

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Newberry County

Honorable Frank R. Addy, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JAMES WHEELER BEDENBAUGH. JR.,

APPELLANT

APPELLATE CASE NO 2016-002013

RECORD ON APPEAL

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2016-GS-36-00114

State of South Carolina)
 vs.) Transcript of Record
)
)
James Bedenbaugh)
 Defendant)

September 12 and 13, 2016
Newberry, South Carolina

B E F O R E:

Honorable Frank R. Addy, Judge

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

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Taylor Daniel, Assistant Solicitor
Attorney for the State

Charles Verner, Public Defender
Attorney for the Defendant

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Official Court Reporter

I N D E X O F W I T N E S S E S

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(DW) - Denotes Defense Witness
(SW) - Denotes State's Witness

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Court's

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1 THE COURT: Solicitor, call your first case, please.

2 MR. SCOTT: Your Honor, the State calls State versus
3 James Bedenbaugh. I think the indictment is
4 16-GS-36-0114, indicted charge is pointing and presenting.
5 It was true billed by Newberry County Grand Jury.

6 THE COURT: All right. Ladies and gentlemen of the
7 jury, we are about to begin jury selection in the case of
8 the State of South Carolina versus James Wheeler
9 Bedenbaugh, Jr. Mr. Bedenbaugh is charged with the
10 offense of pointing and presenting a firearm at a person.
11 And of course this case, ladies and gentlemen, I will
12 remind you that the indictment is nothing more than a
13 piece of paper by which the charge is brought into this
14 court. Okay. Mr. Bedenbaugh has plead not guilty to this
15 charge and that plea of not guilty, it is the burden on
16 the State on each and every element of this indictment
17 beyond a reasonable doubt. Now, in a few moments I am
18 going to ask you some questions that are specific to this
19 particular case and we will use the same procedure that we
20 used earlier. If the question applies just stand up and
21 give me that response. In this case the State of South
22 Carolina is being represented by Deputy Solicitor Dale
23 Scott. Mr. Scott, if you will introduce yourself and
24 anyone else seated at counsel table with you.

25 MR. SCOTT: My name is Dale Scott, I am a Deputy

1 Solicitor for the Eighth Circuit. Your Circuit is
2 comprised of Abbeville, Greenwood, Laurens and Newberry
3 Counties. I primarily handle cases in Newberry and
4 Laurens Counties. Assisting me is Taylor Daniel,
5 Assistant Solicitor of our office. And our investigator,
6 Walter Bentley.

7 THE COURT: Thank you, Mr. Scott. Mr. Bedenbaugh in
8 this case, ladies and gentlemen, is represented by Charles
9 Verner. Mr. Verner, if you care to introduce yourself and
10 your client to the members of the jury panel.

11 MR. VERNER: May it please the Court. I am
12 representing James Bedenbaugh from Prosperity. My name is
13 Charles Verner, I am a lawyer here in Newberry on Boyce
14 Street next to the Cabana across the street. James
15 Bedenbaugh is from Prosperity.

16 THE COURT: Thank you, Mr. Verner. Ladies and
17 gentlemen, the first question, is there any member of the
18 jury panel related by blood or marriage or has any close
19 business or social relationships with the Defendant in
20 this case, James Bedenbaugh, Jr. If so please stand.

21 (No response.)

22 THE COURT: No one is standing. The alleged victims
23 in this case, I believe they are minor children and they
24 are young children. The alleged victims are Aleah,
25 A-L-E-A-H C. and Michael C. Is there any member

1 of the jury panel related by blood or marriage or has any
2 business or social relationships with those children or
3 the kid's parents. If so please stand.

4 (No response.)

5 THE COURT: No one is standing. Is there any member
6 of the jury panel who has previously been represented or
7 is currently being represented by any of the attorneys
8 involved in this case, either Mr. Scott, Mr. Daniel or Mr.
9 Verner. If so please stand.

10 (No response.)

11 THE COURT: Is there any member of the jury panel who
12 has any close business or social relationships with any of
13 the attorneys involved in this case. If so please stand.

14 (No response.)

15 THE COURT: No one is standing. I am going to read a
16 list of potential witnesses. And after I am done reading
17 this list I will ask whether or not if there is any member
18 of the jury panel who has a close, business or social
19 relationship with any of these folks. Possible witnesses
20 in this case are Casey Rembisz, R-E-M-B-I-S-Z with the
21 Newberry County Sheriffs Department; Clayton Babb also
22 with the sheriffs department; Aleah C. , Michelle
23 Cromer and Michael C. and Johnny Bedenbaugh. Is
24 there any member of the jury panel related by blood or
25 marriage or has any close, business or social

1 relationships with any of those possible witnesses. If so
2 please stand. What is your name, please.

3 JUROR: Number 9, Bobbie Beard. I know Michelle
4 Cromer and Leah C.

5 THE COURT: And how do you know the Cromers?

6 JUROR: Michelle Cromer is my best friend.

7 THE COURT: Okay, she is your best friend. Have you
8 heard anything from her about this case?

9 JUROR: I have heard nothing about this case.

10 THE COURT: You haven't heard anything. All right.
11 But Michelle Cromer is your best friend?

12 JUROR: I didn't talk to her none this weekend so I
13 don't really know what is going on.

14 THE COURT: I will let you sit this one out since you
15 know her so well. Thank you.

16 Your name?

17 JUROR: I know Michelle. My name is Marilyn Gray.

18 THE COURT: Ms. Gray, how often do you see Ms.
19 Cromer?

20 JUROR: I don't. There is really no connections.

21 THE COURT: Very good. Can you put that aside and be
22 fair to all?

23 JUROR: Yes.

24 THE COURT: Very good. Thank you. No one else is
25 standing. Ladies and gentlemen, the State alleged that

1 this incident took place in Prosperity, Downtown
2 Prosperity on or about November the 15th of last year at
3 approximately 3:25 in the afternoon. It is alleged that
4 this incident took place at [REDACTED] again,
5 Downtown Prosperity. Is there any member of the jury
6 panel thinks that they may know anything about this or has
7 formed or expressed any opinion about the allegations
8 involved in this case. If so please stand.

9 (No response.)

10 THE COURT: No one is standing. Is there any member
11 of the jury panel who knows any reason whatsoever why you
12 could not give both the State of South Carolina and the
13 Defendant in this case a fair trial. Any reason you feel
14 like you should sit this out or can't be fair in this
15 case.

16 (No response.)

17 THE COURT: No one is standing. Is there any member
18 of the jury panel who has a deeply held moral or religious
19 beliefs which would prevent you from serving on a jury.
20 If so please stand.

21 (No response.)

22 THE COURT: No one is standing. Any additional voir
23 dire from the State?

24 MR. SCOTT: No, Your Honor.

25 THE COURT: From the Defense?

1 MR. VERNER: Just if anybody is a member of an
2 advocacy group organization.

3 THE COURT: Is there any member of the jury panel who
4 is a member of any victim's advocacy organization such as
5 Mother's Against Drunk Driving, Students Against Drunk
6 Driving, any organization with the primary purpose of
7 which is the promotion of victims rights or promotion of
8 law enforcement. If so please stand.

9 (No response.)

10 THE COURT: No one is standing. Additional voir
11 dire?

12 MR. VERNER: No, Your Honor.

13 THE COURT: Strikes are five and five. Ladies and
14 gentlemen, the way that we select a jury in a criminal
15 case, if you have served on a jury in civil cases it is a
16 little different with criminal. If your name is called
17 what I need you to do is come forward and stand right here
18 in front of the Clerk and then turn around and face the
19 back of the courtroom. At that point and time the
20 attorneys will be given a chance to seat you or to excuse
21 you. Now, ladies and gentlemen, if for some reason one of
22 the lawyers ask that you not serve on this case please do
23 not take it personally. They are simply doing their jobs.
24 Madam Clerk, if you will give me a jury, please.

25 CLERK OF COURT: When I call you name please come up.

1 Number 70, Eleanor Harris. What says the State.

2 MR. SCOTT: Please present the juror.

3 CLERK OF COURT: The Defense.

4 MR. VERNER: Seat Ms. Harris.

5 CLERK OF COURT: Have a seat in the jury box, please.

6 Number 15, Julie Lawing. What says the State.

7 MR. SCOTT: Please present the juror.

8 CLERK OF COURT: The Defense.

9 MR. VERNER: Seat Ms. Lawing in the jury box.

10 CLERK OF COURT: Number 147, Diane Trantham. What
11 says the State.

12 MR. SCOTT: Please present the juror.

13 CLERK OF COURT: The Defense.

14 MR. VERNER: Please seat Ms. Trantham.

15 CLERK OF COURT: Number 137, Kerry Stribble. What
16 says the State.

17 MR. SCOTT: Please present the juror.

18 CLERK OF COURT: The Defense.

19 MR. VERNER: Please seat Ms. Stribble.

20 CLERK OF COURT: Number 49, Jeremy Floyd. What says
21 the State.

22 MR. SCOTT: Please excuse the juror from this trial.

23 CLERK OF COURT: Number 43, Angela Erhardt. What
24 says the State?

25 MR. SCOTT: Please present the juror.

1 CLERK OF COURT: The Defense.

2 MR. VERNER: Please seat Ms. Erhardt.

3 CLERK OF COURT: Have a seat in the jury box. Number
4 76, Virginia Holt. What says the State.

5 MR. SCOTT: Please present the juror.

6 CLERK OF COURT: The Defense.

7 MR. VERNER: Please seat Ms. Holt.

8 CLERK OF COURT: Number 161, Terry Wise. What says
9 the State.

10 MR. SCOTT: Please excuse Mr. Wise from this case.

11 CLERK OF COURT: Number 136, Terri Stokes. What says
12 the State.

13 (Whereupon, Ms. Stokes and the Clerk of Court have a
14 conversation.)

15 THE COURT: Ms. Stokes is indicating to the Clerk
16 that she has worked previously, you are retired now but
17 you worked previously at services with SCDC. Is that
18 correct?

19 MS. STOKES: That's correct.

20 THE COURT: Okay, so that is what she is telling us
21 now. Solicitor.

22 MR. SCOTT: Please present the juror.

23 CLERK OF COURT: The Defense.

24 MR. VERNER: From today's case I want to excuse Ms.
25 Stokes.

1 CLERK OF COURT: Number 148, Jaime Van Zadelhoff.

2 What says the State.

3 MR. SCOTT: Please present the juror.

4 CLERK OF COURT: The Defense.

5 MR. VERNER: Please seat Ms. Van Zadelhoff.

6 CLERK OF COURT: Number 145, Wanda Toland. What says

7 the State.

8 MR. SCOTT: Please present the juror.

9 CLERK OF COURT: The Defense.

10 MR. VERNER: Please seat the juror.

11 CLERK OF COURT: Number 27, mist Cassada. What says

12 the State.

13 MR. SCOTT: Please present the juror.

14 CLERK OF COURT: The Defense.

15 MR. VERNER: Seat Ms. Cassada.

16 CLERK OF COURT: Number 142, Jenna Taylor. What says

17 the State.

18 MR. SCOTT: Please present the juror.

19 CLERK OF COURT: The Defense.

20 MR. VERNER: Please seat Ms. Taylor.

21 CLERK OF COURT: Number 133, Katherine Sheets. What

22 says the State.

23 MR. SCOTT: Please present the juror.

24 CLERK OF COURT: The Defense.

25 MR. VERNER: Please seat Ms. Sheets.

1 CLERK OF COURT: Number 50, Timothy Floyd. What says
2 the State.

3 MR. SCOTT: Please seat the juror.

4 CLERK OF COURT: The Defense.

5 MR. VERNER: Please seat Mr. Floyd.

6 THE COURT: We will pick one alternate.

7 CLERK OF COURT: Number 144, Kenneth Toland. What
8 says the State.

9 MR. SCOTT: Excuse the alternate from this trial.

10 CLERK OF COURT: Number 6, Jonathan Bautista. What
11 says the State.

12 MR. SCOTT: Please present the alternate.

13 CLERK OF COURT: The Defense.

14 MR. VERNER: Please seat Mr. Bautista.

15 THE COURT: Any issues with the jury selection, the
16 composition, from the State?

17 MR. SCOTT: No, Your Honor.

18 THE COURT: None from the Defense?

19 MR. VERNER: No, Your Honor.

20 THE COURT: Ladies and gentlemen who have been
21 selected on this case, I need you to adjourn to the back.
22 It is only going to be about five minutes. I need to
23 release the rest of the jury panel and give them some
24 instructions. I will then bring you out and probably
25 release you until sometime this afternoon. I need to take

1 care of a few matters that involve the jury. If you would
2 adjourn to the back and don't discuss the case.

3 (Whereupon, the jury was excused from open court.)

4 THE COURT: Ladies and gentlemen who were not
5 selected on this case, there is one other case that we are
6 looking at trying. If you will call back Wednesday night
7 and follow the instructions. You will get a recorded
8 message and if for some reason the case for Thursday is
9 not going to go forward, we will tell you that and we will
10 thank you for coming in and the message will say something
11 along the lines of you don't need to report back, you are
12 done with your jury service. That message may say, you to
13 report to the court house at X time on Thursday. Follow
14 the instructions. You are free to go.

15 (Whereupon, the remaining jury panel was excused from
16 open court at approximately 11:45 a.m.)

17 THE COURT: Bring the jury in, please.

18 (Whereupon, the jury came into open court at
19 approximately 11:46 a.m.)

20 THE COURT: The record will reflect that the jury is
21 back and seated. Ladies and gentlemen of the jury, I have
22 talked with the attorneys on this case and there are a few
23 matters that I need to take up, some of which don't
24 involve this case, some of which they do but they don't
25 involve you. So, be back at 3:15 and we will get started.

1 Thank you. Report back to the Grand Jury room downstairs.
2 Now, ladies and gentlemen, do not do any kind of
3 independent research and I will give you additional
4 details on this, more remarks to you. But please don't do
5 any kind of independent investigation, don't go to try to
6 find out anything about this case and certainly don't go
7 discussing this case with anyone while you are serving as
8 a juror. Please be back at 3:15. Thank you.

9 (Whereupon, the jury was excused from open court at
10 approximately 11:49 a.m.)

11 (Whereupon, a lunch break was taken.)

12 THE COURT: We are going to go back on the record in
13 State versus Mr. Bedenbaugh. The record will reflect the
14 Defendant is present with Counsel. I am assuming that we
15 have all the jurors present in the jury room or in the
16 Grand Jury room downstairs. One housekeeping matter that
17 we need to address. The Clerk's office either got a call
18 or received a communication from one of the jurors who
19 basically told them that he had no one to keep his
20 children tomorrow. He works from 10:00 at night until
21 7:00 in the morning and I really don't have an explanation
22 as to why he didn't stand up or anything. The very fact
23 that he is working from 10:00 to 7:00, in my mind, may
24 very well make him a zombie tomorrow for us to move
25 forward with the case. Any thoughts on how to handle

1 this?

2 MR. SCOTT: One of the deputies mentioned that juror
3 147 passed on some information to him that she was,
4 something that she wanted to disclose to the Court too,
5 that she had failed to mention during qualifications. And
6 I think it had to do with something, with her husband's
7 prior employment or something that she suddenly felt
8 compelled, since we only have one alternate I do want to
9 raise that.

10 MR. VERNER: I mentioned to the Solicitors, I
11 anticipate for the motion to take about an hour but I was
12 going to ask the Court to release them for the day, I
13 don't know how we can start before 4:15, 4:30 in the
14 afternoon. They are not very contentious motions but
15 there is still going to be testimony and cross.

16 THE COURT: What the Court is towing with the idea
17 of, is actually asking both of you, because if the motion
18 is based on a legal search and seizure of the firearm and
19 a Jackson v. Denno, however if it would be possible
20 because I know the two children are here and obviously
21 they have class tomorrow morning, if the State does not
22 intend to go into any of the statements that the Defendant
23 supposedly made and don't intend to reference the firearm
24 in your opening then I think it would be possible to go
25 ahead and move forward with opening arguments and at least

1 take the testimony of the two children. I am a little bit
2 sensitive to the fact that they have school obligations.
3 In Greenwood they can only miss ten days and we are just
4 starting the school year. I don't want to put them behind
5 the eight ball on that. I would like to see us being able
6 to accommodate their class schedule, as if we don't elude
7 to that during opening or elude to those two facts in
8 opening and address those motions perhaps first thing in
9 the morning, having the jury come in at 10:00. I am also
10 okay to start tomorrow as well. I am trying to
11 accommodate the kids involved in this.

12 MR. SCOTT: When I had both of them in here they kind
13 of worked themselves up and I think they are ready to get
14 it over with, I told them they wouldn't have to come back
15 after they testify. And Taylor is going to do the opening
16 as he typically does and I hate to step on his toes. But
17 I think we will stay away from that in order to go ahead
18 and get this done today.

19 THE COURT: Mr. Daniel, you okay with doing that?

20 MR. DANIEL: Yes, sir.

21 THE COURT: You spoke to one of the jurors or you had
22 one of the jurors approach you, what was it that they need
23 to bring to the Court's attention.

24 OFFICER: Basically when you had released them she
25 approached in the hallway, stairwell, and said that

1 initially she had said her husband's occupation, that he
2 was a pastor at a church but she did say, she didn't know
3 if it needed to be said that he was retired from State Law
4 Enforcement Division.

5 THE COURT: Any thoughts or issues from the State?

6 MR. SCOTT: It doesn't disqualify her, Your Honor,
7 but I only brought that to the Court's attention in
8 fairness to Mr. Verner because I don't know how he would
9 have employed his strikes.

10 THE COURT: That is juror number 147, I believe,
11 Diane Trantham who was the third juror summoned up here.
12 Mr. Verner?

13 MR. VERNER: If he still works for SLED I would have
14 struck the lady without question.

15 THE COURT: It sounds like it is more of an
16 oversight, he is working as a full-time pastor.

17 MR. VERNER: I am not questioning the lady, I am just
18 saying had she disclosed it accurately at voir dire it
19 would have materially affected whether we had sat her or
20 not.

21 THE COURT: I understand. If you are willing to go
22 with 11 or less.

23 MR. VERNER: We have got an alternate.

24 THE COURT: Who is about to be used for a guy who has
25 got kid problems and who if I have him report back

1 tomorrow at 10:00 he will have the opportunity to maybe
2 get two hours of sleep and he has got to make arrangements
3 for his children.

4 MR. VERNER: Who also had the opportunity to disclose
5 that too during voir dire.

6 THE COURT: I understand.

7 MR. VERNER: My concern is we are accommodating
8 everybody but the Defendant's rights so far. The
9 children, the jurors and we are in a criminal trial.

10 THE COURT: And I am happy to accommodate your client
11 and say if he is willing to go with 11 or less that we can
12 go ahead and use the spare tire on Mr. Floyd and if we
13 allow, I agree with you, you may very well would have
14 struck juror 147. We are at 11 at that point and time.

15 MR. VERNER: Let me ask my client perhaps.

16 THE COURT: Sure.

17 MR. VERNER: Your Honor, and I will defer to whether
18 the State wants to voir dire 147. But we are prepared to
19 go forward with 11 and strike 147.

20 MR. SCOTT: I am fine with that, Your Honor.

21 THE COURT: Let's ask juror number 147 to join us and
22 that Ms. Trantham, bring her up and then bring Mr. Floyd
23 up as well, he is juror number 50. And, Mr. Bedenbaugh,
24 you are willing, if we lose another juror you are willing
25 to go with less than 12, possibly 10, is that correct,

1 sir?

2 MR. VERNER: We had agreed to 11, Your Honor, I
3 understand the Court's concern, not a long case. Lawyer
4 wise I thought we had agreed to 11.

5 THE COURT: I am good to agree with 11, I will not
6 force you to go below 10 but I want your assurance that if
7 somebody comes down with the flue tonight then we can go
8 with 10.

9 MR. VERNER: But we are not transferring it to
10 Magistrate.

11 THE COURT: We are not transferring to Magistrate, no
12 sir.

13 MR. VERNER: Your Honor, he is prepared to go
14 forward.

15 THE COURT: Very good. Thank you.

16 (Whereupon, jurors 147, Ms. Trantham; and juror 50,
17 Mr. Floyd came into open court.)

18 THE COURT: Just a couple of questions. Ms.
19 Trantham, they informed me afterwards that, or I referred
20 to some of the court personnel here, you indicated your
21 husband works currently part-time at SLED, is that right?

22 MS. TRANTHAM: No, he worked for SLED for 13 years
23 before becoming a pastor.

24 THE COURT: Before becoming a pastor. Does he still
25 do anything with SLED?

1 MS. TRANTHAM: No, he does not.

2 THE COURT: How long has he been a pastor.

3 MS. TRANTHAM: He has been a pastor for 13 years.

4 THE COURT: Okay. So he hasn't done anything with
5 SLED or law enforcement for 13 years?

6 MS. TRANTHAM: He volunteers but no.

7 THE COURT: Does he currently volunteer?

8 MS. TRANTHAM: No.

9 THE COURT: When was the last time he volunteered?

10 MS. TRANTHAM: About five years ago.

11 THE COURT: Okay. Very good.

12 MS. TRANTHAM: And I have no problem.

13 THE COURT: Despite that--

14 MS. TRANTHAM: I don't have any problem with that, I
15 just wanted to be honest.

16 THE COURT: Thank you very much. Mr. Floyd, I think
17 when you called the Clerk's office you indicated that you
18 are working from 10:00 to 7:00 tonight?

19 MR. FLOYD: Yes.

20 THE COURT: And where do you work, Mr. Floyd?

21 MR. FLOYD: Walmart.

22 THE COURT: And there is an issue with child care for
23 tomorrow?

24 MR. FLOYD: Yes. My grandmother, she was watching
25 them but she is really not the best.

1 THE COURT: How is your children.

2 MR. FLOYD: One is three and one is seven months.

3 THE COURT: Three and seven months. I hate to impose
4 on your mom but I really do need both of you in this jury,
5 okay, if at all possible. Can your mother stick it out
6 for another day?

7 MR. FLOYD: I can try to get someone else.

8 THE COURT: Are you going to be able to be, you work
9 until 7:00 o'clock tomorrow morning?

10 MR. FLOYD: Yes.

11 THE COURT: Are you going to be able to?

12 MR. FLOYD: I do it all the time.

13 THE COURT: All right. You are going to need to find
14 somebody else. They are going to take you and you can
15 rejoin the jury, just go ahead and step in that room.
16 Let's bring the jurors up, please. We are back up at 13
17 based on the representations. I don't think that was
18 anything to warrant dismissing, if he was still actively
19 involved in law enforcement, that might be one thing. But
20 she is perfectly comfortable in serving. We are back up
21 to 13.

22 (Whereupon, the jury came into open court at
23 approximately 3:42 p.m.)

24 THE COURT: All right. Ladies and gentlemen of the
25 jury, welcome back. We're about to begin the trial of the

1 State v. Bedenbaugh and the first order of business for
2 the Court is to appoint a foreperson. Who is Ms. Lawing.
3 If it's okay with you, I'd like to make you the forelady
4 of the jury. I'll tell you that your primary
5 responsibility in this is to make sure everybody has a
6 chance to have their fair say once the jury begins their
7 deliberations. And if you're okay to do that, you're kind
8 of person of equals, is sort of how I usually characterize
9 if. So if you're okay with that, I'll appoint you
10 foreperson.

11 MS. LAWING: Okay.

12 THE COURT: All right. Very good. When we resume,
13 Ms. Lawing, your seat will be where the lady closest to me
14 is sitting, okay? Mr. Bautista, you'll stay in that seat,
15 okay. The rest of you can feel free to move about as you
16 need to or as you want to. I'll let you know that the
17 acoustics here are very good but if at any time you have
18 any trouble hearing any of the witnesses testimony, just
19 raise your hand. We might need to ask the lawyer or the
20 witness to speak up and speak a little bit more loudly.
21 Additionally, if at any time you need a bathroom break,
22 don't be shy about asking for one, okay. So if you need a
23 comfort break or just a break from the testimony and for
24 any reason, just raise your hand, and we'll take a brief
25 break, okay? Now, ladies and gentlemen, again, we're

1 about to begin the case of the State v. James Bedenbaugh
2 and before we begin the trial, I want to tell you that, of
3 course, this case is going to be a little bit different
4 from how you've seen cases depicted on TV or in the movies
5 or reading about them in books. From what we take from
6 popular culture, we often get the impression that cases
7 are filled with drama and they're very entertaining and
8 certainly sometimes, that is the case. But, obviously,
9 ladies and gentlemen, this is real-life. This is not for
10 entertainment. This case is very important to both the
11 State of South Carolina and to Mr. Bedenbaugh. So I want
12 to thank you for your understanding of the gravity of what
13 we're engaged in here today, the importance of what we're
14 engaged in here today, and I want to thank you for your
15 willingness to be here. I know that none of you
16 volunteered for this. I know you basically got a summons
17 in the mail and you weren't given a choice but to come in
18 here. But as I explained this morning to you, there is no
19 other way to resolve this case and but twelve individuals
20 or thirteen individuals in the jury box and see what
21 happens, okay, so that is the reason we need you here
22 today. Thank you again for your patience and for your
23 willingness to serve, because your service, of course, is
24 very, very important. With that, I'm going to ask that
25 you stand where you are and raise your right hand so that

1 the clerk can administer your oath to you as jurors,
2 please.

3 (WHEREUPON, the jury was sworn at approximately 3:47
4 p.m.)

5 THE COURT: You may be seated. And, ladies and
6 gentlemen, what I'm now about to say to you is intended to
7 serve as an introduction at the trial of this case and
8 these remarks are not instructions on the law. I'll
9 instruct you on the law that applies at the conclusion of
10 the trial before you retire to deliberate your verdict.
11 Again, this is just an overview of the process that we're
12 going to use going forward so that you better understand
13 what's taking place. If at any point in time, ladies and
14 gentlemen, y'all want to take notes; that's perfectly
15 fine. The bailiff can get some notepads for you with some
16 pencils. Just two quick rules about note-taking. First,
17 try not to let the taking of notes distract you from the
18 testimony that's being given and, secondly, those notes
19 are your private property, okay. You can leave them here
20 at the courthouse if you choose to take notes. You're not
21 required to. But if you want to take notes, that's fine.
22 Just make sure that you leave them here when you leave the
23 courtroom tonight and during any breaks, and we will
24 secure those for you. When the case is over with you,
25 you'll take any notes that you've took during the trial.

1 You can take those with you and do what you will with
2 them.

3 Now, ladies and gentlemen, again, the Defendant in
4 this case, Mr. Bedenbaugh, was charged with and indicted
5 and filed in this Court with the offense of pointing and
6 presenting a firearm at a person. And I'll explain the
7 elements of this crime to you later. Again, as I said
8 earlier, this indictment is merely the charge by which a
9 case is brought to a court and it is not in any sense of
10 the word evidence of any of the allegations contained in
11 the indictment. Again, Mr. Bedenbaugh has pled not guilty
12 to this indictment and that leaves the burden of proof on
13 the State to prove each and every element of the charge
14 beyond a reasonable doubt. It's up to you, ladies and
15 gentlemen, to decide whether the State has met this
16 burden. Now, your purpose as jurors is to find and
17 determine the facts of this case, to be the sole judges of
18 the facts. So if at any time I make any comment
19 concerning the facts, you must disregard that comment.
20 The law does not permit me to have any opinion about the
21 facts. That's a matter solely for you to determine. You
22 will determine the facts from the testimony that you hear
23 and from the other evidence presented during the trial.
24 It's up to you to determine the inferences that you feel
25 can properly be drawn from the evidence presented. Now,

1 ladies and gentlemen, it's very important that you perform
2 your duty of determining the facts, diligently and
3 conscientiously, because ordinarily, there is no weight,
4 an erroneous determination of facts by a trial jury. But
5 on the other hand, ladies and gentlemen, the same law that
6 makes you the judge of the facts makes me the Judge of the
7 law. The law is given by the Court as the only law that
8 you can consider. You can accept it, apply it, even
9 though you may disagree with it. Again, the law doesn't
10 permit me to tell you what the facts are and the law also
11 doesn't allow you to disagree with me about what is or
12 what the law should be. Your job will be to take the law
13 as I give to you, apply it to the facts as we find them to
14 be and thus render your verdict under the oath that you
15 have just taken. Now, again, until I advise you to begin
16 your deliberations, please don't discuss the case with
17 anyone, not friends, family members, and especially not
18 your fellow jurors. The parties have been told they're to
19 have no contact with you, so if you happen to see somebody
20 coming or going from the courthouse on break and they're a
21 member of the State's case or the Defense case and these
22 folks don't say hello to you, understand that they're not
23 being rude. They're simply following my instruction to
24 have nothing to do with you while the case is going on.
25 The reason to the Court is readily apparently okay, that

1 if one side seeing you conversing with a lawyer for the
2 other side could easily be misinterpreted as an effort of
3 jury tampering. So the simplest way to keep that issue
4 from even arising is just as I said, the jurors are
5 off-limits while the case is going on. All right. Now, I
6 don't anticipate that there will be any media coverage of
7 this case but, again, please don't read anything in the
8 paper or online. Don't perform any sort of independent
9 research about this case. You'll get the information you
10 need to judge this case from the testimony of the
11 witnesses and the other exhibits introduced. Please keep
12 an open mind. Don't decide any issue in this case until
13 you've heard all the evidence, until you've had a chance
14 to hear my instructions to you on the law. I instruct you
15 it's your solemn responsibility to determine the guilt or
16 the innocence of the Defendant and your verdict must be
17 made solely on the evidence presented during the trial and
18 on the law as I instruct at the conclusion of the trial.
19 In a moment, ladies and gentlemen, the attorneys will make
20 an opening statement to you in which they'll tell you what
21 the issues are, at least what they believe the issues are
22 in this case. Of course, what the lawyers say during
23 their opening is not evidence. You will judge the case
24 from the testimony of the witnesses. At the same time,
25 the opening statement is usually a roadmap or an overview

1 of what they assert will be proven or won't be proven, but
2 you should certainly pay attention to their opening
3 statements because they could help guide you or give you a
4 roadmap, as I said, throughout the rest of the trial.
5 Now, from time to time during the trial, ladies and
6 gentlemen, it may become necessary for me to ask that you
7 step into the jury room so that I can take up an issue of
8 law out here on the record. The reason I'm asking that
9 you leave the courtroom and go into the jury room is that
10 sometimes in ruling on an issue of law, it becomes
11 necessary for me to make a comment about what testimony or
12 what evidence has been presented. Since you're the judges
13 of the facts, again, I don't want anything I say about the
14 facts have any affect upon what you ultimately find the
15 true facts to be. So I ask that you leave the courtroom
16 during those discussions that I'm having with the
17 attorneys so that I can be certain what I say about the
18 facts doesn't influence your finding of the facts. Of
19 course, it goes without saying, do not speculate as to
20 what I am saying about those facts during those breaks.
21 Now, ladies and gentlemen, in determining what the true
22 facts are, you'll have to decide whether or not the
23 testimony of witnesses are believable or not. It will be
24 my responsibility to rule as a matter of law on whether a
25 certain testimony will be admitted. Once the testimony is

1 admitted, whether or not you choose to believe it is
2 solely up to you. In deciding whether to believe a
3 witness, you have the right to consider any interest of
4 any witness, the bias of any witness, the prejudice of any
5 witness, the opportunity for the witness to have seen the
6 matters and things which the witness testifies. You can
7 also consider the way they acted or their appearance while
8 on the witness stand. Consider anything that's in the
9 record in this case that will help you evaluate the
10 testimony of the witnesses. That means it's your duty to
11 pay close attention to them, observe them, listen to them,
12 and please pay close attention to the attorneys and the
13 Court. Try to keep your thoughts from wandering.
14 Instead, give strict attention to testimony so at the
15 conclusion of the trial you'll be in as best a position as
16 possible to render a verdict. Now, in order to observe
17 everyone's rights, I'll give the lawyers a chance to
18 object to anything I said to you here in these opening
19 remarks, then we can proceed with the trial.

20 MR. SCOTT: No objection from the State.

21 MR. VERNER: No, Your Honor.

22 THE COURT: Very good. We will now begin the trial.

23 Mr. Daniel, you are recognized for your opening, sir.

24 MR. DANIEL: Thank you, Your Honor. May it please
25 the Court?

1 THE COURT: Yes, sir.

2 MR. DANIEL: Good afternoon, Ladies and gentlemen.
3 I'll be as brief as I can with my opening remarks. The
4 case before you today is not going to paint a flattering
5 picture of the man who's on trial, James Bedenbaugh.
6 There's no way around it. Because of that, because of his
7 conduct, roughly ten months ago where he traumatized two
8 kids. And as His Honor read out the case caption, it's
9 pointing and presenting a firearm at a person. But what
10 His Honor didn't tell you, it's two kids, a 12 and a
11 13-year old. Aleah C. , a 13-year-old girl at the time
12 and Michael C. a 12-year-old. His Honor didn't tell
13 you the circumstances, and that's our job and what led up.
14 Right now everything is a mere allegation. At this point,
15 Mr. Bedenbaugh is presumed innocent. But once we commence
16 with this case and you hear testimony, it's going to be a
17 record, it's going to be facts, and it's going to be what
18 happened. And sadly, it's kids that were unnecessarily
19 victimized by an adult who took it upon himself, all
20 because a dog went in his yard, to pull out a rifle and
21 threaten innocent little children. That's unjustified, no
22 excuse, and that's what will be testified to. That's what
23 we expect things to play out. There is no reason why a
24 firearm had to be introduced. Now, conflict resolution.
25 Mr. Bedenbaugh, obviously, did not take conflict

1 resolution classes in school or anything like that because
2 that is no way to handle something like this. The
3 slightest provocation, he took to that next level and the
4 end result, you have kids who were traumatized,
5 victimized, however, whatever you want to say. But that's
6 the nature of this case. It's about a dog getting loose.
7 Some went on Mr. Bedenbaugh's yard and Mr. Bedenbaugh
8 reacting in such a poor, and reckless, and indifferent
9 manner to other people. And you'll hear testimony, of
10 course, from the two kids I just mentioned and their
11 testimony. From Aleah C. 's mother and Michelle Cromer
12 who reports it to law enforcement. And going to show you
13 some photos of the property. We'll show you a picture of
14 the dog. Things like that. This dog is not vicious.
15 This dog did not pose a threat to Mr. Bedenbaugh. The
16 kids certainly weren't posing a threat, so why pull out a
17 rifle on the children. So it's a serious case. We're
18 here in big court because this is not a trivial matter.
19 Nothing is ever a trivial matter when it goes to trial, so
20 we don't belittle anything. Really, there is only four
21 settings where a firearm are appropriate, and that's for
22 sport, hunting, target practice, self-defense, protecting
23 our home and family, and then law enforcement, and
24 military. Neither applied to Mr. Bedenbaugh. And the, I
25 guess the old adage, good fences make good neighbors.

1 That's kind of applicable in this case. There wasn't a
2 good fence up there, so the dog gets by, but Mr.
3 Bedenbaugh didn't have to settle it like that. He didn't
4 have to pull out that rifle; he decided to. And that's
5 what I want you to take away from this case. So about
6 five witnesses. We'll hear from the two kids. We'll hear
7 from Michelle Cromer, who is the mother of Aleah C.
8 It's her boyfriend's son, Michael C. , the other
9 victim in this case. And then you'll hear from Deputy
10 Casey Rembisz, and Deputy Clayton Babb who is seated right
11 here and that's the case, ladies and gentlemen.

12 I submit to you there is pretty compelling evidence
13 once this investigation gets going, and I'll let it all
14 play out at trial, and you'll hear that soon enough. But
15 we're going back in time to November 15th, 2015, which is
16 about ten months ago. None of us were there, so all we
17 can rely on is the witness testimony and the evidence
18 that's presented, and you have no friends to reward, no
19 enemies to punish. I just want the truth. Everyone here
20 wants the truth. And that's what verdict means. It's a
21 Latin-based word that literally means to speak or say the
22 truth, and you want a verdict that's consistent with the
23 evidence, and that speaks the truth, and only you can do
24 that, because this is your community. Because you're
25 residents of Newberry, that's the only way you can serve

1 on this jury, and so you have to decide the guilt or
2 innocence of people who are on trial for crimes. I can't
3 do it. Deputy Solicitor Dale Scott can't do it. Mr.
4 Verner can't do it. And His Honor can't do it because you
5 are, actually, the judge of the facts. And so at the end
6 of the day, it is going to be your responsibility, but
7 it's the truth as you know it. And so I'll ask you, at
8 the conclusion of this case, we'll ask you to go back
9 there and render a verdict that does speak the truth and
10 that is guilt.

11 THE COURT: Mr. Verner, you are recognized for your
12 opening, sir.

13 MR. VERNER: May it please the Court?

14 THE COURT: Yes, sir.

15 MR. VERNER: We are here, and this is felony court.
16 The Supreme Court sent a Judge from Greenwood. This isn't
17 a magistrate case. This is a big-time case. The State
18 has charged, the State is charging James Bedenbaugh with
19 pointing or presenting a firearm. The statute is just
20 that they have to prove and what we're not here for is to
21 find out what happened. I wasn't there. You weren't
22 there. If you could get that kind of information, we'd
23 give it to you. You have to go on the testimony and the
24 evidence that the State has. Your job when you took an
25 oath is to, if, does the State beyond any reasonable doubt

1 and a reasonable doubt is if it could have happened any
2 other way or if the facts mean something even slightly
3 different but plausible, Mr. Bedenbaugh is the only person
4 with chips on the table. He is entitled to any benefit of
5 the doubt that you have. And reasonable doubt means if
6 you hesitate even for a second to convict him but decide,
7 well, I'm going to put that doubt aside, and I still think
8 more likely than not, he's guilty. No, he's not.
9 According to your oath, that is the benefit. That is the
10 doubt. The pointing and presenting means just that,
11 pointing a firearm at somebody. Here is what the State is
12 missing. They have to provide criminal intent. It is not
13 always against the law to have a gun. And this is an
14 incident, these are neighbors. Mr. Bedenbaugh is 51.
15 This happened on his house where he's lived for the last
16 51 years. I submit to you that the facts are going to be
17 that there are no, that at the time, there were no fences.
18 The State says that this is a friendly dog. Well, that's
19 nice for them to say after the fact, but it's a large dog.
20 It's in Mr. Bedenbaugh's yard. The kids go out, and it's
21 been a recurring problem. He's going to testify that he
22 hears his small, he's got small dogs, but they are in
23 kennels. He hears his dogs getting aggravated. He comes
24 out of the house. The kids are, he sees one of the kids
25 who's pulling the dog back to their property. Mr.

1 Bedenbaugh is going to testify, I didn't have a rifle or a
2 shotgun. They just saw me and got scared when I came out.
3 And then they ran inside, and then their mother came out.
4 When he suggested that they call the police, well, she
5 called the police first based on what the kids a year ago
6 told her. I submit to you that even if he did have a
7 rifle, and he comes out, it is not a crime on your own
8 property if you think that there is a dog or a intruder on
9 your own property and you come out with a rifle, and he's
10 saying I didn't, that does not mean that you have a
11 criminal intent to present. If you've heard that phrase,
12 present arms, like the military, that's presenting. It,
13 basically means when you raise a rifle. The Supreme Court
14 has said when you brandish it in a threatening manner.
15 But it's not just having a rifle. It's brandishing it at
16 somebody in a criminal, you have to have a criminal reason
17 to be doing that against somebody. Their theory is that
18 if you come out on your property, anytime you are armed
19 with a rifle, you are guilty of pointing and presenting if
20 somebody sees you, no. You are guilty if you threaten
21 somebody and you have a criminal intent. If I threaten
22 somebody and say get off my property, and I have a rifle,
23 I've got a right to defend my property. If I see a dog or
24 an animal, a rabid raccoon, I'm entitled on my property to
25 come out with a weapon. The State has to prove that he

1 threatened these children with a rifle, that he either
2 pointed it at them or he brandished it in a threatening
3 manner, presented it at them and that the reason he had on
4 his mind is, was he had a criminal intent.

5 It's tough to define criminal intent. That,
6 basically means that you have a hateful, a malicious
7 intent to harm or threaten somebody and that's just not
8 the facts in this case. These are two neighbors who don't
9 really get along. The dog is crossing the lines. The man
10 comes out to check on his dogs. The kids are saying,
11 well, he had a gun so we ran, and maybe he did, maybe he
12 didn't. I submit under either one of those scenarios in a
13 felony pointing and presenting case, Mr. Bedenbaugh is
14 entitled to the benefit of the doubt, whether you find he
15 had a gun or not. Unless all twelve of you are satisfied
16 without any intent, he had an evil intent to threaten
17 those children and put them in fear of their lives. If he
18 came out to check on his property, he's entitled to a not
19 guilty verdict, and I submit it's a pretty easy question
20 for you. Is it possible the kids when they saw him, got
21 scared and ran and thought he had more, you know, he's the
22 mean old man from next-door. Small kids. I submit to you
23 if that is at all possible, he's entitled for that benefit
24 of the doubt. He's the one who has to pay the tab at the
25 end of the day, and if you have any doubt that maybe he

1 didn't have a criminal intent or maybe he didn't threaten
2 them with a weapon, he's entitled to a not guilty verdict.
3 Thank you.

4 (Whereupon, State's Exhibits 1 through 10 were marked
5 for identification purposes only.)

6 THE COURT: Solicitor, call your first witness,
7 please.

8 MR. SCOTT: The State calls Aleah C. .

9 ALEAH C. , being
10 first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 By Mr. Scott:

13 Q Aleah, how old are you?

14 A I'm good.

15 Q Say, what?

16 A Good.

17 Q Good. Well, actually, how old are you today?

18 A Thirteen.

19 Q Okay. And where do you go to school?

20 A [REDACTED]

21 Q Okay. Where do you live?

22 A I live at [REDACTED]

23 Q Okay. That's Prosperity?

24 A Yes.

25 Q And you guys are kind of Downtown Prosperity, is that

1 fair to say?

2 A Yeah.

3 Q How long have you lived there?

4 A About four years.

5 Q Okay. Who all lives there with you?

6 A Me, my mom, Sean, Michael, and Adam.

7 Q Okay. Who's Sean?

8 A My mom's boyfriend.

9 Q Okay. Who are his children?

10 A Michael and Adam.

11 Q Okay. And have they lived there with you all four
12 years?

13 A Three.

14 Q Okay. So, I guess, last year, November 15th of last
15 year, you remember that day?

16 A Yes, sir.

17 Q Okay. Were all those people living there then?

18 A Yes, sir.

19 Q Okay. Mr. Bedenbaugh, the Defendant here, do you see
20 him? Do you want to look at him just for a second?

21 A Yes.

22 Q Do you know who he is?

23 A He is the neighbor that lives in that corner --

24 Q Okay.

25 A -- where our dog went into his yard.

1 Q Okay. Well, November 15th of last year, did you see
2 him that day?

3 A I had saw him as I was dragging my dog because he was
4 like out on the porch.

5 Q Okay. Before that day, did you really know who he
6 was?

7 A No, sir.

8 Q Okay. Had you ever been over to his yard or anything
9 before?

10 A No, sir.

11 Q Okay. Well, and you just started talking about your
12 dog. What is your dog's name?

13 A Mist.

14 Q Mist. What kind of dog is Mist?

15 A Mist, she is, basically, more a border collie and lab
16 mix.

17 Q Okay. How long have you had Mist?

18 A We've had her for two years.

19 Q Okay. Now, I was over at your house the other day.
20 You weren't there, but you've got kind of a high
21 chain-length fence around your backyard now, don't you?

22 A Yes.

23 MR. VERNER: Your Honor, that's a leading question,
24 and it assumes facts not in evidence.

25 THE COURT: Solicitor, show her a photo, go ahead.

1 Q Describe your backyard.

2 A It's really big, and then we have like this six-foot
3 fence --

4 Q Okay.

5 A -- and we have another fence inside of that fence.
6 It's a small square where our dog stays in.

7 Q Okay. This fence, did you have the fence, the
8 six-foot fence November of last year?

9 A No, but there was a small fence that she could jump
10 over.

11 Q Okay.

12 MR. SCOTT: This is State's number 2. Aleah, does
13 that, what is that?

14 A That is our fence that we just put up a couple of
15 months ago.

16 Q Okay.

17 MR. SCOTT: All right. Let me, State's number 2,
18 Your Honor, we would offer for admission into evidence.

19 THE COURT: Without objection, State's 2 is in
20 evidence.

21 (Whereupon, State's Exhibit number 2 was admitted
22 into evidence.)

23 Q Okay. That fence, I'm looking, and there's a house
24 you can see through the fence?

25 A Yes.

1 Q Who's house is that?

2 A That would be Mr. Bedenbaugh's house.

3 Q Okay. And November of last year, the high fence, the
4 six-foot fence was not there, but you said there was a
5 smaller little fence?

6 A Yes. There was a smaller fence that you would
7 normally put like around like tomatoes or something.

8 Q Okay.

9 A Like chicken wire.

10 Q How tall was it?

11 A Like halfway to your waist.

12 Q Well, I'm just looking and from this picture, and you
13 can look at yours, with the little post right here kind of
14 on the left side of your, was that one of the fence posts
15 for that old fence?

16 A Yes.

17 Q Okay.

18 A It had vines and stuff growing in it.

19 Q Okay. All right. Let me show you State's number 1.
20 I'm sorry. What is that?

21 A That is our backyard, and this is our porch swing,
22 and our fire pit. And over here, the colorful thing is
23 our agility course.

24 Q Okay. And we'll talk about that in a minute, but
25 does that, that kind of gives a good, I guess, depiction

1 of your backyard?

2 A Yes.

3 MR. SCOTT: The State offers number 1 for admission,
4 Your Honor.

5 MR. VERNER: No objection.

6 THE COURT: Without objection. State's 1 is in
7 evidence.

8 (Whereupon, State's Exhibit number 1 was admitted
9 into evidence.)

10 Q Now, on this picture, you said you have a little
11 agility course. What is that for?

12 A We normally make the dogs jump through it and stuff
13 because we do pretend shows and I also show off my
14 cousin's big blue ticks, hound dog in shows.

15 Q Okay. What about Mist, is that a show dog or you
16 said you do pretend shows?

17 A We do a pretend show with her because she's not a
18 true breed, so they won't let her into any shows.

19 Q Okay. What do you do, you have her jump and go
20 through the obstacle course?

21 A Yes.

22 Q Is that more just for fun for you guys?

23 A Yeah.

24 Q All right. This view we're looking at, where would
25 Mr. Bedenbaugh's house be on this picture?

1 A Right over in the corner where you normally see like
2 these trees over here, where it's like right across from
3 the pink agility jump.

4 Q Okay. Aleah, just so you don't have to get down, is
5 this kind of what you're describing up here?

6 A Yes.

7 Q His home would be --

8 A Yes.

9 Q -- down that way? All right. So you were talking
10 about having Mist and, well, you were taking her through
11 the obstacle course on that day in November of last year?

12 A Yes.

13 Q And the big fence wasn't there, so how were you
14 keeping her in the yard?

15 A We would normally keep her into her small fence that
16 we have put her in every night. And I also, when I take
17 her out, I will have her on a leash.

18 Q Okay. Did you have her on a leash that day?

19 A Yes.

20 Q And did something happen where she got off the leash?

21 A A deer ran from one side of the yard to the other
22 side and jumped over the fence that was there. And Mist
23 jumped and snatched the leash out of our hand and ran
24 towards and after the deer.

25 Q Okay. Mist ran after the deer?

1 A Yes.

2 Q Okay. In this picture, where did the deer come from?

3 A It came from where you see like this small tree right
4 here where the apple tree is.

5 Q Okay. All right. The apple tree you see right here,
6 is that what you're talking about?

7 A Yeah. It was like up here in the corner and it ran
8 right through here and into the fields.

9 Q Okay. So put your, I'm just following you, can you
10 say anything, describe it running across the yard through
11 here and back to that corner of the yard?

12 A Yes.

13 Q And did Mist take off after it?

14 A Yes.

15 Q And what happened next?

16 A So then after she snatched the leash out of my hand,
17 I ran after her and me and Michael went through the woods
18 to go get her. And so she had ended up jumping over the
19 fence, so I went over the fence to grab her. And when I
20 did it, I saw him sitting on his porch, but I just grabbed
21 her, and we went to the house.

22 Q You saw who sitting on the porch?

23 A Mr. Bedenbaugh.

24 Q Mr. Bedenbaugh?

25 A Yes.

1 Q And after you saw him, did he say anything?

2 A I heard him yell something, but I didn't even quite
3 hear it because I was too busy trying to get Mist back to
4 the house because she was still going after the deer.

5 Q And who did you say was with you?

6 A Michael.

7 Q How old is Michael?

8 A He is 12, and he's about to turn 13 on Thursday.

9 Q Okay. So he was 11 or 12 when this happened?

10 A Yes.

11 Q And did Michael say anything?

12 A He told me, other than keep going --

13 MR. VERNER: Your Honor, I'll object, Your Honor.

14 MR. SCOTT: I think I have an exception of what I'm
15 trying to--

16 THE COURT: You have an exception?

17 MR. SCOTT: Yes, sir.

18 THE COURT: What's your exception?

19 MR. SCOTT: I think excited utterance, or present
20 sense impression is, well, what would be elicited here
21 from this.

22 THE COURT: All right. Proceed.

23 Q What did Michael, first of all, what was Michael's
24 tone? Do you understand what tone is when, did Michael,
25 what did his voice sound like without saying--

1 A Like he was yelling because he was a little bit
2 scared and he kept yelling, Aleah, keep going. Keep
3 running. He's got a gun.

4 Q Okay. But you didn't see the gun, though, did you?

5 A No. I kept running trying to get Mist back to the
6 house because she was still going after the deer.

7 Q Okay.

8 MR. SCOTT: I beg the Court's indulgence. Pull
9 number 1 back up, Walter.

10 Q Okay. So, Aleah, would you step down just for a
11 minute. I want to clear up a couple of things just so you
12 can show the jury on the board here and keep your voice up
13 so the court reporter can hear. All right. You already
14 testified that's the general area where Mr. Bedenbaugh's
15 house was?

16 A Yes.

17 Q Where did you start dragging the dog?

18 A We started up here, and we went around this shed and
19 through Mr. David's yard to get her back home, small wire
20 fence up through there.

21 Q Okay. Was that shed in between where Mr. Bedenbaugh
22 was and where you took the dog?

23 A Yes.

24 Q Okay.

25 MR. SCOTT: You can take this down now.

1 Q Okay. So after you heard Mr. Bedenbaugh yell, and
2 then you heard Michael tell you that thing, what did you
3 do with Mist?

4 A I just tried to figure out how to get him on back to
5 the house, and we went inside.

6 Q Okay. You took the dog inside the house?

7 A Yes.

8 Q And does the dog normally go inside the house?

9 A During the winter she does.

10 Q Did you tell anybody what happened?

11 A I told my mom.

12 Q Okay. What happened then?

13 A So she came out to see where the fence broke out and
14 when she did, Mr. Bedenbaugh yelled, if your children or
15 your dog comes back on my yard again or near the fence, I
16 will shoot them.

17 Q Okay. And you heard Mr. Bedenbaugh say that?

18 A Yes.

19 Q All right.

20 A It was me and her out by the fence.

21 Q Okay. Did he sound angry or how did he sound?

22 A He sounded angry.

23 Q And did you see what he was doing while he was saying
24 those things?

25 A No, because I was behind my mom.

1 Q Okay. All right. I think you already pointed to him
2 over there. You see Mr. Bedenbaugh here today?

3 A Yes.

4 Q Okay. Would you point to him, please?

5 A Right there.

6 Q Okay.

7 THE COURT: Let the record reflect the witness has
8 identified the Defendant.

9 MR. SCOTT: All right. Aleah, thank you. Answer any
10 questions Mr. Verner has for you, please.

11 MISS C. : Okay.

12 THE COURT: Mr. Verner.

13 CROSS-EXAMINATION

14 By Mr. Verner:

15 Q All the fence around your house is fairly new, isn't
16 it? When did y'all put the fence around your house?

17 A It is like, more of like a couple of months. I'd say
18 about ten months ago.

19 Q Two months or ten?

20 A Ten.

21 Q Ten. Was it before or after Christmas last?

22 A After.

23 Q Okay. So sometime early this year, January/February?

24 A It was like two days after Christmas we put it up.

25 Q Okay. Did you help your parents when y'all put up

1 the fence around the backyard?

2 A No, because I was out doing a whole bunch of things
3 that day. And so I had to do a whole bunch of stuff.

4 Q How long did it take your parents to or your mom and
5 her boyfriend to put a fence around the backyard?

6 A I would say about a week.

7 Q Okay. So just to be clear, all the fence we're
8 looking at was put in slightly after Christmas?

9 A Yes.

10 Q And are you sure it's six-feet high or could it be
11 slightly lower?

12 A No, it's six-foot exactly.

13 Q Okay. But that fence wasn't there back in November
14 of last 2015, right?

15 A No. But there is another fence there --

16 Q Okay.

17 A -- that was a lot smaller.

18 Q Okay. And in places, it was torn down completely, or
19 it was better in other places than others or was it good
20 in all the places?

21 A The smaller fence?

22 Q Yes, 'ma'am.

23 A It was small, it is rusty, and there's a lot of gaps
24 in it.

25 Q Okay.

1 MR. VERNER: Mr. Bentley, do you have the Judge's
2 monitor hooked up, or do you need it, Judge?

3 THE COURT: I got it.

4 MR. VERNER: Okay.

5 Q Now, on that fence, I kind of see that there is a lot
6 of growth kind of growing up against the fence and kind of
7 the, some weedy area. Was there a lot of weedy area
8 around the five-foot fence, too, bushes and shrubs in that
9 area?

10 A There is a lot over there. There's like nothing but
11 shrubs and stuff growing, and it was just basically
12 nothing but wire there.

13 Q Okay. And you kept Mist in a little kennel or a
14 little cage at night and during the daytime, you kept her
15 on a leash, right?

16 A Yes.

17 Q And I suppose sometimes in the day that you would
18 kind of put a stake in the ground or something and put a
19 chain kind of, when you were at school or what not or how
20 would they keep her?

21 A No, she stayed in the pen.

22 Q Even during the day?

23 A Even during the day.

24 Q Okay. So there wasn't like a long chain that --

25 A No.

1 Q -- it was just tied up? And Mist is a
2 part-lab/part-collie mix?

3 A Yes.

4 Q Okay. Now, I thought I heard that you sometimes play
5 with what you call the bigger dogs, the blue ticks --

6 A Yes.

7 Q -- which are the hounds?

8 A Yes.

9 Q Okay. So sometimes that they would be in your yard,
10 too, doing the playing?

11 A No. We only keep them down there at my Uncle
12 Stephen's house.

13 Q Okay. Had you had any problems with Mr. Bedenbaugh,
14 your neighbor, prior to then, prior to?

15 A Before then?

16 Q Yes, ma'am.

17 A No.

18 Q Okay. And is that the back of his house we can kind
19 of, if you need to step down and see, but is that kind of
20 the back of the house where this, where he was?

21 A Yes.

22 Q And you saw him sitting on the porch when you ran
23 over there?

24 A Yes.

25 Q Sitting on the steps or sitting on the porch?

1 A He was on the porch.

2 Q Okay. Do you recall whether he was sitting in a
3 chair or was he sitting just on the --

4 A No.

5 Q -- just on the porch himself?

6 A He was sitting in a chair, but as I grabbed the dog,
7 he got up.

8 Q Okay. Do you recall what he was wearing?

9 A In a chair, right beside the door.

10 Q But do you recall what he was wearing?

11 A No.

12 Q Okay. And was it cold?

13 A I didn't like to look directly at him.

14 Q Did, and so you kind of just caught him out the side
15 of your eye looking at you? When you're saying the deer
16 ran through your yard, the, did you immediately chase Mist
17 when she took off after the deer?

18 A Yes.

19 Q Okay. So Mr. Bedenbaugh would already have been on
20 his, I'm guessing if you're in the middle of your yard and
21 to chase a dog, you would have gotten there in just a few
22 seconds?

23 A Yes.

24 Q It wouldn't have taken you very long to get to the
25 edge of your yard, would it?

1 A No.

2 Q Were you running after Mist?

3 A Yes.

4 Q Okay.

5 A Yes, because our yard is fairly big.

6 Q Now, I believe you told the police officers that Mist
7 had been getting over that fence is the reason that y'all
8 kept him in the kennel?

9 A No. We had to put him in the kennel because like all
10 collies, they love to run. And we could not put her on a
11 leash out in the yard because it was too cold at that
12 time.

13 Q You don't recall telling the deputies that Mist has
14 to be kept because she gets over that fence; she could
15 climb the fence?

16 A She cannot climb the fence. She can jump over the
17 old fence.

18 Q The old one. I'm talking about the old fence.

19 A The old fence, she could jump over it.

20 Q Okay.

21 A But we normally would keep her in our yard.

22 Q Okay. So because was jumping the fence or climbing
23 the fence was why, and that there were gaps in it was why
24 y'all had it kept up in the first place?

25 A No. We had her kept up in the first place in that

1 one pen was the one when we went to the school, so she
2 wouldn't use the bathroom inside the house.

3 Q Okay.

4 A Because at that time, she was still a puppy, and she
5 was not potty-trained.

6 Q Right. But you couldn't let her run in the yard
7 without being tied up or in the kennel, because she could
8 get out?

9 A She would sometimes run, but she normally listens.

10 Q All right. And to you and your family, she's a very
11 friendly dog, right?

12 A Yes.

13 Q Okay. And you've still got her?

14 A Yes, we do.

15 Q Okay. And your house is kind of a block away from
16 the old school where the city police chief, his office is?

17 A I believe so.

18 Q Okay. It's kind of in the Downtown area, right
19 behind the Downtown area in Prosperity?

20 A Is it like that courthouse center.

21 Q The courthouse.

22 A Yes.

23 Q You're like a block away from the courthouse?

24 A Yes.

25 MR. VERNER: Okay. One second, Your Honor. I'm just

1 going to check my notes real quick, and then I'm going to
2 let you go.

3 Q Okay. And just as part of this investigation, you
4 wrote down a statement of what happened for the police
5 officers?

6 A Yes.

7 MS. VERNER: Okay. Thank you, Miss C. . If Mr.
8 Scott has any follow-up questions, he's allowed to ask you
9 a couple of more, too.

10 REDIRECT EXAMINATION

11 By Mr. Scott:

12 Q All right. Mist, your collie/lab mix, what kind of
13 behavior or would you describe or assign to Mist?

14 A Energetic, but she will still listen to you.

15 Q Okay. Has she ever bitten you or anything?

16 A No.

17 Q Okay. To your knowledge, has she attacked anybody or
18 bitten anybody before, anything like that?

19 A No.

20 Q Okay. Playful dog?

21 A Yes.

22 Q But during the day you keep her in a little kind of a
23 kennel there, is that what you said?

24 A Yes, while I'm at school.

25 MR. SCOTT: Okay. One second.

1 Q I've got, I'm going to print a physical copy, but
2 this is going to be State's number 8. All right. Aleah,
3 come down here. This is a different view. Do you
4 recognize what this is?

5 A Yes.

6 Q Speak up loudly.

7 A Yes.

8 Q And you see your house?

9 A Yes. It's right here.

10 Q Okay. And, again, what's all that stuff in the
11 middle of your yard?

12 A This is where our swing and fire pit is and right up
13 through here is our agility course.

14 Q Okay. Fire pit and agility course, and what is that,
15 the green kind of awning down there?

16 A This is mist's cage.

17 Q Mist's cage, and it's kind of a pen or a kennel kind
18 of thing?

19 A Yes.

20 Q That's where the dog is kept during the daytime?

21 A Yes.

22 Q Okay. Even still now that y'all've got the six-foot
23 fence?

24 A Yes.

25 Q And just one more time point to where Mr.

1 Bedenbaugh's house was?

2 A Right here.

3 Q Okay. In this picture, show me the direction where
4 the deer went running?

5 A First, it somehow came up through here and ran
6 through our yard, jumped over here and kept going across
7 the road.

8 Q Okay. Thank you.

9 MR. SCOTT: All right. Thanks, Aleah. That's all
10 the questions I have. Your Honor, the State would offer
11 number 8.

12 MR. VERNER: Without objection.

13 THE COURT: Without objection. State's 8 will be in
14 evidence.

15 (Whereupon, State's Exhibit number 8 was admitted
16 into evidence.)

17 THE COURT: All right. Mr. Scott, call your next
18 witness, please.

19 MR. SCOTT: Michael C. .

20 MICHAEL C. , being
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 By Mr. Scott:

24 Q Okay. Michael, and the most important thing is to
25 speak loudly. How old are you?

1 A I'm twelve years old.

2 Q Okay. And where do you go to school?

3 A [REDACTED]

4 Q Okay. Do you remember this day that we're talking
5 about here today?

6 A Yes, sir.

7 Q Okay. Were you living in the same house in November
8 last year that you live in today?

9 A Yes, sir.

10 Q Do you know your address?

11 A [REDACTED]

12 Q [REDACTED]

13 A Yes, sir.

14 Q What do you remember about that day?

15 A Me and Aleah were playing in the backyard, and a deer
16 ran through the woods in our backyard and took off into
17 Mr. Bedenbaugh's yard. And Mist ripped the leash out of
18 Aleah's hand and took off running after the deer.

19 Q Okay. And do you remember where you were standing
20 when the dog first took off?

21 A I was stand, I was following Aleah with Mist.

22 Q Okay. And the dog was running after the deer you
23 say?

24 A Yes, sir.

25 Q In what direction was the dog running?

1 A It was, it went through the woods and took off into
2 Mr. Bedenbaugh's yard.

3 Q Okay. Did you know Mr. Bedenbaugh before this?

4 A No, sir.

5 Q Okay. So you followed trying to go get Mist?

6 A Yes, sir.

7 Q And who got to Mist first?

8 A Aleah did.

9 Q Okay. And did the dog go into Mr. Bedenbaugh's yard?

10 A It, like it's feet, and then it turned around, it
11 turned around and turned into Mr. Daniel's yard.

12 Q Speak up a little bit. It's feet hit his property,
13 and then he turned around and went where?

14 A To Mr. Daniel's yard.

15 Q Daniel's yard? Is that another neighbor of yours?

16 A Yes, sir.

17 Q Okay. What yard was it or where was Aleah when she
18 finally caught the dog?

19 A She was in Mr. Daniel's yard.

20 Q Okay. And what did you see?

21 A He had the rifle at his shoulder like he was fixing
22 to shoot.

23 Q Wait a minute. Who's he?

24 A Mr. Bedenbaugh.

25 Q Okay. You saw him. At what point did you look up

1 and see Mr. Bedenbaugh?

2 A I was following Aleah, and then I looked up, and I
3 saw him. And then I yelled to Aleah that, you know, the
4 gun and running toward mist and her.

5 Q Okay. What made you look up at Mr. Bedenbaugh?

6 A I just heard, when he got up, I looked at him and
7 just told her--

8 Q You looked up at him and what?

9 A I looked at, I was looking at Aleah. Then, I looked
10 over there towards him and saw him get up, and I yelled to
11 Aleah to run.

12 Q Okay. And did he say anything?

13 A He yelled, if y'all come back in this yard, I'm going
14 to shoot you and your dog.

15 Q Okay. But what did you do, all right. So did he
16 yell that, and then you looked at him or did you look at
17 him, and then he yelled it? Do you, or do you remember
18 what order those happened?

19 A I don't remember what order it happened.

20 Q Okay. When you looked at him and he had the rifle,
21 first of all, describe the rifle from what you remember.

22 A It had a big black scope on it.

23 Q Okay.

24 A And that's all, really all I saw was a big scope on
25 it.

1 Q Okay. Do you remember how he was holding it when you
2 saw him?

3 A He was holding it at his shoulder like he was ready,
4 going to shoot.

5 Q Holding it on his shoulder like he was ready to
6 shoot. And who was he pointing it at?

7 A Aleah and Mist.

8 Q Aleah and Mist, the dog?

9 A Yes, sir.

10 Q Okay. And did he point it at you?

11 A I'm not sure if he saw me or not.

12 Q Okay. When you saw him point it at Aleah, what did
13 you yell?

14 A I yelled that he had a gun, and then she took off
15 running with Mist towards the house.

16 Q And what did you do?

17 A I ran back to the house and went and got Michelle.

18 Q Okay. Did you go back out with Michelle once she
19 went back out?

20 A No, sir. I stayed inside.

21 Q Okay. So now is he holding the gun kind of, let me
22 show you something.

23 MR. VERNER: And, Your Honor, I think this is what
24 we, can we approach.

25 THE COURT: Yes.

1 (Whereupon, a bench conference was held in the
2 presence of the jury but out of the hearing of the
3 jury.)

4 THE COURT: I'm sorry, Solicitor. Please continue.

5 MR. SCOTT: Thank you, Your Honor.

6 Q All right. Michael, just tell, and so you said it
7 had a big black scope on it and what else do you remember
8 about it?

9 A That, he was looking through the scope.

10 Q Okay. Well, I just want to be clear that he wasn't
11 holding it with the barrel pointed up to the sky?

12 A No, sir.

13 Q Was he holding it with the barrel pointing down at
14 the ground?

15 A No, sir. He was holding it like he was fixing to
16 shoot.

17 Q Okay. And was it aimed, point it like he was fixing
18 to shoot, you say?

19 A Yes, sir.

20 Q Okay. You told your mother, or not your mother, but
21 rather Michelle what he had said?

22 A Yes, sir.

23 Q And what did she do?

24 A She went outside and to look at the fence where Mist
25 got through, and then he said the same thing to her that

1 he said to us.

2 Q Were you out there when he said it the next time?

3 A No.

4 Q Okay. Why didn't you go back outside?

5 A I was still inside when, and I was too scared to go
6 back outside.

7 Q Okay. Did he scare you when that happened?

8 A Yes, sir.

9 Q Do you, have you seen him since this happened?

10 A No, sir.

11 Q Why not?

12 A Because I haven't looked over at his house. I just
13 pay attention to Aleah and the dog.

14 Q Why don't you look at his house anymore?

15 A I don't know. I just don't like to look over there.

16 Q Why not?

17 A Because every time when I look over there, it reminds
18 me of what happened.

19 Q Okay. All right. Do you see the, do you see the guy
20 here today that pointed the gun at Aleah?

21 A Yes, sir.

22 Q Okay. Where is he?

23 A He's over there.

24 Q What color shirt?

25 A White.

1 THE COURT: The record will reflect that he has
2 identified the Defendant.

3 Q Let me ask what, how does Mist typically behave?

4 A She is playful and she's a puppy. She's tries to
5 play.

6 Q Has she ever growled at you? Do you know if she's
7 bitten anybody before or anything like that?

8 A No, sir.

9 Q If, if we brought the dog in here, would it be, would
10 you expect it to, what would you expect it to do? What
11 does it do when you go home and greet it during, after
12 school?

13 A The dog will try to lick you.

14 Q Try to lick you, is that what you said. All right.

15 MR. SCOTT: Thank you, Michael. Answer any questions
16 Mr. Verner has for you.

17 CROSS-EXAMINATION

18 By Mr. Verner:

19 Q All right. Now, what's your birthday?

20 A [REDACTED]

21 Q [REDACTED]

22 A Yes, sir.

23 Q Okay. So you had just turned eleven or you were
24 about to turn twelve?

25 A I was about to turn thirteen.

1 Q Okay. So you were twelve last year?

2 A Yes, sir.

3 Q All right. Just describe for me the back part of
4 your yard. There was an old smaller fence there, right?

5 A Yes, sir.

6 Q What was, was there anything growing against the
7 fence?

8 A There was trees and vines.

9 Q Do y'all have kind of a hedge between, when that was
10 fully grown, you couldn't really even see Mr. Bedenbaugh's
11 house from your house, could you, because you would have
12 to see through all the hedges and bushes?

13 A Yes, sir.

14 Q Okay. But y'all have since cut that down and put up
15 a six-foot fence?

16 A Yes, sir.

17 Q Okay. Now, did you go in Mr. Bedenbaugh's yard?

18 A No, sir.

19 Q Okay. Would you have had to go into his yard? Where
20 were, where was Mr. Bedenbaugh when you're saying you
21 first saw him?

22 A He was on the porch.

23 Q On the porch. Was he sitting or was he standing?

24 A When I saw him, he was standing up.

25 Q Were, were there any like furniture on that porch?

1 A There was a chair on the back porch.

2 Q Okay. How big is the porch behind his mobile home?

3 A It's, I can't explain how big it was. I don't know.

4 Q If you can step down, you can kind of walk off how
5 big that porch is. Can you do that for me? How many
6 people could stand on that porch at the same time?

7 A Like about five or six.

8 Q Five or six people. Okay. You can sit down,
9 Michael. Is the porch longer than that table?

10 A Yes, sir.

11 Q Okay. Is it a lot longer than that table?

12 A I don't know.

13 Q All right. I think you testified for the prosecutor
14 that when Mist took off running, Aleah was first behind
15 him, and then you were behind Aleah?

16 A Yes, sir.

17 Q Where did Aleah cross over the fence, was that on the
18 Bedenbaugh property?

19 A It was like in between his yard and Mr. Daniel's
20 yard.

21 Q Mr. Daniel's?

22 A Yes, sir.

23 Q Okay. So there's another house, looking at Mr.
24 Bedenbaugh's house from your property, the Daniel's house
25 is on the left or on the right?

1 A I think it's on the right, I mean. His house is over
2 here and Mr. Daniel's is, right beside of his.

3 Q Okay. Well, you're indicating to me, I guess, that
4 it would be on his left as you look at it. Is that what
5 you're saying?

6 A Yes, sir.

7 Q Because you were pointing this way?

8 A Yes, sir.

9 Q So was anybody else out there that day?

10 A No, sir.

11 Q Do you remember what, did you have to jump the fence
12 or did you just go through an opening or how'd you get
13 across the fence?

14 A I didn't cross the fence.

15 Q So you were still in your yard?

16 A Yes, sir.

17 Q Okay. Well, how do you see through the bushes
18 towards Mr. Bedenbaugh's property?

19 A There is a hole where a tree used to be that you can
20 see in his yard.

21 Q You're saying Mr. Bedenbaugh didn't see you though?

22 A No, sir.

23 Q Or didn't indicate that he did?

24 A No, sir.

25 Q Had you seen him out on his property prior to Mist

1 running away?

2 A No, sir.

3 Q Had you seen, in the past, Mist being crossed the
4 line; have y'all had to go get her before?

5 A No, sir.

6 Q Do you remember or just you're sure she hadn't been
7 getting across or just you don't remember?

8 A She hasn't been getting across.

9 Q Okay. Was Mr. Bedenbaugh sitting on the property
10 with the rifle?

11 A He was on, he had to go inside and grab, grab it.

12 Q Well, how long were you watching?

13 A About not even a minute.

14 Q Well, I mean, why are you watching Mr. Bedenbaugh; is
15 he saying anything to you?

16 A I was watching Mist, then I looked at him, then he--

17 Q -- then he what?

18 A He was saying that if we come back into his yard he
19 would shoot us and the dog.

20 Q Okay. When you first, you said you saw him for you
21 said a minute. But, I mean, when you first saw him, what
22 was he doing?

23 A He was standing on the porch.

24 Q Do you remember what he was wearing?

25 A No, sir.

1 Q Do you remember what the weather was like then?

2 A It was really sunny.

3 Q Did he have a short-sleeve shirt on or long-sleeve
4 shirt on?

5 A I don't remember.

6 Q Do you remember whether he had short pants or long
7 pants?

8 A No, sir.

9 Q Do you remember whether he was wearing a hat?

10 A No, sir.

11 Q Were you scared when you seen him?

12 A Yes, sir.

13 Q And what did you do when he first yelled out at you?

14 A I turned around and started to --

15 Q Turned around and what?

16 A I turned around and started to go to my house.

17 Q Okay. Did he startle you? Did you see him before he
18 said something or had he said something first, and then
19 that's what drew your attention to him?

20 A He, I looked at him and then he said, because I heard
21 him walk inside and I heard the screen door shut.

22 Q Okay. I'm sorry, Michael. Say that again for me. I
23 couldn't hear.

24 A I heard the door shut when he got up and went inside.

25 Q Was that after you left or when did he go inside?

1 A It was when Aleah and Mist took off through his yard.

2 Q And he went inside when?

3 A When Aleah and Mist went into, through his yard.

4 Q As soon as they ran in through his yard?

5 A Yes, sir.

6 Q So you saw him as soon as you were in his yard?

7 A Yes, sir.

8 Q Okay. How far after this did you go?

9 A As soon as I saw him when Aleah and Mist almost got
10 about to him.

11 Q And do you recall him telling your mother that maybe
12 they ought to call the police about the dog?

13 A I wasn't outside.

14 Q Okay. Well, when your mother went out, you didn't go
15 outside?

16 A No, sir.

17 Q Okay. But was there anybody else out there that day
18 playing with y'all or in Mr. Bedenbaugh's yard or that
19 y'all saw?

20 A It was just me and Aleah.

21 MR. VERNER: All right. Thank you, Michael. Mr.
22 Scott might have some more.

23 MR. SCOTT: Nothing further, Your Honor. Thank you.

24 MR. VERNER: Yes, sir.

25 THE COURT: All right. Solicitor, do we have another

1 brief witness or are we at a good stopping point.

2 MR. SCOTT: This would be a good stopping point.

3 THE COURT: Ladies and gentlemen of the jury, we're
4 going to go ahead and take a break. I'll remind you what
5 I said a few moments ago. Please don't talk about the
6 case with anyone. When you go home tonight, obviously,
7 your husband, wife, whoever, they know you have jury duty,
8 okay. It's perfectly fine to tell them that yes, I got
9 selected on a case because that's the first thing they're
10 going to ask about. But when they ask, well, what kind of
11 case is it, that's where you draw the line, okay. The
12 decision on this case belongs to y'all, the thirteen of
13 you. It doesn't belong to your spouse, significant other,
14 whoever the case will be. So enjoy your evening and don't
15 talk about the case. Try to stay dry. It looks like
16 we've got on and off rain happening this evening. And if
17 you would, I'm going to ask that you be back at the
18 courthouse tomorrow morning. I'm going to ask that you be
19 downstairs. Go ahead and meet up at the same place that
20 you did this afternoon in the Grand Jury room. I have a
21 few other things that I have to be doing tomorrow morning.
22 So, if you would, go ahead and meet up in the Grand Jury
23 room and, hopefully, we'll be in a position to get you out
24 here right around 10:00 o'clock, okay. With that, enjoy
25 your evening. Thank you very much for your attention.

1 You are excused for the night.

2 (Whereupon, the jury is excused from open court for
3 the day.)

4 THE COURT: The jury is out. We will reconvene on
5 this tomorrow morning at 9:00 o'clock. And we can go
6 ahead and address the motions that you want to raise. You
7 said it will take about an hour or two is what you expect,
8 and then we'll launch into this at 10:00 o'clock, if
9 that's okay.

10 MR. SCOTT: So starting at 9:00 a.m.?

11 THE COURT: Is that okay with you? Okay with you,
12 Mr. Scott?

13 MR. SCOTT: I doubt the two officers, I don't think
14 they're going to take an hour, but I mean I just have
15 these two witnesses that can handle both motions.

16 THE COURT: Okay.

17 MR. SCOTT: But if it takes less, it takes less.

18 THE COURT: Did you want to go ahead and try and do
19 it tonight?

20 MR. SCOTT: I'd like to. I mean, they're here.
21 They've been here in anticipation of doing it. Oh, well,
22 I don't know what their shifts are. These are road
23 deputies, too, Your Honor. Oh, they're working tomorrow
24 anyway, so whatever.

25 MR. VERNER: My preference is tomorrow, but my guy is

1 going to testify.

2 THE COURT: We'll start in the morning around 10:00
3 o'clock then and try and knock it out as quickly as
4 possible. Y'all have a good night. Thank you.

5 (Whereupon, the trial will resume the next day at
6 9:00 a.m.)

7 September 13, 2016

8 THE COURT: All right. We're going to go back on the
9 record in the State versus Mr. Bedenbaugh. The Defendant,
10 of course, is present. Counsel, I'm told the jury is
11 here. Mr. Verner indicated to me a few moments ago that
12 he would be withdrawing the pretrial motions, so there is
13 no need for the various matters that we were going to
14 address this morning at 9:00. I think the jury is here,
15 correct?

16 CLERK OF COURT: Yes.

17 THE COURT: Let's have them out.

18 (Whereupon, the jury enters open court at
19 approximately 10:10 a.m.)

20 THE COURT: The record will reflect that the jury is
21 back and seated. Ladies and gentlemen, I trust that y'all
22 had a pleasant evening last night. Of course, we're still
23 in the State's case-in-chief in the trial of the State
24 versus Mr. Bedenbaugh. So at this point in time,
25 Solicitor, if you'll call your next witness.

1 MR. SCOTT: The State calls Michelle Cromer.

2 MICHELLE CROMER, being

3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 By Mr. Scott:

6 Q Michelle, where do you live?

7 A [REDACTED] in Prosperity.

8 Q Okay. Is that where you were living last November?

9 A Yes.

10 Q And who all was living there with you?

11 A Me, Aleah, Michael, Abby, and Sean.

12 Q Okay. And Aleah is your daughter?

13 A Yes.

14 Q Michael is, I guess, your stepson?

15 A Pretty much, yes.

16 Q You know Mr. Bedenbaugh?

17 A I know him now.

18 Q Okay. Yeah. November 15th of last year, did you
19 know him then?

20 A No, I did not.

21 Q Okay. Did something occur that day where you got to
22 know him?

23 A Yes, it did.

24 Q Okay. Tell me about Mist.

25 A Mist is a border collie/lab mix. She's a very gentle

1 dog. She's very sweet..

2 Q Okay. At the time, where was she kept during the
3 day?

4 A And during the day, she was kept in a six-foot kennel
5 at my bedroom window and Aleah's bedroom window.

6 Q Okay. Let me show you State's number 8. Do you
7 recognize that?

8 A Yes.

9 Q Okay. This green awning near the home, what is that?

10 A That would be her kennel.

11 Q Okay. And you said that was outside of your bedroom
12 window?

13 A Yes, sir.

14 Q Okay. So she, at the time she was kept in that
15 kennel during the daytime?

16 A Yes.

17 Q What about at night?

18 A At nighttime because it was November, she would be
19 brought in if it got below 50 degrees.

20 Q Okay. The fence we see there, it's like a six-foot
21 chain-link fence. When was that put in?

22 A Within a week to two weeks, we had Abraham come out
23 and survey our land. That way we know where we could put
24 a fence. After talking to Garrett Lominick, we decided to
25 put the fence up would be our best bet. So probably

1 within two weeks after that, we had the fence put up.

2 Q After what?

3 A After he had surveyed the land that way we knew our
4 property boundaries.

5 Q When did you survey the land?

6 A The next week. We had Abraham come out.

7 Q All right. And I don't think you've answered the
8 question. When did the fence go in?

9 A Within the next month it was up.

10 Q Of what? Next month of what?

11 A November, December.

12 Q Okay.

13 A Yes.

14 Q So December of 2015, the fence went up. All right.
15 Well, November 15th, what we're here in trial for, you
16 remember that?

17 A Yes.

18 Q All right. Tell me what you remember?

19 A I was sitting inside watching TV. The kids come in
20 shaking, white as ghosts. I'm like, what is wrong with
21 y'all. And they're like, Mist got out of Aleah's hand
22 chasing a deer, and then once she was chasing the deer,
23 she had to go into Mr. Bedenbaugh's yard to grab the dog
24 back. Well, Michael said that he looked up and Mr.
25 Bedenbaugh had a gun and pointed it at them and threatened

1 to shoot them. So I went outside to see where my dog got
2 through the old rusted gate and to see what was going on.
3 And I asked him personally what the problem was and he
4 told me if my children, or my dog, or myself come back in
5 his yard, he would shoot us.

6 Q Okay. His home, in this picture, I know there's a
7 bunch of trees. Whereabouts is his house in this picture?

8 A In this left corner.

9 Q The left corner. Is this somewhere in here is what
10 you're showing?

11 A Yes.

12 Q All right. And then if we look at State's number 2,
13 what is that a picture of?

14 A That is a picture of his back yard.

15 Q Okay. Is that your back left corner of your fenced
16 in yard?

17 A Yes.

18 Q And the house we're looking at, what is that house?

19 A That is Mr. Bedenbaugh's house.

20 Q Okay. So after the kids came in and you said they
21 were shaking and white as ghosts and they told you what
22 happened, what did you do?

23 A I went back inside after he told me that, and I told
24 him, I said, that's okay. And I walked inside and--

25 Q Wait. I'm sorry. Back up. The kids tell you what

1 happened and they're shaking and they are white as a ghost
2 you said. What did you do after they told you that?

3 A I went outside to see where the dog had went through.

4 Q Okay.

5 A He was outside. I asked him what his problem was and
6 that's when he told me to my face that if my kids, my dog,
7 or me come back on his property, he would shoot them.

8 Q All right. Where were you standing whenever this
9 exchange happened?

10 A In where the fence had come together, the old rusted
11 fence.

12 Q Is that in this picture anywhere?

13 A It would be up in this area, and there is a path
14 going up through here.

15 Q Okay. So you're pointing kind of towards the back
16 corner of this fence, is what you're saying?

17 A Yes.

18 Q Right there where I'm pointing?

19 A Yes.

20 Q Okay. So you were standing about where that corner
21 is and he, where was he standing?

22 A On his back porch.

23 Q Okay. And tell, one more time, because I keep
24 speaking over you, but what did he say?

25 A He said that if my kids, my dog, or me come back on

1 his property he would shoot us.

2 Q And what did you do?

3 A I went back in the house and called the law.

4 Q And were you there when law enforcement arrived?

5 A Yes, I was. I stayed on the phone with them the
6 whole time until they got there.

7 Q Mist, and I was asking you earlier, what kind of dog
8 is Mist?

9 A Border collie/lab mix.

10 Q And, I think, demeanor. What is the general demeanor
11 of the dog?

12 A She is a very hyper dog, but she is a very loving
13 dog.

14 Q Okay. Ever have any problems with viciousness or
15 anything?

16 A None at all.

17 Q Did you bring the dog today?

18 A Yes.

19 Q Okay. And the dog is here in the courtroom or court
20 house rather?

21 A Yes.

22 Q Okay. If we brought it in the courtroom, what would
23 you expect it to do?

24 A She would be hyper, but she would not try to attack
25 or bite anyone.

1 MR. SCOTT: Beg the Court's indulgence.

2 THE COURT: Yes, sir.

3 (Whereupon, the Dog, Mist, was brought into the
4 courtroom.)

5 Q Who's this guy or girl rather.

6 A This is Mist.

7 Q Okay. And how old is Mist?

8 A Two-and-a-half.

9 Q Okay. And kept inside the kennel during the day is
10 what you're saying?

11 A Yes. And nighttime and brought in in the wintertime.

12 Q Okay. Have you ever seen this dog bite anybody or --

13 A Never.

14 Q -- growl at anybody?

15 A Never.

16 Q Okay. You ever heard of it described as being a
17 vicious dog?

18 A Never.

19 Q How old was it at the time? You said it's two now?

20 A Two-and-a-half.

21 Q So about a one-year-old puppy last year?

22 A Yeah.

23 Q Okay. I think that's all.

24 MR. SCOTT: I'm done with the dog.

25 THE COURT: We can bring the, we can bring the dog

1 back if need be.

2 Q All right. So after, and did you call the police?

3 A Yes,, I did.

4 Q And were you there when they arrived?

5 A Yes, I was.

6 Q Okay. And what happened once the police got done?

7 A I talked to him and told him what had happened and

8 they set it up and they proceeded next-door to Mr.

9 Bedenbaugh's house.

10 Q Okay. And did you say anything else?

11 A No. We stayed toward the front of the house while

12 they done all that.

13 Q Okay. Had any trouble since then?

14 A I've had the law called on the dogs a couple, the dog

15 a couple of times.

16 Q Okay. And what happened with that?

17 A Just the cops come out to make him quit barking.

18 Q Okay. And who's calling you about the dog?

19 A Mr. Bedenbaugh.

20 Q Okay. And does your dog bark?

21 A She does bark, but not constantly. But she does

22 bark. She's a dog. She's going to bark.

23 Q Okay. Any further confrontations like this on this

24 date?

25 A No.

1 Q Okay.

2 A And before all of this happened, he never called the
3 law on my dog for barking.

4 Q Okay. So it all just happened once the kids went on
5 his property?

6 A Yes.

7 MR. SCOTT: Thank you. Nothing further. Answer any
8 questions Mr. Verner has for you.

9 MR. VERNER: May I approach, Your Honor?

10 THE COURT: Please.

11 CROSS-EXAMINATION

12 By Mr. Verner:

13 Q And you wrote a statement for law enforcement when
14 this happened, Ms. Cromer?

15 A Yes.

16 Q Your very last sentence, what is that?

17 A This started last summer.

18 Q Okay. What did you mean by that?

19 A Ah--

20 Q I take it to mean in the context that you're, you've
21 had a running dispute with the man?

22 A No, I had not.

23 Q When you say this all started last summer.

24 A No.

25 Q Well, what do you mean by that?

1 A The way I was writing this day. I went to see what
2 was going on in the yard and that's what, this started
3 last summer. It started when this happened, not the last
4 summer.

5 Q When this happened, the day you called the police was
6 November 15th, right?

7 A Correct.

8 Q November is not summer?

9 A Correct.

10 Q And you wrote your statement when, the same day or?

11 A The same day that this happened.

12 Q In November?

13 A Correct.

14 Q Okay. Well, what do you mean by this all started in
15 the summer?

16 A I am not sure what I was writing. At this point, I
17 was shaken up. My kids were scared. I was scared.

18 Q All right. I take that in the context when you start
19 talking about your neighbor or this incident you state it
20 all started with summer that there is some kind of run-in?

21 A No, I never knew him before this. I never knew him
22 before this.

23 Q Okay. Well, what do you mean by it all started this
24 summer or it started in the summer?

25 A I'm not sure. Like I said, I was shook up when I was

1 writing this for the safety of my children. I had no
2 priors with this man.

3 Q Did the officer ask you a question that you think you
4 might have been responding to or was that just, he just
5 gave you a piece of paper and said write down what
6 happened?

7 A Just write down what happened, and we were trying to
8 also help the kids write theirs, because Michael was so
9 shook up that he could not even write his own statement or
10 give his birthdate.

11 Q Okay. So you were helping him write his, too?

12 A Yes.

13 Q Okay. So you don't recall what you meant by that?

14 A No, I do not.

15 Q No disputes with the dog getting in his property
16 before?

17 A Never.

18 Q Okay. Are you sure that dog is a border collie?

19 A I am very sure that dog is a border collie. The
20 people that brought it is sitting in this room. It's a
21 border collie/lab mix. It has veterinarian papers that I
22 do not have with me, but it's been to the vet. We know
23 what the dog is.

24 Q It seems to have Rottweiler colors, though, doesn't
25 it?

1 A No, sir.

2 Q How big is it?

3 A It does look, it seemed to look that way, but that is
4 a border collie/lab mix.

5 Q I've got a border collie and that doesn't appear to
6 have the typical border collie--

7 A Is yours mixed with a lab?

8 Q But labs are an all-black dog, right?

9 A No. They come in brown, gray, and yellow.

10 Q Or a chocolate lab or a black lab, correct?

11 A They are chocolate, yellow, brown, and gray.

12 Q And they're typically one-colored dogs?

13 A Correct.

14 Q Okay.

15 A And border collies come in brown and black.

16 Q Correct. Or all kinds of varieties, too?

17 A Correct.

18 Q But border collie is a long-haired dog, though?

19 A Correct. Labs are a short-haired dog.

20 Q Right. And labs don't have that short yellow, tan
21 chest color and they don't have the yellow across the
22 face?

23 A You don't know where the color is going to go.

24 Q Okay.

25 THE COURT: Okay. Let's watch talking over each

1 other, Mr. Verner.

2 REPORTER: Judge, I didn't get that.

3 MR. VERNER: Yes, sir.

4 REPORTER: I didn't get that last question or answer.

5 Q The dog at least appears, whether it is or not, it
6 appears to have Rottweiler colors in it and patterns?

7 A Correct.

8 Q Okay. But you're saying that would be a mistake?

9 A I did, yes.

10 Q And Mr. Bedenbaugh certainly wouldn't be familiar
11 with your dog, would he?

12 A No. Because the dog has always been kept up or on a
13 leash when it was in the yard.

14 Q And did Mr. Bedenbaugh have dogs himself?

15 A I hear dogs over there. I've never actually seen
16 them. I've never got that close to his house to see them.

17 Q So you don't know if he has Chihuahuas or small dogs
18 over there?

19 A They sound like little small Chihuahuas.

20 Q When did you bring the dog to the courthouse today?

21 A When?

22 Q Yes, ma'am. When you arrived?

23 A When I came.

24 Q When did you come to the courthouse today?

25 A At 9:00.

1 Q At 9:00 and you brought the dog with you?

2 A My mother and stepfather brought it for me.

3 Q Okay. And so the dog has been sitting in the
4 prosecutor's office for the last hour, to an hour-and-half
5 or so?

6 A Roughly, yeah.

7 Q Okay. And the prosecutors were able to kind of
8 approach the dog and make friends with it? I didn't hear
9 your answer.

10 A Were they able to? Most of the time they've been out
11 here. We brought the dog in, and they've been out here.

12 Q Okay. But it was in the, the dog is on a leash, I
13 suppose?

14 A When we walked him in, yes.

15 Q Okay. And the family members brought the dog in?

16 A Yes.

17 Q Okay. They're people who the dog are familiar with.
18 And then in that setting, the prosecutors, I suppose, came
19 up and at least briefly introduced themselves to the dog
20 or patted the dog?

21 A Yes.

22 Q Okay. And on November 15th, the dog was not, I mean,
23 the dog was in a different state then, right?

24 A He was on a leash when all of this happened. He
25 yanked out of my daughter's hand.

1 Q According to the, to your daughter, is that the dog
2 was on a leash, right?

3 A Correct.

4 Q And she said that the dog was running agility stunts?

5 A Yes. They were playing in the backyard, and a deer
6 run across the yard.

7 Q And then took off after a deer?

8 A Correct.

9 Q And then jumped a fence or climbed under a fence?

10 A Correct.

11 Q And then so, and then it's startled by the deer or
12 agitated by the deer?

13 A Yes, it went after the deer.

14 Q And then there are other little dogs barking?

15 A I was not out there. I cannot say.

16 Q But that dog wasn't in the same sterile environment
17 in November of '15 when he's chasing a deer than when the
18 prosecutors brought him to the court house a second ago?

19 A That's the way that dog always acts. The way, when
20 they brought him in here, you can go get him right now.
21 You're not familiar with him, he is going to do the same
22 with you.

23 Q Okay. Even when it's agitated and chasing a deer?

24 A He was chasing the deer because he's a dog.

25 Q Okay.

1 A We do, we have been trying to train him to hunt.

2 Q To hunt what?

3 A To trail, blood trails for deer and so on.

4 Q So y'all are a hunting family?

5 A Yes.

6 Q Okay. And that's not uncommon? Do y'all have rifles
7 and stuff?

8 A No, not at my house. They are all kept at my
9 brother's in Pomaria.

10 Q Is that because you have small children in your
11 house?

12 A Correct.

13 Q Okay. But you don't have hunting rifles and what not
14 in your possession or they're not at home?

15 A They're not at home. They are locked up at my
16 brother's.

17 Q Your boyfriend keeps his at his brother's house or
18 your brother's house?

19 A My boyfriend doesn't have any.

20 Q Well, who's the hunter?

21 A Me and my daughter.

22 Q Oh, you're the hunter?

23 A Yes, sir. Well, actually, my daughter is the hunter.
24 She goes coon hunting, rabbit hunting, you name it, deer
25 hunting.

1 Q And not uncommon in Prosperity for a lot of people to
2 have, to be hunters?

3 A Correct. And we have 97 acres in Pomaria that we
4 hunt.

5 Q Okay. And you would think that probably most of your
6 neighbors have at least hunting rifles in their home?

7 A I would assume. I mean, I can't say if they do. I
8 mean, I don't go in their houses looking for guns.

9 Q You don't recall getting into a confrontation about
10 Mr. Bedenbaugh suggesting that he's going to call the
11 police over, about a dog?

12 A No.

13 Q But that hadn't been broached before November 15th or
14 on that day?

15 A No.

16 Q No issues about the dog, your dog trying to climb
17 under the fence where his Chihuahuas are, digging under
18 the fence?

19 A No.

20 Q Well, how long had you been at that location when you
21 moved there?

22 A When I moved there--

23 Q Prior to November 15th of last year.

24 A Prior; two-and-a-half, three years.

25 Q About two or three years?

1 A Yes.

2 Q Okay. And you helped the kids because they were
3 nervous writing their statements?

4 A We helped them as far as what they were supposed to
5 be writing down.

6 Q Okay.

7 A Of like what happened. They were nervous. They were
8 shaking. One has dyslexia. The other one has, is in the
9 IEP program, because they get confused very easily.

10 Q And Aleah knew that the dog had been climbing that
11 fence, right?

12 A Climbing what fence?

13 Q She wrote in her statement that the dog climbs the--

14 A -- the old raggedy fence, yeah.

15 Q Okay.

16 A The dog could get over it.

17 Q Okay. You got a new fence now that's just a few
18 inches shorter than six feet tall?

19 A No, sir. It is six feet tall.

20 Q Okay. And that keeps the dog without--

21 A Without any harm.

22 Q -- being able to.

23 A Yeah. He cannot get over that fence.

24 Q Are y'all still, do you still keep the dog in a
25 kennel during the full time day?

1 A Yes. We don't let him run in the backyard. He stays
2 in his kennel while we are not at home.

3 Q Okay. And why is that?

4 A Because that's where his food, and water, and his
5 house is.

6 Q Okay. But do you have any other dogs?

7 A Yes. I have a Yorkie.

8 Q A Yorkie, so a small dog, too?

9 A Uh-huh.

10 Q Okay.

11 REPORTER: Is that a yes?

12 A Yes. And at this time, I actually, when this
13 happened, I had that dog, two ferrets, and a cat that the
14 dog also lived with.

15 Q Where did you, when the kids came running in where
16 did you go?

17 A Out my back door to the fence to see where the dog
18 got through. He was still on the back porch, and that's
19 when I asked him what was going on.

20 Q Can you step down for a second? Is that the back
21 porch we're talking about?

22 A Right here?

23 Q Yes, ma'am.

24 A Yes.

25 Q All right. How big would you guesstimate that that

1 back porch is?

2 A I have never been close to it, and I really can't see
3 how far, but I'm assuming probably about this wide.

4 Q Okay. And it's no wider, and you can see, it's no
5 wider than the steps going up to the trailer, is it?

6 A I can't really tell.

7 Q Okay. It just, well, there are other photographs but
8 it's not what you would call a deck or anything like that,
9 is it?

10 A No, and no, it's not a huge deck that goes all the
11 way across the back of his house.

12 Q It's about as wide as the steps going up?

13 A It appears in that picture to be.

14 Q Okay. And it's maybe two-to-four feet? It wouldn't
15 be more than one step on that porch to get to the ground?

16 A I have never been close enough to really be able to
17 tell you an honest answer.

18 Q Was that the same general area we're looking at in
19 State's Exhibit number 2. Just keep that photograph up
20 there. Where were you standing when you spoke to Mr.
21 Bedenbaugh?

22 A In this area.

23 Q Okay. A little bit further towards the corner of the
24 fence line?

25 A Yes. There used to be an old wire fence back behind

1 our new one that came about this high and that's where the
2 dog went over. That's where I was standing when I
3 confronted him.

4 Q Okay. Now, we see it's a little bit overgrown, but
5 was it over, were there like shrubs and bushes?

6 A Where all this right here is, there was shrubs and
7 bushes.

8 Q Okay.

9 A We had all of that taken down to put the fence up.

10 Q Right. But is that the same general location that
11 the old fence was in?

12 A Yes.

13 Q Okay. So it's, it basically followed the same tract
14 that the old fence did?

15 A The old fence is actually a little bit further behind
16 it.

17 Q Towards the Bedenbaugh side?

18 A Yes.

19 Q So you moved it a little bit closer in on your side?

20 A Yes. We brought it in six to, six inches to almost a
21 foot off of his property line. That way, there would be
22 no issues.

23 Q So from the new fence we're looking at, how much
24 further would that be inside of where your fence was?

25 A Probably about a foot.

1 Q I didn't hear you.

2 A About a foot.

3 Q Okay. So that's, basically, the same location --

4 A Basically.

5 Q -- but a foot closer?

6 A It's a foot closer in because we did not want it, we
7 wanted to make sure there was no problem where my fence
8 was, so we brought it off of his property six inches to a
9 foot.

10 Q And when you bought the property two or three years
11 ago, that fence was already there?

12 A The old fence.

13 Q Right.

14 A Correct.

15 Q Okay. And it was hedges and shrubbery and it kind of
16 gave you the privacy?

17 A Yes.

18 Q Okay. Can you estimate how far you would have been
19 from Mr. Bedenbaugh's property or where he was standing on
20 the edge of yours?

21 A Probably from me to him, the guy in the corner.

22 Q Which him are you talking about?

23 A The officer in the very back.

24 Q The very, the officer in the very back?

25 A Yes.

1 Q The deputy?

2 A Yes.

3 Q Can you estimate how far that would be?

4 A No. I can get up and walk it for you.

5 Q And I don't believe that, about thirty yards give or
6 take?

7 A Yeah.

8 MR. VERNER: Thank you, Ms. Cromer.

9 THE COURT: You going to have redirect?

10 REDIRECT EXAMINATION

11 By Mr. Scott:

12 Q You said you have another dog. Did you say it was a
13 Yorkie?

14 A Yes.

15 Q How do Mist and the little dog get along?

16 A Great.

17 Q This is State's number 3. State's number 3, what is
18 that a picture of?

19 A That's the Yorkie.

20 Q Okay. And that's just another is that the kennel
21 that you keep the dog in during the day?

22 A Yes. That's where he stays in during the day and
23 that has also a six-foot fence.

24 Q Okay.

25 MR. VERNER: What exhibit is this?

1 MR. SCOTT: Number 3.

2 MR. VERNER: 3.

3 Q So Mist with the little dogs, they get along okay?

4 A Yes.

5 MR. SCOTT: All right. The State offers number 3 for
6 admission.

7 MR. VERNER: No objection, Your Honor.

8 THE COURT: All right. Without objection, the
9 State's 3 is in evidence.

10 (Whereupon, State's Exhibit number 3 was admitted
11 into evidence.)

12 Q And I just want to, the agility course, I guess, is
13 this something you set up or is this something Aleah set
14 up?

15 A It's something Aleah set up, her and her grandfather
16 made for her to play with.

17 Q State's number 1, what is that a picture of, State's
18 number 1?

19 A The jumps and where she teeter-totters and goes
20 through all the courses that Aleah tells her to jump.

21 Q Okay.

22 A And my fire pit.

23 Q What's this little, it's like a kind of a pitched
24 thing. Does she get the dog to walk up and down that?

25 A Yeah.

1 Q And then what about this, is this, it's like a stump
2 with a stick laying across the top of it?

3 A Yes.

4 Q What is, what does she do with that?

5 A The dog will jump it.

6 Q Okay. So it's just kind of a pretend little show
7 that she does?

8 A Correct. Because her dog is not full-blooded, she
9 cannot show it. She shows my brother's bloodhounds.

10 Q Okay. Is she just having fun with the dog?

11 A Correct.

12 MR. SCOTT: All right. That's State's number 1 we
13 would offer into evidence.

14 THE COURT: I think that's already in.

15 MR. SCOTT: One is?

16 Q Let me show you State's number 2, again, down there.

17 MR. VERNER: It's already in, too.

18 MR. SCOTT: I know.

19 Q State's number 2. All right. This is a, we were
20 just looking at and you were showing where you were. The
21 old fence, do you see the post here in kind of the left
22 side of your picture there? Is that an old fence post to
23 the pre-existing fence?

24 A Yes.

25 Q Okay. So it was a little bit shorter than the

1 six-foot fence you have now?

2 A Oh, yes.

3 Q Okay. And you say about a month after this incident,
4 you went and fenced in the whole backyard?

5 A Correct. Hoping to keep the peace and it be done and
6 over with and no more contact would be made. That way my
7 dog could not get out of the yard, and my children were
8 safe, and knew where their boundaries were.

9 Q Okay. How much did you spend trying to keep the
10 peace?

11 MR. VERNER: Your Honor, that's beyond
12 cross-examination.

13 THE COURT: Go ahead. I think it was opened. I
14 think, go ahead.

15 A I think it was around \$350.00 for the land surveyor
16 to come out, and then another \$3,600.00, right at
17 \$4,000.00 for the fence to be put up.

18 Q Okay.

19 A And we done a lot of the work ourselves.

20 MR. SCOTT: Thank you. Nothing further.

21 MR. VERNER: Just very quickly. Mr. Bentley, would
22 you be able to put number 3 back on the board, please,
23 sir. Do you have the ability, Mr. Bentley, to scroll in
24 on that photograph toward the dog?

25 RECROSS-EXAMINATION

1 By Mr. Verner:

2 Q Now, Ms. Cromer, you're telling me the, if I hadn't
3 met you before and I got a first look at the dog, I
4 wouldn't, would I be crazy to think that that's a
5 Rottweiler?

6 A Well, if you know Rottweiler's, they're a whole lot
7 bigger in mass than this dog is. But yes, he does have
8 the markings of a Rottweiler.

9 Q Okay.

10 A But like I said, he is a border collie and lab mixed.

11 Q Okay. I'm not disputing that it's a nice dog. I'm
12 just saying if I didn't know your dog and it first came up
13 to me, I would be mistaken, but my first general reaction
14 would be that's a Rottweiler and if somebody felt that
15 way, that would be an honest mistake?

16 A It could be.

17 Q Okay. Because a Rottweiler is a large dog?

18 A Just like a person. You don't know a person till you
19 get to know them. You shouldn't just assume.

20 Q Right. And like the pit bull, the Rottweiler has the
21 reputation of being a vicious dog.

22 A A vicious dog.

23 Q Or can be a dangerous dog?

24 A Correct.

25 Q Pit bulls and Rottweilers and sometimes, they're not?

1 A Right. And in my cases, I've never had any dog like
2 that.

3 Q Right.

4 A That's ever been aggressive.

5 Q Right. But an honest stranger coming up to your
6 house and seeing that dog, when somebody comes up to your
7 house and knocks on the door to deliver a package and
8 stuff like that, how do the dogs react?

9 A They're happy-go-lucky. They won't pet it.

10 Q They don't bark at strangers in the house?

11 A No, sir. I've actually had the, when the law was
12 called to my house one time over the dog barking, an
13 officer actually went and got him out of his outside
14 kennel and put him in his inside kennel and he had only
15 been working for the Prosperity police for two weeks. So
16 that was a complete stranger to my dog.

17 Q And that's, you would think, though, that officers
18 have been around dogs a lot more common by going to
19 people's houses routinely, right?

20 A Yeah.

21 Q Okay.

22 A But if he thought that was a Rottweiler, would he
23 just walk up in the dog's pen and grab him?

24 Q Thank you, Ms. Cromer.

25 THE COURT: Ma'am, thank you. You can step down.

1 Call your next witness. Just leave those. You can leave
2 them there on the stand. That's fine.

3 MS. CROMER: Okay.

4 THE COURT: Thanks.

5 MR. DANIEL: Your Honor, the State calls Casey
6 Rembisz.

7 CASEY REMBISZ, being
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 By Mr. Daniel:

11 Q All right. Ms. Rembisz, you're a deputy with the
12 Newberry Sheriff's Office?

13 A Yes.

14 Q How long have you been with that agency?

15 A Fourteen years.

16 Q November 15th of last year, were you on duty that
17 date?

18 A Yes.

19 Q Were you dispatched out to a residence in Prosperity,
20 [REDACTED] Prosperity?

21 A I was.

22 Q And that's in Newberry County?

23 A Newberry County, yes.

24 Q And what was that call in reference to?

25 A Michelle Cromer had called with a complaint that a

1 neighbor had pulled a gun on her children and threatened
2 to shoot them.

3 Q So that's the information that you were relayed;
4 dispatch relayed that information to you?

5 A That's correct.

6 Q And about what time do you arrive at this location?

7 A 3:35 is the arrive time on the report.

8 Q Afternoon?

9 A In the afternoon, yes.

10 Q All right. And tell us what happened upon arrival?

11 A Upon arrival, we first spoke with Michelle, which is
12 common. You speak with the Complainant first. She stated
13 that her daughter and her boyfriend's son had been playing
14 in their backyard with a dog on a leash and that a deer
15 had run through their backyard, and the dog took off and
16 actually jerk, the dog jerked the leash out of Aleah's
17 hand and took off after the deer, which ran into the
18 neighbor, Mr. Bedenbaugh's yard. The children, she said
19 that the children chased after it and that's when, you
20 know, he had threatened them and pulled the gun on them
21 when they ran through his backyard.

22 Q Okay. So the mother, Michelle Cromer, just
23 testified. You spoke to her first upon arrival?

24 A Yes.

25 Q At her house?

1 A At her house.

2 Q Okay. And what do you do next, do you interview the
3 children?

4 A Yes. Typically, we'll speak with the Complainant
5 first and then since the children were the initiating
6 factor to the call, we spoke with both of them next.

7 Q Okay. I guess, describe everyone's, I guess,
8 demeanor. Were they excited, upset, or what was the case?

9 A Aleah was very shaken and upset and very scared. She
10 was literally shaking and a lot of times, typically, with
11 children when you go to speak with them, they start
12 talking really fast and you have to just slow them down.
13 You know, first, we like to ask them some just general
14 questions, what's your name, what's your date-of-birth,
15 and all that just to get them used to talking to us first,
16 and we did that with Aleah. She was able to answer those
17 questions even though she was shaken and very upset, and
18 Aleah gave us her account of what had happened.

19 Q Okay. And the other child, did you speak with him?

20 A Michael was a lot more upset than Aleah. Michael was
21 somewhat traumatized. He seemed to be almost in shock.
22 He couldn't tell us his name. He couldn't give us his
23 date-of-birth. He was overly upset and totally
24 overwhelmed with fear.

25 Q So visibly shaken?

1 A Visibly shaken. Could not answer simple questions
2 when we first started talking to him.

3 Q Crying?

4 A Yes.

5 Q Anything like that?

6 A Yes. Very, very upset.

7 Q All right. I guess, what do you do next in your
8 investigation?

9 A Oh, we talked with the children separately, which is
10 also typical. Aleah gave us her account. Once we talked
11 to Michael, got him calmed down a little bit, got his
12 account of the story, which was the same story that Aleah
13 gave us.. Then I think two of us responded first. I
14 responded and Sergeant Babb and once we got two other
15 officers on scene, then we went over to Mr. Bedenbaugh's
16 house.

17 Q Okay. And what's Mr. Bedenbaugh's address?

18 A [REDACTED] Prosperity, which was right around
19 the corner from the Complainant.

20 Q Okay. So you and the other deputies on scene just
21 walked to Mr. Bedenbaugh's house?

22 A If I recall correctly, I think two of us, I walked
23 around, and I believe Sergeant Babb walked around. And
24 then maybe two other deputies drove around to, because you
25 always want to be on the scene.

1 Q So you cut through the victim's property to get to
2 Mr. Bedenbaugh?

3 A I don't remember if we walked around the outside of
4 that fence from her front yard because most of the
5 conversations we had with them were on her front porch.

6 Q And I'm getting ahead of myself. But did you see the
7 Cromer's dog on the property?

8 A Not at the first initial response to their house. I
9 don't remember seeing the dog. I do remember after the
10 scene was secure and Mr. Bedenbaugh was in custody,
11 Sergeant Babb and I went back over to Michelle's house to
12 do paperwork that's required, and I remember seeing the
13 dog then.

14 Q And that was the same dog that we saw in court?

15 A Yes.

16 Q Was the dog barking or anything like that?

17 A No. Actually, Sergeant Babb was playing with the dog
18 while I was doing paperwork.

19 Q Okay. Did the dog appear to be vicious?

20 A Not at all.

21 Q Any aggressive tendencies?

22 A Not at all.

23 Q All right. So now go back to the point where y'all
24 respond to Mr. Bedenbaugh's house.

25 A Okay.

1 Q What happens upon you walking over there?

2 A I believe we had knocked on the back door. I believe
3 it was the four of us. He actually came out the back door
4 approaching us. Typically, on this type of call when a
5 gun is involved and a gun has been drawn, we will go ahead
6 and detain the subject so that we're safe, the neighbors
7 are safe, and for the safety of the subject too. And
8 that's what we did in this case.

9 Q So you're approaching Mr. Bedenbaugh's house from the
10 back?

11 A Two of us did. Two officers would have been in the
12 front. That's a typical response.

13 Q Okay. And Mr. Bedenbaugh automatically just comes
14 out of the back door?

15 A Yes. We, one of us may have knocked or we may have
16 called for him to come out. I don't exact, I don't
17 remember, but I know we didn't initially have to go into
18 the house. I remember him coming out.

19 Q Take it from there once he comes out, what's the
20 exchange?

21 A Once he came out, like I said, we took him, we
22 detained him so that we could have a safe scene to conduct
23 an investigation of what had taken place. He wasn't very
24 compliant at first. Once he was detained, of course, you
25 know, he was a little more compliant, but not very much.

1 Q So he had to be detained because he was
2 non-compliant, is that accurate?

3 A Well, that is a factor of why, yes. That he was not
4 compliant, plus any time we typically respond to a call
5 like this when a gun has been involved, if we feel like
6 that's the safest way for us to conduct that
7 investigation, then the subject will be contained so that
8 we can conduct a safe investigation of what's taken place.

9 Q Officer safety reasons when allegations of a gun --

10 A That's right.

11 Q -- you automatically detain them. Tell us, you're
12 questioning Mr. Bedenbaugh at this point?

13 A We did not question him. Actually, when we were
14 detaining him, he was asking what, you know, what's going
15 on and yelling wanting to know what, what was taking
16 place, which is understandable. And we told him at that
17 time, you know, what the complaint was by Michelle, and we
18 didn't ask him a question. He just responded that he
19 didn't even have guns out; that all his guns were locked
20 in a safe inside his house.

21 Q So he just kind of just made a spontaneous
22 admission--

23 A Yes.

24 Q -- he made about the guns?

25 A Yes. We were asking him a question. We were

1 explaining to him what we were doing there and why we were
2 detaining him.

3 Q And his answer was there are no guns?

4 A His, that was his response when we explained to him
5 that Michelle had stated that he had pulled a gun on the
6 children when they ran through his yard chasing the dog.
7 And he said I don't, all my guns are locked up in a safe.
8 That was just his response to us explaining why we were
9 there.

10 Q Okay. And tell us what happens next?

11 A We did get consent to search that residence to look
12 for that possible firearm from Mr. Bedenbaugh's brother,
13 who is also a resident of that house. And once inside, we
14 did find a long gun with a scope as described by Michael
15 right in arm's reach of the back door.

16 Q Back door where the porch is?

17 A Yes, where it's shown on that picture.

18 Q Okay. I'm going to hand you what's been admitted
19 into evidence.

20 A I may have that.

21 Q Okay.

22 A That one.

23 Q Okay. You have it up there?

24 A Yes.

25 Q State's number 2. All right. Mr. Bedenbaugh

1 initially comes out of that back door?

2 A Yes.

3 Q Okay. And he's detained there?

4 A Yes. Well, he walked on down the steps. It was down
5 in the yard right, it wasn't up on the porch. He walked
6 on down the steps.

7 Q And the long gun was located in the house right near
8 the back door?

9 A Yes. If you go in that back door, I believe you have
10 to take an immediate left. That's just the way the house
11 is built which goes into the kitchen, and it was right on
12 the left, right inside the back door.

13 Q Okay.

14 MR. DANIEL: Just representing to the Court this is,
15 got a safety lock on it and is unloaded.

16 THE COURT: Very good.

17 Q All right. Deputy Rembisz, I'm going to hand you
18 what's been marked for I.D. purposes as State's number 9.
19 Do you recognize this?

20 (Whereupon, State's Exhibit 9 was marked for
21 identification only.)

22 A Yes.

23 Q Okay. And how do you recognize that?

24 A This is the gun that was taken from his residence by
25 the back door and entered into evidence on that day.

1 MR. DANIEL: And, Your Honor, in lieu of actually
2 admitting the actual gun, a substitute photograph --

3 THE COURT: That'll be fine.

4 MR. DANIEL: -- be State's 9-A, I'd offer for
5 admission into evidence.

6 THE COURT: Without objection, State's 9-A is in
7 evidence.

8 (Whereupon, State's Exhibit 9A was admitted into
9 evidence.)

10 Q What kind of weapon is that, kind of gun is that?

11 A I believe a .338. I left my paperwork, I'm sorry,
12 right there where I was sitting with my notes.

13 Q That's a fairly powerful rifle?

14 A Yes.

15 Q And that's not like a .22?

16 A No, sir.

17 Q Okay. And that does have a scope on it?

18 A As described by Michael, yes.

19 Q Okay. And so you located that gun or found that gun
20 after Mr. Bedenbaugh had told you that there was no guns?

21 A He didn't say there weren't any guns in the house.
22 He just said they were all locked in a safe.

23 Q And that gun was not locked in a safe?

24 A No, sir.

25 Q And it was close proximity to the back door?

1 A Arm's reach, yes.

2 Q Arm's reach. And at that point, is Mr. Bedenbaugh
3 taken into custody?

4 A The search was, yes. It would have gone from being
5 detained to an arrest, yes.

6 MR. DANIEL: Okay. Beg the Court's indulgence.

7 THE COURT: Yes, sir.

8 MR. DANIEL: Can we approach for a side, Your Honor?

9 THE COURT: Sure.

10 (Whereupon, a bench conference was held in the
11 presence of the jury but out of the hearing of the
12 jury.)

13 THE COURT: Objection is noted. We'll put that on
14 the record later. You may proceed, Solicitor.

15 MR. VERNER: Could he go ahead and give me the
16 numbers, though?

17 THE COURT: If you would.

18 MR. DANIEL: Your Honor, it's State's number 4 and
19 State's number 5.

20 MR. VERNER: 4 and 5.

21 Q All right. Deputy Rembisz, were photographs taken of
22 the Defendant's residence that day?

23 A Yes.

24 Q So you are familiar with the property?

25 A Yes. That's the only time I've ever been there, but

1 yes.

2 Q Okay. I'm going to hand you what's been marked for
3 I.D. purposes as State's 4 and 5. Do you recognize these
4 photographs and what they depict?

5 A Yes.

6 Q And what are they?

7 A These are two metal signs that were displayed in the
8 subject's yard, in Mr. Bedenbaugh's yard, and this is a
9 thermometer sign that was also displayed in his yard.

10 Q Okay. And what do those signs convey? What's the
11 message on those signs?

12 A One of them is a warning message that says, due to
13 the price increase of AMMO, do not expect a warning shot,
14 with a picture of a long gun. And the other is a metal
15 sign that says, prayer is the best way to meet the Lord.
16 Trespassing is faster, with a picture of a revolver.

17 MR. DANIEL: Your Honor, I'd offer State's 4 and 5
18 for admission into evidence.

19 THE COURT: Subject to the earlier objection, they
20 are in evidence.

21 (Whereupon, State's Exhibits 4 and 5 were admitted
22 into evidence.)

23 Q So these are on the exterior of the property for
24 people to see?

25 A Yes, sir.

1 MR. DANIEL: Deputy, I think that's all the questions
2 I have. Please answer any Mr. Verner has for you.

3 THE COURT: Mr. Verner.

4 CROSS-EXAMINATION

5 By Mr. Verner:

6 Q Deputy, do you know the Cromers?

7 A I'd never met them until that day.

8 Q All right. Well, you keep referring to her as
9 Michelle. Is that just mainly because of this case,
10 though?

11 A Yes.

12 Q Okay. So you're not on a, don't know them
13 personally?

14 A No.

15 Q Okay. You keep saying you detained Mr. Bedenbaugh.
16 Well, that's kind of a euphemism for handcuff behind his
17 back?

18 A He was handcuffed, yes.

19 Q And that's what you mean by detained?

20 A Yes, sir.

21 Q And behind his back or?

22 A Yes. It's against policy to do it any other way.

23 Q Well, I thought you indicated that was kind of a
24 discretionary policy. But the general rule is when there
25 are weapons involved, the general rule is to handcuff

1 them?

2 A Yes.

3 Q Did you threaten to tase him?

4 A I don't recall that, no.

5 Q And, in fact, you also handcuffed the, was Ms. Cromer
6 pretty clear that the incident was only involving Mr.

7 Bedenbaugh, and the children, and her?

8 A Yes.

9 Q Okay. But you also handcuffed his brother?

10 A I believe his brother was also detained on the scene,
11 yes.

12 Q And by detained, you mean handcuffed behind the back?

13 A Yes. For safety purposes for everybody involved.

14 Q Was there any allegation that, the brother's name was
15 Johnny?

16 A I don't have my notes in front of me, but I believe
17 his name is Johnny Jacob Bedenbaugh.

18 Q Well, was there any allegation that he had threatened
19 anybody?

20 A Not that I'm aware of, no.

21 Q And he also lived on the property, too?

22 A Yes. They lived there together is my understanding.

23 Q Now, do you know how long they had been living on
24 that property?

25 A I do not.

1 Q And the signs you just talked about showing the,
2 what I take is kind of no trespassing type signs, they are
3 not uncommon to see at people's property, are they?

4 A You do see a few around the county.

5 Q Would you take that as a reasonable person has a no
6 trespassing sign?

7 A Not a typical one, no.

8 Q But how would you take it?

9 A A typical no trespassing sign is like the black and
10 orange that say, no trespassing.

11 Q All right.

12 A Not warning of being shot.

13 Q But a picture of a rifle saying, warning, stay off
14 the property, is a no trespassing sign, too?

15 A Yes. I think one of them had --

16 Q A little bit more aggressive, but still a --

17 A Yes.

18 Q -- no trespassing sign? And the Bedenbaugh's had a
19 gun safe inside the home, is that true?

20 A I did not go back to the back part of the house due
21 to the conditions. But yes, they did have a gun safe in
22 the back as reported by the officers that went back into
23 that area.

24 Q Was it a locked, was it a lockable gun safe to your
25 knowledge?

1 A I didn't, I don't want to say because I didn't deal
2 with the safe at all.

3 Q Were there other weapons in the gun safe or are you
4 aware?

5 A I do know that we took more than one weapon from that
6 house so, yes.

7 Q Were they all legal rifles?

8 A I think one was a handgun.

9 Q Okay. But were there any of the rifles or handguns
10 illegal guns?

11 A No.

12 Q But were any of them assault rifles?

13 A Not as I know of.

14 Q And the .338 would be what I would call a deer
15 hunting rifle?

16 A Yes.

17 Q Okay. Do you deer hunt or your children deer hunt?

18 A My child.

19 Q Is that that uncommon of a rifle that you would see
20 from somebody that hunts?

21 A No.

22 Q Do you recall there being other dogs on Mr.
23 Bedenbaugh's property?

24 A I remember him having a dog inside, I believe. I
25 believe there was a little small dog inside.

1 Q Could it have been a Chihuahua or do you, just a
2 small dog, a small breed?

3 A I don't remember the breed, but I do remember there
4 being a small dog.

5 Q And do you remember there being other dogs barking in
6 the back yard?

7 A I do not remember any other dogs, no.

8 Q Okay. I will think being a deputy or a police
9 officer that running into people's dogs would be a pretty
10 common occurrence when you go to people's houses.

11 A Encountering dogs, yes.

12 Q Okay. And some dogs are good dogs. In fact,
13 probably the majority of dogs are good dogs?

14 A Most of the time.

15 Q All right. Is it fair to say that the Cromer's dog
16 at least has the appearance of a Rottweiler as the color?

17 A That is not my opinion, no.

18 Q Okay.

19 A It never struck me to think that that dog was a
20 Rottweiler.

21 Q But he, Rottweiler's don't have that black color?

22 A They do have the same color.

23 Q Short black hair?

24 A Yeah, the face of the dog looks nothing like a
25 Rottweiler. It's more pointing and long where a

1 Rottweiler is more flat and wide.

2 Q Right. But you've seen the dog up close?

3 A Yes, it's the same color.

4 Q You've seen it in a kennel?

5 A Yeah.

6 Q If I saw the dog from across the room and saw a short
7 black hair and the tan face and tan chest, would you call
8 me crazy to think that's a Rottweiler?

9 A I wouldn't call you crazy. I would just know better.

10 Q Okay. And are there certain types of dogs that you
11 approach more carefully?

12 A Sometimes, yes, depending on their demeanor.

13 Q Okay. Did you enter the house of Mr. Bedenbaugh or
14 did you stay outside with Mr. Bedenbaugh?

15 A I entered part of the house. I didn't go all the way
16 back.

17 Q Okay. So you entered from the back door or the front
18 door?

19 A The back door.

20 Q Okay. And how big would you say that porch is on the
21 back door?

22 A The porch?

23 Q Yes, ma'am.

24 A If it's any wider than the steps. The steps are, as
25 I remember and by looking at the pictures are wide enough

1 for maybe two people to walk up together. If the porch
2 goes out any and back to the house, it would be a small
3 amount.

4 Q Okay.

5 A It's not a huge deck.

6 Q Slightly wider than the steps possibly?

7 A Right.

8 Q And would it take more than a step to reach the door
9 from the edge of the porch and the steps? It's not really
10 a full porch and this is kind of like a landing?

11 A Right. It's just like shown in the picture.

12 Q Do you remember what Mr. Bedenbaugh was wearing?

13 A Wearing, I do not.

14 Q Okay. But is it fair to say that when you
15 investigate any kind of call like this that the average,
16 most people don't, you know, overly volunteer, enjoy being
17 handcuffed behind their back when you talk to them, do
18 they?

19 A Will you ask me that again? I'm sorry.

20 Q It's not unusual for somebody to be reluctant to go
21 into handcuffs before you start talking to them when you
22 come to the scene, though?

23 A Most of the time if you tell someone to turn around
24 and put their hands behind their back, most people do.

25 Q Okay.

1 A I wouldn't say they enjoy, but they do. Most of the
2 time they follow those commands.

3 Q They understand they're required to do it or most of
4 them do?

5 A Yes.

6 Q But nobody's ever happy to do that, though?

7 A No.

8 Q And some are less happy than others?

9 A Correct.

10 Q Do you know who put the no trespassing signs, but
11 they are what they are, but do you know who posted those
12 on the property?

13 A I do not. I would, I do not.

14 Q Did you take the photographs?

15 A I believe I did.

16 Q And do you know where they were posted on the
17 property?

18 A Well, as I remember when, if you're facing his house,
19 well as I remember, at least two of them were towards the
20 left, I think.

21 Q Okay. They appear to be on some kind of particle
22 board kind of?

23 A Yes. Maybe a post or a board.

24 Q But you don't remember where on the property they
25 are?

1 A That temperature sign, I do not remember.

2 Q Okay. It's just somewhere on the property?

3 A Right. The thermometer one, I do not remember. The
4 other one, I believe, were on the left when you face his
5 house.

6 Q And there's nothing illegal about signs or bumper
7 stickers like those are?

8 A No.

9 Q When you see a sign like this, when people buy these
10 signs like that, do you think that if you put a sign like
11 that, the person literally means that he's going to shoot
12 you or is it kind of like a humorous type?

13 A I don't think it would be displayed in a humorous
14 manner. I think if, if it, if somebody wants to purchase
15 them as humorous, they wouldn't post them on their
16 property for all to see.

17 Q Okay.

18 A To me, they're more of a threatening, posted as a
19 threatening manner in my opinion.

20 Q Well, have you had any prior calls of Mr. Bedenbaugh
21 shooting trespassers?

22 A No.

23 Q Okay. So if you saw one on my yard, you would assume
24 that I automatically shoot all trespassers because the
25 sign says that?

1 A I would not assume anything.

2 Q Is it possible at least that people post those up
3 because they are humorous type?

4 A It's possible.

5 Q Okay. But they're aggressive certainly, and you see
6 a threat in them?

7 A They are aggressive, yes.

8 Q Okay. But you wouldn't dispute that people post
9 those because they are humorous, too?

10 A They could.

11 Q Okay. Thank you, Deputy.

12 THE COURT: Anything on redirect?

13 MR. DANIEL: No, Your Honor. No redirect at this
14 time.

15 THE COURT: Thank you, ma'am. You may step down.
16 The State rests?

17 MR. SCOTT: Yes, we do, Your Honor.

18 THE COURT: Ladies and gentlemen, there is a few
19 matters that the Court needs to take up with the attorneys
20 and right now it's probably a good time for a break, so
21 we're going to be at ease for about 15 minutes or so.
22 Adjourn to the back and don't talk about the case. If
23 anybody needs to step outside, just let the bailiff know,
24 and they'll be more than happy to take you downstairs for
25 a cigarette, or for fresh air, or whatever the case may

1 be, okay. We'll be back on the record shortly. Thank
2 you.

3 (Whereupon, the jury was excused from open court for
4 a break.)

5 THE COURT: All right. Just so that the record is
6 clear. Before the introduction of State's 4 and 5, Mr.
7 Verner approached or we huddled up over to the side, and
8 Mr. Verner essentially objected to State's 4 and 5, I
9 think, based on unfair prejudice, is that essentially
10 outweighing any probative value. Is that what the
11 objection was?

12 MR. VERNER: Well, for relevance and 403, yes.

13 THE COURT: All right. Very good. The Court
14 overruled that objection because it went to state of mind,
15 and well some of it is to state of mind. You do move for
16 a directed verdict and renew all prior motions, correct,
17 Mr. Verner?

18 MR. VERNER: Particularly, on the directed verdict,
19 Your Honor, Michael C. testified that the, that Mr.
20 Bedenbaugh would not have seen him, would not have
21 brandished the weapon at him and would not have threatened
22 him. He referred to Aleah as the victim. So I'll move to
23 dismiss him from the indictment as a victim, but they're
24 jointly listed as Aleah and Michael.

25 THE COURT: All right. The State's position?

1 MR. SCOTT: To my recollection, he said he didn't, at
2 some point he said he didn't know if Mr. Bedenbaugh had
3 seen him or not. The statute is point or present.
4 Present means to alter, to view in a threatening manner or
5 to show in a threatening manner, which the act of
6 shouldering the rifle coupled with a, the verbal threat
7 that he would kill the kids and the dog, to me I think
8 very clearly meets the standard. And then it does, it
9 occurs to me, too, if you, I guess, analyze his statement
10 everyone who's testified what they heard Mr. Bedenbaugh
11 say was, he would kill the kids, plural, and the dog.

12 THE COURT: In the light most favorable to the State,
13 the Court will deny the Defendant's motion. Do you intend
14 to offer any Defense, Mr. Verner?

15 MR. VERNER: Yes, sir. And now would be a good time
16 to admonish if the Court's inclined to do with my client.

17 THE COURT: Okay.

18 MR. VERNER: And we do intend that he's going to
19 testify, but I'd like to double-check that with him.

20 THE COURT: Sure.

21 MR. VERNER: But now would be a good time to admonish
22 him. But let me take just a quick break to double-check
23 that. So maybe a 10-minute break.

24 THE COURT: Okay. All right. Mr. Bedenbaugh, you
25 can stand where you are and make yourself comfortable. I

1 just need to put you under oath here, Mr. Bedenbaugh.
2 Raise your hand. I need to ask you just a couple of
3 questions under oath.

4 JAMES BEDENBAUGH, being
5 first duly sworn, testified as follows:

6 MR. BEDENBAUGH: Yes.

7 THE COURT: All right. Now, sir, you understand that
8 we've come to that part in the trial where you can offer a
9 defense. And I'm sure you've already discussed with Mr.
10 Verner the fact that under the laws of our state and our
11 country, you do not have to testify, okay, and Mr. Verner
12 cannot force you to. I can't force you to. Obviously,
13 the Solicitor can't force you to. And if you choose to
14 testify, obviously, you'll be subject to the same rules of
15 cross-examination as pretty much any other witness.

16 MR. BEDENBAUGH: Okay.

17 THE COURT: So if you decide that you didn't want to
18 testify, I would instruct the jury that they're not to
19 hold that against you. They're not to talk about your
20 failure to testify in no way, shape, or form, or they to
21 consider that in any way in deciding whether you're, in
22 fact, guilty. Do you understand that, sir?

23 MR. BEDEBAUGH: Yes, sir.

24 THE COURT: Of course, it's a personal right. It can
25 only be waived by you. Usually, the way I leave it is if

1 Mr. Verner calls you as a witness, I'll assume that you've
2 automatically waived your Fifth Amendment rights to
3 self-incrimination. Is that acceptable to you, sir, to
4 handle it that way?

5 MR. BEDENBAUGH: Yes, sir.

6 THE COURT: Okay. Well, that's what I'm asking you.
7 Because if you intend to testify, well, let me ask it like
8 this. Do you intend to testify at this point in time or
9 have y'all made that decision?

10 MR. BEDENBAUGH: Well, I can testify and tell my side
11 of the story.

12 THE COURT: Sure. I understand. Are there any
13 crimes of impeachment?

14 MR. VERNER: No, sir.

15 THE COURT: Okay. Mr. Bedenbaugh, you are at liberty
16 to testify. You're at liberty to remain silent. Whatever
17 you want to do, it's entirely your decision. But I just
18 wanted to make sure that you are aware of your Fifth
19 Amendment rights of any self-incrimination. You
20 understand all that, sir?

21 MR. BEDENBAUGH: Yes.

22 THE COURT: All right. Good enough. We'll take a
23 brief break and if you want, you just let me know if he
24 intends to testify once we come back from that break,
25 okay?

1 MR. VERNER: Just, and the inclination, just so we
2 know, Your Honor, is I do anticipate he's going to give
3 his side of the story.

4 THE COURT: Sure.

5 MR. VERNER: I do anticipate closing with his
6 testimony and the issues and the issue of whether there
7 are rebuttal witnesses.

8 THE COURT: Do you anticipate anything in rebuttal or
9 maybe, maybe not, who knows?

10 MR. SCOTT: No, but they have just passed me kind of
11 laminated--

12 MR. VERNER: The Defendant has a permit in the Town
13 of Prosperity to shoot small animals on his property. I
14 handed that to the Prosecutor thinking I might offer it,
15 but I don't intend to offer it. But he's just got a
16 on-letterhead permit to shoot small animals on his
17 property.

18 THE COURT: Okay. Like nuisance animals, moles, that
19 kind of thing, I guess?

20 MR. VERNER: Squirrels.

21 THE COURT: Squirrels.

22 MR. VERNER: With a .410 shotgun.

23 THE COURT: Very good. We'll see if that becomes an
24 issue. We have the dog back there. Do we have further
25 use for the dog or maybe/maybe not?

1 MR. SCOTT: Just depending on Mr. Bedenbaugh's
2 testimony.

3 THE COURT: All right. Well, let's, somebody take
4 the dog for a walk while we're on a break. We will be at
5 ease.

6 (Whereupon, a break was taken.)

7 THE COURT: Let's bring the jury in.

8 (Whereupon, the jury came into open court at
9 approximately 12:03 p.m.)

10 (Whereupon, Defendant's Exhibit numbers 1, 2, 3, 4,
11 5, 6 marked for identification only.)

12 THE COURT: We are back on the record. The jury is
13 present. Ladies and gentlemen of the jury, thank you for
14 your patience. At this point, Mr. Verner, your case, sir.

15 MR. VERNER: And thank you, Your Honor. We'd call
16 James Bedenbaugh. Come on up, Mr. Bedenbaugh.

17 JAMES BEDENBAUGH, being
18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 By Mr. Verner:

21 Q Mr. Bedenbaugh, how old are you, sir?

22 A I'm 51, going on 52.

23 Q And where do you live?

24 A [REDACTED]

25 Q Where is that?

1 A It's if you coming into Prosperity on 391, Main
2 Street Prosperity, you turn right at the Post Office.

3 Q It's in the Downtown area of Prosperity?

4 A More or less to the side of it.

5 Q Okay. But coming from Newberry to Prosperity, would
6 I turn right on that stop light, where the ball fields
7 are, the baseball fields?

8 A You just get onto there and come straight on down on
9 the right.

10 Q Okay. And it's kind of behind that Post Office?

11 A Yes, sir. And you turn right beside the Post Office
12 onto Brown Street. If you wanted to take the long scenic
13 route, you can go down Shiloh Street.

14 Q Is that a built-up area or is it still kind of rural?

15 A It's sort of built-up. There's still some fields
16 around there.

17 Q Okay. Well, how long have you lived on that
18 property?

19 A Hard to say. I was too young to remember when we
20 moved there. But we lived in that same general area
21 within a hundred yards for 51 years. I was six months old
22 when we moved down there.

23 Q The same property, just different houses or mobile
24 homes?

25 A Right.

1 Q Where did you grow up; I guess in the Prosperity
2 area?

3 A Prosperity.

4 Q Where did you go to high school?

5 A Never made it to high school. I went to Prosperity
6 Elementary where the police station is right now.

7 Q Okay. And you grew up on the same property we're
8 talking about?

9 A Yes, sir.

10 Q Who are your neighbors out there?

11 A All of them are new because of the original ones are
12 dead now. It was Asbury and Bedenbaugh on the left side
13 facing the road, and Ruth Pugh on the right side, and
14 there's an old white two-story house that's still there.

15 Q But you get along with your neighbors?

16 A (No audible response.)

17 Q Who else lives out there on your property?

18 A My brother.

19 Q What's his name?

20 A Johnny Bedenbaugh.

21 Q What's your employment history? Where did you used
22 to work?

23 A I used to work at Hobby Construction until I got
24 injured on the job.

25 Q Okay. How long have you been unemployed?

1 A Since sometime around 2013.

2 Q Okay. But Hobby Construction before then?

3 A Right.

4 Q Okay. Is there anywhere else you worked?

5 A I worked for the school. It was Sizemore, at the
6 time, Janitorial Service at the schools.

7 Q Are you familiar with the neighbors behind you, the
8 Cromers?

9 A No, I haven't met them.

10 Q Prior to November 15th of 2015, had you ever had a
11 run-in with them?

12 A No, sir.

13 Q Do you have a pretty clear recollection of November
14 15, 2015?

15 A Pretty clear.

16 Q Okay. First off, you took some photographs of your
17 property?

18 A That's the back porch.

19 Q Okay. That would be the back porch --

20 A Yes, sir.

21 Q -- between your house and the --

22 A Cromers.

23 MR. VERNER: May I publish and I'd introduce?

24 THE COURT: You may approach.

25 Q Well, that's not really a sitting area there. Could

1 you put a chair up on that porch?

2 A I tried once. I tried to put up one of them little
3 folding lawn chairs and when I tried to get out of it, I
4 almost fell down the steps. So I decided I wouldn't try
5 that one no more.

6 Q So how big would you say that top step of the porch
7 is?

8 A Forty-eight and in between the rails, forty-three.

9 Q Okay.

10 A Because I just had to cut some boards and replace
11 them on it.

12 Q Do you typically sit out there on that porch?

13 A No.

14 Q Would there have been a reason for you to have been
15 sitting out of there on November the 15th of last year?

16 A No, sir. It was a pretty warm day. From what I
17 remember, my brother had the AC on, and I was in there
18 soaking it up.

19 Q You ever had some kind of run-ins with the Cromers
20 prior to November 15th?

21 A I was, the dog had been up there on the yard once.
22 That's the only time I seen it, and I didn't know whose
23 dog it was then. I just seen the dog and it kind of
24 growled at me. Then it meandered on its way.

25 Q Okay. Are you sure that's the same dog?

1 A Yes, sir.

2 Q Do you have dogs of your own?

3 A Yes, sir.

4 Q What kind of a dog do you have?

5 A I got three little Chihuahuas. Well, one pureblood
6 and two, about three-quarter Chihuahua.

7 Q Okay. But they're all smaller-type or small-dog
8 types?

9 A Right.

10 Q Where do you keep them?

11 A In dog kennels. One of them was in the house, but
12 she got a bad habit of wanting to get on the table, so she
13 got out in the yard too.

14 Q Okay. And where do you keep the dogs?

15 A In a dog kennel.

16 Q Well, I mean, where is the dog kennel?

17 A Right behind my brother, there's a house within.

18 Q Is it in your backyard?

19 A Right, my backyard.

20 Q Is it between the fence and the Cromers property or
21 is more of the side?

22 A There's a driveway on that side. It's on this side
23 of this driveway. It's a good thirty feet and forty.

24 Q Have you had problems with dogs trying to get in?

25 A Yes, sir. There's something has tried to dig its way

1 in because there's a place about yay wide and about yay
2 deep that goes up under there. I know it's not my little
3 dogs digging out because it's big enough they could have
4 got out. I don't know what it was.

5 Q Do you think it's from like a coyote, or an animal,
6 or is it more like a dog.

7 A I'd say it was canine, whatever it was the way it was
8 being dug.

9 Q What kind of flooring do you have on the kennel, is
10 it concrete or is it just regular dirt?

11 A The one that they were trying to dig in is just a
12 portable kennel that you can move around if you want to.
13 It's just dirt.

14 Q All right. Well, tell us what you remember about
15 November the 15th.

16 A Well, I was sitting in the house and, like I said, my
17 brother had the air conditioning on, and I was enjoying
18 it. I heard the dogs barking.

19 Q Okay. I apologize. I'm going to let you go back to
20 that in just one second. I just want to set it up. Have
21 you ever seen deer in your backyard before?

22 A Backyard?

23 Q Or in your yard, I guess.

24 A Yeah, I have seen deer, but they were generally, they
25 would have between 2:00 and 3:00 o'clock in the morning.

1 They're real early when they do come in, if they come in.

2 Q Have you ever seen deer, and you've lived there about
3 fifty years?

4 A Right.

5 Q You ever see deer at 3:00 o'clock in the afternoon in
6 your house or yard?

7 A I've never seen a deer at 3:00 o'clock in the
8 afternoon when I was deer hunting.

9 Q Well, and you're a deer hunter, too, right?

10 A Right.

11 Q And this is in the middle, hunting, November is in
12 the middle of, my understanding, deer season?

13 A By that time of the season, most deer have been done
14 ran to nocturnal running. They want to run at night and
15 they are very jittery about coming out in the day. About
16 the only time they will is if something runs them off the
17 bed.

18 Q Did you see any deer on November 15th?

19 A No, sir.

20 Q And in your experience from being there 50 years, as
21 a hunter, seeing a deer in the middle of the afternoon
22 would be pretty unusual?

23 A It'd be a plus if I was hunting.

24 Q All right. But there's no question there are deer
25 out there.

1 A Oh, there's deer around there.

2 Q But did you see any deer tracks, or signs, or
3 anything?

4 A Nah, I went back there and looked after I got out of
5 jail to see if there was any sign of a deer track. And
6 after tracking deer through the woods, you learn to track
7 them through brush, weeds, leaves, and I couldn't find
8 none.

9 Q Are you a hunter?

10 A Yes, sir.

11 Q Okay. Are you just an occasional hunter or are you a
12 pretty regular?

13 A I hunt every chance I get. Every chance that, the
14 injury I received from Hobby doesn't knock me down where I
15 can't go.

16 Q Well, what does that mean every chance you get in
17 terms of once a week, once a month, several times a day?

18 A If I can go, I'll go every day of the week.

19 Q Okay. But were you back in November hunting several
20 times a week at least?

21 A Yes.

22 Q Okay. Did you recognize the gun that the law
23 enforcement, that the prosecutor showed the jury today?

24 A Yes, sir. That was my deer rifle.

25 Q Was that yours?

1 A That's my deer rifle that I generally hunt with.

2 Q Okay. Did you have rifles and shotguns in the home
3 in November?

4 A Yes, sir.

5 Q Okay. Where do you keep your weapon?

6 A Ninety percent of the time, they're in that gun vault
7 unless I'm cleaning them or I'm getting prepared to go
8 hunting. And this was on Sunday and since I hunt on
9 federal land, it's the only place I have, I had them out
10 making sure I had everything right on them before I left.

11 Q And you also have a permit from the Town of
12 Prosperity to kill squirrels on your property?

13 A Yes, I do.

14 Q Does the lock, does the gun safe lock?

15 A Oh, yes.

16 Q Okay. But there aren't any small children in that
17 home, are they?

18 A No, sir.

19 Q Are you married, by the way?

20 A No.

21 Q You got any kids?

22 A No, sir.

23 Q Who else lives in that building with you?

24 A My brother.

25 Q Okay. What's the purpose of the gun safe?

1 A Well, mainly to keep it from being stole. I've had,
2 me and my brother has had a pistol stole from us.

3 Q So it's not to keep it from children?

4 A Right.

5 Q Do you have children who come in regularly?

6 A No.

7 Q It's just to keep them from being stolen?

8 A Right.

9 Q And, all right, I'm sorry. Tell me again about
10 November 15th of last year.

11 A Well, like I said, I was sitting in there enjoying
12 the air condition, and I thought I heard the little dogs
13 barking. So I got up and went to the door and looked. I
14 opened the door, and I looked to the left where my brother
15 parks his car. I figured somebody had came up. I stood
16 there for a second. I didn't see a car or nobody come up.
17 Then, I turned around. I was turning back around to go
18 in, and I seen her leading the dog off of the property.

19 Q Who is her?

20 A Aleah.

21 Q Okay. What do you mean by leading off the property?

22 A She had him by the collar. I didn't see a leash, but
23 she was holding him by the collar leading the dog across
24 the property.

25 Q If there was a leash, are you clear in your

1 recollection she was carrying by the leash and by the
2 collar?

3 A She was holding him by the collar. She had him
4 wrapped and her hands wrapped up under it holding him.

5 Q Do you remember seeing a leash or anything?

6 A I didn't see no leash.

7 Q Okay. All right. Well, then did you see Michael,
8 the other boy?

9 A I didn't see nobody else.

10 Q Okay. So you see, you walk out. You walk out into
11 the yard and you walk on the porch or what do you do?

12 A I was standing on the porch at this particular time.

13 Q Okay. And you testified that you see Aleah leading
14 the dog. Where is she and the dog?

15 A By the time I seen her, she was just about ready to
16 leave the property.

17 Q And walk towards your neighbor's house or the
18 backyard?

19 A Facing out the back porch, she was going down through
20 the neighbor's yard on the right.

21 Q All right. But if I left your back door and I
22 stepped onto your back porch what direction will I look to
23 see the Cromers home? If I look just straight from your
24 porch from the door?

25 A You'll see my trailer. You'll see a trailer sitting

1 out there.

2 Q Another trailer, but that's a different trailer on
3 your property?

4 A The other one is not a trailer.

5 Q Okay.

6 A It's actually a stick-built house.

7 Q Well, where do I look to see the Cromer house if I'm
8 sitting--

9 A You look to the right at an angle.

10 Q Okay. How far back does your property line go, do
11 you think from your porch before you reach the fence? Is
12 it as long as this courtroom? Is it shorter?

13 A Longer.

14 Q Okay.

15 A It's probably twenty-five, thirty yards, forty,
16 somewhere in there, because it's going at an angle.

17 Q So about forty yards from where, if I stood on the
18 porch about forty yards walking at an angle to reach the
19 fence between you and the Cromers house?

20 A Right.

21 Q But that's walking kind of diagonally across your
22 property?

23 A Right.

24 Q Was there a fence in your backyard at the time back
25 in November?

1 A There was one that we put up, and then there was a
2 partial piece of fence had been there ever since I've been
3 there.

4 Q Was it in good-condition fence?

5 A No, this fence, it's quite old and rusty and probably
6 falling down. I was told by my daddy that it was actually
7 the neighbor's fence, but from where the boundary line is,
8 it's actually was on us.

9 Q This is Defendant's 6.

10 A That's the fence separating.

11 Q Is that the old fence that used to be there --

12 A Right.

13 Q -- but to the right of the new fence?

14 A Right.

15 Q Okay.

16 A That's their fence. There's another fence that was
17 there. There's the property line.

18 Q Okay. So I'm looking at this photograph. The fence
19 on the right would be the fence that was there back in
20 November?

21 A Right.

22 MR. VERNER: Your Honor, I'd offer Exhibit 6.

23 THE COURT: Without objection, Defendant's 6 is in
24 evidence.

25

1 (Whereupon, Defendant's Exhibit 6 was admitted into
2 evidence.)

3 Q So again, James, this is kind of a picture showing
4 the new fence and the old fence --

5 A Right.

6 Q -- side-by-side. The new fence was not there in
7 November of last year?

8 A No, sir.

9 Q So the darker or the smaller fence was there?

10 A Right. Yeah.

11 Q About how high was that fence? The old fence.

12 A Three foot, something maybe.

13 Q Was it standing in all directions or had it been
14 knocked out in some, any portions?

15 A It ran, this will get complicated. It ran towards
16 and through her, beside their property or when the
17 property we are staying on actually owned that property.
18 And they had sold it prior before we bought it and my
19 daddy bought it, and then it came up, and then it ran down
20 the side of us. By that oak tree, it ran past it.

21 Q All right. Was it cleaned out? Was the lot cleaned
22 out or was there overgrowth?

23 A Oh, it was majorly overgrown. Wisteria got in there
24 and took over.

25 Q Just the fence or in the trees, too?

1 A Everything.

2 Q So if I looked at your fence, the fence that's there
3 today, would it be in the same condition as it was in
4 November?

5 A It's --

6 Q Is it, I'm talking about the under, the growth, the
7 vegetation.

8 A Oh, down where the new fence is now, they cleared it
9 out dramatically.

10 Q Okay. So the wisteria and the overgrowth that was in
11 the back of your property --

12 A Yes, sir.

13 Q -- there is less there now than there was in
14 November?

15 A Oh, yes.

16 Q Is it still fairly heavily?

17 A Over on our property?

18 Q Overgrown?

19 A There's still a good little bit of it growing there.

20 Q Could you see, if you were standing on the back porch
21 of your house, could you see the Cromers house?

22 A Now? Yes.

23 Q Now?

24 A Now, I can.

25 Q What about back in November?

1 A I could make out little blotches in their, if they
2 wore, there was somebody that wore a brightly-colored
3 safety shirt. I could see little dots of orange or neon
4 green go through there but that's all I could see. I
5 couldn't have told you it was a person.

6 Q All right. If I came to the back of the Cromers yard
7 to speak to you on the back porch, would you be able to
8 see my face?

9 A No.

10 Q Through the overgrowth?

11 A No.

12 Q Okay. So if Ms. Cromer was standing at the edge of
13 her property back in November, could you see her at all
14 from your porch?

15 A No, not at all.

16 Q What if she was wearing like bright clothing or, or
17 orange clothing?

18 A I'm afraid if she was wearing a neon candle powered
19 light I couldn't have seen her, not through the growth
20 that was there.

21 Q And it's neither here nor there, but we took a
22 picture of what, how tall the new fence is.

23 A Right.

24 Q And it's just slightly over five-and-a-half feet
25 tall.

1 A Right.

2 Q It's taller than it used to be, but the new fence to
3 the top post is about five-and-a-half feet tall?

4 A Right.

5 Q Okay. Did you take some photographs fairly recently
6 of your backyard?

7 A I took some photographs of it this morning.

8 Q Okay. So these are photographs taken this morning?

9 A This morning.

10 Q Okay. Defendant's 1, what are we looking at, James?

11 A That is an, the oak tree where that other fence ran
12 looking back across there showing how they cleared it out.

13 Q But this is a picture taken from your backyard
14 looking towards the Cromers house?

15 A Cromers house.

16 Q Is it more cleared out now than it was or?

17 A Oh, yes.

18 Q But there seems to be some dense vegetation in parts
19 of it on your property?

20 A Like this direction is about like what it was all the
21 way around.

22 Q But this red brick building was the Cromers home?

23 A Right.

24 Q And that, is that taken from your porch or further on
25 down your property?

1 A Pretty close to where the clothesline is right now.

2 Q Okay. So this will be from where the clothesline
3 would have been?

4 A Right.

5 Q And you can see the Cromers house today?

6 A Today, you can.

7 Q Is that the condition it was in in November?

8 A No.

9 MR. VERNER: I would offer Defendant's 1, Your Honor.

10 THE COURT: Any objection?

11 MR. SCOTT: No, Your Honor.

12 THE COURT: Defendant's 1 is in evidence.

13 (Whereupon, Defendant's Exhibit number 1 was admitted
14 into evidence.)

15 Q All right. What are we looking at Defendant's 2?

16 A That is an example of what it did look like.

17 Q Okay.

18 A Now, that's a measuring stick. I tied a ribbon on
19 all the way up to six-feet tall. I think I had it
20 six-foot-ten, six-foot-nine.

21 Q Okay.

22 A But that's a fiberglass rod with ribbon tied on it.

23 Q Is the ribbon tied at like one-foot increments?

24 A One-foot increments.

25 Q Okay. And that's just an example of what the

1 overgrowth is in the back of your yard?

2 A Right.

3 MR. VERNER: I'd offer Defendant's 2, Your Honor.

4 THE COURT: Without objection, Exhibit 2.

5 MR. SCOTT: The testimony, that is an example of what
6 it used to look like?

7 THE COURT: I believe that's kind of what you were
8 getting at.

9 MR. BEDENBAUGH: That's right.

10 (Whereupon, Defendant's Exhibit number 2 was admitted
11 into evidence.)

12 Q Well, that's your photo, well, clarify what you mean?
13 This is clearly what your property looks like today you
14 are testifying.

15 A That's right now.

16 Q Because you took it today?

17 A That's pretty much what the whole fence line looked
18 like.

19 Q Back in November, too?

20 A Right.

21 Q So that's part of the property that didn't get
22 cleared out?

23 A That's on us.

24 Q That's on your side of the property?

25 A Right.

1 Q What's on the other side of the overgrowth, is that
2 the Cromer property on the other side?

3 A Another about ten or fifteen feet over would be
4 getting close to their line.

5 Q On the other side of this overgrowth would be the
6 Cromer property?

7 A Right.

8 Q Okay. And then the little fiberglass stick with the
9 orange tape on is just to show how high it is?

10 A Right.

11 Q So can you estimate how high you think it is?

12 A The stick is six-foot and it is over and it overgrows
13 it by another three-to-four foot.

14 Q And you're testifying that's the typical, what it
15 looked like back then?

16 A Right.

17 Q And number 3, what is this?

18 A That's another picture of basically the, a fence line
19 and their corner right down there.

20 Q Okay. But that's looking directly at the Cromer
21 house?

22 A Yeah. Looking at the, well, it's looking at the
23 corner of their fence.

24 MR. SCOTT: I would just like to see these pictures.

25 MR. VERNER: I have handed them to the prosecutors.

1 THE COURT: Go ahead and show him. I believe you're
2 up to Defendant's 3. Go ahead and show him 4 and 5.

3 MR. VERNER: I thought I had showed them all five.

4 THE COURT: All right.

5 MR. SCOTT: Okay.

6 Q What is 4?

7 A That is showing their property line right there.

8 Q Okay.

9 A And the old fence that used to be there.

10 Q Like I say, you can see this is standing right up
11 next to the new gate, the new fence?

12 A Well, that's their property line marker right there.

13 Q Okay. And so it shows the new fence on the very left
14 of the picture?

15 A Right.

16 Q The property line marker that they had it surveyed on
17 and kind of the overgrowth in that area?

18 A Right.

19 Q So the white stick with the orange tape around it is
20 the property line, I guess?

21 A Right.

22 Q And you can see a new fence to the left of it?

23 A Yes, sir.

24 Q And that's what the overgrowth looked like?

25 A Right..

1 THE COURT: 3 and 4, Your Honor, for evidence.

2 MR. SCOTT: No objection.

3 THE COURT: 3 and 4 in evidence.

4 (Whereupon, Defendant's Exhibit numbers 3 and 4
5 admitted into evidence.)

6 Q And, finally, number 5, what are we looking at?

7 A That standing back there in between their fence and
8 the property looking back at the house.

9 Q Okay. Is that wisteria or what is that?

10 A That is wisteria.

11 Q Okay. And is that just kind of the typical growth
12 between the property lines?

13 A At one time, I don't know where it came from. The
14 neighbor on the right coming out the back door, his whole
15 yard, the backyard in there before he bought it was just
16 grewed over with wisteria.

17 (Whereupon, Defendant's Exhibit 5 was admitted into
18 evidence.)

19 Q So back in November of 2015, looking at the, from
20 your back porch towards your back yard?

21 A Yes, sir.

22 Q Would I see houses back there or would I just see the
23 trees and overgrowth?

24 A Trees and overgrowth mostly.

25 Q Okay. Would you have had a clear view at all of the

1 Cromer property in November?

2 A No.

3 Q Would they have a clear view of your property?

4 A No, not unless they were standing there and they're
5 sticking their head through it.

6 Q All right. The pictures that have been introduced by
7 the State today, but the property, the overgrowth at least
8 where the fence was cleaned out when they put in the new
9 fence?

10 A Yes, sir.

11 Q So it's not in the same state it was?

12 A No sir, it is not.

13 Q Okay. All right. Where we left the story, you came
14 and, you heard the dogs. You came to the back porch. You
15 saw Aleah dragging the dog off the property?

16 A Right.

17 Q Was she, how far away to you was she?

18 A Twenty, thirty yards.

19 Q To the right or left?

20 A To the right.

21 Q Is that on your property or is that the neighbor's
22 property?

23 A It was on the property.

24 Q Okay.

25 A She was heading to the neighbor's property.

1 Q All right. If I am looking at your front door from
2 the street --

3 A From the street.

4 Q I assume your front door faces Oak Street?

5 A Yes.

6 Q Who lives on your right? Do you have a neighbor to
7 the right?

8 A Facing the house from the street, who lives on the
9 right? I don't know their name.

10 Q Does anybody live there?

11 A Yes, sir.

12 Q Okay. What about to the left?

13 A There's somebody lives over there. I met them one
14 time.

15 Q Okay. But you do have neighbors to the right or
16 left?

17 A Right.

18 Q How far, are they close neighbors? Can you see their
19 house from your house?

20 A Yes, I can.

21 Q Okay. All right. Well, tell me after you see Aleah
22 dragging Mist off your property?

23 A She had done got the dog. I was happy. Gone. No
24 more problem. I went out and checked on the little dogs
25 after she got, she got gone because I didn't want her

1 feeling that I was threatening her to go out there while
2 she was still on the property. After I checked and seen
3 that they were all--

4 Q Did you say anything to Aleah?

5 A No.

6 Q Did you have the rifle?

7 A No, sir.

8 Q Did you go back in and get a rifle?

9 A No, sir.

10 Q Had you had any prior bad history with Aleah prior to
11 that day?

12 A Never met her. I didn't know her.

13 Q Did you recognize her as being the girl who lived
14 behind your house, or just assumed, or what?

15 A I didn't know who she was. I had seen that dog
16 before, but far as knowing whose dog it was, I couldn't
17 have told you.

18 Q All right. But did you know the dog lived behind
19 your house?

20 A I know there was a dog back there.

21 Q Okay. And you testified that you'd seen it one time
22 on your property?

23 A Yes, sir.

24 Q Was it on your property at other times, too, or just
25 one time?

1 A I couldn't honestly say it had been there any other
2 time.

3 Q Okay. All right. Well, let me use, does Aleah say
4 anything, does she say I'm just getting my dog or anything
5 like that?

6 A No, she didn't say nothing.

7 Q Okay.

8 A She just took the dog. I take it the dog was
9 actually, I said she was leading the dog. Maybe the dog
10 was leading her. I ain't going to say which.

11 Q Okay. And so she takes the dog back to her property?

12 A Right.

13 Q Do you watch, sit there and watch her take the dog
14 off?

15 A No. I come down the steps after she got a little
16 piece there on that other property fixing to turned past
17 the shed, that little building he has. I checked on the
18 little dogs. They were all right. I started getting
19 clothes off the clothesline.

20 Q How long did it take Aleah to get the dog? Between
21 the dogs, did you hear your dogs barking, right?

22 A Right.

23 Q And you go outside to check on them, and you see
24 Aleah dragging her dog off the property?

25 A Right.

1 Q Was that pretty close in time?

2 A Yes.

3 Q So she had already caught the dog pretty quickly?

4 A Right.

5 Q And then how long did it take her to get back to her
6 own property, just a few minutes or seconds or?

7 A Oh, the way she, the way it looked like, like I said,
8 I don't know if she was leading the dog or the dog was
9 leading her. Whichever it was, they were moving pretty
10 good.

11 Q All right. Well, I mean, it couldn't have taken more
12 than just a few seconds to get back to her property, could
13 it?

14 A No, she was gone quick.

15 Q Okay. Did you see anybody else?

16 A No, sir.

17 Q But did you have any exchanges of words with anybody?
18 Could you have been talking to yourself or just, or
19 yelling, in general?

20 A At that time, no. I started, when I started to get
21 the clothes off the line, I was thinking to myself and it
22 looked like that dog is just a little much, they can't
23 control that one. And somebody screamed from over the
24 other side. Dog was chasing, their words, a Goddamn deer.

25 Q So you go to the clothesline to get your clothes?

1 A Right.

2 Q At that time, you hadn't had any kind of run-in or
3 exchange with either the C. kid or the C. kid?

4 A No, sir.

5 Q All right. How long are you out there at the
6 clothesline? You go to check on your dogs?

7 A Right.

8 Q How long, just a few minutes, I guess, to walk
9 around, or look, or what?

10 A Just a few seconds to walk back. Walk up to that end
11 kennel where they were at and look around and look at it
12 and make sure there was, they were all right and went back
13 to the clothesline. Things done quieted down by then.

14 Q All right. And then you get your clothes. How long
15 are you out there at your clothes line?

16 A Oh, a minute or two. I just started picking them off
17 the line and kind of halfway folding. Being a man, I'm
18 not good at folding.

19 Q All right. And then you said you heard somebody?

20 A Well, while I was doing that, I just thought, was
21 thinking that that little child with that size of dog--

22 Q -- well, I mean, don't tell me what you're thinking.
23 Just what happens.

24 A Well, I said to myself that it don't look like they
25 can control that dog, and then she screamed out over at

1 me.

2 Q Who is she?

3 A I--

4 Q -- could you see who the lady was?

5 A No, I couldn't see.

6 Q Had you ever met Ms. Cromer before?

7 A No, I have not.

8 Q Did you physically see her?

9 A No, sir.

10 Q But did the voice sound like it was coming from the
11 Cromer property?

12 A It came from that direction.

13 Q Okay. I mean, and what, what happens or what's said
14 then?

15 A Well, she said, like I said, that was chasing a
16 Goddamn deer, and what do you expect when the fence is
17 tore down. And I told her that the, then she was talking
18 about the little old fence that was--

19 Q -- right then it was just the old fence?

20 A There was another little fence put back there that
21 run down the line that was to keep a deer from eating that
22 shrubbery when the woman that lived there before put it
23 up.

24 Q Okay.

25 A I knew it was tore down and the other one, age has

1 took its toll on it.

2 Q Okay. But, again, you're at the clothesline?

3 A Right.

4 Q Are you speaking to yourself?

5 A Right.

6 Q Are you speaking out loud or is it in your head?

7 A Well, I reckon I was talking to myself. I'm bad
8 about it.

9 Q Well, what do you remember the conversation at the
10 clothesline to be?

11 A Well, it just look like they can't control that dog
12 or it seems to be a little much.

13 Q All right. And were you aware the lady was there
14 when you were talking out loud?

15 A No. I couldn't have told you there was anybody out
16 there but me.

17 Q And then what happened does she, nobody says, hey,
18 you or anything like that?

19 A No, sir.

20 Q To the best of your knowledge, well, how did the
21 conversation start?

22 A The way I said it did. That she yelled out the dog
23 was chasing--

24 Q -- her words were the dog was chasing the deer?

25 A Right.

1 Q Well, how, well, how did the fence even get brought
2 into the conversation?

3 A She said something about the fence being tore up.
4 What do you expect, the fence is tore down.

5 Q Do you have a rifle in your hands?

6 A No.

7 Q Did you go back inside and get a rifle?

8 A No.

9 Q All right. Well, what happens next?

10 A She said, and I told her the fence was on the, the
11 back one that she's talking about was on us. And the
12 other one as a border line that, I'm not going to argue
13 about this. I'll just let the police settle it. And I
14 finished getting the clothes off the line and I went on
15 in.

16 Q All right. And what happened next?

17 A The next thing I know, I go out to check the feed on
18 the, make sure the little dogs has got water and food. I
19 should have done it when I was out there, but I didn't.
20 And this cop is standing out there pointing guns at me.

21 Q All right. And what happened?

22 A They tell me to come down the steps and turn around.
23 I came down the steps. I turned around. And then she
24 grabbed me.

25 Q By, she, you talking about the lady deputy who

1 testified earlier?

2 A Right.

3 Q Okay. And what happened?

4 A She was holding my arms and the man kept telling me
5 to tell me the truth or you'll never touch a gun again in
6 your life.

7 Q Were you handcuffed or were you free?

8 A At that time, she was holding my hands and she kept
9 kind of--

10 Q -- you weren't handcuffed. She was just kind of
11 keeping your hands?

12 A Right.

13 Q All right. All right. Well, go on.

14 A Well, she was kind of abusive and trying to, I
15 reckon, show her power.

16 Q But did, at some point, were you handcuffed?

17 A Yes, sir.

18 Q Okay.

19 A After she pushed me or was pushing, I kind of stepped
20 forward a little bit and was losing balance. She wrenched
21 my arms, and then she told somebody to come over and
22 buckle him up.

23 Q Okay. Did they ask you whether you had threatened
24 the child or children with a gun or the lady?

25 A They ask me did I point a gun at them. I told them

1 no.

2 Q Did they ask you if you had weapons?

3 A Yeah. I told them I had them, but most of them was
4 in a, they were supposed to be in a gun vault, but I
5 forgot I got one out that morning. At my brother's house,
6 I do the cooking. I got them out, and I cleaned them up
7 and getting them ready to go hunting Monday, but then I
8 got up and started cooking.

9 Q Okay. Was that the rifle with the scope on it?

10 A Right.

11 Q That we saw earlier?

12 A Yeah, that's my deer rifle.

13 Q Where was that in the house?

14 A It was sitting over there near the table in a chair
15 that I set in and leaned up against an old Singer sewing
16 machine.

17 Q In what room?

18 A In that house, the kitchen and dining room were
19 adjoined. It would be what was in actually the dining
20 room.

21 Q Okay. Is the dining room, what room would you be in
22 if you wanted to go through the back door onto the back
23 porch?

24 A You'd have to go through the kitchen and the utility
25 room.

1 Q Okay. Well, the door to the back door is in the
2 utility room or it's in the kitchen?

3 A Right. Utility room.

4 Q I mean, that's a separate room from the kitchen?

5 A Right.

6 Q Was that on the far side of the dining room?

7 A Right.

8 Q To the best of your knowledge on November 15th, where
9 did you leave the hunting rifle?

10 A Near the table in the dining room.

11 Q Okay. Is it possible you could have left it beside
12 the door, the back door?

13 A No, sir.

14 Q And can you account, if it did get there, can you
15 account for how it was there?

16 A No, sir. I couldn't figure out how it got there if
17 it was at the back door.

18 Q When the officers went in your house to look around,
19 they had also arrested or detained your brother, right?

20 A Right.

21 Q And although he stayed there sometimes, it's
22 technically, legally he owns the house?

23 A Yes, sir.

24 Q Okay. Where was he while this was all going on?

25 A He was down the hall messing with the computer.

1 Q Where were you when the deputies searched the house?

2 A Standing outside in handcuffs.

3 Q So what they found and where, you don't know because
4 you were outside?

5 A Right.

6 Q Is it possible that when you first heard the dogs
7 barking that you could have grabbed the rifle to see if
8 there was something threatening them?

9 A No, sir. That's not my first instinct to grab a gun
10 when them dogs barking. They could be barking at
11 anything. Sometimes, a cat comes through the yard and
12 they just have a fit, and I go out to see what they are
13 barking at.

14 Q All right. So just the fact that you heard the dogs
15 barking wouldn't ordinarily make you go grab a rifle?

16 A No.

17 Q And this was daytime?

18 A This is during the day.

19 Q And hadn't had any prior difficulties with the
20 Cromers prior to November 15th?

21 A No, sir.

22 Q Okay. Had you had problems with their dogs?

23 A It had been in the yard once before then.

24 Q Any other problems?

25 A No, not that I know of.

1 Q Well, the lady testified that you called the police
2 at some point for the dog barking?

3 A This was after November the 15th.

4 Q Okay. Well, why was that?

5 A Well, the dog had a nasty habit of barking most of
6 the night. He barked and to up to 2:00 and 12:00 and 1:00
7 o'clock in the morning and if it keeps me up that late, I
8 might as well have just stayed up. I get up about 1:00.

9 Q Okay. Well, how long had the dog been barking like
10 that?

11 A He had been barking like that for probably over six
12 months out there.

13 Q Okay. After this happened? After November?

14 A Well, after November he, now you can't tell that
15 dog's down there much.

16 Q Okay.

17 A He barks a little bit every now and then. I've never
18 seen a dog that didn't bark.

19 Q Who put those signs up?

20 A I did.

21 Q Okay.

22 A My brother got them, but I put them up.

23 Q Johnny bought those?

24 A Yes, sir.

25 Q Well, do you know where he bought those from?

1 A Like I said, he plays with the computer. He finds
2 all kinds of weird things on there.

3 Q So he may have ordered them on the Internet?

4 A Yeah. He ordered off line.

5 Q Bought them locally or?

6 A No, I think they mailed. I remember the mailman
7 delivering one or some of them.

8 Q And then he gave them to you, and you put them up
9 around his house where y'all live?

10 A Put--

11 Q Did you mean them literally that you would shoot
12 somebody?

13 A I put them up as a joke.

14 Q Just for trespassing on your property?

15 A I put them up as a joke for the mailman. When he
16 delivers a package I told him, see my new one?

17 Q Well, where is the ply board that the two
18 side-by-side, where on your property is that ply board,
19 but they appear to be on some kind of board or something?

20 A They're on OSB.

21 Q OSB. Where is that on your property?

22 A That's right at the edge of my brother's house.

23 Q Towards the front street, towards the Cromers house,
24 towards the side, where?

25 A It's on the opposite side of the Cromers.

1 Q If I was looking at the house from the street,
2 looking at the front door, where are the signs?

3 A Left side.

4 Q On the left side?

5 A The left side.

6 Q Facing towards Oak Street?

7 A Right, towards there.

8 Q Well, is there a fence or something?

9 A A little privacy fence we put up.

10 Q Are they on, are they connected to the privacy fence
11 or they, just there's a board?

12 A No, they're connected to the fence itself.

13 Q Okay. They're on the fence privacy. Okay. What
14 about the other with the thermometer?

15 A It's on a tree right back there just about the
16 clothesline.

17 Q So that's in the backyard?

18 A That's in the backyard.

19 Q Would anybody be able to see that thermometer who
20 wasn't already on your property?

21 A They wouldn't be able to see that thermometer unless
22 they were standing just about at that thermometer because
23 it's facing my brother's house.

24 Q Okay. So the thermometer doesn't point towards the
25 Cromers house or point towards the street, it's just on

1 your property?

2 A Only person it points towards is my brother's house.

3 Q Okay.

4 A I put it up so I can read the temperature.

5 Q Do you have a strict people policy of shooting people
6 trespassing on your property?

7 A No. I don't even have a strict policy of shooting
8 stray dogs that runs through their occasionally.

9 Q Okay. So have you shot any dogs?

10 A Yes, sir. I've had to shoot one. I had some
11 chickens, and it got in and it killed every one of them.
12 And it kept coming back because of I reckon it had so much
13 fun doing that, it didn't eat nairn.

14 Q Well, how long ago was that?

15 A Oh, that's been a couple of years ago.

16 Q And the police told you what?

17 A That if they can't seem to catch this dog or find out
18 whose dog this is.

19 Q So you reported it to the police?

20 A Right. And they told me it'd be best if I seen him,
21 seen like it likes to kill small things, to go ahead and
22 shoot him for them.

23 Q But you didn't have any chickens on your property at
24 that time?

25 A No.

1 Q In November?

2 A No.

3 Q Just if you had seen a dog in your yard, would you
4 shoot it?

5 A No.

6 Q But if it was, if it was just going through your yard
7 but not in an aggressive way, you don't have a policy just
8 toward shooting?

9 A Well, the next-door lady, the lady on the right
10 standing back facing the back porch, she's got a
11 Pomeranian. She was chasing it one day, and it ran up in
12 the yard. She told me, stopped the car and told me, if
13 you can catch that dog, would you please catch it.

14 Sure. Does he bite.

15 No.

16 Now, I laid down and I told him, come here, come
17 here.

18 He came straight to me. I picked it up, rubbed it.

19 Q If you saw me walking or just somebody walking and
20 they were going across your property, would you pull out a
21 gun and tell them to get off your property?

22 A No.

23 Q And it would take at least some kind of provocation
24 more than just being on your property?

25 A If I seen you going across the property, I might ask

1 you if I could, if there was anything I could help you
2 with.

3 Q You might let me know it's private property. But
4 you're not one of these people who has a strict policy
5 that it's my property and nobody can be on it?

6 A No, I've lived in, I've lived on that property for 51
7 years, 51 years, and not yet have I shot a neighbor.

8 THE COURT: Hold on one second. We need a brief
9 break up here somewhere?

10 FOREPRESON: Yes, sir.

11 THE COURT: We'll have one break, real quick. Okay.
12 All right. Yeah, just pop in there, sir, and we'll stay
13 and just wait for him.

14 (Whereupon, a juror had to take a short break.)

15 THE COURT: Please continue.

16 Q James, I'm inclined to ask you, did you pull out a
17 gun and threaten the [REDACTED] kids?

18 A No.

19 Q And do you know of a reason why they reported to
20 their mother that you had?

21 A Only thing I could think of if they was off their
22 property and was on someone else and maybe they got scared
23 and run. I don't know.

24 Q Were you yelling at them as they ran away?

25 A No.

1 Q Did you ever see them run away?

2 A Well, like I said, I only seen one and that was the
3 girl with the dog.

4 Q And then you intimated, you said something to the
5 mother about, well, we'll just let the police decide it or
6 what did you say to the mother?

7 A Well, she said something about the fence being tore
8 down, and I told her it wasn't on her, that maybe we ought
9 to just let the law and decide this one.

10 Q But you're not a person who has any kind of extra
11 sense of protection of your own individual property that
12 nobody can ever be on your property?

13 A Oh, no.

14 Q Like the utility man when he comes and checks the gas
15 reading?

16 A That's his job.

17 Q Okay. Well, and if people were just trespassing on
18 your property, your first inclination would not be to
19 threaten them with a gun?

20 A Why would I threaten them?

21 Q Okay.

22 A If I don't want them, I'd ask them not to come back.

23 Q Have you had any problems with the law or police
24 about your property prior to this?

25 A No.

1 Q And how old are you?

2 A 51, going on 52.

3 Q And lived a fairly peaceable life?

4 A I tried to.

5 MR. VERNER: Mr. Scott may want you to answer some
6 questions too.

7 THE COURT: Cross.

8 CROSS-EXAMINATION

9 By Mr. Scott:

10 Q You don't think that you're more sensitive about
11 property rights than anybody else?

12 A No.

13 Q You know, I don't want to beat a dead horse, but you
14 don't think those pictures you got on your property, do
15 you think this is what an average person might have on
16 their property, shooting people who go on your property?
17 You don't think you're a little bit more sensitive about
18 trespassers than just the average person?

19 A Well, I don't think so.

20 Q Okay.

21 A No more than the United States is with the borders of
22 their country.

23 Q What, say what, now?

24 A I said I'm a little less aggressive about it than the
25 United States is about their borders.

1 Q Oh, what do you mean by that?

2 A Well, there's been more than one war that's actually
3 started out over boundary lines of a country.

4 Q Okay. What's that have to do with this situation
5 though?

6 A Well, in this, our Country, they classify your home
7 your kingdom, your castle.

8 Q Okay. Well, what do you know about that?

9 A What do I know about what?

10 Q Your home being your castle, what do you mean by that
11 and the law classifying that as your, your home as your
12 castle. What do you mean by that?

13 A It's your domain. You live there.

14 Q Okay. And so you're protective of that is what I'm
15 asking though?

16 A No. I don't go out there and chase people off. If
17 they come up, they come up.

18 Q But you warn them that guns might be involved if they
19 step on your property, don't you?

20 A No.

21 Q Now, what does this sign mean? Now, I'm trying to
22 figure if the, due to the price increase in ammo, do not
23 expect a warning shot. You got two that say that, don't
24 you? You got two signs that talk about no warning shots,
25 right?

1 A Right.

2 Q Okay.

3 A Well, one's a thermometer.

4 Q What now?

5 A One's a thermometer.

6 Q Okay. Do you know your neighbors on the left or
7 right; do you know their names? You don't?

8 A No.

9 Q Is it fair to say you kind of just keep to yourself
10 on that property with your brother?

11 A That's right.

12 Q What?

13 A That's right. I try to stay by, try to be peaceful
14 and just stay by myself.

15 Q And you don't really associate with your neighbors?

16 A No.

17 Q And they are in close proximity to you, right?

18 A Right.

19 Q Say what?

20 A I have talked to the man on the right.

21 Q You don't know his name?

22 A No. Names go in one ear and out the other one. I
23 can't remember a name.

24 Q How close do you think his house is from your land?

25 A Ten, fifteen yards.

1 Q Okay. What about on the other side of your house,
2 ten to fifteen yards between your house and theirs?

3 A Oh, probably thirty or forty yards, fifty in between
4 theirs.

5 Q Okay.

6 A There's a big oak tree down there, a privacy fence,
7 and then the little driveway, and then their house.

8 Q Okay. So but you do have a number of neighbors. Let
9 me see, have you ever seen your house from about a hundred
10 feet up, State's number 8. Do you recognize that or can
11 you orient yourself there?

12 A Brown Street, Town of Prosperity. Well, the police
13 department now.

14 Q Well, you're right Downtown pretty much, aren't you?

15 A More to the side.

16 Q Okay. More to the side of Downtown?

17 A Yeah, more to the side.

18 Q But you've got these, this line of houses on Brown
19 Street here. Really just a row of houses that you're a
20 part of, is that correct?

21 A Right.

22 Q And you're telling us that a policeman told you that
23 it'd be okay to shoot dogs in the city limit, the town
24 limit?

25 A The town police officer or the Town of Prosperity,

1 chief of police.

2 Q Okay. He told you to shoot dogs?

3 A Well, he said if they would come there and they were
4 deeming their self a threat. The Newberry County Humane
5 Society even told me this.

6 Q Okay. They didn't call the dog catcher, they said
7 just shoot in the middle of Downtown Prosperity is your
8 testimony?

9 A (No audible response.)

10 Q You ever get in trouble for that, animal cruelty,
11 anything like that?

12 A Well, my brother brought a dog from the woods, he
13 used to log, that was left out there. And it was just
14 about starved to death before he brought it home, and we
15 tried to feed it and get it up. We got it up and got it
16 barking, but somebody called and said it was cruelty to
17 animals. And yes, I been in trouble for that.

18 Q And another time you shot a dog that was on your
19 property?

20 A Yeah. He killed and he killed about 15 chickens and
21 I shot it.

22 Q Okay. When did you say those pictures, these
23 pictures you had, I can't, and that's why I wanted to see
24 them because I can't tell where that's taken from or what
25 we're looking at. I see a bunch of leaves.

1 A That's the back of their property, the fence line at
2 the corner.

3 Q Where on this picture is it, the picture you're
4 looking at?

5 A Right here.

6 Q Let me, I'll tell you this, I got a better picture
7 for you. This is State's number 2. Do you recognize
8 that?

9 A I was on just the other side of that fence.

10 Q Let him pull it up real quick. All right.

11 A I was right about there.

12 Q Okay.

13 A Just on the other side of that fence on our property
14 line.

15 Q Okay. You don't disagree that, I mean, this is a,
16 this is the Cromers backyard and it's a very clear, I
17 guess, lane towards your house, is it not?

18 A Today it is.

19 Q When did you take your picture?

20 A Today.

21 Q Okay. So it's very clear.

22 A But back in there where she says she was standing,
23 she wouldn't have seen me at the clothesline.

24 Q Okay. And I don't know that her seeing you, what
25 does that matter? Did you remember her talking to you?

1 A Yes, sir.

2 Q Okay. And do you say you don't spend a lot of time
3 in that backyard?

4 A That's right.

5 Q Well, you were out there last Thursday afternoon,
6 weren't you?

7 A No. I was in the front yard last Thursday when y'all
8 went by.

9 Q Well, because you weren't on the, how do you know I
10 was there?

11 A Because I seen you.

12 Q Okay. Well, I was in the backyard, so how would you
13 have seen me from your front yard?

14 A I see y'all when you went by in the car.

15 Q Okay. Do you remember being on that back porch and
16 looking at me too?

17 A Uh-huh.

18 Q You do. Because you spend a lot of time on that back
19 porch?

20 A No, I had just walked out there to see what the dogs
21 are barking at.

22 Q Okay. So you heard dogs barking?

23 A Right. And I walked out there to see what they were
24 barking at.

25 Q All right.

1 A It could have been the mailman bringing something.

2 Q It could have been, but it was us taking some
3 pictures of your house, wasn't it?

4 A Um-huh.

5 Q Did that upset you?

6 A No. You want to take pictures, go ahead.

7 Q And your dogs are out there, though. How many little
8 dogs do you have?

9 A Three.

10 Q Three?

11 A One little male; two little females.

12 Q Okay. And do they come inside, too?

13 A (No audible response.)

14 Q Do they stay in the backyard?

15 REPORTER: Is that a yes or a no or?

16 A Yes.

17 Q And you were just sitting inside enjoying the AC that
18 November?

19 A Right.

20 Q You said you don't typically see deer around there,
21 is that right?

22 A Not at that time of day. Early in the morning you
23 may see one.

24 Q There are a lot of deer around there, though, aren't
25 there?

1 A Not as many as there used to be.

2 Q Right. Because you said there was actually somebody,
3 put the fence to keep the deer from eating all the
4 shrubbery, didn't you? Didn't you say that?

5 A No, I put, we put a fence up to keep a pet goat that
6 my daddy had had from eating that shrubbery.

7 Q Oh, I thought you said there in your direct testimony
8 that a neighbor put up some--

9 A No, she planted the shrubbery, and she was saying
10 that a pet goat that some man my daddy knew had a farm
11 gave him for a pet. She said that she was scared that
12 goat was going to get over there and eat the shrubbery.

13 Q Okay. Well, did I misunderstand you say they put the
14 fence up for the deer keeping them from eating shrubbery?

15 A Right. No, I didn't say that.

16 Q Okay. So if the court reporter took it down, she was
17 mistaken, too?

18 A Well, I didn't say it was to keep the deer from
19 eating it. I said that I, it was put up to keep a goat
20 from getting over there and eating that shrubbery.

21 Q Okay.

22 A Back where that shrubbery was, I don't see how
23 anything could have got through there.

24 Q Right. And I know you keep wanting to say how thick
25 the shrubbery was. I know that. But looking at this

1 picture, you can clearly see your house, can you not?

2 A Yes.

3 Q Okay. And your testimony is that some shrubs were
4 cut down when they put the fence up?

5 A Right.

6 Q Okay. But they wouldn't have been cutting shrubs on
7 your property, would they have?

8 A No.

9 Q Okay.

10 A They stopped at the property line.

11 Q Now, so Aleah, you used her first name a minute ago,
12 but you've only met her in this trial and during that day.
13 You had no trouble seeing her that day, did you?

14 A No, she was on the property at that time when I did
15 see her.

16 Q Okay. And how did that make you feel when you saw
17 her on your property?

18 A She was getting the dog. I was happy.

19 Q Okay. You didn't want to do some of these things you
20 talk about in your signs, did you?

21 A The sign, like I said, they was put up to be a joke
22 between me and the mailman.

23 Q Does your mailman think it's funny?

24 A Yeah.

25 Q All right. So you can clearly see her. In fact, you

1 said you can see her hand wrapped around the dog's collar.

2 So you didn't have any trouble seeing her, did you?

3 A Right.

4 Q All right. And it's your testimony that you may have
5 been talking to yourself when you saw her or something
6 like that?

7 A Now, I didn't say nothing to her when she was over
8 there.

9 Q All right.

10 A She left, I, I, after she got, got off the property I
11 said, good, she's got him. She's gone. I'm happy.

12 Q Okay.

13 A She got her dog, if that was her dog. I couldn't
14 verify it was hers. I couldn't verify it was yours.

15 Q Yeah, but you had seen the dog before?

16 A I had seen that dog before but whose it was?

17 Q Had it ever acted vicious towards you?

18 A The first time I seen it when I walked up, it kind of
19 growled. Maybe I startled it. I don't know. You never
20 know what's in a dog's mind. He could have got scared.

21 Q You're saying that dog that we brought out here today
22 growled at you?

23 A It growled at me, but it's been, at that time, it was
24 about over a year ago, six months ago, a year ago that it
25 came on.

1 Q Okay.

2 A I don't remember it, because I didn't think of it as
3 much of a challenge or a threat. It never came back and
4 when they don't come back, I don't worry about them.

5 Q Now, after Aleah drug the dog away, what was the next
6 thing you remember happening because I want you to explain
7 that again.

8 A I went out to check on the small dogs and make sure
9 they were all right.

10 Q All right.

11 A I looked around at the kennel. I walked to the back
12 side where the dog and her, where she was at and they
13 left. I stepped there and I looked around and I couldn't,
14 I didn't see nothing. The dogs looked okay, so I turned
15 around and went back to get the clothes off the
16 clothesline.

17 Q Okay. Then, what happened?

18 A Well, I started getting the clothes off and I started
19 thinking, don't look like they can control that dog.

20 Q You were still watching them?

21 A No, she was gone.

22 Q All right. So why were you, explain that again.
23 Said you were taking the clothes off, and you said it
24 doesn't look like she can control the dog?

25 A Right.

1 Q Well, how, how do you, why are you saying that if you
2 can't see her?

3 A Talking to myself.

4 Q All right. So you're talking to yourself. She
5 doesn't look like she can control the dog and you can't
6 see her?

7 A Right.

8 Q And, and did you answer yourself?

9 A Occasionally, I do.

10 Q Okay. Well, what happened after that, now did you,
11 what happened?

12 A Well, she yelled over there about the dog chasing a
13 deer. I told her, and then she said something about how
14 the, what do you expect, the fence is tore down.

15 Q Okay.

16 A I told her the fence ain't even on you.

17 Q All right. So y'all are talking to one another at
18 that time?

19 A Right.

20 Q Was it a child's voice or was it Michelle?

21 A No, it was a grownup's voice.

22 Q Okay. What do you expect, the fence is torn down.
23 Was that in response to something you had said?

24 A I reckon it's in response to the, I reckon she heard
25 me. I couldn't have told you if she was there or anybody

1 was there about the dog, don't look like they could
2 control their dog.

3 Q Okay. So you think she heard you talking to
4 yourself?

5 A Yes.

6 Q Okay.

7 A Had to have.

8 Q Do you think the kids may have heard you talking to
9 yourself too?

10 A I doubt it because I didn't say nothing when I walked
11 out there with them.

12 Q Okay.

13 A I just looked to see what was going on.

14 Q Were you maybe talking to yourself when you said,
15 I'll kill you kids and the dog if you ever get on my
16 property again?

17 A No.

18 Q You just categorically deny saying that?

19 A I categorically deny saying that.

20 Q And then you did not ever bring the rifle outside?

21 A No.

22 Q Okay. And so we are to believe that the child
23 described a rifle with a black scope who didn't--

24 MR. VERNER: Your Honor, that's, he's not allowed to
25 comment on another witnesses' testimony. That's pitting

1 witnesses.

2 THE COURT: Sustained to the pitting, but if you want
3 to rephrase the question.

4 Q You did not visibly show that rifle while the
5 children were out there?

6 A No.

7 Q You don't deny that State's number 9 is your rifle?

8 A That's my rifle.

9 Q And it clearly has a large black scope on it?

10 A It does.

11 Q All right. And you did tell the officers, though,
12 that all your guns would be locked in the safe, right.

13 A Yes, sir.

14 Q That's not where this rifle with the big black scope
15 was, was it?

16 A No. It was over there at the table where I'd forgot
17 I'd put it. I got it out that morning to clean it.

18 Q You just, okay. And you just happened to forget the
19 rifle with the big black scope, right by the back door?

20 A It wasn't by the back door. It was over there near
21 the table.

22 Q Okay. Where is the table?

23 A Probably fifteen foot away from the back door.

24 Q Okay. So you deny that it was within arm's reach of
25 the back door?

1 A I deny that it was in reach of the back door.

2 Q Okay. But you don't deny that it was out and not in
3 the safe?

4 A I don't deny that it wasn't in the safe.

5 Q And your testimony is that oops, I forgot about that
6 one? That's your testimony today?

7 A Well, like I told you, I got it out cleaning it, and
8 then I got started cooking supper and when I got started
9 cooking supper, I forgot all about it.

10 Q But it was loaded, too, wasn't it?

11 A Actually, no. It had three rounds in the box
12 magazine, but it did not have one in the chamber. And
13 under federal law, though, unless it has one in the
14 chamber, it's not classified loaded.

15 Q Okay. Well, but it had three rounds in it?

16 A It had three, it had three rounds in the box
17 magazine.

18 Q Okay. Ready to be fired?

19 A No. You'd had to chamber a round before you could
20 fire it.

21 Q And what does that take, just pull the bolt back?

22 A Right. Pull the bolt back and put a round, chamber
23 the round.

24 Q Ready to be fired?

25 A Then it's ready to be fired.

1 Q And do you often keep the rifle loaded while you're
2 cleaning it?

3 A No, I loaded it back up after I got through.

4 Q I thought you said you forgot about it?

5 A This was during while I was cleaning it. I finished
6 cleaning it before I started cooking, and then I just set
7 it down and went over there to clean, start cooking
8 supper.

9 Q Okay. Clean the gun, unload the gun and clean it.
10 Then load it back up and forget about it and then cook,
11 right?

12 A Right.

13 Q Okay.

14 A Well, about 2:00 or 3:00 o'clock in the afternoon, if
15 you don't get started on supper by that time you'll be
16 eating supper about 8:00 or 9:00 o'clock.

17 Q All right. And this, I think I know what the answer
18 is going to be for this last one. You didn't, so
19 Michelle, whenever she was talking to you, you didn't tell
20 her the same thing that if the dog or the kids come on my
21 property, I'm going to shoot to kill them?

22 A No.

23 Q You deny that?

24 A I deny saying that.

25 Q Okay. All right. But you don't deny that the

1 officer did find your rifle with three shells in with a
2 big black scope, you're going to say fifteen feet from the
3 back door? You going to deny that, after you told them
4 that wouldn't, there wouldn't be any guns outside the
5 safe?

6 A Like I said, I forgot about it.

7 Q Did you ever tell law enforcement you thought that
8 dog was vicious?

9 A I told him he growled at me. I couldn't say whether
10 it was vicious or not.

11 Q Okay.

12 A It could be and it could not be.

13 MR. SCOTT: Nothing further.

14 THE COURT: Anything else?

15 MR. VERNER: Nothing further.

16 THE COURT: Sir, thank you. You can step down. All
17 right. Ladies and gentlemen of the jury, we're a little
18 bit past breaking time for lunch, so I'm going to ask if
19 we could to try and be back around 2:15. That will give
20 you about an hour to grab a bite, okay, and try and be
21 back around 2:15 again. Don't discuss the case. I
22 anticipate having this to you sometime shortly after
23 lunch. So enjoy your lunch and don't talk about the case
24 with anyone and we'll see you back in about an hour.
25 Thank you.

1 (Whereupon, the jury was excused from open court for
2 a lunch break.)

3 THE COURT: All right. I'll see y'all back around
4 2:15.

5 MR. VERNER: Your Honor, the Court didn't inquire,
6 but we are resting.

7 THE COURT: I assumed as much and assuming that there
8 will be no reply testimony. Apparently, there will not be
9 reply testimony. I've already provided or had my clerk
10 provide copies of the charges to y'all. I've tweaked
11 those a little bit. It includes the presenting language
12 that you wanted, Mr. Verner. And the, it reads pointing
13 or presenting as opposed to pointing and presenting.

14 MR. VERNER: I'll read it over the break, Your Honor.
15 I do anticipate probably asking for one charge that I'm
16 thinking of kind of off the top of my head.

17 THE COURT: Can you let me in on what it might be, so
18 I can be mulling it over and maybe have it so that we can
19 hit the ground running.

20 MR. VERNER: Just probably generic language that a
21 person's got a right to defend their property just as a
22 general legal proposition. And I will try to come up with
23 a nicer, more precise language. But that, basically, that
24 a homeowner would have the right to defend his property,
25 even with deadly force. But my understanding is a general

1 proposition is that you got a right to defend your
2 property.

3 THE COURT: I would agree with that general
4 proposition, but the implication is that you can then
5 shoot trespassers on sight which has never, of course,
6 been the law of this State. You cannot use deadly force.

7 MR. VERNER: Right.

8 THE COURT: Against a mere trespasser. There would
9 have to be greater provocation such as someone trying to
10 enter your home before you can employ deadly force or show
11 a weapon.

12 MR. VERNER: Well, my thoughts are just that it would
13 not be illegal in and of itself that if I thought I heard
14 a disturbance on my property to come out with a gun. But
15 I guess we'll get into the specific language that the
16 State is alleging. You'd have to get into a different
17 area of the law. But this is a general proposition that
18 if you find that he came out with being armed with a gun
19 on his own property. And I'd have to find the language,
20 but if it was reasonable. And just if I can find
21 something along that line, Your Honor that's probable and
22 true legal, then I may be inclined to ask for it.

23 THE COURT: I hear what you're getting at. Why don't
24 you work something up and give it some thought, and we'll
25 discuss it again briefly at 2:15.

1 MR. VERNER: Okay.

2 MR. SCOTT: And, Judge, I'm going to object to that.

3 THE COURT: I understand. I understand. I
4 understand Mr. Verner's, his point is that there is
5 nothing prohibiting a person from carrying a firearm on
6 their own property.

7 MR. SCOTT: But the evidence was, which is the way he
8 aimed at somebody and threatened them, he believed he
9 never brandished a weapon, period.

10 MR. VERNER: Well, I agree that then it becomes to
11 what degree it crosses the line.

12 MR. SCOTT: Because you don't get there, because his
13 testimony is he never took a weapon outside his home.

14 MR. VERNER: And we'll cross that bridge, I guess.
15 The State cannot object to a motion I haven't made yet,
16 Your Honor.

17 THE COURT: I understand. Very good. I am hungry.
18 I'll see y'all at 2:15. Thank you.

19 (Whereupon, a lunch break was taken.)

20 THE COURT: We can go back on the record. Of course
21 the record should reflect, the Defendant is present.

22 MR. VERNER: I intimated over the lunch break that I
23 would intend to re-call Ms. Cromer for two questions,
24 specifically two statements she made to the 911
25 dispatcher. But wouldn't be any longer than that. It

1 would possibly involve playing the 911 tape, at least just
2 those portions of it if she denied making the statements.
3 But I would intend to close with that, and then I, the
4 State is looking at some charges offering his general
5 propositions of the law.

6 THE COURT: Okay. Let's go ahead and discuss those
7 instructions so that we know where we stand and then we
8 can go straight to testimony.

9 MR. VERNER: You need a copy of it? You need me to
10 make a copy for you real quick. Your Honor, I have four
11 proposed charges I'm going to hand up to the Court. The
12 State brought in my client's views about the Castle
13 Doctrine, a man's home is his castle. I would state in
14 kind of a derisive type trying to make him look bad. I
15 would introduce the statute that in South Carolina it
16 says, specifically, a man's home is his castle.

17 THE COURT: All right. And I appreciate your
18 position. I don't want to muddy any orders by instructing
19 the preamble to the EPP acts, (phonetic), as a general
20 statement of philosophy. I can agree that a man's home
21 is, of course, his castle, but there is no argument in
22 this case.

23 MR. VERNER: Well, the Solicitor, from my
24 inclination, put it in a challenging where the intent of
25 his questions was to make it appear to the jury by the

1 questioning that that was not, and there were a few other
2 provisions that he's got the right to come out and defend
3 his property. Now, this isn't a self-defense case, but
4 just as a general proposition of law, that a property
5 owner has a right to defend his castle.

6 THE COURT: I would agree that the act that you have,
7 that you hand up that talks about people remaining
8 unmolested and safe within their homes, businesses, and
9 vehicles, and there is no allegation in this case. I
10 mean, there is just no facts that would support this
11 charge in the Court's opinion, but I do appreciate your
12 position.

13 MR. VERNER: B is State v. Bodie that a landowner has
14 the right to approach a trespasser on his property.

15 THE COURT: You are requesting that the Court
16 instruct the person has the right to approach one,
17 trespass upon his land and to use such force as necessary
18 to eject such person.

19 MR. VERNER: As a general, I understand that's not
20 the complete facts of the case. But just as a general
21 law, a person would be allowed to approach a trespasser
22 and in certain circumstances, remove him forcibly.

23 THE COURT: I would agree that would perhaps be the
24 case or that could be the case. Bodie is an 18, according
25 to this, it's an 1890 decision and Bodie may have had more

1 application in a time and the Sheriff was a day's
2 horseback ride away from one's home. And you had to rely
3 more on more self-help to maintain your property and your
4 privilege. I think we're getting a little far afield
5 here. But, the question is whether there was pointing and
6 presenting, pointing or presenting going on. And I don't
7 think that anyone disputes that the kid was running onto
8 his property for purposes of retrieving a dog. I
9 appreciate the position, but the argument from your
10 client's own testimony is that no argument, that he was
11 trying to legally eject the trespasser. So I don't see
12 where he would be entitled to this charge in light of that
13 fact.

14 MR. VERNER: Well, then the, you may not be wild
15 about my next one which is C, Your Honor. And I'll admit
16 to some extent, that is a cut-and-paste from the
17 self-defense charges. But that a Defendant has the right
18 to act on appearances, where we've been talking about in
19 this case whether or not the dog could appear to be a
20 threatening dog.

21 THE COURT: I understand your position. But, again,
22 your client says he did nothing wrong, that the gun never
23 went outside the house. And so I don't see where this
24 would be appropriate.

25 MR. VERNER: And, finally, D, Your Honor, which is

1 the Manley case, Supreme Court case from 1983 that a
2 landowner has a right to kill a trespassing dog. And not
3 as an absolute rule, but based on the circumstances, a
4 landowner has a right to terminate a trespassing dog.

5 THE COURT: And if your client were charged with
6 malicious injury to personal property and that he shot the
7 dog or injured the dog because he was trespassing on the
8 property, then perhaps that would be a correct statement
9 of law. Your client's defense is not merely as a
10 bystander. I saw the kid run in, retrieve the dog and
11 leave.

12 MR. VERNER: Well, I guess, my concern would be that
13 if the jury, if there was at least an inference in the
14 case that maybe he took the rifle out because of the dog
15 or the threat to his dogs, then he would be right to act
16 on his impression. I understand that it, the alleged
17 statements kind of cross the Rubicon between getting the
18 gun in the first place, and then whether or not it becomes
19 a threat. I think that the jury could say that maybe he
20 got the gun because he had a legitimate fear of the dog.
21 In that case, he would be illegal. But if the jury felt
22 like he would be unreasonable to shoot a dog on his
23 property, then it would dispel that legal misconception.

24 THE COURT: And seeing as how no shots were ever
25 fired, I don't know or I can't see really how to request,

1 charge would be applicable. But I think it's really just
2 they believe he did point and present a gun or they
3 believe he did not point and present a gun. That's really
4 where we are.

5 MR. VERNER: Okay. I want, I'm going to grab the 911
6 disc. I don't intend to play it unless it's, and it would
7 be short. I've got the passages marked.

8 THE COURT: All right. Go right ahead. Do you want
9 to make this part of the record.

10 REPORTER: Yes, Court's 3. Thank you.

11 MR. VERNER: Thank you, Your Honor. I'm ready.

12 THE COURT: Can y'all print that out for us. Let's
13 have the jury in.

14 (Whereupon, Court's Exhibit 1 was marked for
15 identification only.)

16 (Whereupon, the jury enters open court at
17 approximately 2:36 p.m.)

18 THE COURT: The jury is back and seated. At this
19 point, Mr. Verner, you indicated that you had one, one to
20 re-call.

21 MR. VERNER: Your Honor, I would call, is it Ms.
22 Michelle Cromer?

23 THE COURT: Ms. Cromer.

24 MR. VERNER: Ms. Cromer.

25 THE COURT: And you are still under oath, ma'am.

DIRECT EXAMINATION

1
2 By Mr. Verner:

3 Q Ms. Cromer, on November 15th of last year, you're
4 that person who called 911?

5 A Yes, sir.

6 Q Okay. Are you aware that 911 calls are recorded and
7 maintained by the County?

8 A Yes, sir.

9 Q And you gave truthful testimony today that, earlier?

10 A Yes, sir.

11 Q Is it a fact that you told the 911 dispatcher on
12 November 15th of last year that you had multiple incidents
13 involving a gun and your neighbor, Mr. Bedenbaugh?

14 A I do not recall that.

15 Q You don't recall saying he's--

16 A -- no.

17 Q You had three incidents, bad incidents before?

18 A No. There had been a time when he hollered at the
19 kids, but there was no incident between me and him or the
20 law got called or anything like that but he was yelling
21 at. But there was no altercation whatsoever.

22 Q Okay. So if the tape says that you've had three
23 occasions with him and a gun; that would be incorrect?

24 A Incorrect.

25 Q Is it possible you told the, because you were excited

1 at the situation, you embellished it to the 911 operator?

2 A That, that he might have had a gun, that he had a gun
3 that day.

4 Q But you, but if you told the officer you had three
5 prior occasions where he had a gun, that is untrue?

6 A That is untrue.

7 Q Okay. You deny making that statement?

8 A I do not recall making that statement at all.

9 Q And on the same 911 tape, the 911 dispatcher asked
10 you if you could describe what Mr. Bedenbaugh looked like.
11 And you said, I couldn't see him because of the bushes.
12 Is that correct?

13 A I couldn't see him well enough to describe him, but I
14 could see him. I couldn't tell if the, I could not tell
15 the dispatcher what he was wearing, but I could see the
16 white in his hair and his beard, that part of him.

17 Q Okay.

18 A I did not have my glasses on. I could not see far.

19 Q Okay. You remembered the 911 dispatcher asking you
20 to describe him?

21 A Yes.

22 Q Okay. And do you recall telling the dispatcher you
23 couldn't see him through the bushes? I'm not asking
24 whether that's true or not. I'm just asking if you
25 recall.

1 A No.

2 Q Okay. Is it possible you told the 911 dispatcher you
3 couldn't see him through the bushes?

4 A Yes, because I might not have been able to see
5 clearly.

6 Q Okay. What you meant by that was that, well, you
7 agree that the bushes between your house and the back and
8 his property were pretty thicker, were thicker at the
9 time?

10 A They were thicker at the time.

11 Q Okay.

12 A Yes, they were and where I was going, I had been
13 through those bushes to the break in the fence is when I
14 confronted him --

15 Q Okay.

16 A -- and asked him what the problem was.

17 Q But you could see his head, but you couldn't get a
18 good look at him because of the obstruction of bushes?

19 A Correct..

20 MR. VERNER: Thank you, Ms. Cromer.

21 MR. SCOTT: No cross..

22 THE COURT: Ma'am, thank you. You can step down.

23 Mr. Verner?

24 MR. VERNER: Your Honor, we would close with Ms.
25 Cromer's testimony.

1 THE COURT: Anything in reply, Solicitor?

2 MR. SCOTT: No, Your Honor.

3 THE COURT: All motions are renewed. The same
4 rulings as before. All right. Ladies and gentlemen,
5 we've now reached that portion in the trial where you've
6 received all of the evidence that you're going to have in
7 order to judge this case and the attorneys will be given
8 an opportunity to give you their closing argument or their
9 closing summation. Like I said about the openings, of
10 course, what the lawyers say in closing argument is not
11 evidence. It's merely their contention as to what has
12 been proven or hadn't been proven. And, normally, the
13 lawyers will refer to testimony or facts, things of that
14 nature during their closings but if at any time they make
15 a comment about the facts or they say something concerning
16 the testimony and it differs from what your recollection
17 of what the testimony is, of course, you should go with
18 your recollections opposed to what they say about the
19 facts. Because as I said earlier, you are ultimately the
20 judge of the facts in this case, okay. The way that we'll
21 proceed, Mr. Verner will go first in his closing, and then
22 he'll be followed by Mr. Scott for the State. So Mr.
23 Verner, you're recognized, sir.

24 MR. VERNER: May it please the Court, Your Honor?

25 THE COURT: Yes, sir.

1 MR. VERNER: Forelady, members of the jury. Just
2 keep in mind the role of the jury is we can't find exactly
3 what happened on November 15th. The role of the jury is
4 to find truthfully if the State has met the burden of
5 proof to convict a man which is to deprive somebody of
6 life, liberty, or property. The State has to get over the
7 jury. We're not a team here. We're not working together.
8 The role of the jury is to protect the Newberry citizen
9 against the State, unless the State has proven to you
10 without any doubt. And I'm not talking fanciful doubts.
11 I'm talking realistic doubts that everything that they are
12 claiming is true. That the facts are exactly or
13 substantially like they're presenting them, and that Mr.
14 Bedenbaugh had a criminal intent. That he did, he had a
15 criminal knowledge of what he was doing. The burden is
16 entirely, we all leave here today. And I try a lot of
17 cases in Newberry. My friends in the Solicitor's Office
18 try a lot of cases. You've got real consequences for your
19 decision today. We're not an academic team. The Supreme
20 Court doesn't send Judges from counties inside the State
21 to try cases for trivial matters. We know that. A lot of
22 people tell me, you know, well, there's somebody who looks
23 at the case after us and they can fix things if we get
24 them wrong. No. There is nobody who corrects the jury
25 findings. You are the only jury and judge of the facts.

1 If the Judge charges an improper law or given problems
2 about evidence, that can be reversed. Your findings can't
3 be reversed on guilt about what happened. So don't think
4 that it, that somebody, there's a cavalry coming after you
5 that will fix things if you get it wrong. If y'all make a
6 decision and it has bad consequences, that is it and we
7 all live with it, and Mr. Bedenbaugh lives with it. What
8 is a reasonable doubt? The State has to prove every
9 element of their crime. This pointing and presenting, the
10 Judge is going to tell you what the crime is. That the
11 facts, that, I guess, one of the definitions that the
12 State doesn't like to argue, but the Supreme Court has
13 said is the law is if you hesitate to convict somebody,
14 then that is the reasonable doubt. There is no way, it's
15 not a mathematical doubt. It's just if you hesitate to
16 convict a person, because you're not sure if the facts are
17 exactly like they happened. You have found a reasonable
18 doubt and even if you decide, well, I'm not sure, but I'm
19 pretty sure he did it and I'm going to go ahead and
20 convict him, you have reached a reasonable doubt and by
21 your oath and you've got to give to Mr. Bedenbaugh. He's
22 the only one who's going to pay anything today with the
23 burden of proof. I mean, we'll move on. I promise you
24 I've never begrudged a jury's verdict. They move on, too.
25 We try a lot of cases. We hope you, we know that you're

1 going to use your best conscience, and I don't begrudge
2 you. But I will ask you if you have any benefit of doubt
3 for Mr. Bedenbaugh and not for the State and not to the
4 criminal. Let's just look at the evidence. Aleah, it's a
5 fairly quick case. It doesn't mean it's not serious.
6 Aleah testified that she only saw Mr. Bedenbaugh when she
7 first ran on the property and he was sitting on the porch.
8 Well, you saw pictures. That's probably not true. And
9 I'm not suggesting anybody's lying. I never have. But
10 these are young kids. If they see things and they're
11 mistaken even for a second, they've got it in their mind
12 that they saw it, but Aleah didn't see him with the
13 weapon. She said he was already out sitting on the porch
14 when she got on the property and she got on there quickly
15 because she's chasing right after the dog. She said she
16 didn't feel threatened. What made her feel threatened is
17 Michael, the boy with her, said, Leah, he's got a gun.
18 Keep going. And anything I say, I just go by my notes,
19 but if y'all have a question about the testimony, it can
20 be replayed for you or y'all can go by your memory. But
21 Aleah didn't see a gun. She didn't, she just saw him when
22 she first got on the property. She didn't get scared
23 until Michael, her stepbrother or the fiancé, the
24 boyfriend's son said, Leah, he's got a gun. Keep going.
25 Would that scare a twelve-year-old girl? Probably. A

1 crusty old man coming out of his house. I'm not supposed
2 to be here anyway. I don't dispute she's scared, but it's
3 just a question of whether she saw what she saw. I do
4 have some question about whether the dog just got out and
5 they chased it, or they're playing with the dog. I submit
6 to you that it's probably not a deer. And 3:00 o'clock in
7 the afternoon. The kids are making noise, playing with a
8 dog, jumping obstacles. There's no question there are
9 deer in that neighborhood. It's unlikely that a deer
10 actually jumped a fence, ran across the yard and the dog
11 chased it. But the girl, initially, just, and I've got
12 kids. Just why did you do that? Well, the deer jumped
13 across the road, and she's got it in her head. She's not
14 going to get in trouble whether it's the dog ran out or
15 the deer got it, but it's possible. I mean, we don't
16 dispute there is deer on the property. But I submit to
17 you it's just as reasonable that they are scared. Well,
18 maybe we'll get in trouble for getting in his yard in the
19 first place, so it's the deer. I mean you don't see deer
20 at 3:00 o'clock in the afternoon jumping across a fence.
21 You do, but not when people are making noises, playing
22 with the dog. I submit that's just one example of them
23 being scared. Michael, just he didn't, my problems with
24 his testimony is he didn't tell us where he was in the
25 property. He gave very vague testimony. I saw him

1 looking through the scope of a rifle at Aleah. Well,
2 Michael is with Aleah. I mean, he would have been looking
3 at them, and just Michael didn't testify where he was. If
4 he's, if he's scared by the man on the porch yelling at
5 them and just look at the pictures. The observation from
6 the Cromer house to the Bedenbaugh house is not a clear
7 look. As the mother testified, you don't get a clear look
8 from their property. I couldn't even describe his
9 clothing for the 911, on the same day, I couldn't even
10 tell you what he looked like because I couldn't see the
11 overgrowth in the area. I submit to you if Michael is
12 already chasing the animal, and then hears the mean old
13 neighbor yell at them and, particularly, I understand Mr.
14 Bedenbaugh said that he didn't have a confrontation. But
15 and suppose just for a second someone, when they go back
16 and talk to the mother and Mr. Bedenbaugh says, you know,
17 if the, if your kids come back on the property, I'm going
18 to shoot them. Would that make the children think that he
19 might have had a gun? Possibly. And as Mr. Bedenbaugh,
20 you've said, they hadn't had any prior altercations.
21 There is no real reason for Mr. Bedenbaugh. Y'all saw Mr.
22 Bedenbaugh testify. Did he strike you as the kind of guy
23 who's just sitting there with a gun waiting to terrorize
24 kids or people coming across his property? The State is
25 going to say because he had posted these two signs on his

1 yard and the thermometer, due to the increase of price of
2 ammo, do not expect a warning shot. Prayer is the best
3 method to meet the Lord; trespassing is faster. Due to
4 the price increase in price of ammo, don't expect a
5 warning shot. The State's going to suggest to you that
6 that indicates that Mr. Bedenbaugh had a criminal intent.
7 I'm from Newberry. I can tell you for a fact there are a
8 lot of good old boys going to jail for crimes if y'all
9 convict because they have signs like this or bumper
10 stickers. I see bumper stickers, you know, my car is
11 protected by Smith & Wesson. And there is going to be
12 some trial where the State's going to say that's proof
13 that he intended to hurt somebody. The yellow flag with
14 the snake on it that says, don't tread on me. There are
15 already some jurisdictions that take that as a
16 threatening. It just bothers me that the State's going to
17 say that, and we know these are novelty signs. We know
18 these aren't true signs. There is no, if there was a
19 pattern of shooting people, then maybe. But there's not.
20 But there are a lot of redneck boys I grew up with who
21 going to be going to jail if they have, if the State's
22 allowed to convict them because they have these novelty
23 signs. And really the only evidence you've got in the
24 case is the mother said when I approached the man and the
25 fence line, he said if your kids or your dogs come on back

1 on my property, I will shoot them. Then she's angered.
2 She calls 911. She embellishes and says, well, I've had
3 prior run-ins with him before, which is she, is untrue and
4 she admitted it. Really, only evidence is that he's got a
5 deer rifle in his home. And a common occurrence and just
6 a common deer rifle, and they want you to convict him on a
7 felony of pointing a gun at somebody. When Aleah's
8 testimony is I never saw him threaten me at all.
9 Michael's testimony is I saw, and it's just unlikely, how
10 quick did this happen? How quick does it take a girl to
11 chase it down to her neighbor's property and drag it back
12 onto their property. And during that time, they're saying
13 that Mr. Bedenbaugh already out, had the time to go get
14 the gun, aim a scope at her before she could get the dog
15 probably from that end of the court house to this end in
16 the court house. It is just unlikely. I think that the
17 kids got scared. The mother got scared for the kids. And
18 just a neighbor that they may or may not like, and they
19 did the smart thing. You know, good fences makes good
20 neighbors. They put in a legitimate fence, and they kept
21 their animals, we know why that dog is being kept in a
22 kennel until they put the kennel in there because the dog
23 is getting out. And I understand, is a friendly dog. I
24 mean just parading it in front of you here in the
25 courtroom is all sweet, and I appreciate that. I don't

1 dispute that it's not a vicious dog. It is a big dog. It
2 is a, it's got the colorings of a Rottweiler dog. Just
3 the fact, the mere fact that he doesn't want dogs on his
4 property does not just reach the level of a, and a
5 criminal. He has to have the criminal intent to terrorize
6 you with the gun. That is the main ingredient. He has to
7 do that, and he has and he has the criminal intent that
8 he's threatening you with it, unlawfully. There has to
9 be, just you have to be convinced beyond a reasonable
10 doubt that his intent was to terrorize the children. And
11 I submit that's probably where they failed in this case.

12 THE COURT: Thank you, Mr. Verner. Mr. Scott, you're
13 recognized for your closing, sir.

14 MR. SCOTT: Thank you, Your Honor. Good fences do
15 make good neighbors. Bad neighbors can make life
16 miserable. Dangerous neighbors like Mr. Bedenbaugh, well,
17 you never know what they're good for or what could happen
18 if something sets them off and November 15th of last year,
19 he showed just how dangerous he could be; what a ticking
20 time bomb he is. Some of what he's capable of, I'm glad
21 it didn't go any farther, but he certainly let everybody
22 know those kids and that mother, what his mind was on and
23 that he had no qualms about pointing a loaded high-powered
24 rifle at a 12 and 13-year-old. And so I'm glad it didn't
25 escalate any farther, but I think we've seen a little tip

1 of the iceberg on what Mr. Bedenbaugh is capable of, and I
2 think he showed that. He took a very minor situation, a
3 very harmless, routine situation and he upped the ante to
4 such a degree that really something bad could have
5 happened. You're pointing a loaded, deadly weapon at
6 somebody, you know, that girl could have been killed. I
7 mean, if ticked, his temper was ticked up a notch, if his
8 finger slipped. I mean, you don't, you don't, I mean, I
9 don't have to tell you that you don't aim a deer rifle at
10 a child, and I don't care if a dog did step on your
11 property. I mean, just think about that. The family dog
12 and you saw the dog. Look, I don't do that for effect. I
13 don't bring the dog in here for effect for you guys so you
14 can think it's cute. But you heard the opening statement.
15 Y'all remember that yesterday? The initial statement was
16 that this is going to be a vicious dog. Well, he didn't
17 know I was going to bring the dog in here. So that's when
18 the Defense kind of shifted away from it being a vicious
19 dog, which he can't say that anymore because the jury just
20 saw the dog. So yeah, I brought the dog in here. I want
21 you guys to see what we're talking about and you saw it.
22 I mean, and then we get into, well, it does have colorings
23 of a Rottweiler. He didn't mistake that for a Rottweiler.
24 He didn't mistake it for a vicious dog. He's just one of
25 those people who gets very sensitive, very angry if

1 somebody sets foot on his property, no matter what the
2 reason. He is so unhinged. After he points the rifle, he
3 tells these children if you ever set foot on my property
4 with that dog again, I'll kill you. What effect does that
5 have on anybody much less a 12-year-old or a 13-year-old
6 and he's so just worked up and angry, he repeats it to the
7 mother. I can't imagine what it's like to be one of those
8 children and hear that, an adult after pointing a weapon
9 at one of them, making that threat, that terrible threat.
10 I can't imagine what it would be like for them, how it
11 would affect them. I think we got a little taste of that
12 from Michael yesterday, but what about the mother. I
13 mean, he repeats that terrible threat to her when she
14 comes back. What is this my kids are all upset about.
15 Mom, the kids, come in my yard again with that dog, I'll
16 kill them. Who says that? A man on edge. The man who
17 hangs these signs all over his property. Look, yeah,
18 you're right, I'm going to show you that, too. The
19 Defense attorney says I'm sure the State's going to talk
20 about we should convict them for those signs, but it's not
21 what this trial his about. It's not about the signs, but
22 I think it's compelling. I think it's relevant for you
23 all to see. I didn't hang them. I didn't put them there.
24 He did. That's the kind of things he thinks about and
25 maybe, maybe they are humorous to him in some way, but I

1 think that's compelling. And I think a jury ought to see
2 if he hangs them up there. But no, we're not convicting
3 his good old boy; the lawyer's friends for hanging signs
4 like that. That's not nothing about that subject.
5 Torture twist of what I'm trying to present to you all,
6 and I think you saw that. But to me it is frightening
7 sometimes to think that people like Mr. James Bedenbaugh
8 could live two or three doors down from you and the things
9 they're capable of. You heard from Aleah C. . Walter,
10 can you still give me State's number 8? Aleah's got this
11 dog. It's a mutt. It's a collie mixed with a lab, but
12 she has these pretend shows, like a little girl would do.
13 And you can kind of see it. I got another picture y'all
14 can take back there and see. She's got these little
15 obstacles and you can almost see her back there and she's
16 getting it to walk on her little ladders and go under, you
17 know, just different obstacles for fun. And, I mean,
18 she's a 12-year-old girl at the time. She loves dogs.
19 But on that particular day she says a deer went running
20 by. Now, Mr. Verner says that is very difficult to
21 believe, but if any of you want to ride home with me today
22 I'll show you where you can see deer crossing during
23 daylight hours. And I don't know where y'all live, I
24 mean, but I'll submit to you that is not uncommon, and I
25 have no reason, I cannot fathom a reason she would make

1 that up. But just for whatever reason, that's what they
2 will inject and maybe she made that up, but that doesn't
3 make sense. And she did testify that a deer went running
4 through here. The dog broke loose from the leash. She's
5 a small girl. Jerk loose and went running after the deer
6 and it's hard to see because he's let all kinds of stuff
7 grow up around his house. But up under this tree is what
8 was testified to is where Mr. Bedenbaugh's house is and
9 the deer went running somewhere over here and they had a
10 three-and-a-half foot, I think somebody testified, about a
11 three-and-a-half foot tall fence at the time and deer
12 clears that in a single bound. Mist runs after it and
13 finds a break in that little rickety kind of pre-existing
14 fence. He goes to the backyard of Mr. Bedenbaugh. She's
15 chasing after the deer. Aleah is running after it.
16 Catches the dog somewhere in Mr. Bedenbaugh's back yard
17 and is trying to lead it back to her yard, like anyone
18 would do if their dog broke loose and Michael's following
19 after her. And Michael hears the door shut, the screen
20 door shut. Y'all remember him talking about that, which
21 makes him look up there and here comes this man, here
22 comes this man out with this rifle, this rifle, aimed at
23 his stepsister. He said he had it shouldered.
24 Twelve-year-old Michael saw that, and what do you think is
25 going through his mind? This crazy man's about to shoot

1 my stepsister and he yells at her, he's got a gun. I
2 mean, she heard him say that and she takes off running,
3 and he does the same and they hightail it back and that's
4 when they get the mother, Michelle, and tell her what
5 happens. And again, like I said, she goes back to
6 confront him. He says the same thing to her. He's not,
7 at that time, he has no qualms about telling her what he's
8 capable of doing and that those signs mean what he says
9 they mean. The Sheriff's Department does arrive. They
10 speak with Mr. Bedenbaugh. He says, well, I didn't do it.
11 Then, they said, well, do you have a gun. They were
12 talking about a gun being out here. No, I don't have a
13 gun. They're all locked up in the safe. Mind if we take
14 a look. What do they find right within the door, right at
15 the door where the kids said they saw him with the gun?
16 Surprise, they find a rifle with a large black scope. The
17 Judge is going to tell you that one thing necessarily,
18 you're going to have to consider in crafting your verdict,
19 is the credibility of witnesses. He's going to say that.
20 I already know some of the charges he's going to give you
21 and that's going to be one of them. And we should. We
22 should judge credibility. When somebody gets up there and
23 puts a hand on that Bible and says they going to tell the
24 whole truth and nothing but the truth, we do judge their
25 credibility. We do that in everyday when somebody talks

1 to you, and are they telling the truth. I mean, there's
2 certain things we all know to look for to determine if
3 somebody is being truthful to us. That's a part of
4 serving on a jury trial is determining who's telling the
5 truth and who's not, because we all are suppose to tell
6 the truth when we put our hand on the Bible. It doesn't
7 always happen on this stand. But what he means by
8 credibility is basic believability, and there's certain
9 things you can do, you know, look at do they have bias or
10 do they have a reason to make this story up. You can
11 believe multiple witnesses. You can believe all of one
12 witnesses' testimony or only part of it. You don't have
13 to believe any of it. You may also consider the
14 appearance and manner of a witness while they're on the
15 stand; they're appearance and their manner. Okay. How
16 they're behaving while they're trying to tell y'all this
17 story, while they're trying to recount what happened.
18 Think about that. Think about Aleah, the little girl
19 yesterday. Remember her demeanor from the stand?
20 Thirteen-year-old Aleah. She's thirteen now. She very
21 clearly described Mist getting way and running back, and
22 she talked about the path. She talked about catching the
23 dog. Talking about hearing her brother scream out what
24 nobody wants to hear, he's got a gun, run. Very clearly
25 describe that. And his attorney got up there and tried to

1 question her, well, maybe you didn't hear this, maybe
2 that, and tried to see if she would contradict herself.
3 She never did. Very clearly described it. Talked about
4 going back telling her mother, and then going back to
5 their mother into the yard and hearing this man repeat the
6 same thing to her mother. What was her demeanor, guys, do
7 y'all remember? What about little Michael. He'll be
8 thirteen, I think, next week. He was twelve then, and
9 he's still twelve, but I submit he was a little bit more
10 traumatized and for good reason. He's the one that saw
11 the gun aimed at his sibling then. He doesn't go really
12 in that backyard. He certainly doesn't look over towards
13 Mr. Bedenbaugh. It's because of this trauma. I mean,
14 that's going to be something they'll never forget. So
15 thank you, Mr. Bedenbaugh for that. He described that big
16 rifle and he described it in detail. He described a deer
17 rifle with a big, black scope on it. Remember that? He
18 was very clear. It wasn't a very iffy kind of
19 description. Again, that chilling threat, I'll kill both
20 of you and the dog if you ever step foot on the property
21 again. He talked about how he yelled and Aleah took off
22 running. He took off after her. He was terrified and
23 still is of Mr. Bedenbaugh. Y'all remember his appearance
24 and the manner that he testified from the stand. Very
25 clear. I hope his parents are proud of him because that

1 was a very difficult position for a twelve year old boy to
2 be in, especially after being traumatized on something
3 like that. He was very clear. He didn't falter. Even
4 when he was cross-examined by the Defense attorney. Even
5 when they tried to trip him up, he was very clear.
6 Michelle, the mother, she said the kids come in like
7 they'd seen a ghost. They were white and frantic, and
8 talked about what the man had just told them and talked
9 about the gun. She said when she went back over there to
10 the fence and what's going on here, he repeats it to her.
11 I mean, just it's not the Bedenbaugh y'all are seeing here
12 today sitting over there. This is a man unhinged in his
13 backyard, because a twelve-year-old girl and a mutt walked
14 to the corner of his yard. I'll kill those kids and that
15 dog if they ever set foot on my property again. And then
16 we got James Bedenbaugh, and that was something else,
17 wasn't it? I mean, is there any other way to describe
18 what about his manner and demeanor? What about his
19 version of the story. It was rambling, and it was
20 difficult to follow, and it didn't really make sense a lot
21 of the time, and I tried to walk him through it, but it
22 was sort of a, it wasn't real linear. It was very
23 unclear. I think he stumped himself from time-to-time
24 during that direct and cross-examination. He says he
25 really doesn't go in his backyard, and then he said, well,

1 that's where he keeps his Chihuahua's and he hangs his
2 clothes out there. And he described in detail different
3 hedges, and bushes, and fences people put up, the
4 shrubbery because of the deer, or goats. He talked about
5 the width of the stairs and the back porch and this and
6 that and measurements and everything. But oh, he didn't
7 really go back there. Well, you were back, I went over
8 there Thursday, and you were back there, weren't you.
9 Well, I was in the front yard. Well, how did you see me.
10 Well, I was in the front yard and y'all were taking
11 pictures. Just very contradictory. I mean, he even
12 contradicted himself under very simple questions. And
13 that might seem minor to you but, you know, when the
14 question is a very direct question and you're under oath,
15 a direct uncomplicated simple answer is in order, and he
16 was unable to do that. And this kind of started when the
17 Defense attorney asked him, well, you know, are you any
18 more sensitive to trespassing than anybody else is? No,
19 well, I'm not. I'm not sensitive any more than anybody
20 else is. But then he admits he's got all of these signs
21 hanging all over his yard. If any of you have those
22 signs, you know, I don't really, they're not really and
23 they may be humorous but to me, I think, it just is a
24 small window into Mr. Bedenbaugh's mind on how he feels
25 about people setting foot on his property, even if it's to

1 chase a dog. I think they're noteworthy. I really do.
2 He is no more sensitive to trespassers than anyone else,
3 but he did kill a dog on his property one other time, so
4 there's that. Yelling at the kids, that was, I never
5 really, he said he didn't say anything to the kids. And
6 then he tried to explain that, well, I don't know, maybe
7 if they heard something, I was talking to myself. Now,
8 and if y'all heard anything different, that's what I
9 heard, but whatever your recollection is, I would agree
10 with that. But I understood him to say he never said
11 anything to the children, but if they heard something, it
12 could have just been him talking to himself. The rifle;
13 he never took that rifle outside. I asked him that three
14 times. He never took it outside. And it's just a
15 wonderful coincidence to me that little Michael describes
16 that rifle with the big black scope, and then that's what
17 officers find right within that door. And when they ask
18 him about it he says I don't have any guns, and then they
19 find the exact rifle that Michael had described. Now,
20 he's telling y'all he never took it outside. So it's a
21 really great coincidence that Michael described the rifle
22 with a big black scope and that's what they find right
23 within arm's reach of that back door. He wants you to
24 believe that. It's just a great coincidence. And I don't
25 understand why he denied it to law enforcement when they

1 asked him about it, but he did, because he knew what he
2 would find, and he knew he'd be in trouble if he got
3 caught. They find it. It's loaded. And at trial here
4 today he was trying to tell, I forgot about that gun.
5 That's right. I was cleaning it earlier, and I just left
6 it out. I got busy cooking, 3:00 p.m. and just forgot
7 about that gun. I said, well, it was loaded, right? He
8 said well, he got an answer for this, too. It only had
9 three shells in it, so it's not loaded. That makes no
10 sense to me, but that was his explanation. And I said,
11 well, do you often clean guns when they're loaded? He
12 said, well, he didn't think about that, because I got to,
13 got to figure out an answer. Okay. I emptied it, then I
14 cleaned it, then I reloaded it, and then I forgot it.
15 God, it was just really one thing after another for me and
16 now, what was his appearance, what was his manner when he
17 was explaining this thing? Did y'all find him to be
18 credible? Did you find this story to make any sense,
19 really? What does the evidence show? What does the
20 evidence direct that the verdict ought to be? No reason
21 for these children to make this story up. No reason for
22 this mother to say she heard what she said she heard, and
23 then just the physical evidence. The gun being right
24 there just like the child described it, and then his
25 inconsistent statements. It really leaves to wonder

1 beyond a reasonable doubt. The Judge is going to tell you
2 we've got to prove this charge of pointing and/or
3 presenting a firearm beyond a reasonable doubt, and that
4 just means you got to be firmly convinced. He's going to
5 say that twice. When he tells you what reasonable doubt
6 is, he's going to say that you need to be firmly convinced
7 of his guilt. He's going to use that term twice when he's
8 describing it. And then the pointing. Pointing the
9 firearm at somebody, whether it's loaded or not, this gun
10 was loaded, that's against the law. You cannot point a
11 firearm at somebody, period. It's against the law. It's
12 what we're saying he did to Aleah. You cannot present a
13 firearm in a threatening manner. I submit to you that any
14 way you cut it, any way you cut it, when you hold a rifle
15 like that at somebody and you say if you ever, you said
16 you kids ever set foot in my yard again or that dog, I'll
17 kill you. That is the, I don't know of any other
18 clear-cut or any more clear-cut example of a threatening
19 gesture as far as presenting a weapon. That's the fact, I
20 intended to, I mean you go back there. What does your gut
21 tell you? What does the evidence show? What does the
22 witnesses' testimony convince you of? What makes since,
23 for crying out loud? What does logic dictate, does reason
24 expect of you? The only verdict at all that is applicable
25 to this case is a verdict of guilty, pointing and

1 presenting a weapon, pointing it at Aleah, presenting it
2 in a threatening manner to she and her brother. Thank
3 you.

4 THE COURT: Thank you, Mr. Scott.

5 Ladies and gentlemen of the jury, it is my
6 responsibility to instruct you on the law in this
7 particular case. And I will tell you that when I first
8 started practicing law, 23, 24 years ago, the way Judges
9 would do this, is they basically sit up here and then read
10 from basically eleven pages of the applicable law taken
11 from the law books right behind me. And they were suppose
12 to hear it and get it right the first time. I found that
13 a little bit unreasonable because like most people it took
14 me three years to get through law school. So long story
15 short, you will have a copy of these instructions that you
16 can refer to if you need to during the course of your
17 deliberations. All right. Additionally, if you need any
18 further explanation about the law I am more than happy to
19 try to help you with any legal questions you may have.
20 However, if you have a factual question, any question that
21 touches on the facts odds are I am not going to be able to
22 assist you in that because, again, you are the judges of
23 the facts, I can't at this point and time reopen the
24 record and get additional evidence presented. So if it is
25 a factual question probably I can't help you, if it is a

1 legal question I probably can. All right. Of course,
2 please consider these instructions as a whole and don't
3 simply follow some instructions to the detriment of
4 others.

5 Now, ladies and gentlemen, the indictment in this
6 case charges the Defendant with pointing and presenting a
7 firearm. I remind you the fact that Mr. Bedenbaugh was
8 arrested, charged and indicted in this case is not
9 evidence and cannot be considered by you as evidence of
10 guilt nor does the indictment create any presumption or
11 inference of guilt. This document, again, is simply the
12 formal written instrument which contains the charge made
13 against Mr. Bedenbaugh. It is a document by which this
14 case was brought to court.

15 Now in this case the Defendant has pled not guilty to
16 these indictments and that places the burden on the State
17 to prove the Defendant guilty. I instruct that a person
18 charged with committing a criminal offense in this State
19 is never required to prove himself innocent. It is an
20 important rule of law that a Defendant in a criminal
21 trial, no matter what the seriousness of the charge may
22 be, will always be presumed to be innocent of the crime
23 for which the indictment was issued unless guilt has been
24 proven by evidence satisfying you of his guilt beyond a
25 reasonable doubt. Now, ladies and gentlemen, this

1 presumption of innocence does not end when you begin your
2 deliberations but it accompanies the Defendant throughout
3 the trial of the case until you reach a verdict of guilt
4 based on evidence satisfying you of his guilt beyond a
5 reasonable doubt..

6 The presumption of innocence has been described as
7 being like a robe of righteousness that is placed about
8 the shoulders of the Defendant that remains with him until
9 it has been stripped from him by evidence satisfying you
10 of his guilt beyond a reasonable doubt.

11 Ladies and gentlemen, the presumption of innocence is
12 not merely a legal theory. It is not just a legal phrase.
13 It is a substantial right to which every individual is
14 entitled unless you, the jury, are satisfied from the
15 evidence of his guilt beyond a reasonable doubt.

16 What is a reasonable doubt in the law. A reasonable
17 doubt is the kind of doubt that would cause a reasonable
18 person to hesitate to act. The State has the burden of
19 proving the Defendant guilty beyond a reasonable doubt.
20 Some of you may have served as jurors in criminal, I am
21 sorry, in civil cases, where you were told that it is only
22 necessary to prove that a fact is more likely true than
23 not true, such as by the greater weight or the
24 preponderance of the evidence. In criminal cases the
25 State's proof must be more powerful than that, it has to

1 be proof beyond a reasonable doubt. Proof beyond a
2 reasonable doubt is proof that leaves you firmly convinced
3 of the Defendant's guilt. Now, there are very few things
4 that we know in this world with absolute certainty and in
5 criminal cases the law does not require proof that
6 overcomes every possible doubt. If based on your
7 consideration of the evidence you are firmly convinced
8 that the Defendant is guilty of the crime charged you
9 should find him guilty. If on the other hand you think
10 there is a real possibility that the Defendant is not
11 guilty you should give him the benefit of the doubt and
12 find him not guilty.

13 Again, ladies and gentlemen, I remind you that during
14 this trial you and I have certain duties to perform. As
15 the trial Judge it was my responsibility to preside over
16 the trial of the case. And I also have the duty to charge
17 you on the law that applies. You are to consider only the
18 evidence before you, the competent evidence before you.
19 So any testimony stricken from the record you have to
20 disregard that testimony. You are to consider only the
21 testimony which has been presented from this witness
22 stand, as well as any exhibits which have been made a part
23 of the record in this.

24 I also have the duty to charge you on the law. And
25 as the Judge, I am the sole Judge of the law. So it is

1 your duty to accept and apply it as I now state it to you.
2 If you have any ideas as to what the law is or what the
3 law should be and it disagrees with what I now tell you
4 the law is you have to abandon this idea because you are
5 sworn to accept and apply the law as I state it to you
6 now.

7 Again, in every case tried in this court the jury
8 becomes the sole and exclusive judge of the facts. A
9 trial Judge cannot intimate, state, comment on or make any
10 statement to a trial jury about the facts in a case.
11 Since you, the jury, are the sole judges of the facts you
12 are not to infer from what I have said during the progress
13 of this trial in ruling upon the admissibility of evidence
14 or otherwise or anything that I say now to you during
15 these instructions, that I have any opinion about the
16 facts in this case. Ladies and gentlemen, the law does
17 not permit me to have any opinion about the facts. This
18 is a matter solely for you to determine. As jurors, it is
19 your duty to determine the effect, value, weight and truth
20 of the evidence presented during the course of the trial.

21 Now, typically, ladies and gentlemen, in cases there
22 are two types of evidence which are presented, direct
23 evidence and circumstantial evidence. Direct evidence is
24 evidence which directly proves the existence of a fact and
25 does not require deduction such as testimony by an

1 eyewitness. Circumstantial evidence is proof of a chain
2 of facts and circumstances indicating the existence of a
3 fact. I instruct you that crimes may be proven by
4 circumstantial evidence. The law makes no distinction
5 between the weight or value to be given to either direct
6 or circumstantial evidence. However, to the extent the
7 State relies on circumstantial evidence, all of the
8 circumstances must be consistent with each other. And
9 when taken together point conclusively to the guilt of the
10 accused beyond a reasonable doubt. If these circumstances
11 merely portray his behavior as suspicious then the proof
12 has failed. I instruct you that the State has the burden
13 of proving the Defendant's guilt beyond a reasonable
14 doubt. This burden rests with the State regardless of
15 whether the State relies upon direct or circumstantial
16 evidence or some combination of the two.

17 Now as I explained yesterday, ladies and gentlemen,
18 necessarily you have to determine the credibility of
19 witnesses who have testified. And again, the credibility
20 simply means believability. It becomes your duty as
21 jurors to analyze and to evaluate the evidence and
22 determine which evidence convinces you of its truth. In
23 determining the believability of witnesses who have
24 testified you can believe one witness over several
25 witnesses or several witnesses over one witness. You may

1 believe a part of the testimony of a witness and reject
2 the remaining part of the testimony of that same witness.
3 You may believe the testimony of a witness in its entirety
4 or reject the testimony in its entirety. You may consider
5 whether any witness has exhibited to you any interest,
6 bias, prejudice or other motive in this case. You may
7 also consider the appearance and manner of a witness while
8 they are on the witness stand.

9 Again, ladies and gentlemen, the Defendant in this
10 case is charged with pointing or presenting a firearm.
11 The State must prove beyond a reasonable doubt that the
12 Defendant presented or pointed at another person a loaded
13 or unloaded firearm. I instruct you that presenting a
14 firearm means to offer to view in a threatening manner or
15 to show in a threatening manner.

16 Ladies and gentlemen, there are two, usually, or
17 there is, two usually exclusive potential verdicts in this
18 case. And, Madam Forelady, I wrote out this verdict form,
19 it is about as simple as I know how to make it. I don't
20 think you will have any difficulty understanding it. But
21 the options are basically, it gives the following
22 statement. We, the jury, in the above captioned case on
23 the charge of pointing or presenting a firearm unanimously
24 find James Wheeler Bedenbaugh, Jr., and there is two
25 options for you, either not guilty or guilty. Okay.

1 There is no significance the order in which I state these
2 verdicts, ladies and gentlemen, it just that one has to be
3 stated first. Now, ladies and gentlemen, your verdict has
4 to be a unanimous one. That means that all twelve of you
5 must agree on the verdict, we do not have majority
6 verdicts in this State. Other States do have majority
7 verdicts, those States are doing it wrong. Okay. Other
8 States have verdicts where people can vote 7 to 5 for a
9 particular outcome and if that becomes the verdict, I am
10 telling you that is not the way we do it in this State and
11 I hope that is the way we never do it. So, they are
12 wrong, we are right. Madam Forelady, when the jury has
13 agreed on the verdict and all twelve have agreed, let the
14 bailiff know, knock on the door and tell them that you are
15 ready and we will receive you back in the courtroom as
16 soon as I can get everybody assembled back in here. Okay.

17 Now, ladies and gentlemen, I will remind you that you
18 have no enemies to punish, you have no friends to reward
19 in this case. You have been selected as fair and
20 impartial citizens who have an interest in the outcome of
21 this case, other than just judge the facts and render a
22 verdict. Now, at this time I am going to ask that you
23 return to your jury room, just ever so momentarily, I have
24 to give the attorneys an opportunity to object to anything
25 I said in terms of these instructions. But, of course, I

1 have already reviewed this with them, I don't think there
2 will be any objections. Your question to begin your
3 deliberations, Madam Forelady, will be receipt of the
4 exhibits. These instructions and the verdict form and
5 when I ask y'all to step out. When all of this stuff goes
6 in and the alternate steps out that is when y'all can
7 start talking about it. I will let you know, ladies and
8 gentlemen, of course at no point and time, if you need to
9 communicate with me that is perfectly fine. But at no
10 point in time should you ever disclose to me which
11 direction the jury is leaning. Okay. 7 to 5, guilty, not
12 guilty, 11 to 1, guilty, not guilty. I am not interested
13 in those numbers and I don't need to know those numbers.
14 Okay. Secondly, the last couple of trials I have done, I
15 have had jurors to send out a note asking how long they
16 have to deliberate. Under the law there is no set time,
17 okay, five minutes, fifteen minutes, fifty minutes, five
18 hours, five days, five weeks, I hope it is not five weeks,
19 I hope it is not five days. But that is up to you, it is
20 my personal rule that once a case has been submitted to a
21 jury we are on your time table. So, just take that for
22 what it is worth category. There is no set time, minimum
23 or maximum for deliberations. Adjourn to the jury room
24 but don't start talking about the case yet.

25 (Whereupon, the jury was excused from open court at

1 approximately 3:26 p.m.)

2 THE COURT: Exceptions, additions from the State?

3 MR. SCOTT: No, Your Honor.

4 THE COURT: Except for the Court's failure to charge
5 Defendant's A through D, any additions, Mr. Verner?

6 MR. VERNER: Not as to the charge, Your Honor.
7 Again, I just wanted to renew the objection on the
8 directed verdict that the boy, Michael C. as a
9 victim. In my view of the case, there is no testimony
10 that the weapon was presented at him or pointed at him.
11 And the testimony was that he didn't think the man saw
12 him. And, we would ask for a directed verdict on that.

13 THE COURT: I understand your position. I appreciate
14 it, I will deny that motion, there has been testimony that
15 he retrieved a weapon, whether or not a weapon was in fact
16 shown or whether it was displayed in a threatening manner,
17 it is of course a factual question for the jury. I think
18 we are probably, don't have a lot of exhibits, if you will
19 double check and look at the verdict form and then we will
20 give to the jury.

21 (Whereupon, the jury started deliberations at
22 approximately 3:29 p.m.)

23 (Whereupon, the alternate was excused at
24 approximately 3:30 p.m.)

25 THE COURT: I am told that the jury has reached a

1 verdict. Anything before we receive the jury in the
2 courtroom from the State?

3 MR. SCOTT: No, Your Honor.

4 THE COURT: Nothing from the Defense?

5 MR. VERNER: No, Your Honor.

6 THE COURT: Let's have the jury, please.

7 (Whereupon, the jury came into open court with the
8 verdict at approximately 4:15 p.m.)

9 THE COURT: The record will reflect that the jury is
10 back and seated. Madam Forelady, I am told the jury has
11 reached a verdict. Is that correct?

12 MADAM FORELADY: Yes.

13 THE COURT: And all twelve of you agree on the
14 verdict?

15 MADAM FORELADY: Yes, sir.

16 THE COURT: If you would, just hand the verdict form,
17 please, to the bailiff. Thank you.

18 Madam Clerk, if you will publish, please.

19 CLERK OF COURT: The State of South Carolina versus
20 James Wheeler Bedenbaugh, Jr., we, the jury, in the above
21 captioned case on the charge of pointing and presenting a
22 firearm unanimously find James Wheeler Bedenbaugh, Jr.,
23 guilty. Signed Julie H. Lawing, Foreperson. Ladies and
24 gentlemen, if this is your verdict please indicate by
25 raising your right hand.

1 (Whereupon, all jurors raised their hand.)

2 THE COURT: The record will reflect all twelve jurors
3 did, in fact, raise their right hand. Anything for the
4 jury before they are discharged?

5 MR. SCOTT: None from the State.

6 MR. VERNER: No, Your Honor.

7 THE COURT: Ladies and gentlemen, I want to thank you
8 for your service here. In speaking with the Solicitor
9 earlier today, the case that we are looking at trying on
10 Thursday may or may not actually necessitate a jury. So
11 at this point and time we are kind of in a little bit of a
12 flux. The instructions that I gave to your fellow jurors
13 yesterday was for them to call back tomorrow night,
14 anytime after 6:00 o'clock. That number that was listed
15 on your juror card. So I am going to ask you guys to do
16 the same thing. But it looks like in all likelihood that
17 case is not going to go forward Thursday. It is probably
18 going to be the last time I get to see you guys. So,
19 please understand that at this point and time I can't say
20 that definitively but it is looking, if I were a betting
21 man I would say a ninety percent chance that we will not
22 need you to come back. So if you have plans for Thursday
23 and Friday keep them. I am betting that is probably what
24 is going to happen. But do remember to call that number
25 tomorrow night any time after 6:00 and follow what those

1 instructions are. At this point, ladies and gentlemen, we
2 will sentence the Defendant. If you want to stick around
3 for that that is fine. For security reasons I am going to
4 need y'all to go out and then come back up and have a seat
5 out there. Thank you for your work here these last two
6 days. You will also have a letter from me that will be in
7 your mailbox sometime Friday or Saturday. The purpose of
8 the letter is really twofold. It is to thank you for your
9 service this week but more importantly, at least in my
10 mind, it solicits feedbacks. So if there is anything you
11 liked about jury service feel free to tell me. If there
12 is anything that you did not like about jury service
13 definitely tell me. Okay. You are not going to hurt my
14 feelings. If there is anything that you thought should
15 run smoothly or done better let me know. You are excused,
16 have a lovely next couple of days and if I don't get a
17 chance to see you again take care of yourselves. Thank
18 you. I need the foreperson to sign the indictment.

19 (Whereupon, the jury was excused from open court at
20 approximately 4:25 p.m.)

21 THE COURT: We will be at ease for a few moments,
22 Solicitor, if you want to go ahead and prepare a
23 sentencing sheet.

24 (Whereupon, a short break was taken.)

25 THE COURT: Solicitor, at this point and time was

1 there any member of the children's family who would want
2 to address the Court.

3 MR. SCOTT: Michael's father, Your Honor, Shawn
4 Carroway is here. And he does wish to address the Court
5 as far as sentencing.

6 THE COURT: Very good. Before I hear from him does
7 Mr. Bedenbaugh have any prior criminal history that the
8 Court needs to be apprized of?

9 MR. SCOTT: '85, unlawful carrying of a weapon;
10 cruelty to animals in '92; public disorderly conduct in
11 2004 is what I show.

12 THE COURT: Sir, I am happy to hear anything you
13 might want to say.

14 MR. CARROWAY: Yes sir, I just want to speak a little
15 bit about how this affected our entire family, especially
16 the kids. Before this incident happened our kids played
17 in the yard constantly, you couldn't hardly bring them
18 inside and they were relatively happy with just being
19 outside all the time. Now, having this happen, we had to
20 clear the land in order to put the fence up. There is a
21 clear view of the man's house. My kids don't hardly want
22 to go outside, they are more prone to sit inside and watch
23 TV. They are intimidated, especially if he is outside
24 which he does a lot, he is constantly on his back porch.
25 We have been harassed from the dog calling, I mean calling

1 the law on the dog for barking. There was never an issue
2 up until this incident. My children have suffered enough.
3 I don't want another incident like this to come up.

4 THE COURT: I understand, sir, thank you very much.
5 All right. I think, gentlemen, we have agreed that the
6 sentencing range is 0 to 5 on this.

7 MR. VERNER: Yes, Your Honor.

8 MR. SCOTT: Yes.

9 THE COURT: Mr. Verner, of course, you move for a new
10 trial and all prior motions are of course renewed. The
11 motions are denied. I am happy to hear from you.

12 MR. VERNER: Your Honor, Mr. Bedenbaugh here is 51,
13 he is a life long, he pretty much grew up on the property
14 where this happened, lives with a brother, Johnny. He
15 dropped out of school around early high school. He does
16 read and write but the lower level of reading and writing.
17 His father worked on the highways back for a living. In
18 '85, my understanding that the possession of a weapon was
19 a knife that he had on him, on his belt. The cruelty to
20 animals was a Magistrate charge where he and his brother
21 was accused of not feeding the dog, we heard a little bit
22 of it at the trial. And the disorderly conduct. No
23 criminal activity since '85 other than the 2004 disorderly
24 conduct which he tells me that was, the power was
25 disconnected or transferred from the house that he thought

1 he was entitled to. He doesn't strike me, he is not
2 certainly out in the community, this happened on his
3 property. He was in jail for about a week before he
4 bonded out. First crime at that age, 51, Your Honor. I
5 know the Court has heard about it, on his own property
6 type incident. I understand how a pointing and presenting
7 would fit on the charge. All things being equal, Your
8 Honor, he is a candidate for supervision in leu of prison
9 time and that is what we ask the Court to consider.

10 THE COURT: Thank you, Mr. Verner. All right, Mr.
11 Bedenbaugh, your lawyer made some very good, some very
12 fine points and I have taken into account, of course, your
13 lack of prior criminal, general sessions history and the
14 fact that this incident did take place on your property.
15 What I need you to understand, Mr. Bedenbaugh, is that the
16 first obligation of laws take care of people that can't
17 take care of themselves. So, the two obvious categories,
18 children and the elderly fall in that. Okay. And
19 understand, Mr. Bedenbaugh, to engage in conduct that you
20 engaged in, I understand your position, I understand what
21 your testimony was and I heard the evidence. And I do
22 find that the jury's verdict is quite appropriate in light
23 of the evidence. But to brandish a weapon, point a weapon
24 at kids, the law would be remiss, the Court would be
25 remiss if we didn't send some kind of signal or message

1 for waiving around firearms. So, taking that into
2 account, Mr. Bedenbaugh, I sentence you to five years, I
3 have suspended that on the service of one year. And I put
4 you on probation for three years. So you have got a year
5 in prison to serve, Mr. Bedenbaugh, hopefully that will be
6 a wake up call to you. Give you credit for the time you
7 previously served. I am ordering that the firearm
8 involved in this incident be forfeited. Probation, of
9 course, won't begin until you are released from the
10 Department of Corrections. I am ordering that you have no
11 contact with the C. or C. family. So, no further
12 contact of any sort between you and them. And the
13 standard conditions of probation, I also impose those as
14 well. Under Federal law of you possessing a firearm based
15 on this offense. So, if you have any firearms at home you
16 will have those removed. I wish you luck, sir, good luck
17 to you. You have got ten days to file a notice of intent
18 to appeal, just let Mr. Verner know. Good luck, sir.

19 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER
2
34 State of South Carolina)
5 County of Newberry)
6
78 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Newberry, South
14 Carolina on the 12th and 13th day of September, 2016.15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
17
1819 January 22, 2017
2021 *Joy Holston*
2223 Joy E. Holston, Court Reporter
24

25 My Commission expires: May 2, 2026

WITNESSES

Garett Lominack
Newberry County Sheriff

WARRANT NUMBER

2015A3610100624

TRUE BILL

Ympton
Foreman of the Grand Jury
Date: 1/29/16

VERDICT

Guilty
Julie H. Lawing
Foreman 9-13-16

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

January Term, 2016
Indictment # 16GS36- 0114

THE STATE

vs.

James Wheeler Bedenbaugh Jr.

INDICTMENT FOR

Pointing or Presenting Firearm at a Person
§16-23-0410

CDR: 0122

THE STATE OF SOUTH CAROLINA**INDICTMENT FOR****COUNTY OF NEWBERRY****Pointing or Presenting Firearm at a Person
§16-23-0410**

At a Court of General Sessions, convened on the 29th day of January, 2016, the Grand Jurors of Newberry County present upon their oath:

That James Wheeler Bedenbaugh Jr. did, on or about November 15, 2015, in Newberry County, willfully and unlawfully without just cause or excuse present or point a firearm at Aleah C. and/or Michael C. , in violation of Section 16-23-410 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Taylor Daniel
Assistant Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED

APR 21 2017

SC Court of Appeals

Robert M. Pachak

Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 21st day of April, 2017.