

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
The Honorable Diane S. Goodstein, Trial Judge
The Honorable R. Scott Sprouse, Post-Conviction Relief Judge

Appellate Case No: 2017-000970

JABARI LINNEN,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF BEAUFORT) CASE NO.: 2011-GS-07-0946 & 0947

THE STATE OF SOUTH CAROLINA,)
)
)
 v.) TRANSCRIPT OF RECORD
)
 JABARI LINNEN,)
)
)
 DEFENDANT.)
)

BEAUFORT, SOUTH CAROLINA
 SEPTEMBER 17TH, 2012
 BEFORE THE HONORABLE STEPHANIE MCDONALD, JUDGE
 SEPTEMBER 18TH - 21ST, 2012
 BEFORE THE HONORABLE DIANE S. GOODSTEIN, JUDGE.

APPEARANCES:

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Jury Selection
State v. Jabari Linnen
2011-GS-07-00946 & 00947
September 17th - 21st, 2012

Juror #	Name	Race	Gender	Jury
247	Russell Whiteford	W	M	1
214	David Staigall	W	M	2
215	Jeremy Stansell	W	M	3
117	Barbara Logan	W	F	4
126	Charles Mathieu	B	M	5
91	Shaa Jackson	B	M	6
244	Joseph White	B	M	7
250	Richard Young	W	M	8
122	Barbara Margopulos	W	F	9
145	Deborah Morris	W	F	10
20	Robert Burns	B	M	11
66	Greg Gresham	W	M	12
29	Harold Clifton	B	M	Alt. 1

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1 (WHEREUPON, COURT PROCEEDINGS HELD ON MONDAY, SEPTEMBER
2 17TH, 2012, BEFORE THE HONORABLE STEPHANIE MCDONALD.)

3 THE COURT: Thank you. Please be seated. Good
4 morning, everybody. My name is Stephanie McDonald. I am
5 here to hold Court. It is my honor and privilege to serve
6 with y'all during this time of General Sessions Court here
7 in Beaufort County. I am up from Charleston and Beaufort is
8 one of my favorite places. I am lucky that they send me
9 here, so I look forward to working with all of y'all this
10 week. It is my understanding that you have already been
11 sworn and that roll call has been completed.

12 South Carolina's law requires that I ask certain
13 questions of the panel to determine your qualifications to
14 serve on a jury here in Beaufort County. There are also
15 certain exemptions that you may or may not choose to
16 exercise, and those are optional, and we'll get to those in
17 a moment.

18 I'm going to ask a series of questions, most of them
19 are pretty innocuous, but at times one or more of the
20 answers may be personal to you, and it might be something
21 that you would rather not stand and announce in front of the
22 panel. So the general rule is that if a question applies to
23 you, then you will stand, give your name, give your jury
24 number, and respond to the question.

25 But, if it's something that you would rather save until

1 the end, at the end of all the questioning, then we'll have
2 two lines -- I think you have two lines here, that's how we
3 do it in Charleston, but it may just be one. I'll have
4 y'all come up and address anything personal or specific one-
5 on-one and there is a catch-all question at the end, as
6 well.

7 The first question -- and before I ask, it's essential
8 that we get honest, complete answers. These attorneys that
9 are sitting here with us, both for the State and for the
10 Defense, are trying to pick fair and impartial juries in
11 their cases. And so if there is a particular personal line
12 that you may have one way or another, or a reason that you
13 might not should sit on a certain case, or just something
14 that they need to know, it's important, pursuant to the oath
15 that you took, that you answer any questions that do apply
16 to you. The first one, is any member of the jury panel not
17 a citizen of the United States of America? If so, please
18 stand.

19 Okay. Thank you. I find none. Is there any member of
20 the panel who is not a resident and citizen of Beaufort
21 County, South Carolina? If so, please stand. For example,
22 if you move to another county, but you were summoned, you do
23 not have to stay, but if you still live in Beaufort, you do.
24 Okay. I find none. Is there any member of the jury panel
25 who is unable to read, write, speak, or understand the

1 English language, and you understand this question that I
2 did not write? If so, please stand. Okay, I find none at
3 this time.

4 Does any member of the jury panel have less than a
5 sixth grade education or its equivalent? If so, please
6 stand or we'll chat about that at the end. Okay, I find
7 none at this time.

8 Is any member of the jury panel unable, because of
9 mental or physical infirmity, to render efficient jury
10 service this week? For example, you had back surgery last
11 week and you are unable to sit for about an hour and a half
12 or so at a time, because that's about how long we go before
13 we take a break and let everybody stretch. Is there some
14 medical issue that would make it impossible for you to
15 render efficient jury service? If so, please stand at this
16 time, or come and have a chat with me at the end. Yes, sir?
17 Your name and juror number, please?

18 JURY: Steve Scatino, juror number 191. I had back
19 surgery and injections.

20 THE COURT: And when did you have that surgery?

21 JURY: I'm still ongoing with injections. The surgery
22 was a year ago and the injection I just had last week.

23 THE COURT: Okay. And is it hard for you to sit and be
24 still?

25 JURY: Yes, ma'am.

1 THE COURT: Do they expect that to get better at some
2 point or they don't know?

3 JURY: It's ongoing right now.

4 THE COURT: Okay. Well, let me tell you what I'm going
5 to do. I'm not going to excuse you, but I will transfer you
6 to another term when you haven't just had an injection so
7 you may go, but if you will touch base with the folks on the
8 way out and they can transfer you to another term.

9 JURY: Yes ma'am. Thank you.

10 THE COURT: Thank you. Good luck. Anybody else? All
11 right. Is there any member of the jury panel who has been
12 convicted by guilty plea or trial in a State or Federal
13 Court record of a crime punishable by imprisonment for more
14 than one year and your civil rights have not been restored
15 by pardon or amnesty. If so, please stand or address that
16 with me shortly. This will apply to anyone who has been
17 convicted for a crime punishable by more than one year; it
18 doesn't mean that you actually were punished for more than
19 one year. Okay. I find none at this time.

20 If any member of the jury panel is a clerk or deputy
21 clerk of court, constable, sheriff, or other commissioned
22 law enforcement officer, probate judge, council official,
23 magistrate, or other county officer, or otherwise employed
24 within the walls of any courthouse within our state? If so,
25 please stand. Okay, I find none.

1 Is there any member of the jury panel who has
2 previously served on jury duty in Circuit Court, and that's
3 this court, not City Court or Federal Court or Magistrate's
4 Court, but Circuit Court during this calendar year? If so,
5 please stand. Thank you.

6 Has any member of the jury panel served as a Beaufort
7 County Grand Jury during the past five years? If so, please
8 stand. Okay, thank you. I find none at this time.

9 Okay, ladies and gentleman, that concludes the list of
10 qualifications. We now move to exemptions to service; this
11 is what I referenced earlier. These don't disqualify you
12 from service if one or more apply, they simply allow you the
13 opportunity to say "I choose not to serve." We hope you'll
14 stay with us. I think it will be an interesting week. I
15 know it sounds trite, but it's absolutely true that our
16 system could not work without y'all. So hopefully, most of
17 y'all will remain with us.

18 The first applies to folks who are 65 years of age or
19 older. Anyone 65 years of age or older may be exempted from
20 jury service if he or she so chooses. That being said, we
21 need those folks that have some wisdom and life experience,
22 so hopefully, we won't have any. Is there anyone 65 years
23 of age or older who would like to exercise their exemption?
24 If so, please stand. Okay, thank you. I find none.

25 Another exemption concerns prior jury service. No

1 person is required to serve as a juror more than once every
2 three calendar years in Circuit Court. Therefore, if any
3 member of the panel has served on a Circuit Court jury
4 during the past three years, you may be exempt from service
5 this week if you so choose. Again, that's just Circuit
6 Court and that includes General Sessions and the Court of
7 Common Pleas, not Federal Court and Magistrate Court or City
8 Municipal Court. Anyone that applies to? Please stand.
9 Okay, I find none.

10 The next exemption deals with those of you who have and
11 care for very small children. Please listen carefully to
12 this exemption, because it contains three or four parts and
13 each and every part must apply in order for you to be able
14 to exercise the exemption. You may be exempted from jury
15 service if you have a small child or children under the age
16 of seven years old, you have legal custody of that child or
17 children, you have the principle care or custody and control
18 of that child or children, and you are unable to make
19 arrangements for the adequate care of that child or children
20 in the day while performing jury duty. If all of those
21 requirements apply and you wish to exercise this exemption,
22 please stand. Okay, thank you. I find none.

23 The next exemption involves those of you who may be
24 attending school or working in some school capacity. If
25 this exemption applies to you, you won't be exempted, but we

1 can transfer you to another term, like we did with the
2 gentleman from earlier and we will transfer you to a term
3 that will not conflict with your school responsibilities.
4 For example, during the summertime or sometimes during the
5 holidays. Is there any member of the jury panel who is a
6 full-time student, school teacher, crossing guard, bus
7 driver, or who serves in any other school- related capacity
8 who is unable to serve on jury duty this week as a result of
9 that school attendance or work? If so, please stand. Okay,
10 I find none.

11 Is there any member of the jury panel who is employed
12 with the Department of Corrections at a penitentiary? If
13 so, and you would like to be exempted, please stand. Thank
14 you.

15 Is there any juror who performs services for a
16 business, commercial, or agricultural enterprise who is so
17 essential to the operation of that business or enterprise
18 that it would have to shut down this week if you're not
19 there? For example, if you're the only employee and the
20 business would have to absolutely close. If so, please
21 stand. Okay, thank you.

22 Is there any juror that is the primary caretaker of a
23 severely disabled person who is unable to care for himself
24 or herself during the day while you're at jury duty and
25 cannot be left unattended? If so, please stand. Thank you.

1 Is there any juror who is the primary caretaker of a
2 person aged 65 years of age or older who cannot be left
3 unattended during the day while you would be serving on jury
4 duty? If so, please stand. Y'all are a wonderful group.
5 We have a lot more excuse makers in Charleston.

6 Ladies and gentleman, that concludes the specific list
7 of qualifications and exemptions for jury service. It may
8 be that you were qualified and that no exemption applies,
9 but if for some specific emergency reason this week you're
10 working with an especially difficult hardship upon you if
11 you serve.

12 For example, if your son or daughter is coming home
13 from Afghanistan tomorrow and you haven't seen them in six
14 months, or you're having surgery Thursday, or you've got
15 tickets for a cruise and your wife wants to leave Wednesday
16 and you're going to be in the doghouse really bad if you
17 don't get out of jury duty. If there's something specific
18 and emergent applicable to this week that you need to bring
19 to my attention, I'm going to ask y'all to form a line and
20 we'll go through those one-on-one.

21 Now would also be the time for the previous questions
22 for the qualifications or exemptions that applied to you
23 that you wanted to address privately, we'll have you come
24 forward and we'll put that on the record with the court
25 reporter. So if y'all will form a line. Thank you.

1 (Sotto voice discussions with the jurors that come up.
2 Juror number 86 remains. Juror number 194 is excused.
3 Juror 248 will be transferred. Juror 238 will remain with
4 us. Juror number 157 will remain with us. Juror 247 will
5 be protected Thursday afternoon. Juror number 35 will be
6 transferred to January or February. Juror number 148 will
7 remain with us. Juror number 216 will be transferred.
8 Juror 203 is excused. Juror number 6 will be transferred.
9 Juror number 30 is excused. Juror number 22 is excused.)

10 THE COURT: Ladies and gentlemen, thank you for your
11 patience with that. That does complete the qualification
12 process and I do find the panel is so qualified. If I can
13 get y'all to take about a 15-minute break, I have some legal
14 matters and documents I need to go over with the attorneys
15 and then we will begin the voir dire process and ask
16 questions that are specific to the two cases that we are
17 picking a jury for this morning.

18 (WHEREUPON. THE JURY EXITS THE COURTROOM AND THE
19 FOLLOWING IS HELD ON THE RECORD.)

20 THE COURT: Mr. Brown, are you ready to go?

21 MR. BROWN: I am ready, Your Honor. Very briefly, and
22 I'll try to be succinct. We obtained some information in
23 police reports regarding some mental health issues for the
24 alleged victim, and pursuant to that we did follow up and
25 served a subpoena; one of the subpoena's we served was to

1 the Department of Mental Health. A record from the Probate
2 Court listed a follow-up counselor as being Ms. Geri
3 Stewart; Ms. Stewart is here pursuant to my subpoena.
4 Regardless of Ms. Stewart's involvement, Coastal Empire's
5 position is that without a court order that HIPPA prevents
6 them from disclosing any records, and I would ask Your Honor
7 to order it without having to argue other grounds.

8 THE COURT: Anything from the State?

9 MR. THORNTON: The State has no objection as to his
10 ability to get the records, Judge.

11 THE COURT: All right. I will order him to be provided
12 with the records. I make no comment on the admissibility as
13 such; however, you are entitled to the records.

14 MR. BROWN: Yes, ma'am.

15 THE COURT: It's my understanding that there are some
16 additional records from another entity that nobody bothered
17 to show up from.

18 MR. BROWN: That's correct, Your Honor.

19 THE COURT: They were also ordered to provide you with
20 The records? If they want to come and chat with me and tell
21 me why nobody was here and why they shouldn't have to, I'll
22 be more than happy to see them.

23 MR. BROWN: As soon as this jury is selected, we're
24 going to find out where they are. Thank you so much, Your
25 Honor. And that was Beaufort Memorial Hospital, for what it

1 is, Dr. Tyrone McElveen was subpoenaed to bring like
2 records, and neither he nor the records are here, as far as
3 I can tell.

4 DEP. SOL. THORNTON: Your Honor, with my apologies to
5 the court reporter, I wanted to go ahead and call the
6 indictments in this case for her records. This is 2011-GS-
7 07-946 and 947, the State v. Jabari Linnen. I apologize for
8 not doing that to start with.

9 THE COURT: Okay. We're going to deal with Mr.
10 Lennin's case, first. Mr. Thornton, Mr. Brown, I know that
11 we discussed the voir dire in chambers. Y'all each had
12 something to put on the record. Mr. Brown, I believe with
13 respect to your voir dire request number five, Mr. Thornton
14 objected to the portion which reads, including, but not
15 limited to, paranoia, explosive anger, or homicidal
16 tendencies, and I guess, just the general question itself
17 being have you ever been involved in a dispute with a person
18 suffering from a mental illness.

19 DEP. SOL. THORNTON: And Your Honor, my specific
20 objection was the specific facts alleged in the last -- I
21 know Mr. Brown was going to attempt to introduce records
22 that would indicate that on the victim.

23 THE COURT: Sure.

24 DEP. SOL. THORNTON: I do think it's voir dire directly
25 to the facts. The way I understood Your Honor's ruling in

1 chambers was that you would be willing to ask whether any
2 member of the jury panel has ever had a dispute with a
3 person suffering from a mental illness. I don't have any
4 objection to that. My objection was with the specificity of
5 that. And as to the other objection I had, Judge, I'll
6 waive that and go with your ruling. I don't need to put
7 anything else on the record.

8 THE COURT: Certainly. And Mr. Brown, with respect to
9 your question number five, happy to hear from you.

10 MR. BROWN: And Your Honor, quite frankly, we will
11 accept the Court's modification.

12 THE COURT: Okay. Wonderful.

13 MR. BROWN: No objection. We will just leave it the
14 way it is.

15 THE COURT: Well, I appreciate that. And the way I
16 will read it is, just for the record's purposes, "Has any
17 member of the panel, or any member of your immediate family,
18 or close personal friend ever been involved in a dispute
19 with a person who suffers from mental illness such that it
20 would interfere with your ability to be fair and impartial
21 in the trial of this case?" And then I'll have them stand.

22 MR. BROWN: Yes, ma'am.

23 THE COURT: What I generally do, just for everybody,
24 before I qualify the panel, is ask has anybody heard
25 anything about the case, do you know anything, have you

1 heard any media? I read them the indictments. I explain to
2 them that the indictments are not evidence; they are merely
3 the instruments by which the case comes to court. Everybody
4 okay with that?

5 DEP. SOL. THORNTON: No objection from the State,
6 Judge.

7 MR. BROWN: No, ma'am.

8 THE COURT: All right. We will do that for Mr.
9 Lennin and then we will take about a ten minute break to get
10 our next defendant out. Anything else we need to bring up
11 before the jury comes in?

12 DEP. SOL. THORNTON: Again, Judge, just to be safe, I
13 would appreciate a copy of the records that Mr. Brown just
14 got so that I can look at them as well.

15 THE COURT: Absolutely.

16 MR. BROWN: And obviously, I didn't actually get them
17 yet.

18 THE COURT: Oh, I know.

19 (Brief pause in the courtroom.)

20 THE COURT: All right. Just so the record will
21 reflect, she just handed you the records?

22 MR. BROWN: Yes, ma'am. And for the record, again,
23 it's a one page, double-sided sheet of paper. And I will
24 make a copy and provide it to Mr. Thornton.

25 THE COURT: Wonderful. I appreciate that.

1 MR. BROWN: Thank you. And if I can tell her just to
2 stand by until I totally need to release her.

3 THE COURT: Yes. One thing, I think Judge Goodstein is
4 going to do y'all's motions in the morning when she gets
5 here. However, if y'all need anything while I'm around, just
6 let me know.

7 MR. BROWN: Yes, ma'am.

8 THE COURT: Are y'all ready to strike a jury?

9 MR. BROWN: Yes, ma'am.

10 THE COURT: Do y'all agree the strikes will be five and
11 five, and one alternate?

12 MR. BROWN: Yes, ma'am. And I'm not going to belabor
13 an argument, but I would make an equal protection argument
14 that we should be entitled to at least six, since you get
15 six in Magistrate's Court.

16 THE COURT: Six what?

17 MR. BROWN: Strikes.

18 THE COURT: What does Magistrate's Court have to do
19 with anything?

20 MR. BROWN: Because this charge carries 30 years; those
21 charges carry 30 days; and they get more strikes. And I
22 would just like to make an equal protection argument.

23 THE COURT: Okay. It's denied.

24 MR. BROWN: Thank you.

25 DEP. SOL. THORNTON: Nothing further from the State,

1 Judge. The State is ready to proceed.

2 THE COURT: Thank you. Okay. Whenever they come back
3 in, we will proceed.

4 MR. BROWN: Yes, ma'am.

5 (WHEREUPON, THE JURY PANEL ENTERS THE COURTROOM AND THE
6 FOLLOWING PROCEEDINGS ARE HELD ON THE RECORD.)

7 DEP. SOL. THORNTON: May it please the Court, Judge?

8 THE COURT: Yes, sir.

9 DEP. SOL. THORNTON: Your Honor, the State is ready to
10 proceed with the State v. Jabari Linnen. Indictment numbers
11 2011-GS-07-946 and 2011-GS-07-947, charging Mr. Lennin with
12 the offenses of attempted murder and possession of a weapon
13 during the commission of a violent crime.

14 THE COURT: Okay. Thank you, sir. And I believe we
15 are doing our head count to make sure all of our jurors are
16 in the courtroom. Are we missing anybody?

17 BAILIFF: Yes, ma'am, we are.

18 THE COURT: Okay.

19 DEP. SOL. THORNTON: My apologies, Judge. I thought
20 we were ready.

21 THE COURT: No problem. No problem.

22 (OFF THE RECORD, BRIEFLY.)

23 BAILIFF: All the jurors are now present, Your Honor.

24 THE COURT: All right. Mr. Thornton?

25 DEP. SOL. THORNTON: Yes, ma'am. The State is ready

1 in the case of the State v. Jabari Linnen. Indictment
2 numbers 2011-GS-07-946 and 2011-GS-07-947, charging Mr.
3 Linnen with attempted murder and possession of a weapon
4 during the commission of a violent crime.

5 THE COURT: Okay. Thank you, sir. Ladies and
6 gentlemen, you've heard the Solicitor read the indictment
7 numbers. I'm going to read to you the language from the
8 indictments at this time, and then ask you some questions
9 about whether you have any personal knowledge of this or
10 whether you've read anything about it. Please understand
11 that the indictments, and any information contained therein,
12 are not evidence in this case. They are simply the vehicle
13 that brings the case to Court.

14 The defendant, under our laws and the Constitution, is
15 presumed innocent up and until the point that a jury
16 unanimously decides that the State has met its burden of
17 proof beyond a reasonable doubt. So as I read these,
18 please keep in mind that the indictments are not evidence.
19 They are merely the documents that bring the case before us.

20 Indictment number 2011-GS-07-0946 states that in
21 Beaufort County, on or about April 21st, 2011, the
22 defendant, Jabari Linnen, with intent to kill and malice
23 aforethought, did attempt to kill the victim, Kenneth Trey
24 Nichols, in that the defendant did shoot the victim multiple
25 times with a firearm in violation of South Carolina Law.

1 Indictment 2011-0947 states that in Beaufort County,
2 South Carolina, on or about April 21st, 2011, the defendant,
3 Jabari Linnen did present a firearm, or did visibly display
4 what appeared to be a firearm, during the commission, or
5 attempted commission, of attempted murder, a violent crime.
6 The indictment alleges this to be in violation of South
7 Carolina Law.

8 Is there any member of the panel who has any knowledge
9 of anything about this particular case? Have you read
10 anything, any media coverage, does anybody know anything
11 about this case? If so, please stand.

12 (NO RESPONSE.)

13 THE COURT: Okay. I find none at this time. I'm going
14 to ask Mr. Thornton to introduce himself and everyone at his
15 table.

16 DEP. SOL. THORNTON: Thank you, Your Honor. Good
17 afternoon, ladies and gentlemen. My name is Sean Thornton.
18 I'm Deputy Solicitor of the Fourteenth Circuit. I supervise
19 the five counties on behalf of my boss, Solicitor Stone.
20 With me at the table is Kenneth Trey Nichols, and he will be
21 here at the table with me during the course of this trial.
22 He is the victim in this case. Also with me is Jeremiah
23 Fraser, a Sergeant with the Beaufort County Sheriff's
24 Office; and also is Tameaka Legette, a Solicitor with our
25 office. She will not be present, however, for the trial of

1 this case. Thank you, Your Honor.

2 THE COURT: Thank you, sir. Does any member of the
3 panel know Mr. Sean Thornton or Ms. Tameaka Legette of the
4 Beaufort Solicitor's Office, members of the Fourteenth
5 Circuit? Are you close personal friends with them or
6 related to them by blood or marriage? If so, please stand
7 at this time.

8 (NO RESPONSE.)

9 THE COURT: Okay. I find none. How about --- and I
10 apologize, Sgt. Jeremiah Fraser. Any member of the panel
11 know Sgt. Fraser, related by blood or marriage, or is a
12 close personal friend of Sgt. Fraser? If so, please stand.

13 (NO RESPONSE.)

14 THE COURT: All right. Mr. Nichols, Mr. Kenneth Trey
15 Nichols, any member of the panel know Mr. Nichols? Are you
16 related to him by blood or marriage, or are you a close
17 personal friend? If so, please stand at this time.

18 (NO RESPONSE.)

19 THE COURT: Okay. I find none. Mr. Brown, if you
20 would introduce the folks at your table.

21 MR. BROWN: My name is Jim Brown. I'm a solo
22 practitioner here in Beaufort, South Carolina. I'm proud to
23 represent Jabari Linnen; he's my client. Also sitting with
24 me is Kate Brobston. She's a law graduate waiting on her
25 law license. Thank you.

1 THE COURT: Thank you, sir. Any member of the panel
2 know or are you related by blood or marriage or have you
3 ever been represented by Mr. Jim Brown or Mrs. Kate
4 Brobston?

5 (JUROR STANDS.)

6 THE COURT: Yes, ma'am?

7 JUROR: I'm juror number 86. I know Mr. Jim Brown.

8 THE COURT: Okay. And would your acquaintance with Mr.
9 Brown in any way interfere with your ability to be fair and
10 impartial in the trial of this case?

11 JUROR: It would.

12 THE COURT: It would? Okay. Then, I will excuse juror
13 number 86 from the trial of this case. We're going to pick
14 another case after we finish this one, so if you would
15 remain with us. Yes, ma'am?

16 JUROR: I'm juror number 62. I know Jim; his sons and
17 my daughter are classmates

18 THE COURT: Okay. And would that relationship in any
19 way interfere with your ability to be fair and impartial?

20 JUROR: No, ma'am.

21 THE COURT: Okay. Juror 62 will remain with us..

22 How about Mr. Jabari Linnen. Does any member of the
23 panel know Mr. Jabari Linnen? Are you related to him by
24 blood or marriage? Are you friends with him? Do you have
25 any knowledge of him? If so, please stand.

1 (NO RESPONSE.)

2 THE COURT: Thank you. Ladies and gentlemen, I have a
3 lengthy list of names that I'm about to read to you. I'm
4 going to ask you to wait until the end, and if you know
5 anyone on the list to please stand and tell us how you know
6 them, and I will ask you the same question about if that
7 relationship will interfere in any way with your ability to
8 be fair and impartial. Please do not be frightened by the
9 length of the list. These are just potential witnesses.
10 These witnesses will not all be called in this case. We
11 expect the case to last about two to three days.

12 But I'm going to read you this list: Daniel Allen,
13 Brandon Beaton, Desiree Blanding, Regina Blanding, Robert
14 Blanding, Jeff Blythe, Sgt. Todd Calhoun, Cpl. C. Cash,
15 Crystal Campbell, Myron Carter, A. Chaplin, Sgt. Bryan
16 Champan, Gary Chase, Misty Cleavinger, Michael Dantzler,
17 Victoria Dantzler, Joe Daise, Valetta Davis, A. Frasier,
18 Melissa Ellis, John Ferguson, Janice Flynn, Kenneth Folk, R.
19 Fife, Sgt. R. Varst, Lawrence Glass, John Goble, O.
20 Hatchett, Sgt. Jody Hiers, Richard Jenkins, Harold Johnson,
21 D. Kistler, O. Lamb, S. Leeks, Joseph Linnen, Rosa Lee
22 Linnen, Jeff Blight, J. Malphrus, Tyrone McElveen, Jay
23 Merrill, V. Michaels, Paul Mitchell, Patricia Miller, D.
24 Runey, Sharine Nichols, Theresa Nichols, M. Perkins, Aerial
25 Polite, James Kruzinowski, Jeff Perdy, Cpl. Matthew

1 Rickerveen, Cpl. Andrew, G. Rice, Eileen Rios, Gene Riou,
2 R-I-O-U?

3 MR. BROWN: That's correct, Your Honor.

4 THE COURT: Helen Rivers, Althea Rod, Chad Seronka,
5 Jeremy Sims, Makayla Smalls, Darlene Smith, Rod Sprogue,
6 Jerry Stewart, W. Vanai, A. Vaughn, King David Williams,
7 Chris Wilson, and Cpl. Adam Zaymar. If anyone knows any one
8 or more of those people, or if you're related to them by
9 blood or marriage, or if you are close personal friends with
10 them? If so, please stand. And we will start right over
11 here, ma'am.

12 JUROR: I'm juror 121, Teresa Manning. I know Rod
13 Sprogue.

14 THE COURT: You know Rod Sprogue?

15 JUROR: Yes.

16 THE COURT: How do you know him?

17 JUROR: If it's the same one, he was a professor at USC
18 and I took a class from him.

19 THE COURT: Okay. Would your knowledge of him in any
20 way interfere with your ability to be fair and impartial in
21 this case?

22 JUROR: No.

23 THE COURT: Thank you. Yes, sir?

24 JUROR: Charles Henderson, Number 81. I know several
25 people. Danny Allen, Chapman, Mr. and Mrs. Linnen, and I

1 think A. Vaughn; I think that's Ashley Vaughn.

2 THE COURT: All right. Would our knowledge or
3 relationship with any of these folks in any way interfere
4 with your ability to be fair and impartial in this case?

5 JUROR: No, ma'am.

6 THE COURT: Yes, ma'am, in the front?

7 JUROR: Jeff Perdy and Jeff Blythe, I know them. I was
8 a police reporter for the Beaufort Gazette. So I dealt with
9 them as part of my reporting duties.

10 THE COURT: Okay. And what is your number again,
11 please?

12 JUROR: I'm sorry; it's 62. My name is Cheryl Grapho.

13 THE COURT: And Ms. Grapho, would that in any way
14 interfere with your ability to be fair and impartial in this
15 case?

16 JUROR: No, Your Honor.

17 THE COURT: Okay. Yes, sir?

18 JUROR: A lot of those names are familiar, but in
19 particular, Rod Sprogue and Smith; I used to work with the
20 Magistrate's Office.

21 THE COURT: What is your juror number, please, sir?

22 JUROR: Juror number 82.

23 THE COURT: And you said you used to work with the
24 Magistrate's Office?

25 JUROR: Yes; I no longer.

1 THE COURT: Would that in any way interfere with your
2 ability to be fair and impartial in the trial of this case?

3 JUROR: No, ma'am.

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

5 JUROR: I'm Tara Horton, juror number 86.

6 THE COURT: I think that you are excused from this
7 case. I'm going to give you a waiver now.

8 JUROR: Oh, okay.

9 THE COURT: Yes, ma'am?

10 JUROR: Barbara Logan, number 117. I used to work for
11 the Magistrate's Office. I know a number of the deputy's
12 that you called their names.

13 THE COURT: Okay. And ma'am, would that in any way
14 interfere with your ability to be fair and impartial in the
15 trial of this case?

16 JUROR: It would not.

17 THE COURT: Thank you, ma'am.

18 DEP. SOL. THORNTON: Your honor, I apologize. I was
19 trying to go through the list.

20 THE COURT: Did I miss anybody?

21 DEP. SOL. THORNTON: And I'm not sure if you did or
22 not, but out of an abundance of caution, Your Honor, Cherish
23 Eubanks and Sharon Powers are both with EMS, and I don't
24 know if you did or not. I didn't check them off.

25 THE COURT: Sharron Powers and Cherish Eubanks with

1 EMS, does anybody know either Ms. Powers or Ms. Eubanks, or
2 are you related to them by blood or marriage?

3 (NO RESPONSE.)

4 THE COURT: Thank you, Mr. Thornton.

5 DEP. SOL. THORNTON: Thank you, Judge.

6 THE COURT: Okay. Has any member of the jury panel or
7 any member of your immediate family, or any close personal
8 friend been involved in a situation involving self defense,
9 or the defense of others, or the defense of property? If
10 so, please stand.

11 (NO RESPONSE.)

12 THE COURT: There are none, thank you. Does any member
13 of the jury panel have any religious or moral opposition to
14 the justified use of force, such as self defense, defense of
15 property, or defense of others? If so, please stand.

16 (NO RESPONSE.)

17 THE COURT: Okay. Thank you; finding none. Does any
18 member of the jury panel have any moral or religious
19 opposition to the ownership or somebody owning a firearm?
20 If so, please stand.

21 (NO RESPONSE.)

22 THE COURT: Thank you; finding none. Does any member
23 of the jury panel have any moral or religious opposition to
24 the lawful use of a firearm? If so, please stand.

25 (NO RESPONSE.)

1 THE COURT: Has any member of the jury panel or any
2 family member or any close, personal friend of a panel
3 member ever been involved in a dispute with a person who
4 suffered from mental illness, such that that experience
5 would interfere with your ability to be fair and impartial
6 in the trial of this case? If so, please stand.

7 (NO RESPONSE.)

8 THE COURT: Thank you. Has any member of the jury
9 panel or any member of your immediate family or any close
10 personal friend ever had a family member or been threatened
11 by another person? If so, please stand.

12 (NO RESPONSE.)

13 THE COURT: There are none. Thank you. Has any
14 member of the jury panel ever visited or traveled to Seaside
15 Road on St. Helena Island, St. Helena, South Carolina. If
16 so, please stand.

17 (JUROR STANDS.)

18 THE COURT: Yes, ma'am?

19 JUROR: Juror number 62, Cheryl. My daughter had a
20 friend who lived in that area.

21 THE COURT: Okay. Thank you, ma'am. Anyone else?

22 (NO RESPONSE.)

23 THE COURT: Okay. Thank you. Does any member of this
24 jury panel have any particular bias or any particular strong
25 opinion for "stand your ground" laws? If so, please stand.

1 (NO RESPONSE.)

2 THE COURT: Does any member of the panel know of any
3 reason whatsoever why they shouldn't sit as a juror in the
4 trial of this case, based on the little bit that y'all know
5 about what we've read to you? If so, please stand.

6 (NO RESPONSE.)

7 THE COURT: Okay. Anything further from the State?

8 DEP. SOL. THORNTON: Nothing from the State, Your
9 Honor.

10 THE COURT: Anything further from the defendant?

11 MR. BROWN: I may need to note something when we get to
12 this other issue, about I guess, the taking up of juror
13 number later.

14 THE COURT: Is it something we need to take up now? I
15 mean, apparently there's somebody who just walked in.

16 MR. BROWN: I do have a slight fear, and if I may
17 approach?

18 THE COURT: Sure. Come on up.

19 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD
20 AND OUT OF THE HEARING OF THE JURY.)

21 THE COURT: Okay. Is the State ready to strike?

22 DEP. SOL. THORNTON: The State is ready, Your Honor.

23 THE COURT: Is the defense ready?

24 MR. BROWN: The defense is ready, Your Honor.

25 THE COURT: All right. And I note your objection and

1 we will discuss that shortly.

2 MR. BROWN: Thank you so much, Your Honor.

3 THE COURT: All right. We're going to pull a jury.

4 (BRIEF PAUSE IN THE COURTROOM WHILE THE COMPUTER PRINTS
5 OUT A JURY LIST. THE CLERK DISTRIBUTES A LIST TO THE
6 ATTORNEYS, THE COURT, THE LAW CLERK, AND THE COURT REPORTER
7 IN THE COURTROOM.)

8 MADAME CLERK: As I call your juror number, if you will
9 gather your belongings and come stand here facing the jury
10 panel, please. Juror number 117, Barbara Logan.

11 THE COURT: What says the State?

12 DEP. SOL. THORNTON: Please present this juror.

13 MADAME CLERK: What says the defense?

14 MR. BROWN: Please sit Ms. Logan. Thank you, Your
15 Honor.

16 MADAME CLERK: Juror number 148, Olivia Myers. What
17 says the State?

18 DEP. SOL. THORNTON: Please present this juror.

19 MADAME CLERK: What says the defense?

20 MR. BROWN: Please excuse Ms. Myers from the trial of
21 this case.

22 MADAME CLERK: Juror number 122, Barbara Margopolis.
23 What says the State?

24 DEP. SOL. THORNTON: Please present this juror.

25 MADAME CLERK: What says the defense?

1 MR. BROWN: Please sit Ms. Margopolis, thank you.

2 MADAME CLERK: Juror number 244, Joseph White. What
3 says the State?

4 DEP. SOL. THORNTON: Please present this juror.

5 MADAME CLERK: What says the defense?

6 MR. BROWN: Please sit Mr. White.

7 MADAME CLERK: Juror number 20, Robert Burns. What
8 says the State?

9 DEP. SOL. THORNTON: Please present this juror.

10 MADAME CLERK: What says the defense?

11 MR. BROWN: Please sit Mr. Burns.

12 MADAME CLERK: Juror number 145, Deborah Morris. What
13 says the State?

14 DEP. SOL. THORNTON: Please present this juror.

15 MADAME CLERK: What says the defense?

16 MR. BROWN: Please sit Ms. Morris.

17 MADAME CLERK: Juror number 192, Mark Schmidt. What
18 says the State?

19 DEP. SOL. THORNTON: Please present this juror.

20 MADAME CLERK: What says the defense?

21 MR. BROWN: Please excuse Mr. Schmidt from the trial of
22 this case.

23 MADAME CLERK: Juror number 214, David Staigar. What
24 says the State?

25 DEP. SOL. THORNTON: Please present this juror.

1 MADAME CLERK: What says the defense?

2 MR. BROWN: Please sit Mr. Staigar. Thank you.

3 MADAME CLERK: Juror number 91, Shaa Jackson. What
4 says the State?

5 DEP. SOL. THORNTON: Please present this juror.

6 MADAME CLERK: What says the defense?

7 MR. BROWN: Please sit Mr. Jackson. Thank you.

8 MADAME CLERK: Juror number 47, Russell Whiteford.
9 What says the State?

10 DEP. SOL. THORNTON: Please present this juror.

11 MADAME CLERK: What says the defense?

12 MR. BROWN: Please sit Mr. Whiteford. Thank you.

13 MADAME CLERK: Juror number 126, Charles Mathieu. What
14 says

15 the State?

16 DEP. SOL. THORNTON: Please present this juror.

17 MADAME CLERK: What says the defense?

18 MR. BROWN: Please sit Mr. Mathieu. Thank you.

19 MADAME CLERK: Juror number 250, Richard Young. What
20 says

21 the State?

22 DEP. SOL. THORNTON: Please present this juror.

23 MADAME CLERK: What says the defense?

24 MR. BROWN: Please sit Mr. Young. Thank you.

25 MADAME CLERK: Juror number 102, Shelley Corley. What

1 says the State?

2 DEP. SOL. THORNTON: Please excuse this juror.

3 MADAME CLERK: Juror number 66, Gregory Gresham. What
4 says the State?

5 DEP. SOL. THORNTON: Please present this juror.

6 MADAME CLERK: What says the defense?

7 (BRIEF PAUSE IN THE COURTROOM.)

8 MR. BROWN: Please sit Mr. Gresham. Thank you.

9 MADAME CLERK: Juror number 215, Jeremy Stansell. What
10 says the State?

11 DEP. SOL. THORNTON: Please present this juror.

12 MADAME CLERK: What says the defense?

13 MR. BROWN: Please sit Mr. Stansell. Thank you.

14 MADAME CLERK: Now, we are ready for the alternate.

15 Juror number 29, Harold Clifton. What says the State?

16 DEP. SOL. THORNTON: Please present this juror.

17 MADAME CLERK: What says the defense?

18 MR. BROWN: Please sit Mr. Clifton. Thank you.

19 MADAME CLERK: That's our jury, Your Honor.

20 THE COURT: All right. Do we have anything from the
21 State or the defense regarding the seating of the jury?

22 DEP. SOL. THORNTON: Nothing from the State, Judge.

23 MR. BROWN: Nothing from the defense, Your Honor.

24 THE COURT: Okay. Thank you. Ladies and gentlemen, you
25 will be our jurors and our alternate juror in the trial of

1 this case. Your case will begin tomorrow with Judge
2 Goodstein who will be here from Dorchester County. I know
3 there are some pretrial matters you all need to take up.
4 What time do you think the jury should come back?

5 DEP. SOL. THORNTON: I would say 10:00 in the morning.
6 Mr. Brown and I discussed that earlier, just to not waste
7 any of the jury's time, I think 10:00 would probably be on
8 the safe side. We can, hopefully, get in here early and get
9 all that knocked out before they get here.

10 THE COURT: Wonderful. Ladies and gentlemen, you heard
11 the lawyers. I'm going to ask you all to be back at 10:00
12 tomorrow morning. I'm not sure which courtroom you all will
13 be in.

14 BAILIFF: Courtroom Number Two, Your Honor.

15 THE COURT: Y'all will be in Courtroom Two. And the
16 court personnel and the bailiffs will show you all where to
17 go in the morning. Please don't discuss the case with
18 anyone, including each other. You don't really know enough
19 about it yet to discuss it, but I have to say that. You are
20 limited to consideration only of the evidence that you
21 either hear from this witness stand or see by way of
22 evidence submitted during the trial of this case.

23 Don't do any research or try to look this up or find
24 anything about it. I want you to have as much of a clean
25 slate as possible, other than your good common sense and

1 life experience that you bring. So you all will be back at
2 10:00 in the morning with Judge Goodstein. Y'all are free
3 to go now. Thank you, ladies and gentlemen.

4 (WHEREUPON, THE JURY IN THIS CASE EXITS THE COURTROOM
5 AND THE FOLLOWING IS HELD ON THE RECORD.)

6 BAILIFF: The jury is clear, Your Honor.

7 THE COURT: Thank you, sir. Mr. Brown, anything you
8 would like for us to put on the record?

9 MR. BROWN: Very briefly, Your Honor, and I'm not sure
10 whether you want to do it in front of the rest of the panel.

11 THE COURT: Remaining panel, we have one more jury to
12 pick this morning. Everybody is here. But if y'all would
13 give us about a five minute break; y'all take five minutes,
14 no more than five minutes, and we will continue to select
15 the other jury.

16 (WHEREUPON, THE REMAINING JURY PANEL EXITS THE
17 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

18 THE COURT: Mr. Brown?

19 MR. BROWN: May it please the Court, Your Honor?

20 THE COURT: Yes, sir.

21 MR. BROWN: Three of the jury panel during
22 qualification, obviously, one juror came in late, and for
23 what it's worth, there were five African Americans out of
24 approximately 35, 37 jurors, I believe. One was struck,
25 which left four, and essentially I object because it's not

1 an adequate cross-section. My client is African American.
2 There is just that 10 percent, maybe 11 percent, of when I
3 ran for the State House in 2008 as a Democratic candidate,
4 we know there is over 30 percent African American's
5 registered as voters in this county, which may be higher
6 than some other places, but it's pretty closely
7 disproportionate.

8 THE COURT: Do you have any case law, Mr. Brown?

9 MR. BROWN: Your Honor, case law, for what it's worth
10 is very fact specific, and most of the time it involves
11 dueling statisticians that come in and talk about all that
12 stuff, and quite frankly, that would probably entail months
13 to go through and do a statistical analysis of this,
14 obviously this just happened in here today. I had no idea
15 who would and wouldn't show up.

16 THE COURT: Generally, it's in the matter of the
17 Court's discretion. And I understand that any waive of the
18 objection at issue, I certainly think that you would be
19 subjected to a strict standard, based on what we have here,
20 and that doesn't get you there. Nobody struck for any
21 possible discriminatory ruling. In fact, I think that the
22 State, the one person that they struck was a white female.

23 MR. BROWN: Yes, ma'am.

24 THE COURT: Respectfully, I dealt with the cross-
25 section that we had, based on the questioning that State law

1 requires we do by statute, when I qualify the jury, and I
2 think the record will reflect that we lost a couple to
3 various things. In addition, I believe that juror was a
4 good 10 to 15 minutes late.

5 BAILIFF: Twenty-five, Your Honor.

6 THE COURT: Oh, 25 minutes late. You know, while I
7 wish that hadn't happened, I don't have any control over
8 that. We did a head count and thought we had everybody. So
9 respectfully, your motion is denied.

10 MR. BROWN: Thank you, Your Honor, for entertaining it.

11 THE COURT: Oh, sure; it's interesting. All right.
12 Well, I've just been told that we don't have enough people
13 left in the panel to strike my next jury. Where is the
14 other lawyer?

15 MS. HENDERSON: She's right here, Your Honor.

16 MR. BROWN: Your Honor, if I may ask, and this is just
17 a matter of practicality, because I noticed there are a lot
18 of folks here on both sides regarding this trial. If I can
19 ask that we can move to this courtroom, which for what it's
20 worth, I consider the trial courtroom, compared to the plea
21 courtroom next door. That's generally the way it works when
22 we have a planned trial.

23 THE COURT: I'm going to let Jeri work it out.

24 MR. BROWN: Sure. Otherwise, we would have a number of
25 folks right up against each other that might ---

1 THE COURT: Okay.

2 MR. BROWN: Yes, ma'am.

3 THE COURT: Again, we will deal with this issue. This
4 is in the State of South Carolina v. Charles Greene, Jr. We
5 were hoping to strike a jury. However, it appears that we
6 don't have enough of venire left to strike from.

7 MS. HENDERSON: How many do we have, Your Honor?

8 THE COURT: We have 24. And y'all each get five
9 strikes. That takes us down to fourteen, plus two
10 alternates, and y'all get to strike for the alternate. At
11 some point, I can see that the defense would have an issue,
12 but I'm happy to hear from y'all. Well, let's take five
13 minutes while they are bringing up your client. Let's take
14 five minutes and then we will discuss this matter.

15 (WHEREUPON, THE PROCEEDINGS IN THE TRIAL OF THE LENNIN
16 CASE IS FINISHED; THEREAFTER, THE NEXT MORNING, AT 9:00
17 A.M., THE FOLLOWING PROCEEDINGS TAKE PLACE IN THE LENNIN
18 CASE IN COURTROOM ONE, BEFORE THE HONORABLE JUDGE DIANE
19 GOODSTEIN, ON THE RECORD.)

20 THE COURT: All right. Gentlemen, tell me -- I want to
21 put on the record about the medical records. I know I've
22 signed an Order, but I just want to go ahead and put that on
23 the record, because that was a matter of some concern, and
24 maybe we can put a couple of other things on the record, and
25 then see if we can't begin.

1 MR. BROWN: Yes, ma'am.

2 THE COURT: Great. And your client is present with us;
3 good morning.

4 MR. BROWN: And Judge McDonald allowed him to stay out
5 on bond. He's been out on bond since July of last year.

6 THE COURT: Okay. And I gather his bondsman is fine?
7 His bondsman has been notified?

8 MR. BROWN: Yes, ma'am. And he has electronic
9 monitoring.

10 THE COURT: Okay. He is currently on electric
11 monitoring?

12 MR. BROWN: Yes, ma'am. GPS monitoring.

13 THE COURT: Where is it? Is it by ankle? And is it
14 visible to the jury?

15 MR. BROWN: It is on the ankle, and no, ma'am, it's not
16 visible.

17 THE COURT: Okay. Great.

18 MR. BROWN: I guess I'm asking that he be allowed to
19 stay out here.

20 THE COURT: If that was her Order, her option, and as
21 long as the bondsperson is comfortable, so am I. Okay? All
22 right. Oh, excuse me, I'm listening.

23 MR. BROWN: Oh, Yes, ma'am. I did provide Your Honor
24 with those two cases, and although not the original reason
25 that I pulled the Day case, but the Day case is up there,

1 which is somewhat of a follow-up on the issue, but it is a
2 specific violence. In Day, a long story short, Day was the
3 defendant, and he argued that the judge erred in excluding
4 testimony from Ms. Szumowicz, and I apologize if I
5 mispronounce her name, concerning a past act of violence
6 that was closely related in time and occasion to the
7 homicide, and served as strong, corroborating evidence that
8 Renew, who is the deceased, was a vengeful person. Nothing
9 about it occurring with him, and the statement of law -- and
10 in the next sentence, we agree.

11 So they go to state in the law that if a murder of
12 prosecution of one who's pleading self defense of getting
13 attacked by the deceased, evidence of other specific
14 instances of violence on the part of the deceased, are not
15 admissible, unless they were directed against the defendant,
16 or if directed against others were so closely connected at
17 point of time or occasion with the homicide as to reasonably
18 indicate the state of mind of the deceased at the time of
19 the homicide or to produce reasonable apprehension of great
20 bodily harm, without any reference to the attacks or prior
21 instances being directed to the defendant.

22 THE COURT: I think that's exactly what we talked
23 about.

24 MR. BROWN: And that was the law you were asking for,
25 and I think it's 100 percent supportive, and for what it was

1 worth, that was error and it was reversible in this case.

2 THE COURT: Was the statement that you read me is the
3 statement of law at the end of the case? The state of the
4 law at the end of the case, not the argument?

5 MR. BROWN: That's right. The Court agreed with the
6 Appellate, yes, ma'am. And for what it's worth, in that
7 case, I'm trying to get the -- the case cites 405. The one
8 that I had -- the rule that I had mentioned to Your Honor.
9 I'm trying to get the date of time between that third party
10 incident of violence and this one, Your Honor, and they
11 found in a previous case, found it 23 years intervening
12 between acts is too long, and Your Honor, again I'm just
13 trying to find out -- trying to get the date of this
14 incident. Long story short, Your Honor, it's about four
15 months from the incident that's directed at the third party
16 and the justified shooting.

17 THE COURT: And in that case, what is it -- temporally,
18 what are we speaking of?

19 MR. BROWN: That's the four months, Your Honor. And
20 they distinguish a different case where they say 23 years is
21 too long. So we know it's somewhere between four months and
22 23 years.

23 THE COURT: I always like it when things give us a
24 short time to deal with. It always makes it exciting.

25 MR. BROWN: And so that would be our support on that

1 issue, Your Honor.

2 THE COURT: Okay.

3 MR. BROWN: And they did go to the Supreme Court.

4 There was not an intervening Court of Appeals Ruling. There
5 was a conviction in Aiken County, Judge Whetstone.

6 THE COURT: Okay. Mr. Thornton?

7 DEP. SOL. THORNTON: Thank you, Judge. Judge, the
8 State, as we did in chambers, I agree with him that the Day
9 case is the one that the Court should focus on, and I agree
10 that it's dispositive as to, you know, that generally the
11 evidence of these specific acts are not admissible, unless
12 you have one of those issues.

13 One of those being it's directed against the defendant,
14 the other one being if it is directed against somebody else,
15 that it is closely related both in time and to show
16 apprehension or fear. And as we discussed in the back, the
17 allegation dealing with the CSC and the contributing, that
18 was an '09 case. That's two years before -- or
19 approximately two years before, and has nothing to do with
20 the assault, or an assault type issue, with his client.

21 The State concedes the issue with the mother that day.
22 The issue with the grandmother. I don't think I have a
23 reasonable argument, Judge. I'm not going to make one that
24 he can call the mother and/or the grandmother if he wishes
25 to talk about that on those issues, because that happened

1 that day and it was -- we may differ on the degree of
2 assault, but it certainly had an incense or a flavor of
3 violence to it.

4 The State will not argue those two, Judge, but as to
5 the CSC's, the contributing, and some of these other things
6 he wants to talk about, including this medical evaluation or
7 other things, I don't think that either one of those would
8 apply, and that's the State's position.

9 MR. BROWN: And if I may give, Your Honor, the dates of
10 the difference incidents, because I think each one has to be
11 done.

12 THE COURT: I think you're right. I think each one has
13 to be done and you're exactly right. That's what I was
14 going to ask you.

15 MR. BROWN: Yes, ma'am.

16 THE COURT: What were the dates? Okay. Now, first of
17 all, let's don't -- let's know where we are as we begin.
18 The instances with the family members close in time to these
19 events are not an issue. Specifically, Mr. Thornton, tell
20 me which ones are not an issue.

21 DEP. SOL. THORNTON: There is one -- there are two, I
22 believe two instances, if I'm not mistaken, that occurred
23 the same day, that morning. Those, I believe, he can ask
24 about.

25 THE COURT: Okay.

1 DEP. SOL. THORNTON: I have no argument on those.

2 MR. BROWN: And that's April 21st, 2011, Your Honor.

3 THE COURT: Thank you, April 21st, 2011. All right.

4 And that's the instance involving his mother; am I correct?

5 DEP. SOL. THORNTON: Yes, ma'am.

6 THE COURT: And his grandmother?

7 MR. BROWN: Yes, ma'am. And for what it's worth, the
8 first one is with the mother, and that's listed on the
9 police report as an assault and battery, and that's the
10 first one that morning; that was at 9:12, listed on the
11 police report.

12 THE COURT: You get the whole day. You got that whole
13 day. What's the next one?

14 MR. BROWN: We're going to go backwards in time. Okay,
15 then the preceding criminal report is on 3-23-11 and the
16 victim there of the assault and battery was Mr. Nichols'
17 grandmother.

18 THE COURT: Mr. Nichols' grandmother.

19 MR. BROWN: Yes, ma'am.

20 THE COURT: And let me just be clear, these are
21 instances that occurred that your client did not know of,
22 but they occurred?

23 MR. BROWN: There's no question. I have 9-1-1 calls
24 where the ---

25 THE COURT: I know you've done all of that, so that

1 what you're telling me are events that you know have
2 occurred, but on the ones that we are discussing are events
3 your client had no knowledge of?

4 MR. BROWN: Well, that part, I'm not going to agree or
5 disagree with that. I don't mean to be cute or curt, but I
6 guess what I'm saying is I'm trying to find out whether I
7 can get this stuff in here with respect to my client's
8 testimony, because it may make a difference.

9 THE COURT: Okay. I understand -- I understand. And I
10 will tell you that. Let me tell you this.

11 MR. BROWN: Yes, ma'am.

12 THE COURT: If your client knew -- just as we begin,
13 did your client know about the incident of March the 23rd?
14 Did he have knowledge of that act?

15 MR. BROWN: Yes, ma'am.

16 THE COURT: You have been told about that?

17 MR. BROWN: Yes, ma'am.

18 THE COURT: I'm inclined to let that in.

19 MR. BROWN: Yes, ma'am.

20 THE COURT: But now, so let's excuse that, and let's
21 focus on the question at hand is, let's assume he did not
22 know about that, okay? Or had not heard about that. Okay?

23 MR. BROWN: Yes, ma'am. And that the preceding
24 incident -- and for what it's worth, the following day he
25 was actually picked up on the mental health commitment, but

1 I skipped that on the March 24th, I skipped that because
2 that's not a prior incident of violence.

3 THE COURT: That's a different issue?

4 MR. BROWN: Yes, ma'am. And the preceding one would
5 be on February 5th, and this was about 10 weeks before the
6 shooting and this was an assault and battery third, and
7 that's on his grandfather. And in the Day case, we have
8 four months, and these are all within 10 weeks, and
9 geographically, the exact same area.

10 DEP. SOL. THORNTON: At the appropriate time, Judge,
11 I'd like to be heard on that.

12 THE COURT: What I'm going to do is pull the rule.

13 DEP. SOL. THORNTON: Yes, ma'am.

14 MR. BROWN: Rule 405 is the one I've asked that it come
15 -- yes, ma'am. I'm sorry.

16 (Brief pause in the courtroom while The Court reviews
17 the Rule.)

18 THE COURT: All right. Mr. Thornton, let me ask you
19 this question. And I am looking at the Day case.

20 DEP. SOL. THORNTON: Yes, ma'am.

21 THE COURT: I am looking at the 3-23-11 instance and
22 the 2-5-11 instance. Okay? So I'm looking at two, three
23 months -- February, March, April -- two months ---

24 DEP. SOL. THORNTON: Yes, ma'am.

25 THE COURT: And I'm looking at one month, right?

1 DEP. SOL. THORNTON: Yes, ma'am.

2 THE COURT: If I look at the Day case, the Day case
3 says the four months, the instance of violence against
4 another, an unrelated individual, as corroboration -- as
5 corroboration as a specific instance of conduct of violence
6 with regards to the decedent to show that the decedent was
7 the aggressor is admissible, based upon the Day case?

8 DEP. SOL. THORNTON: Yes, ma'am.

9 THE COURT: Let me hear from you about 3-23-11 and 2-5-
10 11.

11 DEP. SOL. THORNTON: Judge, the only argument I have is
12 that -- and I will make it on the 2-5-11, because the
13 further in time you go, the closer to question this becomes.
14 Under the Day case, strictly from a time constraint, I think
15 both of those are admissible. I would, however, have one
16 argument.

17 THE COURT: Okay.

18 DEP. SOL. THORNTON: As to the 2-5-11, since it is
19 further back and involves the same party, at some point,
20 Judge, you have a cumulative problem. It's the same
21 victims, for lack of a better word, that he wants to talk
22 about and the same type of conduct. So my argument is not
23 going to be time, because I think under the Day case, even
24 four months was okay, but all of those are in four months of
25 one another.

1 As to the 2-5-11, you've already got the quote,
2 unquote, victim from another case. I think that it becomes
3 cumulative and I think the prejudicial value, the prejudice
4 of it far outweighs the probative value because he can
5 already establish that the victim in this case had these
6 issues within his family. He's already got specific
7 instances of conduct he can talk about. So I have no
8 argument with regards to 4-21-11, and I don't have an
9 argument with regard to 3-23-11, but I think that that 2-5-
10 11 and anything else like that, I think you get into a
11 cumulative problem. That would be my argument, Judge.

12 THE COURT: Thank you.

13 MR. BROWN: Very briefly; they are different and here's
14 why. The first, 2-5-11, is assault and battery on his step-
15 grandfather. Then, the 3-23-11 incident is an assault and
16 battery on his grandmother, and then the 4-21-11 incident is
17 assault and battery on his own mother. They are not
18 cumulative. He is willing, I guess, to victimize everybody
19 at his household, on different days.

20 I mean, I think that -- one thing that had come up
21 before is that there is not much, I guess, much lower you
22 can get than beating up your own mother, and that's the last
23 one. So we start out, as I had mentioned in chambers,
24 there's an escalation, not only the number of incidents
25 because they become more common, but we go from the step-

1 relative, then to a grandparent he doesn't live with, then
2 to his own mother he lives with. That is an escalation of
3 violence.

4 THE COURT: All right. This is going to be -- this is
5 going to be my determination. I believe that the instances
6 on April 21st, 2011, I'm going to go to a state of mind on
7 that day.

8 MR. BROWN: Of the?

9 THE COURT: Of the defendant, because as I understand
10 your defense, your defense is that the defendant was the
11 first aggressor, yes?

12 MR. BROWN: Yes, ma'am. I would assert it also goes to
13 whether or not my client was, quote, actually in imminent
14 endanger and the third prong of self defense is the other
15 instance, if he was actually in imminent danger that these
16 circumstances would warrant a man of ordinary prudence,
17 firmness and courage to strike that blow, and frankly, we'll
18 never know how much is enough to tip their minds in the
19 favor of a verdict for my client. It's hard to say that
20 it's cumulative because I don't produce -- I don't believe I
21 have the burden of persuasion, but I do have the burden to
22 produce the information to support justification.

23 THE COURT: With regards to 3-23-11 and 2-5-11, I
24 believe that that evidence is a little different. I believe
25 that it does go to 405(b), in corroboration of 405(b). You

1 would think it was two issues. In other words, I believe
2 that the state of mind on 4-21-11 is not the same issue,
3 it's a little different.

4 MR. BROWN: Yes, ma'am.

5 THE COURT: 3-23-11 and 2-5-11 are pretty clearly
6 405(b) and goes to -- your theory of your case, as I
7 understand it, as you intend and have notified, that you
8 intend to avail yourself of this self-defense defense.

9 MR. BROWN: Yes, ma'am.

10 THE COURT: Therefore, under 405(b), you are entitled
11 to that on that basis.

12 MR. BROWN: Yes, ma'am.

13 THE COURT: However, additionally, the instances on
14 April 21st, 2011, as we've already discussed, really goes to
15 the state of mind of the decedent on that occasion. So,
16 there really is two prongs.

17 MR. BROWN: Yes, ma'am.

18 THE COURT: I don't know that as you have articulated
19 the argument, while I think it is unique, it's a little bit
20 different than my ruling, but you have made that argument
21 for the record.

22 MR. BROWN: Yes, ma'am.

23 THE COURT: But my ruling is a little bit different,
24 but yet your argument remains on the record.

25 MR. BROWN: Yes, ma'am. And I still get to go into it,

1 for those purposes?

2 THE COURT: Absolutely. I don't think there's any
3 difference.

4 MR. BROWN: You know -- ultimately, I was trying to get
5 to that. There are two other incidents I'd like to go to,
6 they are more extenuating.

7 THE COURT: Yes.

8 MR. BROWN: And continuing backwards. In August of
9 2010, which is about eight months from this incident,
10 there's an allegation that Mr. Nichols threw a table through
11 his grandmother's flat screen TV, because she hadn't
12 finished cooking his food, and we think this is important
13 because it goes hand in hand with the escalation of
14 violence, because eight months earlier it's property damage
15 that's listed as malicious injury to property, and then
16 February, March, and multiple times in April, then we have
17 physical violence and then it gets closer and closer to
18 home.

19 THE COURT: And then the other incident is?

20 MR. BROWN: And in the other incident, Your Honor, is
21 initially charged as an allegation of criminal sexual
22 conduct, without going into something that may not be here,
23 there was a disposition for some other non-lesser included
24 charges through a diversionary program, for lack of a better
25 phrase, but it's the criminal sexual conduct allegations.

1 He was arrested for two or three warrants, which this
2 included a sworn statement for criminal sexual conduct,
3 first degree, Your Honor, but is not alleged with a minor,
4 even though they are minors. It alleges a criminal sexual
5 conduct with accomplished via aggravated force, which is the
6 real first degree rape, for lack of, paraphrasing; and that
7 was 9-12-09.

8 THE COURT: This would be my ruling with regards to
9 those two instances. I am not going to prevent you from
10 calling a witness who knows of these two events to
11 testifying with regards to opinion or reputation. I will
12 not allow that witness to testify with regards to specific
13 instances.

14 MR. BROWN: Yes, ma'am.

15 THE COURT: Okay.

16 MR. BROWN: So I can call witnesses and ask them if
17 they have an opinion about his reputation and what that
18 opinion would be?

19 THE COURT: Do you know this individual? Do you have
20 an opinion? What is that opinion? And it has to be for the
21 trait that is at issue in your defense and that is for
22 peaceableness or violence.

23 MR. BROWN: Yes, ma'am.

24 THE COURT: Okay. Not anything else other than
25 peaceableness or violence. Cross-examination can be in

1 specific acts, but on those two -- in other words ---

2 MR. BROWN: Yes, ma'am, I understand.

3 THE COURT: --- if the people that know about these,
4 they cannot go into the specific act, but I will allow them
5 to testify on regarding opinion or reputation.

6 MR. BROWN: Yes, ma'am. And some of that, I may be
7 able to elicit on cross-examination myself, and we just
8 suggest, I expect there is a chance. There can be some door
9 opening to the specifics, even if I don't go into it.

10 THE COURT: I will be here. I'm not going anywhere in
11 the event that happens. I'm still going to be here.

12 MR. BROWN: Yes, ma'am.

13 THE COURT: Mr. Thornton, are you clear about that?

14 DEP. SOL. THORNTON: I understand your ruling, Judge.

15 THE COURT: Thank you.

16 DEP. SOL. THORNTON: Yes, ma'am.

17 THE COURT: All right.

18 MR. BROWN: And Your Honor, I would ask, if there's any
19 404(b) information regarding my client, under Lyle, of which
20 I'm not aware, but I thought I would ask, because there's no
21 conviction; so it would have to have this mini-clearing
22 convincing evidence, kind of, mini-trial, if there was.

23 DEP. SOL. THORNTON: I don't intend to try to introduce
24 anything under Lyle, Judge.

25 MR. BROWN: If I may beg the Court.

1 THE COURT: Yes.

2 MR. BROWN: And for what it's worth, there was a search
3 in my client's house. We're not challenging that search.
4 There was an identification through a personal photo array,
5 six-person photo array. We're not asking for a hearing on
6 that, because that's frankly not an issue in play here, and
7 there was no statement that my client made, so there's no
8 Jackson v. Denno hearing as a matter of housekeeping to try
9 to make sure I keep these things clean, Your Honor.

10 THE COURT: Very well. Thank you so much in doing
11 that.

12 MR. BROWN: Yes, ma'am.

13 THE COURT: All right. Anything further from the
14 State?

15 DEP. SOL. THORNTON: Nothing further from the State, as
16 to those issues, Judge. Thank you.

17 THE COURT: All right. And from the defendant?

18 MR. BROWN: Nothing, Your Honor.

19 THE COURT: All right. Very well. Was there a
20 discussion yesterday of any -- you all mentioned a couple of
21 things that in the medical records was an issue. Of course,
22 those have now been provided and I'll sign an Order just
23 reflecting that, that was requested by counsel from the
24 hospital. Any other issues that happened yesterday that I
25 need to know about?

1 DEP. SOL. THORNTON: Judge, the only other thing, I'm
2 glad you brought that up, would be, I don't know if Mr.
3 Brown has had an opportunity to review those or if he plans
4 on, you know, the State, as I said in Chambers, I don't
5 think any of the things we've talked about under the Day
6 case or 405(b) would allow him to get into medical records,
7 or medical testimony, about Mr. Nichols, the victim in this
8 case. And just for the record, Judge, because of the Day
9 case, we're using the word decedent, but this is an
10 attempted murder, not a murder, so obviously it would be ---

11 THE COURT: Oh, I'm so sorry.

12 DEP. SOL. THORNTON: I just wanted it clear for the
13 record, Judge.

14 THE COURT: You're so right.

15 DEP. SOL. THORNTON: I do not think that there is
16 anything, the State's position is there's nothing that
17 allows Mr. Brown to put a doctor on the stand or to call the
18 Probate Judge and talk about him being committed for
19 observation for two or three days or whatever it was. I
20 don't think that has anything to do with this case or a
21 specific instance of conduct, other than the ones he can
22 already go into.

23 So that's the only other outlying issue that I'm aware
24 of, Judge, because I know he -- he won't object to him
25 getting the records, because I think the defense has a right

1 to get pretty much anything they want, within reason, but I
2 certainly don't think the records are admissible, nor do I
3 think the doctors, nor the Probate Judge's testimony would
4 be admissible as to a involuntary two or three day
5 commitment.

6 MR. BROWN: Very briefly. Right now, I don't know that
7 I'm going to bring it up, and of course, it wouldn't come in
8 until I had a case in chief, unless he called the doctors,
9 is the way I see it. So I don't plan on -- I won't
10 represent in my opening and right now, I don't plan
11 eliciting that from any witness, and I certainly won't do so
12 without first asking you, Judge, for a ruling, given his
13 objection.

14 THE COURT: Thank you.

15 MR. BROWN: And, of course, we have gone through and I
16 do have everything I've asked and all that. The one last
17 thing, this is a matter of housekeeping. I'm going to refer
18 to it as an elephant in the room. There's a big screen in
19 front of the jury and I don't know, since it's not going to
20 be used ---

21 THE COURT: It's as big as an elephant.

22 MR. BROWN: Yeah. It's now white, though. So I don't
23 know if we can maybe move that, just to kind of keep it
24 clean for opening.

25 THE COURT: Well, I can't see the jurors, so that is of

1 some concern to me. Is it moveable?

2 DEP. SOL. THORNTON: Yes, ma'am. If I need to, the
3 only thing is, Judge, if I move it and unplug it, then it's
4 going to take time to re-set it up, which is fine. There's
5 nothing on the screen. I don't know how much cleaner it can
6 be than a blank black screen, but I'm happy to move it for
7 Your Honor.

8 THE COURT: Yes. I just can't see the jurors and it
9 makes it difficult to talk to folks when you can't see them.
10 It's rude, actually.

11 DEP. SOL. THORNTON: Yes, ma'am.

12 THE COURT: Oh. And I have a note from one of our
13 jurors. We have one juror that I am informed that Judge
14 McDonald is going to be excusing for Wednesday afternoon;
15 isn't that right, Wednesday afternoon?

16 MR. BROWN: I have it as Thursday.

17 DEP. SOL. THORNTON: Thursday is what I thought.

18 THE COURT: Thursday afternoon. And then lastly, we
19 have a juror that is concerned about not having to drive in
20 the dark. I don't think that's going to be a problem.

21 MR. BROWN: As your Honor sees fit.

22 THE COURT: I don't think that will be a problem. I'm
23 going to make it a point not to go later than 5:30 for
24 personnel who work so unbelievably hard.

25 [Brief pause in courtroom as Mr. Thornton moves TV out

1 of view.]

2 DEP. SOL. THORNTON: All right, Judge.

3 THE COURT: Thank you. Now, is there anything else
4 before we bring our jury out?

5 DEP. SOL. THORNTON: No, ma'am. Nothing from the
6 State.

7 MR. BROWN: Nothing from the defense.

8 THE COURT: Now, let me -- has everybody been
9 introduced to the jurors yesterday?

10 DEP. SOL. THORNTON: Yes, ma'am.

11 MR. BROWN: Yes, ma'am.

12 THE COURT: So I don't need to do that?

13 DEP. SOL. THORNTON: No, ma'am.

14 MR. BROWN: And they've read the indictments, and
15 there's actually two: there's attempted murder, and the one
16 for which is when he was in possession of a weapon during a
17 violent crime charge.

18 THE COURT: The two indictments?

19 MR. BROWN: Yes, ma'am. That's the second charge.
20 That one doesn't get discussed as much. Your Honor, for
21 what it's worth, I do have a copy of my voir dire, if Your
22 Honor wanted to look at it; only to see what had been
23 discussed. I don't know that there's an issue other than
24 that.

25 THE COURT: Thank you so much. We'll get right to it.

1 Now, I am going to let them take notes, but I'm going to
2 give them an instruction to go by. All right. We'll have
3 the jury now. Wonderful.

4 (WHEREUPON, THE JURY ENTERS THE COURTROOM AND THE
5 FOLLOWING IS HELD ON THE RECORD.)

6 BAILIFF: Your Honor, the jury has entered.

7 THE COURT: Wonderful. Good morning, ladies and
8 gentlemen. I guess you guys thought we were never going to
9 meet. I am so delighted to meet you all and I am Diane
10 Goodstein, and I am one of the two judges from the First
11 Judicial Circuit. Where's the First Judicial Circuit?
12 Well, that's Dorchester County, Orangeburg and Calhoun. So
13 how in the world did I get here? Did I get lost or what?
14 I'm not only rotating in our circuit, but also rotating
15 around our state, and that is how I got so lucky to be here
16 in the Fourteenth Circuit in Beaufort County. And I've got
17 to tell you what I really think. The Lowcountry -- you
18 know, people in Charleston think they've got the Lowcountry,
19 y'all got the real Lowcountry. I'm just here to say. I
20 think it's one of the most beautiful places on the face of
21 this earth. So I'm real excited to be here.

22 I want to thank you all so very much for your patience.
23 I also wanted to apologize to you for keeping you in your
24 jury room. I promise you not a story has been told; not a
25 joke has been made. We have been out here and we have been

1 working very diligently and the reason is, is to try to
2 isolate, to get our issues precise, so that your time in the
3 courtroom with us is as short as we can make it.

4 So that's what we've been doing, actually out here
5 working, so I thank you so much for your patience. I want
6 you to know that every single, solitary tick of the clock
7 that you are here, I know that you are giving your great
8 gift of time and so I want you to know I'm mindful of it and
9 we're going to take just as little of it as it is absolutely
10 necessary.

11 Now, ladies and gentlemen, let me tell you a little bit
12 about how we are going to be proceeding this morning. In
13 just a moment, you are going to be sworn in as the jury in
14 this case. I then have just have a few preliminary remarks
15 that I would like to make to you and then we'll get right
16 into the trial of this case.

17 Ladies and gentlemen, at this time, I am going to call
18 on our esteemed Clerk of Court, and she is going to swear
19 you in as the jury of this case.

20 WHEREUPON, THE JURY IS DULY SWORN.

21 THE COURT: Now, do we have any members of our jury
22 panel who failed to take the oath? No. Wonderful.

23 Now, ladies and gentlemen, I want to talk a minute with
24 you about two things, then we're going to get right into my
25 preliminary remarks. First of all, our gentleman on our

1 back seat with the fabulous shirt, tell me your last name.

2 MR. CLIFFTON: Clifton.

3 THE COURT: Mr. Clifton, you are our alternate and I
4 know that our esteemed bailiff wanted you to sit there so we
5 can keep up with you as our alternate. I am going to ask
6 you to stay on that back row so I can keep up with you as
7 our alternate, okay? I promise it's not so we know where to
8 keep the whoopee cushion; but I do need for you to keep that
9 seat so I can keep up with you as our alternate.

10 Now, ladies and gentlemen, our law provides that there
11 should be one of you who is the presiding juror. What in
12 the world does the presiding juror do? There's three
13 different tasks and we will go over that and then we'll talk
14 about how we obtain a presiding juror.

15 Well, the presiding juror has three additional tasks as
16 a juror. Number one, the presiding juror will actually take
17 physical possession of the verdict form, and once the jury
18 has reached its verdict, the presiding juror will actually
19 write it down on the verdict form; that's the first task of
20 the presiding juror.

21 The second task of the presiding juror is the presiding
22 juror presides in the jury room. All that means is that
23 during the deliberations of the jury, there will be no
24 question in your minds when that time has come, but during
25 the deliberations, the presiding juror presides in the jury

1 room just to be sure everybody gets a chance to talk; that's
2 a requirement.

3 The third duty of the presiding juror is that the
4 presiding juror is the jury's spokesperson here in court.
5 All that means is, if, in the event, that the needs to speak
6 with me for whatever reason, the presiding juror will take
7 that down in writing, sign it, and give it to our bailiff
8 who will in turn give that to me. If the jury needs to
9 communicate with me for whatever reason, the presiding juror
10 will simply take that down in writing, sign it, and give it
11 to our bailiff, and who will in turn give that to me. It
12 might be, all right, it's hot in here; it's cold in here; I
13 can't hear; gosh, I'm hungry. But in any event if the jury
14 needs to communicate with me for whatever reason, the
15 presiding juror would just simply take that down and give it
16 to our bailiff.

17 Those are the additional tasks of the presiding juror,
18 none of them are too terribly difficult. Now, our law says
19 that the presiding juror can be selected in one of two ways.
20 Either the judge can appoint the presiding juror or the jury
21 can select its own presiding juror. I'm going to ask you
22 all to please select your own presiding on one of our
23 breaks. I need to have a presiding juror before the trial
24 has ended. Let me just tell you, when the presiding juror
25 is selected, they will take this seat right here closest to

1 the door. Unfortunately, sometimes that's the number one
2 qualification for the presiding juror to have that chair.
3 If you all would just select your own juror, I would be
4 grateful. I will need to know who that person is. Now, you
5 can do that one of two ways. When you come into the
6 courtroom, you can say, "I have been selected as the
7 presiding juror," and let me know your name, you can write
8 it down, "presiding juror," with your name, or you can just
9 see if I'm smart enough to figure who keeps the presiding
10 juror's seat throughout the trial, and see if I'm smart
11 enough to figure it out. Any one of those methods is
12 perfectly fine. I just need to know who the presiding juror
13 is once you all have selected it.

14 Now, secondly, I want to talk about notetaking. In a
15 moment, you are going to be passed a pad and pencil. You
16 get to be my exemplar. Tell me your last name.

17 JUROR: Mr. Whiteford.

18 THE COURT: Mr. Whiteford, you're going to be my
19 exemplar. First of all, you may be seated, and if you'd be
20 so kind as to pick up your pad and your pencil and on the
21 first sheet, I would like you to either put your juror
22 number or your name; it doesn't make a bit of difference.
23 Then, you will turn that page over and as you take notes --
24 in other words, you have a cover sheet. Let me tell you
25 what will happen to your notes. There's two competing

1 theories about notes. It has been going on 16 years and
2 will probably go on afterwards. There was a debate about
3 note taking and this is what the debate is. Some jurors, it
4 might be so, are concerned that you can miss something as
5 it's coming from the witness stand as you take a note. So,
6 how do I handle that, I just tell you, don't miss anything
7 as it's coming from the witness stand while you take a note.

8 The other concern about notetaking is that there could
9 be a concern that during deliberations, if one juror has a
10 note and another juror doesn't have a note that there can be
11 too much emphasis placed on the note. I have a note, unh-
12 unh-unh-unh. (To the court reporter: I don't know how you
13 put "unh-unh-unh-unh on there, but you can figure it out.)
14 So, here's what I'm going to tell you, remember that James
15 Bond movie, *For Your Eyes Only*? These notes are going to be
16 for your eyes only. They are not to be shared with anyone.
17 It simply is to allow you to refresh your recollection to
18 assist you in your deliberations if you have them and you
19 choose to do that.

20 Now, I've passed out little notepads and pencils to
21 allow jurors who are notetakers to take notes. You know,
22 there's just some of us that are notetakers and you can't
23 listen unless you can take a note or two. There are people
24 like that, that it simply makes it easier for them to listen
25 if they can take a note and that's the reason that I am

1 passing out the pads. There is absolutely no pressure to
2 take a note. The pressure is to listen attentively to
3 everything that is being said, not to take a note. Now,
4 as you're getting your notes, there are a couple other
5 things I want to mention to you. You will leave your
6 notepads here in the courtroom during our breaks, during
7 lunch. In the evening, we will protect them, we will guard
8 them, and then they will be placed back out for you in the
9 morning. So, please protect your notes.

10 Let me tell you that once the deliberations are
11 concluded and the trial has ended, one of two things can
12 happen. You're welcome to take your notes with you; if that
13 is your choice, that is perfectly fine. Or, if you choose
14 not to, what if you forget, which oftentimes happens.
15 Here's what happens to your notes, I want you to know.
16 Those notepads come back to my chambers and I, myself, take
17 your notes and I destroy them. They don't get out into the
18 community, if you will, they come to me and I, myself, take
19 them out and tear them up and then they are destroyed by my
20 own hands; so just know that.

21 Now, did I miss anything? I don't want anybody under
22 any pressure to take notes, but that applies to the
23 notetakers in the crowd. It's a lot more important to
24 listen than it is to take a note.

25 Now, on to the general charge. Ladies and gentlemen,

1 you've been sworn in as the jurors in this case. You are
2 now the jury in this case. What I'm going to say to you
3 know is intended to serve as an introduction to the trial of
4 this case and please know that my remarks are not a charge,
5 or an instruction, on the law in this case. I am going to
6 instruct you on the law applicable to this case at the
7 conclusion of the evidence included in the closing
8 arguments. At the conclusion of the case, yet before you
9 retire to begin your deliberations.

10 The reason that I am giving you this explanation is to
11 give you a road map. I just want you to know where you are
12 in the process, if you will, to give you the big picture, so
13 that you will know where you are in the trial. I think that
14 if I do that and you know where you are in the process, it
15 makes it so much easier for you to concentrate and focus on
16 the evidence and focus on what you're hearing.

17 Now, ladies and gentlemen, the defendant in this case,
18 and if I say defendant, I am talking about Mr. Jabari
19 Lennin. So, if I say Jabari Lennin, or if I say defendant,
20 that's the same person. Sometimes, I use the term
21 defendant, but I mean Jabari Lennin.

22 Now, he has been charged by two indictments. One
23 indictment he is charged with possession of a weapon during
24 a violent crime and he's also been charged with attempted
25 murder. Now, I'm quite confident that yesterday that Judge

1 McDonald talked about what an indictment is and what they
2 are not. I'm going to do it very quickly again.

3 These are simply notice documents. It's just a way
4 that we notify. It's the way the State notifies a person, a
5 citizen. The State maintains that that person has violated
6 one or more of the criminal laws in the State of South
7 Carolina and these are two indictments, so the State is
8 alleging that Mr. Lennin has violated two of the criminal
9 laws in the State of South Carolina.

10 I also want to hasten to you, and tell you, that to
11 each of these charges Mr. Lennin has pled not guilty, not
12 guilty, and that places on the State the burden of proving
13 each and every allegation of each of these two indictments
14 beyond a reasonable doubt. We'll talk a lot more about that
15 when I give you the concluding instructions, but I wanted
16 you to know that.

17 These are simply pieces of paper. They are just notice
18 documents and they certainly aren't evidence of any of the
19 allegations that they contain. And again, to each of these
20 indictments, to each allegation to these indictments, Mr.
21 Lennin has pled not guilty, not guilty. And we'll talk more
22 about this when I give you the concluding instructions. You
23 will consider these indictments separately and
24 independently. They must stand alone and that you stand
25 independently and alone.

1 Now, ladies and gentlemen, let me also share with you
2 that I am going to talk to you about the elements of these
3 offenses in the concluding instructions; I'm not going to do
4 that now.

5 Ladies and gentlemen, your duty as jurors is to
6 determine as to each of these indictments whether or not the
7 State has met its burden to prove each and every allegation
8 beyond a reasonable doubt and that is your duty. And again,
9 that is the State's burden. How do you do that?

10 Well, ladies and gentlemen, you, as jurors, you have
11 the duty to find and to determine the facts. You are the
12 fact finders. You are the judges of the facts. You are the
13 sole judges. You are the only judges of the facts. Ladies
14 and gentlemen, under our rule of law, there is no way,
15 ordinarily, to correct an erroneous determination of the
16 facts by a trial jury. Those are the facts of all time, if
17 you will, the facts as determined by the trial jury.

18 Now, I have a different role and I'm going to talk a
19 little bit more about that in a moment. I'm the judge of
20 the law in this case. The reason that I am mentioning that
21 you is that you and I have different roles, different
22 duties. You're the judges of the facts; I'm the judge of
23 the law. If, at any point and time, ladies and gentlemen,
24 if I do or if I say anything that appears to be a comment on
25 or an intimation regarding or having anything to do with the

1 facts, please consider it to be too much lunch or something,
2 because I can assure you, I don't have an opinion about
3 these facts at all, because the fact of the matter is solely
4 for you to determine.

5 So if I do or say anything that appears and you think
6 it has any effect with regards to the facts, please, I ask
7 you to please disregard that, because I have no opinion
8 regarding the facts. The law doesn't allow me to have an
9 opinion to the facts, and I don't. So if I have done or
10 said something that you believe has an effect on the facts,
11 please disregard that, because I assure you, I do not. That
12 is a matter solely for you to determine.

13 How will you determine the facts? You will determine
14 the facts from the evidence that is presented, the testimony
15 that you will hear from this witness stand from the sworn
16 witnesses, and from other evidence which is introduced into
17 Court. Those will be exhibits.

18 Ladies and gentlemen, it is up to you to determine the
19 inferences which you feel may be properly drawn from the
20 evidence. It is especially important that you perform your
21 duties of determining the facts diligently and
22 conscientiously, because as I say, ordinarily, there is no
23 way to correct an erroneous determination of facts by a
24 jury.

25 On the other hand and with equal emphasis, the same law

1 that makes you the judges of facts, makes me the judge of
2 the law. The law, as given to you by the Court, is the only
3 law that you may consider. You must accept and you must
4 follow the law, even though you may disagree with it. That
5 may be a discussion you want to have with your legislatures,
6 but for our system to work correctly, you must accept and
7 apply the law exactly as I give it to you. I cannot comment
8 on, intimate on, or in any way tell you what the facts are
9 and you can not disagree with me about what the law is or
10 should be. Your job is to find the facts as you find them
11 to be, you will then take the law as I give it to you and
12 you will apply it to the facts as you have found them to be
13 and that is how you will render your verdict. Then, a true,
14 just verdict under the oath you just took.

15 Now, ladies and gentlemen, until I advise you to begin
16 your deliberations, you must not discuss this case with
17 anyone, including your fellow jurors, friends, family, or
18 anyone involved in this case. This includes discussions
19 face to face, by telephone, e-mail, text, blog, Facebook,
20 Linked in, or MySpace. No electronic or social media can
21 you consult with regards to this case. You cannot read
22 anything or listen to anything on the radio, television or
23 newspaper, and, of course, social media. You cannot use
24 your computer, cell phone, or any other electronic device of
25 communication capability at any time while you are in the

1 courtroom or jury room during deliberations or during your
2 breaks for meals or overnight. You may use your devices,
3 just not overnight or when you're away from the Court and if
4 you have to, just not do with anything about this particular
5 case.

6 Let me give you an example. There was, years ago, a
7 jury and they had been trying a case for a whole week they
8 had been together. They were doing their deliberations and
9 they just had a little question. And one of the jurors
10 said, "I got this. I got a friend who is a doctor and I'm
11 going to call him up on my cell phone." Ring, ring, ring.
12 Well, guess what? The entire trial had to be scrapped. It
13 had to go back, because what had happened was the
14 information injected into the jury's deliberation that
15 didn't come to the jury in Court while Court was in session.
16 That is how you render your decision. You must render your
17 decision based upon the information that is provided to you
18 in Court while Court is in session.

19 What that means is if you get some wonderfully,
20 intriguing legal term and you're just burning with desire to
21 know about it, you can look it up when this trial is over
22 with. You can research it, ad infinitum, but while the
23 trial is ongoing, you must not -- does anybody remember
24 Colombo? I had a court reporter who has passed now, but he
25 said you can't use that example anymore. I said, I'm going

1 to use it. There's going to be people who remember Colombo.
2 No Colombo. No investigations. You have to receive all of
3 the information here in Court while Court is in session. So
4 don't get on the internet, don't get any information. If
5 you do, then we are going to have to begin this trial anew,
6 please keep that in mind.

7 Let me tell you, too, with regards to cell phones. I
8 know that Judge McDonald said to leave them somewhere other
9 than the courthouse. Now, if you have your cell phone with
10 you because you forgot and you're a million miles away from
11 your car when you get to the courthouse and you've got it in
12 your pocket or your pocketbook, just because we are all
13 tethered to these things, please just let me know now and we
14 can keep it for you. Anybody got a cell phone with you?
15 No. Okay. You know you can't get away with turning it off,
16 because it will turn itself back on and ring. You cannot
17 have a cell phone or any other electronic devices with
18 communication capabilities at any time. We will be happy to
19 keep that safe for you.

20 Now, ladies and gentlemen, it is so important that you
21 keep an open mind and that you do not decide any issue in
22 this case until all of the evidence has been presented and
23 the parties have made their closing arguments and I have
24 instructed you regarding the law applicable to this case.

25 Ladies and gentlemen, I want to just go over very

1 briefly the process. The first thing that you are going to
2 hear, you are going to hear the opening statements of the
3 attorneys. You're first going to hear from Mr. Thornton, on
4 behalf of the State, in his opening statement; then, you
5 will hear from Mr. Brown in his opening statement on behalf
6 of Mr. Lennin.

7 Let me tell you about the opening statements. They are
8 not arguments. Those arguments are going to come at the
9 conclusion of the case. What the opening statements are for
10 is to allow each side to just give you a low down, if you
11 will, on to what they believe the issues are in this case
12 and that really is the purpose of that is just to introduce
13 themselves again to you and to introduce their case to you
14 and to introduce to you what they believe the issues are in
15 the case. Once those opening statements are finished, then
16 the evidence will be presented and each side will have an
17 opportunity to present evidence, with the State going first.

18 Now, you know evidence can take many forms. It will be
19 sworn testimony from the witness stand and other sworn
20 testimony, could be. It may be pictures. It may be
21 diagrams, and the like. It is so important that you pay
22 close attention to all of the evidence presented in this
23 case. Once the evidence is presented, each side will
24 present what are called closing arguments. Those are true
25 arguments, ladies and gentlemen, and what that means is, is

1 that both of these lawyers, each of these sides, are going
2 to emphasize certain portions of the evidence and try to
3 convince you to agree to their version of the facts.

4 Ladies and gentlemen, I urge you, please give these
5 lawyers your undivided attention. Please know that what
6 they tell you is important, but you must be mindful that
7 what the lawyer's say is not evidence. Evidence comes from
8 the sworn witnesses in this case and from the exhibits which
9 are admitted into evidence.

10 Now, ladies and gentlemen, we have, as a part of our
11 structure of the trial, and you're learning how structured
12 trials really are, but we have what are called the rules of
13 evidence. What their purpose is, is to ensure that the
14 information that you receive is the most trustworthy and
15 reliable information that is available. You're going to
16 hear these attorneys, from time to time, say something like,
17 "Objection," or "Your Honor, may we approach?" or "Your
18 Honor, we have a matter of law." I want to tell you what is
19 happening. That is our process. That is the only way that
20 our rules allow them to raise the possible violation of the
21 rules of evidence to my attention and that is their duty.

22 So if you hear one, or both, of these lawyers from time
23 to time say "objection," I don't want you to hold that
24 against the attorney or the client, because that's the only
25 way that our rules allow for them to raise a possible

1 violation, nor do I want you to think that my ruling on the
2 objection means I favor one side or the other, because I can
3 assure I do not. That is simply our procedure; the way that
4 they are raising a possible violation, the rules of evidence
5 to my attention.

6 They have a duty to do that ruling on matters of the
7 admissibility of evidence or matters of law, whether we
8 believe it, what weight you give to it, any inferences you
9 draw from the evidence which is admitted just for you.
10 Whether or not it is admissible at all or not, are matters
11 of law for the Court, because of that, you must not hold an
12 attorney's objection against that lawyer or his client, nor
13 should you conclude from my ruling that I favor one side or
14 the other, because I can assure you I do not.

15 Now, sometimes, I'm going to ask these lawyers to
16 approach and sometimes I may need to ask you to be excused
17 to your jury room so that I can consider a matter of the
18 admissibility of evidence.

19 The reason I'm pausing to tell you about this is that I
20 want you to know that these lawyers aren't trying to keep
21 anything from you. What that does is it just simply allows
22 me to hear, either when they approach a rule or two, so that
23 I can make the ruling or if I ask you to step to your jury
24 room, that would be as infrequent as possible, but that will
25 allow me maybe to hear a little more information. And the

1 reason for that is I wouldn't want anything that I might
2 say, the ruling on the matter of evidence to be considered
3 by you as a comment on the facts.

4 So it's really to allow me the space, if you will, to
5 make rulings as I must do. These lawyers certainly aren't
6 trying to keep anything from you; it's to help me. I'm
7 almost done.

8 Ladies and gentlemen, I'm going to urge you to give the
9 strictest attention to these matters. To listen to these
10 witnesses, observe these witnesses. Please do not allow
11 your thoughts to wander, but give the strictest attention to
12 these matters so that at the end of all of the testimony, of
13 all the presentation of evidence, and the arguments of
14 counsel, and the charge on the law by the Court that you
15 would be in a position to determine what the true facts are
16 and to apply the law to those facts and thus render a true
17 and just verdict.

18 Ladies and gentlemen, in order to preserve everyone's
19 right, I'm going to now ask of these lawyer's whether or not
20 they have any additions or objections or exceptions as to
21 what I have just informed you; from the State?

22 DEP. SOL. THORNTON: None, Your Honor.

23 MR. BROWN: None at all from the defendant.

24 THE COURT: Ladies and gentlemen, you are now
25 participating in a time-tested system, and I ask that you

1 please draw close as we listen to the opening statements of
2 our attorneys.

3 DEP. SOL. THORNTON: Thank you, Your Honor. May it
4 please the Court and Mr. Brown.

5 OPENING STATEMENT

6 BY DEP. SOL. THORNTON:

7 Ladies and gentlemen, this case is about an attempted
8 murder; that's what it's about. It's about the rules and
9 the laws that we as a society, that the State of South
10 Carolina as a society as being appropriate. And the Judge,
11 her Honor, is going to talk to you about the law at the
12 close of this case and she will do what we call a charge to
13 you on the law at the close of this case, but this case is
14 about an attempted murder.

15 The defendant in this case, Jabari Lennin, is charged
16 with two crimes. He's charged with attempted murder and
17 he's charged with possessing a weapon during the commission
18 of a violent crime. The violent crime, of course, in this
19 case being the attempted murder. The attempted murder of
20 one, Trey Nichols, who you were introduced to yesterday.
21 Trey is sitting right back over there with his mom and some
22 other members of his family.

23 You're going to hear lots of evidence in this case.
24 You're going to hear from witnesses on that stand. You're
25 likely going to see some exhibits, and that's what the

1 evidence is, ladies and gentlemen, not what I say, not what
2 Mr. Brown says, but the evidence is what comes from that
3 witness stand, what exhibits there are, and the Judge will
4 talk to you about that during the closing. Seaside Road and
5 Luther Warren Drive in St. Helena, April the 21st, 2011.

6 The defendant in this case, Jabari Lennin, fired
7 multiple times striking the body of Trey Nichols with a
8 pistol, multiple gun shots. You're going to hear from EMS.
9 You're going to hear from members of the Sheriff's
10 Department. You're going to hear probably from some of
11 members of Mr. Nichols family, but that's what this case is
12 about, and what I want you to pay particular attention to
13 are things of what it's not about. This is not a civil
14 case, this is not Trey Nichols versus Jabari Lennin. This
15 is the State of South Carolina versus Jabari Lennin and
16 there's a reason for that and after this trial is over and
17 when I come back to you and I get to argue to you on what I
18 think the evidence should show and what I think you should
19 do with this case, I'll talk to you more about that.

20 But, please remember that that's what this is, this
21 isn't like it is on television. I'm sure when you all heard
22 that list of witnesses read out that you all thought, you
23 know, that it was like it was on television and you were
24 going to be here for the next six months. This should be a
25 relatively short case, but don't think, though, that that

1 makes it not important. Okay?

2 You have a victim who was shot multiple times with a
3 pistol. It is an important case. It's important because,
4 again, these are the rules and the laws that apply to us
5 all, that we as a society have said what is and what is not
6 appropriate and that's what this case is about.

7 This case is not about whether you like the lawyers.
8 It's not about whether you like me, whether you like Mr.
9 Brown, whether you like the victim, whether you like the
10 defendant. It's about did the defendant, Jabari Lennin,
11 attempt to murder Trey Nichols, and did he do so while
12 possessing a weapon? That's it. That's what the case is
13 about. No more and no less.

14 All that anybody can ask you to do is that her Honor
15 has already instructed you is to pay close attention to the
16 witnesses, pay close attention to the evidence that comes
17 in, and not make any decisions until everything has been
18 presented to you, we've made our arguments, and you're told
19 to go back and deliberate. That's all anybody can ask of
20 you.

21 THE COURT: Thank you. Mr. Brown.

22 MR. BROWN: May it please the Court, and Mr. Thornton.

23 OPENING STATEMENT

24 BY MR. BROWN:

25 April 21st, 2011. Mr. Nichols attacked Jabari Lennin

1 using hostile words and harsh facts at the corner of Luther
2 Warren Drive and Seaside Road. Jabari was without fault in
3 bringing on that difficulty. Jabari stood his ground,
4 because he reasonably believed that force was necessary to
5 prevent great bodily injury or death.

6 Now, you'll find out that Mr. Nichols has a reputation
7 for violence. Mr. Nichols has earned this reputation. What
8 are you going to find out about Mr. Nichols? We know that
9 he has physically attacked his mother, grandmother, and
10 grandfather within two and a half months of April 21st,
11 including one incident with his mother the very morning that
12 this happened.

13 Now, why is Mr. Nichols' reputation for violence or
14 instances of violence important? Because a person in South
15 Carolina has the right to expect to remain free from
16 molestation and attack. We know that a person in South
17 Carolina has a right to stand their ground. As a person in
18 this State that has not engaged in unlawful activity and who
19 is in a place where he has a right to be, has the right to
20 stand his ground and has no duty to retreat as long as he
21 reasonably believes that the force used is necessary to
22 prevent harm, death, great bodily injury, or death to
23 himself or others or to prevent the commission of a violent
24 crime.

25 So it is important to understand while Jabari Lennin

1 tried to raise a family, Mr. Nichols was raising hell on
2 Seaside Road. Now, it is my pleasure to represent Jabari
3 Lennin. You've been introduced to him. He's here with his
4 support, his mother, his step-father are here, as well as
5 his fiancée, the mother of his child. Also in support are
6 other family and friends, including his grandfather, former
7 Chief of Police for the City of Beaufort, Joe Lennin, as
8 well his grandmother, Mrs. Rosa Lee Lennin.

9 Now, for many of you this may be your first time
10 engaged in the criminal justice system, but it's important
11 to all of us. Because as a society, two hundred and twenty-
12 five years ago yesterday, we entered into a contract where
13 we said that no person could be deprived of life, liberty or
14 property without due process of law. Jabari Lennin stands
15 here in jeopardy of losing his liberty, of losing his
16 freedom.

17 It's a humbling experience when a man comes into your
18 office and asks you to control or fabricate for his destiny
19 to represent him and protect his rights, to protect his
20 freedom and liberty. At the end of this case, the awesome
21 power controlling his freedom will be passed to you. I feel
22 certain that after listening to the facts of this case, that
23 you will dissolve all questions in favor of Jabari Lennin
24 and find him not guilty.

25 THE COURT: Thank you, Mr. Brown. All right.

1 Mr. Thornton, if you will please call your first witness.

2 DEP. SOL. THORNTON: Yes, ma'am. The State calls
3 Janice Flynn to the stand.

4 [Whereupon, Ms. Janice Flynn is duly sworn.]

5 THE COURT: Please state your full name for the record.

6 MS. FLYNN: My name is Janice Iona Flynn

7 THE COURT: How do you spell your middle name?

8 MS. FLYNN: I-O-N-A.

9 THE COURT: And how do you spell your last name?

10 MS. FLYNN: F-L-Y-N-N.

11 THE COURT: Two "n's".

12 MS. FLYNN: Yes, ma'am.

13 THE COURT: Your witness, counsel.

14 DEP. SOL. THORNTON: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY DEP. SOL. THORNTON:

17 Q Ms. Flynn, where do you live now?

18 A 871 Seaside Road, St. Helena Island, South Carolina.

19 Q All right. And what county is that in?

20 A Beaufort.

21 Q Did you live there on or about April the 21st, 2011?

22 A Yes.

23 Q Was there anything unusual about that day that
24 happened?

25 A Yes.

1 Q Before we get into that, you heard me reference a Trey
2 Nichols earlier. Do you know Trey Nichols?

3 A Yes.

4 Q How do you know him?

5 A He's my nephew.

6 Q How long have you lived in St. Helena in Beaufort
7 County?

8 A Six years.

9 Q Six years? Where did you live before that, ma'am?

10 A New York City.

11 Q Ma'am, let me ask you a question. Earlier, I asked you
12 about April 21st, 2011, do you remember that day?

13 A Yes.

14 Q Why do you remember that day?

15 A That's when Trey got shot.

16 Q All right. Can you tell me about what happened?

17 A I was at my house; I heard some shots.

18 Q And let me ask you real quickly, you said your house,
19 and again what is your address?

20 A 871 Seaside Road.

21 Q 871 Seaside Road, is that near the intersection of
22 Seaside Road and Luther Warren?

23 A Yes.

24 Q Okay. Go ahead, ma'am.

25 A I heard some shots. I went to the window. I looked

1 out and at first I didn't see anybody, but I opened my door
2 to go to the porch, I heard my nephew calling me, and I
3 looked at him hopping, and he ran to me and fell in my arms.

4 Q All right. And when you said you heard shots, could
5 you be more specific?

6 A I heard, "Pop, pop, pop, pop, pop, pop, pop."

7 Q Okay. When you say shots, do you mean gun shots?

8 A Yes.

9 Q You heard multiple gun shots?

10 A Yes.

11 Q When you looked out and you saw Trey, where was he
12 coming from?

13 A Seaside Road.

14 Q And is there anything in particular near the
15 intersection of Seaside Road and Luther Warren Drive?

16 A There's a big old oak tree right there.

17 Q When you saw Trey, you said he was hopping and then ran
18 to you; can you tell us a little bit about that?

19 A He hopped toward me and he was calling me, "Aunt
20 Janice, Aunt Janice," and he ran over my screen door and
21 then I put my arms around him and he laid down on the
22 ground.

23 Q All right. Where was he when he laid down?

24 A He was between the porch and the screen door and the
25 ground.

1 Q Was it like he -- you said he opened the screen door,
2 was he in the doorway area?

3 A Yes.

4 Q Did you notice anything about his condition?

5 A He was shot, you know, I saw he was shot.

6 Q How did you know?

7 A I could see the bullet wounds on him.

8 Q And I realize some of these questions may sound silly,
9 Ms. Flynn, but keep in mind, none of us were there, only you
10 were.

11 A All right.

12 Q So you saw bullet wounds. Did you see blood? Did you
13 see other things?

14 A A little bit.

15 Q At that point, what did you do?

16 A I called 9-1-1.

17 Q Did you stay with him ---

18 A Yes, all the way until everybody came. Until the
19 police came, until the paramedics came, the fire trucks
20 came; I was there.

21 Q All right. When you saw Trey, when he came up to you,
22 was he armed in any way?

23 A No.

24 Q Did he have a gun on him?

25 A No.

1 Q A knife?

2 A No.

3 Q Is there anything that you saw on your porch or in your
4 yard?

5 A No.

6 Q Did you see anything else while this was going on while
7 you were with your nephew?

8 A Yes.

9 Q What was that?

10 A I saw a car go by slow. It turned around and came back
11 real slow in front of the house, looking, you know, and then
12 shot off.

13 Q What kind of car was it?

14 A It was a white car with a red top.

15 Q White car with a red top. Other than that, did you see
16 the shooting or see anything else?

17 A No.

18 Q I don't have any further questions. Please answer any
19 questions Mr. Brown has for you.

20 THE COURT: Cross-examination.

21 MR. BROWN: May it please the Court, Your Honor.

22 THE COURT: Yes.

23 CROSS-EXAMINATION

24 MR. BROWN:

25 Q Ms. Flynn, how are you this morning?

- 1 A Fine. Thank you.
- 2 Q Okay. Do you know the Blandings?
- 3 A Yes.
- 4 Q And how do you know the Blandings?
- 5 A I'm friends with his girlfriend's grandmother.
- 6 Q Mr. Lennin's girlfriend's grandmother?
- 7 A Yes.
- 8 Q So you know Regina Blanding?
- 9 A Yes.
- 10 Q You know Desiree Blanding?
- 11 A Yes.
- 12 Q And you know Robert Blanding?
- 13 A Yes.
- 14 Q Do you know Paul Mitchell?
- 15 A No.
- 16 Q You don't know who Paul Mitchell is?
- 17 A No, I don't.
- 18 Q And I don't think he's in here right now, but you've
- 19 never heard of Mr. Mitchell?
- 20 A No.
- 21 Q Let me ask you, 871 Seaside Road; who else lives there?
- 22 A My sister and her husband.
- 23 Q And your sister's name is?
- 24 A Theresa Nichols.
- 25 Q Okay. And her husband's name?

- 1 A Joseph.
- 2 Q And his last name is?
- 3 A (No response.)
- 4 Q Daise?
- 5 A Yes.
- 6 Q Okay. So you live there, as well as Theresa Nichols
- 7 and Joseph Daise. And then, do you know Trey Nichols or
- 8 Kenneth Nichols; do you know his mother's name?
- 9 A Yeah, Sharine.
- 10 Q Sharine.
- 11 A Yes, that's my niece.
- 12 Q Okay. How close do they live to you?
- 13 A Around the corner. You have to go around the oak tree.
- 14 Q Okay. Tell me the relationship to Kenneth Nichols and
- 15 that same house?
- 16 A What do you mean?
- 17 Q Does he ever live there?
- 18 A Yes.
- 19 Q Does he live there more or less than he lives with his
- 20 mother?
- 21 A About the same.
- 22 Q About the same. And how long have you lived at that
- 23 place?
- 24 A In that house?
- 25 Q Yes, ma'am.

1 A Around three years.

2 Q Three years, so that would be back to 2009?

3 A Yes.

4 Q Have you ever seen law enforcement come to that house?

5 A Yes.

6 Q All right. Do you know anything about the reasons for
7 the police response?

8 A Not really, because when I saw them, I was getting off
9 the senior citizen bus, and that's when I saw them, so I
10 don't know why they were there.

11 Q Well, let me just ask you this a little bit. Have you
12 ever seen police come out to 871 Seaside Road in February of
13 2011, about two months before this?

14 A They might have.

15 Q They might have. All right, how about March 23rd,
16 2011?

17 A No.

18 Q How about April 13th, 2011?

19 A I don't know. Where are you getting these dates from?
20 What is that? I don't understand.

21 THE COURT: If you will just respond to the question.

22 A No. No. No. Because I don't know what he's talking
23 about.

24 Q How about the morning of April 21st, 2011?

25 A Yes. I remember that, because that's the day my nephew

1 got shot.

2 Q How about them coming out hours before Mr. Nichols was
3 shot?

4 A I don't know nothing about hours before.

5 Q Okay. So you have never seen the police come out to
6 those houses until Mr. Nichols was shot?

7 A I told you one time I saw them come; one time. You
8 asked me that question already and I told you I saw them
9 come one time when I was getting off the senior citizen's
10 bus. I don't know why you asking the same questions.

11 Q And was that the same day of the shooting or not?

12 A No.

13 Q Do you know about how long before the shooting that
14 police visit occurred?

15 A It's been a while. I can't answer that question
16 because I don't know. It's been a while, so I couldn't tell
17 you.

18 Q Do you recall whether Trey Nichols was living there
19 between March of 2011 and the time of the shooting?

20 A Off and on.

21 Q Was he allowed there by Mr. Daise?

22 A Yeah.

23 Q There was no trespassing notice for ---

24 A That I can't answer, because that's their business. I
25 don't get caught up in their business; I just don't.

1 Q Okay. So you don't know whether or not he was
2 prevented from going to his grandparent's house ---

3 A I said I don't ---

4 A --- I'm sorry, go ahead.

5 A Right. I don't know.

6 Q You don't know?

7 A No, I don't.

8 Q One way or the other. All right. But, you've never
9 seen a police there regarding that?

10 A Let me ask you a question. Why are you people asking
11 the same thing over and over again?

12 THE COURT: No, ma'am ---

13 A No. No. I told him one time. I told him I saw it one
14 time. So why is he asking the same thing over and over
15 again?

16 THE COURT: I need you to do a couple of things. One,
17 our court reporter can't take down two people talking at the
18 same time, so even if you know it, if you understand the
19 question, if you would let him finish the question and then
20 you can respond.

21 A Okay. Okay.

22 THE COURT: And if there is an objection, Mr. Thornton
23 will make the objection.

24 A Why does he keep asking me the same question?

25 THE COURT: Why does he keep asking you the same

1 question?

2 A Why does he say it a different way, like I'm going to
3 change my answer?

4 THE COURT: Well, if you understand the question, then
5 you can respond.

6 A No. One time. I told you one time. Please don't ask
7 me the same thing again.

8 Q The gentleman in the back row in the blue shirt that's
9 standing right now, have you ever seen that man before?

10 A Yes.

11 Q All right. And have you see him at the Blanding house?

12 A Yes.

13 Q Thank you. And you don't know whether his name is Paul
14 Mitchell, do you?

15 A No.

16 Q Okay. I am going to ask you at least one other
17 question regarding the incidents between February and April
18 2011. Have you ever seen, Joe Daise, Mr. Nichols'
19 grandfather's eye swollen shut. It looked like a grapefruit
20 was in it?

21 A I saw it, but it wasn't closed shut like no grapefruit.

22 Q How would you describe it?

23 A It was a little swollen, around his eye.

24 Q And you know the source of that injury?

25 A Yes.

1 Q And would you tell the jury the source of that injury
2 to Mr. Days?

3 A Him and Mr. Nichols got into a confrontation.

4 Q So Mr. Nichols and his grandfather got into a fight at
5 his grandfather's house?

6 A I didn't say it was a fight. I said they got into a
7 confrontation.

8 Q Was it physical?

9 A Somewhat.

10 Q Somewhat. Okay, so Mr. Nichols, who was 20 years old,
11 I believe; is that right?

12 A Somewhere around there.

13 Q So a 20 year old, who doesn't own the house, gets into
14 a -- and I believe your words were a physical ---

15 A I didn't say nothing about no physical; don't lie now.
16 I said a confrontation.

17 Q A confrontation. I don't want to put words in your
18 mouth ---

19 A Well, that's what you're doing. You're saying
20 physical, and I didn't say nothing about no physical. I
21 said a confrontation. Look in the dictionary so you know
22 what that is.

23 Q And was that confrontation physical?

24 A Somewhat.

25 Q So to make sure I understand this, Mr. Nichols is 20

1 years old, correct?

2 A Yes.

3 Q Mr. Nichols does not own that house, does he?

4 A No, he doesn't. His grandmother owns that house.

5 Q Okay.

6 A He's allowed in the grandmother's house. He was
7 allowed there.

8 Q You know whether he was allowed there?

9 A Yes. The grandmother said he was allowed there. The
10 grandmother said he could come there anytime he wants.
11 That's her grandson.

12 Q Okay. So it was just a somewhat physical
13 confrontation?

14 A Listen. No, it was not.

15 Q You're not trying to hide something are you here, Ms.
16 Flynn?

17 A Are you trying to trick me out?

18 Q I'm trying to find out if you're trying to hide
19 something from the jury.

20 A No, you're trying to trick me out because you keep on
21 asking the same thing and doing it in a different way and I
22 told you it was a confrontation, it was somewhat physical;
23 so why are you going to keep on asking me the same thing and
24 say that this is right. I am not going to change my answer;
25 do you understand that?

1 DEP. SOL. THORNTON: Objection, Your Honor.

2 THE COURT: Yes.

3 DEP. SOL. THORNTON: On a couple of different rounds.

4 One, it's been asked and answered. Two, in that last bit,
5 Mr. Brown was clearly badgering the witness, accusing her of
6 hiding something. If he has a question, I'd ask the Court
7 to direct him to ask it, but he's already asked the same
8 question about a dozen times.

9 THE COURT: Sustained. You may proceed.

10 Q Is there any question that Mr. Nichols caused the
11 swelling of Mr. Daise's eye?

12 A No.

13 Q Thank you.

14 THE COURT: Redirect?

15 DEP. SOL. THORNTON: None, Your Honor. Thank you.

16 THE COURT: I don't know if this witness, Ms. Flynn if
17 you're under subpoena, but if she is, is she free to leave?

18 DEP. SOL. THORNTON: She is, Your Honor. I would ask
19 that -- we had to make arrangements to have her flown down,
20 actually from New York, so I'm going to ask her to remain in
21 the county, but in case of rebuttal, before this case is
22 over, that would be subject to recall, and that would be it.

23 THE COURT: Ms. Flynn said she is going to stay with
24 us. Thank you.

25 MS. FLYNN: I'm not going anywhere, not until

1 Thursday.

2 DEP. SOL. THORNTON: I believe that's when the flight
3 is out, Your Honor.

4 THE COURT: Okay.

5 MR. BROWN: And may it please the Court, Your Honor?
6 We don't any objection to her remaining under their
7 subpoena. I'm not sure whether there would be any
8 admonition from Your Honor regarding her conversation with
9 potential witnesses.

10 THE COURT: I haven't been asked to do that.

11 MR. BROWN: And I don't know whether, Your Honor ---

12 THE COURT: And I don't believe that anyone has been,
13 at this point, sequestered.

14 MR. BROWN: We both agreed not to ask for that, but
15 beyond sequestration will be some type of prejudicial
16 conversations with other potential witnesses.

17 THE COURT: Can I please see you?

18 MR. BROWN: Yes, ma'am.

19 (Off the record, briefly.)

20 THE COURT: Call your next witness.

21 DEP. SOL. THORNTON: Your Honor, the State calls
22 Brandon Beaton.

23 (WHEREAS, MR. BRANDON BEATON IS DULY SWORN.)

24 THE COURT: And if you'd state your full name for the
25 record.

1 MR. BEATON: Yes, ma'am, Brandon A. Beaton.

2 THE COURT: And how do you spell your last name?

3 MR. BEATON: B-E-A-T-O-N.

4 THE COURT: Thank you. Your witness.

5 DEP. SOL. THORNTON: Thank you, Judge.

6 DIRECT EXAMINATION

7 BY DEP. SOL. THORNTON:

8 Q Mr. Beaton, where do you live, sir?

9 A Number 10, Luther Warren.

10 Q Luther Warren; is that Luther Warren Road or Drive?

11 A Drive.

12 Q Is that St. Helena?

13 A Correct.

14 Q You heard earlier, Ms. Flynn talk about Seaside Road;
15 is that near Seaside Road?

16 A Correct.

17 Q Okay. Is there an intersection at Seaside Road and
18 Luther Warren?

19 A What do you mean "intersection"?

20 Q I'm sorry. Do the roads cross?

21 A Yes, that's correct.

22 Q Is there anything, in particular, she talked about an
23 oak tree. Is there a large oak tree at that intersection?

24 A Correct.

25 Q Mr. Beaton, were you living on Luther Warren on or

- 1 about April 21st, 2011?
- 2 A Correct.
- 3 Q And where did you live exactly?
- 4 A Number 10.
- 5 Q The same place as you just talked about?
- 6 A That's correct.
- 7 Q How long have you lived there, sir?
- 8 A Four years.
- 9 Q Where did you live before that?
- 10 A Peppermint, which is right down the road.
- 11 Q Okay. And forgive me for asking something that's
- 12 probably a silly question, is that in Beaufort County?
- 13 A Correct. It's off of Seaside.
- 14 Q Okay. And Luther Warren is also, and Seaside, also, in
- 15 Beaufort County?
- 16 A Correct.
- 17 Q Let me ask you a question, sir. I see you have a
- 18 uniform on; who do you work for?
- 19 A Lady's Island Fire District.
- 20 Q Okay. So you're a firefighter?
- 21 A Correct.
- 22 Q Do you have any life-saving training, as a result of
- 23 being a firefighter?
- 24 A Correct. And I'm also an EMT.
- 25 Q Are you EMT basic, intermediate, or paramedic?

- 1 A Basic and a firefighter.
- 2 Q So is that what they call cross-trained?
- 3 A Yes.
- 4 Q On or about April 21st, 2011, do you remember that day?
- 5 Did anything unusual happen?
- 6 A Correct.
- 7 Q Tell me what happened.
- 8 A Okay. I was in the house with my kid. He was two at
- 9 the time, my son.
- 10 Q Okay.
- 11 A I picked him up from school. And off duty, I carry a
- 12 pager, so I heard my pager go off saying that a victim was
- 13 shot at the intersection of Luther Warren and Seaside.
- 14 Q All right. Hang on just a moment. Let me ask you a
- 15 question. I know you and I have talked about this before.
- 16 When you say a pager, I don't know, a lot of the jury may
- 17 remember; we're not talking about one of the pagers like
- 18 folks had in the '80s that just flashes a number. This is
- 19 something different, right?
- 20 A Yes. This actually gives out information; dispatch
- 21 talks on it.
- 22 Q Okay. So dispatch information comes through the pager?
- 23 A Correct.
- 24 Q I'm sorry to interrupt you. What information did you
- 25 hear that kind of got your attention?

1 A Male victim, about 20 years old, shot multiple times at
2 the intersection of Luther Warren and Seaside.

3 Q All right. And that's near your house; is it not?

4 A Correct.

5 Q How far away would you say?

6 A Maybe 50 yards.

7 Q Okay. Certainly walking distance or no?

8 A Correct.

9 Q Mr. Beaton, what did you do once you heard that
10 information come over?

11 A When I heard it come over, I had my son at the time, so
12 I called next door and had my little cousin come over and
13 sit with my son. One of our trucks was en route, which is
14 coming from the Dataw station, so the truck went out and I
15 gave them a little more information. I know the location
16 because I live there and I'm a fireman, so I kind of know
17 our district; so I knew exactly where 871 was. I ran over
18 and that's where I found Mr. Nichols.

19 Q So as a result of the information you got over
20 dispatch, realizing it was in your neighborhood, and you
21 went over to find out what was going on?

22 A Correct.

23 Q When you got to -- you said you found Mr. Nichols. Are
24 you referring to Treyvon Kenneth Nichols?

25 A Correct.

- 1 Q All right. Do you see him in the courtroom?
- 2 A Correct.
- 3 Q Where is he?
- 4 A In the back.
- 5 Q All right. Is that his mother sitting next to him?
- 6 A Yes, sir.
- 7 Q What happened when you saw him? What condition was he
- 8 in?
- 9 A He was laying supine, shot multiple times ---
- 10 Q Forgive me for interrupting. What does supine mean?
- 11 A He was laying on his back.
- 12 Q Okay. And go ahead, you said shot multiple times?
- 13 A Yes. I remember the lower extremities, upper
- 14 extremities and chest.
- 15 Q Okay. So by lower extremities, for us who are not in
- 16 the medical field, that means arms, legs and chest?
- 17 A Correct.
- 18 Q Not that it's all that important, do you remember
- 19 specifically how many wounds you saw?
- 20 A No, I don't remember how many.
- 21 Q Clearly, though, there were multiple?
- 22 A Correct.
- 23 Q When you got there, what type of, for lack of a better
- 24 word, life-saving things did you do?
- 25 A His Aunt Janice was there at the time. She was on the

1 phone with, I guess, 9-1-1, and I had her run and grab me
2 some towels so that I could help stop the bleeding. So
3 while she was doing that, I was taking off his shirt, you
4 know, because I saw blood on his chest area. So I took off
5 his shirt to see how serious it was and I paid more
6 attention to that than his arms and his legs.

7 Q Why is that?

8 A That's life threatening, the chest.

9 Q Okay. So chest wounds were the ones you were most
10 concerned about?

11 A Correct.

12 Q What did you do with the towels?

13 A I applied direct pressure.

14 Q Were you there doing that at the time EMS got there and
15 law enforcement?

16 A Correct.

17 Q Is it typical that law enforcement comes and secures
18 the scene and then fire and EMS come in after that?

19 A Correct.

20 Q Okay. While you were with him, were you very close to
21 Mr. Nichols?

22 A What do you mean close?

23 Q You were touching him, correct?

24 A Correct.

25 Q So you were right next to him?

- 1 A Yes.
- 2 Q Did you see any weapons of any kind on Mr. Nichols?
- 3 A Negative.
- 4 Q No knives, no guns, nothing?
- 5 A Negative.
- 6 Q Did you see any on your way over laying in the road, or
- 7 in the yard, or anything like that?
- 8 A Negative.
- 9 Q Had you noticed something like that, I'm assuming you
- 10 would have notated it and let law enforcement know?
- 11 A Correct.
- 12 Q And you were there before anybody, except his aunt, Ms.
- 13 Flynn?
- 14 A Correct.
- 15 Q What happened, after you're applying direct pressure,
- 16 tell me what happened after that.
- 17 A Our truck arrived on the scene, the Dataw Station
- 18 Engine 24, and I relayed to them what I had and they started
- 19 assisting me with care, and shortly after that, EMS arrived.
- 20 Q Once EMS arrived, did you then turn over the life-
- 21 saving duties to them?
- 22 A Correct. I helped patch him up.
- 23 Q Did you ride with him or anything after that or was
- 24 that the end of your ---
- 25 A Negative. That was the end, because I had my son at

1 the house.

2 Q All right, sir.

3 DEP. SOL. THORNTON: Your Honor, Court's indulgence for
4 just a moment.

5 THE COURT: All right.

6 (Brief pause.)

7 Q One other thing I asked you earlier, you said you took
8 off his shirt. How did you remove his shirt?

9 A I had to pull it over his head.

10 Q So he would have been naked to the waist then once you
11 pulled that off, correct?

12 A Correct. And once EMS got there, we cut off his pants.

13 Q Okay. So you were there during all of that happening?

14 A Correct.

15 Q Did you, at any time, see any weapons of any kind?

16 A Negative.

17 Q Thank you very much. I don't have anything further.

18 If you'd please answer any questions Mr. Brown has.

19 THE COURT: Cross-examination, Mr. Brown.

20 MR. BROWN: May it please the Court?

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. BROWN:

24 Q Good afternoon. You referred to Janice by her first
25 name. Do you know her as a close, personal friend?

- 1 A Negative, sir.
- 2 Q As a relative?
- 3 A Negative.
- 4 Q Where did you learn her first name?
- 5 A I asked her after, but I knew her prior before that.
- 6 Q That's what I'm trying to find out about. So you knew
- 7 her prior, socially?
- 8 A Not socially.
- 9 Q Explain to me how you knew her.
- 10 A In passing.
- 11 Q As neighbors?
- 12 A She was catching the bus to get on the senior citizens
- 13 bus; I just know her from that.
- 14 Q As neighbors?
- 15 A I guess you could say that.
- 16 Q But you know her through your contact in the
- 17 neighborhood?
- 18 A Yeah. There you go.
- 19 Q All right. Thank you. Do you know Mr. Paul Mitchell?
- 20 A I do.
- 21 Q Do you know Mr. Robert Blanding?
- 22 A I do.
- 23 Q Do you know Regina Blanding?
- 24 A Negative.
- 25 Q Do you know Desiree Blanding?

- 1 A I know of her.
- 2 Q How close do they live to 871?
- 3 A If I had to guess, 200 yards.
- 4 Q And how close is that to the tree that is at the corner
- 5 that's been referenced before, the oak tree?
- 6 A The tree at the intersection of Seaside and Luther
- 7 Warren?
- 8 Q Okay. How close would the Blanding's house be to that
- 9 tree?
- 10 A About 200 yards.
- 11 Q Okay. Are there any houses between their house and
- 12 that tree?
- 13 A Yes.
- 14 Q On that side?
- 15 A On the same side as their house?
- 16 Q Yes.
- 17 A Is my house.
- 18 Q Is it in between the two?
- 19 A Yes.
- 20 Q Do you let your son go hang out at that tree?
- 21 A If he's with me.
- 22 Q If he's with you?
- 23 A Correct.
- 24 Q Have you ever heard that tree referred to in a slang,
- 25 phrase, or have a nickname?

1 A Negative.

2 Q Never heard it referred to as the crack tree?

3 A Negative.

4 Q Have you ever seen folks loitering there?

5 A Negative.

6 Q Never. Do you know where Mr. Nichols was coming from
7 that day?

8 A Negative.

9 Q You don't know whether he was coming from that tree?

10 A Negative.

11 Q Did you ever find out if he had been coming from work?

12 A Negative.

13 Q Or school?

14 A Negative.

15 Q Okay. So you really don't know anything about the
16 contact, sir?

17 A Negative.

18 Q Do you have any information to present to this jury
19 indicating that Mr. Lennin was not justified in standing his
20 ground that day?

21 DEP. SOL. THORNTON: Objection, Your Honor. That's a
22 legal conclusion that has to be reached by the jury after
23 instructions from Your Honor, as to whether something is
24 justified or not.

25 THE COURT: Sustained.

1 Q Did you gather any evidence regarding any altercation
2 at the intersection?

3 A Negative. It wouldn't be my job anyway.

4 Q Okay. Fair enough. Now, the last thing I want to ask
5 you about. How long have you worked in your current
6 occupation?

7 A Seven years.

8 Q So did you respond to an assault and battery call
9 February of 2011 at the very same house?

10 A Negative.

11 Q And why wouldn't you?

12 A It's not my job. Criminal is cops, EMS.

13 Q Battery means an unlawful touching causing physical
14 injury.

15 A Cops.

16 Q Physical injury?

17 A Cops.

18 Q Okay. Maybe I'm confused. You respond as the first
19 responder?

20 A Correct.

21 Q Did that involve treating injury?

22 A Correct.

23 Q And if a person suffers injury through a battery, why
24 wouldn't you respond?

25 A It never went over my pager.

1 Q Okay. So it's not that you couldn't properly respond,
2 nobody even called you to go out there?

3 A Negative.

4 Q How about an assault and battery on March 23rd, 2011
5 involving Mr. Nichols' grandmother, Theresa Nichols.

6 A Negative.

7 Q Why didn't you respond to that assault and battery?

8 A Wasn't aware of it.

9 Q Okay. And how about the assault and battery on April
10 21st about 9:00 in the morning ---

11 DEP. SOL. THORNTON: Objection, Your Honor. Mr. Brown
12 is testifying. He has laid no foundation as to whether this
13 witness even knows what he's talking about and every answer
14 has been, "he didn't know."

15 MR. BROWN: Briefly, Your Honor. I'd ask that I'd be
16 allowed to ask these questions conditional on the relevance
17 that I'll tie in later in the rules of evidence to provide
18 for it to be linked back up at a later point in time.
19 Certainly, I don't mind a limiting instruction to the jury,
20 and if Your Honor will allow me the moment, I'll give you
21 that exact rule of evidence that allows it to be
22 conditionally admitted.

23 THE COURT: I know. I understand conditional
24 admissions. Let me see you though.

25 MR. BROWN: Yes, ma'am.

1 (Off the record, briefly.)

2 Q Let me back up one second, are you aware of any
3 reputation or opinion regarding Treyvon Kenneth Nichols?

4 A Negative.

5 Q Do you know him?

6 A Yes, I do.

7 Q How long have you known him?

8 A Ten or eleven years.

9 Q Ten or eleven years?

10 A Or longer.

11 Q Okay. Fair enough. You had no knowledge of any
12 opinion about him?

13 A Negative.

14 Q And so, obviously, you wouldn't have an opinion about
15 him regarding his reputation for peacefulness or violence?

16 A Negative.

17 MR. BROWN: No further questions.

18 THE COURT: Very well. Redirect.

19 DEP. SOL. THORNTON: None, Your Honor. I ask this
20 witness be excused, subject to recall.

21 THE COURT: Redirect.

22 MR. BROWN: Without objection.

23 THE COURT: Very well. You are free to go. Call your
24 next witness.

25 DEP. SOL. THORNTON: The State calls Cherish Eubanks.

1 (WHEREUPON, CHERISH EUBANKS IS DULY SWORN.)

2 MS. EUBANKS: My name is Cherish Eubanks, E-U-B-A-N-K-
3 S.

4 THE COURT: Just bring that microphone down a little :
5 bit lower. There you go. Your witness.

6 DEP. SOL. THORNTON: Thank you. I think Mr. Beaton is
7 a little bit taller than you are and that's why you had to
8 move it.

9 DIRECT EXAMINATION

10 DEP. SOL. THORNTON:

11 Q Ms. Eubanks, are you a little bit nervous today?

12 A Extremely.

13 Q Is this the first time you've ever testified in General
14 Sessions?

15 A Yes, sir.

16 Q Just like we had our discussions earlier, just take a
17 deep breath. I see you are in uniform today; who do you
18 work for ma'am?

19 A Beaufort County EMS.

20 Q Okay. And did you work for Beaufort County EMS on or
21 about April 21st, 2011?

22 A Yes, sir.

23 Q Did you respond out to any particular calls that day?

24 A No.

25 Q Let me ask you a question before we go any farther,

1 because if I don't I'm going to forget. On April 21st,
2 2011, what level of EMT were you?

3 A Basic.

4 Q How many levels are there?

5 A There's three.

6 Q What are they?

7 A Basic, which is the bottom of the rung. Then you have
8 intermediate, which is a little bit more advanced care, and
9 then you have a paramedic, and they take care of everything.

10 Q Okay. At that time, you said you were an EMT basic?

11 A Yes, sir.

12 Q What did you do on April 21st, 2011? Did you respond
13 out to any calls in particular?

14 A We were dispatched to the gunshot wound on Seaside
15 Road.

16 Q All right. You were dispatched out to gunshot wound.
17 Did you find anybody suffering from gunshot wounds?

18 A Yes, sir.

19 Q Who did you find?

20 A Mr. Trey Nichols.

21 Q Okay. Can you point him out to the jury for me?

22 A Yeah. He's sitting back there.

23 DEP. SOL. THORNTON: Trey, stand up.

24 (Trey Nichols stands.)

25 Q Is that Mr. Nichols right there?

1 A Yes, sir.

2 Q Okay. Thank you.

3 DEP. SOL. THORNTON: Thanks Trey.

4 Q Ma'am, what did you find when you found Trey Nichols?

5 A The police department was already on the scene; fire
6 trucks were already on the scene. Mr. Nichols was laying on
7 his back, partially in the doorway of the porch. He had
8 gunshot wounds in his chest, and the one I noticed was in
9 his lower right leg; it appeared to be fractured.

10 Q Okay. What did you do when you got there?

11 A I observed the patient's wounds and took him to a long
12 spine board, because when you have chest injuries, you don't
13 know where the bullets have gone. You don't know if there's
14 any back injuries.

15 Q All right. So what is the purpose of the spine board?

16 A It immobilizes the spine to prevent further damage.

17 Q How do you attach the patient to the spine board?

18 A You log roll him, which is you roll him on his side in
19 which settles you to help with him and to secure his
20 cervical spine, his neck, and then you roll him back onto
21 the board and you secure his straps.

22 Q Okay. I asked this, do you remember me asking you what
23 the straps were for?

24 A Yes, sir.

25 Q What did you tell me?

1 A I said so he doesn't roll off.

2 Q Which makes sense, but as a medical purpose, what are
3 the purpose of the straps and spine board?

4 A To immobilize the spine.

5 Q Okay. So just to see if there's any back injury. You
6 don't want to make it worse; is that right?

7 A Right.

8 Q What other involvement did you have -- were you the
9 ranking person on scene for EMS?

10 A No, sir.

11 Q All right. Who would that be?

12 A That would have been Sharon Powers.

13 Q Is she in the courtroom?

14 A Yes, sir.

15 Q Where is she? The only other person I've got left in
16 the blue shirt; is that correct?

17 A Yes, sir.

18 Q Did you have anything else to do with this case other
19 than you went out because you were dispatched to gunshot
20 wounds and you provided care to the victim in this case,
21 Trey Nichols?

22 A Outside of tending to his wounds in the back of the
23 ambulance and transferring care to a flight crew, then no.

24 Q Okay. When you say flight crew, what does that mean?

25 A It's a helicopter that comes in and takes the patient

1 to another facility.

2 Q Why was the helicopter used; do you know?

3 MR. BROWN: Objection. She wouldn't know why the
4 helicopter was used.

5 THE COURT: Are you going to lay a foundation?

6 DEP. SOL. THORNTON: I'll lay the foundation with the
7 next witness is fine.

8 Q Let me ask you a question, while you were there, and I
9 know this is going to sound like a silly question, were you
10 close to Trey Nichols?

11 A As in physically?

12 Q As in physically close. Were you close enough to touch
13 him and to work on him and all of those things?

14 A Yes.

15 Q At any time, did you see a weapon of any kind on Mr.
16 Nichols or near Mr. Nichols?

17 A No.

18 Q No guns, knives, brass knuckles, nothing?

19 A No, sir.

20 Q I have no further questions. Please answer any
21 questions Mr. Brown has.

22 THE COURT: Cross-examination.

23 MR. BROWN: May it please the Court?

24 THE COURT: Yes.

25 CROSS-EXAMINATION

1 BY MR. BROWN:

2 Q Ms. Eubanks, how long have you been working with a
3 first responder type outfitter in that job?

4 A At that time, two years.

5 Q Okay. And now it's been, I guess, about three or three
6 a half?

7 A About three.

8 Q Are you familiar with assault and battery?

9 A Yes, sir.

10 Q Have you ever seen a person injured through the use of
11 fists or just plain physical force?

12 A Yes.

13 Q Have you ever seen anybody severely injured that way?

14 A Not personally.

15 Q Have you ever heard about it, in your studies?

16 A In my studies.

17 Q Let me ask you, what are some concerns that you would
18 have responding to an incident where a person was battered
19 only by another person's hands, fist or feet?

20 A In regards to the assaultant being there or the
21 physical injury to the patient?

22 Q What would you check for if you knew somebody had
23 gotten beaten up in a fist fight?

24 A We would examine their wounds and see who they are.

25 Q Would you want to know whether they lost consciousness?

1 A Yes.

2 Q Is it reasonable to expect somebody to lost
3 consciousness through a blow from a fist or a foot?

4 A It's possible.

5 Q How about other injuries? How about a spinal injury
6 from that? How about even death from a blow from a fist?

7 A It's possible.

8 Q It's possible. Okay. I don't have any other
9 questions. Thank you.

10 THE COURT: Redirect.

11 DEP. SOL. THORNTON: None, Your Honor. I asked she be
12 excused, subject to recall.

13 MR. BROWN: Without objection.

14 THE COURT: No objection. Thank you. Call your next
15 witness, please.

16 DEP. SOL. THORNTON: Thank you, Your Honor. Your
17 Honor, at this time I'd call Sharron Powers.

18 (WHEREUPON, MS. SHARRON POWERS IS DULY SWORN.)

19 DEP. SOL. THORNTON: I'm sorry; I may have missed it.
20 Did you spell your last name for the record?

21 MS. POWERS: No. It's Powers, P-O-W-E-R-S. My first
22 name has two r's.

23 DIRECT EXAMINATION

24 DEP. SOL. THORNTON:

25 Q Ms. Powers, let me ask you a question. I see you

1 wearing the same blue shirt that Ms. Eubanks wore. Who do
2 you work for?

3 A Beaufort EMS.

4 Q And what capacity do you work for them?

5 A I'm a paramedic.

6 Q So earlier, we heard testimony that paramedic is the
7 top level of the EMS provider; is that correct?

8 A Right.

9 Q Can you tell me what training, or education, you have
10 that allows you to be a paramedic?

11 A Just different levels of training. I've went through
12 basic, intermediate and paramedic, then continued education
13 every month and just ACLS, which was just advanced and just
14 different types of advanced care.

15 Q All right. Well, let me ask you a question. How long
16 does it take to become an EMT basic? How long are the
17 classes?

18 A They have different classes, but usually, I think no
19 more than nine months.

20 Q What about to move up to intermediate?

21 A That's two or three more months.

22 Q And what about to move up to paramedic?

23 A Now, it's a two-year course. I took a seven month
24 crash course.

25 Q Okay. So you have then, almost two years worth of just

1 classroom instruction and training just by itself?

2 A Yes.

3 Q All right. This training all deals with assessing
4 life- threatening injuries, things like that; how to treat
5 them?

6 A Yes, cardiac, trauma.

7 Q Let me ask you a question. What are some of the things
8 that you, as a paramedic, can do that an EMT basic or an EMT
9 intermediate cannot do?

10 A Advanced care, whether it's using our drugs that we use
11 or any kind of maneuvers that I can do, intubations.

12 Q For those of us that don't have a medical background,
13 what does intubation mean?

14 A Putting the tube down the throat and helping you
15 breathe.

16 Q All right. So, like in the case of a collapsed lung or
17 things like that?

18 A Yes.

19 Q So you're actually allowed to do the intubation or the
20 tubing of somebody with a collapsed lung?

21 A Right.

22 Q What about, you mentioned drugs. Are you allowed to
23 push medication?

24 A Yes.

25 Q Is an EMT basic or intermediate allowed to do that?

- 1 A There's a few they can use, but it's just a few.
- 2 Q Can you do more than medications?
- 3 A Oh, yes.
- 4 Q How long have you been a paramedic?
- 5 A Almost 18 years.
- 6 Q Does that include your time as a basic and an
- 7 intermediate?
- 8 A Yes.
- 9 Q So altogether, you've got 18 years of experience?
- 10 A Yes.
- 11 Q How many calls do you think you've been out on?
- 12 A Too many to try to count.
- 13 Q More than 100?
- 14 A Oh, yeah.
- 15 Q Maybe more than 1,000?
- 16 A Yeah.
- 17 Q How is a decision made on whether or not to life-flight
- 18 somebody out or why is that decision made?
- 19 A If they're life threatening injuries or any life
- 20 threatening problem.
- 21 Q And, would that be considered ACLS advanced?
- 22 A Um, yeah.
- 23 Q Tell me what the acronym is, I'm sorry.
- 24 A ACLS is advanced cardio.
- 25 Q Okay.

1 A And then ITLS is trauma life support. Just any kind of
2 life threatening problem.

3 Q And is that determination, with you as the ranking
4 person as a paramedic, is that left to you?

5 A Yes.

6 DEP. SOL. THORNTON: Your Honor, at this time, I'd ask
7 that Ms. Powers be deemed an expert for purposes of
8 accessing and treating life-threatening injuries.

9 THE COURT: Any voir dire?

10 MR. BROWN: No voir dire, and actually no objection,
11 Your Honor.

12 THE COURT: No objection. Very well. She's so
13 qualified, but do let me explain to the jury.

14 Ladies and gentlemen, normally under our rules of
15 evidence, folks aren't allowed to testify regarding their
16 opinions or the reasons for those opinions, but there is an
17 exception and that is when by virtue of someone's knowledge,
18 training, experience, education, they have become an expert
19 in some field, typically, it could be science or the arts,
20 and they are allowed to testify regarding their opinions and
21 the reasons for those opinions within that expertise.

22 Now, I'll give you some instructions about expert
23 opinion testimony when I give you the concluding
24 instructions, but briefly I will tell you that expert
25 opinion testimony is given for the purpose of helping you

1 understand the evidence and not for the purpose of
2 controlling your judgment. You may proceed.

3 DEP. SOL. THORNTON: Thank you, Your Honor.

4 Q On April 21st, 2011, were you working for Beaufort
5 County EMS?

6 A Yes.

7 Q Did you respond out to an incident on St. Helena at
8 Seaside, Luther Warren?

9 A Yes.

10 Q How were you dispatched out there?

11 A It was dispatched as multiple gunshot wounds.

12 Q All right. When you got to the scene, did you find
13 anything that would be consistent with multiple gunshot
14 wounds.

15 A Yes.

16 Q What was that?

17 A We were led to the patient lying in the doorway on the
18 porch. He had already had his shirt taken off and had
19 towels that had blood on them, and it was Brandon who had
20 told me that, Mr. Beaton, and it just led to that patient
21 who was lying on his back.

22 Q Okay. I know we've already seen this, you were here
23 earlier. Do you see the patient in the courtroom?

24 A Yes.

25 Q Was that the same Trey Nichols that was identified

1 earlier?

2 A Yes.

3 Q What injuries, or wounds, did he have that you felt
4 were consistent with gunshot wounds?

5 A Well, he had the first two I noticed, were in his
6 chest.

7 Q All right. So that's two gunshot wounds to the chest?

8 A Right. He also had wounds to his legs, and I believe
9 one arm.

10 Q Would any or all of these be considered, in your expert
11 opinion, as life threatening?

12 A At least three of them, yes.

13 Q Which three would those be?

14 A The two in the chest and the one in the leg.

15 Q What was life threatening about the one in the leg?

16 A It was through and through, but you could never tell
17 like where it goes and it might hit an artery, because
18 there's a big artery in the upper leg.

19 Q All right. And is that why Life Flight was called?

20 A Oh, yes.

21 Q And what is Life Flight?

22 A When we get them stabilized enough on scene, we can
23 then fly them out so they can go direct to -- in this case,
24 the trauma unit, and be taken care of and stabilized.

25 Q All right. Is that because it's faster?

1 A Oh, yeah.

2 Q So was Life Flight called in this case?

3 A Yes.

4 Q Were you a part of the transport team that took the
5 victim to the Life Flight helicopter?

6 A Yes.

7 Q We heard testimony earlier about the spine board and
8 things. What other things did you do to assist the victim in
9 this case?

10 A Well, while we were on scene, my supervisor came up
11 also, and he rode in the back with us. He comes on major
12 calls like that and both of us started IV's. We put him on
13 a monitor, a cardiac monitor, and just monitored his vitals,
14 especially lung sounds and stuff.

15 Q All right. Did anything else occur on the ride to Life
16 Flight?

17 A Mostly monitoring, just checking for shock and his lung
18 sounds; I noticed some were diminished, which was not good.

19 Q All right. What is that usually indicative of if you
20 have gunshot wounds to the chest and diminished lung
21 capacity?

22 A He could have had a chemo or thorax, which is collapse
23 of the lung, pretty much, and he also, when we did board
24 him, or put him on the long spine board, he had a little
25 lump, next to his spine, which could have been the bullet,

1 so that was the problem.

2 Q All right. So you testified already that at least
3 three of those wounds you would consider life threatening?

4 A Yes.

5 Q And two of them were to the chest and the other was to
6 the leg?

7 A Right.

8 Q Do you remember where the other wound was?

9 A No, but according to my report, he had one on the right
10 arm, two in the chest, and two in the right leg, and one in
11 the left leg.

12 Q All right. So multiple gun shot wounds then to the
13 upper and lower extremities and in the chest was what was
14 testified to earlier; is that what you would say?

15 A Right.

16 DEP. SOL. THORNTON: Court's indulgence just one
17 moment, Your Honor.

18 THE COURT: All right.

19 Q Ma'am, when you saw Mr. Nichols, it's been testified to
20 earlier, I think even you said his shirt was already
21 removed; is that correct?

22 A Yes.

23 Q So he was naked to the waist?

24 A Yes, he was.

25 Q As part of your treatment, do you remove clothing or

1 cut clothing away?

2 A Yes, everything came off and we covered him with a
3 sheet.

4 Q Did you do that in this case?

5 A Yes.

6 Q Would he be completely naked at that point? You would
7 remove all clothing?

8 A Right.

9 Q What is the purpose in that?

10 A Just to make sure we've covered everything and found
11 all the injuries.

12 Q When you say "log roll," when you put him on a spine
13 board, is that how you noticed the lump?

14 A Yes.

15 Q All right. And what are you checking for?

16 A Just looking for any exit wounds or anything in the
17 back.

18 Q So prior to putting him in an ambulance, you had
19 removed all of his clothing; is that correct?

20 A Yes.

21 Q Were there any weapons that you saw? Any guns? Any
22 knives? Any weapons of any description?

23 A No.

24 Q On your way up there, did you take note of any guns, or
25 any knives, or anything laying on the ground?

1 A No, not at all.

2 Q And was law enforcement already there when you got
3 there?

4 A Oh, yes.

5 Q Is that the typical pattern? They secure the scene
6 first?

7 A Right. They go in first and then they tell us when to
8 come in.

9 Q Thank you very much, ma'am.

10 DEP. SOL. THORNTON: Your Honor, I have no further
11 questions. Please answer any questions Mr. Brown has.

12 THE COURT: Cross-examination.

13 MR. BROWN: May it please the Court?

14 THE COURT: Yes.

15 CROSS-EXAMINATION

16 BY MR. BROWN:

17 Q Ms. Powers, I want to ask you, have you ever seen
18 injuries caused by bare fist or feet?

19 A Probably. I wouldn't know if it was bare or not, but
20 sure.

21 Q By fist or feet, how about that?

22 A Yes.

23 Q Whether or not they were shoes or gloves, but how
24 serious can they get?

25 A Different degrees. Like a slap in the face or a good

1 punch, yeah.

2 Q Tell me how serious.

3 A Bruising, possibly. I'm sure it could get worse, but I
4 can't diagnose that.

5 Q I understand that. Well, how worse do you believe in
6 your medical or training opinion could it get?

7 A I don't know. I'm sure -- I don't want to guess, but
8 I'm sure they can get ---

9 Q Could someone snap another person's neck with their
10 hands?

11 A I've never seen it done, except for the movies.

12 Q How about causing death through blows to the face or
13 head?

14 A Probably.

15 Q How about concussions?

16 A Oh, yeah.

17 Q Okay. How bad can a concussion be?

18 A I'm sure they have different degrees, but I don't know
19 the difference, but they do happen; they can happen.

20 Q And they can be serious?

21 A Sure.

22 Q Such as causing memory loss and later problems,
23 aneurysm's?

24 A I would think so, but I don't know for sure. I know
25 they happen, but I, medically, don't know.

1 Q Well, let me ask you this, when you're trained to
2 respond and they tell you when you respond to this type of
3 incident you need to look for this or that, and so, is there
4 not any training regarding what to look for if somebody's
5 been knocked unconscious or somebody's sustained repeated
6 blows to the head?

7 A Well, yeah. We're told if it's a head injury, since we
8 have curriculums in place for that.

9 Q And, what would those curriculums entail?

10 A Vomiting, loss of conscious, unconscious, blackened
11 eyes.

12 Q When a person has a concussion, how do you deal with
13 the loss of consciousness? Do you want to let them stay
14 unconscious or you try to revive them?

15 A We treat them as they sit, so it depends on if they
16 answer us or blink their eyes.

17 Q If a person has suffered a concussion, do you let them
18 go back and, like, to sleep? Is that proper to let them go
19 to sleep if they've had a concussion?

20 A We don't. I mean, we transport them and try and talk
21 to them and see what happened, because we don't know the
22 depth of it.

23 Q Well, let me ask you this, if they've had a concussion
24 -- when you're trying to diagnose a concussion, what are the
25 diagnostics?

1 A We're not allowed to diagnose.

2 Q Okay. How do you determine how to treat an injury
3 without ---

4 A We treat symptoms.

5 Q Symptoms, okay. And so the symptoms of a concussion
6 would be a loss of consciousness?

7 A Yes.

8 Q And if a person who had lost consciousness was revived,
9 is it proper procedure to allow them to go back to sleep?

10 A No.

11 Q And why would that be?

12 A Because it's depending on the depth of their injury; I
13 don't know.

14 Q You don't know what it could be?

15 A No, there's just different depths of degrees of injury.

16 Q But it's because it's serious. It'd be a serious
17 issue?

18 A Sure. I would think so.

19 Q And again, no questions that concussions can be caused
20 by blows from the fist or feet?

21 A Sure.

22 Q Thank you. No further questions.

23 THE COURT: Redirect.

24 DEP. SOL. THORNTON: Just one question.

25 REDIRECT EXAMINATION

1 BY DEP. SOL. THORNTON:

2 Q Which, in your expert opinion, if you came to a scene,
3 would you find more troubling or more life threatening, a
4 hypothetical concussion or two actual gunshot wounds to the
5 chest?

6 A The gunshot wounds.

7 MR. BROWN: Objection, Your Honor. The question is
8 hypothetical. He asked which one's worse, a hypothetical
9 head injury or an actual shooting. He's asking which one is
10 worse if she responded to the scene.

11 THE COURT: Yes, I'll sustain the objection as it is
12 asked.

13 MR. BROWN: Thank you.

14 Q Which would you find more troubling or life
15 threatening, a potential concussion or two gunshot wounds
16 that you could look at into the chest?

17 A The gunshot wounds.

18 Q Thank you. No further questions.

19 THE COURT: Recross.

20 MR. BROWN: No need for me to re-cross, Your Honor.

21 THE COURT: Very well. As to this witness, may she be
22 excused?

23 DEP. SOL. THORNTON: I ask that she be excused, subject
24 to recall.

25 MR. BROWN: Without objection.

1 THE COURT: Very well. You are free to go. Call your
2 next witness.

3 DEP. SOL. THORNTON: Your Honor, may we approach?

4 THE COURT: You may.

5 (Off the record, briefly.)

6 THE COURT: Call your next witness.

7 DEP. SOL. THORNTON: Thank you, Your Honor. Lance
8 Corporal John Ferguson.

9 (WHEREUPON, LANCE CORPORAL JOHN FERGUSON IS DULY
10 SWORN.)

11 MR. FERGUSON: John L. Ferguson, F-E-R-G-U-S-O-N.

12 THE COURT: Your witness.

13 DEP. SOL. THORNTON: Thank you.

14 DIRECT EXAMINATION

15 BY DEP. SOL. THORNTON:

16 Q Although it should be obvious with your uniform, who do
17 you work for, Mr. Ferguson?

18 A Beaufort County Sheriff's Office.

19 Q And are you a Lance Corporal, did I get that right?

20 A Yes, sir.

21 Q Excellent, because if I didn't it would have been his
22 fault, because he's the one that told me what your rank was.
23 Did you work for the Beaufort County Sheriff's Office on or
24 about April 21st of 2011?

25 A Yes, sir.

1 Q Did you respond out to any particular scene on that
2 day?

3 A Yes, I did.

4 Q What scene did you respond out to?

5 A 871 Seaside Road.

6 Q All right. And where is that located?

7 A It's located just before the intersection on Luther
8 Warren.

9 Q What county?

10 A In Beaufort County.

11 Q All right, sir. Did you respond out there?

12 A Yes, sir.

13 Q What did you do when you got there?

14 A I protected the victim and secured the scene.

15 Q When you say the victim, do you see the victim in the
16 court room?

17 A Yes, I do.

18 Q All right. Where is he?

19 A He's located in the back corner over there.

20 Q Is that Mr. Nichols that's been identified already?

21 A Yes, sir.

22 Q Where was he when you got out to Seaside and Luther
23 Warren?

24 A He was collapsed on the front porch.

25 Q Did you go close enough to him to look and see if he

1 was injured in any way?

2 A No closer than about ten feet.

3 Q Were you able to see any injuries?

4 A I could see some blood, but I didn't see the actual
5 injury.

6 Q All right. What did you do at that point?

7 A I was trying to keep back the -- a lot of occupants
8 were trying to come in and press towards the victim and I
9 was trying to keep them back away from him.

10 Q And did you set up a crime scene like they do on
11 television?

12 A I observed the crime scene taking place and we had
13 other officers starting to arrive at that time and they
14 began to set up a perimeter.

15 Q All right. Was a perimeter set up?

16 A Yes, sir, it was.

17 Q Did the perimeter just stay around the porch or did it
18 go further than that?

19 A Initially, it was just close to the front yard in that
20 area then it was expanded.

21 Q Okay. And how far did it get expanded to?

22 A It got expanded to just down Luther Warren and then
23 covered the intersection of Luther Warren and Seaside.

24 Q Is that where the tree that's been testified to is
25 located?

1 A Yes, it is.

2 Q Does that tree -- Mr. Brown asked somebody earlier,
3 does that tree have any particular names or nicknames that
4 you know of?

5 A There weren't any that I was aware of.

6 Q That's all I wanted to know. So other than what Mr.
7 Brown talked about today, you've never heard that nickname
8 before?

9 A No, sir.

10 Q Now, at the time you went up there, you said you were
11 there protecting the victim and keeping everybody back.
12 Were you one of the first officers on scene?

13 A Yes, sir.

14 Q And after the perimeter was established, what did you
15 do then?

16 A I stayed within the scene and I tried to collect any
17 witnesses that may have been in the area at the time.

18 Q All right. Let me ask you this, at any time did you
19 take note of or notice any firearms?

20 A None in the immediate vicinity.

21 Q You said you had got about ten feet of the victim in
22 this case?

23 A Yes, sir.

24 Q Was he armed in any way that you were able to tell?

25 A None that I observed.

1 Q And the time that you were out there, did you find any
2 pistols, knives or anything laying on the ground in that
3 area?

4 A No, I did not.

5 Q You said you pushed the perimeter back all the way to
6 the tree; is that correct?

7 A That's correct.

8 Q Other than that and your perimeter duty, did you do
9 anything -- you talked about assembling some of the
10 witnesses. Did you do anything else that day?

11 A No, sir.

12 Q Is that your connection with this case?

13 A Yes, sir, it is.

14 Q All right. Thank you very much. I have no further
15 questions. Please answer any questions Mr. Brown has for
16 you.

17 THE COURT: Cross-examination.

18 MR. BROWN: May it please the Court, Your Honor?

19 THE COURT: Yes.

20 CROSS-EXAMINATION

21 BY MR. BROWN:

22 Q Good afternoon. Have you ever responded to any
23 incidents at 871 Luther Warren or Seaside before this?

24 A No, sir.

25 Q Okay. Never had any calls out on that road before?

1 A On that road, I have.

2 Q Okay. Incidents of violence?

3 A No, sir.

4 Q Any drug investigations or drug incidents you've been
5 involved with on that road?

6 A None that I'm aware of.

7 Q Now, was this is the middle of the day?

8 A Yes, it was.

9 Q And you had information that the intersection at the
10 oak tree was somewhat relevant? It wasn't just the location
11 of Mr. Nichols?

12 A I was not aware that the oak tree was involved in this.
13 I just thought it was something that occurred in the front
14 yard.

15 Q So you thought it had occurred in the front yard of ---

16 A Well, when I initially arrived, I thought it occurred
17 in the front yard.

18 Q And you never heard anything otherwise?

19 A Never.

20 Q So there was no expansion that you did?

21 A I did not do an expansion.

22 Q Which people, who claim to be the witnesses, did you
23 speak with?

24 A I'm not aware of all the witnesses that I spoke with.

25 Q Okay. Did you keep some notes or records?

1 A I contained some.

2 Q Okay. Do you have those?

3 A Not with me, right now.

4 Q Did you refer to those before you came to testify?

5 A No, I did not.

6 Q Okay. I don't have any other questions.

7 THE COURT: Redirect?

8 DEP. SOL. THORNTON: None, Your Honor. Thank you.

9 THE COURT: May this witness leave?

10 DEP. SOL. THORNTON: I asked him to be excused, subject

11 to recall.

12 MR. BROWN: Without objection.

13 THE COURT: Very well. You are free to go. Call your

14 next witness.

15 DEP. SOL. THORNTON: Your Honor, the State calls

16 Corporal Chad Seronka.

17 (WHEREUPON, MR. CHAD SERONKA IS DULY SWORN.)

18 MR. SERONKA: Chad Seronka, S-E-R-O-N-K-A.

19 THE COURT: Your witness.

20 DEP. SOL. THORNTON: Thank you.

21 DIRECT EXAMINATION

22 BY DEP. SOL. THORNTON:

23 Q Mr. Seronka, do you also work for the Beaufort County

24 Sheriff's Office?

25 A I do.

1 Q What do you do for it, sir?

2 A Patrol and I'm a K-9 handler.

3 Q So you work with one of the canines, or dogs?

4 A I do.

5 Q What services do you provide with the K-9? What kinds
6 of things does your K-9 do?

7 A The current K-9 I have is trained in narcotics
8 location, area search, animal protection, apprehension
9 tracking, building search.

10 Q So it does a variety of things?

11 A Correct.

12 Q Did you work for Beaufort County Sheriff's Office as a
13 K-9 handler on or about April 21st of 2011?

14 A I did.

15 Q All right. Did you respond out to any particular
16 scenes that day?

17 A I did.

18 Q Where did you go?

19 A 871 Seaside.

20 Q Did you have your K-9 with you?

21 A I did.

22 Q And what function, if any, did you perform while you
23 were there?

24 A I was contacted and asked to respond to the scene for
25 the purpose of locating any evidence that may have been

1 discarded and finding upon leaving the scene that had any
2 value to that particular instance.

3 Q All right, sir. So did you do a sweep then?

4 A I did.

5 Q Was that after other law enforcement was already there?

6 A Yes.

7 DEP. SOL. THORNTON: Your Honor, Court's indulgence for
8 one moment, please.

9 THE COURT: Of course.

10 (Brief pause in the courtroom.)

11 Q So when you got there afterwards, you did a search.
12 Did you do a larger area than just the immediate vicinity?

13 A Yes.

14 Q Okay. Did you locate any firearms, any guns, any
15 knives, or any weapons of any kind?

16 A Located absolutely nothing.

17 Q Okay. And you had the assistance at that time of your
18 K-9?

19 A Correct.

20 Q Is that the reason they called you out, was not just so
21 you could look, but so the K-9 could search as well?

22 A The dog does the looking; I work the dog.

23 Q Is that because the dog looks a lot better than we do
24 as people?

25 A Correct.

1 Q Did you have any other connection to this case, other
2 than that?

3 A Not at all.

4 Q All right, thank you very much. I have no further
5 questions. Please answer any questions Mr. Brown has for
6 you.

7 THE COURT: Cross-examination.

8 MR. BROWN: Very briefly.

9 CROSS-EXAMINATION

10 BY MR. BROWN:

11 Q How are you doing this morning? The K-9 dog is trained
12 to do what? I mean, this dog is trained to smell or track
13 what?

14 A He can track humans using several different odors. He
15 can detect a handful of different narcotics in an area
16 search; those being the main ones. Anything that he would
17 use his nose for.

18 Q All right. So help me with this, he could go out there
19 and use his sense of smell to track for drugs or people?

20 A Correct.

21 Q Anything else?

22 A In an area search, the reason I was called that day, he
23 can go to an area, if somebody discards anything into a
24 parking lot, it doesn't matter the terrain, the dog is going
25 to try to locate anything that does not smell native to that

1 area.

2 Q You mean anything that's been touched by a person?

3 A Anything that's been thrown down on the ground,
4 correct.

5 Q Okay. And there was nothing found that had been thrown
6 down on the ground by a person?

7 A Nothing in the area that I checked, nothing.

8 Q No items like an item that may have been thrown into a
9 car Mr. Lennin was in?

10 A Thrown into a car?

11 Q Yes.

12 A No.

13 Q All right. And have you ever been out there with your
14 K-9 before?

15 A To that particular residence?

16 Q To the Seaside Road area?

17 A Numerous times.

18 Q All right. And what were those responses for?

19 A Mainly in response to a traffic stop where somebody --
20 the idea that somebody had narcotics in the vehicle and they
21 would ask me to come do a scan of the vehicle.

22 Q With respect to the neighbors out there, is that
23 considered to be a high drug trafficking area? A lot of
24 drug activity?

25 A To my knowledge, yes.

1 Q Okay. Are you familiar with the tree at the two
2 corners of those two ways?

3 A That particular intersection, no.

4 Q You've never heard of that referred to as a crack tree?

5 A That terminology is used quite a few places. That
6 particular intersection, though, I do not have a whole lot
7 of familiarity with.

8 Q When you see people with no other reason, not folks
9 waiting on the bus or anything else, hanging out at an
10 intersection at a tree like that in a high drug area. What
11 have you been trained?

12 DEP. SOL. THORNTON: Objection, Your Honor. There's no
13 foundation. He's about to ask him an opinion question.

14 MR. BROWN: I will gladly back up. I will gladly back
15 up and go in to lay the foundation on this.

16 THE COURT: Okay.

17 Q All right. You're trained to evaluate situations
18 related to calls to make searches for drugs?

19 A Yes.

20 Q Were one of those factors, whether a place is a high
21 crime area or high drug activity area?

22 A You are asking in regards to a search?

23 Q Or just suspicion when you do a traffic stop.

24 A Before I do a search, I utilize the dog.

25 Q What I'm trying to find out is, one of those things

1 when you judge suspicion, is it not whether a person is in
2 an area of high drug activity?

3 A If a traffic stop was conducted of a person leaving a
4 high drug area, then that would play on my mind, yes.

5 Q Okay. How about a person who's stopped without being
6 in the car, like on foot?

7 A Sure. I guess you could make that conclusion.

8 Q Well, no, no, no. I'm trying to find out in your
9 opinion is that one of the things that you're trained to do.

10 A If someone is standing on the side of the road?

11 Q If they're loitering -- well, the first thing I'd try
12 to find out if a person is in a high drug area and is in a
13 car is that something you would take into account or if
14 they're not in the car, would you still take that into
15 account that they were in a high drug area if you had other
16 reasons to believe?

17 A Oh, sure. Anytime you're in a high drug area, that's
18 something you can say about anyone.

19 Q That their presence there begs the question of why they
20 are there.

21 A They're just merely in a high drug area.

22 Q Okay. So what does that tell you? What is the factor
23 that you are trained to consider? A person who's in a high
24 drug area?

25 A They may live there. They may be visiting somebody.

1 There are numerous reasons as to why somebody could be in
2 the area.

3 Q Sure. But why are y'all trained to consider that as an
4 indicator of person that may be suspected of drugs? I mean,
5 I'm just curious. Y'all have training on that, right,
6 whether it's determining whether they're in a high drug
7 area?

8 A I wouldn't call it training; I'd say it's just
9 something you learn.

10 Q Where did you learn that from, you're experience on the
11 job?

12 A Yes.

13 Q Okay. That's the same for other narcotic's officers?

14 A I can't speak for other officers.

15 Q No, you're experience on the job is involved working
16 with other narcotic officers.

17 A Yes.

18 Q Okay. Drug task force?

19 A Yes.

20 Q Okay. So you pick up training experience that allows
21 you to form some opinions about suspicion?

22 A Correct.

23 Q Because, at some point, you have to make a
24 determination whether you have sufficient suspicion before
25 you then conduct some type of law enforcement procedure,

1 like a pat down or --

2 A Correct.

3 Q All right. So you actually have to calculate those
4 things and formulate an opinion?

5 A Correct.

6 MR. BROWN: I would like to offer him as an expert
7 regarding opinions pertaining to suspicion of drug activity,
8 because he does it all the time. He forms those opinions;
9 it's part of his job. He just testified to it.

10 (Sotto voice discussion between the Court and the
11 attorneys at the bench.)

12 THE COURT: Okay.

13 Q Does a person who loiters in a drug area, does that add
14 another factor when you evaluate whether a person is
15 suspicious of drug activity?

16 A I would say yes.

17 Q Okay. So, one, if a person who's in the drug area,
18 they're passing through or in the other case, somebody
19 orders in that drug area.

20 A What's the question?

21 Q Let me stop and break it down a little bit. A factor
22 you look at when you're evaluating suspicion of drug
23 activity as whether a person is traveling through?

24 A One thing.

25 Q Okay. How about a person loitering in that same drug

1 area?

2 A True.

3 Q Okay. No further questions. Thank you.

4 THE COURT: Redirect?

5 REDIRECT EXAMINATION

6 BY DEP. SOL. THORNTON: Two, Judge.

7 q Or they could just live there?

8 A It can be any one of a hundred things in that area.

9 Q Let me ask you a question. Mr. Brown asked you earlier
10 about your dog and what's it trained to smell and you
11 mentioned drugs. You did a sweep of that whole area, right?

12 A I did.

13 Q Did you find any drugs?

14 A No.

15 Q Thanks.

16 THE COURT: Recross?

17 MR. BROWN: No recross.

18 THE COURT: Is this witness free to leave?

19 DEP. SOL. THORNTON: We'd ask that he be free to leave,
20 subject to recall like everyone else, Judge.

21 THE COURT: Okay. You're free to go, subject to being
22 recalled.

23 MR. BROWN: Excuse me, Your Honor, may I approach?
24 Without objection.

25 THE COURT: Oh, we're going to take our lunch break.

1 Is everybody ready for that? Ladies and gentlemen, we are
2 now going to take our lunch break. On the same admonition,
3 don't talk to anybody; don't listen to anything regarding
4 this matter. Do not talk to anyone about this matter. If
5 anyone should try to approach you, please give their name,
6 if not a description, report that to me upon your return.
7 Remember, leave your cell phones and other communication
8 devices away from the courthouse. Don't read or listen to
9 anything. You must receive all the information for which
10 you will make up your mind while Court is in session. We're
11 going to start back as soon as we can. Everyone have a
12 wonderful lunch. Leave your notebooks in the seats.

13 (12:50 P.M., WHEREUPON THE JURY EXITS THE COURTROOM AND
14 THE FOLLOWING IS HELD ON THE RECORD.)

15 THE COURT: All right. Is there anything that we need
16 to address that would cause you all to return a little bit
17 earlier?

18 DEP. SOL. THORNTON: Nothing from the State, Your
19 Honor.

20 MR. BROWN: Nothing from the defense.

21 THE COURT: All right. Wonderful. You all have a good
22 lunch hour.

23 (WHEREUPON, THE COURT IS IN RECESS FOR THE LUNCH BREAK.
24 AT 2:00 P.M., THE COURT RECONVENES IN THE TRIAL OF THIS CASE
25 AND THE FOLLOWING IS HELD ON THE RECORD.)

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1 DEP. SOL. THORNTON: Your Honor, we do have one matter
2 that we need to take up and I'd like to approach.

3 THE COURT: Sure. Absolutely. Counsel approach.
4 (Off the record, briefly.)

5 THE COURT: Come on down. Go ahead and swear him.

6 (WHEREUPON, MR. JEREMIAH FRASER IS DULY SWORN.)

7 THE COURT: Would you please state your full name for
8 the record and spell your last name, please.

9 MR. FRASER: Staff Sergeant Jeremiah Fraser, F-R-A-S-E-
10 R.

11 THE COURT: Just that one issue?

12 DEP. SOL. THORNTON: Yes, Your Honor. And I believe
13 that would be Mr. ---

14 THE COURT: I think it's going to be cross-examination.

15 DEP. SOL. THORNTON: Yes, ma'am.

16 MR. BROWN: It significantly alters the rule -- there's
17 a significant difference between the right to cross on that
18 very issue under Rule 405(a). It says, "On cross, inquiry
19 is allowed on relevant specific instances of conduct." And
20 I understand your ruling, but I'm just ---

21 DEP. SOL. THORNTON: Of his conduct, not him testifying
22 about somebody else's conduct.

23 MR. BROWN: It actually doesn't say that. It says
24 character of a person. Proof may be made by a testimony as
25 to reputation or testimony in the form of an opinion. On

1 cross-examination, inquiry is allowable into relevant
2 specific instances of conduct under 405(a).

3 THE COURT: Exactly. But he's not going to do it. I
4 don't think he's going to open the door. You think he's
5 going to open the door?

6 MR. BROWN: Well, I think the way it is, is I get to
7 ask him about this stuff, and of course, that's what we're
8 going to do, but I think it may well lead to where there may
9 be some, I guess ---

10 THE COURT: I'm with you. I understand.

11 MR. BROWN: There may be if something were said that
12 somewhat contraceedingly inconsistent with the two arrest
13 warrants, for lack of a better way of saying it. Mr.
14 Nichols was denied bond for several months on two CSC ---

15 THE COURT: Hold on. This is just me. This is just
16 me.

17 MR. BROWN: Obviously, Mr. Fraser had some, I guess,
18 significant convincing feelings about Mr. Nichols at the
19 time he arrested and charged Mr. Nichols for the CSC cases.

20 THE COURT: I understand.

21 MR. BROWN: And he may well have those same beliefs now
22 or not, but he made a sworn statement.

23 THE COURT: Well, ask him.

24 MR. BROWN: Yes, ma'am. Do we want to go straight to
25 that part of it?

1 THE COURT: Let's do this. Here's what I'm going to
2 do. I'm going to handle it as though there's been no
3 opening of the door. Now, if he's opening the door, then we
4 know that's a -- as they say in the Wizard of Oz, a horse of
5 a different color, right?

6 MR. BROWN: Yes, ma'am.

7 THE COURT: Do you understand?

8 MR. BROWN: Yes, ma'am, totally.

9 THE COURT: This is just a proffer -- in the event that
10 that does not happen, right?

11 MR. BROWN: Yes, ma'am.

12 THE COURT: We're straight on that?

13 MR. BROWN: One hundred percent.

14 THE COURT: Okay.

15 MR. BROWN: And if I can go ahead, I'm just going to
16 ask him to take a look ---

17 THE COURT: Absolutely.

18 PROFFER OF CROSS-EXAMINATION

19 BY MR. BROWN:

20 Q To kind of cut through things, Investigator Fraser, do
21 you recall doing an investigation regarding Trey Nichols
22 back in 2009?

23 A I do.

24 Q Pursuant to that investigation, did you form an opinion
25 regarding Mr. Nichols' character for peacefulness or

1 otherwise, or lack of peacefulness?

2 A Based on the statements of the victims in the case,
3 they described him as forcing them to have sex with him. My
4 opinion is based on what they told me.

5 Q Did you form an opinion, though?

6 A Further in the case, I believe when I conducted an
7 interview with him, Mr. Nichols never denied having sexual
8 intercourse with them. He just denied that the intercourse
9 was forceful. It's hard to say whether I have an opinion or
10 not, probable cause existed to swear the affidavit for the
11 warrant. That's based on the two victim's statements.
12 Kenneth Nichols also gave a statement that was similar,
13 except there was no aggravated force used. A personal
14 opinion of his character, I mean, I really don't know how to
15 answer that to be quite honest with you.

16 MR. BROWN: This is kind of where I thought we'd end up
17 to.

18 THE COURT: Okay.

19 MR. BROWN: Because what I don't know right now is
20 whether he did or did not form an opinion.

21 A I really don't have an opinion, Mr. Brown.

22 Q I'm talking about in 2009, again, the date the warrant
23 was sworn out, October 8th, 2009, did you have an opinion of
24 Mr. Nichols regarding his character for lack of
25 peacefulness?

1 A Based on these victim's statements?

2 Q Yes.

3 A Based on what they said, he was not peaceful. Based on
4 what he said, he was peaceful.

5 Q Okay. But did you form an opinion?

6 A No.

7 Q You did not form an opinion at all?

8 A No, I'm not an opinion former. I just present facts.

9 Q Did Mr. Nichols have a reputation in the community for
10 violence?

11 A Not that I knew of at the time. Without looking at my
12 report, without taking a whole lot of time looking for it, I
13 don't know if I ever came across somebody that had that.

14 Q No. Did you form an opinion regarding his reputations
15 for violence on October 8th, 2009?

16 A To be honest with you, I don't believe I did past the
17 affidavit of the victims.

18 Q Let me ask you about that. Did you recall, and I'm
19 trying to go into it now to flesh out what we may not be
20 able to go into later. Did you speak to the Judge regarding
21 bond?

22 A I don't recall if I did or not.

23 Q Okay. I'm going to back up; bond was denied, right?

24 A I think that's what you said. Mr. Brown, I work over a
25 hundred cases a year.

1 Q If you had a chance to take a look at the file obtained
2 from the prosecutor's office on this case, would that
3 refresh your recollection?

4 A Of his bond?

5 Q Of your knowledge of this case, because I thought
6 that's what you said, you've worked a lot of cases and you
7 couldn't remember all of them.

8 A Well, your question specifically was did I present him
9 his bond; is that right?

10 Q Well, it was then you said you couldn't recall all the
11 stuff because the cases.

12 A Then, you're asking me if I saw documentation, would I
13 recall; is that your question?

14 Q Investigator Fraser, I've given you a copy of the
15 report. Would you take a look at it and see if that helps
16 refresh your recollection?

17 MR. BROWN: Your Honor, I have a feeling that we're
18 going to go into a full blown cross-examination to get from
19 one issue of opinion. It's incredible to think he didn't
20 have an opinion when bond was denied and a warrant was
21 obtained for first degree, aggravated forced rape.

22 THE COURT: Whoa. Whoa. Whoa.

23 MR. BROWN: It just is.

24 THE COURT: Let me define opinion and reputation for
25 everyone. A reputation witness must be qualified by showing

1 the witness has a sufficient acquaintance with a person, the
2 community in which he has lived or worked, and the circles
3 in which he has moved to speak with authority of the terms
4 in which is generally regarded. That's reputation.

5 MR. BROWN: Yes, ma'am.

6 THE COURT: Opinion: as with reputation, a witness must
7 have sufficient familiarity to be qualified to express an
8 opinion as to a person's character.

9 MR. BROWN: And I will gladly follow up.

10 THE COURT: So, I mean, all I'm hearing is that he's a
11 police officer that investigated a case.

12 MR. BROWN: A case of aggravated -- I'm sorry.

13 DEP. SOL. THORNTON: Judge, my point was it was exactly
14 that. When he finally understood the question, he said,
15 "No, I didn't form an opinion." I understand Mr. Brown may
16 not like the answer, but if he didn't form an opinion, then
17 he didn't form an opinion. If he did, he did.

18 MR. BROWN: He says he can't recall the case. I mean,
19 he did say that.

20 THE COURT: Okay.

21 SGT. FRASER: I recall most of the case. I don't
22 remember appearing at bond hearing.

23 MR. BROWN: Well, would you like to take a look at the
24 documents and see if that refreshes your recollection? And
25 I'm sorry.

1 THE COURT: Here's my problem. My problem is, is that
2 you've got to have the appropriate foundation. First of all,
3 I've got problems with you getting the foundation.

4 MR. BROWN: I'm trying to get right to the question
5 about the opinion. I mean, I think I can lay baby steps all
6 the way through.

7 THE COURT: I don't care about baby steps; like do you
8 know the guy? How much have you dealt with him? Are you an
9 acquaintance? Do you work in his community? Do you know
10 him? How do you know him? How might you know his people
11 that know him? I mean, I'm hearing no.

12 MR. BROWN: Let me make sure -- well, let me make sure
13 I lay a very proper foundation.

14 THE COURT: Okay.

15 Q Investigator Fraser, do you know Trey Nichols?

16 A Yes, sir.

17 Q How do you know Trey Nichols?

18 A From working the St. Helena area.

19 Q When was the first time you became acquainted with Trey
20 Nichols?

21 A Roughly, 2009.

22 Q How did you become acquainted with Trey Nichols in
23 2009?

24 A Working cases on St. Helena.

25 Q What kind of cases do you work, civil warrants or?

1 A Criminal cases.

2 Q What type of criminal case do you generally
3 investigate?

4 A All kinds.

5 Q All right. In this case, was it a smaller kind of case
6 or a larger kind of case?

7 DEP. SOL. THORNTON: I would object to this when we're
8 in front of the jury.

9 THE COURT: I wouldn't get into any of that. I know
10 him from St. Helena within the same community. Now, go to
11 the question.

12 MR. BROWN: Okay.

13 Q Pursuant to your acquaintance with Mr. Nichols, did you
14 conduct an investigation into allegations?

15 THE COURT: No. It's do you have an opinion?

16 MR. BROWN: Well, I haven't been able to lay my
17 foundation yet, Your Honor. How much investigation did you
18 do? I mean, I have to lay out that he knows him.

19 THE COURT: No, you don't.

20 MR. BROWN: How can I lay out that he has sufficient
21 knowledge ---

22 THE COURT: Because the fact that a police officer
23 investigated the case has nothing to do as to whether or not
24 he has an opinion with regards to his propensity for
25 violence and it has nothing to do with whether or not he is

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1 familiar with his reputation in the community for
2 peaceableness or rather lack thereof.

3 MR. BROWN: Your Honor ---

4 THE COURT: No, I'm not going to allow you to. You're
5 back talking at the same time to everybody.

6 MR. BROWN: Oh, I'm sorry. I'll sit down. I do not
7 mean to do that. I'm trying to represent something ---

8 THE COURT: Here's what I want you to get, Mr. Brown.
9 It's real clear and just because a police officer -- I don't
10 mean just because a police officer. By virtue of the fact
11 that a police officer investigates a case, finds that
12 probable cause exist and the charges made in and of itself
13 does not get you to 405(b); it just doesn't.

14 Now, by virtue of the fact that he is a member of law
15 enforcement ---

16 MR. BROWN: Yes, ma'am.

17 THE COURT: --- he is in that community and he is
18 familiar with that community. He is familiar with this
19 individual, then the question is, are you familiar with his
20 reputation or peaceableness or lack thereof? It's a
21 question, just yes or no.

22 MR. BROWN: I understand that, Your Honor, and frankly,
23 I've never heard your definition of reputation or how a
24 person accumulates an opinion regarding reputation, but when
25 you read it --

1 THE COURT: Let me say it again. A reputation witness
2 must be qualified by showing that the witness has a
3 sufficient acquaintance with the person -- with the person,
4 with the community which he or she has lived or worked,
5 because there are different communities that people are in.
6 There's a work community, there's a church community,
7 there's a social community. There are different kinds of
8 communities that people exist in, right?

9 MR. BROWN: Yes, ma'am.

10 THE COURT: Has a sufficient acquaintance with the
11 person, the community in which he or she has lived or
12 worked, and the circles in which he has moved, and by virtue
13 of that familiarity, that person can speak with authority of
14 the terms in which he is generally regarded. That's the
15 reputation.

16 MR. BROWN: Yes, ma'am. And what I want to do is
17 establish a sufficient foundation by showing his
18 acquaintance with Mr. Nichols, his involvement in the
19 community in which Mr. Nichols -- well, I don't think he
20 worked, so I guess lived, and the circle in which Mr.
21 Nichols and Mr. Fraser moved.

22 THE COURT: Okay. Here's ---

23 MR. BROWN: And so I would just like to ask -- I'm
24 sorry.

25 THE COURT: Unfortunately though, under our rules,

1 those are very, very stylized questions.

2 MR. BROWN: But I'm trying to ask to actually hear for
3 proffer.

4 THE COURT: I know. You want to go into what did you
5 investigate? How did you investigate it, et cetera, right?

6 MR. BROWN: To establish before Your Honor, in limine,
7 all of this information.

8 THE COURT: Right. I know.

9 MR. BROWN: I'm just trying to - trying to bring it out
10 the list ---

11 THE COURT: Okay. Okay. But the problem is, is that
12 under the definition of opinion or reputation, that's not
13 going to get you there. It's just not going to get you
14 there. The fact that he happened to investigate this one
15 case is not going to give you what you're looking for.

16 MR. BROWN: Well, may I proffer his answer to it for
17 appeal?

18 THE COURT: Yes.

19 MR. BROWN: Thank you.

20 Q Investigator Fraser, is there anything else you need to
21 be able to refresh your recollection regarding the
22 investigation with Mr. Nichols as to 2009?

23 A I don't believe so.

24 Q Okay. And you got a chance to review it?

25 A Slightly.

- 1 Q Would you like more time?
- 2 A Go ahead, sir.
- 3 Q Are you ready?
- 4 A I'm listening.
- 5 Q Can you tell me the amount of complainants you had with
- 6 Mr. Nichols back in your investigation in 2009?
- 7 A It was very little. I brought him in for an interview,
- 8 after obtaining warrants based on the statements made by the
- 9 two victims', I obtained a statement and transported him to
- 10 jail.
- 11 Q Did you speak to him twice?
- 12 A You mean ---
- 13 Q Once when he asked for a lawyer, then second when he
- 14 gave a statement? I'm going to refer you to page six of
- 15 eight for court date 10-8-09.
- 16 A Yes, sir.
- 17 Q Does that reflect that you spoke to him on 11:30 hours
- 18 on 10-8-09?
- 19 A Yes, sir. He asked for -- or he wanted to speak with
- 20 an attorney.
- 21 Q Then, did you speak to him later on?
- 22 A I believe it was after ---
- 23 Q After you arrested him?
- 24 A Yes, sir.
- 25 Q Okay. So you did speak to him two different times?

1 A The first time he was brought in, essentially, he was
2 brought in for magistrate bench warrants. I asked him if
3 he'd be willing to speak with me regarding this case after I
4 read him his Miranda warning, and he said that he didn't.
5 He was taken to the jail. I went to obtain the warrants and
6 then I conducted the interview. So the first contact was
7 very brief; I don't even recall the first contact. The
8 second contact was the interview.

9 Q And you used the phrase, when you speak to him about
10 this incident, you're talking about the rape allegation, not
11 the bench warrants for Magistrate Court?

12 A That's correct.

13 Q Okay. So ---

14 A I think what I specifically said was a slumber party he
15 was not supposed to be at, from what I noted in the report.

16 Q Okay. So there was twice you spoke -- either way you
17 spoke with him. Twice, you spoke with him regarding this?

18 A Yes.

19 Q Who else did you speak with to become familiar with the
20 person, Trey Nichols?

21 A The two victims.

22 Q What are their names, for the record on appeal.

23 A The first I believe is Makayla Smalls, and the second
24 is Aerial Polite.

25 Q And how about a Victoria Dantzler?

1 A Sir, I may have that wrong. I'm sorry, the second
2 victim is Victoria Dantzler; I apologize.

3 Q And you spoke to all three of those people whose names
4 have just been mentioned, right?

5 A That's right, Victoria, Makayla; that's right.

6 Q And they're all 15 year olds?

7 A Yes, sir. At the time, they were.

8 Q And did you ask them about Trey Nichols?

9 A I did.

10 Q Did they give you statements about Trey Nichols?

11 A They did.

12 Q Did they live in the community in which Mr. Nichols
13 lived?

14 A They live on St. Helena, which is a watered island.
15 They lived on Orange Grove, and I believe Trey Nichols lives
16 on Seaside.

17 Q Approximately, how far was that?

18 A Several miles, I think.

19 Q Would you say that that is a rural area?

20 A Yes, sir.

21 Q And did you ascertain as to how Mr. Nichols supposedly
22 got to their house at the night of the slumber party he
23 wasn't supposed to be at?

24 A I believe I did.

25 Q And he walked?

1 A I believe that's what they said.

2 Q Okay. So it was close enough that Mr. Nichols was able
3 to walk from his house to theirs?

4 A If you say so.

5 Q I'm asking you.

6 A I wouldn't walk.

7 Q Is it close enough that Mr. Nichols was able to walk
8 that night?

9 A It appears he did.

10 Q Okay. So I'll take that as a yes.

11 A (No response.)

12 Q I'm sorry. I need a verbal answer for the record.

13 A I would not walk that far.

14 Q That's not the question.

15 MR. BROWN: I'm sorry, Your Honor, I'd ask that he
16 answer the question.

17 THE COURT: Don't talk on top of him, please.

18 MR. BROWN: I'm not. I'm trying to make sure that he
19 answers my question.

20 A The answer is yes, he walked that far.

21 Q Okay. So it's close enough for him to walk?

22 A It's not that far.

23 Q So it's close enough for him to walk?

24 A Yes. He walked that far.

25 Q So would you say that that was the community in which

1 Mr. Nichols lived?

2 A No.

3 Q Because it was too far to be in the same community?

4 A No, because it's a different community. That's the
5 Seaside community, not the Orange Grove community.

6 Q How about the circles in which he moved?

7 A I really can't tell you about the circles in which he
8 moved.

9 Q Did he have some movements in the Orange Grove
10 community, according to Ms. Smalls, Polite and Dantzler?

11 A I guess. How else would he have gotten there?

12 Q You want me to answer it?

13 A Sir, I don't know how to answer your question. Did he
14 have contact? Yes, he apparently knew these two.

15 Q I was trying to find out whether this Orange Grove
16 community apparently was a circle in which he moved that
17 night.

18 A Sir, I can't answer that. I don't know. He was
19 obviously on Orange Grove there that night.

20 Q So did he move within that circle?

21 A He was there.

22 Q Were they prior acquaintances with him?

23 A I believe so.

24 Q Was there any dispute from him that he was an
25 acquaintance with them?

1 A No.

2 Q And they engaged in conversation for some previous
3 time?

4 A I believe so.

5 Q So those girls' community was one in which he moved?

6 A (NO RESPONSE.)

7 MR. BROWN: Your Honor, I can't get an answer. I'm not
8 getting a no; I'm not getting any answer.

9 THE COURT: If you can respond to whether or not you
10 know that the gentleman moved in the community of these two
11 ladies?

12 A I don't believe so. The thing about St. Helena is,
13 Seaside is a community; Orange Grove is a separate community
14 that don't typically intermingle.

15 THE COURT: Okay.

16 A Answering "Does he move in those circles," I don't
17 know.

18 THE COURT: Okay.

19 Q So when you interviewed King Williams, he's out in the
20 lobby, and you told him that you knew all about Mr. Nichols
21 on the tape that I've got right there. What did you mean by
22 knowing all about him?

23 A I mean I used the tactic from the interview tactic.

24 Q You lied?

25 A Sure.

1 Q No, that was a lie?

2 A No, I know Trey Nichols. I used an interview tactic to
3 make King Williams feel more comfortable in talking with me.

4 Q Okay. So when you told King Williams that you knew all
5 about Trey Nichols, was that true or not?

6 A No.

7 Q So you don't know all about him?

8 A No.

9 Q So you admitted to lying in that interview?

10 A Sure.

11 Q All right.

12 MR. BROWN: Your Honor, I would ask that on cross, I'd
13 be able to go into specifics if there's a question that
14 comes up under 404(b).

15 THE COURT: Clearly, you're exactly right, if -- if on
16 direct examination, if the State inquires of this officer
17 regarding the reputation or the opinion of the alleged
18 victim to his peaceableness, you certainly may cross-examine
19 him on specific acts of violence or lack of peaceableness.

20 MR. BROWN: Your Honor, I do have to ask, because it
21 doesn't say it brought up on direct.

22 THE COURT: Yes, it does. Yes, it does. Sure.

23 MR. BROWN: Under 405(a)?

24 THE COURT: On cross-examination, inquiry is allowable
25 into relevant, specific instances of conduct and that's for

1 cross-examination.

2 MR. BROWN: Right. That's right, on cross-examination,
3 I can ask him about specifics; that's what it says.

4 THE COURT: If he goes into it.

5 MR. BROWN: I just don't see that part.

6 THE COURT: In all cases in which evidence of character
7 or a trait of character of a person is admissible, proof may
8 be made by testimony as to reputation or by testimony in the
9 form of an opinion.

10 MR. BROWN: Well, I get to do it, too. I get to ask
11 about opinion. It doesn't say I can only go into specifics.

12 THE COURT: On cross-examination, inquiry is allowable
13 into relevant, specific instances of conduct.

14 MR. BROWN: Yes, ma'am.

15 THE COURT: In other words, if the State wanted to talk
16 about the reputation now or the opinion of the alleged
17 victim, the question is how do they go about it, right?

18 MR. BROWN: I don't read the rule the way Your Honor
19 does. I read that both of us can go into opinion and I get
20 to ask on cross about specific instances. There's no "if"
21 on either of the two sentences.

22 THE COURT: Let's review where we are for your
23 purposes.

24 MR. BROWN: Yes, ma'am. Yes, ma'am.

25 THE COURT: For you and your purposes, and then let's

1 deal with them.

2 MR. BROWN: Yes, ma'am.

3 THE COURT: All right. I have opined on the basis of
4 your position regarding the specific character trait and the
5 lack of peaceableness that you can under 405(b) go into
6 specific instances, right?

7 MR. BROWN: Yes, ma'am.

8 THE COURT: Okay. But I've said in some you can and in
9 some you cannot.

10 MR. BROWN: Yes, ma'am.

11 THE COURT: Okay. I have also been opined that beyond
12 that -- beyond that, if you have -- you can under 405(a),
13 while you cannot go into those specific instances that I
14 have excluded, you can ask reputation or opinion, right?

15 MR. BROWN: Under 405(a), first sentence?

16 THE COURT: Yeah.

17 MR. BROWN: Yes, ma'am.

18 THE COURT: Right. They can then, the State, at that
19 point, they can cross-examine with regard to specific
20 instances of conduct or peaceableness.

21 MR. BROWN: But they couldn't cross-examine the witness
22 who's their witness.

23 THE COURT: I'm talking about yours.

24 MR. BROWN: Oh, okay. I'm talking about ---

25 THE COURT: If you raise it, yes, they could.

1 MR. BROWN: I understand that. I understand that.

2 THE COURT: Right. So ---

3 MR. BROWN: No, I'm talking about their witness on
4 direct.

5 THE COURT: So if they call a witness to talk about the
6 character of the alleged victim or the peaceableness, it's
7 going to be -- I suppose it could be both. You're right; I
8 agree. I actually do agree with you. It could be
9 reputation or opinion or specific instances of conduct,
10 because it would be an essential -- it's not an essential
11 element of their claim. It's an essential element of your
12 defense.

13 MR. BROWN: That's -- which is, it says claims or
14 defense.

15 THE COURT: It would not be their claim.

16 MR. BROWN: It would be my defense.

17 THE COURT: Right. Which I think they're under (a).
18 But then in the event that they would raise the issue of
19 peaceableness by reputation or opinion, you could cross-
20 examine if you wanted to with regards to specific instances;
21 that's where you are.

22 MR. BROWN: Okay. Well, I hate to tell you, I'm
23 confused; but since it's an essential element ---

24 THE COURT: Let me see if I can help you.

25 MR. BROWN: Okay.

1 THE COURT: This witness doesn't even help you on
2 specific instances of conduct. He can't. Okay? He's the
3 investigating officer, so you can ask him all about what he
4 did.

5 MR. BROWN: What he did in which case?

6 THE COURT: In this case.

7 MR. BROWN: Okay.

8 THE COURT: (TO THE WITNESS) You are the case officer,
9 right?

10 SGT. FRASER: Yes, ma'am.

11 THE COURT: I don't know that yet, but I suspect it.
12 So he is your case officer and you cross-examine him just
13 like any other case officer.

14 MR. BROWN: Yes, ma'am.

15 THE COURT: I have excluded your ability to ask -- to
16 elicit evidence under 405(b) with regards to the instances
17 in 2009. You don't get to ask him about that, under 405(b),
18 right?

19 MR. BROWN: Yes, ma'am.

20 THE COURT: Right. Now, you want to use -- and I'm
21 going to mess this up. I want to say detective, and that's
22 wrong.

23 SGT. FRASER: That's fine. You can call me whatever
24 you want, Judge.

25 THE COURT: 405(a) for reputation or opinion, you want

1 to use him for that, which is pretty smart on your part; but
2 you can't, because he can't give it to you.

3 MR. BROWN: Well, he actually still hasn't answered
4 that yet.

5 THE COURT: Yeah, he has.

6 MR. BROWN: Well, I didn't ask for reputation; I'm
7 going to ask him about his opinion.

8 THE COURT: Okay. Well, here's the problem, if he
9 doesn't have sufficient information to form an opinion with
10 regards to his character or he doesn't know it, that's
11 sufficient for me. How in the world is he going to have
12 sufficient familiarity with the person in this community in
13 which he lives, or works, or circles in which he has to move
14 to speak with authority to his reputation?

15 MR. BROWN: Because he ---

16 THE COURT: Well, get right to it. Just don't chicken-
17 walk around. Just ask him straight up, because if you will
18 recall from your evidence class, "Have you heard it?" "Do
19 you know?"

20 MR. BROWN: Sure.

21 THE COURT: "Have you heard it?" "Do you know?"

22 MR. BROWN: And I don't mind asking him ---

23 Q Were you able to learn of Mr. Nichols' reputation
24 through the investigation we already mentioned previously?

25 THE COURT: Nope. That's not the question. That's

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1 eliciting hearsay. Have you ---

2 MR. BROWN: Well, reputation is always hearsay.

3 THE COURT: Here you go. You want to ask him what is
4 his -- are you on reputation?

5 MR. BROWN: Yes, ma'am.

6 THE COURT: Okay. So let me go through it, again.
7 First of all, you've got to show that he has sufficient
8 acquaintance with the person; I don't think you've done that
9 yet. The community in which he lived or worked; you haven't
10 done that yet. And the circles in which he has moved; I
11 don't know about that either. But he has had sufficient
12 authority to speak in terms of his reputation. Go to that.

13 MR. BROWN: Okay. Sure.

14 Q In 2009, did you have a chance to become acquainted
15 with Trey Nichols?

16 A I did.

17 Q How did you become acquainted with him?

18 A Working cases on St. Helena.

19 Q All right. And was that a case involving an allegation
20 against Mr. Nichols? You said you worked cases -- I don't
21 know, where there others?

22 A Yes, sir. There are several others.

23 Q Involving Mr. Nichols?

24 A No.

25 Q Okay. How did you have a chance to become acquainted

- 1 with Mr. Nichols in 2009?
- 2 A By working cases on St. Helena.
- 3 Q Okay. Specifically, Mr. Nichols?
- 4 A Case involving him.
- 5 Q Okay. Did you investigate what other people said about
- 6 him? A I did.
- 7 Q Okay. Did you investigate any physical evidence that
- 8 may weigh one way or the other in support or contradiction
- 9 of the statements people made about him?
- 10 A I don't believe there was any physical evidence.
- 11 Q They didn't collect a condom?
- 12 A They may have; I don't recall.
- 13 Q Okay. Fair enough. And was this is in the general
- 14 part of Beaufort County where Mr. Nichols lived?
- 15 A On St. Helena.
- 16 Q Okay. All of it was on St. Helena?
- 17 A Yes.
- 18 Q Did Mr. Nichols go to high school at that time?
- 19 A I don't recall. He may have been at college.
- 20 Q Eighteen, seventeen years old.
- 21 A He may have been in college or high school; first year
- 22 of college, last year of high school.
- 23 Q It was in 2009, and his date of birth would have made
- 24 him 18 at that time?
- 25 A Sure.

- 1 Q Did the girls go to high school?
- 2 A They did.
- 3 Q They would go to high school where?
- 4 A Beaufort High.
- 5 Q And where would he have gone to high school?
- 6 A Beaufort High.
- 7 Q So the people that you spoke with regarding the matter
- 8 you were investigating also would run in that same school
- 9 circle, besides living in the general course of the county
- 10 in which he lived?
- 11 A If they were school age, yes.
- 12 Q Fifteen?
- 13 A Yes.
- 14 Q That's high school age?
- 15 A Yes.
- 16 Q So we got 15 and 18?
- 17 A Sure.
- 18 Q So that's generally where they live, and of course,
- 19 instead of work, I'm going to say school, so we know that
- 20 the area they went to school and the area they work are the
- 21 same circles, same community.
- 22 A Where they go to school; I don't know about working.
- 23 Q Right, instead of work, I'm going to use school in this
- 24 case.
- 25 A Sure.

1 Q And, as I think it's come out earlier, there was a
2 movement between the two on foot, so in the general area
3 circle they moved?

4 A Sure.

5 Q Because they also knew him before that day?

6 A Yes.

7 Q All right. So they had known him before?

8 A I believe so.

9 Q And the family knew him, didn't they? The girl's
10 parents in the case.

11 A I believe so.

12 Q So they appeared to run in enough circles that they
13 were all acquaintances with Mr. Nichols?

14 A I don't know what level they knew each other. I
15 believe Mr. Nichols was a football player and they may have
16 known him through athletics; I don't know.

17 Q Did they all seem to know exactly who he was? They
18 didn't tell you who he was or where he lived?

19 A I believe they knew who he was.

20 Q And whether or not he was invited over there?

21 A I believe the general consensus was it was a girls'
22 slumber party and no boys were invited; so it didn't matter
23 who the boy was.

24 Q And pursuant to that, were you able to gain knowledge
25 of his reputation in that community?

1 A I gained knowledge of the girls' opinion of him.

2 Q And what was that opinion?

3 A They alleged that he had forcefully had sex with them.

4 MR. BROWN: Your Honor, there it is. I mean forced sex
5 is violence.

6 THE COURT: Okay. Thank you. Anything else?

7 DEP. SOL. THORNTON: The only thing I would say is,
8 Judge, I don't think that's admissible, based on your prior
9 rulings and that's not his general reputation; it's the
10 opinion of one or two people. That's not his general
11 reputation. If he wants to -- you know, when he was
12 directly asked twice ---

13 THE COURT: I got it.

14 DEP. SOL. THORNTON: Yes, ma'am.

15 THE COURT: That is not reputation or opinion evidence
16 under 405(a).

17 MR. BROWN: Yes, ma'am. And for what it's worth, we
18 will go ahead and say at some point it's going to be
19 revisited with these girls brought in on our case in chief,
20 because I think that they would have an opinion of it.

21 THE COURT: Okay. I can only deal with what is before
22 me.

23 MR. BROWN: And let me ask you this, Your Honor, as a
24 matter of housekeeping, if I've got concerns about what his
25 witnesses may go into, can we have in limine hearings, as

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1 well? So I can find out what he's going to ask?

2 THE COURT: I can only deal with what is before me.

3 MR. BROWN: Yes, ma'am. But you're not opposed to that
4 like we just did?

5 THE COURT: Mr. Brown, when I am concerned that there
6 could be something that can come out in front of the jury
7 that ought not to come out in front of the jury that could
8 cause problems, and let me say, if you had gone into any of
9 this before the jury and it caused problems, I'm always
10 happy to hear it in limine.

11 MR. BROWN: And I wouldn't have gone into all those
12 facts, except we did it in limine to see what the foundation
13 was.

14 THE COURT: I'm missing the point. Can we move on with
15 the trial?

16 MR. BROWN: As Your Honor sees fit.

17 THE COURT: Very well.

18 MR. BROWN: I didn't ask for the hearing; Mr. Thornton
19 asked to go through this.

20 THE COURT: Okay. Very well.

21 SGT. FRASER: Where do you want me to go now?

22 THE COURT: You're going to go sit back down at the
23 table and you will be called at a later time.

24 MR. BROWN: And if I may give those two documents that
25 were two packets.

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1 THE COURT: All right. Anything further before we
2 bring the jury out?

3 MR. BROWN: As long as the Court notes my objection and
4 the reasons therefore, and that the Court's rule upon it.

5 THE COURT: Objection about what?

6 MR. BROWN: Of about not being allowed to go into
7 specific instances.

8 THE COURT: I gotcha. Okay.

9 MR. BROWN: Of course, they say in limine sometimes
10 doesn't preserve it, but I'm assuming this as close to as
11 tight on times that I could ask it.

12 THE COURT: I don't know, but we'll see. Okay?

13 MR. BROWN: And the best thing I can do is then try to
14 proffer it and, I guess, get an objection.

15 THE COURT: There you go. You may choose to do that.
16 I don't want to go into the whole thing again, but you may
17 need to do that.

18 MR. BROWN: I don't want the Court to think that I'm
19 trying to argue against your ruling, but I've ---

20 THE COURT: No, I would never think that of you.

21 MR. BROWN: I've got to make sure it's at the right
22 time so it doesn't get waived.

23 THE COURT: I know you do.

24 (3:00 P.M., WHEREUPON, THE JURY ENTERS THE COURTROOM
25 AND THE FOLLOWING IS HELD ON THE RECORD.)

1 THE COURT: Thank you, and thank you so much for
2 serving in that capacity. Very well. All right. At this
3 time, we will continue with the State's case. If you would
4 please call your next witness.

5 DEP. SOL. THORNTON: Thank you, Your Honor. The State
6 calls Staff Sergeant Jeremiah Fraser to the stand.

7 THE COURT: Come up, please, sir, to be sworn.

8 (WHEREUPON, SGT. JEREMIAH FRASER IS DULY SWORN.)

9 DIRECT EXAMINATION

10 BY DEP. SOL. THORNTON:

11 Q Staff Sergeant Fraser, who do you work for?

12 A I work for the Beaufort County Sheriff's Office.

13 Q What do you do for them?

14 A I am the Investigation Supervisor north of the Broad
15 River.

16 Q And what does that mean?

17 A It means, along with my boss, I supervise a group of
18 investigators that handle primarily criminal cases north of
19 the Broad River.

20 Q So that I don't mess up Staff Sergeant, is detective
21 okay?

22 A That will be just fine.

23 Q Detective Fraser, let me ask you a few questions. Did
24 you work in this same capacity for Beaufort County on or
25 about April 21st of 2011?

1 A I was primarily an investigator at the time.

2 Q Was that for Beaufort County?

3 A It was.

4 Q Did you respond out to any particular calls on that
5 day?

6 A I did.

7 Q What call was that?

8 A It was this case, the attempted murder of Trey Nichols.

9 Q Describe for me what you found when you got to the
10 scene.

11 A My partners and I were slightly down the road when the
12 call went out; one of my partners had actually passed by.
13 When I arrived on scene, the victim in this case was on the
14 ground at his residence. I believe it was a family member's
15 residence, if I recall right. He was in the doorway and was
16 being treated. We were able to quickly find where the
17 primary crime scene was, and that was the intersection of
18 Luther Warren and Seaside Road.

19 Q Is there anything in particular there at this
20 intersection?

21 A The oak tree that a lot of people use as a shade tree
22 at the intersection.

23 Q All right. Go on. What else happened?

24 A Once I determined what was obviously had just occurred
25 that Mr. Nichols had been shot, we secured the entire crime

1 scene which included the residence, the roadway in front of
2 the residence, the intersection, to include Luther Warren
3 Drive.

4 Q All right.

5 DEP. SOL. THORNTON: Court's indulgence for one moment.

6 THE COURT: Okay.

7 DEP. SOL. THORNTON: Your Honor, May I approach?

8 THE COURT: You may.

9 Q Detective, I'm going to hand you what's been marked for
10 identification purposes as State's Exhibit for
11 Identification 1A through 1Z, consisting of 26 photographs.
12 Would you, as an initial matter, please just look through
13 that group of photographs.

14 A All right.

15 Q With regard to 1A through 1X, which are grouped in one
16 group, for lack of a better word, there in front of you, are
17 you familiar with 1A through 1X?

18 A I am.

19 Q What are those photographs, those being 24 photographs,
20 what are they of?

21 A These are all photographs of the primary crime scene
22 which is the intersection of Luther Warren at that large oak
23 tree.

24 Q All right. Were you present when those were being
25 taken?

1 A Yes.

2 Q Are they an accurate, true reflection of the scene as
3 it was found on April 21st, 2011?

4 A Yes.

5 Q Have they been altered or changed in any way?

6 A No, sir.

7 Q Your Honor, I'd ask that exhibits 1A through 1X be
8 moved into evidence at this time.

9 MR. BROWN: Without objection.

10 THE COURT: Very well. Exhibit's 1A through 1X into
11 evidence, without objection, they are photographs.

12 (Whereupon, State Exhibit Numbers 1A through 1X, 24
13 photographs, are received into evidence, without objection.)

14 DEP. SOL. THORNTON: Thank you, Your Honor.

15 Q If you'll put those down for me, Detective. The second
16 set of photographs I've given you, which is 1Y and 1Z; can
17 you identify those for me?

18 A I can. These are photographs of Trey Nichols at the
19 hospital.

20 Q All right. And are they a true and accurate depiction
21 of how Mr. Nichols appeared?

22 A Yes.

23 Q Were you present when those photographs were taken?

24 A I don't believe so.

25 Q All right. Were you present at the approximate same

1 time frame as those were taken?

2 A Yes.

3 Q Are they a true and accurate depiction of how he
4 appeared in the hospital on that day?

5 A Yes, sir.

6 Q Have they been altered or changed in any way?

7 A No, sir.

8 DEP. SOL. THORNTON: Your Honor, I'd ask that 1Y and 1Z
9 be moved into evidence.

10 MR. BROWN: Without objection.

11 THE COURT: All right. 1Y and 1Z are in evidence,
12 without objection.

13 (State Exhibit Numbers 1Y and 1Z, two photographs, are
14 received into evidence, without objection.)

15 DEP. SOL. THORNTON: Thank you, Your Honor. For record
16 purposes and speaking with the court reporter this morning,
17 we've done it as 26 separate exhibits all under the heading
18 1, but A through Z, so there are 26 photographs total.

19 THE COURT: All right. Thank you, Madame Court
20 Reporter.

21 Q Detective, I've handed you what's been marked for
22 State's Identification as 2A through 2I; do you recognize
23 those envelopes?

24 A I do.

25 Q What are they?

1 A These are all .45 caliber shell casings that were
2 recovered from the scene.

3 Q How many of them are there? Does that make it nine?

4 A There are nine.

5 Q All right. Were those collected by you or in your
6 presence?

7 A Yes.

8 Q Would you please pop the seals on those and examine
9 each one. First of all, did you seal those up?

10 A I did.

11 Q Have they been altered or changed in any way or are
12 they still in the same sealed condition as when you put them
13 into evidence?

14 A They are.

15 Q Have they been altered or changed in any way?

16 A They have not.

17 DEP. SOL. THORNTON: All right, Your Honor, I'd ask
18 that 2A through 2I be admitted into evidence.

19 MR. BROWN: Without objection.

20 THE COURT: Very well. State's Exhibits 2A through 2I
21 are in evidence, without objection.

22 (State Exhibit Numbers 2A through 2I, .45 caliber shell
23 casings, are received into evidence.)

24 DEP. SOL. THORNTON: Your Honor, if I could have the
25 Court's indulgence for one moment. I'd like to go ahead now

1 and move this smart board out, so I can publish the
2 photographs to the jury and have the detective come down and
3 explain what we're looking at.

4 THE COURT: Sure. Can everybody see?

5 JURY PANEL: Yes.

6 THE COURT: Good. Wonderful.

7 DEP. SOL. THORNTON: Your Honor, what I'll do, if it's
8 all right with the Court, is I'll pass up the photographs to
9 Your Honor, they're going to be in the same order, if you'd
10 like to look at those while I bring the detective down, so
11 Your Honor can see as well.

12 THE COURT: That'd be great.

13 (Brief pause in the courtroom while the smart board is
14 being set up.)

15 DEP. SOL. THORNTON: Judge, I'm sorry about the delay.
16 I'd like to have Detective Fraser come down.

17 THE COURT: He's on the way.

18 Q Detective, if you would, and I'm going to show you each
19 of these photographs, you can move them using that left
20 click button. If you will just go through each photograph
21 and explain them, and they should be in order 1A through 1Z,
22 as they appear.

23 A Yes, sir. This is the intersection of Luther Warren
24 and Seaside Road. This is the oak tree that stands at that
25 intersection that's been mentioned. Would you like me to

1 carry on?

2 Q Just go through each of them if you would, please.

3 A This, again, is the same intersection, the same oak
4 tree, this is just a different angle. From this angle, what
5 you can see is the residence where we found the victim in
6 the case, Mr. Nichols, and the path that he followed to get
7 through to the house. I know it's kind of difficult, but he
8 went into this ditch, through these woods in front of the
9 residence. As you can see, it's a very large tree at the
10 intersection; this is right at the intersection.

11 This is a Coke can that we located right in front of
12 the tree. At first, we did not know the significance of the
13 Coke can, it was just there, and until we got further into
14 the investigation, we didn't know what it was from.

15 These are referred to as evidence placards. This is
16 how we mark items with evidence to show location and
17 proximity through an item such as a house, or in this case,
18 the base of the tree. Each placard shows a .45 caliber
19 round that had been recovered along with the Coke can. And
20 what I note on this is that the first projectiles found in
21 the middle of the street and they appeared to be moving
22 toward the tree.

23 Again, this is a .45 caliber projectile that has been
24 marked with evidence placard one. Evidence marker two, same
25 thing, .45 caliber shell casing. Four, same thing, a .45

1 caliber shell casing. Five, another .45 caliber shell
2 casing. Six, another .45 caliber shell casing. Seven,
3 again, is a .45 caliber shell casing. Eight, .45 caliber
4 shell casing. Nine, also a .45 caliber shell casing; as is
5 ten.

6 Q Let me stop you for one second, Detective. One of the
7 things you mentioned a second ago as you were going through
8 is -- there was no three placard, is that because three was
9 the Coke can placard?

10 A Three was the Coke can, yes, sir.

11 Q Thank you. Go ahead.

12 A This is a photograph of the base of the tree. You can
13 notice on this tree that there appears to be fresh damage to
14 the tree. This, we believe, is from the projectile striking
15 the tree during the gun battle. We did attempt to extract
16 the bullets from the tree. However, if you try to get a
17 small object out of a tree, it is not an easy thing to do.
18 We did not recover the projectiles.

19 This is a photograph, it appears to be two different
20 bullet strikes on that tree. This is another photograph of
21 what we believe to be a bullet strike in that same tree.

22 This is where we begin finding the blood trail leading
23 from that intersection back to where we found Kenneth Trey
24 Nichols. This is just his drop of blood on a leaf showing
25 again the flow of movement starting at 1 going along to 11,

1 which is where we're at now, getting towards the house where
2 he was found.

3 Thirteen's a Gatorade bottle; I believe we found this
4 bottle in the ditch. The ditch is what you saw that runs
5 along Seaside Road, right in front of that tree; that's
6 quite a drop. It appears he may have fallen in that area
7 and the blood transferred on to the Gatorade cup.

8 This is the residence. You can see straight this way
9 is the intersection, this is the yard that he came running
10 through, and this is the front door that was open and he
11 fell into the doorway. That's where he was found was in the
12 doorway.

13 Those are the clothing items that were taken off Mr.
14 Nichols and marked as evidence 14. The purple gloves you
15 see there are protective for us from bloodborne pathogens,
16 things like that. These are the clothing items, again, that
17 were cut off. Red sweat pants, a shirt, and again they were
18 cut off. They're still where we found them, where he fell,
19 essentially.

20 This is the blood spatter or cast off. As you can see,
21 it is right beside the door, but it is not high. I don't
22 believe that there was any blood higher than that, so it
23 appeared to me that he had fallen in the doorway.

24 MR. BROWN: Cause for speculation.

25 THE COURT: Sustained.

1 MR. BROWN: Thank you.

2 Q Detective, did you find any blood higher than two to
3 three feet off the ground?

4 A We did not.

5 Q Thank you.

6 A This is the shirt. I'm pointing at what is a hole in a
7 pants leg. You can see the blood-soaked clothing from all
8 the injuries that Mr. Nichols sustained. Again, that was
9 marked as evidence 14, and it was inside the doorway of the
10 house where he fell. That is the shirt that Mr. Nichols was
11 wearing. You can see quite a bit of blood that still it
12 appears to be draining off from the shirt that was cut off
13 of him, there was quite a good bit of blood, and you can
14 also see the droplets, and again where he fell right in that
15 doorway.

16 This is a photograph of Mr. Nichols' right hand, and
17 this is a photograph of Mr. Nichols in the ER, and all the
18 patching from the bullet strikes.

19 Q And, Detective, did you see Mr. Nichols when you got to
20 the scene?

21 A Yes, sir.

22 Q Do those patches, are those covering gunshot wounds
23 that he received that day?

24 A Yes, sir.

25 Q Is than an accurate depiction on how he appeared in the

1 ER?

2 A Yes, sir.

3 Q We've heard other testimony about the nature of the
4 wounds being leg strikes and a strike to the upper
5 extremities and the chest wound; is that what they were
6 referring to?

7 A It is.

8 Q Thank you very much, if you could retake the stand for
9 me.

10 DEP. SOL. THORNTON: Your Honor, with the Court's
11 permission, I'm going to disassemble and move this out of
12 everybody's way now.

13 THE COURT: Thank you.

14 Q Detective Fraser, and if you need the gloves for this,
15 let me know. Would you please open each of those envelopes
16 and examine what's inside. I believe you testified those
17 were .45 caliber shell casings? While you're doing that
18 Detective, out of curiosity, would a 45 Caliber casing be a
19 large caliber for a hand gun?

20 A It is.

21 Q What is carried by Beaufort?

22 A We use a .40 caliber, which is smaller than a .45.

23 Q As you're opening those, again, how many shell casings
24 did you find in the area where Trey Nichols was gunned down?

25 A There were nine casings in total.

1 Q All of them, were they of the same caliber or different
2 calibers?

3 A No, sir. They all appeared to be the same caliber.

4 Q Your Honor, if I could, if I could ask him to show one
5 of those to the jury, obviously -- Detective, are they all
6 relatively the same?

7 A Yes. Two are different from the others.

8 Q By different, how do you mean?

9 A Different manufacturers who made two of the shell
10 casings.

11 Q But same caliber?

12 A Yes, sir.

13 Q All right. Would you just pick one and with Your
14 Honor's permission, let him come down and show the jury.

15 THE COURT: Exactly. He needs to do it, if you will,
16 three different times just because he'll just present,
17 present, and then present a third time.

18 DEP. SOL. THORNTON: Yes, ma'am.

19 Q We'll just stop and do one on the left side, one in the
20 middle, and one on the right so everybody can see.

21 A Certainly. This is a CBC .45 auto shell casing.

22 (Shows to jury in three different perspectives.)

23 Q Thank you, Detective, if you'll take you seat. Have
24 you finished opening those?

25 A I have not opened all nine.

1 Q All right. How many have you opened?

2 A Four?

3 Q Well, leave the rest because they are in evidence as
4 the jury can open them later if they wish, but having
5 examined them when you collected them, they are all .45
6 caliber shell casings; is that right?

7 A That's right.

8 DEP. SOL. THORNTON: Your Honor, because these are
9 biohazards, I have not had them premarked, because I don't
10 like the court reporter to have to mess with it, so I'm
11 going to go ahead and get those marked now with the Court's
12 permission.

13 THE COURT: Okay.

14 (Court reporter marks next exhibits.)

15 Q Sergeant Fraser, I'm going to hand you what's been
16 marked for identification only as State's Exhibit's Five and
17 Six. Can you identify those for me?

18 A I can.

19 Q What are they?

20 A Item six is the red sweat pants that you saw in the
21 photos in the doorway that Nichols was wearing and Number
22 Five is the black tee shirt that was also in the doorway
23 that Mr. Nichols was wearing.

24 Q All right, if you would, please, make sure you have
25 your gloves on. If you would go ahead and open -- oh, I'm

1 sorry, before we do that, are you the one that collected
2 those items or were they collected in your presence?

3 A Yes, sir.

4 Q Had they been sealed and in a sealed condition since
5 that time?

6 A Yes, sir.

7 Q How do you know that?

8 A Because I sealed them.

9 Q All right. Does it reflect your initial somewhere on
10 the tape?

11 A It does not on the tape, but that's how I seal these;
12 all the way around.

13 Q Have they been altered or changed in any way since you
14 sealed them up and placed them in evidence?

15 A No, sir.

16 Q Is it an accurate reflection of the clothing as they
17 appeared and as the condition existed at that time?

18 A Yes, sir.

19 DEP. SOL. THORNTON: Your Honor, I'd ask that State's
20 Exhibit's Five and Six be moved into evidence.

21 MR. BROWN: Without objection to either the chain or
22 the authentication.

23 THE COURT: Very well, so admitted.

24 (State's Exhibit Number Five, black tee shirt, is
25 received into evidence.)

1 (State's Exhibit Number Six, red sweat pants, is
2 received into evidence.)

3 Q At this time, Detective, if you would go ahead and open
4 those seals and please show each of those to the jury. And,
5 if you would follow the same procedure as you did last time
6 Detective, stopping three times so that each juror has an
7 opportunity to see it, please.

8 A This is the black tee shirt that we removed from Mr.
9 Nichols at the scene in it's condition after being cut.

10 THE COURT: Now, keep your voice up.

11 SGT. FRASER: Yes, ma'am.

12 Q Detective, I have a quick question while you're putting
13 that back in the bag. Why is that considered a biohazard
14 and why do we handle that with gloves?

15 A There was a large amount of blood that was on the tee
16 shirt, that's why it's considered a biohazard and we handle
17 it with gloves because of any pathogens that may be in it.

18 Q Is it easier to see where the blood is on the pants
19 instead of the black tee shirt?

20 A Much easier. This is the pants that were cut off Mr.
21 Nichols and you can see several of the bullet holes in them.

22 Q Thank you, Detective, if you'll put those back in the
23 bag and retake the stand, please.

24 (SGT. FRASER COMPLIES.)

25 Q Detective, I'm going to hand you what's been marked for

1 identification as State's Exhibit Number Three; can you
2 identify that for me?

3 A I can. This is the aluminum Coke can that we
4 collected. I believe it was in placard Number Three.

5 Q Was that collected by you or in your presence?

6 A It was. It was in the same condition.

7 Q Has it been altered or changed in any way?

8 A No, it hasn't.

9 Q And that is the same Coke can you testified that was
10 seen in the photographs next to all the shell casings?

11 A That's correct.

12 DEP. SOL. Your Honor, at this time, I would move
13 State's Exhibit Number Three into evidence.

14 MR. BROWN: Without objection as to either
15 authentication or chain of custody.

16 THE COURT: Very well. In evidence, without objection.

17 [State's Exhibit Number Three, aluminum Coke can, is
18 received into evidence.]

19 MR. BROWN: Your Honor, may we approach?

20 THE COURT: Sure.

21 Q I'm going to hand you, only for identification, what's
22 been marked as State's Exhibit Number Four, and without
23 making reference to any markings or anything on it, can you
24 identify that document?

25 A I can.

1 Q What is that?

2 A It's a photo array.

3 Q Okay. And in that photo array, does anybody in this
4 courtroom appear in that photo array?

5 A Yes.

6 Q Who appears in that photo of array?

7 A The defendant.

8 Q Is that the defendant, Jabari Lennin?

9 A It is.

10 Q What number is he on the photo array?

11 A He is number four.

12 Q All right. Detective, once you got done at the scene,
13 obviously you had the victim in this case was in the
14 emergency room with for obvious reasons with multiple
15 gunshot wounds, did you at some time talk to the victim in
16 this case, Trey Nichols?

17 A My partner, Investigator Zaymar, did.

18 Q Without regard to anything specific he said, was he
19 able to provide information to assist in your investigation?

20 A He was.

21 Q And again, without regard to anything he said or did
22 with what's been marked only for identification at this
23 point as State's Number Four, was he able to make an
24 identification of the shooter?

25 A He was.

1 DEP. SOL. THORNTON: Court's indulgence, Your Honor,
2 for one moment.

3 THE COURT: Sure.

4 Q As part of your investigation detective, as the results
5 of information provided to you, did you at some point speak
6 with a person named King David Williams?

7 A Yes, sir, I did.

8 Q Is that not a title, but an actual name?

9 A His name is King David Williams, yes.

10 Q Did you talk to Mr. Williams and was he able, again
11 without regard to what he said specifically, did he provide
12 information to you?

13 A He did.

14 Q Was that in your capacity as investigating this case?

15 A Yes, it was.

16 Q All right. Other than the discussion that you had and
17 the interviews of Mr. Williams and any other witnesses, what
18 else, if anything, did you do with regard to this case?

19 A We executed a search warrant at Mr. Lennin's
20 grandparent's residence.

21 Q All right. And did you find -- let me ask you this,
22 did you ever find a gun?

23 A No, we never did find a gun.

24 Q So there was nothing to test these shell casings
25 against?

1 A There was not.

2 Q So you did a search warrant you said at Mr. Lennin's
3 what?

4 A Grandparent's house, I believe.

5 Q Did you find anything?

6 A We found clothing. When we entered the residence, the
7 room was well kept, the residence primarily was well kept,
8 and we found, I believe it was a white shirt and a black
9 pair of shorts that had appeared to have been thrown out, or
10 thrown off, rather.

11 Q Okay. So they were out of place?

12 A They were.

13 Q Is there anything of particular importance about the
14 white shirt?

15 A They fit the general description that we were given of
16 clothing worn by the defendant at the time.

17 Q By the defendant or by the person who shot?

18 A By the person who shot.

19 Q Which, in this case, is the defendant?

20 A That's correct.

21 MR. BROWN: Your Honor, that's actually somewhat of an
22 opinion about whether or not the person who shot was -- I
23 guess, and I'll withdraw, Your Honor, but I think it is; I
24 apologize.

25 THE COURT: Okay, go ahead.

1 Q All right. Maybe I'll have to be a littler clearer.

2 The person alleged to have been the shooter, you were given
3 a description of what clothing they wore?

4 A Yes, a general description.

5 Q What was the clothing that they were to alleged to have
6 worn?

7 A A white shirt, and I believe it was dark pants or
8 shorts.

9 Q Okay. Did you find something matching that description
10 at Jabari Lennin's grandparent's house?

11 A We did.

12 Q Is there anything else, Detective, that you can think
13 of in regards to the investigation of this case, other than
14 what we've gone over?

15 A I don't believe so.

16 Q At some point, as a result of your investigation, did
17 you make an arrest in this case?

18 A Yes, I did.

19 Q Who did you arrest for this crime?

20 A I arrested the defendant in this case, Jabari Lennin,
21 as well as King David Williams.

22 Q All right. What was the arrest for King David Williams
23 on?

24 A King David Williams was charged with accessory before
25 the fact, Class A felony.

1 Q What was Mr. Lennin charged with?

2 A Mr. Lennin was charged with attempted murder for the
3 shooting of Mr. Nichols and for possession of a weapon
4 during the commission of a violent crime; the attempted
5 murder being the violent crime.

6 Q Just a couple of follow up questions. I've asked this
7 of a couple other folks, what county is this located in?

8 A This is within the jurisdiction of Beaufort County.

9 DEP. SOL. THORNTON: Your Honor, subject, of course, to
10 recall, my case officer, I have no further questions at this
11 point. I'd ask him to answer any questions of Mr. Brown.

12 THE COURT: All right. Cross-examination.

13 MR. BROWN: May it please the Court, Your Honor?

14 THE COURT: Yes.

15 CROSS-EXAMINATION

16 BY MR. BROWN:

17 Q You had mentioned Class A felony, what is a Class A
18 felony?

19 A Attempted murder.

20 Q What does it mean to be a Class A felony?

21 A I couldn't give you the definition off the top of my
22 head, sir.

23 Q Okay. I was just curious. Now, let me ask you this,
24 you talked to Mr. Williams at some point?

25 A King David?

1 Q Yes, sir.

2 A Yes.

3 Q Okay. And you also charged Mr. Williams?

4 A I did, yes, sir.

5 Q And the reason why I ask that, didn't you tell Mr.

6 Williams when you were talking to him that you weren't going
7 to charge him?

8 A No, I believe what I told him was that I didn't have
9 any warrants for him.

10 Q And, in fact, was that not exactly the way the
11 interview ended?

12 A No, at the end of the interview, he was arrested.

13 Q Okay. Didn't you tell Mr. Williams that you knew all
14 about Trey Nichols?

15 A I did.

16 Q Was that true?

17 A No. May I explain?

18 Q Sure.

19 A We use several tactics during an interview. There are
20 several different techniques used to talk to people during
21 an interview to build feelings between the two. Once
22 somebody feels more comfortable with you, they're more
23 willing to speak with you, and that's what I was doing was
24 trying to build the comfort level between King Williams and
25 I.

1 Q Why do you think it would make Mr. Williams more
2 comfortable if he believed you knew all about Trey Nichols?

3 A People are more likely to talk to you if they feel that
4 you already know what's going on.

5 Q What was it that you believed would make Mr. Williams
6 feel more comfortable if you knew all about Trey Nichols and
7 if you didn't know Trey Nichols at all?

8 A Because I knew King Williams was at the scene when the
9 shooting occurred. I wanted him to feel like I knew exactly
10 what had happened, therefore, he would be more comfortable
11 and willing to talk to me about it.

12 Q Now, apart from saying that you knew what already
13 happened, because you tell him that at one point, but what
14 is it about knowing all about Trey Nichols -- what does that
15 have to do knowing all about him, not just that he was shot?

16 A Just in general. I knew about what was going on and
17 trying to build a repore.

18 Q Let me break that down. Did you have a chance to speak
19 to Mr. Nichols at that point and time?

20 A At the scene?

21 Q Yes.

22 A No.

23 Q Okay. So you hadn't spoken to Mr. Nichols at all?

24 A No, I had not. My partner did.

25 Q Your partner did. Okay. But, did you know all about

1 him?

2 A No, I did not know all about him.

3 Q When was the first time you ever met Mr. Nichols?

4 A The first time I met him was in, I believe, 2009.

5 Q Okay. That wasn't related to this?

6 A No, it was not related to this.

7 Q You didn't in any way mean that the meeting in 2009 was
8 part of what you knew all about him?

9 A No. Again, I just said that I knew him to further help
10 Mr. Williams feel more comfortable with me sitting in the
11 room after such an incident as this and adrenaline still
12 going. I was trying to make the comfort level more between
13 he and I so the flow of information would be better.

14 Q And is that also when you mentioned that you knew all
15 about the beef between Jabari Lennin and Mr. Nichols?

16 A The only beef that I knew of was from his girlfriend.

17 Q But that's part of what you were telling Mr. Williams?

18 A Right. And again, that was an interview I conducted
19 prior to an interview with Mr. Williams. It was on scene.

20 Q Let me ask you, in this case, was there a reference to
21 a Leah Blanding?

22 A Yes, there was.

23 Q Can you tell me who Leah Blanding is?

24 A I can. Leah Blanding is Desiree Blanding's mother, I
25 believe; Desiree Blanding being the defendant's girlfriend.

1 Q Fiancée.

2 A Fiancée, excuse me.

3 Q I want to make sure, are you sure Leah's not the sister
4 and Regina's the mother.

5 A I'm not sure about that.

6 Q Okay. And had you ever spoken with the Blanding's
7 before about Mr. Nichols?

8 A I don't know.

9 Q Is there something that you would have access to that
10 would refresh your recollection?

11 A I don't know.

12 Q Is there a way that we could find out whether there was
13 something out there that might refresh your recollection?

14 DEP. SOL. THORNTON: Objection, Your Honor. May we
15 approach?

16 THE COURT: Yes.

17 (Whereupon, a bench conference is held off the record
18 and out of the hearing of the jury.)

19 MR. BROWN: Thank you.

20 Q Investigator Fraser, if you went over to your computer
21 data base at the Sheriff's Department, do you think you
22 could find out whether or not there were documents related
23 to the Blanding's or any interactions you had with them?

24 A Absolutely.

25 Q Okay. So you don't know whether or not you have had

1 some discussions with Leah Blanding in the past that would
2 be somehow in a document?

3 A Sir, I work hundreds of cases a year. I don't recall
4 one specific person, typically.

5 Q Okay. But you did recall that you knew her when you
6 heard the name?

7 A Yes.

8 Q Okay. Who did you speak to, because I think we had
9 heard that you had spoken to, I guess, Ms. Flynn and Officer
10 Zaymar, those are two people you spoke to?

11 A Ms. Flynn. Yes, sir.

12 Q You spoke to Paul Mitchell?

13 A Yes, sir.

14 Q All right. And Paul Mitchell was here earlier today
15 and he lives with the Blanding's, also?

16 A Yes, sir.

17 Q And you spoke to Desiree Blanding, as well?

18 A I did.

19 Q Did you ever speak to Leah Blanding?

20 A I don't know that I did.

21 Q Did you ever speak to Regina, the mother?

22 A Regina Blanding?

23 Q Yes.

24 A I don't believe I did.

25 Q Or Robert Blanding?

1 A No, sir. From what I understood when I arrived at the
2 residence that they didn't even know anything had happened
3 and I think Mr. Mitchell, Leah, and maybe other person, were
4 the only one's there at the time. If I recall right, it was
5 the three of them that were there at the time when I came
6 down, right after the shooting.

7 Q Okay. When you did the investigation of this case, is
8 one thing you look at, in a shooting case, is whether the
9 shooting is lawful or unlawful?

10 A Are you asking me, sir?

11 Q Yes, sir. Is that one of the things you look at?

12 A Typically, that's the question that we ask at the
13 prosecutor's office. We don't generally, as law enforcement
14 officers, decide if something is okay to do or not okay, we
15 present it to the prosecutor's office. We don't make that
16 assumption.

17 Q I gotcha. But there is at least an investigative
18 question about whether a shooting would be lawful or
19 unlawful?

20 A Sure.

21 Q The prosecutors don't go out personally and investigate
22 cases, do they?

23 A No, sir.

24 Q So y'all have to investigate, I think as you mentioned,
25 the facts?

1 A Yes, sir.

2 Q All right. So you have to investigate the facts and
3 then provide them the facts to decide whether it was a
4 lawful shooting or an unlawful shooting?

5 A That's correct.

6 Q Do you recall during your investigation that issue for
7 this case. Do you recall being privy to a Sheriff's
8 Department report 2010-08-04-07-04?

9 A May I see it, sir?

10 Q Sure.

11 A (Witness reviews statement.) I don't recall seeing
12 this, sir.

13 Q Okay.

14 A May I read it?

15 (Brief pause in the courtroom.)

16 Q Sure. Out of curiosity, during your investigation, you
17 don't recall reviewing that?

18 A No, sir, I don't.

19 Q Out of curiosity, did, at any point and time, did
20 anybody else provide you with this or mention anything about
21 that, on your side, when you were doing this investigation
22 with the prosecutor's office?

23 A Mr. Mitchell noted when I went out to the Blanding's
24 residence at the end of Luther Warren, he mentioned that the
25 police had been out there earlier in the day.

1 Q And had been out where earlier in the day? To the
2 Blanding's house or to Mr. Nichols' house?

3 DEP. SOL. THORNTON: Objection, Your Honor. May we
4 approach?

5 THE COURT: Sure. In fact, we will take our afternoon
6 break while I do this. We will take 15 minutes. Step to
7 your jury room. Leave your notepads in your seat. Do not
8 discuss this matter or allow anyone to discuss it with you.
9 We'll take 15 minutes.

10 (4:00 P.M., WHEREUPON, THE JURY EXITS THE COURTROOM, AND
11 THE FOLLOWING IS HELD ON THE RECORD.)

12 THE COURT: Okay. Now the question was?

13 MR. BROWN: My question was whether or not he had seen
14 that report, and that report was from the August 2010 that
15 was prohibited from going into specific instances. I only
16 asked whether he had seen that report during his
17 investigation of facts about whether it would be lawful or
18 unlawful, that was it.

19 Then I asked if he had spoken to the people out there,
20 and at some point and time he said he had spoken to Paul
21 Mitchell and that Paul Mitchell -- and I didn't ask this
22 question -- Paul Mitchell told him, that is hearsay. Paul
23 Mitchell told him the police had been out there that day,
24 and Your Honor, not having knowledge of the case, it's a
25 little ambiguous. Mr. Mitchell's statement was made the

1 day of the shooting April 21, 2011. I never even asked what
2 Mr. Mitchell told him, it was volunteered and it has nothing
3 to do with August 2010. Mr. Mitchell's statement, which
4 appears in the discovery of this case, says that "I was
5 walking to the store on the way coming back our neighbor
6 said the police was talking to Trey, telling him to take a
7 walk, because he was arguing with somebody." That's the
8 case here. All I showed him was the 2010 report and asked
9 him if he had looked at that report.

10 DEP. SOL. THORNTON: Judge, that's absolutely not true
11 and if we need to have the court reporter read it back. Mr.
12 Brown ---

13 MR. BROWN: We ---

14 THE COURT: Go ahead.

15 DEP. SOL. THORNTON: Mr. Brown is famous for this. He
16 already knows that he can't go into specifics. The only
17 thing he can talk about is what your reputation is. So he
18 takes a specific report about the specific incident and
19 hands it to the officer and says, "Have you ever seen this
20 report?" "No, I haven't." "Nobody showed you this report?
21 You never talked to anybody about the report?"

22 He is doing exactly what I knew he was going to do,
23 Judge, which is he takes your ruling that he can't go into
24 specifics and then he tries to ask general questions to boot
25 strap and then be able to talk about specifics. I don't

1 object to what the officer says about Mr. Mitchell's, I
2 mean, it's hearsay, but that wasn't what I was objecting to.

3 What I'm objecting to is his continual questioning and
4 handing up an incident report on the specific date that
5 you've already prohibited him from talking about and said,
6 "You cannot, Mr. Brown; don't go into the specifics." So he
7 hands him a report to ask him about it. It doesn't get much
8 more specific than that.

9 MR. BROWN: Your Honor, I didn't ask one thing about
10 that report. In fact, if I did, Your Honor would know what
11 the incident was and we didn't, because that's the incident
12 where they threw the table through the TV; we never heard
13 anything about it.

14 DEP. SOL. THORNTON: I'm sorry, Judge, I must have been
15 somewhere else when he handed him the report and said, "Have
16 you ever seen this report?" and nobody's ever -- to me,
17 that's asking about the report.

18 MR. BROWN: But not about the incident.

19 DEP. SOL. THORNTON: Just the report that the incident
20 references.

21 MR. BROWN: I asked him about whether he'd seen that
22 report to determine whether or not he conducted an adequate
23 investigation to the justification or lack thereof at issue.
24 I was just trying to find out if he's looked at all the
25 reports he had available and he said he hadn't seen that

1 report and I never asked him. I don't know what specifics I
2 asked. The only reference was by case number. I gave a
3 case number and that's all I gave. And I would relish the
4 opportunity hear the questions and answers back.

5 THE COURT: So ---

6 MR. BROWN: For what it's worth there was no objection
7 made at that point and time, the only time when there was an
8 objection was about Paul Mitchell's statement in this case,
9 which I didn't -- I just asked him who he spoke to that day
10 he went out there. Zaymar, Flynn, the Blandings, Mr.
11 Mitchell, and then the officer volunteered what Mr. Mitchell
12 said.

13 THE COURT: Okay. I'm going to have to hear it back,
14 because I thought we were talking about the document, but
15 let me listen to it back.

16 MR. BROWN: It is confusing, but Mr. Mitchell has
17 nothing to do with this report thing.

18 THE COURT: And you're okay with Mr. Mitchell's ---

19 DEP. SOL. THORNTON: I think it's hearsay. I didn't
20 object to it because I knew it was going to come in anyway.
21 My issue is Mr. Brown's -- you know this is more of trying
22 to prevent this from happening again.

23 THE COURT: I'm with you.

24 DEP. SOL. THORNTON: If you have ordered him not to
25 mention specifics, then he shouldn't be able to take a

1 report that none of us can now mention and say, "Have you
2 seen this report about this incident, that, oh, jury, we
3 can't talk to you about," like it's a big secret. Judge,
4 I've been doing this long enough to know what he's doing.
5 I'm not asleep over here. That's my issue. Because next,
6 Judge, he'll be handing him a thing about the CSC charge
7 going, "Hey, did you ever investigate this charge? What
8 about this?" that we can't talk about. I mean, it's
9 ridiculous.

10 MR. BROWN: I never said charge.

11 THE COURT: Okay. Let me listen to it.

12 MR. BROWN: Your Honor, and for what it's worth ---

13 THE COURT: The problem is the concern about the
14 report.

15 MR. BROWN: Your Honor, I've already asked him when he
16 met Mr. Nichols, and that was in 2009, and I moved on. And
17 then I asked if he had seen the report 2010-08-0704, and he
18 said he had not and that was it.

19 DEP. SOL. THORNTON: That wasn't it. Then you moved on
20 and said, "Nobody from your department showed you this
21 report?" and I don't know how far he's going to go.

22 THE COURT: Okay. Go and take a break.

23 (WHEREUPON, THE JUDGE COMES DOWN TO LISTEN TO THE AUDIO
24 FROM PREVIOUS QUESTION AND ANSWERS. THE COURT IS IN A BRIEF
25 RECESS AND THEN THE FOLLOWING IS HELD ON THE RECORD.)

1 THE COURT: Are you ready?

2 DEP. SOL. THORNTON: Yes, ma'am. I do have a
3 housekeeping matter, though, just so we don't have to ask to
4 approach again. It's 4:15, depending on how much longer,
5 even it's not that long that Mr. Brown goes in this. I
6 would ask that we stop. I think I only have two witnesses
7 left, at most three. They're going to be pretty long, and
8 I'd rather start over it with him if that's all right with
9 Your Honor?

10 THE COURT: I'm with you completely. I feel your pain.

11 DEP. SOL. THORNTON: I just wanted to ask.

12 THE COURT: I got it. I'm with you. I agree. I
13 concur. Mr. Brown, are you ready to go?

14 MR. BROWN: I am.

15 THE COURT: Fantastic. Let's have our jury.

16 (4:20 P.M., WHEREUPON, THE JURY ENTERS THE COURTROOM,
17 AND THE FOLLOWING IS HELD ON THE RECORD.)

18 THE COURT: Ladies and gentlemen, we will continue with
19 the State's case and the cross-examination. You may
20 proceed.

21 MR. BROWN: May it please the Court, Your Honor?

22 THE COURT: Yes.

23 CROSS-EXAMINATION CONTINUES

24 BY MR. BROWN:

25 Q And I think you had mentioned Paul Mitchell right

1 before we broke and that you had mention that you had spoke
2 to Paul Mitchell, and I don't want to put words in your
3 mouth, but he gave you some statement, I think you had
4 mentioned.

5 A A written statement. Yes, sir.

6 Q Okay. He indicated that the police had been out ---
7 DEP. SOL. THORNTON: Objection. Hearsay, Your Honor.
8 MR. BROWN: It was already in. I was just trying to
9 make sure that that was what his previous objection, which
10 wasn't the hearsay.

11 THE COURT: I know, but it exists now.

12 MR. BROWN: Okay.

13 Q Quite frankly, I guess what you mentioned is already in
14 the record and the jury has access to that if they need to
15 play it back later. Okay. But no question you took a
16 statement from Mr. Mitchell on April 21st, 2011?

17 A Yes, sir.

18 Q Okay. All right. And following up on your
19 investigation and what you looked at and gathered to provide
20 the prosecutor's office information about justification or a
21 lack thereof; remember that's what we were talking about?

22 A Yes, sir.

23 Q Okay. That is one thing that you are familiar with is
24 what is called a justified shooting?

25 A Correct.

1 Q All right. And I'm going to ask -- I'm going to ask if
2 you had an opportunity ---

3 MR. BROWN: Your Honor, if I might approach the
4 witness?

5 THE COURT: Yes.

6 Q I'm going to ask if you had the opportunity to review
7 case report 2011-02-05-43 ---

8 THE COURT: Now, has that been marked for
9 identification purposes?

10 MR. BROWN: No. I'll take it back because I was going
11 to ask if it would refresh his recollection. I'm just
12 trying to find out --

13 THE COURT: Oh, just to refresh his recollection.

14 MR. BROWN: Yes, I'm sorry. I did skip ahead and just
15 went ahead and gave it to him.

16 Q Okay. And is that something that you gathered in the
17 course of the investigation of this shooting?

18 A Yes, sir.

19 Q All right. Specifically, as to the question about
20 specific instances of violence of Mr. Nichols, can you tell
21 me what the Sheriff's Department report lists as the
22 incident type?

23 DEP. SOL. THORNTON: Objection, Your Honor. If he
24 wants to introduce it, he's got to introduce it. Unless
25 this officer is the author of it, he can't even put it in

1 through this officer.

2 THE COURT: A document, in order to be published, must
3 be in evidence.

4 MR. BROWN: I understand. I'm not looking to publish
5 it.

6 THE COURT: Didn't you just ask him to read the title
7 of it?

8 MR. BROWN: No. And I'll ask the question more
9 artfully, Your Honor.

10 THE COURT: Okay.

11 Q Was this one of the things that you gathered regarding
12 the question of whether Mr. Nichols was the aggressor in
13 this shooting?

14 A No.

15 Q You did not look at this report?

16 A I looked at the report.

17 Q You didn't look at this as related to this shooting?

18 A No.

19 Q When did you look at this report?

20 A I'm sorry. Yes, I reviewed this after the shooting. I
21 did not look at this in light of the shooting.

22 Q I'm sorry, I must have misunderstood.

23 A This did not have any weight or bearing on this case as
24 I viewed it.

25 Q Chronologically speaking, when did you look at this

1 report?

2 A After the shooting.

3 Q Okay. So you didn't have it in -- was there another
4 reason you looked at it at the sight of Mr. Nichols being
5 shot?

6 A No, sir. After the incident, I just pulled names of
7 people that I knew were involved and I reviewed what we had
8 in our system.

9 Q Okay. And this wasn't something in the system for
10 Jabari Lennin was it?

11 A No.

12 Q All right. Anybody else that this was related to when
13 you pulled those names?

14 A This was related to the victim, Mr. Nichols.

15 Q This report?

16 A Yes, sir.

17 Q Any other names that came up when you cross referenced?

18 A Mr. Lennin?

19 Q No, any other names. You said it wasn't Mr. Lennin.

20 DEP. SOL. THORNTON: Objection, Your Honor. He's still
21 asking for information from the report. If he wants to
22 bring the officer in who authored the report or one of the
23 people mentioned in the report to testify about an incident
24 in the report, he can. He cannot ask for him to give him
25 information off the report. The report is not in evidence.

1 MR. BROWN: And I didn't ask him for anything for the
2 truth or matter asserted. I asked him how or why he looked
3 at it, and he said he went through and ran the names in
4 their little database and this report came up for Mr.
5 Nichols.

6 THE COURT: I know. You may proceed.

7 MR. BROWN: Thank you.

8 Q And so anyone else's name that triggered, or came up,
9 when you were doing that database search?

10 A Yes, sir. Anytime anybody has contact with law
11 enforcement there name is essentially entered into our
12 database. Anytime you get a warning ticket, anytime you
13 make an animal complaint, anytime there is law enforcement
14 contact, we generate paperwork on that contact.

15 Q Okay. So related to this report, is Mr. Daise's name
16 also cross referenced?

17 THE COURT: All right. Yes, that is publishing the
18 report.

19 DEP. SOL. THORNTON: Thank you, Your Honor. It's the
20 same objection.

21 Q Did you run Mr. Daise's name?

22 A No, I did not.

23 Q Okay. But you ran Mr. Nichol's name?

24 A Yes, sir.

25 Q All right. That's what led you to read this report?

1 A Yes, sir.

2 Q All right. And again, that was 02-05 is the report
3 number, for future reference.

4 DEP. SOL. THORNTON: 843.

5 MR. BROWN: Right. And the first part is the --

6 DEP. SOL. THORNTON: Your Honor, if I could save us
7 some time. If Mr. Brown would like to introduce somebody to
8 testify to the report, or introduce the report itself, I'd
9 be happy to entertain that, but he keeps going back to the
10 same thing of trying to get information off the report into
11 evidence without putting the report in.

12 MR. BROWN: I'm absolutely not. I'm trying to make
13 sure the jury knows this is cross reference to a report that
14 came up on his search of Mr. Nichols.

15 THE COURT: That's called publishing the report.
16 Here's the rule. The rule is if you wish to refresh his
17 recollection, you can join the Manhattan Phone Book,
18 remember that in law school?

19 MR. BROWN: I'm going to ask him ---

20 THE COURT: But if you ask him to verify any specific
21 information from the report, specifically, then the report
22 is being published. It might just be a little bit and not a
23 whole bunch, but it has to be in evidence, okay?

24 MR. BROWN: Clearly.

25 Q How many things were you able to get regarding Mr.

1 Nichols?

2 A I don't recall.

3 Q All right. Where would you put the results of your
4 investigation?

5 A They would be contained in my file.

6 Q Where is your file?

7 A Right in front of me.

8 Q And that includes everything that you were able to look
9 up in the database?

10 A No.

11 Q Where would you put that information?

12 A I wouldn't print all of it, sir. Not all of it I felt
13 was relevant. Things that happened months prior to this
14 incident, I didn't feel were relevant to this incident.

15 Q How many months do you think it was that was relevant?

16 A Again, we're talking -- in this case, this was two
17 months prior to this incident with people that were not
18 involved in the incident. I did not feel this report was
19 relevant with this case. There was no need, in my opinion
20 at the time, to pull this report and add it to the case
21 file, and I've reviewed it and looked it over, I didn't feel
22 it was relevant to this case, so I didn't print it off.
23 That's the same thing for any tickets, warnings, any ---

24 Q Let me ask you, what other reports did you review and
25 not think were relevant?

1 DEP. SOL. THORNTON: Objection, Your Honor.

2 THE COURT: Sustained.

3 MR. BROWN: Your Honor, I'm trying to show the
4 inadequacy of the investigation turned over to the
5 prosecutor. He said he doesn't make a decision whether it's
6 justified, he just gets the information to them. But we
7 also just heard that if he doesn't think it's important, he
8 doesn't even give it to them. Just saying. And so I'm
9 trying to show not the truth of the matter asserted.

10 THE COURT: Hold on.

11 MR. BROWN: Yes, ma'am.

12 THE COURT: Ladies and gentlemen, I need you to step to
13 your jury room. Do not discuss this matter or allow anyone
14 to discuss it with you. I don't think we will be long.

15 (4:30 P.M., WHEREUPON, THE JURY EXITS THE COURTROOM,
16 AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE RECORD.)

17 THE COURT: All right. State your objection.

18 DEP. SOL. THORNTON: The objection is on two grounds.
19 One, Judge, he is now asking about reports, some of which
20 include information you've already told him he can't ask,
21 which would include -- and he asked him in what other
22 reports. Well, there's the report CSC, the other report
23 that we were just talking about a minute ago that he swore
24 he was done with and wasn't going to retouch on.

25 Now, he's asking him what other reports there are.

1 You've already ruled on those that they can't be gone into,
2 number one. Number two, it's hearsay, and he absolutely is
3 trying to go into truth of the matter asserted because these
4 are the incidents that he wants to use to say that Trey
5 Nichols is a danger to the community and deserved for, you
6 know, for Jabari to gun him down multiple times.

7 He's using those as incidents of truth to show that he
8 has some predilection for violence. So him claiming that he
9 doesn't care if they're true or not is ridiculous. So I
10 have this objection on two grounds. One, he is asking about
11 items that you've already excluded as evidence; two, it's
12 hearsay. He has the ability, if he wants to, on the matters
13 that you said he can go into specifics, he's got probably 50
14 people subpoenaed; any of the victims in those cases, if he
15 wants to, he can call and have them testify. He can't just
16 randomly ask about reports of incidents that you've already
17 indicated, it's a State's position, that you've already
18 indicated are not admissible for a variety of reasons; in
19 addition to that, it's hearsay.

20 THE COURT: Okay.

21 MR. BROWN: Take them separately. I'm not referring to
22 the reports by the incident type. I have yet to say assault
23 and battery or any of those things. I'm referring to them
24 by the only number that's on there, which is their case
25 number. And it is very relevant because they have put up a

1 lot of information, quite frankly, I don't think it's
2 relevant to the issue here, which is how many gun casings,
3 bullet casings they've found, or the shirt where he was shot
4 and things like that, but it's part of his case. So he puts
5 it in, and I point that out because I think the idea is, is
6 they're going to show thoroughness of their investigation
7 because Kyle v. Whitley, former Justice Suiter, puts in that
8 opinion that the oldest defense, and the most conservative
9 defense, is a lack of thoroughness in the allegation or
10 investigation of the defendant. That's the oldest one.
11 Well, you didn't investigate enough; that's the oldest
12 defense. That's the most conservative one. All I'm asking
13 about is what he looked at and what he turned over. I'm not
14 asking for the truth and I've never even brought up any of
15 these allegations. I think Mr. Thornton's problem is
16 there's so many reports that might be relevant to Mr.
17 Nichols; that is exactly the problem. I think he wants to
18 say is that it's too prejudicial for the jury to hear that
19 there were a lot of reports.

20 THE COURT: Let me tell you -- here's my concern.

21 MR. BROWN: Yes, ma'am.

22 THE COURT: My concern is that when you ask the
23 question, "What did you look at?" "What did you review?"
24 "What was important for you to make the determination to
25 seek an arrest warrant against your client?"

1 MR. BROWN: Yes, ma'am.

2 THE COURT: That's a different question and he's giving
3 you an answer to that: I went through and went to the
4 database. I pulled certain information.

5 MR. BROWN: Right

6 THE COURT: But my problem is, is when you start asking
7 him about this report and that report and this report and
8 that report, what that does is -- my concern is, is that
9 there are certain of those police reports that I have told
10 you that you cannot go into in terms of specific instances
11 of aggressive conduct.

12 MR. BROWN: None of these other one's are.

13 THE COURT: Yeah, you did, because you asked "did you
14 know about a certain report," and we're getting into that
15 time that I said you couldn't get into.

16 MR. BROWN: No, I've already passed those. This was
17 02-05, Your Honor. Your Honor, 02-05, you said was a ---

18 THE COURT: Well, you asked what other reports you just
19 ---

20 MR. BROWN: And I meant what others from 02-05, and I
21 apologize.

22 THE COURT: "What other reports did you look at?" Now,
23 here's the problem when you do that. "What other reports"
24 assumes that there are reports, when you assume that there
25 are reports, then the problem is, is that is at odds with my

1 decision. Now, when you ask the question as you have asked
2 the question, "What did you review?"

3 MR. BROWN: Yes, ma'am.

4 THE COURT: Now, if the door gets opened, the door gets
5 opened.

6 MR. BROWN: But I get to cross-examine, use leading
7 questions?

8 THE COURT: I know you can use leading questions.

9 MR. BROWN: Which would be, "Did you review this?"

10 THE COURT: But you cannot in your leading questions
11 intimate to those reports that I have excluded.

12 MR. BROWN: Never again. I won't. And this is 02-05-
13 11 in there, we were only going --

14 THE COURT: But you asked what reports did you look at
15 and that applies right into the face of it.

16 MR. BROWN: And I will go through and ask did he look
17 at this report, this report, this report, the only problem
18 I've got is I have to reference them somehow, and I figured
19 it's more innocuous to use the case number.

20 THE COURT: Can I ask you a question?

21 MR. BROWN: Yes, ma'am.

22 THE COURT: I mean you don't think he's a custodian of
23 those records?

24 MR. BROWN: I don't think he is.

25 THE COURT: Okay.

1 MR. BROWN: I don't think he has them in his files with
2 him, because I've asked for his file and they're not in
3 there. I just want to ask if he looked at it, and that's
4 it, because I suspect following down the road, we will get
5 into the people who can talk about the specifics as Your
6 Honor's allowed of where it's not hearsay. If I can bring
7 the people in and say, "This is what happened," and at the
8 end of the case -- and I hate to have to show my strategy,
9 but I don't mind doing in this respect ---

10 THE COURT: Well, you don't have to -- don't do that.
11 I don't want you to do that.

12 MR. BROWN: Well, I want to, because I don't want to
13 miss this opportunity that I do get to say, just like Suiter
14 says, that listen, the State formed a theory that my client
15 was guilty, but in reality, you've heard these other
16 incidents, and they did not consider those.

17 THE COURT: The one's that I have said ---

18 MR. BROWN: Allowing it.

19 THE COURT: Yeah.

20 MR. BROWN: Well, that was the one I just asking about.

21 2011-02-05 ---

22 THE COURT: Let me see you a second, because I have a
23 question I want to ask.

24 MR. BROWN: Yes, ma'am.

25 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD.)

1 THE COURT: Let's mark the ones that you know are
2 coming in.

3 MR. BROWN: Yes, ma'am. I've got copies right here.
4 Defendant's One through Six, and the one that's for ID only
5 is Three.

6 THE COURT: All right. So by agreement, what goes into
7 evidence is Exhibit One, Exhibit Two, Exhibit Four, Exhibit
8 Five, Exhibit Six.

9 MR. BROWN: Yes, ma'am.

10 DEP. SOL. THORNTON: The State has no objection to
11 those being introduced, Judge.

12 THE COURT: Not Three.

13 MR. BROWN: Yes, ma'am.

14 THE COURT: One, Two, Four, Five, and Six.

15 MR. BROWN: Yes, ma'am. And I'm assuming you still
16 want me to move them in?

17 THE COURT: They're in, but you can do it in front of
18 the jury.

19 (Defendant's Exhibit Number One, Incident report of 2-
20 5-11, is received into evidence.)

21 (Defendant's Exhibit Number Two, Incident report of 3-
22 23-11, is received into evidence.)

23 (Defendant's Exhibit Number Four, Incident report of 4-
24 13-11, is received into evidence.)

25 (Defendant's Exhibit Number Five, Incident report of

1 4-21-11, is received into evidence.)

2 (Defendant's Exhibit Number Six, Incident report of 4-
3 21-11, is received into evidence.)

4 MR. BROWN: Yes, ma'am.

5 THE COURT: All right. We will bring the jury back
6 out.

7 (WHEREUPON, THE JURY ENTERS THE COURTROOM, AND THE
8 FOLLOWING PROCEEDINGS ARE HELD ON THE RECORD.)

9 THE COURT: Ladies and gentlemen, at this time we will
10 continue with the State's case with cross-examination.

11 MR. BROWN: May it please the Court?

12 THE COURT: Yes.

13 CROSS-EXAMINATION CONTINUES

14 BY MR. BROWN:

15 Q Officer Fraser, we were talking about some reports and
16 this may make it a little easier. I'm going to show you
17 what has been entered into evidence as Defendant's Exhibit
18 One. Did you have a chance to look over that?

19 A I have.

20 Q Okay, great. And just for the record that's report
21 2011-02-05-843?

22 A Yes, sir. 02-05-2011 is the date.

23 Q Okay. What is the incident type listed on that report?

24 A The type is assault and battery in the third degree.

25 Q Who's listed as the victim?

- 1 A The victim is listed as Joseph Daise.
- 2 Q And what is his age?
- 3 A Fifty-six.
- 4 Q What is his height?
- 5 A He is six foot.
- 6 Q Who is listed as the suspect to that assault and
- 7 battery of the 56-year-old man?
- 8 A Kenneth Nichols.
- 9 Q Kenneth Nichols. What's his nickname?
- 10 A Trey.
- 11 Q Did it list the explanation of visible injuries
- 12 suffered by Mr. Daise?
- 13 A Left eye swollen shut.
- 14 Q Swollen shut?
- 15 A Yes, sir.
- 16 Q It wasn't just a little swollen?
- 17 A That's correct.
- 18 Q Okay. Do you know who made this report?
- 19 A I do.
- 20 Q And who was that?
- 21 A Corporal Rickevenia (sic).
- 22 Q Would he put any false information on this report?
- 23 A No. I also know that there was no arrest made.
- 24 Q Out of curiosity, why wouldn't they arrest somebody?
- 25 A Well, in this case, there is one statement of Joseph

1 Daise saying what happened. Typically, almost always,
2 there's two sides to every story, when you can't get the
3 second side, it's difficult to effect an arrest. In a case
4 like this, there are no witnesses to it, other than a loud
5 bang heard by Ms. Nichols and a statement made by Mr. Daise.

6 Q Let's read that statement from Mr. Daise.

7 A I also note on this, there is no other complaint of
8 non-visible injuries. The victim was advised on eviction
9 procedures and courtesy summon procedures to bring Mr.
10 Nichols to court and it doesn't appear that that was ever
11 done.

12 Q All right. So to make sure I understand this, is there
13 any question that Mr. Daise was sent to the hospital by
14 injuries inflicted by Trey Nichols, his own grandson?

15 A I know the report indicates it's later in the day that
16 Mr. Daise decided to go to Beaufort Memorial Hospital to
17 have his injuries evaluated. That's where BCSO was
18 contacted.

19 Q Okay. So let me make sure I understand this. The
20 injury was so bad, at least Mr. Daise thought he needed to
21 go to the hospital?

22 A That would appear right.

23 Q Okay. What does Mr. Daise say about this incident?
24 What's his -- since he did tell his side of the story, what
25 does he say?

1 A Mr. Daise stated that on 02-05-2011 at approximately
2 ten hundred hours, he left his residence, which is 871
3 Seaside Road, to go to the store. He stated he had returned
4 and was immediately attacked by Kenneth Nichols, the
5 suspect. Daise stated that Nichols tripped him by sticking
6 out his foot. Daise stated that when he was on the ground,
7 Nichols stood over him and punched him in the head with a
8 closed fist repeatedly. Daise said the only thing ever said
9 by Nichols was "Get up." Daise stated that Theresa Nichols,
10 the witness, pushed Nichols away from him and he was able to
11 get up. Daise stated that Theresa told Kenneth to gather
12 his belongings and leave the residence and Daise stated that
13 Kenneth grabbed his belongings and left without further
14 incident. Later in the day, he decided to go to the
15 hospital to have his injuries evaluated where BCSO was
16 contacted for assistance.

17 Q Okay.

18 A Ms. Nichols' statement is slightly different; may I
19 read that?

20 Q Oh, please. The whole thing is in evidence.

21 A Theresa Nichols stated that she was sleeping when she
22 was awoke by a loud bang coming from the living room. Upon
23 arrival, she observed Kenneth standing over Daise telling
24 him to get up. Theresa pushed Kenneth away from Daise and
25 advised him to gather his belongings and leave the

1 residence. Kenneth left without further incident. So as
2 opposed to what Joseph said, Theresa stated that she didn't
3 see the assault and that she essentially did not stop the
4 assault as Mr. Joseph Daise stated. Most likely, that's why
5 an arrest was not made or warrants weren't obtained, and he
6 was just advised on courtesy summons procedures because of
7 conflicting statements on scene and the fact that Mr.
8 Nichols did exactly what he was asked to do and leave.

9 Q I want to make sure I understand this. There's
10 something that is material, or substantial, conflicting
11 between Ms. Nichols and her husband, Mr. Daise?

12 A He stated that ---

13 Q No, I'm talking about is there something that you find
14 significantly different?

15 A I do. She said she was not in the room to witness it
16 and she didn't stop the attack.

17 Q Okay. But is there any contradiction about Ken Nichols
18 beating up his grandfather?

19 A Only Mr. Daise said he did.

20 Q Is there anything that Ms. Nichols contradicts?

21 A Again, she wasn't there to witness it as it would
22 appear she said she was there to see it, and she wasn't.

23 Q Now, he doesn't say that she was there. He said that
24 she pushed Kenneth away and she says she pushed him away.

25 A After the assault occurred. She doesn't know when the

1 assault occurred.

2 Q Wait, wait, wait. I want to make sure we understand
3 it; it's in evidence, because I don't want to argue with you
4 about it.

5 DEP. SOL. THORNTON: Objection, Your Honor. We are
6 going to keep repeating this. The document is in evidence.
7 The jury can read it for themselves.

8 MR. BROWN: And it speaks for itself and that's quite
9 fine, but I do want to ask this.

10 Q If Mr. Daise told law enforcement that he was beat up
11 by Mr. Nichols and he had a corroborating witness and that
12 the only person was there was Mr. Nichols, and he had a
13 swollen eye, is that sufficient evidence to attempt to get a
14 warrant?

15 A Yes, sir.

16 Q Thank you.

17 A And they were advised on summons procedures to obtain a
18 warrant, or a courtesy summons, to bring into Magistrate
19 Court, which they never did.

20 Q Whoa. But they called the police, didn't they?

21 A And also to note, they didn't call the police. The
22 incident occurred at 10:00 in the morning. The police were
23 not called until 4:55 in the afternoon. So we're talking
24 six, almost seven hours later, that the police were called.

25 Q That was after he was already in the ER?

1 A That's correct. But at any point during that seven
2 hours while at home, they could have called 911 and reported
3 the incident.

4 Q Okay. Had you ever heard of a delay in reporting?

5 A Sure.

6 Q Has that stopped you from getting warrants before?

7 A No, sir.

8 Q All right.

9 A When the evidence is there and the victims want to
10 pursue charges -- it appears in this case that they did not
11 pursue by going through with civil court -- or courtesy
12 summons procedures.

13 Q Did Mr. Daise call the police on his grandson?

14 A Sir, I'm not sure he called the police; it's what the
15 report says. I was dispatched from Beaufort Memorial
16 Hospital, emergency room five, in reference to a report of
17 assault and battery. A lot of times what happens is when
18 somebody comes in and has been assaulted, to the ER, the
19 person doesn't call 911; the ER staff does because it's
20 their policy to call 911 when something happens.

21 I can't tell you and the way that I read this report is
22 they didn't call 911 on scene, Ms. Nichols' statement is
23 slightly different than Mr. Daise's statement, Trey was
24 never advised, they were advised on how to pursue this
25 further and they didn't. It appears to me that they didn't

1 call 911, probably the ER did, but I can't testify to that
2 for sure. But again, that is ER practice.

3 Q Okay. So Mr. Daise didn't do enough to have Mr.
4 Nichols arrested?

5 A I can't testify to what happened, sir.

6 Q No, procedurally.

7 A Sure.

8 Q Mr. Daise didn't do enough?

9 A For one, it was not freshly committed. Seven hours had
10 passed since the assault allegedly occurred. It's not a
11 freshly committed act then we advise our courtesy summons
12 procedures, we don't go out and immediately effect arrest.
13 Had we responded to the scene, found probable cause to
14 effect an arrest on scene and been able to identify and
15 located Mr. Nichols and conduct a proper interview with him,
16 then he may have been arrested. I can't say one way or the
17 other, and in reading this report, it appears to me that he
18 went to the hospital. The hospital followed protocol and
19 called 911 and said there was an assault victim. BCSO
20 arrived and conducted an interview seven hours after the
21 fact and advised him on courtesy summons procedures, which
22 he did not follow through with.

23 Q Okay. So Mr. Daise, the victim, didn't do enough -- he
24 didn't follow through to have him arrested?

25 A It appears to me that he didn't want to do anything at

1 all.

2 Q Okay. We'll come to that later.

3 A That's how it appears to me.

4 Q Let me ask you just a couple of follow-up things. They
5 did gather evidence, didn't they?

6 A In the matter of?

7 Q Of this case. There was some actual evidence
8 collected?

9 A Photographs were submitted into evidence, yes, sir.

10 Q And those photographs include?

11 A A few digital photographs of the victim's injuries were
12 taken.

13 Q It shows his eye?

14 A Yes, sir.

15 Q Okay. That's entered into y'all's lab?

16 A Lab? No, sir. Evidence.

17 Q Evidence room.

18 A Yes.

19 Q Is there any question that Mr. Nichols was no longer
20 welcome at 871 Seaside Road?

21 A No, sir. It doesn't say that anywhere in the report.

22 Q Let's go back and look at that part, because I thought
23 that Mr. Daise had told him to get his stuff and leave and
24 his grandmother said the same thing.

25 A What I read, Daise said that Theresa told Kenneth to

1 gather his belongings and leave the residence. They stated
2 that Kenneth grabbed his belongings and left without further
3 incident. Later in the day, he decided to go to Beaufort
4 Memorial Hospital and have his injuries evaluated. Under
5 Ms. Nichols' statement, it says Theresa pushed him away from
6 Daise and advised him to gather his belongings and leave the
7 residence. Kenneth left the residence without further
8 incident. Typically, if you want somebody gone and not to
9 come back, you tell them don't come back. That is not in
10 this report.

11 Q Okay. Did they tell him to leave and take his stuff
12 with him?

13 A I believe he took his belongings.

14 Q Did they tell him to get his stuff and leave?

15 A They did.

16 Q Okay.

17 A Under Mr. Daise's statement it says to gather his
18 belongings and leave the residence, and in Ms. Nichols's
19 statement says she advised him to gather his belongings and
20 leave the residence, but again, that may have just been for
21 a period of cool-down time.

22 Q Are you speculating to that?

23 A I can't tell you for sure, because even in this report
24 you're asking me should he have left for good, it doesn't
25 say that in there.

1 Q I asked whether or not he was told to leave, that he
2 wasn't welcome.

3 A He was told to leave. Nowhere in there does it say he
4 was no longer welcome in the home.

5 Q Okay. Let me ask you. What is the statute of
6 limitations on charging somebody in South Carolina?

7 A There is not a statute of limitations in South
8 Carolina.

9 Q So you could charge him today with that?

10 A Sure. Provided they wanted to pursue charges and there
11 was evidence and corroborating evidence for it.

12 Q Would you say photos of a swollen eye are corroborating
13 evidence?

14 A It depends. That's one side of the story. There is no
15 witness that observed how the eye got swollen.

16 Q How about Mr. Daise?

17 A Mr. Nichols's story may be completely different.

18 Q Okay. Did y'all try to go -- is there any indications
19 that somebody even went to try and talk to him?

20 A Again sir, there was no further action taken on the
21 victim's part to pursue the matter any further.

22 Q So y'all didn't even go try to speak to Mr. Nichols?

23 A I'm sorry, sir?

24 Q Is there any indication the police even tried to go
25 talk to Mr. Nichols?

1 A I believe there is -- no, sir there's not. I'm sorry,
2 I apologize.

3 Q I'm going to ask you to take a look at Defendant's
4 Exhibit Two. If you'll let me know when you're finished
5 looking at it.

6 A Yes, sir.

7 Q All right. There are a couple of things I want to go
8 back to in the first report. Defendant's One, you said you
9 did look at that when investigating this case?

10 A I believe I did.

11 Q Okay. Defendant's Two, did you look at that when you
12 were investigating this case?

13 A I believe I did.

14 Q All right. And back to One real quick, what is the
15 height and weight of Kenneth Nichols?

16 A 6'5", 210.

17 Q All right. And in Defendant's Two, what is Mr. Nichols
18 listed as?

19 A 6'5", 200.

20 Q What is the victim's age in Defendant's Two?

21 A The victim is 62.

22 Q What is her height?

23 A 5'4".

24 Q What was the incident location on Defendant's One?

25 A 871 Seaside Road.

- 1 Q What is the incident location on Defendant's Two?
- 2 A 871 Seaside Road.
- 3 Q What was the incident type for Defendant's One?
- 4 A Disturbance and assault and battery third.
- 5 Q That was One or Two?
- 6 A Oh, I'm sorry. Which one did you want?
- 7 Q Defendant's One, what was that incident?
- 8 A Assault and battery third.
- 9 Q What was Defendant's Two?
- 10 A Disturbance and assault and battery third.
- 11 Q So we have an assault and battery third in February at
- 12 871, then we have an assault and battery in March at 871?
- 13 A That's correct.
- 14 Q What is the relationship, if you know, between the
- 15 victim in Defendant's Exhibit Two and Mr. Nichols?
- 16 A In the first line of page two, "Theresa stated today
- 17 that she had her grandson, Kenneth Nichols, over to the
- 18 house."
- 19 Q So long story short, this is an assault and battery
- 20 that Mr. Nichols, 6'5" battered his 62-year-old grandmother?
- 21 A That's what's alleged, yes, sir.
- 22 Q Is there anything to contradict it? Anything?
- 23 A There's no physical evidence of battery. Would you
- 24 like me to expand upon this one?
- 25 Q Is there anything contradicting the allegation of a

1 battery?

2 A The only evidence of a battery is a statement made by
3 the victim.

4 Q Is there anything that contradicts that?

5 A No, there's actually nothing else in this report.
6 There's no evidence of any kind.

7 Q Okay. So she didn't actually suffer visible injury
8 from impact?

9 A That's correct.

10 Q Okay. But she's still 62 years old; isn't that right?

11 A That's correct.

12 Q Let me ask you this. Have you ever heard of assault
13 and battery of a high and aggravated nature?

14 A I have.

15 Q Isn't it one of the things that makes it aggravated is
16 that there's circumstances of aggravation?

17 A Yes, sir.

18 Q Isn't one of the circumstances of aggravation a great
19 disparity in size?

20 A Yes, sir.

21 Q How about a disparity in sex?

22 A Yes, sir.

23 Q How about a disparity in age?

24 A Yes, sir.

25 Q In this case, we have an able bodied young man, the one

1 glaring in the back of the Court, an able bodied young man -
2 --

3 DEP. SOL. THORNTON: Objection, Your Honor. He's not
4 allowed to make those kind of characterizations and he knows
5 better.

6 THE COURT: Sustained.

7 Q An able-bodied young man who's beating up his elderly
8 grandmother?

9 A There's no allegations of beating up, sir.

10 Q What's a battery?

11 A A battery is actually putting your hands on someone.

12 Q What's assault in third degree, what does that require?

13 A Well the assault is the threat of, the battery is the
14 touching.

15 Q And with the injury under the new law, isn't it?

16 A I'm sorry?

17 Q There has to be injury under the new law?

18 A I'm not sure about that one. I mean, I'd have to look.
19 I'm not an attorney so I don't know the specifics of each
20 and every law as they do, but I would have to look to be
21 sure. A simple assault is what this appears to me to be
22 more of, but again, I'm not an attorney. I don't dictate
23 the law. I don't pretend to know everything throughout the
24 law, as the attorney's do.

25 Q Did Ms. Nichols say that Kenneth laid his hands on her?

1 A She stated that he pushed her. She said that she
2 pushed him and that he pushed her back.

3 Q And she was pushing him to go where?

4 A Out the door.

5 Q Because he wasn't welcome there, right?

6 A No. In the beginning of the statement, she stated that
7 -- Theresa stated today she had her grandson, Kenneth
8 Nichols, over at her house. Which this occurred a month
9 after the last one we talked about, so she still has him at
10 her house.

11 Q Okay. That's what I'm going to follow up. Why was she
12 pushing him out the door after she said she had him over at
13 the house?

14 A It appears, and again I was not there, that Kenneth
15 does not like Joe Daise, which is his grandmother's husband.

16 Q Well, let's go back to the sentence before that one,
17 but after the first one you read; the one you skipped.

18 A Theresa said that Kenneth was acting fine, but later in
19 the day he started getting into trouble.

20 Q Okay. So it looks like she was trying to get him to
21 leave after he became disruptive?

22 A That's not what it looks like at all. It looks like
23 she wanted him to leave because he started talking about Joe
24 Daise, who he doesn't like. It doesn't appear to me
25 anywhere in here that he intended any harm to his

1 grandmother.

2 Q He pushed her, right?

3 A Well, that push could have been bumping into her.

4 Q Okay. So if she said "push," she meant "bump," didn't
5 she?

6 A Again sir, I wasn't there I can't tell you for sure.

7 Q Okay. So you really don't know?

8 A I don't. What I do know is that this says that she
9 wanted him over at the house, so he was there. She asked
10 him to leave later on, and ultimately, he left.

11 Q Let me ask you, if Kenneth is the aggressor, that
12 doesn't help your case here, does it, today?

13 A Sure. It doesn't matter to me. There's only one way
14 to tell the truth.

15 Q Let me ask you. At the end, doesn't Ms. Nichols
16 indicate that Kenneth picked up a weapon and made a threat
17 to Joe Daise?

18 A What it says is that Joe Daise was not even there.

19 Q I understand, but you can still threaten somebody even
20 if they're not present.

21 A I'm sorry. How do you threaten somebody if they're not
22 there?

23 Q You communicate a statement as a threatening statement
24 and they're not there.

25 A So how is that ---

1 MR. BROWN: Your Honor, I don't know if he wants me to
2 keep answering, but I will gladly answer his questions if he
3 wants to ask.

4 THE COURT: No, sir. You ask the questions.

5 MR. BROWN: He's giving me questions back to mine and I

6 ---

7 THE COURT: If you can respond, respond.

8 MR. BROWN: All right.

9 Q Did Theresa not say that "Once he was outside, Kenneth
10 picked up a beer bottle and said he would hit Daise with it
11 if he was there"?

12 A Yes, it does.

13 Q All right. So he did arm himself with a weapon?

14 A I wouldn't necessarily consider a beer bottle a weapon
15 against somebody who's not even there.

16 Q Okay. So a beer bottle wouldn't be a weapon against
17 your grandpa?

18 A Who's not there?

19 Q A 6'5" man yielding a beer bottle is not a weapon?

20 A Again, he's not there.

21 Q All right. Is that not a weapon in the hands of a 6'5"
22 person?

23 A It depends on the circumstance.

24 Q Okay. Let's move to April. If you'll take a look at
25 Defendant's Exhibit Number Four. Let me know when you have

- 1 a chance to finish going over that.
- 2 A Yes, sir.
- 3 Q All right. Does he give an address for this incident?
- 4 A Yes, sir. 871 Seaside Road.
- 5 Q Does he give an address for the suspect?
- 6 A 15 Luther Warren Drive.
- 7 Q And the suspect's name is?
- 8 A Kenneth Nichols.
- 9 Q And the victim's name is?
- 10 A Joe Daise, again.
- 11 Q All right. Listed as victimizing his grandfather in
- 12 this report.
- 13 A That's actually not right. I wouldn't call it
- 14 victimizing but go ahead.
- 15 Q Well, hold on. Kenneth's the suspect and Daise is the
- 16 victim, and that's not victimizing?
- 17 A That's the title of the report; this is a trespassing
- 18 report.
- 19 Q Okay, fair enough. Let me ask you this, at that point,
- 20 there was a formal no trespass notice, correct?
- 21 A There was one issued. Yes, sir.
- 22 Q All right. I'm going to go back. At the original
- 23 Defendant's One, which is the time that Mr. Daise's eye
- 24 ended up being swollen shut, Kenneth Nichols' address is a
- 25 new one, isn't it?

1 A It is.

2 Q Then in the Defendant's Two, after Mr. Daise and Ms.
3 Nichols told him to get his belongings and leave, that one
4 is listed as -- where does Kenneth live after that?

5 A 15 Luther Warren.

6 Q All right. And then on this one here, he is listed as
7 living at?

8 A 15 Luther Warren.

9 Q So he is no longer listed as living at his
10 grandparent's house?

11 A Well, again, what I would note about that is the
12 grandma is still inviting him over. However, it appears,
13 and again I wasn't there for any of these, that Joe Daise is
14 the one making the complaints against Kenneth, and his
15 grandmother is continuing in inviting him over to the house.

16 Q Let me try if I can go back. I want to make sure I
17 understand this. This report lists Mr. Nichols as living
18 somewhere else, doesn't it?

19 A It does.

20 Q Thank you. And didn't Mr. Nichols, in the interview of
21 this, tell the police, "No, I don't live at 15 Luther
22 Warren; I live at 871"?

23 A It does.

24 Q And Mr. Daise says, "No, he doesn't," and the police
25 told him to leave?

- 1 A That's correct.
- 2 Q So the police believe which one?
- 3 A I would imagine they believe Mr. Daise. However, if
- 4 the grandmother had been there, she may have shed a little
- 5 more light on it. However, she is not listed in this
- 6 interview.
- 7 Q And the date on this again?
- 8 A It is April 13th, 2011.
- 9 Q That's eight days before the shooting?
- 10 A Yes, sir.
- 11 Q All right. Let's move to Defendant's Number Five.
- 12 What time do you have as the call in on the shooting?
- 13 A I have 2:15, 1400 or 1500 hours.
- 14 Q So 2:15 p.m.?
- 15 A Yes, sir.
- 16 Q All right. Well, let's look at Defendant's Five. Tell
- 17 me when you've had a chance to look at it.
- 18 A Yes, sir.
- 19 Q All right. What is the date of this?
- 20 A The date is April 21st, 2011.
- 21 Q The same day as the shooting?
- 22 A Yes, sir.
- 23 Q What's the time?
- 24 A The time is 09:12 or 9:12 in the morning.
- 25 Q What is the incident type?

- 1 A Assault and battery third.
- 2 Q Who is listed under the spot that says victim's name
3 appearing at the top?
- 4 A Do you want also listing the suspect, too?
- 5 Q No, I'm sorry. Who is listed as victim one?
- 6 A Victim one is Sharine Williams.
- 7 Q Thank you. And the relationship between Sharine
8 Williams and Kenneth Nichols is what?
- 9 A She is his mother.
- 10 Q All right. So in February, Joe Daise says, "My
11 grandson beat me up." In March, Theresa Nichols says, "My
12 grandson battered me." And now, one more month later, his
13 own mother says, "Well, he's battered me, too."
- 14 A Actually, sir, in this case, there was a witness who is
15 Akeya Hill. Hill stated that she observed Kenneth and
16 Sharine pushing each other during the argument. Hill stated
17 that Sharine pushed Kenneth first when she told him to leave
18 the room, and in this report, Kenneth actually appears to
19 leave, should have been victim one, but it has suspect one.
- 20 Q I want to make sure I understand this. Kenneth and his
21 mother get into a shoving match with each other?
- 22 A It appears his mother shoved him.
- 23 Q And?
- 24 A And he shoved her back, is what is appears.
- 25 Q Okay. Tell me about the phrase "mutual combat".

1 A Mutual combat?

2 Q If you and I decided to go outside and get in a fist
3 fight, is that legal?

4 A No, it's not.

5 Q Who's at fault if we did that?

6 A We try to determine the primary aggressor. Typically,
7 a primary aggressor is the person who starts the act, and in
8 this case it appeared to be Sharine.

9 Q I want to make sure I understand this. Who can you
10 charge in a mutual combat situation?

11 A Again, typically, we don't like to try to charge both
12 people. We try to find out who is the root problem of the
13 situation.

14 Q Who can?

15 A You can charge both. However, we typically try to find
16 the primary aggressor in the case, which is typical.

17 Q And I want to make sure I understand this, what does
18 his mother indicate started this battery episode?

19 A She said that he came into the residence -- I'm sorry,
20 she came into her bedroom, she told him to leave, he left
21 the residence, but immediately came back in. She said that
22 she pushed him back out and then he pushed her, essentially,
23 in return. He stated that he went in to get his toothpaste
24 out of her bathroom, which she had taken, she told him to
25 get out and knock before he came in, and before he could

1 walk all the way out, she was already shoving him out of the
2 door.

3 Q Mr. Nichols gave a written statement, didn't he?

4 A I believe he did.

5 Q That's not the same statement on the police report, is
6 it?

7 A No, it's not.

8 Q All right. In that written statement, didn't he say
9 that, "I went to get the toothpaste out of my mother's
10 bathroom and she told me to get out and knocked and pushed
11 me out"?

12 A "So I did."

13 Q Okay. So I want to make sure I understand this. She's
14 in the bedroom and she says, "Don't come in here"?

15 A Apparently, he came in, and she told him to get out.
16 There was no, "Don't come in."

17 Q Fair enough. She asked him to leave?

18 A Correct.

19 Q And did he leave?

20 A Yes, it appears he did.

21 Q Did he stay out?

22 A It appears she shoved him out.

23 Q Did he stay out?

24 A It appears he knocked to come back in to get his
25 toothpaste. In his initial statement in this ---

1 Q No, that's not his statement; this is his statement.

2 A Right, Kenneth Nichols. "And I moved around her real
3 fast and got my toothpaste."

4 Q So I want to make sure. So she didn't want him in
5 there and he left and then decided he'd come back in?

6 A It appears she started shoving him out.

7 Q And he still didn't take no for an answer, did he?

8 A No.

9 DEP. SOL. THORNTON: Objection, Your Honor. I've kind
10 of let this go on for a while. The reports speak for
11 themselves. He wasn't there. He can't speculate.

12 THE COURT: Sustained.

13 Q Just to make sure, according to Mr. Kenneth Nichols'
14 statement, his mother was in the bedroom at 9:00 in the
15 morning with her boyfriend, right, in her house?

16 A That's what it appears.

17 Q We know Kenneth has already said that's not his house,
18 because he says he lives at his grandparent's house, right?

19 A I would be speculating on any answers given. It's hard
20 to answer those type of questions, typically, because people
21 on St. Helena live in community groups, really. They're
22 larger family groups, and typically, there's several family
23 members that live in very close proximity, if not next door,
24 to each other.

25 Q Sounds to me like no matter which part of the community

1 you live in ---

2 DEP. SOL. THORNTON: Objection, Your Honor. Now, he's
3 testifying.

4 THE COURT: No, sir. The question is over.

5 Q Don't these records indicate that Mr. Nichols was asked
6 to leave both residences?

7 A At one, and then they invite him back; and then asked
8 to leave a bedroom, not a residence, I don't think.

9 Q So that's a yes, isn't it?

10 A No, it's not a yes.

11 Q I want to make sure with you. Was he ever asked to
12 leave 871 Seaside Road?

13 A And then invited back.

14 Q Was he ever asked to leave 871 Seaside Road?

15 A Yes, he was.

16 Q Was he ever asked to leave 15 Luther Warren?

17 A I believe he was asked to leave a bedroom, his mother's
18 bedroom, as opposed to 15 Luther Warren.

19 Q And he says he didn't even live there; that's what he
20 told the police previously, right?

21 A Again, sir, I wasn't there.

22 Q The record speaks for itself. Let me ask you to take a
23 look at Defendant's Exhibit Six. If you'll let me know when
24 you finish taking a look at that.

25 A Yes, sir.

1 Q All right. And again, the shooting in this case that
2 we're here before the Court today occurred April 21st, 2011,
3 right?

4 A Yes, sir.

5 Q And that earlier assault and battery with his mother
6 was the same day and that was approximately at 9:00?

7 A Yes, sir.

8 Q All right. And the shooting was approximately 2:00 in
9 the afternoon?

10 A Yes, sir. That's correct.

11 Q All right. What I'm handing up is Defendant's Exhibit
12 Six; what's the date listed on that?

13 A It is April 21st, 2011.

14 Q Same day?

15 A Yes, sir.

16 Q What's the time listed on that?

17 A It is 10:15 in the morning.

18 Q Okay. So he gets in a shoving match with his mom at
19 9:00 and then he trespasses at his grandfather's house at
20 10:00?

21 A Actually, what it says is yes, his grandfather didn't
22 want him there, but his grandmother lets Nichols in the
23 house all the time, and that's according to the grandpa.

24 Q Does it reference the no trespass notice that he was
25 issued by the police?

1 A It does, but typically when there's a no trespass
2 notice issue, and family members are actually inviting that
3 person to the house, you don't enforce it because they're
4 inviting them to the house.

5 Q But you could?

6 A I don't know about that, sir. If it were me, and
7 again, I was not there, but if I knew that his grandmother
8 was inviting him back to the house, which in this case Mr.
9 Joe Daise says specifically, his wife, Nichol's grandmother,
10 lets Nichols in the house all the time. I would not enforce
11 the trespass notice, because she lives in the house, she
12 continues to invite him over, which in every other report it
13 appears Joe Daise makes a complaint, Theresa is allowing him
14 in the house, Joe Daise makes a complaint, Sharine makes a
15 complaint, and now Joe is making another complaint, because
16 essentially Trey's grandmother continues to let him back in
17 the house.

18 Q All right. Let me make sure I understand this. Is
19 that what Mr. Nichols said, too, Kenneth?

20 A He stated that his grandfather, Joe Daise, does not
21 like him and Daise calls the police every time he sees him.
22 Nichols stated he's done nothing wrong to Daise and he
23 denied even talking to him. He stated that he was not over
24 at his grandfather's residence.

25 Q Okay. So he said he wasn't even there?

1 A That's correct.

2 Q And doesn't he say, "I never even got a trespass notice
3 before?"

4 A I believe that's correct.

5 Q Even though that trespass notice is referenced by one
6 of your fellow sheriff's deputy's in a different report?

7 A It is, but it also notes that he refused to sign it, I
8 believe.

9 Q Does that make it not valid?

10 A No, it doesn't.

11 Q Okay. So either he didn't ever get the trespass notice
12 or Kenneth Nichols lied about not getting it?

13 A I can't answer, because I wasn't there, sir, for either
14 of them.

15 Q Now, did you look at these five reports when you were
16 investigating this case?

17 A I believe I did. Let me back up, I'm sorry. On 04-21
18 the two reports I had not seen because they had not come
19 across my desk yet.

20 Q Okay. You hadn't seen those at the time that you
21 initially started this investigation?

22 A That's correct.

23 Q Before today, have you ever seen them?

24 A Sure.

25 Q When?

1 A I can't give you a specific date.

2 Q Like last week or last year?

3 A Again, I can't give you a specific date, sir.

4 Q Okay. But at some point and time, you looked at all
5 five of these reports?

6 A I did.

7 Q All right. In any one of those reports, or pursuant to
8 them, did you think it worthy to arrest Mr. Nichols?

9 A Again, sir, I wasn't involved in any of these for the
10 investigations. The victims in each case were afforded the
11 opportunity to further the case at the Magistrate's Office
12 and for whatever reason chose not to or didn't even report
13 it to begin with; possibly, the ER person reported it. I
14 can't answer these questions, sir.

15 Q So it's the victim's fault?

16 A No, sir. But if they want to pursue a matter, they
17 have to let us know they want to pursue it, otherwise we
18 don't know. If you notice on this report, it's number 2012-
19 04-21, that's the date. The report number is 338; that's
20 the 338th call for service that day, not that week, not that
21 month, 338th that day by 10:13 in the morning. If they
22 don't call us and let us know, or follow up and let us know
23 that they want to pursue it, we don't know to continue to
24 pursue it, because it appears they don't want to continue to
25 pursue it.

1 Q Even though he could be charged even today, how many
2 times was Mr. Nichols arrested related to these five
3 complaints?

4 A I don't know that he was.

5 Q Do you have any indication that he was ever arrested?

6 A No, sir.

7 MR. BROWN: No further questions, Your Honor.

8 THE COURT: All right. We're going to save any
9 redirect for tomorrow morning.

10 DEP. SOL. THORNTON: Yes, ma'am.

11 THE COURT: Ladies and gentlemen, that is going to
12 conclude the work that we are going to do for today. I do
13 need to give you just a little bit of instruction. First of
14 all, leave your notepads in your seat, again, we will secure
15 them over the evening and we will replace them in the
16 morning. I know that you all are coming from all over
17 Beaufort County, but we are going to start at 9:30 in the
18 morning; 9:30 in the morning. Hopefully, you won't get in
19 the heat of the traffic, but be here at 9:30 in the morning
20 so we can start then.

21 Now, I need to tell you that you are going to be going
22 home tonight. Yay. And then, no doubt, there is going to
23 be someone curious about what you have been up to today, and
24 I want to remind you that must not discuss this matter or
25 allow anyone to discuss it with you. Don't let whoever

1 asks you get upset with you. Put it on the judge. Tell
2 them that the judge says you can't talk about it.

3 Now, when you have been dismissed from your service on
4 this jury by me and I promise you there will be no question
5 in your mind when that time has come, you will be at liberty
6 to talk about the case, if you choose to, but until you have
7 been instructed, you must not discuss this matter or allow
8 anyone to discuss it with you.

9 Remember no internet, no social networking, no Colombo.
10 You must receive all of the information from which you will
11 make up your mind here while Court is in session. One other
12 thing I wanted to ask you, does anybody work at night? Not
13 tonight. Let me tell you why, because you will be exhausted
14 tomorrow morning and I don't want you to be exhausted. Not
15 unless you're going home to babies and children and put them
16 to bed, then I'll let you do that. The reason for that is
17 you can't do both. Now, what are your hours?

18 JUROR: It varies. It could be from 8:00 in the
19 morning until 8:00 at night.

20 THE COURT: And what do they think you're going to be
21 doing this evening?

22 JUROR: I'll probably be done by 11:00.

23 THE COURT: Oh, that doesn't give you time to rest. I
24 don't want you to do that. I would prefer that you do not.
25 Here's what happens to my jurors when that happens. When

1 they call in, again, put it on the judge. And if whomever
2 your supervisor is, if they're concerned, all you have to do
3 is give me a phone number and I'll make a phone call. I
4 don't want anybody upset with you, I'd rather them be upset
5 with me. Okay?

6 JUROR: Okay.

7 THE COURT: Because I want you rested. I've watched
8 all of you and you've listened. You've been riveting. It's
9 exhausting when you do that and so I want to thank you for
10 that, but I also want you to rest, because I want you to
11 bring that kind of attention tomorrow, as well. Chill.
12 Take the night off. And if anybody is concerned about that,
13 just let me know and I'll be happy to deal with it in the
14 morning. Ladies and gentlemen, have a very pleasant evening
15 and I look forward to seeing you in the morning at 9:30.
16 Thank you.

17 (5:25 P.M., WHEREUPON, THE JURY EXITS THE COURTROOM,
18 AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE RECORD.)

19 THE COURT: I want to speak to the family members for
20 just a moment. I meant to do that beforehand, so I
21 apologize to you and I'm not going to keep you very long.
22 You know, when you have a criminal case such as this case
23 and you have families who love their family members, the
24 victim, the defendant; they love their family members, it
25 becomes stressful for family, and I really want to commend

1 all of you for your conduct here today. I know it's
2 difficult and I know it's heartwrenching, and I want y'all
3 to know that I'm aware of how heartwrenching it is. I want
4 to commend you all on your conduct. I should have done that
5 this morning, and I do it out of an abundance of precaution,
6 because obviously, all of you know it. It is critically
7 important that you maintain your decorum, if you will,
8 meaning your emotions, because it's upsetting to hear things
9 and sometimes it burns in your ears, but you've all done an
10 excellent job maintaining your decorum and I want to thank
11 you for that, because these jurors, y'all they have such an
12 important job to do. They must be able to do their job with
13 coolness, be able to stay riveted just as they have. You
14 all have afforded them that opportunity and I want to thank
15 you for it, because I know these matters are heartwrenching.

16 Now, I just want to remind you all and ask you to
17 please continue to carry that on as we go through this
18 process. Sometimes as these matters are discussed, it
19 almost gets overwhelming, your heart gets full, and I allow
20 for family members, I won't let other people, lawyers and
21 all, get up and move around. I just don't allow that,
22 because, again, it distracts the jury. All of a sudden,
23 instead of hearing something that this jury needs to be able
24 to listen to, they're watching the person walk out the
25 courtroom and it may be something very important. That's

1 the reason why I must have stillness in the courtroom, but
2 that doesn't apply to family members; because if your heart
3 is full, if you feel that you need a moment to breathe, if
4 you need a moment to shed a tear, or a moment to go out and
5 grit your teeth, whatever it may be for yourself, that
6 doesn't apply to family members. You may quietly, if you
7 need to, take your leave, and then when you are together,
8 you may then come back in; that just applies to family
9 members. I hope that's clear to everyone. I want to give
10 you the compassion that both sides deserve.

11 Please understand that my responsibility is to see that
12 justice is done to protect this jury, to give this jury an
13 environment that this jury can, with a calm and cool head,
14 do a very difficult and important and critical work that
15 this jury must do.

16 Thank you all so much for the way that you have
17 conducted in the court room today, I appreciate it from
18 everybody. Do you have anything for me?

19 DEP. SOL. THORNTON: Nothing from the State, Judge.

20 THE COURT: On behalf of the defense?

21 MR. BROWN: Nothing, Your Honor.

22 THE COURT: Now, I want to see you guys here at 9:15 in
23 the morning. Have a good evening and I will see y'all in
24 the morning.

25 (5:45 P.M., WHEREUPON, THE COURT IS RECESSED IN THE

1 TRIAL OF THIS CASE FOR THE EVENING.

2 (THEREAFTER, THE NEXT MORNING, 9-19-12, 9:50 A.M., THE
3 FOLLOWING IS HELD ON THE RECORD IN FRONT OF THE JURY.)

4 THE COURT: Good morning, ladies and gentlemen.

5 JURY: Good morning.

6 THE COURT: I hope and trust that you all had a very
7 pleasant evening and at this time we will continue the
8 State's case and the direct examination. Mr. Thornton?

9 DEP. SOL. THORNTON: Thank you, Your Honor.

10 REDIRECT EXAMINATION

11 BY DEP. SOL. THORNTON:

12 Q Earlier on cross-examination, Detective Fraser, Mr.
13 Brown asked you about the fact that one of the people
14 arrested, obviously, is the shooter, was the defendant in
15 this case; is that correct?

16 A Yes, sir.

17 Q Do you recall how long it was between the shooting and
18 when Mr. Lennin was arrested?

19 A Mr. Lennin was arrested the following day.

20 Q So within 24 hours?

21 A Yes, sir.

22 Q Did you observe Mr. Lennin on that day?

23 A I did.

24 Q Did he have any marks or abrasions on him that you saw?

25 A No, sir.

1 Q Did he appear to be beaten up?

2 A No, he did not.

3 Q Did he appear to suffer from any kind of head trauma or
4 trauma of any kind?

5 A None that I observed.

6 Q Earlier -- excuse me, yesterday, you didn't stay in the
7 chair all night, did you? I know the Judge asked you to
8 leave. Yesterday, Mr. Brown got up and talked extensively
9 about Defense Exhibit One, Two, Four, Five and Six; do you
10 recall that?

11 A I do.

12 DEP. SOL. THORNTON: Your Honor, may I approach?

13 THE COURT: You may.

14 Q And without taking a whole lot of time, are you
15 familiar with those still from reading them yesterday?

16 A I am.

17 Q What do those have to do with Jabari Lennin?

18 A As I said yesterday, anytime somebody makes a
19 complaint, or somebody's named, or somebody is met with,
20 there is a record generated.

21 Q Okay. Do you those say Jabari Lennin anywhere in them?

22 A No, they don't.

23 Q So what do they have to do with him that you're aware
24 of?

25 A They have nothing to do with Jabari Lennin.

1 Q Thank you.

2 DEP. SOL. THORNTON: I have no further questions,
3 Judge.

4 THE COURT: Very well. Recross?

5 MR. BROWN: Yes, ma'am.

6 RECROSS-EXAMINATION

7 BY MR. BROWN:

8 Q Investigator Fraser?

9 A Sir?

10 Q What do they have to do with the reputation of Mr.
11 Nichols as a violent person?

12 A I don't know if they have anything to do with
13 reputation, sir.

14 Q Okay. They don't serve as a basis to form an opinion
15 regarding his lack of peacefulness?

16 A I don't believe so.

17 Q And have you formed an opinion about Mr. Nichols'
18 reputation for violence or lack of peacefulness?

19 A I have not.

20 MR. BROWN: Your Honor, at this point, I have a matter
21 of law.

22 THE COURT: Okay.

23 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD
24 AND OUT OF THE HEARING OF THE JURY.)

25 THE COURT: Ladies and gentlemen, I have got to ask you

1 to step back out to your jury room. There's a matter that I
2 must consider outside your presence.

3 (WHEREUPON, 9:55 A.M., THE JURY EXITS THE COURTROOM,
4 AND THE FOLLOWING IS HELD ON THE RECORD.)

5 THE COURT: Okay. All right. Cue it up.

6 MR. BROWN: Yes, ma'am, just give me a second because
7 I've got to plug in my speakers. You can't hear it on this
8 TV.

9 Q As a matter of proffer, Officer Fraser, have you
10 conducted an interview with King Williams?

11 A I have.

12 Q During that interview, did you discuss matters with Mr.
13 Williams as part of that questioning or interrogation?

14 A I did.

15 Q Do you recall telling him information about Mr.
16 Nichols?

17 A I do.

18 Q And do you recall discussing what you knew about Mr.
19 Nichols, in specific, not what you knew generally about all
20 about him, but being very specific with him?

21 A Yes, sir.

22 Q Do you recall referring to what kind of person Mr.
23 Nichols was?

24 A Yes, sir. In an attempt to build that repore with him.
25 Yes, I did.

1 Q And I want to make sure I understand this. You made a
2 statement regarding your opinion of Mr. Nichols?

3 A In an attempt to build the repore, I lied, yes. I told
4 him he was a dick.

5 Q So you made that statement?

6 A Yes, sir.

7 Q And if you would, what was the context of that one
8 phrase about Mr. Nichols "being a dick"?

9 DEP. SOL. THORNTON: Your Honor, at this point, I would
10 object. I understand we're doing this proffer outside the
11 presence of the jury. However, I think what he's trying to
12 do is 613(b). I have two things I want to object to.

13 Number one, under 613(b), a prior statement of a
14 witness, the extrinsic evidence is not allowed unless the
15 witness denies or doesn't admit making the statement; he
16 just admitted it.

17 Number two, the State's position is that him saying
18 somebody, and forgive me Judge, is a dick is not being
19 impeached for when Mr. Brown asked him, "Do you have an
20 opinion as to his reputation for peacefulness or violence,"
21 that those two would seem to be mutually exclusive. He
22 didn't deny calling him a dick, and I think he can do that
23 in front of the jury, "In your interview, didn't you refer
24 to him in a less than polite way; didn't you call him a
25 dick?" "Yes, I did." But he didn't ask him that. What he

1 asked him was, "Do you have an opinion as to his traits for
2 violence?"

3 THE COURT: What has been represented to me is that in
4 this tape that Mr. Brown is proffering to me now, that this
5 witness is going to tell me that he is familiar with, he has
6 sufficient acquaintance with the victim in this case, that
7 he can form an opinion based on his acquaintanceship with
8 this particular alleged victim or that he is sufficiently
9 acquainted with the reputation of this particular alleged
10 victim in his community that he can give an opinion with
11 regards to his reputation in the community or that he has
12 specific basis to give an opinion regarding his
13 peaceableness or lack thereof.

14 DEP. SOL. THORNTON: Yes, ma'am.

15 THE COURT: That's what I'm waiting for.

16 DEP. SOL. THORNTON: Yes, ma'am. Thank you, Judge.

17 MR. BROWN: And if I may, when you ---

18 THE COURT: I got what's going on is that this is an
19 interrogation on a particular case that is not this case.

20 MR. BROWN: It actually is this case; it's the
21 codefendant. It's the very investigation in this case.

22 THE COURT: Okay. Okay. You do understand, Mr. Brown,
23 that under the case law, when it comes to cross-examination,
24 and it's gone up to the United States Supreme Court and I do
25 not have the citation, but law enforcement is allowed to

1 lie, to flat out lie ---

2 MR. BROWN: And if that's his explanation --

3 THE COURT: Are you going to interrupt me every single
4 time I open my mouth in this trial, Mr. Brown? They are
5 allowed as a tactic to lie to the suspects or the people of
6 interest as a part of their investigation. That's so far is
7 where we are with this witness. I am waiting, and I hope
8 you get there, because I got a jury waiting why you believe
9 this witness has the foundation in which he can testify
10 regarding the reputation or the opinion with regards to the
11 alleged victim in this case. Okay? Let's get to it.

12 MR. BROWN: Yes, ma'am. And I think for housekeeping
13 purposes, I need to have it marked as Defendant's Six?

14 THE COURT: For identification purposes?

15 MR. BROWN: That's correct.

16 COURT REPORTER: Seven.

17 MR. BROWN: Seven, excuse me.

18 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER SEVEN, DVD
19 INTERVIEW, IS MARKED FOR ID PURPOSES.)

20 Q Did you, in fact, conduct an investigation of Mr.
21 Nichols?

22 A I did.

23 Q And did it involve an allegation of violence?

24 A It did.

25 THE COURT: You're talking about this case? You're

1 talking about did it have to do with alleged violence in
2 this case?

3 MR. BROWN: No, ma'am. I mean that was the question, I
4 don't know. That was my answer to your question, Your
5 Honor.

6 THE COURT: I thought I was going to look at a tape?

7 MR. BROWN: Yes, ma'am.

8 THE COURT: Why am I not looking at the tape?

9 MR. BROWN: I'll play it right now, Your Honor.

10 (10:03 A.M., MR. BROWN BEGINS PLAYING A DVD INTERVIEW
11 OF DETECTIVE FRASER WITH KING WILLIAMS; DVD STOPS AT 10:25
12 A.M.)

13 THE COURT: Stop it a second. I've been listening to
14 it now for about 30 minutes, does he ever talk about
15 community or the reputation or the opinion? Do we ever get
16 there or is this just more of the interrogation of the
17 codefendant?

18 MR. BROWN: In my opinion, Your Honor, on behalf of Mr.
19 Lennin, I believe that he already gave the basis and the
20 opinion earlier in the tape.

21 THE COURT: So I've been sitting here listening to all
22 of this when you think I've already heard what I needed to
23 hear?

24 MR. BROWN: Well, it was already heard when I cut it
25 off the first time respectfully, Your Honor, you asked to

1 hear the rest of the tape.

2 THE COURT: Well, no, what I said was -- you were
3 asking him questions and my comment to you was I thought I
4 was going to listen to a tape that you wanted me to listen
5 to.

6 MR. BROWN: Yes, ma'am.

7 THE COURT: Okay. So you don't want me to listen to
8 this tape?

9 MR. BROWN: Yes, ma'am. I do.

10 THE COURT: Do you want me to listen to anymore of the
11 tape?

12 MR. BROWN: No, ma'am. But I didn't want to deprive
13 you of that opportunity out of respect, Your Honor, for your
14 request that I play it. I didn't want to interrupt you.

15 THE COURT: Mr. Brown, let me be clear.

16 MR. BROWN: Yes, ma'am.

17 THE COURT: You wanted me to listen to this tape
18 because you said that this tape set out that this witness
19 had all these opinions and knew of the community and the
20 reputation of this particular gentleman, then you start
21 asking him questions about a whole other case, at which
22 point I stopped you, because I've got the jury sitting out
23 now, because I thought you wanted me to listen to a tape and
24 you turned the tape back on. You didn't say you've heard
25 all of the tape that I need you to hear. Right?

1 MR. BROWN: No, ma'am, I didn't, because I didn't know
2 that you were finished.

3 THE COURT: Okay.

4 MR. BROWN: I didn't want to presume what Your Honor
5 would want to hear out of respect for Your Honor. I
6 apologize for being an advocate for my client, Your Honor.
7 I apologize for trying to be effective --

8 THE COURT: Don't give me those kind of answers, Mr.
9 Brown; that's not appropriate. That's not appropriate. I
10 don't need a speech. I'm trying to accomodate you, Mr.
11 Brown.

12 MR. BROWN: Thank you.

13 THE COURT: You've presented this tape as being your
14 foundation for this witness and why this witness had opinion
15 and reputation evidence. I've been listening to this tape
16 now for 30 minutes. You never told me that there wasn't
17 anything else on the tape that dealt with the issue of
18 opinion and reputation.

19 I don't think I was unclear that that's the purpose of
20 why I was listening to this tape. Then, you stopped -- or
21 over the table, whatever, you start asking him about a whole
22 other case and I'm nonplussed because I'm supposed to be
23 listening to this tape, because this tape you tell me has
24 the foundation that this witness has all this opinion and
25 reputation foundation in this tape.

1 I've been listening to this tape now for 30 minutes and
2 you tell me there's nothing else on this tape with opinion
3 and reputation, and then you tell me you're going to let me
4 sit and listen to this tape that is of no moment to your
5 position because you want to be an advocate for your client?
6 That's not being an advocate for your client, Mr. Brown.
7 That's wasting the Court's time, that the Court doesn't have
8 time to waste; that's not being an advocate for your client,
9 just so you and I are clear.

10 Is there anything else on this tape that you maintained
11 has anything to do with the reputation or the opinion that
12 you alleged that this witness has, because I want to listen
13 to it if it is on this tape. Is there anything else on this
14 tape?

15 MR. BROWN: Can I respond, Your Honor?

16 THE COURT: To my question. Is there anything else on
17 this tape that you maintain is the foundation that this
18 witness has an opinion or knows the reputation of the
19 alleged victim?

20 MR. BROWN: May it please the Court with my response?

21 THE COURT: Okay.

22 MR. BROWN: I don't believe there's anything else on
23 there that I don't presume to make an opinion for Your
24 Honor.

25 THE COURT: That's not my job to advocate for your

1 client, Mr. Brown, let's remove that now. Okay?

2 MR. BROWN: I'm sorry ---

3 THE COURT: Have you marked it for identification
4 purposes?

5 MR. BROWN: I have, Your Honor. And I would like to
6 continue with my basis for that, because I don't believe the
7 tape is all.

8 THE COURT: For what?

9 MR. BROWN: For him having sufficient basis for an
10 opinion.

11 THE COURT: He's already said he doesn't.

12 MR. BROWN: He said he didn't have an opinion, is my
13 recollection, Your Honor, but in this tape he says he does.

14 THE COURT: I got it.

15 MR. BROWN: Yes, ma'am.

16 THE COURT: And you're going to cross-examine him on
17 the fact that he tells me and tells the jury he doesn't have
18 an opinion and he doesn't know his reputation?

19 MR. BROWN: And in the tape I believe is an
20 inconsistent statement, admissible under ---

21 THE COURT: No.

22 MR. BROWN: I'm sorry.

23 THE COURT: No, it's not.

24 MR. BROWN: And Your Honor, if I may, also enter these
25 two as Defense Eight and Defense Nine.

1 THE COURT: I don't know what it is.

2 MR. BROWN: I understand that. Your Honor, proposed
3 defendants, proposed for ID, Defendant's Eight is a copy of
4 the charging documents from the September 2009 rapes. The
5 proposed Defendant's ID Nine are the police reports that
6 same detective compiled during his investigation of Mr.
7 Nichols for those rapes. I would ask that they be marked
8 again as Eight and Nine for purposes of ID related to this
9 argument and my offer proof regarding his basis to form an
10 opinion, which he then in turn states in the recording at
11 approximately minutes 36:15 on what's now been ID'd as
12 Defendant's Seven.

13 THE COURT: Okay. Now, do you have anything else
14 regarding your belief that this witness has an opinion
15 regarding the propensity for peaceableness or violence with
16 regards to the alleged victim?

17 MR. BROWN: Yes, ma'am.

18 THE COURT: You have more cross-examination?

19 MR. BROWN: No, ma'am. I believe it's already been
20 entered as Defendant's One, Two, Four, Five, Six, and Three,
21 which is only marked for ID, but I'm presuming when Officer
22 Fraser -- Investigator Fraser did his database search, since
23 I got that in my request from the Sheriff's Department
24 database search that he also did, I may need to ask him that
25 to see if he also had reviewed that Defendant's ID Three,

1 but other than that I have no more questions, but I do ask
2 the Court to hear me on argument why it's admissible.

3 THE COURT: Do you have any additional evidence that
4 you wish to proffer with regards to whether or not this
5 witness has the foundation to testify regarding the
6 reputation in the community of the alleged victim?

7 MR. BROWN: Nothing besides Defendant's One through
8 Nine and his testimony.

9 THE COURT: Okay. Heretofore?

10 MR. BROWN: Yes, ma'am. But I would like to ask him if
11 he reviewed Defendant's ID Three, because I have not done
12 that.

13 THE COURT: Okay. Well ask him.

14 MR. BROWN: Yes, ma'am.

15 Q Mr. Fraser, if I may ---

16 MR. BROWN: May I approach the witness, Your Honor?

17 THE COURT: Yes.

18 Q I ask you to look at Defendant's ID Three.

19 THE COURT: Okay. So you've shown him, now, Exhibit
20 Three?

21 MR. BROWN: Yes, ma'am.

22 THE COURT: And asked him if he's familiar with it?

23 Q Are you familiar with that, Investigator Fraser?

24 A Yes, sir.

25 Q Did you review that during that, I guess, paraphrasing

1 it, database search you did?

2 A Yes, sir.

3 Q Okay. And is that something that you used when you
4 considered whether or not you had an opinion regarding Mr.
5 Nichols's reputation for peacefulness?

6 A Sir, again, I haven't developed any opinion.

7 Q And did you note on there that it said that he was
8 found at homicidal tendencies?

9 A No, I did not.

10 Q You didn't see that part?

11 A No, I did not.

12 Q Now that you know that, does that help you form a
13 basis?

14 A No, it doesn't.

15 Q So you still have no opinion?

16 A No, I don't.

17 Q And the statement on the tape, which you said you had
18 an opinion ---

19 A I didn't say I had an opinion.

20 Q You said you knew what kind of person he was?

21 A Correct.

22 Q Okay. When you say "what kind of person," you're
23 saying what you think about him?

24 A No, I'm not.

25 Q What do you mean by you know what kind of person he is?

1 A Again, what I'm trying to do is establish a repore to
2 the person I'm interviewing; that's all I'm doing.

3 Q Okay. But what does the phrase "kind of person mean?"
4 You're not saying that you knew he did something ---

5 A It's a general term, sir.

6 Q General term of opinion, right?

7 A No, sir.

8 Q Is it a fact what kind of person ---

9 A Sir. You're trying to switch my words. Again, all I
10 was doing was attempting to establish a repore between the
11 person I was interviewing and myself, nothing more; I have
12 no opinion.

13 Q So you did not have any idea of the kind of person Mr.
14 Nichols was?

15 A I do not.

16 MR. BROWN: And, Your Honor, again, I would like to be
17 heard on argument, and then, of course, I've got to go
18 through this in front of the jury, so I don't waive this
19 objection and, obviously, within limitations, but I've got
20 to attempt to get that information out, and obviously have a
21 ruling if there is, in fact, an objection.

22 THE COURT: I think that's where we started today was
23 with an objection, yes. Okay. Additionally, to what you
24 have told me, what do you want to tell me?

25 MR. BROWN: Yes, ma'am. I believe this is admissible

1 to prove my client's defense which is justification, and I
2 say that Your Honor because that right to present a defense
3 is found and it is a part of a number of rights that fall
4 under the Fifth Amendment, Due Process; Fourteenth
5 Amendment, Due Process; Sixth Amendment Right to a fair
6 trial, Sixth Amendment, right to effective assistance of
7 counsel.

8 THE COURT: Are you talking about a different defense
9 other than self defense?

10 MR. BROWN: I'm talking ---

11 THE COURT: --- are you saying there's a defense called
12 justification? Or are you saying that this evidence is
13 admissible on the basis of your claim of self defense?

14 MR. BROWN: Your Honor, the self defense is a subset of
15 justification. They're generally two major theories of
16 defense if an act did occur, which would be either an excuse
17 or a justification for what otherwise might be a criminal
18 act; this would fall under justification, not being skewed
19 apart and subpart of that would include self defense, the
20 right to stand your ground, statutorily, and the defense of
21 others.

22 Stand your ground is a little broader because it allows
23 you to defend yourself to prevent the commission of a felony
24 and that's in the statute.

25 THE COURT: I'm aware of that.

1 MR. BROWN: Yes, ma'am. So that's apart from those, so
2 those three generally, and we believe it is admissible, we
3 believe this information is admissible, because we do
4 believe that that is an opinion and because it's in the
5 context of criminal sexual conduct, and in this case
6 aggravated force, we believe knowing the kind of person he
7 is, he's a dick, he was arrested for criminal sexual conduct
8 against two 15 year olds; we believe -- or my assertion is
9 that that is an opinion regarding his violence, his
10 character or reputation of violence. His character as a
11 violent person and his reputation as a violent person.

12 THE COURT: Okay.

13 MR. BROWN: And that's the assertion, Your Honor. We
14 believe it's admissible. Generally, it's admissible as a
15 statement made by the witness, statement of a party
16 opponent, and as well as the reputation in character of it
17 is allowed as an essential element of the special factors of
18 reputation for violence and character for violence for Mr.
19 Nichols. And again, we believe that those multiple things,
20 the five police reports that have been entered, the sixth
21 report of the mental health --

22 THE COURT: You've already got the five reports in.

23 MR. BROWN: Yes, ma'am. I just want to make sure
24 that's our basis and I don't want to ---

25 THE COURT: Very well. I'm prepared to rule. Rule 405

1 and we're in the character -- and you want to postulate, and
2 I appreciate that, by justification and all that, I've got
3 all that Mr. Brown. That's what has led us down the road to
4 405(b). I'm not quite sure why you feel compelled to lead
5 that piece of your foundation, I've got that, we did that
6 yesterday, that's who we got to 405(b), if you will recall.

7 Rule 405(b) does allow you to introduce specific
8 instances of conduct. We went down that road yesterday.
9 And I told you yesterday also that I was not going to limit
10 you in the appropriate circumstances being able to, under
11 405(a), to offer reputation or opinion evidence with regards
12 to the character traits of peaceableness, or lack thereof,
13 but it had to be done pursuant to 405(a). 405(a) requires a
14 foundation; that foundation requires that the witness
15 embrace an acquaintance with the individual such that the
16 witness is able to give opinion testimony with regards to
17 the character and trait. This witness in every way, this
18 witness knew how to do; said I don't have that acquaintance.
19 I have investigated this individual, I have interviewed this
20 individual, I have some information, but I am not acquainted
21 with this individual such that I feel that I can give an
22 opinion.

23 The other way that you can prove up under 405(a) with
24 the reputation, again, is that the witness has to believe
25 that the witness has sufficient information and

1 acquaintanceship of the community of the alleged victim such
2 that he could give you and testify to this jury with regards
3 to the reputation of the alleged victim within the
4 community, within the alleged victim's community, and he's
5 testified in a many number of ways that he doesn't have
6 that.

7 Now, what you have offered to oppose that is an
8 interview with a codefendant in this case where he says, "I
9 know what kind of guy he is." He's testified that that is
10 his tactic in interrogation. The tactic that he is using to
11 interrogate Mr. King, codefendant, is not sufficient in my
12 mind to lay the proper foundation to allow this witness to
13 be forced to testify regarding an opinion he says he does
14 not hold or a reputation to which he is not familiar. That
15 is the ruling of the Court.

16 Anything further from the State before we bring the
17 jury back in?

18 DEP. SOL. THORNTON: No, ma'am.

19 THE COURT: From the defense?

20 MR. BROWN: No, ma'am. I do plan on going through
21 enough on the record that I can get the ruling again, if
22 there is an objection.

23 THE COURT: Okay. Thank you. Jury, please.

24 (10:45 A.M., WHEREUPON, THE JURY ENTERS THE COURTROOM,
25 AND THE FOLLOWING IS HELD ON THE RECORD.)

1 THE COURT: All right. Yes, sir you may proceed.

2 MR. BROWN: May it please the Court?

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION CONTINUED

5 BY MR. BROWN:

6 Q Now, Officer Fraser, we have discussed your review of
7 Defendant's One, Two, Four, Five, and Six. Do you recall
8 that?

9 A Yes, I do.

10 Q And you had reviewed those before you came to Court, I
11 think you indicated?

12 A I looked at them, yes.

13 Q And do you have before you what's been ID'd as
14 Defendant's Exhibit Three?

15 A Yes, sir.

16 Q Did you review that before you came to Court?

17 A I did.

18 Q Okay.

19 MR. BROWN: Your Honor, at this time, I would ask that
20 Defendant's ID Three be moved into evidence.

21 DEP. SOL. THORNTON: I object, Your Honor, for the
22 reasons already stated.

23 THE COURT: On the basis that we addressed previously
24 for that basis, that's the basis for which it's being
25 offered. I would sustain the objection.

1 Q I would ask your review of Three, did that help you
2 form or not form an opinion?

3 A No, it did not.

4 Q Did it help you become acquainted with ---

5 DEP. SOL. THORNTON: Objection, Your Honor.

6 MR. BROWN: I'm just

7 THE COURT: Sustained for the reasons previously
8 stated.

9 DEP. SOL. THORNTON: Thank you, Judge.

10 Q I'm going to ask if you've taken a look at Defendant's
11 ID Eight and Nine.

12 DEP. SOL. THORNTON: Objection, Your Honor. These are
13 matters that the Court has already ruled on are not
14 admissible and he should not be asking witnesses about if
15 they're not admissible; it's improper.

16 THE COURT: I think they're in evidence.

17 DEP. SOL. THORNTON: No, ma'am.

18 MR. BROWN: They're not in evidence, but I'm asking to
19 set the foundation for your ruling.

20 THE COURT: Those are the items that are for ID only?

21 MR. BROWN: Yes, ma'am.

22 THE COURT: Okay.

23 MR. BROWN: I'm trying to establish a foundation for
24 forming his opinion.

25 THE COURT: I understand. Ask your question.

1 MR. BROWN: Yes, ma'am.

2 Q Have you reviewed items Eight and Nine, Defendant's ID
3 Eight and Nine?

4 A Yes, sir.

5 Q All right. Did those help you know Mr. Nichols or
6 learn about Mr. Nichols?

7 A Yes, sir.

8 Q They helped you become acquainted with him?

9 A In this status, yes.

10 Q I'm sorry. I don't understand what "this status"
11 means.

12 A I began acquainted with -- with Nichols.

13 Q Okay. So that did form some basis for an acquaintance
14 of Mr. Nichols?

15 A That's how I met him.

16 Q Okay. Let me ask you, have you stated previously --
17 have you made a statement regarding your acquaintance with
18 Mr. Nichols?

19 DEP. SOL. THORNTON: Objection, Your Honor. This goes
20 into matters you've already ruled on.

21 THE COURT: Oh, I know that.

22 MR. BROWN: Out of the presence of the jury, I
23 obviously have to get an objection.

24 THE COURT: He's objected on the basis previously
25 stated in the in camera proceeding. I sustain the objection.

1 MR. BROWN: Your Honor, at this time I would ask to
2 move the video, Defendant's Seven, into evidence with the
3 prior statement.

4 DEP. SOL. THORNTON: I would object, Your Honor.

5 THE COURT: On the same basis articulated by the Court
6 in the hearing outside the presence of the jury, I sustain
7 the objection.

8 MR. BROWN: And just to be certain that those ID Three,
9 Seven, Eight and Nine are now in the record for purposes of
10 the argument only, but not in the record as evidence.

11 THE COURT: They are for identification.. They are
12 exhibits for ID purposes only.

13 MR. BROWN: Yes, ma'am. And I just want to make the
14 record clear on that, and obviously, Your Honor, I put forth
15 those items for the grounds that I previously stated.

16 THE COURT: Okay.

17 MR. BROWN: Thank you so much, Your Honor.

18 Q Now, I do want to ask you, Mr. Fraser, whether or not
19 you interviewed a Mr. Williams?

20 A King David Williams?

21 Q That's correct.

22 A I did.

23 Q And did you tell Mr. Williams ---

24 DEP. SOL. THORNTON: Objection, Your Honor. I can't
25 unring the bell.

1 MR. BROWN: That has nothing to do about -- I'm not
2 asking that question. I know which question he thinks I'm
3 asking, but I'm not.

4 DEP. SOL. THORNTON: Your Honor, I'll withdraw the
5 objection and let him ask it.

6 THE COURT: All right. Ask the question. There's an
7 objection -- let me see you, Counsel.

8 MR. BROWN: Yes, ma'am.

9 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD
10 AND OUT OF THE HEARING OF THE JURY.)

11 MR. BROWN: And to make it clear, Your Honor, I would
12 also offer Seven, Eight and Nine as part of our burden of
13 production or defense of justification. My client has a
14 right to present his defense.

15 THE COURT: This is not your case.

16 MR. BROWN: I'm developing it through cross-
17 examination, and obviously, it will come into my case in
18 chief, as well.

19 THE COURT: For the purposes which you have offered
20 these exhibits in the in camera proceeding, they are
21 inadmissible, okay? They are marked for ID, are you with
22 me?

23 MR. BROWN: Yes, ma'am. I am with you on that.

24 THE COURT: Thank you.

25 Q Just to make sure I'm clear, you don't believe there's

1 any relevance to the question of who was the aggressor or
2 whether Mr. Nichols had a character for violence in those
3 reports that have been admitted is One, Two, Four, Five and
4 Six?

5 A I don't believe I understand your question.

6 Q All right. You've reviewed One, Two, Four, Five and
7 Six?

8 A Yes, sir.

9 Q And they've been introduced into evidence?

10 A Yes, sir.

11 Q Do you believe that those support a basis for opinion
12 regarding Mr. Nichols' character for violence or reputation
13 of a violent person?

14 A Sir, I wouldn't speak for someone else.

15 Q Does that give you a basis for opinion about his
16 reputation?

17 A Okay.

18 Q Do those reports give you a basis to form an opinion
19 about his character for violence or reputation for violence?

20 A No, sir. All those reports are essentially one side of
21 one story, so I cannot draw a conclusion from that.

22 Q I want to make sure the story of Joe Daise, Theresa
23 Nichols, and Sharine Nichols, as well as Akeya Hill, there's
24 four full reports on one side?

25 A Actually, they're all each separate reports, not all at

1 once. So each of those four are one side of one story. So
2 in other words there's four stories with one side is what it
3 appears to be.

4 Q And there's not a synergistic effect between four
5 complaints of incidents and Mr. Nichols' perpetrated, that
6 does not help you form an opinion about whether Mr. Nichols
7 was violent?

8 DEP. SOL. THORNTON: Objection, Your Honor. Asked and
9 answered about ten times.

10 THE COURT: Thank you. Yes, sustained.

11 Q But you did review them?

12 A Yes, sir.

13 Q And battery is not violent?

14 DEP. SOL. THORNTON: Objection, Your Honor.

15 THE COURT: Sustained.

16 Q Aggravated battery is not violent?

17 DEP. SOL. THORNTON: Objection, Your Honor.

18 THE COURT: Sustained. Ask and answered, sir.

19 MR. BROWN: On Recross, I haven't, I call it
20 respectfully, Your Honor. Because he did go into whether
21 those reports had anything to do with Jabari Lennin.

22 THE COURT: Proceed. And ask and answered. Thank you,
23 sir.

24 MR. BROWN: Yes, ma'am.

25 Q Anything else that you reviewed regarding your

1 acquaintance with Mr. Nichols?

2 A Not that I can recall.

3 Q But it was the other items One through Nine?

4 A The other items One through Nine?

5 Q That's correct; that we looked at. You did review
6 those?

7 A I don't know if there's anything else.

8 Q That's correct, but you did review those?

9 A Yes, sir.

10 Q And did you review the information contained in Seven
11 or Eight and Nine ---

12 DEP. SOL. THORNTON: Objection, Your Honor. It's been
13 asked and answered. He's gone through all nine of them.

14 MR. BROWN: No, this is totally different.

15 Q Did you review the information contained in Eight and
16 Nine with King Williams when you interviewed him?

17 DEP. SOL. THORNTON: Objection, Your Honor.

18 THE COURT: It's outside the scope of cross.

19 DEP. SOL. THORNTON: Yes, ma'am. It's outside the
20 scope of cross-examination.

21 THE COURT: Yes. Sustained.

22 MR. BROWN: Thank you, Your Honor. I don't have any
23 other questions for the witness at this time. I ask that he
24 remain under my subpoena for my case. Thank you.

25 THE COURT: Any objection?

1 DEP. SOL. THORNTON: No, Your Honor.

2 THE COURT: Very well. You may come down. All right.
3 Call your next witness, please.

4 DEP. SOL. THORNTON: Thank you, Judge. At this time
5 the State calls Kenneth Treyvon Nichols to the stand.

6 (WHEREUPON, MR. KENNETH TREYVON NICHOLS IS DULY SWORN.)

7 THE COURT: State your full name for the record.

8 MR. NICHOLS: Kenneth Trey Nichols.

9 THE COURT: How do you spell your last name?

10 MR. NICHOLDS: N-I-C-H-O-L-S.

11 THE COURT: Keep your voice up, okay? Your witness.

12 DEP. SOL. THORNTON: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY DEP. SOL. THORNTON:

15 Q Mr. Nichols, do you go by Kenneth, or Trey, or Treyvon?
16 What do you go by?

17 A Trey.

18 Q Trey, let me ask you a few questions. Where do you
19 live right now?

20 A 15 Luther Warren Drive.

21 Q Who do you live with?

22 A My moma.

23 Q Is your mom in the courtroom with you today?

24 A Yes.

25 Q Where is she?

1 A Right there.

2 Q All right. Is that who you've been sitting with all
3 week?

4 A Yes, sir.

5 Q Who else is here with you?

6 A My family.

7 Q Let me ask you a question. You say you live in 15
8 Luther Warren Drive; is that near Seaside Road?

9 A Yes.

10 Q Do those roads intersect one another?

11 A Yes.

12 Q Did you live in that area back on April 21st, 2011?

13 A Yes.

14 Q Do you remember what happened that day?

15 A Yes.

16 Q Okay. Did anything unusual happen to you that day?

17 A I got shot.

18 Q Tell me about it; what happened? Well, first of all,
19 let's go ahead and end the suspense, do you see the person
20 that shot you in the courtroom?

21 A Yes.

22 Q Where is he?

23 A Right there.

24 Q Do you mean the defendant sitting right over here in
25 the black shirt; is that who you're talking about?

1 A Yes.

2 Q How many times did he shoot you?

3 A Ten times.

4 Q All right. Do you know who he is?

5 A No.

6 Q Did you know, the day he shot you, did you know his
7 name?

8 A I think.

9 Q Okay. Well, obviously, you know his name now, but on
10 the 21st, when did you see him?

11 A I saw him when I was sitting at the oak tree.

12 DEP. SOL. THORNTON: Your Honor, may I approach?

13 THE COURT: Yes, you may.

14 Q I'm going to show you what's been entered into evidence
15 as State's Exhibit 1A and 1B; is that the tree you're
16 talking about?

17 A Yes.

18 Q So you were sitting at the tree and who did you see
19 come by?

20 A Jabari.

21 Q And you've already identified Jabari Lennin; did you
22 see anybody else?

23 A No.

24 Q What kind of car was Jabari in?

25 A Crown Vic.

- 1 Q What color was it?
- 2 A White.
- 3 Q Was it one color car or two colors?
- 4 A White with a red top.
- 5 Q White Crown Vic with a red top. Was Jabari driving the
- 6 car or was somebody else driving it?
- 7 A Somebody else was driving it.
- 8 Q Who was driving it?
- 9 A King.
- 10 Q Do you know King's full name?
- 11 A King David Williams.
- 12 Q All right. Was there anybody else in the car with them
- 13 that you saw that you can identify when they came by the
- 14 first time?
- 15 A Yes.
- 16 Q Who was in the car?
- 17 A Desiree.
- 18 Q Who is Desiree? Is she in the courtroom? Do you see
- 19 her?
- 20 A Yes.
- 21 Q All right. Where is she?
- 22 A There.
- 23 Q And Ms. Desiree, do you know her connection to Jabari,
- 24 if any?
- 25 A Her boyfriend.

1 Q All right. So you see King David Williams driving.

2 You see Jabari; where is Jabari sitting in the car?

3 A In the passenger seat.

4 Q And you see who else in the car?

5 A King in the driver seat.

6 Q And Desiree, where is she at?

7 A The backseat.

8 Q Now, do they stop where the tree is at the intersection
9 and drive by? Does anything happen at that time?

10 A They turn at the intersection and drive by.

11 Q Did you have words with Jabari when they came by?

12 A No.

13 Q Did you say anything to Jabari when they came by?

14 A No.

15 Q I'm going to show you what's been -- actually, leave
16 that for a second. Did you see them once they came by, did
17 you see them again that day? And when I say them, did you
18 see Jabari again that day?

19 A Yes.

20 Q All right. Did they come back through the
21 intersection?

22 A Yes.

23 Q Who was in the car when they came back through the
24 intersection?

25 A Jabari and King.

1 Q Was Jabari driving or was King driving?

2 A King.

3 Q What happened? Did you have words with Jabari, then?

4 A Yes.

5 Q Did you call him some less than nice names?

6 A Yes.

7 Q All right. Did you throw anything into the car or at
8 the car?

9 A Yes.

10 Q What did you throw?

11 A A soda can.

12 DEP. SOL. THORNTON: Court's indulgence for just one
13 moment.

14 THE COURT: Sure. Let the record reflect that you are
15 opening a ---

16 DEP. SOL. THORNTON: Your Honor, I am opening what has
17 been marked as State's Exhibit Number Three and has been
18 entered into evidence. Thank you, Your Honor, I apologize.

19 Q Do you recognize that?

20 A Yes.

21 Q Does that at least look like the can that you threw
22 that day?

23 A Yes.

24 Q Did you throw anything else at the car?

25 A No.

- 1 Q Did you shoot at the car?
- 2 A No.
- 3 Q Did you have a gun on you that day?
- 4 A No.
- 5 Q How about a knife?
- 6 A No.
- 7 Q Have any weapons at all other than the empty Coke can?
- 8 A No.
- 9 Q What happened when you had words with Jabari and you
- 10 threw the Coke can, what happened after that?
- 11 A I sat down.
- 12 Q What did Jabari do, if anything?
- 13 A He drove off and he said, "I got something for you."
- 14 Q All right. What happened then?
- 15 A Nothing.
- 16 Q Did you see him at all after that?
- 17 A They came back.
- 18 Q They who?
- 19 A Him and King.
- 20 Q What happened then? Did y'all have anymore words?
- 21 A No.
- 22 Q What happened?
- 23 A They drove past, turned around, and came back. They
- 24 drove past, drove down my road, and turned around at my
- 25 house, where my house is located, and came back to the

1 intersection and then he got out the car ---

2 Q All right. Hold on. Who's "he"? Who got out the car?

3 A Jabari.

4 Q All right. Now, where were you at this time, were you
5 still at the tree?

6 A Yes, sir.

7 Q And Jabari gets out of the car, what does Jabari do
8 then?

9 A He was talking and ---

10 Q Were y'all arguing?

11 A Yes.

12 Q Fussing with each other?

13 A Yes.

14 Q Okay. He gets out of the car; what does he do then?

15 A He gets out of the car and he was arguing, and I was
16 like what that is behind your back? He had his hand behind
17 his back. And I was like, "What that is behind your back?"
18 And then he started shooting -- no, he pulled out the gun,
19 and then I hold my hand up and then he started shooting.

20 Q All right. How many times did he shoot?

21 A Ten times.

22 Q Did you shoot back at him?

23 A No.

24 Q Did you have a gun to shoot back at him with?

25 A No.

1 Q Had you hit him or punched him, kicked him, anything?

2 A No.

3 Q Were y'all just, at that point, arguing -- I'm sorry,
4 that's probably a bad question. Right before he tried to
5 gun you down in cold blood, had you done anything other than
6 talk to him?

7 MR. BROWN: Your Honor, I object to that. A gratuitous
8 comment.

9 THE COURT: Sustained.

10 MR. BROWN: Thank you.

11 Q Before he shot at you nine or ten times, had you
12 punched him or kicked him?

13 A No.

14 Q Had you threatened him, other than to -- fussing with
15 him?

16 A No.

17 Q I'm gonna show you what's been marked as State's
18 Exhibit Number Four. Hold it, if you would, please; do you
19 recognize that?

20 A Yes.

21 Q Have you ever seen that piece of paper before?

22 A Yes.

23 Q What is it?

24 A It's a lineup.

25 Q Did you get shown that lineup by the Beaufort County

1 Sheriff's Office?

2 A Yes.

3 Q Did you make any notations on that?

4 A Yes.

5 Q Who did you circle -- let me ask you something. Did
6 you circle the person on there that you believed is the one
7 that shot you?

8 A Yes.

9 Q Who did you circle?

10 A Jabari.

11 Q Which number is he?

12 A Number four.

13 Q Did you make your initials by that?

14 A Yes.

15 DEP. SOL. THORNTON: Your Honor, at this time I'd ask
16 that State's Exhibit Number Four be moved into evidence.

17 THE COURT: Would you show it to Mr. Brown?

18 DEP. SOL. THORNTON: I apologize, I should have done
19 that first.

20 MR. BROWN: Without objection.

21 THE COURT: Very well. Without objection.

22 (STATE'S EXHIBIT NUMBER FOUR, PHOTO LINEUP, IS RECEIVED
23 INTO EVIDENCE.)

24 DEP. SOL. THORNTON: Your Honor, Court's indulgence,
25 please, for one moment.

1 Q What happened after Jabari Lennin shot you, what
2 happened? What did you do?

3 A I ran to my grandmother's house.

4 Q All right. How far away is your grandmother's house?

5 A About three yards.

6 Q Were you bleeding?

7 A Yes.

8 Q How many family members have you got in that
9 neighborhood right there; how many houses?

10 A About four or five.

11 Q Okay. Are there other houses in that area around the
12 tree?

13 A Yes.

14 Q So you went to your aunt's house did you say?

15 A My grandmother's house.

16 Q I'm sorry; your grandmother's house. What happened
17 when you got there?

18 A I saw Aunt Janice and I collapsed on the floor.

19 Q What kind of injuries did you receive?

20 A I was shot in the chest, my leg, my hand.

21 Q Have you got the scars of the bullet holes?

22 A Yes.

23 Q Do you remember how long you stayed at the hospital?

24 A No.

25 Q Were you there for a while?

- 1 A Yes.
- 2 Q Okay. Let's go back to a couple of these points, Trey.
- 3 Any question in your mind as to who shot you?
- 4 A No.
- 5 Q All right. Had you seen Jabari Lennin before?
- 6 A Yes.
- 7 Q You seen him around?
- 8 A Yes.
- 9 Q All right. Had you had prior problems with him?
- 10 A One time.
- 11 Q On that day, other than fussing with him or calling him
- 12 names, do you remember what you called him?
- 13 A A curse name; cursing at him.
- 14 Q All right. Should we just assume that it's things
- 15 you'd rather not say in front of your momma?
- 16 A Yes.
- 17 Q Okay. But you were not being very nice to him and
- 18 calling him names, correct?
- 19 A No.
- 20 Q "No" meaning you weren't being nice or no meaning
- 21 that's not correct?
- 22 A I wasn't being nice.
- 23 Q All right. Did you punch him or hit him?
- 24 A No.
- 25 Q Strike him in any way that day?

1 A No.

2 Q Strike anybody else next to him that day?

3 A No.

4 Q And you've heard some stuff mentioned, I know you were
5 in the courtroom when Mr. Brown talked about issues with
6 your momma and your grandmoma and your grandpa; is that
7 right?

8 A Yes.

9 Q All right. On that day, earlier that morning, did you
10 have a problem with your mom?

11 A Yes.

12 Q Okay. It had something to do about toothpaste or
13 something?

14 A Yes.

15 Q Did your momma kick you out of the house?

16 A Yes.

17 Q Did she let you back in?

18 A No.

19 Q At some point?

20 A Yes.

21 Q Okay. Is that who you live with now?

22 A Yes.

23 Q All right. And that's who sitting with you in Court?

24 A Yes.

25 Q Okay. And you've had a problem before with your

1 grandma?

2 A Yes.

3 Q You know you shouldn't push your moma, right?

4 A Yes.

5 Q You know you shouldn't push your grandmoma?

6 A Yes.

7 Q You know you shouldn't hit folks, right?

8 A Yes.

9 Q Was Jabari Lennin at your house when any of those
10 things happened? Did he live with y'all?

11 A No.

12 Q Okay. So he wasn't present when your mom and you got
13 in the toothpaste argument?

14 A No.

15 Q Okay. He's never lived with you or has nothing to do
16 with your family?

17 A No.

18 Q Okay.

19 DEP. SOL. THORNTON: Your Honor, I don't have any
20 further questions. I'd ask he answer any questions Mr.
21 Brown has. Thank you, Trey.

22 THE COURT: We're going to take a break before cross-
23 examination; we're going to take our morning break. Ladies
24 and gentlemen, I'm going to ask you to please step to your
25 jury room. Do not discuss this matter or allow anyone to

1 discuss it with you. We're going to take 15 minutes. Thank
2 you.

3 (WHEREUPON, THE JURY EXITS THE COURTROOM, AND THE
4 FOLLOWING IS HELD ON THE RECORD.)

5 THE COURT: All right. You cannot talk about your
6 testimony with anyone during our break. You get to take a
7 break, too, though, okay?

8 All right, we're going to take 15 minutes.

9 (11:10 A.M., WHEREUPON, THE JURY EXITS THE COURTROOM.
10 AT 11:25 A.M., THE JURY ENTERS THE COURTROOM AND THE
11 FOLLOWING IS HELD ON THE RECORD.)

12 THE COURT: Ladies and gentlemen, at this time we will
13 continue with the State's case and the cross-examination.
14 Mr. Brown?

15 MR. BROWN: Good morning, Mr. Nichols. May it please
16 the Court?

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. BROWN:

20 Q Mr. Nichols, do you have any problems perceiving
21 reality?

22 A No.

23 Q Okay. Do you have any problems with hallucinations?

24 A No.

25 Q Now, how long have you lived in the Luther Warren Drive

- 1 area?
- 2 A About four years.
- 3 Q Do you find yourself to be a person who's resorted to
- 4 violence during that four years?
- 5 A Yes.
- 6 Q You think you're a violent person?
- 7 A No, I don't think I'm a violent person, but I got into
- 8 trouble before.
- 9 Q For acts of violence?
- 10 A You can say that, yes.
- 11 Q Okay. Would that include against your grandmother?
- 12 A No.
- 13 Q How about your grandfather?
- 14 A Yes.
- 15 Q On that note, let me show you what has been premarked
- 16 as Defendant's Exhibit's Eleven and Twelve.
- 17 MR. BROWN: May I approach the witness, Your Honor?
- 18 THE COURT: Yes.
- 19 Q And Mr. Nichols, if you'll take a look at those. Do
- 20 you know who is depicted in those photos?
- 21 A Yes.
- 22 Q Okay. Who is that?
- 23 A My grandfather.
- 24 Q What's his name?
- 25 A Joe.

1 Q Last name?

2 A Daise.

3 Q Okay. Joe Daise, and do you recall an incident from
4 February 5th, 2011, regarding your grandfather Joe Daise?

5 A Yes.

6 Q All right. Do you recall what Mr. Daise looked like
7 after that incident?

8 A Yes.

9 Q Do those items fairly and accurately depict Mr. Daise's
10 conditions after the incident between you and him?

11 A Yes. After we got into the confrontation, yes.

12 MR. BROWN: Your Honor, I'd ask that they be moved into
13 evidence.

14 DEP. SOL. THORNTON: Without objection, Your Honor.

15 THE COURT: Very well.

16 (Defendant's Exhibit Number Eleven, photo, is received
17 into evidence.)

18 (Defendant's Exhibit Number Twelve, photo, is received
19 into evidence.)

20 MR. BROWN: I would ask the opportunity to publish them
21 to the jury.

22 THE COURT: All right. That's fine; you may go ahead
23 and do that. Ladies and gentlemen, Mr. Brown would like you
24 to view these photographs now. I just don't want you to
25 allow the viewing those photographs to keep you from being

1 able to listen to the testimony and we're not going to stop.

2 You're going to have to continue with your examination.

3 MR. BROWN: Yes, ma'am.

4 THE COURT: Be mindful that the photographs will be
5 with you in your jury room for your deliberations, but you
6 can certainly take a look at them now. You may proceed.

7 Q How would you describe your relationship with Mr.
8 Daise?

9 A Okay.

10 Q It's an okay relationship? Does he let you live in the
11 house?

12 A Yes.

13 Q Has he ever asked you to not live in the house?

14 A Yes.

15 Q Have you ever received a no trespass order?

16 A Yes.

17 Q At the time you received that order, did you comply
18 with it?

19 A Yes.

20 Q You never went back to the house after you were told
21 not to?

22 A I probably went to the house to get something, but
23 that's about it.

24 Q Okay. And you never had Mr. Daise call the police
25 again after you had a no trespass order?

- 1 A Yes.
- 2 Q Yes, you did? Or no, you didn't?
- 3 A I think he called the police one time.
- 4 Q Let me ask you this. What was the reason that you and
- 5 Mr. Daise had a confrontation in February?
- 6 A Him and my grandma was in a conflict.
- 7 Q Explain that to the jury if you would.
- 8 A They had a conflict, and I got upset and I intervened.
- 9 Q You intervened?
- 10 A Yes.
- 11 Q So I want to make it clear, at the time that you and
- 12 Mr. Daise came into the conflict, your grandmother was in
- 13 the room? A No, she wasn't.
- 14 Q Okay. So Mr. Daise, your grandfather, and your
- 15 grandmother got into conflict, but they were not in the same
- 16 room?
- 17 A They got into a conflict and then they went to separate
- 18 rooms, because he left and then he came back, and then we
- 19 got into it.
- 20 Q That's the part I want to talk about. Tell me about
- 21 him getting into it with you. What did he do to provoke
- 22 this, if anything?
- 23 A He was in a conflict my grandmother and I was upset.
- 24 Q After he came back?
- 25 A I was still upset.

1 Q You were upset. And did he do anything else or were
2 you just upset?

3 A No.

4 Q All right. So you were upset and he didn't do anything
5 and you punched him to where his eye swelled shut?

6 A Yes.

7 Q Without any other provocation?

8 A Yes.

9 Q Let me ask you about an incident involving your
10 grandmother. You've never been involved in an incident with
11 your grandmother?

12 A No.

13 Q Can you recall March 23rd, 2011?

14 A No, I don't remember.

15 Q You cannot remember? Is there a reason you can't
16 remember a date less than a month before the time you were
17 shot?

18 A I don't know.

19 Q Did the police ever speak with you?

20 A I don't think so.

21 Q Did you speak to the police regarding the blow you
22 inflicted on Mr. Daise?

23 A No.

24 Q Never spoke with them then?

25 A No.

1 Q Let me ask you this. Did the police ever come back to
2 get your side of the story as part of their investigation?

3 A No.

4 Q Never did?

5 A No.

6 Q Do you know why they never came to follow up from you
7 dotting his eye?

8 DEP. SOL. THORNTON: Objection, Your Honor. Calls for
9 speculation.

10 THE COURT: Sustained.

11 Q Were you hiding?

12 A No.

13 Q All right. So all they had to do was drive back out
14 there and you would have been there?

15 A Yes.

16 Q What do you usually do during the day, are you at
17 school? Work?

18 A Nothing.

19 Q Nothing, okay. How do you pay to live somewhere?

20 A I live with my mother.

21 Q Do you chip in on the bills?

22 A No.

23 Q Are you disabled?

24 A No.

25 Q All right. Let me ask you, did you stay at your

1 grandparent's house on April 13th after being asked to
2 leave?

3 A No.

4 Q You never did that?

5 A I don't know. I probably stayed, because I always go
6 there and leave, so I don't remember.

7 Q Let me ask you this, do you recall speaking to Sergeant
8 Garst?

9 A No.

10 Q Do you recall making a statement to Sergeant Garst?

11 A I don't remember.

12 Q You don't recall making that statement. Do you recall
13 receiving a trespass after notice document?

14 A No.

15 Q Do you recall refusing to sign a trespass after notice
16 document?

17 A No.

18 Q You sure you don't have problems with recall or
19 reality?

20 A Yes, I'm sure.

21 Q You're sure you don't?

22 A Yes.

23 Q Okay. I'm sorry I keep asking that same question, but
24 I'm confused. You are sure you do not?

25 A Yes.

- 1 Q But you don't recall that incident?
- 2 A No.
- 3 Q Even though that was eight days before the shooting?
- 4 A I don't remember.
- 5 Q Do you have a problem with your memory?
- 6 A I guess I probably do.
- 7 Q Do you know what the source of that problem is?
- 8 A Of what?
- 9 Q Do you know what causes your memory problems?
- 10 A No.
- 11 Q Have you ever discussed it with anyone?
- 12 A No.
- 13 Q So nobody's ever checked to see whether you have a
- 14 memory problem?
- 15 A No.
- 16 Q Do you recall speaking to the police any time in the
- 17 February, March or April time period and just don't know
- 18 that it applies to these cases?
- 19 A I don't really remember. I just remember me and my
- 20 grandfather getting into it and he told me to leave.
- 21 Q Did you ever go back to his house?
- 22 A Yes, I did go back.
- 23 Q Okay. But you don't recall ever getting in a shoving
- 24 match with your grandma?
- 25 A No.

1 Q And you don't recall being presented with a no trespass
2 notice?

3 A No.

4 Q And you don't recall speaking to Sergeant Garst?

5 A No.

6 Q All right. But that may be because you have some
7 memory problems?

8 A Maybe.

9 Q All right. Let me ask you about the morning that you
10 were shot. Do you recall getting into a shoving match with
11 your mother?

12 A Yes.

13 Q All right. Tell me what justified you shoving your
14 mother?

15 A I didn't shove her. She had her arm blocked up, like
16 that, and I squeezed past her.

17 Q Does she pay to live in that house?

18 A Yes.

19 Q Do you pay to live in that house?

20 A No.

21 Q All right. And did she say it was okay for you to go
22 into that bedroom?

23 A No.

24 Q You didn't have permission to go into her room?

25 A No.

1 Q And who would you say is the boss of that house?

2 A My momma.

3 Q And you weren't willing to listen to that authority?

4 A I was willing to, but I was just trying to get
5 toothpaste.

6 Q Okay. I want to make sure, she didn't want to let you
7 get that toothpaste because she didn't want you in the
8 bedroom, right?

9 A Yes.

10 Q Even though she didn't want you there, you didn't
11 concern yourself about her and her wishes, did you?

12 A No.

13 Q Even though she was the owner of the house, the boss?

14 A Yes.

15 Q All right. No questions about it, you disobeyed her?

16 A Yes.

17 Q All right. Is there any time that you pushed her?

18 A I didn't push her; I just slipped past her.

19 Q You never touched her?

20 A I probably did touch her.

21 Q Describe that touching if you would, please.

22 A Well, she had her arms stuck out, like this, and I
23 probably brushed past her arm.

24 Q Tell me who else you came in physical contact with in
25 that room?

1 A No one else.

2 Q Nobody? I'm going to ask you to take a look at
3 Defendant's Exhibit Number Five. Do you recognize that
4 handwritten document?

5 A Yes.

6 Q Is that a statement you wrote?

7 A Yes.

8 Q In that document, does it discuss your encounter on
9 that day at your mother's house, on April 21st?

10 A Yes.

11 Q All right. Does it not describe physical contact with
12 another person, your own words, describe physical contact
13 with another person?

14 A Yes.

15 Q Now, I'm going to ask you again, that day, did you have
16 physical contact with another person?

17 A No.

18 Q Did you put something else in your statement?

19 A Yes.

20 Q Would you just read that statement for the jury, that
21 line about moving around her real fast.

22 A I did that, and she pushed me again, and I moved around
23 her real fast and got the toothpaste; and her boyfriend got
24 up and hit me in the face.

25 Q Did he really do that?

- 1 A No.
- 2 Q So why did you put that in this police statement?
- 3 A Because I thought she was just trying to bother me.
- 4 Q Your mother was trying to bother you?
- 5 A Yeah, I thought she was just doing that just to bother
- 6 me.
- 7 Q Okay. So you lied to the police to gain advantage in
- 8 the investigation of your pushing of your mother, didn't
- 9 you?
- 10 A Because she was going overboard, so I went overboard.
- 11 Q Okay.
- 12 A She was trying to say I pushed her, so I said her
- 13 boyfriend hit me in the face.
- 14 Q So you did lie in this statement to the police?
- 15 A Yes.
- 16 Q And you lied to help yourself?
- 17 A Yes.
- 18 Q And you lied against your mother and her boyfriend?
- 19 A Yes.
- 20 Q And you did that to gain advantage in the investigation
- 21 of this criminal incident?
- 22 A Yes.
- 23 Q Is that something you do normally?
- 24 A No.
- 25 Q Tell me when you decide that it's okay to lie?

1 A Never.

2 Q It's never okay to lie, but sometimes you don't even
3 follow your own rules, do you?

4 A No.

5 Q Let me ask you, does it have problems to do with
6 remembering what rules are appropriate?

7 A You can say that.

8 Q Because sometimes you just don't know what the right
9 thing to do is with the truth?

10 A Yes.

11 Q Is that because you have a problem with reality
12 sometimes?

13 A Maybe.

14 Q Would that include things like hearing voices and ---
15 DEP. SOL. THORNTON: Objection, Your Honor. May we
16 approach?

17 THE COURT: Let me see you.

18 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD
19 AND OUT OF THE HEARING OF THE JURY.)

20 Q Do you sometimes hear voices in bushes?

21 A No.

22 Q You don't ever hear a voice or have an auditory
23 hallucination?

24 A No, we have stray dogs running around, but no.

25 Q Tell me what stray dogs has to do with hearing voices.

1 A I mean, I don't hear voices in the bushes.

2 Q Do you hear voices from cats?

3 A No.

4 Q Okay. But you do have a memory problem?

5 A I don't think so. I mean, maybe because I don't
6 remember those incidents, but I don't think so.

7 Q You don't remember having a memory problem?

8 A No.

9 Q Okay. All right. Let me ask you, did you speak to the
10 police when your mother and you had the disagreement over
11 the toothpaste?

12 A Yes.

13 Q And that's obvious because you gave a statement to
14 them, correct?

15 A Yes.

16 Q Was this statement given before you were shot?

17 A Yes.

18 Q The very same day?

19 A Yes.

20 Q So that morning you had a meeting with the police on
21 your street?

22 A Yes.

23 Q All right. And you knew it involved a question about
24 pushing or unlawfully touching someone?

25 A Yes.

1 Q All right. Where is your house, or your mother's
2 house, in relation to the Blanding's home?

3 A Probably about halfway down the street.

4 Q Okay. If a police officer was in the area, could they
5 see it?

6 A No.

7 Q They couldn't see the police officer -- how far away
8 when you say down the street, how many houses between your
9 house and their house?

10 A Three or four.

11 Q Okay. And so there's three or four houses, but if the
12 police were there, you don't think they could have seen the
13 Blanding's house?

14 A No.

15 Q Did you obey the law after that, after the police took
16 that statement from you that morning?

17 A I think so.

18 Q Okay. So did you ever speak to the police about
19 trespassing at your grandparent's house?

20 A Yeah, because she left the house and I was told to get
21 out when the police left and she left too. So I went to my
22 grandmas house to see if they would let me in over there and
23 he said no.

24 Q And did you speak to the police after your grandfather
25 told you that you couldn't go into that house?

1 A Yes, sir.

2 Q It was twice that same day that the police were called
3 out, wasn't it?

4 A Yes.

5 Q Was it not the same police officer that went out both
6 times?

7 A I think it was the same police officer.

8 Q Is there a reason that you can't be certain that it's
9 the same police officer you spoke with within one hour?

10 A Say that again.

11 Q Do you have a problem remembering whether or not it was
12 the same police officer?

13 A Yes.

14 Q You do have a problem remembering that?

15 A Yes.

16 Q And that's the same day of the shooting, right?

17 A Yes.

18 Q Is it just a problem remembering the stuff in the
19 morning of the shooting or is there a problem remembering
20 anything from the day of the shooting?

21 A It's a problem remembering some stuff.

22 Q Okay. Which stuff do you decide to remember and which
23 stuff do you decide not to remember?

24 A I just didn't remember that. I mean, I don't remember
25 if it was the same police or not.

1 Q Okay. But you remember telling the officer that you
2 did not ever receive a trespass notice?

3 DEP. SOL. THORNTON: Objection, Your Honor. Asked and
4 answered. He's already asked him about receiving a trespass
5 notice.

6 MR. BROWN: This is whether he told the officer he
7 never got one on a different date. That's true that he said
8 that on April 13th, he says he never got a trespass notice,
9 but on April 21st ---

10 THE COURT: So you want to know?

11 MR. BROWN: Whether he told the officer that he never
12 got it which would be ---

13 THE COURT: You want to ask him did he tell the police
14 officer that?

15 MR. BROWN: Yes.

16 Q Did you tell the police officer on April 21st that you
17 had never gotten the trespass notice?

18 A I don't remember.

19 Q So you don't remember that either?

20 A No.

21 Q Do you remember any details of that discussion with law
22 enforcement?

23 A No.

24 Q Ókay. So the trespass notice wasn't the issue, just
25 Mr. Daise told you not to come in the house again?

- 1 A Yes.
- 2 Q What did you do after the police came to visit you
- 3 twice that day -- what did you do after that, because you
- 4 couldn't go back to either your house or your grandparent's
- 5 house, could you?
- 6 A I went to the park.
- 7 Q You went to the park. How did you end up at the tree?
- 8 A I walked home from the park to the tree.
- 9 Q Have you ever heard of that tree referred to as the
- 10 crack tree?
- 11 A No.
- 12 Q Never heard of that?
- 13 A No.
- 14 Q Okay. Do you know Mr. Paul Mitchell?
- 15 A Yes.
- 16 Q Do you know Ms. Regina Blanding?
- 17 A Yes.
- 18 Q Do you know her daughter, Desiree Blanding?
- 19 A Yes.
- 20 Q Do you know her son Robert Blanding?
- 21 A Yes.
- 22 Q Can you tell this jury the interactions you've had with
- 23 Robert Blanding?
- 24 A I don't remember.
- 25 Q You don't remember any time you ever talked to Robert

1 Blanding?

2 A No.

3 Q Do you ever remember speaking to Desiree Blanding?

4 A No.

5 Q Never remember to speaking to Ms. Regina Blanding?

6 A No.

7 Q Do you remember standing in the road at the corner by

8 the tree and throwing bottles at cars?

9 A No.

10 Q You've never done that?

11 A No.

12 Q Ever?

13 A No.

14 Q Do you remember threatening to use a bottle against

15 your grandfather?

16 A I didn't threaten him. I picked up a bottle up off the

17 ground, and I picked it up, yeah.

18 Q You picked it up to use it as a weapon?

19 A No.

20 Q Tell me what you picked it up for?

21 A I just did.

22 Q Was it during that argument?

23 A Yes.

24 Q Okay. So you were engaged in an argument with your own

25 family and you picked up a bottle?

1 A Yes.

2 Q You don't know why you picked it up?

3 A No.

4 Q How tall are you Mr. Nichols?

5 A About 6'4".

6 Q Did you know that you are listed as 6'5" or 6'6" in
7 any of those football programs?

8 A Huh?

9 Q Any of those football programs from the high school
10 list you as 6'5" or 6'6"?

11 A No.

12 MR. BROWN: Your Honor, if I can get him to stand down
13 and stand beside me to show his size.

14 THE COURT: Okay. You cannot testify, you understand?

15 MR. BROWN: I'm not going to say one word.

16 THE COURT: All right.

17 (WHEREUPON, THE WITNESS, MR. NICHOLS, AND MR. BROWN
18 STAND BESIDE EACH OTHER. THEREAFTER, THE WITNESS RESUMES
19 THE STAND.)

20 MR. BROWN: Let the record reflect the difference that
21 we have stood in front of the jury for difference in height.

22 THE COURT: Okay.

23 MR. BROWN: I think it's better to do that than with my
24 client, for obvious reasons.

25 THE COURT: Don't comment.

1 MR. BROWN: Well, I apologize. I just thought ---

2 THE COURT: Don't comment.

3 Q Let me ask you, if I may, about your physique at the
4 time this happened, 19 months ago?

5 A I ain't hear you.

6 Q All right. Had you been lifting weights at some point
7 and time?

8 A In my life?

9 Q Well, closer to this time. When was the last time you
10 trained as an athlete?

11 A I'll say in high school.

12 Q Okay. When did you finish high school? What year did
13 you graduate?

14 A 2009.

15 Q 2009. So you graduated about 21 months before you were
16 shot?

17 A Yeah.

18 Q Did you ever do any training after that?

19 A No.

20 Q Did you go to Newberry College?

21 A Yes.

22 Q Was that related in part to football?

23 A Yes.

24 Q When you went to Newberry College, they didn't make you
25 do any weight training?

- 1 A Yes.
- 2 Q And when was that?
- 3 A A year after I got out of high school.
- 4 Q So that would be the Fall of 2010 or Fall of 2009?
- 5 A I'd say the Spring of 2010.
- 6 Q Okay. So Spring of 2010, you're at Newberry College;
- 7 when is the last time that you trained, physically trained
- 8 or conditioned with lifting weights with Newberry College?
- 9 A That's probably the last time.
- 10 Q Was the Spring?
- 11 A Yes.
- 12 Q That would be into like May, June, or is that like
- 13 March, April?
- 14 A March or April.
- 15 Q Okay. So about a year before this, you were trained.
- 16 Give us some idea of how strong you were at that time, how
- 17 much weight did you lift?
- 18 A Bench pressing, I could probably could lift about 185
- 19 at one time.
- 20 Q I want to make sure, how much does the bar itself
- 21 weight, just the naked bar?
- 22 A About 45 pounds.
- 23 Q The bar itself; the girl bars, they call it for guys
- 24 who don't lift with anything else on it, right?
- 25 A Yes.

1 Q All right. When you put those real big rings on it,
2 how much are they?

3 A Like 135.

4 Q So when you put one on each side, they're 45 each?

5 A Yes.

6 Q So you got 3 times 45, you got 135; and you couldn't
7 even lift a second set of those big ones?

8 A No.

9 Q Not at all. But you were able to go to college to play
10 football lifting 180 pounds, bench press?

11 A Yes.

12 Q You sure your memory is right on that?

13 A Yeah.

14 Q All right. Tell me about squats?

15 A About 300-something pounds.

16 Q You could squat 300 pounds, but your arms were not
17 nearly as strong?

18 A No.

19 Q Just 185?

20 A Yes.

21 Q Any other physical training you did besides weight
22 lifting?

23 A No.

24 Q Would you say you were in pretty good athletic
25 condition at least April of 2010?

1 A Yes.

2 Q Did you suffer any significant injury or trauma between
3 April 2010 and April 2011 that would change your physical
4 condition?

5 A I don't remember; I don't think so.

6 Q Okay. You didn't get hit by a car or anything?

7 A No.

8 Q Did you do anything else that would have been bad for
9 your health or your physical condition?

10 A No.

11 Q All right. Let me ask you about April 21st. Did you
12 ever know or have ever seen Mr. Jabari Lennin before April
13 21st?

14 A I don't remember.

15 Q You don't remember if you ever seen him before?

16 A Well, I saw him one time. I remember seeing him one
17 time, and then after that I don't remember.

18 Q I want to understand you, where did you see him one
19 time?

20 A Passing that oak tree.

21 Q You don't recall going to high school with him?

22 A Yes, sir.

23 Q You do recall him from high school?

24 A I think so.

25 Q You recall having a beef with him?

- 1 A No.
- 2 Q Never had a beef with him?
- 3 A No.
- 4 Q Do you ever recall him at Ms. Blanding's house?
- 5 A Yes.
- 6 Q All right. For what it's worth, did you know Ms.
- 7 Blanding was pregnant?
- 8 A No.
- 9 Q You never knew that?
- 10 A No.
- 11 Q Okay. Did you ever recall Mr. Lennin staying at the
- 12 Blanding house?
- 13 A No.
- 14 Q Now, on that day you mentioned this Coca-Cola can
- 15 that's been entered into evidence; do you recall that?
- 16 A Yes.
- 17 Q Were you drinking that soda out at the road?
- 18 A Yes.
- 19 Q All right. And there was reference to throwing that
- 20 can?
- 21 A Yes.
- 22 Q Was that can thrown into the car by you?
- 23 A Yes.
- 24 Q Was it thrown at Mr. Lennin?
- 25 A I threw it in the car; I don't know who I through it

1 at.

2 Q Did it have soda in it still?

3 A No.

4 Q Okay. You had finished it then you threw an empty can
5 in the car?

6 A Yes.

7 Q Can you tell me why you threw a can at someone else's
8 car?

9 A I don't know.

10 Q Okay. Is there any reason that would be a nice reason?
11 Were you being mean to him?

12 A Yes.

13 Q All right. Did you walk up to the car or did they
14 drive the car up to you?

15 A I walked to the car.

16 Q All right. Do you recall exactly the words you used
17 when you spoke to Mr. Lennin?

18 A I don't remember exactly what I said.

19 MR. BROWN: And I apologize, Your Honor, but I would
20 like to ask him, based on what I have is a good faith basis
21 of knowledge, about what those words were.

22 THE COURT: You can ask him what he said.

23 MR. BROWN: Thank you, Your Honor.

24 Q Did you not say, "Get out of the car, pussy?"

25 A No.

1 Q You didn't say that?

2 A No.

3 Q Did you have words of vulgarity with him before you
4 threw the can?

5 A Yes.

6 Q All right. Now, when Mr. Lennin was outside the car,
7 he was face to face with you?

8 A Yes.

9 Q All right. How was he positioned toward the driver of
10 the car? Was his back to the driver's window or his chest,
11 Mr. Lennin's, that is?

12 A I think his back was.

13 Q Okay. His back is to the window and you're still
14 facing the driver's window of the car like you were before?

15 A Yes.

16 Q When you threw the Coke can into the car?

17 A They was sitting in the car, and then I walked to the
18 car, throwed the can in the car, and then I went back and
19 sat down at the tree?

20 Q Then, how did you get back face to face with him
21 standing right there?

22 A When they came back, he got out the car, and then I was
23 sitting down at the tree and he was standing up facing me.

24 Q And you walked towards him?

25 A I didn't walk towards him.

1 Q Were you standing at the tree when you were shot?

2 A I was sitting at the tree when I was shot.

3 Q You were sitting down when you were shot?

4 A Yes.

5 Q Would you come around here?

6 MR. BROWN: If I may, Your Honor.

7 Q And ask, would you demonstrate for the jury how you
8 were sitting down beside that tree?

9 (WITNESS COMPLIES.)

10 A I was sitting down just like this.

11 Q If you could demonstrate, if Your Honor, I mean I'm
12 assuming he was sitting on the ground, it would be the same
13 as the floor.

14 A I was sitting like this.

15 Q So you were actually leaning against the tree to stand?

16 A No, I was sitting -- sitting, like in a chair.

17 Q Was there a chair there?

18 A There's a little hump right here -- (referring to an
19 exhibit laying on the bar.) -- on the tree and I was sitting
20 on it.

21 Q Okay. And you're referring to State's Exhibit 1A. All
22 right.

23 THE COURT: Here's what I want you to do. I want the
24 exhibit to be shown to the jury, so that he can show the
25 jury what he is referring to.

1 MR. BROWN: Certainly, Your Honor. If I may approach
2 the jury panel with the photo?

3 THE COURT: Yeah. Just hand them the photo. He picked
4 that photo, and if you'll just show the jury and do it three
5 times for me, so all of the jurors can see.

6 (MR. BROWN COMPLIES.)

7 THE COURT: Very well.

8 Q Now that we're looking at State's One, do you see a
9 sign in the middle of that tree?

10 A Yes.

11 Q What does that sign say?

12 A I don't know.

13 Q Let me see if you can look at 1B and read it a little
14 better. Does that look like the same tree?

15 A Yes.

16 Q Can you read the sign in that tree?

17 A No trespassing.

18 Q Do you own that piece of property where that no
19 trespassing sign is?

20 A No.

21 Q Did anybody who owned that give you permission to be
22 there?

23 A No.

24 Q So you were trespassing a second time that day?

25 A Yes.

1 Q Okay. So you were trespassing again?

2 DEP. SOL. THORNTON: Objection, Your Honor. I realize
3 he's already asked the answer. Mr. Brown is repeatedly
4 calling for speculation in legal conclusions. I mean
5 whether he was trespassing or not would be a legal
6 determination. He can ask him about the sign at the tree or
7 did he own the property. I mean he's calling for legal
8 conclusions.

9 THE COURT: It's a little late.

10 DEP. SOL. THORNTON: I understand, Judge.

11 MR. BROWN: I don't mind rephrasing it.

12 THE COURT: You may proceed.

13 MR. BROWN: Thank you.

14 Q Now, had you ever left that spot at the tree when Mr.
15 Lennin got out of the car?

16 A After I was shot?

17 Q Did you ever walk towards him or put your hands up?

18 A No, I was sitting down.

19 Q You were sitting down on the little hump there?

20 A Yes.

21 Q All right. Where were your hands at that time?

22 A At what time?

23 Q Where were your hands before he got out of the car?

24 A In my lap.

25 Q Your hands were in your lap. All right. When did you

1 put your hand up? That right hand up like you gestured?

2 A After he pulled out the gun.

3 Q After he pulled out the gun is when you put your hands
4 up. Had you had any words with him when he got out of the
5 car?

6 A No.

7 Q All right. Because I recall you mentioning an argument
8 with Mr. Lennin. Now, we've heard that you said some
9 unpleasantries to Mr. Lennin. So tell me what it is Mr.
10 Lennin said to you that made it an argument?

11 A I don't remember what he said.

12 Q Did you ever tell the police he said anything?

13 A I don't remember.

14 Q You don't remember him saying anything at all, do you?

15 A I remember him saying something, but I don't remember
16 what he said.

17 Q Was it something that you think was significant?

18 A No, I don't remember what he was saying.

19 Q Okay. And you tell this jury that Mr. Lennin said
20 anything threatening to you?

21 A Yeah, he had a gun.

22 Q Did he say anything threatening to you?

23 A I don't remember what he said.

24 Q You don't remember, so you can't say that he said
25 anything threatening, can you?

1 A He had his hands behind his back and he was talking. I
2 don't remember what he was saying though, because I was
3 just, like, why does he have his hands behind his back.

4 Q Was there anything threatening that he said on that
5 part?

6 A I don't remember what he said.

7 Q You don't remember anything that he said. Are you
8 certain that the gun was held in a hand that was behind his
9 back?

10 A Say that again. I didn't hear you.

11 Q You said that he had a hand behind his back?

12 A Yes.

13 Q Is that the hand in which he held the gun?

14 A Yes.

15 Q And was that any question it was behind his back before
16 you saw the gun?

17 A Yes.

18 Q There's no question or is there a question? You're
19 certain that he had that gun behind his back in that hand?

20 A Yes.

21 Q Absolutely. All right. Because I don't want there to
22 be a memory slip; I want to make sure.

23 A Yes.

24 Q Okay. And there's no question that his back was
25 towards the driver of that car?

1 A Yes.

2 Q Was it close enough to the driver that a normal person
3 could see it?

4 A Probably.

5 MR. BROWN: I beg the Court's indulgence.

6 THE COURT: Okay.

7 MR. BROWN: I don't have any other questions, Your
8 Honor.

9 THE COURT: Very well. Redirect?

10 DEP. SOL. THORNTON: None, Your Honor. I ask that he be
11 allowed, of course, he, obviously, is the victim, that he
12 can stay, but just ask he be allowed to sit with his mom.

13 THE COURT: Very well. You may step down. Call your
14 next witness, please.

15 DEP. SOL. THORNTON: The State calls King David
16 Williams.

17 (WHEREUPON, MR. KING DAVID WILLIAMS IS DULY SWORN.)

18 THE COURT: Mr. Williams, I'm going to ask you to state
19 your full name for the record.

20 MR. WILLIAMS: King David Williams, III.

21 THE COURT: Your witness.

22 DEP. SOL. THORNTON: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY DEP. SOL. THORTON:

25 Q Mr. Williams, where do you live, sir?

- 1 A 450 Parris Island Gateway.
- 2 Q All right. And did you live in that area on or about
3 April 21st, 2011?
- 4 A No.
- 5 Q Did you live somewhere else in the Beaufort area?
- 6 A Yes, I did.
- 7 Q Where was that?
- 8 A 12 County Share Road.
- 9 Q All right. Do you know the person seated at this table
10 next to Mr. Brown, the defendant in this case, Jabari
11 Lennin?
- 12 A I do.
- 13 Q How do you know him?
- 14 A My auntie married his uncle, so I think we're family
15 like that; friends of the family.
- 16 Q All right. So y'all are related in some way?
- 17 A Yes.
- 18 Q How long have you known him?
- 19 A Ever since I was little. I can't say a specific date.
- 20 Q Okay. So would it be fair to say you've known him for
21 several years?
- 22 A Yes.
- 23 Q Were you with Jabari Lennin on or about April 21st,
24 2011?
- 25 A Yes.

- 1 Q What were you doing with him?
- 2 A Taking his girlfriend home.
- 3 Q All right. What car were you in?
- 4 A Crown Vic.
- 5 Q Who's car is it?
- 6 A Jabari.
- 7 Q Do you remember what color the car is?
- 8 A White and red.
- 9 Q White and red. What part of the car is white and what
10 part is red?
- 11 A The body is white, the top is red.
- 12 Q You said you took -- who were you taking home?
- 13 A Desiree Blanding.
- 14 Q All right. Who is Desiree Blanding? Who is she to
15 Jabari?
- 16 A His girlfriend.
- 17 Q Okay. Did you take her any place specific that day?
- 18 A I think we went to Walgreen's or something like that.
- 19 Q Did you take her home?
- 20 A Yeah.
- 21 Q Where does she live?
- 22 A Off Seaside Road.
- 23 Q Seaside Road, is that here in Beaufort County?
- 24 A Yes.
- 25 Q Is there a tree at the intersection of Seaside and

1 Luther Warren?

2 A Yes.

3 DEP. SOL. THORNTON: Your Honor, if I may approach?

4 THE COURT: You may.

5 Q I'm going to show you what's been entered into evidence
6 as State's 1A and 1B; would you look at those photographs.

7 Is that the tree that you mentioned?

8 A Yes.

9 Q Okay. Did you pass by that tree when you took Desiree
10 Blanding home?

11 A Yes.

12 Q And when you took Desiree Blanding home, did you see
13 anybody at the tree?

14 A I think so.

15 Q In the area of the tree, who did you see?

16 A Trey.

17 Q By Trey, are you referring to Trey Nichols, the victim
18 in this case?

19 A Yes.

20 Q All right. Did you and Trey have any words or have an
21 argument or anything?

22 A No.

23 Q Who else was in the car with you, by the way?

24 A Jabari.

25 Q Jabari and who else?

1 A Desiree.

2 Q All right. Did Jabari and Trey or Desiree and Trey
3 have any words exchanged?

4 A As we were coming, there was something brief, but I
5 can't tell you what was said.

6 Q Okay. What happened after you dropped Desiree off?

7 A We just chilled for a second and then we left out.

8 Q We who?

9 A Me and Jabari.

10 Q You and Jabari. What happened when you left out?

11 A He threw a can at the car when we were stopping.

12 Q He who?

13 A Trey.

14 Q Do you mean Trey Nichols?

15 A Yes.

16 Q Trey threw the can?

17 A Yes.

18 Q Does that look like the kind of can he threw?

19 A Yeah.

20 DEP. SOL. THORNTON: I'm sorry, Your Honor, I
21 apologize. I've handed the witness State's Exhibit Number
22 Three; it's the Coke can. It's already been testified to --
23 -

24 THE COURT: Okay.

25 DEP. SOL. THORNTON: --- and introduced into evidence.

1 THE COURT: Okay.

2 Q What happened when the Coke can -- you said he threw
3 the Coke can, what happened?

4 A Then ---

5 Q Did it hit the car or come inside the car?

6 A It hit the car; and then, the second time he threw it
7 in the car.

8 Q Okay. So he threw the can twice at the car, once it
9 hit the car, once it went in. What happened after that?

10 A Then they were arguing and stuff like that.

11 Q Who is they?

12 A Jabari and Trey.

13 Q All right. Now where is Jabari in the car?

14 A In the passenger seat.

15 Q And who's driving?

16 A Me.

17 Q You said they were arguing. Were they arguing about
18 anything specific or were they cussing at each other or
19 what?

20 A Yeah, they were cussing at each other.

21 Q Okay. What happened after that?

22 A It was an argument, and then it led into the shooting.

23 Q All right. Now, you're going to have to be a little
24 bit more specific. Did Jabari stay in the car or did he get
25 out of the car?

- 1 A He got out of the car.
- 2 Q All right. Where did he go?
- 3 A Around the car on my side.
- 4 Q Okay. And where did he go after that?
- 5 A He was right there, basically, right there. It's not
- 6 like he was walking around and stuff like that.
- 7 Q Okay. So he walked in front of the car?
- 8 A Yes.
- 9 Q Did he end up on your side?
- 10 A Yes.
- 11 Q About how far away?
- 12 A Probably from here to, closer to him; not too far, you
- 13 know what I mean.
- 14 Q Would about this far be right or closer?
- 15 A Closer.
- 16 Q All right. Was Jabari arguing with anybody at that
- 17 time?
- 18 A I mean they was going back and forth.
- 19 Q They who?
- 20 A Jabari and Trey.
- 21 Q All right. Now, what happened during the argument?
- 22 You said it led to his shooting. Who was shooting?
- 23 A I couldn't tell at the time, and then I saw the gun
- 24 afterwards, I didn't know who was shooting.
- 25 Q All right. You saw a gun. Your testimony today is

1 that you didn't know who was shooting; is that right?

2 A No, I'm saying afterwards I knew who had shot who, but
3 I didn't know at the time.

4 Q All right. Well, who shot who?

5 A Jabari shot Trey.

6 Q How do you know that?

7 A Because as he got back in the car, I saw the gun.

8 Q You saw the gun. And who had the gun?

9 A Jabari.

10 Q Did Jabari have any holes in him or any marks?

11 A Not from I knew.

12 Q Was he pouring blood from anywhere that you saw?

13 A No.

14 Q Did he seem okay to you?

15 A Yes.

16 Q Now, that's not exactly what you told law enforcement
17 when you talked to them, is it?

18 A I can't be sure; it was over a year and a half ago.

19 DEP. SOL. THORNTON: Your Honor, if I may approach?

20 THE COURT: You may.

21 Q Let me hand you some notes from an interview you did
22 and ask you if ---

23 MR. BROWN: Your Honor, may we approach?

24 THE COURT: Yes.

25 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD

1 AND OUT OF THE HEARING OF THE JURY.)

2 Q I'm going to hand you something, and I want you to tell
3 me if reading this refreshes your memory of what you told
4 law enforcement.

5 MR. BROWN: Your Honor, I think he does need to ask
6 about the time and date of the statement and ---

7 THE COURT: Right now, he just, "Does it refresh your
8 recollection?" The answer to that will be "yes" or "no".

9 MR. BROWN: I understand, but before it's proven
10 otherwise.

11 THE COURT: Okay.

12 Q Let me know when you're done reading this.

13 THE COURT: And Mr. Williams, the question, before you
14 just say, "No," is "Does that document refresh your
15 recollection?" The answer for you will be "yes" or "no." I
16 just want you to know that.

17 (Brief pause as witness reads statement.)

18 Q Does that refresh your recollection?

19 A Yes.

20 Q Would you like to change your answer when I asked you a
21 moment ago of who shot who and how you knew? Did you see
22 the shooting?

23 A I was there.

24 Q That's not what I asked you, sir. Did you see the
25 shooting?

1 A There was shooting at my car on the street, you know
2 what I mean?

3 Q Okay. So you did see Jabari Lennin shoot?

4 A Yes.

5 Q So what you said earlier was not true?

6 A As to what?

7 Q Earlier, I asked you who did the shooting, and you said
8 Jabari did the shooting; is that correct?

9 A Yes.

10 Q I then asked you how you knew and you said, I believe
11 your statement was, "I didn't see until after he got back in
12 the car with the gun," and I asked you who had the gun, and
13 you said Jabari. Do you remember that, just about ten
14 minutes ago?

15 A Yes.

16 Q All right. And I allowed you to look at a document to
17 refresh your recollection, and now from what I understand,
18 when I asked you that question you said I saw him shoot him.
19 Is that true or not?

20 A Yes.

21 Q All right. Who did you see shoot who?

22 A Jabari shot Trey.

23 Q And you saw this? You witnessed it, is that true?

24 A Yes.

25 Q Now, when Jabari got back into the car with you, did he

1 have the gun with him?

2 A Yes.

3 Q Did you know he was going to go out there and shoot
4 Trey that day?

5 A No.

6 Q Did you know he had a gun on him?

7 A No.

8 Q Did he -- where was the gun? Did you see the gun at
9 any time before the shooting?

10 A No.

11 Q All right. But you did see it afterwards, is that
12 correct?

13 A Yes.

14 Q When he got back into the car, did he say anything to
15 you or did you ask him any questions?

16 A It was just a whole lot of mixed emotions going on
17 because of what had just happened, you know.

18 Q I understand. Do you remember asking him something?

19 A I was, like, why, you know what I mean, and he couldn't
20 give me a direct answer. He was just like "fuck," you know
21 what I mean, because of when everything happened.

22 Q Is that what you remember telling law enforcement that
23 he said?

24 A I remember him saying, like, "fuck" you know, like, he
25 was just hysterical from what happened, you know what I

1 mean? That's not something that normally happens.

2 Q So he doesn't normally go around shooting people?

3 A No. I've never known him to own a gun.

4 DEP. SOL. THORNTON: Your Honor, I'm sorry, Court's
5 indulgence for just a moment.

6 THE COURT: Okay.

7 Q Again sir, I'm going to hand you this document and just
8 ask if that refreshes your recollection. If you pay
9 particular attention to where I have put as a star in red.
10 Does that refresh your recollection?

11 A Yes.

12 Q What did Jabari tell you when you asked him why he had
13 shot Trey?

14 A He just said, "Fuck that, fuck him."

15 Q Is that what he said?

16 A In a way, you know what I mean? He was saying "Fuck
17 it," like he didn't know; you know what I mean? Like at the
18 time, like somebody who probably didn't want to talk about
19 it, he didn't want to talk about it.

20 Q Okay. Just so we're clear, I know there's been a
21 little bit of confusion now, who were you with in the car?

22 A Jabari.

23 Q All right. Did you see Jabari shoot Trey Nichols?

24 A Yes.

25 Q Were you charged in this case?

1 A Yes.

2 Q Were you charged as an accessory?

3 A Yes.

4 Q Did you have a meeting with and were you interviewed by
5 law enforcement?

6 A Yes.

7 Q Did you also have a meeting with me?

8 A Yes.

9 Q All right. Were you told anything about your testimony
10 today -- in other words, did I offer you a deal, for lack of
11 a better word?

12 A No.

13 Q I didn't?

14 A Oh yes, I mean, you said that they would be dropped or
15 whatever.

16 Q All right. So let me be more specific. Did I agree to
17 dismiss your charges in exchange for your truthful testimony
18 here today?

19 A Yes.

20 Q You have a criminal record, don't you, Mr. Williams?

21 A I do.

22 DEP. SOL. THORNTON: Sorry, Your Honor, Court's
23 indulgence for just one moment.

24 THE COURT: All right.

25 MR. BROWN: Your Honor, I've never been privy to it.

1 DEP. SOL. THORNTON: Your Honor, my understanding of
2 the rule is that I am supposed to provide this to him after
3 the witness has testified. I'd be happy to do it as soon as
4 I ask him about it.

5 MR. BROWN: And I didn't follow Rule 5; it says "rap
6 sheets".

7 THE COURT: Okay.

8 MR. BROWN: I'd just like to look at it. I mean, I have
9 no objection, quite frankly. I would just ask that they
10 only introduce what the document allows; there's some things
11 marked not for dissemination.

12 DEP. SOL. THORNTON: It can be handled, Your Honor,
13 without need for the objection. We'll take care of it.

14 THE COURT: Okay.

15 Q You were convicted in 2010 of receiving stolen goods,
16 were you not?

17 A Yes.

18 Q All right. Now, let me ask you a question, just one
19 last time to make sure that we're all clear here. Did you
20 or did you not see Jabari Lennin shoot Trey Nichols?

21 A Yes.

22 Q And you testified earlier that you're related to
23 Jabari; is that right?

24 A By marriage.

25 Q Okay. Now, do you see Jabari Lennin in this courtroom?

- 1 A Yes.
- 2 Q Where is he?
- 3 A Right there.
- 4 Q All right. You've indicated Mr. Jabari Lennin, the
5 defendant in this case; is that right?
- 6 A Yes.
- 7 Q What happened after you left when you said Jabari got
8 in the car? Did you guys stay there or did you leave?
- 9 A We left.
- 10 Q Where did you go?
- 11 A Well, I made a left turn to turn around, and I went
12 towards Folly Road and that's how I got out of there.
- 13 Q All right. I'm sorry, so you drove down one way and
14 made a left and turned around and came back?
- 15 A Uh-huh (affirmative).
- 16 Q And went down what road?
- 17 A Folly Road.
- 18 Q Where did you go after that?
- 19 A I called a friend of mine and he came and picked me up
20 and I went to my grandmother's house.
- 21 Q All right. Where was this at? Where did you get out
22 of the car at?
- 23 A I can't say the address on Folly Road.
- 24 Q Okay. Somewhere on -- in other words, did you go to a
25 house, did you go to an address or did you just stop the

1 car and get out?

2 A I got out.

3 Q Why?

4 A Because I just didn't want to be a part of it.

5 Q A part of what?

6 A What had just happened.

7 DEP. SOL. THORNTON: Your Honor, I don't have any
8 further questions. I'd ask he answer any questions Mr.
9 Brown has, unless it's time for the lunch break.

10 THE COURT: All right. Your cross-examination, you may
11 proceed.

12 MR. BROWN: May it please the Court?

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. BROWN:

16 Q King, were you scared?

17 A (NO RESPONSE.)

18 Q Well, let me ask you this, who decides whether or not
19 you testify truthfully for part of the deal?

20 A Who decides what?

21 Q Who decides whether or not they're going to drop your
22 charges?

23 A I'm not sure.

24 Q Okay. Do you remember signing an agreement with Mr.

25 Thornton?

1 A Yes, I did.

2 Q Okay. And do you recall what it requires for you to
3 get the benefits?

4 A All he did was tell me to testify truthfully.

5 Q Okay. Does it say what it has to be consistent with?
6 The truth consistent with what?

7 A What happened that day.

8 Q Is it what you told him in your meeting?

9 A Yes.

10 Q All right.

11 MR. BROWN: And I'm going to ask at this point if I can
12 show him this document which I would asked to be marked as
13 Defendant's Thirteen.

14 DEP. SOL. THORNTON: I don't need to see it, Judge;
15 it's my agreement. I know which one it is; thank you,
16 ma'am.

17 THE COURT: At this point it's for identification?

18 MR. BROWN: Yes, ma'am.

19 Q Do you think this might help refresh your recollection
20 about the specific details of that agreement? Would you
21 like to read it first and see?

22 (BRIEF PAUSE AS WITNESS REVIEWS STATEMENT.)

23 Q Have you had a chance to read it?

24 A Yes.

25 Q Isn't it true that to get the deal you have to testify

- 1 in accordance with what you told Mr. Thornton?
- 2 A Yes.
- 3 Q Did you write that information down anywhere?
- 4 A No, sir.
- 5 Q Was it videotaped or audiotaped?
- 6 A Yes.
- 7 Q They did audiotape that and videotape that?
- 8 A I don't know if it was videotaped, but I know it was
- 9 audio, I think. I'm not one hundred percent sure. Are you
- 10 talking about the ---
- 11 Q The meeting with Mr. Thornton.
- 12 A No, it wasn't.
- 13 Q So you didn't write it down and it wasn't audio or
- 14 video taped?
- 15 A No.
- 16 Q Okay. So who would be the one that would determine
- 17 whether or not what you said today is the same as what you
- 18 told him?
- 19 A He would.
- 20 Q He would. He's the one that determines whether you
- 21 still have legal liability. Does that concern you?
- 22 A I mean, it's what I stated.
- 23 Q Okay. But obviously it's important that you not say
- 24 anything that displeases this gentleman?
- 25 A Not from what I'm aware of.

1 Q Okay. What other times did you speak with law
2 enforcement?

3 A Whenever I first got arrested and a couple weeks ago
4 with him.

5 Q Okay. Two times. Now, in the other one did you speak
6 with this investigator?

7 A When I initially got arrested.

8 Q And was there a second person in that room?

9 A Yes, but I can't say who it was.

10 Q Was it another investigator?

11 A Yes.

12 Q Were there one or two other investigators that would
13 come in and kind of talk during the middle of that?

14 A Yes.

15 Q All right. Do you know whether that was recorded?

16 A I'm not one hundred percent sure.

17 Q Let me ask you, how long had you known Trey Nichols?

18 A I don't really -- I know him because of a girl I dated
19 and friends we have. That's it. I don't know him other than
20 that.

21 Q Would you say you and Mr. Nichols get along?

22 A I can't say we don't or we do, because we're not
23 friends; we're acquaintances.

24 Q You're acquaintances with him. Tell me how you are
25 acquaintanced with him, besides your mutual girlfriend.

- 1 A A friend of mine.
- 2 Q Did y'all go to school together?
- 3 A No, I went to Battery Creek.
- 4 Q Okay. Do you recall telling law enforcement
- 5 information about how your relationship with Mr. Nichols
- 6 was?
- 7 A No, I don't.
- 8 Q Okay. You don't recall making a statement in that
- 9 regard?
- 10 A I don't recall if they asked me anything about him.
- 11 Q Do you ever recall making that statement on April 21st?
- 12 A Do I recall making a statement about what?
- 13 Q Do you recall making a statement to law enforcement
- 14 regarding how well you and Mr. Nichols got along or not?
- 15 A No.
- 16 Q Or how long you had known him?
- 17 A No.
- 18 Q Okay. Did Mr. Lennin and Mr. Nichols have a beef with
- 19 each other?
- 20 A From what I know, you know, I've seen several times
- 21 like they'll say stuff back and forth when we drive through
- 22 there.
- 23 Q And when you drove through there, was Mr. Lennin at the
- 24 tree or Mr. Nichols at the tree?
- 25 A Mr. Nichols.

1 Q And where was Mr. Lennin at the times Mr. Nichols was
2 at the tree?

3 A Coming in or out?

4 Q Was he in the car?

5 A Yeah, he was in the car.

6 Q Okay. So Mr. Lennin is in a place where he has a right
7 to be, isn't he, in his car?

8 A Yes.

9 Q Was Mr. Nichols in a place that he had a right to be?

10 A I don't know.

11 Q Was he at the tree?

12 A Yes, he was.

13 Q All right. Fair enough. The day, on April 21st, after
14 dropping Desiree Blanding off, why did the car come to a
15 stop at the stop sign?

16 A Because there's a stop sign.

17 Q Okay. Who was driving it?

18 A Me.

19 Q And did Mr. Lennin ever tell you to stop the car there
20 so he could engage Mr. Nichols?

21 A No.

22 Q While you were stopped obeying the traffic laws, is
23 that when Mr. Nichols approached the car?

24 A Yeah.

25 Q Would you say that his demeanor at that time was happy

1 or angry?

2 A Angry.

3 Q Would you say he was animated?

4 A Animated in what way?

5 Q Would you say that he was moving, like throwing the
6 can; I think you mentioned two can throws. Was he using his
7 arms?

8 A Yes.

9 Q Okay. Would you say that he just kind of peacefully
10 walked up to the car? Did he get there before you could
11 drive off?

12 A Yeah, he got there before I could drive off.

13 Q Okay. How far from the tree itself, the little stump
14 in the tree, would it be to the stop sign, would you say?

15 A Well, it's a different distance. If you're saying from
16 the tree to the stop sign or from the tree to the door ---

17 Q From the tree to your door, how about that?

18 A Probably -- I can't give the exact distance, but it's
19 probably from the counter to close to where they're sitting.

20 Q From that counter there to this jury box? So we're
21 talking about more or less than a car length?

22 A Yes.

23 Q Which one?

24 A The car, it's probably half of a car, but not any more.

25 Q So about ten feet away?

1 A Yes.

2 Q All right. So before you could pull off, Mr. Nichols
3 covered ten feet to get up to the window before you could
4 pull away?

5 A Yes.

6 Q All right. Now, had he said something before when
7 y'all passed on the way in?

8 A Yes.

9 Q All right. Do you recall what he said when he went up
10 to the window of the car on the way out?

11 A I can't recall the exact word, but I do know they were
12 exchanging words.

13 Q Okay. Do you recall making a statement to Investigator
14 Fraser concerning the words?

15 A I may have. It was a long time ago, so I can't tell
16 you the exact words that I said or he said.

17 Q Can you recall saying exactly what Mr. Nichols said?

18 A No, sir.

19 Q Okay. Do you recall ever telling Investigator Fraser
20 exactly what he said or even recall making that statement at
21 all?

22 A I can't tell you what he said, but I know they were
23 arguing.

24 Q Do you recall making a statement to Investigator
25 Fraser, telling him exactly what Mr. Nichols said. Do you

1 recall making that statement?

2 A I don't.

3 Q Okay. Now, do you recall telling him that he was
4 trying to fight him?

5 A I believe that that was eventually going to happen.

6 Q Tell me why you believe Mr. Nichols was trying to fight
7 Mr. Lennin that day?

8 A I mean, because he threw the can and stuff like that.

9 Q He was antagonizing him. Would you call that throwing
10 of the can a hostile act?

11 A Yes.

12 Q All right. Would you say he used harsh words?

13 A Yes.

14 Q And have you ever seen Mr. Nichols at that tree on
15 other times doing other inappropriate things?

16 A Yes.

17 Q And you saw those with your own eyes?

18 A Yes.

19 Q All right. And has Mr. Nichols ever exposed himself or
20 his naked body at that tree?

21 A Like when we was driving down the road one day.

22 Q Would you tell the jury?

23 A We was driving down the road and he just pulled down
24 his pants and showed us his butt.

25 Q Who was in the car that time?

1 A I think it was me, Jabari, and Desiree; I can't
2 remember, but I knew we was taking her home or picking her
3 up, one of the two.

4 Q And how close does Desiree live to that tree?

5 A Not even three-fourths of a mile. She lives right up
6 the road.

7 Q Right up the road. How many houses would you say?

8 A There's only one house, because yards, like they got
9 big yards and stuff.

10 Q All right. Only one house. And do you recall at the
11 time that he exposed himself, was Ms. Desiree Blanding
12 pregnant?

13 A I can't say if she was or if she wasn't.

14 Q Was she pregnant at the time of the shooting?

15 A They had thoughts about it and she was not.

16 Q She thought she might be pregnant?

17 A Yes.

18 Q And she was not in the car at the time that it appeared
19 that Mr. Nichols was going to fight Mr. Lennin?

20 A Yes.

21 Q Do you know anything, any specific incidences regarding
22 Mr. Nichols or anything that you've seen with his
23 interaction with the Blanding's?

24 A I've never seen him fighting or anything, but I've
25 heard of altercations.

1 Q Okay. I'm going to go back to this very day -- and let
2 me back up. Has there ever been bottles thrown by Mr.
3 Nichols at Jabari or at you when you drove by?

4 A It didn't hit the car, but it was in the road, like
5 glass, from glass bottles.

6 Q Who was throwing the bottles?

7 A Trey.

8 Q Trey Nichols was throwing bottles?

9 A Uh-huh (affirmative).

10 Q Was that a prior difficulty that Mr. Lennin had with
11 Mr. Nichols?

12 A Yes.

13 Q All right. Out of all of this knowledge of Mr.
14 Nichols, have you been able to form an opinion about his
15 character as a violent person?

16 A Yes.

17 Q What is that opinion?

18 A If he didn't like you, I guess, you know what I mean,
19 he would let you know.

20 Q Do you have an opinion about whether he's violent? I
21 don't want to change the words that you said. I want to make
22 sure I understand, because I heard your answer. Do you have
23 an opinion about whether he's a violent person?

24 A As I said, you know, if he had a problem with you, he
25 would let you know, you know what I mean? It wasn't like he

1 was scared of anyone.

2 Q He wasn't scared of anyone?

3 A Not that I know of.

4 Q Okay. He wasn't scared of anyone, and what do you mean
5 he let you know if he had a problem with you, what does that
6 mean? I mean, would he say, hey, I have a problem or write
7 you a letter?

8 A Like if you disrespected him, you know, he would let
9 you know you disrespected him.

10 Q Right. How would he let you know?

11 A Either an altercation or argument or it may lead to a
12 fight, I can't say what he would do.

13 Q Okay. So three ways he would let you know that he had
14 a problem. There'd be an altercation or a fight and what
15 was the other one you said?

16 A I said an argument or something like that.

17 Q All right. Three ways that he expresses his emotions.
18 Now, was Mr. Lennin's back towards the window of the car
19 after he got out?

20 A Yes.

21 Q All right. Did you see the gun at that time?

22 A No.

23 Q Any question that you could not see the gun being held
24 in that hand behind his back?

25 A If he had it -- well, I don't think I would have seen

1 it while it was hidden.

2 Q Okay. And where was Mr. Nichols at the time Mr. Lennin
3 was standing with his back towards your window?

4 A They was standing in front of each other.

5 Q I want to make sure; he was standing in front of Mr.
6 Lennin?

7 A I mean they was facing each other.

8 Q Was he sitting down or standing up?

9 A Standing up.

10 Q Okay. And out of curiosity, would you agree that Mr.
11 Nichols is much bigger than Mr. Lennin?

12 A Yes.

13 Q And that's from your own personal observations?

14 A Uh-huh (affirmative).

15 Q Now, let me ask you about the reputation of Mr.
16 Nichols. What kind of reputation are you aware of regarding
17 his propensity to violence or what is his reputation in the
18 community?

19 DEP. SOL. THORNTON: Objection, Your Honor. I think
20 it's already been asked and answered.

21 THE COURT: Sustained.

22 MR. BROWN: I asked if he had an opinion for a
23 character for violence; reputation and opinion is different.

24 THE COURT: You have to lay a proper foundation, sir.

25 MR. BROWN: And I sure will.

1 Q You have been acquainted with Mr. Nichols at least for
2 a couple years, is that right?

3 A Yeah.

4 Q All right. How many times would you say you've been to
5 the area where he lives?

6 A Several times; I can't give an exact amount, but it was
7 a lot of times.

8 Q A lot of times. Do you have other friends in that area
9 besides the Blanding's?

10 A Yes, but not on Martin Luther (sic), no.

11 Q Not on Martin Luther (sic), but in the Seaside area?

12 A Yes.

13 Q You have other friends in that area?

14 A Yes.

15 Q How many times have you been to those other friends
16 houses?

17 A Several times.

18 Q Over how long of a period?

19 A Several years.

20 Q So over several years you've been there several times,
21 is that like three times, like, once a year?

22 A No, I was over there frequently.

23 Q Frequently been over to your friends' house?

24 A Yes.

25 Q And frequently over to the Blanding's house?

1 A Yes.

2 Q And did you not say on direct that you were
3 acquaintances with Mr. Nichols?

4 A Like I knew him through people; we didn't never chill
5 or hangout together and stuff like that, but we had friends
6 that are alike, you know what I mean?

7 Q So you knew him through people?

8 A Yes.

9 Q And so when you say that you knew him, is it you knew
10 of him?

11 A Yes.

12 Q All right. Through your acquaintance and knowledge of
13 him through the community, were you able to form an opinion
14 regarding Mr. Nichols and his reputation?

15 A I just heard he got into fights and stuff like that,
16 but I can't say exactly what he does or doesn't do.

17 Q So that's a reputation for fighting?

18 A Yes.

19 Q All right. Now the clothes that he was wearing at that
20 time, Mr. Nichols that is, do you recall how they fit on
21 him?

22 A They were big.

23 Q Big. Is that his style?

24 A I mean if that's what he wants to wear that's what he
25 wears.

1 Q Okay. Fair enough. We're not talking about tight-
2 fitting clothes?

3 A Yes.

4 Q We're talking about loose, baggy clothes?

5 A Yes.

6 Q And do you recall where his hands were when he and Mr.
7 Lennin were arguing outside the car?

8 A No.

9 Q You don't recall seeing that?

10 A No, I mean to me, I thought they was gonna fight, to be
11 honest.

12 Q What about Mr. Nichols' mannerisms made you think he
13 was going to fight?

14 A Because of the way they approached each other.

15 Q Tell me how Mr. Nichols approached Mr. Lennin?

16 A They just walked together, you know what I mean. It
17 wasn't like I'm saying hi, what's up, buddy, you know what I
18 mean?

19 Q So we're half a car length apart and Mr. Nichols is
20 walking towards Mr. Lennin?

21 A Yes.

22 Q All right. And Mr. Lennin's back is towards the car.
23 So if he went back, he'd hit the car?

24 A Yes.

25 Q Did Mr. Lennin ever tell you to stay there?

1 A No.

2 Q All right. And you were driving and not Mr. Lennin at
3 the time that he looked like he was going to fight?

4 A Uh-huh (affirmative).

5 Q And Mr. Lennin did not have control of that vehicle,
6 did he?

7 A No.

8 MR. BROWN: I beg the Court's indulgence.

9 THE COURT: Okay.

10 Q On April 21st, 2011, on the corner of Luther Warren and
11 Seaside Road, about 2:00 in the afternoon, did you have
12 reason to fear for Mr. Lennin that he would suffer bodily
13 injury at the hands of Mr. Nichols?

14 A If they was to fight, I don't know what would have
15 happened, but I know it wouldn't have been nice or anything
16 like that. They would have fought, you know.

17 Q Do you have a reason to believe Mr. Nichols could
18 inflict serious bodily injury or great bodily injury?

19 DEP. SOL. THORNTON: Objection. Calls for speculation.

20 MR. BROWN: I'm asking if he has reasons. I didn't ask
21 whether he actually ---

22 THE COURT: Let me see you, please.

23 MR. BROWN: Yes, ma'am.

24 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD
25 AND OUT OF THE HEARING OF THE JURY.)

1 THE COURT: Ladies and gentlemen, we're going to take
2 our lunch break now. I'm going to ask you to please be back
3 about 2:15 ready to continue with this matter. Please do
4 not discuss this matter or allow anyone to discuss it with
5 you. Leave your notebooks and your pad and I'll see you at
6 2:15. Thank you.

7 (1:00 P.M., WHEREUPON, THE JURY EXITS THE COURTROOM,
8 AND THE FOLLOWING IS HELD ON THE RECORD.)

9 THE COURT: All right. State your objection, please,
10 sir.

11 DEP. SOL. THORNTON: Your Honor, I'm sorry; I just
12 about lost the train of thought now. I objected because he
13 was calling and asking the victim to make a speculation on
14 what was or if he could have done this or done that, there's
15 been no foundation laid for it. He's basically asking him
16 to speculate on what one person could maybe do to another.

17 THE COURT: The question before that, just so we're
18 straight, the question before that was did you have any fear
19 that Mr. Lennin was going to be harmed by Mr. Nichols, or
20 something to that affect, and the response was, well, when
21 you get into a fight you don't know what's going to happen
22 in a fight and it looked to me like they were about to get
23 into a fight. Then, the question was were you concerned
24 that your friend would receive great bodily injury or harm
25 at the hands of Mr. Nichols, and that's when you objected,

1 and then, I think the objection was on speculation?

2 DEP. SOL. THORNTON: It was, yes, ma'am.

3 THE COURT: Okay. The objection is sustained.

4 MR. BROWN: I'm sorry, may I respond?

5 THE COURT: Yes.

6 MR. BROWN: All right. My recollection of the question
7 was that ---

8 THE COURT: We can play it back, Mr. Brown, if you
9 would like for us to. I'd be happy to do that, and then
10 we'll know what it says.

11 MR. BROWN: As the Court desires, Your Honor.

12 THE COURT: Yeah, I think so. And I'm talking about
13 the prior question where you ask them were you worried about
14 Mr. Lennin getting harmed and then he talks about well, I'm
15 worried about what's going to happen in this fight, because
16 you don't know what will happen in a fight. Can you do that
17 for us?

18 MR. BROWN: And I would ask that we ---

19 THE COURT: And then we'll do the next one.

20 MR. BROWN: The one that was actually objected to.

21 THE COURT: Right.

22 MR. BROWN: Yes, ma'am.

23 (AUDIO PLAYBACK OF THE WITNESS, KING DAVID WILLIAMS,
24 TESTIMONY.)

25 MR. BROWN: Your Honor, I was trying to set up a

1 foundational question by asking if he had a reason to
2 believe.

3 THE COURT: And he answered that, and what his answer
4 was, was they were about to have a fight. He gets out of
5 the car and they're about to have a fight. "Yeah, I'm
6 worried. I don't know what's going to happen in the fight.
7 I don't know who's going to win the fight."

8 MR. BROWN: And that was not exactly the same question.
9 The first question, according to the quotation that we were
10 able to write down was -- the first question was not
11 objected to ---

12 THE COURT: I think you're arguing with the Court, Mr.
13 Brown. That can be for another time.

14 MR. BROWN: No, ma'am. I appreciate your ruling.

15 THE COURT: Thank you.

16 MR. BROWN: Thank you.

17 THE COURT: Yes, sir. All right. We are going to take
18 our lunch. Now, I must instruct you not to discuss your
19 testimony with anyone Mr. Williams, okay? That means anyone
20 with the State or the defense. I'm going to tell you, at
21 this point, over the lunch break you probably want to keep
22 with your own counsel. In other words, it is in your best
23 interest to stay away from everybody during our lunch break,
24 because you must not discuss your testimony with anyone and
25 I don't want anyone to accuse you of doing that and the only

1 way that I know to protect yourself from that is just to
2 stay away from everybody over the lunch break, okay.

3 And I'm going to ask both families to respect the fact
4 that Mr. Williams is on the stand and please y'all give him
5 some space and time and do not try to approach him over the
6 lunch.

7 MR. BROWN: Just to make sure, that applies to all
8 counsel?

9 THE COURT: I thought I said the State and the defense.
10 Did I not say the State and the Defense?

11 MR. BROWN: There's a third lawyer.

12 THE COURT: Are you his lawyer?

13 MS. CARROWAY: Yes, ma'am.

14 THE COURT: Oh, I'm so delighted that he has a lawyer.
15 You tell me your name.

16 MS. CARROWAY: I apologize, Your Honor. I'm Lauren
17 Carroway with the Public Defender's Office.

18 THE COURT: Ms. Carroway, you certainly can speak with
19 your client about anything you need to speak with your
20 client. Do you wish to be heard about whether or not you
21 want to talk about his testimony?

22 MS. CARROWAY: No, ma'am. We don't need to talk about
23 his testimony. I was just going to encourage him to make
24 sure he's timely.

25 THE COURT: You can certainly speak with your client.

1 Very well.

2 MS. CARROWAY: Thank you.

3 THE COURT: Thank you. Anything further before we have
4 our lunch?

5 DEP. SOL. THORNTON: Nothing from the State, Judge.

6 THE COURT: Okay. I'd like to see y'all about ten
7 minutes after 2:00, just to make sure there aren't any
8 issues.

9 MR. BROWN: If I may, Your Honor, in response to your
10 question about whether I had anything, I do as a matter for
11 scheduling, predict that they will rest, based on the
12 statement they made yesterday, Your Honor, that they only
13 have two more witnesses today after Investigator Fraser.

14 THE COURT: And I want to know that, too, so let's ask
15 together for scheduling purposes.

16 MR. BROWN: I was going to say because we may end up
17 with the jury coming in and out for a very brief period of
18 time.

19 THE COURT: Oh yeah, absolutely. I'm with you
20 completely. How many more witnesses do you have?

21 DEP. SOL. THORNTON: None, Judge.

22 THE COURT: Wonderful.

23 DEP. SOL. THORNTON: I will be doing redirect and he'll
24 be the last witness, Your Honor.

25 MR. BROWN: And I still have some cross, I guess,

1 because I didn't actually end.

2 THE COURT: Yeah. You clearly haven't finished your
3 cross, so we have plenty of time.

4 MR. BROWN: Yes, ma'am. And I just wanted to make sure
5 that there may only be like ten minutes of testimony with
6 the jury in and out.

7 THE COURT: Yes, but you need to know where you are in
8 terms of your ---

9 MR. BROWN: And for the normal motions, Your Honor,
10 that are made at the end of their case.

11 THE COURT: Absolutely. I think probably what we're
12 looking at is 45 minutes, then they'll take their break, and
13 then we'll hear our motions.

14 (1:10 P.M., WHEREUPON, THE COURT IS IN LUNCH RECESS IN
15 THE TRIAL OF THIS CASE. THEREAFTER, AT 2:15 P.M., THE
16 FOLLOWING IS HELD ON THE RECORD.)

17 THE COURT: All right. Anything from the State before
18 we bring the jury out?

19 DEP. SOL. THORNTON: Your Honor, Mr. Brown and I do
20 have one matter ---

21 THE COURT: I'm so surprised.

22 DEP. SOL. THORNTON: We're trying to get this one ahead
23 of time, Judge. I think we've agreed to everything. We
24 just want to make sure what the procedure should be
25 followed, I'll let Mr. Brown -- it's going to be his

1 witness.

2 THE COURT: Thank you.

3 MR. BROWN: May it please the Court, Your Honor?

4 THE COURT: Yes.

5 MR. BROWN: There were two specific questions I asked
6 of Mr. Williams in which he did not recall making a certain
7 statement, which happens to be a statement contained on the
8 video, which I'm not asking to -- I don't want to enter or
9 publish the video, but I would like to be able to impeach
10 him with his inconsistent statement, and of course, the
11 problem is I can't hand up the written statement because
12 it's a video statement.

13 THE COURT: How interesting. And so the way y'all have
14 resolved this is?

15 MR. BROWN: I have two alternatives, Judge. He's told
16 me what to -- he's told me what the specific question is;
17 I'm not going to object to the question. If he wants to say
18 under 613(b), on such and such a date, at such and such a
19 time, did you say this to the person? And I would, also, if
20 it comes to it, and he does it, or he says no, or doesn't
21 remember, the State will stipulate that on that day, at that
22 time, he did state that to the detective. So I think that
23 would resolve without the need -- because clearly he said, I
24 mean, I know he did, and he knows he did, so.

25 THE COURT: Okay. And then what you'll do is if when

1 we get to that point where we need to do a stipulation, then
2 what we'll do is -- have y'all written a little stipulation
3 down?

4 MR. BROWN: No, ma'am. That's what I was just asking,
5 if we wanted to hammer that out to make it more efficient.

6 DEP. SOL. THORNTON: We can. We can do that, Judge,
7 and we'll just do that now before we bring the jury in.

8 THE COURT: Okay. Do that and then what I would
9 propose to do is I will explain to the jury what a
10 stipulation is, that it's just an agreement of counsel that
11 they should accept the following as fact.

12 MS. CARROWAY: Judge, may I have just two minutes with
13 Mr. Williams?

14 THE COURT: Of course you can; he's your client.

15 MS. CARROWAY: Thank you.

16 (OFF THE RECORD, BRIEFLY.)

17 THE COURT: Is everybody ready?

18 MR. BROWN: Yes.

19 DEP. SOL. THORNTON: Yes.

20 THE COURT: All right. Let's have the jury.

21 (2:20 P.M., WHEREUPON THE JURY ENTERS THE COURTROOM AND
22 THE FOLLOWING IS HELD ON THE RECORD.)

23 THE COURT: Ladies and gentlemen, at this time we are
24 going to continue with the State's case and cross-
25 examination of Mr. Williams. You may proceed, Mr. Brown.

1 MR. BROWN: May it please the Court, Your Honor?

2 THE COURT: Yes.

3 CROSS-EXAMINATION CONTINUES

4 BY MR. BROWN:

5 Q Mr. Williams, before I end here, I had asked you
6 earlier about making a statement that was videotaped on the
7 day of April 21st, 2011. Do you remember that?

8 A Yes.

9 Q Okay. Do you remember speaking with Investigator
10 Fraser?

11 A Yes.

12 Q All right. Do you remember telling Investigator Fraser
13 on that videotape that Mr. Nichols and Mr. Lennin had been
14 beefing since high school?

15 A I can't say if I did, but if it's on the tape and I
16 said it, then, I said it, you know what I mean? I can't
17 remember if I said it or not, to be honest.

18 Q Okay. And the other question I want to ask you about
19 is about what you told Investigator Fraser at that interview
20 about what Trey Nichols said when he walked up to the car
21 window. And did you not tell Investigator Fraser that Trey
22 Nichols told Jabari to "Get out of the car, pussy?"

23 A He asked him to get out, from what I can recall.

24 MR. BROWN: Your Honor, the only thing I would ask
25 regarding the first one, that he could not recall, I think

1 that we have already resolved how to handle that part of it.

2 DEP. SOL. THORNTON: That's correct, Your Honor, the
3 State will stipulate when King David Williams spoke to
4 Investigator Fraser that he did, in fact, make a comment
5 that he thought that they had been beefing since high
6 school, they being Jabari Lennin and Trey Nichols.

7 THE COURT: Is that the stipulation?

8 MR. BROWN: That is the stipulation, and as far as the
9 second matter, I believe he admitted that.

10 THE COURT: He did very well. Okay. Very well.
11 Ladies and gentlemen, let me tell you what a stipulation is.
12 A stipulation is an agreement of counsel that you should
13 accept a stipulation as fact, per the stipulation, and that
14 means that these attorneys want you to accept their
15 agreement that you should accept the stipulation which was
16 just stated as fact. You may proceed, Mr. Brown.

17 MR. BROWN: Thank you. And I have no further
18 questions.

19 THE COURT: Very well. Redirect.

20 DEP. SOL. THORNTON: Just a couple of brief things.

21 REDIRECT EXAMINATION

22 BY DEP. SOL. THORNTON:

23 Q Mr. Williams, you said you were driving the Lincoln, is
24 that correct?

25 A Crown Vic.

- 1 Q I'm sorry, Crown Vic. A Crown Vic, is that slang for a
2 Crown Victoria?
- 3 A Yes, sir.
- 4 Q That's a full-size car, is it not?
- 5 A Yes, sir.
- 6 Q All right. When you were driving it, Jabari was where?
- 7 A In the passenger seat.
- 8 Q Okay. When you were driving away, right before Jabari
9 shot Trey, what side of the car was Trey on at the tree? In
10 other words, what side of the car was the tree on?
- 11 A To the left side.
- 12 Q Would that mean the driver's side?
- 13 A Yes.
- 14 Q Your side?
- 15 A Yes.
- 16 Q When the Coke can got thrown in the car, thrown at the
17 car and then thrown in the car, when Trey threw it, where
18 was Trey at?
- 19 A On the driver's side.
- 20 Q Okay. Where was Jabari when that was going on?
- 21 A In the passenger seat.
- 22 Q Now, did Jabari shoot Trey from the car?
- 23 A No.
- 24 Q Where was he?
- 25 A Did he shoot from inside the car?

- 1 Q Yeah?
- 2 A No.
- 3 Q Well where was he?
- 4 A Outside the car.
- 5 Q On which side of the car?
- 6 A The driver's side.
- 7 Q And how did he get there?
- 8 A He got out.
- 9 Q Okay. So Jabari left the car and did what?
- 10 A He walked around it.
- 11 Q Okay. Walked around the car to the other side to your
- 12 side?
- 13 A Yes.
- 14 Q Is that where he shot Trey Nichols, is that the area?
- 15 A Yes.
- 16 Q Okay. The other question I have for you is when Jabari
- 17 was shooting Trey Nichols, were his hands up or down -- did
- 18 he have his hands up, holding them out like this, or where
- 19 were his hands?
- 20 A I can't tell you exactly where his hands were, but I
- 21 know in my statement it says ---
- 22 Q Okay. What did you say in the statement?
- 23 A I didn't write that statement.
- 24 Q Okay. What did you tell the officer?
- 25 A I said in the statement that he had his hands out.

1 Q Okay. Did you tell Detective Fraser when you talked to
2 him and gave him a statement that Trey had his hands up
3 backing away, did you tell him that?

4 A I told him that.

5 Q Okay. Thank you. I have nothing further. Please
6 answer any questions Mr. Brown has.

7 THE COURT: Recross.

8 MR. BROWN: And Your Honor, we're going to have to go
9 back to that prior statement also.

10 RECROSS-EXAMINATION

11 BY MR. BROWN:

12 Q Now, when you refer to the statement, the one that you
13 were just asked about, is that the video statement or is
14 that a different statement?

15 A I only talked to Detective Fraser one time, so it had
16 to be a video statement.

17 Q Okay. And I want to make sure I understand this
18 correctly. You did not say that Mr. Nichols was walking
19 towards the car and that they argued?

20 A Yes.

21 Q Okay. Now, if Mr. Nichols is walking towards the car --
22 towards the car, and I want to state the obvious that he's
23 not walking away from the car if he's walking towards it, is
24 he?

25 A Yes.

1 Q How can he be doing both or explain because I'm
2 confused. Can you please explain? Is Mr. Nichols walking
3 towards the car, like you said at eight minutes left into
4 the video statement?

5 A He was walking towards -- they were walking towards
6 each other, because I thought they were going to fight.

7 Q Okay. So Mr. Lennin was at the car and Mr. Nichols was
8 walking towards Mr. Lennin?

9 A Yes.

10 Q And that would be towards the car?

11 A Yes.

12 Q All right. Any question or that's what happened?

13 A That's what happened.

14 Q Thank you.

15 THE COURT: Counsel, I need to see you just a second.

16 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD
17 AND OUT OF THE HEARING OF THE JURY.)

18 MR. BROWN: May it please the Court?

19 THE COURT: Yes. Thank you, Mr. Brown.

20 Q Mr. Williams, you said that they were walking towards
21 each other before the shooting?

22 A Yes.

23 Q Okay. When Mr. Nichols walked towards Mr. Lennin, was
24 that away from the tree or towards the tree?

25 A He was walking away from the tree coming towards the

1 car.

2 Q Okay. Thank you.

3 MR. BROWN: No further questions, Your Honor.

4 THE COURT: Thank you, Mr. Brown. All right. Now, is
5 this witness free?

6 DEP. SOL. THORNTON: I asked that he be excused, Your
7 Honor.

8 MR. BROWN: Without objection.

9 THE COURT: Very well. You are free to go, Mr.
10 Williams. Call your next witness, please.

11 DEP. SOL. THORNTON: Your Honor, at this time the
12 State rests.

13 THE COURT: Okay. Ladies and gentlemen, let me tell
14 you what has just happened. You have now heard the
15 witnesses and received the exhibits, which you will for the
16 State and the State's case in chief. This signifies to me
17 that there are matters that I must take up outside your
18 presence, so at this time, I'm going to ask you to please
19 step to your jury room. Do not discuss this matter or allow
20 anyone to discuss it with you. We will be with you shortly.

21 (2:40 P.M., WHEREUPON, THE JURY EXITS THE COURTROOM,
22 AND THE FOLLOWING IS HELD ON THE RECORD.)

23 THE COURT: All right. Motions?

24 MR. BROWN: May it please the Court, Your Honor?

25 THE COURT: Yes, sir.

1 MR. BROWN: I would move for a directed verdict, and
2 the first thing I would like to point out is that he's
3 charged with attempted murder, and that attempted murder
4 expressly requires malice aforethought, and there is no
5 evidence in the record for which any reasonable juror could
6 believe that this was anything but a non-malice shooting.
7 We don't mean an intentional, because the altercation ---

8 THE COURT: Let me ask you this question. What about
9 the fact that he shot him in the chest twice and he shot his
10 extremities. There's been a question whether he was shot
11 nine times or ten times; how about that?

12 MR. BROWN: Yes, ma'am.

13 THE COURT: With a .45, is that right?

14 MR. BROWN: .45 caliber, not a 45 shotgun.

15 THE COURT: Yeah, .45 caliber weapon.

16 MR. BROWN: Your Honor, if there is a shooting that's
17 excused -- well, let me rephrase that. Justified under some
18 type of law that allows justification, which we're also
19 asserting, or was committed under a sudden heat of passion,
20 neither one would be changed if the act was under the sudden
21 heat of passion, unless there was no cooling period.

22 THE COURT: I'm with you, but here's what I'd do.

23 MR. BROWN: Yes, ma'am.

24 THE COURT: I don't weight it. I only -- my only task
25 is just to ascertain whether or not there's evidence on each

1 and every element.

2 MR. BROWN: Yes, ma'am.

3 THE COURT: So when I begin to look at the evidence,
4 and obviously in the light most favorable to the non-moving
5 party, on the issue of attempted murder, the jury has got to
6 make a determination based on all the facts and
7 circumstances what was in the mind of the defendant. It
8 seems to me that when you shoot somebody nine or ten times,
9 and that's certainly the testimony, I think, that the
10 victim, Mr. Nichols testified ten times, that that certainly
11 is circumstances that a jury could reasonably believe that
12 the defendant wished to kill, if you will.

13 MR. BROWN: I'm not arguing with Your Honor, but the
14 intent to kill that's listed in there and the element of
15 malice are two different warrants; and the existence of
16 sudden heat of passion, it eliminates malice, they're
17 mutually exclusive. You can't have a sudden heat of passion
18 and malice.

19 THE COURT: I know. And so that's why I think that
20 there ought to be charged a lesser included offense of
21 assault and battery of a high and aggravated nature and
22 would intent to do that.

23 MR. BROWN: And I understand the Court's position and
24 my position is there's nothing but that, unless I get a
25 directed verdict, just to make it clear.

1 THE COURT: Okay. Got it.

2 MR. BROWN: Yes, ma'am.

3 THE COURT: I would respectfully deny that motion for
4 the reasons that I've already stated, and again, I'm not
5 weighing; this is for the jury to weight. It is for the
6 Court to determine whether or not there is evidence on each
7 element, as you know.

8 MR. BROWN: Yes, ma'am. And I believe it's also
9 appropriate for me to renew all my previous objections,
10 which would mainly include the introduction.

11 THE COURT: I don't know whether or not you must do
12 that or not, but good for you for doing it.

13 MR. BROWN: But I'm trying, because I do think there
14 are some mixed signals about ---

15 THE COURT: I agree with you completely and they are
16 all renewed.

17 MR. BROWN: Thank you. And I guess the rulings would
18 all be the same as well?

19 THE COURT: They would be.

20 MR. BROWN: Thank you. And I think that's all the mid-
21 trial motions I have. There is one -- and we're ready to go
22 on to the next part of our case.

23 THE COURT: Let me see you guys at the bench, because I
24 want to ask you a question.

25 MR. BROWN: Yes, ma'am.

1 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD
2 AND OUT OF THE HEARING OF THE JURY.)

3 THE COURT: Okay. So you're ready to go, but you have
4 other people you need to call, right?

5 MR. BROWN: Yes, ma'am. I did want to put him up, kind
6 of as my third witness, with the 911 call being one.

7 THE COURT: All right. Now, let's have the jury back.

8 (2:50 P.M., WHEREUPON, THE JURY ENTERS THE
9 COURTROOM, AND THE FOLLOWING IS HELD ON THE RECORD.)

10 THE COURT: All right. Now, let me tell you where we
11 are in the process. As I mentioned to you before you
12 stepped out, you have now heard from the State and the
13 State's case in chief, and what that means is you listen to
14 the witnesses and received the evidence, which you will from
15 the State and the State's case in chief. We will now turn
16 to the defense. Mr. Brown?

17 MR. BROWN: May it please the Court, Your Honor?

18 THE COURT: Yes.

19 MR. BROWN: At this time I'd like to introduce the
20 recordings that have been marked on a thumb drive as
21 Defendant's Exhibit Thirteen, and I believe any
22 authentication ---

23 THE COURT: This exhibit is in by consent?

24 DEP. SOL. THORNTON: It is, without objection, as to
25 authenticity or chain, Your Honor.

Defense Exhibit Thirteen is played for the jury by Mr. Brown
(Five different audio portions of 911 calls)

1 THE COURT: Very well. And this is Exhibit Thirteen.

2 It's now on a thumb drive.

3 MR. BROWN: Yes, ma'am. And I'm going to do them one
4 at a time, because there's more than one item, so what I'm
5 going to do is play each item.

6 THE COURT: What I'm going to tell our jurors, if you
7 can't hear or understand, raise your hand, because you've
8 got to be able to hear and understand. I know that Mr.
9 Brown's worked on this to make it as audible as possible,
10 but if you're having trouble hearing it, you let me know
11 because I'll move it so you can, because it's critical that
12 you're able to hear it and what's being played. Okay.

13 MR. BROWN: Thank you. And Your Honor, the first
14 recording is 2011-02-05-843, is the way it's marked, and it
15 corresponds to Defendant's Exhibit One.

16 THE COURT: Okay.

17 (2:54 P.M., FIRST RECORDING IS PLAYED.)

18 MR. BROWN: And the second call is referenced on the
19 thumb drive as 2011-03-23-639, corresponding with defense
20 exhibit Two.

21 (2:56 P.M., SECOND RECORDING IS PLAYED.)

22 MR. BROWN: And the third call is referenced on the
23 thumb drive as 2011-04-13-0461, corresponding to Defendant's
24 Exhibit Number Four.

25 (3:02 P.M., THIRD RECORDING IS PLAYED.)

Defense Exhibit Thirteen is played for the jury by Mr. Brown
(Five different audio portions of 911 calls)

1 MR. BROWN: And the next clip on here is listed as the
2 fourth call, and is referenced on the thumb drive as 2011-
3 0421-275, and this corresponds to Defendant's Exhibit Number
4 Five. It's giving me an error message here. I may need to
5 come back and try this one more time, but I'm going to skip
6 to -- I've got one more.

7 I'm going to go now to 2011-0421-338, which corresponds
8 with Defendant's Exhibit Six. I'll try that one, one more
9 time as well. I apologize; the program doesn't even want to
10 open it.

11 My computer may have had it and we're going to try to
12 play it off of a disc on another computer, which it won't
13 take long. We just have to plug in. I apologize. And then
14 we'll fix the thumb drive, so it correctly has all of the
15 information and we'll make sure.

16 THE COURT: It's all right. I completely understand.

17 MR. BROWN: Again, I'm now trying to play what's listed
18 as 2011-04-21-275, corresponding with Defendant's Exhibit
19 Five.

20 THE COURT: All right.

21 (3:06 P.M., FOURTH RECORDING IS PLAYED.)

22 MR. BROWN: And the last portion, Your Honor, that I'll
23 play is number 2011-0421-338, and that corresponds with
24 Defendant's Exhibit Six.

25 (3:15 P.M., FIFTH RECORDING IS PLAYED; AUDIO ENDS AT

1 3:17 P.M.; AUDIO ON DEFENSE EXHIBIT NUMBER THIRTEEN IS
2 NOT TRANSCRIBED. IT IS MARKED AS DEFENDANT'S EXHIBIT
3 NUMBER THIRTEEN.)

4 MR. BROWN: Your Honor, that concludes that part of the
5 defense's case. I will fix the thumb drive momentarily.

6 THE COURT: Okay. Your intention would be to mark it
7 and admit it into evidence as Defense Exhibit Thirteen.

8 MR. BROWN: Yes, Your Honor. At this time, I would
9 call Ms. Regina Blanding.

10 THE COURT: Okay.

11 (WHEREUPON, MS. REGINA BLANDING IS DULY SWORN.)

12 THE COURT: And if you would, please, state your full
13 name for the record and spell your last name.

14 MS. BLANDING: Regina Blanding, B-L-A-N-D-I-N-G.

15 THE COURT: Your witness, counsel.

16 DIRECT EXAMINATION

17 BY MR. BROWN:

18 Q Ms. Blanding, would you tell the Court your
19 relationship to Desiree Blanding?

20 A She's my daughter.

21 Q And how about your relationship to Robert Blanding?

22 A He's my son.

23 Q And how about your relationship to Mr. Paul Mitchell?

24 A He's my good friend.

25 Q Where do y'all live?

- 1 A 40 Luther Warren Drive.
- 2 Q Do y'all all live there together?
- 3 A Yes.
- 4 Q Would you tell me how close 40 Luther Warren drive is
5 to the oak tree that is depicted -- I'm going to show you in
6 State's Exhibit 1A.
- 7 A It's a little more than a half a mile.
- 8 Q Okay. How many houses are between that tree and your
9 house?
- 10 A About two.
- 11 Q Okay. Is one of them actually just in front of your
12 house?
- 13 A Yes.
- 14 Q So there's actually one between it and then one closer
15 to the street?
- 16 A There's one there and we're behind it.
- 17 Q When did Robert -- does he still go to high school?
- 18 A No. He's going to adult education.
- 19 Q When was he still in the high school where he was being
20 dropped off or picked up?
- 21 A Last year.
- 22 Q And last year would be 2011?
- 23 A Yes.
- 24 Q What high school did he attend?
- 25 A Beaufort High.

1 Q Okay. Would he ride the bus sometimes to school?

2 A Yes.

3 Q Did anyone ever go pick him up sometime at the bus
4 stop?

5 A No.

6 Q Did he walk home?

7 A Yes.

8 Q What's the relationship between Desiree and Jabari
9 Lennin?

10 A That's her boyfriend.

11 Q And they have a child together?

12 A Yes.

13 Q All right. Would Jabari sometimes come to your house?

14 A Yes.

15 Q And help me with this. Would you tell me a little bit
16 about Jabari visiting or coming over to your house and
17 staying over there?

18 A Well, sometimes, a lot of times, he would drive my
19 daughter to school and to work, so sometimes he would spend
20 the night.

21 Q Okay. Just give us some idea, was it like once or
22 twice or has it been a number of times?

23 A It's been a number of times.

24 Q Okay. How long have you and your family lived in
25 Beaufort?

1 A Well, my mother was here first. I've been here going
2 on about eight or nine years now.

3 Q How long have you known Kenneth Treyvon Nichols?

4 A I knew him through my kids, because he went to school
5 with them.

6 Q Could you give us an estimate of how many years that
7 you've known him?

8 A From the time I've been here.

9 Q Okay.

10 A From the time, I guess, he moved around there because
11 he was around my kids age.

12 Q But you've known him since you've been here?

13 A Yes.

14 Q Okay. Let me ask you this. What can you tell us about
15 the relationship between Robert and Desiree and Trey
16 Nichols?

17 A With my daughter, I don't know anything like that.
18 They went to school together, but my son had a problem with
19 him in which I had to call the neighbor ---

20 DEP. SOL. THORNTON: Objection, Your Honor.

21 THE COURT: Sustained.

22 A He was harassing my son.

23 THE COURT: I know it's difficult, but since they are
24 for other reasons and other rules. So if you will just work
25 with us when I sustain an objection, just wait and let him

1 ask another question. Thank you so much.

2 Q Now, did you speak with your son?

3 A My son came to me.

4 Q Okay. As a result of speaking with your son, what did
5 you do?

6 A I left out the house, I walked up the street to go talk
7 to Trey, but before I could get there, he started cussing at
8 me ---

9 DEP. SOL. THORNTON: Objection, Your Honor. This is
10 the 405(b) that I thought we were already established in
11 going over and these are specific instances.

12 THE COURT: Let me see that, please.

13 (Brief pause in the courtroom.)

14 Ladies and gentlemen, I need you to step to your jury
15 room. Do not discuss this matter or allow anyone to discuss
16 it with you. We will not be long.

17 (WHEREUPON, THE JURY EXITS THE COURTROOM, AND THE
18 FOLLOWING IS HELD ON THE RECORD.)

19 THE COURT: All right. You wanted to state your
20 objection, Mr. Thornton?

21 DEP. SOL. THORNTON: I do, Your Honor. For the record,
22 this is more -- it's my understanding, based on the
23 questions that were asked, this is more evidence that Mr.
24 Brown is seeking. He introduced a specific instances of
25 conduct; it would be under 405(b) by the victim as we've

1 already talked about in the Day case, it either has to be
2 directed against the defendant, or to be so close in time,
3 or to be otherwise relatable as the Court has already ruled,
4 there was nothing in any of that that talked about when this
5 was, how long ago it was. It clearly is not the defendant.
6 I don't believe the defendant is her son, and she said this
7 was a problem he had with her son.

8 As far as her specific conduct, it's still specific
9 conduct, it's still an attack on the defendant's specific
10 instances of bad conduct, which is allowable; but under the
11 Day case, there are restrictions. We don't know when it
12 was, if it was three years ago, my objection would be that
13 it's too far removed in time.

14 I think clearly she could answer, once he's laid a
15 foundation, "Do you have a reputation as to his character
16 for violence or anything?" I think she can answer that in
17 general terms. But the specific conduct, I don't care how
18 he attempts to get it in, whether it's through incident
19 reports or -- it still is under the Day analysis. That's my
20 objection, I'm sorry that was so long, Judge.

21 THE COURT: I got it. Absolutely. And Mr. Brown, I
22 know you are certainly well aware of the parameters.

23 MR. BROWN: But this is a little different because I've
24 asserted in our opening that it was justification related to
25 defense of himself and others, and this is his family. He

1 lives with them. He's had a child by one of them. This may
2 not be his only place he lives, but he's allowed to defend
3 relatives, and that's what I'm developing here, and
4 obviously, in a defense of others scenario, Mr. Lennin then
5 becomes the alter-ego of the others, so he stands squarely
6 in their shoes.

7 And so obviously when you do a prior difficulties
8 analysis, if it's viewing it from the third-party shoes,
9 then it would be whether or not they had prior difficulties
10 and here's the important part, the time limits in Day don't
11 apply to threats against the defendant or the person who
12 attempted to use the force. That is only for ones that are
13 not directed at that person, and so I will try to get it in
14 under the part about whether or not it's close enough, but I
15 also believe it's relevant to his actions on behalf of
16 others and that's why I've established repeatedly how close
17 they are.

18 THE COURT: Okay. Let me tell you what the law doesn't
19 say.

20 MR. BROWN: Yes, ma'am.

21 THE COURT: What the law doesn't say is throughout high
22 school they didn't get along, and therefore, because they
23 didn't get along with a cousin in high school that you're
24 allowed then to get out of a car and walk around and shoot
25 somebody because you didn't get along with somebody in high

1 school, Mr. Brown. You are not suggesting that I am quite
2 certain, right?

3 MR. BROWN: That is not what I'm arguing.

4 THE COURT: Very well.

5 MR. BROWN: This is much more specific.

6 THE COURT: And that's where we are in this testimony,
7 do you understand that?

8 MR. BROWN: Right now -- yes, ma'am.

9 THE COURT: So here's what I'm going to do, I'm going
10 to try to address our situation, but you're going to have to
11 very tightly be mindful of the parameters, okay?

12 MR. BROWN: Yes, ma'am.

13 THE COURT: And I don't want you telegraphing to this
14 witness that we will be talking about what happened in high
15 school and that's going to be some sort of justification of
16 the contact on this occasion.

17 MR. BROWN: That's not at all what I meant. And quite
18 frankly, Your Honor, you know it's my understanding that to
19 develop this and make it more efficient, that it may be that
20 I would leave the witness to make it to get to the point.

21 THE COURT: I understand. And all that was -- I don't
22 want you misled, Ms. Blanding, and I need to give you some
23 parameters it's not fair to you. When you get an open-ended
24 question, you need to be able to answer it.

25 Our law allows, when you have a criminal prosecution,

1 and there is a history between folks, that that direct
2 history has got relevance and that can come in. The other
3 part of it that can come in is that when you have a
4 character trait, either with the defendant or the alleged
5 victim, and that character trait is a relevant character
6 trait, obviously peaceableness, or lack thereof, it is a
7 relevant character trait. But if it's close enough in time,
8 it's admissible to show either a state of mind or what the
9 difficulties; but the law is real tight, real tight, on
10 these particular areas. And the reason is, is our law says
11 that because you may have made a mistake in your life twenty
12 years ago, doesn't mean that you made that same mistake
13 today and you're not allowed to say, "Well, somebody robbed
14 a bank twenty years ago and they were just walking by the
15 bank; and today, they're clearly going to rob the bank," and
16 that's the reasons that we've got to have those parameters.

17 So I'm not so sure that you want to ask some real
18 general questions, but I need you to understand that there
19 are some parameters, and it kind of puts you in a difficult
20 position as you answer the questions, but I'm confident that
21 Mr. Brown is going to be able to tailor them tightly,
22 because the proximate time under our case law is real tight,
23 it's real tight. So he's going to be asking you those
24 questions. If you have any questions about that and you're
25 not real clear about those questions, don't you hesitate to

1 say that you don't understand what he's saying. Okay? Make
2 sense?

3 MS. BLANDING: Yes, ma'am.

4 THE COURT: All right. Yes?

5 DEP. SOL. THORNTON: Judge, forgive me if I'm not
6 understanding what the procedure is going to be. I would
7 request that if we're going to do that, that Mr. Brown do
8 these questions briefly outside the presence of the jury,
9 because what I don't want is for him to develop this
10 difficulty and then find out that the last question, after
11 it's already in front of the jury, and that happened three
12 years ago, and then Your Honor rules it's not admissible.
13 So, if there's any way to do that before we go back to the
14 jury, otherwise, I don't know how to object to it because if
15 he goes through -- and I'm certainly not going to object to
16 him leading or keeping the parameters tight, but if the last
17 question after all the information is already out is -- and
18 that happened two years ago and I object under Day, and then
19 you sustain it, the jury has already heard it.

20 THE COURT: I'm with you. And I don't mind sharing
21 this with Ms. Blanding. That's what I'm talking about the
22 time limitations being so tight. If it is, we're not going
23 to. It's got to be very contemporaneously, within a couple
24 of months. If it's not going to be within a couple of
25 months, I want you to sig on that to Mr. Brown. Now, Mr.

1 Brown can approach and that sort of gives us a chance to
2 ferret that out, but this would be easier for you.

3 MR. BROWN: There's another thing here which is whether
4 or not the effect of what they knew had on Mr. Lennin's
5 belief.

6 THE COURT: Say that again?

7 MR. BROWN: Irrespective of the truth of any assertions
8 against Mr. Nichols, if Mr. Lennin heard those things and
9 they caused him to look differently on Mr. Nichols, it would
10 be different than whether or not in fact that it happened.
11 Somebody could have a reputation and it not actually be
12 true.

13 THE COURT: But now, you're talking about a whole
14 different thing.

15 MR. BROWN: Partly, but this is --- yes, ma'am.

16 THE COURT: Right now, I'm addressing specific acts.
17 The last thing I want to do is confuse this jury.

18 MR. BROWN: Right, and I'm trying to avoid having to do
19 the jury in and out every time I ask a question, because at
20 some point and time I do plan on asking her whether any of
21 the engagements with Mr. Nichols had been discussed with Mr.
22 Lennin, and that's very generic. I'm not asking her to talk
23 about anything that's not admissible, but whether Mr. Lennin
24 had ever been at their house and they discussed Mr. Nichols,
25 and that goes right to one of the elements of self defense

1 is whether he believed.

2 THE COURT: Now, you're going to do that outside the
3 jury, because I'm not going to have ---

4 MR. BROWN: That's why I brought it up.

5 THE COURT: I'm not going to have -- that she had a
6 conversation five years ago, and somehow that's going to be
7 used as a defense, because that's not appropriate.

8 MR. BROWN: Well, if he has it on his mind, I don't
9 think there's ---

10 THE COURT: Five years ago. No, sir, we're not going
11 to do that. No. But it depends on the factors. If you
12 want to go into that, then we'll go into that. Now, I don't
13 want to confuse Ms. Blanding, so let me be sure I'm clear
14 with you. I was talking about specific acts just then,
15 talking about the months. He may also ask you are you
16 familiar with the reputation in the community, that's a
17 different question. That's a very general question, okay?
18 And you'll say whatever you say and he'll help you through
19 that.

20 He may say, "Do you have an opinion?" and then you'll
21 state your opinion, but that's a general question, you know
22 what I mean, as opposed to a very specific incident. And
23 we've been talking about that now, for what, two days? Is
24 this your first day?

25 MS. BLANDING: Yes, ma'am.

1 THE COURT: Okay. Well, you missed some of the
2 conversations, but you are listening. So that's two
3 different issues. One is called reputation, there's another
4 called opinion, and then there's specific acts. What I'm
5 talking about that two month window of opportunity, I'm
6 talking about specific acts, okay?

7 MS. BLANDING: Okay.

8 THE COURT: Mr. Brown will help you through those more
9 general questions and they'll sound a little unusual, but if
10 you'll listen carefully, they'll make sense to you.

11 All right. Now, if you're wanting to get into what she
12 might have told him five years ago, I want you to do that
13 now.

14 MR. BROWN: Okay. And I would ask her what she told
15 him, whether they had discussed Trey Nichols around Mr.
16 Lennin.

17 THE COURT: All right.

18 DEP. SOL. THORNTON: I'm sorry, Judge, I thought you
19 were talking about ---

20 THE COURT: I don't want you to talk about Trey
21 Nichols. I don't want that in front of the jury; we're
22 doing that now.

23 MR. BROWN: Okay. And would you like me to kind of do
24 a little proffer here?

25 THE COURT: Just on that, because I'm satisfied she's

Proffer of Direct Examination
of
Regina Blanding by Mr. Brown

1 got the specific action; you're going to do opinion or
2 reputation, fine; I'm not worried about that.

3 MR. BROWN: Yes, ma'am.

4 THE COURT: Just did y'all ever talk about it and was
5 it five years ago or whatever.

6 MR. BROWN: Okay.

7 PROFFER OF DIRECT EXAMINATION

8 BY MR. BROWN:

9 Q When did Mr. Lennin first start going over to your
10 house?

11 A It was last year.

12 Q Okay. And last year was 2011?

13 A Yes.

14 Q And so sometime in 2011 was the first time Mr. Lennin
15 started frequenting your house, according to your daughter?

16 A Yes.

17 Q During that time, did y'all ever discuss Mr. Nichols?

18 A I might have mentioned it one time, because my son came
19 to me when he slapped my son in the back of his head and I
20 might, you know, I was angry.

21 Q And that's more than I asked for, but you did discuss
22 an incident?

23 A Yes.

24 Q You did discuss Mr. Nichols?

25 A Yes.

Proffer of Cross-Examination
of
Regina Blanding by Dep. Sol. Thornton

1 Q Okay.

2 MR. BROWN: And that's, quite frankly, what I wanted to
3 talk about, besides any specifics or reputation. And that's
4 the question about whether Mr. Linnen was privy to any
5 discussion.

6 THE COURT: All right. Well, would you like to cross-
7 examine, because if he's not going to ask her any more, you
8 might want to ask her more questions about that.

9 PROFFER OF CROSS-EXAMINATION

10 BY DEP. SOL. THORNTON:

11 Q Now, ma'am, it's my understanding that you said you did
12 have this conversation?

13 A Yes, I did mention him, because I was angry at the time
14 and he was there at my house.

15 Q "He" being Jabari Lennin?

16 A Jabari Lennin, yes.

17 Q How long has he been going to your house?

18 A Over a year, about a year.

19 Q All right. Is that the same time he's been seeing
20 Desiree?

21 A Uh-huh (affirmative), yes.

22 DEP. SOL. THORNTON: Your Honor, I don't think I have
23 anything further on that. I'm not going to delve into it.
24 Other than she says that she told him that, you know, she
25 told him that. My concern is with the specific conduct

1 and specific acts.

2 MR. BROWN: And I don't mind going into that, right
3 now, if Your Honor wishes, because it seems obvious that
4 soon enough within a short amount of time compared to the
5 time of the shooting, Mr. Lennin has been going over there.
6 Do you want me to go into that now? I will. I don't know
7 if you want me to do more proffer examination.

8 THE COURT: I know you don't. I'm thinking.

9 MR. BROWN: Okay. That was the only question I was
10 going to ask about whether or not Mr. Lennin had been privy
11 to some of the family discussions about Mr. Nichols.

12 THE COURT: Yeah. Are there anymore?

13 MR. BROWN: None on that, Your Honor.

14 THE COURT: Is there going to be an objection to that?

15 DEP. SOL. THORNTON: No, ma'am. If he asks it in a
16 generic fashion like that, you know, have there been
17 discussions with Mr. Lennin about their interactions with
18 Trey Nichols, I'm not going to ask. However, in an
19 abundance of caution, if there is a characterization of --
20 like we had in some of the other things, "Did you discuss
21 how Mr. Nichols victimized your family?" Obviously, I'm
22 going to object to that, but if he leaves it as vague as he
23 just said it, I'm not going to object.

24 THE COURT: Okay. And Ms. Blanding's quite clear.

25 DEP. SOL. THORNTON: Yes, ma'am.

1 THE COURT: Okay. Have we done anything to confuse
2 you?

3 MS. BLANDING: No, ma'am.

4 THE COURT: Okay. Because this is for you.

5 MS. BLANDING: I'm straight. Yeah.

6 THE COURT: Great. Are we clear?

7 MR. BROWN: Yes, ma'am.

8 THE COURT: That's going to be fine.

9 MR. BROWN: Right. I was going to follow up on the
10 specifics as far as they're close enough in time.

11 THE COURT: You already did it. It was within the
12 year.

13 MR. BROWN: Right. In front of the jury, I guess, is
14 what I'm saying.

15 THE COURT: Yes. It's the maximum of a year; there's
16 no objection to that. You're good to go.

17 MR. BROWN: Thank you.

18 THE COURT: You ready?

19 MR. BROWN: Yes, ma'am.

20 DEP. SOL. THORNTON: Yes, ma'am.

21 THE COURT: Bring in the jury.

22 (WHEREUPON, THE JURY ENTERS THE COURTROOM, AND THE
23 FOLLOWING IS HELD ON THE RECORD.)

24 THE COURT: You may continue, Mr. Brown.

25 MR. BROWN: May it please the Court, Your Honor?

1 THE COURT: Yes.

2 DIRECT EXAMINATION

3 BY MR. BROWN:

4 Q Within a few months of April 2011, did you ever have,
5 or witness personally, or personally have any encounters
6 about Mr. Nichols?

7 A The only time that I had an encounter with him was when
8 I went to go talk to him about smacking my son in the back
9 of his head.

10 Q How would you characterize that encounter?

11 A Well, before I could get to where he was at, he started
12 cussing at me, and I'm just going to say what he said, he
13 said "I know you're not coming down here with this f'ing
14 shit."

15 Q He referred to you or spoke to you that way?

16 A Yes, he did.

17 Q Now, let me ask you, when you lived there had you
18 gotten to know Mr. Nichols' family?

19 A Yes.

20 Q And can you give some of the family members that you
21 know; would you tell the jury just some of them?

22 A Patricia Sutton, Theresa Nichols, Janice -- I don't
23 remember what Janice last name is; I know them. The ones
24 that live there, I know them.

25 Q Mr. Daise?

1 A Yeah, Joe Daise.

2 Q Does Mr. Nichols have siblings, as well?

3 A Yes, he has cousins, one was Kim -- I don't remember
4 their last names.

5 Q And let me ask you this, had they ever approached you
6 to discuss Mr. Nichols?

7 A No. I called the neighbor, Willa Mae Parker, and I
8 asked her to call their mother to speak to her to leave my
9 son alone.

10 Q Okay. Let me ask you this, have you ever spoken with
11 the police on your road?

12 A The only time I talked to the police was when I sent my
13 daughter and Jabari Lennin to go pick my granddaughter up
14 off the bus. I don't know what happened; Jabari drove off,
15 my daughter came back to me and said something about Trey,
16 he was messing with them. I told her to call the police and
17 I walked up back to the tree and waited for the police.

18 Q Did you speak to them?

19 A Yes.

20 Q Did you ever speak to them again after that one day?

21 A No.

22 Q All right. And during this time, did you ever have the
23 chance to speak around or to Jabari Lennin about the
24 difficulties?

25 A Like I said, one time he was there and I was

1 discussing it, because I was angry.

2 Q Yes, ma'am.

3 A So he overheard what I was saying.

4 Q Now, having known Mr. Nichols for this amount of time
5 and experiences you've had with him, the discussions you've
6 had with his family, the discussions you've had with your
7 family, and the discussions you've had with law enforcement,
8 do you have an opinion regarding his character for violence,
9 his reputation?

10 A Well, the only thing I see was the part where it was my
11 son, other than that, I don't have nothing else, not with
12 him.

13 Q You don't have an opinion about him?

14 A No.

15 MR. BROWN: I have no other questions.

16 THE COURT: Very well. Cross-examination.

17 CROSS-EXAMINATION

18 BY DEP. SOL. THORNTON:

19 Q Ma'am, were you present when Jabari shot Trey Nichols?

20 A No, I wasn't.

21 Q Thanks.

22 DEP. SOL. THORNTON: Nothing further, Judge.

23 THE COURT: Very well. Any redirect?

24 MR. BROWN: No, ma'am. She's excused; I do think her
25 ride is actually my next witness.

1 THE COURT: Thank you. Call your next witness, please.

2 MR. BROWN: Paul Mitchell.

3 (WHEREUPON, MR. PAUL MITCHELL IS DULY SWORN.)

4 THE COURT: And if you would state your full name for
5 the record and spell your last name.

6 MR. MITCHELL: Paul Anthony Mitchell, M-I-T-C-H-E-L-L.

7 THE COURT: All right. Your witness, Mr. Brown.

8 MR. BROWN: May it please the Court, Your Honor?

9 THE COURT: Yes, sir.

10 DIRECT EXAMINATION

11 BY MR. BROWN:

12 Q Mr. Mitchell, and we may already know this, but you
13 live on Luther Warren Drive?

14 A Yes, I do.

15 Q And you live with the Blandings?

16 A Yes, I do.

17 Q How long have you lived there?

18 A Right at eight or nine years.

19 Q Okay. Have you an occasion to come to know Trey
20 Nichols?

21 A Yes, I have.

22 Q And his family?

23 A Yes, sir.

24 Q Can you tell me some of the ways that y'all got to know
25 each other?

1 A We are neighbors passing each other from time to time,
2 you know, same neighborhood and stuff like that.

3 Q Would you say that y'all moved in the same circles?

4 A You could say that.

5 Q Okay. Would you say that y'all are acquainted through
6 those years on that street?

7 A Yes.

8 Q Okay. And Mr. Lennin, has he spent time at y'all's
9 house?

10 A Yes.

11 Q Let me ask you this, was most of that during the year
12 2011?

13 A Yes.

14 Q And do you remember April 21st, 2011?

15 A Yes, vaguely; but I remember it.

16 Q Okay. And for lack of a better word, that's the day
17 that Mr. Nichols was shot?

18 A Yes.

19 Q All right. And do you recall within the months before
20 that any specific instances involving Mr. Nichols and your
21 family?

22 A Well, like Regina said, it was a while ago, but I
23 remember Robert getting off the school bus ---

24 Q And who is Robert?

25 A Her son.

1 Q Robert Blanding?

2 A Yes. And he was chasing him, you know, and he had
3 mushed him in the back of his head, you know, and it upset
4 him, and he came home and told me and his mother about it.

5 Q Did you ever have a chance to speak to the police?

6 A No, I haven't.

7 Q Did you ever see the police out there?

8 A Yes, I seen the police down there from time to time. I
9 would see the cops down there at the end of street.

10 Q Okay. That would be you're referring to -- down at the
11 end of the street, that would be at Mr. Nichols' house?

12 A Yes, at the end of the street down there.

13 Q Okay. Because the jury hasn't been there. I'm trying
14 to find out, is that towards where his mother lives and his
15 grandparents?

16 A Yes.

17 Q Okay. Do you recall speaking with law enforcement on
18 April 21st, 2011?

19 A Yes, I did.

20 Q Did they ask you to provide a written statement?

21 A Yes, the officer there did.

22 Q Do you recall what you told him at that time?

23 A Vaguely; it wasn't much that I could tell him, you
24 know, because when he came down to our house, I think it was
25 that morning -- part of that morning, and he was kind of

1 explaining to us what happened and we were just getting up.

2 MR. BROWN: And if I may, Your Honor, approach and ask
3 him if this refreshes his recollection?

4 THE COURT: Very well.

5 Q Mr. Mitchell, I ask that you read that and see if it
6 refreshes your recollection. And let me ask you this, did
7 you provide the officer any information about law
8 enforcement being there before you spoke with him?

9 A No.

10 Q If you look at that statement, does it reference law
11 enforcement?

12 DEP. SOL. THORNTON: Your Honor, I would have an
13 objection. I believe that would be, that the reference in
14 the statement, would be double hearsay.

15 THE COURT: As I understand it, he's just refreshing
16 his recollection.

17 DEP. SOL. THORNTON: Yes, ma'am.

18 Q Now, let me ask you, what you put in your statement,
19 that's not referring to the conversation you had with this
20 investigator, is it?

21 A No.

22 Q That's something else, isn't it?

23 A Yes.

24 Q Okay. And the reason why I asked that is that -- who
25 did you have this discussion that's referenced in here, who

1 was that with? There's a reference in here, this line ---

2 THE COURT: Now, don't publish anything.

3 MR. BROWN: I'm not going to publish it.

4 Q If you look at this part, who was the discussion --

5 there's a discussion that you've referenced in that

6 statement; who was that with?

7 THE COURT: Now, don't publish that document. You
8 can't publish that document. You understand that's not in
9 evidence?

10 MR. BROWN: I understand that, yes, ma'am.

11 THE COURT: All right.

12 Q I don't want to make it too confusing, Mr. Mitchell.
13 When you get a chance, I'll ask when you're finished with
14 that.

15 THE COURT: What is relevant is whether or not the
16 document refreshes his recollection and that is a yes or a
17 no.

18 Q Did that help refresh your recollection of what
19 happened on April 21st?

20 A Yes.

21 Q Now, to make sure I understand, that statement was
22 written when you spoke with Investigator Fraser?

23 A Yes.

24 Q Did you have some conversations earlier that day?

25 A Not that I can recall.

1 Q And when you wrote down what you put in that statement,
2 I don't mean with Officer Fraser, did you speak with anybody
3 else that morning?

4 A Not that I recall.

5 Q I'll ask you one more time if you'll take a look at
6 that statement.

7 A I'm trying to see.

8 THE COURT: Mr. Mitchell, you said you needed your
9 glasses, have you got them with you?

10 MR. MITCHELL: No, I left them at home. I can see
11 pretty good, though.

12 MR. BROWN: Your Honor, may I approach?

13 THE COURT: Of course

14 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD
15 AND OUT OF THE HEARING OF THE JURY.)

16 Q This might make it much easier. (HANDS MR. MITCHELL A
17 PAIR OF READING GLASSES.) Mr. Mitchell, did you tell the
18 police that you had a discussion with a neighbor that
19 morning?

20 A I'm trying to remember.

21 THE COURT: That would be a "yes" or "no."

22 Q And again, if you'll look at that and see if it
23 refreshes your recollection on whether you had a
24 conversation with "our neighbor."

25 A I think I did. It's just been ---

1 Q I think that's the same, and I don't know how else to
2 get to it, but I think we're still back to that same issue.

3 DEP. SOL. THORNTON: Your Honor, if it'll save time I
4 will stipulate that he told the detective that he talked to
5 a neighbor that day.

6 THE COURT: How about that?

7 MR. BROWN: And it was in that written statement?

8 DEP. SOL. THORNTON: And it is in the written
9 statement.

10 A I'm sure I did, but I just can't remember.

11 DEP. SOL. THORNTON: We'll stipulate. The words "our
12 neighbor" is clearly in the statement, Judge. We'll
13 stipulate it.

14 THE COURT: Very good.

15 Q And to follow up with that, so you were out in the
16 street or out in the road and had a conversation with the
17 neighbor that day; does that sound right?

18 A I did.

19 Q All right. Did you generally get out and speak to the
20 other folks in the neighborhood?

21 A Yes, from time to time I do.

22 Q Okay. And did you ever have conversations with Mr.
23 Nichols' family?

24 A That day, I don't ---

25 Q No, anytime. Over the how many years you've been

- 1 there?
- 2 A Yes.
- 3 Q All right. How many years have you been discussing
- 4 just neighborhood matters with the neighbors?
- 5 A Six or seven years, something like that.
- 6 Q And who would those people include?
- 7 A Well his family, you know ---
- 8 Q Some names, I'm sorry.
- 9 A Theresa Nichols.
- 10 Q Joe Daise?
- 11 A Uh-huh (affirmative).
- 12 Q All right. How about Sharine?
- 13 A Yeah, I spoke to his mother before.
- 14 Q How about Ms. Flynn?
- 15 A Oh, yes.
- 16 Q All right. How about the Suttons?
- 17 A Yes.
- 18 Q How about Trey's siblings?
- 19 A I spoke to his little sister, you know, just how are
- 20 you doing and stuff like that.
- 21 Q And how many years have you been talking with them?
- 22 A Five or six years.
- 23 Q And for most of that time you lived there, and also Mr.
- 24 Nichols lived there?
- 25 A Yeah.

1 Q Would you say y'all moved in the same circles?

2 A Yeah.

3 Q Did you live in the same community?

4 A Yeah.

5 Q Would you say that time and experience there provided
6 you with the sufficient basis to form an opinion regarding
7 Mr. Nichols' character for violence or his reputation for
8 violence?

9 A Yeah.

10 Q What is that opinion?

11 A At times, he can be kind of a bully, you know,
12 disrespectful at times, you know, things that I've seen him
13 do, unnecessary things, throwing bottles in the middle of
14 the streets and stuff like that.

15 Q Within just a few months of this shooting, before this
16 shooting, have you seen Mr. Nichols do anything that was
17 violent, such as what you said?

18 A Yeah.

19 Q Tell me what those were.

20 A Throwing bottles, and then my son, you know what he did
21 to him, you know, when he put his hands on him, and the way
22 he spoke with my daughter.

23 Q Which daughter?

24 A Desiree.

25 Q Now, let me ask you this, when you say throwing

1 bottles, is it just throwing bottles in the woods?

2 A Yes, busting bottles on the asphalt. You know, people
3 drive their tires on the asphalt and it can bust their
4 tires.

5 Q And he's busting in the roadway?

6 A Yes.

7 Q All right. Anything else you saw during that time, is
8 that what serves as the basis for that opinion that he's
9 kind of a bully?

10 A Yes.

11 Q I don't have any other questions.

12 THE COURT: Okay. Cross-examination.

13 CROSS-EXAMINATION

14 BY DEP. SOL. THORNTON:

15 Q Mr. Mitchell, a statement has been referenced that you
16 talked to law enforcement that day. I apologize, that was a
17 horribly phrased question. That day being the day that
18 Jabari shot Trey Nichols. Did they talk to you that day,
19 the police?

20 A Yes.

21 Q Were you able to provide any information about how or
22 the circumstances that Jabari shot Trey?

23 A No.

24 Q That's because you weren't there, isn't that right?

25 A No.

**MISSING PAGE 426 FROM ORIGINAL
TRANSCRIPT**

1 DIRECT EXAMINATION

2 BY MR. BROWN:

3 Q Mr. Blanding, where do you live?

4 A 40 Luther Warren Drive.

5 Q And where'd you go to high school?

6 A Beaufort High.

7 Q How long have you lived at 40 Luther Warren?

8 A For like eight or nine years.

9 Q And how long have you known Mr. Nichols?

10 A Ever since I moved down here.

11 Q Did you ever go to high school with Mr. Nichols?

12 A No.

13 Q And did he graduate before you went there?

14 A Yes.

15 Q All right. About how tall are you?

16 MR. BROWN: If I may ask him to step down and stand
17 next to me.

18 THE COURT: All right.

19 Q Would you say you're shorter or taller than me?

20 A Shorter.

21 Q Okay. So shorter than Mr. Nichols?

22 A Yes.

23 Q Within a few months of April 2011, have you ever seen
24 Mr. Nichols engage in any violent acts?

25 A Yes.

1 Q And what were those acts?

2 A Like throwing bottles in the street and saying comments
3 to me when I walked from school.

4 Q Did he ever act violently towards you physically?

5 A No.

6 Q Did he ever lay his hands on you?

7 A Yeah, one time when I was going to the bus in the
8 morning.

9 Q Would you tell the jury about that?

10 A I was walking to school one morning and he just came up
11 to me and asked me if I had been to his house, and then he
12 just mush me in the back of my head and he said, "Answer my
13 question," and then he walked off.

14 Q And let me ask you this, where is the bus stop where
15 that happened?

16 A At the end of Luther Warren.

17 Q And where is that in relation to the tree?

18 A Like not too far from, it's like forty yards away.

19 Q Forty yards. So almost right at the tree?

20 A Yes.

21 Q Okay. Was he riding the bus to school with y'all?

22 A No.

23 Q Because he wasn't going to school, was he?

24 A No.

25 Q But you were going to high school on that bus?

- 1 A Yes.
- 2 Q All right. Was he there other times that you got on
3 and off the bus?
- 4 A No, it was just one time.
- 5 Q Was he ever there other times, though, at the tree?
- 6 A Yeah, he would sit there.
- 7 Q How many other times?
- 8 A Probably like four or five times.
- 9 Q And he would sit there; does he appear to be doing
10 anything?
- 11 A No, he was just sitting there, but he would say
12 something to me; but he wouldn't do anything.
- 13 Q So there were other times that he would say something
14 to you but he only actually laid his hands on you one time?
- 15 A Yes.
- 16 Q And was he saying nice things?
- 17 A No.
- 18 Q Now, the time that he laid his hands on you, what did
19 you do to provoke that response?
- 20 A I really didn't say nothing; I just left him alone.
- 21 Q What did you do before he touched you?
- 22 A Before he touched me, I didn't do nothing.
- 23 Q You didn't do nothing?
- 24 A No.
- 25 Q And then he said some ugly things to you?

- 1 A Yes.
- 2 Q And laid his hands on you?
- 3 A Yes.
- 4 Q Did you eventually speak to the police?
- 5 A No.
- 6 Q Did you know whether the police responded?
- 7 A No.
- 8 Q Do you know whether or not the police had ever been to
- 9 your house at other times?
- 10 A Yes.
- 11 Q And was that concerning Mr. Nichols?
- 12 A No.
- 13 Q Has the police been in the neighborhood concerning Mr.
- 14 Nichols?
- 15 A Yes.
- 16 Q All right. Did you know about those other times?
- 17 A Like sometimes, but not all the time.
- 18 Q All right. Having lived there for that amount of time,
- 19 would you consider yourself acquainted with Mr. Nichols?
- 20 A Yes.
- 21 Q Would you consider that y'all live in the same
- 22 community?
- 23 A Yes.
- 24 Q And would you say that you moved in the same social
- 25 circle?

1 A Yes.

2 Q With all of that basis of knowledge did you form or
3 have you formed an opinion regarding his character for
4 violence or reputation for violence?

5 A Yes.

6 Q And what is that?

7 A Bully.

8 Q He's a bully?

9 A Yes.

10 MR. BROWN: I have no further questions.

11 THE COURT: Okay. Cross-examination.

12 CROSS-EXAMINATION

13 BY DEP. SOL. THORNTON:

14 Q Robert, is it okay if I call you Robert?

15 A Yes.

16 Q Robert, where you out near the tree or at the tree when
17 Jabari shot Trey Nichols?

18 A No.

19 DEP. SOL. THORNTON: I have no further questions, Your
20 Honor.

21 MR. BROWN: Nothing further, Your Honor.

22 THE COURT: All right. And is this witness free to
23 leave?

24 MR. BROWN: Yes, ma'am.

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

1 Call your next witness, please.

2 MR. BROWN: I would call Dr. Tyrone McElveen. He's
3 under subpoena.

4 THE COURT: Very well. We're going to take our
5 afternoon break. Ladies and gentlemen, I anticipate a break
6 of about fifteen minutes, but it could go a little bit
7 longer. Remember not to discuss this matter or allow anyone
8 to discuss it with you. Thank you.

9 (WHEREUPON, THE JURY EXITS THE COURTROOM AND THE
10 FOLLOWING IS HELD ON THE RECORD.)

11 THE COURT: All right. Mr. Brown, I'm going to ask
12 you, please, if you will file with the Court the subpoena
13 that you served on Doctor McElveen.

14 MR. BROWN: And Your Honor, this is my copy because the
15 original was signed after we made the copies. My copy of
16 the subpoena is not signed because that was the original
17 that went to him, there is the proof of service, Dr. Raymond
18 and his office accepted it; it's the cover letter, as well.
19 And again, it was served on 9-7-12 at Beaufort Memorial
20 Hospital.

21 THE COURT: Thank you. We're going to file that and
22 make that a Court's Exhibit.

23 (WHEREUPON, COURT EXHIBIT NUMBER ONE, SUBPOENA OF DR.
24 MCELVEEN, IS RECEIVED INTO EVIDENCE.)

25 THE COURT: Mr. Brown, I ask you this in your capacity

1 as an officer of the Court.

2 MR. BROWN: Yes, ma'am.

3 THE COURT: And I want you to describe for me, if you
4 will, the history of your contact and communication with Dr.
5 McElveen.

6 MR. BROWN: Yes, ma'am. I served the subpoena on -- I
7 went to the hospital the 7th of September and served it. I
8 contacted the hospital chief security officer, Bart Murray,
9 and Mr. Murray took me to Dr. Raymond, who was the partner,
10 I think the head of the practice from which Dr. McElveen
11 works, and in front of Mr. Murray, Dr. Raymond says, "I will
12 take it for Dr. McElveen."

13 And we fast forward because I never got any records and
14 they didn't show up on Monday, and at that point in time, we
15 had a discussion in chambers with Judge McDonald who was
16 here doing some preliminary matters, and she had suggested
17 that Kay Brobston, from my office, and I go to the hospital
18 and see if we make some headway on that. So we went down
19 there and we did mention to again, the security, that Dr.
20 McElveen needed to contact us, because the Judge wasn't
21 happy that he wasn't there and there had been a request for
22 records.

23 After that, there was contact back, Dr. McElveen called
24 my office within thirty minutes of explaining that Judge
25 McDonald was concerned and he gave me a cell phone number

1 and he told me, among other things, that he was working on
2 Tuesday also, but off on Wednesday, and then he mentioned
3 Thursday he would be in Jasper County and he gave me his
4 contact cell number. I told him I also needed some records,
5 and obviously, since there was some issue about who had the
6 records, he said he'd make a phone call; that's the last I
7 heard of Dr. McElveen. And thereafter, I know there was
8 other contact because the hospital's attorney, Mary Lohr,
9 then contacts me and then we go from there where I actually
10 do receive the records.

11 So I not only had a conversation with Dr. McElveen, but
12 in turn that triggered the hospital's lawyer to call me
13 regarding the records involved.

14 Since then, when it looked like the State was getting
15 ready to rest their case and we thought there would be an
16 issue after examination of a witness, and I asked my
17 paralegal to go ahead and call the doctor, he would like to
18 be my first witness, and I planned to put him up at the
19 point and time where we did the break, which I think was
20 about 45 minutes ago, about 4:00, and within a number of
21 hours, we've been trying to contact the doctor; and that's
22 been my experience of this so far.

23 THE COURT: Very well. Now, what I'm going to do, I've
24 noticed that Ms. Brobston stepped out of the courtroom, but
25 I think I should put on the record that in this past break,

1 that counsel and the Solicitor and I went back into the
2 chambers and I made a phone call to Buster Davis, who
3 informed me that he was representing, that Buster
4 represented that practice, and I spoke with him personally
5 and told him of the predicament involving Dr. McElveen and
6 that if he could would he please try to reach Dr. McElveen
7 so that we could avert any further Court intervention to
8 obtain his compliance with subpoena, "his" being the
9 doctor's.

10 (Whereas, Ms. Pam Brobston enters the courtroom.)

11 Now, Ms. Brobston, I know that you just stepped out; do
12 we have any additional word?

13 MS. BROBSTON: No, Your Honor. Mr. Davis did call me a
14 second ago, and he has not been able to get in touch with
15 Dr. McElveen. He has also sent Dr. McElveen e-mails and
16 left him messages numerous times so far.

17 THE COURT: Very well. All right. Are you are telling
18 me that the subpoena that you served was signed and that
19 this is merely a copy?

20 MR. BROWN: And what we did is we made two copies and
21 came to the Courthouse and had one copy signed and did it
22 that way, Your Honor, and there's been no dispute throughout
23 this and she, Ms. Lohr, agrees that there was a subpoena and
24 I think what she said is that I gave it to the hospital
25 since Dr. Raymond and Dr. McElveen don't technically work

1 for the hospital.

2 THE COURT: And this subpoena will note, it says "To
3 Tyrone McElveen, Beaufort Memorial Hospital, you are
4 commanded to appear in the above named Court at the place,
5 date, and time specified below to testify in the above
6 entitled case," and it's this case, and it says, "Come to
7 Courtroom One on September 17th, 2012, 9:00 a.m., and you
8 are commanded to bring with you the following documents, any
9 and all records regarding Kenneth Treyvon Nichols."

10 Now, this is the subpoena that you served and told Dr.
11 McElveen to do two things. Number one, to appear to
12 testify; number two, to get the documents. What you are
13 telling me is that Tyrone McElveen did not appear at 9:00
14 Monday morning and it took the intervention of his lawyer to
15 get the documents.

16 MR. BROWN: Yes, ma'am.

17 THE COURT: Very well. What I'm going to ask you to do
18 -- anything you want to say on behalf of the State?

19 DEP. SOL. THORNTON: No, Judge. I will tell you that
20 everything as relayed by Mr. Brown, I wasn't a witness,
21 obviously, to the subpoena being served, but all the
22 discussions with both Your Honor and Judge McDonald and all
23 of that has been relayed correctly to the Court.

24 THE COURT: Very well. All right. What I'm going to
25 do then is I am going to ask you to draft an Order for me, a

1 Rule to Show Cause, why Dr. McElveen ought not to be held in
2 contempt of Court for his failure to follow the dictates of
3 the subpoena and order that he appear in Court tomorrow
4 morning at 9:00 ---

5 MR. BROWN: Yes, ma'am.

6 THE COURT: --- with that Rule to Show Cause and that
7 he be prepared to testify and to await a hearing on the Rule
8 to Show Cause.

9 MR. BROWN: The doctor is calling now.

10 THE COURT: You have the doctor on the phone?

11 THE COURT: All right. If you all would prepare that
12 Order, I will sign it. I'm going to dismiss the jury. I
13 want you to know the way that I'm going to go about it. I'm
14 going to explain to the jury that there was a witness under
15 subpoena. The witness did not appear. It is not the fault
16 of the counsel, but for there to be a logical flow, that
17 witness must be called next and I apologize for them. Okay?

18 DEP. SOL. THORNTON: Fine with the State, Judge.

19 MR. BROWN: Yes, ma'am. Thank you.

20 THE COURT: All right. Let me have the jury.

21 (WHEREUPON, THE JURY ENTERS THE COURTROOM, AND THE
22 FOLLOWING IS HELD ON THE RECORD.)

23 THE COURT: Ladies and gentlemen, I need to explain to
24 you where we are in the process because you're entitled, I
25 think, to an explanation. I try to keep jury's informed so

1 you know why things happen and where we are in the process.

2 Ladies and gentlemen, there was a witness who was
3 subpoenaed who did not show, and when that happens, those
4 matters get turned over to the Court, because they become
5 matters of law. These lawyers have done everything they are
6 supposed to do to acquire the presence of the witness. And
7 there has to be a natural progression as evidence is
8 presented by Counsel and there entitled to that. Certain
9 circumstances, and oftentimes lawyers, work around there and
10 they do the very best that they can, but sometimes just they
11 can't and we find ourselves in that circumstance where
12 counsel just simply can't, so they have turned the matter
13 over to me.

14 I believe that we have resolved the issue regarding the
15 witness and the witness will appear in a timely fashion,
16 which will be in the morning, and I apologize to you because
17 this particular person has taken your time and I apologize
18 for that, but I think we have clarified the issue. If there
19 was any miscommunication at all, it has certainly been
20 corrected, and that person will be here in the morning.

21 Again, though, I want you to know that the witness
22 that's not been present is not the fault of these lawyers.
23 They certainly have done everything that they are supposed
24 to do under our rules to have the person be here, so we are
25 going to adjourn in just a moment. Now, I need to give you

1 some instructions and let me tell you why, because the
2 curiosity is going to go overnight.

3 So I need to remind you to put it on the Judge, because
4 you cannot discuss this matter or allow anyone to discuss it
5 with you, and here you are going home another night and
6 you're not going to be able to talk about this case.

7 So if anybody gets upset with you, don't you let them
8 get upset with you, put it on the Judge and tell them the
9 Judge says that you can't discuss this matter or allow
10 anyone to discuss it with them.

11 Remember, when you have been discharged from your
12 service on this jury, and there will be no question in your
13 mind when that time has come, you will be at liberty to talk
14 about this case, if you choose, and we'll talk more about
15 that when that time has come.

16 Remember don't read anything, don't listen to anything,
17 don't watch anything about this particular case, and that of
18 course, is on the radio, the television, newspaper,
19 internet. Don't blog, don't Facebook, no social media about
20 this matter. Again, you must receive all of the information
21 from which you will make up your mind here in Court while
22 Court is in session.

23 Ladies and gentlemen, that does conclude my remarks.
24 Leave your notebooks in your chairs and we'll take them and
25 we'll secure them over the evening. Thank you.

1 (5:00 P.M., WHEREUPON, THE JURY EXITS THE COURTROOM,
2 AND THE FOLLOWING IS HELD ON THE RECORD.)

3 THE COURT: Now, what I would like you to do before you
4 leave is to look at the Order that I'm going to sign and
5 then I'm going to put it in your capable hands and I know
6 you'll know what to do beyond that.

7 DEP. SOL. THORNTON: Yes, ma'am.

8 MR. BROWN: Yes, ma'am.

9 THE COURT: For everyone else, I've got to wait for
10 this Order that I've got to sign. If you all do not have to
11 wait, you are free to leave. We are adjourned in this
12 matter for this evening and you are certainly at liberty to
13 move around, go home, and get back to your business. I'm
14 just going to remain on the bench while I wait to sign this
15 Order.

16 (WHEREUPON, THE TRIAL IN THIS CASE IS IN RECESS FOR THE
17 EVENING; THE FOLLOWING MORNING, SEPTEMBER 20th, 2012, THE
18 FOLLOWING IS HELD ON THE RECORD.)

19 THE COURT: Any issues before we proceed this morning?

20 DEP. SOL. THORNTON: Your Honor, my request this
21 morning would be that we proffer the doctor's testimony,
22 since the doctor is here.

23 THE COURT: Okay.

24 DEP. SOL. THORNTON: The reason being, Judge, because
25 there is a stack of medical information this high -- I'm

1 sorry, for the record, they are about two inches thick. Mr.
2 Brown has shown me that. I've looked over it this morning.
3 I just want to make sure that my understanding is that Mr.
4 Brown is going to narrowly tailor this as to the memory.

5 What I don't want is the information that was already
6 ruled on by this Court dealing with homicidal tendencies,
7 personality disorder, or explosive personality on the
8 records. This, to my knowledge, is only about whether his
9 initial diagnosis, I believe, of psychosis, is something
10 that could affect his memory, because I believe Mr. Brown's
11 question is about the victim in the case saying, "Yeah, I
12 might have memory problems sometimes, but I don't know what
13 causes it."

14 And I just want to make sure that the Court has already
15 ruled on these other matters with these admission forms, and
16 other things, that those are not coming in. And I would
17 rather proffer the doctor's testimony and find out what the
18 Court is and is not going to allow.

19 THE COURT: I understand. Let me be clear, I'm going
20 to call him. I'm going to let Mr. Brown do his examination,
21 if you wish to do that. Now, I want to be clear with you,
22 with regards to I don't know what he's going to testify to.
23 When we receive documents, at that moment, I had pieces of
24 paper with opinions on pieces of paper, and clearly, I would
25 not have allowed opinions on pieces of paper to come into

1 evidence, and that was an easy decision.

2 I don't know what the doctor may or may not testify to.
3 I don't know if he can be qualified as an expert in that
4 field. I don't know what his opinion is. I don't know what
5 any relevance is, but I would not want the fact that I made
6 the comment that the opinions that were in the records
7 weren't coming in as opinions in the records, because
8 clearly those are not admissible.

9 The doctor is present, and beyond that, I don't know
10 what's coming in. I don't know if it's relevant, but I
11 wouldn't want the fact that I said that opinions and pieces
12 of paper are inadmissible because that's triple hearsay;
13 that that would exclude Mr. Brown from eliciting what may be
14 admissible evidence; is that clear?

15 DEP. SOL. THORNTON: Yes, ma'am. And that's why I was
16 wanting to do the proffer.

17 THE COURT: I understand.

18 MR. BROWN: And if I may, Your Honor?

19 THE COURT: Yes.

20 MR. BROWN: I hate to read between the lines, but it
21 sounds to me like the questions about whether or not my
22 client may have actually been in danger with great bodily
23 injury or harm may have -- there may be information in here
24 that we've discussed otherwise that I could try to
25 introduce.

1 THE COURT: Mr. Brown, I'm not limiting you in any
2 respect, but you know, as I know, when we started down this
3 road on Monday, you didn't even have the piece of paper.

4 MR. BROWN: That's right, yes, ma'am.

5 THE COURT: And the conversation was, was that the
6 opinions within the piece of paper couldn't come in.

7 MR. BROWN: Right. Yes, ma'am.

8 THE COURT: And at that point, you just wanted a piece
9 of paper, and now you're in a different place than you were
10 in on Monday, and now I think you have a person to go with
11 the pieces of paper?

12 MR. BROWN: Yes, ma'am, I do.

13 THE COURT: And so I don't know -- I'm not telling you
14 how to try your case and I'm not telling you you're limited.

15 MR. BROWN: So I would like to try to introduce that as
16 information, or evidence, supporting my client; the fact
17 that my client was objectively in danger. And Your Honor,
18 my client is here and we are ready.

19 THE COURT: How wonderful. Hello, Dr. McElveen. You
20 just tell me when you're ready.

21 MR. BROWN: I'm sorry, Your Honor. I would call Dr.
22 Tyrone McElveen.

23 THE COURT: Okay.

24 (WHEREUPON, DR. TYRONE MCELVEEN IS DULY SWORN.)

25 MR. BROWN: May it please the Court, Your Honor?

Proffer of Direct Examination
of
Dr. Tyrone McElveen by Mr. Brown

1 THE COURT: Yes.

2 PROFFER DIRECT EXAMINATION

3 BY MR. BROWN

4 Q Dr. McElveen, I'm going to, kind of, give you a
5 softball and ask if you can kind of go through your
6 education, background, work experience, et cetera, to get to
7 the point we're at.

8 A Okay. I'm originally from Sumter, South Carolina. I
9 went to the University of South Carolina, undergraduate, and
10 then I went to the Medical University of South Carolina for
11 medical school. I did my residency in family practice in
12 Anderson, South Carolina. I then moved to Ridgeland and the
13 Beaufort area in 1997 straight out of residency, and I've
14 been here ever since.

15 Q What type of work have you done related to interviews
16 or screening for psychiatric admittance?

17 A Psychiatric training is a part of the general medical
18 education and also a part of residency experience, if
19 needed.

20 Q And have you had an occasion to exercise or use that
21 training on the job?

22 A Yes, sir.

23 Q And about how many years have you been using that
24 training?

25 A Through the secondary years of residency and 15 years

Proffer of Direct Examination
of
Dr. Tyrone McElveen by Mr. Brown

1 of experience, would make 17 years.

2 Q So about 17 years you've had occasions, on and off, at
3 least, to use that training?

4 A Yes, sir.

5 Q All right. And during that course of time, can you
6 give the Court some general idea of how many times you've
7 reviewed a person for psychiatric conditions?

8 A Probably, once or twice a month.

9 Q Okay. So we're talking about 25 times a year -- well,
10 I guess between 12 and 24 a year times 17, we're talking
11 about somewhere over 100?

12 A Yes, sir.

13 Q Okay. And do you -- were you working at Beaufort
14 Memorial Hospital on March 24th, 2011?

15 A Yes, sir.

16 MR. BROWN: Your Honor, I would offer him, and I know
17 it's not a very detailed offer as an expert, but I would
18 offer him as an expert witness regarding psychiatric
19 diagnosis.

20 THE COURT: Okay. Do you want to voir dire on that?

21 DEP. SOL. THORNTON: I do, Your Honor.

22 THE COURT: Okay.

23 VOIR DIRE AS TO EXPERT -- CROSS-EXAMINATION

24 BY DEP. SOL. THORNTON:

25 Q Doctor, can you differentiate for me the training and

Voir Dire as to Expert in re: psychiatric diagnosis – Cross-Examination
of
Dr. Tyrone McElveen by Dep. Sol. Thornton

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1 admitting diagnosis as far as a regular psychiatric
2 diagnosis?

3 A Certainly. My experience is almost entirely acute
4 based. Diagnosing someone as being ill, I in now way treat
5 psychiatric illness.

6 Q Are you qualified in any way to be an attending doctor
7 for psychiatric reasons?

8 A No, sir.

9 Q Do you have the authority in your capacity to actually
10 admit people to the hospital?

11 A To the hospital, but not to the psychiatric unit.

12 Q Okay. So you can't admit somebody to a psychiatric
13 unit?

14 A No, sir.

15 Q Could you discharge somebody from a psychiatric unit?

16 A No, sir.

17 Q Can you treat somebody for psychosis?

18 A Acutely; when they're ill in the emergency room and in
19 my care, I can, but that's as far as it goes.

20 Q All right. Beyond that, nothing?

21 A That's right.

22 DEP. SOL. THORNTON: Your Honor, I would object to him
23 being able to offer any diagnosis as to psychosis.

24 MR. BROWN: And obviously, I'd like to be able to
25 rehabilitate on that issue or follow up with some questions.

Voir Dire as to Expert in re: psychiatric diagnosis of Redirect Examination
of
Dr. Tyrone McElveen by Mr. Brown

1 THE COURT: Sure. Go ahead.

2 PROFFER REDIRECT EXAMINATION

3 BY MR. BROWN:

4 Q Is there anything that's substandard about the acute
5 diagnosis that you do regarding psychiatric complaints -- is
6 there anything lesser about your diagnosis?

7 A This is -- it's what a psychiatrist would say versus
8 what I would say.

9 Q So it's a matter of degree and not a difference in
10 kind?

11 A A psychiatrist can tease out the finer parts or make a
12 more exact diagnosis than what I would make.

13 Q So they can make a second opinion on your diagnosis?

14 A I would prefer their opinion every time.

15 Q Certainly. But are you able to give an opinion
16 regarding whether a person suffers from mental illness?

17 A Yes.

18 Q All right. Are you even able to treat that?

19 A In an acute phase, I do treat it, yes.

20 Q All right. And there were questions about whether or
21 not you could admit or discharge, and are those based on
22 your limitations for your license or is that based on the
23 operational procedure of this hospital?

24 A On my privileges at this hospital.

25 Q At this hospital?

1 A Yes.

2 Q Now, does your medical license in any way limit you
3 from any other type full treatment of psychiatric concerns?

4 A I think in the State of South Carolina, it doesn't; but
5 I'm not entirely sure on that.

6 Q Okay. So it's just your agreement with the hospital
7 that limits you from doing more than an acute diagnosis?

8 A Yes, sir.

9 MR. BROWN: And Your Honor, again, I think he's plainly
10 qualified to give a diagnosis of mental illness or a
11 psychiatric diagnosis, pursuant to symptoms that have been
12 presented and he's been able to treat them. The fact he's
13 limited is only by his contract with this hospital, not his
14 medical license.

15 DEP. SOL. THORNTON: Your Honor, I still object. With
16 due respect to the doctor, he said that he would always
17 defer to a psychiatrist. He doesn't treat them, other than
18 acutely right there in the emergency room, and whether it's
19 by agreement or by medical license, he doesn't admit nor
20 discharge. So in March, when he saw the victim, he wouldn't
21 have those privileges then, either.

22 MR. BROWN: And Your Honor, not going into the
23 specifics of this, it's just whether or not he is qualified
24 through experience or training to diagnose a person
25 regarding psychiatric issues, or in this case, even treat.

Proffer of Redirect Examination
of
Dr. Tyrone McElveen by Mr. Brown

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1 THE COURT: What you didn't ask him was you didn't ask
2 him the difference between an acute determination as opposed
3 to what happens beyond an acute determination, and I need
4 that information. So would you like to ask him about that
5 or do you want me to ask him?

6 MR. BROWN: Either way, but I would like to ask him
7 whether or not ---

8 THE COURT: I would be more comfortable if you did.

9 MR. BROWN: Yes, ma'am.

10 Q And let me ask you, we've talked about the difference
11 between an acute diagnosis and then one that goes on while a
12 person's admitted or under psychiatrist care. Can you tell
13 me what the difference is on that?

14 A My diagnosis is more with what I acutely see with the
15 patient. My exam of the patient; my evaluation of the
16 patient. We're talking about psychosis. Psychosis is more
17 of a general term, like fever, that can be from many
18 different things, it can be from bipolar disorder. It can be
19 from psychiatric illness. It can be from drug affects. It
20 can be from any of a number of things. But I know that that
21 person is sick. Fortunately, the treatment is more or less
22 the same, regardless of the cause of psychosis.

23 Q And what do you do differently to make your diagnosis
24 than what a person would do as a treating psychiatrist
25 outside of the acute setting?

Proffer of Redirect Examination
of
Dr. Tyrone McElveen by Mr. Brown

1 A A psychiatrist can sit down with the patient over many
2 sessions and tease out what exactly is causing psychosis.

3 Q So you look at different things than they look at?

4 A Probably.

5 Q And is that based on their ability to see them more?

6 Are you looking for the same factors?

7 A My training is airway, breathing, circulation to make
8 sure that they're going to survive the next several hours,
9 whereas, theirs is treating for mental illness.

10 Q Let me ask you about your education that you mentioned
11 in your general -- medical education that you covered. Now,
12 what did they ask you to look at there? What are you
13 trained to look at when you deal with a psychiatric issue?

14 A I guess trying to fit the patient into to the DSM-IV,
15 the Diagnostic Statistical Manual. It's just trying to
16 diagnose exactly what mental illness they have.

17 Q Okay. So they tell you what to look for?

18 A Yes.

19 Q All right. And are those factors come from the DSM-IV?

20 A Yes, sir.

21 Q Is that the same DSM-IV that a psychiatrist would look
22 at?

23 A Yes.

24 Q All right. So you're looking for the exact same
25 factors they look at?

Proffer of Redirect Examination
of
Dr. Tyrone McElveen by Mr. Brown

1 A Yes.

2 Q And they just look at them more in depth than you do?

3 A I look at them more acutely. As far as what I'm seeing
4 in front of me right now, as far as harm to the patient.

5 Q But otherwise, the treatises you use, or the standards
6 you're supposed to go by, are the same?

7 A For the acute phase, yes.

8 Q And are they the same for the acute in the other phase
9 on DSM-IV?

10 A It's such a wide variety. To use the fever analogy, if
11 someone came in with a strep throat versus appendicitis, the
12 treatment would be completely different. My treatment in
13 the emergency room, though, I would give them Tylenol and
14 make sure they're comfortable. It's the same thing with
15 psychiatric illness. If someone is acutely manic or raging,
16 we give them medicine to calm down. If someone is acutely
17 psychotic and trying to harm themselves or someone else, we
18 give them medicine to calm down. If someone is depressed
19 and acutely suicidal, we'd make sure they won't hurt
20 themselves.

21 Q All right. And apart from the treatment, let's go back
22 to the diagnostic part of it. Is there anything that you do
23 lesser, besides the amount of study, do you use less factors
24 to determine the psychiatric diagnosis or do you use the
25 same factors?

1 A If someone is acutely ill, it's rudimentary basic. So
2 yeah, it would be the same factors. If a psychiatrist
3 walked into the emergency room, I'm sure they would do the
4 same thing I would do.

5 MR. BROWN: Your Honor, I believe that sets up --
6 although, I think he certainly goes to the weight of his
7 testimony, whether or not he saw them as much as a
8 psychiatrist would of seen him, or whether or not there's a
9 differing opinion. He uses the exact same standard, DSM-IV
10 factors, and he looks for the same stuff that they tell -
11 that those standards tell him to look for to make his acute
12 diagnosis.

13 THE COURT: I understand. Here's my ruling. I don't
14 think there's any question that Dr. McElveen can talk about
15 his diagnosis of Mr. Nichols in the acute phase, as he
16 presented to him in the acute phase.

17 In other words, if somebody walks in and they are
18 convinced that they are the king of France and you know they
19 are not the king of France, but they are 100 percent
20 convinced, and you're convinced, that they believe they are
21 the king of France, and you know very well that they aren't,
22 then what you are dealing with is a psychotic situation and
23 that person you know is in need of help.

24 Beyond that, as I understand what you are saying, then
25 they are going to be transferred to a psychiatrist to

1 ascertain why they think they are the king of France, but at
2 that moment you know you are dealing with someone who thinks
3 they are the king of France, and therefore, having a
4 psychotic episode.

5 If it's manic depressive disorder, schizophrenia, or
6 any other of the other reasons that that could be happening,
7 you know, and it could be a myriad of different things, but
8 that's handled, if you will, when matters have cooled down,
9 but you've got to handle that situation that you're
10 presented with someone who thinks that they are the king of
11 France, and that's not the fact.

12 So I don't think there's any question that he can
13 testify with regards to the diagnosis in the way that Mr.
14 Nichols presented himself in that acute phase; and then,
15 I'll hear from you in any terms of treatment that this
16 doctor may have done.

17 MR. BROWN: I'll be honest; I'm not looking to get into
18 that.

19 THE COURT: Okay. Well, he's an expert.

20 MR. BROWN: And that's all I'm offering him for is to
21 give his acute diagnosis of Mr. Nichols is where I was
22 going.

23 THE COURT: As he presented on that day?

24 MR. BROWN: Yes, ma'am.

25 THE COURT: Okay.

Proffer of Direct Examination
of
Dr. Tyrone McElveen by Mr. Brown

1 MR. BROWN: During his treatment phase, which I do
2 understand was only the one day, not the time that he was
3 actually in the psych part, but ---

4 THE COURT: I'm with you.

5 MR. BROWN: All right.

6 Q And having been qualified, Dr. McElveen, do you recall
7 a patient named Kenneth Treyvon Nichols?

8 A Only by my records.

9 Q Do you believe that those records would help refresh
10 your recollection of that treatment with your diagnosis of
11 him?

12 A Yes, sir.

13 MR. BROWN: And if I may, Your Honor, and I have shown
14 opposing counsel these records, and I'm going to hand up
15 what has been marked; there's three different items. The
16 first one has been marked as Defendant's Exhibit Fifteen,
17 the second one is what has been marked Defendant's Exhibit
18 Sixteen, and the last one would be Defendant's Exhibit
19 Seventeen.

20 THE COURT: And those are for identification purposes?

21 MR. BROWN: Yes, ma'am.

22 Q And I believe you already had a chance to look at those
23 a little earlier?

24 A Just a few minutes ago, yes.

25 Q And for what it's worth, do you recognize what Fifteen

Proffer of Direct Examination
of
Dr. Tyrone McElveen by Mr. Brown

1 is?

2 A Yes, sir.

3 Q Would you tell the Court what that is?

4 A This is a hard copy, or printout, of our electronic
5 medical record for Mr. Nichols when he visited the emergency
6 room on March 24th, 2011 at 13:39 hours.

7 Q And who's listed as the person who's the signee on
8 this, as a Doctor?

9 A The first pages you see there, page 1 and 2, are the
10 nurse's triage notes. The "LB" signifies the nurse's
11 initials on the side as Linda Bower. My notes begin on page
12 1 of 2 of physician documentation; it's the fourth page of
13 this document.

14 Q All right. Did you make a preliminary diagnosis
15 regarding Mr. Nichols's condition during that acute stage?

16 A Yes, sir.

17 Q And what was that diagnosis?

18 A My diagnosis was psychosis.

19 Q And can psychosis affect a person's ability to perceive
20 and recall reality?

21 A Yes, sir.

22 MR. BROWN: Frankly, Your Honor, that's where I'm at
23 now. I would like to ask -- that's where I'm at on that one
24 part, but I would like now to go into whether or not I can
25 admit other factors that might affect him.

Proffer of Direct Examination
of
Dr. Tyrone McElveen by Mr. Brown

1 THE COURT: Go ahead.

2 Q Have you had a chance to take a look at Defendant's
3 Sixteen?

4 A Yes, sir.

5 Q All right. In Defendant's Sixteen, would you tell the
6 Court what that is?

7 A This is the actual document that is used -- it's what
8 we refer to as commitment papers. This is the actual legal
9 document that states why the patient would have to be
10 committed to a psychiatric institution against their will or
11 to be mandated by the State that they need it.

12 Q And in this case, was there a question presented
13 regarding Mr. Nichols' actual danger to other people?

14 A Yes.

15 Q Is that the purpose of your review of Mr. Nichols?

16 A Yes, sir. That's why he was brought to the emergency
17 department.

18 Q And based on your training and experience and
19 education, were you able to form an opinion?

20 A Yes, sir.

21 Q Is that opinion listed there?

22 A Yes, sir.

23 Q And would you tell the Court what that opinion was?

24 THE COURT: I know that we're outside the presence of
25 the jury, but you know that's not the required standard; you

Proffer of Direct Examination
of
Dr. Tyrone McElveen by Mr. Brown

1 know that. What you're eliciting from him now is not the
2 appropriate standard. I know there's not an objection, but
3 I'm concerned about the fact that you're eliciting an
4 opinion that is not the appropriate standard.

5 MR. BROWN: The standard for the self defense as ---

6 THE COURT: No, sir. For an opinion.

7 Q Did you have sufficient amount of time to meet with
8 him?

9 A For the emergency room visit, yes.

10 Q Okay. And you formed an opinion; what was that opinion
11 based on?

12 A The history provided by the patient's family members
13 and from what I could gather from the patient himself.

14 Q All right. Those facts that you gathered, do those
15 apply to the training that you got to make the diagnosis?

16 A Yes, sir.

17 Q Okay. So you look at those, because that's what your
18 training told you to do?

19 A That's correct.

20 Q Were you asked to draw an opinion?

21 A Yes.

22 Q And that's what your purpose was when you did both the
23 review of the facts for Mr. Nichols, as well as how those
24 apply to your medical training?

25 A Yes, sir.

Proffer of Direct Examination
of
Dr. Tyrone McElveen by Mr. Brown

1 MR. BROWN: Your Honor, I would offer this as an
2 opinion that would ---

3 THE COURT: Let me hear your question.

4 MR. BROWN: Is whether or not he has an opinion
5 regarding Mr. Nichols' presentation as a danger to others.

6 THE COURT: That is not an appropriate way to ask that
7 question; it's inadmissible.

8 MR. BROWN: On the question that I'm trying to admit
9 it?

10 THE COURT: On the question of his opinion. You're
11 going to bedrock evidence.

12 MR. BROWN: Okay, Your Honor.

13 THE COURT: Come here a minute, both of you.

14 MR. BROWN: Yes, ma'am.

15 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD.)

16 Q I'm sorry, Dr. McElveen, to what degree were you able
17 to make that opinion?

18 THE COURT: Go ahead and ask him the other way.

19 Q Were you able to form that opinion to a reasonable
20 degree of medical certainty?

21 A Yes, sir.

22 Q All right. And what was your opinion regarding Mr.
23 Nichols' potential ability to harm others?

24 A I thought he was a threat to other people, especially,
25 and that he was acutely psychotic at that time.

Proffer of Direct Examination
of
Dr. Tyrone McElveen by Mr. Brown

1 Q And were there other, I guess for a lack of a way of
2 saying it, other sub-opinions that you also made? That's a
3 general kind of statement. But what specific opinions or
4 conclusions did you make to a reasonable degree of medical
5 certainty supporting that?

6 A I found that he was threatening his family. That he
7 was paranoid, and also had explosive personality disorder.
8 I usually don't diagnose personality disorders. It's more
9 of an access to or a little more in finer detail; but I had
10 a Coastal Empire Mental Health worker there, a psychologist
11 who was there with me, and we reviewed the case together.
12 That's kind of how we came up with these four diagnoses.

13 Q And that input from the other counselor, is that
14 something that you generally would rely upon to form this
15 type of opinion?

16 A Yes, sir.

17 Q All right. Would you turn to page 2 of Defendant's
18 Sixteen?

19 A Yes, sir.

20 Q Are there other conclusions, or findings, you make
21 relative to Mr. Nichols' threat of harm to others?

22 A Page 2 is a little more of the medical information.
23 And of that, the only thing that I found that was abnormal
24 was that he was a threat to others; he was homicidal.

25 Q Tell me what you mean by he was homicidal?

Proffer of Direct Examination
of
Dr. Tyrone McElveen by Mr. Brown

- 1 A He poses a significant threat to other people.
- 2 Q Okay. But homicidal means killing?
- 3 A Yes, sir.
- 4 Q And I don't want to put words in your mouth, but the
5 box you checked, is that a finding?
- 6 A Yes.
- 7 Q What is the exact wording of that finding you made?
- 8 A Under the health of the patient, the heading is
9 disease. It's basically a review of system paralysis,
10 cancer, hepatitis, head injury; and one of the deciding
11 factors is whether or not the patient has harmed himself or
12 others, suicidal or homicidal, and at this point, he didn't
13 seem to want to harm himself, but he definitely wanted to
14 hurt other people.
- 15 Q And so what exactly is the wording of the box that's
16 checked?
- 17 A Homicidal, and I checked yes.
- 18 Q And does it have another word at the end of that?
- 19 A Oh, those are my initials where I initial ---
- 20 Q You circled the word homicidal, but what's the last
21 word?
- 22 A Tendencies.
- 23 Q So he has homicidal tendencies you found?
- 24 A Yes.
- 25 Q And you signed that report?

Proffer of Direct Examination
of
Dr. Tyrone McElveen by Mr. Brown

1 A Yes, sir.

2 Q Adopting that as your belief?

3 A Yes, sir.

4 MR. BROWN: And Your Honor, in light of the fact that
5 we've now got him here, and I believe it's now relevant.
6 This is 28 days before the shooting event, and I believe
7 it's relevant to whether or not Mr. Lennin was actually or
8 objectively in imminent danger of great bodily injury or
9 death. I think there's certainly other circumstantial
10 evidence that supports that he was going through a psychotic
11 event that day. I'm not a doctor, but obviously, Your
12 Honor, the events actually, after this date, escalated;
13 there were three events besides the events leading to the
14 shooting.

15 From the reports we have, there's only two reports
16 prior to this and there's actually three incidents
17 afterwards. The reason why I say that is I think what he
18 found was on the 24th of March, but I think that given the
19 very close proximity here, to exactly 28 days, that there
20 were other three more events that preceded and I think
21 together the jury could actually draw that what he exhibited
22 then was still what he exhibited.

23 THE COURT: Yes, sir. Cross-examination.

24 CROSS-EXAMINATION

25 BY DEP. SOL. THORNTON:

Proffer of Cross- Examination
of
Dr. Tyrone McElveen by Dep. Sol. Thornton

1 Q Dr. McElveen, what statements did Mr. Nichols provide
2 to you that gave you the diagnosis of homicidal tendencies?
3 Who did he threaten to kill?

4 A I have my notes. Going back to document Fifteen, the
5 hard copy of the emergency medical record. I think he was
6 brought in by the Sheriff's Department after threatening his
7 grandparents.

8 Q Okay. But who -- you said that your diagnosis is based
9 on what you see?

10 A Yes.

11 Q What was it he told you in the emergency room? Who did
12 he threaten to kill in front of you?

13 A It was probably no one; it was probably secondhand
14 information from the Sheriff's Department, most likely.

15 Q Okay. If he sat in your office and said, "I'm going to
16 kill my grandparents," would you have noted it?

17 A I would have noted it.

18 Q So that didn't happen?

19 A Most likely it did not.

20 Q All right. What evidence did he provide to you -- did
21 he tell you that he wanted to harm anyone else?

22 A Let me look over the chart here for a second.

23 (Brief pause in the courtroom.)

24 A I don't have any direct quotes from patients; I have
25 history.

Proffer of Cross- Examination
of
Dr. Tyrone McElveen by Dep. Sol. Thornton

1 Q Would it be fair to say, then, that you're initial
2 diagnosis from an acute standpoint was made only by history?

3 A That's right.

4 Q And "by history" is a fancy medical way of saying what
5 other people told you happened?

6 A Yes, sir.

7 Q All right. Now, you made a notation earlier about what
8 the Sheriff's Department told you. What in there says that
9 the Sheriff's Department said that he threatened to kill
10 somebody?

11 A My notation is that the patient was brought in by the
12 Sheriff's Department after threatening grandparents.

13 Q Does it say "threatening to kill" or "threatening to
14 harm" or anything?

15 A I just noted threatening.

16 Q Okay. So what other evidence did you have that would
17 justify a finding of homicidal or wanting to kill other
18 people?

19 A That was the only one.

20 Q So the one phrase of "he threatened his grandparents"?

21 A As far as being homicidal, also as far as being
22 psychotic, I noted that he had hallucinations, but again,
23 this is secondhand information.

24 Q Okay. So -- and I'm sorry, I'm not a doctor, so please
25 forgive me; I'm not trying to beat up on you. What direct

Proffer of Cross- Examination
of
Dr. Tyrone McElveen by Dep. Sol. Thornton

1 quotes do you have from the defendant from your interview?

2 Apparently, you had yourself and another psychologist with
3 you -- or a psychologist with you?

4 A That's right.

5 Q What evidence did he give you? "He" being Trey
6 Nichols, the patient, that would say he was hallucinating?

7 A I had none; that he was actively hallucinating in front
8 of me.

9 Q So, basically, this is information that someone else
10 provided?

11 A Yes, sir.

12 Q Were the grandparents in the room?

13 A He came in by the Sheriff's Department; no one else was
14 allowed in the room when a patient is like that.

15 Q So, basically, this is actually not even secondhand
16 information, but third-hand? The Sheriff's Department told
17 you what somebody else told them?

18 A Unless they witnessed it themselves, yes, sir.

19 DEP. SOL. THORNTON: Your Honor, may I approach?

20 THE COURT: Yes, sure.

21 Q So we've covered the homicidal tendencies. As regards
22 to the psychosis, or anything else, was there anything that
23 you observed about Mr. Nichols directly that led to this
24 diagnosis?

25 A From my exam, he was in no acute distress, and at the

Proffer of Cross- Examination
of
Dr. Tyrone McElveen by Dep. Sol. Thornton

1 time there was nothing directly that made me think -- his
2 demeanor was calm, he was oriented, he didn't appear to want
3 to harm himself, or others, at that time.

4 Q So he was calm, oriented and -- Doctor, I apologize.
5 Could you tell me what you're looking at, which number?

6 A Oh, I'm sorry. This is my notes from the hard copy of
7 the electronic medical records, Defendant's Exhibit Fifteen.

8 Q All right. And your notes indicate he was what when
9 you saw him?

10 A He was pleasant, cooperative, his affect was calm; he
11 was oriented to person, place and time. He had no thoughts
12 of harm to self or others. His judgment appeared to be
13 normal. It's good to be normal, and he did not appear to be
14 hallucinating at the time.

15 Q And the only reason that you checked homicidal
16 tendencies was one statement from the Sheriff's Department
17 which said that he had threatened his grandparents?

18 A That's correct.

19 DEP. SOL. THORNTON: Your Honor, I don't have any
20 further questions, but I do reserve the objection that I'm
21 going to have shortly.

22 MR. BROWN: Just briefly.

23 THE COURT: Go ahead.

24 Q Before I get to the big question, isn't there, even in
25 your physician notes -- I want to make sure I get this

Proffer of Cross- Examination
of
Dr. Tyrone McElveen by Dep. Sol. Thornton

1 right. I'll withdraw that part. Did you review the nurse's
2 notes before you made your own?

3 A Yes, sir.

4 Q All right. And did that indicate that other than the
5 Sheriff's Department that somebody actually, at the
6 hospital, or the nurse's, more specifically, also took a
7 statement from Mr. Nichols? If you'll look at the third
8 page, it actually says one of one.

9 A Third page.

10 THE COURT: Come help him.

11 Q (APPROACHES WITNESS AND POINTS TO DOCUMENT WHERE HE IS
12 TALKING ABOUT.) And if you'll look at 13:43, it would be
13 the third sentence under the third entry at 13:43 hours.

14 A Okay. "Presenting complaint a patient brought by
15 police with involuntary papers reports of escalating
16 aggressive behavior of the past few days. Patient reports
17 that he has been hearing voices in the bushes. He thinks it
18 may just be a cat or something. Patient denies any desire
19 to harm self. Acuity, urgent; method of arrival: escorted
20 by police."

21 Q So briefly, it actually says reports of escalating
22 aggressive behavior, right?

23 A Yes, sir.

24 Q All right. Does that sound like more than one
25 incident?

Proffer of Cross- Examination
of
Dr. Tyrone McElveen by Dep. Sol. Thornton

1 A Yes, sir.

2 Q How do you interpret it?

3 A The best approach is if someone comes in for a
4 psychiatric illness, and someone is, say, depressed, they
5 may deny it and they're not going to feel like themselves.
6 But we know by their history, and they have a gun at home,
7 and they've been cutting their wrist, they've been giving
8 away their possessions, then most likely something is going
9 to happen. For this diagnosis, for psychosis, we have
10 hallucinations, and we have reports of aggression towards
11 another family member, which even though he may be calm in
12 front of us, that's enough to say let's look at this a
13 little closer. Let's put you on Two East and let's have a
14 psychiatrist take a look.

15 Q Sure. And let me just follow-up. And I'll try not to
16 state the obvious, but escalating aggression would have to
17 have more than one event, right?

18 A Usually, yes, sir.

19 Q I'm not trying to lead you too much on that, but I am
20 trying to get to the point. And is there any question that
21 when the patient reported the hallucinations that that was
22 an in-person report, although not to you, but to the person
23 who made that notation?

24 A The nurse documents that the patient made that
25 statement.

Proffer of Cross- Examination
of
Dr. Tyrone McElveen by Dep. Sol. Thornton

1 Q Okay. And the last thing, on those little points we
2 just talked about, are these items, or data, or facts, the
3 type that you would reasonably believe, rely upon, to form
4 your opinion?

5 A Yes, sir.

6 MR. BROWN: Your Honor, I believe under 703 -- although
7 I'm not trying to get in what formed his basis, I'm trying
8 to get the opinion in, but I think it's proper for him to
9 rely upon data -- which an expert basis and opinion or
10 inference, excuse me, the facts or data in a particular case
11 ---

12 THE COURT: I'm not concerned about that.

13 MR. BROWN: Okay. Yes, ma'am. Just the fact that it
14 was hearsay to me makes no difference, if that's something
15 that he normally would rely upon.

16 THE COURT: He's allowed to rely upon it, what he can't
17 do is testify to the hearsay, but he certainly can rely upon
18 it.

19 MR. BROWN: And I will not try to introduce that, and
20 the State's argument in part is that it's too extenuated
21 information or something like that.

22 THE COURT: I can understand that.

23 BY DEP. SOL. THORNTON:

24 Q Did you rely upon that nurse's note when you made the
25 diagnosis?

Proffer of Cross- Examination
of
Dr. Tyrone McElveen by Dep. Sol. Thornton

1 A Yes, sir, I did.

2 DEP. SOL. THORNTON: Your Honor, all I have left is my
3 objection as to the relevance.

4 THE COURT: Got it. Do y'all have any other questions?

5 MR. BROWN: No, ma'am. And that is all I would intend
6 to offer in Court, because there's two things.

7 THE COURT: I'm with you. And you can sit there and
8 feel kind of weird, but I got to listen to these lawyers for
9 a little bit, so if you want to go sit with Mr. Davis,
10 that's fine. Don't leave me, though.

11 (DR. MCELVEEN STEPS DOWN FROM THE WITNESS STAND.)

12 THE COURT: Okay. With regards to 405(b), I mean
13 that's where we are. Would this be a specific act of
14 violence under 405(b)?

15 MR. BROWN: I believe under 405(a) is what the
16 reputation or opinion part would be.

17 THE COURT: No. He doesn't know what his reputation in
18 the community is and he hasn't formed an opinion based upon
19 his acquaintanceship. He's given a 702, he's giving a
20 scientific opinion. He's giving his medical opinion.

21 MR. BROWN: Yes, ma'am. And for what it's worth, I'm
22 not actually admitting it for his reputation, or character
23 for violence. I'm offering it as proof, because one of the
24 factors in the self defense/stand your ground stuff is
25 whether or not Mr. Lennin was actually in imminent danger

1 of great bodily injury or harm. Either one suffices, or, of
2 course, both; they're both sufficient, neither necessary.

3 THE COURT: What I think you're offering to this is
4 under the Day case, under 405(b), that this is a specific
5 act that addresses the character trait, which is relevant in
6 this case, which is violence. Yes?

7 MR. BROWN: I do think it will actually buttress that
8 and I think, implicitly, it does imply that he has a
9 character trait of violence. I do think it does that, but
10 that's not why I'm offering it.

11 THE COURT: Okay.

12 MR. BROWN: Again, I'm offering it as evidence that he
13 was actually, Mr. Lennin was actually in imminent danger of
14 great bodily injury or death. Your Honor, if somebody is
15 homicidal and they are, at some point, attacked, or bring on
16 a difficulty with another person, the question is whether
17 they were actually -- and for what it's worth, it's not even
18 a question of whether Mr. Lennin knew he was actually,
19 because that's the subjective problem.

20 THE COURT: Well, how do you handle the fact that two
21 days later the same doctor gives an opinion of "He's fine;
22 there's nothing wrong with him"?

23 MR. BROWN: The same doctor doesn't. This doctor never
24 gives that opinion.

25 THE COURT: Yeah.

1 MR. BROWN: For what it's worth, because in Defendant's
2 Seventeen, which is a larger stack, I called Dr. McElveen --
3 Fifteen and Sixteen are the items Dr. McElveen was involved
4 with; then, I called out of Seventeen. Seventeen, if you'll
5 notice, I think the description was "two inches thick." For
6 what it's worth, Fifteen is five sheets of paper and Sixteen
7 has two. So that stack, minus seven pages, is Dr. McElveen.
8 I have no doubt that there may be another doctor, and the
9 State may want to introduce, that would have a contrary
10 opinion. But right now, that's not even before the Court.

11 THE COURT: What do you mean? You don't think this
12 doctor can testify that Mr. Nichols was discharged and what
13 is required for him to be discharged?

14 MR. BROWN: If that's a fact he had personal knowledge
15 of.

16 THE COURT: Based on his review of the records, you
17 don't think he can opine as to the fact that he's no longer
18 in the hospital and what happened to him before he was
19 discharged?

20 MR. BROWN: Your Honor, for what it's worth, whether or
21 not that comes in, is not really my concern. And what I
22 mean by that is it's not the Court's concern.

23 THE COURT: I know, but it becomes important. Here's
24 the reason it becomes important. I think it becomes
25 important because what you're attempting to say is that 30

1 days earlier when he was hospitalized for an illness, for
2 psychosis, and then discharged well, and no longer
3 psychotic, fine ---

4 MR. BROWN: I don't believe that's actually the truth.

5 THE COURT: Well, based on what he just read to me ---

6 MR. BROWN: Well, my understanding ---

7 THE COURT: Are you going to let me speak ---

8 MR. BROWN: I'm sorry.

9 THE COURT: --- so you can answer it or are you going
10 to interrupt me?

11 MR. BROWN: No, Your Honor. I'm sorry.

12 THE COURT: Here's my concern. My concern is that this
13 doctor is going to be able to testify based on the records
14 from this hospital that he was discharged and what are going
15 to be the parameters of the discharge. He's going to say
16 that they're not allowed to be discharged when people are
17 admitted acutely. They are not discharged until that fear
18 and concern is removed. He's going to be able to testify to
19 that, because he knows that. That's the law. He's going to
20 know that. It's coming in through this doctor.

21 So here's where we are. Where we are under your theory
22 is that you want to use that as evidence that because he had
23 this psychotic event 30 days earlier that that is evidence
24 that he was in threat of great bodily injury and/or death 30
25 days later for something he doesn't even know about?

1 MR. BROWN: May it please the Court?

2 THE COURT: Yes.

3 MR. BROWN: Okay. Actually, it's not exactly the way I
4 understood it. There was an escalating pattern of violence;
5 it was not one day.

6 THE COURT: It was over.

7 MR. BROWN: It was not one day that led to that.
8 Coupled with the fact, like I had mentioned earlier in
9 Defendant's Four, Five, and Six, there are actually more
10 police intervention afterwards than there were before ---

11 THE COURT: I'm not going to -- and then, you're asking
12 this jury to speculate. I'm not going to let them
13 speculate.

14 MR. BROWN: I would gladly ask him that.

15 THE COURT: I'm not going to let them speculate.

16 MR. BROWN: No, no. I understand that, Your Honor.

17 THE COURT: If you want to ask him a hypothetical, and
18 I don't know if I'm going to let you put him in that
19 position, given that he's not a psychiatrist; I don't know
20 if that's fair to say.

21 MR. BROWN: I understand; and from my discussions from
22 what was brought out on the stand is that psychosis, for a
23 lack of better way of saying it, comes and goes. So it's
24 not like he's cured of psychosis.

25 THE COURT: And you think he's going to give you an

1 opinion within a reasonable degree of medical certainty
2 whether or not this person who he's seen for one time is
3 going to have psychosis that's coming and going? I'd be
4 willing to bet you that ain't going to give you that.

5 MR. BROWN: I will totally agree that he's not going to
6 give that, but I think he can give the opinion that
7 psychosis can be cured and that psychosis comes and goes.
8 And for what it's worth, the last he saw him, it was
9 psychosis; the last he saw him.

10 THE COURT: I'm not going to let you do that. The
11 reason that I'm not going to let it stand like that is
12 because that's misleading this jury. I'm not going to let
13 you do that. I'm not going to let this jury be left when I
14 am aware of the fact that he was discharged, based on the
15 records that this doctor has just read to me, that he was
16 calm, he was fine, he didn't mean any harm to anybody, and
17 he was okay to discharge. Now, we're not misleading this
18 jury by giving them half of that story. That's not
19 happening.

20 MR. BROWN: Yes, ma'am.

21 THE COURT: Now, it's inadmissible in my mind, based
22 upon the grounds that you're offering it. That because 30
23 days earlier, he had a psychotic episode that he was
24 hospitalized and then released, and then you're going to ask
25 this jury to start speculating that what was happening was

1 he had another psychotic episode, without any expert
2 testimony, that is absolutely speculation on behalf of this
3 jury and we're not going there, unless you have got an
4 expert that can take what Dr. McElveen says, take then the
5 history, and then opine. You don't have that, based upon
6 what I know at this moment. You don't have that doctor?
7 You don't have that expert, right?

8 MR. BROWN: Well, to be honest, I think he could
9 qualify as that expert.

10 THE COURT: I don't think you're going to be able to
11 qualify him, but if you want to try, I'm going to let you do
12 it.

13 MR. BROWN: Yes, ma'am.

14 THE COURT: But I don't believe he's going to go there,
15 but he might.

16 MR. BROWN: Yes, ma'am.

17 THE COURT: Okay. I'm not going to close it, but if
18 you would like to recall him to see if he can do that. I'm
19 going to let you do that.

20 MR. BROWN: Yes, ma'am. And I would also ---

21 THE COURT: But I think it's a different issue and
22 here's what I - now, I'm going to see if I can make you
23 shift your focus.

24 MR. BROWN: Okay.

25 THE COURT: I want you to answer this question for me.

1 MR. BROWN: Yes, ma'am.

2 THE COURT: Why isn't this 405(b)?

3 MR. BROWN: I do think it is a specific incident or
4 instance, in this case, violence, and I do think it's
5 closely enough tied in.

6 THE COURT: For you to think it's 405(b)?

7 MR. BROWN: I also think it's 405(a), Your Honor.

8 THE COURT: It's not 405(a).

9 MR. BROWN: I understand that. I would ask that the
10 Court consider that.

11 THE COURT: I don't think it's 405(a). I do think it's
12 405(b), but once it's in, what difference does it make?

13 MR. BROWN: I'll take it with a limiting instruction or
14 not.

15 THE COURT: I think once it's in, it's in.

16 MR. BROWN: Yes, ma'am. Then, I would offer it under
17 405(b), as well.

18 THE COURT: You understand what I'm saying? Once the
19 evidence comes in, you know, whether you color it with a
20 pink pencil or a blue pencil, what difference does it make?
21 If it's in, it's in.

22 MR. BROWN: Yes, ma'am.

23 DEP. SOL. THORNTON: Judge, I think it needs to be
24 analyzed under 405(b). I don't think it comes in for this
25 reason. Everything that it's based upon, Your Honor, is

1 things that are already in evidence. In other words, this
2 is something that occurred a month before. The defendant
3 doesn't know about it. He can't know about it. It is not
4 directed against the defendant and it is items that Mr.
5 Brown has already introduced, because the threatening the
6 grandparents is already something that's been introduced.
7 That incident is already there. It's basically taking that
8 incident and punishing the victim for it again by allowing
9 it to be introduced twice, based on what is, in essence,
10 double hearsay to get to the doctor's opinion. And I
11 realize that's a weight issue, but I think it's also
12 admissibility, because we've already got the incidents that
13 predicate this finding by the doctor are already in
14 evidence. This is 28 days before something the defendant
15 didn't know, couldn't know, and wasn't directed at the
16 defendant.

17 THE COURT: Well, let me ask you this question, because
18 here is what is going through my mind. I've got these
19 series of incidents that are in. I've got another incident,
20 another specific act that reflects on this particular
21 characteristic. It's a characteristic of the alleged
22 victim, and what it says is, is that this victim had a
23 psychotic event that was cured, if you will, that was
24 treated. Okay? That was treated. So why, then, isn't this
25 a specific act that directly addresses this characteristic

1 of this alleged victim?

2 DEP. SOL. THORNTON: Because it's not a specific act.

3 THE COURT: Sure, it is. The specific act is that
4 there was concern about that characteristic, if you will,
5 that propensity, then, that he was brought to the hospital.
6 That is the act. He was treated and then he came to a
7 different place and then he was released. Why isn't that a
8 specific act?

9 DEP. SOL. THORNTON: The State's position on that,
10 Judge, is it's not a specific act, because it is based on
11 the act -- in other words, the threatening of the
12 grandparents.

13 THE COURT: Right.

14 DEP. SOL. THORNTON: That's what this is all based on.
15 So he threatened the grandparents, that act has already been
16 introduced.

17 THE COURT: Right.

18 DEP. SOL. THORNTON: That act is the reason they then
19 took him to the doctor to be involuntarily committed. He
20 did no other act. There's not another act by the victim in
21 this case. The act was the threatening of the grandparents,
22 which is already in front of the jury.

23 THE COURT: In other words, your position is it's
24 cumulative?

25 DEP. SOL. THORNTON: Yes, ma'am.

1 THE COURT: Whether he's arrested as a result of that
2 act or whether he's hospitalized as a result of that act is
3 of no moment.

4 DEP. SOL. THORNTON: Yes, ma'am. In other words, it
5 would be whatever the act is, and the arrest analogy is
6 probably the best one I can make. You then shouldn't be
7 able to use the fact that he was arrested for the act that
8 you've already introduced, making it two acts when he didn't
9 do anything additional. That would be my position. Thank
10 you.

11 THE COURT: I understand.

12 MR. BROWN: And Your Honor, narrowly on that, but very
13 briefly. It's not cumulative, since none of the information
14 that Dr. McElveen can testify to has come in before, and
15 what I mean by that, the issue about the psychotic break is,
16 in fact, an act that we haven't heard about. What we've
17 heard was one action, which was on the day before, the 23rd,
18 the beating of his grandmother. So he beats up his
19 grandmother on the 23rd, but during that time, there was
20 another act, which I'm assuming preceded the beating up, but
21 has not been testified to, which was a psychotic break.
22 Then the beating up, and we've heard nothing about the
23 psychotic break, and obviously, there's been no testimony
24 regarding this psychosis.

25 THE COURT: But I don't think that -- I think that the

1 characteristic and the trait that is relevant here is the
2 trait of peaceableness, not the mental health -- not the
3 mental health. That is not a trait. Mental illness is what
4 may or may not cause the character trait of peaceableness or
5 lack thereof.

6 MR. BROWN: Yes, ma'am. And I think the homicidal
7 tendency is -- and all I was suggesting is that the
8 character trait would be that aggression, or potential to
9 harm others, or explosive personality, those things are the
10 character of violence or character trait that is relevant to
11 this defense, but the act under 404, or 405(b), is the break
12 or the mental episode, because he could have had a mental
13 episode and not beat up his grandmother.

14 THE COURT: So do you think it would be admissible,
15 then?

16 MR. BROWN: I do, because it's a separate act.

17 THE COURT: If he hadn't harmed anybody, but had a
18 psychotic break 30 days before it, and this guy, the alleged
19 victim, never touched a soul, but he has a psychotic break
20 30 days before he gets shot, do you think that is
21 admissible?

22 MR. BROWN: If I may. All I meant was that that's not
23 necessarily that he would have beaten up his grandmother. I
24 do think there would have to be some actions that supported
25 the opinion that he had a break, so whether that would be

1 a different violent act or what it would be, I can't answer
2 the hypothetical, except by saying yes, I think that could
3 still be admissible; but I can't tell you without knowing
4 more of what the evidence of that psychosis -- and I use
5 that just as a general term to cover these other opinions.

6 (OFF THE RECORD, BRIEFLY.)

7 THE COURT: Okay. Do you want to call the doctor to
8 see if you can establish that ---

9 MR. BROWN: Psychosis comes and goes?

10 THE COURT: No, to make it relevant with regards to
11 what happened 30 days later.

12 MR. BROWN: Yes, ma'am. And I kind of characterized it
13 that way, but I - Dr. McElveen, if I can recall you, please.

14 THE COURT: In other words, like the Price is Right,
15 come on down.

16 (THE WITNESS, DR. MCELVEEN, APPROACHES THE STAND.)

17 PROFFER REDIRECT EXAMINATION

18 BY MR. BROWN:

19 Q Dr. McElveen, can you tell us briefly, but generally,
20 about psychosis and whether it can be cured or how it is
21 displayed?

22 A Psychosis is a diagnosis, a lot like the diagnosis of
23 headache and fever. It's more of an adjective, more of a
24 description, than an actual, say schizophrenia, or a manic
25 phase of bipolar disorder. Psychosis is -- I can't think of

1 the Latin root; it escapes me right now. Basically, when
2 one's thoughts and perceptions are out of place with
3 reality. That would probably be the simplest diagnosis.

4 Q Okay. And to follow up, is it curable?

5 A Insomuch as the underlying process, if psychosis is
6 from smoking marijuana or doing drugs, then yes; stop doing
7 drugs. If it's from schizophrenia, a certain percentage of
8 folks tend to have problems the rest of their lives. So
9 somewhere on that spectrum, I'd say yes, there's certain
10 things you can do to keep it from coming back, but it can be
11 a recurring problem, also.

12 Q It can be a recurring problem. And if you were given a
13 history ---

14 MR. BROWN: And I am going a little further, Your
15 Honor.

16 Q --- but if you were given history, would you be able to
17 give an opinion whether a person that you had previously
18 examined and made a diagnosis of had then a representation
19 of psychosis, through more history?

20 A Well, I would defer to a psychiatrist. I would say if
21 someone has a diagnosis of schizophrenia and they were
22 acting oddly, then I would say it's probably the
23 schizophrenia that's reoccurred, but without that, I would
24 be making presumptions.

25 Q Well, let me ask you this, if he was re-presented,

1 let's say, April 21st, to you for an acute review, and you
2 were able to review history similar to this history, would
3 you be able to form an opinion?

4 A If, three days later, or prior to this, he had another
5 event ---

6 Q Twenty-eight days later he was presented, but you had
7 history between his discharge and that presentation on April
8 21st?

9 A I could say most likely, but I wouldn't, you know.

10 MR. BROWN: And Your Honor, if I could ask him by
11 showing him some items to follow-up, because he said maybe,
12 is the way I took that answer.

13 THE COURT: It depends.

14 MR. BROWN: It depends, yes.

15 THE COURT: Sure.

16 MR. BROWN: Thank you.

17 THE COURT: What do you want to show him?

18 MR. BROWN: Four, Five and Six.

19 THE COURT: Okay.

20 MR. BROWN: Just like he read the rest of those reports
21 from the doctor afterwards.

22 THE COURT: Okay.

23 MR. BROWN: Thank you.

24 Q And if I may, Dr. McElveen, hand you some items listed,
25 or labeled, as Defendant's Exhibit Four, Five and Six, and

1 there are multiple pages there, obviously. Look at them as
2 much as you feel like you need to.

3 A Okay.

4 Q And if I may ask you, preliminarily, are those things
5 you would review if he was presented, as part of a history,
6 if he was presented to you for acute review on April 21st.
7 Would you consider those patient history?

8 A If he were brought in by family or the Sheriff's
9 Department with this history?

10 Q Well, is that something you would review as the patient
11 history?

12 A Yes, I would.

13 Q Is that similar to what you reviewed at 3-24, and I
14 don't mean the actual reports, but similar type history?

15 A This history presents emergency room; for this, I'd say
16 that it sounds like he was angry and there was a dispute,
17 but I don't see any medical history.

18 Q And then I want to ask you specifically, does the
19 assault and battery of his mother on the 21st give you any
20 concern -- what does that suggest to you regarding ---

21 THE COURT: No, no. What does that suggest to you?
22 Nope.

23 Q Does that suggest anything to you regarding psychosis
24 or reoccurring psychosis?

25 THE COURT: That's not an appropriate question to ask.

1 No, sir. Do you have an opinion within a reasonable degree
2 of medical certainty that being more likely than not,
3 whether or not ---

4 MR. BROWN: Yes, ma'am. Before I get there, I actually
5 want to ask him.

6 Q If you'll take a look at the item that's marked as
7 Defendant's Four.

8 A Okay.

9 Q And if you'll take a look at page 2 of 2. Do you see
10 where it says "officer's actions"?

11 A Yes, sir.

12 Q And do you see where it says that the officer issued a
13 no trespass notice to Mr. Nichols?

14 A Yes.

15 Q All right. Do you see on Defendant's Six?

16 A Yes, sir.

17 Q Do you see where there is an interview that is
18 contained on page 2 of 2?

19 A Yes, sir.

20 Q You see where the fourth sentence starting with
21 "Nichols stated that he did not have a trespass notice"?

22 A Yes, sir.

23 Q All right. And one of the things I think you discussed
24 earlier about psychosis can be a break from reality or an
25 inability to perceive reality?

1 A It's usually a little more dramatic than that, but yes.

2 Q Please, if you would. I mean, I'm not trying to put
3 words in your mouth.

4 A Psychosis is usually a - it's not that I forgot my car
5 keys. It's my car keys are really a spider crawling up the
6 wall or the aliens took my car keys. It's not just
7 forgetfulness, or loss of something, or an anger. It's
8 something that it out of the blue. It's something that
9 totally doesn't make sense.

10 Q What you're suggesting, after reviewing that, is that's
11 a lie and not a break from reality?

12 DEP. SOL. THORNTON: Your Honor, how would he even
13 know?

14 THE COURT: Sustained. I understand. I will sustain
15 his objection.

16 Q Well, back to that part of what you just stated about
17 saying the keys are a spider crawling up the wall, would one
18 of those episodes be hearing voices in the bushes?

19 MR. BROWN: And this actually goes to the other thing
20 that I'm ---

21 THE COURT: Stay here. I got it. Don't do that to
22 him.

23 MR. BROWN: Yes, ma'am. Well, we were here.

24 Q Let me ask you this, having reviewed these things,
25 would you be able to form an opinion to a reasonable degree

1 of medical certainty, whether or not Mr. Nichols, given the
2 entire history, what you saw on 3-24, plus this, that he was
3 a danger to others?

4 A That he was a danger to others?

5 Q Yes, what you reviewed on 3-24.

6 A Yes. Looking at these, it's ---

7 Q And not just those, looking at, in fact, any of those
8 notes you've got up there.

9 THE COURT: Let me stop you. Do you have an opinion
10 that he is a danger to others; is that what you want to
11 know?

12 MR. BROWN: If he reviewed on 4-21, just like the
13 opinion he made on 3-24.

14 THE COURT: That he was a person that was a danger to
15 others and is a homicidal ideation, and was suffering from
16 psychosis?

17 MR. BROWN: Yes, ma'am.

18 Q And if he was re-presented on 4-21 with what you knew
19 at the 3-24 admittance, and anything else that you could
20 have reviewed, like, I guess, Dr. Hill's notes, which are up
21 there as Defendant's Seventeen, as well as those reports
22 listed as Defendant's Four, Five and Six. Would you be able
23 to form an opinion to a reasonable degree of medical
24 certainty regarding whether or not Mr. Nichols presented as
25 a harm to others?

1 THE COURT: No. Not would you -- do you.

2 Q Do you have an opinion having reviewed those, and I say
3 that because I don't know if you reviewed Seventeen yet,
4 because it's substantial. Do you have an opinion?

5 A About Mr. Nichols?

6 Q On 4-21, in light of what you had from -- and for what
7 it's worth, I can hand you -- well, the information you had
8 about prior incidents prior to 3-24, plus the extra?

9 A I'm sorry. Do I think on this -- on 4-21, was he in
10 his right mind on 4-21? Was he psychotic then? Is that the
11 question?

12 Q Well, if you were presented with the question like the
13 question on the admittance application for commitment.

14 THE COURT: No, help him.

15 MR. BROWN: I'm going to read the exact question here.

16 Q Having reviewed all of that information, including the
17 stuff prior to 3-24, do you have an opinion to a reasonable
18 degree of medical certainty of whether Kenneth Nichols posed
19 -- and I'm going to say that instead of posing, because on
20 4-21-2011 is past, would he pose a substantial risk of
21 physical harm to himself or others to the extent during this
22 case where he would need to be involuntarily hospitalized?

23 A Can I just kind of give you my though process on this
24 or?

25 Q As Your Honor allows.

1 A Okay.

2 THE COURT: The question is do you have an opinion
3 within a reasonable degree of medical certainty?

4 A Not within a reasonable degree of that, but I have an
5 opinion, of course.

6 THE COURT: Did you say "yes" or "no" within a
7 reasonable degree?

8 A No, I do not.

9 MR. BROWN: May I ask him to give his opinion for
10 purposes of the proffer of his information. I mean, I
11 understand he didn't say the magic words, but I am curious
12 as to what he would say his opinion was.

13 THE COURT: I think he'll say he's concerned about him
14 as a human being, but that has no -- because he's a doctor,
15 he's probably worried about him as a person and worried
16 about people in this world, and he thinks he probably needs
17 treatment, and I got that; but the question is this is --
18 we're not getting into mental health. This is not a case
19 study, but we are sitting in a Court of Law in Beaufort.
20 The question is does he have an opinion within a reasonable
21 degree of medical certainty that being more likely than not,
22 with regards to whether or not Mr. Nichols, on the 21st of
23 April, 2011, was a danger to others, such that he needed to
24 be involuntarily committed, which is what I understood your
25 question to be.

1 MR. BROWN: It is.

2 THE COURT: Okay. And his answer, I understood, was
3 no. Do you have other questions of him?

4 BY MR. BROWN:

5 Q I would ask, so, you would not recommend his
6 commitment, that was presented to you that day?

7 A Yes. He was definitely angry. I mean, he has family
8 problems here that certainly need to be dealt with.

9 Q May I ask what distinguishes this from what was
10 presented to you on the 24th?

11 A What weighs more than anything was the hearing voices,
12 was hearing cats in the bushes. It's kind of -- lots of
13 folks are dysfunctional; lots of people have violence
14 problems; lots of people want to do bad things, but to
15 separate bad choices or behavior problems from medical
16 illness will be something just a little more than that.

17 Q Something more than that for a commitment?

18 A Yes.

19 Q All right. Now, irrespective of the commitment, do you
20 have an opinion to a reasonable degree of medical certainty
21 that Mr. Nichols was a substantial risk of harm to others?

22 DEP. SOL. THORNTON: I would object to that question.
23 The only reason he is able to give an opinion is as a
24 medical doctor who commits people.

25 MR. BROWN: Well, that's not true. He doesn't have to

1 commit somebody; he can still make that same finding.
2 That's exactly where I'm going. He said he wouldn't ask for
3 them to be committed, but that doesn't mean he doesn't have
4 an opinion regarding his threat of great bodily harm or
5 death to others. I'm just asking your respective of the
6 commitment part.

7 THE COURT: Well, if he has that opinion that he should
8 be committed -- if somebody is a threat to himself or
9 others, that is the standard of commitment.

10 MR. BROWN: Well, this is actually substantial risk.
11 "Do you believe" is a slight modifier there. Since he does
12 have an opinion, I don't know what it is, but I'm assuming
13 there's some opinion that's in favor of my position, and it
14 may be to take the word "substantial" out. Then, the
15 opinion does come to a reasonable degree of medical
16 certainty, or more likely than not, based on his training,
17 experience, and education, more likely than not, he is a
18 threat of great bodily injury ---

19 THE COURT: I'll let you proffer it. Go ahead.

20 MR. BROWN: Yes, ma'am.

21 BY MR. BROWN:

22 Q Apart from any commitment review, do you have an
23 opinion based on that same information, whether or not Mr.
24 Nichols was a threat of great bodily injury or death to
25 others?

1 DEP. SOL. THORNTON: Your Honor, I've already objected
2 once. I thought we were doing it just for the ---

3 THE COURT: That is not the appropriate question to ask
4 a medical doctor. I mean, he's a human being, too. So he
5 can have a human being opinion. The question is, do you
6 have an opinion within a reasonable degree of medical
7 certainty?

8 MR. BROWN: Right. And I apologize; I thought that's
9 what I asked.

10 THE COURT: No, you didn't. You asked him as a person,
11 as a human being.

12 MR. BROWN: Okay.

13 Q As a medical doctor, in reviewing this information,
14 including the prior commitment records that you had,
15 including that previous incident of hallucination, do you
16 have an opinion to a reasonable degree of medical certainty
17 of whether or not Mr. Nichols posed a risk of great bodily
18 injury or death to others?

19 A Here's what this was previously about. Dr. Hill and
20 Dr. Salas's assessments. The formal psychiatric assessment
21 that's in, I think, Exhibit Seventeen, didn't find organic
22 psychiatric illness. We have one mention of hearing voices.
23 At the same time, the patient was under the influence of
24 marijuana. Given that, I'd say that I would not diagnose
25 this person as having a psychiatric illness. If I saw him

1 in the emergency room, if he came in, in handcuffs after
2 assaulting someone else, I would do the same thing over
3 again. But I wouldn't say that I think you have substance
4 abuse problems, that you have schizophrenia; I'd say there
5 may be some violence there, but a medical diagnosis, I
6 wouldn't make anything more than what I've already said,
7 psychosis.

8 Q You would have said psychotic, though, on the 21st?

9 A Not based on the assaults of the family, but based on
10 everything I know together, which is what has happened in
11 the past.

12 Q On April 21st, you would have made that diagnosis also?

13 A If I had known what would happen in the hospital --
14 based on April 21st, when he went home from the hospital,
15 they said no, you're not schizophrenic; you're not
16 psychotic. There's no organic illness there, other than
17 personality disorder or something like that. So, no, sir, I
18 would probably not.

19 Q And you said -- what was the disorder you believe that
20 she found?

21 A Again, Defendant's 17, the discharge summary. Axis
22 one, this is page -- it's not the number of the page, but
23 it's Dr. Hill's discharge summary for 3-28-11. Axis one,
24 which is the main, primary psychiatric diagnosis is
25 adjustment disorder with disturbance of conduct. It's a

1 little more difficult to explain. Adjustment disorder is --
2 I've always compared it to when someone is under a great
3 amount of duress from some estranges, some changes in their
4 life, like the loss of a loved one, or the loss of a job,
5 they basically don't act like they always have. They have
6 disturbance of mood or disturbance in their conduct of life.
7 Which disturbance of conduct with Mr. Nichols appears to be
8 problems with his family. There is nothing about your
9 typical psychotic syndromes.

10 Q And let me ask you, you said there was no evidence of
11 any organic problem?

12 A That's correct.

13 Q So I want to make sure I understand this. Adjustment
14 disorder is a personality type disorder?

15 A That's why I said it's difficult to ---

16 Q And you can't cure personalities, can you?

17 A It's not a personality disorder; it's Axis One.
18 Personality disorder would be Axis Two. It's driven by
19 problems in the environment versus organic brain problem or
20 chemical dysfunction.

21 Q Okay. It's not evidence of an organic disorder?

22 A We're getting into neurochemistry here, and it's not
23 what we were taught, but it is an Axis One disorder, which
24 means it may be. I'm probably not the best person to
25 discuss this with.

1 Q What I'm trying to find out is, psychosis is actually a
2 symptom of a mental disorder, right?

3 A It is a symptom, yes.

4 Q Okay. Can that be a symptom of adjustment disorder?

5 A Yes.

6 Q So it actually doesn't rule out psychosis, does it?

7 It's not exclusive?

8 A No, it's not exclusive.

9 Q So she actually gave a more refined diagnosis than just
10 psychosis?

11 A Yeah. The explanation behind what we saw the
12 commitment from Mr. Nichols on the 24th was because of his
13 adjustment disorder. That's what caused ---

14 Q And that's what I'm trying to -- so was he -- do you
15 believe he -- well, can you be cured of that adjustment
16 disorder? Is there a way to cure it or is it something
17 that's just treated?

18 A You can certainly treat it, but I don't know the
19 treatment for that. I don't know what the prognosis is.

20 MR. BROWN: Your Honor, I don't believe that there's
21 evidence of no psychosis, because all they did was make a
22 refined -- I mean, he gave his opinion on that, and I say
23 that because I think that's a little different. For what
24 it's worth, I'd like to re-ask the question to the doctor
25 because I don't think he was aware that that was an Axis One

1 at the time he answered the question a few minutes ago. If
2 I may?

3 THE COURT: No.

4 MR. BROWN: Your Honor, I still believe it's admissible
5 under ---

6 THE COURT: I understand completely. I'm with you.
7 Thank you so much.

8 MR. BROWN: And Your Honor, I didn't really go into the
9 part one about the hearing, about the hallucinations being a
10 symptom of psychosis, which could cause an inability to
11 recall reality. That was the original thing I called him
12 here for today, and we went into the other part. Before he
13 steps down, I don't know if we need more on that or not.

14 THE COURT: You don't.

15 MR. BROWN: Okay. Thank you, Your Honor. I just
16 didn't want to have to bounce him back up.

17 (WITNESS STEPS DOWN FROM THE WITNESS STAND.)

18 THE COURT: Sure.. All right. Well, it's clearly not
19 admissible under 501(a). It's clearly not admissible under
20 501(b), his testimony. I have gone back and looked at the
21 date, and I know y'all were wondering what I was doing, and
22 I was reviewing the Day case and the Fuller case, as well as
23 501 and the commentary after 405(b); and 405(b) is concerned
24 -- "it" being 405(b) is concerned with specific instances of
25 conduct with regards to the person's conduct. What is it

1 that a person does, not what is it that family members or
2 law enforcement may do as a reaction to that conduct.

3 Clearly, this family, at some point, was concerned, law
4 enforcement was concerned, and as a result of that concern,
5 several things could have happened. They could have
6 arrested him, that certainly wouldn't be relevant. They
7 chose to take him to the hospital and have him hospitalized;
8 that's not relevant with regards to 405(b).

9 Rule 405(b) allows there to be evidence of specific
10 instances of conduct when it is an essential element of the
11 claim. The claim is self defense, and the specific instance
12 of conduct is that of violence; we've heard all that. We've
13 heard all the instances. What law enforcement or family did
14 as a result of these acts, I am determining is not relevant
15 to 405(a) or (b).

16 Now, I know, Mr. Brown, that your next ground is that
17 this evidence is relevant regarding whether or not he is in
18 imminent danger of harm, and what you would offer the
19 doctor, or you tried to have Dr. McElveen testify to, is
20 that he could opine that because he was concerned that he
21 had had a psychotic break and was hospitalized 30 days
22 earlier, that alas, there is another psychotic episode afoot
23 on the 21st, and irrespective of whether or not the defendant
24 was aware or not, he was really in imminent danger of
25 serious bodily injury, although he may not realize that.

1 I don't believe that is what is contemplated by law. I
2 think that what is contemplated by the law is two-fold.
3 Number one, that a person really is in imminent harm. There
4 is something afoot. Somebody is pointing a gun at them and
5 therefore, they are entitled to meet that. Or other factors
6 that this person is experiencing that shows that they are in
7 imminent harm or the law gives greater assistance to that.
8 It doesn't have to even in reality be that they are in
9 imminent harm. They could perceive that they are in
10 imminent harm.

11 In other words, there's been some question about the
12 clothing, and if -- and there's another case, I think it's
13 the Fuller case that says the defendant saw a shiny object
14 and he knew that this fellow was a drug dealer, that he was
15 knew people, that he had held a gun on them, that he had a
16 gun on him, and even though on this occasion, he may not
17 have had a gun, this defendant thought he saw a shiny
18 object, knew this guy was paranoid, shot him. And that is
19 classic that the defendant believed he was in imminent
20 danger. I don't think we could go into and have a doctor,
21 based on a hypothetical, testify that we may have a person
22 who has problems with his family, and that, basically, is
23 what Dr. McElveen is saying, that we got a fellow who is
24 going through adjustments, he's got a problem, and he
25 reacts, and he doesn't react in very appropriate ways.

1 MR. BROWN: Yes, ma'am.

2 THE COURT: But at no point, other than what Ms.
3 Blanding testified to yesterday, do I have any evidence
4 before me at this point that your client knew of these
5 matters. Now, maybe, we'll go beyond that, but your
6 imminent danger argument is that based upon his presentation
7 at the hospital 30 days earlier, for which he was
8 discharged, that because he began to have problems with his
9 family again, that that's evidence that your client was in
10 imminent danger, and therefore, was entitled to shoot the
11 defendant even though he didn't know what the mental state
12 of this alleged victim was.

13 MR. BROWN: And if I may site the Day case, because
14 it's very similar.

15 THE COURT: No, it's not. It's not similar at all, and
16 I have read it a number of times.

17 MR. BROWN: Yes, ma'am. If I would suggest this one
18 line, and the Court when it finds that the evidence of
19 violent incident to another person, not communicated to the
20 defendant, and the other person's name, the aggressor's name
21 is Renew, or in that case it's the decedent, and it says
22 Renew's conduct in holding a gun to Szumowicz's, who is not
23 the defendant, head because he was suspicious of her, is
24 further evidence of continuous and a consistent pattern of
25 the decedent's drug-induced violent paranoia, which the

1 defense attempted to establish at trial; and there's no
2 expert testimony suggested that ties that in at all.

3 THE COURT: But here's the difference. The defendant
4 knew all of that.

5 MR. BROWN: There's no information he knew that.

6 THE COURT: Oh -- oh -- They knew that Renew had a
7 tendency to violently overreact and when he thought Renew
8 saw Bouchillon move under the blanket, he believed he was in
9 imminent danger and shot Renew to defend himself.

10 MR. BROWN: But no evidence he knew about this attack
11 on third part, on Szumowicz.

12 THE COURT: Guess what? I've let you do that for two
13 days.

14 MR. BROWN: I understand that.

15 THE COURT: I've let you put in violent acts for two
16 days.

17 MR. BROWN: Yes, ma'am, you did.

18 THE COURT: And at this point, the only evidence in
19 this case -- and I understand that your client -- but the
20 only evidence in this case that your client knew anything,
21 was the testimony of Ms. Blanding yesterday, that she told
22 your client that the alleged victim had just -- he didn't
23 even say popped him up side the head. I forget the term he
24 used, but he didn't say ---

25 MR. BROWN: Mushed.