
19 when you put it to SLED and there might be you sending stuff
20 jointly or you sending it -- y'all work together in that
21 respect.

22 A. Yes, sir.

23 Q. Okay. Now, you tested for blood on the axe handle,
24 didn't you?

25 A. Yes, sir, I did.

TESTIMONY OF JEFF STEELE

1 Q. Okay. And a SLED report came back, blood indicated.

2 Whose blood?

3 A. I believe it was Michael Hyatt.

4 Q. Do you have it?

5 A. Yes, sir, I've got it right here.

6 MR. GRIER: That's all of the questions I have. Thank
7 you.

8 THE COURT: All right. Solicitor?

9 MR. COOK: No further questions, Your Honor.

10 THE COURT: Thank you, sir, you may step down. You can
11 call your next witness.

12 MR. COOK: That's all of the witnesses from the State
13 today, Your Honor.

14 THE COURT: Okay. All right. Well, ladies and
15 gentlemen of the jury, that concludes our business for the
16 day. We're going to recess until tomorrow morning at 9:30.
17 Reminder to you, don't discuss this case with anybody, you
18 have not received it yet. Don't do any independent research
19 on it, don't Google it, don't Facebook it or anything else.
20 like that, don't go in to detail with your spouse or
21 significant other about it. You can tell them you are
22 serving on jury duty and that's it, say, "The Judge says I
23 can't talk about it," that should suffice. Okay. So be
24 back tomorrow morning at 9:30, look forward to seeing you.
25 (The jury left the courtroom.)

1 THE COURT: Anything else before we adjourn for the
2 day?

3 MR. COOK: Nothing from the State, Your Honor.

4 MR. FRICK: No, sir.

5 THE COURT: All right, adjourn for the day. Y'all be
6 ready to roll at 9:30.

7 (Court recessed for the evening and resumed at
8 9:30 a.m. on Thursday, January 9, 2014.)

9 THE COURT: Do you intend to call any other witnesses?

10 MR. COOK: The State rests, Your Honor.

11 THE COURT: Normally you would do that in front of the
12 jury and saying the State rests, then I would send them out
13 to hear motions and anything else, but you're telling me the
14 State rests now. I will go ahead and hear motions now, then
15 I'll let you say that again whenever the jury comes back in
16 and then we'll go straight to the defense and see whatever
17 they're going to do.

18 MR. COOK: Yes, sir.

19 THE COURT: All right. So the State rests. I'll be
20 glad to hear whatever motions at this time from the defense.

21 MR. FRICK: Your Honor, I'll start. On behalf of
22 Mr. Aaron Hyatt I move for a directed verdict. Taking the
23 evidence in the light most favorable to the State I don't
24 think there's enough evidence for you to send it to the jury
25 for it to be a question of fact for them, I think you can

1 decide it. Your Honor, first and foremost you've seen the
2 evidence, my client is present on the scene, the testimony
3 is he had no weapons, he didn't do anything. The only
4 testimony you've heard is that he said, "Kill him, daddy."
5 Well, the law is clear, you have to have an overt act or
6 present ability to do something if you're going to have an
7 assault and battery which is what we're talking about even
8 though we're calling it an attempted murder. Words alone
9 aren't enough, in fact, he's at the vehicle, he's far away
10 from the scene. Later on I think he goes into it but
11 there's still no evidence that he is involved in the fracas
12 as it is occurring. And if you really believe he does
13 become involved, I think someone said he picked up a stick
14 and said, "If you don't get back I'm gonna beat the hell out
15 of you," or something, that would be self-defense. So in
16 either event I think there's not enough for his case to go
17 to the jury and I would ask you to direct a verdict in his
18 favor.

19 THE COURT: All right. Solicitor?

20 MR. COOK: Your Honor, in terms of the overt act, Aaron
21 Hyatt's culpability comes from him blocking Mr. Nassrah's
22 truck. Mr. Nassrah, was trapped, had nowhere to go because
23 Aaron Hyatt pulled his truck up so far, he couldn't go
24 anywhere, and our theory is he did that so his dad could
25 come from behind and hit him in the head. He's charged

1 under the accomplice liability theory, hand of one, hand of
2 all involving the acts of his father. The acts of the
3 father were accomplished with the assistance of Aaron Hyatt
4 because he wouldn't let Kamil go anywhere. You've got two
5 witnesses saying they saw him out there blocking the truck,
6 one of them said he said, "Kill daddy," (sic) which is the
7 malice aforethought intent of attempted murder. I would ask
8 that you deny the motion, I think it's a jury question
9 whether or not he is guilty.

10 THE COURT: The motion for directed verdict as to Aaron
11 Hyatt is denied. Mr. Grier?

12 MR. GRIER: Your Honor, I may be in -- I'm probably in
13 a worse position than Mr. Frick to argue it but I will. I
14 think that the Court has heard the evidence and we know that
15 Mr. Nassrah was armed with a gun and that Mr. Hyatt -- there
16 had been some confrontation and prior difficulties between
17 the parties in that when Mr. Hyatt saw that the truck,
18 trailer, tractor were all stopped below his house it would
19 have been reasonable that he would perceive the threat and
20 would have carried something up there to deal with that
21 threat, and then see that a gun was presented at that point
22 and that he would have been acting in self-defense. So --
23 and I believe the Court Should -- could and should find that
24 those are facts that have been established by the evidence
25 and put the case in a position of not going forward to the

1 jury and I would ask you to direct a verdict.

2 THE COURT: Same argument, Solicitor?

3 MR. COOK: Same argument.

4 THE COURT: Motion denied.

5 MR. GRIER: Judge, I think also at this point just
6 briefly, it would be appropriate to renew our motion for
7 immunity for our clients, it's a different standard. The
8 Court has heard evidence -- additional evidence and more
9 thorough evidence and, you know, I believe at this point --
10 and certainly the burden on us at this point is more likely
11 than not of showing that Mr. Hyatt acted out of a perceived
12 threat to his son and I don't believe under any scenario
13 that you could look at the facts of this case that what
14 happened up there at that truck, those circumstances did not
15 create some perceived threat that would have justified the
16 use of force to protect his son is I think what the evidence
17 you have heard thus far suggests. So I believe it would be
18 appropriate just based on the evidence thus far to grant
19 that motion.

20 THE COURT: Mr. Frick, you join in that motion?

21 MR. FRICK: I join in that motion.

22 THE COURT: That motion is denied. What else?

23 MR. COOK: Nothing from the State, Your Honor.

24 THE COURT: All right. The State has rested. Again,
25 I'll let you say that in the presence of the jury and then

1 we'll proceed on with the defense case. I need both
2 defendants to please stand, Mr. and the elder Mr. Hyatt.

3 (Both defendants were sworn.)

4 THE COURT: At this time I'm going to explain to both
5 of you certain rights that you have. If you don't
6 understand anything I say please ask for me to repeat it and
7 I will be glad to do that, or try to explain it in more
8 detail to you. I know you've been over this with your
9 lawyer but this has to be on the record coming from the
10 Court. We've now reached the stage of the trial where you
11 may present your defense like you and your lawyer I know
12 have gone over because both of you have very excellent
13 lawyers. You do not have to present a defense if you don't
14 want to, you don't have to testify because you have the
15 right to claim the protections given to you by the 5th
16 Amendment of the U.S. Constitution which says that no person
17 shall be compelled in any criminal case to be a witness.
18 against himself, this means you cannot be required to
19 testify in this case. Now, you have the right to testify on
20 your behalf but nobody can make you do that. This is a
21 personal right and no one can waive this right except for
22 you. Do each of you understand?

23 AARON HYATT: Yes, sir.

24 MICHAEL HYATT: Yes, sir.

25 THE COURT: Now, if you do decide to testify you will

1 be subject to the same rules that govern other witnesses
2 that you've heard here this week, and you may be examined
3 and cross examined on any relevant issue in this case. In
4 addition if you have any convictions against you for cases
5 involving dishonesty or false statements for crimes -- are
6 there any?

7 MR. COOK: No.

8 THE COURT: Solicitor, do you intend to impeach either
9 one of them if they testify?

10 MR. COOK: Your Honor, I don't think there's anything
11 in their record as far as could be used for impeachment
12 purposes.

13 THE COURT: All right. Well, you understand, however,
14 that your cross examination -- your version of the events or
15 whatever can be examined thoroughly by the solicitor and he
16 can try to make you look bad through your testimony. Do you
17 understand that, Mr. Aaron Hyatt?

18 AARON HYATT: Yes, sir.

19 THE COURT: Mr. Michael Hyatt?

20 MICHAEL HYATT: Yes, sir.

21 THE COURT: Now, if you decide to testify this decision
22 must be freely, voluntarily and intelligently made with your
23 knowledge of the protections given to you by the Fifth
24 Amendment. If you decide not to testify then I would
25 instruct the jurors that they cannot use that against you in

1 any way whatsoever because of this constitutional
2 protection. You can talk to your lawyers about this, your
3 family, other friends, that kind of thing but ultimately
4 it's your decision and your decision alone. And Mr. Aaron
5 Hyatt, do you understand what I have explained to you?

6 AARON HYATT: Yes, sir.

7 THE COURT: Mr. Michael Hyatt?

8 MICHAEL HYATT: Yes, sir.

9 THE COURT: Do you have any questions about what I've
10 explained to you, sir?

11 AARON HYATT: No, sir.

12 THE COURT: Sir?

13 MICHAEL HYATT: No, sir.

14 THE COURT: Have you discussed with your lawyer, Mr.
15 Aaron Hyatt, about whether you should or should not testify?

16 AARON HYATT: Yes, sir.

17 THE COURT: And do you wish to talk to your lawyer
18 anymore at this time?

19 AARON HYATT: No, sir.

20 THE COURT: Do you wish to testify?

21 AARON HYATT: Yes, sir.

22 THE COURT: And Mr. Michael Hyatt, have you discussed
23 with your lawyer about whether you should or should not
24 testify?

25 MICHAEL HYATT: Yes, sir.

1 THE COURT: Do you wish to talk to him anymore at this
2 time?

3 MICHAEL HYATT: No, sir.

4 THE COURT: Do you wish to testify?

5 MICHAEL HYATT: Yes, sir.

6 THE COURT: Mr. Aaron Hyatt, are you satisfied with
7 your lawyer?

8 AARON HYATT: Yes, sir.

9 THE COURT: Has he answered all of your questions?

10 AARON HYATT: Yes, sir.

11 THE COURT: Sir, are you satisfied with your lawyer?

12 MICHAEL HYATT: Yes, sir.

13 THE COURT: Has he answered all of your questions.

14 MICHAEL HYATT: Yes, sir.

15 THE COURT: All right. Thank you very much, y'all can
16 both be seated. We'll bring the jury in.

17 (The jury returned to the courtroom.)

18 THE COURT: All members of the jury are present. Good
19 morning, ladies and gentlemen, I hope you had a good
20 evening. The week is almost over with, I know y'all are
21 happy. All right, Solicitor, are you ready to proceed?

22 MR. COOK: Yes, sir.

23 THE COURT: You can call your next witness.

24 MR. COOK: Your Honor, at this time the State rests.

25 THE COURT: All right. Which defendant is -- Mr.

TESTIMONY OF MICHAEL HYATT

1 Grier? All right. You may proceed.

2 MR. GRIER: I'd call Michael Hyatt.

3 THE COURT: All right. Mr. Hyatt?

4 The witness, MICHAEL HYATT, was first duly
5 sworn and testified as follows, on:

6 DIRECT EXAMINATION

7 BY MR. GRIER:

8 Q. Please state your name.

9 A. Michael Hyatt.

10 Q. Mr. Hyatt, how old are you?

11 A. Sixty-three.

12 Q. Mr. Hyatt, what kind of work have you done during your
13 lifetime?

14 A. Construction.

15 Q. And is that principally it?

16 A. Pretty much all of my life, yeah.

17 Q. Okay. Do you do any farming?

18 A. Some, yes, sir.

19 Q. Do you do any farming out when you were living on Merle-
20 Lane? Did you do any farming when you were living on Merle
21 Lane?

22 A. I had a farm there, yes.

23 Q. Okay. Mr. Hyatt, are you wearing hearing aids today?

24 A. Yes, sir.

25 Q. Why do you wear hearing aids?

TESTIMONY OF MICHAEL HYATT

1 A. To try to hear better. They're not perfect but they're
2 better than none at all.

3 Q. Do you draw disability?

4 A. Yes, sir, I do.

5 Q. What is that for?

6 A. Because of hearing.

7 Q. Do you have any other health issues?

8 A. I have COPD.

9 Q. What does that mean?

10 A. I have problems with my lungs.

11 Q. Is it heart related, too? Any issues with your heart?

12 A. I take blood pressure medicine -- high blood pressure
13 medicine.

14 Q. How long have you had COPD?

15 A. For about two or three years and I've been taking
16 treatment for it.

17 Q. Okay. Well, had you been diagnosed with that at the
18 time --

19 A. Yeah, I was taking inhalers. I've been taking inhalers
20 and stuff like that for about 10 years.

21 Q. Now, how about your hearing when -- are you legally
22 deaf?

23 A. Yeah. The diagnosis is not comfortable, I can't hear
24 words. Sometimes I hear words and they don't sound exactly
25 like they are even with the hearing aids, and there's no

TESTIMONY OF MICHAEL HYATT

1 hearing aid designed today that will improve it. It helps
2 it some but it's still not perfect, you know what I mean?

3 Q. How long have you had those sorts of hearing
4 difficulties?

5 A. Really started about 25 years ago. And about five or
6 six or seven years ago, or maybe a little bit more, I
7 started going to try to have something done for it and it
8 just kept getting worser and worser. First I wore hearing
9 aids and they would help some but then it got to when I was
10 around loud equipment it was just making me got worse and
11 worse or something, so it just got to a point where the
12 hearing aids don't do that much anymore. I don't even wear
13 them most of the time. I wore them to court to try to hear
14 better.

15 Q. All right. Were you wearing them back in September in
16 2010?

17 A. No.

18 Q. You didn't have them at that time?

19 A. Yes.

20 Q. I'm not saying on this date you had them, but on --
21 well, on this particular date when this confrontation
22 happened, September 16th?

23 A. I never wear them around the house because the way they
24 do the noise, some noises it's louder and they irritate me
25 so I don't wear them. It's just like now, I hear ringing

TESTIMONY OF MICHAEL HYATT

1 all the time and it's less when I ain't got them in.

2 Q. Are you married?

3 A. No, wife is passed away.

4 Q. Who lives with you?

5 A. Now?

6 Q. Well, back in 2010 who was living with you?

7 A. Nobody lived with me.

8 Q. You were living over on Merle Lane, right?

9 A. Yes.

10 Q. And were you living by yourself?

11 A. Yes.

12 Q. This is your son over here with Mr. Frick?

13 A. Yes, sir, it is.

14 Q. Does he live -- where does he live in relation to you?

15 A. He lives about a mile away from me on Lola Drive.

16 Q. Now, if you go down Merle Lane, how do you get to his
17 house?

18 A. You go to Horton Rollins Road, you turn right and go to

19 the first gravel-road and turn left, then you go on down

20 Lola Drive and his private driveway is about 800 or 900-foot

21 long off of Lola down in the woods.

22 Q. Okay. Now, your home on Merle Lane, how far is that

23 off of the road? Do you know the distance?

24 A. From the front door?

25 Q. Yeah.

TESTIMONY OF MICHAEL HYATT

- 1 A. Probably 35 or 40 foot. Yes, it's probably 35 or 40
2 foot I would say maybe.
- 3 Q. And Merle Lane has got a posted speed limit?
- 4 A. Yes, sir.
- 5 Q. How long has it had a posted speed limit?
- 6 A. How long is it?
- 7 Q. Do you know how long it had been posted.
- 8 A. A long time.
- 9 Q. What is it?
- 10 A. 10 miles an hour.
- 11 Q. All right. Your home is a mobile home.
- 12 A. Yes, sir.
- 13 Q. And did you put that there or -- did you purchase that?
- 14 A. I purchased it.
- 15 Q. Okay. And it's not exactly a new mobile home either,
16 is it?
- 17 A. No. It was old, it was run down. I was trying to fix
18 it up, it was all delapidated, I'd been working on it for a
19 good while trying to fix things up on it.
- 20 Q. Okay. Now, do you recognize this picture?
- 21 A. Yes, I do.
- 22 Q. Who took that picture?
- 23 A. I did.
- 24 Q. Does that show your home?
- 25 A. Yes, it does.

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1 MR. GRIER: Your Honor, I would offer that as
2 defendant's exhibit whatever it is.

3 MR. COOK: No objection.

4 THE COURT: All right. Without objection introduced as
5 defendant's next in order.

6 (The photograph was received as Defendant's
7 28.)

8 Q. All right. Will you look at that picture? With you
9 looking at it, what is on your left-hand side of that
10 picture?

11 A. My mobile home is.

12 Q. What's on the right-hand side?

13 A. The dirt road.

14 Q. Okay. And looking at your mobile home, have you got
15 air conditioning in that mobile home?

16 A. No.

17 Q. What is -- do you keep it closed up during the
18 summertime?

19 A. No, I keep the windows open.

20 Q. Is the window open or shut on that picture?

21 A. Yes, it's open.

22 Q. Well, why do you leave your windows open?

23 A. To let it air out. I ain't got no air conditioner so
24 it just --

25 Q. Well, it's a dusty road there, though, don't you need

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1 your windows closed?

2 A. Well, there ain't too much awful traffic on that road,
3 you know what I mean? So I leave them open most of the
4 time. I don't go see many people. There's only one
5 residence past where I live down that road.

6 Q. So do you have a lot of problems with traffic on that
7 road?

8 A. Well, a lot of people go up and down there faster than
9 what they do and I have to try to ask them to slow down, you
10 know what I mean? Two things, dust and it's really narrow
11 too, you can't see good on that road to keep something from
12 happening.

13 MR. GRIER: Your Honor, I would ask to be allowed to
14 publish the photo to the jury.

15 THE COURT: All right. Without objection.

16 Q. How long have you lived there?

17 A. Since 2004.

18 Q. When do you recall you first meeting Mr. Nassrah?

19 A. The first time I met him I was working for a man named
20 Milton Hunter and he was associated with him, and we've done
21 work -- hauled dirt and stuff and that's the first time I
22 ever seen him is when I worked for Milton Hunter.

23 Q. Was he farming out there at that time? Was Mr. Nassrah
24 farming out on Merle Lane at that time?

25 A. Yes.

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1 Q. So Milton and him worked together on their farm
2 operation, is that what you're saying?

3 A. Yeah, Milton Hunter helped him. Because I hauled hey
4 and stuff for them and he was looking -- they worked
5 together on different projects, yeah.

6 Q. Okay. And how long ago was that do you say? How long
7 ago do you think that was?

8 A. I would guess about five or six years, maybe a little
9 longer than that. When I first met him, yeah, Milton
10 probably more than six or seven years, you know what I mean?

11 Q. Okay. Well, I believe Mr. Nassrah testified he'd been
12 farming out there for five or six years. Do you remember
13 when he started farming out there?

14 A. Yes, sir.

15 Q. Okay. All right. Did you know him when he started
16 farming out there?

17 A. Yes.

18 Q. Okay. So at least since he -- when he started out
19 there y'all met basically when he started farming?

20 A. Yeah. I talked to him many times.

21 Q. All right. Well, describe your relationship with him
22 prior to 2010.

23 A. Well, you know something, I asked him to slow down a
24 couple of times out there and he seemed to --

25 Q. We're going to get to that. But I'm saying --

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1 A. It was pretty good. I would give him stuff to the can
2 and stuff. I thought it was a pretty good relationship,
3 didn't have no harsh words with him or nothing, you know
4 what I mean?

5 Q. You say what, you gave him what?

6 A. Stuff that I canned. I had raised a garden and I
7 canned stuff up and give him pickles and peppers and
8 different stuff like that, you know what I mean?

9 Q. When did some issue come up about the way that he was
10 using that road as your best recollection?

11 A. When did it first come up?

12 Q. When did it first come up?

13 A. A year or two ago I asked him to slow down -- well, a
14 year or two prior to this happening because I hadn't seen
15 them none since then.

16 Q. Well, was it --

17 A. 2008, 2007, something like that.

18 Q. All right. Well, what made you bring that to his
19 attention?

20 A. About the road?

21 Q. Yeah.

22 A. Because the dust usually just covered us up. He was
23 flying up and down that road with that tractor and that
24 truck, you know what I mean? Yeah.

25 Q. All right. Well, did that conversation seem to help

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1 resolve the situation?

2 A. Well, when it first happened I thought it did. Until
3 this happened I thought it had, you know what I mean?

4 Q. Okay. So did he seem to be respecting the speed on the
5 road after you talked to him?

6 A. Yeah. But like when you see him, he ain't down there
7 that often, but when you see him, you know what I mean?

8 Q. Well, when do you recall the first time that y'all
9 had -- had you ever had harsh words?

10 A. Yes.

11 Q. When do you recall the first times y'all having hard
12 words?

13 A. On that day, on the day that week, you know what I
14 mean, that this happened.

15 Q. The day of the week. Okay.

16 A. On the 16th is the first time -- well, he said
17 something about us locking him in the gate and they came up
18 there and was raising cane and Deputy Morgan took them on up

19 the road. But, I mean --

20 Q. Well, did you lock the gate on his pasture?

21 A. No.

22 Q. Do you believe that he thought you had?

23 A. I don't know anything about it. We didn't do it, I
24 didn't do it.

25 Q. Okay. Did you -- describe what the words were as best

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1 you recall.

2 A. That day when Deputy Morgan come about -- Aaron's truck
3 had broke down and he pulled up in the driveway and he just
4 let it roll back out on the flat in the road because the
5 driveway is on a hill like that, and we had the hood raised
6 up to see how come it wouldn't crank back up. And Deputy
7 Morgan came up, and he got out of his car and came around
8 there and asked us to see our driver's license and we give
9 them to him and he said he had been called. A few seconds
10 later another deputy sheriff showed up, his name was Lily.
11 Aaron put the wire on the truck, pulled it up in the yard,
12 Lilly stayed there with us, Morgan went down there to where
13 Kamil was supposed to be at that gate. In a little bit they
14 came back with Melton and Kamil and Deputy Morgan, and they
15 got out of their vehicles and started threatening Aaron in
16 the yard that day and so I said something to Deputy Morgan
17 and he took them up the road. Well, they left and that's,
18 you know --

19 Q. When you say threatening, what were the words, or could
20 you hear the words?

21 A. It was like they were antagonizing him to fight, like,
22 "You ain't nothing." And Kamil told Aaron to come on, and
23 so -- right there in the yard. And I asked Deputy Morgan to
24 take them out of my yard and he did.

25 Q. Okay. Did you speak with Kamil and Melton anymore that

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1 day?

2 A. No.

3 Q. Okay. Did you have any -- were they -- what's going on
4 with their farming operation then? From that point on, you
5 know, what do you observe about what they're doing as far as
6 going in and out of there?

7 A. The following day, or one day Deputy Morgan came in and
8 Kamil and Melton was behind him and they was going really
9 slow down the road. Deputy Morgan came back out, he was
10 going really slow, Kamil and them was still down there. I'm
11 out in the yard, I'm out in the yard swinging and messing
12 around, so I'm there. A few hours later he comes back and
13 he gets them and he comes out and they're really slow. I
14 called my son and I told him, I said, "You know something?
15 There's no more fussing because there's a deputy sheriff
16 down here and everybody is doing like they're supposed to."
17 Okay. The next day I'm over there, I'm out there sitting in
18 the swing messing with my dog and stuff and they're out
19 there and there's another deputy that is with them, Deputy
20 Lilly, and so they're going back and forth up to my
21 neighbor's house, Bill Truesdale. And then what happens is
22 because they're going fast and they're threatening me, I'm
23 sitting in the swing and the guy on the tractor and the one
24 in the truck is making threatening remarks to me.
25 Q. Well, what are those remarks? What's he saying?

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1 A. Well, you know something? They're shaking their hand
2 at me and hollering at me. So when Deputy Lilly came back
3 out I walked out to the road and stopped him and told him
4 what was happening, that they was threatening me. And his
5 remarks was to me that a judge had sent him down there and
6 if I had anything to say that I needed to talk to him.

7 Q. Okay. All right. Well, don't they carry hay into that
8 field and store it, too?

9 A. No, just haul it out.

10 Q. Is that right? Okay.

11 A. Yeah.

12 Q. So there wasn't nothing going in, all of the hay is
13 coming out, there ain't no hay going in.

14 A. No hay is going in.

15 Q. Tell me what was said between you and Mr. Nassrah about
16 your chickens.

17 A. I didn't say nothing to him about no chickens.

18 Q. Okay. Okay. Does Mr. Nassrah bring a dog out there
19 when he comes?

20 A. No. I never seen a dog or nothing with him any time he
21 came out there.

22 Q. Did you ever accuse his dog of killing your chickens?

23 A. No.

24 Q. He doesn't even live out there, does he?

25 A. No.

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1 Q. Does he live anywhere even close?

2 A. No.

3 Q. Do you know where he lives?

4 A. Yes.

5 Q. Where does he live at?

6 A. I lives off of 522 like you're going out towards

7 Buford.

8 Q. How far from where you live -- I know you don't know

9 the exact miles, but how many miles would you just estimate
10 that is?

11 A. From my house to his?

12 Q. Yeah.

13 A. Ten or 15.

14 Q. It ain't close. His dogs ain't coming over and getting
15 your chickens, is it?

16 A. No, I don't think so. I ain't never seen him with no
17 dog.

18 Q. Okay. The day that you describe -- that you mentioned
19 that I believe Officer Lilly came out there.

20 A. Yes, on the 16th.

21 Q. What day was that -- was that the day before -- was
22 that the 15th?

23 A. When Officer Lilly was there?

24 Q. Yeah. This incident happened on the 16th, right?

25 A. I think that's right, yes, sir.

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1 Q. Okay. So what day in relation to the day that this
2 incident happened was Officer Lilly out there?

3 A. He was out on the 16th.

4 Q. Oh, he was out there on the 16th.

5 A. Yes, sir, on the 16th.

6 Q. Was he out there on the 15th?

7 A. No.

8 Q. Okay. So it happened earlier that day? Lilly was out
9 there earlier in the day that this happened?

10 A. Yeah, he was out there. He was out there until I left,
11 you know what I mean, and I thought he was still there but
12 evidently he left, you know what I mean?

13 Q. Okay. Did you speak with him?

14 A. I spoke with him when they were threatening me. I
15 informed him that they was threatening me as the trucks was
16 coming by. That's what his remark was, that a judge had
17 sent him out there.

18 Q. Okay. Well, you know, after Morgan had been taking him
19 in and out, you know, what was the situation with the way
20 they were driving in and out of there as far as speed goes
21 after Morgan was escorting him?

22 A. After Morgan?

23 Q. Uh-huh.

24 A. After Deputy Morgan escorted him that day they never
25 came back to the -- the next time they came back was on the

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1 16th.

2 Q. Okay.

3 A. I never seen them no more after it, and I'm pretty sure
4 it was when Morgan was there the next day that they was
5 hauling hay out of the field.

6 Q. Okay. Well, let's move on and focus on the 16th then.
7 Do you recall anything going on that morning that has any
8 relevance to the situation?

9 A. The only thing I seen on the 16th, they were hauling
10 hay out there like I said, they didn't go all of that, they
11 just went up there. Like I said, the first day they didn't
12 go all the way out, they just went to Bill Truesdale's
13 house, that's where they was unloading it, you know what I
14 mean?

15 Q. The morning of the 16th?

16 A. Yeah.

17 Q. Did you see Mr. Melton and -- Mr. Nassrah and Mr.
18 Melton the morning, during the morning time?

19 A. Well, it wasn't early, no, it wasn't early, it was --
20 do you know something? It was -- I guess it was
21 somewhere -- it was later in the morning, you know what I
22 mean? They went there early in the morning.

23 Q. Well, approximately what time is the first time -- did
24 you see them when they came into the field for the day?

25 A. Yes.

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- 1 Q. What time do you believe that to be?
- 2 A. Maybe about 10:00, I guess.
- 3 Q. And when was the first hay coming out that day?
- 4 A. Where was the hay going?
- 5 Q. When? What's your estimate of the time when the first
- 6 hay started coming out, the first hay came out?
- 7 A. I don't know. It was a little while, you know what I
- 8 mean? I wasn't keeping up with the time, but it was a
- 9 little while, maybe an hour or so, you know what I mean,
- 10 when the first hay come out of there.
- 11 Q. All right.
- 12 A. Yeah.
- 13 Q. Well, did you have any contact with law enforcement on
- 14 the 15th prior to the arrival of Officer Morgan after this
- 15 incident happened?
- 16 A. Deputy Lilly on the 16th when they was taking the hay
- 17 in and out of the --
- 18 Q. Well -- you've got to be more careful about where that
- 19 is.
- 20 A. But they were taking the hay in and out of the field up
- 21 there to Bill Truesdale's house, and Deputy Morgan -- I
- 22 mean, Deputy Lilly was down there escorting them in and out
- 23 on that 16th. That's when I stopped him and told him that's
- 24 the day that they was -- when they were coming by there they
- 25 was behind him and they was threatening me and they was

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1 going fast. That's the reason I took that picture, you know
2 what I mean?

3 Q. I think I got my days mixed up, not you, there for a
4 minute. All right. So after that incident did you -- had
5 you done anything else as far as making any phone calls, or
6 what else had you done besides talking to people there on
7 the ground out there about the situation?

8 A. Well, after I talked to Deputy Lilly and he didn't do
9 anything I thought, I'm going to find out how come he didn't
10 do nothing. So I unloaded stuff out of my truck and got in
11 my truck and left, and he was sitting in the road at Bill
12 Truesdale's driveway, Deputy Lilly was.

13 Q. Okay. Make sure we know where Bill Truesdale's
14 driveway is. That's just right up here where this incident
15 happened.

16 A. Right.

17 Q. All right.

18 A. And so what happened was as he moved out of the way and
19 I left and I was going, when I got up to Pleasant Hill I
20 looked around and seen it was late in the afternoon, you
21 know what I mean, I got to thinking I said, "You don't even
22 know who sent him down here or where they're at."

23 Q. Now, where are you headed to?

24 A. I was headed to the magistrate's office to talk to them
25 like he said, and so I decided to turn around and come back

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1 home. When I came back home I didn't see anybody. So I got
2 out of the truck, I went over there to the shed.

3 Q. Well, before you get there let me ask you this: When
4 you get back home, that's the last time you come home before
5 this incident happens, right?

6 A. Yes.

7 Q. All right. What in your mind is going on down in the
8 pasture at that point, and is law enforcement involved?

9 A. I thought they were gone because I didn't see anybody,
10 wasn't nobody on the road, I didn't see nobody and so I
11 thought they had already left.

12 Q. When you say they, you thought Mr. Nassrah and -- you
13 thought the hay crew was gone.

14 A. Yeah. I thought everybody that was down there that
15 didn't live down there that day was gone.

16 Q. In fact, you passed some hay trucks on the road, didn't
17 you?

18 A. Yeah.

19 Q. It shows some on the video that we looked at yesterday...

20 A. Yeah.

21 Q. Okay. So -- all right. So, you know, what did you do?

22 A. So I went there, I went outside and sat down in the
23 swing and I called the sheriff's office and told them I
24 wanted to talk to the supervisor and they said, okay, that
25 she would do something. So he called me back, a supervisor

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1 did, and I'm not sure what his name was or nothing
2 because -- and I told him what was going on and he said,
3 "I'll call you back." Well, I got out of the swing and got
4 that pick handle because on a pole barn.

5 Q. You were working on what?

6 A. A pole barn.

7 Q. P-o-l-e?

8 A. Yeah, pole barn.

9 Q. Tell the jury what a pole barn is in case they don't
10 know. I happen to know one because I've got one.

11 A. A pole barn is just four by fours and then a roof on
12 it, just something that ain't got no sides on it, we was
13 working on that, I was working on that. My son there would
14 help me start putting braces in it and digging around it,
15 that's the reason I got that handle.

16 Q. What were you doing with a handle on a pole barn when
17 you're making one?

18 A. Well, what happens is the pick head, the head of the
19 handle was ~~out~~ at the pole barn where I took it off, I ~~had~~
20 been prying with it and put braces in and I took the head
21 off. It was on a hill like this and I was putting a board
22 behind the pole barn to keep the water from running down my
23 driveway and so it was treated and I was digging it down. I
24 was going to dig it down with that pick axe so it would be
25 down in the ground so it would make the water run around it.

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1 But I never got that far.

2 Q. Well, the head isn't on the axe.

3 A. No. It's up there at the pole barn.

4 Q. Okay. But you've got -- is this --

5 A. That's it.

6 Q. Now, you were digging with this?

7 A. No. That's called a pick axe handle, and what happened
8 is it has a head, it has a point on one end and flat part on
9 the other side that it slides down there and fits on that
10 and you dig with it like a pick, and that part is out at the
11 pole barn.

12 Q. You were using it with that part on it?

13 A. With a pick on it?

14 Q. That day did it have the pick on it?

15 A. Well, I took it off. I took the pick head off because
16 you could just bump it and it would come off. I'm putting
17 braces in and I was prying, the thing is a little out of
18 swack so I put that up there to pry, to give me some more

19 leverage and I took a screw and screw it up there, you know.

20 Q. So were you out there working on that?

21 A. Yeah, some, and resting some.

22 Q. Why are you resting?

23 A. I ain't in no big hurry. If it was a hot day I would
24 just -- I sleep in that swing sometimes, you know what I
25 mean, I go out there and sit in that swing and take it easy.

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- 1 Q. Well, how hard can you work with your medical
2 condition?
- 3 A. Well, I don't believe I can work like I could back in
4 the day but I still work some.
- 5 Q. Probably be good for you, isn't it?
- 6 A. Yeah.
- 7 Q. Okay. All right. Well, are you doing something with
8 the pole barn after you got back home for this last time
9 before the incident?
- 10 A. No, I didn't do anything.
- 11 Q. Is the head on the pick axe the whatever, the part that
12 goes on to dig with, is it on there at this point?
- 13 A. No.
- 14 Q. Okay. All right. But this is sitting right just like
15 it is right now somewhere close by.
- 16 A. Yeah.
- 17 Q. Now, when do you realize that there is somebody in the
18 pasture?
- 19 A. Well, I was sitting out there and --
- 20 Q. Where are you sitting?
- 21 A. In the swing.
- 22 Q. Okay.
- 23 A. And so I seen a couple of trucks come by and I got up
24 out of the swing and stood up and looked and I recognized
25 one of the people in the truck, and the only thing I know is

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1 his nickname is Tick. Now, when I worked for Milton Hunter
2 he worked for Milton doing different kinds of jobs, Milton
3 does farm work and logs too and I knew from logging, you're
4 back and forth. So I knew him and he waved at me and I
5 waved back at him.

6 Q. What kind of speed is he doing?

7 A. They weren't going fast, they was just easing up the
8 road.

9 Q. Can you go down this road without kicking up dust if
10 you go slow enough?

11 A. Yes. They say dirt, it's actually a gravel road, you
12 know something. It's packed down pretty good, you have to
13 go on and get up some speed to make it dusty.

14 Q. Okay. You took pictures that day?

15 A. Yes.

16 Q. When did you take the pictures?

17 A. That's the picture up there when they was going up
18 there to Truesdale, when they were taking that load up there
19 to Bill Truesdale, my neighbor's, driveway on that same
20 driveway on that same road.

21 Q. Now, is that before you went -- you intended to go to
22 the magistrate?

23 A. Yes. That's where he talked to the deputy?

24 Q. Well, why did you take that picture?

25 A. Because when I say something to somebody about the dust

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1 down there some don't seem to believe me so I took the
2 picture to show them, just to show them what was going on
3 and the deputy would ask me, I told him I would show him.
4 That's why I took them.

5 Q. I understand, that would make sense. Do you know who
6 was driving here?

7 A. No. I don't know who was driving that truck.

8 Q. Was that an acceptable speed?

9 A. No. That thing was going a little faster.

10 Q. Did you have any issues with whoever is in this truck?

11 A. No. Except he was one of them that was making the
12 remarks when he came by there, you know.

13 Q. Do you know who this was?

14 A. I never seen that man before. That's Kamil's truck and
15 trailer but I never seen the man, I don't know who he was.

16 Q. Now, you're saying he's making remarks. On this day?

17 A. Yes, on that day.

18 Q. At this time when he was going by was there something
19 being said?

20 A. No. When I took that I was sitting in that swing, when
21 they come back the other way they had the windows down in
22 their truck and they were making gestures out of the thing,
23 and then Melton was on the tractor, he was doing it, too,
24 you know what I mean? He was driving that tractor going to
25 unload the hay.

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- 1 Q. There's a bunch of pictures in evidence but I believe
2 this is the first one that went into evidence. Can you tell
3 in the picture whether the window is up or down?
- 4 A. Looks like it's down to me.
- 5 Q. All right. But nothing was said at this point, it was
6 on the return trip.
- 7 A. Yes.
- 8 Q. Okay. Do you own a gun?
- 9 A. No.
- 10 Q. Do you own a bee bee gun?
- 11 A. Yes, a pellet rifle.
- 12 Q. Owing one and having one are different things. Do you
13 have a gun at your home?
- 14 A. Pellet rifle.
- 15 Q. Okay. That's all?
- 16 A. That's it, a bow and arrow.
- 17 Q. Do you recall if you ever had a pellet rifle out there
18 when Mr. Nassrah or Mr. Melton were going back and forth?
- 19 A. I don't think I ever have.
- 20 Q. Did you have it out that week?
- 21 A. I probably did, because I get out there and put cans
22 and stuff up and shoot them, different things like that, you
23 know, just for entertainment.
- 24 Q. Do you know that you did or you might have?
- 25 A. Did I have it out there that week?

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1 Q. Do you know whether you did or not with certainty?

2 A. No, I don't really know of instances.

3 Q. Okay. Did you ever use it -- have you ever used it to
4 try to intimidate anybody or anything?

5 A. No.

6 Q. All right. You realize that somebody was coming out of
7 the pasture -- did you know -- sorry, can't get my question
8 started here, I asked you but now I can't really focus on
9 what your response was. When did you first realize somebody
10 is coming out of the pasture?

11 A. Well, when those first two trucks were coming out
12 that's when I knew someone was still down there. So they
13 come out and they left, and I stood there at the corner of
14 my trailer a little bit so it's -- I don't keep exact
15 minutes, but then --

16 Q. I'm sorry, what did you say? Jack minutes?

17 A. I didn't know exactly how long they would be gone.

18 Q. Okay.

19 A. But when they left I stood right there at the trailer
20 for a little bit and so they left up the road. So I called
21 Aaron on the phone, you know, and I'm telling him what's
22 going on that day, and Kamil and Melton come up and Kamil
23 stops the truck -- the cab of his truck about right where my
24 driveway was at and Melton pulls up behind him on that
25 tractor. Melton gets off that tractor and Kamil gets out of

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1 the truck and starts threatening to kill me when I'm
2 sleeping. I'm talking to Aaron, I said, "They're in my yard
3 threatening me." He told me, he said, "Okay, I'll come over
4 there." So a little bit they got back in their vehicles but
5 why I don't know, it might be because I was talking on the
6 phone.

7 Q. You're on the phone there. How close are you?

8 A. Well, it was pretty close, they was walking towards me,
9 they was pretty close.

10 Q. Well, I don't think we've got a good picture of the
11 swing. But is the swing -- it's kind of -- let's see.

12 A. You can imagine where it was at, I was sitting there
13 when I took that picture.

14 Q. Exactly. So when you took that picture -- here it is.
15 Okay. It's kind of lateral over to the side?

16 A. Yes.

17 Q. Of your home?

18 A. Yes.

19 Q. Okay. So when Kamil and Melton pull up, where are you --
20 at?

21 A. Well, I wasn't in the swing right then. When Terry and
22 them started, when I seen them coming up I got up out of the
23 swing, it was right there at the back of my trailer, it was
24 about five or 10-foot from the trailer. Okay. And so what
25 happened was when they left I started towards my pickup

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- 1 truck because I had stuff in there and I was going to go
2 back to working on the barn, so I went to get some stuff out
3 of there, that's when Kamil and Melton pulled up. I was in
4 the yard about not quite where my door was at and that's
5 when they stopped and got out of the truck and off the
6 tractor and come up in the yard and started threatening me.
- 7 Q. Were they physically in the yard?
- 8 A. Yes, they was in the yard.
- 9 Q. Where is your front -- in front of your house? Where
10 does your property line go to?
- 11 A. Well, actually, the road is on it. It goes right up to
12 the road and the road is on the my property.
- 13 Q. It's a state maintained road?
- 14 A. It's a county maintained.
- 15 Q. And so they've got an easement across your property
16 technically, right?
- 17 A. Yes.
- 18 Q. And so -- but in your yard, how far did they come into
19 your yard?
- 20 A. About 10-foot.
- 21 Q. So how far are you from them?
- 22 A. About 15-foot, maybe that, ten or 15.
- 23 Q. All right. Now, what kind of weapons do you see or
24 potential weapons at that point?
- 25 A. Melton had some kind of wrench, a big wrench, some kind

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1 of big wrench, I don't know where he got it from. Kamil had
2 his hand on his pocket but he didn't have nothing in his
3 hand.

4 Q. Who's doing the talking between the two of them?

5 A. Both of them are.

6 Q. Do you remember the specific words?

7 A. Yeah. They was threatening me, you know. Kamil tell
8 me, "Better not go to sleep at night," you know what I mean?
9 And they was threatening to do harm to me, you know, like
10 beating me up, you know what I mean, and cussing at me.

11 Q. All right. And you called -- are you already on the
12 phone with --

13 A. Yes. I'm still on the phone with Aaron when this is
14 happening.

15 Q. They pull up while you're on the phone.

16 A. Yeah. I'm on the phone, they pull up.

17 Q. Okay. All right. So here we go, they leave, or go get
18 in the vehicle.

19 A. Yeah. -- I'm standing there watching them leave.

20 Q. At what point do you understand that Aaron is coming
21 down there?

22 A. Well, he said he was coming but I didn't know nothing
23 about it. When they was going up the road I watched them
24 and they stopped, and then Melton jumped off the tractor and
25 run around the tractor and run to the passenger's side of

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1 the truck. When he did I knew they must have met Aaron, so
2 I jumped in my truck --

3 Q. Let me ask you a little bit more -- something I didn't
4 ask you earlier. How common is it to meet somebody and
5 somebody have to back up on that road? Does that happen
6 from time to time?

7 A. True. The sun is shining right in your eyes when you
8 leave there in the evening and you can't see -- that road is
9 narrow and it's got curves and dips in it, you can't hardly
10 see on that road at all, you've got to be careful.

11 Q. If somebody is coming from the paved road down Merle in
12 the afternoon where is the sun at?

13 A. Right in your eyes, right in your face.

14 Q. And this is about, what time are we talking when this
15 happened?

16 A. 3:00 when this happened, 3:00 or 3:30.

17 Q. This is in September.

18 A. Yes, sir.

19 Q. Sun is getting low?

20 A. Yeah. It's over there, yeah.

21 Q. Now, when Kamil and Melton pull off -- you've already
22 gotten ahead of me a little bit -- but do you go -- where do
23 you walk to?

24 A. Well, I'm standing there in the yard, I can see them
25 leaving.

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1 Q. You can see them going up the road?

2 A. Yeah.

3 Q. You've already said, you saw what happened. Melton
4 jumps off -- it stops.

5 A. Yeah.

6 Q. Now, when it stops what do you do?

7 A. When it stops I don't do nothing.

8 Q. Well, then what happens?

9 A. Then Melton jumped off the tractor and run around on
10 the driver's side of that trailer up through there and when
11 he did that I jumped in my truck because I figured Aaron had
12 come over there, I jumped in my truck and went up there.

13 Q. Why did you jump in your truck? It ain't that far over
14 up there.

15 A. It might not be for somebody but it is for me. I
16 didn't feel like I could run all the way up there, I bet you
17 it's over 100 yards from my driveway to his driveway, you
18 know what I mean?

19 Q. Well, when did you get this in your hand?

20 A. Well, I had it in my hand, I was going to get the head
21 for it and I had it in my hand when I was going back towards
22 the truck I had it then. When they pulled up I had it.

23 Q. Okay. So you already had it before they pulled up.

24 A. Yeah.

25 Q. In your hand.

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- 1 A. Yeah.
- 2 Q. Did you wave it at them?
- 3 A. No.
- 4 Q. Threaten them with it?
- 5 A. No.
- 6 Q. But you're standing there with it while they're coming
- 7 there at you up in the yard.
- 8 A. Yeah.
- 9 Q. Sorry, I had to go back and focus on that again. So
- 10 what do you do -- you jump in your truck. Where does this
- 11 go when you jump in your truck?
- 12 A. With me.
- 13 Q. Why?
- 14 A. It just did.
- 15 Q. You know --
- 16 A. They have been down there threatening me and stuff, I
- 17 didn't know what they was doing.
- 18 Q. Okay. You ain't got no gun?
- 19 A. I ain't got no gun.
- 20 Q. All right. So you drive up -- you drive up there.
- 21 A. Yeah.
- 22 Q. Get up there, what do you do?
- 23 A. I jump out of my truck and run up along side of the
- 24 driver's side of the trailer and the truck to Aaron's truck.
- 25 Q. You run up the driver's side of the trailer and the

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1 truck.

2 A. Yeah.

3 Q. Pass the tractor.

4 A. Yeah.

5 Q. Do you see anything at that point?

6 A. No.

7 Q. When do you see something happening?

8 A. When I come up by the truck I looked in the truck and
9 nobody was in there. I come around the corner truck, I was
10 running and I come up on that truck, and when I did that I
11 seen Kamil standing on the other side and Melton over there,
12 and as soon as I come around that truck I seen him pointing
13 a gun at Aaron and shoot.

14 Q. Okay. You see him pointing the gun what?

15 A. Towards Aaron. He was facing there and he had the gun
16 in his hand.

17 Q. Okay. And then -- all right. Did you have to get --
18 in relation -- you're coming up the left side of Kamil's
19 truck. At what point -- do you see that? Is it before you -
20 get to the front of his truck or after you get it?

21 A. After I get to the front of his truck. I couldn't see
22 him until I got to -- I seen him -- once the hood --
23 something you could see across the hood and see over there.

24 Q. Well, where are they at in relation to Mr. Truesdale's
25 driveway?

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1 A. At that time they're right there -- Melton is closer to
2 the -- over next to the truck away from the front of the
3 truck some, but Kamil is standing right there in Bill
4 Truesdale's driveway.

5 Q. Okay. And where is Aaron?

6 A. Where is Aaron?

7 Q. Yeah.

8 A. He's way over here off from his truck back over that
9 way, not right behind it but he was beside it, but actually
10 he's probably a little bit behind it in distance, you know
11 what I mean?

12 Q. What happens next? You see that?

13 A. As soon as I rounded that corner he had that gun and he
14 shot that gun at Aaron.

15 Q. All right. Now -- all right. Now, what did you do
16 then?

17 A. I went to get that gun away from him.

18 Q. And how did you attempt to do that?

19 A. ~~The~~ The only thing I thought about was I need to get that
20 gun before he kills my son.

21 Q. And how did you attempt to do that?

22 A. I was gonna try to knock it out of his hand with that
23 stick, you know what I mean?

24 Q. All right. Well, did you make an attempt to do that?

25 A. Yeah.

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1 Q. And was that successful?

2 A. No.

3 Q. Okay. All right. Then what happened? When you say

4 knock it out of his hand, what are you trying to strike?

5 You're talking about knocking it out of his hand?

6 A. Yeah, knocking it out of his hand, yeah.

7 Q. How close did you get to that?

8 A. Pretty close.

9 Q. And then what did you go then?

10 A. I slipped -- that gravel is loose right there going to

11 that driveway so I did like this and then -- where he comes

12 out of there makes it loose and I slipped down on one knee

13 and stuff like that and fell, not all the way on the ground

14 but just down on my knee.

15 Q. Did you say anything to him?

16 A. Yeah. I told him to drop that gun or I'll call the

17 law.

18 Q. Did you say that before you attempted -- what was the

19 sequence? When did you say that?

20 A. I was yelling at him to drop the gun when I seen what

21 he was doing when he shot that gun.

22 Q. Right. Okay. All right. You're falling to the

23 ground, and what happened?

24 A. When I got up and stepped right there and he shot right

25 at the side.

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1 Q. When you went to get up?

2 A. When I went to get up he stepped right up and shot me
3 almost point black right in this side.

4 Q. Okay. Were you coming at him when you got shot or who
5 was coming at you? Who was coming at who?

6 A. He stepped to me, I was on my knee on the ground.

7 Q. So it was close range?

8 A. Yeah.

9 Q. All right. What happened to the stick then?

10 A. Well, I got up after he shot me and hit him with the
11 stick, you know what I mean? I was kind of --

12 Q. You were close enough to do that?

13 A. Yeah.

14 Q. What was he doing with the gun at the time you struck
15 him with the stick? What was he doing at the time that you
16 recall?

17 A. With the gun? He had the gun in his hand. I hit him
18 with the stick because Melton was saying, "Shoot him again"

19 -- you know what I mean? And I didn't do, you know -- I knew I
20 had to do something to try to make that shooting quit, you
21 know what I mean?

22 Q. All right. What happened first, you getting shot or
23 Kamil getting struck with a pick axe?

24 A. He shot me.

25 Q. All right. Now, after he's hit with the stick what

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1 happened? What do you do?

2 A. Well, Aaron came over there, got where I was at and got
3 me and picked the stick up, got it out of my hand, I was
4 kind of a little bit -- and took me over there out of the
5 way.

6 Q. Well, tell me what's going through your head. You've
7 been shot, what's going through your head?

8 A. I know I'm shot, I just don't know how bad. I know I
9 was shot in the stomach but I didn't know how bad, you know
10 what I mean?

11 Q. Okay. All right. Aaron comes and gets the stick.
12 What does he do with it?

13 A. What did Aaron do with the stick?

14 Q. Uh-huh.

15 A. He was holding them off because they were still
16 threatening us.

17 Q. What did being shot do to your system as far as -- did
18 you feel a change in your -- you know?

19 A. Yeah. It was like a mule kicked you in the side, you
20 know what I mean? It was a pretty good jolt.

21 Q. Did you ever see -- how many guns did you see out
22 there?

23 A. One.

24 Q. And who had that gun?

25 A. Melton.

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1 Q. And after you -- do you remember seeing the gun being
2 put away?

3 A. I'm sorry, Kamil had the gun.

4 Q. Okay.

5 A. Kamil had the gun.

6 Q. All right. Did you ever see Melton with a gun?

7 A. No.

8 Q. Have you ever seen a -- we've been talking about a
9 .380. You were shot with a Beretta, right, based on what
10 you've learned today. You knew that?

11 A. No.

12 Q. Did you see -- you didn't see any other gun out there
13 period.

14 A. No.

15 Q. What did Kamil do with the gun after that? Aaron took
16 the stick --

17 A. You know, something after that -- he had the gun in his
18 hand but after Aaron got me over there, you know something?

19 I didn't really see much-else-going on, you know what I
20 mean? But I knew they was threatening him because Aaron
21 came over that way and he was trying to get me out of the
22 way from where they was at.

23 Q. Well, was your ability to make observations about
24 what's going on comprised at that point?

25 A. Some.

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1 Q. Okay. Do you recall anything else you think is
2 significant about this case after that?

3 A. No.

4 Q. Okay. What does -- how does Aaron address you and talk
5 to you? What does he call you?

6 A. Pop.

7 Q. Does he ever call you daddy?

8 A. No.

9 Q. Have you ever heard that before?

10 A. No.

11 Q. All right. Mr. Hyatt, I know you know this case is
12 here today for trial because you're on trial. Did you take
13 any action to make this case come to trial?

14 A. No, sir, I didn't.

15 Q. Did you ask your attorney to take any action?

16 A. Yes.

17 Q. What did you ask me to do?

18 A. To defend me.

19 Q. But did you ask me to take some action to get this case
20 to trial, to file a motion for a speedy trial?

21 A. Yes, I did.

22 Q. Why did you do that?

23 MR. COOK: Objection.

24 THE COURT: Sustained.

25 A. Because I --

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1 THE COURT: The objection is sustained.

2 Q. You can't go forward, you can't -- my last question.

3 Did you ever see Kamil in his truck or on his running board
4 or on the driver's side of his truck?

5 A. No.

6 Q. Okay.

7 MR. GRIER: Thank you. Answer any questions that
8 Mr. Cook may have for you.

9 THE COURT: Solicitor.

10 MR. COOK: Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MR. COOK:

13 Q. All right. Mr. Hyatt, you said you took this picture
14 the day this happened.

15 A. Yes, I did.

16 Q. What color is that truck?

17 A. Red.

18 Q. What color truck was Kamil driving that day?

19 A. White.

20 Q. So Kamil is not driving that truck.

21 A. No.

22 Q. Okay. Now, you said you get disability?

23 A. Yes.

24 Q. For your hearing.

25 A. Yes.

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1 Q. And you've got hearing aids on today.

2 A. Yes.

3 Q. But you weren't wearing hearing aids on the 16th at
4 your house?

5 A. No.

6 Q. But you were able to hear people -- where is your
7 swing? How far from the road is your swing?

8 A. Probably about 40-foot, I guess.

9 Q. 40 feet?

10 A. Yeah.

11 Q. So about this far up the road?

12 A. Yeah, about that far, maybe a little further.

13 Q. Farther than this?

14 A. It might be. Yeah.

15 Q. This far off the road?

16 A. Yeah.

17 Q. So you're sitting on your swing without your hearing
18 aids on and there's a big truck pulling a trailer, a diesel
19 ~~truck and tractors coming by~~ and you can hear ~~what the~~
20 people in those trucks are saying?

21 A. Pretty much so.

22 Q. Really?

23 A. Yeah.

24 Q. And you get disability for your hearing?

25 A. Yeah. I can take these hearing aids off, you could

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1 stand at that door and I can pretty much tell you -- I can
2 read your lips if you're loud. If I'm looking at you I can
3 hear better. I've been reading lips pretty good for 25
4 years.

5 Q. You can read their lips from them sitting in the tuck?

6 A. They was making threatening remarks.

7 Q. Well, what did they say?

8 A. "You're going to get it."

9 Q. Who said that?

10 A. Kamil, Melton and the driver that was in that red
11 truck.

12 Q. Who was driving that red truck?

13 A. I don't have no idea. I've never seen him before and
14 I've never seen him since.

15 Q. So some stranger you've never seen was telling you you
16 were going to get it?

17 A. Yeah.

18 Q. Why would he do that?

19 A. Um-um.

20 Q. I don't know either. All right. You said you took
21 those pictures of these trucks going up and down the road,
22 and after that you went and talked to the magistrate but you
23 never got there.

24 A. Yes, sir.

25 Q. And then when you came back home you saw some truck

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1 coming out?

2 A. When I first came home I didn't see anything.

3 Q. Okay. When did you call Aaron?

4 A. After the first two trucks left.

5 Q. Why did you call him?

6 A. To tell him what had been happening over there on the
7 road and stuff that day.

8 Q. You just called and told him that the truck was going
9 down the road?

10 A. No. I called him over and told him that I told the
11 deputy that people was over there threatening me and he
12 never done nothing, and I called the supervisor and stuff
13 like that and he was supposed to call me back.

14 Q. So after these trucks come out -- who was driving these
15 two trucks? When you called Aaron you don't know who was
16 driving these trucks?

17 A. I knew one of them because I had worked with him with
18 Milton Hunter and I only know his nickname was Tank. He
19 came out of there and I was standing there and he waved at
20 me and I waved back to him.

21 Q. It sounds like that was friendly. Then you called
22 Aaron to complain?

23 A. Huh?

24 Q. So it sounds like that was a pretty friendly
25 interaction between you and that guy. So after that you

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1 called Aaron to complain?

2 A. Not about him.

3 Q. But nobody else had come out yet, you were already
4 complaining.

5 A. About what was going on. I wasn't complaining, I was
6 just telling him what was going on and what happened over
7 there at the house today.

8 Q. And you're standing back at your swing talking to Aaron
9 on the phone?

10 A. When I was talking to Aaron on the phone?

11 Q. Yeah, where were you?

12 A. I was in the front yard.

13 Q. Okay. So you were talking to Aaron when Kamil and
14 Donnell Melton came up?

15 A. Yes.

16 Q. How far did you say they were from you?

17 A. Oh, about 10-foot probably.

18 Q. So they walk up to you this far while you're on the
19 phone.

20 A. A little bit further back, about right there, yeah,
21 about like that.

22 Q. Did you say anything to them or you just keep talking
23 to Aaron and ignore them?

24 A. I told them to get out of the yard, they was
25 threatening me. I was shocked to start with that they

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1 stopped in the yard and started threatening me.

2 Q. Why would they do that?

3 A. Who knows.

4 Q. Why would they have any reason to walk up in your yard
5 and threaten you? Have you ever done anything to them?

6 A. No.

7 Q. So Kamil just walks up in your yard while you're on the
8 phone and starts -- what did he say to you?

9 A. He said, "You'd better not be trying to sleep at
10 night," that was him. And Melton saying, "Bring that big
11 old stick down there," he had a big old wrench. I don't
12 know what they were mad for about.

13 Q. Well, if they're 10 feet from you where did Melton get
14 that wrench?

15 A. Melton had the wrench when he got off the tractor.

16 Q. He was driving a tractor holding a wrench?

17 A. Listen, when he got off that tractor -- I don't know
18 how he done it but he had it when he got off.

19 Q. He wasn't but 10 feet from you, you couldn't tell? You
20 were obviously watching him come up.

21 A. When he first got off the tractor he was more than
22 10 foot away from me.

23 Q. Well --

24 A. When he got off the tractor he had the wrench in his
25 hand, when he stepped off of that tractor he had that

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- 1 wrench, that's what I seen.
- 2 Q. Did you see like a tool box on his tractor?
- 3 A. No.
- 4 Q. So he was balancing it driving the tractor, is that
- 5 where you said he had it?
- 6 A. I don't know how he done it, I know he had it in his
- 7 hand.
- 8 Q. How long were they in your yard?
- 9 A. A few minutes.
- 10 Q. A few, three, four, five?
- 11 A. I don't know exactly, I wasn't counting. It just
- 12 seemed like they was there, it was a pretty good bit, you
- 13 know what I mean?
- 14 Q. But you're on the phone with Aaron while they're
- 15 standing in front of you?
- 16 A. Yes, sir.
- 17 Q. Did you tell Aaron they're in your yard?
- 18 A. I told him they were in the yard threatening me.
- 19 Q. Have you ever driven from your house to Aaron's house?
- 20 A. Have I ever done what?
- 21 Q. Have you ever driven from your house to your son
- 22 Aaron's house?
- 23 A. Yes, sir.
- 24 Q. How long does it take you to get there?
- 25 A. Minutes, I don't really know. It's about a mile over

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1 there. You've got to go over one dirt road and then go down
2 another one and hit a driveway, it's crooked as all get out.

3 Q. Well, how long does it take you to get there?

4 A. Probably not more than five minutes.

5 Q. Okay.

6 A. If it took that long.

7 Q. So when they walk up in your yard you're already on the
8 phone with Aaron.

9 A. Yes.

10 Q. He can hear them on the phone?

11 A. Yeah.

12 Q. And they're threatening to take your life and your son
13 is on the phone, you say they're in your yard three or four
14 minutes but he doesn't -- he can't get from his house to
15 your house before they get all the way down to Bill
16 Truesdale's driveway? Aaron knew they were in your yard but
17 he couldn't make it down there before they got back in their
18 truck, cut it back on and started heading up the road? They
19 did all of that before he got down there?

20 A. I don't think they turned the truck off. I don't think
21 they got out, put in park, turned it off and set the brakes
22 on it, no, I don't think they done that. The tractor was
23 running and the truck was, too.

24 Q. Well, if you don't put the brake on and put it in park,
25 wouldn't the tractor be riding down the road while they're

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1 up there threatening you? They had to do something to it or
2 it would be rolling down the road.

3 A. They was in the yard, exactly how long I don't know.

4 Q. But Aaron knew they were in your yard, right? He was
5 on the phone with you at the same time they're in your yard,
6 he could hear them.

7 A. Yeah.

8 Q. And they had enough time to get out of your yard, get
9 the stuff back moving, get their big rig moving and get down
10 the road before he could get down there. Is that --

11 A. That's the way it looks, don't it?

12 Q. You tell me.

13 A. Well, you tell me. That's the way it looks on tape
14 that he met him at Bill Truesdale's driveway, not at my
15 yard.

16 Q. So where were you? When they left how far were you
17 from the road?

18 A. It was about the same distance, I can see up the road
--19 from where I was at.

20 Q. Where was your truck?

21 A. Where was my truck?

22 Q. Yeah.

23 A. In the driveway.

24 Q. When they leave -- well, let me back up. Why didn't
25 you turn around and go back in the house if they're out

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- 1 there threatening you? You just stood there -- did you ever
2 say anything back to them?
- 3 A. Did I say anything back to them?
- 4 Q. Yeah.
- 5 A. When they was threatening me?
- 6 Q. Yeah.
- 7 A. Yeah, "Get out of my yard."
- 8 Q. Well, Melton had a wrench and you said Kamil apparently
9 had his hand on his pocket, why didn't you just go back
10 inside?
- 11 A. Why?
- 12 Q. I assume to get away from them. Why would you just
13 stand right there in front of them if that's what they did?
- 14 A. Well, I wasn't too crazy about turning my back on
15 people when they're threatening me.
- 16 Q. Did you make any effort to get away from them?
- 17 A. No.
- 18 Q. Why not?
- 19 A. They're in my yard....
- 20 Q. Did you have that stick in your hand?
- 21 A. Yes.
- 22 Q. Are you getting ready to fight them?
- 23 A. No.
- 24 Q. You're just going to let them beat you with a wrench
25 and shoot you?

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1 A. Well, the stick -- when he got the wrench -- I wasn't
2 giving the stick up and then got the wrench, Melton got that
3 wrench. I wasn't turning my back on them and I didn't go
4 back in the house.

5 Q. So you're talking to Aaron and you're talking to them
6 at the same time?

7 A. Uh-huh.

8 Q. Okay. So you see Kamil and the tractor stop down the
9 road.

10 A. I seen them stop, yes.

11 Q. Why did you think they stopped?

12 A. I didn't have no idea.

13 Q. Well, why did you go down there?

14 A. When I seen Melton jump off the tractor and run around
15 the passenger's side of the truck I figured they had met
16 Aaron so that's when I jumped in my truck and went up there.

17 Q. What reason would they have to have an altercation with
18 Aaron down at the road if he's coming?

19 A. I don't know. They had been in the yard threatening to
20 kill me.

21 Q. They didn't threaten to kill Aaron, did they?

22 A. I was going up there to see what was going on.

23 Q. You knew Aaron was up there. You knew Aaron was on his
24 way.

25 A. I figured he was up there. I couldn't see his truck, I

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1 figured he was up there. I didn't know for a fact, I

2 figured he was.

3 Q. You know he was on his way.

4 A. Yes, sir.

5 Q. You know that's a one-way road, right?

6 A. Yes, sir.

7 Q. So if Aaron is coming and they're going out, how are
8 they going to get out if you're telling Aaron to come up
9 there?

10 A. I don't know. I thought they would be gone before he
11 got there.

12 Q. You couldn't see Aaron's truck past the hay and
13 everything?

14 A. No. I couldn't see Aaron's truck from where I was
15 standing.

16 Q. All right. So when you get -- you got in your truck
17 and drove 100 yards to the tractor?

18 A. Yes, sir.

19 Q. You're already down by the road, why didn't you just --
20 walk down there?

21 A. It was a long way up from my house all of the way to
22 where that truck was at.

23 MR. COOK: Beg the Court's indulgence just one moment.

24 THE COURT: Yes, sir.

25 (Break in proceedings.)

TESTIMONY OF MICHAEL HYATT

- 1 Q. Do you see this picture?
- 2 A. I do.
- 3 Q. Is that your truck?
- 4 A. Uh-huh.
- 5 Q. Is that your house in the background? How far do you
- 6 think that is?
- 7 A. Maybe 100 yards.
- 8 Q. Would it not be quicker if you're already down the road
- 9 to just walk down to the tractor to see what was going on
- 10 rather than get in your truck, turn it on, back up and
- 11 driving down there?
- 12 A. Might have been but, you know, I don't breath so good.
- 13 Q. So you said when you got up to Kamil's truck you didn't
- 14 see anybody.
- 15 A. No.
- 16 Q. When you come around you said you saw Kamil shoot at
- 17 Aaron?
- 18 A. Yes, sir.
- 19 Q. Did you see the video yesterday when Aaron is walking
- 20 around showing everybody where everything happened?
- 21 A. Yes, sir.
- 22 Q. Did you hear him say that the first shot he shot you?
- 23 A. Yes, sir.
- 24 Q. Well, who did Kamil shoot at first, did he shoot at you
- 25 or was he shooting at Aaron?

TESTIMONY OF MICHAEL HYATT

- 1 A. He shot at Aaron.
- 2 Q. Well, why didn't Aaron say he shot at him?
- 3 A. I don't you, you'll have to ask him.
- 4 Q. Well, I will. Aaron said when you walked up you said,
- 5 "Kamil, put the gun down, you're going to shoot nobody," and
- 6 he shot you while you're standing right in front of him.
- 7 Today you're up here saying that Kamil is shooting at Aaron
- 8 and you're swinging trying to get the gun out of his hand
- 9 and fall down and you're on one knee getting up and Kamil
- 10 shoots you.
- 11 A. Yes.
- 12 Q. Did Kamil lean over and shoot up?
- 13 A. No.
- 14 Q. He shot you in the side right here, didn't he?
- 15 A. Straight down.
- 16 Q. He shot down?
- 17 A. The bullet is my femur, it went straight up. I was
- 18 getting up and he shot straight down in my side like that
- 19 right there.
- 20 Q. Okay. But you saw him shooting at Aaron.
- 21 A. Yes, sir.
- 22 Q. Was Aaron just running around?
- 23 A. Yes, sir.
- 24 Q. Just running around in circles?
- 25 A. He ain't flying, he's moving around over there.

TESTIMONY OF MICHAEL HYATT

- 1 Q. Well, how far was Aaron from Kamil when you walked up?
- 2 A. Probably about half the distance, a little bit further
- 3 back than what you are.
- 4 Q. Y'all are about this far apart?
- 5 A. About where that desk is at. I would say somewhere
- 6 between from where you stopped the first time and that desk,
- 7 somewhere around in there, yes, sir.
- 8 Q. So I'm Kamil and Aaron is this far, he's shooting at
- 9 Aaron and you come up and try to knock the gun out of his
- 10 hand?
- 11 A. Yeah.
- 12 Q. Okay. How many times did he shoot at Aaron?
- 13 A. How many times what?
- 14 Q. How many times did you see him shoot at Aaron?
- 15 A. Once.
- 16 Q. How many times did he shoot at you?
- 17 A. Once.
- 18 Q. The first shot that he shot at you hit you?
- 19 A. Yes.
- 20 Q. So you said you've got COPD, correct?
- 21 A. Yes.
- 22 Q. Is that cardiopulmonary disorder, is that what that
- 23 means?
- 24 A. Yes.
- 25 Q. That means you can't breath real well? You have issues

TESTIMONY OF MICHAEL HYATT

1 breathing?

2 A. I can breath but if I take off running you can't do
3 that, you've got to kind of warm up a little bit before you
4 can do something like that.

5 Q. You've got to get cranked up before you get started?

6 A. Yeah.

7 Q. That's why you drove the truck down from your house to
8 the back of the tractor because --

9 A. Well, I just jumped in it. Now, I mean, as far as
10 thinking about getting in your truck, I just was going to go
11 down there.

12 Q. You left fishtail marks coming out of your driveway,
13 didn't you?

14 A. Yes, that's true.

15 Q. You were in a hurry to get down there.

16 A. Yeah, I was.

17 Q. So you've got COPD for your breathing you've been
18 diagnosed, so you drive a truck 100 yards from your house to
19 the back of a tractor so you're not winded, you get up there
20 and get shot in the gut. But you've got enough energy and
21 enough -- you're cranked up enough where you can get up and
22 hit somebody after you got shot?

23 A. Yes, sir.

24 Q. So Kamil shoots you and just stands there looking at
25 you and let's you get up and hit him in the head?

TESTIMONY OF MICHAEL HYATT

- 1 A. I don't know what Kamil was doing, I know I hit him --
2 I got up and hit him in the head. He had that gun in his
3 hand still.
- 4 Q. Well, how far is he? Is he this far from you?
- 5 A. Kamil?
- 6 Q. Yeah.
- 7 A. Pretty close, it might have been closer than that.
- 8 Q. So he shoots you and stands there and looks at you and
9 let's you get up and hit him in the head while he's unharmed
10 with a gun and he allows you to hit him in the head?
- 11 A. I guess so. That's what happened, right?
- 12 Q. I wasn't there, that's why I am asking you.
- 13 A. That's what happened. He shot me and I got up and hit
14 him.
- 15 Q. Well, how long was it after you got shot when you hit
16 him?
- 17 A. What?
- 18 Q. How long in between when you got shot and you hit
19 Kamil? ...
- 20 A. Pretty quick.
- 21 Q. So the first shot you saw him, was Kamil shooting at
22 Aaron?
- 23 A. Yes.
- 24 Q. And then you knocked the gun out, try to and fall down
25 and he shoots you while you're getting up.

TESTIMONY OF MICHAEL HYATT

1 A. Yes, sir.

2 MR. COOK: Beg the Court's indulgence for just one
3 moment.

4 THE COURT: Yes, sir.

5 (Break in proceedings.)

6 Q. Mr. Hyatt, do you remember Aaron telling you, "Don't do
7 anything until I got there," on the phone?

8 A. Yes.

9 Q. Don't do anything what? What do you think he meant by
10 that?

11 A. I don't know what he meant, he just said, "Don't do
12 anything until I got there."

13 Q. Don't you think he was probably referencing Kamil and
14 Melton?

15 A. I'm sorry, I didn't quite understand you.

16 Q. When he said, "Don't do anything until I get there,"
17 what else would he be talking about besides Kamil and
18 Donnell Melton?

19 A. Well, he was talking about it, I'm sure he was
20 referring to that. But as far as me thinking about it once,
21 there was a lot of stuff -- they were in my yard threatening
22 me and all the other stuff, I wasn't thinking about 100
23 different reasons about what he said. "Don't do anything,"
24 so I didn't do anything.

25 Q. On that video, too, Aaron said, "My dad is old school."

TESTIMONY OF MICHAEL HYATT

1 Do you know what he meant by that?

2 A. Yeah. Because I do things a lot the way that I live is
3 like old school.

4 Q. Would he be referencing that in the way in terms of how
5 you handle disputes?

6 A. I don't really know exactly what he meant by that, he
7 just said it.

8 Q. How long was it between when Kamil stopped his rig and
9 when you got down to the scene?

10 A. Not very long, just a little bit.

11 Q. Maybe 30 seconds, a minute?

12 A. I don't know, I can't tell you, I wasn't doing time on
13 it. I watched them go down the road, they stopped, as soon
14 as they stopped Melton got off the tractor, jumped and ran
15 around the tractor and run up the passenger's side of the
16 truck. As soon as I seen that I jumped in my truck and ran
17 up.

18 Q. When Aaron is walking around placing everybody where
19 all this happened he said it was five or six minutes before
20 you got down there. You're saying it was as soon as you saw
21 them get off the tractor you got down there?

22 A. That's what I'm saying, as soon as they stopped I got
23 in the truck and went down there.

24 Q. So we're not sure how much time was in between when
25 they stopped and you got down there?

TESTIMONY OF MICHAEL HYATT

1 A. It wasn't no five or six minutes, I can tell you that
2 right now, that's what wanted to hear, right?

3 Q. I just want to hear what happened.

4 A. That's what happened, I run right down there as soon as
5 I seen it stopped.

6 Q. Okay. And you said earlier you've been having issues
7 for a couple of years with Kamil and the dust.

8 A. Yes, I did.

9 Q. How many times do you think you told him to slow down?

10 A. Three or four, asked him to slow down.

11 Q. And that dust drives you nuts, doesn't it?

12 A. No, it was not driving me nuts. It was just --

13 Q. Well, you took pictures and called law enforcement and
14 kept driving to the magistrate about this dust?

15 A. True. So it's a 10 mile an hour speed limit on that
16 road and when you're running 10 miles an hour there's no
17 dust on it. It's a narrow road and there's people that
18 drive golf carts and stuff on that road and it's dangerous
19 driving that fast on that road. Was it driving me nuts?
20 No. It's not respectful to drive by somebody's house like
21 that. I asked him on several different occasions, I even
22 tried to give him stuff to make a gesture and they kept
23 driving it and so I took the pictures so when the law wanted
24 to look at them when I told them that they would have some
25 kind of indication that I just wasn't making it up.

TESTIMONY OF MICHAEL HYATT

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1 Q. Okay. You had already been to law enforcement one time
2 that day on the 16th because you had taken these pictures
3 and calling. But when Kamil and Melton allegedly came in
4 your yard, why didn't you call law enforcement then if they
5 threatened to kill you? You never called law enforcement
6 then.

7 A. I was talking on the phone to my son, but I told the
8 law enforcement that same day. Officer Lilly, I told him
9 that they were threatening me and he never done nothing, you
10 know what I mean? So -- right?

11 Q. Well, after they left the yard they were gone, you
12 didn't think to call law enforcement and say, "Kamil is out
13 here and him and his worker threatened to kill me in my
14 yard?"

15 A. No. I didn't think about calling no law, they was
16 gone.

17 Q. You didn't think it was important to call and say,
18 "This happened again?" You called about the dust but you
19 don't want to call about them allegedly threatening to kill
20 you in your sleep?

21 A. I never called law enforcement one time about the dust,
22 not one time. I asked the people personally, "Would you
23 please slow down on the road?" I never called the law and
24 so I didn't call them then and I never called them before
25 about it.

TESTIMONY OF MICHAEL HYATT

1 Q. All right.

2 MR. COOK: I don't have any further questions of the
3 witness, Your Honor.

4 THE COURT: Mr. Frick?

5 MR. FRICK: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. FRICK:

8 Q. Clear up a couple of things, Mr. Hyatt. Mr. Grier was
9 asking you about the day that Aaron's truck broke down and
10 rolled out into the road.

11 A. Yes, sir.

12 Q. Was that on the 16th?

13 A. No.

14 Q. When was that?

15 A. That was earlier that week, I'm not sure exactly,
16 couple or three days before that.

17 Q. And that's when -- the first time you saw law
18 enforcement and they talked to y'all?

19 A. Yes, sir.

20 Q. Said something about something going on up at the
21 pasture with Mr. Nassrah and whoever he had with him that
22 day?

23 A. Yes.

24 Q. Y'all were down at your house.

25 A. Yes, sir.

TESTIMONY OF MICHAEL HYATT

1 Q. Didn't leave there.

2 A. No.

3 Q. Deputy stayed with you, didn't he?

4 A. Yes.

5 Q. Were there any words exchanged between you and

6 Mr. Nassrah or any of his crew that day?

7 A. On that day when Deputy Morgan brought them back up to
8 the house, he stopped right at the house because the other
9 patrol was in their driveway and he stopped there. Kamil
10 and Melton got out and started threatening Aaron to fight.

11 Q. So there had been previous words.

12 A. Yeah.

13 Q. Jump ahead to the 16th. You said there was a guy
14 driving the red truck, I think it's the one -- I think this
15 is the one that they showed you, Defendant's Exhibit Number
16 1.

17 A. Yeah.

18 Q. You said that that guy said something to you?

19 A. Yeah. He was making gestures out the window with his
20 hands and stuff and they was saying stuff, you know what I
21 mean?

22 Q. You didn't know who he was?

23 A. No.

24 Q. It wasn't Mr. Nassrah.

25 A. No.

TESTIMONY OF MICHAEL HYATT

- 1 Q. It wasn't Melton.
- 2 A. No.
- 3 Q. But it was part of his crew?
- 4 A. True.
- 5 Q. I'm going to show you what is Defendant's Number 28.
- 6 That is the picture of your home and the road, correct?
- 7 A. Yes, sir.
- 8 Q. Okay. Which direction is that headed? Is that towards
- 9 the field or is that towards the black top?
- 10 A. It was going towards the black top.
- 11 Q. That's your driveway, correct?
- 12 A. Yeah.
- 13 Q. Okay. This is the view that you have before you hop in
- 14 your truck, right?
- 15 A. Yes.
- 16 Q. Okay. What drew your attention? What made you decide,
- 17 "I need to hop in my truck and go down there?"
- 18 A. I seen him stop, just shortly after he stopped Melton
- 19 jumped off of the tractor and run around the tractor and run
- 20 up the passenger side of the truck. When I saw him do that
- 21 I thought they must have run into Aaron, so I jumped in the
- 22 truck and run up there.
- 23 Q. You hadn't told Aaron, "Hey Bo, meet me in the middle
- 24 of the road, we're going to take care of them this time."
- 25 A. No. I thought Aaron was away from them. I thought --

TESTIMONY OF MICHAEL HYATT

1 they was over there a pretty good time from the yard, I
2 thought they would be gone before he got there.

3 Q. Had you already hung up with Aaron?

4 A. Well, I was talking to them as they left and then it
5 dropped the call, it ain't very good cellphone service down
6 there.

7 Q. Okay. You pull up, you get out of your car. Are you
8 going down the right side of the road or the left side of
9 the road?

10 A. I'm going down the left side of the road.

11 Q. You're going down the left side of the road?

12 A. Yeah.

13 Q. Is that the passenger's side or the driver's side?

14 A. That's the driver's side of the truck.

15 Q. Of your truck?

16 A. Yes, sir.

17 Q. All right. Where do you see the confrontation between
18 Mr. Nassrah and Aaron?

19 A. I don't see it until they get to where I can look
20 across the hood and they're on that side over there.

21 Q. Okay. I'm going to show yet another picture. Do you
22 recognize that?

23 A. Yes, I do.

24 Q. What is that?

25 A. That's Aaron's pickup truck and Kamil's truck in front

TESTIMONY OF MICHAEL HYATT

1 with the hay.

2 Q. Okay. All right.

3 MR. FRICK: I'm going to ask this be marked as the next
4 exhibit.

5 MR. COOK: No objection.

6 THE COURT: Without objection introduced as Defendant's
7 next in order.

8 (The photograph was received as Defendant's
9 29.)

10 Q. Now, this is the opposite view from what you had, isn't
11 it?

12 A. Yes.

13 Q. You're coming from this way?

14 A. Yes.

15 Q. Where are you standing in relation to this picture?
16 Where are you standing when the -- where is the stuff
17 happening?

18 A. Melton is right here about across from the front fender
19 and Kamil is over here.

20 Q. So there's a little driveway over here --

21 A. Yeah.

22 Q. And that's where your son --

23 A. That's Bill Truesdale's driveway, yeah.

24 Q. And that's where Mr. Nassrah and your son are?

25 A. Yes, sir.

TESTIMONY OF MICHAEL HYATT

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1 Q. Where are you standing at that point?

2 A. Over here. When I come around the truck I come around
3 on this other side between the trucks.

4 Q. You could see over Mr. Nassrah's hood?

5 A. Yeah. As soon as I come around by the hood I seen
6 them.

7 Q. Okay. They're standing close to where that little
8 yellow thing is?

9 A. Yeah. Pretty close, yeah.

10 Q. You get over there and do what?

11 A. When I come around the hood -- as soon as I come around
12 the hood, as soon as I got to about to where I was straight
13 in line with the two trucks I seen Kamil fire that gun and
14 he was facing towards Aaron and he had that gun in his hand.

15 Q. Okay.

16 A. And then when I seen that gun first thing I thought he
17 was trying to kill my son so I was going to get that gun so
18 I just run as fast as I could to try to knock that gun out
19 of his hand.

20 Q. Is that why you went down there in the first place?

21 A. No. I didn't know what they was going to do. They was
22 in the yard and threatening me so I didn't know what they
23 was going to do up there, you know what I mean?

24 Q. Okay.

25 A. Yeah.

TESTIMONY OF MICHAEL HYATT

1 Q. And when you got down there you had a little urgency.

2 What was the urgency? What drove you down there?

3 A. Make sure they wasn't hurting my son.

4 Q. Stand up for a second if you don't mind. Don't unzip
5 your coat, but where did you get shot? Don't unzip it.

6 A. Right here.

7 Q. Right there. The bullet didn't go through you?

8 A. No, it's in my femur.

9 Q. Well, how does it go from here to here?

10 A. Because I was down getting up like that and he put the
11 gun right there against my side and shot it. I was down
12 below my waistline, this part of my body was where he shot
13 me.

14 Q. So he shot you while you were almost on the ground?

15 A. Yes, sir.

16 Q. Do you come up and strike him?

17 A. Yes, sir.

18 MR. FRICK: Thank you, sir. No further questions.

19 THE COURT: Any redirect?

20 MR. GRIER: No, Your Honor.

21 RECROSS EXAMINATION

22 BY MR. COOK:

23 Q. You said you come up and struck Kamil?

24 A. Yes.

25 Q. Well, how in the world did he get hit in the top back

TESTIMONY OF MICHAEL HYATT

1 of his head? He got hit right here. You're saying you came
2 up and hit him, how do you make contact right here?

3 A. I don't know, that's where it hit him at. I was coming
4 up right here and swung the stick.

5 Q. I know where he got hit but how did you end up hitting
6 him right there if you're down and you say you're coming up
7 and strike him?

8 A. Came straight like this and strike him just like that.
9 I didn't know exactly where I was going to hit him, I was
10 just trying to do something to keep him from shooting me.

11 Q. Did you golf swing it up or did you like a sledge
12 hammer?

13 A. No, like this. I was getting up just like this and I
14 swung it like that.

15 MR. COOK: No further questions, Your Honor.

16 THE COURT: Thank you, sir, you may step down. Ladies
17 and gentlemen, at this point in time we're going to take a
18 brief morning recess to refresh all of ourselves, we'll
19 reconvene in about ten or 15 minutes. Okay. Don't talk
20 about the case as you have not received it yet.

21 (The jury left the courtroom.)

22 THE COURT: I ask this because I'm required to ask you,
23 but seriously I can't imagine the jury wanting to hear all
24 of that stuff, but if there's anything specific you want me
25 to charge that you think of right now let me know?

TESTIMONY OF MICHAEL HYATT

1 MR. COOK: I don't have anything besides hand of one,
2 hand of all.

3 THE COURT: One thing that came up, I was speaking with
4 my law clerk about this as I was going over my request is
5 the lesser includes. Attempted murder, the lesser included
6 is the new ABHAN, A and B First is a lesser included, A and
7 B Second, all the way down to A and B Third. Let me hear
8 from y'all as to which lesser-included's you want me to
9 charge and which ones you don't want me to charge. We'll
10 start with you.

11 MR. GRIER: Your Honor, I think they all ought to be
12 charged.

13 THE COURT: Okay.

14 MR. FRICK: My request is if you're going to charge a
15 lesser included you charge all lesser included's.

16 THE COURT: Solicitor.

17 MR. COOK: I would ask that you don't do anything less
18 than A and B First.

19 THE COURT: Okay. I am going to charge all of the way
20 to A and B Second over the defenses' objection that y'all
21 want me to charge A and B Third, I don't think there's any
22 evidence of A and B Third. I think the lowest I could go
23 given the facts presented thus far -- of course, I've pretty
24 much heard everything, Mr. Murray (sic) didn't do the
25 striking -- would be a moderate bodily injury. Go ahead.

TESTIMONY OF MICHAEL HYATT

1 MR. FRICK: Judge, and I am not going to argue, I
2 understand that's not your ruling, I just want to put on the
3 record my objection on that. I think the jury can infer
4 whether that's moderate bodily injury or even less, they've
5 had a chance to view the injury, they've got the
6 photographs. I understood what the State is saying, we
7 certainly don't concur that the injury was as severe as he
8 says it was, I would ask you to include it as well. If
9 we're going that far I don't see what the difference would
10 be and why you cannot charge that.

11 MR. GRIER: I join that objection to not charging
12 third, I just believe the jury can infer that.

13 THE COURT: All right. Solicitor, do you want to add
14 anything on that?

15 MR. COOK: Just my prior objections. Given the facts
16 and circumstances I don't think -- if they believe the facts
17 as presented that it can be A and B Third given what was
18 used, where he was hit and it says risk of great bodily
19 injury, it doesn't say what actually occurred.

20 MR. GRIER: Judge, unless you can give a specific
21 charge as to what a moderate bodily injury is, I don't
22 think -- you couldn't say that a jury couldn't infer that --

23 THE COURT: I am charging moderate bodily injury, I'm
24 charging them what great bodily injury is as well, that's
25 part of the charge. Y'all let me think about it, I may

TESTIMONY OF AARON HYATT

1 revisit that issue before I actually charge, we'll see.

2 (The jury returned to the courtroom.)

3 THE COURT: All members of the jury are present.

4 Mr. Grier, you can call your next witness.

5 MR. GRIER: Your Honor, I rest.

6 THE COURT: All right. Mr. Michael Hyatt rests.

7 Mr. Frick?

8 MR. FRICK: Thank you, Your Honor. We would call

9 Mr. Aaron Hyatt.

10 The witness, AARON HYATT, was first duly sworn

11 and testified as follows, on:

12 DIRECT EXAMINATION

13 BY MR. FRICK:

14 Q. Your name is Aaron Hyatt?

15 A. That's right.

16 Q. Can you spell your first name for us?

17 A. It is A-a-r-o-n.

18 Q. And Hyatt?

19 A. H-y-a-t-t.

20 Q. And Mr. Hyatt at the time of this incident back in 2010
21 where were you living?

22 A. I live at [REDACTED] Lola Drive.

23 Q. Okay. Is that close to Merle Lane?

24 A. If you walk through the woods it's about a half mile,
25 around the black top it's a mile.

TESTIMONY OF AARON HYATT

1 Q. All right. I'm going to show you yet another picture
2 in this case. Does that look familiar to you?

3 A. Yeah. That's Merle Lane, that's Horton Rollins and
4 that's Lola.

5 Q. Okay. All right. Does that show the entirety of Merle
6 Lane or can you tell?

7 A. Yeah. This part back here, it's on the edge of this
8 picture, is actually where the field is at. But that's the
9 whole length from the black top to the field.

10 Q. That's an accurate depiction of that area?

11 A. Yeah.

12 MR. COOK: I've seen, it Your Honor, no objection.

13 THE COURT: All right. Without objection it will be
14 introduced as defendant's next exhibit.

15 (The photo was received as Defendant's 30.)

16 Q. I know no one can see this but I'm going to try to get
17 you to point to some things. Show me where Lola Lane is.

18 A. Lola is over here.

19 Q. Where is Merle?

20 A. Right here.

21 Q. Can you take your finger and run it along Merle on this
22 picture?

23 A. It starts right there at the black top and runs all the
24 way to here, it actually turns and stops at that residence
25 right there.

TESTIMONY OF AARON HYATT

1 Q. Okay. Who lives at that residence?

2 A. I don't know who lives at it now, I think back then it
3 was a fellow named Merle, actually the road was named after
4 him. His name was Merle, he was a brick mason, that's all I
5 knew about him.

6 Q. Your dad lived on this road?

7 A. Yes, sir.

8 Q. Where did he live?

9 A. He lived right there at the trailer.

10 Q. That's the trailer back there?

11 A. That's it.

12 Q. It looks like about half way down.

13 A. It's about half way.

14 Q. Where is the field we've been talking about?

15 A. It's actually back here.

16 Q. Okay. All right. The pictures makes this look like
17 this is a rather straight road. Is that true if you are
18 driving down it?

19 A. Oh, no. That road when you first come in it
20 actually -- it dives down off the black top road and it kind
21 of turns back like this and then it kind of makes a swing
22 turn right there where Truesdale's driveway is. And then it
23 goes kind of up hill until you get to dad's house, and then
24 when you get on the other side of dad's yard it drops over a
25 hill like this and goes straight down and then flattens down

TESTIMONY OF AARON HYATT

1 there in that field.

2 Q. All right. Now, there has been some discussion about
3 something that happened on the 13th. Do you recall that
4 day?

5 A. Yeah. I come over to my dad's house -- I had a job
6 interview that morning and I was just coming over there to
7 dad's letting him know how it went. When I went to pull in
8 the driveway that old truck I used to have, the coil wire
9 would vibrate off of it, well when it vibrated off of it it
10 would just shut down and about the time I pulled in the
11 driveway it just shout down. About the time I pulled in the
12 driveway it shut down. So I let it roll back on the dirt
13 gravel road right there because it was easier to get over
14 there in the truck where the coil was at, and when I got
15 over and got the hood up, that's when Deputy Morgan come up.
16 I actually had my dog with me and I've got a pretty good
17 sized dog.

18 Q. Are you the one with the dog that's eating the
19 chickens?

20 A. No, my dog don't eat no chickens.

21 Q. All right. Go ahead.

22 A. He's a pretty good sized dog. He was a little nervous
23 about the dog so I had to put the dog in the truck, and he
24 asked us for our ID's and we give him the ID's and I asked
25 him, "What's going on?" And that's when he told us that

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1 Kamil said we had been down to some field and locked him in
2 here, and I was like, "This is as far as I got so I don't
3 know what you're talking about." Once I got the truck
4 running I pulled up in the yard and Mr. Morgan was talking
5 to us about the situation, I told him that this was as far
6 as I got, I don't know what's going on down there. And
7 that's when Deputy Lilly pulled up and then Officer Morgan
8 took off down through there, and it was probably, I don't
9 know, 10 or 15 minutes later here they come back. Well,
10 when they come back Kamil got out of the truck and was
11 telling Morgan, "Hey, you need to search his truck." And
12 Deputy Morgan was telling him, "I can't just go over there
13 and search a man's truck because you say so." Well, Harlan
14 Melton was out there in the yard, he was running his mouth,
15 talking about, "I'll just whoop, I'll just whoop you." I
16 wasn't over there for all of that nonsense.

17 Q. Are you talking about Mr. Melton who was here and
18 testified?

19 A. Yeah. Then Kamil started with him, "We'll kick your
20 tail, we can take care of this." And that's when dad had
21 Deputy Morgan, "Hey, how about getting them out of the yard
22 and get them gone," and that's what Deputy Morgan did.

23 Q. Any more trouble that day?

24 A. No.

25 Q. Are you familiar with this dust situation?

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1 A. Yeah. I had been over at dad's house several times
2 throughout the years, I probably had an acquaintance with
3 Kamil for probably six or seven years up to the day that it
4 happened. I worked for Milton Hunter, I've hauled hay and
5 actually took hay to his barn and put it in his barn for
6 him, so I have known Kamil through the years. And he had
7 other workers that worked for him before this Harlan guy,
8 and most of the time -- because he wasn't always down there
9 when they would go get the hay, sometimes it would just be
10 his workers. And if you would ask them they would be pretty
11 cool, they would say, "Yeah, no problem, we understand."
12 Because the main thing is that dust, when you come by that
13 house they're flying, them tractors will go faster than
14 14 miles an hour.

15 Q. Well, what's the deal the dust?

16 A. My dad ain't got no air conditioning, he has got a
17 breathing problem and he has to leave his windows open. He
18 can't be in his yard because they kill him with the dust, he
19 can't be in his house because they kill him with the dust
20 and it's just a little common courtesy. We have asked
21 him -- I have asked him several times, "Hey man, dad is an
22 old man, cut him some slack. You want to fly, fly up to
23 this point, slow down and when you get past to this point
24 drag race, I don't care, just cut him a little slack."
25 Well, most of the people would do it, but when we asked

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1 Kamil to do it he started getting more and more, "I rent
2 this field and I'll do what I want to." We tried to
3 communicate with the guy, tried to make it civil, he just
4 didn't want to hear nothing we had to say. Dad lived on
5 that road, he didn't care, he was going to do whatever he
6 wanted to.

7 Q. How long had this problem been going on approximately?

8 A. For years. It started out four or five years prior to
9 that but it wasn't no arguing, it was just -- like I said,
10 most of the time it wasn't him, it was his workers and we
11 just asked them and they were real polite and they would
12 slow down and once they would get past the house they were
13 gone. But whenever Kamil was out there if you asked him he
14 would get mad, you know what I mean? "I got this field
15 rented and I'll do what I want to do." Well, we'll just
16 leave it alone at that point. Most of the time dad would
17 end up coming to my house until they got gone.

18 Q. All right. Let's get down to it. Do you remember the
19 16th?

20 A. Yes, I do.

21 Q. All right. Did you get a phone call that day or did
22 you call your dad?

23 A. I was sitting at the house. I wasn't -- I didn't have
24 no wallet or nothing, I was in a pair of shorts and a
25 T-shirt watching TV, phone rang, it was dad.

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1 Q. Do you remember about what time this happened?

2 A. I'm not exactly -- I know it was after 3:00 but I think
3 it was before 4:00, I'm not exactly sure what time it was
4 because I didn't look.

5 Q. The phone rings.

6 A. The phone rings, it was dad and I said, "What's going
7 on, Man?" And he said, "These guys are over here riding up
8 and down the road over here threatening me and cussing at
9 me." He said, "I stopped Officer Lilly." And I said,
10 "Well, what did he say?" He said, "The magistrate told him
11 he was down here and that if he had any problems that I had
12 to deal with it through the magistrate, he couldn't do
13 nothing." I said, "Well, did you go to the magistrate's
14 office?" He said, "Well, I tried to go up there "-- I think
15 this was a Thursday or a Friday, I'm not sure exactly but I
16 know it was late in the week -- and I said, "Well, did you
17 go up there?" And he said, "Well, it's kind of late in the
18 afternoon." And I said, "That's probably true, if they
19 ain't gone they're getting gone." And I said, "Well, what
20 else did you do?" And he said, "Well, I called the
21 sheriff's department and they're going to have the
22 supervisor call me," or had a supervisor called me one, I
23 can't remember how that went.

24 Q. How long was this conversation?

25 A. It was a pretty good while. We had been talking

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1 probably three or four minutes, maybe two or three minutes
2 when I heard someone yelling, and I couldn't hear it
3 clearly, I said, "What is that?" And he was like, "They
4 just stopped in front of the house and now they're coming in
5 the yard." And I was like, "Who is?" He was like, "Kamil
6 and his worker." And I was like, "Well, don't do nothing,
7 just keep your distance." I could hear them cussing and as
8 I'm talking to him they're getting worse and worse and
9 louder and louder. I know they're getting close in distance
10 because I can hear them clearly.

11 Q. Did you recognize the voices?

12 A. Yeah, I knew one of them was Kamil. I didn't know -- I
13 wasn't positive about the other guy but I had a pretty good
14 clue. But I told him, I said -- he said -- well, I could
15 hear them threatening him, they were threatening to kill him
16 and all kind of stuff on that phone, I could hear them
17 cussing and calling him all kinds of names. I told him, I
18 said, "Don't do nothing," and I run out my door, down the
19 porch, out in the yard, across the yard to get to my truck.
20 I get in my truck, I turn my truck around and I go out the
21 driveway. I'm talking to him on the phone, you know what I
22 mean? "Man, just don't worry about it, don't do nothing,
23 I'll be over there in a minute and we'll be able to deal
24 with it from there." My main thing was is they were
25 threatening to hurt my father, I was nervous. He's an old

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1 man, there's two of them, they've already been over in the
2 yard previous to this week threatening to hurt people, I
3 didn't want him over there by himself.

4 Q. All right.

5 A. So I get over there and when he come down the road --
6 like I said, it drops off that hill and it kind of does like
7 this. Well, you come around -- the sun is coming right down
8 the road that time of year, in the morning it gets you and
9 in the afternoon it gets -- I come around the corner and I
10 couldn't see nothing. About the time that sun cleared
11 enough where I could see there was Kamil, there was his
12 truck, so I slammed on the brakes to keep from running in to
13 him.

14 Q. Do you know where you were on Merle Lane approximately?

15 A. When I stopped?

16 Q. When you slammed on brakes.

17 A. Well, not -- Truesdale's driveway was here and my truck
18 was kind of like sitting not all the way in front of it but
19 kind of like in the middle. As soon as I stopped Kamil
20 stopped and when he stepped he stepped out on that running
21 board, opened that door and he laid that pistol out across
22 the roof of the truck and pointed it right at me. Well, as
23 soon as he pointed that gun at me I opened the door and
24 bailed out of the truck, I was running to the back of the
25 truck to get some distance between me and him.

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1 Q. All right. Let me stop you there. You're still in
2 your truck, the truck is running, right?

3 A. Well, no. It's automatic, it stalled out when I
4 slammed on the brakes.

5 Q. So you couldn't throw it in reverse and just slam back
6 down the driveway.

7 A. No. It used to be a three speed on a tree but they
8 broke the tree and it was down in the floor and if you
9 didn't take your time putting that truck in gear you was
10 walking.

11 Q. All right. Your truck stalled out and you've got a gun
12 pointed at you. What happened?

13 A. I throwed the door open and jumped out the door and run
14 toward the back right side -- driver's side of my truck to
15 get as much distance between me and that man with that gun.
16 While I'm running back here, "If you don't move that truck
17 ..you're going to die." Well, I ain't moving it, Jack, you've
18 got that gun pointed at me and I ain't going to get shot and
19 that's all there is to it.. Somebody point a gun at me I
20 hope you're best because you're going to have a hard target
21 to hit and that's why I run to the back of the truck. Well,
22 when I run to the back of the truck he got out of the truck,
23 I could see down the hay trailer all the way straight down
24 that hay trailer. I couldn't see the tractor but I could
25 see the --

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1 Q. Which side of the road was that?

2 A. I'm on the driver's side of my truck and the
3 passenger's side of their truck. And I'm looking at Kamil
4 and I see that boy come around that trailer, I can see him
5 and he's coming down through there --

6 Q. When you say that boy, who are you talking about?

7 A. Harlan Melton.

8 Q. Okay.

9 A. He come flying down through there and he got a wrench.
10 Now, I thought he had got the wrench out of the truck but
11 I'm not sure, I don't know whether he had it or he got it
12 out of the truck, it really don't make no difference, that
13 was the biggest crescent wrench I ever seen, me standing out
14 there barefooted I ain't even got a stick in my truck. He
15 come running around there. About that time Kamil come
16 around the front of his truck and him and Harlan come at me
17 this way. My truck is sitting here, I'm standing here and
18 here they come. When they come this way I broke camp and
19 went this way, they started to break camp and tried to come
20 around and meet me, I broke camp back this way. When they
21 come back around this time -- this is about the third
22 time -- when they got almost back to the tailgate and I was
23 going this way then they broke camp going that way. When I
24 come back they had got all the way to about the middle of
25 that Ford pickup truck. When I seen them get to that pickup

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1 truck I could see down the driver's side of that truck I
2 could see dad coming down through there.

3 Q. Your truck or the other truck?

4 A. I could see down past the Ford 350 with the hay on it,
5 I could see all the way down that driveway.

6 Q. Where is Truesdale's driveway?

7 A. It's to my left. I'm standing here, here is
8 Truesdale's driveway, I can see dad running around this side
9 of the truck, Kamil and them is down by here, he's back
10 there by the hay trailer. When they got right there I just
11 took off and they run in to each other, I figured when they
12 run in to each other --

13 Q. Who is they?

14 A. Kamil and Harlan Melton, they run in to each other and
15 when they run in to each other I figured, I'd say, I'm going
16 to break camp, I'm going to try to dive across this barbed
17 wire fence and get to these trees to not get shot. I
18 figured if I can get in them woods if he's going to shoot at
19 me I've got a better chance of not getting shot.

20 Q. Just so I got it straight you're breaking off and
21 you're going to head towards that driveway?

22 A. I'm going to run across that driveway, across that
23 driveway and over his yard and dove over that fence is what
24 I was going to try to do.

25 Q. All right. Did you get to do that?

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1 A. I didn't get that far.

2 Q. How far did you get that?

3 A. When I started down through there they run in to each
4 other, by the time I got halfway down they had started down
5 and were cutting me off. Kamil actually got where he was
6 running side by side where I was at and was cutting me
7 off -- one gate was closed and one gate was opened. So he
8 just about cut me off, and about the time he got me to that
9 gate that's when dad come flying around through there
10 running and running between me and Kamil, and that's when I
11 seen him tell Kamil to put that gun down or we're going to
12 call the law.

13 Q. Okay. Let me stop you for a second. Your dad
14 testified that he seen that you got shot at. Were you shot
15 at at that point?

16 A. From my knowledge no. But just the way I remember it
17 and that was a pretty dramatic deal for me, I could be
18 right, I could be wrong on that deal.

19 Q. Did you hear a shot, or do you recall hearing a shot?

20 A. I don't recall hearing a shot. Like I say, my main
21 goal is I wasn't caring about no shot or no shiny wrench or
22 nothing, I was trying to get some distance between me and
23 whoever had that gun pointed at me, which was Kamil, as fast
24 as I could because you don't pull a gun on somebody unless
25 you plan on shooting them, at least not anywhere I've even

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1 been in my lifetime.

2 Q. Let's get back to the driveway, what happened at the
3 driveway?

4 A. I was standing here or Hilton (sic) here or Harlan,
5 whatever that boy -- Milton (sic) Kamil is here and dad had
6 run in between them. The gate is right here. When dad run
7 in between them and told him that, that's when Kamil turned
8 around and stuck that gun on him and shot him, "pow." When
9 he did dad went down, he had that stick and he went down on
10 the ground, and he wasn't down but a second. He got back up
11 and that's when he came around -- when he got up he come
12 around there and he hit Kamil. When he hit Kamil he hit him
13 right in here, you know what I mean? Kamil was looking
14 right at him, Kamil was down there and it looked like he was
15 either trying to reload that gun or that gun had jammed, he
16 was messing with the gun like this.

17 Q. Okay.

18 A. When dad cracked him it dazed him, you know what I
19 mean? He quit messing with the gun. That's when I went
20 down there and I got ahold of my dad, I grabbed him and I
21 grabbed that stick and I got him and I went up the hill.
22 When I was going up that hill they kept trying to come at
23 me, Kamil and Harlan, they kept -- I had to keep threatening
24 them with that stick, which they still had a damn gun.
25 Q. Who had a gun?

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1 A. Kamil.

2 Q. Did somebody still have a wrench?

3 A. Yeah. Harlan still had that big ole -- that wrench was
4 about that long.

5 Q. What are you doing then?

6 A. Main thing I'm trying to do now is keep them at bay and
7 get my dad over to that truck because I know he had been
8 shot.

9 Q. Okay.

10 A. Well, at some point in time I switched hands with that
11 thing because they were still coming at me -- what they were
12 trying to do was Harlan was coming this way and Kamil was
13 trying to get to where he could surround me. So I went up
14 there and hit the tool box on that truck, and I carry a tool
15 pouch, I grabbed that hammer out of that tool pouch. And
16 when I went to throw it Kamil was over here and Harlan is
17 kind of like over coming toward the truck but they were
18 still off a good distance, when I went to throw it they was
19 standing over here and the hammer went over there so it
20 didn't really work in my favor.

21 Q. Pretty bad throw.

22 A. Well, I was nervous, I was still scared. I thought I
23 was fixin' to get killed.

24 Q. Did you have anybody in particular that you were aiming
25 at?

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1 A. Not really. I figured if I throwed it maybe if they
2 seen me start to throwing something they would get on.

3 Q. Okay. Stop there for a second. Let me show you a
4 couple of pictures. Take a look at these two pictures.

5 A. Yeah. This is the actual hammer and that's where it
6 landed.

7 Q. Okay. Is that the fence you were talking about?

8 A. Yeah. What happened is when I throwed that hammer I
9 was over here, Kamil and them was over here.

10 Q. That's your truck right there.

11 A. That's my truck right there, yeah. Dad was up in this
12 area somewhere. When I grabbed it Harlan Melton was
13 standing -- if you're looking at it like this Harlan was
14 standing like up the hill a little bit and Kamil was still
15 standing right here and they was over in this direction and
16 the hammer actually went over the fence and landed right
17 there.

18 Q. Okay.

19 MR. COOK: No objection.

20 THE COURT: Without objection introduced as defendant's
21 next in order.

22 (The photos were received as Defendant's 31 and
23 32.)

24 Q. All right. Look at this diagram. This is a diagram of
25 the whole situation?

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1 A. That's right.

2 Q. Are you familiar with this? Does this look about
3 right?

4 A. Yes.

5 Q. This is the driveway.

6 A. That's right.

7 Q. Is this where all the action takes place?

8 A. Yeah, this is where everything happened. The gate was
9 actually right in this area, right back even with that
10 marker, maybe a little bit south of it.

11 Q. Clearly you've been sitting here all week. You heard
12 Mr. Nassrah testify, you heard Mr. Melton testify that Mr.
13 Nassrah was standing on the running board of his pickup
14 truck and your dad runs up and pops him in the back of the
15 head. Are you telling us that ain't what happened?

16 A. That ain't what happened.

17 Q. Where was Mr. Nassrah when he got struck?

18 A. He was down there where I said where that number 12
19 marker was at, right in this area right in here. Right in
20 here is where he got hit.

21 Q. Nothing happened on the driver's side of Mr. Nassrah?

22 A. Nothing happened over here by this truck. The only
23 time he was down there -- when he pulled up and he laid that
24 gun across that hood and pointed it at me, then they came
25 from over there and chased me around this truck two or three

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1 times and when I went to break camp that's when they cut me
2 off here, dad come through here and dad got shot right here
3 and that's where Kamil got hit.

4 Q. All right. And Mr. Cook is going to get up here in a
5 second and ask you about this great conspiracy you and your
6 daddy cooked up to trap these folks on this road. Come on,
7 just go ahead and fess up, tell us, isn't that what
8 happened? Your dad called up and said, "Hey, we got them."

9 MR. COOK: Objection, Your --

10 A. Listen, I ain't got no hard feelings --

11 THE COURT: Hang on. What?

12 MR. COOK: He's leading. He's telling him what he
13 wants him to testify to.

14 THE COURT: Sustained.

15 MR. FRICK: Well, Mr. Cook has been doing it the whole
16 trial.

17 MR. COOK: I objected.

18 Q. Did you and your dad conspire to start this fight?

19 A. No.

20 Q. Who started the fight?

21 A. Kamil and Harlan Melton.

22 Q. Why did you go to your dad's house, or attempt to go to
23 your dad's house?

24 A. To keep him from getting hurt, I was afraid for his
25 safety.

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1 MR. FRICK: Thank you. Answer any questions Mr. Cook
2 has.

3 THE COURT: Solicitor?

4 CROSS EXAMINATION

5 BY MR. COOK:

6 Q. Mr. Hyatt, I'm assuming you don't get in a lot of foot
7 chases.

8 A. I'm sorry?

9 Q. Your tactics are a little questionable when they start
10 chasing you around the truck. You say you pulled up almost
11 bumper to bumper with Kamil and he pulls the gun on you; is
12 that right?

13 A. That's right.

14 Q. You're inside of your truck and he pulls a gun and you
15 decide to get out?

16 A. The truck wasn't running. I was trying to get enough
17 distance between me and that man with that gun because he
18 was pointing it right through the windshield of my truck.

19 Q.. Did you tell any law enforcement or anybody that your
20 truck was broke down and that's why you didn't move?

21 A. I'm sorry?

22 Q. Did you tell anybody that your truck was broken down
23 and why you didn't move?

24 A. I didn't say it was broke down, I said the truck
25 stalled out so it wasn't running. That man was pointing a

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1 gun at me through my windshield.

2 Q. What did he tell you? He told you to move, didn't he?

3 A. Not until after he pulled that gun on me and I done
4 broke camp out that truck.

5 Q. Wait. Were you out of the truck when he pulled the gun
6 or are you in the truck?

7 A. He pulled that gun when I was sitting in that truck, as
8 soon as he laid that gun across the hood of the roof of that
9 truck there wasn't no words, I seen a pistol. As soon as I
10 seen a pistol I broke camp, I ain't going to get shot.

11 Q. Well, how far did you run?

12 A. I ran to the back of that truck to get enough distance
13 between me and him.

14 Q. There's a whole road, why don't you just keep on
15 running?

16 A. Because I was gonna try to get my truck --

17 Q. You're going to --

18 A. If the man would have put the gun away I would have got
19 my truck and moved it.

20 Q. Okay. You told Investigator Crump that he said, "Move
21 this truck or you're gone to die."

22 A. That's what he said.

23 Q. Well, why didn't you move the truck?

24 A. The man pulled a gun on me.

25 Q. But he asked you to move the truck.

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1 A. There ain't no but to it, he pulled a gun on me.

2 Q. Okay. Well, your next idea is -- there's a driveway,
3 there's woods and a barbed wire fence.

4 A. That's right.

5 Q. And that's your best option to get away?

6 A. The only option I had.

7 Q. There's a road that goes back to the main road, there's
8 bushes and trees over here, there's a barbed wire fence over
9 here and your best idea is I'm going to run and jump over
10 that barbed wire fence?

11 A. That's right, he was chasing me around the truck. He
12 wasn't standing over there by his truck, he was over there
13 chasing me.

14 Q. You said that y'all were on every part of the truck.
15 You said that he is going this way and Donnell is going this
16 way and they bump in to each other like a cartoon.

17 A. I never said they were going that way or going that
18 way.

19 Q. You said it right here.

20 A. I said they were both going this way, they both went
21 this way. I never said one went one way and one went the
22 other way.

23 Q. And then you said they bumped in to each other.

24 A. They run in to each other because it was right there
25 together, when Kamil turned around he run in to him.

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1 Q. So y'all were just do-si-doing around the truck and
2 bump in to each other and it's like bad guys in a cartoon
3 and you just take off running.

4 A. Well, it might be Wylie Coyote but it was real life and
5 I was not getting shot.

6 Q. You never got further than 15 feet from the truck, did
7 you?

8 A. I got a little bit further than 15 foot.

9 Q. In all this time that's as far as you could run away?

10 A. That was the best I could do.

11 Q. Why didn't you just run down the road?

12 A. I'm going to run down the road that's gravel, I'm
13 barefooted, I've got no shoes on, it's rock, with a man a
14 little bit behind me with a gun and run straight up the road
15 so it's easier for him to shoot me? I'm not a little
16 fellow, I'm already an easy target.

17 Q. I don't dispute that.

18 A. So the only thing you can do for me is called strategy,
19 move, put things between me and him. That was my plan. It
20 might not been the best plan but it worked, I didn't get
21 shot.

22 Q. Well, you're worried about gravel on your feet but
23 you're going to dive over the barbed wire?

24 A. That's right.

25 Q. How high is that barbed wire fence?

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1 A. Maybe two foot.

2 Q. Are there not trees on this side of the truck? If
3 you're on your passenger's side of the truck where you said
4 you saw your dad coming, what's over there?

5 A. There's bushes, a barbed wire fence, it's about six and
6 a half to seven foot higher than the road, and then there
7 was pastures with horses in it over there past that.

8 Q. When they came and you're on the driver's side door,
9 Kamil comes from his driver's side, why don't you just run
10 down to Mr. Truesdale's house? There's a wide open gate,
11 there's a house, you can go down there and get help if you
12 wanted to and called the police. Why didn't you run down
13 there?

14 A. That gate is there and that gate is there, my right is
15 right here and they're right here and they're chasing me
16 around that truck in that driveway. I tried to run down the
17 driveway, you seen me -- just like on that picture you can
18 see I tried to run down the driveway and he run right out in
19 front of me and when my dad went through there then he shot
20 my father in the driveway, the driveway you want me to run
21 down that I tried to run down to get away from these people
22 and he shot him.

23 Q. You must not run real fast because you didn't get --
24 you are never more than 20 feet from your truck.

25 A. I ain't never claimed to be no athlete.

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1 Q. Well, you said somebody pulled a gun on you you're
2 going to get out of the way.

3 A. That's what I done. I didn't stand in the way of that
4 gun period. I got myself as far as away -- the best logical
5 thing that come to me was to do what I done and get away
6 from that gun, and it worked for me, I didn't get shot.

7 Q. He never even shot at you.

8 A. Well, I can't say that.

9 Q. Well, you said that the day it happened. They said,
10 "When was the first shot?" And you said, "The first shot he
11 shot my dad."

12 A. And what did I say for the second shot?

13 THE COURT: No, sir, don't ask questions, just answer
14 his questions. And y'all don't talk over each other as
15 well, it's hard for my court reporter to take down two
16 things at one time.

17 THE WITNESS: Can he repeat that question?

18 THE COURT: Yes, sir, absolutely. Go ahead, Solicitor.

19 Q. When they asked you how many shots they said the first
20 shot, you said, "The first shot hit my dad."

21 A. I said the first shot hit my dad and then the second
22 shot I didn't know where it went. He could have shot at me,
23 I don't know.

24 Q. Well no, that's not what your dad said. When he comes
25 out there Kamil is shooting at you. You never once said

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1 anybody shot at you before your dad got there.

2 A. Well, I know I didn't say that but that doesn't mean --
3 if you listen to me now.

4 Q. I'm listening.

5 A. -- that don't mean that things get swapped up. I'm
6 getting chased with a gun and a crescent wrench, now I could
7 be right and I could be wrong about how the shots were fired
8 as far as whether or not he shot at me, but I know for a
9 fact that he shot my father and then my father hit him.

10 Q. Well, you're getting ahead of me here.

11 A. No, I'm stating a fact.

12 Q. When the investigator said, "When is the first shot?"
13 "The first shot, then my dad walked up, my dad had that
14 stick and he said, 'Put the gun down, you're not going to
15 shoot anybody.' Bam, he shot."

16 A. That's what I said.

17 Q. You said that's the first shot.

18 A. That's what I said.

19 Q. That's a lot different than you saying, "I'm running
20 around and they're shooting me," and your dad is saying
21 they're shooting at you.

22 A. I didn't see that.

23 Q. I know you didn't, that's why you're saying now you
24 don't know. But the day it happened three and a half years
25 ago and this is fresh and they asked you what happened you

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1 never said, "I got shot at."

2 A. That's what I said in my statement and I stick with my
3 statement.

4 THE COURT: Remember, don't talk over each other.

5 Q. Your dad said that he went after the gun and fell down
6 and Kamil shot him.

7 A. All I know is when Kamil shot him I heard him go "oof,"
8 and when he shot him --

9 Q. Were you not watching when he shot him?

10 A. Yeah, I was standing right there. This is what I'm --
11 can I answer the question? What I said was this is what I
12 know, I seen Kamil shoot him, I seen him go down and go
13 "oof," that's the only sound he made. He stood right up and
14 he took that stick and he come around and he hit Kamil.
15 When he hit Kamil, Kamil was messing with that gun.

16 Q. You never said your dad fell before Kamil shot him.
17 You said he was standing -- you had law enforcement and you
18 were placing them on the spots, "He was here, he was here,
19 he was here," you had it all set up.

20 A. That was the best of my recollection at that time.

21 Q. And when you did that you said, "My dad right here, him
22 and Kamil was standing right in front of each other and he
23 said, 'Kamil, put that gun down, we're going to call the law
24 right now, and Kamil shot him."

25 A. That ain't how that was set up.

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1 Q. Well, you saw it on the video.

2 A. You can show the video again, I'll show you that it
3 shows I was in front of Kamil, then my father was down the
4 hill from Kamil.

5 Q. You said your father was standing in between you and
6 Kamil -- we'll show it if you want to -- and you said he was
7 standing right there and he shot him. Your dad said that he
8 fell down, was getting up and got shot.

9 A. Okay.

10 Q. Is that -- that's a different story, isn't it?

11 A. Well, it could be. People see things differently, you
12 know what I mean? He's got his traumatic experience and I
13 got my traumatic experience, I'm giving you the best of my
14 knowledge what happened.

15 Q. Well, it's not traumatic until you get shot, you're
16 standing there talking.

17 A. You mess with -- I'm sorry. To me that's traumatic.

18 Q. Well, you set it all up and said, "My dad was standing
19 right in front of Kamil, they're talking to each other and
20 Kamil just shoots him." Your dad's story is he goes after
21 the gun --

22 MR. FRICK: Your Honor, I think we've covered this
23 territory and I say it's asked and answered and move on.

24 MR. COOK: Okay. That's fine.

25 THE COURT: All right.

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1 MR. COOK: Beg the Court's indulgence one moment.

2 THE COURT: Okay.

3 (Break in proceedings.)

4 Q. Do you remember telling Investigator Crump that your
5 dad was old school?

6 A. Yeah.

7 Q. What do you mean by that?

8 A. Old school, he lives kind of by the way things were
9 back in the older days.

10 Q. Do you remember saying, "Old school. Back in the day
11 you just go in and have a fist-fight and that's the end of
12 that shit and it's over." Do you remember saying that?

13 A. I don't remember saying it about him. I remember
14 saying old school, back in the old days that people used to
15 fist-fight and the shit was over, that's what I said. I'm
16 pretty sure that's what I said.

17 Q. Yeah, that is what you said. But you weren't
18 referencing your dad at that point?

19 A. No, I was referencing old school.

20 Q. Just people in general?

21 A. A lot of people is old school.

22 Q. But you said your dad was old school.

23 A. Some people say I'm old school.

24 Q. We're talking about this. Okay?

25 A. Well, you asked me what I was referencing it to and I'm

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1 giving you the answer.

2 Q. How long has your dad been mad about this dust?

3 A. He hadn't been mad about the dust, he asked about the
4 dust, he asked them cordially several times. Asking
5 somebody cordially does not make you mad, that makes you --
6 asking them to show you a little respect and be civil.

7 Q. Well, you said to Investigator Crump, "He called me,
8 he's six (sic) years old, old people raise hell and he
9 called me to complain about it."

10 A. I said what now?

11 Q. You said, "He called me, he's 60 years old, he's an old
12 man, old people raise hell, he called me and complained
13 about it."

14 A. My dad calls me and gripes about all kinds of stuff.

15 Q. Did he call you and gripe about the dust?

16 A. He gripes about the news.

17 Q. What was he complaining about that day?

18 A. He was calling me and telling me what was going on, he
19 was upset because the way they was treating.

20 Q. You said you heard people over the phone when you were
21 on the phone with your dad.

22 A. That's correct.

23 Q. What did they say?

24 A. I heard Kamil and Harlan Melton threatening him,
25 cussing at him, saying a lot of cuss words, telling him he

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1 wasn't going to do nothing and threatening him, and that's
2 what had they said.

3 Q. Wasn't going to do nothing about what?

4 A. This is what I assume, about them just treating him
5 like a piece of trash and that's the way they was doing and
6 we talked to the officers. We tried to do it the right way
7 and calmly and they just wasn't pay it no attention and then
8 this incident happened, we're still trying to get this
9 resolved.

10 Q. So how long did it take you to get from your house to
11 his house that day?

12 A. I have no idea. I come as fast as I could, that's the
13 best guesstimate I can give you.

14 Q. Have you driven to his house before?

15 A. Yeah, and I ain't never timed it, not one time. Why
16 would I -- I'm sorry. I have never timed it, not one time.

17 Q. Is it 30 minutes?

18 A. No, it don't take that long.

19 Q. Is it two minutes?

20 A. It's more than that.

21 Q. Ten minutes?

22 A. It takes me a little bit to get there. I can't give
23 you an answer to that, I don't know. I don't really know.

24 Q. You said it's only a mile away.

25 A. Yeah. But you've got to come up -- from my house

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1 you've got to come up that gravel road and turn and twist
2 like this and then you've got to make a turn, go around this
3 gravel road and turn and twist like this, then you've got to
4 get on a black top road, and that's a county road that might
5 have traffic. And then I have to go down, turn left and
6 then go back down the road. I can't tell you exactly how
7 long it takes me to get there. It takes me a little bit,
8 that's the best I can give you.

9 Q. How long was it that you were doing this little dance
10 with Kamil and Harlan around the truck before your dad got
11 down there?

12 A. It seemed like forever to me. If I just guestimate
13 four or five minutes.

14 Q. You said you were on the phone with your dad and you
15 lost him on the video, there's an opening in the trees when
16 you come through, the driveway was to the left, you said, "I
17 was on the phone with my dad until I got right here,"
18 pointed right back to where your truck was and you said you
19 lost him.

20 A. That's not what I said.

21 Q. I can show you the video, I'm not going to lie to you.

22 A. Okay. That's fine. What I said on that video was I
23 lost signal where my brother was standing in the road, which
24 was halfway up that road where you couldn't see him but the
25 officers could see him.

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1 Q. Well, at that point if you're on the phone with your --
2 you were on the phone with him from the time that they were
3 allegedly in his yard until you almost pulled up in front of
4 Kamil, did you not know they were gone at that point?

5 A. No. He never said nothing about them being gone.
6 Mostly what you hear -- where I live, I live down behind
7 Hanging Rock, I've had every kind of phone you can imagine
8 and I can't -- there's not very good service down there. So
9 it wasn't like we was sitting there talking a conversation
10 like you're sitting on a land line, I was getting bits and
11 pieces. I was doing the best I could with what I had.

12 Q. But the signal is obviously good enough where you can
13 pick out voices and exactly what they say.

14 A. When I was sitting at my house it was, not when I was
15 driving down the road. I wasn't driving down the road when
16 I heard what they said, I was sitting in my house watching
17 TV minding my own business.

18 MR. COOK: One moment, Your Honor.

19 THE COURT: Okay.

20 (Break in proceedings.)

21 Q. At one point on there you said your dad, you said he
22 was ex-military and he doesn't deal with that well. What do
23 you mean by that?

24 A. People talking at him and cussing him like that, that's
25 what I mean by that.

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1 Q. When you said he doesn't deal well, how does he deal
2 with it?

3 A. He don't like it, nobody likes it. What do you mean --
4 how can you deal -- you tell them not to talk to you like
5 that, that's how you deal with it.

6 Q. The reason you came over there is because he called you
7 complaining about the dust.

8 A. The reason I come over there is because I could hear
9 them threatening my father and I was worried about his
10 safety.

11 Q. You told investigators, you said, "That's what this is
12 all about. If they would just slow down there would have
13 never been harsh words between my dad and Kamil."

14 A. That's what started from the 13th.

15 Q. So this has been brewing at least a week -- there has
16 been tension about a week?

17 A. We thought the cops had it resolved when they came down
18 there -- the day before this happened when Morgan was taking
19 them up and down the road there was no trouble so we thought
20 it was resolved.

21 Q. So there's no trouble when law enforcement is coming
22 back and forth with them?

23 A. When Officer Morgan was escorting them there was no
24 trouble.. This happened when Lilly was over there. I can't
25 tell you from what was happening over there because I wasn't

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1 over there, but there wasn't no trouble the day before when
2 Officer Morgan was there. When Officer Lilly was there then
3 there was trouble.

4 Q. So there's no trouble while the officers are there.

5 When you got there on the 16th was there an officer there?

6 A. Wasn't no officer there.

7 Q. So the one day there is no officer something happens.

8 A. The only thing -- only reason I know what happened was
9 because I can hear somebody threatening him on the phone so
10 I come over there because I was worried about my dad.

11 Q. And there's no law enforcement when you got there?

12 A. No. I didn't even make it past the Truesdale driveway,
13 so far as I know, no.

14 Q. Whose truck is that in front?

15 A. That's Kamil's.

16 Q. The white one is Kamil's?

17 A. Yeah.

18 Q. The green one is yours?

19 A. That's right.

20 Q. Do you see that driveway right there?

21 A. How do you get this thing to work?

22 Q. Just tap it.

23 A. It ain't doing nothing. There it goes. Are you
24 talking about the fence?

25 Q. Yeah, to the left, that open gate.

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1 A. Yeah, that's the Truesdale's driveway.

2 Q. Okay. Well, you saw Kamil coming, why wouldn't you
3 just pull over to the side and let him go by.

4 A. Because I didn't see him coming, that's what I told
5 you. When I came around that corner what you can't see
6 right here, but there's a tree, and when come up and you
7 turn that sun was beaming straight down that driveway I mean
8 like right here at you, as soon as I seen him I stopped. I
9 didn't know he was there, I didn't know anyone was in front,
10 that's why I was coming down through there so fast. I
11 thought they were still down at my dad's house.

12 Q. Why would you think they're still at your dad's
13 house --

14 A. Because they were threatening him on the phone.

15 Q. Let me finish the question. Why would you think they
16 were still at your dad's house if you were on the phone with
17 him while you're still on Merle Lane?

18 A. Listen, that's what I tried to tell you, I couldn't
19 hear everything that was going on except when I was at the
20 house, I could hear that clearly. As we was coming out when
21 I started coming up Horton Rollings Road I started losing
22 him. I actually lost the whole call when I come in on Merle
23 Lane, but it was breaking up before then. But I didn't know
24 they had left, I didn't know they had left, he never said
25 nothing to me that they had left. I didn't know that they

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1 had left.

2 Q. That's not what you said the day of, you said you the
3 lost the call right back where your brother was standing and
4 then pointed to your brother on the video, and it's not all
5 the way back to Merle Lane.

6 A. My brother is standing up the road up there past them
7 trees up there next to that next driveway.

8 Q. You could see him where you were standing?

9 A. I don't think you could see him on the video. I can
10 see him but I don't think he is on that video where you can
11 see him.

12 Q. And you're past the driveway. Is there room for Kamil
13 to get around you?

14 A. Is there room for him to get around me now?

15 Q. Yeah.

16 A. Yeah. He could have went around me because he could
17 have drove right there in that grass --

18 Q. With that truck?

19 A. -- with that trailer, okay, let me finish. He could
20 have drove right down on that grass to the right in the
21 Truesdale driveway, there's enough room. He could have
22 pulled in there and I could have went right on by his
23 trailer. Because I have passed -- the actual people that
24 own that property come down there with four wheelers and
25 stuff and I have passed several of them with longer trailers

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1 than that in that same spot.

2 Q. Your truck is right there, how is Kamil getting around
3 you?

4 A. Like I said, taking a turn to the right, he could have
5 pulled right there, he could have pulled right down that
6 driveway and rode right around me. I've passed more than
7 one person in the time that my father owned that place on
8 that spot right there.

9 Q. You're saying there's enough room for Kamil to get that
10 rig around your truck?

11 A. Yes, sir.

12 Q. When you were on the phone with your dad you said,
13 "Don't do nothing, don't do anything." What do you mean?

14 A. Don't do nothing.

15 Q. You said, "Don't do anything until I get there."

16 A. Don't do nothing, that's what that means.

17 Q. Well, what was he going to do?

18 A. I can't predict what he was going to do, I just didn't
19 want him to do anything until I got over there.

20 Q. On the video at the end Investigator Crump said, "Your
21 dad didn't know you were coming over here," and you said,
22 "Nope."

23 A. At that time I didn't think he knew I was coming but I
24 guess I told him and I got that wrong on the video. But, I
25 mean, when he asked me at the time I didn't think he knew I

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1 was coming, I just didn't.

2 Q. And you said, "Don't do anything until I get over
3 there."

4 A. That's right.

5 Q. But he didn't know you were coming, and he was on the
6 phone with you while you were in the truck?

7 A. Excuse me?

8 Q. He was on the phone with you while you were in the
9 truck? You said, "Don't do anything until I get there," but
10 then you said you didn't think he knew you were coming.

11 A. Hey man, it was a traumatic deal, people been shot, I
12 done the best I could with that. To be honest with you I
13 would have rather went and seen my dad, I was getting eaten
14 alive by mosquitoes, instead of doing that. I done the best
15 I could with that. I'm not a cop or investigator or
16 anything, I think I done the best I could to give them as
17 much information I could about what happened that day.

18 Q. I just want to make sure you give the same information
19 then as you do now.

20 A. I did. I give them the exact same information that I'm
21 giving you now. There's things in there maybe the words
22 wasn't right but I did the best I could.

23 MR. COOK: Your Honor, I don't have any further
24 questions of Mr. Hyatt.

25 THE COURT: Okay. Mr. Grier?

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1 CROSS EXAMINATION

2 BY MR. GRIER:

3 Q. Aaron, do you recall Kamil saying that you said, "Your
4 days are numbered, where is your escort now?" Tell me, what
5 is your response to --

6 A. I remember him saying that in here but I never said
7 nothing to him. I never got a chance to say nothing to him.

8 Q. Nothing at all was said between -- from you --

9 A. Only person that was talking was him because he had
10 that gun, I was trying to get away from him.

11 Q. Do you own a gun?

12 A. Oh, I've got several guns, yeah. I've got hunting
13 rifles, I don't own no pistols. I've got three or four
14 hunting rifles, high powered rifles and a couple of shotguns
15 and a couple of .22 rifles, you know, like for squirrel
16 rifles.

17 Q. If there's a confrontation and you're concerned about
18 your dad's safety, why didn't you grab a gun when you went
19 over there?

20 A. I went over there just to make sure they wasn't doing
21 nothing to him, I wasn't going over there to do nothing to
22 them.

23 Q. You heard the video. Did anybody accuse you of having
24 a gun at the scene?

25 A. No.

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1 Q. You don't recall anything on the videos where you were
2 accused of having a gun by anybody?

3 A. No.

4 Q. You don't recall a gun being found except for Kamil's
5 two guns at this scene?

6 A. The only gun I know of are Kamil's guns.

7 Q. I think you may have answered this, but why didn't you
8 leave immediately when your dad was taken out to go see
9 about him?

10 A. They asked me to do that reenactment, I didn't want to
11 do it but they asked me to. From my assumption I didn't
12 have much choice.

13 Q. Okay. Describe what you saw at the scene involving the
14 stick.

15 A. When dad come through there Kamil had that gun, he run
16 between me and Kamil. I was running, I wasn't walking, they
17 were chasing me. Dad run between them and was pointing that
18 stick at the gun telling him, "Put that gun down, you ain't
19 going to shoot anybody, we'll call the law." When Kamil
20 started up with the gun that's when dad went to step back
21 and when he did Kamil stuck that gun to him and said, "Pow."
22 Dad fell down and went, "Ooh." Jumped back up, which
23 surprised me that he got right back up, and cracked him with
24 that stick. When he cracked him with that stick Kamil was
25 messing with his gun doing something like this, I don't know

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1 what he was doing but he was trying to do something with
2 that gun. After dad hit him with the stick and he was dazed
3 I got the stick and got dad behind me and just tried to keep
4 them at bay, to keep them away from me and keep enough
5 distance -- because I had called the law in that time, I
6 think a few of us had called the law. I think we talked to
7 a few different the cops on the phone with that occasion, do
8 you know what I mean?

9 Q. You took the stick away from your dad?

10 A. That's right.

11 Q. Where was he at when you took the stick away from him?

12 A. Kamil was here and he was like kind of down the hill
13 from him. When I went down there that's where dad got shot
14 when he stepped up to hit him, and when he stepped up and
15 hit him that's when I got around that fence, I got ahold of
16 him and I took the stick out of his hand. He's right handed
17 so I took it out of his right hand.

18 Q. Did your dad ever drop the stick?

19 A. No.

20 MR. GRIER: Okay. Thank you.

21 THE COURT: Redirect?

22 MR. FRICK: No questions. Thank you.

23 MR. COOK: Nothing further.

24 THE COURT: Thank you, sir, you may step down.

25 Mr. Frick, you can call your next witness.

1 MR. FRICK: Defense rests, Your Honor.

2 THE COURT: Defendant Aaron Hyatt rests. All right.

3 Anything in reply from the State?

4 MR. COOK: Nothing from the State, Your Honor.

5 THE COURT: All right. Ladies and gentlemen, we have
6 reached a good point today to take a lunch break. I would
7 like you back in the jury room at 1:30. We have completed
8 the evidence phase of the trial, starting at 1:30 today
9 there will be closing arguments, after that I will instruct
10 you on the law and you will begin to deliberate this
11 afternoon. So until you begin to deliberate this afternoon
12 do not talk about the case, don't go on the Internet or
13 anything during the break and look up anything about the
14 case, don't do any of that, you remember this instruction I
15 have given you continually this week. We'll see you back at
16 1:30 in the jury room.

17 (The jury left the courtroom.)

18 THE COURT: Solicitor, state for the record the
19 proposed verdict form the solicitor opposes, go ahead and
20 state your reason.

21 MR. COOK: The reason, if they mark the not guilty
22 blank on the charge of attempted murder there's a chance
23 they don't move down and consider the following charges,
24 which there's only one spot for each one if it's guilty and
25 it can create confusion as to how they're instructed to go

1 down considering each charge.

2 THE COURT: And the defense's response to the verdict
3 form issue?

4 MR. FRICK: Your Honor, I believe it's confusing if
5 it's -- I think they would think they would have to consider
6 each one of them and that's not the case, and I know that's
7 not how you instruct them. They can consider it if they are
8 looking at lesser-included but if they think it's not guilty
9 it's not guilty.

10 THE COURT: The only reason these lesser-included's are
11 on the verdict form is because they are lesser included
12 offenses of the charge. And I agree with the defense's
13 position that it would be a confusing verdict form if each
14 one had guilty or not guilty beside it because it would be
15 like four different charges against each defendant and
16 that's not the case, there's only one charge against each
17 defendant. So I respectfully deny your motion to amend the
18 verdict form.

19 MR. COOK: Thank you, Your Honor.

20 MR. FRICK: Judge, one thing I need to put on the
21 record that I have an issue with the charge, I believe that
22 assault and battery third should be charged based on the
23 definition that's given and the charge that's given on the
24 bodily injury, because of the language they would have to
25 determine if there was a surgical procedure required of a