

VOLUME THREE OF FOUR
STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM MCCORMICK COUNTY

R. Lawton McIntosh, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOE ROSS WORLEY,

APPELLANT

APPELLATE CASE NO. 2014-001497

RECORD ON APPEAL

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1 the sensation he has. To his other fingers and his
2 thumb, he's got normal sensation, but when that
3 common digital artery was involved, it also shocked
4 the nerves. And on the side of his finger, very
5 little sensation. And basically all except for the
6 very, very tip of his finger, he's got minimal
7 two-point discrimination.

8 I think probably from a functional outlook, if
9 you look at what a hand does, you use your hand to
10 manipulate your environment. You use it to pinch
11 things, pick them up by the tips. You use it with a
12 key pinch to turn the ignition on your car. You
13 might pick up a ball and use all four in what we
14 call a three-jaw clamp, where you're approaching it
15 from other sides. Like if it were a ball, you'd
16 take it from all sides so the ball doesn't go around
17 everywhere. And then the last thing you'd do is you
18 grip it with your whole hand.

19 So his right hand, his key pinch, pinching like
20 this {indicating} to do an ignition -- the 2.6
21 pounds is the average key pinch. Normal, on his
22 left hand, his nondominant hand -- normally your
23 right hand is your strong hand; your left hand is
24 your weak hand -- his weak hand is 22 pounds. His
25 strong hand is 2.6 pounds.

1 Three-jaw on his strong hand, almost 17 pounds,
2 16.95. On his right hand, using all of his fingers,
3 he managed to generate 4.7, a quarter of the
4 strength of his noninjured hand.

5 And the tips pinch, just two fingers, 16
6 pounds, just pinching. If you were going to pull an
7 eyelash out or a splinter out, 16 pounds with the
8 noninjured hand and 1.3 pounds with the injured
9 hand.

10 Grip strength is when you're using your most
11 powerful grip. It ranges, depending on how big of a
12 an object you're trying to hold, on his nondominant
13 hand, his weak hand, between 55 and 100 pounds of
14 force that he can generate with that left hand. On
15 his right hand, he's able to generate between 12 and
16 20 pounds, roughly a quarter of what his normal hand
17 can do.

18 Another way to look at it: With his left hand,
19 he can hold on to these papers and hold them in his
20 pinch grip as strong as he can grip the entire wad
21 of paper using every muscle in his hand with his
22 right hand, so about a quarter of his strength. So
23 he's lost -- because he still has some function in
24 terms of being able to grasp things, we evaluate the
25 function of his hand by finger. He's lost 85

1 percent of the function -- excuse me -- 84 percent
2 of the function of his index; middle finger is not
3 there, so it's 100 percent gone; 53 percent of the
4 function of his ring finger; and 18 percent of the
5 function of his small finger.

6 Now, when you mix it all up and figure out how
7 much those contribute to the overall function of his
8 hand, he has a 44 percent reduced function to his
9 hand. It's an 80 percent reduction in strength, but
10 because a lot of the things that you do, you don't
11 have to have a whole lot of strength, it only comes
12 out to 44 percent total impairment, and that results
13 in a 40 percent.

14 Because the whole purpose of your arm is to
15 move your hand so that you can do things. It
16 doesn't matter if your elbow works or your wrist
17 works or your shoulder works. If you don't have a
18 hand on the end of it, you've really lost most of
19 the purpose of your arm. So he's lost 40 percent of
20 the function in his dominant arm, which amounts to
21 about 24 percent of the function of what we would
22 consider an able-bodied individual.

23 Q All right. Hold on just one second.

24 MR. GARRETT: We have a matter.

25 THE COURT: Madame Forelady, you can take your

1 jury to the jury room, please.

2 (The jury retires to the jury room.)

3 **THE COURT:** For the record, there was some
4 photographs of Officer Rushton's hand that were
5 being presented into evidence, and there was some
6 objection as to how many or to the graphic nature of
7 them; is that right?

8 **MR. GARRETT:** That's correct, Your Honor.
9 We've reached a compromise and stipulate to the
10 exhibits to put in.

11 **THE COURT:** Thank you very much.

12 (State's Exhibit Numbers 21 and 22,
13 photographs, marked for identification.)

14 **MR. MAYE:** This one we'll mark for ID,
15 fragments of the bullets.

16 **THE COURT:** How about the photos? Did you mark
17 those?

18 **MR. MAYE:** They're in evidence, 22 and 21.

19 **MS. BALLARD:** I'm sorry. What are those?

20 **THE COURT:** 21 and 22.

21 **MR. HENDERSON:** What do you have --

22 **MR. MAYE:** Bullet fragments removed from his
23 hand. I'm just going to mark it for ID at this
24 point in time.

25 (State's Exhibit Number 23, bullet

1 fragments, marked for identification.)

2 (Pause.)

3 **MR. MAYE:** Your Honor, I have State's 23 for
4 ID, but by stipulation, it's going to come in as
5 well.

6 **THE COURT:** And that is container holding the
7 bullet fragments that was removed --

8 **MR. MAYE:** Bullet fragments removed from his
9 hand.

10 **THE COURT:** Is that correct, Mr. Garrett?

11 **MR. GARRETT:** That is correct.

12 **THE COURT:** Exhibits 21 and 22 will be admitted
13 without objection, as well as Exhibit 23.

14 (State's Exhibit Numbers 21 through 23 were
15 admitted into evidence.)

16 **THE COURT:** State ready to proceed?

17 **MR. MAYE:** State's ready.

18 **THE COURT:** Defense ready to proceed?

19 **MR. HENDERSON:** Yes, sir, we're ready.

20 **THE COURT:** Thank you.

21 Will you bring the jury back?

22 (The jury returns to the courtroom.)

23 **THE COURT:** Mr. Maye.

24 BY MR. MAYE:

25 **Q** Dr. Densmore, I'm going to show you State's 21

1 and 22, photographs that were taken in the week
2 after the injury. And I'll just ask you, in looking
3 at State's 21 and 22, do those pretty fairly and
4 accurately reflect the state of Bobby Rushton's hand
5 in the early stages of the injury process and
6 healing process?

7 **A** Correct. This would be after the second
8 operation, before his drains were removed. So this
9 would probably be in the first or second week after
10 the operation.

11 **Q** All right. And 21 is the palm side of his
12 hand?

13 **A** Correct.

14 **Q** And 22 would be the back side of the hand that
15 was injured; correct?

16 **A** Correct.

17 **Q** And, Dr. Densmore, I'll show you what's already
18 been marked into evidence as State's 23. Are those
19 fragments of projectile that were removed from his
20 hand as a result of your treatment in this case?

21 **A** Correct.

22 **Q** Okay. Dr. Densmore, I heard your descriptions
23 of the degree of impairment, and very precise, but
24 in a real-world situation, how would this impact
25 somebody performing something like tying their shoe?

1 What type of diminution in function would you see
2 when somebody performed -- did some menial task like
3 that?

4 **A** This is his dominant hand, so his dominant hand
5 is the one that is most -- usually, the most
6 dexterous and the most ability to manipulate
7 objects: Tying your shoes and things like that.

8 This would make this extremely difficult
9 because not only is the strength diminished by 70 to
10 80 percent, depending on the finger, but the ability
11 to move them independently and quickly in what we
12 would call this dexterous nature would also be
13 severely impaired.

14 Beyond that, if you look at his training and
15 his career, he can't hold a weapon in that hand.
16 That hand is not strong enough. It's not able to
17 stabilize the weapon. He's not going to be able to
18 fire a weapon with his dominant hand. This is a
19 career-ending injury.

20 **MR. MAYE:** Thank you. Answer any questions the
21 defense has for you. Thank you, Dr. Densmore.

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

23 CROSS-EXAMINATION

24 BY MR. GARRETT:

25 **Q** Could he be trained to shoot with his left hand

1 to firm up with his right hand?

2 **A** He can be trained to do that. My understanding
3 is that it is required of all police officers to be
4 able to fire their weapon with either hand.

5 **Q** Okay. But he may still be able to shoot in the
6 future by doing that?

7 **A** With his left hand.

8 **Q** Be able to shoot, not necessarily to be a
9 police officer, but be able to shoot?

10 **A** Correct.

11 **MR. GARRETT:** Thank you.

12 **MR. MAYE:** Thank you, Doctor. I ask you to be
13 released. Thank you so much for coming.

14 **THE COURT:** Any objection?

15 **MR. GARRETT:** Without objection.

16 **THE COURT:** Thank you for coming here. You're
17 excused, Doctor.

18 Would you call your next witness, please, sir.

19 **MR. MAYE:** The State would call Bobby Rushton
20 to the stand.

21 BOBBY RUSHTON,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. MAYE:

25 **Q** Investigator Rushton, please tell the ladies

1 and gentlemen of the jury where you're originally
2 from, what led you to your employment at the
3 McCormick County Sheriff's Office, a little bit
4 about your background in law enforcement prior to
5 that time.

6 **A** Originally, I'm from Saluda County, not much
7 bigger than McCormick here. When I was 15, I moved
8 to McCormick with my parents. Right after high
9 school, I worked for the state parks for a while,
10 went to work for the department of corrections.

11 **Q** What year did you start at SCDC?

12 **A** Yes. I started here at the prison here in
13 McCormick for the department of corrections --

14 **Q** About what year was that?

15 **A** Around '93 maybe. I'm not exactly sure. It's
16 been a while.

17 I worked there for the department of
18 corrections for seven years. I left from the
19 department of corrections and I worked for the
20 Edgefield County Sheriff's Department for one year
21 as a jailer. Then I was hired here at the Town of
22 McCormick as a city police officer.

23 A position came open at the sheriff's
24 department, where I really wanted to be, so I
25 applied and was accepted at the sheriff's department

1 and worked there for approximately seven years.

2 Q When did you go to work for George Reid at the
3 sheriff's department here? What year was that; do
4 you remember exactly?

5 A '98, '99, somewhere around in there.

6 Q Okay. Did there come an occasion that you went
7 to serve in another format prior to November the
8 15th of 2009, and what was that service?

9 A Yeah. I had -- the Iraqi war had come out and
10 I found out that the U.S. Department of State was
11 looking for American police officers, and they were
12 wanting us to go to Iraq and mentor and advise the
13 Iraqi police.

14 I applied for the position. I went through the
15 vetting system. I was accepted, and it took
16 probably about eight months for it to go through the
17 vetting system, but I got accepted. I went through
18 the training. And I went to Iraq where I served for
19 four years for the Department of State. It was
20 through another company that actually paid us, but
21 we had to follow directions of the Department of
22 State. And, to be specific, it was a department in
23 the Department of State, International Narcotics and
24 Law Enforcement.

25 Q So you worked over there training Iraqi police

1 officers and acting as an advisor and assisting in
2 the formation of their --

3 **A** Yes.

4 **Q** -- I guess, regrouped police department over
5 there?

6 **A** Yes. We were trying to get them more of a
7 democratic policing instead of the Gestapo policing
8 they were doing prior.

9 **Q** Okay. All right. Officer Rushton, let's talk
10 about you going back into service. You went back --
11 you came back to the sheriff's department; is that
12 correct?

13 **A** I did. I returned back to the U.S. August or
14 September of 2009. I took a few months, spent some
15 time with my family; I had been away from them for
16 quite a bit. I -- a position came open at the
17 sheriff's department, and it was something that I
18 loved, I loved doing.

19 I applied for the position. I was called in
20 for an interview. I don't know how much -- the time
21 period, but I got a phone call stating that I had
22 been rehired -- they were going to hire me back.

23 **Q** So you went back into your service with the
24 sheriff's department?

25 **A** Yes.

1 **Q** Did you complete the necessary training that
2 you needed to in order to get your certification
3 back?

4 **A** Yes, I did. Investigator Collier at the
5 sheriff's department is also the training officer.
6 Everyone knows McCormick's a very small sheriff's
7 department, so everybody has to do a lot more than
8 one specific job.

9 From my understanding, he had contacted the
10 Criminal Justice Academy in Columbia, and they told
11 him --

12 **MR. GARRETT:** Objection, Your Honor.

13 **THE COURT:** Sustained.

14 BY MR. MAYE:

15 **Q** Don't go into what anybody else said, but --

16 **A** Okay. For the next two weeks, I had to watch a
17 lot of videos, take some questionnaire tests, and
18 things of that nature.

19 **Q** Okay. And you took the oath of office again
20 and were sworn back in as an officer; correct?

21 **A** Yes.

22 **MR. GARRETT:** Objection, Your Honor. He's
23 leading.

24 **THE COURT:** Rephrase, please. Sustained.

25 **THE WITNESS:** On November -- I was rehired --

1 BY MR. MAYE:

2 Q Let me ask you this: What steps did you take
3 prior to returning to service fully in your
4 capacity?

5 A The first day back would have been November
6 2nd, which was a Monday. Investigator Collier
7 brought me here to the courthouse in the Clerk of
8 Court's office, and I retook my oath.

9 Q Okay. All right. When did you resume service
10 back in your regular day-to-day capacity as a deputy
11 sheriff for Sheriff Reid here in McCormick County?

12 A It would have been at 6:00 p.m., November the
13 14th, which was a Saturday.

14 Q On Saturday?

15 A The morning -- or the evening before the
16 incident.

17 Q Okay. Let's talk about November the 15th of
18 2009. Let's talk about the shift that would have
19 gone from Saturday the 14th to Sunday the 15th, the
20 day that you got shot. What happened?

21 A Well, we -- our shift started at 6:00 p.m. in
22 the afternoon on the 14th, which is a Saturday. It
23 was uneventful that night. Patrolled different
24 areas of the county. There were three of us working
25 that night: Myself, Deputy Moore, and Deputy

1 McAllister.

2 Shortly after 4:00 a.m., we had received a call
3 of a disturbance in Little River subdivision on
4 Presidents Drive. I was in Plum Branch, right where
5 the four lane is, headed north which would have been
6 coming toward town when I got the call and it was
7 Presidents Drive. I turned onto Jefferson Street,
8 which would have been to the left, right where the
9 four lane ends. Go up Jefferson Street, and then
10 I'm not sure exactly; it's a couple miles on
11 Greenfield Road, and you take Greenfield Road, and
12 it comes back out on 378. 378 to Holiday Drive,
13 Holiday Drive to Independence Drive, Independence
14 Drive to Presidents Drive.

15 **Q** What happened when you got there? What was the
16 first thing that you saw?

17 **A** I actually -- I caught up to Deputy McAllister.
18 We were actually given the incorrect numeric
19 address, but we were given the Worley residence as
20 the suspect in this.

21 Deputy McAllister actually went past the
22 residence, which I don't recall seeing a numeric
23 address; I just saw a plank of wood, like driftwood
24 or something, that had Worley burned into it. So I
25 knew -- I saw it. Deputy McAllister had went past

1 it. And I believe I called out over the radio that
2 it was an incorrect residence, that this was it.

3 I turned into the residence. Deputy Moore
4 actually went past me and turned into the driveway
5 that Melissa had turned into, which is parallel to
6 the Worley residence.

7 Upon arriving, there was some type of little
8 small SUV/Crossover-type car or something parked in
9 the yard. I parked back behind it.

10 I saw movement next door; I was assuming it was
11 the complainants. We got out and kind of walked in
12 that direction. I went over and talked to -- that
13 was the complainants -- was Mr. and Mrs. Sheffield.

14 Melissa went to my left, and Nick went to my
15 left. And Melissa was standing between Nick and I,
16 where he went to the front of the house. I was
17 talking with the Sheffields, getting information
18 about why they had called. They informed me --

19 **MR. GARRETT:** Objection, Your Honor.

20 **THE COURT:** Sustained --

21 BY MR. MAYE:

22 **Q** Don't go into what they said, but let me ask
23 you this --

24 **THE COURT:** Just one -- go ahead.

25 **MR. MAYE:** I'm sorry.

1 BY MR. MAYE:

2 Q Let me ask you this: What could you hear in
3 regard to what Nick was doing, even over at the
4 Sheffields' house? What could you hear that he was
5 doing over there?

6 A Oh, I could hear him announcing, Sheriff's
7 office. I could -- from where I was standing, I
8 could hear that.

9 Q You're over at the Sheffields' house --

10 A Yes, I'm at the Sheffields.

11 Q -- but you could clearly hear that over there?

12 A Yes.

13 Q Okay. So after you gathered whatever
14 information you got from the Sheffields, what was
15 the next thing that you did?

16 A Well, I told Mr. and Mrs. Sheffield to go back
17 in the house while we go over and talk to him.

18 Nick and Melissa were actually walking back
19 toward me, as I was walking toward them. A light
20 came on and immediately went back off.

21 Q Where was that light?

22 A It was in -- if you look at the setup of the
23 house, the front of the house.

24 Q And if it'll help you, I'm going to show you
25 what's already into evidence as two photographs that

1 are State's 5.

2 **A** This is the front of the house. It would have
3 been on this corner here {indicating}.

4 **Q** You saw that light go on and off?

5 **A** Yes.

6 **Q** Okay. What did y'all do once you saw that
7 light go on and off?

8 **A** We walked on up to the house. I'll use the
9 same evidence, State's 5.

10 We went onto the front porch -- well, Nick and
11 I stepped up onto the front porch. Nick would have
12 been to the left side of the door, and I was on the
13 right side of the door.

14 **Q** What were y'all doing all during that time that
15 you were there? What did y'all start to do?

16 **A** Well, I -- Nick was knocking on the door. I
17 was ringing the doorbell and knocking; both of us
18 announcing, Sheriff's department.

19 **Q** Okay.

20 **A** I heard something from up above, Who is it? We
21 replied, Sheriff's department. The reply was, I
22 don't give a fuck.

23 I'm walking backwards as this is happening so I
24 can see. The door -- you could hear that sliding
25 glass door open. And the next thing that I

1 actually -- when I was able to get far enough back
2 to see over the railing, I saw the defendant
3 standing in front of the stool.

4 **Q** Okay. Let me ask you this: That exterior
5 light that had come on and gone off, was it on or
6 off at the time that you were looking up there at
7 him?

8 **A** It was off.

9 **Q** It was off at that point in time?

10 **A** Yes.

11 **Q** Okay. But was there enough ambient light for
12 you to see some at that point in time?

13 **A** We also had our flashlights.

14 **Q** You had a flashlight as well?

15 **A** Yes.

16 **Q** Okay. So you heard the glass. What happened
17 next?

18 **A** He was standing in front of the stool. And if
19 you had the butt stock of the gun in your left hand
20 and holding it like this {indicating}, and he was
21 walking to his left when I saw him.

22 **Q** Okay. If he was walking to his left, which way
23 was he headed?

24 **A** He was here, and he was headed toward where
25 this white sheet's at {indicating}.

1 **Q** How was he moving with the weapon as he was
2 doing that?

3 **A** Walking sideways. .

4 When I saw that he had the gun, I yelled, Gun,
5 alerting Nick and Melissa that -- letting them know
6 that he had a weapon.

7 **Q** Yes.

8 **A** Immediately, Nick and I were yelling, Sheriff's
9 department, drop your gun.

10 **Q** Did he comply or did he do anything?

11 **A** Not at that point. No sooner than we had said
12 that, the light came on, and I was facedown in the
13 ground.

14 **Q** Okay. Did you -- you said the light came on
15 and you were facedown on the ground. Why did you
16 fall onto the ground?

17 **A** I had realized I had been shot, and I even
18 called out, I've been hit.

19 Nick had stepped around to the side and was
20 yelling, Come to me, come to me.

21 **Q** Once that light went on just before the shot,
22 how did that affect your ability to see or
23 comprehend what was going on?

24 **A** I could see nothing. That light was pointed
25 straight down and blinding me.

1 **Q** Okay. What was the next thing that happened?

2 **A** Nick was yelling, Come to me, come to me. As
3 I'm trying to get up and run, there's a second shot.

4 **Q** Okay.

5 **A** He get -- I get with Nick or actually he gets
6 me and leads me to the back of the house, and I'm
7 not sure exactly where I was at in the back of the
8 house, but I could hear, Where you at, you son of a
9 bitches?

10 And Nick is telling me that we got to go, we
11 got to go. And I'm trying to get out of there. My
12 radio comes off from my belt, wraps around my leg.
13 Where my mic is attached to my shirt here with the
14 cord, it trips me up; I can't move. I finally get
15 free of it and make it to the -- Melissa had gotten
16 her patrol car and come around.

17 **Q** What was the next thing that happened?

18 **A** I remember Nick opening the door, the driver's
19 side rear door, opening that rear door, getting me
20 in the car. I remember Melissa standing with the
21 door open on the patrol car, the front door. Right
22 where the door meets the car is the apex. I
23 remember her standing in the apex of the door
24 covering Nick while he gets me in the car.

25 Melissa jumps in the car, goes over to the

1 passenger side, and she goes through the driver's
2 door, flips over to the passenger side. Nick gets
3 in, and we drive off and make it up to the Sandy
4 Branch Fire Department.

5 I don't remember if the first responders were
6 there, but it was just {snapping fingers} like that,
7 somebody was there helping me. I don't know where
8 they came from.

9 Q Okay. Were you -- do you remember being
10 transported by the ambulance and the subsequent
11 things?

12 A Oh, most definitely. The gentleman that was
13 with the EMS that was here earlier, I'd never met
14 him before that night. The other gentleman there
15 that was Mike Sharp, I remember talking with Mike,
16 trying to focus on him so they could treat my arm,
17 because my hand was mutilated. I knew it was
18 mutilated, and all I could do was just hold it,
19 hoping that I didn't bleed out because I didn't know
20 how bad I was.

21 Q What happened next? Where did they take you
22 to?

23 A Well, the ambulance got there shortly after
24 that. I was laying in the back of the ambulance,
25 and I remember them trying to give me a shot of

1 morphine, and I told them that morphine does not
2 work on me. And I remember them telling me that,
3 We've given you four shots of morphine already, and
4 it has no affect on me.

5 **Q** So what was the next thing that happened?

6 **A** They took me to the MCG, the Medical College of
7 Georgia. I remember laying in the emergency room
8 and a puddle of blood just all around the stretcher
9 I was on.

10 **Q** Okay. You were subsequently treated by
11 Dr. Densmore and other physicians there?

12 **A** Yes. Yeah, they finally came in and gave me
13 some medication that did away with the pain and
14 pretty much knocked me out.

15 **Q** How many surgeries was the resulting of injury
16 to your hand from being shot by him, what did they
17 result in?

18 **A** I've had a total of four surgeries.
19 Dr. Densmore had said there were more, but I've had
20 enough surgeries.

21 **Q** Okay. 21 and 22, about what point in time are
22 you in the recovery process or trying to recover?
23 About when were those photos made?

24 **A** Those pictures were made -- I got shot on a
25 Sunday. Monday/Tuesday, I came home, and I had to

1 change the bandages every day, and it was extremely
2 painful. And my wife was trying to help me, and we
3 couldn't get the bandages off of my hand because
4 they were caught up in the stitches, caught on the
5 pins in my hand. The dried blood, it hurt. So the
6 only thing I knew to do was come to the EMS, and I
7 got some of the EMTs to help me get the bandages off
8 my hand. And these were taken the very next day.

9 Q Okay. What did this do to your law enforcement
10 career? Were you able to continue as an officer?

11 A It ended my career.

12 Q And so you're no longer able to be a law
13 enforcement --

14 A No. I retired 2011. October 31st, 2011.

15 Q You retired on disability?

16 A Yes.

17 Q And I guess it's civilian Rushton now, but
18 Bobby, let me ask you this: The night that you went
19 out there, you said you had come back on the 14th,
20 and this happened on the 15th. How were you
21 dressed? What uniform were you wearing?

22 A I was wearing they're called 5.11 Tacticals.

23 Q What is 5.11?

24 A It's a clothing line. It's designed by and for
25 law enforcement officers.

1 Q Is that clothing that's commonly worn by law
2 enforcement officers?

3 A Most definitely. It's probably the most common
4 brand you'll find.

5 Q How exactly were you dressed?

6 A It was the khaki-colored 5.11 Tactical pants.
7 And not that it's tactical, it's just the name that
8 they give it. And it was a 5.11 polo shirt that was
9 green.

10 Q Okay. Did you have on your badge?

11 A I had my duty belt. My badge would have been
12 clipped right in this area {indicating}. That's
13 where I've always clipped my badge. And that's just
14 where I put it.

15 Q Were you carrying a radio that night?

16 A My radio would have been on my left hip, with
17 the cord coming around.

18 And on the 5.11 polo shirts, the tactical ones,
19 there's a spot right here in the center where the
20 buttons are that you can clip your radio on so it
21 doesn't flip off and things, because it'll slip off
22 easy.

23 Q So, essentially, the same type of clothing, not
24 with the tactical pants and all, but it's a similar
25 outfit to what the officer has on right now?

1 **A** Yeah. I just had a green shirt on; he's got a
2 black shirt on.

3 **Q** Was it similar to what the other officers at
4 the sheriff's department were wearing at the time?

5 **A** Yes.

6 **Q** Was there any difference at all in between what
7 you were wearing and what the other officers were
8 wearing?

9 **A** Just the color.

10 **Q** Bobby, let me ask you this: At the time just
11 before you got shot, did you identify yourself as a
12 sheriff's deputy?

13 **A** Oh, we most definitely need. And he
14 acknowledged --

15 **Q** Any doubt in your mind that he heard you?

16 **A** Oh, there's no doubt, because he acknowledged
17 when he --

18 **MR. GARRETT:** Objection, Your Honor.

19 **THE COURT:** Just one second.

20 Madame Forelady...

21 (The jury retires to the jury room.)

22 **THE COURT:** All right. Mr. Garrett.

23 **MR. GARRETT:** Your Honor, question as to what
24 my client can hear.

25 **THE COURT:** Did you hear what he said in follow

1 up?

2 **MR. GARRETT:** I didn't hear what he said.

3 **THE COURT:** I thought maybe you didn't, that's
4 why I didn't want to say anything.

5 But he said, Because he responded to what I
6 said. So I thought -- I assumed that your objection
7 was going to be based on speculation. And I think
8 that, by his response, he said, Could he hear you,
9 and you said, yes, because he responded. Okay. So
10 I'm going to overrule based on his response.

11 **MR. GARRETT:** All right.

12 **MR. MAYE:** Thank you.

13 **THE COURT:** Would you bring the jury -- are you
14 ready to proceed?

15 **MR. MAYE:** Yes, sir, absolutely.

16 **THE COURT:** Mr. Garrett, are you ready to
17 proceed?

18 **MR. GARRETT:** Yes, Your Honor.

19 (The jury returns to the courtroom.)

20 BY MR. MAYE:

21 **Q** Officer Rushton, you had testified that you
22 knew he heard you because he responded back to you
23 that you were a sheriff's deputy. What did he say
24 to you in response to your statement that you were a
25 deputy?

1 **A** When he said, Who is it, Nick and I both
2 yelled, Sheriff's department. And his reply was, I
3 don't give a fuck.

4 **Q** What kind of car were you driving? Was it
5 unmarked, marked --

6 **A** It was a fully marked white patrol car with the
7 blue and gold strips and a blue light bar on the
8 top.

9 **MR. MAYE:** Answer any questions the defense has
10 for you.

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

12 **MR. GARRETT:** Your Honor, we have a matter.

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

14 Ladies and gentlemen, let me remind you that I
15 told you at the beginning of the case, sometimes
16 you're going to feel like cattle, and that's just
17 part of the methodology we go through in all trials.
18 Okay? But I'm going to ask you to go back to your
19 jury room. Go ahead, take a little bit of extra
20 time for the afternoon, and then we'll bring you
21 back in. Okay.

22 And, Madame Forelady, if you need anything,
23 please let us know.

24 (The jury retires to the jury room.)

25 **MR. GARRETT:** Your Honor, we had issued a

1 subpoena for Deputy Rushton to bring all of his
2 regalia, all of his gun and all of his materials,
3 his uniforms, and whatnot. In order for me to
4 properly cross-examine him, I would like for him to
5 have that available.

6 **THE COURT:** Did you bring it?

7 **THE WITNESS:** Your Honor, I do not have any of
8 that stuff. Everything that I did have has been
9 returned to the sheriff's department on October
10 31st, 2011, when I retired.

11 **THE COURT:** All right. Where is his
12 information?

13 **MR. MAYE:** His clothing, it's my understanding,
14 what he actually had worn that night, I'm going to
15 have to defer to Officer Collier. My understanding
16 is they destroyed those things because he had blood
17 all over them, and they didn't keep the clothing.
18 He had his gun and we brought that.

19 **THE COURT:** Hang on for a second. What exactly
20 did you return to the sheriff's department?

21 **THE WITNESS:** My duty belt and -- as I was
22 wearing that particular night?

23 **THE COURT:** No. I think -- and I'm not asking
24 about specifically you had that night. I can
25 understand it might be bloodied up, but I'm talking

1 about when you retired, what exactly did you return?

2 **THE WITNESS:** Boots, jacket, duty belt, weapon,
3 radio. Anything that belonged to the sheriff's
4 department, I returned to them. I have nothing.

5 **THE COURT:** Is that what you we're looking for?

6 **MR. GARRETT:** In his prior testimony, he
7 testified that, although he wasn't wearing them that
8 night, he had a hat that had sheriff on it. He had
9 a coat that had sheriff across the back of it. He
10 had a --

11 **THE WITNESS:** No, I did not testify to that.

12 **MR. GARRETT:** He said he had another jacket
13 that, I believe, he said in his testimony that he
14 had a police -- it said police on it, and it was
15 highlighted like you see in the dark, that kind of
16 thing where you see police officers wear those type
17 of things. He had those available to him. And I
18 want to just show --

19 **THE COURT:** Can you get exemplars of those over
20 here?

21 **MR. MAYE:** Your Honor, I will certainly give.--

22 **THE COURT:** If they're under subpoena, you
23 know, whether they'll be relevant or not --

24 **MR. MAYE:** I don't know when that was done. I
25 think it was done very recently. When was that

1 done?

2 **MR. HENDERSON:** I gave it to Investigator
3 Collier last night, the same one that testified,
4 Your Honor. And Mr. Collier has been the one that's
5 been gathering information for the State to the
6 sheriff's department.

7 **MR. MAYE:** Your Honor, obviously, we got this
8 last night. We're going to do our best to comply.

9 **THE COURT:** I understand. Look, we're not
10 talking about having to go down to the Nile and go
11 look for something else. You're talking about
12 jackets and hats --

13 **MR. MAYE:** No, sir. And we're going to get
14 anything we possibly can.

15 **THE COURT:** -- jackets and hats and whatever,
16 the belt. I mean, if it's there, go get it or have
17 it brought over here, please.

18 **MR. MAYE:** Sure.

19 **THE COURT:** All right. Let's take about a
20 few-minute break and come back.

21 **MR. GARRETT:** May we say one other thing, Your
22 Honor?

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

24 **MR. GARRETT:** About his duty -- his duty
25 weapon. Is he going to bring his duty weapon to

1 court?

2 **THE COURT:** The duty weapon, I understand, is
3 destroyed.

4 **MR. GARRETT:** They have it. It's in evidence.

5 **MR. MAYE:** We got it.

6 **MR. MYERS:** Yeah, we're going to put that in
7 evidence.

8 **MR. GARRETT:** I'd like to have it for this
9 cross-examination, if I may.

10 **THE COURT:** Any objection to that?

11 **MR. MAYE:** We'll go on and put it in evidence.

12 **MR. GARRETT:** That's fine.

13 **THE COURT:** Any other matters -- articulate
14 what you want them to bring so they can get that
15 over here, hat, jacket, shirt.

16 **MR. GARRETT:** If he had a shell, too, a vest.
17 If he had a gun vest, a bullet vest. Just whatever
18 he had that's marked with law enforcement.

19 **THE COURT:** All right. Let's take a few-minute
20 break.

21 You can't talk to anybody about your testimony.

22 (Brief recess.)

23 **THE COURT:** Have you received your stuff?

24 **MR. GARRETT:** We have not yet, Your Honor, but
25 they are making a diligent effort, I do believe, to

1 try to find it. But one of the problems is one of
2 them is going to have to go to their house to get
3 the flashlight, so they're on their way.

4 **THE COURT:** The flashlight, the exact --

5 **MR. GARRETT:** That he had that night.

6 **MR. HENDERSON:** Your Honor, I believe
7 Mr. Rushton has sent his wife --

8 **THE WITNESS:** Yes, Your Honor. I live three
9 miles from here.

10 **THE COURT:** Well, thank you. I appreciate it.

11 Any reason why we can't start -- are you -- and
12 I'm not trying to try your case, please, but would
13 you rather wait till all this is here before you
14 start?

15 **MR. GARRETT:** I would like to. I know it's
16 4:30. If you want to go on till 5:00, I'm fine with
17 that. But I think, for the very beginning of my
18 examination, I want to have what he had access to
19 and maybe even have somebody here who's got the
20 uniform on that he should have been wearing that
21 night.

22 **THE COURT:** So you want overnight to think
23 about it?

24 **MR. GARRETT:** I'd love to.

25 **THE COURT:** Any reason why I shouldn't do that?

1 **MR. MAYE:** Other than it's December the 16th,
2 and I'd like to get this done as quickly as possible
3 because there are other places --

4 **THE COURT:** I do, too.

5 **MR. MAYE:** As much as I love my job -- at
6 4:30 -- I'd sure hate to quit at 4:30. I want to
7 roll. That's my only thing. I think we should
8 fully utilize our court time.

9 **THE COURT:** Well, here's a few things. Take a
10 minute, here they come in the door now, let's look
11 at it.

12 (Pause.)

13 **THE COURT:** For the record, we had a
14 conversation before the break where the defense had
15 subpoenaed certain clothing items of Officer
16 Rushton's or original facsimiles thereof, and a
17 jacket, a vest that is school yellow, and a armored
18 vest, for lack of better terms, personnel vest has
19 been presented. And my understanding is Officer
20 Rushton has asked his wife to go to their home three
21 miles, more or less, from here to bring back the
22 flashlight that he had and used on the night in
23 question.

24 **MR. GARRETT:** Yes, sir.

25 **THE COURT:** That being said, any reason why we

1 can't proceed?

2 **MR. GARRETT:** No, Your Honor.

3 **THE COURT:** And if you don't have it all, I'll
4 keep the record open for you to continue on or if
5 you don't finish, I'll let you continue on.

6 **MR. GARRETT:** How long will we go today? Until
7 5:00 or --

8 **THE COURT:** You know, I'd like to go ahead and
9 move things forward, but if five o'clock -- when I
10 came here today, that was kind of my idea, since I
11 kept everybody a little bit later last night, but if
12 it gets to a good breaking point around that time,
13 just let me know, and I'll be glad to break it.

14 **MR. GARRETT:** Yes, sir.

15 **MR. MAYE:** And, Your Honor, my understanding is
16 they're not going to move to admit those into
17 evidence, because like I said, that's stuff people
18 are wearing now and jackets -- they're going to use
19 that for demonstrative purposes and not admit it
20 into evidence because it's cold, and these are
21 jackets and vests that people are wearing right now.

22 **THE COURT:** I would just think that as long as,
23 and you tell me, Mr. Garrett, or anybody else, as
24 long as you have that for closing argument to be
25 able to use demonstratively, that's what you're

1 looking for?

2 **MR. GARRETT:** Yes. Yes, sir, that's what I'm
3 looking for, that these things were available to
4 him.

5 **THE COURT:** Any problem with that?

6 **MR. MAYE:** No, sir.

7 **THE COURT:** With that being said, are you ready
8 to begin?

9 **MR. GARRETT:** Yes, Your Honor, I am.

10 **THE COURT:** Oh, I'm sorry. Go ahead. I didn't
11 see your client talking to you.

12 **MR. GARRETT:** Beg the Court's indulgence.

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

14 (Pause.)

15 **MR. GARRETT:** I'm ready.

16 **THE COURT:** Is the State ready?

17 **MR. MYERS:** Yes, sir.

18 **THE COURT:** All right. Bring the jury in,
19 please.

20 (The jury returns to the courtroom.)

21 **THE COURT:** Mr. Garrett?

22 **MR. GARRETT:** Thank you, Your Honor. May it
23 please the Court.

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

25 *****

1 CROSS-EXAMINATION

2 BY MR. GARRETT:

3 Q Officer Rushton, on the night in question, as I
4 understood it, you hadn't gotten your uniform yet;
5 is that correct?

6 A Correct.

7 Q And as I understand it, they had been ordered,
8 and it was probably some two weeks after the
9 incident before you even got your uniform; is that
10 correct?

11 A I have no idea when they came in.

12 Q Some time after this night?

13 A It was after that particular night, yes.

14 Q All right. The outfit that you had on
15 basically didn't have a badge on it, did it?

16 A Not embroidered like what they're wearing, it
17 was not.

18 Q And that's what you had -- had been ordered for
19 you was a badge where somebody could see your badge?

20 A One that had been ordered, yes.

21 Q Okay. And one of those officers was walking
22 around earlier, and this gentleman here has a darker
23 color. Did you also get some darker colors or what
24 colors were the ones that you were supposed to have?

25 A The shirts?

1 Q Shirts, yes, sir.

2 A They were gray.

3 Q They were gray? Okay. So you couldn't have
4 got a black one or --

5 A No, I never had a black shirt.

6 Q Okay. As I understand it, you said that there
7 is no -- y'all have no uniform code or uniform
8 policy at McCormick; is that --

9 A No. I've never seen one that said exactly what
10 we have to wear on a day-to-day basis. So uniforms
11 do not distinguish whether or not you're a law
12 enforcement officer; your badge does.

13 Q I'm going to get to that.

14 Let's talk about, did you file an application
15 when you came back from Afghanistan?

16 A I was in Iraq.

17 Q Or Iraq?

18 A Yes, I did.

19 Q You did? And you were hired?

20 A Yes.

21 Q Okay. And in your -- in some prior testimony,
22 you didn't recall taking your oath of office; is
23 that correct?

24 A When you had asked me in the prior testimony, I
25 did not, but as soon as Investigator Collier showed

1 me that paper, it clicked and I remembered.

2 Q Okay. And that's the only -- the one -- you've
3 only taken one oath of office; is that correct?

4 A No, I actually took two: The very first time I
5 came to work for the sheriff's department and when I
6 came back from Iraq and reapplied at the sheriff's
7 department, I took that oath of office again.

8 Q You took both -- you took two oaths of office
9 or just one?

10 A Two.

11 Q I understand you took one a long time ago.

12 A Yes.

13 Q And when you got back, you took one?

14 A On November the 2nd.

15 Q Okay. You took one oath of office; is that
16 correct?

17 A Yes.

18 (Defendant's Exhibit Number 4, Oath of
19 Office, marked for identification.)

20 BY MR. GARRETT:

21 Q Mr. Rushton, can you look at this and identify
22 that for me, please, sir?

23 A Yes. This is the oath of office that I took on
24 November the 2nd.

25 Q Is that the only oath you took?

1 **A** Once I came back from Iraq or --

2 **Q** Yes, sir. Once you came back from Iraq, is
3 that the only oath you took?

4 **A** Yes.

5 **Q** Okay. And did you take the oath and have it
6 approved by a circuit court judge?

7 **A** No, I did not. And it's my understanding, I've
8 never met a law enforcement officer that has.

9 **MR. GARRETT:** Your Honor, I'd ask the witness
10 be responsive only.

11 **THE COURT:** I'll grant that. And I'll direct
12 the jury to disregard his last statement, please.

13 **MR. GARRETT:** Defense moves into evidence 4.

14 **THE COURT:** Any objection?

15 **MR. MYERS:** No objection.

16 **THE COURT:** Admitted without objection.

17 (Defendant's Exhibit Number 4, Oath of
18 Office, admitted into evidence.)

19 BY MR. GARRETT:

20 **Q** All right. And you've never appeared in front
21 of a circuit court judge to be approved?

22 **A** No, I haven't.

23 **Q** All right. And so, as I understand it, in
24 order to get back, you met with Collier, who has
25 testified earlier, and tried to determine what type

1 of work you needed to do in reference to your
2 certification; is that correct?

3 A Yes.

4 Q Now, you had been gone how long from the
5 department? Can you tell me when you left?

6 A I think it was in April of 2004 when I actually
7 severed my services with the sheriff's department.

8 Q Okay. And you didn't start back until when?

9 A November the 1st was my hire date.

10 Q Was your hire date?

11 A Yes.

12 Q Of '09?

13 A Yes.

14 Q So, roughly, a little over four years?

15 A Just a little over four years.

16 Q All right. And is it true that if you're not
17 in a Navy/Army type of setting, military setting,
18 that after you are without any training for three
19 years, you have to go back through certain parts of
20 the academy?

21 A I'm not sure.

22 Q Okay. And in your previous testimony, you had
23 said that, as far as you were concerned, you had
24 done all that you were supposed to do to be
25 certified on the night in question; is that correct?

1 **A** That's what I was told, and that's what I
2 believed to be true.

3 **Q** All right. And if the true certification
4 didn't come until some time later, like in 2010, you
5 wouldn't dispute that as to the certifications
6 necessary to make you certified?

7 **A** I most definitely will dispute that.

8 **Q** Okay. All right. And what did you say you did
9 for those two weeks, from November 1, the hire date,
10 until this night, the first night out?

11 **A** There's certain classes that, as a law
12 enforcement officer, you have to take annually, and
13 I had missed those classes for the past four years,
14 so I had to catch all of them up.

15 **Q** And some of those classes, are you aware that
16 your record indicated that you were actually there
17 in 2007 at the academy? Did you look at your
18 records?

19 **A** No, I have not seen them.

20 **Q** Can I have you just look at these and see if
21 these are your records?

22 **A** Are both of these the same thing -- no, I'm
23 sorry.

24 **Q** No. One's dated 12/14/09; would you agree with
25 that?

1 **A** I do not see...

2 **THE COURT:** Gentlemen, I've been asked to have
3 you speak a little bit louder, please.

4 **THE WITNESS:** I'm sorry. The date, I see where
5 it says 12/13/09.

6 BY MR. GARRETT:

7 **Q** Right. And that's the first set right there.
8 Is this your history?

9 **A** I believe it is.

10 **Q** Okay. And it says that -- where it says
11 7/2/05, 7/20/09, and then it's a Class 1
12 certification, and it says, Reason: Military?

13 **A** Is that on the same page?

14 **Q** Yes, sir. Right here {indicating}.

15 **A** Okay. Yes, it does say military, or militar.

16 **Q** Militar. Did you go into any kind of United
17 States military service?

18 **A** No, sir. I was under contract with the U.S.
19 Department of State.

20 **Q** Okay. Is it possible, if you left in '05, that
21 you could have actually got time for work?

22 Look at these dates. Start at '05. Were you
23 in South Carolina doing any of that work?

24 **A** 2005?

25 **Q** Yes, sir. 3/31/05 in service. In service, 16

1 hours?

2 **A** These are the updates that I took after I got
3 back.

4 **Q** Well, that's my point. On 12/14/09, you hadn't
5 made the updates yet, had you?

6 **A** Yes, I had. I took them for two straight
7 weeks. I sat there and did the updates.

8 **Q** Okay. And they give you a course date of
9 6/27/05?

10 **A** Why that date is there, I have no idea, but
11 that would be the update, not the year that I took
12 it, just the year that that update came out. And
13 those are the ones I was catching up.

14 **Q** All right. Let's look at the next one. Let's
15 look at the second one, and compare it -- compare
16 it. Do you see any differences in it?

17 **A** I'm not sure what you're asking here.

18 **Q** Does it show you as an active or an inactive
19 full-time appointment from 10/28/98 through 7/2/05?

20 **A** It says, Inactive from 10/21/1998 through
21 07/02/2005. I have no idea what that means.

22 **Q** Okay. These courses, these mandatory courses,
23 6/27/07, 6/27/07, did you complete those? And if
24 you did, where did you complete them at?

25 **A** The ones that say, Make up legal?

1 Q Yes.

2 A They would have been completed right here at
3 the McCormick Sheriff's Department when I came back
4 from Iraq in that two-week period where I was taking
5 these updates.

6 Q Okay. Are you aware that to be a Class 3
7 officer or Class 1 officer, if you have lost three
8 years or more, you have to start back over? Are you
9 aware of that?

10 A I didn't lose three years.

11 Q You were gone --

12 A Because I was under that contract with the U.S.
13 Department of State, my time was frozen, and it was
14 considered the same thing as military time because I
15 volunteered to go there and do something for this
16 country.

17 (Defendant's Exhibit Number 5, training
18 records, marked for identification.)

19 MR. GARRETT: Any objection?

20 MR. MYERS: No objection.

21 THE COURT: Admitted without objection. And
22 that is?

23 MR. GARRETT: It's Defendant's Number 5. And
24 that is his training records.

25 THE COURT: Training records.

1 (Defendant's Exhibit Number 5, training
2 records, admitted into evidence.)

3 **MR. GARRETT:** It would be 5 and 6. I'm sorry.
4 We've got two separate ones there. We've got one
5 marked as 5 and one marked as 6.

6 (Defendant's Exhibit Number 6, Criminal
7 Justice Academy letter, marked for identification.)

8 **MR. GARRETT:** And for the record, Your Honor,
9 we move to introduce Number 6 as a December 21,
10 2009, letter from the criminal justice academy.

11 **THE COURT:** Any objection?

12 **MR. MYERS:** Well, let me see that letter.

13 We object to the letter, unless they want to
14 bring whoever wrote it.

15 **MR. GARRETT:** I'll take the letter off, Judge.

16 **THE COURT:** Okay, sir. So that has records
17 behind that -- training records behind that?

18 **MR. GARRETT:** Yes, sir.

19 If I may, I'd like to remark these, Your Honor,
20 then. This will be Number 5 and Number 6, will be
21 remarked. Both of them had a letter on them, Your
22 Honor.

23 **THE COURT:** Both of those without objection?

24 **MR. MYERS:** Yes, sir.

25 **COURT REPORTER:** Can you tell me which ones --

1 **THE COURT:** Clarify with the court reporter so
2 she keeps her records straight, please, sir.

3 (Pause.)

4 **THE COURT:** 5 and 6 are admitted without
5 objection.

6 (Defendant's Exhibit Number 6, Criminal
7 Justice Academy Records, marked and admitted into
8 evidence.)

9 BY MR. GARRETT:

10 **Q** On the night in question, were you acting with
11 full authority as a Class 1 officer with full arrest
12 powers?

13 **A** Yes.

14 **Q** As a deputy sheriff?

15 **A** Yes, I was, for McCormick County.

16 **Q** Okay. Now, I'd like to go over some of this
17 with you about the timing. In 107 seconds, all of
18 this happened. Did it happen that fast?

19 **A** Apparently. I never timed it. I had no idea
20 until you said something earlier.

21 **Q** Okay. Did you ever turn on your blue lights at
22 all?

23 **A** No. It's not the thing to do.

24 **Q** From where your car was parked next to the
25 house, is there any way that the person who stands

1 out on the balcony could see it?

2 **A** If you were standing on the balcony, yes, you
3 could see my car. It depends on which side of the
4 balcony you were on.

5 **Q** Well, on the side that you said he was on,
6 could he see your car from that balcony?

7 **A** From that side of the house, no, he could not.

8 **Q** And I noticed that there was a phone call made
9 to the Sheffields' residence to try to get in touch
10 with the Sheffields, and I think you actually asked
11 for that --

12 **A** Yes.

13 **Q** -- to contact them and try to see whether or
14 not you could talk to them; is that correct?

15 **A** It is.

16 **Q** Okay. And that's proper police procedure?

17 **A** Yes.

18 **Q** And after you made that call, then you said,
19 Well, they tried to call, actually call them up.

20 Was ever any attempt made to try to call Joe
21 Worley or Mary Worley?

22 **A** Not to my knowledge there was not.

23 **Q** Okay. And you went and talked to the
24 Sheffields. And in your testimony, you said you
25 could hear the calling by the other officers who

1 were on the other side; is that correct?

2 **A** I could hear Nick announcing, Sheriff's office.

3 **Q** And there's no barriers in that woods between
4 the two houses that would prohibit -- to prohibit
5 y'all from being able to hear that, would there?

6 **A** There's a few trees there, but most definitely
7 would not prevent us from hearing each other.

8 **Q** Okay. And Mr. Worley, I'm assuming, until he
9 steps out of the house, would be inside the house
10 the whole time?

11 **A** I have no idea.

12 **Q** Well, your first encounter with Mr. Worley was
13 when? When did you first see him?

14 **A** He was standing on the front porch or on the
15 upper deck.

16 **Q** Okay. And did you hear him step out?

17 **A** I heard a sliding glass door open. I do not
18 recall hearing actual footsteps. I heard a sliding
19 glass door.

20 **Q** So you walked out far enough to be able to look
21 up. And did you use your flashlight?

22 **A** I do not remember if I shined my flashlight or
23 not.

24 **Q** But, at some point, you recognized that there
25 was a man standing there with a gun in the port

1 position? Is this the port position {indicating}?

2 A Well, he would have been doing it from this way
3 {indicating} instead of -- right hand higher.

4 Q Right hand higher?

5 A Yes.

6 Q Okay. But when you saw him, he was --

7 A Yeah, he was about like that.

8 Q In this position. And he wasn't pointing the
9 gun at you or anything like that, from what you
10 could see?

11 A No. When I saw him, he was looking to his
12 right, walking sideways with that rifle pointed at
13 port position.

14 Q Okay. And at some point, you say he made some
15 statement; is that correct? Is that your testimony?

16 A Yes, when we were up under the upper deck when
17 Nick and I were announcing, Sheriff's department,
18 his -- Who is it? Sheriff's department. I don't
19 give a fuck.

20 Q Bobby, why would you walk out into somebody's
21 line of fire if somebody had just said that?

22 A How was I supposed to know he had a rifle until
23 I walked out to see? I did not see that rifle until
24 I walked out.

25 Q Okay. Then you heard it, then you saw it, and

1 then you said what?

2 **A** I said, Gun, alerting Nick and Melissa that the
3 subject had a gun; said, Sheriff's department, drop
4 your gun. And no sooner than I said it, lights came
5 on. I'm blinded. I can't see a thing. I hit the
6 ground face-first, and that's because I was shot.

7 **Q** All right. Now, let's talk about those lights
8 a minute, because that's critical. Where was the
9 light switch?

10 **A** I have never been in the house. I have seen a
11 picture, and I've actually seen a couple light
12 switches -- pictures of light switches.

13 **Q** And you actually sent, as I recall, or y'all
14 had your investigation sent an electrician out there
15 to see whether or not there was any lights that just
16 cut on automatically?

17 **A** Yes. Mr. Burt went out there.

18 **Q** Because, at some point, you said you thought
19 maybe that's why the light came on, because
20 Mr. Worley was outside. He couldn't have very well
21 stopped this whole thing and walked back in the
22 house and went in there and cut the light on for the
23 light to be on for him to blind you?

24 **A** To the best of my recollection, what I was -- I
25 asked other officers, Did we walk in front of a

1 motion sensor? Because I did not know how those
2 lights turned on. I don't who turned them on. I
3 didn't know if we walked in front of a motion
4 sensor. I don't know how they came on.

5 **Q** You were seriously shocked, I'm sure. Did you
6 even see -- I've read some of your testimony.
7 Sometimes you said you heard the shot, and sometimes
8 you said you didn't. Sometimes you said you saw --
9 I don't think you said you saw the flash. I don't
10 think you ever acknowledged seeing the flash.

11 **A** I never saw the flash. I never heard the shot
12 -- the first shot that struck me. The second shot,
13 as I'm scrambling to my feet trying to retreat and
14 get out of there, there's a second shot fired. That
15 is the only shot that I actually heard.

16 **Q** In the investigation, they never found any
17 shots around you. You never heard where the shot
18 hit, I guess?

19 **A** I have no idea where that shot hit. I was
20 trying to get out of there. I was in fear of my
21 life.

22 **Q** So it could have very well been up into the
23 trees, as has been testified?

24 **MR. MYERS:** Objection.

25 **THE WITNESS:** I don't know where that shot

1 went.

2 **MR. MYERS:** Objection.

3 **THE COURT:** Just one second.

4 Y'all come around here for a second.

5 (Whereupon, a bench conference was held off
6 the record, in the presence of the jury, but out of
7 the hearing of the jury.)

8 BY MR. GARRETT:

9 **Q** Now, I'm back with you about this light --
10 excuse me -- I'm with you about this shot up into
11 the trees.

12 To your knowledge, was there ever any bullet,
13 like the fragments that were found in your hand, was
14 there any fragments like that found in the ground
15 with metal detectors or whatever right in there, in
16 the area where you fell?

17 **A** I have no clue to what was found. I was not
18 there. And you said something about a shot up in
19 the trees, I don't know there was a shot up into a
20 tree.

21 **Q** What I'm asking you, Mr. Rushton, is if he had
22 you in his sights sufficient to knock you down on
23 the floor and he's standing there with a gun and he
24 just shot the gun out of your hand, if he wanted to
25 put one in you, laying there --

1 **MR. MYERS:** Objection; speculation.

2 **THE COURT:** I sustain that.

3 BY MR. GARRETT:

4 **Q** Well, do you know anything that would have
5 prohibited him from shooting you in that
6 circumstance?

7 **MR. MYERS:** Objection.

8 **THE COURT:** Overruled.

9 BY MR. GARRETT:

10 **Q** Anything that would have prohibited Joe from
11 killing you where you lay?

12 **A** He missed the second shot, that's what
13 prohibited it.

14 **Q** All right. But there's been no finding of any
15 kind of bullet or anything like that in the ground?

16 **A** Not that I'm aware of, but that doesn't mean
17 there wasn't.

18 **Q** He shot in such a way as not to kill you, but
19 to knock the gun out of your hand?

20 **A** It happened so fast, and I -- there's no way he
21 aimed at my gun and shot my gun out of my hand.
22 This isn't the Wild West.

23 **Q** Well, did you tell the EMS workers that this
24 was a gun fight? You'd been involved in a gun
25 fight?

1 **A** I told EMS workers that? I don't remember
2 that.

3 **Q** Okay. You just don't remember it?

4 **A** I doubt I said it.

5 **Q** Did you say it was a shootout?

6 **A** I said I got shot.

7 **Q** Did you tell them you'd been in a shootout?

8 **A** No. If I said that, I do not remember it, and
9 I seriously doubt that I would ever say that. I
10 told them that I had been shot, and I had been shot.

11 **Q** Did you give a statement to the medical people
12 that were working on you at MCG Health, Inc., the
13 Emergency Express Care Center, on 11/15/09?

14 **A** I have no idea. Shortly after I got to the
15 hospital at MCG, they pumped me so full of drugs, I
16 don't know what was going on.

17 **Q** It said they gave you some Dilaudid on down
18 here.

19 But let me just let you look at that.

20 **A** (Witness reviewing document.)

21 **Q** Did you make that statement, to your knowledge,
22 that you were involved in a shootout?

23 **A** I just testified I don't remember what I said.
24 I was so pumped full of drugs for the pain, I don't
25 know what went on.

1 Q So you may have?

2 A They could have cut my arm off; I wouldn't have
3 known it.

4 Q So you may have?

5 A I seriously doubt it, but I don't remember
6 saying anything like that..

7 Q So you suffered, obviously, a traumatic injury,
8 and you're trying to recall the events of that
9 night; is that correct?

10 A Now or then?

11 Q Then.

12 A At the hospital?

13 Q Yeah, at the hospital or any time after that,
14 when you're writing your statement and those kinds
15 of things.

16 A I was trying to remember -- when I was writing
17 the statement? I don't remember any of that at the
18 hospital. I remember very little from the hospital.

19 Q All right. So you don't know whether you told
20 them you were in a shootout or not?

21 A I don't even know that my wife was in the room
22 with me at the hospital.

23 Q I understand. I understand. I understand.

24 MR. GARRETT: Your Honor, this may be a good
25 time -- beg the Court's indulgence.

1 (Pause.)

2 Q I'm just going to run something by you: Is
3 this your flashlight that you were using that night?

4 A Yes, it is. It is.

5 Q Is that it?

6 A Yes, it is.

7 Q All right. And that's the type of flashlight
8 you had in your hand that evening?

9 A Yes. I had that flashlight with me that
10 evening.

11 Q And do you recall dropping it?

12 A I do not remember.

13 Q Okay.

14 A At some point, I dropped it. I don't know if I
15 dropped it before I got shot or after I got shot.

16 Q And is this a vest that was available to law
17 enforcement?

18 A It was not available to me.

19 Q If this is a sheriff issued, if you wanted to
20 wear it, you could have?

21 A That?

22 Q Yeah, this.

23 A I don't know, because each vest, you have to go
24 to Columbia and you have to be measured and fitted
25 for your vest. You do not pass these vests down.

1 The life expectancy is only approximately two years
2 of these vests.

3 **MR. GARRETT:** Your Honor, I didn't ask that.

4 **THE WITNESS:** I had --

5 **THE COURT:** Stop, stop, stop, stop. You asked
6 a question, Was it not available to you? And he was
7 explaining why it wasn't. So I overrule your
8 objection.

9 **MR. GARRETT:** I'm just saying --

10 **THE WITNESS:** May I finish my --

11 **THE COURT:** No, sir. Let him ask the question.
12 Go ahead.

13 BY MR. GARRETT:

14 **Q** If you wanted to have one like this, you could
15 have?

16 **A** Mine had been ordered. I had not had it. And
17 one was not readily available for me.

18 **Q** I understand. Yours had been ordered, though,
19 right?

20 **A** Mine had been ordered, but had not come in.

21 **Q** Okay. So you were out there in the field
22 without your vest that you could have worn that
23 night if you'd had it?

24 **A** If I had it. I don't wear the vest. It's an
25 option.

1 Q Your department could have made the decision
2 not to let you go out there until such time as you
3 had proper attire?

4 A At the time, there was no policy whether or not
5 we had to wear that vest. That was optional to the
6 officer.

7 Q This is protractive duty and those kinds of
8 things, was one of these types of vests available
9 for you {indicating}?

10 A No, it was not. I have never been issued one
11 of those vests.

12 Q You haven't?

13 A No.

14 Q But you know that they're available at your
15 department if you wanted one?

16 A No, they're not, because I had asked for one,
17 and there were none or they'd all been issued out.

18 Q They had been. And you didn't say -- so you
19 did feel like it's necessary to have one of these?

20 A After I came back. I did not ask for it before
21 I got shot. After I came back to work or tried to
22 work, that's when I asked for it.

23 Q Why did you decide that you wanted it after you
24 came back to work?

25 **MR. MYERS:** Relevancy, Your Honor; objection.

1 **THE COURT:** Sustained.

2 **THE WITNESS:** Because if I came --

3 **THE COURT:** Huh-huh.

4 **THE WITNESS:** I'm sorry.

5 BY MR. GARRETT:

6 **Q** Did you feel like that maybe if you would have
7 had something like this that night, you would have
8 been easier to be seen, recognized as a police
9 officer?

10 **A** That's a traffic vest.

11 **Q** What I'm interested in is that, a sheriff's --

12 **A** We would not wear that on calls such as a --
13 anything other than traffic. That's what that vest
14 is for, traffic.

15 **Q** Your shirt didn't have the emblem on it like
16 these two officers; right?

17 **A** No, it did not.

18 **Q** Okay. Did y'all have an overcoat?

19 **A** A coat had been ordered for me.

20 **Q** Okay. And it had that badge on it?

21 **A** I believe that's the badge.

22 **Q** And you didn't have -- you didn't have one of
23 these?

24 **A** No, I did not.

25 **Q** The truth of the matter is, you were simply in

1 plain clothes?

2 **A** Plain -- no. Well, the shirt was. The pants
3 would have been identical to what Deputy Romines is
4 wearing now.

5 **Q** But the shirt is what's got the badge on it?

6 **A** That's irrelevant.

7 **MR. GARRETT:** Thank you.

8 Your Honor, this is a good stopping point.

9 **THE COURT:** All right.

10 Madame Forelady, ladies and gentlemen of the
11 jury, what we're going to do is go ahead and stop
12 the testimony today since -- we're going to go ahead
13 and stop the testimony tonight. We're going to ask
14 that you be back in your jury room about 9:25, the
15 same time we did this morning.

16 Let me remind you and instruct you that you're
17 not to speak amongst yourselves or with anyone else
18 about this case. You're not to read, hear or listen
19 to anything about this case, if it happens to be out
20 there. I'll ask you in the morning before we get
21 started whether or not you have. Okay?

22 With that being said, thank you, and good
23 night.

24 (The jury was excused for the day.)

25 **THE COURT:** Before we break for the day, let me

1 ask a couple of things or point out a couple of
2 things. We're at ease, but I'm not sure if I
3 understand, and that's not a big jump, but the
4 relevance with whether or not Officer Rushton was
5 certified or not or whether he took a proper oath or
6 not for purposes of this trial today. I mean, is it
7 more relating to the appeal, Ms. Ballard, or is
8 it --

9 **MS. BALLARD:** Your Honor, it is related to
10 today because of the issues that are going to be
11 related to the Castle Doctrine and the right to be
12 in a certain place at a certain time. So, yes, we
13 will be arguing those issues relevant to the trial.

14 **THE COURT:** I got you.

15 Let me also say this so you can understand: I
16 did -- earlier, based on my rulings was I'm not
17 going to let you get into sworn statements made by
18 the defendant without him taking the Fifth -- I
19 mean, without him taking the stand. And I know that
20 sometimes that statements by defendants are
21 admissible, but my understanding is that if you have
22 to take the stand to protect a constitutional right
23 or a statutory right as in this case, then those
24 statements can't be used against him.

25 And so my idea is and my ruling has been that

1 if he can't -- the State can't use it as a sword,
2 you cannot either, without putting him on the stand.
3 Okay?

4 **MR. GARRETT:** Yes, sir.

5 **THE COURT:** Likewise, Judge Few's case by
6 experts -- that's what I'm trying to lead up to --
7 that even though an expert may use hearsay or other
8 type of statements in formulating their opinion, if
9 it's that -- and used by experts in the field,
10 doesn't make those statements admissible. So I'm
11 just trying to give you heads-up where I'm going.
12 Okay?

13 **MR. GARRETT:** I understand. Thank you, Your
14 Honor. I appreciate it.

15 **THE COURT:** All right. That's it. Anything
16 else from the State before we -- okay. Go ahead.

17 **MR. HENDERSON:** Your Honor, I believe Deputy
18 Rushton put his small flashlight in his pocket to
19 take home. Can we just leave it here as
20 demonstrative evidence?

21 **THE COURT:** Do you have any problem with that?

22 **THE WITNESS:** I'd rather leave it with the
23 Solicitors.

24 **MR. HENDERSON:** More than fine.

25 **THE COURT:** That's fine. If you would just

1 leave it here.

2 As you recall, no testimony -- I mean, no
3 discussion about your testimony with anyone,
4 including your spouse and including the State.
5 Okay?

6 **THE WITNESS:** Yes, sir.

7 **THE COURT:** Okay. Thank you, sir. You may
8 step down.

9 All right. Anything from the State before we
10 break for the evening?

11 **MR. MYERS:** No, sir.

12 **THE COURT:** Anything from the defense?

13 **MR. GARRETT:** No, sir.

14 **MS. BALLARD:** Your Honor, I have to be at the
15 Supreme Court at 10:30 in the morning. Again, I'll
16 be here as quick as I can.

17 **THE COURT:** All right. Thank you.

18 (The proceedings were concluded for December
19 17, 2013.)

20 (The following proceedings were held on
21 December 18, 2013.)

22 **THE COURT:** All right. Anything from the State
23 before we bring the jury in?

24 **MR. MYERS:** No, sir.

25 **THE COURT:** Anything from the defense?

1 **MR. GARRETT:** No, sir.

2 **THE COURT:** Would you ask the jury to come in,
3 please, sir?

4 (The jury enters the courtroom at 9:35 a.m.)

5 **THE COURT:** Good morning, Madame Forelady and
6 ladies and gentlemen of the jury. I hope you had a
7 nice evening.

8 Before we get started, as I told you I will do,
9 let me ask if anyone has read, heard, or seen
10 anything about this trial during our break; if so,
11 would you raise your hand.

12 Very good. Let the record reflect that no
13 juror responded.

14 Mr. Garrett, are you ready to proceed and
15 continue on with your cross-examination?

16 **MR. GARRETT:** We are, Your Honor.

17 **THE COURT:** Mr. Rushton, would you come around.
18 You are still under oath.

19 **THE WITNESS:** Yes, sir.

20 (Witness resumes the witness stand.)

21 BY MR. GARRETT:

22 **Q** Good morning, Mr. Rushton.

23 **A** Good morning.

24 **Q** As a matter of just some housekeeping, do you
25 have any idea of whether or not your oath is

1 recorded in the Clerk of Court's office?

2 A It should be.

3 Q Do you know whether it is?

4 A I've never personally checked.

5 Q Okay. Do you have a bond recorded and kept in
6 the Clerk of Court's office?

7 A I have no idea. I never checked.

8 Q On the night of 11/15/09, were you acting at
9 the direction and under the authority of Sheriff
10 George Reid?

11 A Yes.

12 Q Yesterday when we were talking about the
13 incident -- I want to go back over that with you a
14 little bit. Do you acknowledge that it was a dark
15 night?

16 A It was at night. I mean, it was night.

17 Q Okay. And there's no lights in the back area
18 at the door?

19 A You mean the front of the house?

20 Q The front of the house towards the lake.
21 There's no street lights or anything like that?

22 A There's no -- not what I would call a street
23 light, no.

24 Q Okay. There's no yard lights or anything like
25 that, other than the lights that we've talked about?

1 **A** The two lights on the front upper deck are the
2 only two lights that I'm --

3 **Q** That you're aware of.

4 **A** That I'm aware of.

5 **Q** Okay. And when you were talking about that
6 yesterday, you acknowledge that when you parked your
7 car, you parked your car on the other side of Joe's
8 house?

9 **A** In the driveway.

10 **Q** In the driveway. You didn't go all the way
11 down the driveway. You just parked --

12 **A** You can't go all the way down the driveway. I
13 parked behind the vehicle that was in the driveway.

14 **Q** Okay. And we've acknowledged that, unless Joe
15 were to walk all the way over to the other side of
16 the balcony, he wouldn't have been able to see that
17 car?

18 **A** From the balcony?

19 **Q** From the balcony, he could if he had walked all
20 the way over to the other side and looked around?

21 **A** What I'm saying is, if he had -- I don't know
22 the layout in the house, if there's windows on the
23 lower level. He could have looked out the lower --
24 I don't know.

25 **Q** Okay. So you don't know. You didn't have your

1 blue light on?

2 **A** No, I would not have. That would be just
3 something you don't do.

4 **Q** All right. And you hadn't called the Worleys'
5 house or had it dispatched, do a -- or called the
6 dispatched -- like you did or they did with the
7 Sheffields? You didn't call the Worleys' house that
8 way?

9 **A** I have no way of calling the Worley house. I
10 don't know their number.

11 **Q** Okay. And you didn't ask dispatch to do that?

12 **A** No.

13 **Q** Okay. Now, after you had been to the
14 Sheffields and y'all met back up, y'all were walking
15 back and y'all both were under the deck. You said
16 you were on the right side of the door --

17 **A** Yes.

18 **Q** -- and Nick Moore was on the left?

19 **A** Yes.

20 **Q** All right. And I want to talk about the timing
21 of when the light came on, what you saw, and what
22 you heard. Okay?

23 **A** Okay.

24 **Q** So let's just slow that down for just a minute.
25 When you heard the sliding glass door open,

1 were you able to see Joe then?

2 A As the door was opening? No, I was not.

3 Q The moment the door opened, was the light on?

4 A I don't know how far the door -- oh, no. When
5 I heard the door opening, that light was not on.

6 Q It was not on. And you and Moore, at that
7 point, were underneath the deck?

8 A Yes.

9 Q Okay. Now, take it real slow from there. What
10 do you recall happened then?

11 A As the first -- as the door was opening --

12 Q Okay.

13 A Let me start at the beginning so I don't mess
14 myself up.

15 Q That's fine.

16 A We're knocking on the door, ringing the
17 doorbell, announcing.

18 Q Okay. Both of you are?

19 A Both of us are. We're announcing, Sheriff's
20 department, sheriff's office.

21 Q The door is closed at that point?

22 A I don't know if it was closed. It could have
23 been partially open. I don't know. I couldn't see
24 it.

25 Q You don't know. Okay. You couldn't see it.

1 **A** I do not know.

2 **Q** Okay. You couldn't see it; is that right?

3 **A** Yes.

4 **Q** It was dark?

5 **A** I'm under the balcony. I can't see the door.

6 **Q** There's no light under the balcony area --

7 below the balcony area, is there?

8 **A** Not to my knowledge.

9 **Q** Okay. Go ahead.

10 **A** I hear, Who is it? Nick and I both are

11 announcing, Sheriff's office. We hear, I don't give

12 a fuck.

13 **Q** Stop right there. Stop right there.

14 Were you able to see -- when you heard those

15 words, What y'all want, I don't give an F, were you

16 able to see Joe Worley that second?

17 **A** No.

18 **Q** All right. So where were you at when you heard

19 those words?

20 **A** Under the deck.

21 **Q** Still under the deck.

22 Okay. So now you've heard those words, it's

23 still dark. Then what did you do?

24 **A** I'm backing up. And then I hear the sliding

25 glass door as I'm backing up away from the front

1 door.

2 Q I got you. So you don't hear the sliding glass
3 door open until you're backing up?

4 A As I start -- yes. I take a step back from the
5 door; I hear the door opening.

6 Q All right. So you hadn't heard the door open
7 prior to that?

8 A No, I did not.

9 Q All right. He steps back -- or you step back,
10 and you said you walked in a backward position?

11 A Yes, sir.

12 Q Is that correct?

13 A Yes, sir.

14 Q Was the light still off?

15 A It was off.

16 Q Okay. But you said you were announcing,
17 Sheriff's department, and that type of thing?

18 A Yes, we were.

19 Q All right. And you were walking backward?

20 A Yes.

21 Q Was the light still off?

22 A It was off.

23 Q Okay. And then when did you finally recognize
24 that there was a man, and your testimony was, with
25 salt-and-pepper hair holding what appeared to be a

1 shotgun?

2 **A** Yes. Once I got back from the railing a little
3 bit where I could actually see over the top railing
4 of the upper deck, I realized he was standing there.
5 And at that point is when --

6 **Q** All right. Hold on a minute. I'm going to
7 stop right there.

8 The light is still out, but you had to walk --
9 is this the railing that you're talking about here
10 that you had to see through, above --

11 **A** Well, you're pointing at the bottom railing.
12 There's two railings right there.

13 **Q** Okay. There's a top railing and a bottom
14 railing -- actually, there's three parts, would you
15 agree, almost like a...

16 **A** There's the bottom floor, second railing, third
17 railing. That right there is above the window.

18 **Q** Okay. So you've got two railings there?

19 **A** Yes.

20 **Q** Okay. Now, in order for you to see Joe, you
21 had to be able to see through those two boards; is
22 that correct?

23 **A** No, over them.

24 **Q** Over them; right?

25 **A** Yes.

1 Q So you had to get out far enough to --

2 A No, it's very possible that I could see a
3 little bit through it, but to see over them to make
4 out his upper features --

5 Q To make out that he's got a shotgun in his
6 hands.

7 A Yes.

8 Q What did you see him with --

9 A That he had a long gun.

10 Q A long gun in his hand. All right.

11 Now, isn't it fair -- wouldn't you think, if
12 the light is still off, that just as you can't see
13 him well, he can't see you well?

14 A I don't know what he saw. I know what I saw.

15 Q Okay. But he had -- Joe would also have to see
16 you through those rails as you were walking back,
17 too, wouldn't he, in the dark when all you had was a
18 flashlight?

19 A See me so he could shoot me?

20 Q See you walking back, yes.

21 A So he could shoot me?

22 Q See you to do whatever.

23 A I'm assuming he saw me. He shot me.

24 Q All right. And you were carrying a flashlight?

25 A I had a flashlight.

1 Q All right. And you were backing up?

2 A I was backing up.

3 Q And that's the only light that was there?

4 A My flashlight?

5 Q Yeah, that flashlight.

6 A It was there. If it was on or off, I do not
7 know.

8 Q All right. And then what happened?

9 A I see his features. I recognize that it's a
10 gun held at port arms. I yelled, Gun, alerting Nick
11 and Melissa that he has a weapon. We're yelling,
12 Sheriff's department, drop your gun. And no sooner
13 than we get it out of our mouth, the lights come on,
14 and I'm facedown in the dirt.

15 Q Okay. So from his perspective from where he's
16 at, the light shining on you doesn't shine until
17 right before you get shot?

18 A Yes, I'm assuming so.

19 Q Okay. So as far as how much time he had to
20 observe you and see if you were the real thing --

21 A He already knew who we are. He acknowledged he
22 knew who we are when he -- he acknowledged --

23 Q Why is --

24 MR. MAYE: Your Honor, I object. He won't let
25 him answer the question. Thank you.

1 **THE COURT:** All right. Let me get both of you
2 -- let's go back over again. He'll ask the
3 question, let him finish it, and then you'll answer.
4 And if you need more time to answer, he'll allow you
5 to have time to answer. Okay, sir?

6 **THE WITNESS:** Yes, sir.

7 **THE COURT:** Okay. Would you do it again, Mr.
8 Garrett?

9 **MR. GARRETT:** Yes, sir.

10 BY MR. GARRETT:

11 **Q** We're at the point in time where the light
12 comes on and you get shot.

13 **A** Okay.

14 **Q** Okay. And I was questioning how much time then
15 did Mr. Worley have to observe you in the light?

16 **A** I don't know if he saw me before I saw him or
17 not.

18 **Q** Okay. So how much time did he have to see
19 whether or not you were, in fact, a police officer?

20 **A** To see? He already knew.

21 **Q** To see if you were a police officer.

22 **A** I don't know what he saw.

23 **Q** Okay. How much time did he have to see you?

24 **A** I don't know that because he could have seen me
25 before I saw him. I do not know.

1 Q After the light --

2 A After the light came on.

3 Q The light came on.. How much time did he have
4 to see you?

5 A It was a fraction of a second before he shot
6 me.

7 Q Okay. So he had a fraction of a second. If he
8 only saw you -- was able to see who you were, not in
9 uniform, he had less than a second to make a
10 decision whether or not to shoot you?

11 A I don't know if he saw me before, but I do know
12 that he knew who I was.

13 Q All right. Let me ask you this question: How
14 long have you known Joe Worley?

15 A Until that night, I have never met him.

16 Q All right. Have you ever been on any calls
17 down to his property down there?

18 A Never.

19 Q Okay. And so you've been in -- since you were
20 15 years old, you've been in McCormick?

21 A Yes.

22 Q All right. And you've never had any encounters
23 or anything like that with Joe?

24 A No, I have not?

25 Q So you don't know him and he doesn't know you,

1 as far as you know?

2 **A** As far as I know, he doesn't.

3 **Q** Now, the gun --

4 **MR. GARRETT:** Mr. Myers, do we have that gun?

5 **MR. MYERS:** I've got it back there.

6 (Pause.)

7 **THE COURT:** Has that gun been placed into
8 evidence?

9 **MR. GARRETT:** It has not, Your Honor. Can we
10 mark it for identification and put it in evidence,
11 Your Honor?

12 **MR. MYERS:** We have no objection if they put it
13 into evidence.

14 **THE COURT:** Let's go ahead and put it in
15 evidence.

16 **MR. GARRETT:** Yes, sir. That's fine. We'll
17 have it identified and put in as Defendant's
18 Exhibit.

19 **MR. MAYE:** And it is secured, Your Honor. I
20 was just checking it. I don't think it's functional
21 at this point anyway.

22 **THE COURT:** I was just going to tell the jury,
23 ladies and gentlemen, any weapon that you see during
24 this trial will be disabled and not capable of
25 firing.

1 And I'm going to instruct the attorneys and the
2 witnesses not to point it at anybody, please.

3 **MR. GARRETT:** Absolutely.

4 **THE COURT:** Thank you.

5 **MR. GARRETT:** Yes, sir.

6 (Defendant's Exhibit Number 7, gun, marked
7 and admitted into evidence.)

8 BY MR. GARRETT:

9 **Q** Do you recognize Defense 7?

10 **A** This appears to be the -- my duty weapon that I
11 had on November the 15th of '09.

12 **Q** All right. And would you agree with me that
13 the round appears to have gone right through here
14 {indicating}?

15 **A** Yes.

16 **Q** Right through this area right here
17 {indicating}?

18 **A** Yes.

19 **Q** So in order for that round to have hit in that
20 fashion, where would it have been pointing towards
21 Mr. Worley?

22 **A** It would have been pointed upwards. As a law
23 enforcement officer, when you see someone with a
24 weapon, you draw your weapon to protect yourself,
25 and that's exactly what I was doing.

1 Q All right. Had you already drawn your weapon
2 up before the light came on?

3 A I was in the process of coming up with it.

4 Q Okay. But you had cleared your holster and had
5 to get it up to point at him before he could have
6 shot that gun with the .30-06?

7 A If the sights were on him or not on him, I
8 cannot say, but I did pull my weapon to protect
9 myself, and it was in an upward position.

10 Q All right. And so from his perspective, when
11 the light came on, you were already there or on your
12 way there?

13 A I don't know what his perspective was.

14 Q Well, we've just talked about it being dark
15 when the light came on, and the question is -- you
16 said, right after the light came on, bam.

17 The question is, How much time did he have to
18 see who you were in relationship to that gun?

19 A From the time the light came on, it was
20 simultaneously.

21 Q Boom {snapping fingers}?

22 A Before that, like I said, he acknowledged who I
23 was.

24 Q Okay. Do you recall, as you were coming up,
25 you dropped your flashlight?

1 **A** I do not know if I dropped my flashlight before
2 I drew my weapon or I dropped my flashlight when I
3 was shot.

4 **Q** Okay. Now, when y'all went out there, Joe had
5 -- no crime had been committed in your presence; is
6 that correct?

7 **A** No, it had not.

8 **Q** And Joe had not threatened you any harm until
9 he shot you?

10 **A** Threatened me?

11 **Q** Yeah. He hadn't threatened you?

12 **A** Not a threat, no.

13 **Q** Okay. And if -- let's suppose for a moment he
14 was checking you out to see who you really were.
15 You've heard of police officers before lying about
16 being police officers, haven't you? Pulling people
17 over acting like they're police officers?

18 **A** I'm not pulling anyone over.

19 **Q** I understand, but you've heard about that
20 before, haven't you? Isn't that a crime to
21 impersonate a police officer?

22 **A** It is a crime, but...

23 **MR. MYERS:** Objection to the relevance, Your
24 Honor. It's hypothetical, speculative, and has
25 nothing to do with this case.

1 **THE COURT:** What is the relevance of that?

2 **MR. GARRETT:** Your Honor, the relevance of it
3 is it's natural human nature to want to find out if
4 somebody is really a police officer. People might
5 tell you they are, but you've got an opportunity,
6 you know, everybody's got an opportunity to check it
7 out.

8 **MR. MYERS:** I don't know whether that's human
9 nature or not.

10 **THE COURT:** I overrule your objection. Go
11 ahead.

12 **THE WITNESS:** State it again.

13 BY MR. GARRETT:

14 **Q.** I'm just -- you've heard before that people
15 impersonate police officers? Haven't you heard
16 that?

17 **A** I've heard that. Never encountered it.

18 **Q** All right. Now, he didn't threaten to harm any
19 member of your team before he shot, did he?

20 **A** He did not verbally threaten anyone before he
21 shot.

22 **Q** Okay. And, to your knowledge, Joe had not
23 threatened anybody in his own household or you
24 didn't have any knowledge that he had bothered or
25 harmed anybody in his own household?

1 **MR. MYERS:** Objection. How could he know what
2 went on in Mr. Worley's household?

3 **THE COURT:** Lay a foundation for your question.
4 BY MR. GARRETT:

5 **Q** I'm just -- you didn't receive any type of call
6 or anything like that telling you that he was
7 harming somebody in his residence that you needed to
8 be prepared for?

9 **A** I had no knowledge that he hadn't either.

10 **Q** Right. I understand that.

11 And you would agree that Mr. and Mrs. Worley
12 have a right to be in their own house?

13 **A** Yes, definitely.

14 **Q** Occupy their own house?

15 **A** Yes.

16 **Q** And is it not unusual in a southern rural
17 culture for people to have -- own or possess a
18 firearm?

19 **A** Yes.

20 **Q** It's natural. You expect that in this area?

21 **A** Yes.

22 **Q** Now, as a homeowner and as a lawful or a lawful
23 occupant, you can use your guns in self-defense; is
24 that correct?

25 **A** Certain circumstances.

1 **Q** But you can?

2 **A** It depends on the circumstances.

3 **Q** Okay. You can also use your gun for your own
4 defense and your defense of your family?

5 **MR. MYERS:** He's asking about legal
6 conclusions. That's not proper.

7 **THE COURT:** I sustain the objection.

8 BY MR. GARRETT:

9 **Q** All right. You don't -- let me ask it another
10 way. You can defend yourself?

11 **A** When threatened.

12 **Q** Okay. And the other person can defend
13 themselves, too, when threatened?

14 **MR. MYERS:** He's going into legal matters.

15 **THE COURT:** I sustain the objection.

16 BY MR. GARRETT:

17 **Q** All right. Well, let me just ask you a common
18 sense thing. If somebody points a loaded gun at
19 you, do you have a right to be in fear of imminent
20 harm?

21 **MR. MYERS:** Same thing, Your Honor. He's just
22 going on with legal matters. It's hypothetical.
23 It's not appropriate for this. It's not based on
24 what happened here. He's going out on speculation.

25 **THE COURT:** I overrule that. Go ahead.

1 **MR. MYERS:** Thank you, sir.

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

3 BY MR. GARRETT:

4 **Q** Would it cause you to be in fear? If I pointed
5 a loaded gun at you, would that cause you to be in
6 imminent fear?

7 **A** After making a comment that, I don't give a
8 fuck, yeah --

9 **Q** No, no comment.

10 **MR. MYERS:** Don't cut him off. Don't cut him
11 off. Let him answer. He's cutting him off again.

12 **THE COURT:** The rule is, again, he asks the
13 question, you answer the question. If you want to
14 explain it after you answer the question, you may do
15 so. Okay?

16 **THE WITNESS:** Yes, sir.

17 Rephrase it again or say it again.

18 BY MR. GARRETT:

19 **Q** If somebody points a loaded gun at you, aims it
20 at you, you've got a right to be in imminent fear?

21 **A** If I have reason to believe they're going to
22 shoot me and it's not an accident, yes. But on this
23 night in case, I had reason to believe that there
24 may be more going on because of the information I
25 had gathered from Mr. and Mrs. Sheffield. And then

1 when we were knocking on the door, we identified
2 ourselves; he acknowledged he knew who we were when he
3 yelled out, I don't give a fuck.

4 So, yes, I had a right to pull my gun just in
5 safety precautions and that he had a weapon to
6 protect myself. He had already -- I already had
7 some information that this individual...

8 **Q** All right. And that's the point I'm making.
9 I'm not talking about from your perspective now.
10 When you aimed your gun at Joe, a light hadn't cut
11 on yet, or it was in the process of cutting on. So
12 the first thing that Joe gets to see is some human
13 being pointing a gun at him --

14 **MR. MYERS:** He doesn't know what Joe gets to
15 see. We object to that. He's been over -- he's
16 just going over and over and over. Asked and
17 answered.

18 **THE COURT:** Sustained.

19 BY MR. GARRETT:

20 **Q** All right. Now, in the incident report that's
21 into evidence --

22 **MR. MYERS:** Is that Mr. Rushton's incident
23 report?

24 **THE COURT:** Which exhibit are we referring to?
25 Was that the statement and Mr. Rushton's incident

1 report we entered into evidence yesterday? Is that
2 what you're referring to?

3 **MR. GARRETT:** It was.

4 **MR. MYERS:** I didn't get that.

5 **THE COURT:** It was the incident report of
6 Mr. Rushton, and along with the statement that was
7 introduced yesterday.

8 **MR. MYERS:** No, sir. That was Nick Moore.

9 **THE COURT:** Oh, that's right. It was Nick
10 Moore.

11 **MR. GARRETT:** It was Mr. Moore. But it is in
12 evidence.

13 **THE COURT:** I stand corrected. I apologize.

14 **MR. MYERS:** It's in evidence, but he can't ask
15 him about somebody else's report.

16 **THE COURT:** It depends on the question. I
17 hadn't heard it yet.

18 **MR. MYERS:** Thank you, sir.

19 **THE COURT:** Go ahead. I'm sorry.

20 BY MR. GARRETT:

21 **Q** In the incident report, it says that the light
22 went on and off. When y'all were down there, the
23 light came on, and it's before y'all started
24 knocking on the door?

25 **MR. MYERS:** We object to him using an incident

1 report by somebody else to pit this witness against
2 that incident report.

3 **THE COURT:** Overruled.

4 Go ahead and ask your question. I'm going to
5 listen to it.

6 BY MR. GARRETT:

7 **Q** I'm asking the question about this light. In
8 the report, it says the light was on the whole time.

9 **MR. MYERS:** Wait, wait. Show him where it says
10 that in the report, the light was on the whole time.

11 **THE COURT:** Hand him the report, please.

12 **MR. GARRETT:** It's Court's Exhibit Number 4,
13 Your Honor.

14 BY MR. GARRETT:

15 **Q** If you'd just pick it up right there.

16 **MR. MYERS:** Which page are we talking about?

17 **MR. GARRETT:** We're on the front page. The
18 first page.

19 **THE COURT:** It's Court's Exhibit Number 4.

20 **MR. GARRETT:** One, two, three, four, five --
21 six lines down. Can I let him start there?

22 **MR. MYERS:** Where does it say on there, the
23 light was on the whole time?

24 **MR. GARRETT:** I announced -- I did hear the
25 door open upon the deck. The light came back on,

1 and I did --

2 **MR. MYERS:** And went off. So where did it say
3 on there it was on the whole time?

4 He's distorting the facts.

5 **THE COURT:** All right. Let him look at the
6 report.

7 **MR. GARRETT:** I will.

8 BY MR. GARRETT:

9 **Q** Start right here.

10 **A** Out loud or to myself?

11 **Q** To yourself first.

12 **A** Okay.

13 **Q** Does it say that the light was on before the
14 door opened?

15 **A** In the report?

16 **Q** In the report.

17 **A** It does say that in the report.

18 **Q** All right. And does it show anywhere after
19 that -- in the report that's into evidence, does it
20 show anywhere after that that the light was cut off?

21 **A** Not that I read in here, but we --

22 **Q** Okay. Thank you.

23 **A** -- left the area as fast as we could after I
24 was shot.

25 **MR. MYERS:** So is he talking about the time of

1 the shooting? We need to get the timeframe right
2 about the light coming on --

3 **MR. GARRETT:** Your Honor, is that an objection?

4 **MR. MYERS:** Yes, sir, it's an objection.

5 **THE COURT:** Just -- I want y'all both to direct
6 everything to me, please.

7 **MR. GARRETT:** Yes, sir.

8 **THE COURT:** The report speaks for itself. It's
9 in evidence and so the jury will have to look at it
10 and make their own determination.

11 **MR. MYERS:** Thank you.

12 **MR. GARRETT:** Thank you, Your Honor.

13 BY MR. GARRETT:

14 **Q** I want you to identify this, a civil lawsuit.
15 Do you recognize that true copy?

16 **A** This is a lawsuit that I filed against
17 Mr. Worley.

18 **Q** And his mother?

19 **A** Yes, and Ms. Worley.

20 **MR. MYERS:** We object to it. He can bring out
21 the fact that there is a civil lawsuit, but this is
22 another matter where the specifics are not involved
23 in a criminal action.

24 **THE COURT:** All right. Let me look at it,
25 please.

1 **MR. GARRETT:** May we be heard on that, Your
2 Honor?

3 (Pause.)

4 **THE COURT:** It's your intent to question about
5 the particulars contained in this complaint?

6 **MR. GARRETT:** Sir?

7 **THE COURT:** Is it your contention or is it your
8 intention to question this witness about the
9 particulars or the allegations contained in this
10 complaint?

11 **MR. GARRETT:** The general allegations.

12 **THE COURT:** Okay. I'll sustain the objection.
13 You can bring out this fact of the lawsuit, but not
14 the particulars. I'll give this back to y'all.

15 **MR. GARRETT:** Then I can't talk about the
16 particulars?

17 **THE COURT:** No, sir.

18 **MR. GARRETT:** All right. I won't talk about
19 the particulars, but can I talk about it in
20 generality?

21 **THE COURT:** Yes. The fact that it's there,
22 yes, sir, you may.

23 **MR. MYERS:** Maybe we ought to take it up
24 outside the presence of the jury.

25 **THE COURT:** All right, Madame Forelady.

1 (The jury retires to the jury room.)

2 **MR. MYERS:** The reason I objected, Your Honor,
3 is that you said that he can't go into particulars,
4 and he said he wanted to go into generalities. His
5 definition of generalities and mine might not be the
6 same, so I think it would be best to go into it
7 outside the presence of the jury.

8 **THE COURT:** I understand. What I -- what my
9 ruling is, the fact that he filed a lawsuit against
10 the defendant and his mother is something that's
11 been brought out in opening statement, it's already
12 in evidence, and so you can bring that out. When
13 you start asking him about the particular
14 allegations, I'm not going to let you go there.
15 Okay? It's not verified by him. It's his attorney
16 who filed that, and that's the reason I'm not going
17 to let you do that. Okay, sir?

18 **MR. GARRETT:** All right. So for my
19 understanding, my desire was to be able to show
20 that, in his lawsuit, he's alleging negligence,
21 whereas in his --

22 **MR. MYERS:** No, sir.

23 **THE COURT:** Absolutely not.

24 **MR. GARRETT:** May I proffer that, Your Honor?

25 **THE COURT:** You may. You may go ahead and do

1 your proffer now, please, sir.

2 **MR. GARRETT:** I can do the proffer.

3 **THE COURT:** And I note your objection to my
4 ruling.

5 **MR. GARRETT:** All right. Thank you.

6 **THE COURT:** Make that Court's Exhibit Number 5.

7 **MR. GARRETT:** Yes, sir.

8 (Court's Exhibit Number 5, civil lawsuit,
9 marked for identification.)

10 IN CAMERA EXAMINATION

11 BY MR. GARRETT:

12 **Q** Is this the lawsuit that you filed?

13 **A** That my attorneys filed, yes.

14 **Q** Okay. And in that lawsuit, it alleges
15 negligence against Mr. Worley and his mother?

16 **A** I believe it does say negligence.

17 **Q** It doesn't say any intentional conduct, does
18 it?

19 **A** I don't know that. I've never read it in its
20 entirety. I know that my attorneys, who are
21 competent attorneys, filed it, and I trust them.

22 **Q** All right. It doesn't say anything about
23 intentional. Do you need to read it?

24 **A** I do not know if it says anything about
25 intentional.

1 **MR. GARRETT:** Beg the Court's indulgence.

2 (Witness reviewing document.)

3 **THE COURT:** Are they seeking punitive damages?

4 **MR. GARRETT:** I think so.

5 **MR. MAYE:** Your Honor, if it would save time, I
6 mean, it's in evidence. I'm not sure of the purpose
7 of making him read it. It's in evidence. I mean, I
8 think the record --

9 **THE COURT:** As an officer of the Court,
10 Mr. Garrett, if it doesn't say that he intended his
11 conduct, then it doesn't say that. It is what it
12 is.

13 **MR. GARRETT:** It is what it is.

14 **THE COURT:** That way we can go forward.

15 **THE WITNESS:** It does -- on page 2, line 11.

16 **THE COURT:** That's all right. That's all
17 right.

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

19 So to make sure that I've got His Honor's
20 instructions correctly, I can only say that he sued
21 them and that's it.

22 **THE COURT:** And let me just say this to you,
23 and I'm treating it as you're moving it in again
24 after that -- I know I cut you off -- I don't know
25 what good it's going to have him reading it, but I'm

1 treating it, for the record, so you're protected,
2 that you were moving to have that come in now after
3 you did your proffer, and I'm denying that under
4 403. I think it is -- it's misleading to the jury,
5 it's confusing the issues, two different standards:
6 He didn't sign that, it's filed by his attorney, and
7 it's not probative to anything.

8 Now, to show some bias on the part of this
9 witness potentially, I'll let you bring up the fact
10 that he did, in fact, file a lawsuit, so he may have
11 some bias in that regard, but that's where you're
12 limited. Okay?

13 **MR. GARRETT:** Yes, sir. Can I ask that he's
14 seeking money?

15 **THE COURT:** Sure. And that's where you'll
16 stop, though.

17 **MR. GARRETT:** I'll stop right there.

18 **THE COURT:** Everybody ready to go?

19 **MR. MYERS:** Yes, sir.

20 **THE WITNESS:** I have a question, Your Honor.

21 **THE COURT:** Okay. Be careful when you ask me a
22 question. What is it?

23 **THE WITNESS:** Am I going to be able to answer
24 this and explain why.

25 **THE COURT:** We'll just have to wait and see.

1 Okay? Usually, when you're a witness, you're asked
2 a question, you're generally allowed to answer it.

3 **THE WITNESS:** Okay.

4 **THE COURT:** Would you bring the jury in,
5 please?

6 (The jury returns to the courtroom.)

7 **THE COURT:** Mr. Garrett.

8 BY MR. GARRETT:

9 **Q** Mr. Rushton, just to be sure: You did file a
10 lawsuit against Joe Worley and his mother in this
11 case; is that correct?

12 **A** My attorneys filed one on my behalf, yes.

13 **Q** And that was done after this night?

14 **A** Yes.

15 **MR. GARRETT:** Thank you.

16 No further questions.

17 **THE COURT:** Any redirect?

18 **MR. MYERS:** No redirect, Your Honor.

19 **THE COURT:** Thank you, sir. You may step down.
20 Would you call your next witness, please?

21 ALAN SHEFFIELD,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. MYERS:

25 **Q** Would you state your name, please?

1 **A** My name is Alan Sheffield.

2 **Q** And spell your last name, please.

3 **A** S-h-e-f-f-i-e-l-d.

4 **Q** Mr. Sheffield, where do you live?

5 **A** I live at 130 Presidents Drive in McCormick in

6 Little River subdivision.

7 **Q** And did you live there in 2009?

8 **A** Yes, I did.

9 **Q** Now, if I can show you, please, sir, State's

10 Exhibit Number 4.

11 **A** Okay.

12 **Q** Do you recognize that?

13 **A** Yes.

14 **Q** I'll put this up there for you so you can see

15 it.

16 Are you familiar with the Worleys that live out

17 in that area?

18 **A** Yes, I am.

19 **Q** And this is their house right here on this

20 diagram?

21 **A** Correct.

22 **Q** Do you live near them?

23 **A** Yeah. It would be to the left.

24 **Q** So you'd be living to the left over here?

25 **A** Correct.

1 Q Is there another residence over to the right?

2 A Yeah. The Stevens' residence is over there.

3 Q Okay. Now, the Worleys live right there?

4 A Correct.

5 Q Have you ever been inside of their home?

6 A No, sir, I have not.

7 Q Did you know them? Did you know Joe Ross
8 Worley?

9 A Yes. We -- I met the Worleys first when we
10 first moved in, I believe, in '06. That would have
11 been his dad, his mom, and him. But I -- I wouldn't
12 say that I know him well.

13 Q Did you know his mother? Did you ever have an
14 occasion to talk with his mother?

15 A Yes, yes. Quite often during the time we lived
16 there, I think it was after Mr. Worley passed, I
17 believe in November of -- I think it was November of
18 '06, she would come over. She'd bring vegetables
19 from her garden. She actually made me cookies a
20 couple of times. And I think she even gave my wife
21 a present, a hat, that she would wear when she was
22 outside. So, yeah, we -- you know, just talked to
23 her, neighborhood-type things.

24 Q No ill feelings?

25 A No. No.

1 Q And I think you said not long after y'all moved
2 in, in '06, Mrs. Worley's husband passed away?

3 A Yes. I believe it was late November, around
4 Thanksgiving, I believe, in '06.

5 Q Now, do you and your wife, do you live out
6 there part-time or full-time?

7 A No. We're full-time. We're one of the few
8 people that are.

9 Q What about the Worleys?

10 A No. They generally visited -- they would
11 arrive usually Thursday noonish and then leave
12 Sunday morning around noon also pretty much every
13 weekend.

14 Q Now, in September of 2009, was there anything
15 unusual that occurred out there at the Worleys'
16 residence?

17 A Well, it was unusual in that -- as I said, they
18 normally go home on Sunday, and they did that. It
19 was actually Labor Day weekend, and they did go home
20 on Sunday, but Joe returned by himself either Monday
21 or Tuesday, which was unusual. Didn't think
22 anything about it, but I believe it was the -- would
23 have been early of the 9th -- no, early morning of
24 the 10th, late on the 9th, we were awakened by what
25 sounded like a gunshot and went outside and saw that

1 his light was on.

2 Q Now, which light are you talking about that was
3 on?

4 A There were lights on his back deck there.

5 Q Now, let me ask you a question: Do you call
6 this {indicating} the back of the house or this the
7 back of the house?

8 A That would be the back of the house, towards
9 the lake.

10 Q So you call that the back of the house?

11 A Yes.

12 Q And the light came on out at the part of the
13 house towards the --

14 A Yes, it was on when I went out to look to see
15 what was going on.

16 Q Okay. And what did you see was going on?

17 A I just saw the light. Like I said, I heard a
18 gunshot from what sounded like a high-powered rifle,
19 which startled the daylights out of me.

20 Q And about what time was this?

21 A About 2:00, 2:30 in the morning.

22 Q Anything accompanying that gunshot? Any other
23 noise?

24 A He often would sit out and talk to himself, and
25 I honestly don't recall, at that particular time,

1 whether or not he was doing that. My recollection
2 is that -- I don't remember exactly.

3 **Q** Sure. That's fine.

4 **A** But the light went off after a little while, so
5 we just kind of -- my wife and I discussed it and
6 just kind of didn't really know what to do.

7 **Q** Right.

8 **A** We tried to go back to sleep. And I'd say
9 about 20 minutes later, it happened again.

10 **Q** A second shot?

11 **A** A second shot, correct.

12 **Q** And we're talking in September now; right?

13 **A** Yes, in September, right.

14 And, you know, the same situation. And, again,
15 we really didn't know what to do. It was a -- not
16 the kind of thing that we were prepared to deal with
17 at that time. And we went -- we tried to go back to
18 bed again, and it happened the third time. At that
19 time, we were discussing calling the police then.
20 And I didn't want to do that because I wanted to try
21 -- I knew that Mrs. Worley wasn't there at the time,
22 so what I wanted to do was wait and have a chance to
23 talk to her to see if I could resolve the situation
24 without involving law enforcement.

25 So we went back to bed after the third one, and

1 that was the extent of the shooting that night. I
2 didn't get a chance to see Mrs. Worley until Friday.

3 Q Let me ask you this --

4 A Sure.

5 Q -- you said the first shot that night, 20
6 minutes or so, a second shot?

7 A Uh-huh.

8 Q What was the timeframe between the second
9 shot --

10 A About the same. It was about three shots in
11 about an hour.

12 Q Now, you said you didn't call the police that
13 night. You wanted to kind of resolve it within the
14 area?

15 A Correct.

16 Q What did you do?

17 A Like I said, I knew Mrs. Worley would probably
18 be arriving during the weekend, and she did. And I
19 saw her near their garage on Friday, and I went over
20 and spoke to her and told her that there had been
21 some gunshots. And I believe I discussed with her
22 that, you know, I understood that, you know, I
23 believe the words I used was Joe is a little
24 eccentric, you know, the talking at night and all,
25 that kind of thing, but firing, you know,

1 high-powered rifles in the middle of the night was
2 not acceptable. And we left it at that. I believe
3 she indicated, you know, she'd find out --

4 **MR. GARRETT:** Objection, Your Honor.

5 **THE COURT:** Sustained.

6 BY MR. MYERS:

7 **Q** Did you request her to do anything?

8 **A** Yes. I asked her to see if she could, you
9 know, resolve the situation.

10 **Q** Was the situation resolved?

11 **A** No. Before she left on Sunday, she came over
12 to our driveway.

13 **Q** That's okay. We'll get into that later on.

14 **A** Okay.

15 **Q** You can't say what she said.

16 **A** Okay. Sorry.

17 **Q** It wasn't resolved?

18 **A** No, it was not.

19 **Q** As a result of it not being resolved, what did
20 you or your wife do?

21 **A** My wife felt very strongly about it that we
22 should report the incident at least to get it on
23 record that it happened, and that was done.

24 **Q** I think that was done on September the 9th,
25 reported about the shooting?

1 **A** The shooting was on September --

2 **Q** The reporting.

3 **A** Yes, the reporting that September 9th shooting,
4 correct. Sorry.

5 **Q** And did y'all request that law enforcement take
6 any action?

7 **A** No.

8 **Q** You just wanted to report it?

9 **A** Correct. I was still hoping that we'd be able
10 to resolve it, you know, amongst neighbors.

11 **Q** Yes, sir.

12 Now, between September 9th when this was
13 reported, to make a report with the McCormick County
14 Sheriff's Department, up until November the 15th,
15 did anything occur during that timeframe,
16 September/October up to November 15th?

17 **A** Yes. Typically, there were very generally a
18 single gunshot nearly every weekend between
19 September and November. Usually, it was just one
20 shot sometime Friday or Saturday, and that was it.

21 **Q** Were there ever more than one shot?

22 **A** No.

23 **Q** What about the talking?

24 **A** Excuse me?

25 **Q** What about the talking out there on the porch?

1 **A** Yes. The talking continued. That was
2 something that had been going on before the gunshot
3 started, and that's just one of those things that we
4 chalked up to, you know, just one of those things
5 you got to deal with in the neighborhood.

6 **Q** Now, you said that happened about every
7 weekend; is that correct?

8 **A** Yeah. I mean, I wasn't recording every single
9 time it happened, but it happened on numerous
10 occasions.

11 **Q** Was that disturbing to you and your wife?

12 **A** Extremely. We were struggling to figure out
13 how to deal with the situation.

14 **Q** Did you call the law enforcement any more in
15 September or October?

16 **A** No.

17 **Q** Now, that leads us up to November the 15th.

18 That Saturday night before daylight on Sunday
19 morning, what happened?

20 **A** Well, it had been an unusually warm night for
21 November, so we typically leave the windows open
22 whenever we can. The windows were open, so was the
23 sliding glass door under the screen porch where our
24 bedroom is. And about 3:15 in the morning, we were
25 awakened by what sounded like a gunshot from a

1 high-powered rifle and noticed that the light,
2 again, was on.

3 Q Now, you talk about the light being on. Is
4 that the same light here on the lake side of the
5 Worley house?

6 A Yes.

7 Q And what accompanied that gunshot at about 3:15
8 in the morning?

9 A There was the normal, you know, talking. And
10 we had our normal conversation about, you know,
11 hopefully this will be the last shot for the night
12 and we'll go back to sleep, but I would say maybe
13 20, 30 minutes later -- I don't remember exactly how
14 long between shots -- we had another one. And we
15 had more discussion about what to do. And then the
16 lights went off, and I figured, okay, it's over, you
17 know, we're done for the night.

18 And maybe 10 or 15 minutes later, the lights
19 came back on again, and I turned to my wife and
20 said, I'm not going to wait for the third shot. And
21 so roughly at four -- it's roughly four o'clock in
22 the morning is when I called 9-1-1.

23 Q Now, when that light came on there, you said
24 you weren't going to wait for the third shot, how
25 much after that did you call the sheriff's

1 department?

2 **A** Oh, probably within five minutes. I mean, it
3 was a decision -- I made the statement to my wife
4 that I'm not going to wait for the third shot, you
5 know, I got dressed, went and got the phone and made
6 the call.

7 **Q** Do you know if that light was on when you made
8 the call to the sheriff's department?

9 **A** I believe it was, but before -- before the
10 deputies arrived, it had -- it went off again.

11 **Q** When you called the sheriff's department -- I
12 know you can't be exact, but just roughly, how long
13 did it take for some deputies to respond?

14 **A** It was probably 20, 30 minutes, in that
15 neighborhood. I believe the officers arrived around
16 4:30.

17 **Q** And by the time the officers got there, the
18 light had been turned off?

19 **A** Correct.

20 **Q** Between your call and them arriving, the light
21 was turned off?

22 **A** Yes, that's correct.

23 **Q** Now, did you see the deputies arrive?

24 **A** Yes. I noticed -- I noticed what appeared to
25 be three cars. Some of them went into one driveway

1 and some went into Worleys' driveway, because the
2 two driveways -- the Worleys' driveway and Stevens'
3 driveway are very close together.

4 Q Right over here, there's two driveways right
5 over here?

6 A Yeah, they're very close together.

7 Q Could you see if they were in marked cars?

8 A No, I couldn't. There's some light out there
9 from a -- like a street light out near the garage,
10 but my expectation was they were in marked cars, but
11 I couldn't see them for sure.

12 Q But you knew they were law enforcement?

13 A At that point, it was my assumption. I
14 certainly knew moments later when Officer Rushton
15 came over to my house.

16 Q Okay. Tell us about that. When the officers
17 got there, who came over to your house?

18 A Officer Rushton. About probably a couple of
19 minutes after they came over, when they first
20 arrived, we went to the house -- part of the house
21 closest to that property, kind of our utility room,
22 and that window was open, so I could see people
23 walking with flashlights, and I could hear them
24 identify themselves as sheriff's office or sheriff's
25 department, something to that effect.

1 Q I'm sorry. Repeat that.

2 A They were identifying themselves as either
3 sheriff's officers or sheriff's department,
4 something like that.

5 Q Where were they identifying themselves?

6 A They were at the front of Worley's house, that
7 I could see.

8 Q And what you call the front, right here, the
9 lake side?

10 A No, no. The other side where I first saw them.

11 Q And they were identifying even back there?

12 A Yes.

13 And then I noticed a flashlight coming through
14 the woods, the short period -- the woods between the
15 two houses. And I went out into the driveway and
16 had a talk with Officer Rushton. He asked me about
17 the complaint, and I filled him in on what the
18 details were.

19 Q So you gave him the background?

20 A Yes.

21 Q The other two officers, did they come over and
22 talk with you?

23 A No. They were continuing to identify
24 themselves while I was talking to Officer Rushton.

25 Q All right. At any time while you were talking

1 with Deputy Rushton, did you see any officer go down
2 here on the lake side of the house and knock on the
3 door?

4 A I didn't see them, but I could hear them.

5 Q What could you hear?

6 A I heard them identify themselves as sheriff's
7 department.

8 Q You could hear that?

9 A Yes, as I was out in the driveway with Officer
10 Rushton.

11 Q All right, sir.

12 Now, did Deputy Rushton stay over here with you
13 or did he go somewhere else?

14 A We talked for several minutes, giving him the
15 background, and during that conversation, the porch
16 light came back on again. And he indicated --

17 Q Let me stop you right there. While you were
18 talking with Deputy Rushton, that light was off when
19 you first started talking with him?

20 A Yes. Yes.

21 Q All right. And during the time you were
22 talking with him, thereafter this light came back
23 on?

24 A Correct.

25 Q Did it stay on?

1 **A** It stayed on for some period of time because
2 Officer Rushton said that he had to go back to the
3 scene, and at that point, my wife and I went back
4 into the house. So there was some period of time,
5 15, 20 seconds maybe or so, while we were walking
6 back into the house, that I can't -- I can't see
7 what's going on over there because I'm going in my
8 house.

9 **Q** And where did Deputy Rushton go?

10 **A** Well, he went straight back across. And after,
11 you know, where he exactly went, I don't know, until
12 I got back into the house.

13 **Q** Could you hear anymore announcement by the
14 officers over here when Deputy Rushton went back
15 over there with them?

16 **A** No, I don't recall that I did. I was back in
17 the house by that time.

18 **Q** So that's the time you were going back
19 inside --

20 **A** Correct.

21 **Q** -- and you couldn't tell what was going on back
22 over there?

23 **A** Right.

24 **Q** When you got back in the house, did you have an
25 occasion to look back over towards the Worleys'

1 residence?

2 **A** Yes, I did. When I got back in, I walked over
3 to our -- kind of our eating area where I can see
4 out through the door to our deck, which is pretty
5 much lined up with the, you know, the back corner of
6 their house. I can see that corner, about maybe 50
7 yards.

8 At that point, I remember seeing a light. I
9 don't remember whether it came on immediately or if
10 it was already on, but I saw an officer standing
11 down below this side, the left side of that deck.

12 **Q** Would the officer have been under the porch or
13 outside the porch?

14 **A** No, no. He was -- he was outside of it,
15 looking up at the deck.

16 **Q** Outside, looking up at the deck?

17 **A** Correct.

18 **Q** All right, sir.

19 **A** And then I heard another gunshot, and I saw
20 Officer -- I found out to be Officer Rushton fall
21 backwards. And then a period of maybe two or three
22 seconds later, I heard another gunshot, and I saw
23 Officer Rushton kind of scramble towards the
24 treeline towards the front of the house.

25 **Q** Treeline around here?

1 **A** Correct. To take some cover.

2 **Q** Yes, sir. What else did you observe?

3 **A** After that, honestly, I retreated further into
4 my house at that point. I was pretty alarmed at
5 that point.

6 **Q** Yes, sir. The last time you saw the officers,
7 you said were back over near this treeline?

8 **A** Yeah, where I saw Officer Rushton, correct.

9 **Q** In which direction were they headed?

10 **A** They were heading towards the front, towards
11 the street.

12 **Q** Towards the street?

13 **A** Correct.

14 **Q** Now, when you get back around in this area
15 here, is there any type of lighting right along in
16 there?

17 **A** Yes. There's a street light, kind of a light
18 on a pole that comes on at night. It's on a timer
19 or something.

20 **Q** Does it light up this back area back here?

21 **A** Yeah, pretty good.

22 **Q** What did you do after you saw Deputy Rushton
23 get shot, then going down the treeline and headed
24 back towards the street?

25 **A** Like I said, I retreated to the end of the

1 house, then I realized my garage door open was still
2 open -- my garage was still open, and I immediately
3 went out and closed it. And I believe we turned off
4 some of the lights. We just wanted to stay out of
5 the way.

6 Q Yes, sir.

7 Now, could you clearly hear the officers over
8 here? And the door right here is on the lake side
9 of the house into the Worley residence, isn't that
10 right, down at the bottom?

11 A I don't know. I've never been back there.

12 Q Well, in this vicinity, could you clearly hear
13 from your house them knocking and announcing,
14 Sheriff's department, sheriff's department?

15 A I could hear them -- when I was outside with
16 Officer Rushton and even before, because I was
17 standing near the end of the house with my windows
18 open, I could hear them identifying themselves, and
19 I could hear knocking.

20 Q Even while you were inside your house?

21 A Yes, because I was at the end of the house
22 where I was closest to their property and my window
23 was opened.

24 Q Now, did you and your wife call anybody or make
25 any calls or do anything or you just waited to see

1 what was going to happen?

2 **A** No. Actually, I received a call from I believe
3 it was the 9-1-1 operator probably two, three, four
4 minutes after Officer Rushton was shot, asking me
5 what was going on. And I told them that an officer
6 had been shot and that's all I knew.

7 Some time, I believe after that phone call, I
8 noticed that one of the cars -- at least one of the
9 cars left, and I was assuming that they were getting
10 the injured officer out of the area.

11 **Q** Later on, did you see some other law
12 enforcement officials come back out?

13 **A** Yeah, we did. I would say it was probably
14 maybe 20 minutes after the -- after the police car
15 had left with Officer Rushton, more police cars came
16 to the top of the street. I don't remember --

17 **Q** The street here?

18 **A** Yes.

19 I don't remember if any of them actually went
20 in the driveway or not.

21 **Q** Yes, sir.

22 **A** But, yeah, other officers arrived.

23 **Q** And you and your wife never left your house
24 after the shooting, is that correct, until the
25 police officers later got on there?

1 **A** That's correct. At some point later, I believe
2 it was either a SLED officer or South Carolina
3 patrol, I'm not sure, an officer came into our
4 driveway. This was after dawn, after it had become
5 light. There had been a lot of people over there in
6 the backyard scouring for evidence, I guess. Anyway
7 -- but somebody came over and we went out and talked
8 to them, and he told us, you know, that Officer
9 Rushton had been shot --

10 **MR. GARRETT:** Objection, Your Honor.

11 **THE COURT:** Don't say what he told you, please.

12 **THE WITNESS:** Okay. Sorry.

13 **THE COURT:** I sustain the objection.

14 BY MR. MYERS:

15 **Q** He told you what had happened?

16 **A** Correct. He just gave us an update.

17 **MR. MYERS:** If you would answer any questions
18 they have, Mr. Sheffield. Thank you so much.

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

20 CROSS-EXAMINATION

21 BY MR. GARRETT:

22 **Q** Thank you, Mr. Sheffield.

23 Can you tell us about this cat named Sweet Pea?

24 **A** Yeah. They had a cat named Sweet Pea.

25 **Q** Okay. And are you familiar with how they found

1 Sweet Pea and what they did to try to bring Sweet
2 Pea to good health?

3 A No.

4 Q Okay. Are you aware that they were having
5 trouble with some varmint or something down there
6 trying to hurt Sweet Pea?

7 A No, sir.

8 Q You never -- you never knew anything about
9 that?

10 A I knew that Sweet -- the cat had been -- had
11 been injured. I have no knowledge of how or why.

12 Q Okay. And were you aware that there was a fox
13 in your area?

14 A I had seen foxes in the area, yes.

15 Q Okay. And foxes usually come out around in the
16 fall of the year?

17 A I guess. Okay. I don't know.

18 Q Okay. All right. And did you recall ever
19 telling Ms. Worley about the fox?

20 A No. I do not recall any conversation about a
21 fox.

22 Q Okay. In September when you heard shots fired,
23 you said it concerned you, but you didn't feel it
24 necessary, at least at that point, to call the law
25 out to the scene because you wanted to try to take

1 care of it yourself?

2 A Correct.

3 Q There's a lot of people that shoot at and
4 around that lake area, don't they?

5 A I've heard gunshots before, correct; generally
6 not in the middle of the night.

7 Q Okay. And on this particular time in
8 September, you're not really sure it was Joe that
9 was shooting particularly that night?

10 A I did not see him directly, no, but there was
11 no one else at residence at that time, and the
12 lights were on. It was obviously very close. The
13 sound of a high-powered rifle that close, you...

14 Q In your statements to the government or to
15 dispatch, you said what sounded like gunshot?

16 A Correct.

17 Q Okay. Now, after you had made your -- or your
18 wife, it sounds like, went down and wrote out a
19 report about it; is that correct?

20 A Correct.

21 Q Okay. You never approached Joe yourself to
22 talk to him about it?

23 A No. I didn't feel that --

24 Q That's fine. You never --

25 MR. MYERS: No, no, no, no. Let him answer.

1 **THE COURT:** Go ahead and finish your
2 explanation.

3 **THE WITNESS:** I didn't feel comfortable
4 approaching Joe directly. I didn't think he would
5 take that conversation well.

6 BY MR. GARRETT:

7 **Q** You'd never had any problems with Joe or his
8 family all the years you were there from 2006 on,
9 had you?

10 **A** Not until these incidents, no.

11 **Q** Okay. So, in 2006, you heard two gunshots or
12 three gunshots in September of 2006?

13 **A** No, 2009.

14 **Q** I'm sorry. 2009. Okay.

15 September of 2009, you heard three gunshots,
16 thought it would be good to talk to Mary about it,
17 Ms. Worley about it. And do you have any knowledge
18 as to whether or not Mary actually told Joe?

19 **MR. MYERS:** I'm sorry. I didn't hear the
20 question, Your Honor. I apologize.

21 **THE COURT:** The question was whether or not he
22 had knowledge of whether Ms. Worley told the
23 defendant about the conversation.

24 **MR. MYERS:** I don't have any objection to what
25 -- he had a conversation with Ms. Worley. I have no

1 objection.

2 **THE COURT:** The question was whether Ms. Worley
3 -- he knew about Ms. Worley having a conversation
4 with the defendant. Is that right?

5 **MR. GARRETT:** Yes, sir.

6 **THE WITNESS:** Based on a conversation that I
7 had with her later?

8 **MR. GARRETT:** No.

9 **MR. MYERS:** No, no. That's what he asked you,
10 whether he knows Ms. Worley talked with Joe. How
11 could he know that unless he talked with Ms. Worley?
12 Now, he asked the question; I didn't object.

13 **MR. GARRETT:** I'll rephrase.

14 **MR. MYERS:** No, I want his answer. He asked
15 the question.

16 **THE COURT:** No. He withdrew the question.

17 BY MR. GARRETT:

18 **Q** Now, on the night in question, each time that
19 you heard shots fired and even back into September
20 of '09 when you saw shots fired or heard shots
21 fired, the light was on, wasn't it?

22 **A** Yes.

23 **Q** Okay. And then on the night in question, you
24 don't know whether the light was on until Rushton
25 was shot because you were in the house? Is that

1 what you're telling me?

2 **A** Are we talking about the -- when the officer
3 was shot or the shots prior?

4 **Q** The shots prior, the lights were on?

5 **A** Correct.

6 **Q** Okay. Now, I want to move down to where the
7 officer gets shot.

8 **A** Correct.

9 **Q** Was the light on when the officer got shot?

10 **A** Absolutely.

11 **Q** Had it been on?

12 **A** I don't know.

13 **Q** Okay. Because you were back in the house?

14 **A** I was walking into the house. I turned around
15 and it all happened very quickly.

16 **Q** And there's a wooded area between the two
17 houses. It's about 137 feet; is that a fair --

18 **A** Yes, that's fair.

19 **Q** That's fair.

20 And your windows were open, as I understand it;
21 is that correct?

22 **A** Correct.

23 **Q** And do you know whether or not Joe and those
24 had their air conditioning on or not?

25 **A** I don't.

1 Q Okay. It's a rather loud air conditioner that
2 sits between the house?

3 A True.

4 Q Right in this -- it's not drawn in here, but
5 actually, it's right over in here.

6 A Yeah, that's about right.

7 Q But you were able to hear them announcing?

8 A I was standing at the edge of my house closest
9 to their property, so, yes, I was.

10 Q Okay. And you said you'd never been into the
11 Worley home?

12 A No, I have not.

13 Q You don't know how well it's insulated?

14 A I would have no knowledge of that.

15 Q Do you have any knowledge as to whether any of
16 his windows were open?

17 A No, I have no idea.

18 Q When Solicitor Myers was asking you about the
19 other officers while Rushton was over talking to
20 you, they were announcing, you said, towards the
21 front of -- that would be the front of the house?

22 A That's where I first saw them.

23 Q You saw them. And they were announcing right
24 in here?

25 A That's what it sounded like to me, but they

1 weren't within my sight the whole time, because I
2 was -- I was talking to Officer Rushton.

3 Q Right. I understand there's some woods between
4 there.

5 A Thin, yeah.

6 Q Between you and where they were --

7 A Sure.

8 Q -- supposedly?

9 A Yes.

10 MR. GARRETT: No further questions.

11 MR. MYERS: No further questions.

12 THE COURT: May this witness be excused?

13 MR. GARRETT: He may.

14 THE COURT: Thank you, sir. You're excused.

15 MR. MAYE: The State would call Investigator
16 Joe Collier.

17 JOSEPH E. COLLIER, JR.,

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. MAYE:

21 Q Investigator Collier, if you would, just state
22 your name for the record.

23 A Joseph E. Collier, Jr.

24 Q Investigator Collier, tell the ladies and
25 gentlemen of the jury where you're from.

1 **A** I was born and raised in Plum Branch, right
2 here in McCormick County.

3 **Q** What was your first real career that took you
4 away from McCormick and what did you do initially
5 and how did you make your way into law enforcement?

6 **A** Spent six years in the United States Navy on
7 active duty, four in the Reserves -- both active and
8 inactive Reserves -- where I specialized in
9 electronic signals intelligence.

10 After I came back, I worked for the McCormick
11 Police Department for a few months and eventually
12 went to the sheriff's department, I believe, in
13 February of '93.

14 **Q** February of 1993. You've worn many hats at the
15 sheriff's department, have you not?

16 **A** Yes, sir. Still do.

17 **Q** Okay. I believe you were in narcotics for many
18 years; is that correct?

19 **A** Yes, sir. I worked on the narcotics task force
20 with Saluda and Edgefield from 1997 to 2001. At the
21 sheriff's department, I serve as a training officer.
22 I'm in charge of narcotics and special projects and
23 special operations.

24 **Q** Okay. Investigator Collier, during the time
25 that you've been employed at the sheriff's

1 department, you have had a wide variety of
2 specialized training; is that correct?

3 **A** Yes, sir.

4 **Q** Okay. Let's talk about your specialized
5 training in the area of small arms and ammunition
6 and the firearms that are associated with being used
7 by the department and the ones that y'all encounter
8 in your work as law enforcement officers.

9 Tell us a little bit about the specialized
10 training that you've had in that area.

11 **A** Okay. In 1995, I believe it was, I was
12 certified by the Criminal Justice Academy as a law
13 enforcement firearms instructor and have been
14 continuously certified since that time.

15 In 2001, I was certified by Blackwater
16 International as a technical carbine instructor,
17 which is M16, M4s, that type of weapon.

18 Later on, I was certified in 2004, I believe,
19 by the National Rifle Association Law Enforcement
20 Division as a law enforcement firearms instructor in
21 handgun, shotgun, and tactical carbine, or patrol
22 rifle, I believe they call it.

23 I've been certified by Glock as a Glock
24 armorer, also, as a Glock instructor, and I believe
25 that's -- that's typically pretty much all the

1 firearms training that I've had.

2 I've done some tactical training. I'm an ALERT
3 instructor, which is Advanced Law Enforcement Rapid
4 Response Training, which is active shooter training.
5 And also, I've had some tactical narcotics training,
6 which is firearms related, through the South
7 Carolina Criminal Justice Academy, the New Jersey
8 State Police Academy up in Sea Girt, New Jersey.

9 Q Now, you take care of the -- qualifying people
10 and training people and certifying officers far and
11 wide, not just in McCormick Sheriff's Department,
12 but you take care of that for a wide number of
13 agencies? They came to you as the fall; is that
14 correct?

15 A Yes, sir, they do. I train all of the
16 investigators for the Eleventh Circuit Solicitor's
17 Office, the investigators and the director for the
18 South Carolina Ethics Commission, various
19 departments. I've done North Augusta. I've helped
20 Edgefield, helped Saluda, I've done McCormick PD,
21 and I also do McCormick County.

22 MR. MAYE: Your Honor, at this time, I'm going
23 to ask that Investigator Collier -- I'm going to
24 offer him as an expert in the area of small arms and
25 ammunition, in addition to the testimony that he's

1 going to give as a witness in this case, subject to
2 any cross-examination by the defense as to his
3 qualifications as an expert in small arms and
4 ammunition.

5 **THE COURT:** Any voir dire?

6 **MR. GARRETT:** None, Your Honor.

7 **THE COURT:** Do you stipulate to his expertise?

8 **MR. GARRETT:** We do.

9 **THE COURT:** Ladies and gentlemen of the jury, I
10 remind you about the expert witness. The
11 explanation I gave you yesterday would equally apply
12 to this witness.

13 Okay. Go ahead.

14 BY MR. MAYE:

15 **Q** Investigator Collier, let me first ask you --
16 we'll get to the firearms expertise later, but let
17 me first ask you: In participating in the
18 investigation of this case, did you have an occasion
19 to go out to the scene and perform a variety of
20 measurements in this case?

21 **A** Yes, sir, I did. I believe it was in 2011.

22 **Q** Okay.

23 (State's Exhibit Number 24, measurement
24 report, marked for identification.)

25 **MR. MAYE:** At this point in time, Your Honor,

1 I'm going to hand Investigator Collier State's
2 Exhibit 24.

3 Q Talk to us a little bit about State's 24 and
4 you generating that.

5 A I accompanied several of our officers, as well
6 as I believe you were there that day, out to the
7 Worley residence on May the 13th, 2011, and took a
8 series of measurements from various locations to
9 other locations, like from the Sheffields' house to
10 the Worley residence and other areas. And this is
11 the report that I generated.

12 Q Investigator Collier, I'm going to ask you to
13 do this, if you will: I'm going to make these two
14 exhibits, State's 2 and State's 4, available to you,
15 and the Solicitor's pointer there, if you would talk
16 to them a little bit about the measurements that you
17 took there and how they relate to those two
18 exhibits.

19 A This exhibit right here, this is the porch of
20 the two-story residence, and the lake is actually
21 down here. You cannot see it on the map here on
22 this -- on this diagram. But we measured from --

23 THE COURT: Just one second. Would you turn
24 that so this witness in the far corner can see,
25 please?

1 **MR. MAYE:** Come wherever you need to.

2 **THE WITNESS:** I believe I can do it if I can
3 stand up, Your Honor, if that's all right.

4 **THE COURT:** Absolutely.

5 **THE WITNESS:** The first measurement was from
6 the Worley residence, which would have been probably
7 the porch, the closest thing to the water line, it
8 was 215 feet. Back in 2011, the water line -- the
9 lake was down a good bit, so -- but it was 215 feet.

10 The Worley residence to the closest point of
11 the lake property that belonged to the U.S. Corps of
12 Engineers, we refer to it as the Corps of Engineers
13 proclamation boundary, and it's marked clearly all
14 the way around the lake. At that point, from
15 probably, again, to the deck here or the porch, that
16 measurement was 137 feet.

17 The Worley residence, the rear corner back here
18 to the Sheffield residence, which is not visible on
19 here, but it's actually up here, that distance was
20 137 feet to the bottom of the deck on the
21 Sheffield's residence to the bottom of the steps.
22 And then we estimated another 10 to 20 feet to the
23 window at the kitchen sink, which is the closest
24 window to that residence.

25 The Worley residence to the Stevens' residence,

1 which is also not visible here -- it's visible on
2 this other one. Would you like for me to put it up?

3 Okay. The Worley residence here to the
4 Stevens' residence, which is over here -- actually
5 right here, I'm sorry. It's actually kind of a
6 octagon-shaped thing. It's kind of a strange
7 residence. But it was 159 feet.

8 And the distance from the back of the Worley
9 residence here -- or, excuse me, the front of the
10 Worley residence here to where Deputy Rushton
11 indicated he was standing when he was shot was 20
12 feet from the upper deck down to where he was
13 standing.

14 (Pause.)

15 **MR. MAYE:** Your Honor, I have one photograph
16 that I have shared with the defense in this case.
17 They've indicated they did not have any objection.
18 By stipulation, we're going to enter it into
19 evidence.

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

21 Did 24 -- it has not been admitted into
22 evidence yet. Did you move it into evidence?

23 **MR. MAYE:** I'm going to do so in just a moment,
24 Your Honor. I will offer it next while we're taking
25 care of that matter.

1 Any objection to that one coming in as well?

2 **MR. GARRETT:** No.

3 **THE COURT:** 24 and 25 come in without
4 objection.

5 (State's Exhibit Number 24, measurement
6 report, admitted into evidence, and State's Exhibit
7 Number 25, photograph, marked and admitted into
8 evidence.)

9 BY MR. MAYE:

10 **Q** Investigator Collier, I'm going to show you
11 State's 25. How about tell the ladies and gentlemen
12 of the jury about that photograph, how it was
13 generated, and what it depicts.

14 **A** On that same date that we were out there, which
15 was May the 13th, 2011, this is me standing right
16 here. This is Chief Deputy Gable up on the deck of
17 the Worley residence. This is where Officer Rushton
18 indicated to us that he was standing, and this is
19 where he indicated Mr. Worley was standing on the
20 night of November 15th, 2009. And that's the
21 measurement. It was 20 feet from here to up there.

22 **Q** Okay. And you pulled that with a tape measure?

23 **A** Yes, sir.

24 **Q** Investigator, point out with the pointer, if
25 you would, on State's 4, show us where that railroad

1 tie is and about where he would have indicated that
2 he was standing, if you can point it with the
3 pointer.

4 **A** This is the railroad tie right here. This is,
5 obviously, the deck, which is covered with the porch
6 underneath. And it would have been approximately
7 from right in this area here to over where Deputy
8 Rushton indicated he was standing.

9 **Q** Okay. Investigator Collier, let me ask you
10 this: Do you have with you two fired shell casings
11 that were retrieved from the deck area?

12 **A** I have them in the back back here.

13 **Q** Could I ask somebody to retrieve them for you?

14 **A** Yes, sir. Yes, sir.

15 **Q** Thank you.

16 (Pause.)

17 **MR. GARRETT:** Without objection.

18 **MR. MAYE:** Your Honor, I have a bag here marked
19 Sheriff's Office Item Number 5. There's no
20 objection, from my understanding, from the defense
21 that this be entered as a State's Exhibit in this
22 case.

23 **THE COURT:** No objection, Mr. Garrett?

24 **MR. GARRETT:** No objection, Your Honor.

25 **THE COURT:** Very good. That will be 26.

1 (State's Exhibit Number 26, shell casings,
2 marked and admitted into evidence.)

3 BY MR. MAYE:

4 Q Investigator Collier, show you State's 26.
5 What are those items in State's 26 that are bagged
6 up?

7 A Two spent .30-06 shell casings. Two fired
8 .30-06 rounds.

9 Q Those were retrieved from the deck area up top?

10 A By Sheriff Reid, yes, sir.

11 Q Okay. But you took custody of those, and y'all
12 transferred them on to the South Carolina Law
13 Enforcement Division for analysis?

14 A Yes, sir.

15 Q And you did so with all of the fired shell
16 casings?

17 A Yes, sir.

18 Q And were transferred to Agent Whitler
19 ultimately to be analyzed?

20 A I transferred them to Evidence, and then they
21 ultimately went to him, yes, sir.

22 Q Okay. Investigator Collier, I'm going to show
23 you at this point in time what's marked State's
24 Exhibit 3. And I want you to change gears to the
25 firearms expertise, small arms and ammunition.

1 Explain to the ladies and gentlemen of the jury
2 what those items are and how they function. And
3 let's talk to them a little bit about this Remington
4 742 rifle that's already into evidence in this case.

5 Investigator Collier, what type of rifle is
6 this? How does it function? Is it a bolt action, a
7 semiautomatic? What does that mean?

8 **A** It's a semiautomatic. It chambers a round
9 automatically after a round is fired.

10 **Q** Okay. As to the big black box there that's in
11 exhibit -- what's that exhibit number?

12 **A** Exhibit 3.

13 **Q** Okay. What is the box magazine? What does
14 that do and how does it function? And I'm going to
15 hand you this rifle here.

16 **A** This holds the additional rounds. It holds
17 four rounds when it's totally -- totally full. The
18 magazine would actually go into this area, the well
19 of the gun, and then you can load -- if the gun were
20 fully loaded, you could chamber a round, take the
21 magazine out, put one more round into it so you
22 could have five in the gun. You would have one
23 inside the chamber and four in the magazine.

24 **Q** And based on your training and experience, for
25 example, with law enforcement, typically with a

1 Glock or anything -- a Glock has a stick magazine
2 that would have gone in the butt of what's State's
3 7, this weapon. It would have a magazine that
4 sticks in here; right?

5 **A** Yes, sir.

6 **Q** Typically, law enforcement officers or anybody
7 with a weapon like this that wants to have the
8 maximum number of rounds available for their use,
9 you put the mag in, load it with four, you charge
10 it; with a Glock, you pull the slide. With that 742
11 semiautomatic, you pull the bolt back, you strip it,
12 you drop the box/magazine out. You take another
13 round -- usually with a rifle, you'd have to put it
14 down -- load that magazine with an additional round
15 and put the mag back up there. Four in the mag, one
16 in the chamber; correct?

17 **A** Yes, sir.

18 **Q** No way to get any more rounds --

19 **A** No, sir.

20 **Q** -- in that weapon?

21 **A** No, sir, not with this magazine.

22 **Q** I'm talking about the 742 rifle.

23 **A** No, sir. No, sir. No, sir.

24 **Q** Okay. All right. So can't hold any more than
25 five; correct?

1 **A** No, sir.

2 **Q** Under any circumstances.

3 So that weapon -- let's talk about the rounds
4 that it chambers. Let's talk about the power of the
5 rounds in this case. Let's talk about a .30-06
6 ammunition.

7 What are we talking about in regard -- I know
8 that they say that there's low-powered rounds,
9 high-powered rounds, low velocity, high velocity.
10 Where in the family does that .30-06 fall?

11 **A** A .30-06 is a very powerful round. It's
12 probably the most popular hunting cartridge that
13 there is available because of the myriad of various
14 rounds that you can get. You can get heavy bullet
15 weight. You can get light bullet weights. And it's
16 used for everything from deer, people have actually
17 taken Cape buffalo, and there are even some
18 instances where elephants have been killed, not
19 necessarily the elephant gun of choice, but it has
20 that capability.

21 **Q** You can kill anything in North America that
22 walks on feet with a .30-06?

23 **A** Yes, sir.

24 **Q** It is an extremely high-powered hunting round
25 or otherwise? The M1 Garand in World War II

1 chambered a .30-06; is that correct?

2 **A** That's correct.

3 **Q** It's a high-powered round. All right.

4 Investigator Collier, I would like for you, if
5 you would -- at this point in time, I know it's
6 sealed up. Why don't you open that bag and let's
7 take out one of those rounds out of there.

8 **A** (Witness complies.)

9 **Q** Investigator Collier, if you'd hand me this.
10 You have looked at this round in this case, and the
11 unfired round -- this is a bullet that's got powder,
12 primer, it's intact. This is a live bullet,
13 unfired?

14 **A** Yes, sir.

15 **Q** I mean, the empties that you've got there have
16 been fired. The firing pin struck the primer, it's
17 ignited the powder, the gun's gone off. Those are
18 empties that got chucked out of a gun; correct?

19 **A** That's correct.

20 **Q** Okay. Take a good look at that. I want you to
21 tell the ladies and gentlemen of the jury, is there
22 anything unusual about that round, the bullet,
23 within specificity, that's in the end of that
24 cartridge?

25 **A** The bullet has actually been altered and

1 appears to have what looks like a steel rod of some
2 type inserted into it and sharpened.

3 Q How long have you been around firearms and been
4 involved with firearms?

5 A I grew up hunting, my dad and I. I was hunting
6 when I was five or six years old.

7 Q Have you ever encountered a homemade
8 modification to a round like that?

9 A No, sir. I have never seen anything like this.

10 Q Okay. Let's talk about hunting rounds or
11 standard hunting rounds. Let's talk about the
12 various types of bullets that you would normally
13 have. Let's talk about, for example, a full metal
14 jacket bullet versus a hollow-point bullet. What is
15 that? Tell the ladies and gentlemen of the jury a
16 little bit about that.

17 A A hollow-point would be a defensive round for a
18 handgun and also a very good hunting round because
19 the bullet expands rapidly and creates a wider wound
20 channel. That's the whole design of it.

21 Now, being a hollow-point, there's some drag on
22 the bullet when the bullet's fired so it slows the
23 velocity down somewhat. But it's a very good
24 hunting round and it's a very good defensive round
25 if you're using it for a handgun.

1 A steel jacketed or a jacketed -- full metal
2 jacket would be something that would be used for
3 penetrating a hardened barrier, some type of hard
4 surface, not typically a good hunting round because
5 it does not create a significant wound channel.

6 **Q** Okay. The hollow-point round gets that classic
7 mushroom shape when it strikes something. It makes
8 a big ol' channel when it goes through soft tissue
9 or an animal. It makes them bleed out faster. It
10 increases the lethality --

11 **MR. GARRETT:** Objection, Your Honor; leading.

12 **THE COURT:** Sustained.

13 **THE WITNESS:** The hollow --

14 **THE COURT:** Don't answer that question.

15 Rephrase your question.

16 **MR. MAYE:** I'm sorry, Your Honor.

17 BY MR. MAYE:

18 **Q** What is the difference with the hollow-point
19 ammo bullet and a jacketed bullet in regard to
20 lethality?

21 **A** The hollow-point would typically -- is designed
22 by a design to expand more rapidly. It creates --
23 when it expands more rapidly, there's a faster
24 transfer of energy. It's more substantial. It
25 creates a larger wound channel, obviously, so that

1 if you're hunting, the animal would bleed out more
2 quickly, and, thus, incapacitate the animal quicker.

3 Q What happens when you take a round such as that
4 and modify it in the fashion that that has been
5 modified? What happens when you do that?

6 A This round, with a steel rod or pin inserted,
7 would be designed to penetrate some type of hard
8 barrier. It could be light armor. It could be body
9 armor. It could be the thin skin of a vehicle or
10 the skin of a vehicle. I mean, it could be numerous
11 things.

12 But, ballistically, it -- I'm not sure by
13 design what it would be ballistically because it
14 would go against everything that the bullet was
15 designed for initially. There's a lot of weight
16 forward in this round that there would not normally
17 be, so that's going to cause -- up close it's not
18 going to cause anything seriously, but a long ways
19 away, this bullet may be tumbling, it may be
20 flipping or whatever.

21 So I think, ballistically, inserting this is
22 going to mess up the bullet by design. I mean, I
23 don't know. I don't really understand why it was
24 done from that standpoint.

25 Q So if one were to use this for a hunting round

1 in this case, have you destroyed its functionality
2 to use as a hunting round?

3 **A** I would think that hunting normally with a
4 .30-06 is done at a relatively good range, 100
5 yards, 150 yards, and that's a standard range for
6 deer hunting in our area with a high-powered rifle.
7 Your accuracy would be probably nonexistent. Now,
8 up close, it would not be noticeable.

9 **Q** Let's talk about balance. And could you tell
10 me something -- for example, compare it to something
11 that somebody would know: A tire. What would that
12 do?

13 **A** If you've ever had the tires balanced on your
14 vehicle or thrown a weight, like most of us have on
15 our vehicle, at slow speeds, there's no vibration in
16 your tires. At higher speeds, you'll notice a
17 vibration, and you'll feel the steering wheel doing
18 that {indicating}. As a matter of fact, I've got
19 one on my vehicle that needs to be balanced now, and
20 you made me think of it.

21 That would be doing something similar because
22 you're talking about, on a vehicle, the wheels not
23 turning that often. You're talking about something
24 that's probably going 2500 feet per second here, and
25 that bullet is spinning because the rifling inside

1 the barrel of the gun is designed to impart a spin
2 on the bullet when it's fired to enhance accuracy.

3 So from an accuracy standpoint, I would think
4 it would be horrible.

5 Q So you've got a round, at any distance, it's
6 going to go haywire?

7 A I would think probably anything -- just
8 guessing -- probably past 25 or 50 yards accuracy
9 would be nonexistent.

10 Q So you've got a round that's modified to
11 penetrate a hardened surface only at a very close
12 range?

13 A I would think so, because typically a steel
14 cored bullet is a -- a referred to as an
15 armored-piercing bullet or a -- it is designed
16 simply to penetrate a hardened barrier, be the
17 barrier what it may.

18 Q Okay. So I would ask you, to a reasonable
19 degree of professional certainty, what is your
20 opinion as to the purpose of the modification that's
21 done to that bullet?

22 A It has been modified, again, to more -- to
23 penetrate a barrier or -- and when I say hardened
24 barrier, it can be anything. It can be thin armor.
25 It can be body armor. It can be metal. It can be

1 very thick wood.

2 The thing that you wonder about is with the
3 balance and everything on it, you know, what kind of
4 effect it would have, because the bullet is not
5 going to be stable in flight. So it can create
6 probably a horrific wound particularly at close
7 range.

8 **Q** And, again, you've never seen anybody modify
9 anything like that?

10 **A** No, sir. I've never seen this done. And this
11 is actually the first time I've ever held the bullet
12 in my hand. It was in sealed plastic. And I had --
13 this is the first time I could ever feel the weight.

14 **Q** Okay. Let's talk to us about how that round or
15 that bullet has been sharpened at the tip. What can
16 you tell from your analysis in looking at it?

17 **A** Well, apparently, the -- if you look at it
18 close -- and I have not taken it apart -- but if you
19 look at it close, the rod -- I'm not sure how it was
20 sharpened. It almost looks like a nailhead like a
21 nail -- a large nail that you would buy to nail a
22 2x4 together, but it almost looks like that, and
23 it's been sharpened. You know, it's just basically
24 like driving a nail into something. That's an
25 analogy, the only thing that I can think of.

1 **Q** Now, Investigator Collier, it would take
2 considerable skill and expertise to do this, to
3 manufacture this, would it not?

4 **A** I would think so. And to -- with any
5 uniformity, you would have to have some skills.

6 **MR. GARRETT:** Your Honor, I object. The
7 foundation is is that he has not actually taken one
8 of these apart to see how it was built or whatever.
9 So I would object that a foundation has not been
10 properly laid.

11 **THE COURT:** Overruled.

12 BY MR. MAYE:

13 **Q** Is there a pretty good degree -- look at each
14 one of those rounds -- a pretty good degree of
15 uniformity to all of them?

16 **A** There is. It's -- some type of machining
17 device was used. I'm not sure exactly how, but it's
18 almost perfectly centered. I mean, with the naked
19 eye, you can't tell exactly whether it's perfectly
20 centered, but I mean, it appears to be. You can
21 stand them up. They're all pretty much uniform in
22 length and size.

23 **Q** Okay. Investigator Collier, what would be the
24 danger of modifying those as they are? Because the
25 bullet, as it comes intact, is all assembled.

1 You've obviously got to drill out the inside of this
2 bullet, do you not?

3 **MR. GARRETT:** Objection, Your Honor; leading.

4 **THE COURT:** Rephrase it.

5 **MR. MAYE:** And, Your Honor, I thought that I
6 did have leeway with an expert witness to ask
7 leading questions, again, respectfully.

8 **THE COURT:** No, sir.

9 **MR. MAYE:** Thank you.

10 BY MR. MAYE:

11 **Q** How would one manufacture that as opposed --
12 when it's a assembled round? What's the danger of
13 that?

14 **A** Well, obviously, when you drill anything, you
15 create heat by friction. Now, if it were drilled
16 with the bullet intact in the round, you have powder
17 back here. It's gunpowder. That's what it is. So
18 we refer to it as cooking off a round. There's
19 always the possibility that heat would -- it would
20 generate a high enough heat to cook that powder off,
21 thus causing the round to fire or explode.

22 You would have to chuck it in some type of
23 device. Of course, there are devices made with
24 rubber chucks and everything, or you could remove
25 the bullet, insert it, and then put the bullet back

1 into the casing, which would obviously be the safest
2 way to do it if you're going to modify it.

3 Q Okay. Quite obviously, it was modified in some
4 uniform fashion --

5 A Yes, sir.

6 Q -- all of them.

7 A Yes, sir. All four were.

8 Q Okay. Maximum number of rounds that can be
9 chambered in that weapon, the 742?

10 A With a full load, it would be one in the
11 chamber and four in the magazine.

12 Q So if someone fired two and that rifle was
13 later discovered to have four rounds still in it,
14 that would mean somebody had to reload it; correct?

15 A Yes, sir, definitely.

16 Q At least one round would have had to have been
17 added to it after it was fired twice?

18 A Yes, sir.

19 Q All right. Investigator Collier, let's talk
20 about certification. Do you help the sheriff's
21 office keep the officers, basically, certified and
22 trained? Is that part of your responsibility in
23 this case?

24 A Yes, sir. That's my total responsibility.

25 Q Okay. Was Bobby Rushton -- had you taken care

1 of all those details to him or in regard to his
2 certification and training when he came back on
3 duty?

4 **A** Yes, sir.

5 **Q** Was he, in fact, a certified officer and
6 trained appropriately in this case?

7 **A** Yes, sir.

8 **Q** Okay. What steps did you take, once he
9 returned, in order to ensure that he was straight
10 with the South Carolina Law Enforcement Academy and
11 any training or certification that was necessary?
12 What did you do in order to ensure that he was
13 straight when he came back?

14 **A** Bobby had been gone for four years. I believe
15 he left in 2005. He was working for us when he
16 left.

17 He left in 2005 and he came back in 2009. That
18 was a four-year period. Typically, the Criminal
19 Justice Academy does not allow you to -- if you've
20 been out of law enforcement over three years, they
21 typically will not allow you to come back as a
22 certified law enforcement officer without completing
23 the academy again.

24 He was working for a company at the time called
25 DynCorp International, which was working for the

1 State Department teaching, I believe, Iraqi police
2 officers under contract. The South Carolina
3 Criminal Justice Academy at the time treated DynCorp
4 -- people who were working for DynCorp as military
5 time. So they did not pull their certification;
6 they froze their certification.

7 Q And you checked on all this, did you not?

8 A Yes, sir. I talked many times with the
9 Criminal Justice Academy. I actually told Bobby
10 when he came back that I figured he would have to go
11 back through the academy. And after talking to the
12 academy on numerous occasions, they advised me that
13 he could take all of his legal updates -- because
14 the State requires us once a year to do a two-hour
15 legal update. Statutory law requires us to do a CDV
16 or criminal domestic violence update once a year of
17 four hours.

18 They told me that we could get all of his CDVs
19 that he had missed from 2005 until he came back,
20 that we could get all of them and show them to him
21 and get him caught up, and they would unfreeze --
22 basically unfreeze his certification.

23 Now, certification within South Carolina goes
24 for a three-year cycle, and we call it an
25 anniversary date. The day you graduate from the

1 Criminal Justice Academy is your initial anniversary
2 date. His, I believe, was June the 26th. And I
3 don't have those papers in front of me, but what it
4 would work, like, if he -- 2001 to 2004, 2004 to
5 2007, 2007 to 2010, 2010 to 2013. If he were still
6 working for us, June the 26th of each year, being
7 his anniversary date, when he came back in 2009, he
8 was in his 2007 to 2010 cycle.

9 So when we got him caught up from '04 to '07
10 for the time that he had missed, the academy unfroze
11 his academy -- or unfroze his certification and
12 granted his certification back to us. All of his
13 paperwork was submitted to the academy by me on
14 11/5/2009.

15 Q Okay. So he was straight with all of that?

16 A Yes, sir.

17 Q Did you have him come back and take an oath
18 again in this case? Prior to him going out and
19 working, did he come back and y'all redo the oath
20 and all?

21 A Yes, sir. On November the 2nd, when he came to
22 work -- he actually started on November the 1st,
23 which was a Sunday, and obviously, you know, our
24 county office building and the courthouse and
25 everything is closed on Sunday.

1 So, on that Monday morning, which was November
2 the 2nd, he and I came over to the clerk's office.
3 He was sworn in -- and I normally follow this
4 routine -- and then I take him to the admin office.
5 They sign up for their insurance, everything like
6 that. Then they come back to the department, and we
7 start whatever we need to do at that time.

8 **Q** So when he hit the ground and went back out
9 patrolling for the first time, he was squared away
10 and good to go?

11 **A** Yes, sir.

12 **Q** Okay. Let me ask you this: Let's talk about
13 the uniforms of the sheriff's office, because that's
14 one of the things that you help and assist them
15 with; is that not correct? Purchasing guns,
16 uniforms, and everything else?

17 **A** Yes, sir.

18 **Q** Let's talk about that 5.11 Tactical wear, what
19 police officers are now wearing in the modern era.
20 What kind of clothing did Bobby Rushton have on?

21 **MR. GARRETT:** Leading.

22 **THE COURT:** Overruled.

23 Go ahead.

24 BY MR. MAYE:

25 **Q** What type of clothing did Bobby Rushton have

1 on?

2 **A** He indicated to me at that time on the day

3 of --

4 **MR. GARRETT:** Objection, Your Honor; hearsay.

5 BY MR. MAYE:

6 **Q** Don't go into what he said --

7 **A** Okay.

8 **Q** -- but what you know he was wearing from your
9 direct experience in this case.

10 **A** Okay. He would wear 5.11 Tactical pants and a
11 shirt.

12 **Q** Okay. And that is what he had on that night,
13 the 5.11 Tactical pants and a shirt; correct?

14 **A** I believe so.

15 **Q** Okay. Well, you got those items back
16 afterwards, and they were subsequently destroyed by
17 the sheriff's department?

18 **A** No, sir. They were -- no, sir. They were
19 destroyed by EMS and the hospital. We never got
20 them back.

21 **Q** Is that accepted -- that 5.11 Tactical wear, is
22 that accepted clothing for the sheriff's office?

23 **A** Yes, sir.

24 **Q** Okay. Were the other officers wearing similar
25 clothing or do other officers in the department wear

1 similar clothing such as that?

2 **A** At that time, I believe, in 2009, all the
3 patrol officers were wearing, I believe, blue pants
4 and gray shirts, but they were 5.11 or either
5 Tru-Spec, which are -- BDU pants is the
6 military-style pants like I have on, the battle
7 dress utilities.

8 I believe they were blue with a light gray
9 shirt at that time. We have since switched to tan
10 and a darker shirt.

11 **Q** Again, it's exactly the same kind of clothing;
12 it's just a different color?

13 **A** Just a different color, yes, sir.

14 **Q** Okay. What happened with the old Barney Fife
15 polyester uniforms? Do y'all wear those anymore?

16 **A** We haven't had those in a long time. We get a
17 very limited budget from the county to buy uniforms
18 with typically three or \$4,000 to outfit 15 people,
19 plus a reserve -- at the time, we had two reserve
20 officers; we have one now.

21 The older polyester blend uniforms did not hold
22 up for us, and they were prohibitively expensive.
23 We can buy two sets of these for what one of those
24 cost us. So -- and these are much more -- I don't
25 know if -- can I stand up?

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

2 **THE WITNESS:** If you look, these have a lot of
3 pockets and stuff; they carry a lot of gear. And
4 this is like a ripstop material, so it's much, much
5 hardier. It holds up much better. And we stomp
6 around in the woods a lot.

7 BY MR. MAYE:

8 **Q** That type of clothing is used far and wide by
9 sheriff's departments all over South Carolina, isn't
10 it?

11 **A** All over the nation.

12 **Q** Is that 5.11 Tactical gear, would you say that
13 that's the most popular line of clothing in the
14 entire United States?

15 **A** Probably so, without a doubt.

16 **Q** Okay.

17 **MR. MAYE:** Beg the Court's indulgence.

18 (Pause.)

19 **MR. MAYE:** Answer any questions the defense has
20 for you. Thank you, Investigator Collier.

21 **THE COURT:** Madame Forelady, let's go ahead and
22 take the morning break. If you need anything, let
23 the bailiffs know, please, ma'am.

24 (The jury retires to the jury room.)

25 **THE COURT:** All right. Officer, you may not

1 speak with anybody about your testimony during the
2 break, please, sir.

3 **THE WITNESS:** Yes, sir.

4 **THE COURT:** Thank you. All right. 15 minutes.

5 (Brief recess.)

6 **THE COURT:** Let me ask the attorneys.

7 Stacy, our court reporter, brought to my
8 attention that Officer Moore's incident report and
9 narrative were marked as Court's Exhibits, meaning
10 they will not go back to the jury unless we remark
11 them as somebody else's exhibits.

12 **MR. MYERS:** You can mark them as State
13 Exhibits.

14 **THE COURT:** Any objection to that?

15 **MR. GARRETT:** No, Your Honor.

16 **THE COURT:** So I'm going to direct, if you
17 would, Stacy, to remark those and just number them
18 in that way.

19 (Court's Exhibit Numbers 3 and 4 were
20 remarked as State's Exhibit Numbers 27 and 28 and
21 admitted.)

22 (A brief conversation was held off the
23 record.)

24 **THE COURT:** Do you agree with that?

25 **MR. GARRETT:** I'm sorry, Your Honor?

1 **THE COURT:** They were just clarifying that it's
2 3 and 4.

3 **MR. GARRETT:** 3 and 4, yes, now State's
4 Exhibit.

5 **THE COURT:** Right.
6 Thank you for bringing that to our attention.
7 Anything from the State before we get started?

8 **MR. MYERS:** No, sir.

9 **THE COURT:** Anything from the defense?

10 **MR. GARRETT:** No, sir.

11 **MR. MYERS:** Stacy, they're going to be what
12 now?

13 **COURT REPORTER:** Court's 3, the statement, will
14 be Number 27 -- State's 27. The incident report,
15 Court's 4, will be State's 28.

16 **MR. MYERS:** Thank you.

17 **THE COURT:** Would you bring the jury in,
18 please, ma'am -- or sir?

19 (The jury returns to the courtroom.)

20 **MR. GARRETT:** May it please the Court.

21 **THE COURT:** Mr. Garrett.

22 **MR. GARRETT:** Thank you.

23 CROSS-EXAMINATION

24 BY MR. GARRETT:

25 **Q** I want you to look at State's Exhibit 15. And

1 can you identify what that is?

2 A 15 are all of these -- all of these together,
3 sir?

4 Q Yes, sir.

5 A These are the eight bags of unfired 40 caliber
6 rounds that were picked up at the scene out there,
7 turned over to me by Deputy Nick Moore.

8 Q And do you know whereabouts they were located?

9 A No. Out there? No, sir.

10 Q And those bullets, can you tell us about the
11 characteristics of those 40 caliber bullets?

12 A They are unfired 40 caliber bullets, our
13 department-issued bullets. It's a Speer Gold Dot,
14 180 grain hollow point.

15 Q It is a hollow point?

16 A Yes, sir.

17 Q Okay. So it's to do killing up close?

18 A It's for damage, yes, sir.

19 Q Damage up close?

20 A Yes, sir.

21 Q Okay. Are those bullets capable of inflicting
22 imminent death?

23 A Yes, sir.

24 Q All right. And are those the bullets that
25 were in -- I'm sorry -- Number 7? Can you identify

1 State's Exhibit Number 7 {sic}?

2 A This was Deputy Rushton's Glock Model 23.

3 Q All right. And those were the bullets that
4 were in that gun?

5 A These were the bullets that were picked up out
6 at the residence out there. So I'm assuming they
7 were the bullets that were in the gun.

8 Q That were in the gun?

9 A Yes, sir.

10 Q Okay. And if those bullets are in that gun
11 with a clip, is the clip still kind of stuck in
12 there, or can you tell?

13 A The shell of the clip is. The floor plate and
14 the spring and follower and stuff are gone.

15 Q Okay. Were they ever picked up to your
16 knowledge?

17 A Not that I know of.

18 Q Okay. And how many of those bullets normally
19 does that weapon carry?

20 A That weapon, fully loaded, with one in the
21 chamber, will hold 14. It's a 13-round magazine.

22 Q And how many of those --

23 A There are eight over here.

24 Q Eight. So what happened to the remainder of
25 them?

1 **A** I don't know.

2 **Q** All right. Did you conduct any type of testing
3 at or about this area -- the 20 feet out area that
4 you were referring to earlier -- did you look with
5 any type of apparatus to see whether or not you
6 could find any bullet fragments in or about the
7 ground where he was at?

8 **A** No, sir, I did not. It was two -- almost two
9 years later.

10 **Q** Okay. But you didn't -- that night, nobody did
11 that?

12 **A** I wasn't there. I don't know.

13 **Q** Okay. And I guess you could do it now,
14 couldn't you?

15 **A** I guess so.

16 **Q** I mean, unless somebody reached down into the
17 ground and took it out?

18 **A** I guess so.

19 **Q** All right. But that hadn't been done?

20 **A** Not that I know of.

21 **Q** All right. The -- you can't identify as Joe
22 being the person who owned those bullets, can you?

23 **A** No, sir, I cannot.

24 **Q** And you can't -- you can't say that Joe
25 prepared those bullets in any way?

1 **A** No, sir, I can't.

2 **Q** All right. And let me ask you: Are there any
3 other reasons that you would change a lead-based
4 bullet to a steel-based bullet under any
5 circumstances?

6 **A** Not a normal hunting bullet, I wouldn't think
7 that you would put a steel core in it. With shotgun
8 rounds, it's typically done sometimes.

9 **Q** And why do we do it with shotgun rounds? Why
10 do we change it?

11 **A** With shotgun rounds, they would switch from the
12 lead to, keep from poisoning the waterfowl.

13 **Q** Okay. And so with ducks and that kind of
14 thing, when we're hunting ducks and whatnot, we have
15 to use steel shot. It's against the law for us --

16 **A** I believe that's federal law.

17 **Q** Federal law. Right.

18 And then so if someone is an environmentalist
19 and they decide they want to modify their own .30-06
20 to be environmental friendly, they can do that?

21 **A** Yes, sir.

22 **Q** Nothing against the law about that?

23 **A** No, sir.

24 **Q** Okay. And so -- and people do load their own
25 weapons and they load their own bullets?

1 A Reloading ammo, yes, sir.

2 Q Can you tell me whether or not those shells
3 were reloads?

4 A I can't tell you, no, sir.

5 Q Can you tell me when those shells were loaded?

6 A When? No, sir, I can't tell you.

7 Q Can you tell me the kind of powder that's in
8 that bullet?

9 A Not without taking one of them apart.

10 Q All right. And you've not conducted any
11 experiments on it by taking them apart and looking
12 at them and see what they're consisted of?

13 A No, sir.

14 Q And really, in order to decide how it's done,
15 you probably have to take one apart to do it?

16 A Probably all the way to figure it out.

17 Q Okay. And so you don't know whether it was
18 built from the core, the cylinder itself, up with a
19 primer, powder, and then, I guess, the bullet
20 apparatus?

21 A You mean as in reloaded with the bullet put in?
22 No, sir, I can't tell you.

23 Q Okay. So it might have been done that way?

24 A It could have been.

25 Q So if there's any kind of thing like drilling

1 going on or anything like that, it wouldn't cause it
2 to blow up?

3 A Yes, sir. It could be.

4 Q Now, this uniform situation, I understand -- so
5 McCormick County had a problem with the money, like
6 all of us, I guess?

7 A Yes, sir.

8 Q All right. And so one of the reasons that
9 y'all are having, I guess, a lesser uniform is
10 because of money?

11 A Well, that would be one reason, but it's not a
12 lesser. This is a more -- more of a
13 utilitarian-type uniform for us for rural law
14 enforcement.

15 Q Yesterday, I noticed you had something nice
16 across the back of your shirt, Sheriff?

17 A Yes, sir. I have some with sheriff on it.

18 Q Okay. And is that a standard issue or do you
19 want to do that yourself?

20 A That's not a standard issue. That was when I
21 worked on the narcotics task force. We had sheriff
22 or police on the back of our shirts.

23 Q And why do you have police and sheriff on the
24 back of your shirts?

25 A Just makes you easier to identify.

1 Q Okay. And what about arm patches? Do we have
2 any arm patches?

3 A No, sir, not on polo shirts.

4 Q Okay. And on the night in question, he didn't
5 have -- Bobby didn't have a sheriff's badge like
6 that up on the shirt, did he?

7 A Not that I know of, because he had not received
8 his uniforms at that time.

9 Q And that's what I wanted to ask you about. Why
10 would we put somebody out in the field that didn't
11 have the proper uniform?

12 A That's -- we have to order uniforms because
13 they are custom ordered to fit. So that's not
14 unusual at all.

15 Q But if we had two weeks of training that you
16 had to go through to try to get him back up to
17 snuff, why couldn't we have waited another week or
18 two until we got the uniform before we put him out
19 there in the public?

20 A That's not unusual at all. It's no different
21 than a detective walking around with a badge on his
22 belt.

23 Q Well, a detective may be different. I mean,
24 you have a badge up here; right?

25 A Sometimes, yes, sir, I do wear one.

1 Q And do you know what officers were driving the
2 ones that were black?

3 A It would have been Corporal Crowder and
4 Corporal Romines. I believe they had those cars at
5 that time.

6 Q Corporal Crowder, he was -- his name is Manuel
7 Crowder; is that correct?

8 A Yes, sir.

9 Q And on the night in question, he was the
10 supervisor on shift, wasn't he?

11 A I don't believe he was working that night.

12 Q He had gotten off earlier?

13 A I could not tell you. I just don't believe --
14 I don't think he was working that night.

15 Q Who was in charge?

16 A Whoever was working. We don't -- we don't
17 necessarily have to have a supervisor on duty.

18 Q All right. If you come to a scene, who is in
19 charge? If you come to a scene, if you've got three
20 officers, you've got to have some kind of chain of
21 command, don't you?

22 A Chain of command in a small department is
23 sometimes nonexistent, but typically, the first
24 person on the scene will take charge.

25 Q They'll take control of it?

1 **A** Yes, sir, typically.

2 **Q** All right. Now, when I asked you by letter and
3 whatnot as to whether or not -- or what Mr. Rushton
4 was wearing that night, did you not tell me that he
5 was not wearing a mic?

6 **A** By a letter, I don't know. I remember you
7 can -- I can't remember. I believe I told you that
8 he was wearing a green shirt and a tan pair of
9 pants, by what he related to me. I didn't see him.

10 **Q** Okay. Just glance through that real quick.

11 **A** Okay.

12 **Q** Does that refresh your memory --

13 **A** Yes, sir.

14 **Q** -- that Bobby was not wearing --

15 **MR. MYERS:** Can we see it, please?

16 **MR. GARRETT:** I don't intend to offer it, Your
17 Honor. I'm just asking him about it.

18 **MR. MYERS:** Well, he's talking about what's in
19 there. I want to see it.

20 (Pause.)

21 **MR. MYERS:** I didn't hear which part of this he
22 was asking about.

23 **THE COURT:** He was describing -- go ahead and
24 show him which one.

25 **MR. GARRETT:** All right, sir.

1 (Pause.)

2 **MR. MYERS:** I thought he mentioned 17. I'm
3 sorry.

4 **THE COURT:** Okay. Go ahead.

5 BY MR. GARRETT:

6 **Q** And now that you've refreshed your
7 recollection, looking at the letter that you sent
8 me, you said that he did not have a microphone on
9 that night?

10 **A** He did not have one. I don't believe he had
11 one available.

12 **Q** Okay. Is it also true that you have no written
13 uniform policies and procedures for police
14 operations in the County of McCormick Sheriff's
15 Department?

16 **A** We have policies and procedures, but they are
17 very vague and not really specific as far as
18 response or anything like that.

19 **Q** So are they in writing somewhere?

20 **A** Yes, sir.

21 **Q** Now, I asked for the -- let me let you read it,
22 down about policies and procedures.

23 **A** Okay.

24 **Q** So do you have any policies and procedures that
25 are in writing?

1 **A** Yes, sir, we do, but we don't have any which
2 details how an officer should respond to a call when
3 gunshots have allegedly been fired, which is what
4 you have asked.

5 **Q** Okay.

6 **A** And we also don't have one which mandates or
7 describes a required dress code or uniform for the
8 sheriff's department.

9 **Q** Okay. Thank you for clearing that up.

10 You got to look at this house. This door --
11 this back door here, the back door of the house, did
12 it have a peephole or anywhere where anybody could
13 look out of that door; do you recall?

14 **A** I can't recall. I went out there that one
15 time, and I didn't really look at it that closely.

16 **Q** When y'all were taking pictures, did you take
17 any pictures from Mr. Worley's vantage point? I saw
18 where you took one from Mr. Rushton's vantage point,
19 but did you take one back to Mr. Worley's?

20 **A** I can't recall. I didn't take pictures.

21 **Q** Okay. That was you standing there, though?

22 **A** Yes, sir.

23 **Q** Okay. Somebody else was taking the pictures?

24 **A** Yes, sir.

25 **Q** And you were standing where Mr. Rushton was

1 alleged to have stand, and I think --

2 **A** Chief Gable, yes, sir.

3 **Q** -- Chief Gable was up on the thing. All right.

4 And do you recall whether or not there were any
5 windows on this side of the house {indicating}, the
6 left side of the house?

7 **A** I don't remember, sir.

8 **Q** Or whether or not there were any windows on the
9 right-hand side of the house?

10 **A** Is the right-hand side where the vehicle's
11 park?

12 **Q** Yes.

13 **A** I don't think there were any on that side, but
14 I can't recall. I don't recall seeing any.

15 **Q** Okay. The only area of windows is in the back;
16 is that correct?

17 **A** I believe. And then over on this end where the
18 deck and stuff --

19 **Q** Front -- going front out?

20 **A** Yes, sir. And I believe there were two on the
21 back of the house.

22 **Q** All right. But if the car was parked over
23 here, then you really couldn't see it from the front
24 or from the back?

25 **A** I wouldn't think so.

1 Q All right. There was an electrician that went
2 out there and was out there, actually, with y'all
3 when y'all were out there doing those measurements;
4 do you recall that?

5 A Yes, sir.

6 Q Did you actually go into the up-upstairs at
7 all?

8 A Yes, sir.

9 Q Did you see the light panel on the inside of
10 the house?

11 A Yes, sir.

12 Q Could you get up and describe to the jury where
13 you recall seeing that?

14 A Where I -- the switches?

15 Q The switch to the lights.

16 A I believe there was a sliding door up on the
17 upper deck, and I believe it was over to this side
18 of it, if I remember correctly, but I wasn't really
19 out there doing the electrical.

20 Q I understand. But you did observe him doing
21 that -- doing that study?

22 A Yes, sir.

23 Q And your recollection was there was a light
24 switch over --

25 A I believe it was where -- where is the door on

1 here? This is the door? I believe it was over this
2 way. I can't recall. I really can't, because I was
3 not really paying that much attention to that.

4 Q That's fine. But it was on the inside, wasn't
5 it?

6 A On the inside of the room upstairs?

7 Q Yes, sir.

8 A Yes, sir.

9 Q Inside?

10 A Yes, sir.

11 Q In order to turn it on, you'd have to go inside
12 the room to turn it on?

13 A Yes, sir. I believe that was correct.

14 MR. GARRETT: All right. Beg the Court's
15 indulgence.

16 (Pause.)

17 Q Isn't it true that Melissa McAllister was
18 helping to gather evidence in this case?

19 A I believe so. I wasn't out there.

20 Q Is it unusual for persons who are involved in
21 it to collect the evidence?

22 A Not in a small department. We don't have a
23 team to go do anything.

24 Q I thought when a -- in an officer shooting, you
25 always invited SLED, the South Carolina Law

1 Enforcement agencies to come in and do the
2 investigation?

3 A That's the sheriff's call.

4 Q So when a citizen's shot, do they require you
5 to have SLED come in?

6 A No, sir. That's the sheriff's call.

7 Q All right. So the sheriff has to make that
8 decision whether or not to invite SLED --

9 A Yes, sir.

10 Q -- or somebody else in?

11 A Yes, sir.

12 MR. GARRETT: Thank you. I have nothing
13 further.

14 THE COURT: Redirect?

15 MR. MAYE: Please the Court.

16 REDIRECT EXAMINATION

17 BY MR. MAYE:

18 Q Stand up for me there, Officer Collier, if you
19 would. Put your hand over and cover this up right
20 here.

21 A (Witness complies.)

22 Q Other than the color of your shirts and
23 uniform, that's exactly what Bobby Rushton had on
24 that night; right?

25 A Yes, sir, with a duty belt.

1 **Q** Only difference in between the clothing that he
2 was wearing and what you have on there right now is
3 you covering up that badge?

4 **A** Yes, sir.

5 **Q** Okay. You can sit back down.

6 So when you're talking about his uniform's
7 coming in, the only difference would have been,
8 other than this patch, was who paid for it. Bobby
9 had 5.11 Tactical gear that he paid for; right?

10 **A** It would have just been color and the badge.

11 **Q** Okay. No other difference whatsoever?

12 **A** No, sir.

13 **Q** Would you be comfortable going out -- stand up
14 again. Cover that up. Would you be comfortable
15 going out and patrolling dressed like that, absent
16 that?

17 **A** I've done it many times when I've worked
18 narcotics. Many times.

19 **MR. MAYE:** Okay. All right. Thanks. Nothing
20 else.

21 RECROSS-EXAMINATION

22 BY MR. GARRETT:

23 **Q** This was not a narcotics case, was it?

24 **A** No, sir.

25 **Q** All right. And, obviously, in narcotics, you

1 work undercover often times where you certainly
2 don't want somebody to see you to know you're a
3 police officer and get killed out there?

4 **A** That's a lot of times, yes, sir.

5 **Q** Okay. And as it relates to that -- if that
6 badge would have been displayed, it might have been
7 easier to see than not; right?

8 **A** I don't know. I wasn't out there. I don't
9 know what the lighting or anything was. I can't
10 really tell you.

11 **Q** All right. Suppose it's dark.

12 **A** If it was dark, it wouldn't have made any
13 difference whether there was a badge or not.

14 **Q** Until the what? Light come on?

15 **A** Until the light came on.

16 **MR. GARRETT:** Thank you.

17 **THE COURT:** All right. Thank you, sir. You
18 may step down.

19 **MR. MAYE:** The State calls Kenneth Whitler.

20 KENNETH H. WHITLER,

21 having been duly sworn, testified as follows:

22 **COURT REPORTER:** Can you state your name and
23 spell your last name, please?

24 **THE WITNESS:** My name is Kenneth H. Whitler.
25 Last name is spelled W-h-i-t-l-e-r.

1 DIRECT EXAMINATION

2 BY MR. MAYE:

3 Q Agent Whitler, where are you currently
4 employed?

5 A I'm employed by the South Carolina Law
6 Enforcement Division. It's also known as SLED. And
7 I work in the Forensic Services Department, in the
8 firearms department.

9 Q What's your background in law enforcement,
10 Agent Whitler?

11 A Background, I started in 1968 as a deputy up in
12 Chester County. Subsequently went to work for the
13 Attorney General -- State Attorney General's Office
14 in the '70s. And then, in 1976, I joined the FBI,
15 retired from there in 1997.

16 When I retired from the FBI, I was assigned to
17 the FBI laboratory in their firearms department or
18 unit. And I also -- when I retired, I was hired by
19 SLED to do basically the same job, firearms, in
20 their lab. I've been there since 1997.

21 Q And you have, based on your very longstanding
22 experience, a wealth of professional and advanced
23 training in the area of firearms identification;
24 correct?

25 A In firearms identification, there's no school

1 that you go to to get a degree in firearms
2 identification. You have to learn it from other
3 qualified examiners.

4 When I was in the FBI laboratory, their
5 training program was about a two to
6 two-and-a-half-year program where you work with all
7 the trained qualified examiners in the unit on real
8 cases, plus they give you fake cases to work on,
9 plus you have to do a lot of research on your own.

10 During that time period, you shoot a lot of
11 firearms, you look at a lot of fired bullets and
12 cartridge cases and do a lot of comparisons. At the
13 end of the training period when all the examiners
14 think you've reached a level of qualifi -- of
15 expertise needed to do the job, you're given a
16 series of three tests, and if you successfully
17 complete those three tests, then you're -- are
18 allowed to conduct examinations for the FBI.

19 I successfully completed the program, and in
20 1991, I was qualified to conduct examinations for
21 the FBI laboratory. Like I said, in 1997, I retired
22 on Friday, and on Monday, I started work for SLED.
23 I had a two-day retirement.

24 Q And so you're basically employed with the South
25 Carolina Law Enforcement Division as an expert in

1 that same area, in firearms identification?

2 **A** That's correct.

3 **Q** Your SLED's ex -- one of SLED's experts in that
4 regard?

5 **A** That's correct.

6 **MR. MAYE:** At this point in time, Your Honor --
7 subject, of course, to any cross-examination -- I'm
8 going to offer him as an expert witness in firearms
9 identification.

10 **MR. GARRETT:** Without objection.

11 **THE COURT:** Without objection.

12 Ladies and gentlemen, I'll remind you what I --
13 further of my prior instructions on experts.

14 With that in mind, go ahead, please, Mr. Maye.

15 BY MR. MAYE:

16 **Q** Agent Whitler, I'm going to do this as directly
17 as I can. I'm going to first show you a Remington
18 742 rifle right there, Serial Number 7070652. I'll
19 ask you, in your capacity as an expert witness, did
20 you examine that weapon, test-fire it, and find it
21 to be in working order?

22 **A** Yes, sir, I did.

23 **Q** Now, Agent Whitler -- and I apologize, these
24 were disassembled.

25 Agent Whitler, I'm going to show you State's

1 Exhibit Number 3 that is already in evidence, one
2 magazine and four unfired 30-06 Springfield caliber
3 cartridges. And I'm going to ask you, did you have
4 an opportunity to examine that magazine and
5 determine whether or not it was the correct magazine
6 for that 742 rifle that you just identified?

7 **A** Yes, sir. I examined the magazine and each of
8 the four cartridges that were submitted with it.

9 **Q** Agent Whitler, let me next ask you -- I'm going
10 to hand you two items: Two fired 30-06 caliber
11 cartridge cases that are in evidence as State's
12 Exhibit Number 26 and State's Exhibit Number 11,
13 collectively. They're two bags, but they're both
14 marked and stapled together as State's 11 and 26.

15 I'm going to hand you those two separate
16 State's Exhibits and ask you, if you determined that
17 those unfired cartridge casings had been fired by
18 the same Remington 742 rifle, serial number 7070652?

19 **A** Yes, sir. I examined these four cartridge
20 cases and microscopically compared them to
21 test-fired cartridge cases fired by this rifle
22 {indicating} and determined that these cartridge
23 cases were fired by this rifle.

24 **Q** How were you able to do that? Do you do that
25 by tool marks or what do you do?

1 **A** When the gun fires, the breech face, which is
2 the area of which the cartridge case is supported by
3 the bolt, when it comes forward and locks into the
4 chamber, the firing pin comes through the bolt, hits
5 the primer, and the cartridge goes off.

6 When that happens, the bullet is pushed down
7 the barrel by the pressure from the gunpowder
8 burning. It also pushes the -- against the
9 cartridge case face, or head, which is the backside
10 of the cartridge case. And this material is softer
11 than the steel in the rifle, and so any machining or
12 manufacturing marks put on the breech face, which is
13 what we call that area, are transferred to the
14 softer material of the cartridge case in many cases.

15 In this instance, we had enough marks
16 transferred that we're able to say that the marks
17 produced by the test-fired cartridge cases matched
18 those on the submitted cartridge cases.

19 And the reason we test-fire them is so that --
20 I test-fire this rifle. I shoot it. I collect the
21 cartridge cases. There's absolutely no doubt where
22 the cartridge cases came from. I can say without a
23 doubt I know that the test-fired cartridge cases
24 came from this gun because I put them in them, shot
25 them, and collected them. So that gives us a known

1 standard.

2 And then you compare the marks on those
3 cartridge cases to the submitted cartridge cases, or
4 the questioned one, and if you're able to find
5 sufficient agreement, you're able to say they were
6 fired by the gun. If you don't have enough
7 agreement, then you have to go with another
8 conclusion.

9 Q I'm going to show you what's been marked as
10 State's 23, which are fired bullet fragments -- one
11 metal fragment, four small lead fragments that are
12 in evidence as State's 23, and ask you, did you
13 examine those and were you able to reach any
14 conclusion in regard to whether or not they had any
15 relation to the 742 rifle that you previously
16 examined in this case?

17 A I examined these, but they were so damaged and
18 they were so small, they didn't have sufficient
19 marks to allow me to conduct an examination or a
20 comparison of the test bullets with these -- with
21 these fragments. There just weren't enough marks
22 available.

23 Q Okay. Agent Whitler, basically, just to sum up
24 in this case, in regards to the Remington 742 rifle
25 there, to a reasonable degree of scientific

1 certainty, your expert opinion is you examined that
2 weapon and it's capable of being fired; correct?

3 **A** Yes, sir, I know it can be fired.

4 **Q** Okay. As to the box magazine in this case,
5 same thing: Your expert opinion is that magazine's
6 capable of being inserted in that weapon and it's an
7 appropriate magazine for that type of weapon?

8 **A** Yes, sir. That's the magazine I used for
9 test-firing.

10 **Q** And is it not also, to a reasonable degree of
11 scientific certainty, your expert opinion that all
12 of those shell casings, all four of them, were fired
13 by that exact Remington 742 rifle?

14 **A** That's correct.

15 **Q** Okay. Did you generate a written report to
16 support and document those findings?

17 **A** Yes, sir.

18 **Q** Could I see a copy of that written report?

19 **A** (Witness complies.)

20 (Pause.)

21 **MR. MAYE:** Your Honor, I'm going to move,
22 without objection from the defense, to admit the
23 report generated by Agent Whitler into evidence as a
24 State's Exhibit in this case.

25 **THE COURT:** Admitted without objection, 29.

1 (State's Exhibit Number 29, SLED report,
2 marked and admitted into evidence.)

3 **MR. MAYE:** Agent Whitler, thank you so much.
4 Answer any questions that the defense has for you.

5 **MR. GARRETT:** Thank you.

6 CROSS-EXAMINATION

7 BY MR. GARRETT:

8 **Q** When you had those cartridges that had not been
9 fired of the .30-06 in your possession, did you take
10 any steps to take them apart to look at them?

11 **A** No, sir, I didn't.

12 **Q** Okay. And so you're not able then to
13 accurately say that the bullets that were fired by
14 those, the ones that are empty, contain the same
15 type of material in the ones that remain?

16 **A** No, we didn't do it. That would be another
17 department. That would be an elemental analysis.
18 And you could have the situation where the cartridge
19 that was fired used a different bullet than the ones
20 that remained. In many cases, the magazines are
21 loaded with different cartridges.

22 **Q** So that's not unusual?

23 **A** That's not unusual.

24 **Q** Okay. And were you asked, by chance, to
25 examine any of these 40 caliber bullets?

1 **A** No, sir.

2 **Q** Were you asked to do any kind of investigation
3 on that pistol right there?

4 **A** No, sir.

5 **Q** Okay. And if you haven't done an investigation
6 on it, you really don't know whether that pistol got
7 fired that night?

8 **A** No, sir, there would really be no way to tell.

9 **Q** But you could, if you wanted to do the
10 analysis?

11 **A** No, sir. You can't tell how long it's been
12 since a pistol was fired.

13 **Q** I got you. So time--

14 **A** The timeframe would be -- I know everyone sees
15 on television the hero smells the gun and says it
16 was fired in the last three and a half hours, but
17 you can have a gun sit a week and still have a smell
18 to it.

19 **MR. GARRETT:** All right. Thank you. That's
20 all I have.

21 **THE COURT:** Redirect?

22 **MR. MAYE:** Nothing else. Thank you.

23 **THE COURT:** May this witness be excused?

24 **MR. GARRETT:** Yes.

25 **THE COURT:** Thank you, sir. You may be

1 excused.

2 Are you getting your next witness?

3 **MR. MYERS:** Yes, sir, Sheriff George Reid.

4 GEORGE H. REID,

5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MYERS:

8 **Q** Sheriff, would you state your name and spell
9 your last name, please, sir?

10 **A** My name is George H. Reid, R-e-i-d.

11 **Q** And you're the Sheriff of McCormick County?

12 **A** That's correct.

13 **Q** Approximately, how long have you been the
14 sheriff?

15 **A** I think it's going on my 27th year as the
16 sheriff.

17 **Q** Now, in 2009, on November the 15th, 2009, you
18 were the sheriff then; is that correct?

19 **A** That's correct.

20 **Q** And Melissa McAllister, she was one of your
21 deputies?

22 **A** That is correct, yes.

23 **Q** She's a certified law enforcement with the
24 McCormick County Sheriff's Department?

25 **A** That's correct.

1 Q Getting paid by the County?

2 A That's correct.

3 Q Nick Moore, is he a certified law enforcement
4 officer with the McCormick County Sheriff's
5 Department?

6 A That's correct.

7 Q Getting paid by the sheriff and the County?

8 A That's correct.

9 Q Bobby Rushton, certified law enforcement
10 officer in McCormick County Sheriff's Department,
11 getting paid by the County on November 15th, 2009?

12 A That's correct.

13 Q All working for you?

14 A That's correct, yes.

15 Q Now, did you have an occasion to respond out to
16 the shooting site on the early morning of November
17 the 15th?

18 A Yes, sir.

19 Q And who all accompanied you out there, Sheriff?

20 A Nick Moore, Melissa, and the EMS. They was
21 there, too. I know my guys were there, were
22 working.

23 Q And somebody with the City, too?

24 A Yes, sir.

25 Q Jessie Wideman?

1 **A** Yes, sir. I remember seeing Jessie.

2 **Q** Now, did you have an occasion, when you got out
3 there, to see Bobby's car there at the house?

4 **A** When I first arrived there and I stopped on
5 Holiday Road where the ambulance was working on
6 Bobby, and I guess they had to hurry up and go, and
7 so they left.

8 **Q** When you got out to the Worley house right
9 there where the shooting occurred, did you see
10 Bobby's car still out there?

11 **A** That's correct.

12 **Q** And what did you see inside on the passenger
13 side?

14 **A** A pistol Glock -- a Glock 40.

15 **Q** That was Bobby's pistol?

16 **A** That's correct.

17 **Q** And later on that morning, a lady let y'all go
18 inside the house. Mrs. Worley gave y'all consent to
19 go inside the house; is that right?

20 **A** Yes, sir, that's correct.

21 **Q** Now, Sheriff, I want to direct you now. If you
22 look at this diagram right here, can you see it from
23 where you are?

24 **A** (Witness leaves the witness stand.)

25 This?

1 **Q** Yes, sir.

2 Upstairs on that porch right up there -- and

3 **I**'m going to show you State's Exhibit Number 5; this
4 picture right here. Upstairs on the porch, some
5 chairs were up there right by that window?

6 **A** Yes, sir.

7 **Q** Show the jury where those chairs were upstairs
8 by that window.

9 **A** (Witness complies.)

10 **Q** Now, I'm going to show you three photographs
11 here.

12 **A** (Witness resumes the witness stand.)

13 **Q** What does that photograph depict there?

14 **A** The photograph shows where the empty case for
15 the -- from the bullet, the empty round.

16 **Q** And how close were they around those chairs?

17 **A** Sort of -- they were sort of real close around
18 the chairs.

19 **Q** Now, I'm going to hand you these two
20 photographs and ask you what those two are.

21 **A** This one, the empty shell was laying on the
22 floor of the deck.

23 **Q** And what's the other one?

24 **A** This one also, an empty shell was found on the
25 deck floor.

1 (Pause.)

2 **MR. GARRETT:** Without objection.

3 **THE COURT:** 30, 31, 32..

4 (State's Exhibit Numbers 30 through 32,
5 photographs, marked and admitted into evidence.)

6 BY MR. MYERS:

7 **Q** 32, Sheriff, are those the chairs we were
8 talking about?

9 **A** That's correct.

10 **Q** And you said those chairs were right up here by
11 this large window on the left of the sliding glass
12 door?

13 **A** Yes. {Indicating.}

14 **Q** And then you found 30 and 31, two shells up
15 there had been fired?

16 **A** That's correct.

17 **Q** And these shells were -- where were they in
18 relation to these chairs?

19 **A** They were sort of right in front of the chairs
20 on the floor of the deck.

21 **Q** All right, sir. And I'm referring now to
22 State's Exhibit 26. It says here that these shells
23 were recovered by Sheriff Reid on the top deck. Are
24 those the two shells in those photographs?

25 **A** Yes, sir.

1 **Q** Now, Sheriff, I want to ask you: When you
2 arrived out here, did y'all pull down -- on this
3 diagram up here, this Number 4 -- did y'all pull
4 down in the driveway, or where did y'all stay when
5 y'all got out here, when y'all first pulled up?

6 **A** When we first pulled up, we pulled up on the
7 side of the road. I think that's Presidents Road.

8 **Q** Out on the highway out there?

9 **A** Yes, sir.

10 **Q** And then how did y'all approach coming down
11 through the residence?

12 **A** We park and walked down.

13 **Q** Okay. Now, as you walked down that driveway,
14 did you encounter anyone?

15 **A** Yes, sir. I saw two person have lights,
16 flashlights.

17 **Q** It's still dark?

18 **A** Yes, that's correct.

19 **Q** Okay. And those two persons, where did you
20 encounter them? Is it shown on this diagram? This
21 is that metal building back here and the driveway
22 goes on off.

23 **A** (Witness leaves the witness stand.)

24 This is supposed to be the drive --

25 **Q** Yes, sir.

1 **A** The driveway.

2 **Q** Yes, sir.

3 **A** It's like coming down -- I'm getting confused
4 now.

5 **Q** You remember that metal building that was out
6 there?

7 **A** Yes, sir.

8 **Q** Right there. And here's the driveway, and then
9 the woods start up above off this.

10 **A** Okay. It's -- we got approached right down in
11 here, coming down.

12 **Q** Now, those two people, did you know who they
13 were?

14 **A** No, sir, didn't know -- didn't know who they
15 were.

16 **Q** Okay. And as you approached them, you said
17 they had flashlights?

18 **A** That's correct.

19 (Witness resumes the witness stand.)

20 **Q** What, if anything, did you say to them or what,
21 if anything, did they say to you?

22 **A** I said, Do not shine the flashlight in my face.

23 **Q** Did anybody respond?

24 **A** No, sir. Then I quickly asked, Who is you?

25 Then it was respond back and said, Who is you? Then

1 I identified myself as Sheriff Reid. So, by that
2 time, we were walking towards each other at the
3 time.

4 Q And there was two people that you were coming
5 in contact with?

6 A That's correct.

7 Q What happened when y'all got up face-to-face?

8 A When we got face-to-face, the defendant told me
9 that, I put your deputy gun in his car.

10 Q I put your deputy's gun in his car?

11 A That's correct.

12 Q And what was said next?

13 A Then I said, Well, some shooting going on down
14 here. Then he responded back, I did it.

15 Q I did it?

16 A I did it.

17 Q And what did you say?

18 A Then I said, Did you know you shot my deputy?
19 Then he said, He didn't have no business ringing my
20 damn doorbell.

21 Q Said what now?

22 A He didn't have no business ringing my damn
23 doorbell.

24 Q And what did y'all do then?

25 A Then I placed him under arrest.

1 Q And the person y'all arrested was who?

2 A Was the defendant over there {indicating}.

3 Q Mr. Worley?

4 A That's correct.

5 Q When he said that the deputy didn't have any
6 damn business ringing his doorbell, or words to that
7 effect, he said deputy? The deputy didn't have any
8 reason for ringing my doorbell?

9 A Well, he said, He didn't have -- He didn't have
10 no business ringing my damn doorbell.

11 Q Did he ever say anything like he shot him by
12 mistake or he didn't know who he was or anything
13 like that?

14 A No, sir, he didn't tell me that.

15 Q And then y'all took him on to jail?

16 A One of the city officers carried and
17 transported him on to the detention center.

18 MR. MYERS: Thank you, Sheriff. Answer any
19 questions they have.

20 THE COURT: Cross-examination?

21 MR. GARRETT: Beg the Court's indulgence.

22 (Pause.)

23 CROSS-EXAMINATION

24 BY MR. GARRETT:

25 Q Sheriff, when you came down there that evening,

1 were you in a uniform?

2 **A** Early that morning?

3 **Q** Yes, sir. Early in the morning, yes, sir, at
4 four or five o'clock?

5 **A** No, sir, I wasn't in no uniform.

6 **Q** Okay. And were you in a police car?

7 **A** Yes, sir.

8 **Q** Were you in a marked or an unmarked police car?

9 **A** Unmarked police car.

10 **Q** Did anybody have any blue lights on at the top
11 of the hill up there?

12 **A** I'm not a hundred percent sure.

13 **Q** Okay. And Ms. Worley was standing there with
14 Joe during this time, wasn't she?

15 **A** That's correct. They walked up.

16 **Q** And when they walked up, both of them had
17 flashlights and they walked up to speak to you?

18 **A** Yes, sir.

19 **Q** Okay. And you didn't feel like you needed to
20 take any kind of -- take a shotgun or take any kind
21 of protective steps as y'all were walking to them,
22 did you?

23 **A** No, sir. I didn't know who I was walking
24 toward.

25 **Q** They were unarmed, is what I'm --

1 **A** Yes, they were.

2 **Q** And it's pretty clear to you that they were?

3 **A** Yes, sir.

4 **Q** And it was pretty clear to you they were
5 listening to you and were coming to you?

6 **A** I'm assuming that they was listening to me
7 because I did said, Do not shine the flashlight to
8 my face.

9 **Q** I got you.

10 Now, how long have you known Joe Worley?

11 **A** I think probably about the first, maybe the
12 second time I ever seen him.

13 **Q** Okay. And under what circumstances had you
14 seen him?

15 **A** Well, the -- I can't remember the first time,
16 but -- well, I can say the first time, that was out
17 there.

18 **Q** That was out there. So the first time you ever
19 saw Joe Worley -- what about his mama, Ms. Mary?

20 **A** I think that's the first time I met her, too.

21 **Q** All right. Now, Sheriff, you are a smart man
22 and you know all the people in McCormick County and
23 they love you; ain't no question about it?

24 **A** I don't know all the peoples in McCormick
25 County, but.

1 Q Well, what I'm getting at is this, Sheriff:

2 You know the bad element in your county?

3 A I would say, yes, sir.

4 Q Okay. And you had never had a call out to the
5 Worley residence or to the Sheffields' residence
6 prior to this, had you?

7 A No, sir. I don't remember answering no call
8 out there.

9 Q Okay. So -- and that's a pretty nice place out
10 there in Little River?

11 A Fairly nice place.

12 Q And real nice people, but some of them live
13 there year-round and some of them don't live there
14 year-round?

15 A That's correct.

16 Q And during the investigation of this case, did
17 you discover that at one time or maybe twice in the
18 past, maybe even three times, that the trailer that
19 was down there had gotten broken into? Did you do
20 any investigation on that to see whether or not
21 there had been any history of break-ins down there
22 at the --

23 A The trailer of who?

24 Q Where the Worleys -- where the Worleys'
25 property was, there used to be a trailer there. It

1 was a small trailer before Mr. Worley built the --
2 built a little building down there.

3 **A** I can't remember.

4 **Q** Okay. And did you go in and look at your
5 details to see whether or not you had any record of
6 this place ever being burglarized or anything like
7 that?

8 **A** No, sir, I didn't.

9 **Q** Oh. Do y'all ever have any burglars in
10 McCormick County?

11 **A** Yes, sir.

12 **Q** Okay. Do you ever have any home invasions in
13 McCormick County?

14 **A** Probably so.

15 **Q** Okay. Any gang activity going on in McCormick
16 County?

17 **A** They said gang activity.

18 **Q** Okay. Any bad drug people buying and selling
19 drugs here in this community?

20 **A** Yes, sir.

21 **Q** You got a big job, don't you?

22 **A** Yes, sir.

23 **MR. GARRETT:** Sheriff, thank you. I appreciate
24 the job you're doing.

25 **THE COURT:** Redirect?

1 **MR. MYERS:** No redirect, Your Honor. And with
2 that witness, the case -- the State would rest its
3 case in chief.

4 **THE COURT:** Very good.

5 Ladies and gentlemen of the jury -- Sheriff,
6 you may step down. Thank you, sir.

7 The State indicates that it has rested. In
8 other words, they have completed their case in
9 chief. Therefore, I'm going to go ahead and call a
10 lunch break at this juncture and ask that you be
11 back in your jury room at 2:15, and then we'll
12 resume the trial at that point.

13 Remember, do not speak with anyone or let
14 anybody speak with you about this case during the
15 break, please. Thank you.

16 (The jury was excused for lunch.)

17 **THE COURT:** Mr. Garrett, do you have any
18 motions?

19 **MR. GARRETT:** Yes, we do, Your Honor. Could we
20 have just a few moments to prepare them?

21 **THE COURT:** Sure.

22 **MR. HENDERSON:** Or would it be a good time to
23 break for lunch and let us work through --

24 **THE COURT:** Let's go ahead and do it. I want
25 to move this case along.

1 I tell you what we can do, while y'all are
2 working with that, do you have a problem with me
3 giving your client his Fifth Amendment rights while
4 you're doing that?

5 **MR. GARRETT:** I don't have any problem with
6 that, Your Honor.

7 **THE COURT:** Are you sure?

8 **MR. GARRETT:** Yes, sir.

9 **THE COURT:** I'll be glad not to, if you prefer
10 me not to.

11 **MR. GARRETT:** No, that's fine.

12 **THE COURT:** Would you please stand, Mr. Worley?

13 JOE ROSS WORLEY,

14 having been duly sworn, testified as follows:

15 **THE COURT:** If you don't understand anything I
16 say, please let me know. Okay, sir? I'm going to
17 ask that you give me verbal responses and that you
18 speak loud enough so I can hear you and this lady
19 over here to my left can hear you. Okay?

20 **DEFENDANT:** Yes, sir.

21 **THE COURT:** First, we're at that point in the
22 trial where you have a right to present a defense, a
23 constitutional right. You also have the right to
24 claim the protections that are afforded by you by
25 the Fifth Amendment to the United States

1 Constitution in which the relevant part provides as
2 follows: It says that no person shall be compelled
3 in any criminal case to be a witness against
4 himself. And first, Mr. Worley, have these rights
5 been explained to you prior to today?

6 **DEFENDANT:** No.

7 **THE COURT:** Sir?

8 **DEFENDANT:** No.

9 **THE COURT:** Nobody's explained to you your
10 Fifth Amendment rights against self-incrimination?

11 **DEFENDANT:** No.

12 **THE COURT:** Okay. Now, do you understand that
13 you have the right under our Constitution against
14 incriminating yourself in court today? Do you
15 understand that?

16 **DEFENDANT:** Yes, sir.

17 **THE COURT:** Okay, sir. What that means is,
18 just to make sure that you do understand it, is that
19 you cannot be required by me, your attorneys, or by
20 the State to testify in this case. Do you
21 understand that?

22 **DEFENDANT:** Yes, sir.

23 **THE COURT:** Now, if you decide to, you have a
24 right, a constitutional right to testify; however,
25 nobody can make you do that. And so this is a

1 personal right that you and only you can accept --
2 or, I mean, choose to make or not choose to make.
3 Do you understand that?

4 **DEFENDANT:** Yes, sir.

5 **THE COURT:** Now, if you decide that you are
6 going to testify, you'll be subject to the same
7 rules that govern other witnesses, you'll be subject
8 to direct examination and cross-examination. Do you
9 understand that?

10 **DEFENDANT:** Yes, sir.

11 **THE COURT:** Do you understand that if you have
12 any convictions that involve dishonesty or a false
13 statement or for crimes that are punishable by more
14 than a year in prison, and if I find that the
15 probative value of those prior charges or
16 convictions or pleas outweigh the prejudice to you,
17 then the State will have the opportunity to
18 cross-examine you on those prior convictions or
19 guilty pleas. Do you understand that?

20 **DEFENDANT:** Yes, sir.

21 **THE COURT:** And the obvious reason would be to
22 impeach or attack your credibility in this case. Do
23 you understand that?

24 **DEFENDANT:** Yes, sir.

25 **THE COURT:** Now, if you decide to testify in

1 this case, that decision is yours and yours alone to
2 make, and it must be made by you freely,
3 voluntarily, and intelligently knowing your rights
4 under the Fifth Amendment and knowing the
5 consequences of your decision if you decide to
6 testify. Do you understand that?

7 **DEFENDANT:** Yes, sir.

8 **THE COURT:** Now, if you decide in this case
9 that you will not testify, I'll tell you now that I
10 will instruct the jury when I charge them on the law
11 at the end of this case, that they cannot and they
12 shall not consider your failure to testify
13 whatsoever, because that is your right under the
14 Fifth Amendment to the Constitution, and the burden
15 of proof is on the State of South Carolina to prove
16 your guilt by proving each and every element of the
17 charges against you by proof beyond a reasonable
18 doubt. Do you understand that?

19 **DEFENDANT:** Yes, sir.

20 **THE COURT:** Now, have you understood everything
21 that I've explained to you up to this point?

22 **DEFENDANT:** Yes, sir.

23 **THE COURT:** Do you have any questions of me?

24 **DEFENDANT:** No, sir.

25 **THE COURT:** Do you have any questions of your

1 attorneys?

2 **DEFENDANT:** No.

3 **THE COURT:** Now, at this stage, I'm going to
4 let you speak with anyone who you would reasonably
5 want to speak to, your family members, friends, your
6 attorneys, or anybody who's reasonably in touch with
7 you to help you and aid you in making a decision as
8 to whether or not you wish to testify at the
9 appropriate time in this case. However, at the end
10 of the day, the decision as to whether or not you
11 will take the stand is yours and yours alone to
12 make. Do you understand?

13 **DEFENDANT:** Yes, sir.

14 **THE COURT:** Thank you, sir.

15 **MR. HENDERSON:** If it pleases the Court, Your
16 Honor.

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

18 **MR. HENDERSON:** There's a lot going on here and
19 you've heard a lot, Your Honor, but I think a lot of
20 what you've heard is uncontradicted. And it's
21 coming straight from the State's witnesses, Your
22 Honor, specifically Mr. Rushton, that when they're
23 back over at the house standing outside the door and
24 there is this talking going on, it's undisputed
25 what's already in the record is that they couldn't

1 see Mr. Worley, and I think the fair inference from
2 that is Mr. Worley could not see them, and that
3 Deputy Rushton testified that, when he backed out,
4 that's when the light came on and shot, boom, that
5 it happened that quick. And I believe the phrase
6 was a fraction of a second between the light and the
7 shooting.

8 And, Your Honor, the reason I believe that's
9 important -- and I call the Court's attention to the
10 State versus Curry case that just came out last
11 week, Your Honor.

12 **THE COURT:** I read it.

13 **MR. HENDERSON:** It's a Castle Doctrine case
14 dealing with some different Castle Doctrine issues
15 than here, but I think it's very informative in that
16 it discusses that in order for the Castle Doctrine
17 to apply, you've got to meet the elements of
18 self-defense.

19 I think this is the first case we've got that
20 says that. Because Mr. Worley is in his home, you
21 don't have to deal with the duty of retreat issue
22 because, as a matter of law, there is no duty of
23 retreat.

24 Your Honor, as it relates to him, Mr. Worley,
25 or any other homeowner arming themselves in their

1 home, have an absolute right to do that, Your Honor.

2 **THE COURT:** Didn't I hear something in this
3 case -- my clerk and I were talking about this in my
4 chambers -- that Mr. Worley did not have the right
5 to possess a rifle or a weapon?

6 **MR. HENDERSON:** That is not testimony before
7 the Court, Your Honor. That was not presented to
8 the jury.

9 **THE COURT:** Okay. Well, I don't know where we
10 got that. I was curious about that myself.

11 **MR. MYERS:** Not under the federal law, Your
12 Honor.

13 **MR. HENDERSON:** He's not prohibited under the
14 state statute to possess any type of firearm because
15 he was not convicted of a felony at all. Arguably,
16 the ATF was looking at it -- and I know this is kind
17 of off point, Your Honor --

18 **THE COURT:** Okay. I did that. I'm sorry. Go
19 ahead.

20 **MR. HENDERSON:** The ATF was looking at it and
21 decided not to prosecute. So there has been no
22 evidence before this trial jury that Mr. Worley is
23 prohibited from possessing or using any type of
24 firearm or any type of ammunition. And I think
25 there's been no testimony that this modified

1 ammunition is against the law, any state or federal
2 law.

3 Your Honor, I would call the Court's attention
4 to a case called State versus Hendrix. And to give
5 the Court the cite, it's 244 S.E.2d 503 from 1978.
6 And it pretty well stands for the proposition -- and
7 I'll let the Court read it to make sure I'm quoting
8 it accurately -- that if someone on their property
9 who perceives any type of threat can lawfully arm
10 themselves, and that, as a matter of law, that's not
11 bringing on any type of provocation. That's not --

12 **THE COURT:** Well, what if you -- and you
13 brought up the question that I've been researching,
14 and that is this gentleman was at night, by the
15 testimony, shooting a .30-06, which is against the
16 law, and normally that would, you would anticipate,
17 bringing on law enforcement when you were out
18 shooting a .30-06 at night. Okay?

19 So why is he not, at least a question of fact,
20 as to whether or not he did bring on this
21 confrontation or, as a matter of law, that he's
22 entitled to self-defense?

23 **MR. HENDERSON:** Two things: Number one,
24 there's been no testimony that he was violating any
25 law.

1 **THE COURT:** That's not the testimony that
2 somebody can give. That's up to me to make that
3 determination.

4 **MR. HENDERSON:** Well, what I will represent to
5 Your Honor, that, from our research, there is no
6 county ordinance against shooting guns.

7 **THE COURT:** Well, there is -- the testimony was
8 that Mr. Worley was shooting a gun at a fox. In
9 other words, he was hunting a fox at night.
10 Regardless of whether it's to protect some Sweet Pea
11 cat or whatever, he was hunting at night with a
12 .30-06.

13 But if you look at 50-11-710, it says night
14 hunting is prohibited, and it also says exceptions
15 to that. And with regard to fox, it says you can
16 hunt them, but you can't shoot them with any rifle
17 any bigger than a .22 rimfire.

18 **MR. HENDERSON:** And, Your Honor, I think the
19 testimony was they were shooting at it and not
20 seeking to kill it, not seeking to harm it, motivate
21 it.

22 **THE COURT:** I didn't gather that.

23 **MR. HENDERSON:** Okay. I mean, I don't think,
24 in the classic sense, there was evidence of hunting,
25 you know, what you and I would call deer hunting or

1 along those lines.

2 **THE COURT:** When you shoot at an animal at
3 night, I would say it's hunting. It may not be with
4 the Elmer Fudd, the cap and the garb, but you know
5 what I'm saying. He's shooting, protection of this
6 cat or whatever, but he's still hunting in my view.

7 **MR. HENDERSON:** But assuming that's the case,
8 that is not -- and assume law enforcement gets
9 called because of that, that's not bringing on the
10 problem.

11 **THE COURT:** And that's where I'm looking at.
12 And tell me why that is not.

13 **MR. HENDERSON:** Your Honor, one thing: The
14 Sheffields said this happened around 3:15, I think
15 the first shot, and I believe their testimony was 20
16 minutes thereafter, the second shot. It might be
17 off a hair, but assuming they're somewhat right,
18 3:15 a.m., 3:35 a.m.

19 **THE COURT:** Okay.

20 **MR. HENDERSON:** Deputies get called at 4:06.
21 We know that. It's in the record.

22 **THE COURT:** Okay.

23 **MR. HENDERSON:** So between Mr. Worley shooting
24 and turning out the lights and going back inside,
25 there's a waiting time with the Sheffields that they

1 call law enforcement.

2 Then, on top of that, it's 20 to 30 minutes
3 before law enforcement arrives. The Worley
4 residence now is back still.

5 **THE COURT:** So you think there is a sufficient
6 break in to cause to warrant there not being that --
7 the connection or the nexus is broken.

8 **MR. HENDERSON:** That is correct, Your Honor. I
9 know it's kind of a negligence, you know, a civil
10 negligence concept, but you're right. The nexus has
11 been broken. I mean, that's not the cause. In
12 fact, there's been a lot of time that went on
13 between these shots being fired and law enforcement
14 arriving on the scene.

15 **THE COURT:** Well, let me ask you a question if
16 I may.

17 **MR. HENDERSON:** Yes, sir.

18 **THE COURT:** What if -- this is hypothetically
19 -- what if the officers were riding by the road and
20 this gentleman shot out of his porch at 3:30 in the
21 morning at a fox with a .30-06, and he drove up
22 there then. The same scenario is happening in this
23 case, but the time is different. So he turns around
24 and shoots this officer under those circumstances.
25 Would there be a sufficient nexus at that point?

1 **MR. HENDERSON:** Your Honor, that's -- and your
2 hypothetical is hard to answer. And I'll tell you
3 why --

4 **THE COURT:** I don't know the answer either,
5 that's why I'm asking.

6 **MR. HENDERSON:** Because if we assume all the
7 other facts being the same, no blue light, no
8 uniform, I mean, under that scenario, I don't think
9 time makes a difference because --

10 **THE COURT:** Would that be a sufficient
11 connection? In other words, would that be bringing
12 on the cause?

13 **MR. HENDERSON:** That would be closer to
14 bringing on the cause. It would have to be just --
15 just from a mathematical standpoint, it would be
16 closer to bringing on the cause.

17 But I think something that happens arguably an
18 hour -- it starts an hour and 15 minutes before law
19 enforcement ever gets on the scene, I think that is
20 a sufficient gap in time, but that's not bringing on
21 the problem.

22 **THE COURT:** And I interrupted you,
23 Mr. Henderson. I apologize. Go ahead.

24 **MR. HENDERSON:** No, no, no. I appreciate that,
25 Your Honor.

1 But you hear Officer Rushton's testimony that
2 all of this conversation happens underneath the
3 deck, underneath the porch. And again, Your Honor,
4 you see why everybody agrees that the jury ought to
5 go out and see this property because -- and when all
6 this conversation is going on and then Deputy
7 Rushton, by his own testimony, he backs out, draws
8 his weapon while the light is still out, the light
9 comes on, and boom {snapping fingers}. And his
10 testimony was a fraction of a second.

11 And you've heard all the testimony of him not
12 being in uniform or at least not wearing any indicia
13 saying sheriff.

14 **THE COURT:** I also heard the testimony where
15 they identify themselves as being law enforcement
16 and the response allegedly made by your client.

17 **MR. HENDERSON:** Oh, I understand that, Your
18 Honor.

19 **THE COURT:** And the reason I ask that is,
20 because I was debating this with my law clerk, it
21 almost seems to me that the fraction of a second can
22 be construed one way or the other, meaning he had to
23 make -- he saw a gun, bang, and he shot. I know
24 that's what you're trying to foister up here for the
25 jury, it seems to me.

1 On the other hand, when you just shoot without
2 having a better recognition than that --

3 **MR. HENDERSON:** Your Honor, say you're right
4 about that, this lawsuit that Officer Rushton
5 brought, that's the proper forum under that
6 scenario. I mean, because that's truly negligence,
7 you shooting before you gather everything that's
8 going on. I mean, that is a negligence theory. I
9 think that's why Officer Rushton brought this
10 negligence lawsuit.

11 But, again, that's a different issue here. Our
12 issue here is Mr. Worley, when the lights come on
13 and a gun is aimed at him -- and we know it's aimed
14 at him because we've got the pistol, we see where
15 the rifle cartridge went in. We know, as a matter
16 of law that -- well, not a matter of law, just
17 common sense, that Deputy Rushton is aiming at him,
18 he's aiming at him with a handgun, with ammunition
19 that is designed to kill somebody, can kill
20 somebody.

21 We heard Officer Collier testify that the
22 testimony -- the uncontroverted testimony is that
23 Mr. Worley is standing on the porch with his rifle
24 in the port position. He is actually exercising
25 more gun safety than Officer Rushton was.

1 You know, he's got it out here in the port of
2 arms, not aiming at anyone. You know, the lights
3 come on, he sees a gun, a pistol aimed at him, and
4 in a fraction of a second, he shoots.

5 Your Honor, if that's not -- he's got every
6 right to act on appearances when somebody is aiming
7 a gun at him. I mean, as a homeowner -- well, in
8 his mother's home -- again, no duty to retreat, he
9 can lawfully -- he can possess that gun in the home.
10 There's no evidence that he can't.

11 And I believe Officer Collier testified that
12 it's imminently believable that if somebody's aiming
13 a gun at you -- maybe it was Officer Rushton --
14 they're intending to shoot you.

15 **THE COURT:** The problem with that analysis to
16 me is, from a directed verdict standpoint, would be
17 that it ignores the fact that the officers
18 identified themselves repeatedly at the scene, as
19 witnessed -- as testified to by the officers and
20 heard by the neighbors, or Mr. Sheffield who
21 testified as well.

22 **MR. HENDERSON:** In the light most favorable to
23 the State, I agree that's how you've got to analyze
24 this. But, Your Honor, all this is going on under
25 the deck when Mr. --

1 **THE COURT:** It doesn't matter. I don't care if
2 it's going on on the beach side. If somebody
3 identifies himself as an officer and you split
4 second shoot somebody, you know, I just -- at least
5 makes it a jury question to me, okay, at the
6 minimum.

7 **MR. HENDERSON:** And, Your Honor, one thing that
8 we raised in the appeal -- I mean, Your Honor knows
9 the history.

10 **THE COURT:** Yeah, I want you to have a good
11 record, so go ahead and get it.

12 **MR. HENDERSON:** Your Honor -- if I may pass
13 this up to His Honor, too.

14 And you asked Ms. Ballard a question yesterday,
15 Where are you going with this oath and stuff? Isn't
16 that an appellate issue? And, yes, it was raised
17 under the appeal, and we know the appeal has been
18 dismissed, but we've still got these collateral
19 issues going on.

20 **THE COURT:** Right.

21 **MR. HENDERSON:** Your Honor, the uncontroverted
22 testimony that came from the witness stand is that,
23 under 23-13-10 -- and I'd like to get that packet
24 marked as a Court's Exhibit, Your Honor.

25 **THE COURT:** Which packet?

1 **MR. HENDERSON:** This little packet I just gave
2 you. It's like three or four sheets.

3 **THE COURT:** Okay. Sure. Court's Exhibit
4 Number 6.

5 (Court's Exhibit Number 6, Code of Laws, was
6 marked for identification.)

7 **THE COURT:** I don't know that we necessarily
8 need to make the statute an exhibit, but if you want
9 to, I'll be glad to. It's a copy of Section
10 23-13-10, 23-13-20, Constitution Section 26 oath of
11 office, 23-13-50.

12 **MR. HENDERSON:** Your Honor, 23-13-10, The
13 sheriff may appoint one or more deputies to be
14 approved by the judge of a circuit court or any
15 circuit judge presiding therein. First sentence of
16 it.

17 The uncontroverted testimony by Deputy Rushton,
18 he's never been approved by any circuit judge.

19 **THE COURT:** Are you saying "ever" is being from
20 the first time he was with the department or the
21 second time?

22 **MR. HENDERSON:** He said he's never been in
23 front of a judge, circuit judge.

24 Such appointment shall be evidenced by a
25 certificate thereof, signed by the sheriff. None of

1 that was produced, Your Honor.

2 **THE COURT:** So it's your position that in order
3 for any law enforcement person to be certified, they
4 have to appear before a judge and receive the oath
5 of office by that judge?

6 **MR. HENDERSON:** Your Honor, let me correct
7 that -- let me clarify that, not correct it.

8 **THE COURT:** Please.

9 **MR. HENDERSON:** Deputy sheriffs are different.
10 They are different than city police officers,
11 they're different from SLED. And the reason, Your
12 Honor, if you look at these statutes, all these
13 statutes came out of reconstruction, and I think
14 there's a good reason why they came out of
15 reconstruction.

16 Mr. Garrett is a Civil War buff, but at that
17 point in time, there was a lot of questioning of
18 people giving allegiance to the federal government.
19 I mean, we just fought a war about it, about what
20 government are we going to be adhering to.

21 **THE COURT:** All right. That's well and good,
22 but bring it back to whether or not they need to
23 appear in front of me or another circuit court
24 judge.

25 **MR. HENDERSON:** Okay. On the first one, yes.

1 The deputy has got to appear in front of a circuit
2 judge and be approved. And, Your Honor --

3 **THE COURT:** Where in the statute does it say
4 appear?

5 **MR. HENDERSON:** May appoint to be approved by
6 the judge. He's got to be approved. He said he's
7 never been in front of any judge, never been
8 approved by any judge.

9 **THE COURT:** Okay.

10 **MR. HENDERSON:** 23-13-20, the next page, Your
11 Honor: Bond and oath. You know, Each deputy
12 sheriff shall, before entering into the discharge of
13 his duty, enter into a bond.

14 There's no evidence that Deputy Rushton did
15 that or that that bond has been filed with Madame
16 Clerk of Court and kept there. The law requires
17 here, in 23-13-20, it sets forth an oath that each
18 deputy has to take, and that oath has to be filed
19 and recorded with the clerk.

20 Also, it sets forth -- if you'll skip to the
21 next page -- a second oath that every deputy has got
22 to take. South Carolina Constitution, Article III,
23 Section 26, it also has to be, you know, like an
24 oath, affirmation, notarized by all and recorded in
25 the clerk's office, because the statute clearly says

1 all of this has to be done and filed with the Clerk
2 of Court before entering the discharge of their
3 duties.

4 And then you've got 23-13-50: When duly
5 qualified, a deputy sheriff may perform any and all
6 duties appertaining to the office of the principal,
7 i.e., the sheriff.

8 So, yes, this is why deputy sheriffs are
9 different, Your Honor. Every deputy, before he or
10 she can be duly qualified -- forget whether or not
11 they're a law enforcement officer -- before they can
12 be duly qualified, they've got to be approved by a
13 circuit judge, they've got to enter into these two
14 oaths that have to be filed and recorded in the
15 clerk's office, they have to enter into a bond that
16 is filed and recorded in the clerk's office, and at
17 that point in time, they are duly qualified to
18 exercise the authority of the sheriff, you know,
19 i.e., arrest people, you know, the standard what you
20 think of as the sheriff having authority to do.

21 In this case, Your Honor, at most, Deputy
22 Rushton entered into one of these oaths, which has
23 been entered into evidence. There's been no
24 testimony, and upon information and belief, it's not
25 filed and recorded in the clerk's office.

1 So I think, Your Honor, as a matter of law, I
2 don't think Deputy Rushton is entitled to any
3 protections that he otherwise would have as a deputy
4 sheriff because arguably -- and I think, based upon
5 his own testimony and other testimony, he has not
6 been duly qualified to act under the sheriff. And
7 his testimony was that he's out there that night
8 enforcing policy at the sheriff's direction.

9 And, Your Honor, there is a case, I believe
10 1941. It's cited in this material, and I probably
11 got a copy, but it's the Willis case out of Aiken.
12 I think it's 1939, 1941.

13 **THE COURT:** I'm not familiar with it.

14 **MR. HENDERSON:** It's a workers' comp case, Your
15 Honor. I know it's civil, but it's talking about
16 what it takes to be a duly-qualified deputy sheriff.
17 And our Supreme Court goes through this entire
18 litany, you know, the oaths, the going in front of a
19 circuit judge.

20 **THE COURT:** Well, let me ask you this: For
21 purposes of what we're doing right now, do you
22 contend the burden is on the State of South Carolina
23 to prove that every time they have a criminal case,
24 that each one of their officers is duly certified
25 and qualified?

1 **MR. HENDERSON:** If a good defense lawyer's
2 holding them to their burden of proof, absolutely.
3 Absolutely.

4 **THE COURT:** And I know you both -- all three of
5 you are fine lawyers. That's interesting. Okay.

6 **MR. HENDERSON:** And, Your Honor, this issue --
7 and I won't bore the Court with it on the record
8 because you probably don't want --

9 **THE COURT:** No, I just want to make sure you're
10 protected.

11 **MR. HENDERSON:** Right. And that is our
12 position, Your Honor. And it's not only my
13 position, it's our Supreme Court's position --

14 **THE COURT:** Assume for the sake of argument
15 today that Officer Rushton was not qualified or
16 certified, what difference does that make under the
17 factual scenario in this case?

18 **MR. HENDERSON:** Your Honor, all this police,
19 police, police stuff, don't get it.

20 **THE COURT:** Well, there were two undisputed
21 police officers out there.

22 **MR. HENDERSON:** They've dropped those
23 indictments, Your Honor. I mean, that is -- that's
24 gone.

25 **THE COURT:** It doesn't matter. They're still

1 out there. He just happened to hit one --

2 **MR. HENDERSON:** They might be out --

3 **THE COURT:** Hold on. He just happened to hit
4 the one who was not certified, under your argument.

5 **MR. HENDERSON:** Your Honor, if they had gone
6 forward with the indictments against these other
7 two, we were going to raise these issues.

8 **THE COURT:** So he can shoot somebody who's not,
9 and otherwise he can't shoot the ones that are?

10 **MR. HENDERSON:** No, not at all. That's not --

11 **THE COURT:** I mean, that's what I'm hearing.

12 **MR. HENDERSON:** No, that's not what I'm saying,
13 Your Honor.

14 The issue is I think because he's not a
15 duly-qualified deputy sheriff, the fact that he's
16 allegedly yelling, Police, I'm wearing a badge, all
17 of that stuff doesn't amount to a hill of beans as
18 it relates to Mr. Rushton.

19 And the reason I say that that's important, if
20 you go under the Castle Doctrine, one way that
21 someone loses their protection under the Castle
22 Doctrine is if they have reason to know it's law
23 enforcement or if they have -- or they have reason
24 to know that law enforcement's acting in their --

25 **THE COURT:** Well, based on the evidence that's

1 in the record at this juncture, what evidence is
2 there of any reason that this gentleman had that
3 would say that this was 'not law enforcement, other
4 than the testimony about the lack of the markings on
5 his uniform? Is there anything other than that?

6 **MR. HENDERSON:** That he could not see -- they
7 could not see him. Obviously, he could not see
8 them; just use deduction there. No blue lights.
9 Dispatch had not called the residence. No sirens.
10 No nothing.

11 And, again, there are no backlights. I mean,
12 they're walking around in the dark. Truly in the
13 dark. Darkest night of the month, for what it's
14 worth; no moon. And Officer Rushton is not in
15 uniform, or at least not in uniform that's got
16 sheriff emblazoned on it. He's not giving any
17 indicia that he's any type of law enforcement.

18 **THE COURT:** Other than saying I'm law
19 enforcement.

20 **MR. HENDERSON:** Your Honor, he's saying that
21 under a deck. Granted, in the light most favorable
22 to the State, he said it underneath the deck at a
23 point where he couldn't see Mr. Worley, I believe
24 was his testimony; Mr. Worley could not see him.

25 And, again, I don't think you have to rely on

1 what somebody in the blind is telling you in the
2 middle of the night when you think somebody might be
3 trying to break in on you.

4 And I think, as it relates to self-defense, I
5 think we can put up other -- duty of retreat's not
6 relevant here. But I think of the other three
7 elements, there is good evidence in the record that
8 Mr. Worley had a right to defend himself, and we
9 would ask that you direct a verdict saying that he
10 had a right to defend himself in self-defense.

11 **THE COURT:** Other than the fact that I
12 vehemently disagree with your position in this case,
13 I find that, at least at a minimum, in the light
14 most favorable to the State, that these are
15 questions of fact that need to be resolved by the
16 jury. But I respect your argument; I'm going to
17 look at it a little bit further.

18 Both of you, since I asked you to go ahead at
19 this juncture to make your directed verdict motion,
20 if you have any additional grounds that you think of
21 over the break, I'll let you put them on the record.

22 **MR. GARRETT:** Appreciate that, Your Honor.

23 **MR. HENDERSON:** Thank you, Your Honor. We
24 appreciate it.

25 **THE COURT:** Thank you. I appreciate it.

1 **MR. HENDERSON:** Yes, sir.

2 **THE COURT:** Let's go ahead -- anything from the
3 State before we take a lunch break?

4 **MR. MYERS:** No, sir. What time are we coming
5 back?

6 **THE COURT:** 2:15.

7 (Whereupon, there was a luncheon recess.)

8 **THE COURT:** From the defense side, any
9 additional grounds to support their motion for a
10 directed verdict?

11 **MR. GARRETT:** We do, Your Honor. We would like
12 Ms. Ballard to --

13 **THE COURT:** Ms. Ballard.

14 **MS. BALLARD:** Thank you very much, Your Honor.

15 Separate and apart from what Mr. Henderson has
16 argued, even if Your Honor does not grant the motion
17 for a directed verdict on self-defense or on the
18 Castle Doctrine, we believe, as a matter of law,
19 that the Court should rule on a directed verdict as
20 to whether or not the State has established as a
21 matter of law that Mr. Rushton was legally qualified
22 as a deputy sheriff at the time he was at
23 Mr. Worley's house. That will be a legal question
24 not one that would be submitted to the jury.

25 And as you know, it's our position that the

1 State had the burden of establishing that he was a
2 legally qualified deputy sheriff at the time, and
3 the absence of testimony is glaring.

4 There is no testimony that he took the bond
5 that's required by statute. There is absolutely no
6 testimony that he was sworn by a circuit judge as
7 required by 23-13-10. There's no -- he took one
8 oath, which was introduced into evidence as
9 Defendant's Exhibit Number 4, but that was the
10 constitutional oath.

11 So we believe that the Court has to establish
12 at this point as a matter of law that Mr. Rushton
13 was not qualified as a deputy sheriff at the time he
14 was present on Mr. Worley's property.

15 We know -- his testimony was, he took his oath
16 way back and then he went to Iraq. And then he
17 testified that he did not come before a circuit
18 judge, so we know that's true.

19 He signed the one that came into evidence as
20 Defendant's Exhibit Number 4, but I think that has
21 to be a legal determination.

22 **THE COURT:** I don't necessarily disagree with
23 you. And I'm going to find for the record that the
24 officer was certified and qualified based on what I
25 heard. I know you have -- you challenge that, but

1 I'm also finding that regardless of whether or not
2 this officer was certified or qualified, under the
3 facts of this case, it doesn't make a difference.

4 And I think that you had two undisputed
5 qualified, certified law enforcement officers at the
6 scene --

7 **MS. BALLARD:** Yes, sir.

8 **THE COURT:** -- who are announcing, under the
9 facts so far placed in the record, their presence.
10 Even if Officer Rushton was not qualified or
11 certified at the time, I don't think, under the
12 facts, it makes a difference. I know you disagree
13 with me, but --

14 **MS. BALLARD:** Well, just for the record, our
15 position is that Mr. Rushton specifically had to be
16 authorized and that the State has failed to
17 establish that. And we think that his being in the
18 company of people who were qualified did not sort
19 of, by osmosis, turn him into a qualified deputy as
20 well.

21 **THE COURT:** I got you.

22 **MS. BALLARD:** Thank you so much.

23 **THE COURT:** Thank you.

24 Anything further from the defense before we
25 resume?

1 **MR. GARRETT:** Nothing at this time, Your Honor.

2 **THE COURT:** Okay. Anything from the State
3 before we bring the jury in?

4 **MR. MYERS:** No, sir.

5 **THE COURT:** All right. Are you ready to call
6 your first witness?

7 **MR. GARRETT:** I am, Your Honor.

8 **THE COURT:** Would you bring the jury in?

9 (The jury returns to the courtroom.)

10 **MR. GARRETT:** Thank you, Your Honor. Call
11 Mr. Robert Worley.

12 ROBERT WORLEY,
13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. GARRETT:

16 **Q** Would you tell us your name for the court
17 record, please?

18 **A** My name is Robert Worley.

19 **Q** Mr. Worley, I'm going to ask you to speak up
20 into that microphone. The acoustics in this room
21 are sometimes difficult. So, if you don't mind, try
22 to speak into that microphone so this jury can hear
23 you. Okay?

24 **A** Yes, sir.

25 **Q** What is your relation to Joe Worley?

1 **A** He's my younger brother.

2 **Q** All right. Could you tell us a little bit
3 about your family?

4 **A** My father passed away in 2006.

5 **Q** What was his name?

6 **A** He is a senior; I am a junior. He's Robert
7 Fred Worley, Sr., and I'm Robert Fred Worley, Jr.

8 **Q** What did your father do for a living?

9 **A** He worked at the Savannah River Plant. He was
10 a civil engineer.

11 **Q** What kind of responsibilities did he have for
12 the government?

13 **A** I think the -- he worked for Dupont, who was
14 under contract with the government to run the plant.
15 He worked in the reactor area, and he was actively
16 involved in bringing the reactors up and down for
17 the day-to-day operation. He wrote the manual for
18 bringing them up and taking them down.

19 **Q** And what about your mom? What did she do?

20 **A** She basically took care of us. She was a
21 housewife.

22 **Q** Housewife. All right.

23 And where was your former home at? Where was
24 y'all's former residence at growing up?

25 **A** It was in Vanderbilt Drive in Aiken, South

1 Carolina.

2 Q So y'all lived there most of your life?

3 A Yes, we did.

4 Q Okay. And do you have any brothers or sisters?

5 A I have one brother, Joe, and a sister, Kay.

6 Q All right. And tell me about yourself. What
7 kind of work do you do?

8 A Well, right now, I'm on vacation. I retired
9 about ten years ago.

10 Q Okay. And let's go back through your history.
11 What kind of work have you done over your days?

12 A Well, I worked for the Secret Service for a
13 brief period of time in the early '70s.

14 Q Secret Service?

15 A Yes, sir.

16 Q Okay. What kind of -- what kind of work did
17 you do for the government, the Secret Service?

18 A I was assigned to the White House to
19 protection.

20 Q During which administration?

21 A It was during Nixon administration, and I left
22 about a month before Watergate.

23 Q Okay. Watergate?

24 A Yes, sir.

25 Q You had to have security clearances for that

1 kind of thing?

2 **A** I had to have a top secret clearance for that
3 job, yes, sir.

4 **Q** What about your dad? Did he have to have top
5 secret clearance for his job?

6 **A** Yes, he did.

7 **Q** All right. And let's move on and talk about
8 your sister. What does she do?

9 **A** My sister graduated from Clemson. She has
10 worked for her entire career as an architect or in
11 the real estate field of construction.

12 **Q** Okay. And where is she at now?

13 **A** She lives just south of me in Jacksonville,
14 Florida.

15 **Q** And that's where you currently reside?

16 **A** Yes, it is.

17 **Q** Are you married?

18 **A** Yes, I am.

19 **Q** All right. How many children do you have?

20 **A** We weren't blessed with children. But I was
21 blessed with a wife who's put up with me for over 40
22 years.

23 **Q** I understand.

24 Now, what about Joe. Tell me a little bit
25 about Joe.

1 **A** Joe is my younger brother. I left, I guess,
2 the house or the nest. And he's about ten years
3 younger than I am.

4 **Q** Okay. So when you left, what, about 18, he
5 would have been, what, eight, something like that?

6 **A** Yes, something like that.

7 **Q** And where all did you -- how far would you
8 stray from the family before you would get back to
9 see your family?

10 **A** During the years when my career was starting
11 and my job was starting, probably during those
12 years, two, three times a year.

13 **Q** After you got out of the Secret Service, what
14 kind of work did you do then? Or did you go to work
15 or school?

16 **A** The reason I went to work with the Secret
17 Service was to earn enough money to finish my
18 college degree.

19 **Q** Did you finish that?

20 **A** Yes, I did.

21 **Q** Where did you finish and what type of degree
22 did you get?

23 **A** I finished at the University of South Carolina.

24 **Q** In what year?

25 **A** My degree is in finance with a minor in

1 economics, and it's a bachelor's degree.

2 Q After receiving that degree, what kind of work
3 have you done throughout your career?

4 A Throughout my career, I've done real estate
5 appraisal work.

6 Q All right. And in the process of doing real
7 estate appraisals, do you have to size up houses,
8 get inspections done on them, and that type of
9 thing?

10 A Yes, sir, you do.

11 And I probably -- I don't know how many houses
12 I've done over the years, but it's a considerable
13 number.

14 Q How many years then, roughly, did you stay in
15 that business until you retired some time ago?

16 A Probably in the neighborhood of 25.

17 Q Do you have knowledge of when your pop decided
18 to buy this property down in Savannah Lakes or down
19 at the Little River?

20 A My knowledge is sort of restrictive from the
21 standpoint I was a child when he bought it. He
22 bought it, I think, in 1958 to 1960, somewhere in
23 that range. And we've been living or going up there
24 on the weekends and spending holidays up there when
25 I was a kid. And we've been, I guess, going to that

1 property for 50 years.

2 Q Okay. And during those years, you and your
3 father and I guess your mother and sister and Joe,
4 y'all would go over there and spend weekend times
5 when y'all were in town?

6 A Yes, uh-huh, we would.

7 Q And after you folks had left the roost, so to
8 speak, and you went on down to Jacksonville and your
9 sister went to Jacksonville, is it your knowledge
10 that your family would continue to have the family
11 vacations there, as well as go to that place at
12 least once a week?

13 A Yes. They were there at least once a week on
14 average every week.

15 Q And did they continue to do that until about
16 2006 when your father passed?

17 A Yes, they would, and they continued after that.

18 Q All right. When they first got the property,
19 was it just plain land out there or farm land or --

20 A It was woods.

21 Q It was woods?

22 A Yes, sir.

23 Q All right. And at some point in time, did
24 y'all pull a trailer out there?

25 A Yes, we did. After we cleared it off, we

1 pulled a trailer on it. It was a little 8 by 32, I
2 think it was.

3 Q Eighty-five by 32?

4 A Eight. Eight feet wide by 32 feet.

5 Q So it was a real small trailer?

6 A Yes, it was.

7 Q All right. And when y'all would come out for
8 the weekends, y'all would spend your time in this
9 little trailer?

10 A That's correct.

11 Q And as I understand it, your father liked to
12 fish a lot?

13 A Yes. We went fishing almost -- well, every
14 weekend we went fishing.

15 Q Was he an environmentalist in the sense that he
16 liked the outdoors?

17 A Yes, he was from that sense. You didn't throw
18 a can in the water. You didn't put paper in the
19 water. You put it in the boat and put it in the
20 trash.

21 Q He trained you all that way?

22 A Pardon?

23 Q He trained you all that way?

24 A He pretty much trained all of us that way, yes.

25 Q And, at some point in time, I think you -- can

1 you tell us when a neighbor finally showed up down
2 there for the first -- the years you finally saw
3 some neighbors down there?

4 **A** It was in the neighborhood of 1962, 1963. I
5 believe the Stroms moved next door to us where the
6 Sheffields currently live.

7 **Q** The Stroms?

8 **A** Yes, sir.

9 **Q** What kind of house did they live in?

10 **A** They lived in a mobile home. Mr. Strom had a
11 drugstore uptown in McCormick.

12 **Q** All right. And then how long did they stay
13 before they finally went somewhere else or the
14 Sheffields took over?

15 **A** I believe Mr. Strom passed away and the family
16 sold the property to the Sheffields, I'm assuming.

17 **Q** Do you know what year that was?

18 **A** No, I don't.

19 **Q** All right. What I'd like to do is talk to you
20 a little bit about y'all coming up there. How often
21 would y'all come up there once the -- when the
22 trailer ended, when did y'all build this house and
23 tell me about the building of this house and why you
24 did it.

25 **A** The trailer was a little cramped, a little

1 small, awful hot in the summertime and awful cold in
2 the wintertime. And pop decided he wanted to build
3 a permanent structure, and he started it. My sister
4 drew the drawings for it, and I think she drew them
5 some time in 1974 to '76 timeframe. And then he
6 started construction on it. Mom and dad built the
7 place. Joe helped. Kay helped. I didn't help as
8 much. And there were two shop teachers that are
9 local that helped him build it.

10 Q And did you and he discuss the plans for
11 building that along with your sister as he was
12 building it?

13 A We did. We did discuss it.

14 Q Are you familiar with the construction and what
15 he actually did in the building of this house?

16 A Yes, sir, I am. I'm familiar with it.

17 Q One of the -- could you tell us one of his main
18 reasons for wanting to do special things at this
19 house?

20 A He -- pop worked shift work at the plant, and
21 he had a hard time sleeping. He was a light
22 sleeper. And we were at the lake, and a lot of
23 times, he would get off shift and he'd want to get
24 some sleep. He'd stay up in the day and then try to
25 sleep that night, and there's a whippoorwill.

1 Before it was built up, there were a lot of
2 whippoorwills, and they would wake him up and
3 they're nocturnal, and he often joked about having a
4 whippoorwill for breakfast.

5 Q I understand. So he wanted to do something to
6 prevent him from having to hear these whippoorwills?

7 A Yes, sir. In addition to that, he would have
8 his buddies come up, and they would have a fishing
9 weekend. And there were a couple of them that
10 snored quite loudly, and he wanted to -- he couldn't
11 sleep when they were there.

12 Q All right. Because of the snoring at the
13 trailer?

14 A Yes.

15 Q All right. So in response to that, what did
16 your dad and sister and you and Joe and Mary do
17 about building this thing?

18 A Well, when he built the house, it's a little
19 unique. He's an engineer by trade, and for
20 instance, the slab to the property, the foundation
21 for the floor, and he built what I would call a
22 garage apartment.

23 Q You would call the whole thing here?

24 A Yes, sir. I would call it a garage apartment.

25 Q I'm going to show you what's been marked as

1 State's 4, just a general representation of it, not
2 to scale, but is that the -- that whole thing is a
3 garage apartment, as you would call it?

4 **A** Yes, sir, it is. It's a garage apartment. My
5 sister drew the floor plans and drew all the plans
6 for it. She drew the specifications for it. And
7 just to give you an example, the floor was designed
8 to be four inches -- about a four-inch concrete
9 slab, which is pretty standard. Pop put an
10 eight-inch slab down.

11 The walls are eight-inch concrete block, and
12 the web in the concrete block, every 48 inches, you
13 fill it with concrete and you have rebar in them.
14 Pop, instead of just doing it every 48 inches, he
15 poured concrete on all of it. It's solid. The
16 walls are solid concrete.

17 **Q** So rebar and concrete poured down into the webs
18 of the --

19 **A** Yes. Uh-huh.

20 **Q** All the way around it?

21 **A** Yes, sir.

22 **Q** All around the exterior?

23 **A** All the way around the exterior, yes, sir.

24 **Q** And that's what the house then sits on?

25 **A** Yes, sir.

1 Q Go ahead.

2 A Then he wanted to be able to sleep, he wanted
3 to have a quiet place, and he got a lot of kidding
4 for it, but he would -- and he was also fairly
5 thrifty. The exterior walls are double insulated,
6 but what he did is he took three-and-a-half-inch
7 fiberglass pad that you normally would find in a 2x4
8 cabinet --

9 Q Okay.

10 A -- and he put two of them in there.

11 Q So you had seven inches as opposed to three and
12 a half inches inside of a 2x4?

13 A Right, but he compressed it. And by
14 compressing it, he formed sort of a sound insulation
15 or more so than insulation for heating cold.

16 Q Could you walk around there and show what areas
17 that he did that? Were those interior or exterior
18 walls?

19 A Yes, sir. Actually, he did both the interior
20 and the exterior.

21 Q All right. Let's -- first, let's talk about
22 that drawing there. Show us which walls you're
23 referring to.

24 A (Witness leaves the witness stand.)

25 All of these walls here. All of the walls here

1 and here {indicating}.

2 Q Okay. So all four corners, all of the walls
3 all the way up to the roof structure?

4 A Yes, sir.

5 Q Were built with seven-inch insulation?

6 A Yes, sir.

7 (Witness resumes the witness stand.)

8 Q All right. Now, as far as entrance and exit,
9 is there an entrance door on this property?

10 A The only entrance door to the property is on
11 the first floor, pedestrian door.

12 Q Would that be on the first floor under the deck
13 here, the decking?

14 A Yes, sir, that would be correct.

15 Q All right. And the door itself, what kind of
16 door is it?

17 A It's a metal-clad insulated door. It has --
18 it's solid. It doesn't have a peephole or anything
19 in it.

20 Q No peephole?

21 A No, sir.

22 Q Down below on the front, we'll call this the
23 lake side of the house. I guess that's probably the
24 best way to do it. In addition to that door that
25 you talked about, are there any windows down here

1 below on this side?

2 A The only other openings in the building --

3 Q In the whole building there?

4 A On the first floor.

5 (Witness leaves the witness stand.)

6 Q Okay.

7 A There is a garage door here.

8 Q Okay.

9 A There's a small window high up here and a small
10 window here. There are two on each side.

11 Q Down below?

12 A Yes, sir. This is on the first floor in the
13 garage area.

14 Q Okay.

15 A But both of these windows or all four of these
16 windows have been boarded up. And the reason he
17 boarded them up is because he had problems with
18 people trying to break in.

19 (Witness resumes the witness stand.)

20 Q All right. And could you tell the jury a
21 little bit about that? When y'all had y'all's
22 trailers down there, how many times or how often did
23 they break into y'all's trailer down there?

24 MR. MYERS: Wait a minute. What's he basing
25 that on? Was he there? I'm going to object to

1 hearsay. He hasn't laid a foundation for it.

2 **THE COURT:** Go ahead, if he knows.

3 **THE WITNESS:** May I answer the question?

4 BY MR. GARRETT:

5 **Q** If you know.

6 **A** Yes, sir. They attempted to break into the
7 mobile home about four times. They were successful
8 twice.

9 **Q** All right. And did things get taken that
10 belonged to the family?

11 **A** Yes, sir, they did.

12 **Q** So when dad was building the house, in addition
13 to the concern about the snoring and the
14 whippoorwills, he wanted to have something strong
15 when he wasn't there?

16 **A** Yes, sir. It didn't -- the windows were not
17 originally boarded up. Someone attempted to break
18 in -- after he built the building, attempted to
19 break into it. And what they had done is jimmied
20 the garage door and they jimmied it hard enough to
21 where the rollers, it came off the track. And when
22 that happened, he boarded up those windows.

23 Now, when you mentioned snoring, there is one
24 thing that I didn't tell you about is all of the
25 interior partitions --

1 Q Yes, sir.

2 A -- they also have two rows of
3 three-and-a-half-inch fiberglass, side by side,
4 shoved in.

5 Q Inside of a 2x4 wall?

6 A Yes, sir.

7 Q 2x4 studded wall?

8 A Yes, sir.

9 Q It also has seven inches of insulation through
10 each of those interior walls?

11 A Yes, sir.

12 Q Could you kind of step up there again and show
13 the jury generally the layout --

14 A Yes, sir.

15 Q -- of the apartment. If His Honor allows them
16 to go see it, it may be that they'll recognize it.
17 But if you'll just kind of point it out where the
18 general layout of the house is and where those walls
19 are.

20 A (Witness leaves the witness stand.)

21 In the back corner are the two bedrooms in the
22 back.

23 Q Is this upstairs or downstairs?

24 A This is upstairs. Upstairs. I'm sorry.
25 Bedroom here and bedroom here.

1 **COURT REPORTER:** Can you -- you're going to ,
2 need to speak up, please.

3 **THE WITNESS:** Oh, I'm sorry.

4 In the back are the two bedrooms. Here would
5 be the bathroom, a single bathroom. Entry -- stair
6 entry coming up is about in here. You have a living
7 room here in this quadrant. Your dining area --
8 dining room is here, and your kitchen is right here
9 {indicating}.

10 BY MR. GARRETT:

11 **Q** All right. So how many partitions would you
12 say are in there on the interior -- in the interior
13 walls? How many interior walls would you say you
14 have that are insulated like that?

15 **A** Interior walls that are insulated are the walls
16 in the bedrooms, and the rest of this area is open.

17 **Q** Is open?

18 **A** Yes, sir. And there's insulation also in this
19 wall between the two bedrooms.

20 **Q** Okay. That prevents hearing snoring between
21 bedrooms?

22 **A** Yes, sir.

23 **Q** All right. Now, tell me about the bottom
24 floor. What's going on with the bottom floor?

25 **A** (Witness resumes the witness stand.)

1 The bottom floor, there is a partition that
2 splits the bottom floor, as you first walk in the
3 door to your right. And the door is right here
4 {indicating}, the pedestrian door.

5 **Q** Yes, sir.

6 **A** So when you walk in, there's a partition to the
7 right, and it's plywood siding and it's just on 2x4
8 studs. But now this wall where this door is at,
9 right here and up through here on the first floor,
10 it has a sheet of plastic and then it's got foam
11 insulation in it on the -- in 2x4 studs, and then
12 it's got T1-11 on the outside of it, plywood siding.
13 And that goes where the stairwell's at over to where
14 this partition is. It splits this downstairs on the
15 first floor.

16 **Q** Okay. Would that have kept that area quieter
17 than the rest of the back first floor?

18 **A** That area -- the whole house is quiet. If you
19 are familiar with motel construction, they often put
20 a concrete block wall to separate the units in the
21 motel for sound control and strength.

22 **Q** Yes, sir.

23 **A** In essence, that whole exterior wall is that
24 way.

25 **Q** Okay.

1 **A** And if you're talking about sound quality, in
2 addition to that, you've got the sheeting, the
3 plastic sheeting on that first floor, and then
4 you've got the foam insulation in the wall, and then
5 you've got the siding. The only place that sound
6 enters the building on the first floor would be
7 through that pedestrian door and the garage door.

8 **Q** Okay. And, at some point in time, did y'all
9 decide to put the burglar alarm in this house?

10 **A** Yes, sir. The burglar alarm was installed
11 after the incident with the garage door.

12 **Q** Do you know about what year that was?

13 **A** I would have to say that particular incident
14 took place probably in the late '70s or early '80s.
15 It's been quite some time ago. If you ask me 1979,
16 I couldn't say, yes, or if you asked me 1980, I
17 couldn't say, yes, but it was back in that time
18 period.

19 **Q** In that timeframe?

20 **A** Right.

21 **Q** So y'all were trying to protect this, when you
22 built it, you put a burglar alarm in it, in addition
23 to building it the way that you did?

24 **A** Yes, sir.

25 **Q** And at what point in time did y'all decide to

1 go ahead and board up the windows and put that
2 security system in? At about the same time or did
3 you board up the windows a little later or --

4 **A** It was all done just about the same time. The
5 security alarm went in right after the garage door
6 got jimmied, and the windows were boarded up then
7 because it was an access point.

8 **Q** Have they remained boarded up since then?

9 **A** Yes, sir.

10 **Q** Now, are they -- what about these windows out
11 front? Are these boarded up? Here's some -- this
12 is towards the water.. Are those boarded up, those
13 windows?

14 **A** The only windows up there are -- on the second
15 floor you're referring to?

16 **Q** Yes, sir.

17 **A** Okay. No, sir, they're not.

18 **Q** Okay. And what kind of windows are they?

19 **A** To the right and the left of the two-panel
20 sliding glass door, which is in the center, you have
21 a double-hung wood window, single pane, on the right
22 and a double-hung single pane window on the left,
23 and both of those windows have storm windows on
24 them.

25 **Q** In addition?

1 **A** In addition to the single pane.

2 **Q** And what about the sliding glass door? Does it
3 have a storm door or not?

4 **A** No, sir, it does not. It's a door pane, glass
5 door. And it's aluminum and frame.

6 **Q** Now, is that also -- can you describe the floor
7 construction that's between the first floor and this
8 door entrance and the second floor? Tell us about
9 the floor construction and whether or not it's
10 insulated.

11 **A** The floor -- and you're talking about the floor
12 on the -- for the second floor; right?

13 **Q** Right. You've got your -- how -- is it like an
14 eight or 10-foot wall first and then --

15 **A** Yes, sir.

16 **Q** And then you put your floor on?

17 **A** Right.

18 **Q** How is it constructed?

19 **A** It's 2x10 joists that's going across. The
20 actual subfloor is three-quarter-inch plywood, and
21 it's tongue and groove, so it laps when you install
22 it.

23 **Q** Yes, sir.

24 **A** It has a half-inch foam pad, and then it has
25 carpet.

1 Q Carpet on top of that?

2 A Yes, sir. Now, the kitchen is linoleum and the
3 bathroom is linoleum.

4 Q Now, as far as a doorbell, do y'all have a
5 doorbell?

6 A Yes, sir. The doorbell was installed because
7 pop couldn't hear people coming to visit.

8 Q Okay. Do y'all have a -- can you describe, if
9 I were to come to your house and knock on your
10 door --

11 A Yes, sir.

12 Q -- and I was in that bedroom with that door
13 closed, would I be able to hear you?

14 A No, sir.

15 Q Is there any question about that?

16 A No, sir. When the driveway was gravel, which
17 it stayed gravel a long time when we lived in the
18 trailer, if somebody cut down the driveway, you
19 could actually hear the tires on the gravel.

20 In this house, you see them appear out in your
21 front yard. You never hear them. And if you
22 knocked on that door downstairs, you couldn't hear
23 it upstairs.

24 Q All right. At some later time, I'm assuming
25 then you built these other outbuildings. And did

1 you build yourself a deck?

2 **A** The -- actually, the way that was done,
3 originally, the deck was by itself. If you look at
4 it, it's got steel framing that comes back in to the
5 building and is bolted onto the floor joists, and
6 then the deck was cantilevered out.

7 **Q** Okay. So the deck is up top. Tell us again
8 about that. You're talking about this area here?
9 Is it under the roof, that deck?

10 **A** (Witness leaves the witness stand.)

11 Yes, sir, it is. Now, originally, the deck was
12 built first, and those steel beams come back in here
13 and tie to the floor joists. So the deck was
14 self-supporting.

15 **Q** Okay.

16 **A** And then pop decided that he wanted to make a
17 porch out of it and that's what he did. So now you
18 have a cover over this deck and you've got a
19 concrete patio on the bottom and this deck. And
20 it's covered.

21 **Q** All right. And then what about a dock? Did
22 y'all, at some point, build you a dock down there?

23 **A** (Witness resumes the witness stand.)

24 Yes, sir. The dock was built in 1969 or 1970.
25 It's --

1 **Q** Would you step up to that? Help me identify
2 that one.

3 **A** That would be the dock there, sir. Right there
4 {indicating}.

5 My father likes concrete, and it's actually a
6 floating concrete dock. It's been there since about
7 1969 or 1970. And it's composed of concrete planks
8 that he poured, and we set it on Styrofoam. And you
9 put it together plank by plank, is the way you put
10 it together. And it's tied together by rebar.

11 **Q** All right. Did your father -- did your father
12 hunt?

13 **A** Yes, sir, he did.

14 **Q** And tell us about his hunting habits or gun
15 habits.

16 **A** Gun habits was safety. He liked to think of
17 himself a duck hunter, but he wasn't a real good
18 duck hunter. He liked to hunt deer, and he did that
19 until he got older.

20 **Q** That weapon standing up there in front of you
21 right there --

22 **A** Yes, sir.

23 **Q** -- do you recognize that weapon?

24 **A** It appears to be --

25 **Q** You were referring to State's Exhibit Number 6.

1 It appears to be what? I'm sorry.

2 A It appears to be a .30-06 that was at the lake.

3 Q Okay. Were there any other weapons there at
4 the lake?

5 A Yes, sir. There was a single-barrel 12-guage
6 shotgun, I believe.

7 Q There was a shotgun in there as well?

8 A Yes, sir. Now, there may be other weapons
9 there, but I don't, you know, I didn't notice them.

10 Q Did you use any of those weapons after you
11 moved out of your dad's house?

12 A No, sir. I don't recall using those weapons
13 after I moved out of pop's house. Prior to moving
14 out of the house, I used some of his weapons. I
15 don't remember ever firing that particular .30-06.

16 Q You don't know particularly when your daddy got
17 it or whatever?

18 A No, sir, I don't.

19 Q But you do know that he had that and that he
20 actually owned that weapon?

21 A Yes, sir.

22 Q All right. And when your dad died, as I
23 understand it, there was a will?

24 A Yes, there was.

25 Q And did it leave everything to your mama?

1 A Yes, sir, it did.

2 Q All right. Let's talk about your mama for a
3 minute. How old is mama now?

4 A She's 87, going on 88.

5 Q And tell us a little bit about her condition.

6 A She is doing good now. She had a rough patch
7 after pop passed away. She's doing pretty good.
8 She's dropped something on her foot the other day
9 and now she's hobbling around a little, but I think
10 she's doing fine for almost 88. She'll be 88 in
11 May.

12 Q And so she would have been 84, approximately,
13 in November of 2009?

14 A Yes, sir.

15 Q How is she about hearing?

16 A Almost nonexistent.

17 Q She has a hard time hearing?

18 A Yes, sir. Very hard time.

19 Q All right. Other than that, she's pretty
20 healthy, though?

21 A Yes, sir, she is.

22 Q All right. And after -- you said she hit a
23 rough patch after your pop died. Tell us a little
24 bit about what you mean by that and what you and
25 your family, if you did anything to try to, I guess,

1 help her through that.

2 **A** Well, she, of course, was depressed and lonely
3 and she was forgetful, and I guess what you do when
4 you go through mourning. And we weren't exactly
5 sure if it was that or if she was having another
6 problem. And that lasted for a couple of years.

7 **Q** Okay. Did you and your family take steps --
8 did you, including Joe, take steps to try to help
9 her?

10 **A** Yes, sir. Yes, sir.

11 **Q** Tell us -- tell the jury what kind of steps
12 y'all took to take care of your mama.

13 **A** Well, my sister and I came by more often,
14 visited more often. Joe stayed there to take care
15 of mom. And even today, we continually, you know,
16 we call every week. My sister calls every day. I
17 call three to four times a week just checking up on
18 her. She seems to be doing good. But there after
19 pop passed away, she had a real rough patch.

20 **Q** Since the shooting down here --

21 **A** Yes, sir.

22 **Q** -- tell me how often does your mother go down
23 there now?

24 **A** Mom usually tries to visit the lake place once
25 a week now. Before, we spent -- in retirement, my

1 family -- my mom and dad would spend at least half
2 the week there, probably sometimes a little more.
3 She will not stay there at night because she's
4 scared.

5 Q And has she spent a night there without anybody
6 else there since this happened?

7 A No, sir, she hasn't. And we've only talked her
8 into staying there one night. Or I correct that:
9 Two nights. She stayed there two nights.

10 Q She stayed there two nights?

11 A Yes, sir.

12 Q Has this kind of upset -- this, obviously,
13 upset your entire family?

14 A Yes, sir, this has.

15 Q Do y'all pay county taxes?

16 A Yes, sir.

17 Q To McCormick County?

18 A Yes, sir.

19 Q And have y'all done that since you bought this
20 property back in the 50s?

21 A Yes, sir.

22 Q And have y'all ever had any problem with law
23 enforcement down here? You described some
24 burglaries and whatnot, but have you ever had any
25 problem with law enforcement of any kind down here

1 in the McCormick area over all the years that you
2 know?

3 **A** No, sir, not that I know of. I know I haven't.

4 **Q** Did you have a knowledge of a cat named Sweet
5 Pea?

6 **A** Yes, sir.

7 **Q** All right. Help the jury understand why Sweet
8 Pea's important to your family, how that is, and why
9 that is?

10 **A** Sweet Pea was a stray.

11 **Q** A stray?

12 **A** Yes, sir. It was my parents' -- my father,
13 especially, saw it. Eventually, over a period,
14 coaxed it to him. And the cat had a flea collar on
15 it that had been put on it when it was a kitten, and
16 I don't know, if it was that big around, you know --

17 **MR. MYERS:** Your Honor, if he's here all the
18 time and he's testifying from personal knowledge, I
19 have no objection, but if he's not here and he's
20 testifying on things that are told to him or that he
21 read or he saw, I do have an objection.

22 **THE COURT:** All right. I agree with that. Lay
23 some foundation, please, sir.

24 **MR. GARRETT:** I'll lay some foundation.

25 **BY MR. GARRETT:**

1 Q This cat, is it a -- every time you come down
2 to visit, is this cat a topic of conversation?

3 A Yes, sir.

4 Q All right. And the care for this cat, is it
5 something that is traditional?

6 **MR. MYERS:** Objection to leading.

7 BY MR. GARRETT:

8 Q Just tell us what you have personal knowledge
9 of about this cat. What do you know about this cat
10 from your personal knowledge? Have you helped with
11 this cat?

12 A Yes, I have.

13 Q All right. And -- but go ahead and just tell
14 us from your personal knowledge, not what somebody
15 told you, but what you understand about what's
16 happened with this cat.

17 A I've seen the cat injured up at the lake. Two
18 or three times the cat was injured.

19 Q In what years? Can you help us understand what
20 years those were?

21 A I would say that was in the mid 90s --

22 Q Okay.

23 A -- to maybe 2000 that the cat was injured.
24 Now, it did -- the injury did require it to go to
25 the vet one time, and that was later, probably

1 closer to 2003, 2004.

2 Q Actually had to go to the vet?

3 A Yes, sir.

4 Q Okay. And would y'all have -- from time to
5 time, have to take steps to try to protect that cat
6 against the elements?

7 MR. MYERS: Well, now, wait a minute. Is he
8 talking about him being here protecting the cat?
9 He's saying y'all.

10 THE COURT: Well, he prefaced his comments to
11 him earlier about personal knowledge.

12 And your answers need to be based on your
13 personal knowledge. Okay, sir?

14 MR. MYERS: Your Honor, I request that he ask
15 he and not y'all when he asks the questions.

16 THE COURT: Go ahead, please, sir.

17 BY MR. GARRETT:

18 Q Your personal knowledge of money spent or
19 whatever to take care of the cat, do you have some
20 knowledge of that? And if you don't, that's fine.

21 A I don't have a personal knowledge of the money
22 spent on the cat. I do have personal knowledge of
23 the cat with the bandage on his tail.

24 Q All right. And did your father and Joe do
25 anything special around this house for this --

1 **MR. MYERS:** Can we have a timeframe, please?

2 **THE COURT:** Would you please identify the
3 timeframe, please, sir?

4 **MR. GARRETT:** I am.

5 BY MR. GARRETT:

6 **Q** Do you have knowledge when your dad and Joe did
7 anything towards building protection for the cat,
8 and did you actually see that protection?

9 **A** Yes, sir, I did. When they left the cat -- or
10 left on the weekends, they would leave the cat up
11 there at first. And they built a catwalk. And it's
12 -- if you look at the building there, it's on the
13 left side towards the front.

14 **Q** Step down and show us where this catwalk is.

15 **A** The catwalk is located right along in here
16 {indicating}. It's a part of the drawing.

17 **Q** Okay.

18 **A** And it allowed the cat to go from the first
19 floor to the second floor onto the wood deck.

20 On the wood deck, in this corner right here
21 {indicating}, there's a cathouse. And it's
22 overbuilt, to say the least.

23 **Q** All right. And was that -- was that done for
24 any particular reason?

25 **A** For the cat so it could sleep up there and not

1 have to sleep in the woods.

2 **Q** In the woods at or around you there?

3 **A** Yes, sir.

4 **Q** All right. As far as ammunition or anything,

5 did your dad have a reloader?

6 **A** I saw my father with a reloader down in the

7 basement twice.

8 **Q** Did you ever see Joe with a reloader during all

9 your years?

10 **A** No, sir, I did not.

11 **Q** Do you know whether Joe reloads bullets or not?

12 **A** I do not know.

13 **Q** All right. And do you really know whether your

14 dad reloaded bullets or not?

15 **A** Not -- I didn't see him do the reloading. I

16 saw the reloader on the counter in the basement, and

17 I saw pop putting it up.

18 **Q** Do you reload bullets?

19 **A** I have in the past.

20 **Q** Okay. And do y'all have a lathe -- at either

21 location, does your family own a lathe machine?

22 **A** You mean like a wood lathe or a metal lathe?

23 **Q** A metal lath.

24 **A** Not a metal lathe, no, sir.

25 **Q** At your house in Aiken?

1 **A** No, sir. There's not one in Aiken. There's
2 not one at the lake, but, however, there is a wood
3 lathe at the lake.

4 **Q** There's a wood lathe at the lake?

5 **A** Yes, sir.

6 **Q** Okay. Would you be able to turn metal on a
7 wood lathe?

8 **A** I don't think so. It's apples and oranges, I
9 believe. I'm not real familiar with the operation
10 of a lathe.

11 **MR. GARRETT:** Beg the Court's indulgence.

12 (Pause.)

13 **Q** Are you familiar with the lighting on this
14 property?

15 **A** Somewhat familiar with it, yes, sir. There are
16 a lot of light switches on the property, if you
17 looked at it, yes, sir. And I'm always getting them
18 confused.

19 **Q** There's a -- or is there a light here and a
20 light here?

21 **A** There's a 300-watt floodlight in each corner of
22 the wood deck.

23 **Q** And how -- if I want to turn this one on, where
24 do I have to go -- can I cut it on from the outside
25 standing on the deck?

1 **A** No, sir, you cannot.

2 **Q** What would you have to do to be able to do it?

3 **A** You would have to -- there's a sliding glass
4 door that's in the center here {indicating}.

5 **Q** Yes, sir.

6 **A** If I was facing outside towards the lake,
7 there's a switch right by where you open the door to
8 cut that light on.

9 **Q** Okay.

10 **A** And it's an individual switch.

11 **Q** Okay.

12 **A** And you have to flip another switch to cut on
13 the other light in the upper corner -- in the upper
14 corner.

15 **Q** And where is that light switch for this corner
16 over here? Do you know where that light switch is?

17 **A** It's in -- it's in the same spot. There's a
18 row of about four switches there.

19 **Q** Okay. And is there any question that they're
20 all on the inside?

21 **A** No, sir. They're all on the inside. There's
22 not a light switch on the outside to cut those
23 lights on or any other lights.

24 **Q** Is there a light under the -- this decking
25 area? If I were to look up under this decking area

1 right here that's out here, is there any of that,
2 the wood porch, does any of that got a light on it
3 under there?

4 **A** No, sir.

5 **Q** And then what about -- then you got the roof
6 structure over the top of this thing?

7 **A** Yes, sir.

8 **Q** And does the roof on the outside, once you get
9 out past the plate glass window, once you get out
10 there, is there any lights on the inside up under
11 the ceiling?

12 **A** No, sir, not that I recall. I've never seen a
13 light up there. I haven't looked.

14 **Q** Okay. So as far as your knowledge -- and then
15 I'm assuming each of these interior rooms has its
16 own lighting?

17 **A** Yes, sir.

18 **Q** Is that correct?

19 **A** Uh-huh.

20 **MR. GARRETT:** Beg the Court's indulgence.

21 (Pause.)

22 **Q** If -- there's a light behind here, a large
23 street light, a light pole?

24 **A** Yes, sir. It's a sodium light. It puts out an
25 orange-type glow.

1 Q Okay.

2 A And it's what you would typically see perhaps
3 on a street, a single-bulb light.

4 Q Okay. Does it -- if I'm -- if it's dark and
5 I'm standing here, am I getting any light? Or if
6 I'm standing here {indicating}, am I getting any
7 light from back there?

8 A No, sir. The front yard is completely in the
9 shadow, and by the time you get to the front yard,
10 that light is very dim. If you're standing in the
11 front yard, no, sir.

12 Q Okay. And if we were to cut -- step inside and
13 cut that light on right there --

14 A Yes, sir.

15 Q -- what area would it illuminate?

16 A It would illuminate the whole front yard. It's
17 a floodlight, and it would get this whole area out
18 in here.

19 Q All right. Now, what about the other
20 floodlight, if you added it to it?

21 A It would do the same thing.

22 Q So it would basically cover maybe say like that
23 {indicating}, and that would cover like that or
24 something like that?

25 A The lights would come out straight almost. But

1 the residual light would allow you to see on the
2 other side.

3 Q Okay. And that light, the one that's pointed
4 here, a light can be pointed out, it can be pointed
5 down, medium, or just straight down. Do you know
6 what the normal placement of that light was?

7 MR. MYERS: It's not the normal placement, Your
8 Honor. We object as to what it was on November
9 the 15th of 2009.

10 MR. GARRETT: I'm getting to that.

11 THE COURT: All right. Get to it.

12 BY MR. GARRETT:

13 Q Do you know --

14 A It's normally focused out in the yard is where
15 it's normally focused.

16 Q And, to your knowledge, has anybody ever
17 changed that?

18 A It's been changed now, but up until that point
19 in time, no, it was set and left alone.

20 Q Okay. And did it also -- can you talk about --
21 was there a tree in there back then in 2009 that had
22 some limbs on it?

23 A Yes, sir. There were -- actually, there were
24 two trees to -- may I?

25 Q Yes, sir.

1 **A** To this side of the drawing {indicating}, there
2 were two trees. There's a bank here, it drops off
3 fairly sharply. And those two trees were in that
4 drop-off area, and they came over into the yard.

5 **Q** Well, to give you some scale --

6 **A** Yes, sir.

7 **Q** -- this railroad tie right here will give you
8 scale. Tell them, in relationship to that railroad
9 tie, where those trees were.

10 **A** The two trees -- one was right in here, I
11 believe {indicating}, and one was here. The stumps
12 are still there.

13 **Q** Okay.

14 **A** And they flowed over -- one flowed over into
15 the yard.

16 **Q** All right. Did you have to cut those down at
17 some point?

18 **A** Yes, sir. They got the -- beetles in them, I
19 believe, and they -- they were dead. They were
20 threatening the building, and we took them down.

21 **Q** Do you know what year you took them down?

22 **A** In the past two years.

23 **MR. GARRETT:** Beg the Court's indulgence.

24 (Pause.)

25 **Q** And just for clarification, this has been

1 described. Can you describe this? Is this -- it
2 says dirt driveway. Is it a dirt driveway that's in
3 front of that metal building and comes all the way
4 down?

5 A Yes, sir. The driveway actually goes to where
6 the mobile home was setting. And the mobile home is
7 setting in front of -- was setting in front of this
8 building.

9 Q Yes, sir.

10 A What my father was doing, he was building this,
11 I think, at one time with the thought of it being a
12 guest cottage.

13 Q Right.

14 A And on the point or on the -- right before you
15 start dropping off to the lake --

16 Q Right.

17 A -- he was going to build the main house. If
18 you go to the lake, he's got a lot of wood that he
19 cut off of that lot that he was going to use on that
20 building, and it's stacked in back of this little
21 building.

22 Q That little shed back there was wood that he
23 had cut off of the property?

24 A Actually, there's --

25 Q A lumber pile?

1 **A** Yes, sir. There's a lumber pile back here.

2 **Q** All right.

3 **A** And that's what he was going to use the lumber
4 for.

5 **Q** And that landing where that -- if I were to
6 follow that driveway all the way down to that
7 landing where that new house was going to be built,
8 do y'all use that as a driveway?

9 **A** Yes, sir. We turn around there. We still use
10 it. It's still got -- it had gravel and I think now
11 it's got some sort of asphalt -- broken up asphalt
12 on it.

13 **Q** Right.

14 **A** And it's being grown up by the weeds now.

15 **Q** Suppose a vehicle --

16 **A** Yes, sir.

17 **Q** -- is parked at or about, I think, this area
18 right here, would anybody inside the house be able
19 to see that under the construction as of November
20 the 15th, 2009?

21 **A** No, sir. It wouldn't be visible from the back
22 windows, and it would not be visible from the front
23 or the deck unless you leaned around the side of the
24 building.

25 **Q** Okay. In order to see it, you'd have to lean

1 around the side of the building?

2 **A** Yes, sir. You'd have to -- you'd have to go to
3 the end of the wood deck and lean out to look back
4 behind the building.

5 **Q** Now, you weren't there on the night in
6 question, I'm assuming?

7 **A** No, sir, I was not.

8 **Q** So you really don't know anything about what
9 happened out there that night?

10 **A** No, sir.

11 **MR. GARRETT:** All right.

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

13 **MR. MYERS:** Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. MYERS:

16 **Q** Mr. Worley, you said that the house was built
17 around 1976; is that correct or incorrect?

18 **A** I said in the vicinity of 1976. It could have
19 been '78. I know that pop never finished it.

20 **Q** Pardon me?

21 **A** I say I know my father never considered it
22 finished.

23 **Q** Yes, sir.

24 **A** It was finished to the point that you could
25 occupy it somewhere between 1976, '78, somewhere in

1 that range.

2 **Q** Now, you talk about -- you talked about
3 concrete walls and concrete floors and rebars and
4 double insulation. Fiberglass?

5 **A** Yes, sir. It was three-and-a-half-inch
6 fiberglass that you normally have in a normal 2x4
7 stud wall. And what he did was he took two -- a
8 double layer, and he took the backing off of one
9 layer, and he shoved it in that wall.

10 **Q** He did that himself. He didn't have anybody
11 building it for him?

12 **A** He did -- that's not exactly correct.

13 **Q** What's correct?

14 **A** He had two shop teachers help him build it.

15 **Q** I'm sorry. I can't hear good.

16 **A** I'm sorry. He had two local shop teachers.

17 **Q** Who were they?

18 **A** I do not know their names, sir.

19 **Q** When you say local, local where?

20 **A** Local to this county.

21 **Q** McCormick County?

22 **A** Yes, sir.

23 **Q** And you never saw them?

24 **A** Pardon me?

25 **Q** You never saw them?

1 **A** Yes, sir, I did see them.

2 **Q** But you don't know who they are?

3 **A** I don't remember their names, sir.

4 **Q** Okay.

5 **A** I'm sorry. I don't remember that -- that back.

6 **Q** Yes, sir. And the two shop teachers built the
7 house?

8 **A** The two shop teachers helped my father and my
9 mother build the house. My brother also helped. My
10 sister helped. I'm the one that was -- did not help
11 very much.

12 **Q** So you did not help -- and I'm glad you brought
13 that up, because I put down here. You did not help
14 build it?

15 **A** I did not help very much, sir.

16 **Q** Well, how much did you help? Where were you
17 living at the time?

18 **A** At that point in time, I was living in
19 Jacksonville.

20 **Q** Well, how often would you come up here to help?

21 **A** About once a month.

22 **Q** Once a month?

23 **A** Yes, sir.

24 **Q** Every month?

25 **A** Not every month, no, sir. Sometimes I would be

1 up every three weeks, sometimes once a month.

2 Q Well, during '76, how many times do you think
3 you came up here?

4 A I really couldn't honestly give you an answer
5 to that, sir, because I don't know.

6 Q In '77, how many times did you come up here?

7 A During the time it was constructed, I don't
8 recall back that far, sir. I couldn't tell you '77,
9 '78, or '79. I was here periodically, when my
10 sister and I used to kid my father about the way he
11 constructed the building and we --

12 Q I haven't asked you anything about that.

13 A Okay. I'm sorry.

14 Q Fiberglass has an opposite result. Rather than
15 cutting out noise, fiberglass kind of expands out
16 and allows noise; did you know that?

17 A Yes, sir. If you put a three-and-a-half-inch
18 back in a four-inch stud.

19 Q Yes, sir.

20 A If you compress that back, it has a tendency to
21 inhibit the transmission of sound.

22 Q Well, compressing it makes it worse; did you
23 know that?

24 A No, sir. That's not correct. I don't think
25 so.

1 Q So you dispute that?

2 A Yes, sir, I would.

3 Q Well, let me ask you a question: Who was there
4 the first time the house was broken into and what
5 was the date the first time it was broken into?

6 A The house?

7 Q This garage apartment.

8 A Garage apartment. Okay. Thank you, sir.

9 Q I think you said it was broken into --
10 attempted four times and successful twice? Is that
11 what you said?

12 A That's referring to the mobile home, sir.

13 Q All right. The mobile home.

14 A The mobile home, and it was back in the --

15 Q All right. Let's see '76, '86, '96, 2006.
16 Thirty-three years ago was the first time it was
17 broken into?

18 A I would say that that's probably correct.

19 Q Probably 40 years, because '76 is when you
20 started the house.

21 A '76 is when we started it.

22 Q Okay. Who was there when it was broken into?

23 A No one was there.

24 Q Pardon me?

25 A No one was there when it was broken into.

- 1 Q The second time, who was there and when was it
2 broken into?
- 3 A No one was there.
- 4 Q No one was there. When was that?
- 5 A And we're talking about the mobile home now?
- 6 Q That'd be fine.
- 7 A Okay. Okay, because the house --
- 8 Q Who was there?
- 9 A No one was there.
- 10 Q The third time, who was there?
- 11 A No one.
- 12 Q The fourth time?
- 13 A No one.
- 14 Q We got anymore? Five, six, seven, eight? Who
15 was there?
- 16 A We had one attempt at the garage apartment, I
17 would call it.
- 18 Q Who was there?
- 19 A And no one was there.
- 20 Q So no one has ever been there when somebody
21 tried to break into it?
- 22 A That's correct.
- 23 Q Who was arrested?
- 24 A No one was arrested.
- 25 Q Where is the police reports?

1 **A** I don't know about the police reports, sir.

2 **Q** Because none were ever filed?

3 **A** That I don't know.

4 **Q** But we don't have them.

5 **MR. GARRETT:** Objection, Your Honor, he said he
6 didn't know.

7 BY MR. MYERS:

8 **Q** Do you -- so to your knowledge --

9 **THE COURT:** Hang on, Mr. Myers. Ask him if he
10 knows whether or not there's one filed, please.

11 BY MR. MYERS:

12 **Q** Do you know if any were filed?

13 **A** No, sir, I do not.

14 **Q** So if any weren't filed, it wasn't serious
15 enough to bring it to the police's attention?

16 **A** I don't think that there was enough taken
17 because we didn't have much there, sir. It wasn't
18 worth it.

19 **Q** It was a trespass thing.

20 Now, let me ask you this: Tell us about that
21 sliding glass door up the stairs.

22 **A** Yes, sir.

23 **Q** Tell us how sturdy and soundproof that sliding
24 glass door is.

25 **A** The door on the second floor is not --

1 Q I'm talking about the sliding glass door --

2 A It's a standard sliding glass door.

3 Q Oh, it's no specially built sliding glass door?

4 A No, sir, not to my knowledge, it's not --

5 Q Now, what about the window -- I'm sorry. Go
6 ahead.

7 A It is a standard sliding glass door.

8 Q Now, what about the window to the left? See
9 right here on this diagram, Number 4. What about
10 the window to the left?

11 A Both of those windows are the same. They're
12 double-hung single pane wood windows.

13 Q No specially soundproof windows?

14 A No, sir, there is not.

15 Q Now, what were you saying about this floodlight
16 right up there? What were you saying about how that
17 was on November the 15th, 2009?

18 A Sir, I wasn't there November the 15th, 2009.

19 Q I thought you --

20 A I could -- I stated -- I hope I stated that
21 that floodlight pointed out into the yard, and it
22 had been set and left that way for years.

23 Q For years. For years.

24 Well, let me show you State's Exhibit Number 5.

25 A Yes, sir.

1 Q Is that how it was supposed to have been?

2 A That's the floodlight there, yes, sir, but I do
3 not -- I can't tell from this picture the angle of
4 it. I'm sorry.

5 Q Well, it's taken from the ground.

6 A I know, sir, but I don't normally look at it
7 from the ground.

8 Q Well, step down here. Let's you and I talk to
9 the jury about this.

10 A I normally look at it from the wood deck.

11 Q I understand that.

12 A (Witness leaves the witness stand.)

13 Q And whoever took this picture was standing down
14 right here, right out the side on the ground down
15 there. And it's shining down, isn't it?

16 By the way, that was taken on the 15th of
17 November 2009.

18 A Uh-huh. It appears to be shining down, but I
19 can't tell from that picture whether it was focused
20 like it was focused out in the yard.

21 Q Well, when was the last time you saw that light
22 prior to November the 15th, 2009?

23 A Two weeks before when I was there.

24 Q Now, let me show you this picture, State's
25 Number 25. This is taken in 2011. That light has

1 been moved then by someone after the fact, hadn't
2 it? After the shooting?

3 **A** That -- between these two pictures?

4 **Q** Yes, sir.

5 **A** I would say you're correct, it's been moved.

6 **Q** After the shooting, on Number 25, somebody has
7 moved that light; isn't that right?

8 **A** It appears, from that photograph, that the
9 light has been moved, yes, sir.

10 **Q** But on the day of the shooting, it's pointing
11 right down, isn't it?

12 **A** I can't tell from the photo. It is pointing
13 out, but I can't tell -- since we're looking at it
14 this way, I can't tell the tilt.

15 (Witness resumes the witness stand.)

16 **MR. MYERS:** Excuse me one moment, please.

17 (Pause.)

18 **Q** Now, y'all were talking about if someone were
19 up on this deck right up here -- up here -- for
20 example, your brother.

21 **A** Yes, sir.

22 **Q** And there was a white car parked right here and
23 a police car parked behind it, how would you say
24 that somebody would have to look around that corner
25 to see the police car?

1 **A** Yes, sir. You would have to look around the
2 corner.

3 **Q** How would they have to do it? Couldn't they
4 just come right there and look?

5 **A** You would have to come up -- this cathouse is
6 right here. You'd have to come up and work your way
7 over because there's a little ramp for that
8 cathouse.

9 **Q** You mean if somebody's upstairs here --

10 **A** Yes, sir.

11 **Q** -- they couldn't look right there?

12 **A** No, sir. The cathouse is right here in this
13 corner. You'd have to walk over here and look back.

14 **Q** Yes, sir. So you couldn't see that? Is that
15 what you're telling me?

16 **A** No, sir. I'm telling you, if you walked over
17 here and looked back, you could see something.

18 **Q** And that cathouse went way out?

19 **A** It comes out some, but there's a little ramp
20 for the cat there.

21 **Q** Where?

22 **A** Down at the base of it.

23 **Q** And where does that ramp go down?

24 **A** And if you've got a picture.

25 **Q** I've got a side picture here; I'm referring to

1 Number 16. Is the ramp on the outside?

2 **A** (Witness reviewing document.)

3 **Q** Is the ramp on the outside over here, just like
4 you told the jury? Right over here, where is that
5 ramp on the outside?

6 **A** If you look --

7 **Q** Don't show me, show them.

8 **A** This right here may be a little ramp.

9 **Q** I'm sorry. This lady has got to hear you.

10 **A** Oh, I'm sorry.

11 **Q** You said it may be?

12 **A** I can't tell from this photo, sir.

13 **Q** Well, if it's there, it would be on that photo,
14 wouldn't it?

15 **A** I can't tell. I can't see it well enough to
16 tell you that's it, but you can walk to this corner
17 and look back.

18 **Q** So there's no problem with somebody walking
19 around this corner and looking right behind that car
20 that's about even and seeing a police car back here,
21 is it?

22 **A** No, sir. You can walk to that corner and look
23 back, but you have to walk around the cathouse.

24 **Q** Was it difficult to walk around?

25 **A** No, sir, it's not.

1 Q So the cathouse doesn't really make any
2 difference, does it?

3 A It doesn't make a lot of difference, no.

4 Q Thank you.

5 Now, I want to ask you about this. If I
6 confuse you, you let me know.

7 MR. GARRETT: Objection to the commentary, Your
8 Honor.

9 THE COURT: Overruled.

10 BY MR. MYERS:

11 Q If someone -- in State's Exhibit Number 5, if
12 someone were downstairs at this door here -- see
13 that door downstairs? It's the door right down
14 there.

15 A Yes, sir. The pedestrian door going into the
16 house.

17 Q Someone's downstairs --

18 A Yes, sir.

19 Q -- and they knock on that door --

20 A Yes, sir.

21 Q -- you're saying that people upstairs couldn't
22 hear it?

23 A Yes, sir, that's correct.

24 Q How do you know that?

25 A I have tried knocking on that door. I've had

1 my mom knock on that door.

2 Q Oh, no, no. Repeat that again.

3 A Wait a minute --

4 Q No, no. You had who?

5 A My mom knock on that door, but what I have done

6 -- I questioned that myself, and I set up a boom box

7 and I turned it on.

8 Q Where was the boom box?

9 A About two and a half feet from the door, two

10 feet.

11 Q The door downstairs right here?

12 A Yes, sir. Facing -- the speakers facing the

13 door, and I turned it up.

14 Q Uh-huh.

15 A And I couldn't hear it. Now, you can

16 hear inside --

17 Q Where were you?

18 A When I couldn't hear it?

19 Q Yes, sir.

20 A On the second floor.

21 Q You were on the second floor?

22 A Yes, sir.

23 Q Okay. Let's get this straight. Somebody

24 downstairs knocking on that door, you could not hear

25 it upstairs?

1 **A** No, sir.

2 **Q** I'm going to ask you one more thing: You said
3 your mom's hearing is almost nonexistent?

4 **A** That's correct.

5 **Q** And if someone were knocking on the door,
6 downstairs, your mom certainly couldn't hear it
7 upstairs?

8 **A** No, sir. That's correct.

9 **Q** You're positive about that?

10 **A** Yes, sir.

11 **Q** Now, when did y'all cut these trees down over
12 here you're talking about?

13 **A** I would say in the last two years.

14 **Q** Last two years?

15 **A** Yes, sir.

16 **Q** November the 15th, trees were right there where
17 that cross tie is?

18 **A** Yes, sir, there were two trees there.

19 **Q** You don't happen to have a picture of that, do
20 you, because we can't find them in our picture. Do
21 you have a picture of that?

22 **A** That would show both of those trees?

23 **Q** That would show the trees over this cross tie.

24 **A** I may have one, sir.

25 **Q** Could I see it?

1 **A** I don't have it with me. Could I go to
2 counsel's table?

3 **Q** Yes, sir.

4 **A** (Witness leaves the witness stand.)

5 I've got two photos that I think will show
6 those trees, sir.

7 **Q** Yes, sir. And who took these photographs?

8 **A** I may have taken them. I'm not sure.

9 **Q** When did you take them?

10 **A** In -- I don't --

11 **Q** I don't see a date on them. When did you take
12 them?

13 **A** They would have been taken two years ago.

14 **Q** Two years ago?

15 **A** Wait a minute. This is not my photo. I did
16 not take this photo.

17 **Q** You don't know when they were taken?

18 **A** No, sir, I don't. I don't know. I did not
19 take this photo. That's not my mark on it.

20 **Q** Okay. That's good.

21 **A** (Witness resumes the witness stand.)

22 **Q** What do those trees have to do with this case?
23 Why did you bring that up?

24 **A** (No response.)

25 **Q** What do those trees have to do with this case

1 and why did you bring it up?

2 A The two trees?

3 Q You testified --

4 A I removed them from the property. It's
5 changed.

6 Q You removed them from the property two years
7 ago?

8 A Yes.

9 Q So they don't have anything to do with 2009, on
10 November 15th?

11 A No, sir.

12 Q Well, why did you bring it up?

13 A Because I removed them from the property.

14 Q Did you change that light after the shooting,
15 too?

16 A No, sir.

17 MR. MYERS: No further questions.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 BY MR. GARRETT:

21 Q Do you recognize these two photographs as being
22 your property?

23 A Yes, sir, I do.

24 Q And the trees that you removed, are those limbs
25 of the trees that you removed?

1 **MR. MYERS:** May we see them?

2 **THE WITNESS:** Yes, sir. And I think I did take
3 those two pictures.

4 (Pause.)

5 BY MR. GARRETT:

6 **Q** Do those -- tell us what those leaves or limbs
7 demonstrate.

8 **A** That they're down low on the property.

9 **Q** And what are they at or near?

10 **A** They're near the cross tie.

11 **Q** This area right here, railroad tie? Is that
12 what we're talking about?

13 **A** Yes, sir.

14 **Q** Does it appear those actually -- the limbs
15 actually go over the railroad tie?

16 **MR. MYERS:** Objection; leading.

17 **THE COURT:** Rephrase.

18 BY MR. GARRETT:

19 **Q** Can you tell us what they appear to do as it
20 relates to the railroad tie?

21 **A** Yes, sir. They do appear to go, from this
22 angle, go over the railroad ties.

23 **Q** And did you take those photographs?

24 **A** These, I believe I did take. These -- they're
25 similar to photos I have taken.

1 **Q** Do you recognize the time stamp on those? Are
2 those yours?

3 **A** Yes, sir, I think they are. They were taken
4 May 17th, 2012.

5 **Q** How long was it after that that you had to cut
6 them down? It looks like they're --

7 **A** Right after.

8 **Q** -- they're dying there.

9 **A** Right. Like I said, it was approximately two
10 years ago.

11 **MR. GARRETT:** Move to introduce these two
12 photos.

13 **THE COURT:** Any objection?

14 **MR. MYERS:** Yes, sir, we object. It's 2012,
15 not 2009. We're talking about three years later, so
16 it's not relevant for 2009.

17 **THE COURT:** What is the relevance?

18 **MR. GARRETT:** Relevance shows that there was a
19 tree that had overhang that was in existence and had
20 been for years. /

21 **MR. MYERS:** No, sir. 2009 is what we're
22 talking about now. If he's got a 2009 picture, I
23 don't have any problem.

24 **THE COURT:** I overrule your objection. They'll
25 be admitted.

1 (Defendant's Exhibit Numbers 8 and 9,
2 photographs, marked and admitted into evidence.)

3 **COURT REPORTER:** Defendant's 8 and 9.

4 **MR. GARRETT:** Move to admit them into evidence,
5 Your Honor.

6 **THE COURT:** They're admitted.

7 **MR. GARRETT:** Thank you, Your Honor.

8 BY MR. GARRETT:

9 **Q** Would you come around and show the jury these
10 pictures and describe them for them so they can --
11 and it's in relationship to this area right here?

12 **A** (Witness leaves the witness stand.)

13 Right. There's sort of a ditch running along
14 through here and the land drops off real steep...

15 **COURT REPORTER:** Can you speak up, please?

16 **THE WITNESS:** Oh, I'm sorry.

17 There's a ditch running along the side of the
18 property here. There's a railroad tie. Those trees
19 were right in here. And if you look, not in this
20 picture but in this picture, you can see how they
21 come towards the railroad tie.

22 BY MR. GARRETT:

23 **Q** Walk on down so they can see it.

24 **A** (Witness complies.)

25 And you notice --

1 **THE COURT:** No, sir. No, sir.

2 **THE WITNESS:** Can't talk? I'm sorry.

3 (Witness resumes the witness stand.)

4 BY MR. GARRETT:

5 **Q** I believe Mr. Myers --

6 **MR. GARRETT:** Beg the Court's indulgence, Your
7 Honor.

8 (Pause.)

9 **Q** Do you recognize that tree as being an earlier
10 photograph of the tree that you actually took the
11 picture of in 2012?

12 **MR. MYERS:** He just said a little while ago he
13 didn't know when that photograph was being taken.

14 **THE COURT:** I sustain that objection.

15 **THE WITNESS:** It's --

16 **THE COURT:** No, sir, you can't answer.

17 **MR. GARRETT:** No further questions.

18 **THE COURT:** Any recross?

19 **MR. MYERS:** Yes, sir.

20 RECROSS-EXAMINATION

21 BY MR. MYERS:

22 **Q** Come down here, please, sir.

23 **A** Yes, sir.

24 (Witness leaves the witness stand.)

25 **Q** Defense Number 8, show the jury where the cross

1 tie is in that.

2 **MR. GARRETT:** I'm sorry?

3 **MR. HENDERSON:** Didn't hear the question.

4 BY MR. MYERS:

5 **Q** Show the jury where the cross tie is in that
6 picture.

7 **A** It's not in this picture, sir.

8 **Q** It's not in the picture?

9 **A** No, sir. It is in the picture you're holding.

10 **Q** Well, let's see this Number 9.

11 **A** Pardon me?

12 **Q** Show them where the cross tie is and where the
13 tree is.

14 **A** It's right here.

15 **Q** And where is the tree?

16 **A** And this is the limb for the tree right here.

17 **Q** You had to cut that tree down for these little
18 twigs right here?

19 **A** No, sir. The whole tree was that way. The
20 whole tree was dead.

21 **Q** Oh, excuse me. I apologize.

22 The whole tree? Well, where is --

23 **A** You're only seeing --

24 **Q** Show them where the whole tree is.

25 **A** The whole tree is not in this photo, sir.

1 Q But what is that?

2 A That's the limb from the tree.

3 Q Now, what's that got to do with this case?

4 A Like I said --

5 Q You don't know?

6 A I -- the only reason I took that picture, it
7 was in the picture --

8 MR. GARRETT: Calls for speculation.

9 THE COURT: Overruled.

10 BY MR. MYERS:

11 Q The only reason you took that picture was why?

12 A Because I was taking pictures of the property,
13 and I removed those two trees. That's the only
14 thing.

15 Q But where is that second tree you removed?

16 A It is adjacent to this.

17 Q It's not in that photograph?

18 A No, sir, it's not.

19 MR. MYERS: That's all I have. Thank you, sir.

20 THE COURT: May this witness step down?

21 MR. GARRETT: Yes, Your Honor.

22 THE COURT: Thank you, sir.

23 Madame Forelady, let's go ahead and take a
24 quick break for this afternoon, and then we'll bring
25 you back for further testimony.

1 (The jury retires to the jury room.)

2 **THE COURT:** Let me ask you just some logistical
3 issues right quick, not holding you to it, just to
4 give me an idea, do you have any idea of how many
5 witnesses you may call? I'm looking at when we need
6 to be ready to take them out to the place to make
7 sure we have some rules set for that as well.

8 **MR. HENDERSON:** Can we have one moment, Your
9 Honor?

10 **THE COURT:** Sure. And if you don't want to
11 answer, you don't have to.

12 **MR. HENDERSON:** No, I think we can.

13 (Pause.)

14 **MS. BALLARD:** Your Honor, it looks like we have
15 one witness for this afternoon that might take the
16 remainder of the afternoon, and then we have two
17 short witnesses in the morning. I would suggest
18 that the visit be scheduled for after lunch
19 tomorrow.

20 **THE COURT:** Okay. Any problem, Mr. Myers or
21 Mr. Maye, trying to get those logistics worked out
22 so we can get everybody there?

23 **MR. MYERS:** That's fine, sir.

24 **THE COURT:** Is that okay?

25 **MR. MYERS:** Yes, sir.

1 **THE COURT:** And, also, I want y'all to be
2 thinking about the ground rules, and I'll be quite
3 honest with you, I've never visited a scene in any
4 criminal case. I've done them in condemnation
5 cases, but I anticipate that there will probably be
6 some requests coming through from the jury, and be
7 thinking in terms of how or if we're going to
8 respond to them.. Okay?

9 **MR. GARRETT:** Judge Keesley and I actually
10 looked at a similar house in a civil case, and he
11 instructed the jury not to even talk among
12 themselves while they looked, and they couldn't ask
13 any questions.

14 **THE COURT:** I understand that, and that may be
15 -- that may be the way we go, may not. I hate to
16 leave the jury in the dark and not answer their
17 questions. At the same time, it may be -- without
18 the court reporter, being able to respond to it out
19 there --

20 **MR. MAYE:** They have an oath that the Clerk of
21 Court in Lexington used to do, when I worked for
22 Judge Baggett, numerous times the juries went out to
23 the scene, and they have an oath in Lexington, I
24 think, that the jurors had to take. They gave them
25 something. I remember it. And I imagine that the

1 Lexington Clerk of Court would still have it. It's
2 like what the bailiffs are supposed to do and the
3 drivers are supposed to do.

4 **THE COURT:** All right, guys.

5 (Brief Recess.)

6 **THE COURT:** Mr. Garrett, are you ready to
7 proceed?

8 **MR. GARRETT:** I am, Your Honor.

9 **THE COURT:** Mr. Myers?

10 **MR. MYERS:** Yes, sir.

11 **THE COURT:** You need a few minutes for your
12 folks to come back in?

13 **MR. MYERS:** They'll come back in.

14 We're ready.

15 (Defendant's Exhibit Number 10, CD, marked
16 for identification.)

17 **THE COURT:** Would you bring the jury in,
18 please?

19 (The jury returns to the courtroom.)

20 **MS. BALLARD:** Your Honor, we'd like to play --
21 and I understand we have no objection from the
22 Solicitor -- we'd like to play for the jury the
23 audio of the 9-1-1 call, as well as the radio
24 traffic from that evening. I understand there's no
25 objection from the prosecution.

1 **MR. MYERS:** No objection.

2 **THE COURT:** All right. Go right ahead, please.

3 Are you set up to go ahead and play it?

4 **MS. BALLARD:** And we've introduced the CD as

5 Defendant's Exhibit Number 10 without objection.

6 Mr. Henderson is going to bring his computer over.

7 **THE COURT:** Admitted without objection.

8 (Defendant's Exhibit Number 10, CD, admitted
9 into evidence.)

10 **THE COURT:** So you're going to set it up so the
11 jury can hear it?

12 **MS. BALLARD:** So the jury can hear it, yes,
13 sir.

14 **THE COURT:** All right. Ladies and gentlemen of
15 the jury, when that is being played, if, for some
16 reason, you can't hear it, raise your hand so we can
17 try to adjust it so you can.

18 (Whereupon, Defendant's Exhibit Number 10
19 was played for the jury.)

20 **MR. MYERS:** Your Honor, that was -- I just want
21 to make it clear, that was purported to be the
22 entire tape. There was a lot of skips in there. I
23 just want to make sure the entire tape was played.

24 **THE COURT:** Okay, sir.

25 Would you call your next witness, please, sir?

1 **MR. GARRETT:** Call Nick Moore to the stand.

2 **THE COURT:** You're still under oath, Mr. Moore
3 -- Officer Moore.

4 **MR. MYERS:** Your Honor, he's been presented and
5 cross-examined. Is this for new material?

6 **THE COURT:** I am going to require that you go
7 over new material. You were given wide latitude on
8 cross-examination. I'm not going to let you go back
9 over the same information again.

10 **MR. GARRETT:** The only point, Your Honor, is it
11 relates to the oath of office and whether or not he
12 has bonds.

13 **THE COURT:** Whether or not this one has oath --

14 **MR. GARRETT:** Yes, sir.

15 **THE COURT:** Okay. That was not gone over.

16 I'll let you go over that.

17 **MR. MYERS:** Can we bring up a matter?

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

19 Would you go to the jury room?

20 (The jury retires to the jury room.)

21 **MR. MYERS:** Your Honor, we've gone into it with
22 Bobby Rushton, the victim in here, but as far as
23 anything with Nick Moore, it's not an element of
24 assault and battery with intent to kill, so we'd
25 like to know what the purpose is for asking this

1 witness.

2 **MR. GARRETT:** Your Honor, it's our position
3 that there's an attempt on a law enforcement
4 exception trying to tie Mr. Rushton and Mr. Nick
5 Moore together as being the police officer exception
6 for the Castle Doctrine. And we believe that it's
7 relevant as to whether or not he was a lawful police
8 officer on the night in question.

9 **THE COURT:** What does it do? Does it tie into
10 self-defense?

11 **MR. GARRETT:** It does. It ties into both
12 self-defense and the Castle Doctrine.

13 **MR. MYERS:** Is he talking about the statutory
14 Castle Doctrine?

15 **THE COURT:** The Castle Doctrine, you know, the
16 issue has been ruled upon earlier, it's not part of
17 this trial, but the self-defense is. So if it ties
18 into self-defense, I would agree with you.

19 **MR. GARRETT:** Well, that's true, but we also,
20 we would make a motion at the end of our
21 presentation of evidence for you to reconsider that
22 earlier ruling.

23 **MR. MYERS:** Now, I'm lost now. Is he talking
24 about the statutory act of the Castle Doctrine or
25 the common law Castle Doctrine?

1 **THE COURT:** Let me just tell you this: The
2 Castle Doctrine, as it was ruled on earlier, was
3 statutory when I read it.

4 **MR. MYERS:** Yes, sir.

5 **THE COURT:** I'm not dealing with the Castle
6 Doctrine. That's a pretrial ruling. That's already
7 been done. I'm not dealing with that. But the
8 defense still has a right to raise the defense of
9 self-defense or habitation.

10 **MR. MYERS:** Yes, sir.

11 **THE COURT:** And I'm going to let -- as long as
12 that goes into that, I'm going to let you do it, not
13 as to the Castle Doctrine because that's not part of
14 this case.

15 **MR. MYERS:** And the defense of habitation, a
16 police officer is not an element of that either,
17 under State versus Bryant.

18 **THE COURT:** Well, how does that apply then?
19 Tell me what element of self-defense that this
20 police officer being certified and qualified would
21 come into you meeting your or putting your
22 affirmative defense of self-defense.

23 **MR. GARRETT:** Your Honor, I believe the Curry
24 case requires that the courts make a separate
25 independent finding about whether or not he's a

1 police officer, and we're entitled to have you rule
2 on that --

3 **THE COURT:** I've got the Curry case right here.

4 **MR. MYERS:** The Curry case said that the
5 statutory Castle Doctrine is not a part of the
6 trial.

7 **THE COURT:** It says it's not to be charged.

8 **MR. MYERS:** And it's not a part of the trial
9 because it's not charged and it's not involved in
10 it.

11 **THE COURT:** Where in the Curry case does it say
12 I have to make an independent finding?

13 **MR. MYERS:** Curry says, once the ruling's been
14 made, that's it. And a ruling has been made.

15 **MS. BALLARD:** Your Honor, if I could, as it
16 related to our directed verdict motion, Your Honor's
17 ruling was that, because Mr. Moore -- or Officer
18 Moore and Officer McAllister were deputy sheriffs,
19 that you -- there was sort of an osmosis theory that
20 brought Mr. Rushton --

21 **THE COURT:** Well, I don't know if I would
22 qualify it as osmosis, but I did, in the
23 alternative, say that in the event that Officer
24 Rushton was not qualified, the other two were.

25 **MS. BALLARD:** Correct. So we want to establish

1 that neither Officer Moore nor Officer McAllister
2 have met the statutory requirements either.

3 **THE COURT:** Well, let me ask you this: In
4 relevancy terms, where does that come into this
5 case?

6 **MS. BALLARD:** We intend to ask for a jury
7 instruction on the Castle Doctrine. The Curry case
8 leaves it open --

9 **THE COURT:** Not going to get it. I'll tell you
10 right now, the Curry case says you don't get it.

11 **MR. MYERS:** You don't get it.

12 **MS. BALLARD:** We believe what the Curry case
13 says is that there's a pretrial determination made
14 in the Curry case. The court said that the jury
15 instruction on the Castle Doctrine was permissible
16 under these facts, under the Curry facts.

17 **THE COURT:** I'll go back and look at it again.
18 My recall of that case was Judge Goldsmith, they
19 said that he had made a mistake in charging the
20 Castle Doctrine in the case and he shouldn't have.

21 **MS. BALLARD:** I'm sorry. Well, I misspoke.
22 But we are going to request a jury instruction on
23 the Castle Doctrine under the -- since Your Honor
24 has ruled that, as a matter of law, Mr. Rushton is a
25 law enforcement -- is a deputy sheriff. We're going

1 to ask for a jury instruction on the Castle Doctrine
2 as to whether or not Mr. Rushton and the others have
3 a right to be there, which is relevant to
4 self-defense and to the Castle Doctrine. We're
5 going to request a jury instruction on that. I
6 realize you're going to overrule it, but --

7 **THE COURT:** Well, I understand. Let's look at
8 -- just take a minute for a second. Let me...

9 **MR. MYERS:** Curry case, Your Honor, I can tell
10 you --

11 **THE COURT:** I've got it.

12 (Pause.)

13 **THE COURT:** If you'll look at page -- well,
14 mine is five, but it's headnote -- section B under
15 headnote eight. It says, Appellant contends the
16 trial court erred in charging the jury on both the
17 provisions of the act and the self-defense.

18 And it -- after the court previously held above
19 that they -- that the -- in the trial, the elements
20 of self-defense must be presented or disproven by
21 the State.

22 Then it says under headnotes 12, 13, and 14,
23 that appellant claims the charge is purposeful
24 ambiguity, which confused the jury. It said, The
25 charge under the act was indeed error, but one that

1 inured to the benefit of the appellant. And they
2 denied that.

3 **MS. BALLARD:** I understand.

4 **THE COURT:** And the way I read that case is you
5 don't charge that. That's purely pretrial immunity
6 determination, but you don't charge the act. So --

7 **MS. BALLARD:** The way we read it is because of
8 the social guest analysis in the Curry case, the
9 court has not addressed the circumstances of that
10 issue involving whether someone is or is not a law
11 enforcement officer who has a right to be present
12 under the circumstance where he is.

13 And the Curry case does, in fact, say there's a
14 lot left to be answered about the way the Castle
15 Doctrine applies, so we intend to request a jury
16 instruction on that. And we would like to offer the
17 testimony of Officer Moore and Officer McAllister to
18 establish that they, too, have -- were not qualified
19 properly under the statute.

20 **THE COURT:** Well, let me ask you this: Even if
21 you're correct, or maybe we need a stipulation
22 they're not found in the public records, but is
23 there anything that indicates these officers were
24 responsible for their filing of their qualification?
25 I thought that was a duty by the sheriff or somebody.

1 higher up.

2 **MS. BALLARD:** 23-13-10 requires the sheriff to
3 file it, but it also says -- excuse me -- 23-13-20
4 says, Each deputy sheriff shall, before entering
5 upon the discharge of his duty, file a bond. That's
6 not on the sheriff. That's on each individual
7 officer.

8 **THE COURT:** Let me do this: I'm going to let
9 you protect yourself on the record. I'm going to
10 let you make a proffer of that evidence. I don't
11 think it goes to the element of self-defense. I
12 think that is what is germane here in the elements
13 of assault and battery with intent to kill and
14 possession of a weapon during the commission of a
15 violent crime. Otherwise, it's not relevant. Okay?

16 I may be wrong. So make your proffer and then
17 we'll move on, if that's okay.

18 **MS. BALLARD:** Thank you, Your Honor.

19 **THE COURT:** Okay. Go ahead and make your
20 proffer, please, sir.

21 **MR. GARRETT:** Thank you, Your Honor.

22 This would be a court exhibit, Judge, wouldn't
23 it?

24 **THE COURT:** Yeah, let's make that actually --
25 because we don't need to send that back to the jury.

1 I'm not going to charge the Castle Doctrine to the
2 jury.

3 (Court's Exhibit Numbers 7 and 8, Oaths of
4 Office, marked for identification.)

5 **MR. GARRETT:** Please the Court.

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

7 NICHOLAS MOORE,
8 having been previously duly sworn, resumed the
9 witness stand and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. GARRETT:

12 **Q** Mr. Moore, could I get you to review what's
13 been marked as Court's Exhibit Number 7 and Court's
14 Exhibit Number 8 and tell me if you recognize what
15 those are.

16 **A** Yes, I recognize them.

17 **Q** Would you tell us what the first one is and
18 identify it for us, please?

19 **A** It says it's an oath for county and state
20 officers.

21 **Q** And what date was that one?

22 **A** That was October the 16th, 2007.

23 **Q** All right. And do you have another one there?

24 **A** I sure do.

25 **Q** Could you identify it?

1 **A** It's also an oath for county and state
2 officers. And the date on it is January the 8th,
3 2009.

4 **Q** All right. And are those your oaths that you
5 signed and took?

6 **A** Yes, sir.

7 **MR. GARRETT:** Move at this time to introduce
8 those into the court's record.

9 **THE COURT:** It will be admitted as a court's
10 exhibit.

11 **BY MR. GARRETT:**

12 **Q** To your knowledge, are those oaths of office
13 recorded in the Clerk of Court's office?

14 **A** I don't know what they do with them.

15 **Q** Okay. And do you have a bond -- did you take
16 steps to make sure that you had a bond that was
17 recorded and kept in the clerk's office?

18 **A** I haven't.

19 **Q** Have you been sworn in at any time by a circuit
20 court judge?

21 **A** No.

22 **Q** Have you been accepted by appointment by a
23 circuit court judge?

24 **A** No.

25 **Q** Have you ever appeared before a circuit court

1 judge for purposes of being a deputy sheriff?

2 **A** No.

3 **Q** There's -- have you taken any other bonds other
4 than the two bonds that I've showed you or shown
5 you?

6 **A** Bonds or oaths?

7 **Q** Oaths.

8 **A** I took one to be a city police officer in 1999.

9 **Q** All right. Have you taken any other than
10 those?

11 **A** No, sir.

12 **Q** Okay. So, in 2009, the oath that you took was
13 the one that we have here?

14 **A** Yes.

15 **Q** And, to your knowledge, you took no other
16 oaths?

17 **A** The one before that.

18 **Q** Okay. On 11/15/09, were you acting at the
19 direction and under the authority of the Sheriff
20 George Reid?

21 **A** Yes, I was, as a certified police officer
22 through the South Carolina Criminal Justice Academy.

23 **MR. GARRETT:** That's all I have for this
24 witness, Judge.

25 **THE COURT:** Thank you, sir.

1 Any cross-examination?

2 **MR. MYERS:** No, sir.

3 **THE COURT:** Thank you. You may step down.

4 **MR. GARRETT:** Call Melissa McAllister.

5 **MS. BALLARD:** Your Honor, this will be for the
6 same purpose.

7 **THE COURT:** Would you stipulate for the record
8 just for the purpose of the proffer --

9 **MR. MYERS:** Yes, sir.

10 **THE COURT:** -- that the same evidence will be
11 for the next witness?

12 **MR. MYERS:** Yes, sir.

13 **THE COURT:** And which witness is that? Melissa
14 McAllister.

15 Well, Mr. Myers said he would stipulate that
16 you would elicit the same testimony from
17 Ms. McAllister that you just did from Officer Moore.

18 **MR. GARRETT:** Thank you. May I mark these as 8
19 and 9?

20 **THE COURT:** Yes, sir. May be court exhibits.

21 **MR. GARRETT:** I'm sorry, 9 and 10.

22 (Court's Exhibit Numbers 9 and 10, Oaths of
23 Office, were marked for identification.)

24 **MR. GARRETT:** Move at this time to introduce
25 Court's Exhibits 9 and 10.

1 **THE COURT:** 9 and 10 will be admitted for the
2 purposes of the proffer as court exhibits.

3 **MS. BALLARD:** Your Honor, it's not necessary
4 for her to take the stand.

5 **THE COURT:** Thank you, ma'am. It's not
6 necessary for you to take the stand at this time,
7 but I'm just going to ask you to remain just in case
8 you're needed. Okay?

9 Are you ready to go forward with further
10 witnesses?

11 **MR. GARRETT:** I am, Your Honor.

12 **THE COURT:** State ready to go forward?

13 **MR. MYERS:** Yes, sir.

14 **THE COURT:** Would you bring the jury back in,
15 please?

16 (The jury returns to the courtroom.)

17 **THE COURT:** Mr. Garrett.

18 **MR. GARRETT:** Thank you, Your Honor. I call
19 Dr. George Kirkham.

20 GEORGE KIRKHAM,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. GARRETT:

24 **Q** Dr. Kirkham, get yourself set up there and pull
25 that microphone close to you so this jury can hear

1 you.

2 **A** Okay.

3 **Q** All right. You got you some water there in
4 case you need it?

5 **A** I do.

6 **Q** You good to go?

7 **A** Yes, sir.

8 **Q** All right. Tell us your name and address for
9 our court record, please, sir.

10 **A** Yes, sir. My name is George Kirkham, and I
11 live in Palm Beach Gardens, Florida.

12 **Q** All right. And what is your educational
13 background?

14 **A** I hold a bachelor's degree in the field of
15 criminology from California State University at San
16 Jose; also a master's degree in criminology from the
17 same university; and a doctorate degree of
18 criminology from the University of California at
19 Berkeley.

20 **Q** All right. And what is your occupation at this
21 time?

22 **A** I'm a professor emeritus at the Florida State
23 University College of Criminology and Criminal
24 Justice and a private criminal justice consultant.

25 **Q** What is a professional emeritus?

1 **A** It means you're old. It's an honor that the
2 president of the university can confer on a retiring
3 faculty member. You don't get it simply because you
4 retire. I was full-time faculty for 20 years, and
5 teaching a research there, but you have to make some
6 major contribution to the field of knowledge.

7 In my case, I developed, under grants in the
8 U.S. Department of Justice, the first police human
9 relations training material for the United States
10 that was issued into all 50 states and the FBI
11 academy.

12 **Q** How many professors of criminology at FSU have
13 ever been awarded that title?

14 **A** In the 60-year history of the College of
15 Criminology and Criminal Justice, I think we've only
16 had six or seven, and most of them have been deans
17 or chairmen.

18 **Q** What is a criminologist?

19 **A** A criminologist is a scientist who is involved
20 in studying the causes of crime and delinquency.
21 Criminologists often specialize in the study of
22 different types of crime: Homicide, drug abuse,
23 organized crime, terrorism, domestic security.

24 Sometimes we're mistaken for a criminalist, the
25 people, you know, like you see on CSI who deal with

1 forensics, blood spatter and DNA and fingerprints
2 and so on. That's a criminalist.

3 Criminologists also very often specialize in
4 the study of our criminal justice system: Courts,
5 corrections, and law enforcement.

6 **Q** And what's your particular area of specialty?

7 **A** My area of specialization for the past 40 years
8 has been law enforcement, particularly standards and
9 procedures of the American police profession.

10 **Q** As a criminologist specializing in standards
11 and procedures of the law enforcement profession,
12 have you authored any training material which is
13 used to instruct police officers throughout the
14 nation?

15 **A** Yes. I've authored, throughout my career, some
16 26 training films, video, -- videotapes for training,
17 instructional manuals that are used throughout the
18 United States.

19 **Q** Have you had occasion to personally train law
20 enforcement officers on these and other subjects at
21 academies -- police academies, throughout the nation?

22 **A** Yes, I have.

23 **Q** When and where?

24 **A** I've been a lecturer, consultant or trainer to
25 some 50 different law enforcement agencies

1 throughout the nation -- city, state, and federal.
2 These include lecturing at the FBI Academy in
3 Quantico, training for the consolidated federal law
4 enforcement training center, which is the agency
5 that trains everyone except the FBI. The Bureau has
6 its own academy. All the other agencies are trained
7 by the consolidated federal center, all the other 50
8 state agencies and 50 federal agencies and 200 state
9 agencies. I've instructed for the Maine State
10 Police.

11 For many years, I trained all new troopers at
12 the Virginia State Police Academy in Richmond. I've
13 trained for the Florida Highway Patrol. I've
14 trained many municipal police forces in a variety of
15 subjects. At one time, I trained most of the
16 Cincinnati, Ohio, Police Department, for example.
17 Agencies pretty much throughout the country over the
18 years.

19 **Q** What about Carolina? What about here in South
20 Carolina?

21 **A** Yes. I've instructed at the South Carolina
22 Criminal Justice Academy.

23 **Q** What about in addition to your formal education
24 as a criminologist, have you had any personal,
25 practical experience as a law enforcement officer?

1 **A** Yes, I have.

2 **Q** Can you explain?

3 **A** Yes. I've been a police officer and deputy
4 sheriff for four different law enforcement agencies
5 throughout the course of my university career. I
6 came into law enforcement in a little unusual way.

7 **Q** All right. As an officer or deputy yourself,
8 have you had, on occasion, to respond to shots fired
9 and gun calls in a residential area?

10 **A** Many times, yes.

11 **Q** Have you arrested armed and dangerous
12 individuals?

13 **A** Yes. One of the last people I arrested was
14 Phillip Michael Wheat, who was an armed interstate
15 fugitive who's serving three life sentences. I
16 arrested him following a car chase and a foot chase.
17 I remember that because he nearly shot me.

18 **Q** Is your experience working as a uniform patrol
19 -- patrolman, as well as a plain clothes?

20 **A** Yes. Uniform patrol and also plain clothes and
21 undercover as part of a federal organized crime
22 strike force.

23 **Q** How did you go from being a criminologist to a
24 police officer?

25 **A** Well, it was an unusual exodus. When I got my

1 doctorate at UC Berkeley, I came to my first
2 teaching post at Florida State University thinking I
3 knew a lot about crime and criminals. I'd worked in
4 a major state prison, Soledad State Prison for two
5 years as a counselor. And I had a caseload of 300
6 pretty tough felons in my cell block. I come
7 through a riot there.

8 And I thought I knew quite a bit, but I would
9 have, you know, prisoners sit across from me and
10 everything was, yes, sir, no, sir. A guy who was
11 very violent, I knew from his records was very
12 violent, but he was very polite. I was preparing
13 his parole board evaluation so he wasn't about to be
14 discourteous to me.

15 After I came to Florida State University and
16 started teaching, thinking I knew a lot about crime
17 and criminals, I had a lot of police officers in my
18 class that were coming back to school under federal
19 funds to further their education, and we had some
20 very heated discussions in class. And out of these,
21 emerged a challenge. And one of these young men who
22 was a sergeant, he said, You know, Doc, you guys run
23 one of the oldest schools of criminology in the
24 country here. You're always writing -- you're
25 writing books and articles about the police this and

1 the police that, but none of you has ever been a
2 part -- never seen our world up close and personal.

3 And I said, Well, wait a minute, I spent a few
4 nights went out on the road with the police in San
5 Jose. And he said, No, that's not what I'm talking
6 about. I mean, for one of you to walk a mile in our
7 moccasins. So literally go through a police academy
8 and spend some time on the streets, spend some time
9 as a uniform patrol officer in a high-crime area.
10 He said, That's never been done, has it? And I
11 said, Well, no, we don't really study things that
12 way.

13 But the more these young guys talked to me, the
14 more I -- I got interested in the idea. I
15 approached my dean, and I went back to the sergeant,
16 and I said, Look, Sergeant, if my dean was willing
17 to let me do it and I could get a grant to do it,
18 why would your sheriff in Jacksonville, Florida --
19 both the sheriff's department and the police
20 department are consolidated as one agency. I said,
21 That's where they were talking about me going. I
22 said, Why would he let me do it?

23 And he said, I'll let you ask him that
24 question, and I did. I met with Sheriff Carson.
25 And I said, Sheriff, I don't understand; I'm from

1 Berkeley, and why would you let me come into your
2 department as a police officer and sponsor me
3 through the academy and so on?

4 He said, I'll tell you, Doctor, he said, Years
5 ago, I was a young police officer in Columbus, going
6 to night school, and I used to listen to a lot of
7 guys like you talk about, you know, the things cop
8 do wrong and this and that. And I always swore that
9 if I ever had a chance to expose one of you to the
10 realities of our world, I'd take advantage of it,
11 and here you are.

12 So I went through the police academy with his
13 support and my dean's support. I had my hair back
14 then, didn't wear glasses, and finally somebody -- I
15 wound up one day standing on the steps of the
16 Jacksonville Police Station, someone said -- looking
17 like Charlie Chaplain in a police uniform. No one
18 wanted to ride with me, but by prearrangement, I was
19 assigned to the highest crime beat in the City of
20 Jacksonville on the evening watch for three months.
21 And it was a baptism of fire for me.

22 I came away with many things, one of them was a
23 deep respect for my brother officers and sister
24 officers and an appreciation of how tough the job is
25 and how important it is, and also a great respect

1 for the importance of training, the training we
2 receive in the academies, the police profession.
3 And I think that's what kept me safe during those
4 six months.

5 And I came back with more questions than
6 answers. So after returning to my university, I
7 joined the Tallahassee Police Department as a
8 police, sworn, part-time officer working primarily
9 in the uniform patrol division. And over the years,
10 that became my laboratory. I worked mostly uniform
11 patrol. The last five years I was there, I -- I
12 started, with the chief's help, I started a crisis
13 intervention unit, I worked that.

14 I worked -- while in Tallahassee, I worked
15 criminal investigation, vice narcotics. I had the
16 opportunity, in addition to working for the Leon
17 County Sheriff's Department, while I was back at the
18 university, working for them part-time. None of
19 this was I paid for. This was all just my
20 laboratory.

21 I also had a chance, under a federal grant, to
22 go down to Fort Lauderdale and spend the summer
23 working in a -- I mentioned the federal organized
24 crime strike force. I worked undercover down there.

25 So, you know, I don't pretend to have the

1 experience of a veteran police officer, someone who
2 has to support their family and have it as a career,
3 but it's as close to their world as someone from my
4 world can get. And everything I've been able to
5 develop in the way of training material has been the
6 result of having access to that invaluable
7 laboratory. Nothing like that had ever been done.
8 Now, there are a number of other professors who have
9 done what I did.

10 **Q** And so -- is there something called Ivory Tower
11 Cop?

12 **A** Yeah. What happened was, 60 Minutes -- CBS 60
13 Minutes sat Dan Rather down to do a segment called
14 Ivory Tower Cop, and the reason was that my
15 colleagues were trying to block my tenure because I
16 was a police officer. I would work a shift
17 sometimes, then I would come to class, park a patrol
18 car and come into class, teach my class and try to
19 give the kids some understanding of what police
20 really are and what they do and the difficulties of
21 the job by way of develop training videos and bring
22 them into class and show them problems involving the
23 use of force and police/minority interactions and
24 the use of authority, and, you know, just everything
25 I could.

1 And a lot of my colleagues thought that was
2 unseemly undignified. So they said, Look, if you
3 resign your position with the police department, you
4 know, we won't block your tenure. And I said, I
5 can't do that. I'm proud to be a police officer.
6 It's been a part of my life. And I'm --

7 **Q** Scoot back just a little bit here.

8 **A** Yeah.

9 I'm not going to do that. And so I stayed -- I
10 did get tenure narrowly. And I -- so 18 of my 20
11 years, I worked as --

12 **Q** Hold on just a second. We're getting some
13 sound back from you there.

14 **A** Oh, too close?

15 **Q** Probably too close.

16 **A** Too close.

17 So for 18 of my 20 years, up until I was about
18 50, I worked as a police officer.

19 **Q** Did you receive any honors or awards for your
20 contributions?

21 **A** I did. I did receive a number: The Second
22 Annual J. Edgar Hoover Award, Freedom Salvation and
23 Valley Forge Award --

24 **COURT REPORTER:** Say that again. I'm sorry.

25 **THE WITNESS:** Freedom Salvation and Valley

1 Forge award, distinguished service award from the
2 Reserve Officers Association of America, a variety
3 of civic awards, awards from departments like the
4 Toronto Metropolitan Police for assisting them in
5 internal evaluations and use of force. So a number
6 of those things.

7 BY MR. GARRETT:

8 Q Is any of the police training material you've
9 authored used to train law enforcement officers in
10 other countries?

11 A Yes. Yes, it is. I did some instruction
12 myself for the British Metropolitan Police in
13 London, had the opportunity to do that. They used a
14 number of my training materials at The Peel Centre
15 in London to train their police. But also France,
16 Germany, Italy, India Switzerland, a number of other
17 countries. Russia now uses some of it.

18 Q Have you previously been called upon to
19 evaluate whether the conduct of officers in a
20 particular situation conformed or violated standards
21 and principals of the police profession?

22 A Yes.

23 Q When and where?

24 A Throughout the last 40 years, I think I've been
25 called upon to make such evaluations of police

1 conduct in 46 of our states and in many different
2 kinds of circumstances involving firearms and
3 vehicle pursuits and just a lot of different things,
4 use of different types of force.

5 So probably, I would say, somewhere in the
6 order of 1200 times over the years.

7 **Q** All right. And in what states have you been so
8 qualified?

9 **A** Well, I've had cases in, I mentioned, 46
10 states. I have been in your fair state here many
11 times. Most recently, I was in the U.S. District
12 Court in Charleston just a few weeks ago. And
13 during the summer, in Judge Culbertson's court in
14 Georgetown, I testified in cases there on matters.

15 **Q** In these type of criminal cases that involve --

16 **A** These are civil -- these are civil cases that
17 I've been involved in.

18 **Q** Okay. As it relates to criminal cases, what
19 percentage of time have you been an expert for law
20 enforcement and what percentage of time have you
21 been an expert for a defendant?

22 **A** In criminal cases, it's been about half and
23 half over the years.

24 **Q** Okay. What do you charge for your professional
25 services?

1 **A** I charge the same flat fee. For every case
2 evaluation I do, I charge a flat fee of \$6,000
3 regardless of how much time and effort that it takes
4 or whatever research I may do. That's the same in
5 every case. And then I charge a separate fee for
6 discovery depositions and for trial.

7 **Q** And your fees, do you charge the defense and
8 the prosecutors the same amount of money?

9 **A** Exactly the same amount for everybody.

10 **Q** All right. Do you keep a firearm in your home?

11 **A** I do.

12 **Q** Do you keep it loaded?

13 **A** I do. I have my -- we bought our own firearms
14 in Tallahassee. I have my Beretta Model Number 92F.
15 I keep that loaded by my bedside, yes, in my
16 nightstand.

17 **Q** Have you assisted the National Rifle
18 Association in the case of Winston Lee versus Port
19 of New Jersey to help protect the Second Amendment
20 rights of citizens?

21 **A** I did assist as a consultant in a case where
22 there was an attempt to block citizens from lawfully
23 transporting firearms from one residence to another
24 on the interstate. And the NRA, I worked with an
25 attorney who worked with them on that matter, yes.

1 **MR. GARRETT:** Your Honor, at this time, I move
2 to qualify Dr. Kirkham as a criminologist.

3 **MR. MYERS:** No objection.

4 **THE COURT:** Let me make sure, when you say
5 criminologist, is it in law enforcement standards
6 and procedures more particularly than
7 just criminology?

8 **MR. GARRETT:** Yes. That's what I think he
9 testified to. His particular area was standards of
10 practices and procedures of law enforcement
11 officers.

12 **THE COURT:** Okay. Do you stipulate to that,
13 Mr. Myers?

14 **MR. MYERS:** No objection.

15 **THE COURT:** Very good.

16 Ladies and gentlemen, as I told you several
17 times in this trial, an expert can give their
18 opinion based on their education and experience
19 where other people may not necessarily be allowed to
20 during trial. Expert testimony is just like any
21 other testimony, you may accept it, you may reject
22 it or give it as much weight as you think is
23 appropriate. All right.

24 **MR. GARRETT:** Thank you.

25 BY MR. GARRETT:

1 **Q** Dr. Kirkham, in this particular case, have you
2 had an opportunity to create a case file and to
3 review and examine all of the materials related to
4 this case?

5 **A** Yes. I believe I've had a chance to examine
6 everything that relates to the case. I've done a
7 couple of site inspections as well at the location
8 where the incident occurred.

9 **Q** Are law enforcement officers trained in
10 specific procedures that should be followed when
11 responding to calls involving shots fired and/or
12 armed individuals?

13 **A** Yes. This is a profession that we have in law
14 enforcement and there are standards and procedures
15 that relate to events like that and many other
16 things in the same way that there are standards and
17 procedures for pilots and surgeons, paramedics, fire
18 fighters. Yes, there are specific standards,
19 specific procedures that relate to a man with a gun
20 call, for example, and shots fired. They're very
21 important.

22 **Q** Is such training provided by the South Carolina
23 Criminal Justice Academy?

24 **A** Yes. You have an excellent academy here. I've
25 known the gentleman who is the director for many

1 years, Mr. John O'Leary. He was totally at the
2 academy for 16 years. And their curriculum is one
3 of the best in the country. It's very good.

4 **Q** Was Deputy Rushton trained at the academy
5 before he began his employment as the deputy sheriff
6 with the McCormick County Sheriff's Department?

7 **A** Yes. He had the same standard training that
8 other officers attending the academy would have had,
9 and it's pretty comparable to what you find
10 throughout the country. Some metro areas have
11 longer academies, but the important thing is that
12 every officer, whether it's a small department or a
13 big agency -- the average American police force is
14 only about ten -- ten officers -- that they all get
15 the same basic training. Whether they get a lot
16 more than that, they've got to have that.

17 **Q** All right. Have you had an opportunity to
18 examine the specific training material that the
19 South Carolina Criminal Justice Academy provides for
20 officers on the subject of how to handle a man with
21 a gun and shots fired calls?

22 **A** Yeah. This is their -- their module two. I
23 believe I have a copy of it here. And it's very
24 relevant to this tragic situation.

25 **Q** In your professional opinion, how adequate is

1 the South Carolina academy training material on the
2 subject of how to respond to a man with a gun call
3 compared to other law enforcement academies
4 throughout the nation?

5 **A** It would be very comparable. It's easily as
6 good as the other -- I checked with Mr. O'Leary. I
7 find the material is -- it's supposed to be updated.
8 It's essentially been the same for many, many years.
9 It's very good.

10 **Q** In your professional opinion, did Deputies
11 Rushton, Moore, and McAllister follow or violate the
12 training that they had received on how to handle man
13 with a gun and shots fired calls?

14 **A** Sadly, they did not follow, and in fact,
15 committed very serious violations of the most basic
16 police procedures; procedures that are designed to
17 keep officers and citizens safe.

18 **Q** Are there a circumstance when an officer does
19 not want to disclose his presence as an officer?

20 **A** Oh, there are, and I've been in those. I've
21 been, you know, sitting in the car with felons down
22 in Fort Lauderdale where looking like no one you'd
23 want to have in your home, with a Fu Manchu beard,
24 long hair, and dirty clothes. Where if the felons I
25 was with knew I was an undercover police officer,

1 they'd put a bullet in the back of my head and dump
2 me in the canal.

3 So there are circumstances where you want to
4 not disclose your identity. And we have police
5 officers that never report to the police departments
6 that are in deep cover doing different narcotics or
7 whatever it may be, terrorism, doing undercover
8 operations.

9 But even with patrol officers, initially when
10 you respond to a bad call -- unless it's something
11 urgent, like an active shooter, you know, active
12 shooter would be something like the tragedy at Sandy
13 Hook Elementary. You get something like that or the
14 Navy Yard shooting, you go and you put your --
15 that's one of the things you do as an officer, you
16 put your life on the line because you have to go to
17 try to save lives. People are being shot.

18 And we learned a lot from Columbine, and no
19 longer do we wait for SWAT. You go and do what you
20 can.

21 So -- but absent -- we're not dealing here with
22 an active shooter. So in a situation, a routine
23 call that we get that is a potentially -- this a
24 high-risk call. Any time you get a call, man with a
25 gun, shots fired, you always err in the direction of

1 caution. You're always going to treat it as high
2 risk, potentially high risk.

3 So, there, we don't even want to disclose our
4 presence until we want it to be known, unless we've
5 got something hot going on at the moment. We don't,
6 like, you know, park your patrol car in the driveway
7 or in front of the place. We've had officers killed
8 doing that kind of thing.

9 We learn from mistakes over the years. That's
10 where this body of training material comes from.

11 **Q** All right. And what specific ways did the
12 officers involved violate the training?

13 **A** Well, the first major violation was -- and you
14 got to give the officers the benefit of the doubt
15 here. I think, I try to do that.

16 The call goes out initially, and Officer
17 Rushton, I think, says, well, you know, it's a rural
18 area, maybe it's somebody poaching deer. That's --
19 probably they have a lot of contact with that kind
20 of thing, or somebody shooting at foxes or whatever.
21 That's okay as an initial assumption, but the first
22 thing you do -- you don't know what you've got, and
23 so the first thing you do is you make contact with
24 what we call the RP, the reporting party. And if
25 you're not -- I think there was a little trouble

1 locating the address. And so you clarify with
2 dispatch. In this case, it would have been the
3 Sheffields at 130 Presidential {sic} Drive.

4 So you're going to go over there first, and
5 you're not going to spend hours, but you're going to
6 try to get some real basic information as quickly as
7 possible: What's going on? There's no shooting
8 going on now, but what's been happening? What can
9 you tell me about this guy? Any history of mental
10 illness? Any threats to anybody in the
11 neighborhood? Is he involved with any drugs,
12 alcohol? How many people are over there? Do you
13 know anything about the kind of weapon he was using?
14 Those kind of questions. And, unfortunately, that
15 -- that wasn't done.

16 By the dispatch records, you can see that
17 Officer Rushton, four minutes before shots fired,
18 radioed -- he radios he's still looking for the
19 Sheffields' location. Okay, that's four minutes
20 before. And then two more minutes go by, and he
21 radios out, I found them, I'm talking to them now.
22 And then two minutes later -- two minutes later,
23 we've got shots fired.

24 Now, based on what -- again, giving the
25 officers every benefit of the doubt -- based on what

1 they knew from the Sheffields, shots fired, a guy is
2 out on his porch, loud, they haven't had any trouble
3 with him themselves personally, but he's firing off
4 his gun, and he's -- he's been talking loud out
5 there; hey, I don't know if I'm dealing with a
6 mental patient or somebody who's drunk or somebody's
7 had a fight with a wife or whatever, so we're going
8 to treat this as a high-risk thing. We're doing a
9 threat assessment of it, what they call in the
10 academy -- South Carolina and everywhere else --
11 quick threat assessment, high risk.

12 What does that mean? It means that all the
13 training material in the country, including this
14 very good material here -- the name of the game
15 here, you can see how it makes common sense, the
16 name of the game is we want to get someone like this
17 to come to us, unless we got an urgent situation,
18 which we don't have here.

19 We've got a lot of dangerous situations --
20 circumstances. It's dark. It's very dark. I've
21 been out there, was out there on the same night,
22 November 15th, two years later, couldn't see your
23 hand in front of your face. It's dark. It's late.
24 And we're at a residential neighborhood.

25 And a lot of people, as we Americans have the

1 right to do under the Second Amendment, and an awful
2 lot of people, myself included as I mentioned, have
3 guns. And there have been some tragic things
4 that -- in the military, they're called friendly
5 fire where you wind up killing or injuring your own
6 people in the mistaken belief that they're the
7 enemy.

8 And so we have had tragedies, and we've learned
9 through this and fed it back into training. We've
10 had tragedies where police officers have shot
11 homeowners, homeowners have shot police officers,
12 police officers have shot other police officers
13 because they didn't know who they were.

14 I had a Washington D.C. police officer in plain
15 clothes who was six months' pregnant was trying to
16 stop a street robbery, was shot by a uniform cop
17 because she didn't have her badge on. He didn't
18 know.

19 I had an officer who shot his trainer. They
20 were both in uniform. It was dark. They went
21 around the building. They couldn't see each other.
22 He killed the trainer.

23 So in a situation like this, you come to us.
24 The sequence is talk somebody out before you ever do
25 anything more as far as, you know, on television,

1 they're always crashing in and rushing in. What you
2 see on television is the opposite of what real
3 police are trained to do. I learned that early on
4 in the streets.

5 So how do you do that? Well, there's a very
6 safe -- safe way to handle it, and it's a way that
7 we would not all be sitting here with this tragedy.
8 This officer, Officer Rushton would not have
9 suffered this horrible injury, and Mr. Worley
10 wouldn't be in the trouble he's been in and none of
11 us would be here.

12 What could you do? Very simply, radio
13 dispatch, and you ask dispatch to check the county
14 directory. These folks have a landline. You have
15 dispatch call them up, say, McCormick County
16 Sheriff's Office out here, need for you to step out.

17 And, in the meantime, you're not going down
18 that dark driveway back there where you can draw
19 fire and you could have a guy high on angel dust,
20 methamphetamines. You can have a mentally ill, what
21 we call an EDP, an emotionally disturbed person.
22 You do not know. You do not know. And so you're
23 going to act in a protective way.

24 So you're going to have dispatch call the RP.
25 The phone rings in there and these folks would have

1 answered it. McCormick County Sheriff's Department
2 here; we need for you to come out. If you look
3 outside.

4 Now, by this time, you are down, you've got
5 your doors open, as we do in a high-risk stop, and
6 you are down in the apex or the break of the door
7 behind the engine block, and you've got -- now, you
8 turn on your blues, you hit your spotlight. I just
9 looked at one of the McCormick cars out here.
10 They've got all the standard equipment. Put your
11 high beams on.

12 You are behind the curtain of light. You've
13 been concealed up till now. Now, you're -- you want
14 them to know -- you really want the homeowners to
15 know, We're the police.

16 And so a person picks up the phone in there and
17 they hear, Sheriff's department. Okay, they're
18 calling. But now you look out and you're going to
19 have those lights sweeping all over the place,
20 trees, everything, the blue lights.

21 And if the person didn't -- let's say they
22 didn't have a phone, which they did, and they would
23 have answered the phone, Come on out. If they
24 didn't have a phone, though, you got a PA on there.
25 You hit your PA. And if you have to, I'd just --

1 looking again at the car out here, that's got a
2 standard range of siren controls that go from whale,
3 yelp, high, low, air horn, PA, very high-frequency
4 noises. And that would have been heard.

5 I know that because when I was out there, and I
6 heard Mr. Bob Worley talk about how acoustically
7 well-insulated that place is, and I could experience
8 that, but I could hear the doorbell faintly in
9 Mr. Worley's bedroom. That's just enough to scare a
10 homeowner. Anybody that rings your doorbell at four
11 o'clock in the morning, if it's a police officer or
12 anyone else, the first response is you're going to
13 be scared, and I want to know who it is. I want to
14 know it's the police. A police officer responds
15 differently than a homeowner or a resident who might
16 panic. So you can communicate with a PA.

17 Now, let's say they don't come out. Now, we've
18 got another situation. But we've never gotten to
19 that stage because you've got an 83-year-old lady in
20 there and a man. There's no reason to believe they
21 would have come on out.

22 That's one -- those are some of the problems.
23 Then it gets worse, though, and that is that the
24 officer, we have -- before we even gather enough
25 information to know what -- basically what we've

1 got, we've already got Deputy Moore splitting up
2 from his backup, going on down to start knocking on
3 the door, walking through these dark woods to the
4 house and knocking on the door, ringing the
5 doorbell.

6 And he doesn't know -- suppose -- suppose he's
7 down there, and the other officer learns from the
8 folks next door that, you know, this guy's crazy.
9 Things -- some of these things don't come out in
10 dispatch. He said he's going to kill his wife, kill
11 us, he's got all kinds of -- he's got explosives in
12 there. And then here's Moore down there and
13 McAllister hanging out in the open.

14 So you don't do stuff like that. It's
15 dangerous. It's reckless. It endangers everybody.

16 So he's walked down there by himself, and
17 that's something you just wouldn't do.

18 Another problem comes on. Officer -- Deputy
19 Rushton -- remember the amount of time he spends
20 gathering information, you could figure out the math
21 from the dispatch. Seconds. A minute. A minute
22 and a half, and he's gone. He's down there like a
23 shot. Why? I don't know. It's not what we're
24 trained to do. And officers die when you do things
25 like that and homeowners get hurt and killed as

1 well.

2 So he's down there, and he is -- he's clearly
3 -- he's essentially in plain clothes. Okay? Every
4 police uniform -- I wore three police uniforms; I'm
5 proud to wear all of them. They all had the dark
6 uniforms -- green in the sheriff's department case
7 -- but they had shoulder patches, they had initials,
8 JP, Jacksonville Police, LCSO; shiny, silver on my
9 collars; Marion {phonetic} County Sheriff's
10 Department; all were very, you know, TPD,
11 Tallahassee Police Department. I had a whistle
12 chain on a lanyard, you know, with a -- a bright
13 shiny whistle, a bright shiny badge, a name plate --
14 a shiny name plate that said G.L. Kirkham, and so
15 and so, a lot of -- lot of glitter. Still, even
16 with all that on my uniform -- and these uniforms
17 are dark, okay? That's just the way it is. They
18 say it's budget, whatever.

19 But Officer or Deputy Rushton's uniform wasn't
20 just dark, it was essentially nonexistent. I mean,
21 he's wearing civies. And he's carrying a -- police
22 officers typically carry a five-cell Maglite,
23 Streamlight, Pro-light. Burglars carry little
24 flashlights. And, you know, that's -- that's just a
25 dangerous thing to do to walk around a place like

1 that.

2 And then lights -- the lights come on. There
3 are different accounts as to why -- I know different
4 accounts as to what the lights did, but you put
5 yourself in a position of terrible vulnerability.

6 And as the deputies have testified, if there
7 comes a point in time -- if someone says -- you say,
8 deputy sheriff, sheriff's department, sheriff's
9 department. Well, when I was out there, I just had,
10 you know, I'm an old guy, but I had my hearing
11 checked at my annual physical two months ago, and
12 I've got perfect hearing. I couldn't hear anybody
13 shouting as loud as they wanted downstairs.

14 But, moreover, I found you could take a boom
15 box, you could put on Little Deuce Coupe, The Beach
16 Boys, at a hundred decibels, measured on a decibel
17 meter downstairs; upstairs, you couldn't hear it.
18 You could not hear it.

19 So, you know, how -- how you could hear
20 remarks, I don't care who y'all are or, you know,
21 obscenities or so forth, that's -- but let's say
22 that happened. Let's say that you heard Sherry
23 said, Sheriff's department. And somebody replied
24 from inside the house, that they could hear you
25 somehow or other, they replied, I don't give a fuck,

1 what would that tell you in terms of the good
2 training you've had? Drop back and punt. Back out.
3 Get away from that house because you've got somebody
4 that's hostile. Not walk out in the open. Not walk
5 out in the open.

6 And, here again, we've got a question as to
7 what happened. And there are things I can't
8 explain. We've got Deputy Rushton saying, I looked
9 up and I see him with a rifle at port arms, a guy
10 with a, you know, a salt-and-pepper beard.

11 You know, when I was out there November 15th,
12 2011, I couldn't see my hand in front of my face. I
13 had somebody stand up there with a corn broom, point
14 it -- point it at me, and I tried to take a, you
15 know, assuming I -- pretending I had a weapon. I
16 couldn't see anything. I couldn't see -- and I
17 shoot pretty well on the range for an old guy. I
18 couldn't see anything. I couldn't tell how many
19 people were up there, where they were. So he would
20 have had to go back inside, turn on the light, and
21 then come back outside again.

22 So the core problem here is, I can tell you,
23 ladies and gentlemen, from personal experience that
24 you don't know what it's like to be looking into the
25 muzzle of a loaded gun until you've done it. I've

1 had that happen to me as an undercover officer.

2 Scary, unimaginably scary for anyone, a police

3 officer, a citizen.

4 But we know that there came a point in time
5 when the deputy was standing out there in the open,
6 dressed as he was, pointing a Glock 40 caliber Model
7 .23, I think it was, pointing it at Mr. Worley, and
8 Mr. Worley shoots.

9 My analysis of this matter is that in the
10 hundreds of police cases that I've evaluated,
11 police-related shootings over 40 years, this fits
12 the profile, sadly, of a friendly-fire situation
13 where homeowners shoot officers, officers shoot
14 homeowners, not intending any harm, but out of a
15 mistaken perception of identity. And this could and
16 should have been avoided. It would have been so
17 easy if they just followed what they were trained to
18 do.

19 And we all make mistakes. I made lots of
20 mistakes as a police officer, but this is -- if it's
21 an airplane, you're going to crash it; if this is a
22 patient in an operating room, they're going to die
23 of arterial bleeding. You cannot, you know, Captain
24 Sully would not have landed that plane in the Hudson
25 safely as he did if he hadn't followed and done what

1 he was trained to do. That's it in a nutshell.

2 Q In your professional opinion, did Officer
3 Rushton do anything that needlessly increased the
4 danger to himself and the other officers, as well as
5 Mr. Worley and his mother?

6 A All of these things that I've just discussed,
7 which are in a category police call -- police refer
8 to as jumping the call. You jump a call like this,
9 a high-risk call, and you can -- you can look at the
10 South Carolina training material on this, you make
11 your own determinations, but this is what we're
12 trained to do, do not do this.

13 If there had been a supervisor -- and I know this
14 is a small department, and like I said, the whole
15 country's average force is ten officers, I mentioned
16 earlier. But if there's no supervisor and nobody in
17 charge, just the three deputies out there, you've
18 got to form -- you've got to form a plan quickly.

19 Unless you've got something, we say, exigent or
20 emergency where you've got, you know, someone's
21 going to harm a child, there are shots fired, active
22 shooter, there's nothing like that, there are no
23 shots being fired now, it's time to find out what's
24 going on.

25 And we're in a handicap with it being dark.

1 And I don't care, the brightest uniform I ever had,
2 I'm not going to be walking around a house anywhere
3 in the dead of night unless I've got an emergency
4 where I can, you know, where somebody can think I'm
5 a burglar, and, you know, that's the rest of this
6 tragedy.

7 Q What responsibility did Officer Rushton have to
8 give to the Worleys about making sure it's clear and
9 the knowledge was reasonable?

10 A This is another important point. An officer is
11 trained -- again, going to the academy, you're
12 trained that you are obliged to give notice of your
13 purpose and presence. You know, it's like when
14 you're pulled over by a police car, I mean, the
15 lights come on, they hit the siren for a second:
16 Notice I am a police officer. I'm taking action as
17 a police officer. I'm stepping beyond normal rules
18 of the road, driving to an emergency with my siren
19 and lights.

20 You've got to give reasonable notice. And that
21 becomes all the more important, critical, when
22 you're doing something, you know, some of us are
23 sound sleepers, some of us are light sleepers. When
24 you're doing something in a setting like this --
25 and, see, the problem I have as a criminologist and

1 ex-cop is I can't make sense -- I do it with a lot
2 of people who kill police officers. I've been to
3 brother officers' funerals. I can't make sense of
4 why a guy who has got a cat that he loves or likes,
5 Sweet Pea, and he wants to get the fox that hurt the
6 cat, but a guy who has no history of violence, who's
7 not drunk, who's not on drugs, who's not suicidal,
8 why does a guy like that -- why would a guy like
9 that intentionally shoot a law enforcement officer?
10 It doesn't make sense.

11 It conforms to the pattern that I've seen over
12 the years of friendly fire shootings. And sometimes
13 those can't be avoided, but most of the time, they
14 can, if you do what you were trained to do and you
15 don't get caught up in the rush of adrenaline.

16 And, you know, the FBI and Law Enforcement
17 Bulletin talks about staying out of the kill zone.
18 Don't enter the kill zone. Resist the temptation to
19 -- we all want to know what's going on when we get
20 there. We want to take charge. Don't do that.

21 TV cops do that. Real cops don't do that.
22 It's what LAPD Detective Pierce Brosnan called
23 tombstone courage; don't do that.

24 Q Dr. Kirkham, in your professional opinion, did
25 the failure of Deputy Rushton to provide clear and

1 proper identification of himself as a law
2 enforcement officer contribute in any significant
3 way to Joe Worley's shooting at him? And explain
4 the basis for your opinion.

5 **A** I think that it was a significant and proximate
6 cause. I think it's the reason this man shot. He's
7 looking into the business end of a gun instantly.
8 And when you've got that -- when you're a police
9 officer or a citizen, you've got tunnel vision on
10 that and you've got a second to respond.

11 If I had been in that situation -- I've been in
12 near-shoot situations -- thank God I've never had to
13 shoot anyone -- I would have shot him. And I would
14 have felt terrible when I learned he was a law
15 enforcement officer, but I would have shot him.

16 And that was -- where he was hit was just a
17 fluke. On TV, people shoot guns out of people's
18 hands. Real people don't do that. It was just a --
19 it just happened to be where the bullet went.

20 And, also, the cases I've examined over the
21 years, people who are cop killers, and there are a
22 lot of vicious people out there who take the lives
23 of law enforcement officers every year, sadly, but
24 they -- they often do things like overkill. They
25 will, you know, they won't shoot you just once;

1 they'll shoot you multiple times.

2 He had a .30-06 with rounds left in the
3 magazine. He was, what, 14 feet away? He could
4 have killed this officer.

5 But once he was -- once he was no longer in a
6 position of being threatened, he shot, the officer
7 drops -- he didn't know he was an officer; he thinks
8 he's a burglar, I think reasonably so -- he drops
9 and then he fires a shot off in the air, and he shot
10 something, so -- but he's not trying to kill this
11 officer or this burglar. He's not trying to kill
12 the burglar.

13 You know, that -- all these things -- and,
14 honestly, I've got to tell you, with all due respect
15 to the sheriff, whom I heard testify earlier, I
16 couldn't believe that he would walk down a driveway.
17 He just had a deputy sheriff shot. He's got an
18 unknown subject with a gun, and he's walking down a
19 driveway out in the open? I mean, what was he
20 trained or how was he trained?

21 I mean, I don't mean any disrespect, but that
22 -- it doesn't matter if it's a little department
23 like McCormick or it's LAPD; if you do things this
24 way, people are going to get hurt, people are going
25 to die, and tragedies are going to happen.

1 **Q** All right. And Dr. Kirkham, what would you
2 have done if you had been in Worley's situation on
3 the reverse, if you were up there seeing this
4 transpire in front of you, using this scenario?

5 **MR. MYERS:** Objection.

6 **THE COURT:** Sustained.

7 BY MR. GARRETT:

8 **Q** All right. Do you have an opinion as to why
9 Deputy Rushton failed to follow the police
10 procedures he had been trained in?

11 **MR. MYERS:** Objection.

12 **THE WITNESS:** Well --

13 **THE COURT:** Just -- no, sir.

14 State your question again. I missed what
15 you --

16 **MR. GARRETT:** I asked him did he have an
17 opinion as to why Deputy Rushton failed to follow
18 the police procedures he had been trained in.

19 **MR. MYERS:** There's no way he can answer that,
20 Your Honor, of why Deputy Rushton didn't follow --

21 **THE COURT:** Lay a foundation for how he may
22 know that for me, please, sir.

23 BY MR. GARRETT:

24 **Q** Are you familiar with the deputy's training?

25 **A** Yes, I am.

1 **Q** All right. And are you familiar with his
2 police procedures training?

3 **A** Specifically, yes, as it would relate to this
4 call, the handling of this kind of call.

5 **Q** All right. If he failed to perform, do you
6 have an opinion as to why he failed to follow the
7 procedures -- practices and procedures?

8 **MR. MYERS:** Again, objection.

9 **THE COURT:** Let me stop.

10 Madame Forelady, would you get the jury for one
11 second. I need a little bit more information.

12 (The jury retires to the jury room.)

13 **THE COURT:** Mr. Garrett, he testified earlier
14 that the officers involved, Rushton included, went
15 through the Criminal Justice Academy, and he gave
16 them accolades for the type of training they
17 received there. So -- you have not identified
18 anything other than that for him to base his opinion
19 on except for mere speculation. So you have to give
20 me more foundation than what you've given me, okay,
21 sir? Or given the witness.

22 **MR. GARRETT:** All right. I can let him -- I'll
23 let him look at their records.

24 **THE COURT:** Sure.

25 **THE WITNESS:** These were things he took years

1 before. He'd had no subsequent remedial, you know,
2 preparation. I mean, he was -- use the term rusty.
3 I mean, my God, he'd been out of police service for
4 four years. And the first night he's out, with no
5 riding with another officer, not having any, you
6 know, any real preparation for this. I mean, that's
7 one possible explanation is he's, you know, learning
8 -- I know -- I find, if I was in class all week long
9 and I check out a patrol car and get in uniform and
10 go out, it took me an hour or two to get my head,
11 you know, get the cobwebs out of my head and start
12 handling calls. That's a long time to be away.
13 It's great that he came back into law enforcement,
14 but that's one possible explanation.

15 Beyond that, sometimes -- I don't know the
16 gentleman; I'm sure he's a good person -- but
17 sometimes officers just jump the call. They get --
18 it's a quiet night, there's nothing going on, and
19 you get this -- all of a sudden, there's a call that
20 sounds interesting and you jump the call. And
21 that's how people get hurt.

22 **THE COURT:** Go ahead. Is that it?

23 **MR. GARRETT:** Yes, sir.

24 **THE COURT:** Mr. Myers.

25 **MR. MYERS:** I still have an objection.

1 **THE COURT:** Based on? What is your objection?

2 **MR. MYERS:** Based on just speculation of why
3 this guy did or didn't do something. You can't just
4 be an expert and say why he did or didn't do that.

5 **THE COURT:** I sustain that.

6 **MR. GARRETT:** May I say something as to cause?

7 **THE COURT:** Yeah. I mean, you can test it
8 further if you want, I'm going to give you a little
9 leeway, but right now, he's just saying, you know,
10 this is possible, this is speculation.

11 IN CAMERA EXAMINATION

12 BY MR. GARRETT:

13 **Q** All right. As to cause and effect, are there
14 causes that put police officers in these positions
15 where they're shooting homeowners or homeowners are
16 shooting police officers or they're shooting fellow
17 police officers? The causes that you've referred to
18 earlier?

19 **A** Yes. The proximate cause of these kind of
20 things, you've got four people that night who --

21 **Q** I need you to back up. I'm sorry.

22 **A** I'm sorry. I'm getting feedback in there.

23 You've got four people who violated, with all
24 due respect, these basic procedures. All three
25 deputies. The two that hadn't been over working in

1 Iraq, they violated them, Moore and McAllister. And
2 lo and behold, Sheriff Reid. You know, we talk
3 about cover, they know all this stuff, cover and
4 contact, you know, staying out of the kill zone,
5 keeping the reactionary gap, all these things. You
6 don't step out -- you don't step out and put
7 yourself in harm's way. There's no reason to do
8 that, and there's no benefit to anyone.

9 Q So is it your opinion that the lack of training
10 recently and -- or a refresher, maybe riding with a
11 police officer, may have been one of the reasons
12 that they didn't perform as they should have
13 pursuant to the practice?

14 A That may have been it, coupled with the fact
15 that they, in practice if they -- it would appear
16 from the way things were handled on this particular
17 night, that that's the way they handled these calls.
18 That's the way the sheriff did it. Come on out in
19 the open. Two people out there; I don't know
20 anything about them, I'm going to walk down the
21 driveway.

22 THE COURT: I'm going to sustain the objection.
23 It's still speculation.

24 And in addition, Mr. Garrett, he's already
25 gotten in a number of opinions which touches on this

1 same issue anyway and so I'm going to sustain the
2 objection.

3 Are you ready to proceed?

4 **MR. GARRETT:** I am, Your Honor.

5 **THE COURT:** Mr. Myers?

6 **MR. MYERS:** Yes, sir.

7 **THE COURT:** Would you bring the jury back in?

8 (The jury returns to the courtroom.)

9 BY MR. GARRETT:

10 **Q** Dr. Kirkham, are there well-established police
11 procedures for processing shooting scenes and
12 collecting evidence?

13 **A** Oh, yes. Yes, there are.

14 **Q** And were such procedures followed in this case?

15 **A** No, they were not.

16 **Q** Can you explain why?

17 **A** Yeah. It's basic fundamental in the field of
18 criminal investigation, one of my co-authors is the
19 leading author, Dr. Leonard Territo, of criminal
20 investigation --

21 **MR. MYERS:** Your Honor, I have to apologize,
22 but I really can't understand him. I apologize.

23 **THE COURT:** If you would just try to find a
24 happy medium. If you would kind of help him get
25 that happy medium, because I'm off to the side and

1 I'm not hearing it projected out that way. So, Mr.
2 Garrett, just kind of help us --

3 **THE WITNESS:** Yes. The fundamental procedure
4 followed in -- when there's a shooting that involves
5 police personnel where they are injured or alleged
6 to have been the victims of a criminal attack or
7 whatever it may be and there's evidence that the
8 basic procedure is that all they do -- officers on
9 the scene at something like this, all they ever do
10 is secure the scene, establish a perimeter around
11 the -- where evidence is. They don't process it.
12 They don't photograph it. They don't pick up
13 things.

14 And I understand that the sheriff, for whatever
15 reason -- and I mean no disrespect -- but he does
16 not use SLED, I guess, or I don't know, highway
17 patrol here, whatever resources y'all have, but
18 you're not supposed to be involved, as Deputy
19 McAllister was, for example, in picking up evidence
20 and moving things around.

21 Very important to preserve that crime scene.
22 You just don't -- you're personally involved in it
23 as a potential victim in this case. You don't do
24 those kind of things.

25 BY MR. GARRETT:

1 **Q** And did that concern you as you reviewed the
2 entire case file, that that had happened in this
3 case?

4 **A** Yes. Yes. You don't know were things moved?
5 Where, for example, in the Glock 22, where are the
6 other six unfired rounds? It should be reasonably
7 proximate to the other round. There are a lot of
8 things that you just don't -- you don't have people
9 who have a concern about what just happened. I
10 mean, they're involved in it, so they -- and you can
11 check any basic criminal investigation texts to
12 affirm that.

13 **Q** And a criminalist is different from a
14 criminologist, but as a criminologist, if you're
15 attempting to find bullets or particular fragments
16 of bullets in the ground at or near a certain
17 location, would you be able to perform that with
18 your team to be able to perform that kind of
19 investigation?

20 **A** No, no. You would -- there's where you would
21 use crime scene technicians. Crime scene personnel
22 are highly trained, and I -- SLED has an excellent
23 reputation. I don't know what their relationship is
24 with the sheriff's department, but you should have
25 an arrangement where you can get independent crime

1 scene techs to come in. They will paint the area
2 with video. They'll take photographs, they'll take
3 measurements, and they'll locate things so they're
4 able to piece things back together.

5 But you don't have your own people,
6 particularly people who are involved in the
7 incident, doing that. They're supposed to be
8 separated and you get independent statements from
9 them. They shouldn't be involved.

10 **MR. GARRETT:** Beg the Court's indulgence.

11 (Pause.)

12 **MR. GARRETT:** I have no further questions at
13 this time, Your Honor.

14 **THE COURT:** May I see the attorneys over here
15 at the side bar, please?

16 (Whereupon, a bench conference was held off
17 the record, in the presence of the jury, but out of
18 the hearing of the jury.)

19 **THE COURT:** All right. Madame Forelady and
20 ladies and gentlemen of the jury, I was checking
21 with counsel about scheduling and logistics and what
22 we're going to do. Since this is a good opportune
23 time to break, and it's about 20 after 5:00, I'm
24 going to go ahead and call recess for the day. I'm
25 going to ask you to be back in your jury room the

1 same time you've been coming all week, and that is
2 at 9:25. And we'll try to start right promptly at
3 9:30.

4 I'm going to remind you that you're not to
5 speak with yourselves or anyone else about this
6 case; read, hear, or listen to anything about this
7 case, and I will ask you that in the morning.

8 With that being said, I hope you have a good
9 evening.

10 (The jury was excused for the day.)

11 **THE COURT:** Doctor, since you're on the stand,
12 don't speak with anyone about your testimony.

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

14 **THE COURT:** I know you know, but I have to say
15 it for the record. Thank you, sir. Have a nice
16 evening.

17 All right, guys. Is there anything further
18 from the defense in this matter?

19 **MR. GARRETT:** Nothing from the defense.

20 **THE COURT:** From the State?

21 **MR. MAYE:** Nothing from the State.

22 **THE COURT:** All right. We'll be in recess
23 until 9:30 in the morning.

24 (The proceedings were concluded for December
25 18, 2013.)

1 (The following proceedings were held on
2 December 19, 2013.)

3 **THE COURT:** Mr. Myers, are you ready to proceed
4 from the State?

5 **MR. MYERS:** Yes, sir.

6 **THE COURT:** Defense ready to proceed,
7 Mr. Garrett?

8 **MR. GARRETT:** Yes, Your Honor.

9 **THE COURT:** Would you bring the jury in?

10 (The jury enters the courtroom at 9:40 a.m.)

11 **THE COURT:** Good morning, ladies and gentlemen
12 of the jury. I hope you had a nice evening.

13 As I told you yesterday and I've done before,
14 I'm going to ask each and every one of you if anyone
15 has heard, read, or seen anything about this trial
16 during the break overnight; if so, would you raise
17 your right hand.

18 Let the record reflect that no juror responded
19 in the positive.

20 With that being said, Mr. Myers, is the State
21 ready to proceed with cross-examination?

22 **MR. MYERS:** The State's ready, Your Honor.

23 **THE COURT:** Mr. Garrett, is the defense ready
24 to proceed?

25 **MR. GARRETT:** The defense is ready, Your Honor.

1 **THE COURT:** All right, sir. Would you come
2 back around, and remind you that you're still under
3 oath.

4 **THE WITNESS:** Yes, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. MYERS:

7 **Q** When you first testified yesterday, I think you
8 said you were a scientist; is that right?

9 **A** Yes, that's correct.

10 **Q** And you were an expert in standards and
11 procedures in law enforcement?

12 **A** Of the law enforcement profession, yes, sir.

13 **Q** And that you had testified -- I forgot how many
14 times.

15 **A** In police-related cases, I've been involved and
16 retained a total of about 1200, I think, to date.

17 **Q** Twelve hundred times. And when you testify,
18 you basically say you're a scientist?

19 **A** I say I'm a criminologist, which is a social
20 scientist, yes.

21 **Q** Social scientist?

22 **A** Yes.

23 **Q** And that you have a degree from San Jose State?

24 **A** Correct. Two degrees: Bachelor's and master's
25 of science.

1 **Q** And then a doctor of criminology from the
2 University of California at Berkeley?

3 **A** Yes.

4 **Q** And it seems like you talk about standard
5 procedure and your testimony is the same every time.
6 Do you have a standard list of questions that you
7 like to be asked?

8 **A** It depends on the issues that are before us on
9 a particular case. You know, you may be talking
10 about a use of force or hiring procedures or proper
11 training, vehicle pursuit, use of a particular type
12 of weapon. There could be a lot of different
13 questions. I might suggest questions that would be
14 dealt with.

15 **Q** And when you suggest questions, that's pretty
16 much the same thing: Standards and procedures in
17 law enforcement procedure. And you talk about
18 training and following the book and following rules
19 and regulations.

20 And you have a list of questions that you kind
21 of respond to. It's kind of a standard testimony --

22 **A** Well, the questions vary. I mean, it's up to,
23 ultimately, counsel for plaintiff or defense or
24 prosecution or defense to decide what questions
25 they're going to ask, but I do make suggestions as

1 to, depending on the nature of the case.

2 **Q** And when you make suggestions, you have a list
3 of questions you like to be asked, don't you?

4 **A** Well, I have a list of questions that I think
5 are relevant to the particular subject. I will
6 often submit that for their consideration.
7 Sometimes they don't request that.

8 **THE COURT:** Let me stop you. I'm sorry. Would
9 you back off just a little bit? We're getting a
10 little feedback --

11 **THE WITNESS:** I'm sorry. Y'all are getting
12 feedback there?

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

14 BY MR. MYERS:

15 **Q** Because I noticed yesterday that Mr. Garrett
16 didn't have a yellow pad; he had a list of typed-out
17 questions that he just merely read to you. Those
18 were your questions, weren't they?

19 **A** Yes. Those are questions I prepared.

20 **Q** So you take and show around and you have the
21 questions for which you want to be asked and then
22 you respond?

23 **A** Well, like, they're suggested questions that we
24 -- I think, cover the issues that are in the
25 particular case.

1 **Q** Yes, sir. And you talk about South Carolina
2 Criminal Justice Academy.

3 **A** Yes, sir.

4 **Q** And said you'd been there?

5 **A** I've taught there, yes.

6 **Q** And you said something about John O'Leary being
7 the director. You mentioned that name.

8 **A** He was the director for a number of years; I
9 think was there totally for about 16 years at the
10 academy.

11 **Q** And when was the last time you were at the
12 South Carolina Criminal Justice Academy?

13 **A** Oh, it's been many years ago.

14 **Q** Well, how many?

15 **A** I would say back somewhere probably in the 80s.

16 **Q** Because John O'Leary left -- he was no longer
17 the director after 1980 -- the mid 1980s.

18 **A** I don't know when he left.

19 **Q** Do you know they've had five directors since
20 then?

21 **A** The director that I -- the name of the director
22 when I came was Cliff. I can't remember his last
23 name.

24 **Q** Cliff? He was before John. That's back in the
25 70s, 60s.

1 **A** That may very well be.

2 **Q** So we're talking about 45 years ago?

3 **A** Well, it would have had to have been some time
4 after I became a police officer. It would have to
5 be somewhere, I think, in the mid 70s or maybe
6 later.

7 **Q** Well, who is teaching this training? You said
8 that's an excellent training academy, at least it
9 was back in the 80s?

10 **A** Well, I've had occasion to -- I regularly
11 review that curriculum in the course of looking at
12 other cases. It's a good training program.

13 **Q** Yeah, and who's teaching that now?

14 **A** Well, they have different instructors teaching
15 different --

16 **Q** Well, give me the names of a few.

17 **A** I wouldn't know the names of instructors.

18 **Q** Well, you said they were excellent trainers.
19 Who are they?

20 **A** No. I said that the curriculum is excellent,
21 the training curriculum. I don't know the
22 individual instructors.

23 **Q** Well, you can have a book, but if you don't
24 have a good professor, it doesn't kind of
25 communicate over to the students.

1 **A** Well, that's true, but I'm assuming that, based
2 upon the curriculum that I have, that they have
3 competent instructors, experienced instructors.
4 That's always been my impression.

5 **Q** You're assuming that. Of course, you hadn't
6 been there in 30 years or so.

7 **A** That's true, I have not, but I have kept close
8 touch with Mr. O'Leary over the years and have, you
9 know, have learned some other things about the
10 academy.

11 **Q** Mr. O'Leary has been a defense lawyer since
12 '85?

13 **A** That's correct.

14 **Q** And you said that, in responding to shots
15 fired, that officers should contact the complainant.
16 That's what you said?

17 **A** Yes, that's correct.

18 **Q** And they do not disclose their presence when
19 responding?

20 **A** Until they're ready to have it disclosed.
21 Until they've got some -- until they have it -- what
22 we call a threat assessment.

23 **Q** Uh-huh. So they have to assess what's going
24 on, but they do not disclose their presence when
25 responding?

1 **A** Not immediately.

2 **Q** And they contacted the Sheffields, the
3 complainant?

4 **A** They did contact the Sheffields, and there was
5 conversation with them very, very brief, a matter
6 of, what, a minute, minute and a half.

7 **Q** But however they did that, you said they did it
8 wrong?

9 **A** No. I said that it's correct to contact the
10 RP, the reporting party, but you need to take time
11 to gather information and not have some of the
12 people going off on their own, as Deputy Moore did
13 over at the house. You don't know what you've got
14 over there. So you've got to gather information
15 first.

16 **Q** So when Bobby talked to the Sheffields, he
17 didn't spend enough time with them?

18 **A** He sure didn't.

19 **Q** He should have stayed there how long? How long
20 should he have stayed with them?

21 **A** There's no calculus. I gave some examples
22 yesterday about how you need to gather basic
23 information: Has this man ever threatened anyone?
24 Is he known to be mentally ill?

25 **Q** Well, how would the Sheffields know if he's

1 ever threatened anyone?

2 **A** May I finish my --

3 **MR. GARRETT:** Objection, Your Honor. He's
4 cutting him off, not letting him finish his answer.

5 BY MR. MYERS:

6 **Q** I apologize.

7 **A** That's okay. Basic questions that need to be
8 asked by the officer contacting the Sheffields are:
9 Has he threatened you or anybody else? Does he have
10 any history of mental illness or mental
11 hospitalization? Do you know anything about any
12 medications he's been taking? They may not know
13 anything about that.

14 Do you know if he's -- does he drink? Do you
15 know if he's drunk at the present time? Do you know
16 if he uses drugs? He might be using drugs at this
17 time. Do you know anything about the weapons that
18 he may have over there?

19 Now, some of these things, they may not know
20 anything about, but you ask those basic questions.
21 And the thing that's most key is that what starts
22 out for Mr. Rushton as, oh, I think it could be a
23 deer thing, now you get down there and you hear the
24 Sheffields say, there were loud voices or a loud
25 voice, he's talking loud, and he was firing a gun.

1 That changes the nature of the call to a gun call.

2 Again, the academy has very clear things to say
3 about what you need to do in those kind of
4 situations.

5 Q Are you through?

6 A Yes. Thank you.

7 Q So when they went over there and the Sheffields
8 say, we've reported him cussing, yelling, and
9 screaming in the middle of the night, shooting guns,
10 it's been going on for months and he started back
11 tonight, he's out there cussing and yelling 3:00,
12 3:30, 2:00, whatever it was, and he shot two times,
13 and we wasn't going to give him time to shot {sic}
14 the third time, they should have said, now, wait a
15 minute, when was he committed to the hospital; how
16 drunk is he; is he on PCP; is he on meth; is he on
17 angel dust? They should have gotten --

18 A No, sir. I think I've indicated to you -- how
19 long did it take me to ask those sample questions?
20 Maybe 45 seconds, a minute or so. But they're very
21 important things to know.

22 Q But responding to a disturbance in the
23 neighborhood, they should go into a background of
24 the person doing all this? That's your testimony?

25 A They should learn whatever they can, from an

1 officer safety standpoint, from the reporting
2 person, anyone else that's present that can tell
3 them something about what's going on.

4 The key things here are talking loud and firing
5 a gun. That makes it a gun call. And, again, the
6 academy has very important things to say about what
7 you don't do and what you do when you've got that
8 kind of information.

9 Q And the Criminal Justice Academy teaches that
10 in Columbia, South Carolina?

11 A Yeah, I can read what they say to do and not to
12 do on a call like this if you'd like.

13 Q They teach that out there now?

14 A They do teach that, correct.

15 Q They teach that.

16 And these officers should have gone into all of
17 that for somebody firing in the neighborhood in
18 McCormick County.

19 A I'm sorry, sir?

20 Q These officers should have pulled out the book
21 and gone over a checklist --

22 A No, sir.

23 Q -- for shots fired in McCormick County?

24 A No, sir. No one's suggesting they pull out the
25 book. They should know to ask these basic

1 questions: Any evidence of mental illness, drugs,
2 alcohol, any threats to anyone. Those are four key
3 questions, and the answer's maybe, we don't know or,
4 yeah, he does do drugs, he has made some threats
5 against some other people. Those are things you
6 need to know.

7 You already know some -- you already know the
8 things that change it into a gun call, just shots
9 fired, loud voices on the porch. Loud voice on the
10 porch and shots fired change the nature of the call,
11 it's not a deer.

12 **Q** Yes, sir.

13 And don't pull out the book, but go by the
14 book?

15 **A** Well, you know, the book -- there are times
16 when the book, you know, the book can't describe
17 every last thing, but this is the best --

18 **Q** Would you repeat that now?

19 **A** The book can't describe every last situation.
20 Obviously, every situation is different, but these
21 are -- what you call a book here, this is the best
22 material the American law enforcement profession,
23 the police professionals themselves, police
24 organizations have been able to come up with. So
25 they're good guidelines.

1 I've already indicated yesterday that there can
2 be exceptions. We talked about an active shooter,
3 something like Sandy Hook or Columbine.

4 Q This is like Sandy Hook, like that school up
5 there where they killed all those children?

6 A No, sir.

7 Q Well, why did you bring that up?

8 A I brought it up because you were asking about
9 the book and I'm saying, to be fair, there are
10 exceptions. There are times where you've got to
11 rush in. This is isn't one of them. There's no
12 reason to rush at all. There's every reason to get
13 that information and devise a plan.

14 Q I just wanted to write down Sandy Hook.

15 Now, you said here that they should have
16 contacted Mr. Worley. You said that they should
17 have gotten dispatch to call him on the phone. If
18 that didn't work, use a PA system or maybe a
19 bullhorn, or you said something about a whistle
20 yesterday. You used to carry a whistle around with
21 you?

22 A That wasn't what I was talking about. I was
23 talking about -- the whistle and the other bright
24 pieces of metal on the uniforms that were -- tend to
25 give off more indication of my presence as a police

1 officer than the uniform -- the plainclothes uniform
2 that Deputy Rushton was wearing.

3 Q The Criminal Justice Academy of South Carolina
4 tells officers to wear whistles now in 2000 --

5 A No, sir. They talk about -- the important
6 thing they talk about, the approach and when you
7 should approach and when you should not approach,
8 and they say stay back. The material says, if
9 you've got a gun call, you've got shots fired, stay
10 back, get him to come to you.

11 And that's echoed by every standard text for
12 law enforcement officers, Street Survival, Tactical
13 Edge, material put out by the International
14 Association of Chiefs of Police, the FBI. It all
15 says the same thing: Get him to come to you.

16 If you've got a potentially high-risk call --
17 this is clearly a high-risk call now. Any time
18 you've got a gun, shots fired, you don't know what
19 it is, so you get the person to come to you. The
20 question is, how are you going to go about doing
21 that? There are very simple ways that could have
22 been done.

23 Q What's Street Survival? What's that?

24 A I'm sorry?

25 Q You said something about Street Survival.

1 What's that?

2 **A** Street Survival is a widely used text
3 throughout the United States for many years,
4 authored by law enforcement specialists, people who
5 have extensive experience.

6 They talk about basic officer survival, things
7 that you need to be aware of, cautions to take.
8 They put on training -- they put on officer survival
9 seminars throughout the country. I see that
10 Mr. Rushton's curriculum contains material on
11 officer survival training, so he must have had that,
12 that sort of instruction.

13 **Q** Street Survival was even published in a
14 magazine called Police Magazine?

15 **A** It's been published and reprinted in many
16 different places. Published mainly by --

17 **THE COURT:** Let me -- I don't mean to interrupt
18 again. Scoot your chair back just a tad.

19 **THE WITNESS:** I'm sorry. You let me know if
20 I'm giving you feedback.

21 **THE COURT:** I think -- you want it further
22 away, not closer. I think that's what the
23 feedback's coming from.

24 **THE WITNESS:** Okay.

25 Yeah, it was published by Calibre Press many

1 years ago, but it's become a very, very widely used
2 source, a very respected source throughout the
3 country.

4 BY MR. MYERS:

5 Q And I saw something in your material, you even
6 refer to that magazine, Police Magazine?

7 A Police Magazine, yes, is one publication.

8 Q And you said if all that didn't work, they
9 should cut on their sirens and maybe their blue
10 lights?

11 A I said, if you, you know, the first thing you
12 do is ask the dispatcher to check the county
13 directory to see if there's a landline.

14 Q Check what? Check the county records?

15 A Check the county -- your county directory here
16 and see if the Worleys have a phone listed for 146
17 Presidential {sic} Drive, the Worley residence.
18 They did have one and it presumably was listed. You
19 would then call there, and they would have answered
20 the phone.

21 That's the first thing you try to do:

22 Establish contact from a safe position. And that
23 could be done very easily, and we wouldn't all be
24 sitting here right now if that had been done.

25 Q So we wouldn't?

1 **A** No, we wouldn't.

2 **Q** Because you said if they had done all that,
3 Mr. Worley would have come out. You said right
4 here --

5 **A** Yeah, that's right.

6 **Q** -- if they would have done all that, people
7 would have come out?

8 **A** There's no reason to believe that he and his
9 83-year-old mother, if they knew -- it's four
10 o'clock in the morning now, you know, anybody can
11 say, Sheriff's department. We've got a lot of home
12 invasions where people say, sheriff, police
13 department, open the door.

14 But this proves unequivocally, if you -- by the
15 time you make the call -- the sheriff's department
16 makes the call, you turn on your emergency lights,
17 your protected, covered position at your vehicle,
18 high beams on, spot light on, blue lights on, and
19 they know it's police out there, and they're going
20 to -- there's no reason to believe that these folks
21 were just average folks who are going to do anything
22 except come out.

23 **Q** So when they rang the doorbell, when they
24 knocked on the door and kept yelling, Sheriff's
25 department, did they come out?

1 **A** Well, they did not -- they did not come out.
2 And the doorbell -- the doorbell could be heard
3 upstairs, but that would just be enough to frighten
4 the resident. It would frighten a law enforcement
5 officer sleeping in the middle of the night. The
6 knocking cannot be heard. Loud voices --

7 **Q** Excuse me. The knocking could not be heard?

8 **A** The knocking cannot -- I've been out there
9 twice now. You cannot hear knocking, loud voices.
10 You can't hear The Beach Boys at 100 decibels.

11 **Q** You had a boom box, too?

12 **A** Boom box.

13 **Q** You have one?

14 **A** I had a boom box and a decibel meter. You
15 cannot hear The Beach Boys at 100 decibels on a
16 decibel meter in that back bedroom. You can't hear
17 it.

18 **Q** Okay. So if somebody were downstairs at that
19 door and they were knocking, somebody upstairs
20 couldn't hear it and wouldn't respond?

21 **A** That's correct.

22 **Q** If somebody were downstairs knocking on that
23 door, people upstairs couldn't hear it?

24 **A** That's correct.

25 **Q** That's your testimony?

1 **A** That's my experience being out there.

2 **Q** That's your testimony?

3 **A** Yes. I've done that.

4 **Q** Uniforms. You said the fellows here were
5 dressed like plainclothes officers, civies, and that
6 was bad. That's against the books.

7 **A** I said Officer Rushton was essentially dressed
8 as a plainclothes officer.

9 **Q** What about Deputy Moore?

10 **A** Deputy Moore had some signs of being a deputy
11 sheriff. He had -- he had the star you see
12 embroidered on the front of his shirt.

13 **Q** He had the star on there?

14 **A** Yeah. But he wasn't visible. McAllister
15 wasn't visible. What Mr. --

16 **Q** Now, how do you know they weren't visible?

17 **A** My recollection of the testimony --

18 **Q** Whose testimony?

19 **A** Well, the file. I can't tell you specifically,
20 where in there, but I don't think that -- I don't
21 think that they say that they were --

22 **Q** Who's they?

23 **A** Deputies Moore and McAllister were not in a
24 position -- they said they don't know that he could
25 see them.

1 Q Well, they had windows in the back.

2 A Yeah, but you'd have to walk over -- you'd have
3 to walk over to the other side to look and see the
4 police car.

5 Q What's wrong with walking over? Ain't nothing
6 to obstruct you.

7 A That wasn't what he did. He came out --

8 Q What who did?

9 A Wasn't what Mr. Worley did.

10 Q So you're giving Mr. Worley all the benefit of
11 the doubt of what he did and didn't do.

12 A No. No. No, I think you have to give everyone
13 the benefit of the doubt.

14 Q You give everyone the benefit of the doubt.

15 A Including the officers. That's why I said, you
16 know, for example, they responded with three
17 officers. That's fine. It's good to have plenty of
18 manpower on a call like this that involves guns and
19 shots fired. I give them credit for that.

20 Q And they should have worn bright suits, like
21 you do, a lot of glitter, whistles like in
22 Jacksonville, Florida; Tallahassee, Florida; and you
23 mentioned a couple other cities. What other cities?

24 A Leon County Sheriff's Department.

25 Q Where is that?

1 **A** It's in Tallahassee.

2 **Q** So Tallahassee?

3 **A** Yes. It's a county that embraces Tallahassee.

4 **Q** And Jacksonville?

5 **A** Jacksonville. Jacksonville police is also
6 sheriff Jacksonville police.

7 **Q** And what other cities? You mentioned some more
8 and I didn't catch them.

9 **A** Well, those are the three uniforms I've worn.
10 When I was in Broward, I was in plain clothes. I
11 was undercover, so I didn't wear a uniform.

12 **Q** Forty years ago?

13 **A** I'm sorry?

14 **Q** Thirty-five, 40 years ago when you wore a
15 uniform?

16 **A** I was in Broward undercover in 1975.

17 **Q** '75, '85, '95, 2005 -- 34 years ago?

18 **A** Right. I remained a law enforcement officer,
19 though, until '90 -- I think I resigned my
20 commission in '91. '90 to 91.

21 **Q** So they should have glitter, lights, and
22 whistles on them to brighten themselves up?

23 **A** Well, I'm not being -- I'm not trying to pick
24 them apart. As far as whistles, some agencies don't
25 carry whistles. I'm saying that it's an advantage

1 to have as much reflective material or metal badges
2 and -- but even with that, you don't -- I don't care
3 if you're lit up like the tin man on The Wizard of
4 Oz, you shouldn't be walking around on a gun call, a
5 darkened residence. The reason is that people get
6 killed. Innocent people, deputies, officers get
7 killed by homeowners, homeowners get killed by
8 officers. I've seen it many times.

9 That's not -- that's not an early thing that
10 you do. You're not going to be walking around out
11 there, whatever you're wearing.

12 Q How many deputies of the McCormick County
13 Sheriff's Department have been killed in the last 40
14 years?

15 A I'm not aware of any deputies that have been
16 killed in this department.

17 Q And what's the budgets for Tallahassee and
18 Jacksonville for uniforms?

19 A I couldn't tell you that. I've been gone from
20 there a long time.

21 Q Is it more than \$3,000?

22 A I'm sure it is. These are larger departments.
23 You have a small department here.

24 Q Now, let me ask you something: What do these
25 officers over there in Aiken County over here wear?

1 **A** I'm not familiar with Aiken County.

2 **Q** What do the officers right next door in
3 Edgefield County wear?

4 **A** Also, I'm not familiar with Edgefield --

5 **Q** What do officers right down in Saluda County
6 wear?

7 **A** I don't know.

8 **Q** What do the officers over in Barnwell County
9 wear?

10 **A** Don't know, sir.

11 **Q** How about down in Hampton County?

12 **A** In where, sir?

13 **Q** Hampton. H-a-m-p--

14 **A** I'm really not familiar with all the counties.

15 **Q** What about Allendale County?

16 **A** Don't know, sir.

17 **Q** You just don't know?

18 **A** No, I don't know.

19 **Q** And in Police Magazine, we've talked about that
20 before, you said -- and you've quoted that. This is
21 Police Magazine right here.

22 **A** Yes.

23 **Q** And this is what they have on the first page,
24 officers' uniforms?

25 **A** Right. That's -- a lot of officers wear light

1 uniforms like that. Some officers wear BDUs, battle
2 dress uniforms that are dark, tactical. I've been
3 on plainclothes patrol.

4 Q And they have a contest for people to win the
5 national best uniform, and this is it. Do you see
6 that?

7 A I do.

8 MR. MYERS: I offer this into evidence, Your
9 Honor.

10 THE COURT: Any objection?

11 MR. GARRETT: Can I see it, please?

12 (Pause.)

13 MR. GARRETT: Your Honor, we're fine to put it
14 in evidence.

15 THE COURT: Are you attempting to do the whole
16 magazine or just that piece of the magazine?

17 MR. MYERS: This right here is all we need.

18 MR. GARRETT: Your Honor, under the
19 completeness rule, we'd like the entire magazine.

20 MR. MYERS: I'll put it in.

21 THE COURT: Okay. Admitted without objection.

22 (State's Exhibit Number 33, Police Magazine,
23 marked and admitted into evidence.)

24 BY MR. MYERS:

25 Q Looks like on page 58 and 59 -- come down here,

1 please, sir.

2 A Sure.

3 (Witness leaves the witness stand.)

4 Q Other than this microphone being up on his
5 shoulder -- because Bobby said he had his microphone
6 right here on this little hook -- how is he dressed
7 differently than this man?

8 Oh, I take that back. He had long-sleeve
9 shirts rather than short-sleeve shirts.

10 A He had long-sleeve shirts..

11 Q Other than that.

12 A Well, this -- there are no insignia -- there
13 were no insignia of sheriff's department on his
14 uniform at all.

15 Q Any on this one?

16 A Well, this is a model. This is a display.
17 And, of course, certainly this officer works for
18 some agency.

19 Q I'll give you that. He didn't have any
20 insignia.

21 A Most -- a lot of our officers in south Florida
22 wear shorts, short pants, for example. They wear
23 polo shirts like this, but they have insignia,
24 usually, and badges or -- embroidered badges on
25 there.

1 The idea is to be, you know, visible as police.
2 You'd have to have -- I mean, you couldn't go around
3 like this, as they're showing a model in uniform.
4 You have to have some things on here that tell
5 people you're a police officer.

6 **Q** You've got to have something on there to tell
7 you're a police officer?

8 **A** Yeah. You're not -- this is not an
9 undercover --

10 **Q** Where is the book that says that?

11 **A** Well, the book is the principle that says you
12 must give notice of your purpose and presence when
13 you're taking enforcement action. You've got to let
14 people know, I'm a police officer. I'm telling you
15 to do something, I'm not just Joe Blow.

16 Now, this is just a model here, but he's going
17 to surely have -- and when he's in uniform, he's
18 going to have insignia.

19 **Q** And he should have had an insignia. He should
20 have had more glitter. He should have had more
21 bright stuff. Should have had a whistle. Anything
22 else?

23 **A** I'm not saying he should -- he had to have a
24 whistle. I'm saying that, you know, in a uniform
25 like this -- and these are becoming very popular --

1 that they -- you will see -- typically there will be
2 shoulder patches, there will be a patch sewn on
3 here, there will be some things that will say
4 police.

5 You can't just go up to someone and say, Hey,
6 I'd like to see some identification or whatever, and
7 you don't -- you haven't established your identity
8 to the police officer.

9 Q Anything else?

10 A No, sir.

11 Q Did y'all wear this back 35, 40 years ago?

12 A No.

13 Q Thank you.

14 A (Witness resumes the witness stand.)

15 Q Now, we talked about couldn't hear. You said
16 the house was soundproof, couldn't hear your boom
17 box.

18 A Sir, could you speak up just a little bit? I'm
19 sorry.

20 Q I said that we've talked about you giving
21 Mr. Worley the benefit that he couldn't hear
22 upstairs. You had a boom box, and you've been out
23 there.

24 A Yes.

25 Q But if he could hear, he just ignored the

1 police, didn't he?

2 **A** If you assume that he could hear --

3 **Q** Well, let's assume that he could hear, he
4 ignored the police?

5 **A** Yes. If he could hear police or them saying
6 deputy sheriff, sheriff's department, if he could
7 hear it --

8 **Q** He ignored it?

9 **A** -- then he would be ignoring it, that's
10 correct.

11 **Q** But if they would have called him on the phone,
12 he would have come out?

13 **A** Well, what we know about him and his mother,
14 they're not criminals. They're just two people
15 living up there with their cat. There would be no
16 reason, if they knew it was the sheriff's
17 department, why wouldn't they -- why wouldn't they
18 come out?

19 **Q** Even when they yelled sheriff's department, and
20 he said, I don't give an F --

21 **A** Well, was it --

22 **Q** -- did he ignore them then?

23 **A** If he could hear that. But if I can't hear the
24 Beach Boys at 100 decibels, how is he going to hear
25 an utterance like that?

1 **Q** Now, see, you're giving him too much benefit of
2 the doubt.

3 When he stepped out on that porch -- somebody
4 on the porch, can you hear somebody under the porch
5 talking, yelling, hollering, Sheriff's department?

6 **A** You'd be able -- on the porch, you'd be able to
7 hear.

8 **Q** And when they said, Sheriff's department,
9 sheriff's department, he said, I don't give an F, he
10 ignored them, didn't he?

11 **A** If you assume that happened.

12 **Q** Well, do you assume that happened? Did you
13 hear the officers testify when you were sitting out
14 here?

15 **A** I take that as a hypothetical of the officer.
16 This is the officer's version of what happened.

17 **Q** So you don't believe the officer then?

18 **A** It's not important what -- that's up to the
19 jury to decide.

20 **Q** Sure. It's up to the jury to decide whether he
21 could hear them, whether Worley could hear them,
22 too, isn't it?

23 **A** Well, by the same token, as a criminologist,
24 I'm entitled to conduct an experiment out there in
25 terms of the acoustics of the place, which are

1 remarkable.

2 **Q** Remarkable.

3 Did you get upstairs on the patio up there?

4 **A** I did.

5 **Q** Could you hear that boom box downstairs?

6 **A** I didn't go out on the patio. I went in the
7 bedroom where Mr. Worley was when this knocking and
8 doorbell ringing. You can hear the doorbell
9 ringing.

10 **Q** You could?

11 **A** Sure. And a high-pitch frequency like that,
12 you could also have heard sirens. You've got a
13 range of siren controls on a cruiser,, can be -- make
14 no question at all as to who was out there.

15 **Q** You can't hear a loud boom box at the front
16 door, but you can hear a siren up the road. Is that
17 what you're saying?

18 **A** I'm saying if -- that, you know, I'm not an
19 acoustics expert, but I'm telling you that that --
20 the visor bar on the top of that police car has a
21 siren control range -- high, low, yelp, you know,
22 air horn. You can make a great deal of police-type
23 noise that would erase any question as to who you
24 were. A phone would do that, too.

25 **Q** Yes, sir.

1 And giving everybody the benefit of the doubt,
2 the defendant and the officers, you're saying the
3 defendant couldn't hear the officers when he was on
4 that upstairs porch and they yelled, Sheriff's
5 department?

6 **A** No. I'm saying that if -- giving him the
7 benefit of the doubt, if he was out on the porch and
8 they were yelling, sheriff's department, that you
9 would be able to hear.

10 **Q** And when he said, I don't give an F, he ignored
11 them, disregarded them, didn't he?

12 **A** If that happened.

13 **Q** Well, you don't believe that happened?

14 **A** It's not my role to say what happened. I don't
15 -- I don't know --

16 **Q** Well, you are saying --

17 **A** Here's what I'm saying: I don't know why two
18 people who are just living in a home there would say
19 something like that. What would be their motivation
20 in doing that?

21 **Q** Well, let me ask you this: Let's assume that
22 Mr. Worley heard them and let's assume that
23 Mr. Worley responded, I don't give an F, is that
24 proper standard and procedure for a law-abiding
25 citizen?

1 **A** No. If a citizen -- if the citizen knows that
2 they are law enforcement officers, he's supposed to
3 respond accordingly. However, anyone can say,
4 police, sheriff's department. The question is what
5 proves that?

6 We have home invasions all over the country
7 regularly by people who are -- we have people
8 pulling over cars saying that they're police.

9 **Q** Did we have a home invasion on November the
10 15th of 2009?

11 **A** No, that's not a home invasion. But if you're
12 awakened at four o'clock in the morning by somebody
13 ringing your doorbell, you're going to be scared.
14 You're not going to know what it is. You're going
15 to want to know who is this.

16 **Q** When he was out there after three o'clock --
17 between 3:00 and 3:30 shooting that .30-06 rifle,
18 was he home -- was he home and afraid and scared
19 then?

20 **A** No. He was doing what he was doing. He says
21 he was trying to motivate a fox to leave his cat,
22 Sweet Pea, alone.

23 **Q** So we go back to the fox and the cat; right?
24 And, of course, you believe that?

25 **A** Sir, it's a hypothetical for me. I'm assuming

1 that, too.

2 **Q** You said another agency should have been called
3 in to process the scene; is that right?

4 **A** Yes.

5 **Q** You said that they could have collected
6 evidence better; they could have used crime scene
7 technicians; they would have been independent; they
8 would have made records better; they would have had
9 recordings, whatever that is; more photographs; they
10 could have collected evidence; and they could have
11 done a better job?

12 **A** There's no accusation of bias when it's an
13 independent source. It's very important in a
14 shooting situation that there be an independent,
15 source that does the investigation.

16 **Q** Have you looked at all these photographs we've
17 got in evidence here?

18 **A** When you say all of them, I've looked at quite
19 a number of photographs.

20 **Q** Well, if you need to see more, you can. But
21 what could an independent agency -- how many more
22 photographs could they have taken that would have
23 been relevant?

24 **A** It's not a matter of number. It's a matter of
25 skill. I don't think that Ms. Melissa McAllister

1 was an evidence technician. She was a deputy
2 sheriff.

3 Q Oh, so the McCormick County Sheriff's
4 Department now has to hire a what now? A
5 technician?

6 A Well, we should have access to independent
7 evidence technicians to do independent collection of
8 evidence in a situation where your own officers are
9 involved. You don't investigate your own case.
10 These people are -- these deputies are purportedly
11 the victims of a crime, and they're investigating
12 it.

13 Q What other photographs could an independent
14 agency have taken that would have been relevant to
15 the jury?

16 A You would have to look at -- they would be
17 painting the scene. For example, they'd be taking
18 videos. They'd be taking their own measurements,
19 which are objective. They're not -- and I'm not
20 suggesting that there was anything improperly done,
21 but it avoids --

22 Q You just said that they weren't --

23 MR. GARRETT: Objection, Your Honor.

24 BY MR. MYERS:

25 Q Go ahead. I'm sorry. You finish. You finish.

1 **A** It avoids any suggestion of impropriety when an
2 outside agency like SLED, for example, is conducting
3 the investigation.

4 **Q** So they weren't objective and they weren't
5 honest. Is that what you're saying?

6 **A** I'm not saying that. I'm just saying --

7 **Q** Well, what are you saying?

8 **A** I'm telling you that it is a standard of the
9 American law enforcement profession that that is
10 normally what is done that in a police shooting
11 situation, that -- involving -- the involved
12 officers are not part of the investigation of the
13 scene. Their role is only to secure the scene
14 pending the arrival of an independent source.
15 That's all I'm saying.

16 I'm not making any judgments as to were there
17 any improprieties, was anything moved or anything
18 discarded. I'm just saying that's the standard.

19 **Q** That's an American standard?

20 **A** Yes. I can refer you to many texts if you like
21 to --

22 **Q** I don't care about that.

23 Now, they've got Bobby's gun. Could an
24 independent agency have gotten Bobby's gun somehow
25 better than they do?

1 **A** Again, you're asking me to critique --

2 **Q** Yes, I am. I'm asking you to --

3 **A** I'm not able to do that. I wasn't out there.

4 I'm not trying to argue with you. All I'm trying to

5 tell you is that it is a standard of the American

6 police profession, if you look in any criminal

7 investigation texts, that that is done by an agency

8 that does not involve or by people, at least

9 investigators in that agency, that are not directly

10 involved in the incident to be sure that it's

11 objective and unbiased in every respect.

12 **Q** So, here again, they violated your standards
13 and American standards and procedures and didn't go
14 by the book?

15 **A** They're not my standards, sir. They're
16 standards of the --

17 **Q** I'm sorry. American standards --

18 **MR. GARRETT:** Objection, Your Honor. He was
19 trying to complete his sentence.

20 BY MR. MYERS:

21 **Q** Not your standards, the American standards.

22 **MR. GARRETT:** Your Honor, I'd ask that he be
23 allowed to complete his sentence that he was
24 trying --

25 **MR. MYERS:** Oh, I'm sorry. You can say

1 whatever you --

2 **THE COURT:** All right. Just one second. We
3 all know the rules here. Let's just make sure you
4 observe the question and answer procedure, please.

5 Go ahead.

6 BY MR. MYERS:

7 **Q** Go ahead.

8 **A** I'm just saying these are -- I'm representing
9 to you that these are the standards of the American
10 law enforcement profession. I have not encountered
11 situations where what was done here is done by law
12 enforcement agencies, in other words, where officers
13 who are directly involved who are claiming to be
14 victims of an event are themselves investigating
15 that event. That's not proper in terms of the
16 standards of the profession.

17 **Q** It would have been more proper for another
18 agency to collect all of these fragments?

19 **A** Yes.

20 **Q** It would have been more proper for another
21 agency to go to the hospital and get these fragments
22 that -- took Worley's bullet fragments out of
23 Bobby's hand?

24 **A** Yes. All that the agency people there have to
25 do is just preserve the scene, be sure nobody's

1 traipsing onto the property, nobody else go in,
2 unauthorized persons are coming, and let -- I've
3 seen SLED work before and they're very thorough,
4 very competent, let something like that come and
5 process the scene.

6 **Q** Do you know if SLED -- I'm sorry. Go ahead.

7 **A** I don't know, you know, the Glock Model 23, 40
8 caliber, I have one and shoot it quite often. It
9 holds, I believe, 14 rounds. There were eight
10 bullets -- eight unfired rounds unaccounted for.
11 Where were the other six? The weapon's not terribly
12 deformed. Why weren't those recovered?

13 I'm not criticizing. I'm just saying that
14 questions like that would be easier addressed if you
15 had professional crime scene people out there. And
16 I understand it's a small department; I'm not
17 criticizing them for not having those resources.

18 But I am saying that they should have arranged to
19 have somebody else come in, an outside source, so
20 that, you know, sort of like, as we said, Caesar's
21 wife, Calpurnia, she had to avoid not only
22 wrongdoing, but even the appearance of wrongdoing.
23 You want to avoid any question about whether this
24 was properly handled.

25 **Q** You have to avoid the appearance of wrongdoing?

1 **A** Yes.

2 **Q** And, of course, you here; you're not biassed?

3 **A** I try not to be biassed.

4 **Q** And you're dealing at arm's length. You're
5 giving the officers the benefit of the doubt?

6 **A** Yes.

7 **Q** And you're fair?

8 **A** I'm trying to be fair. I'm trying to, you
9 know, I'm asking questions like why -- why couldn't
10 we have -- even taking your hypothetical that he
11 didn't come to the phone, why couldn't we place a
12 phone call in the interest of safety? Why couldn't
13 we have done these other things to avoid putting
14 ourselves potentially in harm's way being confused?

15 It's four o'clock in the morning. It's very
16 dark. It's in the woods. Most people, I'm sure,
17 have weapons out there, as they're entitled to. Why
18 put ourselves and other people in harm's way when
19 there are so many tragedies born of mistaken
20 identification?

21 **Q** You're fair, giving officers the benefit of the
22 doubt, you're honest, and you're ethical?

23 **A** Yes.

24 **Q** But what about your dissertation here at the
25 University of California at Berkeley? You've been

1 asked about this before?

2 **A** Oh, yes, many times.

3 **Q** What was -- that was you, was getting your
4 doctor's of criminology?

5 **A** I was out there on a full scholarship,
6 obtaining a doctorate in criminology from the
7 University of California at Berkeley.

8 **Q** And you had to write a dissertation to get your
9 doctor's degree?

10 **A** That's correct.

11 **Q** And what was the dissertation about?

12 **A** The dissertation was entitled, Transsexualism:
13 A Study in the Management of Gender Stigma.

14 **Q** What does that mean?

15 **A** I'm sorry?

16 **Q** What does that mean?

17 **A** What it means is that, at Berkeley, it was just
18 -- been the number one public university for 50
19 years. They expect you to do something very
20 creative in terms of a dissertation.

21 I happened to, when I was doing a jail work
22 release study, I made contact with a physician
23 surgeon from Stanford Medical Center named Dr.
24 Donald Laub, who was changing physical stigma of
25 inmates, people who had deformed faces and cleft

1 palates and so on. And we became professionally
2 associated.

3 And years later, when I was at Berkeley and I
4 was casting a ballot for a dissertation topic, I
5 became aware of the fact that Dr. Laub and the
6 Stanford Medical Center, one of the finest medical
7 centers in the country, were treating a group of
8 people that are called transsexuals. I'm sure
9 you've heard of them. These are people who are
10 undergoing change of sex. They're going from male
11 to female or female to male.

12 And, not surprisingly, they often have a
13 history of a lot of psychiatric problems, some of
14 them have criminal histories, attempted suicide.
15 And so Dr. Laub approached me, he said, Look,
16 Mr. Kirkham, we could work together on this. We, at
17 the Stanford Medical Center are evaluating these
18 people trying to make a grave decision, whether or
19 not to alter their genitals, male to female, female
20 to male. We can't go back and change it.

21 I said, Well, how can I help? He said, Well,
22 we will give you access to our patient pool of 50
23 people in the Bay area, many of whom are members of
24 a group called COG, Change Our Gender. And, in
25 return, you'll give us information about what you

1 learned from these people to see if they're still
2 practicing heterosexuals, because if they are and we
3 perform this surgery, then we will have worsened
4 their situation. And we, as medical practitioners,
5 don't want to do that.

6 Seemed like a reasonable thing to do. So I did
7 my dissertation. I was completely honest about my
8 methodology, my contact with Dr. Laub. And one of
9 my major professors took exception to that, a
10 gentleman I had, and he's deceased now and I have
11 the greatest respect for him, a psychiatrist named
12 Dr. Bernard Diamond. He was very upset. He said,
13 Mr. Kirkham, you are -- by working with the Stanford
14 Medical Center, you are -- and not telling the
15 research subjects what you're doing, that you're
16 going to be giving this information to them, you are
17 limiting their chances to have the surgery.

18 I said, Doctor, with all due respect, I am
19 doing that, but these are medical practitioners at
20 one of the finest medical centers in the country
21 trying to help these people and they're trying not
22 to harm them in any way, and I believe that what I'm
23 doing helps them. And I've been completely honest
24 with you about that.

25 He was upset about that. He never filed a

1 university ethics complaint on it, but he did
2 require me to write a section in my dissertation
3 indicating that it was not my intention to, in any
4 way, damage these people's lives, which it certainly
5 wasn't. And that's sort of the long and short of
6 it.

7 **Q** And you said something about you used honest
8 methodology or ethical methodology?

9 **A** I was completely honest about my methodology.
10 I didn't try to conceal any of it. So I wrote up
11 what I had done.

12 **Q** And when you write in here that they brought to
13 your attention and for inducing on your part an
14 awareness --

15 **A** Sir, could you speak up just a little? I'm
16 having trouble --

17 **Q** I'd be glad to.

18 When they put in here, and you wrote this in
19 here, an acknowledgment, you acknowledge the doctors
20 and the review committee reviewing this, for
21 inducing on your part awareness of the significant
22 ethical flaw in the research project, a significant
23 ethical flaw in your research project. You put that
24 in there?

25 **A** I was required by Dr. Diamond as a condition of

1 finishing my degree to do that. He resigned from
2 the committee and was replaced by Dr. Chrisberg
3 {phonetic}. None of the other committee members,
4 none of the other four scholars had any problem with
5 that. Dr. Diamond was the only one. So, you know,
6 that's what it was.

7 **Q** So Dr. Diamond had it in for you?

8 **A** I'm sorry?

9 **Q** Dr. Diamond had it in for you?

10 **A** No, no. He was a very honorable gentleman who
11 just disagreed with what I was doing, and he
12 disagreed with the actions of the Stanford Gender
13 Identity Clinic made up of eminent psychiatrists and
14 surgeons.

15 **Q** And you said because of this criticism, it has
16 led you to conclude that your research project was
17 characterized by the ethical and methodological --

18 **A** Methodological.

19 **Q** -- just discussed, ethical flaw?

20 **A** Yes. Dr. Diamond required that -- required me
21 to put that in the dissertation, and I resented
22 having to put it in. I did put it in, because I
23 was, you know, in order to receive my degree.

24 But I think the situation speaks for itself. I
25 was working with eminent medical practitioners

1 trying to help these people in the process of doing
2 my research, and I don't think there was anything
3 wrong with what I had done.

4 **Q** Because you revealed some things about these
5 people wanting to have sex change operation that
6 they disagreed with you revealing it?

7 **A** Well, right. Dr. Diamond believed that I was
8 limiting their chances of having the surgery by
9 telling the Stanford Medical Center's people that
10 they were still having heterosexual relations. But
11 you think about that for a moment. If they'd gone
12 ahead without that information, they would have gone
13 ahead, removed these people's genitalia, and that
14 could have precipitated, as it has in the past, a
15 psychotic break, a worsening of their condition,
16 suicide.

17 So none of the medical specialists I worked
18 with at that fine medical center, including
19 Dr. Laub, had any problems with it. I had no
20 problems with it either, and that's sort of the long
21 and short of it.

22 **Q** Said you employed a methodology which involved
23 the conscious deception of your subjects. Conscious
24 deception, that means purposely lying, doesn't it?

25 **A** No. It means purposely withholding information

1 from them as to what I was doing. I didn't feel
2 that I was required to tell them that I was working
3 with the Stanford Medical Center personnel in their
4 best interest.

5 Q So you were lying by not telling them
6 something?

7 A You can call it whatever you want. I was
8 withholding --

9 Q Well, you put down here conscious deception.
10 What does that mean to you, conscious deception? If
11 you consciously, intentionally deceive somebody,
12 what does that mean?

13 A You're consciously deceiving, you're
14 withholding information from them. No question
15 about that. And I did that in the course of
16 completing my research.

17 Q And you wrote in here that it's clear by, in
18 your actions, that you took upon yourself a right
19 which no human being has, that of determining the
20 righteousness or wrongness of another person's
21 values and goals in life; is that right?

22 A Those are specific words that Dr. Diamond wrote
23 and required that I put in my dissertation and, you
24 know, it--

25 Q Did Dr. Diamond sign this?

1 **A** Pardon me?

2 **Q** Did Dr. Diamond --

3 **A** No. I signed it. I'm not trying to argue with
4 you. I did what I did.

5 **Q** Is Dr. Diamond's signature on here?

6 **A** Dr. Diamond resigned from the committee, was
7 replaced by Dr. Chrisberg. None of the other four
8 members of the committee saw any problem. The
9 University of California at Berkeley takes, as the
10 number one public university in the nation, takes
11 ethics issues very seriously. There was never any
12 basis for even filing an ethical complaint against
13 what I did.

14 You would have to -- to criticize me, you would
15 have to criticize Stanford Medical Center, their
16 gender identity clinic, all those psychiatrists, all
17 those practitioners, who are well-respected.

18 **Q** Sir, I'm not criticizing anybody. I'm just
19 bringing out your ethical problems here, and I'm
20 sorry that you feel like I'm --

21 **MR. GARRETT:** Objection, Your Honor. He's not
22 asking a question.

23 BY MR. MYERS:

24 **Q** Well, I'll ask this question: You took it upon
25 yourself to determine the rightness and the

1 wrongness of other people's values and goals in
2 life?

3 **A** I did not feel that I was doing that. I've
4 never felt that. I --

5 **Q** So when you wrote -- oh, I'm sorry.

6 **A** I was required by the chairman of my
7 dissertation committee, Dr. Bernard Diamond, eminent
8 psychoanalyst and a great man, to write that
9 apologia. I resented it then. I was, you know, I
10 was in Tallahassee, had a university post already,
11 my dean is asking me, When are you going to get your
12 doctorate? And I said, We're trying to work out
13 this wrinkle right now, Dean, you know.

14 So my future was very much hanging in the
15 balance, and I had no choice but to do what I did.

16 **Q** So you put this in here and you disagreed with
17 it and you thought this was wrong?

18 **A** It was either that or resign from the
19 university and not complete my doctorate degree. I
20 felt there was nothing ethically -- as I say, what I
21 did was identical to what the university committee
22 people were doing. And we were all working in the
23 best interest of these patients, and I didn't feel
24 there was anything wrong with it and never have felt
25 it.

1 **Q** So you put this in here just to get your
2 doctor's degree in criminology? You put this in
3 here just to get your doctorate's degree in
4 criminology?

5 **A** I had to put that apologia in there, written by
6 Dr. Diamond, in order to receive my doctorate.

7 **Q** I don't see Dr. Diamond's signature on this
8 thing.

9 **A** Well, you don't, sir, because he resigned from
10 the committee and was replaced by Dr. Christberg.

11 **Q** Okay.

12 **A** And I will reiterate again that no aide, that
13 no member of my committee had any problem with that,
14 filed any complaint with the university ethics
15 committee. There was no investigation by any
16 university ethics committee, and, you know, it is
17 really a tempest in a teapot.

18 **Q** And then you put in here something about, when
19 confronted, there was a specific denial about you.
20 That, further, the researcher's specific denial that
21 anything said might influence a candidate's chances
22 for obtaining the operation extant was ethically
23 untenable procedure. That you specifically denied
24 you did anything wrong. So you lied twice?

25 **A** I do not regard that as a lie. I regard that

1 as a caveat that I could -- most of which was
2 prepared by Dr. Diamond. He said, If you want me to
3 -- if you want my blessing on the dissertation,
4 you're going to have to issue this apologia. And I
5 resented it, Dr. Laub resented it, the Stanford
6 people did as well, but that's the way it went.

7 **Q** Where in here does it say all these people
8 resented it?

9 **A** I'm telling, there's -- that document does not
10 contain any commentary from the Stanford University
11 medical personnel. But I'm telling you that they --
12 they were the ones that proposed this methodology to
13 me, and it seems sound and reasonable. We were all
14 working in the best interest of their patients. If
15 they did not have the information I gave them, they
16 could have made some grave mistakes.

17 **Q** Maybe you didn't understand my question. Where
18 in here does those people say that?

19 **A** That they resented the requirement that I have
20 to put that caveat in there?

21 **Q** Uh-huh, or whatever --

22 **A** They wouldn't say that in the dissertation.

23 **Q** Well, it says in here about you being
24 unethical.

25 **A** Sir, you're reading -- I feel like -- I'd be

1 happy to read the exact section that you're talking
2 about there aloud, if you like. We're talking about
3 a very small section of a 400-page dissertation.

4 Q Dr. Diamond had it in for you?

5 A No, he didn't. He was a very fine man. He
6 helped me immeasurably. I look up to him. I've
7 always looked up to him. I have the greatest
8 respect -- he disagreed with the methodology that I
9 had utilized.

10 Q So you did what you had to do to get your
11 doctor's degree, basically?

12 A That's correct. That's correct.

13 Q Now, you said something I didn't quite get
14 yesterday. You said you were somewhere and you were
15 volunteering as a police officer, but your
16 colleagues at the university were going to block you
17 getting tenure at the college if you didn't quit
18 being a cop.

19 A That was basically the reason why 60 Minutes
20 sent Dan Rather and a crew down to do a segment
21 called Ivory Tower Cop. The situation was that my
22 colleagues were senior faculty. I was a junior
23 professor --

24 Q What senior faculty? From which college now?

25 MR. GARRETT: Your Honor, allow him to finish

1 his answer.

2 **THE COURT:** Go ahead. Overruled. Go ahead.

3 BY MR. MYERS:

4 **Q** Which -- did we shift it from California to
5 somewhere else now?

6 **A** We're at Florida State University.

7 **Q** Florida State. Okay.

8 I'm sorry. Go ahead.

9 **A** Home of the national champions, soon-to-be,
10 Seminoles.

11 So while I was a junior professor there, I was
12 up for tenure. I had embarked on this experiment on
13 my own. I was unable to get a research grant to do
14 it. With the help of my dean and the help of
15 Sheriff Carson -- I talked to you yesterday about
16 how I worked as a police officer for six months,
17 high-crime beat -- I came back to FSU and joined the
18 Tallahassee Police Department and continued working
19 as a police officer in Tallahassee on a part-time
20 basis.

21 And as part of doing that, I would come to the
22 university in uniform, teach classes, and talk to
23 the students about what police actually do. And I
24 was trying to get across the idea of how am I
25 different in uniform today than I was yesterday in a

1 suit and a tie. What's different about me? And I
2 would bring in training videos that I developed with
3 police and for police.

4 All of these things, senior faculty, full
5 professors, did not approve of, and a number of
6 those faculty sought to block my tenure. I was
7 otherwise very well-qualified. I had the
8 second-highest student instructional rating
9 evaluations on the faculty of about 18 at the time.
10 But they undertook to block my tenure. That's what
11 60 Minutes came down to do a segment.

12 And if you look at that segment, you'll see
13 Mr. Rather moderating an interview between myself
14 and Dr. Ted Chiricos, who is one of my major
15 detractors in which they are expressing -- he's
16 expressing his disapproval, basically, of what I was
17 doing.

18 My dean said, Look, if you resign from the
19 police department, this thing will go away. I said,
20 I'm proud to be a police officer. It's important to
21 my work, my research. I'm not going to do that,
22 even if I don't get tenure. That's what happened.

23 Q Who is this professor that was blocking your
24 tenure?

25 A There were a number of senior faculty. I never

1 knew who all of them were. That is a private --
2 it's a confidential proceeding, and a lot of it was
3 done, you know, behind the scenes. So I never
4 really knew.

5 I knew Chiricos was opposed to it, a number of
6 others were. There was enough to cause me a
7 potential blockage of my tenure.

8 **Q** So in that Florida State, there are people on
9 the faculty and they're trying to take action
10 against you to block tenure?

11 **A** Not all of my colleagues, but a significant
12 number -- a significant-enough number of senior
13 faculty because I was a police officer, but it was
14 all about -- they said it was unseemly for a faculty
15 member to be going, you know, going out in a police
16 uniform, working the streets and, moreover, coming
17 on campus. That really upset them when they see a
18 patrol car and a uniform on campus.

19 **Q** You were working as a police officer, right?

20 **A** Fully sworn, uncompensated at my own election.

21 **Q** What?

22 **A** I was uncompensated. I was not paid. I was
23 fully sworn, had all the arrest powers, worked by
24 myself, made arrests.

25 **Q** You just volunteered to help your research?

1 **A** Well, I was trying to. That was my laboratory.
2 I discovered -- in Jacksonville, I found that by
3 getting out with the men and women who were police
4 officers, at their suggestion originally, as you
5 know, I could learn more about their problems,
6 issues, develop all the training tapes, all the
7 training material I developed over the years as a
8 direct result of that ongoing experiment. I wanted
9 to continue it and I did continue it for 18 years.

10 **Q** And the streets were your laboratory?

11 **A** They were my laboratory.

12 **Q** And you never were paid?

13 **A** I'm sorry?

14 **Q** You never were paid?

15 **A** At my own election, I was the only part-time
16 officer in the City of Tallahassee Police Department
17 who was not paid. No, I was not paid.

18 **Q** But you said something about getting federal
19 grants to be a police officer?

20 **A** I had a federal grant from the U.S. Department
21 of Justice to take a summer and work as an
22 undercover officer in a organized -- federal
23 organized crime strike force in Fort Lauderdale.

24 **Q** So you got federal grants to take your
25 laboratory on the streets?

1 **A** I got a federal grant for the summer to pay my
2 university salary so that I could go down to Fort
3 Lauderdale and work as a plainclothes undercover
4 officer in organized crime strike force.

5 I was trying to get different experience.
6 Mostly, it was uniform patrol. I had some detective
7 experience, I had some vice narcotics, and then I
8 had undercover organized crime experience. I was
9 trying to see as many different kinds of aspects of
10 the police role as I could.

11 **Q** Haven't you written or stated that when people
12 go to academies and then get back out on the
13 streets, that they should disregard 75 percent or
14 more of what they learned at the academy and really
15 learn the reality of life on the streets?

16 **A** No. I've said that it's important to know --
17 to temper what you've learned with the reality of
18 life on the streets. The classroom instruction
19 would be of no use if you couldn't relate it to the
20 field. But the idea of disregarding what you
21 learned at the academy is not correct.

22 **Q** Didn't you say in a book you wrote that they
23 teach you at the academies about who, what, when,
24 and where, but they don't really teach you the how
25 of law enforcement?

1 **A** That's true. The how -- you have to -- you
2 have to take the information you get in the academy
3 and apply it on the street.

4 **Q** Didn't you pretty much say that this is best
5 relegated to the police training academy and,
6 ultimately, to the street where experience is the
7 best and, indeed, often the only teacher? The
8 street's the teacher?

9 **A** The street is the teacher, but always with the
10 backdrop of the training that you received. You
11 wouldn't know how to do -- how to handle calls if
12 you hadn't had the instruction and what to do, what
13 is -- what about covering contact? When do you use
14 concealment? What's a safe position? How do you do
15 a felony car stop? You have to have been instructed
16 in that before you actually do it.

17 **Q** Well, didn't you say this: The police
18 organization, from its academy training instructors
19 and field supervisors, to the upper levels of its
20 command hierarchy is committed to articulating such
21 myths as full and equal enforcement of the law in
22 all situations and rigid adhering to formal
23 departmental regulations despite the fact that these
24 things bear little resemblance to the actual
25 realities of police work on the street?

1 **A** I don't know which article you're reading from.

2 **Q** Well, I'm taking it from the introduction of
3 law enforcement, which you wrote.

4 **A** Okay. I wrote that back in the 70s.

5 **Q** In the 70s?

6 **A** Right. Very inexperienced at the time.

7 But it is true that everything you learn in the
8 academy has to be tempered with experience on the
9 street. It doesn't mean, though -- and I've never
10 said that you should disregard the training that you
11 get. It's vitally important, and it's getting
12 better all the time.

13 **Q** And in the same book, didn't you say numerous
14 times: Officers, once they leave the training
15 academy, have to ignore 75 percent of what they
16 learned there because they find it conflicts with
17 reality as it is out on the streets?

18 **A** I wrote those words back in probably 1974, '75,
19 when I'd had two years' experience in law
20 enforcement.

21 As I went on during the 18 years that I
22 remained in law enforcement, I began to appreciate
23 more and more the importance of the things that I
24 had been taught in the academy and that I was taught
25 each year in in-service training and the relevance

1 of those things to the job that I was doing.

2 **Q** And then you further say: Officers are faced
3 with situations where who knows the year, the month,
4 the weeks people sit down and dissect every single
5 move the officers make to see if everything was done
6 perfectly according to the book. That happens,
7 doesn't it?

8 **A** Well, that happens with the ivory tower. That
9 was my criticism of other professors who don't get
10 out on the streets and see what's going on, and
11 people who sit back and Monday morning quarterback
12 what police -- well, you could have done this, you
13 should have done this.

14 But we're talking here about things that should
15 have been very, very obvious, almost in accord with
16 common sense. If you start from the position that
17 officers should not put themselves and other people
18 unnecessarily in danger, then certain things make
19 sense in terms of the things you're trained to do.

20 **Q** And, of course, you're not in the ivory tower
21 now looking back and judging what police officers
22 do, are you?

23 **A** I'm no longer a university professor. And we,
24 in this process here, this is one of the few
25 countries in the world where people are not afraid

1 of the police, and one of the reasons for that is
2 that we have checks and balances. We critique. We
3 look at -- we have to look at what officers do in
4 its correctness or propriety, and that's a special
5 thing. That's why our citizens are not afraid of
6 our police because they are -- they go through
7 checks and balances, they're constantly critiquing
8 themselves, and they're changing and evolving.

9 Q And you've also written: It seems so wrong to
10 me, so consummately unjust, that we, who so often
11 find ourselves forced to make the gravest of human
12 decisions in a matter of seconds, should then be
13 judged by outsiders, people who enjoy the luxury of
14 quantities of time in which to dissect and examine a
15 policeman's every action retrospectively after the
16 fact. Didn't you write that?

17 A Yes. You're quoting from an article I was
18 invited by the FBI to write for their law
19 enforcement bulletin --

20 Q What article was that?

21 A Huh?

22 Q What article was that?

23 A I'm sorry?

24 Q What article was that?

25 A It was called, A Professor's Street Lessons.

1 Q No, I'm quoting from Signal Zero, the book you
2 wrote.

3 A Okay. That is from Signal Zero, but I said
4 much the same thing in the FBI article, and I
5 believe that. And that was the gospel I was
6 preaching to my colleagues at the university, that
7 you need to get out and see the things that these
8 officers -- at least ride around some and see the
9 things these officers are subjected to to better
10 understand it, rather than sitting in the classroom
11 criticizing it.

12 Q And when you volunteered down in Jacksonville,
13 you were riding with other officers out on the
14 streets; is that right?

15 A In the highest crime beat of the city on the
16 evening watch.

17 Q And out on the streets, you were going by the
18 book?

19 A We went by the book a substantial amount of the
20 time. There were things in that particular beat --
21 it was an extremely violent beat. Three of my
22 partners, a few years after I left, were shot. And
23 there were things that we did that were not always
24 by the book.

25 Q So you didn't go by the book?

1 **A** Not always, no.

2 **Q** Not always.

3 As a matter of fact, out on the streets, after
4 four months of you volunteering, you had burnout and
5 asked to be transferred, didn't you?

6 **A** No. No, I had -- I had been contacted by vice.
7 They requested -- they asked for some -- they were
8 having a problem -- a sex vice problem and put me
9 over there for about two weeks, and then I went back
10 to patrol again.

11 **Q** Haven't you made this statement in court: Yes,
12 I was reaching a point of burnout and being
13 overwhelmed. Having come from academia into the
14 core of the city area, I considered a short transfer
15 to vice because of burnout?

16 **A** That's what I just said.

17 **Q** Now, let's get on to something else. You give
18 the officers the benefit of the doubt; is that
19 right?

20 **A** I try to, yes.

21 **Q** And you said that this case fits in the profile
22 of friendly fire. I wrote that down. You said,
23 friendly --

24 **A** Yeah, it's a military expression, but I used
25 the term friendly fire because that's essentially

1 what this kind of case boils down to.

2 Q And you were giving Bobby Rushton the benefit
3 of the doubt when you said he was shot by a friend?

4 A No. I'm saying that he was shot by a
5 homeowner, I believe, who mistook him for a burglar.

6 Q Mistook him for a burglar? I hadn't heard that
7 in here in the courtroom. I hadn't heard that.

8 A Mistook him for an intruder, someone on his
9 property who was there to do him harm.

10 Q Intruder? Who intruded into his house?

11 A No one went into his house, but he is
12 frightened. He hears a doorbell ringing --

13 Q Yes, sir.

14 A -- and he encounters a man in plain clothes
15 with a gun in his yard who points a gun at him. The
16 person intends to cause him harm --

17 Q How do you know he pointed a gun at him?

18 A I'm sorry?

19 Q How do you know that Bobby pointed a gun at
20 him?

21 A My recollection is, ballistically, that Glock
22 23 shows a bullet strike. The weapon was -- had to
23 have been pointed to sustain the damage.

24 Q Have you heard anybody in this courtroom say
25 Bobby pointed his gun at him?

1 **A** My recollection from the aggregate of the
2 record is that the Glock model 23, 40 caliber, had
3 to have been pointed at the time the .30-06 round
4 was fired.

5 **Q** Show me that. Show me that.

6 **A** It struck the --

7 **Q** Show me that where it says that. I haven't
8 seen that. Show me where it says that.

9 **A** I'm happy to go through the entire court record
10 if you like.

11 **Q** I don't care what you have to do. Show me what
12 you're relying on, him pointing the gun at Joe
13 Worley.

14 **A** I am taking it as a hypothetical based on the
15 voluminous record that I have been through that
16 there came a point in time outside when the light
17 was allegedly on where Mr. Worley -- it's a
18 hypothetical -- looks down and sees a gun pointed at
19 him, and he fires, and the gun is blown apart,
20 damaged by the .30-06 round.

21 **Q** Did Bobby testify to that? Did he testify he
22 pointed a gun?

23 **A** He did not testify.

24 **Q** So you're not giving him the benefit of the
25 doubt. You're giving Joe Worley the benefit of the

1 doubt.

2 **A** I'm taking that as a hypothetical.

3 **Q** A hypothetical.

4 You're giving a hypothetical benefit to
5 Mr. Worley and not to the police officer?

6 **A** I'll entertain any hypothetical, sir, that
7 you --

8 **Q** I don't deal in hypotheticals. I deal in
9 facts.

10 Who testified that Bobby pointed his gun at Joe
11 Worley?

12 **A** I have seen in the record -- the case record
13 that -- that evidence is clear from the damage that
14 was done to the weapon. The firearm had to have
15 been pointed in the direction of Mr. Worley in order
16 to have sustained the damage from the .30-06.

17 **Q** Would you like to see that SLED agent's report
18 and show me in there where it says that?

19 **A** I'm just telling you what I concluded from
20 the -- are you suggesting that the gun was not
21 pointed?

22 **Q** I'm not suggesting anything. I'm just asking
23 why are you saying it was pointed by Bobby at Joe
24 Worley?

25 **A** My recollection is that the Glock was struck

1 and blown apart, essentially, or severely damaged
2 by --

3 Q It blew Bobby's hand apart.

4 A I'm sorry?

5 Q It blew Bobby's hand apart.

6 A By definition, the Glock was in his hand. The
7 Glock was damage; his hand was tragically damaged as
8 well.

9 Q So you want to talk about the gun being damaged
10 and not Bobby's hand?

11 A No. I think it's tragic that the officer's
12 hand was damaged.

13 Q And then you said that, in this case, there was
14 all kind of violations of American standards and
15 procedures. And then --

16 A Police standards and procedures.

17 Q Yeah, police.

18 And then you said something that caught my
19 attention, and you said: Not only that, George
20 Reid, the Sheriff of McCormick County for 27 years,
21 who Mr. Garrett says knows McCormick County, he
22 violated all the procedures by walking down and
23 confronting Mr. Worley and his mother.

24 A Right. Right. I did say that.

25 Q The sheriff?

1 **A** Yeah. You know why I said that?

2 **Q** Yeah.

3 **A** Suppose, suppose he's got -- well, he knows
4 he's got a deputy shot out there. He knows that.
5 It's dark, and he doesn't know if the person that
6 did that is a crazed crystal meth addict, is a
7 deranged mental patient, and he violates every basic
8 procedure by walking out there in the dark,
9 abandoning cover, you know, every basic kind of
10 thing you're taught.

11 Suppose that guy -- suppose, instead of Mr. Joe
12 Worley and his cat in that place and his mother,
13 suppose this had been a crack head with an AK-47 or
14 an AR-15 30-round magazine, you'd have three dead
15 officers out there. That's why they have these
16 standards.

17 **Q** Suppose it was a terrorist in this house with a
18 bazooka and he blew his car up before he got out
19 while we're supposing.

20 **A** That's fanciful, Counselor. That's a highly
21 absurd conjecture. It's not absurd at all because
22 I've seen it happen.

23 **Q** A bazooka?

24 **A** Sir, that's absurd to suggest that somebody had
25 a bazooka there.

1 **Q** It's not absurd.

2 **A** But there are people who lure police officers
3 to ambush them and kill them in situations similar,
4 that's why you want to be careful.

5 What's the downside -- what's the downside to
6 using caution, the kind of things I suggested: A
7 simple phone call using the car's PA system and so
8 on, what's the downside to that? Forming a plan,
9 getting information. Instead of rushing in in a
10 matter of -- what was he over there at -- for 45
11 seconds, a minute, talking to the Sheffields?

12 **Q** I'm talking about Sheriff Reid.

13 **A** Yeah. Well, Sheriff Reid is the -- he's the
14 chief law enforcement officer.

15 **Q** Yes, he is.

16 **A** What in the world is he doing walking down a
17 darkened road when he's just had a deputy shot,
18 exposing himself? Is that the way they do things --
19 is that the way people would want them to do things
20 in McCormick County?

21 **Q** Obviously for 27 years it is.

22 **A** Well, it's dangerous as hell.

23 **Q** Is he dead?

24 **A** Luckily.

25 **Q** Did he arrest the man who shot his deputy?

1 **A** He arrested the gentleman that shot his deputy,
2 yes.

3 And fortunately -- but I'm saying he could have
4 had a very different outcome here, and that's why --
5 that's why police are trained not to do this kind of
6 thing.

7 **Q** And he violated all the procedures when he
8 confronted Joe Worley, and Joe Worley said, I put
9 your deputy's in his patrol car {sic}? He was
10 violating rules then, standards and procedures?

11 **A** As far as the issue of the gun being put in the
12 car, that has no relevance to this directly. What
13 I'm talking about is a sheriff walking down a dark
14 road, confronting a couple people with flashlights,
15 and telling one of them, Don't shine the light in my
16 eyes.

17 He exposes himself to being -- having a
18 flashlight put on him, out in the open, totally
19 uncovered. I mean, that's a reckless thing to do,
20 and it violates every basic precept that police are
21 trained to follow.

22 **Q** And when the sheriff said, You shot my deputy,
23 and Joe Worley said, The deputy didn't have any
24 business ringing my damn doorbell, the sheriff was
25 still violating American standards and procedures in

1 law enforcement?

2 **A** No. No. I mean, those are things that are for
3 the jury to assess as far as what was said, what
4 wasn't said. Was the person upset? Why did he say
5 what he said? That's not for me.

6 **Q** And you're here to give the officers the
7 benefit of the doubt and not Joe Worley?

8 **A** Sir, I've always tried to be fair and
9 objective. I'm not an advocate.

10 **Q** Let me ask you if you agree with this: I love
11 Andy Griffith?

12 **A** Yeah, I like Andy Griffith, too.

13 **Q** And they were getting on him one time for not
14 following the book, and Andy said, You know, he
15 said, In a small town, it's a whole lot better if
16 you go less by the book and more by the heart. Do
17 you agree with that?

18 **A** More by the what?

19 **Q** Go less by the book and more by the heart. Do
20 you agree with that?

21 **A** I'm sorry. What was the last word? More by
22 the --

23 **Q** I'm sorry. Andy Griffith said, In a small
24 town, it's a whole lot better if you go less by the
25 book and more by the heart. Do you agree with that?

1 **A** You know, it's a sweet sentiment. I don't know
2 what he means, but I sure hope that professionals in
3 aviation, in law enforcement, in medicine don't
4 throw out the book when they're doing their jobs.

5 Those books are written for a reason. You
6 can't use them all the time. Sometimes there are
7 times when your heart, your emotions come into play.
8 But the procedures, these are basic procedures that
9 keep police safe and keep the homeowners safe.
10 These tragedies that occur, I've seen many of them
11 during the course of my career of innocent people,
12 officers shooting officers, officers shooting
13 homeowners, homeowners shooting officers, things
14 like this -- this could have been avoided so
15 readily.

16 **Q** And Bobby's hand is blown to bits now because
17 he, Nick, Melissa, and Sheriff George Reid didn't go
18 by the book. That's what you're saying?

19 **A** That tragedy occurred because they failed to
20 follow the most basic police procedures that relate
21 to officer safety. And I'm sorry for that. I'm
22 sorry for what happened to Mr. Worley, but this
23 whole tragedy, we shouldn't even be sitting here
24 having this conversation. If procedures -- basic
25 safety procedures had been followed, this wouldn't

1 have happened.

2 Q You say you were sorry for what happened to
3 Mr. Worley? That's what you just said?

4 A Yeah, he suffered. This gentleman has
5 suffered, yes.

6 MR. MYERS: Thank you, sir. I have nothing
7 further.

8 THE COURT: Madame Forelady, ladies and
9 gentlemen of the jury, we've been going about an
10 hour and a half. Let's take about a ten-minute
11 break, and then we'll start back again.

12 (The jury retires to the jury room.)

13 THE COURT: Doctor, don't talk to anyone.

14 THE WITNESS: No, sir, I won't.

15 (Brief recess.)

16 THE COURT: All right. Mr. Garrett, are you
17 ready to proceed?

18 MR. GARRETT: I am, Your Honor.

19 THE COURT: Mr. Myers?

20 MR. MYERS: Yes, sir.

21 THE COURT: Would you bring the jury in,
22 please?

23 (The jury returns to the courtroom.)

24 THE COURT: Mr. Garrett, redirect?

25 MR. GARRETT: Please the Court.

REDIRECT EXAMINATION

BY MR. GARRETT:

Q Dr. Kirkham, could I have you step down in front of the jury, please?

A (Witness leaves the witness stand.)

Q I'd like for you to go through this magazine, if you would, and tell us what this picture is right here. What's this picture about?

A This is a picture of an officer demonstrating a piece of equipment beside a patrol car.

Q All right. And is he in uniform?

A Yes, he's wearing a uniform.

Q Is that the kind of uniform you were talking about?

A Yes. Most police in the United States today wear conventional police uniform. You can drive through most any city, and this is -- even though we have these other uniforms, most police wear a conventional uniform. You see patches and so on.

And the model you saw in here is just a model. I mean, the person would have to have other insignia on there to demonstrate that they're police. I can't just walk up to you in a pair of fatigues and a green shirt and say I'm the police.

Q And when you were testifying the other day

1 about lapels there, but is that an example of what
2 you were testifying --

3 **A** Yeah. A lot of police agencies -- some don't,
4 have it, but a lot of them have lapel insignias that
5 will say, you know, JP, Jacksonville Police, or in
6 this particular case, it's denoting your position of
7 either chief or deputy chief. And you see a metal
8 badge.

9 But my point was that even with those things,
10 you -- training-wise, you do not go walking around a
11 house at four o'clock in the morning in the woods.
12 It's a dangerous, dangerous thing to do. It's not
13 necessary. You get the suspect to come to you.

14 Here's another example.

15 **Q** Another example of a --

16 **A** Yeah, yeah.

17 I'm sure if you get pulled over by your state
18 police here, in most places, it's pretty much what
19 you're going to see: Shoulder patches -- shoulder
20 patches, badge, nameplate, things that -- here in
21 this case shows insignia of police.

22 So there are a lot of different, you know,
23 we've got 40,000 municipal police agencies in this
24 country, and they all have different uniforms,
25 different colors. But the idea is that you're

1 supposed to give clear notice of your purpose and
2 presence. When people look at you, they've got to
3 know this is a police officer or a deputy sheriff.

4 **Q** Can you describe what this is about? I know
5 it's an article, but can you describe the way the
6 officer is standing? Is that a proper stance?

7 **A** Yeah. This is an officer. He's apparently
8 demonstrating what looks like it might be a Glock
9 sidearm with a light supplement, tactical light on
10 the bottom of it. Yeah, these are the -- this is
11 one of the covered positions that you maintain, like
12 on a felony car stop or high-risk situations I was
13 talking about earlier.

14 When you confront or try to get somebody to
15 come out, you're behind a curtain of light at night,
16 and you've got your high beams on, you've got your
17 spot on, you've got your overhead lights on to make
18 it very clear to them that you're police. And
19 you're going to be in a protective position behind
20 the break of the door and the engine block, which
21 gives you some mass there. You're not going to be
22 out walking around -- the basic principle we call
23 cover and contact.

24 There's another uniform there.

25 **Q** Okay. Can you describe why these people would

1 have sheriff's on them?

2 **A** Yeah. Well, this is, apparently, a tactical
3 entry kind of team. They've got helmets. They've
4 got heavy flak vests on. They've got other
5 insignia. But, you know, this is a different mode
6 of operation. When you're talking about -- even
7 with SWAT teams, on television, they go in
8 immediately. In fact, it's the last thing that
9 happens.

10 The sequence is: Talk them out, force them
11 out, gas, CS, so -- type of stuff. Then taking them
12 out is always the last thing you do. You don't
13 expose yourself. This is dangerous stuff if you're
14 making an entry. Sometimes they've got to make
15 entries.

16 **Q** Is that similar to a vest we saw in here the
17 other day?

18 **A** Yeah, yeah. This is, you know, again, the
19 purpose here being twofold: To save police and also
20 to protect the officer with a ballistic vest.

21 **Q** All right. So this magazine, it appears to be
22 -- well, I think it belongs to Mr. Willis.

23 So in addition to that one uniform, this shows
24 a tremendous number of other uniforms?

25 **A** Right. And, you know, like I said earlier, in

1 South Florida where I live, a lot of officers,
2 because of the heat and everything, we wore shorts,
3 short-sleeve shirts, ride bicycles some of the time
4 and all that. But the idea -- daytime is one thing.
5 It's easier to tell that they're police.

6 But night, you know, night, around people's
7 residences where it's dark -- in this case, I mean,
8 you're talking about an extremely dangerous
9 situation in terms of --

10 **COURT REPORTER:** I'm sorry? I didn't hear the
11 last part.

12 **THE WITNESS:** A very dangerous situation in
13 terms of innocent people shooting at each other.

14 (Witness resumes the witness stand.)

15 BY MR. GARRETT:

16 **Q** And that was State's Exhibit 33 you were
17 referring to?

18 **A** Yes. It shows a good spread of diverse
19 uniforms. I wasn't trying to create the impression
20 that the plainclothes uniform was -- it may be very
21 popular, it's very comfortable, but that still is --
22 you'll find a lot more conventional uniforms than
23 you will those.

24 **Q** This is Exhibit 7. This is awful dirty, so be
25 careful with it, but can you examine it and just

1 point out to the jury why you surmised, through
2 testimony or otherwise, that this is what occurred?

3 **MR. MYERS:** I couldn't hear the question. I
4 apologize, Your Honor.

5 **THE WITNESS:** And I want to emphasize --

6 **MR. MYERS:** I could not hear the question.

7 **JUROR:** You need to turn the gun the other way
8 now. It's pointing towards us.

9 **THE COURT:** Point it to the wall.

10 BY MR. GARRETT:

11 **Q** Tell you what, why don't we do this: Why don't
12 you stand up here, and we can show it to them. All
13 right. This is Number 7 --

14 **MR. MYERS:** Now, once again, Your Honor, I did
15 not hear the question.

16 **THE COURT:** I think he's going to it now.

17 BY MR. GARRETT:

18 **Q** Mr. Myers asked you on cross-examination about
19 why you believed, based on all of your review of all
20 the evidence, that Mr. Rushton pointed his gun
21 towards Mr. Worley.

22 **MR. MYERS:** Oh, no. Oh, no. He's not an
23 expert in this area. He's an expert in standards
24 and procedures in law enforcement. He's not a
25 firearms expert or anything of that nature. That's

1 just speculation on his part. He can't give an
2 opinion on that.

3 **THE COURT:** Mr. Garrett?

4 **MR. GARRETT:** Your Honor, he was in the room
5 while Mr. Rushton testified, and Mr. Rushton
6 testified about what he did out there that night.
7 And I think he, as an expert witness, can synthesize
8 all of the evidence as a criminologist, including
9 criminalist, in coming to his conclusions.

10 **MR. MYERS:** No, sir. He can't be an expert
11 for --

12 **THE COURT:** Hold on, hold on.

13 **MR. MYERS:** Thank you, sir.

14 **THE COURT:** Madame Forelady, would you take
15 your jury to your jury room?

16 (The jury retires to the jury room.)

17 **THE COURT:** Mr. Garrett, you're asking him to
18 give his opinion as to the direction of that gun the
19 night in question versus based on why he said that.
20 I mean, those are two different things.

21 I agree with Mr. Myers, based on his stated
22 expertise in standards and procedures for police,
23 differs from forensic analysis of what's going on
24 with the evidence. But if he's going to say the
25 basis of why he says that or why he thinks that, the

1 factual basis that's in evidence now, I don't have a
2 problem with it. But if he's going to go further
3 and give his opinion otherwise from a forensic
4 standpoint, I do.

5 **MR. GARRETT:** I understand.

6 **THE COURT:** Okay. Or I will sustain the
7 objection.

8 **MR. GARRETT:** I understand your ruling.

9 **THE COURT:** Anything further, Mr. Myers?

10 **MR. MYERS:** No, sir.

11 **THE COURT:** All right. Would you bring the
12 jury back in?

13 (The jury returns to the courtroom.)

14 **THE COURT:** All right, Mr. Garrett.

15 **MR. GARRETT:** Thank you.

16 BY MR. GARRETT:

17 **Q** Dr. Kirkham, based upon the testimony you heard
18 from Mr. Rushton and Officer Moore, Officer Collier,
19 the weapon itself had to be pointed or did it have
20 to be pointed at Mr. Worley in order for Mr. Worley
21 to shoot in the position of the gun that he shot?

22 **A** Yes. The weapon has -- and I want to
23 emphasize, the defense presented a very fine
24 ballistics expert. I'm not a ballistics expert, but
25 I do deal with firearms a lot. I own a Glock 23

1 identical to that, shoot it frequently.

2 It's obviously sustained a massive deformation
3 of the grip such as would be consistent with the
4 weapon being pointed. Something caused a
5 projectile, presumably of some sort, produced a
6 tremendous amount of deformation, damage to that
7 weapon.

8 **Q** Is this a deadly weapon?

9 **A** It certainly is. It's not in its present
10 condition, but it is in its former condition, yes.

11 **MR. GARRETT:** That's all we have.

12 **THE COURT:** Any recross?

13 **MR. MYERS:** I don't have anything else from
14 him.

15 **THE COURT:** Any reason why this witness can't
16 be excused?

17 **MR. GARRETT:** None, Your Honor.

18 **MR. MYERS:** No objection.

19 **THE COURT:** All right. Thank you, sir. You're
20 excused.

21 Would you call your next witness?

22 **MR. GARRETT:** I call Mr. Bo Willis.

23 **MR. MYERS:** He's not on their witness list.

24 **MR. GARRETT:** He's subpoenaed.

25 **MR. MYERS:** I know he's subpoenaed, but he's

1 not on their witness list.

2 **THE COURT:** Y'all come around here.

3 (Whereupon, a bench conference was held off
4 the record, in the presence of the jury, but out of
5 the hearing of the jury.)

6 **THE COURT:** Is Mr. Willis in the courtroom?

7 **OFFICER WILLIS:** Yes, sir.

8 **THE COURT:** Have you been in the courtroom
9 during testimony?

10 **OFFICER WILLIS:** Just that -- what just
11 transpired right here.

12 **THE COURT:** For the last few minutes with the
13 defense expert?

14 **OFFICER WILLIS:** Right. That last whatever.

15 **MR. MYERS:** We have no objection.

16 **THE COURT:** All right. Call your witness.

17 **MR. GARRETT:** Thank you. We call Mr. Bo Willis
18 to the stand.

19 BO WILLIS,
20 having been duly sworn, testified as follows:

21 (Defendant's Exhibit Number 11, diagram,
22 marked for identification.)

23 DIRECT EXAMINATION

24 BY MR. GARRETT:

25 Q. Officer Willis, is this your magazine?

1 **A** Yes, it is. That's mine.

2 **Q** That's one that was sent to you?

3 **A** Yeah. I get several of them.

4 **Q** All right. I notice -- would you stand up,
5 please, in front of the jury here? I'd like for
6 them to see your uniform.

7 **A** Yes, sir.

8 **Q** All right. And does the City and McCormick
9 have a different budget from the County of
10 McCormick?

11 **A** Yes, sir, we're budgeted differently.

12 **Q** Budgeted differently.

13 Do you know how much y'all have -- how many
14 people are on your City police team?

15 **A** Seven of us.

16 **Q** Seven?

17 **A** And one reserve.

18 **Q** Do you have any idea what your budget is for
19 uniforms?

20 **A** Yes, sir. We get -- I'm trying to think what
21 it was last year -- seven or \$8,000 a year for
22 uniforms.

23 **Q** All right. Just have a seat there.

24 **A** (Witness complies.)

25 **Q** Can I ask you to identify this, Defendant's

1 Exhibit 11? Tell us what that is.

2 A Yes, sir. This is a drawing that I did right
3 after the incident happened out at the residence
4 that this is going on about.

5 Q Yes, sir.

6 A I did this and the preliminary report right
7 behind it.

8 Q All right. And there's an area -- if we're
9 using this -- this is State's Exhibit 4 --

10 THE COURT: Would you turn that so the jurors
11 over here in the corner can see it?

12 BY MR. GARRETT:

13 Q Can you see that?

14 A Yes.

15 Q Could you point out the area where the debris
16 field was?

17 A Yes, sir. There was a debris field in this
18 area that the deputies and, I think, the sheriff
19 actually collected a -- debris from what was Deputy
20 Rushton's weapon.

21 Q All right. And the weapon was in the patrol
22 car or do you know?

23 A I don't know where the weapon was at. I cannot
24 testify to that.

25 Q All right. And his flashlight, do you know

1 where his flashlight was?

2 **A** No, sir. That was already picked up before I
3 got there.

4 **Q** All right. And in your -- can you sit down a
5 moment now?

6 **A** Sure.

7 **Q** Because I want you to read your document there.

8 **A** Okay.

9 **Q** And where did you conclude, based upon your
10 examination, as to where Officer Rushton had been
11 shot?

12 **A** It was in this area here by this -- can I just
13 show them on this?

14 **Q** Yeah.

15 **A** Right in here would have been the area
16 {indicating}. This is the first place I located any
17 kind of blood, and that was where I -- and was the
18 first place I located any blood.

19 **Q** All right. And the debris field that was all
20 the way -- that you testified to right here --

21 **A** Yes, sir.

22 **Q** -- how did that -- how did that get -- if he
23 shot in this direction, how does it get over here?

24 **A** There in the magazine of a Glock is a
25 spring-loaded magazine, which means it's under

1 pressure. And if you look at the weapon, the bottom
2 of the weapon, the magazine butt plate is gone. So
3 that spring-load would actually push everything out.

4 Q Okay. Pushed everything out?

5 A Yes, sir.

6 Q In which direction?

7 A Towards whichever way the butt plate was
8 facing.

9 Q And what about the pieces of the weapon, the
10 balance of the pieces of the weapon, did you find
11 any pieces to the weapon?

12 A I did not, no, sir.

13 Q All right. So the debris field was what then?

14 A Was spent casing -- well, not spent casing, but
15 weapon -- the rounds that come out of the magazine,
16 rounds that was broken that come from the magazine.

17 Q All right. From Officer Rushton's magazine?

18 A Right.

19 Q Now, did you find any .30-06 fired cartridges?

20 A I didn't find them, but they were found.

21 Q All right. During -- were you in charge of the
22 investigation or who was in charge of the
23 investigation?

24 A I was called out to assist. I was called out
25 to pretty much take pictures and help out with

1 diagramming the crime scene.

2 Q I understand. And that was your work for that
3 evening?

4 A Pretty much, yes, sir.

5 Q Is it pretty much or is --

6 A Yes, sir. That was what I was called to do,
7 assist, take pictures and help out with the crime
8 scene.

9 Q And, Officer Willis, how much time was it that
10 you wrote your report after that evening?

11 A About a week or so.

12 Q A week or so?

13 A At the most, yes, sir.

14 Q All right. Now, I want to talk to you about
15 those .30-06 empties. Okay?

16 A Okay.

17 Q Can you read your report there? Refresh your
18 recollection and see if you can point out for us
19 where these empties were found, .30-06 empties.

20 A The .30-06 empties, oh, yes, sir. There was
21 some .30-06 empties was found -- there was chairs on
22 the balcony --

23 Q Yes, sir.

24 A -- that was found there and then off to the
25 side of the balcony.

1 Q Okay. And how many were found on the balcony?

2 A On the balcony, two.

3 Q And how many were found on the ground in that
4 area?

5 A At the time of the report, it was reported to
6 me was once, but I was informed that there was two
7 after I did the report.

8 Q All right. Informed two after you did the
9 report.

10 A Right.

11 Q Did you go back and do an amended report?

12 A No, sir.

13 Q All right. And do you know where the second
14 one was found?

15 A My understanding, what I was reported to me, it
16 was found off to the balcony in this place.

17 Q Who found it?

18 A I cannot say. It's not in my report, I don't
19 think.

20 No, sir, it's not in my report who found it, I
21 do not believe.

22 Q I'm going to let you look at this one. It
23 appears to be two empties, and that is State's
24 Number 26. Can you tell me where those two were
25 found?

1 **A** According to the paperwork, it was found on the
2 top deck, outside the living room and dining room.

3 **Q** Okay. Those two were found there?

4 **A** Yes, sir.

5 **Q** All right. And then we've got two separate --

6 **MR. MYERS:** Your Honor, can I ask the relevance
7 of this? Is this to impeach the State's witness or
8 is it just cumulative? If it's cumulative, I'm
9 asking the relevance.

10 **THE COURT:** What is the relevance?

11 **MR. GARRETT:** Your Honor, I want to make sure
12 that we find out where these -- where these were
13 found or located.

14 **MR. MYERS:** But he didn't find them.

15 **THE COURT:** I understand. I'll give him some
16 leeway. Go ahead.

17 **MR. MYERS:** Thank you, sir.

18 BY MR. GARRETT:

19 **Q** Can you look at State's Exhibit Number 11. You
20 said these two were found on the balcony up here?

21 **A** Yes, sir. That's what's indicated on the
22 paperwork, on the top deck, outside the living room
23 and dining room.

24 **Q** All right. And then where were the other two
25 found -- you found one. Which one did you find?

1 **A** I did not find them. This is what they
2 informed me was found.

3 **Q** Okay.

4 **A** Found on the ground --

5 **MR. MYERS:** We're going to have to object to
6 hearsay then. He's asking him what other people
7 did; it's hearsay.

8 **THE COURT:** I'm going to sustain that.

9 BY MR. GARRETT:

10 **Q** All right. Tell me what -- well, is this your
11 bag that you prepared that night and bagged that
12 evidence?

13 **A** No, sir.

14 **Q** Was this reported in your report?

15 **A** I was told what was found and where it was
16 found.

17 **MR. MYERS:** See, that's hearsay.

18 **THE COURT:** Is it in his report?

19 **MR. GARRETT:** Yes, sir.

20 **THE COURT:** If it's in the report, it's in
21 evidence. He can ask him about it.

22 **MR. MYERS:** No, sir. It's not in his report
23 who found it.

24 **MR. GARRETT:** It's not in the report who found
25 it. It's where it was found was in the report.

1 **MR. MYERS:** He came in and was told things and
2 made a diagram. He didn't collect them.

3 **THE COURT:** It's in evidence. As long as it's
4 in the report, you can ask him what's in the report.
5 Otherwise, I'll sustain him on the hearsay grounds.

6 **MR. MYERS:** Thank you.

7 **MR. GARRETT:** Thank you, Your Honor.

8 BY MR. GARRETT:

9 **Q** Now, can you determine, based on the evidence
10 that's in the record, where each of those two were
11 found?

12 **MR. MYERS:** No, sir, that's not in his report.
13 If he shows him where it is in the report of where
14 it was found, I have no objection.

15 **THE COURT:** Show them in the report where it
16 is.

17 (Pause.)

18 **THE WITNESS:** The only reference that I have is
19 the -- location of the spent casings. It doesn't
20 say exactly where it was located except if you go to
21 the diagram, it says --

22 BY MR. GARRETT:

23 **Q** The report refers to the diagram, and the
24 diagram refers to the report, is that --

25 **THE COURT:** With both of those, I'm talking

1 about, report or diagram, if --

2 **MR. MYERS:** Yes, sir, but it doesn't say on
3 either one who found it.

4 **THE COURT:** He's asking where, not who.

5 **MR. MYERS:** Well, does he know where it was
6 found or is that hearsay?

7 **THE COURT:** You can ask him what's in the
8 report.

9 **MR. MYERS:** Thank you.

10 **THE COURT:** And otherwise, you're going to have
11 to base it on personal knowledge.

12 BY MR. GARRETT:

13 **Q** I'm asking you what's in your report.

14 **A** According to my report, there was two spent
15 casings found on the porch behind the chairs and
16 tables. And there was one spent casing off to, it's
17 according to how you want to look at it, the right
18 or left side of the building. All right --

19 **Q** Well, you tell me which is right and left?

20 **A** I have it marked. There was one on this side
21 of the building, but I later found out that there
22 was two found on this side of the building
23 {indicating}. Where the second one was found on
24 that side of the building, I do not know.

25 **Q** And you were the investigator out there?

1 **A** No, sir. I was just assisting. I'm not the
2 investigator. I think Nick Moore is the actual
3 investigator of this.

4 **Q** All right.

5 **A** I was asked by the County to take pictures and
6 help out with the crime scene.

7 **Q** All right. This is your report and as well as
8 your diagram?

9 **A** Yes, sir.

10 **MR. GARRETT:** Your Honor, I'd move at this time
11 to introduce Number 11.

12 **MR. MYERS:** We have an objection, because a lot
13 of stuff on there is hearsay and not of his own
14 personal knowledge.

15 **THE COURT:** All right. Pass that report up.

16 (Pause.)

17 **THE COURT:** I'm going to overrule the
18 objection. Everything contained in that report is
19 already in evidence.

20 **MR. MYERS:** Thank you, sir.

21 **MR. GARRETT:** Thank you, Your Honor.

22 (Defendant's Exhibit Number 11, diagram,
23 admitted into evidence.)

24 BY MR. GARRETT:

25 **Q** Now, your findings, could you tell us a little

1 bit about your findings? What -- based on your
2 investigation or what you did out there, you made
3 findings; is that correct?

4 **A** Right.

5 **Q** Tell us about these two spent cartridges that
6 were up near those chairs. What did you conclude,
7 based on your investigation, about those two
8 cartridges that were found up there as to when they
9 were shot in and about this scene -- this crime
10 scene?

11 **A** Alls I can tell you is the spent casings --
12 because this weapon is a right-fed weapon. This
13 weapon was actually fired -- or the spent casings
14 ended up in a position that would place that weapon
15 in this direction. All right. The spent casings
16 that was out to here, indicated a weapon being fired
17 in that direction.

18 **Q** Okay. Very good.

19 So if you found two here, they would have been
20 fired in that direction, and the other two would
21 have been fired in that direction?

22 **A** Yes, sir.

23 **Q** Or at least the one that you had at the time --

24 **A** Right.

25 **Q** -- when you wrote your report?

1 **MR. GARRETT:** That's all.

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

3 **MR. MAYE:** Yes, sir.

4 **MR. GARRETT:** Excuse me, I apologize.

5 BY MR. GARRETT:

6 **Q** Do you have any idea, based on any work that
7 you did that evening, as to which order these
8 bullets were fired?

9 **A** No, sir.

10 **Q** And, in fact, you -- I also saw in your report
11 you find that, as the police officers were leaving,
12 Mr. Worley fired at them twice, is that correct, as
13 they were leaving?

14 **A** It was a -- from being fired, yes, sir.

15 **Q** Is the reason for that -- there was three shots
16 fired we know: One hit Rushton, and there were two
17 other spent cartridges. So y'all assumed then that
18 he had fired those at the officer?

19 **A** Yes, sir.

20 **Q** Okay. And that may not be correct?

21 **A** Correct.

22 **MR. GARRETT:** Thank you.

23 CROSS-EXAMINATION

24 BY MR. MAYE:

25 **Q** Investigator Willis, tell me your rank. I

1 don't mean to --

2 A Major Willis.

3 Q Major Willis.

4 How long have you been with the sheriff -- with
5 the Town Police Department?

6 A Twenty-four years.

7 Q Twenty-four years.

8 Like Investigator Collier, you have been to
9 Glynco, you've been to FLETC training?

10 A Yes, sir.

11 Q You have had a wealth of training beyond that
12 of a normal or ordinary line officer?

13 A Yes, sir.

14 Q Because you conduct training with your
15 department, and you stay up on that, don't you?

16 A Yes, sir.

17 Q What do you characterize the uniform that you
18 have on now? How would you describe that uniform as
19 it goes into the array of clothing that you wear
20 carrying out your job as a police officer?

21 A This is what we call a Class A uniform.

22 Q A dress uniform?

23 A Yes, sir. Class A dress uniform.

24 Q And you wear that when you come to court
25 because you dressed up; correct?

1 A Pretty much, yes, sir.

2 Q That's the equivalent --

3 A Coat and tie.

4 Q You see me on days when we don't have court,
5 and I've got blue jeans and a shirt on; right?

6 A Yes, sir.

7 Q But when we've got court, I wear my suit.
8 That's what you're doing here today with that
9 uniform?

10 A Yes, sir. This is what we have to wear to
11 court.

12 Q How about 5.11 Tactical gear, the same type of
13 gear that Bobby Rushton had on that night, that Nick
14 had on that night? You've got all that same gear,
15 don't you?

16 A Yes, sir. I wear those pretty much on a
17 regular basis.

18 Q So people that are around McCormick seeing law
19 enforcement officers see you all the time wearing
20 that same type of gear, don't they?

21 A Yes, sir.

22 Q How about we go over and talk to you about the
23 guys that work for Sheriff Adell Dobey over in
24 Edgefield County? All of them wear 5.11 Tactical
25 gear, the same kind of thing that Bobby had on that

1 same night; isn't that right?

2 A Yes, sir.

3 Q How about we go up the road to Saluda County
4 over here to the sheriff's office, we see those same
5 officers on the street all the time. What kind of
6 uniforms do you see them wearing?

7 A The majority in this area now are actually
8 wearing the more suitable for work uniform, which
9 will be the 5.11, Tru-Specs, BDU-type -- about what
10 they call BDU, battle dress uniforms.

11 Q Let's go across the street from the academy,
12 the law enforcement academy, and SLED up there on
13 Broad River Road. You go up there all the time,
14 don't you?

15 A Yes, sir.

16 Q Are you familiar with Lawmen's Safety up there?

17 A Yes, sir.

18 Q When you go in Lawmen's Safety and look around
19 in there, it's a doggone department store for 5.11
20 gear, isn't it?

21 A Yes, sir.

22 Q When you go in there, that's the majority of
23 all the clothing that you see on all the displays in
24 there, isn't it? 5.11 Tactical gear?

25 A Yes, sir.

1 Q And you go to meetings with sheriff's
2 departments and rural law enforcement all over this
3 state where they congregate and get together, don't
4 they?

5 A Yes, sir.

6 Q The overwhelming majority of them in South
7 Carolina in rural law enforcement are wearing 5.11
8 Tactical gear; isn't that right?

9 A Yes, sir.

10 Q This Police Magazine, they sponsor most of the
11 -- this contest -- this very contest in here about
12 the best-dressed police officer in the country shows
13 someone dressed just like Bobby Rushton?

14 A Yes, sir.

15 Q With the exception of shirts; right?

16 A Correct.

17 Q And you've seen Bobby wearing this same kind of
18 gear. You've known him for years, haven't you?

19 A Yes, sir. He actually started his law
20 enforcement career with us.

21 Q And he always wears his badge on the left side
22 of his clothing, doesn't he?

23 A Yes, sir.

24 Q And he's dressed just like this guy, isn't he?

25 A Yes, sir.

1 **Q** How about those old Maglite flashlights, what
2 somebody would refer to -- or if somebody referred
3 to it as a police flashlight, a five D-cell Maglite
4 flashlight? You've been in law enforcement for a
5 long time, do police carry five-cell or four-cell D
6 battery Maglite flashlights in the modern era?

7 **A** No, sir. We don't even issue Maglites anymore.
8 We actually issue what's called a Stinger.

9 **Q** So the standard police flashlight now is one of
10 these small, high-intensity flashlights; right?

11 **A** Yes, sir.

12 **Q** And y'all go for y'all's tactical training and
13 all. They even teach you how to shoot your gun
14 holding one of those smaller flashlights, don't you?

15 **A** Yes, sir.

16 **Q** Maybe in 1974 somebody carried a big ol' five
17 D-cell or D-battery flashlight; is that right?

18 **A** Yes, sir.

19 **Q** You've seen that in the old black and white
20 photos in the history books?

21 **A** Yes, sir. I actually used to have a -- well,
22 I've still got it; I don't use it anymore.

23 **Q** But it's memorabilia for you, isn't it?

24 **A** Yes, sir.

25 **Q** You got it at home and you might use it when

1 you go to get garbage out of the garbage can; right?

2 **A** I think actually my little boy plays with it.

3 **Q** Okay. In the modern era, you've got small
4 high-powered flashlights that have LED bulbs and
5 little cree chips in them that'll put out a
6 tremendous amount of light as compared to one of
7 those dinosaur old flashlights?

8 **A** Yes, sir.

9 **Q** Okay. So if somebody's talking about a police
10 flashlight and they're talking about one of those
11 old D-cell Maglite flashlights, that's ancient
12 history, isn't it?

13 **A** As far as I'm concerned, yes, sir.

14 **Q** Have you ever heard of one of those little
15 small flashlights being called a burglar flashlight?
16 Have you ever seen that?

17 **A** No, sir. I have a Streamlight that's about
18 this {indicating} big around that I carry on me at
19 work, when I'm working the shift all the time.

20 **Q** Do you go down to any of the stores like
21 Wal-Mart or even at Lawmen's Safety, do they have
22 any section over there where they've got a
23 flashlight that burglars carry? Do they have any
24 kind of display where this is a burglar flashlight?

25 **A** No, sir. Never heard of -- called burglar

1 flashlight.

2 Q So if someone was trying to compare and
3 contrast an old D-cell antique flashlight, that
4 design, to one of these modern flashlights that's
5 all through these magazines and what cops carry,
6 that's pure theatrics, isn't it, because it's just
7 not true, is it?

8 A I haven't seen anybody carry a Maglite in
9 years.

10 Q Okay. And you don't know that burglars carry
11 little ol' bitty flashlights, little high-tech
12 flashlights like that, do you?

13 A No, sir, I do not know if they carry those.

14 Q Investigator Willis, you went out there -- and
15 let me see. You don't work for the McCormick County
16 Sheriff's Office, do you?

17 A No, sir.

18 Q You're an outside agency, aren't you?

19 A Yes, sir.

20 Q And so when things happen with other
21 agencies -- often if something happens, if somebody
22 gets hurt, shot, or there's some issue, you go and
23 assist the McCormick County Sheriff's Department
24 because you're an outside independent agency; isn't
25 that right?

1 **A** Yes, sir. If we're called in to assist
2 McCormick County, we do it right away.

3 **Q** Okay. But the bottom line is, you are an
4 outside agency, so you are an independent body going
5 out there and looking and reviewing all of this;
6 right?

7 **A** Yes, sir.

8 **Q** Did you see any misconduct? Did you see
9 anything that looked like they were doing anything
10 wrong while you, as an outside independent
11 authority, were looking at this?

12 **A** No, sir.

13 **Q** Do you know who Mike Perry is?

14 **A** Yes, sir.

15 **Q** Who's Mike Perry?

16 **A** A SLED agent.

17 **Q** Okay. And a SLED agent, Mike Perry, came in
18 behind all of you and went back through all of this
19 too, didn't he?

20 **A** Yes, sir, he did.

21 **Q** Is he from an independent, an outside agency?

22 **MR. GARRETT:** Objection, Your Honor. That's
23 hearsay on that point as to what this other officer
24 told him.

25 **MR. MAYE:** I'm not asking what he told him.

1 I'm asking him if he came back in afterwards, just
2 like Investigator Willis did.

3 **MR. GARRETT:** How would he know?

4 **THE COURT:** Well, hang on. If he has
5 independent knowledge of it, then I'll let him
6 answer it. Go ahead.

7 BY MR. MAYE:

8 **Q** Don't answer unless you've got independent
9 knowledge of this. Didn't Mike Perry come back in,
10 just like you did, who works for the South Carolina
11 Law Enforcement Division?

12 **A** Mike Perry come in and spoke with me and looked
13 at the pictures that I took, yes, sir.

14 **Q** Okay. So he was reviewing all of this. He
15 even came back through you as an independent agency,
16 Mike Perry came back through and looked at what you
17 did; isn't that right?

18 **A** Yes, sir.

19 **Q** So you went out to the scene and looked at all
20 of this. Have you ever seen any bullets like this,
21 these homemade rounds like this?

22 You've been all over the country with
23 specialized training, haven't you?

24 **A** Yes, sir.

25 **Q** Have you ever seen any modified bullets like

1 that with steel cores put in them that some private
2 person had? Have you ever encountered that in all
3 the time you've been in law enforcement?

4 **A** No, sir. This is the first time I've ever seen
5 this in a private individual, yes, sir.

6 **Q** But you were in the military, weren't you?

7 **A** Yes, sir. Six years.

8 **Q** They got rounds like that in the military to go
9 through body armor, don't they?

10 **A** Go through body armor, go through steel,
11 whichever -- armor-piercing rounds is what it's
12 called in the military.

13 **Q** So to get in one of these covered positions
14 like they're talking about, getting in a door like
15 they were talking about up here, like this officer
16 right here, he's got himself in the crook of a door
17 right where the car -- do you see this picture right
18 here?

19 **A** Yes, sir.

20 **Q** Okay. Where an officer's up here in the crook
21 of the door, people use rounds like that to shoot
22 through the door and hit the officer, don't they?

23 **A** It would, yes, sir.

24 **Q** And people use rounds like that to go through
25 the body armor and the shock plate in body armor,

1 don't they?

2 A It would, yes, sir.

3 Q They don't shoot foxes with bullets like that,
4 do they?

5 A Not what I would assume they wouldn't, no, sir.
6 That's not a round you would shoot foxes with. I
7 wouldn't.

8 Q And if somebody stood up here and fired a round
9 down into the ground, how deep would that round go
10 in the ground right there?

11 A I couldn't say exactly, but you'd have to have
12 a backhoe or something to get it up.

13 Q You'd have to dig it up with a backhoe?

14 A Yes, sir.

15 Q Did you get you a backhoe out there and go dig
16 that up?

17 A No, sir.

18 Q Did you get all the background information in
19 this case about what was said and where everybody
20 was in this case?

21 A Yes, sir. After the evidence was collected, I
22 spoke with --

23 Q Don't go into what they said, but did you
24 gather all that information that you could about the
25 case out there at the time?

1 A Yes, sir. What I could at the time, yes, sir.

2 Q Okay. But some of it you had gaps and holes in
3 because Bobby was still in the hospital when you
4 went out there; right?

5 A Yes, sir.

6 Q So you couldn't even talk to him, could you?

7 A No, sir.

8 Q Okay. And you didn't have, at that point in
9 time, all of the information that was later in this
10 case. You didn't have all of it, did you?

11 A No, sir.

12 Q You just had a brief overview of what little
13 bit that you could gather at that particular time as
14 an assisting agency; right?

15 A Yes, sir.

16 Q So some of the information in here you have is
17 not exactly accurate, is it? It's just preliminary
18 information that you gathered?

19 A Yes, sir.

20 Q You don't know anything about the timing and
21 when the light came on and off up here, do you?

22 A No, sir.

23 Q Because you weren't there, were you?

24 A No, sir.

25 Q Who was in the best position out there to see

1 all of that?

2 A The deputies on the scene.

3 Q Absolutely.

4 So any information about whether or not you --
5 basically, there were four spent rounds recovered;
6 right?

7 A Yes, sir.

8 Q And, obviously, Bobby got shot?

9 A Yes, sir.

10 Q So you know one of those rounds went into him
11 so you can account for one of the four; right?

12 A Yes, sir.

13 Q But as to the actual timing of all of the rest
14 of the rounds being fired, you can't say anything
15 about that, can you?

16 A No, sir, I can't say when they were spent, no,
17 sir.

18 Q And you can only assume and part of what you've
19 got in here is just basically your assumptions?

20 A Correct.

21 Q There were four rounds?

22 A Yes, sir.

23 Q Spent rounds.

24 So you know that this .30-06 weapon got fired
25 out there from the evidence that you saw, at least

1 four times out there that night?

2 A Correct.

3 Q But as to the rest of the information,
4 basically just what you could garner from what you
5 looked at and what you saw?

6 A Yes, sir.

7 Q And some of it is just your assumptions; right?

8 A Yes, sir.

9 Q Did you go up inside the house and all when you
10 were there?

11 A Yes, sir. I went into the house to take
12 pictures from the balcony down.

13 Q Who was there?

14 A Ms. Worley, his mother.

15 Q His mother, Mrs. Worley, was there?

16 A Correct.

17 Q Okay. All right.

18 While you were there with Mrs. Worley, did you
19 have an occasion to leave and go back outside,
20 leaving her back upstairs in the house?

21 A Yes, sir. She was in the house, and I wanted
22 to go in and take pictures from the balcony down.

23 Q And the house was all closed up. All the doors
24 and windows were closed up and everything was shut
25 up; right?

1 **A** Yes, sir.

2 **Q** Okay. You decided that you needed to go back
3 in the house; right?

4 **A** Yes, sir.

5 **Q** Once you decided that you needed to go back in
6 the house and you had left and Mrs. Worley was
7 upstairs, what did you do?

8 **A** I spoke with Chief Deputy Gable, and I told him
9 that I'd like to go inside and get some shots from
10 the balcony down and the pictures of the chairs.
11 And so Deputy Gable said, Well, let's ask and see if
12 we could --

13 **MR. GARRETT:** Objection, Your Honor.

14 BY MR. MAYE:

15 **Q** Don't go into what he said, but what you did?

16 **A** Okay. Myself and Chief Gable went up to the
17 door. I knocked on the door. Ms. Worley answered
18 from within, told me it would be just a minute. She
19 came down, opened the door. We went in, went
20 upstairs, and I took pictures.

21 **Q** Let me get this straight: You're outside, the
22 house is all closed up, and you knocked on the door;
23 right?

24 **A** Yes, sir.

25 **Q** Did you ring the doorbell?

1 **A** Didn't know there was one there. Never looked.

2 **Q** Did you beat on it with a battering ram or did
3 you knock on it with your hands?

4 **A** I just knocked on the door.

5 **Q** And in response to you knocking on the door,
6 you heard Mrs. Worley, who you just left upstairs,
7 correct?

8 **A** Yes, sir.

9 **Q** Respond to you --

10 **A** Yes, sir.

11 **Q** -- It'll be just a minute, let me come down?

12 **A** Yeah. Words to that effect, yes, sir.

13 **Q** Mrs. Worley?

14 **A** Right.

15 **Q** Did you wait on her to come down?

16 **A** Yes, sir. We waited outside the door a few
17 seconds. She come down --

18 **Q** Could you hear her coming down and coming down
19 to you?

20 **A** Yes. She come down the steps.

21 **Q** And you knew that?

22 **A** Yes.

23 **Q** Okay. So she wasn't right behind the door
24 downstairs in here. She was upstairs where you had
25 left her; right?

1 **A** Yes, sir. She wasn't right behind the door.

2 She didn't immediately open the door.

3 **Q** And you heard her coming?

4 **A** Yes, sir.

5 **Q** And his elderly mother -- we're talking about

6 the same lady, an older lady that was his mother,

7 Mrs. Worley, his mother?

8 **A** The lady that was there that morning, yes, sir.

9 She said that was -- Ms. Worley. That's who I was

10 introduced as, as Ms. Worley.

11 **Q** Okay. All right. And she didn't have any

12 problem hearing you when you knocked on the door and

13 she came downstairs in response to your knock?

14 **A** No, sir, not as I know of she didn't hear it.

15 She heard -- she responded and come down and opened

16 the door.

17 **Q** Did you use a bullhorn to get her down there?

18 **A** No, sir. I just knocked on the door.

19 **Q** Did you go out to your car and use the

20 microphone on your PA to get her to come down there?

21 **A** No, sir. I just knocked on the door.

22 **Q** And she answered and she came to the door?

23 **A** Yes, sir.

24 **Q** And you're positive about that?

25 **A** Yes, sir. That's how I got back in the house.

1 Q She let you back in the house?

2 A Yes, sir. Went upstairs, took pictures and I
3 left.

4 Q You've been an investigator for a long time.
5 You've worked a lot of cases, haven't you?

6 A Yes, sir.

7 Q The gun in this case was recovered up under --
8 I believe you got in your diagram here that the gun
9 in this case was covered -- recovered underneath the
10 couch. You've seen those pictures and all, haven't
11 you?

12 A Yes, sir.

13 Q Hid up underneath the couch; right?

14 A Yes, it was put up under there, yes, sir.

15 Q And, in fact, you had some trouble with this
16 because somebody took Bobby's gun and moved it from
17 where it actually was at the area he got shot;
18 right?

19 A It wasn't there when we -- when I was there.

20 Q Wasn't there, was it?

21 A No, sir.

22 Q So somebody moved some of the evidence in this
23 crime scene, didn't they?

24 A Yes, sir. That was not there when I was there.

25 Q Strike you as odd, as an investigator, that

1 someone would move the evidence in a case like this?

2 A Yes, sir. I don't know why anybody would want
3 to move that.

4 Q Strike you as odd that somebody would hide a
5 .30-06 rifle up under the bottom of a couch in an
6 investigation of a case like this?

7 A Hide it under -- yes, sir.

8 Q Strike you as odd that that gun would be loaded
9 with four rounds, a full magazine, in a case like
10 this?

11 A Well, here, I don't know about -- no, sir, not
12 the gun being loaded, fully loaded here, no, sir.

13 Q But if you've got a gun fully loaded and you're
14 going to go out -- you're a trained law enforcement
15 officer. If you're going to go out to meet a
16 threat, you don't go out with just three or four
17 bullets in your gun, do you?

18 A No, sir, I don't personally, no, sir.

19 Q You load it all the way, don't you?

20 A Yes, sir.

21 Q To deal with whatever you need to deal with;
22 right?

23 A Yes, sir.

24 Q Let me ask you this: When did you get a
25 subpoena to come up here? What was the timing of

1 that? When was the first time you had any idea that
2 you were going to get subpoenaed by the defense?
3 And you're up here as a defense witness. When did
4 you get that?

5 **A** This morning.

6 **Q** This morning?

7 **A** Yes, sir. I was coming in this morning and
8 Deputy Collier brought it to me and give it to me.

9 **Q** This morning?

10 **A** Yes, sir.

11 **MR. MAYE:** Anything for the defense? If
12 they've got any redirect?

13 REDIRECT EXAMINATION

14 BY MR. GARRETT:

15 **Q** If somebody was trying to hide evidence, do you
16 think they would take it and go put it into a police
17 car?

18 **MR. MYERS:** That's leading, Your Honor. This
19 is his witness.

20 **THE COURT:** Sustained. Rephrase.

21 BY MR. GARRETT:

22 **Q** There was a question asked to you a few moments
23 by the prosecutor about does it strike you odd, and
24 I want to explore that a little bit with you. Okay?

25 **A** Okay.

1 **Q** All right. In most situations where somebody
2 is trying to hide something, what would they do?

3 **A** They'd hide it.

4 **Q** Would they hide it in a police car?

5 **A** Not normally, no, sir.

6 **Q** Not normally at all, would they?

7 If you're trying to hide it from the police,
8 what's the last place you would put it?

9 **A** Well, I've had people I arrested try to hide
10 dope in my patrol car, but not normally.

11 **Q** Not normally, like a gun?

12 **A** Right.

13 **Q** All right. And if you -- you were asked
14 questions about your loading or keeping a loaded
15 gun, if you still have something to meet. If
16 somebody thinks they still have something to meet,
17 would they load their gun?

18 **MR. MYERS:** Objection; calls for an opinion,
19 speculation.

20 **THE COURT:** Sustained.

21 BY MR. GARRETT:

22 **Q** All right. You were asked on cross-examination
23 about whether or not you would load your gun if you
24 had to go deal with something.

25 **A** Yes, sir.

1 **Q** All right. And the question is, is why would
2 you do that?

3 **A** If I knowingly was going to have a reason to
4 use my weapon, I'd want as much ammunition on me as
5 I could.

6 **Q** Okay. And so if there's a threat out there,
7 would that be -- would that cause you to want to
8 make sure you've got more ammunition?

9 **MR. MYERS:** Objection; speculation of opinion.
10 It's his witness.

11 **THE COURT:** Overruled.

12 **MR. MYERS:** Thank you.

13 **THE WITNESS:** Yes, sir. If I knew I was going
14 to go take out a threat, I'd have as much ammunition
15 as I could with me.

16 BY MR. GARRETT:

17 **Q** Now, did you actually go upstairs to make sure
18 that sliding glass door was closed before you
19 knocked on the door?

20 **A** No, sir. I went up -- I knocked, went up, took
21 pictures --

22 **Q** On this door?

23 **A** Right. The door downstairs, I knocked on the
24 door. She responded. She come down. She opened
25 the door. I went up and took pictures from inside.

1 **Q** All right. That's my point, though. Do you
2 recall specifically, Officer, -- I'm asking you
3 specifically -- do you remember whether or not that
4 sliding glass door was open or closed when you --

5 **A** When I knocked on the door?

6 **Q** Yeah.

7 **A** No, sir. I don't know if it was open or closed
8 when I knocked on the door.

9 **Q** So it may very well have still been open?

10 **A** Yes, sir, it could have been, but it was
11 November.

12 **Q** And Ms. Worley knew you were there; right?

13 **A** Yes, she knew we was there.

14 **Q** She knew that you may want to come back in.
15 You had already told her that, that you may want to
16 do some more work?

17 **A** I don't know what they told Ms. Worley.

18 **Q** You didn't tell her that?

19 **A** No, I did not tell her that. I cannot testify
20 what --

21 **Q** Okay. Was she expecting you?

22 **A** She was in the house. I don't know what she
23 was expecting.

24 **Q** Now, on my direct questioning of you, you told
25 me, did you, that you were the investigator -- the

1 chief investigator or not?

2 **A** No, sir. I'm not the chief investigator.

3 **Q** So are you an independent chief investigator of
4 this crime scene or not?

5 **A** No, sir. I'm just an assisting agency that
6 helped out with the crime scene.

7 **Q** So as described by you in cross-examination,
8 were you an independent agency, chief over this
9 investigation?

10 **A** No, sir.

11 **Q** Who is chief over this investigation?

12 **A** As far as I know, it's Deputy Nick Moore.

13 **MR. GARRETT:** Thank you. No further questions.

14 **THE COURT:** Any recross?

15 **MR. MAYE:** That's it. Thank you, Your Honor.

16 I ask him to be released.

17 **THE COURT:** Any reason why this officer can't
18 be excused?

19 **MR. GARRETT:** None, Your Honor.

20 **THE COURT:** Thank you, sir. You're excused.

21 Call your next witness, please.

22 **MR. GARRETT:** Beg the Court's indulgence.

23 Your Honor, may we approach?

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

25 (Whereupon, a bench conference was held off

1 the record, in the presence of the jury, but out of,
2 the hearing of the jury.)

3 **THE COURT:** All right. Mr. Garrett, we had a
4 little side bar. My understanding is, that's the
5 witnesses you intend to call right now; is that
6 correct?

7 **MR. GARRETT:** That's correct, Your Honor.

8 **THE COURT:** All right. Ladies and gentlemen of
9 the jury, what we're going to do is send you out for
10 a lunch break. I'm trying to get a little timing,
11 little logistical things. Both the State and the
12 defense have requested that I allow that you go out
13 to the scene and view the scene, and I've granted
14 that motion, and we're making the logistical
15 arrangements to allow you to do that.

16 And if you will bear with me just for a few
17 minutes, because I want to have some instructions
18 for you about that before we let you go. But if
19 you'll go back to your jury room, we'll bring you
20 back out here, and then we're going to excuse you
21 for lunch, and then bring you back to let you go
22 back to the scene. Okay? Go to your jury room,
23 please.

24 (The jury retires to the jury room.)

25 **THE COURT:** Mr. Worley, would you stand,

1 please, sir? You're still under oath from
2 yesterday. Have you had sufficient time to consult
3 with your attorney or with whomever you'd like to
4 consult with as to whether or not you wish to
5 testify in this matter?

6 **DEFENDANT:** I'm not going to testify.

7 **THE COURT:** You wish to exercise your rights
8 under the Fifth Amendment?

9 **DEFENDANT:** Yes.

10 **THE COURT:** And are you making that decision
11 freely and voluntarily?

12 **DEFENDANT:** Yes, sir.

13 **THE COURT:** Has anybody forced, threatened or
14 promised you anything to get you to exercise your
15 Fifth Amendment rights?

16 **DEFENDANT:** No.

17 **THE COURT:** Your own free will?

18 **DEFENDANT:** My own free will.

19 **THE COURT:** Thank you, sir.

20 So, at this point, is that the defense's case?

21 **MR. GARRETT:** It will be, Your Honor.

22 **THE COURT:** Any motions?

23 Just renew your motions from yesterday?

24 **MS. BALLARD:** I'd like to renew the motions
25 from yesterday, Your Honor; I just don't have them

1 in front of me at the moment.

2 **THE COURT:** Okay. Well, just make sure we put
3 that on the record.

4 **MS. BALLARD:** Okay.

5 **THE COURT:** You're doing me a favor and just
6 remind me.

7 **MS. BALLARD:** Yes, sir. Thank you, Your Honor.

8 **THE COURT:** Also, we're putting on the record
9 that Officer Willis was not on the State's list,
10 wasn't on the defense list, and the State agreed to
11 let him testify notwithstanding that fact.

12 **MR. MYERS:** Yes, sir.

13 **THE COURT:** Anything else I need to place on
14 the record, Mr. Myers, from the State's perspective?

15 **MR. MYERS:** Not as I can think of, Your Honor.

16 **THE COURT:** Just let me know from your side,
17 too, after we come back.

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

19 **THE COURT:** Let's stand at ease, let Ms.
20 Ballard get her magic done and we'll go from there.

21 (Pause.)

22 **THE COURT:** While she's doing that, why don't
23 we let the jury go back and go to lunch and then
24 bring them back at 1:30. Any reason why we can't do
25 that?

1 **MR. HENDERSON:** No, not at all.

2 **THE COURT:** Go ahead and bring the jury in.

3 (The jury returns to the courtroom.)

4 **THE COURT:** Thank you, ladies and gentlemen.

5 What I'm going to do is go ahead and excuse you for
6 your lunch break. I'm going to ask that you be back
7 in your jury room by about 1:25, and then we'll
8 bring you in here for some brief instructions as to
9 your site visit, and then we'll send you back out to
10 the scene.

11 But, at this point, I'm going to excuse you for
12 lunch. Remind you that you're not to speak amongst
13 yourselves or with anyone else about this case.
14 Hope you have a nice lunch.

15 (The jury was excused for lunch.)

16 **THE COURT:** Let's just be in recess until 1:30.

17 And, Ms. Ballard, thank you. I'll get that
18 from you at 1:30.

19 **MS. BALLARD:** I almost got it.

20 **THE COURT:** Okay. Great. Thank you. I
21 appreciate you doing that.

22 (Whereupon, there was a luncheon recess.)

23 **THE COURT:** The only thing I was told is that
24 -- by Officer Willis is that they have -- the driver
25 is not exactly sure how to get there, so they're

1 going to have an officer lead them and then pull out
2 of the way going in. Any objection to that
3 procedure?

4 **MR. GARRETT:** None.

5 **MR. MAYE:** Absolutely not. Thank you, Your
6 Honor.

7 **MS. BALLARD:** And we'll call Mr. Robert Worley
8 when they're on their way so he pulls away. He just
9 doesn't want to leave the house unlocked.

10 **THE COURT:** Let's make sure -- let's go over
11 everything right now. We have the oath to the
12 bailiffs I'll give; directions; you may walk around
13 the garage apartment; you may go inside the garage
14 apartment; you may not conduct any experiments on
15 the premises; you may not ask questions of the
16 people escorting you or of anyone who may be there;
17 no more than six people or jurors on balcony/porch
18 at any one time; you may not discuss this case
19 amongst yourselves until I instruct you to begin
20 your deliberations.

21 **MS. BALLARD:** And Mr. Myers asked that you add
22 to that that they don't take notes while they're
23 there.

24 **THE COURT:** No notes.

25 Anything further, Mr. Maye?

1 **MR. MAYE:** Not from my perspective. I think
2 that should cover it. I don't want to speak for my
3 boss here, but not from the State, Your Honor.
4 Thank you.

5 **THE COURT:** Well, I'd assume Mr. Myers is
6 probably getting ready for closing.

7 **MR. MAYE:** I think that's got it covered. I
8 honestly do. As long as nobody's talking to them
9 and they're not conducting experiments, that would
10 be my primary concern.

11 And if Donnie's indicated that he'd object to
12 them taking notes, I think that's fine. I think
13 that basically covers it, Your Honor.

14 **THE COURT:** Okay. Good. And from my
15 understanding, none of the attorneys, the Court,
16 just going to let them -- we're going to stay here
17 at the courthouse and let them roll out there; is
18 that correct?

19 **MR. GARRETT:** Judge, we talked about that at
20 lunch and the doctrine of the 13th juror might
21 apply.

22 **THE COURT:** I'll tell you what I'll do, the
23 only thing that the 13th juror would apply to, if
24 they violate the instructions. I mean, all the 13th
25 juror has to do, with the facts of a supported

1 verdict.

2 **MS. BALLARD:** That's fine, Your Honor.

3 **MR. GARRETT:** We're just making sure we've
4 covered all of our bases.

5 **THE COURT:** And I thought the 13th juror was a
6 civil remedy. Is it a criminal remedy?

7 **MS. BALLARD:** It would only apply with
8 reference, I think, to your consideration of a
9 motion for a new trial, should it -- should it be
10 made.

11 **MR. MAYE:** Now, let me just make sure, do y'all
12 have an objection to the Judge not going and viewing
13 that evidence from a -- because if you're going to
14 object to that, we can remedy it now, and the Judge
15 can go if you insist. Or if you think that your
16 rights are being compromised, we'd like for you to
17 state that for the record because that way, if you
18 think the Judge should view it, we'd like for you to
19 raise it now or waive it.

20 **MR. GARRETT:** Your Honor, I think, out of an
21 abundance of caution, we have to raise it.

22 **THE COURT:** You want me to go?

23 **MR. GARRETT:** I think so.

24 **THE COURT:** All right. I'll do it.

25 Now, what that's going to do is just delay a

1 little bit of our charge conference that I was
2 hoping to hold. I have -- have any of -- I imagine
3 you probably have -- tried something in front of
4 Gary Hill?

5 **MR. GARRETT:** I have.

6 **THE COURT:** You know, Gary -- and I'll leave my
7 charge here, my basic charge, and let y'all look at
8 it. I mean, I have a laundry list of the
9 self-defense things, a lot of which will not be
10 applicable. I have the charge that's in three
11 parts. The first part is define and controls the
12 jurors' duties as jurors; then the substantive law,
13 which would be assault and battery with intent to
14 kill, possession of a weapon during the commission
15 of a violent crime; then I'd have self-defense. I
16 would also have the -- what's the term I was using
17 earlier? Is it self-defense and also you have a
18 around your house?

19 **MS. BALLARD:** Habitation?

20 **THE COURT:** Habitation. Thank you.

21 And I know -- and we'll do this more
22 particularly, Ms. Ballard and the defense asked that
23 I charge the Castle Doctrine statute, and I
24 respectfully decline under the Curry case, but we'll
25 put more of that on the record.

1 **MS. BALLARD:** Thank you, Your Honor.

2 **THE COURT:** This is the big part. Do you want
3 to get the -- the third section of my charge will be
4 considerations about your deliberations to the
5 jurors, and then go over the verdict form.

6 **MS. BALLARD:** Can I go ahead and give you our
7 proposed jury instructions?

8 **THE COURT:** Yes, please.

9 **MS. BALLARD:** Can I have the court reporter
10 mark one as well?

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

12 (Court's Exhibit Number 11, defendant's
13 requested jury charges, marked for identification.)

14 **THE COURT:** Do y'all want to see the basic
15 structure of the --

16 **MR. GARRETT:** Can we just have a copy of it
17 made so both sides can have it?

18 **THE COURT:** Yes.

19 Buffy, can you make me a copy of that?

20 And how about just the other instructions about
21 this goes -- I charge in every single case, do you
22 want that?

23 **MS. BALLARD:** No, Your Honor.

24 **THE COURT:** I didn't think you would.

25 Mr. Myers, I was confirming that the directions

1 to the jurors were as follows: That you may not
2 walk around -- you may walk around the garage
3 apartment, you may go inside the garage apartment,
4 you may not conduct any experiments on the premises,
5 you may not ask questions of your escorts or anyone
6 who may be there, no more than six jurors on the
7 balcony at one time, and they're not to discuss the
8 case amongst themselves until I tell them to begin
9 their deliberations, and they may not take any notes
10 out there. Do you agree with that?

11 **MR. MYERS:** Yes, sir.

12 **THE COURT:** Other than that, the defense has
13 asked that I be out there at the scene while they're
14 there; I told them I would. And if the attorneys
15 want to come, fine. If they don't, that's fine,
16 too.

17 **MR. MYERS:** We choose not to come and be out
18 there.

19 There's one officer not involved in the case.
20 Do you want him to lead y'all out there?

21 **THE COURT:** Well, we talked about that as well,
22 and whenever he does, if he would take us out to the
23 drive and just stay up on the road while we're up
24 there. I think the defense is concerned that there
25 might be some undue influence. I don't think

1 that'll be the case --

2 **MR. MYERS:** I agree.

3 **THE COURT:** -- but that's out an abundance of
4 caution, we'll do that.

5 **MS. BALLARD:** We just need to know when they're
6 about to arrive so we can have Mr. Robert Worley
7 leave the premises. So if somebody can call us and
8 let us know that.

9 **THE COURT:** Are we ready to go ahead and bring
10 the jury in and send them out there? Is the bus out
11 here and ready to go?

12 **MR. MYERS:** They tell me that the bus is out
13 there.

14 Right? The bus is out there?

15 **OFFICER:** Yes, they've advised me.

16 (The jury returns to the courtroom.)

17 **THE COURT:** All right. Do we have the driver
18 or the drivers that are going to be taking the
19 jurors to the scene?

20 **OFFICER:** Yes, sir. He's downstairs waiting.

21 **THE COURT:** Ask him to come up here, please,
22 sir.

23 While he's doing that, ladies and gentlemen of
24 the jury, there are a few instructions, and Madame
25 Forelady, I'm going to ask you to assist in

1 enforcing these instructions. I, likewise, will be
2 out there. Okay?

3 First, these are the rules, and the parties
4 have agreed on this, that, number one, you may walk
5 around the garage apartment -- if you don't get
6 them, I'll have a copy of them with me -- you may go
7 inside of the garage apartment. You may not, you
8 may not conduct any experiments on the premises.
9 You may not ask any questions of your escort or of
10 anyone who may be at the premises while you are
11 there. They have asked, for safety purposes, that
12 no more than six jurors be out on the balcony should
13 you choose to go out there at one time, just simply
14 for safety.

15 Also, as I've instructed you throughout this
16 case, you may not discuss this case amongst
17 yourselves while you're en route there or coming
18 back to the courthouse. You may not discuss this
19 case until I tell you you can begin your
20 deliberations.

21 Also, you may not take notes while you're
22 there. So out of an abundance of caution, I'm going
23 to instruct each of you, before we leave, to drop
24 your pad inside of the jury room. That way, we
25 don't have to worry about you taking a note, and you

1 don't have to worry about being tempted to take
2 notes.

3 Now, does the State agree or disagree with
4 those instructions?

5 **MR. MYERS:** The State agrees.

6 **THE COURT:** Does the defense?

7 **MR. GARRETT:** It does, Your Honor.

8 **THE COURT:** Any addition from either side?

9 **MR. GARRETT:** No, Your Honor.

10 **THE COURT:** Very good.

11 Sir, are you the man who's going to be driving
12 them?

13 **DRIVER:** I am, yes, sir.

14 **THE COURT:** Come around, if you don't mind.

15 **MS. BALLARD:** Is anybody -- any other bailiffs
16 going with them?

17 **THE COURT:** Are you the only person driving?

18 **DRIVER:** As far as I know, yes, sir.

19 **THE COURT:** If there is, I'll make sure we
20 administer the oath.

21 (Whereupon, the driver was duly sworn by the
22 Judge.)

23 **THE COURT:** Is there any additional
24 instructions to this driver from the defense?

25 **MR. GARRETT:** None from the defense, Your

1 Honor.

2 **THE COURT:** From the State?

3 **MR. MYERS:** No, sir.

4 **THE COURT:** All right, sir. I'm going to let
5 the jury drop their pads back down in the jury room,
6 and I'm going to ask you to follow this gentleman,
7 and I'll follow you in my vehicle. Okay?

8 **DRIVER:** Okay.

9 (A recess transpired.)

10 **THE COURT:** All right, guys, for the record,
11 everything was pretty much uneventful. I had one
12 juror, for the record, ask if they could knock on
13 the door, ring the doorbell. I said, No.
14 Otherwise, the only communication was, I directed
15 the Forelady to communicate only about when
16 everybody's ready to go, other than that
17 everything's uneventful.

18 Now, my question is, at this juncture, it's
19 almost three o'clock and I was hoping to get this
20 case to the jury today, do y'all still want to try
21 to do that?

22 **MS. BALLARD:** Yes.

23 **MR. MYERS:** That suits us.

24 **THE COURT:** Okay. That's fine for me.

25 Now, it was indicated to me by Mr. Myers that

1 my charge on habitation is incomplete.

2 MR. MYERS: It just looked like some pages were
3 omitted on mine, Your Honor..

4 THE COURT: Okay.

5 MR. MYERS: It was at the very end.

6 THE COURT: All right. Also, I always give the
7 attorneys the opportunity to let me charge the law
8 first, if they prefer, and then them charge -- and
9 then they do their closings after I get through or
10 if you want to do it the way we've always done it,
11 either way is fine.

12 MR. GARRETT: I prefer to do it the way we've
13 always done it.

14 THE COURT: Sir?

15 MR. GARRETT: I prefer to do it the way we've
16 always done it.

17 MR. MYERS: That's fine.

18 And the only reason I said that, Your Honor,
19 was -- is on the last three pages, it's habitation
20 and home, and it's got that page. The next to the
21 last page goes down to the bottom, and looks like
22 the sentence goes on, but the last page only says,
23 The question for you to determine. So maybe that
24 says, The victim attempted to eject -- eject the
25 victim is assault in the process is a question for

1 you to determine. So I leave it up to the defense
2 attorneys. I just thought it was incomplete. It
3 may be complete; it just looks kind of odd.

4 **THE COURT:** Okay. Well, let's do it this way:
5 The possession of a weapon during the commission of
6 a violent crime, is there any objection to that one?

7 **MS. BALLARD:** The only objection we thought
8 was, you know, you don't need to describe that it
9 might be a knife or, you know, there's no dispute
10 that it was a gun.

11 **THE COURT:** As far as the possession?

12 **MS. BALLARD:** Yes, sir. Your charge has, you
13 know, you define a knife, a machine gun, an
14 automatic rifle, and all that.

15 **THE COURT:** Okay.

16 **MS. BALLARD:** I don't think you need to go
17 through all that. I don't think there's any dispute
18 about what the item was.

19 **THE COURT:** Do you agree with that, Mr. Myers?

20 **MR. MYERS:** Yes, sir.

21 **THE COURT:** So I go down through expel a
22 projectile or not even that?

23 **MS. BALLARD:** Right. Take out a knife, visibly
24 displayed a knife.

25 The next paragraph: Firearm means any weapon

1 which is designed to -- the whole next paragraph
2 comes out. And then the "in order" paragraph stays.

3 **THE COURT:** Okay. Then assault with intent to
4 kill.

5 **MS. BALLARD:** Right.

6 **THE COURT:** Assault and battery.

7 **MS. BALLARD:** Right. We made no changes to
8 your charge on assault and battery with intent to
9 kill, although on the page that starts -- the first
10 full paragraph starts with the word malice.

11 **THE COURT:** Just one second. Let me catch up
12 with you.

13 **MS. BALLARD:** Okay. Looks like page 8.

14 **THE COURT:** So since self-defense is raised
15 under Belcher, we take out the inference from the
16 use of a deadly weapon?

17 **MS. BALLARD:** Right. And examples that are at
18 the bottom of that page, all of the next page.

19 **THE COURT:** Just take out all of the different
20 instrumentalities?

21 **MS. BALLARD:** Yeah. BB gun on the third page.

22 **THE COURT:** So go back to page 8, top of
23 page 8.

24 **MS. BALLARD:** Yes, sir.

25 **THE COURT:** And then start with, Inferred

1 malice may be -- may also arise from there on down.

2 MS. BALLARD: Take all that out.

3 THE COURT: Do you agree with that, Mr. Myers?

4 MR. MYERS: That's fine.

5 MS. BALLARD: And then you pick back up: If
6 facts are proved, on page 10.

7 THE COURT: So take out 9 totally?

8 MS. BALLARD: Yes, sir.

9 THE COURT: Pick back up with, The specific
10 intent -- no, excuse me, If facts were proved.

11 MS. BALLARD: If facts were proved, yes, sir.
12 I wasn't sure about the transfer of intent on page
13 11.

14 THE COURT: Transfer of intent is not
15 applicable to this case.

16 MS. BALLARD: I didn't think so. That's why I
17 struck it. Okay.

18 And the self-defense charge --

19 THE COURT: Hang on for a second. Hang on.

20 So let's go back and make sure we're clear on
21 the record of assault and battery --

22 MS. BALLARD: Yes, sir.

23 THE COURT: -- with intent to kill. Starting
24 on page 8, I'll go, Malice may be inferred from the
25 conduct showing a total disregard for human life.

1 Stop.

2 MS. BALLARD: Yes, sir.

3 THE COURT: Pick back up on page 10, beginning,
4 If facts.

5 MS. BALLARD: Yes, sir.

6 THE COURT: And then delete, Transferred
7 intent; correct?

8 MS. BALLARD: Correct.

9 THE COURT: Okay.

10 MS. BALLARD: Self-defense begins on page 13.

11 THE COURT: Okay. Just let me get with you.
12 I'm sorry. I appreciate y'all bearing with me since
13 my clerk's not here.

14 MS. BALLARD: I may not have them in the right
15 order.

16 THE COURT: Yeah, mine was kind of mixed up,
17 too. Let me get all my pages in order and make sure
18 I'm right.

19 MS. BALLARD: I put them in order based on the
20 fax pages.

21 THE COURT: Now, let's go back to self-defense.
22 Are you with us on that, Mr. Myers?

23 MR. MYERS: Yes, sir.

24 MS. BALLARD: I have no changes on page 13.

25 On page 14, the "without fault" paragraph I

1 think should be included, but the balance of that
2 page I think should be excluded.

3 **THE COURT:** First, the defendant must be
4 without fault in bringing on the difficulty?

5 **MS. BALLARD:** Yes, sir. That's clearly
6 applicable in this case.

7 **THE COURT:** Okay. I was going to say I think
8 that that is an element that I would charge.

9 **MS. BALLARD:** Yes, that's correct. But
10 beginning with contemptuous language going down, I
11 don't think that or the next --

12 **THE COURT:** I got you, okay.

13 Do you agree with that, Mr. Myers?

14 **MR. MYERS:** Yes.

15 **MS. BALLARD:** And the battered person syndrome,
16 of course, does not apply.

17 **THE COURT:** So all of -- the bottom third of 14
18 start with contemptuous and then all of 15?

19 **MS. BALLARD:** Yes, sir.

20 And on 16, pick up again with imminent danger.

21 **THE COURT:** Okay.

22 **MS. BALLARD:** And then everything's appropriate
23 until page 18, the battered person's syndrome comes
24 out. All of page 19 comes out.

25 **THE COURT:** 20 would come out.

1 **MS. BALLARD:** 20 would come out. The first
2 half of 21 would come out, and you would pick up
3 with number 3, no other way to avoid danger.

4 **THE COURT:** Would that be applicable -- there's
5 no duty to retreat if you're at your home, is it?

6 **MS. BALLARD:** Correct.

7 **THE COURT:** So doesn't that mean there's no
8 other way to avoid danger in that duty to retreat?

9 **MS. BALLARD:** So you would strike out all the
10 way down to duty to retreat. Is that what you're
11 saying?

12 **THE COURT:** Well, it seems to me that that
13 would be part -- the duty to retreat is no other way
14 to avoid danger.

15 **MS. BALLARD:** Right.

16 **THE COURT:** That's what I always thought. Do
17 you agree or disagree with that, Mr. Myers?

18 **MR. MYERS:** Whatever the other side wants is
19 fine with us.

20 **MS. BALLARD:** We would like the jury to be
21 reminded that he had no duty to retreat.

22 **THE COURT:** You want me to say no duty to
23 retreat?

24 **MS. BALLARD:** Yes, sir. At the bottom of page
25 21.

1 **THE COURT:** Okay. So I take out, No other way
2 to avoid danger --

3 **MS. BALLARD:** Correct.

4 **THE COURT:** -- and start with duty -- with, If
5 the defendant was on his own premises, et cetera, et
6 cetera.

7 **MS. BALLARD:** Correct.

8 **THE COURT:** Business is out. And increased
9 risk of harm is out. Unlawful guest.

10 **MS. BALLARD:** Unlawful guest is out.

11 **THE COURT:** So 22 in its entirety is out?

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

13 **THE COURT:** How about degree of force?

14 **MS. BALLARD:** Degree of force, I had left in.

15 **THE COURT:** Okay.

16 **MS. BALLARD:** All of 24. All of 25.

17 **THE COURT:** How about defense of others? I
18 guess his mother was there.

19 **MS. BALLARD:** Yes, his mother was there.

20 **THE COURT:** Okay.

21 **MS. BALLARD:** On page 27 --

22 **THE COURT:** Hold on. 26, right to act on
23 appearances?

24 **MS. BALLARD:** I have no problem with that. The
25 right to act on appearances, I think, is a proper

1 charge.

2 **THE COURT:** Okay. Mr. Myers, if you disagree
3 with any of this, just let me know.

4 **MR. MYERS:** I will; otherwise, I agree with it.

5 **THE COURT:** Okay. And I'm going to go back
6 over it. Okay, go back.

7 **MS. BALLARD:** I'm on page 27, Words accompanied
8 by hostile acts, I think comes out.

9 **THE COURT:** And how about prior difficulties?

10 **MS. BALLARD:** That comes out as well.

11 Page 28 comes out.

12 **THE COURT:** The whole thing?

13 **MS. BALLARD:** Yes, sir.

14 **THE COURT:** Page 29, all except the duty to
15 retreat, that part, of course, stays.

16 And then on page 30, we will take out the
17 paragraph about business.

18 So I go back and start with duty to retreat
19 back on page 29?

20 **MS. BALLARD:** Yes, sir.

21 **THE COURT:** Okay. And then go back -- tell me
22 about 30 again, please.

23 **MS. BALLARD:** Page 30, the only portion I would
24 suggest taking out is the part about business, if a
25 person is in a place of business.

1 **THE COURT:** Okay. And guest will be out.

2 **MS. BALLARD:** Yes, the guest would be out.

3 Habitation was appropriate.

4 **THE COURT:** Now, let's take a minute and look
5 at the habitation, make sure -- mine consists of,
6 basically, a third of page 31, all of page 32, and
7 one sentence on 33.

8 **MS. BALLARD:** That's what I have, Your Honor.

9 **THE COURT:** Have you had a chance to look at
10 that, Mr. Myers?

11 **MR. MYERS:** Yes, sir.

12 **THE COURT:** Is that sufficient or do you
13 want --

14 **MR. MYERS:** If that suits the defense, it suits
15 me.

16 **THE COURT:** Okay. So let's go back and look at
17 -- make sure we're on the same page.

18 **MS. BALLARD:** Yes, sir.

19 **THE COURT:** Self-defense. And we're using the
20 fax numbers?

21 **MS. BALLARD:** Yes, sir.

22 **THE COURT:** All of page 13 is in.

23 Page 14, we take out contemptuous language and
24 mutual combat.

25 All of 15 is out.

1 **MS. BALLARD:** Yes, sir.

2 **THE COURT:** Page 16, we start back with
3 imminent danger.

4 **MS. BALLARD:** Correct.

5 **THE COURT:** All of page 17 is in.

6 **MS. BALLARD:** Correct.

7 **THE COURT:** Page 18, we take out starting with
8 battered person's syndrome.

9 **MS. BALLARD:** Correct.

10 **THE COURT:** All of 19 is out.

11 **MS. BALLARD:** Correct.

12 **THE COURT:** All of 20 is out.

13 **MS. BALLARD:** Correct.

14 **THE COURT:** On page 21, you'll start with duty
15 to retreat.

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

17 **THE COURT:** All of 22 is out.

18 **MS. BALLARD:** Correct.

19 **THE COURT:** Page 23 start with degree of force.

20 **MS. BALLARD:** Yes, sir.

21 **THE COURT:** All of 24 is in.

22 25 is in.

23 **MS. BALLARD:** Yes, sir.

24 **THE COURT:** 26 is in.

25 On page 27, beginning with words, Accompanied

1 by hostile acts and prior difficulties, is being
2 out.

3 MS. BALLARD: Correct.

4 THE COURT: All of 28 is out.

5 MS. BALLARD: Correct.

6 THE COURT: On 29, start with duty to retreat.

7 MS. BALLARD: Correct.

8 THE COURT: And then on 30, you'll take out the
9 business section, then the rest of it will be in.

10 MS. BALLARD: Correct.

11 THE COURT: Okay. And that would include the
12 part on page 31 about lawful guest.

13 MS. BALLARD: That comes out.

14 THE COURT: Right. Habitation is as shown.

15 MS. BALLARD: Yes, sir.

16 THE COURT: Okay. Do you agree with that,
17 Mr. Myers?

18 MR. MYERS: Yes, sir.

19 MS. BALLARD: We would ask Your Honor to charge
20 some of our -- in addition, charge some of our
21 charges as well. There's a lot of them that's been
22 duplicated by your charge.

23 THE COURT: All right. Let me look at it.

24 Number one, let's go over the verdict form.

25 Any objection to the verdict form?

1 **MS. BALLARD:** No objection.

2 **MR. MYERS:** No.

3 And, Your Honor, if I can just ask one
4 question.

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

6 **MR. MYERS:** I've got down here, on
7 self-defense, you got one --

8 **MS. BALLARD:** What page are you on, Mr. Myers?

9 **MR. MYERS:** That will be on page 14.

10 **MS. BALLARD:** Got it.

11 **THE COURT:** 14?

12 **MR. MYERS:** The defendant's without difficulty
13 in bringing -- The defendant must be without fault
14 in bringing on the difficulty.

15 And then, number two, you've got imminent
16 danger. The defendant must have actually believed
17 he was in imminent danger of losing his life or
18 sustaining serious bodily harm.

19 And, number three, if the defense is based on
20 degrees of imminent danger, a reasonably prudent
21 person --

22 **THE COURT:** Hang on. Let me catch up with you.
23 Say that on number three.

24 **MS. BALLARD:** What page?

25 **THE COURT:** That will be 21, I believe.

1 **MR. MYERS:** I see what you've got here. It's
2 just under State versus Davis, they list four, and
3 you list three, but I think you combined two and
4 three together, so we're all right.

5 **THE COURT:** Well, what I did -- let me just
6 come down and show you so we're on the same page; it
7 may be better.

8 **MR. MYERS:** The first one is without fault in
9 bringing on the difficulty.

10 **THE COURT:** Right.

11 **MR. MYERS:** And, number two, The defendant must
12 have actually believed he was in imminent danger of
13 losing his life or sustaining serious bodily injury
14 or he actually was in such imminent danger.

15 **THE COURT:** Right.

16 **MR. MYERS:** Then under Davis, number three, is
17 that if his defense is based upon belief of imminent
18 danger, a reasonably prudent person of ordinary
19 firmness and courage would have entertained the same
20 belief. If the defendant actually was in imminent
21 danger, the circumstances were such that would
22 warrant a man of ordinary prudence, firmness, and
23 courage to strike the fatal blow in order to save
24 himself from serious bodily harm or losing his life.

25 Now, I think what you did was combine two and

1 three together, so that's all right. And then four
2 is the retreat; you're going to leave that out.

3 **THE COURT:** Right. And what I'm going to do is
4 say that he had no duty to retreat since he's in his
5 house.

6 **MR. MYERS:** That's good.

7 (Pause.)

8 **THE COURT:** Okay. Now, let me ask you,
9 Ms. Ballard, first, go ahead and place on the record
10 the request under the Castle Doctrine statute.

11 **MS. BALLARD:** Yes, sir. Yes, sir, Your Honor.
12 That's our request to charge number 11 --

13 **THE COURT:** Okay.

14 **MS. BALLARD:** -- which is in the packet that we
15 had marked.

16 Your Honor, I think, reading the case law, most
17 recently the Curry case, what I think the Supreme
18 Court has said is that the General Assembly codified
19 the Castle Doctrine in Title 16 by creating a
20 procedure whereby it can be decided as a form of
21 immunity pretrial. I don't think it was intended to
22 take away the common law defense of duty to retreat,
23 and I think Your Honor has agreed with me on that.
24 But I think the language of the statute also
25 provides language of the common law fear of imminent

1 peril, death, or great bodily harm, and that should
2 be charged as a defense.

3 My point is, I'm trying to say that the statute
4 provides it as immunity and it's also a defense. So
5 it's determined pretrial as immunity. And if it's
6 not determined pretrial -- in this case, it was
7 determined not to be immunity, it still can be
8 considered as a defense, and that was --

9 **THE COURT:** Separate and distinct from
10 self-defense for habitation?

11 **MS. BALLARD:** Yes, sir. That's our position.

12 And as I read the Curry case, the reason the
13 Curry case -- the court found that the charge should
14 not have been given in the Curry case is because the
15 defendant in that case was on another's premises.
16 He was not out at his own home. And the court then
17 said, Well, the charge wasn't appropriate under
18 those circumstances.

19 But we think that the common law Castle
20 Doctrine survives the adoption of the statute, and
21 the statute -- the language in the statute should be
22 charged as a defense even though it also applies for
23 an immunity.

24 The point I'm trying to make is that the
25 legislature said it should be looked at twice: Once