

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County

Honorable Donald B. Hocker, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

PATRICK O'NEIL MCGOWAN,

APPELLANT

APPELLATE CASE NO 2016-001220

RECORD ON APPEAL

LAURA R. BAER
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-0368

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit
Post Office Box 516
Greenwood, SC 29648
(864) 942-8800

ATTORNEYS FOR RESPONDENT

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**THE FOLLOWING EXHIBIT'S ARE ON FILE WITH THIS COURT:
STATE'S EXHIBIT NOS. 1-15**

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF LAURENS) 2012-GS-30-1367-1370
)
)
)
THE STATE OF SOUTH CAROLINA)
 PLAINTIFF)
) vs.) TRANSCRIPT OF RECORD
)
PATRICK O'NEIL MCGOWAN)
 DEFENDANT)

May 31 - June 2, 2016
Laurens, South Carolina

B E F O R E:

THE HONORABLE DONALD B. HOCKER, Judge; and a
jury.

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

C. DALE SCOTT, ASSISTANT SOLICITOR
MARGARET BOYKIN, ASSISTANT SOLICITOR
Attorneys for the State

THOMAS ADDUCCI, ESQ.
Attorney for the Defendant

APRIL HERRON
Official Court Reporter

1 THE COURT: All right, ladies and gentlemen of
2 the jury panel, I want to take this opportunity to
3 introduce you to some people that are vitally
4 important to the operation of the court system.
5 There's absolutely no way I could do this by myself.

6 We have a clerk of court staff. Lynn Lancaster,
7 who is your elected clerk of court, is to my
8 immediate left and Betty Spires, one of her
9 assistants. We have several gentlemen that are in
10 coats and ties. Johnny Bolt --

11 Johnny, if you'll stand.

12 -- he's our chief bailiff. Bobby Ayer, standing
13 back at the door and Tommy Reames is on the other
14 side of the door. If at any time this week, you have
15 any issues, concerns, problems, anything whatsoever
16 that you need the Court's help or assistance on, all
17 you have to do is find one of these young gentlemen
18 and they will help you. Our security is Ed Turner
19 and Jackie Turner. And they just happen to be
20 husband and wife.

21 And to my left is Scott Todd. He is my law
22 clerk. He is a licensed attorney. And he will be
23 staying with me for the rest of June and then he has
24 already been hired by the solicitor's office in
25 Spartanburg. I certainly couldn't do my job without

1 his valuable assistance.

2 Circuit courts in this state are a court of
3 record, which means we have to maintain a record of
4 everything that is done and said throughout the
5 entire process, whether what we're doing now or in
6 the trial. April Herron is our court reporter.
7 She's very experienced, does an excellent job. She
8 is from Greenville and she will be with me,
9 hopefully, the whole week, but we're not sure. She
10 may have somebody else take her place towards the end
11 of the week.

12 All right. The first case that's been called
13 for trial is the State of South Carolina vs. Patrick
14 O'Neil McGowan.

15 Mr. McGowan, if you would just stand very
16 briefly.

17 (The Defendant stands.)

18 THE COURT: Thank you, very much, sir. You can
19 have a seat.

20 Mr. McGowan has been indicted with four criminal
21 offenses, all being the same offense. Now, let me
22 explain to you what an indictment is. I'm holding
23 the indictments in my left hand. The indictment --
24 or an indictment, rather, is a charging paper. It is
25 the mechanism in which we get to the point we're at

1 today, being the trial of a case. And the
2 indictment, or indictments in this case, contain
3 allegations, but they are merely just allegations.
4 They are absolutely no proof whatsoever of the
5 allegations that the indictments contain. And I will
6 be telling you this several times throughout the
7 process, but the State of South Carolina has the
8 burden of proving each and every allegation in the
9 indictments beyond a reasonable doubt standard. That
10 is a high standard, high burden of proof. So, just
11 because Mr. McGowan has been arrested and charged and
12 indicted for a criminal offense is not proof
13 whatsoever of any guilt on his part whatsoever.

14 He has been indicted on four indictments, all
15 charging him with attempted murder. And I will
16 publish the indictments. They contain all the same
17 allegations, but just a different alleged victim.
18 So, I'll just read one indictment and then tell you
19 the alleged victims' names. That Patrick O'Neil
20 McGowan did in Laurens County, South Carolina, on or
21 about March 31, 2012, did willfully and unlawfully
22 with intent to kill and with malice aforethought
23 attempted to kill the following individuals: Tiffany
24 Garrett, John Glenn, Sarah Irby and a four-year-old
25 juvenile.

1 And Solicitor, Mr. Adducci, would you please
2 come up here a minute, and Solicitor Boykin.

3 (WHEREUPON, an off-the-record bench conference
4 was held in the presence of the jury but out of
5 the hearing of the jury.)

6 THE COURT: Everybody be at ease for just a
7 moment.

8 (WHEREUPON, a short break was taken.)

9 THE COURT: Ladies and gentlemen of the jury
10 panel, the indictment did not contain the actual name
11 of the four-year-old juvenile. And the name is
12 Saliyh, and that's spelled S-A-L-I-Y-H, Reter.

13 And the particular code of laws or the statute
14 that provides for attempted murder charges is Section
15 16-3-29 Code of Laws for South Carolina.

16 Now, I'm going to ask a series of questions that
17 are particularly specified with this particular case.
18 And again, if you don't want to respond to a
19 particular question, then we'll do it like we did
20 last time, you can speak with me privately. I'm not
21 sure, I may be telling you some of the questions do
22 not respond in front of everybody. Or if you have a
23 particular concern that you need to discuss with the
24 Court, then we'll form a line and I'll speak with you
25 privately in just a little bit.

1 this evening, okay? It will give you instructions on
2 what to do. More than likely, it will tell you to
3 call back after 6:00 on Wednesday. I'm not exactly
4 sure that that will be the case, but more than likely
5 it will be.

6 I hope that some of you are a little
7 disappointed that you weren't selected. If you are,
8 then, hopefully, we'll have another case this week
9 and you will have the opportunity to be selected on
10 that.

11 So with that said, you're free to go. Do not
12 forget to call in after 6:00 o'clock this evening.
13 Have a great afternoon.

14 (WHEREUPON, the jury venire left open court and
15 was excused at approximately 11:33 a.m.)

16 THE COURT: Let's take a 10 minute break and
17 let's figure out what we're going to do.

18 (WHEREUPON, a short break was taken.)

19 THE COURT: Okay. It was mentioned that we have
20 a Neil v. Biggers hearing. How many is going to
21 testify in that?

22 MR. SCOTT: Two.

23 THE COURT: Then Mr. Adducci, you indicated
24 there was a discovery issue?

25 MR. ADDUCCI: Yeah, apparently, there was some

1 body cam footage. It has been lost, destroyed, we
2 don't know. I'd just like to figure out who was on
3 there, what was on there, just get as much as we can
4 because we don't know anything about that.

5 THE COURT: Okay. We can certainly deal with
6 that.

7 All right. Well, let's -- I'm going to go ahead
8 and bring the jury out and excuse them. Okay. We
9 can do all that, pre-trial, lunch, we'll start back
10 1:30, you think that will work?

11 MR. SCOTT: Yes, sir.

12 MR. ADDUCCI: Yes, Your Honor.

13 THE COURT: All right. Mr. Bolt, if you would
14 bring the jury back out, please.

15 MR. SCOTT: Judge, can we ask for 2:00, if
16 that's all right? I've got a witness. Murphy's Law,
17 they're being sick right now, so I'm trying to buy
18 myself a little time.

19 THE COURT: All right. Okay.

20 (WHEREUPON, the jury came into open court at
21 approximately 11:48 a.m.)

22 THE BAILIFF: All jurors are present, Your
23 Honor.

24 THE COURT: All right. Thank you, Mr. Bolt.
25 Ladies and gentlemen, what we're going to go

1 ahead and do is break for lunch. I have some
2 pre-trial issues that I need to discuss with the
3 lawyers. So, I'm going to give you a little bit
4 longer lunch break than you may get during this
5 trial. Give you until 2:00 o'clock.

6 And so, be careful with whoever you may come in
7 contact with, don't discuss anything related to this
8 case. Understanding that you know very little about
9 it, but don't engage in any discussion with any
10 family members or friends or anybody you come into
11 contact with. Of course, that applies among
12 yourselves as well. If you decide to go eat at a
13 local restaurant or something, keep your jury badge
14 on because -- let's just say if you were to go
15 Palmetto Fine Foods to eat lunch and some of the
16 lawyers or maybe some people involved in the case are
17 in there and they don't recognize you as being on the
18 jury, they may engage in some discussions about the
19 case that we don't want you to hear. But if you have
20 your juror button on, then they'll know they need to
21 be careful with what they say. So, if you're out in
22 public, just keep that button on. I know you may be
23 a little awkward walking around with the juror button
24 on, but just keep it on just for everybody's best
25 interest.

CHRIS MARTIN-DIRECT BY MR. SCOTT

1 So, with that said, be back promptly at 2:00
2 o'clock. And Mr. Bolt will give you directions when
3 you come back, okay? See you at 2:00, have a good
4 lunch.

5 (WHEREUPON, the left open court at approximately
6 11:51 a.m.).

7 THE COURT: Okay. Solicitor, you prepared to go
8 forward on the Neil v. Biggers --

9 MR. SCOTT: I am, Your Honor.

10 THE COURT: -- issue? Okay.

11 MR. SCOTT: I'll start with the officer, Chris
12 Martin.

13 MR. ADDUCCI: Your Honor, we'd ask the Court to
14 sequester witness that may be in the courtroom.

15 THE COURT: I'm sorry, I didn't.

16 MR. ADDUCCI: We'd ask the Court to sequester
17 witnesses that may be in the courtroom.

18 THE COURT: Okay. All right.

19 CHRIS MARTIN, after being duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION (IC)

22 BY MR. SCOTT:

23 Q Investigator Martin, on March 31st of 2012,
24 there was an incident at Boyd Road in Laurens, do you
25 recall that particular case?

CHRIS MARTIN-DIRECT BY MR. SCOTT

1 A After reviewing, I do.

2 Q Okay. And you didn't get involved on the 31st.

3 When did you become involved with this case?

4 A The 31st, you mean the actual --

5 Q Look at the incident report. It list the date
6 as March 31st, the incident?

7 A Correct.

8 Q When did you become involved with the case?

9 A I became involved later on assisting, I believe
10 it was another investigator, Investigator Cheek at the
11 time and Investigator Franklin. I can't quite remember
12 that far back, if it was somebody out due to whatever
13 reason. I just filled in.

14 Q You were the assigned investigator to this case?

15 A Yeah, it was transferred to me.

16 Q All right. Correct me if I'm wrong, but
17 April 2nd is when you received the case?

18 A Just one second. Yes, sir.

19 Q All right. Upon receiving the case, what steps
20 did you undertake?

21 A Just initially, like I would with any report,
22 just reviewed the report that the officer, responding
23 officer as to who, when, what happened. Just the who,
24 what, when, where, why.

25 Q Generally, what were the allegation that were

CHRIS MARTIN-DIRECT BY MR. SCOTT

1 said to have occurred March 31st of 2012?

2 A It was a shooting incident on Boyd Road,
3 Boyd Road in reference to shots being fired into a
4 residence.

5 Q At the time, did you have a suspect in mind?

6 A I believe it was said through -- it was alleged
7 at the shooting.

8 Q Say what?

9 A Somebody said who did the shooting, they gave a
10 name. But I didn't know who this person was or anything
11 like that.

12 Q What was the name that you were given?

13 A Patrick O'Neil McGowan.

14 Q Were you given a general description of
15 Mr. McGowan?

16 A I believe the female resident said that -- she
17 did give a description and how he went through the yard,
18 was at a party at the residence. Then that's when
19 everything took place.

20 Q So, you spoke with an eyewitness?

21 A That's correct.

22 Q Who was that?

23 A There were several people I talked to. I talked
24 to a Sarah Irby. I spoke with a -- give me just one
25 second, I'm sorry. I believe the last name is Glenn,

CHRIS MARTIN-DIRECT BY MR. SCOTT

1 maybe John Glenn, and a Tiffany Garrett.

2 Q Okay. And the allegations were that Mr. McGowan
3 shot at a home on Boyd Road?

4 A Correct.

5 Q And, at least, one of them said that they
6 watched him do the shooting?

7 A Correct.

8 Q And that would have been who?

9 A The person that told me about the shooting
10 specifically was a Tiffany Garrett.

11 Q Okay. Do you recall whether or not she
12 indicated she had prior familiarity with Mr. McGowan?

13 A Without reading, I don't remember, no, sir.

14 Q If you need to read, refresh your memory.

15 A Yeah, looks like a friend of her dad's or
16 something.

17 THE COURT: What was that last response?

18 THE WITNESS: I'm sorry, Your Honor. It -- by
19 what I'm reading from her statement, it looks like a
20 friend of her father's or something. Just keeps
21 saying her father and him.

22 BY MR. SCOTT:

23 Q Okay. And so, after speaking with her, what
24 time of night was this said to have occurred?

25 A It was late at night. I'll have to look at the

CHRIS MARTIN-DIRECT BY MR. SCOTT

1 actual incident report to find it here. The initial call
2 for service was 23:12, so 11:12 p.m.

3 Q And when you spoke with Tiffany Garrett, where
4 was that? Was that at the sheriff's department?

5 A I spoke with her at the residence on Boyd Road.

6 Q Okay. And at some point, did you develop a
7 photo lineup?

8 A I did.

9 Q All right. Did you bring a copy of that with
10 you?

11 A I did.

12 Q Let me -- I need to get this marked.

13 (WHEREUPON, State's Exhibits Nos. 1-13 were
14 marked for identification only.)

15 BY MR. SCOTT:

16 Q State's No. 13, do you recognize that?

17 A Yes, sir.

18 Q What is that?

19 A That is a photo lineup I generated from the
20 sheriff's office using our Lock Track system.

21 Q And you took that over to Boyd Road when you met
22 with Tiffany?

23 A I believe I met with Tiffany two different
24 times. One initial time just to speak with her in
25 reference to this report, see what happened. She gave me

CHRIS MARTIN-DIRECT BY MR. SCOTT

1 this name. I went back to my office, did this photo
2 lineup, then came back to her residence.

3 Q. Okay. What was the date that you showed her the
4 lineup?

5 A I printed the lineup on the 20th, so that would
6 have been on the same day.

7 Q April?

8 A April 20th -- oh, I'm sorry, April 20th, 2014.

9 Q Is there any -- all right, so if the incident
10 date is March 31st, you printed that up April 20th, is
11 there any reason it was nearly a month later that you did
12 the lineup?

13 A I can't recall, no, sir.

14 Q Okay. Then looks like you got the arrest
15 warrant on April 23rd, is that what you recollect?

16 A Let me just look real quick.

17 Q I'm just looking at the last paragraph of your
18 supplement.

19 A Yes, sir; April 23rd, 2012.

20 Q Okay. Do you recall whenever you met with
21 Ms. Garrett to show her the lineup?

22 A Uh-huh.

23 Q What did you tell her upon presenting the lineup
24 to her?

25 A It would be -- you know, I can't say word for

CHRIS MARTIN-DIRECT BY MR. SCOTT

1 word, but it would be just like any photo lineup I would
2 ever do. I would hand them the photo lineup itself, then
3 I'll say this picture may or may not contain the picture
4 of the person that you're speaking of. If you can please
5 take a look at the lineup, if you see the person, I'll
6 give you a pen, you can circle -- or sure that's the
7 person, circle the number. And she grabbed the lineup,
8 didn't take very long, she circled number four and signed
9 her name.

10 Q Did she make any statements with regards to her
11 certainty?

12 A Oh, she pointed at him and said, This is him.
13 And then, so to confirm that, we have two photo lineups
14 that come out. One is a blank photo lineup with blank
15 lines for that individual to look at. The second one is
16 the one that has the people's name on it. So, that
17 picture, number four that she picked out, was Patrick
18 McGowan.

19 Q And she would have been given the one State's
20 Exhibit there --

21 A Correct.

22 Q -- without the names?

23 A Yes, sir.

24 Q Then to indicate the person on there that she
25 was picking out, how would she mark it?

CHRIS MARTIN-CROSS BY MR. ADDUCCI

1 A She circled number four.

2 Q Is that her signature there as well?

3 A That's correct.

4 Q Okay. You said she picked it fairly quickly?

5 A Yeah, I mean, it didn't take her very long. I
6 mean, I didn't sit there and say one second, two second,
7 but she didn't have any trouble.

8 MR. SCOTT: Okay. Answer any questions that
9 Mr. Adducci may have for you, please.

10 THE COURT: Mr. Adducci.

11 CROSS-EXAMINATION

12 BY MR. ADDUCCI:

13 Q Now, you indicated that you received this case
14 on April 2nd, correct?

15 A Yes, sir.

16 Q And you also indicated that you did interviews
17 with three individuals. What date did you do those
18 interviews?

19 A I spoke with -- for interviews, I know -- or
20 statement-wise, is that what you're speaking to in
21 reference?

22 Q You said you spoke to three eyewitnesses, Sarah
23 Irby, John Glenn, and Tiffany Garrett?

24 A Yeah. So, I know that John Glenn, Tiffany
25 Garrett, and Ms. Irby were all at the same residence

CHRIS MARTIN-CROSS BY MR. ADDUCCI

1 because I called prior to going over there. So, let's
2 see, this was April 3rd, 2012, at 25:50 a.m. is when me
3 and the chief went over there, so.

4 Q You're referring to a document?

5 A Yep. This is a statement from John Glenn.

6 Q At your April 3rd interview, did you take any
7 notes?

8 A Let's see here. I don't have any written notes
9 in this file, no, sir, I don't believe so. Let me just
10 check this right here. I believe this is just a copy of
11 what I give the sheriff's office. No, sir, I don't have
12 any written notes.

13 Q Okay. Did you take any written notes that day?

14 A I would have to say I don't recall. I don't
15 remember.

16 Q Okay. Is it your practice to not send the
17 solicitor's office notes?

18 A Well, sometimes, if somebody says anything we'll
19 jot it down on a piece of paper or I'll jot it on the
20 file. This one has, you know, Anthony McGowan written on
21 the file here and victim, Sarah Irby, and a phone number.

22 Q So, you just don't recall if you took any notes
23 that day?

24 A That's correct.

25 Q And you handed over your entire case file to the

CHRIS MARTIN-CROSS BY MR. ADDUCCI

1 solicitor's office?

2 A Yes, that's correct.

3 Q Okay. At that April 3rd interview, is that when
4 Tiffany Garrett gave you the name of Patrick McGowan?

5 A That's correct.

6 Q Did she indicate where she was standing when the
7 incident occurred?

8 A Yeah. Let me see here. Says she ran and got
9 behind the truck that was sitting in the front yard there.

10 Q Okay. Did she indicate where Mr. McGowan was
11 standing?

12 A Walked across the street, pulled out a black
13 gun.

14 So, I'm assuming across the street.

15 Q And you indicated this was late at night?

16 A The initial call for service?

17 Q When this incident occurred?

18 A Yes, sir.

19 Q Did you ask about lighting conditions?

20 A Not that I can recall. I wasn't the original
21 responding officer.

22 Q Did you record your interview with her?

23 A No, sir.

24 THE COURT: What was that last question,

25 Mr. Adducci, I'm sorry?

CHRIS MARTIN-CROSS BY MR. ADDUCCI

1 MR. ADDUCCI: If he recorded his interview with
2 her.

3 THE COURT: Oh, okay.

4 BY MR. ADDUCCI:

5 Q Did she give you any physical characteristics of
6 the individual?

7 A Other than -- well, let me see. No, sir. Other
8 than the vehicle description, it doesn't appear so.

9 THE COURT: Officer, I need you to speak up.

10 THE WITNESS: I'm sorry. Other than a vehicle
11 description, it doesn't appear so.

12 BY MR. ADDUCCI:

13 Q Now, when -- she did -- when she circled the
14 face on the photo lineup?

15 A Circled the number, yes, sir.

16 Q Was she told to circle Patrick McGowan or was
17 she told to circle the person who she saw shoot the gun?

18 A When I presented the lineup, she had already
19 indicated that Mr. Patrick McGowan -- excuse me,
20 Anthony -- what's his full name, Patrick O'Neil McGowan.
21 And this line up based upon the name she had given. When
22 I presented it to her, I said, You see the person you're
23 speaking of, you can circle that number. He may or may
24 not be in here.

25 And she circled number four. But no, I didn't

CHRIS MARTIN-CROSS BY MR. ADDUCCI

1 say, Can you circle Mr. McGowan, please?

2 Q Did she indicate that that was the individual
3 that she saw holding a pistol?

4 A The person she circled indicated for the
5 shooting, yes, sir.

6 Q Okay. Did you interview Sarah Irby on the 3rd?

7 A I believe she was at the house as well, sir.

8 Q Did she give a statement?

9 A She did not.

10 Q Did you ask her if she saw anything?

11 A I can't recall.

12 Q Okay. What led to the delay between the 3rd and
13 the 20th in receiving this information from Ms. Garrett
14 and developing the photo lineup?

15 A I don't have an answer for that.

16 Q Did you personally develop the photo lineup?

17 A Yes, sir.

18 Q All right.

19 MR. ADDUCCI: I have no further questions for
20 the witness, Your Honor.

21 THE COURT: Anything on redirect?

22 MR. SCOTT: No, Your Honor.

23 THE COURT: Okay. Officer Martin, how certain
24 was Ms. Garrett at the time of the photo lineup when
25 she selected the Defendant?

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 THE WITNESS: She was certain. There was no
2 hesitation.

3 THE COURT: Okay. All right. Thank you, sir,
4 for your testimony. You can step down.

5 THE WITNESS: Thank you.

6 MR. SCOTT: Tiffany Garrett, Your Honor.

7 THE BAILIFF: Place your left hand on the Bible
8 raise your right hand, please.

9 TIFFANY GARRETT, after being duly
10 sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. SCOTT:

13 Q Tiffany, do you remember March 31st of 2012?

14 A Yes, sir.

15 Q Do you remember -- what was going on that night
16 at your house?

17 A My god-daughter's birthday party.

18 Q Speak up clearly so she can hear you.

19 A We had my god-daughter a birthday party.

20 Q And who all was at your house?

21 A My mom, dad, kids, family, Mr. Patrick.

22 Q You just mentioned Mr. Patrick. Before that
23 night, did you know him?

24 A I know him, but not personally.

25 Q What does that mean?

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 A I know him by the neighborhood.

2 Q Okay. Have you seen him before?

3 A Yes, sir.

4 Q So, on that night, March 31st, you said you were
5 having your god-daughter's birthday party?

6 A Yes, sir.

7 Q Okay. Do you remember seeing Mr. McGowan that
8 night?

9 A Yes, sir.

10 Q What was going on? Tell me how you came to see
11 him.

12 A They was -- we was all out there chilling in my
13 yard.

14 Q Okay. He was out there chilling in your yard,
15 too?

16 A Yes, sir.

17 Q And who else was out there?

18 A My step-dad, my mom and some friends, family.

19 Q And your mom's Sarah Irby and your dad's John
20 Glenn?

21 A Yes, sir, he's my step-daddy.

22 Q Stepfather?

23 A Yes, sir.

24 Q Tell me, were you there whenever your father and
25 Mr. McGowan began arguing?

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 A Yes, sir.

2 Q Do you have any idea what the basis of that
3 argument was?

4 A I know they was talking about the Masons and
5 stuff like that.

6 Q The Masons, your stepfather is a Mason?

7 A Yes, sir.

8 Q And to your knowledge, that's what the argument
9 erupted over?

10 A Yes, sir.

11 Q Tell us what happened next.

12 A I just -- they got into an argument about the
13 Masons and stuff like that.. John went in the house -- my
14 step-dad, he went in the house and I just saw Mr. McGowan
15 go to the road and start shooting..

16 Q All right. Now, the dispatch time is about
17 11:12 at night?

18 A Yeah.

19 Q What was the lighting?

20 A It was dark outside. We had been out there
21 since early, though.

22 Q So, even during the daylight time, did you have
23 a chance to observe Mr. McGowan then?

24 A Yes, sir.

25 Q So, describe -- so, you're describing an

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 argument, then you said your stepfather went inside?

2 A He told Mr. McGowan to leave the yard.

3 Q He told Mr. McGowan to leave the yard?

4 A Yeah.

5 Q Then he, being Mr. Glenn, went inside the home?

6 A Yes, sir.

7 Q Where were you?

8 A I was outside.

9 Q Where?

10 A By the porch.

11 Q On the porch?

12 A No, I was just standing by the porch trying to
13 see what was going on.

14 Q In the yard?

15 A Yes, sir.

16 Q Then tell the Judge where does Mr. McGowan go.
17 Your dad goes inside, you're by the porch, where is
18 Mr. McGowan?

19 A Because he told him to leave, so Mr. McGowan
20 started walking to the road. I thought he was just going
21 to leave, then we started hearing gunshots. When I look
22 up, I seen him shoot. I thought he was shooting in the
23 house, and I went in -- I thought he was shooting in the
24 air, but when I went in the house, I seen a lot of bullet
25 holes everywhere.

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 Q Did you see the muzzle blast from the gun?

2 A Well, it was nighttime, you see a fire.

3 Q That's what I'm asking?

4 A Yes, sir.

5 Q You said it was nighttime, was it so dark that
6 you couldn't get a good look at Mr. McGowan?

7 A No, I know it was him.

8 Q Are those bullet holes still in your house?

9 A Yes, sir.

10 Q That's not relevant to this hearing I don't
11 guess. Did you give a description to law enforcement of
12 Mr. McGowan?

13 A They showed me a picture.

14 Q When it first happened and the cops show up and
15 they said who did this, what did you tell them?

16 A They said Mr. McGowan did.

17 Q They said that?

18 A No, my parents -- well, we said it.

19 Q Did you give a description of what Mr. McGowan
20 looked like?

21 A Yeah.

22 Q Now, at some point, a few weeks after the
23 incident, do you remember going -- or I think the
24 sheriff's deputy came to your house and showed you a photo
25 lineup, do you remember that?

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 A Yes, sir.

2 Q And this is State's 13, do you recognize this
3 exhibit?

4 A Yes, sir, that's my handwriting.

5 Q Do you remember an officer showing this to you?

6 A Yes, sir.

7 Q Okay. What do you recall or what was the, I
8 guess, instruction they gave you whenever they handed that
9 piece of paper to you if you remember?

10 A I can't remember too much, but I remember him
11 saying he might not be on there, but if I see him, point
12 him out.

13 Q Did you make a selection?

14 A Yes, sir.

15 Q All right. And did it take you a long time or
16 were you able to do it quickly?

17 A No, I knew it was him just as soon as I saw it.

18 Q As soon as you saw it?

19 A Yes, sir.

20 Q Okay. What was your level of certainty?

21 A One hundred percent.

22 Q One hundred percent?

23 A He had a fro back then.

24 Q Yeah, he's got a little bit different haircut

25 now, doesn't he? He looks a little thinner. Does he look

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 like that now?

2 A No. Well, he had a fro.

3 Q So, what did you do? How did you indicate to
4 law enforcement which one was on there that you
5 recognized?

6 A How did I indicate? You talking about show it
7 to him?

8 Q Yeah, I mean --

9 A Circled it.

10 Q Is that your signature?

11 A Yes, sir.

12 Q Okay. Did you tell law enforcement that was
13 that guy you saw shooting the pistol at you?

14 A Yes, sir.

15 Q 100 percent certain. And you said you had been
16 out there during daylight time and then remained over
17 there?

18 A Yes, sir.

19 Q Okay. You said you knew of him from the
20 neighborhood?

21 A Yes, sir.

22 Q Okay.

23 MR. SCOTT: All right. Answer any questions

24 Mr. Adducci has for you.

25 MR. ADDUCCI: Thank you.

TIFFANY GARRETT-CROSS BY MR. ADDUCCI

1 It's not marked yet.

2 THE COURT: Do we need to have it marked for
3 purposes of this hearing? I mean, it's the aerial
4 photo. Is it going to be the only aerial photo we
5 have?

6 MR. SCOTT: As long as it's referred to on the
7 record, we can mark it later on.

8 THE COURT: Just refer to it as the aerial
9 photo. I think for purposes of this hearing, it will
10 be okay.

11 MR. ADDUCCI: Thank you.

12 CROSS-EXAMINATION

13 BY MR. ADDUCCI:

14 Q Ms. Garrett, I'll refer you to this aerial
15 photo. I know it's pretty big. Do you recognize this
16 area? Is that right there --

17 A That's Boyd Road.

18 Q Is that -- that home is marked 1893, is that the
19 incident location?

20 A 1893? Is that our home?

21 Q Yes.

22 A It look like it.

23 Q Okay. Now, where were you standing on this
24 picture when you heard the gunshots?

25 THE COURT: If you need to stand up, that's

TIFFANY GARRETT-CROSS BY MR. ADDUCCI

1 fine, but when you talk, you need to speak up loud.

2 THE WITNESS: This my mom yard right here.

3 THE COURT: You need to speak up.

4 THE WITNESS: This my mom yard right here.

5 BY MR. ADDUCCI:

6 Q So, you're indicating you were standing right in
7 front of

8 A Yes, sir.

9 Q And whereabouts did you see the muzzle flashes?

10 A (The witness indicates.)

11 Q Was it on your side or the opposite of Boyd
12 Road?

13 A It was in the middle of the road.

14 Q In the middle of the road.

15 A My mother yard is like right in front of the
16 road.

17 Q Okay. Thank you. Are there any street lights
18 on Boyd Road?

19 A Yes, sir.

20 Q There are? And where are they located?

21 A Well, two of them are in my momma yard and one
22 across the road.

23 Q All right. And did you know Mr. McGowan's name
24 prior to March 31st of 2012?

25 A Yes, sir.

TIFFANY GARRETT-CROSS BY MR. ADDUCCI

1 Q Okay. When police initially responded on the
2 evening of the 31st into the morning of the 1st, did you
3 speak with police?

4 A Yes, sir.

5 Q Did you give a description or name that day?

6 A Yes, sir.

7 Q You did? Did you give Mr. McGowan's name on the
8 31st?

9 A Yes, sir.

10 Q Do you remember who interviewed you?

11 A I'm not sure of the officer name.

12 Q Was he from Laurens County Sheriff's Department?

13 A Yes, sir.

14 Q Do you remember if he had a little box on his
15 chest with a video camera?

16 A I'm not sure.

17 Q Okay. And you said, again, on the 31st is when
18 you gave Mr. McGowan's name?

19 A Yes, sir.

20 Q How long did you have the opportunity to view
21 the individual with the gun before jumping behind the
22 truck?

23 A It was a few minutes. I seen him -- I seen him
24 walking down the road and shooting, and then, you know,
25 everybody just scattered out the way.

TIFFANY GARRETT-CROSS BY MR. ADDUCCI

1 Q All right. Now, when Officer Martin showed you
2 the six-pack photo lineup that's right in front of you,
3 State's Exhibit 13, did he ask you to identify
4 Mr. McGowan?

5 A I can't remember, but I know it was him.

6 Q Now, did he ask you to identify the individual
7 who was holding the gun or did he ask you to identify
8 Mr. McGowan?

9 A I really don't remember.

10 Q You don't remember. Did he give any indication
11 as to who the suspect was?

12 A No, he didn't.

13 Q Okay. He didn't point to anybody?

14 A No, he didn't.

15 Q Didn't tell you good job after you circled
16 something?

17 A No.

18 Q In no way did he indicate to you which was the
19 correct answer, did he?

20 A No, I know it as soon as I saw it.

21 Q Okay.

22 MR. ADDUCCI: I have no further questions, Your
23 Honor.

24 THE COURT: Okay.

25 Anything further from the State?

TIFFANY GARRETT-EXAMINATION BY THE COURT

1 MR. SCOTT: No, nothing further from the State.

2 THE COURT: Let me ask just a couple questions,

3 Ms. Garrett..

4 EXAMINATION

5 BY THE COURT:

6 Q You said that your dad told Mr. McGowan to leave
7 the property, correct?

8 A Yes, sir.

9 Q How much time was there from the time your dad
10 said leave the property and the shots were fired?

11 A Maybe five minutes.

12 Q Five minutes?

13 A Yes, sir.

14 Q Did you see where Mr. McGowan went before the
15 shots were fired or did he hang around in the yard or on
16 the street the whole five minutes?

17 A No, he -- I say he -- my stepfather went in the
18 house and probably after that he was walking down the
19 road, walking towards the road.

20 Q He was walking down the road or towards the
21 road?

22 A He was walking out of my mom's yard straight to
23 the road.

24 Q Okay. Did you ever lose sight of Mr. McGowan
25 before the shots were fired?

TIFFANY GARRETT-EXAMINATION BY THE COURT

1 A No, sir.

2 Q Was anyone with Mr. McGowan at the time he was
3 told to leave the yard or when the shots were fired?

4 A No, sir.

5 Q Okay. And you mentioned that he hid behind the
6 truck; is that correct?

7 A Yes, sir.

8 Q Was that before or after the shots were fired?

9 A After the shots were fired.

10 Q Okay. And you said where you were standing when
11 the shots were fired, Mr. McGowan was standing in the
12 middle of the road?

13 A Yes, sir.

14 Q Was he directly in front of your house or down
15 the road in either direction?

16 A He was like directly in front of the road in
17 front of my mom's house.

18 Q Okay. All right. All right. About how far
19 would you say in distance were you and Mr. McGowan at the
20 time the shots were fired? If you want to -- you can
21 either tell me in distance or tell me -- point to
22 something in the courtroom.

23 A I was maybe right here by the porch by the truck
24 and the road is probably right there to the door.

25 Q You're talking about the back door of the

TIFFANY GARRETT-EXAMINATION BY THE COURT

1 courthouse -- the courtroom?

2 A Yes, sir.

3 Q Okay.

4 THE COURT: All right. Does the State have any
5 questions in response to the Court's questions?

6 MR. SCOTT: No, Your Honor.

7 THE COURT: The Defense?

8 MR. ADDUCCI: No, Your Honor.

9 THE COURT: Okay. Thank you, ma'am. You can
10 step down.

11 Okay. Anything further from the State in
12 connection with this hearing?

13 MR. SCOTT: No. Other than argument, Your Honor.

14
15 THE COURT: Well, let me --

16 Well, do you intend to put anything up in
17 connection with this hearing?

18 MR. ADDUCCI: No, Your Honor.

19 THE COURT: All right. I'll be glad to take
20 some very brief argument from both sides on this
21 issue.

22 MR. SCOTT: Your Honor, I think it was
23 established the opportunity to observe Mr. McGowan.
24 He was there throughout the day. He was there during
25 the daylight hours and remained at or near the scene

1 up to the incident location. We have prior knowledge
2 of Ms. McGowan and prior opportunity to observe him.
3 She testified on cross, I believe, that there was
4 ample street lights. There was, at least, two in the
5 yard that she was in, as well as another one across
6 the street.

7 I think what she just testified to was while
8 Mr. McGowan was in the yard, she had an opportunity
9 to observe him, never lost sight of him. Then when
10 he was in the roadway, approximately 30 to 35 feet
11 away, that's just my estimate there, that she was
12 able to clearly see him there, never lost sight of
13 him.

14 The photo lineup, it appears that -- I think
15 under my direct, she said that she was told he may or
16 may not be in here. And that's certainly how she
17 testified during direct. Despite that, she
18 immediately picked number four. She used the term
19 100 percent certainty as well. And I think that was
20 pretty much what Investigator Martin's testimony was
21 as well. So I think the ID should come in during the
22 trial.

23 THE COURT: Thank you, Solicitor.

24 Mr. Adducci, be glad to hear from you, sir.

25 MR. ADDUCCI: Your Honor, there's five factors

1 we need to talk about. First, the opportunity to
2 witness the accused. I think that when you look at
3 the timeframe, it's late at night in March. It's
4 clearly dark. Witness did indicate that it was dark
5 outside, so I think that's a factor to go against
6 allowing this identification. And also, the length
7 of time -- so number five. There's that. There's
8 witnesses degree of attention. It seemed like the
9 shooting occurred in a split second and then she
10 indicated that she jumped behind a truck, hiding from
11 this gunfire.

12 The accuracy of her prior description, she just
13 gave a name. She didn't give any sort of height,
14 weight, clothing, anything like that. She just gave
15 a name. That name ended up on the six-pack lineup.
16 Then the last is the length of time between the
17 alleged crime and the confrontation. She indicated
18 that she gave a name the incident date. And this
19 six-pack was not done until 20, 21 days later.
20 That's three weeks time where she was living in the
21 house with the other alleged victims in this case.

22 So that, again, goes against allowing in this
23 out-of-court identification by the six-pack lineup.

24 THE COURT: Okay. All right. Thank you very
25 much, gentlemen. The way I understand Neil vs.

1 Biggers and the progeny of cases that come after that
2 is that we don't really have to get into the
3 reliability factors unless I determine that the
4 out-of-court ID was unduly suggestive in some form.
5 And I think the photo lineup was done properly. It
6 was not unduly suggestive. That Officer Martin, and
7 confirmed by Ms. Garrett, said may or may not be. I
8 think he said may or may not be -- the person who did
9 the shooting may or may not be on the photo lineup.
10 But I think she said he said that it may be on the
11 photo lineup. I find that it was not unduly
12 suggestive at all.

13 But even going to the reliability factors, I
14 mean, she knew Mr. McGowan before this day, even
15 though not personally, she knew who he was and could
16 identify him. He's there for this party. She never
17 lost sight from the time he is told to leave the
18 yard, when he left the yard until the time of the
19 shooting. The distance -- probably Solicitor Scott's
20 estimation, the distance from the witness stand to
21 the back door, probably 30, 35 feet, thereabouts. I
22 think that's fairly accurate. So, she did have the
23 opportunity to see him and never lost sight. She
24 even said there were three street lights in the area.
25 She did not start hiding behind the truck until after

1 the shots were fired.

2 Level of certainty at the time the photo lineup
3 was done was 100 percent, as she said. The fact that
4 she identified the shooter at the time of the
5 incident date, I think would cure any problem -- and
6 I really don't see one, but any problem with the time
7 of the crime on the 31st until the time of the photo
8 ID lineup, which was the 23rd, so 23, 24 days.

9 So, taking all that into consideration, I find
10 that the out-of-court ID is admissible and had no
11 effect whatsoever on any in-court identification that
12 Ms. Garrett may make of the Defendant if that were
13 the case.

14 All right. We got that issue. Now, we have
15 this discovery issue.

16 MR. ADDUCCI: That's correct, Your Honor. If I
17 can sort of give a brief overview?

18 THE COURT: Yeah, go ahead and tell me about
19 the -- it's related to a body cam video?

20 MR. ADDUCCI: So, I approached the solicitor's
21 office a few months ago when we were talking about
22 taking -- about this case going on the trial docket
23 and I pointed out that in the incident report, there
24 is a body cam video referred to. This is Deputy
25 Holmes's incident report from the date of the 31st.

1 It says, Refer to body cam video.

2 I requested that video and was told by the
3 solicitor's office that data was lost. So, we'd ask
4 the Court to dismiss the case for discovery
5 violation.

6 THE COURT: Okay. Well, I mean, I need to find
7 out a little bit more. You know, why is it -- what
8 it may have depicted? Why is it not in existence
9 now? I just don't think I can summarily grant you
10 any relief until I hear a little bit more -- you
11 know, is there any spoliation of evidence issues? I
12 mean, I don't know.

13 MR. ADDUCCI: Absolutely, Your Honor. I was
14 sort of giving the overview at the front so that we
15 can talk about it later.

16 THE COURT: Okay. All right.

17 Solicitor Scott, who would -- who would have
18 knowledge of the existence of this body cam video and
19 then what may have happened to it? Would Officer
20 Martin be the one or?

21 MR. SCOTT: It's Holmes.

22 THE COURT: Deputy Holmes, okay.

23 MR. SCOTT: Yes, sir.

24 THE COURT: All right. Is he still here? I saw
25 him here earlier.

1 MR. SCOTT: Yes, sir, I think he's subject to
2 sequestration.

3 THE COURT: Okay.

4 MR. SCOTT: Actually, Investigator Martin says
5 he's prepared to testify. It's kind of more an
6 internal thing. While Barton Holmes would have been
7 operating the body cam, I think it was a
8 department-wide issue. I think probably Investigator
9 Martin can probably explain it.

10 THE COURT: Well, let's hear from Martin and
11 then if it looks like we still need to hear from
12 Holmes or if Mr. Adducci wants us to hear from Barton
13 Holmes, then we can certainly do that.

14 Come back up. You're still under oath.

15 CONTINUED DIRECT EXAMINATION

16 BY MR. SCOTT:

17 Q Have you seen a reference to a body camera video
18 being used in this case?

19 A I just read that, yes, sir.

20 Q And this case, we already established
21 March 31st, 2012. Would you explain to the Court, was
22 there something in your department that led to, I guess,
23 the destruction of the video evidence?

24 A Yeah. I can't give you an actual day. Jimmy
25 Sharpton, who is the lieutenant training supervisor, could

CHRIS MARTIN-CON'T CROSS BY MR. ADDUCCI

1 probably give you the actual day of that. But at some
2 point in time, we had a system crash is probably the best
3 way to describe it. And it's not so much this video that
4 caused problems with, but several other videos. I mean,
5 videos from 2008, when I was a deputy on the road, that
6 used to be saved on this hard drive, which was in a local
7 area -- excuse me, in a common area at the sheriff's
8 office where deputies do their reports, all the videos get
9 stored on this one specific drive. At some point in time,
10 that drive crashed, which caused any and all videos just
11 to be gone. It wasn't an intentional act, it wasn't
12 something against Mr. McGowan or anything like that. This
13 was something department-wide that affected a lot of
14 different things.

15 THE COURT: All right. Okay.

16 MR. SCOTT: I don't have any further questions
17 for Investigator Martin.

18 THE COURT: Mr. Adducci, you want to examine
19 Officer Martin about this?

20 MR. ADDUCCI: Sure.

21 CONTINUED CROSS-EXAMINATION

22 BY MR. ADDUCCI:

23 Q You don't know what date this happened?

24 A No. Like I said, Lieutenant Sharpton with the
25 sheriff's office can probably narrow the date down for

CHRIS MARTIN-CON'T CROSS BY MR. ADDUCCI

1 you.

2 Q And all the videos were stored on one local
3 server?

4 A That's correct, there at the sheriff's office in
5 the training room.

6 Q There was no back up?

7 A That's more technical than I would know, but I'd
8 assume no since we don't have it.

9 Q Wasn't backed up on data --

10 A No, sir. Everything -- if a deputy come in from
11 the road, from a call or whatever, they would take this
12 body cam off their uniform, they would plug it up to the
13 computer and go -- the way it's set up is it's by name, so
14 you find your name and then you would load the data in
15 there. Then everything from that day that you worked
16 would be loaded onto the computer.

17 Q When you're using -- back in March, April 2012,
18 were you using a body cam?

19 A Me personally, is that what you're asking?

20 Q Correct.

21 A No, sir. Back then, it was -- I wasn't on the
22 road when body cams came around, so maybe 2010, 2011 is
23 when they first started. They purchased some for the road
24 deputies. It wasn't purchased for the department-wide.

25 MR. ADDUCCI: Okay. Nothing further for this

BARTON HOLMES-DIRECT BY MR. SCOTT

1 individual.

2 THE COURT: Anything further from the State for
3 this witness?

4 MR. SCOTT: No, I'm going to call Barton Holmes
5 just briefly to discuss what may or may not have been
6 on the video.

7 THE CLERK: Place your left hand on the Bible,
8 and raise your right.

9 BARTON HOLMES, after being duly sworn,
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. SCOTT:

13 Q Detective Holmes, on March 31st, 2012, the time
14 of this incident that happened at Boyd Road, do you
15 recall that date and time?

16 A Yes, I do.

17 Q And the time, I guess, was 11:12 was your
18 dispatch time?

19 A That's correct. I arrived six or seven minutes
20 later, I believe.

21 Q You were a road deputy at the time?

22 A That's correct.

23 Q Now, looking at your incident report, do you
24 recall wearing a body camera on that date and time?

25 A I would have been issued one. I wore it all the

BARTON HOLMES-DIRECT BY MR. SCOTT

1 time. It was active.

2 Q Do you recall wearing one on this date?

3 A Yes.

4 Q Have you looked at your incident report?

5 A I have.

6 Q Okay. Was it operational that night, do you
7 remember?

8 A It should have been. I would have noted in the
9 report if it was operational.

10 Q Okay. Did you ever review what you filmed that
11 night?

12 A Just at the end of my shift transferring over to
13 the server, but not in any great detail.

14 Q Okay. Well, describe how that would happen. At
15 the end of a shift, what would you do with your body
16 camera?

17 A At that point in time, the way our system was
18 set up, it was a micro SD card and we would insert that in
19 the computer and, basically, transfer the files from the
20 card onto the server at the sheriff's office. I'm not
21 exactly sure how that works.

22 Q Okay. Do you recall, I mean, actually watching
23 the video or whether or not it recorded anything that
24 night?

25 A Yes, there was video and I did transfer it.

BARTON HOLMES-DIRECT BY MR. SCOTT

1 Q And generally what would it have captured?

2 A I wore it mid-chest level. You know, it would
3 have captured, obviously, what I was seeing and hearing,
4 people I encountered.

5 Q Okay. Now, in the incident report, in the
6 second to last sentence, it talks about briefly talking to
7 an individual who some witnesses placed on the scene, but
8 he just denied being at the residence then. In that
9 sentence, in parentheses, Refer to body cam video. Would
10 that have been the only thing the video recorded that
11 night or would it have recorded from the time you got
12 there?

13 A From the time that I got there to that
14 encounter. The period of time was pretty --- it was one
15 continuous event.

16 Q Okay. Might just be the sentence structure. If
17 you look at how it's contained in that one sentence. But
18 you're saying it recorded more than just that?

19 A It's our policy from the time I get out of my
20 car to the whole encounter, whatever's going on. So, it
21 would have all been recorded.

22 Q Okay. Now, you recall --

23 A I think I may have put that in there just
24 because there wasn't any sort of written statement or
25 anything like that, just a note to the investigator to be

BARTON HOLMES-DIRECT BY MR. SCOTT

1 able to refer to that.

2 Q Okay. And you recall the -- I guess it was me
3 or Mr. Bentley who spoke with you asking about the body
4 camera video?

5 A Yes, sir.

6 Q And where is that video now?

7 A I'm not an IT person, I don't know. From my
8 knowledge, just general knowledge of what happened at the
9 sheriff's office, I believe there was some videos on the
10 server that were lost or wiped after a certain period of
11 time, but I can't speak to that.

12 Q But this was not an intentional destruction?

13 A No, not at all.

14 Q That video -- was Mr. McGowan on the scene when
15 you arrived there?

16 A No, he was not.

17 Q So, that video would not have captured him?

18 A No.

19 Q Okay. Generally, I guess, it would have been
20 just the witnesses accounts of what had occurred?

21 A That's correct. Just the initial encounter with
22 the people on scene. We ask them basic questions, what
23 happened and their responses.

24 Q Okay.

25 MR. SCOTT: Thank you. Answer any questions

BARTON HOLMES-CROSS BY. MR. ADDUCCI

1 Mr. Adducci may have.

2 THE COURT: Mr. Adducci.

3 MR. ADDUCCI: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. ADDUCCI:

6 Q When you responded on the 31st, were there any
7 other responding officers with you?

8 A I believe there were. I can't recall who in
9 particular. There were other people that showed up
10 afterwards as well.

11 Q Now, you wrote an incident report. Did any of
12 those other responding officers write incident reports?

13 A No, just myself, being the primary responding
14 officer.

15 Q Okay. Other than what is contained in this one
16 and a little bit more page incident report, did you take
17 any other notes?

18 A No written notes. I believe I made a witness
19 note document in my encounter with the brother of
20 Mr. McGowan, but no other, no.

21 Q Okay. Do you recall who was present and who you
22 interviewed that evening?

23 A I didn't actually take any written statements
24 from anybody. Again, I encountered the people that were
25 at the residence and spoke with them, but I can't recall

BARTON HOLMES-CROSS BY. MR. ADDUCCI

1 their specific names or anything.

2 Q Did you speak with Tiffany Garrett?

3 A Yes, sir, I believe I did.

4 Q Okay. Do you recall what she told you?

5 A Just that they were there. A number of people
6 were there for a birthday party. Her husband,
7 Mr. Garrett, and Mr. McGowan -- or who was later
8 identified as Mr. McGowan, had some sort of altercation
9 and asked him to leave. They went back inside, then they
10 said they heard gunshots, obviously, called the police.

11 Q Would that have been Sarah Irby?

12 A Oh, I'm sorry, yes.

13 Q But did you speak to Sarah Irby's daughter,
14 Ms. Tiffany Garrett?

15 A I can't recall, but if she was on scene, I would
16 have made it around to everybody.

17 Q Do you remember how many people you interviewed
18 while you were there?

19 A There were a number of people there, but I can't
20 recall.

21 Q Okay. Did the other officers who were on scene
22 report to you what they had found?

23 A Not -- again, I was just the deputy on scene. I
24 wasn't actually like the incident commander and
25 investigator, so no, they did not.

BARTON HOLMES-CROSS BY. MR. ADDUCCI

1 Q Okay. Now, did you speak with Mr. John Glenn
2 that morning -- or that evening, rather?

3 A I don't recall. Again, names, not great with.

4 Q The guy who they indicated got into an argument?

5 A Oh, yes. Sorry.

6 Q You spoke to that gentleman?

7 A He's the one that indicated that there had been
8 the argument in the front yard.

9 Q Okay. You believe that interview would have
10 been recorded?

11 A Again, from the time I got out of my patrol
12 vehicle to whenever I got back, it would have been on
13 there.

14 Q Now, at that time, nobody gave you or you're not
15 aware of anybody giving any name of the person, correct?

16 A That's correct, I did not receive a name.

17 Q Okay.

18 A Just a general description of the individual.

19 Q What was that general description?

20 A Black male that was there at the party that was
21 driving a white vehicle, that left. And they also said
22 that the gentleman that I did speak to, other than
23 Mr. McGowan, was familiar with him.

24 Q All right. If you refer to your incident
25 report, you indicated witnesses at scene stated that they

BARTON HOLMES-CROSS BY. MR. ADDUCCI

1 could identify the suspect if they saw him, but could not
2 provide a name, right?

3 A That's what I wrote, yes, sir.

4 Q Is that consistent with your recollection?

5 A With the information that was provided to me,
6 yes, sir.

7 Q And again, you don't recall how many people you
8 interviewed that day?

9 A Again, I didn't take any witness statements from
10 people, so, obviously, on a scene like that, you have a
11 lot of people coming up to you and telling you things.
12 But I didn't actually sit down and interview anybody.

13 Q Did you write down a list of individuals who
14 were possible witnesses?

15 A I guess by the de facto of information I passed
16 to the investigator, but, again, it wasn't written down.
17 It was various people that were on the scene.

18 Q And all this would have been on the camera?

19 A Yes, sir.

20 Q And it would have had names of individuals that
21 you interviewed?

22 A Well, at least, the people that I was speaking
23 to. Obviously, when speaking with somebody, identifying
24 who they are.

25 Q When you were interviewing any of those people,

BARTON HOLMES-REDIRECT BY MR. SCOTT

1 did any of those people identify Mr. McGowan, Mr. Patrick
2 McGowan?

3 A Nobody provided an actual specific name to me
4 while I was on the scene.

5 Q Do you recall when the body cam video and audio
6 was deleted or lost?

7 A That's kind of beyond the scope of my job. I'm
8 not sure.

9 Q But you did upload this audio and video up to
10 the server?

11 A Yes, sir.

12 MR. ADDUCCI: I have nothing further, Your
13 Honor.

14 THE COURT: Okay. Solicitor, anything in
15 redirect?

16 REDIRECT EXAMINATION

17 BY MR. SCOTT:

18 Q Holmes, are you privy to statements being
19 obtained -- not necessarily written statements, but Sarah
20 Irby? Do you know whether her account of what happened
21 that night was given to law enforcement?

22 A In a written statement to law enforcement?

23 Q Not necessarily written, but did y'all gain
24 information from her that's documented in the incident
25 report?

BARTON HOLMES-REDIRECT BY MR. SCOTT

1 A That's correct.

2 Q So, y'all did get information from her?

3 A Yes, sir.

4 Q Documented in the incident report. What about
5 John Glenn?

6 A That would be the husband?

7 Q Yes, sir.

8 A Yes, that's correct.

9 Q Okay. Do you know he actually did give a
10 written statement, did you know that?

11 A Later on, I believe he did, yes, sir.

12 Q Tiffany Garrett, do you recall getting her
13 account of what happened that night?

14 A Yes, I spoke to her.

15 Q Are you aware that she actually gave a written
16 statement as well?

17 A After the fact, yes.

18 Q Okay. Would your body cam have recorded any
19 accounts of anybody other than those three of what
20 happened?

21 A Obviously, it picks up a lot of audio of just
22 people around me. It could have, but not to my knowledge.

23 Q Do you recall speaking with anybody other than
24 those three about exactly what happened?

25 A In terms of details, no, I don't recall that.

BARTON HOLMES-REDIRECT BY MR. SCOTT

1 Q All right.

2 MR. SCOTT: Okay. Thank you. No further
3 questions.

4 THE COURT: Mr. Adducci, anything further in
5 cross?

6 MR. ADDUCCI: No, Your Honor.

7 THE COURT: Thank you, sir, you can step down.

8 Mr. Adducci, Deputy Sharpton's name has been
9 mentioned, do you want to hear from him? Because we
10 can get him up here after lunch.

11 MR. ADDUCCI: I would, Your Honor, as to the
12 timing of the data loss.

13 THE COURT: All right. Solicitor, you think --
14 you want to confer?

15 MR. SCOTT: I think Mr. Bentley was getting in
16 touch with the sheriff.

17 THE COURT: Okay. Mr. Bentley, if you can try
18 to get Deputy Sharpton up here maybe a few minutes
19 before 2:00.

20 Okay. All right. Then I'll take any argument
21 after we hear from Deputy Sharpton. All right, we'll
22 be in recess until a couple minutes before two
23 o'clock.

24 MR. ADDUCCI: Thank you, Your Honor.

25 (WHEREUPON, a lunch break was taken.)

1 (WHEREUPON, State's Exhibits Nos. 14 & 15 were
2 marked for identification only.)

3 THE COURT: Again, the witnesses need to be
4 sequestered.

5 THE CLERK: Place your left hand on the Bible
6 and raise your right hand.

7 JIMMY SHARPTON, after being duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. SCOTT:

11 Q Mr. Sharpton, are you employed with the
12 sheriff's department?

13 A I am.

14 Q Back in 2012, you were with the sheriff's
15 department.

16 A I was.

17 Q And have your duties changed since then?

18 A They have not.

19 Q What is your position over there at the
20 sheriff's department.

21 A I wear a lot of hats. I'm the administrative
22 lieutenant and the training coordinator, plus several
23 other things, but that's my main title.

24 Q What hat did you wear when we're talking about
25 servers crashing and body camera videos being uploaded to

JIMMY SHARPTON-DIRECT BY MR. SCOTT

1 a server?

2 A I've been pretty involved in our IT program at
3 the sheriff's office. That includes the servers that do
4 the in-car cameras and the body cameras.

5 Q We've got an incident date in this case of March
6 31st of 2012. And there's been some testimony there was
7 body cam footage generated from the, I guess, first
8 responding officer. And there's been some testimony to a
9 server malfunction. Can you, I guess, inform the Judge
10 about what they're talking about?

11 A Okay. Judge, I can't give you a specific date.
12 I could probably go back and look to see using the
13 equipment that replaced it. Basically, what happened is
14 in the end of the year 2013, October or November, to the
15 best of my recollection, we had a storm that came through
16 that, basically, fried the server and the external drive
17 that was used to back up that server. And we lost
18 everything from -- that had been downloaded into that
19 system from that date backwards. There was no way to
20 retrieve because it got the back up system, also.

21 Q Okay. So, is that any and all body cam videos
22 that were prior to that 2013 surge?

23 A Yes, sir.

24 Q Okay. So, that would include the video uploaded
25 March 31st, 2012, if it had not been copied onto a hard

JIMMY SHARPTON-CROSS BY MR. ADDUCCI

1 disk or something?

2 A That is correct.

3 MR. SCOTT: Thank you. Answer any questions

4 Mr. Adducci has.

5 THE COURT: Mr. Adducci.

6 MR. ADDUCCI: Thank you.

7 CROSS-EXAMINATION

8 BY MR. ADDUCCI:

9 Q You indicated it was the end of 2013 when this
10 storm and the loss of data was?

11 A To the best of my recollection, sometime in
12 October or November, I think that's correct, yes.

13 Q Okay. And did your office undertake anything in
14 order to try to recover the lost data?

15 A Yes. It was sent to our IT people and it was
16 determined that both drives, the main drive, the server
17 and the back up driver were gone.

18 Q Gone, all the data was unrecoverable?

19 A Right.

20 MR. ADDUCCI: I don't have any questions, Your
21 Honor.

22 THE COURT: Thank you, sir, step down. I think
23 you have other things you need to attend to.

24 THE WITNESS: Yes, sir, thank you.

25 THE COURT: Yes, sir, good. Thank you.

JIMMY SHARPTON-CROSS BY MR. ADDUCCI

1 All right, Mr. Adducci, any argument on this
2 particular issue?

3 MR. ADDUCCI: Yes, Your Honor. I think that we
4 need to sort of -- I think this is -- the way I see
5 it, it's a Brady issue. So, just from the testimony
6 you heard today before we've gotten into trial, you
7 had the State's, I would argue, star witness,
8 Tiffany, testify that she spoke to police the evening
9 of the incident. That she was interviewed and that
10 she identified Mr. McGowan as the alleged shooter.
11 You also have the first responding officer who was
12 wearing that body camera, who indicated that he did
13 interview Ms. Tiffany. And in his police report and
14 in his testimony, he indicated that nobody identified
15 an individual. They said we would recognize him if
16 we saw him, but he was identified as unknown,
17 light-skinned, black male. So, we have exculpatory
18 information --

19 THE COURT: Educate me, how is it exculpatory?
20 There may be some inconsistencies or conflicting
21 evidence, but how is what has been brought out
22 exculpatory?

23 MR. ADDUCCI: A prior inconsistent statement is
24 exculpatory information by the State's witness.

25 THE COURT: I don't know if I agree with that,

1 but go ahead.

2 MR. ADDUCCI: Based on evidence that will be
3 favorable to the accused. It's clearly -- it's
4 impeachment evidence, which is exculpatory, which is
5 discoverable under Brady.

6 THE COURT: Well, you know, again, that -- you
7 know, when you have prior inconsistent statements,
8 that's for the jury to determine, you know, which
9 statement is correct and whether or not a particular
10 witness is testifying falsely or not. That's not --
11 an inconsistent statement is not automatically
12 exculpatory for the Defendant.

13 MR. ADDUCCI: Well, it was never disclosed to
14 the Defendant. That is why it's a Brady violation,
15 so it's exculpatory -- arguably exculpatory
16 information. The Court can, you know, take issue
17 with whether a jury would determine it's exculpatory.
18 But it is potentially exculpatory information that
19 was not disclosed to the Defendant.

20 THE COURT: Okay.

21 MR. ADDUCCI: It was in possession or known to
22 the Prosecution. Clearly, the video was on the
23 server for over a year. We sent our Rule 5
24 October 19th of 2012. This video was never disclosed
25 to the Defendant. And the storm happened about a

1 year after our Rule 5 and Brady request and it was
2 suppressed by the Prosecution. Again, it was never
3 disclosed, this prior inconsistent statement. And
4 the audio and, potentially, video proof of this prior
5 inconsistent statement of the State's star witness
6 was not disclosed up to a year after a Rule 5 and
7 Brady motion. And it was material to guilt or
8 punishment -- I clearly believe that it's material to
9 guilt because it is a -- it is a -- it's impeachment
10 evidence for the individual who allegedly IDs my
11 client. If she had testified that she knows my
12 client and she ID'd him and she knew him before the
13 incident date. And then we have a video or audio of
14 her saying unknown African-American, light-skinned,
15 male.

16 THE COURT: I don't know if -- correct me if I'm
17 wrong, if I understood Deputy Holmes correctly, it's
18 not that she said, you know, I can't identify him, I
19 don't know who it was or -- I think he just said she
20 never gave a name. Not that she was unable to give a
21 name, she just never gave a name and just gave a
22 description. Black male, whatever height and weight,
23 whatever he may have said.

24 MR. SCOTT: Your Honor, I referred Deputy Holmes
25 to his incident report where -- it says, Witnesses at

1 the scene all stated they could identify the suspect
2 if they saw him, but could not provide a name, only a
3 description.

4 That is in direct -- that is the exact opposite
5 of what the State's witness, Ms. Tiffany, testified
6 to this morning. Again, I think that's clearly,
7 clearly Brady material that hasn't been disclosed
8 until today. And it was on this server for a year
9 after the Defendant issued a Rule 5, asked for Brady
10 material. None of this was disclosed for three and a
11 half, four years later. And now, we're just getting
12 this prior inconsistent statement of the State's star
13 witness, the individual who identifies my client.

14 THE COURT: All right. When did -- I recognize
15 that October 2012 is when you put in your Rule 5
16 Brady request. When did the State respond, at least,
17 initially? Do you have a date on that?

18 MR. ADDUCCI: I have a -- I have a reciprocal
19 Rule 5 that says it was signed July 12, 2012, which
20 would have been before our office issued their Rule
21 5.

22 THE COURT: They typically don't send their
23 reciprocal Rule 5 request until after they get the
24 Defense, correct?

25 MR. ADDUCCI: Exactly, that's why that date

1 doesn't make sense to me.

2 THE COURT: While you're looking --

3 Solicitor, do you have any dates, Solicitor
4 Boykin?

5 MS. BOYKIN: Your Honor, I'm looking right now.
6 There might be something on our computer system. I
7 believe back then we used to get them to sign for it,
8 so I'm trying to find that piece of paper.

9 Your Honor, we have it right here, but there's
10 no date on it.

11 MR. SCOTT: Looks like Rhonda Carrington signed
12 for it, but didn't date the receipt on it.

13 THE COURT: Okay.

14 MR. SCOTT: I've got an offer given by one of my
15 predecessors July 6th, 2012. That's probably --

16 THE COURT: I'm sorry, I was talking to my law
17 clerk.

18 MR. SCOTT: I was saying one of my predecessors
19 gave a plea offer on July 6th of 2012, so that's
20 probably when discovery was issued.

21 THE COURT: Okay. But why would that have been
22 done -- that's all prior to when Mr. Adducci says his
23 Rule 5 motion --

24 MR. SCOTT: I think his date's wrong. I think
25 it was probably asked for earlier than that because

1 we don't ask for a reciprocal Rule 5 until we have
2 their discovery request.

3 MR. ADDUCCI: Your Honor, I'm just looking on my
4 case file in the public index. I do have a clocked
5 Rule 5 that was October 19th. Oh, here it is. If I
6 can show this to the State.

7 If I can approach, Your Honor?

8 THE COURT: Sure. Okay. So, Defense Rule 5
9 Brady motion was clocked and, presumably, delivered
10 at the same time, or close thereto October 19th,
11 2012..

12 MR. SCOTT: Your Honor, I'm kind of piecing it
13 together. We've all inherited these cases. Tom's
14 inherited, I've inherited, at least, a couple prior
15 solicitors. He was admonished a couple of times.
16 I'm looking at notes in here, so, possibly, that's
17 what happened. The other solicitor is dealing with
18 him on a defendant solicitor basis. Then sometime
19 along in October, it looks like the public defender
20 got involved, so that's probably why our reciprocal
21 Rule 5 is dated July whatever.

22 THE COURT: Okay.

23 MR. SCOTT: It just looked like we had to kind
24 of edge him on a little bit towards getting
25 represented.

1 THE COURT: Okay. Continue, Mr. Adducci.

2 MR. ADDUCCI: Thank you, Your Honor. So, the
3 destruction of the evidence was well outside the
4 30-day Rule 5 requirement. So, I think we've -- our
5 side requested it at the latest, middle of October,
6 end of October. Thirty days would put us into
7 November. The State clearly had discovery at that
8 time because they did provide, at least, some
9 material to the Defendant in July. The video and
10 audio was not destroyed until a year later. So,
11 we're dealing with a year where this evidence that is
12 exculpatory -- potentially exculpatory because it's a
13 prior inconsistent statement by the State's witness
14 is not disclosed to the Defense. And they had not
15 disclosed it. And we didn't hear about it at all
16 until today.

17 That is a problem with poor incident report
18 writing because the Defense couldn't have been on
19 notice of this prior inconsistent statement because
20 the Defense was not notified that Ms. Tiffany was
21 interviewed the day of the alleged incident. It just
22 says witnesses. And then she has given a statement
23 in April of 2012, a written statement that was
24 disclosed to the Defense. However, that statement
25 is, again, at odds with what was allegedly said the

1 evening of the incident. Again, this is all coming
2 to light the morning of the trial.

3 So, I think it's clearly Brady material. I
4 think it's exculpatory. It was in possession of the
5 Prosecution, it was in possession of the State. It
6 was on their servers. The officers remembered -- the
7 officer remembered speaking to these individuals.
8 And it's clearly material to guilt. Because, again,
9 it's impeachment evidence of the State's star
10 witness. So, I think it's clearly Brady material.
11 We would ask the Court to dismiss the case for
12 violation of Brady.

13 THE COURT: Let me see -- before I hear from the
14 State, let me see her statement and Barton Holmes's
15 incident report, please.

16 All right. Let's have these two -- these extra
17 copies, I'm going to have them marked as a Court's
18 Exhibit, the incident report and the Garrett
19 statement.

20 MR. SCOTT: If I could just make a copy for my
21 reference because that's the only copy I have.

22 THE COURT: We can do that at break. Just note
23 that this is going to be Court's 1 and 2.

24 All right. Let me hear from the Solicitor --

25 Oh, you're not finished.

1 MR. ADDUCCI: Just a couple more things. That
2 statement -- and, again, we're reconstructing the
3 file. So, the statement by Tiffany Garrett and John
4 Glenn, along with the photo lineup, I didn't have in
5 my original file when I was prepping this case for
6 trial, so I did approach the solicitor's office about
7 those. So, when I have it uploaded to my file was
8 April 20th, 2016. And I wanted to be extra cautious
9 over saying this wasn't disclosed before, so I then
10 went back and looked at the initial Rule 5 response
11 that was done in 2012 and it does not have
12 voluntarily statement of blank checked off.

13 I think we are now working on the Spartan system
14 and I think the State can see when our office pulled
15 down this added document from the cloud. But just
16 again, from my recollection, unless the State has
17 something otherwise, our office didn't receive this
18 statement by Tiffany Garrett and John Glenn and the
19 six-pack photo lineup until April of 2016.

20 THE COURT: Okay. All right. Now, help me
21 here, how does that help you with your argument
22 concerning the lost video?

23 MR. ADDUCCI: Tiffany Garrett is not
24 mentioned -- I'm sorry, her -- let me -- her
25 statement is mentioned in the police reports,

1 however, the actual written statement was not given.
2 So, again, we just have discovery issues. We've got,
3 you know, issues with cases lingering on for a long
4 time when things gets lost and misplaced.

5 THE COURT: All right. So, are you claiming a
6 Brady violation with respect to Tiffany Garrett's
7 statement as well as the video cam?

8 MR. ADDUCCI: No, Your Honor, the -- I was just
9 giving the Court information that I received that
10 actual written statement in 2016.

11 THE COURT: We are still dealing just with the
12 video?

13 MR. ADDUCCI: Exactly. The video is the Brady
14 violation, exactly.

15 THE COURT: All right. Let me hear from the
16 solicitor on this.

17 MR. SCOTT: This is, I guess, what the courts
18 have termed merely potentially useful material. I
19 think that's all this video is at this time. And a
20 good faith failure to disclose, they have ruled is
21 not a violation of due process. I'm looking at just
22 kind of a headnote, Arizona v. Youngblood, that's a
23 U. S. Supreme Court case back in '89.

24 So, what we're talking about here is something
25 that's merely potentially useful. And it appears

1 that Barton Holmes' testimony really kind of stands
2 in place for this video. And it seems to me that
3 what Mr. Adducci argument is is things that he would
4 have opportunity to impeach these witnesses on. I
5 think Tiffany Garrett's testimony is, I think, the
6 main issue that he has, how was that difficult to
7 track an argument as to what she said that would be,
8 I guess, inculpatory or exculpatory involving
9 Mr. McGowan. But it's just clearly good faith
10 failure. There was never intent by the sheriff's
11 department to erase these videos.

12 I can't speak to my predecessors, although, I
13 guess, it's just mentioned, you saw it, briefly in a
14 parenthetical. It was a failure on their part to
15 provide it on the front end and a failure on our end
16 to request it, but a good faith failure all the same.
17 And, again, I would just characterize it as merely
18 potentially useful, certainly, not exculpatory. And
19 I think he still has the opportunity to cross-examine
20 these witnesses on impeachment material.

21 THE COURT: All right. Everybody be at ease for
22 just a moment.

23 Mr. Bolt, would you go back and just tell the
24 jury that we're working on something that we need to
25 work on before we can bring them out. Just tell them

1 to be patient with us, please.

2 (WHEREUPON, Court's Exhibits Nos. 1 & 2 were
3 marked for identification and received into
4 evidence.)

5 MR. ADDUCCI: And, Your Honor, if I could draw
6 the Court's attention to a case, which is 369 S.C.
7 39.

8 THE COURT: 369 S.C.?

9 MR. ADDUCCI: Thirty-nine.

10 THE COURT: Thirty-nine, okay.

11 MR. ADDUCCI: Riddle v. Ozmint.

12 THE COURT: Okay. I'll take a look at that.

13 MR. ADDUCCI: Thank you, Your Honor.

14 THE COURT: Okay. Anything further on this
15 issue first, Mr. Adducci?

16 MR. ADDUCCI: Your Honor, just in response to
17 the State's argument that impeachment evidence is not
18 Brady material. I think that case that I listed
19 clearly states that impeachment evidence is very much
20 Brady material. So, I think that this clearly falls
21 into Brady issues. Again, this is the morning of
22 trial that we have found out about this. And I don't
23 think it's the individual solicitors that are trying
24 to hide the ball, but, unfortunately, the solicitor's
25 office is presumed to know everything that law

1 enforcement does. And this failure to disclose the
2 video for over a year, again, compounded that Brady
3 violation.

4 THE COURT: Okay.

5 All right. Anything further from the State on
6 this issue?

7 MR. SCOTT: Judge, just so I understand the
8 argument, is it that we think that evidence from the
9 video is favorable to the Defense because of a
10 statement therein potentially given by Tiffany
11 Garrett? Is that how you understand the argument?

12 THE COURT: Right --

13 MR. ADDUCCI: Would the Court like me to
14 respond?

15 THE COURT: Right. As I understand Mr. Adducci,
16 he believes that if the video -- the audio portion of
17 the video, if it were in existence, it would show
18 that Tiffany Garrett did not give the name of the
19 Defendant on the 31st when talking with and being
20 interviewed by Barton Holmes. And therefore, that
21 would be impeachment evidence and, consequently, a
22 Brady violation.

23 Did I fairly state your -- not very eloquent,
24 but did I state your position?

25 MR. ADDUCCI: Ms. Garrett testified today that

1 she knew Patrick from before, knew his name, knew who
2 he was.

3 THE COURT: Right.

4 MR. ADDUCCI: Okay. Then we have -- there's a
5 video of interviews that were done the day of.

6 THE COURT: And probably -- the use of the word
7 interviews probably should be maybe loosely used
8 because I don't think Officer Holmes was sat down and
9 in a typical interview. It was more just talking
10 with everybody who was there who wanted to say
11 something is the way I took it.

12 MR. ADDUCCI: And he did testify that he did
13 speak with Tiffany. In his report and in his
14 testimony, he indicated -- and he adopted the
15 language of his incident report, which was that
16 witnesses at the scene all stated they could identify
17 the subject if they saw him, but could not provide a
18 name. The only description given was a
19 light-skinned, African-American male driving a white
20 Lincoln, which is in direct contradiction to, again,
21 the star witness's testimony. I think that's clearly
22 impeachment evidence.

23 MR. SCOTT: I understand now the argument.
24 Judge, if that was the testimony, I should have
25 corrected it because my recollection was that she

1 said she knew Mr. McGowan from the street, from the
2 neighborhood. This testimony hasn't come out yet, I
3 intend to show that his mother lived right down the
4 street from the incident location. I intend to show
5 that she was more closely connected with
6 Mr. McGowan's brother, so she knew of that
7 connection. I don't think she testified nor do I
8 intend to have her testify in my case in chief that
9 she knew his name from the get-go. She knew him. I
10 don't think that was the testimony today. If I
11 remember incorrectly --

12 THE COURT: I think she did testify in the Neil
13 v. Biggers hearing that she gave the Defendant's name
14 to law enforcement on the 31st, the night of the
15 incident. I think that's what she said.

16 MR. ADDUCCI: That's my recollection as well,
17 Your Honor.

18 MR. SCOTT: That would not have been my
19 recollection under my direct under cross-examination.
20 If I didn't catch it, then I -- I think this is a
21 premature motion, perhaps. I think it would be
22 dependent on the testimony given at trial. That was
23 my -- that was not the testimony I had intended to
24 elicit, perhaps, I think, if anything, I may have
25 been maybe not fully listening to the Defense

1 counsel's question. I think -- I think testimony to
2 that effect indicates that's not how I intended to
3 present it, that she knew of the man's name, full
4 name, perhaps, his last name. I don't think she had
5 his first name. And I think that's -- what we're
6 going to show is how they developed the suspect. And
7 a lot of that comes through her acquaintance with his
8 brother. I think they, to this day, still talk
9 regularly. She knew his brother before she knew his
10 name.

11 THE COURT: Anything further?

12 MR. ADDUCCI: Again, I think there's serious
13 inconsistencies from her testimony now from whatever
14 she apparently said to the police the incident night.
15 Again, this is all just rushing to me the morning of
16 trial.

17 THE COURT: Right. I understand. But, again,
18 your complaint is solely the video from the body cam,
19 not anything else?

20 MR. ADDUCCI: Well -- so the video and just
21 disclosure of that previous statement by Tiffany,
22 right. So, even if the video -- even if there was no
23 video in the first place and the police just
24 interviewed her and she gave this statement, that
25 statement would be Brady material, even if there

1 wasn't a video. I just think that --

2 THE COURT: Oh, I agree 100 percent that the
3 video is Brady material. I don't think there's any
4 question about that.

5 MR. ADDUCCI: And even without the video, the
6 statement itself that day. So, assume the officer
7 was not wearing a body cam --

8 THE COURT: What statement are you referring to,
9 what she testified to at the hearing?

10 MR. ADDUCCI: No. So, assume that the officer
11 was not wearing the body cam the evening of the
12 incident.

13 THE COURT: Right.

14 MR. ADDUCCI: And he testified that he did
15 interview Tiffany that day. And his testimony that
16 was consistent with his police report was that nobody
17 gave a name, they kind of gave a general description,
18 right. That statement by Tiffany is Brady regardless
19 of whether it's on video or not. And --

20 THE COURT: Well, that statement that she
21 identified the Defendant, how could that be
22 discoverable? It's not in any documents. And, you
23 know, short of you deposing the officer, how can the
24 State disclose that -- or deposing Tiffany, how can
25 the State disclose that Tiffany will testify that she

1 gave the Defendant's name to the officer on the night
2 of the 31st? How can that be disclosed?

3 MR. ADDUCCI: So --

4 THE COURT: Absent the video?

5 MR. ADDUCCI: How can a statement of a witness
6 be disclosed without a video?

7 THE COURT: Right. You're saying absent the
8 video, you still expected to have received in
9 discovery the fact that Tiffany says, based upon her
10 testimony today, that she gave the Defendant's name
11 to law enforcement.

12 MR. ADDUCCI: My -- so -- I guess maybe I'm
13 confusing the question the Court's asking. The
14 statement that Tiffany gave to law enforcement
15 initially that day, that she did not -- that she did
16 not -- could not provide a name, but could recognize
17 him, right, is in contradiction to what she
18 apparently said to police later when she said it was
19 Patrick McGowan.

20 THE COURT: But I thought you were not
21 complaining about any incident reports, statements or
22 whatever you got April 16th, I thought you weren't
23 complaining about that.

24 MR. ADDUCCI: No, so -- right. So, I guess, the
25 April 16th disclosure of Tiffany Garrett's statement

1 is -- again, it's very late. But it is -- the
2 inconsistency between -- again, just the
3 inconsistency that is the Brady violation, right,
4 between her statements, either in that statement --

5 THE COURT: The Brady violation has to be based
6 on something tangible that you're claiming the State
7 did not disclose to you during this year period of
8 time, okay?

9 MR. ADDUCCI: And that tangible information is
10 --

11 THE COURT: It's in the form of the video
12 camera.

13 MR. ADDUCCI: Yes.

14 THE COURT: And what else?

15 MR. ADDUCCI: And the statements to police. So,
16 say in a hypothetical a witness gives an exculpatory
17 statement, right? Even if it isn't recorded, that's
18 still Brady material. Even if it's not written down
19 in any report. If a police officer fails to write
20 down exculpatory information, that does not make it
21 not Brady, or else we're encouraging just not writing
22 things down. And if the courts -- I think where the
23 Court is going with this is that a statement that is
24 not written is not Brady, I just fundamentally
25 disagree with that.

1 THE COURT: Well, it's almost -- and I see your
2 point to some extent, but it's almost like you expect
3 in advance to receive the total transcript of what
4 the trial testimony is going to be.

5 MR. ADDUCCI: No, I --

6 THE COURT: In effect, yeah.

7 MR. ADDUCCI: I would expect the recorded video,
8 yes.

9 THE COURT: No. I mean, you're wanting to
10 know -- maybe I've confused things, but the way I'm
11 seeing this Mr. Adducci is that you're wanting to
12 know in advance in some fashion through Brady
13 everything that's going to be testified to by every
14 witness for the State and then it can be discerned
15 whether or not it's exculpatory or has any
16 impeachment value. I mean, that's kind of the
17 impression that I'm getting.

18 MR. ADDUCCI: Not necessarily, Your Honor. I
19 think that there's inconsistency between her initial
20 statement and the written statement that was done 20
21 some odd days later..

22 THE COURT: Well, inconsistent -- just because
23 the statement doesn't include everything she
24 testifies to, which is typically the case, I don't
25 know if it's necessarily inconsistent. I mean, I

1 don't see how you can say it's necessarily
2 automatically inconsistent if a written statement
3 does not include ever single detail that maybe the
4 witness testifies to.

5 MR. ADDUCCI: I'm not arguing that she is
6 exclusively limited to this. What I'm saying is that
7 there are inconsistencies in her testimony, right?
8 They're inconsistencies in her stories to police at
9 the time of the investigation. And those
10 inconsistencies could have been knowable to the
11 police because they had an initial statement that
12 apparently was don't know who it is, but I can
13 recognize him, and then a later statement that says
14 Patrick McGowan did X. That is inherently an
15 inconsistency.

16 THE COURT: Well, I think we can beat this all:
17 day long. At this time, from what I understand, when
18 it all shakes out, your complaint is that you were
19 not provided the video from the body cam within this
20 year and -- well, year and a half, over a year and a
21 half from what I understand. But it does require
22 some speculation that that video would, in fact, have
23 Ms. Garrett saying, Oh, I don't know the name, I just
24 recognize it. Okay. It could have very well been
25 that the video contains a name and Officer Holmes,

1 for some reason, reported it incorrectly on his -- on
2 his incident report.

3 The four factors that we've got to find to
4 constitute a Brady violation under Gibson, and even
5 your Riddle case refers to Gibson, evidence favorably
6 to the Defendant. We don't know if it's favorable.
7 It could be, but it may not be. Secondly, in the
8 possession of the State. No question about that.
9 Third, which I think probably is the most important
10 factor, and this really kind of hits home with
11 respect to the Riddle case, wasn't suppressed by the
12 State. I think you have to have some intentional,
13 going back to a bad faith type of analysis that the
14 State, as in Riddle, the case you cite, was
15 intentionally withheld in some fashion. Being lax
16 for a year and a half and not disclosing it, that, in
17 and of itself, I don't believe constitutes a Brady
18 violation.

19 Material to the guilt or punishment, well,
20 again, we're kind of speculating what that video is
21 going to contain. We don't know what it's going to
22 contain. It was not a sit-down interview. It was
23 just Officer Holmes at the scene and he has people
24 coming up to him and telling him whatever they may
25 have told him.

1 So, based upon that, I'm going to deny your
2 motion to dismiss this case based upon Brady
3 violation. I will allow you -- the solicitor seems
4 to think this is a premature motion. I don't really
5 think that it is, I mean, you're making it at the
6 right time. But I will allow you to renew the motion
7 after we get into this case. And if the witnesses
8 testify to something that would have been of help to
9 you in support of your position, then I'll let you
10 renew the motion. I'll be glad to take a look at it
11 again even though I don't think you're being
12 premature with the motion.

13 MR. ADDUCCI: Your Honor, would the Court allow
14 an in-camera testimony from the officer exactly to
15 what he recalls was stated that day?

16 THE COURT: Yeah. If you want to make sure that
17 you have a real good record on this particular issue,
18 I'll allow for Officer Holmes to be recalled and
19 examined. If you think possibly that we don't cover
20 everything that we should have this morning, I'll
21 allow you to recall him for purposes of the record.
22 If that's what you're asking.

23 MR. ADDUCCI: Well, I'd ask the Court to
24 continue the case so that we can look further into
25 the inconsistency and try to uncover as much

1 information as we can being as though it was brought
2 to our attention this morning.

3 THE COURT: Right. Well, again, I mean, it was
4 brought to your attention this morning that there was
5 a video of the body cam and that it got lost because
6 the computer crashed. I realize that was brought to
7 your attention.

8 MR. ADDUCCI: That was brought to my attention.
9 I've had no information that Tiffany was interviewed
10 the day of the incident. That is the issue. I had
11 no idea --

12 THE COURT: Now, the incident report shows that
13 witnesses were interviewed. And you're surmising
14 that the use of the term witnesses included Tiffany.
15 Now, we don't know that 100 percent. But the
16 incident report says witnesses and you were aware of
17 that before today.

18 MR. ADDUCCI: I was aware that witnesses were
19 interviewed, I was not aware that this specific
20 witness was interviewed until --

21 THE COURT: I'm going to deny your request for a
22 continuance, but I'll allow you to -- if you want to
23 recall Officer Holmes on the issue of the Brady
24 violation, I'll be more than happy -- we can do that
25 now.

1 MR. ADDUCCI: Yes, please.

2 THE COURT: All right.

3 Officer Holmes, come back up.

4 And even though this is the State's witness, I'm
5 going to go ahead -- just to kind of expedite this,
6 I'm going to allow Mr. Adducci to start the
7 examination and I will allow him wide latitude as far
8 as how he conducts his examination.

9 Okay. Officer Holmes, you're still under oath,
10 sir.

11 Yeah, I'm going to allow you to go ahead. And
12 even though Officer Holmes is a State's witness, I'm
13 going to allow you to examine Officer Holmes and I'm
14 going to give you wide latitude as to how you handle
15 the examination because he would be an adverse
16 witness. You may proceed, sir.

17 MR. ADDUCCI: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. ADDUCCI:

20 Q You responded on March 31st, 2012, to the
21 incident location, correct?

22 A That's correct.

23 Q And you interviewed witnesses, correct?

24 A That's correct.

25 Q And you previously testified that Tiffany

BARTON HOLMES-DIRECT BY MR. ADDUCCI

1 Garrett was, in fact, one of those witnesses, correct?

2 A I believe she was there. It was a number of
3 people there on the scene interviewed. They were just
4 coming up to me giving information and stuff.

5 Q But you previously testified that you did speak
6 with her that evening?

7 A She was there on the scene, that's correct,
8 yeah.

9 Q And you did speak with her?

10 A I believe so.

11 Q At that time, did she give you the name of
12 Patrick McGowan?

13 A Again, to the best of my memory, the only
14 statements that I received from the individuals there was
15 the fact that they would recognize who the person was, but
16 they were not willing to give me a name. The sense that I
17 have got, and this happens a lot --

18 Q I didn't ask you what your sense was.

19 A Okay.

20 Q But you were not provided a name that day,
21 correct?

22 A No, I was not.

23 Q Who else did you interview that evening?

24 A Again, I spoke with people that were there on
25 the scene, Ms. Irby, Mr. Glenn, Mr. McGowan's brother.

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1 Other than that, I couldn't recall specific names.

2 Q Now, Ms. Irby, when you spoke to her, did she
3 give you the name of Patrick McGowan?

4 A No, she did not.

5 MR. ADDUCCI: Your Honor, I believe the
6 witnesses are under sequestration?

7 THE COURT: Excuse me?

8 MR. ADDUCCI: Aren't the witnesses under
9 sequestration?

10 THE COURT: Yeah, they were. That's just kind
11 of an oversight on everybody's part. He's out now.

12 BY MR. ADDUCCI:

13 Q Did you interview John Glenn that day?

14 A I believe I spoke with him, yes.

15 Q In your police report, you indicated that
16 witnesses at the scene all stated that they could identify
17 the subject if they saw him, but could not provide a name.
18 The only description that could be given was a
19 light-skinned black male driving a white Lincoln. Is that
20 consistent with the statements of Tiffany Garrett?

21 A The information that was provided to me on scene
22 by the people that were there, that is what they told me.

23 Q How long were you on scene that day?

24 A I'm looking back at the incident report. I
25 cleared the scene at 12:30. I arrived on scene at 11:18,

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1 so just a little over an hour.

2 Q And that evening after you cleared the scene,
3 did you report back and upload all the information onto
4 the data base from your body cam?

5 A That's correct, yes.

6 Q Do you recall how many people were at the scene
7 when you arrived?

8 A I couldn't give you an exact number. Again, it
9 was a family function, a birthday party, I believe, so
10 there were a good number of people there.

11 Q But five to 10 or 20 to 30?

12 A I would say around a dozen maybe, but again, I
13 didn't take an official head count.

14 Q Okay. Is it your practice not to record the
15 names of witnesses that you interview at incident
16 locations?

17 A Could you repeat your question to make sure I --

18 Q Is it your practice not to record the names of
19 individuals who are witnesses to crimes when you interview
20 them?

21 A Anybody that I actually sit down and interview,
22 I always get their pertinent information. Again, I had
23 people walking up to me giving me information, so I
24 wouldn't consider that an interview. If you're asking if
25 I purposely left out anything, no, I did not.

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1 Q I was just asking is it your practice to not
2 include that information or not write it down?

3 A I record the pertinent details that are told to
4 me the best I can.

5 Q How did you get back in contact with these folks
6 if you did not record their information on the incident
7 date?

8 A I was only the responding officer that did the
9 initial report. I had no follow-up contact with anyone.

10 Q How many other officers responded that evening?

11 A I couldn't give you an exact number. It was a
12 shooting, so more than just myself.

13 Q Now, on your incident report, it indicates
14 reporting officer/officers. What does that mean? What is
15 a reporting officer?

16 A The officer that writes the report.

17 Q Okay. So, is there any documentation of other
18 officers that reported to the scene that evening?

19 A It would be documented in our computer automated
20 dispatch system.

21 Q And is that information disclosed to the
22 solicitor's office?

23 A Not generally, unless requested, I guess.

24 Q When you forwarded this case onto the
25 investigator, what documents did you provide to him?

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1 A It would have just been the printed-off version
2 of the incident report that I guess you have a copy of. I
3 completed the one form that is the witness information
4 form on James McGowan, with a victim's form attached to
5 that, as well as photographs.

6 Q Are there any other statements from the evening
7 that you reported to the incident location that we haven't
8 gone over yet?

9 A I don't think so. Again, it was just what was
10 told to me.

11 Q Is there anything else that was told to you?

12 A Not that I can recall, no.

13 MR. ADDUCCI: I don't have any other questions,
14 Your Honor.

15 THE COURT: Solicitor, anything you want to ask
16 on this particular issue?

17 MR. SCOTT: Really just one thing.

18 CROSS-EXAMINATION

19 BY MR. SCOTT:

20 Q The second page of that -- you don't have the
21 incident report, do you? The second page of it, you
22 reference a James Edmond McGowan?

23 A Correct.

24 Q How were you given that name?

25 A By individuals on scene placing him on the

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1 scene, saying that he was with the suspect who did the
2 shooting.

3 Q Was that somebody that they were associating the
4 gun with?

5 A That's correct.

6 Q Okay. Is it fair to say that that was something
7 used to develop the name of Patrick McGowan?

8 A Again, the extent of, if you want to call it, my
9 investigation as the recording officer, that was really
10 the extent of it. After I went and spoke with
11 Mr. McGowan, the witness next door, I didn't like -- I had
12 other calls, I didn't have a chance to develop an
13 investigation or anything.

14 Q Okay. Well, do you know or were you -- did they
15 know the relationship of the gunman with that James
16 McGowan, do you recall?

17 A If they knew it, they didn't disclose it to me.

18 Q But they did know where that James McGowan
19 lived, didn't they?

20 A They pointed me in the right direction, yes.

21 Q How far away was it from the incident location?

22 A A trailer or two down the street.

23 Q Okay.

24 A Very close proximity.

25 Q Okay. But had you been given the name Patrick

BARTON HOLMES-CROSS BY MR. SCOTT

1 McGowan, that would have been incorporated in your
2 incident report?

3 A That's correct.

4 Q Okay. The date that you generated the incident
5 report, is that April 1st?

6 A That's correct. I guess the dispatch time was
7 the 31st at 11:00, and I would have written this report
8 probably 3:00 or 4:00 o'clock in the morning on the 1st.

9 Q I'm just -- it is -- it's just occurring to me
10 as we go through this thing, you do list the suspect as
11 Patrick McGowan?

12 A That can be changed -- that is changed by the
13 investigator after they have the arrest. I think one of
14 mine that I kept for my records is still unknown, unknown
15 African-American male.

16 Q Just because the date at the bottom is April the
17 1st?

18 A Right. I actually have a copy showing that it
19 says unknown, but I, obviously, didn't develop a suspect
20 if you need to get those printed.

21 Q I got you. I guess, what -- my last point I'm
22 trying to make here is in the body of your incident
23 report, though, had you been given the name Patrick
24 McGowan that night, would it have been your practice to
25 list that as the suspect you were looking for?

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1 A Absolutely.

2 MR. SCOTT: Judge, I think that's all I have.

3 THE COURT: Okay.

4 Anything further, Mr. Adducci?

5 MR. ADDUCCI: No, Your Honor.

6 THE COURT: All right. Thank you, Officer
7 Holmes.

8 Okay. Well, again, my ruling as to a Brady
9 violation and the Defense's motion to dismiss, that
10 is denied. Even though due process has not been
11 specifically argued by the Defense, I think it would
12 be worthwhile to put on the record that I do not find
13 a due process violation taking place by virtue of the
14 video of the body cam not being disclosed. The
15 two-prong test for due process violation would be a
16 showing of bad faith. I don't find any bad faith on
17 the part of the State or showing that it is
18 exculpatory in nature. And we just don't know for
19 sure what that video of the body cam would actually
20 depict or indicate.

21 So, based upon that, I do not find any due
22 process violations. And I'm pretty much basing it on
23 the recent McBride case and the cases cited in that
24 opinion.

25 Let's take a five minute break before we get the

1 jury out and get started.

2 MR. ADDUCCI: Thank you, Your Honor.

3 THE COURT: Thank you...

4 (WHEREUPON, a short break was taken.)

5 THE COURT: Ready for the jury to come in?

6 MR. SCOTT: Yes, sir.

7 MR. ADDUCCI: Yes, Your Honor.

8 THE COURT: Okay, Mr. Bolt.

9 (WHEREUPON, the jury came into open court at
10 approximately 3:18 p.m.)

11 THE COURT: Ladies and gentlemen of the jury,
12 thank you for your patience. We've been working on a
13 couple legal issues, and this happens sometimes.
14 Sometimes, we just have to keep the jury back in the
15 jury room. And it never fails when you have really
16 good lawyers like we've got in this case, they're
17 going to work the Judge pretty good. So, we had to
18 deal with some legal issues. I had to hear their
19 arguments and had to make a ruling on some things, so
20 that's what we've been doing. So, please accept
21 my -- thank you for being patient. I'll probably
22 have to thank you again a few more times for your
23 patience. We need to -- before we start the trial,
24 there are two things we need to do.

25 First thing, Madam Clerk, would you swear this

1 trial jury in, please?

2 THE CLERK: Please stand and raise your right
3 hands. If you accept the oath I'm about to
4 administer, please respond by saying, I will.

5 (WHEREUPON, the jury was sworn.)

6 THE CLERK: Thank you.

7 THE COURT: Okay. The second item, ladies and
8 gentlemen, I need to appoint a foreperson of the
9 jury. Now, if it is a man, it's a foreman. If it's
10 a female, it's a forelady, as we refer to them. And
11 let me explain to you a little bit about what a
12 foreperson does. They wear several hats. One, I
13 need a person to serve as kind of a go-between
14 between the jury and the Court. So, if there's an
15 issue that arises or something that needs to be
16 brought to the Court's attention, then I'll have that
17 person speaking on behalf of the jury.

18 Secondly, I need -- and this really applies to
19 all of you, but, in particular, the foreperson of the
20 jury to make sure that all my instructions are being
21 followed. For example, I've already told you a time
22 or two not to begin any discussion about this case
23 among yourselves. There will be other instructions,
24 so you'll need to have somebody to be on guard and
25 make sure that those instructions are followed.

1 And thirdly, I need a person to organize the
2 deliberations. Once this case ends and I tell you
3 you can start your deliberations, your discussion on
4 reaching a verdict in this case, then I need someone
5 to organize those deliberations. Now, let me
6 emphasize with you that the vote of the foreperson
7 carries no greater weight than the vote of the 11.
8 They all are considered and counted equally.

9 Let me explain to you the role of the
10 alternates, Mr. Copeland and Ms. Terrell. It's not
11 unusual sometimes when a person -- one of the 12 has
12 to be excused by having an illness, they have an
13 emergency at home or something of that nature and I
14 need someone that is the alternate who has been in
15 the courtroom, heard all the evidence and testimony
16 as the 12 has to be able to step right on into the
17 shoes of that excused juror. So, your presence and
18 your role is very, very important.

19 While I believe that all 14 of you would make
20 excellent forepersons, I can only have one. And
21 Mr. Lanford, I'm going to appoint you as foreman of
22 the jury. And you will -- when you come back out
23 after your next break, you will always maintain your
24 seat, front seat on the first row, okay.

25 Mr. Copeland, Ms. Terrell, you are seated in the

1 right seats for the alternates.

2 The other 11, you can sit wherever you like.

3 Now, if you want to maintain the same seat, that's
4 your right, you don't have to. I tell juries it's
5 kind of like church, you always sit in the same seat
6 or same pew and don't want anybody else sitting in
7 the same place. So, you can maintain your same seat
8 if you're comfortable with that, but you certainly
9 don't have to. That's just totally up to you folks.

10 What I'm going to do now is give you just some
11 preliminary instructions, and then the lawyers are
12 going to make their opening arguments to you, and
13 then we will start with the testimony and evidence in
14 this case.

15 Ladies and gentlemen, before we begin the trial
16 of this case, I want to tell you that this trial
17 probably will be different from what you might
18 expect. Many people don't have a chance to attend
19 actual court sessions as you are doing right now.
20 And you may have think from watching television or
21 movies or reading books that trials are always full
22 of high drama, intense action and riveting
23 circumstances. While all these things may be true at
24 times, this trial is not for entertainment. It is a
25 fundamental part of our democracy, a search for the

1 truth in an effort to make sure that justice is done
2 between the parties before the Court. Searching for
3 the truth and making sure that justice is done is
4 often slow, deliberate and repetitive, the opposite
5 of what you might have seen on television or seen in
6 movies or read in books. This courtroom is a place
7 of honor dedicated to the protection and preservation
8 of citizens' rights through what many have called to
9 be the greatest justice system ever created. I think
10 I may have mentioned that earlier today.

11 The attorneys appearing before you are the
12 advocates for the parties they represent, but first
13 and foremost, they are officers of the court sworn to
14 uphold the integrity and fairness of our judicial
15 system and to help you in the search for the truth.
16 You should expect them to be professional, competent
17 and ethical in the representation of their clients'
18 interest. But you, also, as juries are expected to
19 be professional, reasonable and ethical as well.

20 I want to thank you officially and formally for
21 accepting this very important responsibility of jury
22 service and for your contribution today and
23 throughout the remainder of this case to your justice
24 system.

25 Now, what I'm saying to you now are just

1 preliminary comments, kind of an introduction to the
2 trial of this case. These remarks are not a charge
3 on the law in this case. I will instruct you on the
4 law applicable to this case at the end of the trial
5 before you retire to consider your verdict. I'm just
6 trying to explain to you the procedure that we will
7 follow in the trial of this case so that you may
8 better understand what may be happening.

9 First of all, you're not permitted to take any
10 notes. What that means is that you need to be very
11 attentive, clear-headed and observe everything that
12 is going on during this entire proceeding because you
13 need to have a good memory, a good recollection of
14 what you have heard during the course of this trial
15 when you do begin your deliberations.

16 Now, as I told you at the outset, I'm going to
17 tell you again, the Defendant has been charged with
18 four counts of attempted murder as reflected in the
19 four indictments. Now, the indictments, as I told
20 you, and I cannot emphasize enough, are not in any
21 sense evidence of the allegations it contains -- or
22 the indictments contain, rather. The Defendant has
23 exercised his Constitutional right and has pled not
24 guilty to these four charges. Therefore, the State
25 has the burden of proving each and every element in

1 the indictments beyond a reasonable doubt. And it
2 will be your duty, ladies and gentlemen, to decide
3 whether or not the State has met that burden. And
4 that will be what you decide at the end of the case
5 when you begin your deliberations.

6 Your purpose as jurors is to find and determine
7 the facts. You are the sole judge of the facts. If
8 at any time during the course of this trial I make
9 any comment regarding the facts, you must disregard
10 it. You are to determine the facts from the
11 testimony you hear and the other evidence introduced
12 in court. It's up to you to determine the inferences
13 which you feel may properly be drawn from the
14 evidence. It's especially important that you perform
15 your duty of determining the facts diligently and
16 conscientiously because, ordinarily, there is no way
17 to correct an erroneous determination of the facts by
18 a juror.

19 On the other hand and with equal emphasis, the
20 same law that makes you the judges of the facts,
21 makes me the sole judge of the law. The law given by
22 the Court is the only law you may consider. You must
23 accept and follow it even though you may disagree
24 with it. I can't tell you what the facts are and you
25 can't tell me what the law is or should be. Your job

1 is to take the law as I give it to you -- and again,
2 I'll give it to you at the end of the case -- and
3 apply it to the facts as you find them from the
4 testimony of the witnesses and any other evidence
5 that is introduced. After doing that, you will
6 render your verdict, a verdict under the solemn oath
7 that you just took a moment ago as jurors.

8 Once again, before I tell you that you can start
9 your deliberations, you cannot discuss anything about
10 the case with anyone, which includes your fellow
11 jurors, friends, family, anybody involved in this
12 case, anybody that you come into contact with. You
13 must decide this case based solely, 100 percent on
14 the evidence presented here in this courtroom. This
15 means -- listen very carefully, this means that
16 during this trial, you cannot, you must not, you
17 should not conduct any independent research about
18 this case, the facts of the case, the evidence
19 presented in this case, anyone involved in this case,
20 anything related to this case.

21 We all realize we have ready access to a wealth
22 of information because of the internet. It may be
23 very tempting for you when you go home this evening
24 or during a break or whatever is to try to do some
25 independent research on your own. That is 100

1 percent totally forbidden for you to do.

2 Unfortunately, we have had over the years -- not
3 often, but we have had over the years some jurors who
4 have completely disregarded that instruction that not
5 only do I give, but all other circuit court judges
6 give and, unfortunately, that juror has suffered
7 consequences of that refusal to follow the Court's
8 instruction. So, stay away from the internet during
9 the course of this trial by way of any computers,
10 phones, etcetera.

11 And also, I don't know if there's going to be
12 any media coverage of this case. I would not have --
13 I just would not know that. But if there is, if
14 there's anything that appears in the newspaper, on
15 radio, even TV, even though there's no TV cameras in
16 the courtroom, if there is, you must not consider
17 that and must not look at that during the course of
18 this trial. If you become aware of another juror's
19 violation of these instructions, the Court must know
20 that immediately.

21 It's extremely important, ladies and gentlemen,
22 that you keep an open mind and not decide any issue
23 in this case until all of the evidence has been
24 presented, the parties have made their closing
25 arguments to you and I have instructed you on the law

1 in this case.

2 Now, there may be times where you will hear one
3 of the lawyers say objection, Your Honor, or I have a
4 matter of law for the Court. And if we cannot
5 resolve it by having a discussion, either up here at
6 the bench or to the side, I may have to have you
7 retire to your jury room. And the reason for that
8 is -- well, several reasons, but the primary reason
9 is that I may have to discuss the facts with the
10 lawyers in order to properly rule on the legal issue
11 that they're bringing to my attention. And I
12 certainly don't want to discuss the facts in your
13 presence because, again, you're the sole judges of
14 the facts in this case.

15 I'll ask the lawyers, does the State have any
16 objection to the Court's preliminary charge?

17 MS. BOYKIN: None from the State, Your Honor.

18 THE COURT: From the Defense?

19 MR. ADDUCCI: No, Your Honor.

20 THE COURT: Thank you, very much.

21 All right. The lawyers now are going to make
22 their opening arguments to you. These arguments are
23 not evidence in this case whatsoever. It's only
24 their statement as to what they believe this case is
25 about, what they believe the evidence will show. So,

1 if you will give them your very close attention.

2 Solicitor Boykin, you're going first, you may
3 proceed.

4 OPENING STATEMENT

5 MS. BOYKIN: Thank you, Your Honor, may it
6 please the Court?

7 THE COURT: Certainly.

8 MS. BOYKIN: Ladies and gentlemen, this is a
9 case about an extremely reckless and violent act.
10 This is a case about a man who has absolutely no
11 regard for the value of human life. This is a case
12 about Patrick McGowan and how he took a pistol and in
13 anger fired multiple shots into this family's home.
14 That's what we're here for today. We're here for
15 Patrick McGowan being charge with four counts of
16 attempted murder. The victims, John Glenn, his wife,
17 Sarah Irby, their daughter, Tiffany Garrett, and a
18 four-year-old granddaughter that was asleep in her
19 bed after her birthday party that night. That's what
20 we're here for.

21 Now, we're lucky we're not here for a murder
22 trial. We're lucky that those bullets didn't hit
23 those intended targets. You'll hear testimony that
24 the difference between the attempted murder and the
25 murder trial were just inches away of being a

1 different trial here today.

2 So, let's go over what happened back in 2012.
3 March 31st of 2012, John Glenn and his wife, Sarah
4 Irby, were throwing a birthday party for their
5 granddaughter in Laurens County off of Darby Road --
6 Boyd Road, I'm sorry, in Laurens County. It's a
7 neighborhood type of area. There was another party
8 happening down the street. You will hear testimony
9 that this wasn't a child's birthday party. It was
10 people hanging out, drinking, just talking. People
11 from that party would come over to the birthday party
12 and just mingle with each other.

13 So, it started to get dark. Kids, you know,
14 it's bedtime, so they send the kids to bed and they
15 go inside. The parents and adults decide to stay
16 outside and hang out, you know, have fun and drink
17 and talk. John Glenn is outside talking to a friend.
18 Patrick McGowan approaches them. He had never met
19 Patrick before. John Glenn is telling his friend how
20 he's a Mason. For some reason, Patrick got a little
21 angry and started yelling at John. John, of course,
22 says, you know, it's my family's home. Could you
23 please leave, I don't want any trouble. Heated words
24 were exchanged. There were some cussing.

25 Patrick McGowan was angry. You'll hear

1 testimony they saw him start walking down the street.
2 John Glenn goes inside. Moments later, gun fire just
3 happens. You'll hear testimony from Tiffany Garrett
4 that she saw Patrick McGowan turn around, pull out a
5 pistol and shoot multiple times into the home that
6 John Glenn just walked. He was there at that party.
7 He knew who all was inside.

8 Inside that home was John Glenn, Sarah Irby and
9 there granddaughter. Bullets went flying through all
10 different rooms, breaking all the TVs, mirrors,
11 glass, inches from where that little girl was
12 sleeping, inches from where these people were
13 sitting. We're lucky that no one was shot. We're
14 lucky that they're here today to tell their story.
15 The story where Patrick McGowan pulled out his pistol
16 and shot multiple times into that home knowing that
17 that family was inside.

18 Now, for the State to prove its case, they have
19 to prove it beyond a reasonable doubt. I'm sure you
20 guys have heard that term before and you'll hear more
21 about it. The Judge will give his instruction and
22 explain what it all means and during closing
23 arguments, the attorneys will also tell you a little
24 bit more about it, but I want to briefly explain to
25 you what it means. Beyond a reasonable doubt is

1 prove that leaves you firmly convinced of a
2 defendant's guilt. Okay. What it doesn't mean is
3 that you don't have any doubt. You can have some
4 doubts about certain things, but the key there is
5 reasonable. And I submit to you at the end of this
6 trial, you will see that Patrick McGowan is guilty
7 beyond a reasonable doubt of attempted murder of all
8 four victims.

9 So, that brings me to the next thing. What's
10 attempted murder? I'm sure you guys all know what
11 that is, too. It's you attempt to kill another
12 person with malice aforethought. Well, that, of
13 course, will be explained in further detail later on.
14 But malice aforethought is ill will towards another
15 human. And that can be either expressed or implied.
16 Expressed would be if I took a gun and said I'm going
17 to kill you'll right now. That would be expressed.
18 Implied is you can infer the intent from someone's
19 actions and the circumstances surrounding it. And I
20 submit to you, there's definite implied malice when
21 you take a gun and you shoot it multiple times into a
22 home that you know people are inside. You just saw
23 people walk into that home and you're shooting that
24 gun right into that home. That is implied malice.

25 Naturally, I think we all kind of know what

1 happens if you shoot a gun at someone? It's very
2 likely that someone can get killed. And I don't know
3 about you, but I can't think of any other intent that
4 would be out there of why you'd want to point and
5 shoot a gun at someone. But that's why we're here.

6 Ladies and gentlemen, this is going to be a
7 pretty simple trial, pretty straightforward. It
8 shouldn't last more than a day or two. And I submit
9 to you at the end of this trial, it will be crystal
10 clear that Patrick McGowan is guilty of attempted
11 murder of all four victims. And I'm going to ask you
12 at the end of this trial, or Solicitor Dale Scott
13 will, to go back in that jury room and hold him
14 accountable for his violent, reckless acts. Hold him
15 accountable and find him guilty of attempted murder.
16 Thank you.

17 THE COURT: Thank you, Solicitor.

18 Mr. Adducci, you ready, sir?

19 OPENING STATEMENT

20 MR. ADDUCCI: Yes, Your Honor. May it please
21 the Court?

22 THE COURT: Certainly.

23 MR. ADDUCCI: Good afternoon, my name is Thomas
24 Adducci and I represent Patrick McGowan. I'm going
25 to try to keep this pretty short because what matters

1 is what you hear from the testimony from the stand.

2 Now, the State indicated that there was people
3 out there. There's a couple parties, right? One was
4 at the Glenn's house, one was down the road. There
5 was apparently some chirping back and forth the
6 entire night. People were drinking, people were
7 getting a little bit rowdy. There were a number of
8 arguments between folks throughout the entire
9 evening. At about 11:00 at night when it's dark
10 outside, the States alleging that somebody pulls a
11 gun and starts firing into the house. There were
12 apparently dozens and dozens of people at these
13 parties. You're not going to hear from a great
14 majority of them. So, when the State talks about
15 what they have and what they're bringing, you also
16 have to think about what they don't have and who they
17 aren't bringing. Because what isn't there, a witness
18 speaking, that's important.

19 You're going to hear from people that were at
20 that party that were near Mr. McGowan who said that
21 no, he didn't have a gun. He was running for his
22 life just like everybody else. The individual the
23 State says identifies Mr. McGowan was down at the
24 house and was saying that Mr. McGowan was up there by
25 the street. 11:00 o'clock at night, 11:30 at night,

1 can she really identify anybody? That's for you to
2 decide.

3 Once you hear all the testimony, see the
4 witnesses, understand what happened that day, you'll
5 see it's clear, the State simply does not have the
6 evidence. Does not have proof beyond a reasonable
7 doubt and you will find the only verdict that you
8 should, not guilty. Thank you, very much.

9 THE COURT: Thank you, Mr. Adducci.

10 Is the State ready to call its first witness?

11 MR. SCOTT: We are, Your Honor. The State calls
12 Barton Holmes.

13 THE CLERK: Place your left hand on the Bible
14 raise your right hand, please.

15 BARTON HOLMES, after being duly sworn,
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. SCOTT:

19 Q All right. Investigator Holmes, you are
20 employed with who?

21 A The Laurens County Sheriff's Office.

22 Q How long have you been -- what is your current
23 job duties there?

24 A I'm currently a criminal investigator in the
25 crime unit, but I've been with the sheriff's office since

BARTON HOLMES-DIRECT BY MR. SCOTT

1 July 2010.

2 Q Okay. You're an investigator now. In 2012,
3 what were you doing?

4 A I was assigned to the uniform patrol division. I
5 worked night shift as a deputy answering calls for
6 service.

7 Q What does that mean if you're a road deputy, a
8 call goes out to 911, you're one of the guys that respond
9 to the scene?

10 A Correct. The guys in uniform drive a marked
11 vehicle. When you call 911, they're the first officers
12 that respond to your call.

13 Q Now, I mentioned that date, March 31st, 2012, do
14 you remember that particular date and a call coming from
15 Boyd Road?

16 A That's correct, I remember it.

17 Q All right. And do you recall about what time
18 you were dispatched to that location?

19 A It was a little bit after 11:00, I believe.

20 THE COURT: Officer, let me see the lawyers for
21 just a second.

22 (WHEREUPON, an off-the-record bench conference
23 was held in the presence of the jury but out of
24 the hearing of the jury.)
25

BARTON HOLMES-DIRECT BY MR. SCOTT

1 BY MR. SCOTT:

2 Q So a little bit after 11:00 p.m. is what you
3 were testifying to?

4 A Yes, sir.

5 Q Boyd Road, is that in Laurens County?

6 A That's correct, it's in Laurens County.

7 Q All right. What was the nature of the call you
8 were responding to?

9 A We were dispatched to that address for shots
10 being fired into a residence.

11 Q All right. Tell us what you observed when you
12 got there.

13 A Whenever I arrived on scene, I was the first
14 officer on the scene. There was a large group of people.
15 I believe it was a family birthday party, so there were
16 people, the point I got there, kind of milling about in
17 the front yard. Of course, there were people in the
18 house. And I spoke with my complainant and she stated the
19 reason why she called 911.

20 Q Okay. Your complainant is listed as a Sarah
21 Irby?

22 A That's correct.

23 Q All right. Were you informed of who lived in
24 this residence?

25 A To the best of my recollection, it was --

BARTON HOLMES-DIRECT BY MR. SCOTT

1 MR. ADDUCCI: Objection, Your Honor. State's
2 calling for hearsay.

3 MR. SCOTT: Your Honor, it's not for the truth
4 of the matter asserted, A, and it's part of his
5 investigation.

6 THE COURT: I think it's probably more to his
7 state of mind in connection with conducting an
8 investigation. I'm going to overrule the objection.

9 MR. ADDUCCI: Thank you, Your Honor.

10 BY MR. SCOTT:

11 Q Were you able to ascertain who lived at the
12 residence?

13 A To the best of my knowledge, it was Ms. Irby and
14 her husband.

15 Q Okay. And were you able to ascertain who was
16 inside the home whenever it was fired upon?

17 MR. ADDUCCI: Objection, Your Honor, again
18 hearsay. He didn't have personal knowledge.

19 THE COURT: Okay. I'm going to go ahead and
20 overrule it because, Solicitor, I assume you're going
21 to put up other testimony to confirm. So, I'm going
22 to go ahead and overrule.

23 BY MR. SCOTT:

24 Q Mr. Holmes, were you able to ascertain who was
25 inside of the residence when it was fired upon?

BARTON HOLMES-DIRECT BY MR. SCOTT

1 A Yes, based off Ms. Irby's statement that she
2 told me.

3 Q Okay. And are you prepared to name who was
4 inside the house?

5 A Multiple individuals. I can't recall.

6 Q Okay. You said you were able to determine there
7 was a birthday party going on, is that what you said?

8 A That was what was provided to me by Ms. Irby and
9 people there on scene.

10 MR. ADDUCCI: Objection. Your Honor, can we
11 approach?

12 THE COURT: Sure.

13 (WHEREUPON, an off-the-record bench conference
14 was held in the presence of the jury but out of
15 the hearing of the jury.)

16 THE COURT: Okay.

17 BY MR. SCOTT:

18 Q Mr. Holmes, so we were talking about you get
19 there and there was people who was approaching you and I
20 guess they're telling you what they observed or what
21 happened just before you got there?

22 A That's correct.

23 Q Okay. And did you make any personal
24 observations that would, I guess, corroborate their story?
25 I mean, did you notice any physical evidence of a shooting

BARTON HOLMES-DIRECT BY MR. SCOTT

1 at the house?

2 A There were what I perceived fresh bullet holes
3 inside of the residence.

4 MR. ADDUCCI: Object, Your Honor, move to
5 strike. It's an opinion. He's not a qualified
6 expert.

7 THE COURT: Well, I mean, he --

8 Lay maybe a little bit of foundation, Solicitor,
9 concerning his opinions as far as what he observed.

10 Then if you want to renew the objection, you
11 can.

12 MR. ADDUCCI: Thank you, Your Honor.

13 BY MR. SCOTT:

14 Q Had you seen, I guess, bullet holes in buildings
15 before?

16 A I have.

17 Q Let me -- actually, look at this, this might
18 help. State's 14, do you recognize that?

19 A That's the residence.

20 Q All right. Okay. What is the -- I guess the
21 material, is that siding?

22 A It's vinyl siding, yes.

23 Q Now, describe what you're talking about. You
24 said -- I think the objection was you were opining on a
25 fresh bullet. What do you mean by that?

BARTON HOLMES-DIRECT BY MR. SCOTT

1 A There were bullet holes in the side of the
2 residence and based on the nature of the call, I perceived
3 them to be the shots in question.

4 Q But that is the home that you went to that night
5 with the vinyl siding and everything?

6 A That's correct.

7 Q And you took some pictures, didn't you?

8 A I did.

9 Q You took pictures of the outside of the home?

10 A Both the outside and the interior of the home.

11 Q Okay.

12 MR. SCOTT: Your Honor, I published it, but I'm
13 going to move to admit State's Exhibit No. 14.

14 MR. ADDUCCI: No objection, Your Honor.

15 THE COURT: Without objection, No. 14 will be in
16 evidence on behalf of the State.

17 (WHEREUPON, State's Exhibit No. 14 was admitted
18 into evidence.)

19 BY MR. SCOTT:

20 Q This is State's No. 1, what is that, Mr. Holmes?

21 A That's a photograph that I took on the side of
22 the residence, that was one of the bullet holes.

23 MR. ADDUCCI: Objection, Your Honor. Again,
24 it's an opinion.

25 THE COURT: Well, I think the solicitor asked

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1 Officer Holmes if he had seen bullet holes in other
2 houses before in other cases and he said he had. So,
3 I'm going to overrule the objection. I'll allow him
4 to state in his opinion that it is a bullet hole.

5 MR. ADDUCCI: Thank you, Your Honor.

6 BY MR. SCOTT:

7 Q Investigator Holmes, this is State's No. -- and
8 now let me reference back to State's 14. Can you
9 recollect where on the house the bullet holes were? This
10 is, obviously, the front house of the house, is it not?

11 A That's correct.

12 Q Were --

13 A They were -- as I noted in my report, the shots
14 traveled through the house in like a right to left
15 orientation from the -- I guess, the right corner.

16 MR. ADDUCCI: Objection, Your Honor. Again,
17 we're getting into expert testimony, bullet
18 trajectory.

19 THE COURT: Lay a foundation first, Solicitor,
20 and just see if this is just basic police knowledge
21 and understanding or if it does require some more
22 expertise that Officer Holmes does not have. I don't
23 know at this point, so lay a better foundation if you
24 would, please, sir.

25 MR. SCOTT: Okay. I think he was testifying,

BARTON HOLMES-DIRECT BY MR. SCOTT

1 which any layperson can do about the front right of
2 this house.

3 BY MR. SCOTT:

4 Q Is that what you were saying, it appeared that
5 the bullet holes were entering?

6 A That's correct.

7 Q Okay. So, is that generally where I'm pointing
8 on this part of the residence?

9 A Correct.

10 Q Okay. So, we went over State's No. 1. You
11 observed that, I guess, and you said to the right of the
12 home from the front. State's No. 2, do you recall that?

13 A That would be a photograph I took of the
14 residence, yes.

15 Q And is this significant to you?

16 A Again, I photographed what I believed to be a
17 bullet.

18 Q Now, let me show you State's No.3, would that,
19 to your recollection, be an interior or exterior
20 photograph of the house?

21 A Interior.

22 Q So, that would have been inside the house.
23 State's No. 4, what are we looking at there?

24 A That would be the television in the living room
25 of the residence.

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1 Q What did you perceive this to be?

2 A A bullet impact on the television.

3 Q Then, State's No. 5, what is that?

4 A I believe that's a photograph I took of one of
5 the interior walls of the residence, again, noting a
6 bullet hole.

7 Q Okay. State's No. 6, are you able to see this
8 mark from there?

9 A I can faintly see it. Again, I remember it from
10 the pictures. I believe that was a bullet impact.

11 Q Okay. What is that?

12 A That's in the bathroom, I believe.

13 Q Okay. I've got a State's No. 7.

14 A Again, a mirror in the bathroom that had a
15 bullet impact causing the glass to break.

16 Q State's No. 8 is here, do you recall that?

17 A That's another interior photograph that I took.
18 I believe that's in the living room.

19 Q Okay. And then this is 9, do you recall why you
20 took that picture?

21 A I believe that would have been one of the
22 bedrooms, I believe. Again, one of the bullet impacts.

23 Q State's No. 10?

24 A Again, a photograph I took. I can't determine
25 what wall face that, but, again, a bullet impact.

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1 Q Okay. Is it fair to say that's interior?

2 A Yes, yes, interior.

3 Q Okay. I've got a -- finally, I'll show you
4 State's 11 and I've got State's 12 here, is this the
5 same -- this is State's 12 and this is State's 11, is that
6 the same bullet hole, but just different angles to your
7 recollection?

8 A I believe so, yes.

9 Q Okay. Now, when you looked at the exterior
10 holes in the siding, then you went inside and took
11 photographs, how is that helpful in determining the
12 direction of the bullets or trajectory?

13 A It allowed us to get an idea of the direction
14 the shots came from.

15 MR. ADDUCCI: I object, Your Honor. This is
16 sort of trajectory analysis. There hasn't been a
17 proper foundation for that.

18 THE COURT: All right. Let's do this,
19 Mr. Foreman, and ladies and gentlemen of the jury,
20 I'm going to send you to your jury room. I hope not
21 very long, but let me explore this particular issue a
22 little further with the lawyers and get you back out
23 again. Remind you, don't begin any discussions about
24 this case. Thank you.

25

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1 (WHEREUPON, the jury left open court at
2 approximately 3:56 p.m.)

3 THE COURT: Okay, Solicitor, I think in order
4 for me to properly rule on Mr. Adducci's objection,
5 which I think he's objecting --

6 You're objecting based upon his testimony
7 concerning trajectory and angles and that sort of
8 thing as far as how the bullet or bullets traveled,
9 is that --

10 MR. ADDUCCI: So, my initial objection to just
11 him saying bullet holes.

12 THE COURT: Right. I believe --

13 MR. ADDUCCI: I don't think he's an expert that
14 can --

15 THE COURT: I don't have a problem with him --
16 in his opinion, he has seen bullet holes in the past
17 in houses and he's testified based upon his
18 experience that those were bullet holes, so I don't
19 have a problem with that. I've denied your motion --
20 or overruled your objection on that.

21 Now, you're objecting because you don't believe
22 he has the expertise to testify concerning trajectory
23 and distances and angles and path of each bullet?

24 MR. ADDUCCI: Exactly. And I don't believe he's
25 done any measurements or anything like that. I think

1 it's just sort of eyeballing, which -- and I don't
2 think that rises to the level of scientific evidence.

3 THE COURT: Right. So, what we're going to need
4 to do, Solicitor, lay a foundation and just see if
5 he's qualified to render opinions, which I understand
6 where you're headed to concerning the path of the
7 bullets and the trajectory and distance and angles
8 and that sort of thing. So, let's see if he's
9 qualified to render opinions on that.

10 MR. SCOTT: Well, Judge, just before we get
11 there, if you would consider this -- I had it in my
12 mind, I've got a case that, basically -- he's not
13 testifying as an expert. It would be my contention
14 that what he's testifying to does not require any
15 special knowledge, skill or experience. That's one
16 of the prongs. It says if a witness is not
17 testifying as an expert, his testimony in the form of
18 opinions are inferences. It's limited to those
19 opinions or inferences which are rationally based on
20 the perception of the witness, that's one, or helpful
21 for a clear understanding of his testimony, or the
22 determination of a fact at issue, that's two, and
23 three, does not require special knowledge, skill or
24 experience or training. And then it list a citation
25 In Re: Thomas 402 S.C. 373. It's just my contention

1 that this is not something that requires special
2 skill or training. He's going to talk about bullet
3 holes entering on the right of the house and winding
4 up somewhere on the left interior, which anybody --

5 THE COURT: Okay. Let's do this then, let's
6 handle it in this fashion, go ahead and examine
7 Officer Holmes concerning what you want him to
8 testify to. Let's just hear from start to finish
9 concerning this particular issue. I'm not talking
10 about go through his whole direct, but on this
11 particular issue and then let's just see where we go
12 from there.

13 BY MR. SCOTT:

14 Q Okay. Let me just direct you one more time,
15 Barton, so on the right of the residence is where you
16 perceived these holes?

17 A That's correct.

18 Q We can agree they were holes, right?

19 A They were holes, yes, sir.

20 Q And when you photographed the interior, where in
21 this picture -- I guess, what I'm trying to, I guess, ask
22 you is where was the TV?

23 A If you were to walk in the front door of the
24 residence as is situated in that photograph, it would be
25 at the far end of that room that you walk into, kind of

BARTON HOLMES-DIRECT BY MR. SCOTT

1 situated on the left.

2 Q Okay. So, if I walk in that door and take a
3 left, the TV is over --

4 A Well, if you walk in the front door, maybe at
5 like 10:00 or 11:00 o'clock in that back corner kind of
6 facing the door.

7 Q Okay. How about the bathroom, that picture we
8 saw of the bathroom, where was --

9 A The bathroom was in the back right of the
10 residence. So, you walk in the front door, there was a
11 hallway to the right.

12 Q All right. Let's see. Okay. Incident report,
13 one shot entered through the front right side of the
14 house, traveling through the bathroom, the living room and
15 the back bedroom in a right to left direction. Second
16 shot entered from the right side of the house, traveling
17 through a bedroom into the living room and striking a TV
18 that was situated in the back left corner of the living
19 room in a right to left direction.

20 So, tell me, if the bathroom is to the
21 right, why are you writing in here that the bullet would
22 have gone front right side of the house, traveling through
23 the bathroom, living room and back bedroom in a right to
24 left direction?

25 A I may have worded slightly confusing in the

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1 report, but my recollection, it said the right side of the
2 house, I meant kind of that right face of the house. It's
3 kind of hard --

4 Q If the Judge will let you, would you step down
5 and just kind of point out a few things for us?

6 THE COURT: Sure.

7 BY MR. SCOTT:

8 Q Show the Judge where, if you can recall -- this
9 should be helpful. If you look at State's No. 2 up here,
10 I note that there's a -- I guess, a handrail there just
11 directly under the bullet hole?

12 A Correct.

13 Q Okay. Now, point on this where that handrail
14 would have been.

15 A I believe it's in this area right in there.

16 Q Okay. State's No. 1, there's really no other
17 landmark to gauge where that is, but do you recall where
18 that bullet hole is now?

19 A To the best of my memory, again, they were
20 impacts on the front side as well as that right side,
21 which, obviously, isn't captured in the front face of the
22 house.

23 Q Now, generally, show where the interior bullet
24 holes would have been seen?

25 A They were in this bedroom right here as well as

BARTON HOLMES-DIRECT BY MR. SCOTT

1 a living room that was directly through the front door.

2 Q Okay. All right. Now, I'm confused because the
3 bullet holes are right in here. How are you winding up
4 with a bullet hole back in that bedroom if it's going from
5 a right to left direction?

6 A It was traveling that way. The other bullets
7 were coming in from that way as well.

8 Q Okay. So, that would indicate that one of your
9 bullet holes would have been here, is that what you're
10 saying now?

11 A Again, I can't remember the exact location of
12 it, but in that area on this side of the house.

13 Q Okay. Thank you. You can take the stand.

14 A (The witness complies.)

15 Q I guess what I'm trying to explain here is how
16 were you able to determine the trajectory of these
17 bullets? Did you need expertise in that field to make
18 that determination?

19 A No. Again, I mean, it was -- it was obvious by
20 looking at it based on the witnesses on the scene, you
21 know, saying where the vehicle was in the yard and where
22 they thought the shots came from, gave you a good point of
23 reference to -- you know, the impacts inside the house, it
24 lined up.

25 Q Okay. So, that's what you're saying, all you

BARTON HOLMES-DIRECT BY MR. SCOTT

1 were doing was lining up holes in the house and then in
2 the interior?

3 A I mean, not necessarily. I'm just using
4 information that the witnesses were giving.

5 Q Okay.

6 THE COURT: You know, I think he can --
7 certainly, he can testify -- subject to his objection
8 that Mr. Adducci said he can't call them bullet holes
9 and I said he can. He can say, okay, I found four
10 bullet holes -- and I'm just using this as an
11 example. Four bullet holes on the outside, here's
12 the location. I found four bullet holes inside or
13 impacted bullets and here's the location. But I
14 don't think he can testify, Okay, this entrance hole
15 corresponds to this hole here inside and this
16 entrance hole corresponds to this hole here. I don't
17 think he can do that. I don't think he's qualified
18 to do that. So, I'm not going to let him testify,
19 but he can testify what he observed.

20 MR. SCOTT: Okay.

21 THE COURT: Does that make sense, Solicitor?

22 MR. SCOTT: Yes, sir, it does.

23 MR. ADDUCCI: That's exactly what was going to
24 be my recommendation. If he just says, you know, we
25 see a hole here, we see a hole here, we see what we

BARTON HOLMES-DIRECT BY MR. SCOTT

1 think is impact there --

2 THE COURT: Right.

3 MR. ADDUCCI: -- do with that what you may to
4 the jury. I think that's appropriate. I just don't
5 think that him testifying, again, to trajectory --

6 THE COURT: Apart from the holes being bullets,
7 and I understand that. Okay. All right. So, that's
8 how I rule. He can testify what he observed, but
9 really can't go beyond that.

10 MR. SCOTT: Okay.

11 THE COURT: All right. Anything further on this
12 issue before we bring the jury out?

13 MR. ADDUCCI: No, sir.

14 MR. SCOTT: No, Your Honor.

15 THE COURT: Are you offering those into
16 evidence?

17 MR. SCOTT: I'm going to. You want me to do it
18 in front of the jury?

19 THE COURT: Wait until the jury comes out, I
20 just wanted to make sure.

21 All right. Mr. Bolt, if you'll bring the jury
22 out, please.

23 THE BAILIFF: Judge, may I speak with you?

24 THE COURT: Y'all just come up here.

25 (WHEREUPON, an off-the-record bench conference

BARTON HOLMES-DIRECT BY MR. SCOTT

1 was held.)

2 THE COURT: Okay. Let me put on the record what
3 I just discussed with the lawyers sidebar. Mr. Bolt
4 has just informed me that one of the jurors did not
5 recognize Mr. Glenn, who's seated in the courtroom,
6 one of the alleged victims, but now recognizes him.
7 And what I'm going to do is bring her out and examine
8 her concerning her relationship or knowledge of
9 Mr. Glenn and see if that has any effect on her
10 ability to be fair and impartial in this case.

11 And the juror, again, Mr. Bolt, is who?

12 THE BAILIFF: Ms. Anderson.

13 THE COURT: Okay, Vivian Anderson, Juror No. 6.

14 Now, if you'll bring just Ms. Anderson out,
15 please.

16 (WHEREUPON, Juror No. 6, Vivian Anderson, enters
17 the courtroom.)

18 THE COURT: Hi, Ms. Anderson.

19 THE JUROR: Hey.

20 THE COURT: Before I ask you anything, it's just
21 my understanding that you told Mr. Bolt, our bailiff,
22 that you did not recognize Mr. Glenn initially, but
23 that you do now.

24 Madam Clerk, would you swear Ms. Anderson,
25 please.

JUROR VIVIAN ANDERSON-EXAMINATION BY THE COURT

1 THE CLERK: Raise your right hand, please.

2 VIVIAN ANDERSON, after being duly
3 sworn, testified as follows:

4 EXAMINATION

5 BY THE COURT:

6 Q All right. You are Vivian Anderson?

7 A Uh-huh.

8 Q And you informed Mr. Bolt that John Glenn, who
9 is one of the alleged victims in this case, that you did
10 not recognize him initially, but that you now do; is that
11 correct?

12 A I didn't recognize his name, but they call him
13 something else, but that's my son-in-law's brother.

14 Q Your son-in-law's brother. And because we have
15 not referred to him by a nickname, you did not put the two
16 and two together?

17 A No.

18 Q The fact that you now realize that your
19 son-in-law's brother is involved in this case, would that
20 prevent you from being fair and impartial?

21 A No.

22 Q You can still be fair and impartial in this case
23 even though you know Mr -- how well do you know him, the
24 fact that it's your son-in-law's brother?

25 A I just know that -- you know, I just know it's

JUROR VIVIAN ANDERSON-EXAMINATION BY THE COURT

1 my son-in-law's brother. We don't mingle together or
2 anything. I just know that it's his brother.

3 Q You don't associate with him at all?

4 A No.

5 Q All right.

6 THE COURT: Okay. The State have any questions
7 you would like to ask Ms. Anderson?

8 MR. SCOTT: No, I don't, Your Honor.

9 THE COURT: Mr. Adducci?

10 MR. ADDUCCI: We would ask the Court to inquire
11 with the juror if her relationship with Mr. Glenn
12 would lead her to be more or less likely to believe
13 his testimony.

14 THE COURT: Okay. The fact that Mr. Glenn is
15 related by -- related to your son-in-law, would that
16 make you more likely to believe his testimony or less
17 likely to believe his testimony? Would that have any
18 effect on your determination of the credibility and
19 truthfulness of his testimony?

20 JUROR ANDERSON: No.

21 THE COURT: Okay.

22 MR. ADDUCCI: Thank you, Your Honor.

23 THE COURT: All right. Thank you, ma'am. You
24 can go back to your jury room. Thank you for your
25 honesty, I appreciate it.

JUROR VIVIAN ANDERSON-EXAMINATION BY THE COURT

1 All right. Does the State have any position in
2 this matter?

3 MR. SCOTT: No, Your Honor.

4 THE COURT: Okay. The Defense?

5 MR. ADDUCCI: No, Your Honor.

6 THE COURT: And the Court feels comfortable. I
7 think she was forthcoming with disclosing her very
8 limited relationship with Mr. Glenn. So, without
9 objection, we will keep her on the jury.

10 All right. Ready to bring the jury out?

11 MR. SCOTT: Yes, sir.

12 MR. ADDUCCI: Yes, Your Honor.

13 THE COURT: All right, Mr. Bolt. You're going
14 to get your exercise today.

15 (WHEREUPON, the jury came into open court at
16 approximately 4:13 p.m.)

17 THE BAILIFF: All jurors present, Your Honor.

18 THE COURT: Thank you, very much.

19 Ladies and gentlemen, I told you you were going
20 to get some exercise.

21 Okay. All right. State ready to continue with
22 examination of Officer Holmes?

23 MR. SCOTT: I am, Your Honor.

24 THE COURT: Okay.

25 MR. SCOTT: The State has published and the

1 State would offer State's 1 through 12 for admission
2 into evidence as well.

3 THE COURT: Okay.

4 MR. ADDUCCI: Without objection, Your Honor.

5 THE COURT: Okay. Without objection, 1 through
6 12 into evidence on behalf of the state.

7 (WHEREUPON, State's Exhibits Nos. 1 - 12 were
8 admitted into evidence.)

9 DIRECT EXAMINATION

10 BY MR. SCOTT:

11 Q Those were the pictures we went over?

12 A That's correct.

13 Q And how many exterior holes do you recall?

14 A I believe there were three that I observed.

15 Q Okay. And then -- do you have your incident
16 report?

17 A I have a digital copy, but I don't have the
18 paper copy.

19 Q Do you recall what interior rooms you saw holes?

20 A It would have been one of the bedrooms and
21 bathroom and living room.

22 Q Okay. So, one bedroom, one bathroom and living
23 room? Here, take a look and see if this refreshes your
24 memory.

25 A That would be correct.

1 Q So, the living room, that would have been the
2 TV?

3 A Yes.

4 Q All right. So, that night, were you given a
5 description of the person?

6 A The information provided to me by the people on
7 scene was that they could not provide a name to me, just
8 that he was a black male.

9 MR. ADDUCCI: Objection, Your Honor, hearsay.

10 THE COURT: All right. They provided a
11 description, but not the name, okay. All right.

12 That, in and of itself, would not be hearsay, so I
13 overrule the objection.

14 BY MR. SCOTT:

15 Q So, you were given a description of the person
16 that night?

17 A That's correct.

18 Q And you mentioned you weren't given -- you
19 weren't given a name. Were you advised of the familiarity
20 with the person?

21 A I was told by Ms. Irby --

22 MR. ADDUCCI: Objection, Your Honor.

23 THE COURT: The nature of your objection?

24 MR. ADDUCCI: Hearsay as to what Ms. Irby stated
25 to the officer.

1 THE COURT: All right. Again, I think it goes
2 back to it's not offered for the truth of the matter
3 asserted, it's only part of his investigation, the
4 information gathered. And I'll overrule it.

5 MR. ADDUCCI: Thank you, Your Honor.

6 BY MR. SCOTT:

7 Q Okay. So, did any witnesses express that they
8 were familiar with the shooter?

9 A Yes.

10 Q Okay. And did any eyewitness express actually
11 seeing the shooting being done?

12 A I believe, according to my incident report, I
13 was told they were inside the residence.

14 Q Are you familiar with a Tiffany Garrett?

15 A She was on the scene that night.

16 Q To your recollection, did she express seeing the
17 shooting being done? Do you recall where she was when the
18 firing went on?

19 A I can't recall specifically where Ms. Garrett
20 was.

21 Q What else did you do that night?

22 A Again, as the responding deputy, reporting
23 deputy, just got complaints, information, took
24 photographs. I believe I was on scene for approximately
25 an hour.

1 Q So, the shooter was gone by time you got there,
2 is that what you're saying?

3 A Yes, sir.

4 Q Then as the road deputy, what do you do with the
5 case? Who do you turn it over to next?

6 A As the responding officer, obviously, we have to
7 make a lot of calls. If we don't have a clear and
8 defining suspect and it's a crime of this nature, we would
9 pass it off to one of our investigators for followup.

10 Q And that's what you do now; is that right?

11 A Correct.

12 Q But at the time, you were a road deputy, so you
13 would have passed it on to another investigator to follow
14 up the leads you had generated?

15 A Correct. I would generate the report and pass
16 it on.

17 Q Okay. Let me go ahead and get this in.

18 (WHEREUPON, State's Exhibit No. 15 was marked
19 for identification in prior testimony.)

20 BY MR. SCOTT:

21 Q You got the address, Boyd Road?

22 A Yes.

23 Q State's No. 15. Do see the address of
24 Boyd?

25 A I do.

1 Q Would you point to it for the jury?

2 A (The witness complies.)

3 Q Was there a general area you were looking for
4 evidence of the shooting where the shots were said to have
5 come from?

6 A That being Boyd Road, that being we were
7 searching this general area for evidence.

8 Q You recognize this? I went through that.

9 MR. SCOTT: State offers State's 15 for
10 admission into evidence, Your Honor.

11 MR. ADDUCCI: Without objection, Your Honor.

12 THE COURT: Without objection, State's 15 into
13 evidence for the State.

14 (WHEREUPON, State's Exhibit No. 15 was admitted
15 into evidence.)

16 BY MR. SCOTT:

17 Q And the evidence that you have in a shooting
18 situation, you were looking for shell casings?

19 A Correct.

20 Q Did you ever find the shell casings?

21 A I did not, no.

22 Q You didn't that night?

23 A No.

24 Q You're an investigator now, do you always find
25 shell casings at shooting scenes?

BARTON HOLMES-CROSS BY MR. ADDUCCI

1 A No, we do not.

2 Q Do all guns eject shell casings?

3 A No.

4 Q What type of guns would not eject -- except for
5 manually, which kind of guns would not eject shell
6 casings?

7 A Revolvers contain shell casings.

8 Q Okay. So, that's all you did that night, you
9 turned over to the investigators after you were done?

10 A That's correct.

11 MR. SCOTT: Answer any questions that

12 Mr. Adducci has for you.

13 THE COURT: Okay. Cross-examination?

14 MR. ADDUCCI: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. ADDUCCI:

17 Q Deputy Holmes, you indicated that you arrived
18 after 11:00 in the evening that day?

19 A That's correct, I believe around 11:15.

20 Q And how long between when you received your
21 dispatch and you arrived on the scene?

22 A I want to say, I believe about six minutes, six
23 or seven minutes.

24 Q It wasn't immediate, but it wasn't too long
25 afterwards?

BARTON HOLMES-REDIRECT BY MR. SCOTT

1 A Correct.

2 Q And about how many people were present that
3 night?

4 A I didn't take a head count, but I would say
5 maybe a dozen or so.

6 Q And that day you were wearing a body cam,
7 correct?

8 A That's correct.

9 Q And that video has since been destroyed,
10 correct?

11 A I don't know whether it was destroyed or not,
12 but I don't have possession of it.

13 Q And that body cam footage would have had all of
14 the interviews you did that day?

15 A It was -- the way I operate, any time I got out
16 of my car and encountered people in the community on
17 calls, I would have that body camera running. So,
18 anything that's within earshot of me, it should have
19 recorded.

20 MR. ADDUCCI: Nothing further, Your Honor.

21 THE COURT: Okay. Anything in redirect?

22 REDIRECT EXAMINATION

23 BY MR. SCOTT:

24 Q Do you recognize these two people?

25 A Yes.

BARTON HOLMES-REDIRECT BY MR. SCOTT

1 Q Would you have interviewed them that night or
2 spoken with them at the scene?

3 A I spoke with them on the scene, yes.

4 Q Do you understand they're subpoenaed to testify
5 here today?

6 A Yes.

7 Q Okay. Essentially, what he asked you, your body
8 cam would have just recorded what they were telling you
9 that night on the scene?

10 A Yes.

11 Q But we're going to hear from them when they take
12 the stand?

13 A Yes.

14 MR. SCOTT: Nothing further.

15 MR. ADDUCCI: No recross, Your Honor.

16 THE COURT: Okay. Thank you, Officer Holmes.
17 You can step down.

18 State may call your next witness.

19 MR. SCOTT: State calls John Glenn, Your Honor.

20 THE COURT: Okay. Come around, please, sir.

21 THE CLERK: Place your left hand on the Bible,
22 raise your right hand, please.

23 JOHN GLENN, after being duly sworn,
24 testified as follows:

25 THE CLERK: Thank you.

JOHN GLENN-DIRECT BY MR. SCOTT

1 MR. ADDUCCI: Your Honor, may we approach real
2 quick?

3 (WHEREUPON, an off-the record a bench conference
4 was held in the presence of the jury but out of
5 the hearing of the jury.)

6 DIRECT EXAMINATION

7 BY MR. SCOTT:

8 Q Okay, John, where do you live?

9 A Boyd Road.

10 Q How long have you been there?

11 A Fourteen years.

12 Q Okay. Let's get to March 31st, 2012, what was
13 going on that day?

14 A We was throwing the grandkids a birthday party.
15 Then after that, we sat around and had a little party
16 ourselves.

17 Q Okay. And so the party, I guess, began during
18 the daytime hours?

19 A Yes.

20 Q What kind of party was it?

21 A Well, it just really like a little get-together.
22 After we had kids a party, we put stuff on the grill for
23 us to eat.

24 Q What was the kids' party? Were there other
25 little kids there?

JOHN GLENN-DIRECT BY MR. SCOTT

1 A Yeah, it was, I think, about 12, 12 total.

2 Q Okay. Who was the party actually for?

3 A Saliyh.

4 Q Saliyh?

5 A Yeah, Saliyh.

6 Q Was that her four-year-old birthday party?

7 A Yes.

8 Q Who all do you remember being there besides the
9 children?

10 A I remember Willie James was there. Tiffany and

11 --

12 Q You said Tiffany?

13 A Yeah, Tiffany was there. Sarah, she was there.

14 Q Tiffany, you're talking about Tiffany Garrett?

15 A Yeah.

16 Q Then Sarah, that's Sarah Irby, is that who
17 you're talking about?

18 A Yeah, Sarah, she was there.

19 Q Sarah is who to you?

20 A My wife.

21 Q Tiffany is who?

22 A Step-daughter.

23 Q Anybody else -- what, if anything, was going on
24 across the street? Do you recall anything going on in
25 another house on Boyd?

JOHN GLENN-DIRECT BY MR. SCOTT

1 A No. I didn't -- well, everybody came over to
2 our house, so I didn't see nothing else going on on the
3 street.

4 Q Okay. Tell me about -- you're a Mason; is that
5 right?

6 A Yes, sir.

7 Q How long you been a Mason?

8 A Eight years.

9 Q Okay. Is that something -- it sounds like
10 something pretty important to you, is that fair to say?

11 A Yes, very important.

12 Q I notice you have a tattoo. What's that symbol,
13 Masonic symbol there?

14 A Yes, it's the likes of Mason.

15 Q It's what?

16 A The likes.

17 Q I'm not asking you to tell all your secrets. Is
18 that a symbol -- is that one of the symbols of the Masons?

19 A Yes.

20 Q Then I saw your ring, is that the same symbol on
21 there?

22 A Same symbol.

23 Q Is that something you're proud of, to be a
24 Mason?

25 A Oh, yeah.

JOHN GLENN-DIRECT BY MR. SCOTT

1 Q Was this a topic of discussion at this party at
2 some point?

3 A Yes, Willie James, he had approached me about
4 joining the Masons. He wanted to talk to me. So, I had a
5 bench right there. I said I can't tell him so much, but I
6 can tell him a little bit. After that, we started talking
7 and that's when everything started.

8 Q You said you couldn't tell him -- you could tell
9 him a little bit about it?

10 A Yeah, it so much I can tell.

11 Q Because a lot of it is like secret or something?

12 A Yes.

13 Q So, you were trying to tell him, -- some of the
14 things about the Masons, you were able to disclose, but
15 not everything, is that what you're saying?

16 A Mostly telling him about the qualifications to
17 be a Mason.

18 Q Then you said that's when all of that started
19 happening, what's all that?

20 A We was talking and somebody came around me and
21 said they was a percenter.

22 Q Look, everybody in here's a grownup.

23 A Yeah.

24 Q I don't understand. Tell me what he said?

25 A I'm a motherfucking five percenter.

JOHN GLENN-DIRECT BY MR. SCOTT

1 Q That's what the person came up to you and said?

2 A Yes.

3 Q Did you recognize this person?

4 A No, I looked back. I didn't recognize him. I
5 kept asking, Who is you?

6 And, you know, motherfucking five.
7 percenter.

8 So, we started cussing each other and
9 cussing each other. And I told him, I said, Man, just get
10 out the yard. I said, I don't even know you.

11 Q Okay. Describe -- you're having a conversation
12 about the Masons with Willie James and then this other
13 individual comes up and gets involved with y'all's
14 conversation?

15 A Yes.

16 Q Did you see where he came from?

17 A He came up from behind.

18 Q All right. Let's see. State's No. 15, is
19 that right?

20 A Right.

21 Q All right. Where were you standing in the yard
22 when this --

23 A I was standing about right there.

24 Q In that backyard?

25 THE COURT: What you're going to need to do,

JOHN GLENN-DIRECT BY MR. SCOTT

1 kind of set that up a little bit. I don't want to
2 block the court reporter's view of this witness. And
3 make sure you speak up a little louder, Mr. Glenn. I
4 know you want the jury to see it.

5 MR. SCOTT: Probably what I'll do, Judge, is
6 just have him come down from the stand.

7 THE COURT: Mr. Glenn, be sure to speak up very
8 loud because you will not have the benefit of the
9 microphone and we need to make sure we hear you,
10 okay?

11 BY MR. SCOTT:

12 Q All right. What's this road right here?

13 A That's Boyd Road.

14 Q Boyd Road. Can you stand so all the jurors can
15 see where you're pointing? You've already indicated
16 that's your home?

17 A Right.

18 Q All right. And what would you call the front
19 yard?

20 THE COURT: All right, Mr. Glenn, you're going
21 to need to speak up.

22 THE WITNESS: This is the front right here.

23 THE COURT: There you go.

24 BY MR. SCOTT:

25 Q Now, whereabouts were you -- is this the

JOHN GLENN-DIRECT BY MR. SCOTT

1 driveway right here?

2 A Yes.

3 Q Whereabouts were you standing when you were
4 talking to Willie James?

5 A I was on the left side.

6 Q Point to it on there.

7 A (The witness complies.)

8 Q Okay. All right. If you're facing the house,
9 that would be more to the right, is that fair to say?

10 A Yeah. Yeah.

11 Q Where is this guy who got into your
12 conversation, where did he come from?

13 A I was sitting at the table and he came in that
14 direction.

15 Q Did you see him walking up?

16 A No, I didn't see him.

17 Q He approaches your home from this direction?

18 A Yeah.

19 Q And the first time you're aware of him is
20 whenever he's telling you he's a five percenter?

21 A Yes.

22 Q I'm not asking you to describe what that means,
23 but does that have anything do with Masons?

24 A No. Has something to do --

25 Q As long as it's not anything to with the Masons.

JOHN GLENN-DIRECT BY MR. SCOTT

1 You can take stand.

2 A (The witness complies.)

3 Q But your testimony, you're having this
4 conversation about the Masons with Willie James, this guy
5 comes up, butts in about being a five percenter and you
6 said he was cussing?

7 A Yes.

8 Q What did you tell him to do at that time?

9 A I told him I didn't know him, get out of my
10 yard.

11 Q Did you recognize this guy?

12 A No, I didn't know him.

13 Q You hadn't ever seen him before then?

14 A Never saw him.

15 Q And you told him to get out of your yard. Where
16 did Bill Cunningham live at this time?

17 A Right across -- directly across the street.

18 Q Let me show you this, if you can see it from
19 there. If that is did Bill live in this home or
20 this home? That's the house with the tin roof.

21 A Yeah, that's the one with the tin roof.

22 Q That's where Bill lived, in this home?

23 A Yes.

24 Q Did you see him that night to your recollection?

25 A No.

JOHN GLENN-DIRECT BY MR. SCOTT

1 Q Okay. Well, after you told this guy to get out
2 of your yard, how did he take it?

3 A Well, we started cussing each other again. I
4 said, Man, just get out of my yard, I don't even know you.
5 And I turned around and went in the house.

6 Q What did he say when you told him to leave?

7 A Still cussing, I mean. I was walking off.

8 Q Did he appear to be intoxicated to you?

9 A I can't say.

10 Q Do you have any personal knowledge of why he
11 would have come up to you and been so aggravated and
12 agitated and belligerent?

13 A No, because I never knew him.

14 Q Okay.

15 A But I later know that Willie James knew him.

16 Q You knew what now?

17 A I found out later on that him and Willie James
18 were kin.

19 Q Were kin?

20 A Yeah.

21 Q Okay. All right. So, after you told him to
22 leave, did he leave?

23 A I walked in the house. Right when I walked in
24 the house, that's when everything started happening.

25 Q When you walked in the house, tell me what

JOHN GLENN-DIRECT BY MR. SCOTT

1 happened.

2 A When I walked in the house, about the time I sat
3 down -- got ready to sit down, I heard bullets flying.
4 And when I sat down, a bullet went past me and hit the TV.

5 Q How do you know it went past you?

6 A I felt it. I was sitting down in the chair when
7 the bullet -- when it came through the trailer, it went
8 straight pass me into the TV.

9 Q You were in front of that TV that we saw a
10 picture of?

11 A Yes, sir.

12 Q Did you see the interior hole where it came into
13 house?

14 A Yes, sir.

15 Q How close was it to you?

16 A It was probably about from here to you.

17 Q Okay. And so you could hear it whiz by your
18 head is what you're saying?

19 A Yeah, I felt it when it went through.

20 Q Were you sitting beside the wall that it came in
21 through?

22 A Yeah, I was sitting -- it came at an angle,
23 that's how it went past me. I was sitting in the corner
24 in a chair and it went past me.

25 Q Is that chair in the middle of the living room?

JOHN GLENN-DIRECT BY MR. SCOTT

1 A Yes.

2 Q Okay. What did you do next?

3 A I ducked.

4 Q Okay. Then after that, what did you do?

5 A Then I jumped up, you know, and tried to look,
6 but didn't see nothing.

7 Q When you ran outside, you tried to look?

8 A Yeah.

9 Q You didn't see anything at that point?

10 A No, I didn't see anything. They done took off.

11 Q Okay. Have you since that time met somebody,
12 met Patrick McGowan?

13 A Yes.

14 Q Tell me about how you came to -- and where did
15 you meet Patrick McGowan?

16 A With James -- well, two guys brought him to the
17 house talking about the incident.

18 Q And what did Willie -- not what Willie James
19 said or anybody else, but what did Patrick McGowan say to
20 you?

21 A Told me they just wanted to --

22 MR. ADDUCCI: Objection.

23 THE COURT: Wait a minute, sir.

24 MR. ADDUCCI: If we can approach?

25 THE COURT: Yes.

JOHN GLENN-DIRECT BY MR. SCOTT

1 (WHEREUPON, an off-the-record bench conference
2 was held in the presence of the jury but out of
3 the hearing of the jury.)

4 THE COURT: Solicitor, you want to maybe kind of
5 go back where you were on the question.

6 MR. SCOTT: Yes, Your Honor.

7 BY MR. SCOTT:

8 Q Mr. Glenn, you said that since this incident
9 that a man named Patrick McGowan came to your house?

10 A Yes, sir.

11 Q More than once?

12 A Twice.

13 Q Okay. And what did he say to you?

14 A He told me that he wanted to get this stuff over
15 with, replace my TV and stuff.

16 Q He would replace your TV to get this over with?

17 A Yes.

18 Q And Patrick McGowan, did he tell you that was
19 his name?

20 A No, he didn't tell me his name.

21 Q How did you find out he was Patrick McGowan?

22 A I found out later on. Because he went by
23 another name. I found out later on his real name was
24 Patrick McGowan.

25 Q When he showed up to your house the first time

JOHN GLENN-DIRECT BY MR. SCOTT

1 and said he'd pay for your TV, did you recognize him?

2 A Yes.

3 Q How did you recognize him?

4 A I had saw him. I had saw him a couple of times
5 after that happened.

6 Q I'm trying to link it back to the night of the
7 shooting. Was this the guy you're saying --

8 A Oh, yes, yes. Yeah, that's the one I was
9 arguing with, yes.

10 Q That's your testimony --

11 A Yes.

12 Q -- the guy you argued with about being a five
13 percenter was the guy who said he would pay for your TV?

14 A Yes.

15 Q And you recognized that to be the same man?

16 A Yes.

17 Q Do you see that same man in court today?

18 A Yes.

19 Q All right. Where is this man?

20 A Right there.

21 Q Okay. So, he came to your house twice saying, I
22 want to get this over with, I'll pay for your TV?

23 A Yes.

24 Q Those bullet holes still in your house?

25 A Yes.

JOHN GLENN-DIRECT BY MR. SCOTT

1 Q Tell us where they all are.

2 A Bedroom, bathroom, living room.

3 Q Okay. Who all was in the house whenever the
4 shots started coming in?

5 A Me, Sarah Irby and my granddaughter.

6 Q That's Saliyh?

7 A Saliyh.

8 Q Is that the four-year-old?

9 A Yes, sir.

10 Q All right. Do you know where Sarah was whenever
11 the bullets came in the house?

12 A Well, she was -- she just had came out the
13 bathroom.

14 Q She was in the bathroom?

15 A Yeah, she was in the bathroom. She just had
16 came out. Then when it started -- we was arguing, I told
17 her to come get me. I had made it in the house and when
18 the shooting started, she ran outside.

19 Q Did you have a gun that night?

20 A No.

21 Q Did you ever threaten Patrick McGowan that
22 night?

23 A No.

24 MR. SCOTT: Okay. Answer any questions

25 Mr. Adducci has for you, okay?

JOHN GLENN-CROSS BY MR. ADDUCCI

1 THE COURT: Cross-examination?

2 MR. ADDUCCI: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. ADDUCCI:

5 Q About what time did this party start, do you
6 remember?

7 A For the kids or grownups?

8 Q For the kids, let's start there.

9 A About 2:00.

10 Q Two o'clock?

11 A Yeah.

12 Q Okay. And what time did the grownups start
13 arriving?

14 A Started getting dark. I guess, come around
15 maybe 9:00.

16 Q And is that when you guys put the kids to bed?

17 A Yes, because some of the grownups was still
18 there. Some of them left, so rest of them probably come
19 around about 9:00.

20 Q And you said it started getting dark around
21 9:00 o'clock.

22 A Yes.

23 Q Now, was there another party going on across the
24 street?

25 A No.

JOHN GLENN-CROSS BY MR. ADDUCCI

1 Q No?

2 A I didn't see none.

3 Q Now, how many adults were at your party around
4 11:00 that evening?

5 A Ten, 12.

6 Q Ten, 12 folks? Were there any other arguments
7 between folks before this?

8 A (The witness shook his head.)

9 THE COURT: You need to verbally respond.

10 THE WITNESS: No.

11 THE COURT: Thank you.

12 BY MR. ADDUCCI:

13 Q All right. Let me draw your attention to
14 State's Exhibit No. 15. Now, you're what's labeled

15 A Yes.

16 Q All right. Now, this is Boyd Road?

17 A Yes.

18 Q And there are no street lights on Boyd Road,
19 correct?

20 A Yes. It got -- yeah, it got lights in people's
21 yard and stuff.

22 Q No like city street lights?

23 A No. No.

24 Q There's just like a porch light on somebody's
25 house, right?

JOHN GLENN-CROSS BY MR. ADDUCCI

1 A Yeah, we got, you know, regular lights. What
2 you call them, show lights in your yard.

3 Q Okay. But there are no street lights?

4 A Well, I guess you call it a street light, I
5 guess. It's lights people have in their yard and stuff.

6 Q But it was attached to your house, right?

7 A No, no, no. It's -- you pay Laurens Electric so
8 much a month for them.

9 Q Okay.

10 A Night lights.

11 Q How long before you entered the residence before
12 your heard these gun shots?

13 A Probably wasn't a minute.

14 Q And you were sitting on the couch?

15 A Yes. Yes.

16 Q And once you heard the shots, you hit the deck,
17 correct?

18 A Yes, sir.

19 Q How long before you exited the residence after
20 the shots?

21 A Actually when it quit, that's when I went out
22 and looked.

23 Q And everybody went running that was outside?

24 A Yeah, everybody was just running.

25 Q You were interviewed by police that day?

JOHN GLENN-REDIRECT BY MR. SCOTT

1 A Yes.

2 Q About how far from your porch to

3 Mr. Cunningham's house?

4 A Probably about from here to that wall -- that
5 door.

6 Q That's from your porch all the way to

7 Mr. Cunningham's house, you said?

8 A Yeah, uh-huh.

9 Q Crossing the street?

10 A Uh-huh.

11 MR. ADDUCCI: Nothing further, Your Honor.

12 THE COURT: Okay. Any redirect, Solicitor?

13 REDIRECT EXAMINATION

14 BY MR. SCOTT:

15 Q Those street lights you were talking about, can

16 you label those on the poster?

17 A Can I label them?

18 Q Yeah, can you tell where they are?

19 A They were night lights.

20 Q You say it's like Laurens Electric will come
21 hang on a post for you?

22 A Yes.

23 Q Does it light up your yard pretty good?

24 A Yes. Got some, neighbors got them, too.

25 Q Okay. Do you think you can kind of label about

JOHN GLENN-REDIRECT BY MR. SCOTT

1 where on this? Take one of these yellow stickers and put
2 where the lights are?

3 A (The witness complies.)

4 Q

5 A Right. Here's Cunningham.

6 THE COURT: If you're going to speak while
7 you're putting stickers on, you're going to need to
8 speak up. Otherwise, put the stickers on, then
9 answer whatever other questions that the Solicitor
10 has for you.

11 BY MR. SCOTT:

12 Q Just put the stickers in your yard and Bill's
13 yard and wherever else you know street lights to be.

14 A (The witness complies.)

15 Q Are there any in your yard?

16 A Yes.

17 Q What about your front yard? Are they flood
18 lights or are they just bulbs?

19 A Yeah, bulb lights.

20 Q But you have those along the front porch?

21 A Yes.

22 Q How about State's No. 14, do you kind of see
23 where you and Mr. McGowan first met?

24 A It's not on there. It was further that way.

25 Q Further to the right of this picture?

JOHN GLENN-REDIRECT BY MR. SCOTT

1 A Yeah.

2 Q Okay. So, State's No. 14, it would have just
3 been over just outside of this frame is what you're
4 describing?

5 A Yes.

6 Q Okay. But you talk about porch lights up under
7 here?

8 A Yes.

9 Q Did those help light up your yard?

10 A Yes.

11 Q And you said it was just about a minute after
12 the argument that you went inside and heard the shots
13 being fired?

14 A Yes, less than a minute.

15 Q Was there anybody else there that night that you
16 got in an argument with?

17 A No.

18 Q Was anybody else there cussing at you?

19 A No.

20 Q Okay. Just the one guy who you identified in
21 court?

22 A Yes.

23 Q Okay. And it was about a minute after that
24 argument that those gunshots went through your house?

25 A Yes.

JOHN GLENN-RECROSS BY MR. ADDUCCI

1 MR. SCOTT: Thank you. Nothing further.

2 THE COURT: Recross, Mr. Adducci?

3 MR. ADDUCCI: Hold on a second, Your Honor.

4 RECROSS-EXAMINATION

5 BY MR. ADDUCCI:

6 Q Have you added or removed any of these lights
7 from your house since the incident?

8 A No.

9 MR. ADDUCCI: Nothing further, Your Honor.

10 THE COURT: Thank you, sir, for your testimony.

11 You can step down.

12 State have any further witnesses for today?

13 MR. SCOTT: Not for today, Your Honor, just
14 based on the time. The next few will be lengthy.

15 THE COURT: All right. Mr. Foreman and ladies
16 and gentlemen of the jury, it looks like we need to
17 go ahead and adjourn for the day. So, I'm going to
18 ask that you be back in your jury room by 9:15 in the
19 morning. I remind you don't discuss anything related
20 to this case with anybody you come in contact with.
21 Even if you have a family member that quizzes you
22 pretty good about what all has taken place, tell them
23 that the Judge specifically instructed the jury to
24 have no conversation, no discussion whatsoever about
25 the case. Blame it on me, okay.

1 So, we'll see you bright and early in the
2 morning at 9:15. Be prompt and we'll get started at
3 that time. Have a great evening. Get some rest,
4 too, okay.

5 (WHEREUPON, the jury left open court at
6 approximately 4:51 p.m.)

7 THE COURT: Okay. Mr. Adducci needed to put a
8 couple of matters on the record. Before Mr. Glenn
9 started his testimony, we had a sidebar conference
10 concerning an objection. And then during the course
11 of his testimony, prior to his testimony, about some
12 interaction on two occasions with the Defendant
13 concerning paying some money or whatever, we had a
14 sidebar conversation at that time.

15 So, you need to put those two matters on the
16 record. Be glad to hear from you.

17 MR. ADDUCCI: That's correct, Your Honor. I
18 just argued that the in-court identification is
19 unduly suggestive. He's the only person sitting at
20 the Defense table. And as to the statements by the
21 individual identified as my client to Mr. Glenn,
22 there was damage to a television. He was originally
23 charged with malicious injury to personal property,
24 which would also correlate to a possible tort. It
25 is -- any settlement negotiations or plea

1 negotiations would be not considered admissible at
2 trial. I would argue that any offer to cover the
3 potential damage on a potential tort of injury to
4 property would then be inadmissible at trial.

5 THE COURT: Okay. Solicitor, you want to
6 respond to those two matters?

7 MR. SCOTT: Well, first, that foundation is laid
8 pretty clearly. He talked about seeing that guy and
9 later, the guy shows up at the house attempting to
10 pay him off. Then saying he definitely recognized
11 that man who showed up at his home trying to pay him
12 off as the guy who had pulled the pistol on him --
13 or, rather, he had argued with in his front yard.
14 Then, of course, saying when I asked him have you
15 seen that guy since then, that's when he pointed him
16 out. I don't find that unduly suggestive. He had
17 not -- there was no testimony that he had been shown
18 any pictures or any, I guess, lineups of Mr. McGowan.

19 That argument about the malicious injury is
20 fairly tortured argument. To say that we would not
21 be allowed to introduce evidence of that because it
22 would possibly construed as tort, I think it's clear
23 why the State would offer that. The whole defense
24 here seems to be I wasn't there. It's all ID. It's
25 not like a voluntary-type thing or anything like

1 that. So, I think that the inferences that a guilty
2 party or only somebody connected to this would show
3 up trying to pay off the victim, that is why we
4 offered that. But those are my only responses, Your
5 Honor.

6 THE COURT: Okay. All right. Concerning the
7 in-court identification, I don't think there's
8 anything that would taint the in-court identification
9 because, according to Mr. Glenn's testimony, that the
10 gentleman who approached him after the fact and
11 offered to replace the TV, etcetera, was the same
12 person he had the argument with and the same person
13 that is in the courtroom today, the Defendant. So, I
14 don't think there's anything to taint the in-court
15 identification to cause it to be suggestive in any
16 way. So, I deny your objection on that -- or
17 overrule your objection on that.

18 Concerning the statement of the Defendant to
19 replace the TV and repair the house, you, initially,
20 at sidebar said that that was plea negotiations. Are
21 you abandoning that ground for your objection or is
22 that -- that's what you said at sidebar?

23 MR. ADDUCCI: It's all the same. It's a plea
24 negotiation or a settlement negotiation. Whether it
25 is in the criminal or civil sphere, those sorts of

1 discussion are not admissible.

2 MR. SCOTT: Judge, the State was not party to
3 any plea negotiations, therefore, it's not a plea
4 negotiation.

5 THE COURT: And I believe it's not. I think
6 it's a statement against his interest, which,
7 certainly, the State can argue the inference. You
8 can argue that he never admitted any guilt. So, I'm
9 going to allow it in and overrule your objection on
10 this.

11 MR. ADDUCCI: Thank you, Your Honor.

12 THE COURT: All right. Thank you, very much.

13 We'll get started back at 9:15. If there's
14 anything that needs my attention prior to that, then
15 try to get with me before 9:15 if there is.

16 Otherwise, we'll get started back 9:15, but I'll be
17 here way before then.

18 MR. SCOTT: Judge, he is out on bond. I'll
19 leave that in Your Honor's discretion as far as bond
20 in this case. But I do -- should he stay out on
21 bond, obviously, just not to contact the victims in
22 this case.

23 THE COURT: Okay. All right.

24 Mr. Adducci, your position -- well, I know what
25 your position is, but the basis for your position as

1 far as revoking bond or not?

2 MR. ADDUCCI: Your Honor, this is a four year
3 old case. I don't believe he's been in trouble
4 since. I discussed with him sequestration and not
5 discussing this case with anybody or anybody
6 involved. He has been always great about making
7 contact with me and coming to my office. He's been
8 on the trial docket a few times and he's always come
9 to court. I don't believe there's any reason to
10 revoke his bond.

11 THE COURT: Okay. All right.

12 Mr. McGowan, I have the authority since we have
13 already started the trial to revoke your bond and
14 hold you in custody for the remainder of the trial.
15 I'm not going to do that, but I want to make sure
16 that you understand the importance of several things.
17 One is that you appear back tomorrow and any other
18 days that we're in this trial. I don't know if we'll
19 finish it tomorrow or not. But -- because if you do
20 not show back up, then we will try you in your
21 absence. We will continue with this trial. And
22 Mr. Adducci needs you -- to properly represent you,
23 he needs you here, so understand the importance of
24 coming back tomorrow and any other days that we're in
25 trial. Do you understand that, sir?

1 MR. MCGOWAN: Yes, sir.

2 THE COURT: Okay. And two, it's extremely
3 important not to contact anybody involved in this
4 case insofar as any of the State's witnesses. And
5 don't get into anything tonight and be back here
6 whenever Mr. Adducci wants you back up here in the
7 morning, okay?

8 MR. ADDIS:

9 MR. MCGOWAN: Yes, sir.

10 THE COURT: All right. Thank you, very much.
11 We'll be in recess until 9:30 in the morning.

12 (WHEREUPON, the proceedings were concluded for
13 the day to be reconvened on June 1, 2016.)
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JUNE 1, 2016

(WHEREUPON, the jury came into open court at approximately 9:20 a.m.)

THE COURT: Good morning, everyone. I hope you had a good night's rest. We will proceed with the State's case.

Solicitor, ready to call your next witness?

MS. BOYKIN: Yes, sir, Your Honor. The State calls Sarah Irby.

MR. SCOTT: Your Honor, is the sequestration order still in place?

THE COURT: Yes, it is.

MR. SCOTT: I think a Defense witness came in.

THE COURT: You can come on up, Ms. Irby.

THE BAILIFF: Place your left hand on the Bible, raise your right hand.

SARAH IRBY, after being duly sworn, testified as follows:

BY MS. BOYKIN:

Q Ms. Irby, where do you live?

A Boyd Road.

Q What county is that in?

A Laurens, South Carolina.

Q How long have you lived there?

A About 17 years.

1 THE COURT: Ms. Irby, you need to speak up a
2 little bit, please, ma'am.

3 BY MS. BOYKIN:

4 Q How long again?

5 A About 17, 18 years.

6 Q Okay. Were you living there back in March of
7 2012?

8 A Yes.

9 Q Okay. Do you remember March 31st, 2012?

10 A Yes.

11 Q Okay. Tell me a little bit about what happened.
12 What were you doing that day?

13 A I was having my grandbaby birthday party.

14 Q And what's your granddaughter's name?

15 A Saliyh Reter.

16 Q How old was she turning that day?

17 A Four.

18 Q Four, okay. What time did the party start?

19 A The party started around about 2:00, 230.

20 Q Do you know how many kids were there?

21 A It was right about -- probably about 15 kids or
22 more.

23 Q Who else was there?

24 A Well, I had -- it was good many people there, my
25 kids and my daughter and my husband.

1 Q Who's your husband?

2 A John Glenn.

3 Q Who's your daughter?

4 A Tiffany Garrett.

5 Q What time did the party start dying down?

6 A It start dying down about 5:00, 5:30.

7 Q What happened after that, did y'all stay
8 outside?

9 A Well, yeah, I put the kids in room and stuff.
10 Grownup people started having a get together.

11 Q Were there some people getting down the road, do
12 you know?

13 A No, ma'am.

14 Q You don't know, okay. So after you put the kids
15 to sleep, who all was outside that you remember?

16 A It was a good many people.

17 Q Can you name a few for me, please?

18 A My daughter, Tiffany Garrett, she was still out
19 there, and a couple more.

20 Q Whose else besides Tiffany Garrett?

21 A John Glenn still out there?

22 Q Did you happen to an altercation with your
23 husband that night?

24 A Well, I was inside the house and they come and
25 got me.

1 Q Who came and got you?

2 A One of my friend girls.

3 Q What happened?

4 A I just saw them -- they said come on out and
5 come get Johnny, he out there arguing. I went outside and
6 got him and he came back in the house.

7 Q Okay. When you walked outside, did you see an
8 argument?

9 A When I walked outside, yeah, and I went outside
10 and got him. And I came back in the house.

11 Q Do you see the man he was arguing with that day?

12 A Yes.

13 Q Can you point to him if he's in this courtroom?

14 A Yes, right there.

15 Q Okay.

16 THE COURT: Left or right?

17 THE WITNESS: Right there.

18 THE COURT: Left or right, ma'am?

19 THE WITNESS: Left.

20 THE COURT: All right. Let the record reflect
21 the witness has identified the Defendant.

22 BY MS. BOYKIN:

23 Q Now, Sarah, after you took John back inside,
24 what did you do next?

25 A I went to use the bathroom. And when I used the

1 bathroom, I heard the shots. So, I jumped up and ran and
2 I got my phone and dialed 911.

3 Q All right. Now, you were in the bathroom, you
4 heard a shot?

5 A Yes.

6 Q What happened when you were in the bathroom?
7 Did a shot come in there?

8 A Yes, ma'am. If I hadn't gotten up, I'd been
9 dead.

10 Q All right. Let me show you -- Sarah, I want to
11 show you State's Exhibit 6 and 7. Do you recognize those
12 pictures?

13 A Yes, ma'am.

14 Q What are those pictures of?

15 A Of my bathroom.

16 Q Okay. So, Sarah, did you jump up when the shots
17 came?

18 A Yes, ma'am.

19 Q And if you hadn't jumped up, what would have
20 happened?

21 MR. ADDUCCI: Objection, Your Honor, calls for
22 speculation.

23 THE COURT: Sustained.

24 BY MS. BOYKIN:

25 Q So, Sarah, what was this again?

1 A That was my bathroom.

2 Q Okay. So, is this the mirror in your bathroom?

3 A Yes, ma'am.

4 Q Is this the toilet right here where you were
5 sitting?

6 A Yes, ma'am, where I was sitting.

7 Q So, the shot was right here?

8 A Yes, ma'am.

9 Q Okay. Now, State's No. 6, you said that was
10 also your bathroom?

11 A Yes, ma'am, that's my shower.

12 Q Okay. And I don't know if you can see from
13 there, but is this the other bullet hole?

14 A Yes, ma'am.

15 Q Now, Sarah, you said you jumped up. And what
16 did you do next?

17 A I jumped up and ran outside.

18 Q Okay. Did you have anything with you?

19 A I had my cell phone.

20 Q What did you do with your cell phone?

21 A I called 911.

22 Q Okay. When you jumped and went outside, did you
23 see anything?

24 A Yes, ma'am.

25 Q What did you see?

1 A I seen Patrick running down the road.

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

3 A He had a gun.

4 Q Okay. Now, I asked you this earlier, do you see
5 Patrick in this courtroom today?

6 A Yes, ma'am.

7 Q Can you point to him, please?

8 A Right there.

9 Q On the left?

10 A Yes, ma'am.

11 Q Okay. And you said you saw him running with a
12 gun?

13 A Yes, ma'am.

14 Q Now, was John outside at that point?

15 A No, ma'am, he had came back in the house.

16 Q So, he hadn't come outside yet?

17 A Uh-huh.

18 Q Okay. Now, do you know where the other bullet
19 holes went?

20 A In my kids' room.

21 Q Okay. Now, Sarah, I'm going to show you a few
22 pictures, State's 5, 11, 10, 9, 14 and 12. Could you see
23 if your granddaughter's room is in one of those pictures,
24 if you wouldn't mind taking a look quickly?

25 A (The witness complies.)

1 Q Do you see one in there?

2 A Uh-huh.

3 Q Which one? Could you hand it to me, please?

4 A This one right here.

5 Q So both of these?

6 A Yes, ma'am.

7 Q So, State's Exhibit 11 and 12, right here,

8 Sarah?

9 A Uh-huh.

10 Q Okay. Now, again, what room is this?

11 A That my daughter and my grandbaby room.

12 Q What's her name again?

13 A Saliyh Reter.

14 Q And that was her --

15 A That's her bedroom?

16 Q Was she asleep in the room at that time?

17 A Yes, ma'am.

18 Q Okay. And then, also, this one, you said that
19 is her room as well?

20 A Yes, ma'am.

21 Q Where else were some shots in the house?

22 A Behind my -- behind my front living room door,
23 behind the door in the living room and the bathroom.

24 Q Okay. Did it hit anything inside besides the
25 walls?

1 A It hit my flat screen TV.

2 Q Okay. Sarah, you mentioned that you recognized
3 Patrick?

4 A Yes, ma'am.

5 Q Do you recognize him from any other day?

6 A Yes, ma'am.

7 Q When was that?

8 A He had been up to the house several times.

9 Q Okay. What for?

10 A Tried to get us to settle the money --

11 MR. ADDUCCI: Objection, Your Honor.

12 THE COURT: I could not understand the answer.

13 MS. BOYKIN: Your Honor, I believe she said to
14 settle for money. This is what we talked about
15 yesterday.

16 (WHEREUPON, an off-the-record bench conference
17 was held in the presence of the jury but out of
18 the hearing of the jury.)

19 THE COURT: Objection overruled, consistent with
20 yesterday's ruling.

21 MR. ADDUCCI: Thank you, Your Honor.

22 MS. BOYKIN: Thank you.

23 THE COURT: Could you repeat the question again,
24 Solicitor?

25 MS. BOYKIN: Yes, sir, Your Honor.

1 BY MS. BOYKIN:

2 Q Sarah, what did he come to the house afterwards
3 for?

4 A To settle the money for the TV.

5 Q To settle with money?

6 A Yeah.

7 Q For the TV?

8 A Yes, ma'am.

9 Q What did he say exactly?

10 A He said to keep from going to court, let's
11 squash everything and he would pay for the TV.

12 Q Now, Sarah, did you see John fighting with
13 anyone else that night?

14 A No, ma'am.

15 Q Did you see him fighting or arguing with Patrick
16 the night of March 31st?

17 A No, ma'am.

18 Q Okay. When you came outside, who was he talking
19 to?

20 A When I came and got him outside, he just came on
21 in the house.

22 Q But did you see anyone with him at that point?

23 A No, ma'am.

24 Q Okay. When you came outside after the shots,
25 who did you see?

1 A I seen him running down the road.

2 Q Who did you see running down the road?

3 A Patrick.

4 Q What was he holding?

5 MR. ADDUCCI: Objection, Your Honor, asked and
6 answered.

7 THE COURT: Sustained.

8 MS. BOYKIN: Thank you, Sarah. Answer any
9 questions Mr. Adducci has.

10 THE COURT: Any cross, Mr. Adducci?

11 MR. ADDUCCI: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. ADDUCCI:

14 Q Now, Ms. Irby, you indicated that the party
15 started for the children at around 2:00, that's correct?

16 A Yes, sir.

17 Q And that the children's party was finished at
18 around 5:00?

19 A Yes, sir.

20 Q And that's when the adult party started?

21 A Yes.

22 Q So, about how many people come over for the
23 adult party?

24 A It was about 20 something, over 20.

25 Q Over 20 people. And were they relatives?

SARAH IRBY-CROSS BY MR. ADDUCCI

1 A Yes, half of them. Some of them were friends.

2 Q And friends of yours, you said?

3 A Uh-huh.

4 Q And who were the relatives that were present?

5 A The relatives?

6 Q Yes.

7 A My daughter and John.

8 Q Any other adult relatives?

9 A Well, some I didn't know the name of them, you
10 know, they just came.

11 Q The relatives who you don't know their names?

12 A Uh-huh.

13 Q You indicated some other friends came. Who were
14 those friends that came?

15 A It was a good many of them, friends.

16 Q Can you please provide me with some names?

17 A Most of my friends were Essie -- Essie.

18 THE COURT: If you're going to give names, you
19 need to spell the names for the assistance of the
20 court reporter.

21 THE WITNESS: Well, I'm not no good at spelling,
22 but I can name them, though.

23 BY MR. ADDUCCI:

24 Q What was that first person's name?

25 A Essie James.

SARAH IRBY-CROSS BY MR. ADDUCCI

1 Q Essie?

2 A Essie James.

3 Q Essie James. And who else?

4 A Terry Cunningham.

5 Q And who else?

6 A Drica.

7 Q Drica. Is that a male or female?

8 A A female.

9 Q Okay. Who else?

10 A I think that's all of them now. Just friend and
11 family time.

12 Q And other people from around the neighborhood?

13 A Yes.

14 Q Now, at the adult party, were you guys grilling?

15 A Yes.

16 Q Were you guys drinking?

17 A Yes.

18 Q Was everybody drinking?

19 A Not everybody.

20 Q All right. Were you drinking?

21 A Huh-uh.

22 Q No. Was John drinking?

23 A Yes.

24 Q And what was he drinking that evening?

25 A Gin.

SARAH IRBY-CROSS BY MR. ADDUCCI

1 Q Gin?

2 A (The witness nods.)

3 Q Just straight gin or was it a mixed drink?

4 A Just gin.

5 Q Just straight gin?

6 A Yes.

7 Q And was Tiffany drinking?

8 A Huh-uh.

9 Q No. But were the other folks at the party, were
10 they drinking?

11 A Yeah, some of them.

12 Q Now, when you indicated that you heard shots,
13 you indicated that you were in the bathroom, is that
14 correct?

15 A Yes.

16 Q And you indicated that you were seated?

17 A Yes.

18 Q And not to get too personal, but were your pants
19 down?

20 A Yes.

21 Q And so you then heard the shots?

22 A Yes.

23 Q Pulled up your pants?

24 A Yes.

25 Q And then -- your bathroom doesn't have any

SARAH IRBY-CROSS BY MR. ADDUCCI

1 windows, does it?

2 A No.

3 Q So, you couldn't see outside?

4 A Huh-uh.

5 Q So, then you pulled up your pants and went out
6 of the bathroom?

7 A Yes.

8 Q And you went out of the bathroom and then you
9 had to turn left to get into the living room?

10 A Yeah.

11 Q And then you get in the living room, then you
12 have to turn left again to get out the front door?

13 A Yes.

14 Q Then that's when you stepped out --

15 A That's when I ran out.

16 Q Ran out to the porch?

17 A Uh-huh.

18 Q Okay. And about what time was this?

19 A It's about something after 11:00.

20 (WHEREUPON, Defendant's Exhibit No. 1 was marked
21 for identification only.)

22 BY MR. ADDUCCI:

23 Q After 11:00. All right. If I could show you
24 what I've marked as Defense Exhibit No. 1. Could you
25 please review that?

SARAH IRBY-CROSS BY MR. ADDUCCI

1 A Yes.

2 Q What is that?

3 A My house.

4 Q Is that a fair and accurate representation of
5 the front of your house?

6 A Yes.

7 Q Has anything substantially changed about your
8 house from March 31st, 2012, until when the picture was
9 taken?

10 A No.

11 Q There have been no additions?

12 A No.

13 Q Nothing added?

14 A No.

15 Q Thank you. Now, you live on Boyd Road, that's
16 correct?

17 A Yes.

18 Q If I can show you this. You live at

19 A Uh-huh.

20 Q And across the way and down the street, there's
21 1871?

22 A Uh-huh.

23 Q Now, that is a tin roof structure? 1871, is
24 that a tin roof structure?

25 A I can't see from there.

SARAH IRBY-CROSS BY MR. ADDUCCI

1 Q Okay. Right there?

2 A Yeah.

3 (WHEREUPON, Defendant's Exhibit No. 2 was marked
4 for identification only.)

5 BY MR. ADDUCCI:

6 Q Okay. If I may show you what is marked as
7 Defense Exhibit No. 2. What is that?

8 A Across the street.

9 Q Is that the tin roof structure that we just
10 spoke about across the street?

11 A No.

12 Q That is not?

13 A No.

14 Q That is not 1871?

15 A Oh, yes.

16 Q Okay. And that's a fair and accurate
17 representation of that house?

18 A Yes.

19 Q And it is in the same relative condition as it
20 was on March 31st of 2012?

21 A Yes.

22 Q Was there anybody at that home, the second home
23 that we spoke of across the street, on the evening of
24 March 31st?

25 A Yes.

SARAH IRBY-CROSS BY MR. ADDUCCI

1 Q How many folks were over there?

2 A I didn't see but one.

3 Q Just one?

4 A (The witness nods.)

5 Q Do you remember who lived at that home at that
6 time?

7 A Yes.

8 Q Who was that?

9 A Bill Cunningham.

10 Q And was Bill Cunningham at your party on the
11 31st?

12 A No.

13 Q Did you see Bill Cunningham that evening?

14 A Yes.

15 Q Where did you see Mr. Cunningham that evening?

16 A Standing in his yard.

17 Q So, Mr. Cunningham was in his yard that day?

18 A Yes.

19 Q And did you ever see him come to your yard?

20 A No.

21 Q Was he just standing there alone?

22 A Yes.

23 Q Nobody else with him?

24 A No.

25 Q Just watching the party?

SARAH IRBY-CROSS BY MR. ADDUCCI

1 A Yeah.

2 Q How long was he standing out there?

3 A I really don't know, but I know I seen him out
4 there.

5 Q Pardon?

6 A Yes, he was standing out there.

7 Q Do you know how long he was standing out there
8 for?

9 A No.

10 Q Okay. I'm going to show you Defendant's Exhibit
11 No. 2 again. There is some trees in that photograph,
12 right?

13 A Yes.

14 Q Were those trees there in March of 2012?

15 A Yes.

16 MR. ADDUCCI: Beg the Court's indulgence, Your
17 Honor.

18 THE COURT: Certainly.

19 BY MR. ADDUCCI:

20 Q When you went outside, how many people did you
21 see outside?

22 A Well, everybody -- when the bullet had came,
23 everybody had scattered away?

24 Q How many people did you see outside when you
25 were there?

SARAH IRBY-CROSS BY MR. ADDUCCI

1 A Well, about two, three.

2 Q How many people were inside the house?

3 A About five, six.

4 Q And who were the people that were inside the
5 house?

6 A John was in the house. And -- let's see, and
7 Essie and -- I can't think of the rest of the names, but
8 there was a good bit of people in the house.

9 Q Okay. Now, you previously indicated that there
10 were about 20 people at the party that evening, correct?

11 A Uh-huh.

12 Q And you said about five or six were inside the
13 house, correct?

14 A Yes.

15 Q So, that leaves us with 14 or 15 unaccounted
16 for.

17 A (The witness nods.)

18 Q Were those people outside?

19 A Well, when the gun started shooting, everybody
20 scattered away.

21 Q Okay. How far were you from the person that you
22 said you saw with the gun when you were on the porch?

23 A I was on my porch.

24 Q Okay. And where was the person with the gun?

25 A In the road running.

SARAH IRBY-CROSS BY MR. ADDUCCI

1 Q In the road running. Okay. What kind of gun
2 was it?

3 A It was black.

4 Q And do you recall if it was a semiautomatic
5 pistol?

6 A I don't know.

7 Q You don't know?

8 A It was just black.

9 Q Okay. And you called the police that evening,
10 correct?

11 A Yes.

12 Q And the police arrived, correct?

13 A Yes.

14 Q Did everybody pretty much stay around?

15 A No.

16 Q How many people were there when the police
17 arrived?

18 A Well, about three, four.

19 Q Just three or four people there when the police
20 arrived? And you spoke with the police that day?

21 A Yes.

22 Q And you recall they had a little body camera on,
23 correct?

24 A No.

25 Q You don't recall that?

SARAH IRBY-REDIRECT BY MS. BOYKIN

1 A (There was no response.)

2 MR. ADDUCCI: Nothing further, Your Honor.

3 THE COURT: Redirect, Solicitor?

4 MS. BOYKIN: Briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. BOYKIN:

7 Q Sarah, you said you were in the bathroom when
8 the shots came?

9 A Yes.

10 Q How far away is the bathroom from the doors to
11 the porch?

12 A Not far away. About two or three minutes, not
13 that far.

14 Q Two or three minutes?

15 A Uh-huh, not that long.

16 Q From inside the house to the bathroom?

17 A Uh-huh, from the front door.

18 Q All right. I want to show you State's Exhibit

19 14. What is that?

20 A My trailer.

21 Q Okay. Sarah, in this your porch?

22 A Yes, ma'am.

23 Q Okay. What side of the house is the bathroom
24 on?

25 A It's on the right-hand..

SARAH IRBY-RECROSS BY MR. ADDUCCI

1 Q This side?

2 A Yes.

3 Q Okay. So, pretty close to the porch?

4 A Yes.

5 Q And when you made it out to the porch, you were
6 able to see someone running away?

7 A Yes.

8 Q Now, let me ask you, the man that you saw
9 running away with the gun, was he there earlier in the
10 day?

11 A Yes.

12 Q What was he doing?

13 A He was out there talking to John.

14 Q Okay. Did he appear intoxicated?

15 A Ma'am?

16 Q Did he seem like he was intoxicated --

17 A No.

18 Q -- Patrick?

19 A Well, I wasn't around him. I wasn't around him.

20 Q Okay. But you did see him earlier?

21 A Early that day.

22 Q Okay.

23 MS. BOYKIN: Thank you, Sarah.

24 THE COURT: Any recross?

25 RECROSS-EXAMINATION

CHRIS MARTIN-DIRECT BY MR. SCOTT

1 BY MR. ADDUCCI:

2 Q When you say you saw Patrick, he wasn't yelling
3 at you, was he?

4 A At me?

5 Q Yeah.

6 A No.

7 Q So, you didn't have an argument with him, did
8 you?

9 A No.

10 MR. ADDUCCI: Nothing further, Your Honor.

11 THE COURT: Thank you, ma'am, for your
12 testimony. You can step down.

13 MR. SCOTT: The State calls Chris Martin.

14 CHRIS MARTIN, after being duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. SCOTT:

18 Q All right. Investigator Martin?

19 A Yes, sir.

20 Q March 31st of 2012, you with the Sheriff's
21 Department in Laurens, is that right?

22 A Yes, sir.

23 Q Okay. And you were an investigator at that
24 point?

25 A That is Correct.

CHRIS MARTIN-DIRECT BY MR. SCOTT

1 Q Did you have an occasion to respond to -- or do
2 a follow-up investigation on a shooting that happened at
3 Boyd Road?

4 A That's correct. I received a report on
5 April 2nd of 2012.

6 Q Okay. And in that case, what did you end up
7 doing?

8 A Initially, just like I would in any case, made
9 contact with the complainant on the report and then I
10 responded out to the incident location on Boyd Road.

11 Q Did you speak with anyone there?

12 A I did.

13 Q All right. Who did you speak with?

14 A I spoke with a Sarah Irby, a John Glenn and a
15 Tiffany Garrett.

16 Q And these were the -- did they live at the home,
17 was that your understanding?

18 A That's my understanding, they all lived there.

19 Q Did they give you, I guess, their version of
20 what happened that night?

21 A That's correct.

22 Q Were you able to develop a suspect?

23 A After speaking with Ms. Tiffany Garrett, she did
24 give the name of --

25 MR. ADDUCCI: Objection, Your Honor. Again,

CHRIS MARTIN-DIRECT BY MR. SCOTT

1 that's just hearsay, saying what another individual
2 said.

3 THE COURT: Overruled, consistent with my
4 rulings yesterday. It's part of his investigation.

5 MR. ADDUCCI: Thank you, Your Honor..

6 BY MR. SCOTT:

7 Q Would you repeat that? You spoke with Tiffany
8 Garrett and she did what?

9 A I spoke with her and through speaking with her,
10 she gave the name of Patrick McGowan.

11 Q As a result of receiving that name, what did you
12 do?

13 A Well, while we were still at the residence,
14 Sergeant Cheek took a statement from Mr. Glenn. I took a
15 statement from Ms. Tiffany Garrett. Then through the
16 course of the investigation, later on down the line,
17 developed a photo lineup.

18 Q Okay. Explain to the jury what a photo lineup
19 is.

20 A A photo lineup is, basically, she had given a
21 name, just like in any case, somebody gave a name, I would
22 want to confirm who this person was through them. So,
23 basically, through that name, we go back to the sheriff's
24 office, using our law track system and we do a six-person
25 photo lineup. And this photo lineup may or may not

CHRIS MARTIN-DIRECT BY MR. SCOTT

1 contain a picture of the person they were speaking of.
2 Then we take this photo lineup back to this person for
3 them to review.

4 Q Were you -- aside from the name; were you also
5 given a description, a general physical description of
6 this person?

7 A That, I can't remember. I think the only thing
8 that was given to me was based upon a report and in
9 speaking with them, it was a black male and then a vehicle
10 description.

11 Q Okay. State's No. 13, do you recognize this?

12 A That's the photo lineup I did.

13 Q Okay. And you showed that to who?

14 A Ms. Tiffany Garrett.

15 Q Why did you show it to Tiffany Garrett?

16 A Through speaking with her and getting her
17 statement, she's the one who identified Mr. McGowan and
18 that's who I showed the lineup to.

19 Q And did she make a selection on the photo
20 lineup?

21 A She did. This particular lineup -- can I see
22 that lineup?

23 Q This a State's No. 13.

24 A This particular lineup, Mr. McGowan happened to
25 be picture number four. After handing Ms. Garrett the

CHRIS MARTIN-DIRECT BY MR. SCOTT

1 photo lineup, I said based upon our conversations, this
2 photo lineup may or may not contain a picture of
3 Mr. McGowan. I handed her the piece of paper and she
4 picked out number four identifying Mr. McGowan. She
5 circled number four and then signed her name.

6 Q Okay. Did she indicate how certain she was?

7 MR. ADDUCCI: Objection, Your Honor, speaking to
8 another individual's state of mind.

9 THE COURT: Okay. All right. I'll sustain the
10 objection.

11 You may want to rephrase the question as far as
12 how quickly did she or something along those lines.

13 BY MR. SCOTT:

14 Q Do you recall how long it took for her to make a
15 selection out of those six individuals?

16 A I didn't count, you know, one second, two
17 second, but it wasn't long. I mean, it was pretty quick.

18 Q Okay. Did those -- it will be in evidence, but
19 the photo lineup, but they don't have people's names on
20 them, do they?

21 A No. When we print a lineup at the sheriff's
22 office, if we use the law track system, using the law
23 track system, the first page it will print would be this
24 photo lineup. Then the second page it would print would
25 contain the names of the people. Of course, I don't hand

CHRIS MARTIN-DIRECT BY MR. SCOTT

1 that to them because that would be a bad idea.

2 Q Okay. How did she indicate that she was
3 selecting the photo that had Patrick McGowan?

4 A She indicated by circling number four and
5 signing her name.

6 Q Okay. Did anybody else come forward to you from
7 that night that wanted to tell you what happened that
8 night?

9 MR. ADDUCCI: Objection, Your Honor.

10 THE COURT: Well, he's not asking what they
11 said, but he's just asking if anybody else came
12 forward. I'll overrule.

13 BY MR. SCOTT:

14 Q Did anyone else besides those three come forward
15 to tell you what happened?

16 A No, sir.

17 Q Did Bill Cunningham come to you and tell you
18 about that night?

19 A Can I just take a second? No, sir, not that I
20 can see in my notes. According --

21 Q Did a James -- I'm sorry, what?

22 A According to my notes, no, sir.

23 Q Did a James McGowan come to you to tell you what
24 happened that night?

25 A No, sir, not me.

CHRIS MARTIN-DIRECT BY MR. SCOTT

1 Q Did a Charles Jennings come to you to tell you
2 what happened that night?

3 A No, sir.

4 Q How about Derrick Handberry, have you ever heard
5 of that person?

6 A No, sir.

7 Q They never came to tell you what happened?

8 A No, sir.

9 Q Okay. After Ms. Tiffany Garrett circled number
10 four on there and ID'd Patrick McGowan, what did you do
11 next?

12 A After that lineup was complete -- that lineup
13 was done on the 20th, April 20th, 2012. And on the 23rd,
14 I took all the information that we had received in this
15 case -- that I had received in this case and went talk to
16 magistrate office to register warrants.

17 Q And at some point, did you catch up with Patrick
18 McGowan?

19 A Me, personally, no. Those warrants were turned
20 over to the warrant division.

21 Q Did you ever speak with him?

22 A No, sir.

23 MR. SCOTT: Answer any questions Mr. Adducci has
24 for you.

25 THE COURT: Cross-examination.

CHRIS MARTIN-CROSS BY MR. ADDUCCI

1 MR. ADDUCCI: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. ADDUCCI:

4 Q Mr. Martin, you indicated that on April 2nd, you
5 reported to Boyd Road, that's correct?

6 A That the day I received this, yes, sir.

7 Q What day did you report to that incident
8 location for your follow-up investigation?

9 A To speak and get signatures, is that what you're
10 saying?

11 Q You referenced that you went to the home, on
12 what day was that?

13 A On the second.

14 Q On the second, okay.

15 A Then I went back on the third, then I went back
16 on the 20th.

17 Q Now, you did not report to the scene on the
18 incident date, did you?

19 A No, sir.

20 Q So, you were just handed information from the
21 reporting officers, correct?

22 A This is true, yes, sir.

23 Q Did they give you a witness list?

24 A I believe there was only one piece of paper.

25 Hold on one second. Yes, attached to the report was a --

CHRIS MARTIN-CROSS BY MR. ADDUCCI

1 with this typed was a James McGowan with a note from the
2 officer.

3 Q So, other than an incident location and a name
4 of a James McGowan, those are the only two bits of
5 information you have to go on, correct?

6 A When we went to residence, yes, sir.

7 Q So, when you went to the house, you just spoke
8 with the three people who happened to be there, correct?

9 A I called ahead of time before we went because I
10 didn't want to just go and nobody be there.

11 Q Certainly.

12 A So, I called ahead of time and spoke with, I
13 believe it was Ms. Irby and then found out -- didn't know
14 who all was there, but, at least, somebody was there for
15 me to talk to.

16 Q And you're aware that the reporting officer was
17 wearing a body cam that day, correct?

18 A That's correct, yeah.

19 Q Did you review that footage?

20 A I did not.

21 Q Would that footage have possibly had additional
22 witnesses on it?

23 A I guess. That's hard for me to say. I'm not
24 really sure who all that officer talked to. There's a
25 possibility, but I'm not sure who all he spoke with.

CHRIS MARTIN-CROSS BY MR. ADDUCCI

1 Q Okay. It is possible for you to review that
2 footage now?

3 A No, sir.

4 Q And why is that?

5 A I'm not sure on the date, at some point in time,
6 we had a system crash at the sheriff's office which lost
7 not only this video, but a lot of others.

8 Q Sometimes in 2013?

9 A Possibly, yes, sir.

10 Q In speaking with the folks at Boyd Road,
11 did you inquire with them as to whose else was at the
12 party that evening?

13 A I can't recall.

14 Q Okay. Did you take any notes?

15 A I did not.

16 Q You indicated you did a supplemental?

17 A Yes, sir.

18 Q That was completed on April 24th, 2012?

19 A That's when it was printed. So, that's the day
20 I printed it, yes, sir.

21 Q Can you just explain how this system works, I
22 guess?

23 A In terms of the supplemental?

24 Q Yes. So, is it an open document that you can
25 enter information into and then come back later?

CHRIS MARTIN-CROSS BY MR. ADDUCCI

1 A That's correct. So, how I use it for my
2 investigative tools is if I receive information, I'll type
3 in there that day just so I don't lose track of what I'm
4 doing with the case. Then if I do something else, I'll
5 add that in there.

6 Q Does the software keep track of when things were
7 added, when things were deleted, anything like that?

8 A I'm pretty sure, yes, sir.

9 Q Okay.

10 A I know it keeps track to when you entered it,
11 the days it was printed. I can't remember exactly what
12 all, but there's a log, yes, sir.

13 MR. ADDUCCI: Court's indulgence, Your Honor.

14 THE COURT: Sure.

15 BY MR. ADDUCCI:

16 Q State's Exhibit 13, that's the photo lineup?

17 A Yes, sir, that's correct.

18 Q And at the top, it says April 20th, 2012?

19 A That's correct.

20 Q And that's the date that photo lineup was
21 printed?

22 A Yes, sir?

23 Q And that's the date that the signature was put
24 on there?

25 A That's correct.

CHRIS MARTIN-REDIRECTBY MR. SCOTT

1 MR. ADDUCCI: Nothing further from this witness,
2 Your Honor..

3 THE COURT: Redirect?

4 REDIRECT EXAMINATION

5 BY MR. SCOTT:

6 Q You were just asked about the other officer's
7 report?

8 A Yes, sir.

9 Q Is that something you would have reviewed
10 whenever you inherited this case?

11 A Yes, sir.

12 Q I think there was a specific question about a
13 James McGowan?

14 A Yes, sir.

15 Q And what was indicated as far as James McGowan?

16 A On the witness sheet?

17 Q Yes, sir. Or I guess if you have it, the second
18 page, the incident report.

19 A Would you like me to read the last two lines, it
20 looks like?

21 Q Yeah.

22 MR. ADDUCCI: I'm going to object, Your Honor.

23 BY MR. SCOTT:

24 Q Or refresh your memory with it.

25 A Okay.

CHRIS MARTIN-REDIRECT BY MR. SCOTT

1 MR. ADDUCCI: Your Honor, this is hearsay within
2 hearsay.

3 MR. SCOTT: He was specifically asked by the
4 Defense attorney about the other officer's report
5 when he inherited the case, specifically, about this
6 James McGowan.

7 MR. ADDUCCI: Your Honor, I asked if there was a
8 witness list provided. The witness gave me a witness
9 list. I didn't ask anything about contents of
10 statements. I did not open any door there.

11 THE COURT: Okay. Hand me, Solicitor, please,
12 what Officer Martin is reviewing.

13 MR. SCOTT: He was also asked about a body cam
14 that's incorporated in that supplemental.

15 THE COURT: I'm going to sustain the objection.

16 MR. ADDUCCI: Thank you, Your Honor.

17 BY MR. SCOTT:

18 Q After speaking with the first responding
19 officer, did you feel a need to go speak with a James
20 McGowan?

21 A No, sir, based upon what --

22 Q You can't say what he said.

23 A Oh, I'm sorry. No, sir.

24 Q And no James McGowan ever came to you to tell
25 you about what happened?

CHRIS MARTIN-REDIRECT BY MR. SCOTT

1 A No, sir.

2 Q Was there a gun ever recovered?

3 A No, sir.

4 MR. SCOTT: Thank you.

5 THE COURT: Recross?

6 MR. ADDUCCI: No, Your Honor.

7 THE COURT: Thank you for your testimony,

8 Officer. You can step down, sir.

9 MR. SCOTT: Your Honor, a fairly lengthy witness
10 now. Perhaps, a five minute break?

11 THE COURT: Okay. Very good.

12 Mr. Foreman, ladies and gentlemen of the jury,
13 we're going to take a short recess. Go back to the
14 jury room. Again, I caution you and remind you not
15 to have any discussions among yourselves about this
16 case. We'll get you back out shortly.

17 (WHEREUPON, the jury left open court at
18 approximately 10:03 a.m.)

19 (WHEREUPON, a short break was taken.)

20 THE COURT: Y'all ready to bring the jury out?

21 MR. ADDUCCI: Yes, sir.

22 MR. SCOTT: Yes, sir.

23 THE COURT: Ms. Garrett, it's real important
24 when you're testifying, speak slow and loud so we can
25 understand you and hear you, okay?

1 THE WITNESS: Yes, sir.

2 THE COURT: Make a real good effort on that, I
3 appreciate it.

4 All right. Mr. Bolt, bring the jury out,
5 please.

6 (WHEREUPON, the jury came into open court at
7 approximately 10:21 a.m.)

8 THE COURT: Solicitor, ready to proceed?

9 MR. SCOTT: Yes, sir, Your Honor. The State
10 would call Tiffany Garrett.

11 THE COURT: Come around, please, ma'am.

12 THE CLERK: Place your left hand on the Bible,
13 raise your right hand.

14 TIFFANY GARRETT, after being duly
15 sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. SCOTT:

18 Q Tiffany, where do you live now?

19 A 119 Monetta Street.

20 Q Where's that?

21 A Laurens, South Carolina.

22 Q What was the street?

23 A Monetta Street.

24 Q Monetta Street. Now, have you ever lived at
25 Boyd Street home?

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 A Yes, sir.

2 Q Okay. Were you living there March 31st of 2012?

3 A Yes, sir.

4 Q And who else lived there with you?

5 A Me, John Glenn, Sarah Irby, Saliyh Reter,
6 Brittany Irby, Brantley Irby.

7 Q Brittany Irby, and who was the last one?

8 A Brantley Irby.

9 Q How old are those two?

10 A At the time, they were --

11 Q Are they children?

12 A My brother and sister.

13 Q Okay. Well, March 31st, were they there that
14 night?

15 A I can't remember.

16 Q Well, what was going on that night, do you
17 recall?

18 A We was having Saliyh Reter's birthday party,
19 four year old birthday party.

20 Q Saliyh Reter, how is she related to you?

21 A That's my god daughter.

22 Q Okay. There was a birthday party going on. Do
23 you remember about what time the get-together began?

24 A They started early, like about 2:00.

25 Q Okay. What kind of -- just what did y'all do,

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 cook out for the kids?

2 A Yes, sir.

3 Q Have birthday cake?

4 A Yes, sir.

5 Q And about what time did the children's party
6 end?

7 A I say around 5:00 or 6:00.

8 Q Okay. Did all the people from the children's
9 party stick around or some leave?

10 A Some left and some stayed.

11 Q Okay. Well, then, I guess, did it kind of
12 change from a children's party to more of an adult
13 get-together at that point?

14 A Yes, sir.

15 Q Did y'all cook dinner?

16 A We were still cooking out on the grill.

17 THE COURT: Speak up, please, ma'am.

18 THE WITNESS: We were still cooking out on the
19 grill.

20 BY MR. SCOTT:

21 Q And, I guess, March, so probably around 5:00
22 o'clock or so, it's starting to get a little bit dark. At
23 what point do you remember first thing -- first of all,
24 did you know Patrick McGowan?

25 A Yes.

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 Q At what point do you first remember seeing him
2 there at the Boyd Street residence?

3 A What time?

4 Q Yeah. Around about?

5 A Maybe around about 7:30, 8:00. It was starting
6 to get dark.

7 Q All right. That was the first time you remember
8 seeing him over there?

9 A He was there a little bit before it got dark.

10 Q Okay. About 7:00, 7:30 is what you're saying?

11 A Yes, sir.

12 Q And had you see him around Boyd Street before
13 that night?

14 A Yes, a lot.

15 Q Okay. Matter of fact, do you know some other
16 McGowans on Boyd Street?

17 A Yes, sir.

18 Q Who else do you know that's a McGowan?

19 A I know his brother and, I guess, his cousin and
20 stuff like that.

21 Q What do you recall his brother?

22 A Huh?

23 Q What do you call his brother?

24 A We call him Mack.

25 Q Who do you call his cousin?

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 A James, Big James.

2 Q James McGowan?

3 A Yes, sir.

4 Q And are you friends with Mack McGowan?

5 A Yeah, we cool.

6 Q And is that how you recognized Patrick McGowan,
7 through his brother?

8 A Yes, I know they was brothers, but I didn't know
9 him like that.

10 Q You were more closely acquainted with Mack?

11 A Yes, sir.

12 Q What about James, do you call him something
13 else?

14 A Well, I call him Big James. Sometimes I call
15 him Willie, Willie James.

16 Q Willie James. And did you remember seeing him
17 that night, March 31st?

18 A Yes, sir.

19 Q All right. When was about the first time, I
20 guess, you really noticed Willie James, James McGowan?

21 A Talking about when he was there?

22 Q Yes.

23 A He was there earlier, before Mr. Patrick was
24 there.

25 Q And do you remember Willie James drinking?

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 A Yes, sir.

2 Q Did you see Patrick drinking?

3 A Yes, sir.

4 Q At some point, do you recall Willie James or
5 James McGowan, whatever you call him, having a
6 conversation in the front yard with John Glenn, your
7 stepfather?

8 A Yes, sir, because I was right there talking to
9 them and they started talking about other stuff, so I
10 walked away.

11 Q Tell me what you saw. Did you see them -- what
12 else did you see while your dad was talking with Willie
13 James?

14 A I saw him and Willie James, they was standing
15 there having a conversation. Well, I was talking with
16 them at first, then I walked away and let them talk. And
17 I seen Mr. Patrick walk up and start cussing.

18 Q What was Patrick saying? Did you hear what he
19 was saying?

20 A Yeah, he was cussing John out about the
21 motherfucker five percent and all that.

22 Q He was saying he's a Five Percenter?

23 A Yes.

24 Q Do you know what that means?

25 A No, I'm not gang related.

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 MR. ADDUCCI: Objection, Your Honor, move to
2 strike. Move for a mistrial.

3 THE COURT: Mr. Foreman, ladies and gentlemen of
4 the jury, I have a legal issue that I need to take up
5 with the lawyers, so if you could go back to the jury
6 room, please. Hopefully, it won't be for long.
7 We'll get you back out shortly. Remember, don't
8 begin your discussions about this case.

9 (WHEREUPON, the jury left open court at
10 approximately 10:29 a.m.)

11 THE COURT: All right. Even though I may have
12 the court reporter read back what was just asked and
13 answered, Solicitor, let me just ask you, can you
14 tell me what your question was or what you
15 understood -- and I could not understand the witness,
16 her answer, okay? What you understood the answer of
17 the witness to be and then we'll see if Mr. Adducci
18 agrees, so then I know what we're dealing with. Then
19 we can deal with Mr. Adducci's objection and his
20 motion for mistrial.

21 MR. SCOTT: Yes, sir. The testimony has been
22 through multiple witnesses that he comes up and I'm
23 MF Five Percenter.

24 And I asked her, Do you even know what a Five
25 Percenter is?

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 I expected the answer to be, No, I don't.

2 Ms. Garrett said something to the effect of
3 either I'm not gang related or I don't know if it's
4 gang related was her response to that.

5 THE COURT: All right, wait just a second. And
6 you believe she said what now again? Her answer,
7 Solicitor?

8 MR. SCOTT: It sounded to me like I'm not gang
9 related or the other alternative, which was a little
10 bit difficult for me to understand the exact
11 language, or I don't know if it's gang related.

12 THE COURT: Mr. Adducci, your recollection of
13 what she answered, would it be along the lines of
14 what the Solicitor -- or did you have a hard time
15 understanding her as well?

16 MR. ADDUCCI: I had a little hard time
17 understanding every word in it. I heard some I don't
18 know and I did hear gang related or something along
19 those lines. I don't know if it's gang related or I
20 don't know, it's gang related.

21 THE COURT: Okay. All right. You're first --
22 well you're first request was to strike it from the
23 record. Then you followed it up with a request for a
24 mistrial, is that correct?

25 MR. ADDUCCI: That's correct, Your Honor.

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 THE COURT: All right. Well, I'm not going to
2 grant a mistrial, but I will strike that question and
3 that answer from the record. And I will instruct the
4 jury to disregard the last question and last answer
5 from the witness. I'm not going to repeat what we
6 think she said. We'll just have to leave it up to
7 the jury if they heard it and understood it what she
8 said, but I will tell them to disregard the last
9 question and the last answer from the witness.

10 MR. ADDUCCI: Thank you, Your Honor.

11 THE COURT: And Ms. Garrett, do not answer any
12 questions with anything related to gang activity or
13 something being gang related or anything of that
14 nature. Do you understand, ma'am?

15 THE WITNESS: Yes, sir.

16 THE COURT: Okay. Mr. Bolt, bring this jury
17 back in.

18 (WHEREUPON, the jury came into open court at
19 approximately 10:33 a.m.)

20 THE BAILIFF: All jurors are present, Your
21 Honor.

22 THE COURT: All right, thank you, very much
23 Mr. Bolt.

24 Mr. Foreman, ladies and gentlemen of the jury,
25 the last question and the last answer from

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 Ms. Garrett immediately proceeding the objection from
2 Mr. Adducci has been stricken from the record and you
3 are to disregard it totally.

4 Solicitor, you may proceed.

5 MR. SCOTT: Thank you.

6 BY MR. SCOTT:

7 Q And when you first see Patrick McGowan, what is
8 he saying? What did Patrick McGowan say when you first
9 saw him?

10 MR. ADDUCCI: Objection, Your Honor, asked and
11 answered.

12 THE COURT: Sustained.

13 BY MR. SCOTT:

14 Q Was he saying a curse word or something?

15 A Yeah, he was cursing.

16 Q Was anybody else out there cursing?

17 A Not at the time.

18 Q Okay. Before that -- I guess, before the
19 argument between John Glenn and Mr. McGowan, you said that
20 cuss words were being thrown around, there was an
21 argument. Before all that, was anybody else out there
22 arguing with John Glenn?

23 A No.

24 Q Was anybody else cussing at him?

25 A No.

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 Q What happened after Mr. McGowan came up and
2 started cussing at your stepfather?

3 A They got -- well, they got into a little
4 argument.

5 Q They weren't fighting, were they?

6 A No.

7 Q Just mouthing off at each other?

8 A Yes, sir.

9 Q Okay. What happened next?

10 A Well, I saw John go in the house and I saw
11 Mr. McGowan walk towards the road.

12 Q Okay. Where were you standing at the time?

13 A Standing by the porch.

14 Q Let me -- this is Defense No. 1. All right,
15 where were you standing whenever Mr. McGowan started
16 walking towards the road?

17 A Right in the middle between the two cars in the
18 yard.

19 Q So, what you're talking about is kind of these
20 two cars right here?

21 A Yes, sir.

22 Q You were standing -- are those cars -- were they
23 there at the time?

24 A There was some cars in the yard, but those
25 particular cars weren't there.

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 Q Okay. This is kind of a newer picture. Were
2 you here when Mr. Adducci came and took this picture, were
3 you at the house?

4 A No, sir.

5 Q This is more recent, so those cars weren't
6 necessarily there on March 31st?

7 A No, sir.

8 Q But you're using those as a marker, you're
9 saying you were approximately where the two of those cars
10 are side by side?

11 A Yes, sir.

12 Q Okay. And -- all right, then you watched
13 Mr. McGowan walk towards the street?

14 A Yes, sir.

15 Q And what happened next?

16 A I thought he was going down the road going home,
17 but he started shooting.

18 Q Tell me how he did it. None of these jurors
19 were there that night, I don't think. I wasn't there. I
20 want you to be real descriptive and show us what happened,
21 how he turned around and what you saw.

22 A I seen him walk across the road. And then I
23 looked up and I seen him shooting in the air. I thought
24 he was shooting the air, but when I went in the house,
25 there was bullet holes everywhere.

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 Q Okay. Could you see -- are you familiar with
2 what a muzzle blaster is?

3 A From the gun pistol?

4 Q Yes.

5 A Shooting.

6 Q Did you remember seeing anything --

7 A I remember seeing fire like you're shooting.

8 Q Fire coming from the pistol, is what you're
9 saying?

10 A Yeah.

11 Q Any doubt in your mind that was Patrick McGowan
12 firing those shots?

13 A No doubt.

14 Q You had just been how close to him -- how close
15 were you whenever he came up to John Glenn?

16 A Maybe from me to you.

17 Q Okay. Tell me about the lighting in your yard
18 at Boyd?

19 A We have a porch light. We didn't have street
20 lights. It's a light on a pole right when you come down
21 our driveway.

22 Q Okay. There's a light on top of a pole?

23 A Yes, sir.

24 Q All right. I want to do this again, I want you
25 to come down and I want you to put some stickers where

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 different people were. You've got to speak up so that the
2 court reporter can hear you. is the house that you
3 were at, is that correct?

4 A Yes, sir.

5 Q Do you recognize this to be Boyd Road?

6 A Yes, sir.

7 Q Do you recognize that to be Bill Cunningham's
8 house?

9 A Yes, sir.

10 Q Put a blue sticker where you were standing when
11 the shots were fired.

12 A (The witness complies.)

13 Q All right. I'm going to label it T. Garrett,
14 Tiffany Garrett. Okay. I want you to put a red sticker
15 where Patrick McGowan was standing when the shooting
16 occurred.

17 A (The witness complies.)

18 Q P. McGowan is what I'm marking the red sticker
19 with. All right. Where did you say y'all have a light in
20 the drive?

21 A Right here in the driveway.

22 Q Is it on the pole right there?

23 A Yes, sir.

24 Q Put a yellow sticker there to show that light
25 fixture.

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 A (The witness complies.)

2 Q Okay. Then you said you had porch lights on the
3 front by the front door?

4 A Yes, sir.

5 Q Okay. Tell me after -- did you see where he
6 went after shots were fired?

7 A I seen him run to the road.

8 Q Which way?

9 A To the left.

10 Q This -- kind of back down this way?

11 A Yes, sir.

12 Q Okay. All right. At some point, do you
13 remember some week or two later speaking with law
14 enforcement about what you saw?

15 A Yes, sir.

16 Q Okay. You spoke with them that night, is that
17 right?

18 A Yes, sir.

19 Q Okay. But then when the investigator was
20 assigned to the case, do you remember him showing you some
21 pictures?

22 A Yes, sir.

23 Q First of all, let me ask you this, did you
24 know -- you said you recognized Patrick McGowan, from
25 where, the Boyd Street?

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 A Yes, sir.

2 Q Okay. And you knew his brother you already
3 said?

4 A Yes, sir.

5 Q Did you know his name to be Patrick McGowan that
6 night?

7 A No, sir.

8 Q After the shots were fired, how were you able to
9 find what his name was?

10 A Facebook.

11 Q Okay. Did you -- was he a friend of yours on
12 Facebook?

13 A No, he wasn't my friend. I typed his name in.

14 Q How did you know his name?

15 A I typed in McGowan.

16 Q And then you were able to find him. Is that how
17 you gave law enforcement his name?

18 A Yes, sir.

19 Q Okay. Do you remember them showing you a photo
20 lineup?

21 A Yes, sir.

22 Q Let me show you State's No. 13, do you recognize
23 that?

24 A Yes, sir.

25 Q What is it?

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 A What is what?

2 Q What is that? Is that the photo lineup?

3 A Yes, sir.

4 MR. ADDUCCI: I'm going object, Your Honor. If
5 we could have the jury step out for a moment.

6 THE COURT: Come up here, first.

7 (WHEREUPON, an off-the-record bench conference
8 was held in the presence of the jury but out of
9 the hearing of the jury.)

10 BY MR. SCOTT:

11 Q All right. At some point, do you recall -- do
12 you remember when you saw that lineup, was it at your
13 house or the sheriff's department?

14 A It was at my house.

15 Q And when you were shown it, do you remember
16 picking somebody?

17 A Yes, sir.

18 Q All right. And which one did you circle?

19 A Number two, Mr. Patrick McGowan.

20 Q You circled it and did you -- what number did
21 you circle on there?

22 MR. ADDUCCI: Objection, Your Honor, already
23 asked and answered.

24 THE COURT: He can come back and ask her.

25 Overruled.

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 BY MR. SCOTT:

2 Q What number did you circle on there?

3 A Number four.

4 Q How did you indicate that was who you were
5 selecting?

6 A I signed it.

7 Q That's your signature?

8 A Yes, sir.

9 Q That is the photo lineup that you were shown
10 that day?

11 A Yes, sir.

12 MR. SCOTT: State offers 13 for admission into
13 evidence.

14 MR. ADDUCCI: With previous objections --

15 THE COURT: Subject to any previous objections
16 made on the record, that would be No. 13 in evidence
17 for the State.

18 (WHEREUPON, State's Exhibit No. 13 was admitted
19 into evidence.)

20 BY MR. SCOTT:

21 Q Okay. Do you remember how long it took you to
22 select that photo out of those six?

23 A Seconds.

24 Q All right. And how certain were you at the time
25 that that was the person you saw shooting the gun?

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 A A hundred percent.

2 Q All right. Again, this is the number four that
3 you circled and that's your signature?

4 A Yes, sir.

5 Q Okay. It looks like a photo taken of 2007. Did
6 he look more like that on that night or did he look like
7 he does now?

8 A He looked more like that.

9 Q His hair was a little longer?

10 A Yes, sir.

11 Q Looks like he's a little thicker in that
12 picture?

13 A Yes, sir.

14 Q Okay. Well, do you see the man today in court
15 that you saw firing those shots at you?

16 A Yes, sir.

17 Q Where is he?

18 A Sitting over there on the left.

19 Q On the left?

20 THE COURT: Let the record reflect she's
21 identified the Defendant.

22 BY MR. SCOTT:

23 Q Have you seen him since that time he fired the
24 shots at you and your family?

25 A I seen him in the store.

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 Q Okay. And you had seen him before that night?

2 A (The witness nods.)

3 THE COURT: Is that a yes, ma'am?

4 THE WITNESS: Yes, sir.

5 BY MR. SCOTT:

6 Q How close to that bathroom -- are the bullet
7 holes still in the house?

8 A Yes, sir.

9 Q And how close is that bathroom to the front
10 door?

11 A Seconds.

12 Q Okay. Two or three minutes or two or three
13 seconds?

14 A What I said.

15 Q How long did it take you to get from that
16 bathroom to the front door?

17 A Me, maybe 30 seconds.

18 Q To get from the bathroom to the front door?

19 A Uh-huh.

20 Q Are you familiar with how long 30 seconds is in
21 real life?

22 A Yes, it's like as soon as you walk out the
23 bathroom, the front door is right there.

24 Q So, how close is it, how many feet to the front
25 door is it?

TIFFANY GARRETT-DIRECT BY MR. SCOTT

1 A Probably about six feet.

2 Q Okay. So, that would take you 30 seconds to go
3 six feet.

4 A I'm pretty fast sometimes.

5 Q I don't know. I hate to ask you another time
6 estimate, but do you know how long it took from the time
7 the argument broke up until when Patrick was shooting at
8 the house?

9 A Probably about five minutes. As soon as I seen
10 John go in the house, I seen Mr. McGowan walk towards the
11 road.

12 Q Then he started shooting once he got to the
13 road?

14 A Yes, sir.

15 Q Did he say anything? Did you hear him say
16 anything?

17 A I didn't hear him say anything. But when he
18 walked away, he was cursing, upset.

19 Q He was still cursing. Did he appear angry to
20 you?

21 A Yes, sir.

22 Q Did he appear intoxicated to you?

23 A Yes, sir.

24 Q And you had seen him drinking earlier in the
25 night?

TIFFANY GARRETT-CROSS BY MR. ADDUCCI

1 A Yes, sir.

2 MR. SCOTT: All right. I think that's all I
3 have.

4 THE COURT: Cross-examination?

5 MR. ADDUCCI: Thank you.

6 CROSS-EXAMINATION

7 BY MR. ADDUCCI:

8 Q Now, on the evening of March the 31st, you
9 indicated there was a kids' party that started around 2:00
10 o'clock?

11 A Yes, sir.

12 Q Okay. And that got finished around 5:00
13 o'clock?

14 A Yes, sir.

15 Q Okay. And that's when the kids left or went to
16 bed?

17 A Yes, sir.

18 Q All right. And after that, the adult party
19 started?

20 A Yes, sir.

21 Q How many people were at the adult party at
22 around 11:00 in the evening?

23 A I'm not sure.

24 Q Was it two, three, 10, 20?

25 A I'm not sure.

TIFFANY GARRETT-CROSS BY MR. ADDUCCI

1 Q Okay. You don't know how many people were
2 there?

3 A I can't recall how many people it was.

4 Q Can you give an estimate?

5 A I'd say about 10 people.

6 Q Now, you were there?

7 A Yes, sir.

8 Q Mr. Glenn was there?

9 A Yes, sir.

10 Q Who else was there?

11 A My mom, Sarah Irby.

12 Q Okay.

13 A Saliyh Reter.

14 Q Now, that is the child that was in bed?

15 A Yes, sir.

16 Q Who else was outside?

17 A Just people from the neighborhood.

18 Q Okay. About how many people from the
19 neighborhood?

20 A I say probably about six people from the
21 neighborhood.

22 Q Do you have names of the people from the
23 neighborhood?

24 A No, sir.

25 Q All right. You indicated that you were

TIFFANY GARRETT-CROSS BY MR. ADDUCCI

1 standing, on Defense Exhibit 1, sort of between where
2 those two cars are?

3 A Yes, sir.

4 Q Were there other vehicles in the driveway that
5 day?

6 A Yes, sir.

7 Q And where on this -- or in your driveway were
8 these vehicles?

9 A You want me to get up and show you?

10 Q That would be great.

11 A All in the yard.

12 THE COURT: Speak up, ma'am.

13 BY MR. ADDUCCI:

14 Q They're all in the yard in between the home and
15 the street?

16 A Yeah, the yard right here.

17 Q Okay. And do you remember how many vehicles
18 there were?

19 A No, sir.

20 Q Do you remember what kind of vehicles there
21 were?

22 A No, sir.

23 Q Now, the way that the property goes, the house
24 is below street level, correct?

25 A Yes.

TIFFANY GARRETT-CROSS BY MR. ADDUCCI

1 Q So, when you pull off the street, the driveway
2 slopes down and then it's the house, correct?

3 A Yes, sir.

4 Q And then on the other side of the street is Bill
5 Cunningham's house.

6 A Yes, sir.

7 Q And if I can show you this photograph, which is
8 Defense Exhibit 2, is that Mr. Cunningham's home?

9 A Yes.

10 Q Is that the view of Mr. Cunningham's home from
11 your side of the street?

12 A Yes.

13 Q Is there anything substantially different about
14 the home on this picture than it was --

15 A No, sir.

16 Q All right. Thank you. Now, you indicated that
17 you saw an argument between two folks, one of which was
18 your father, that evening, right?

19 A Yes, sir.

20 Q And then you saw your father go inside?

21 A Yes, sir.

22 Q Now, at a previous hearing, you testified that
23 it was about five minutes between when your father went
24 inside and when you heard gunshots, isn't that correct?

25 A Yes, sir.

TIFFANY GARRETT-CROSS BY MR. ADDUCCI

1 Q And you indicated that you saw an individual
2 shooting in the air, is that correct?

3 A Yes, sir.

4 Q Were the shots -- did you see any shots coming
5 towards you?

6 A No, sir.

7 Q Were you able to identify the type of gun that
8 you saw?

9 A No, sir.

10 Q So, you don't know if it was a revolver?

11 A No, sir.

12 Q Or a semiautomatic handgun?

13 A No, sir.

14 Q All right. Now, after this, police were called,
15 correct?

16 A Yes, sir.

17 Q Okay. And you spoke with police that day,
18 correct?

19 A Yes.

20 Q And at a previous hearing, you said that prior
21 to this date, you knew Patrick McGowan?

22 A Yes.

23 Q And at that previous hearing, you also indicated
24 that you knew Patrick McGowan's name at that time,
25 correct?

TIFFANY GARRETT-CROSS BY MR. ADDUCCI

1 A Yes.

2 Q However, today, you're saying that at that time
3 you didn't know his name?

4 A I thought they were talking about his nickname.
5 We knew him by his nickname.

6 Q So, you -- strike that. So, you knew a nickname
7 at the time of the incident?

8 A Yes.

9 Q And what was that nickname?

10 A Pee.

11 THE COURT: Would you repeat that, please?

12 THE WITNESS: Pee.

13 BY MR. ADDUCCI:

14 Q Now, just today, you testified that you went on
15 Facebook, correct?

16 A Yes.

17 Q Was it under your account?

18 A Yes.

19 Q And did you get it on your phone or --

20 A On the phone.

21 Q -- a computer? On your phone?

22 A Yes.

23 Q Who was with you when you did this?

24 A I can't remember.

25 Q Were you there with your mother?

TIFFANY GARRETT-CROSS BY MR. ADDUCCI

1 A I think I was there with my mom.

2 Q Were you there with your father?

3 A I think he was there.

4 Q All right. So, all three of you were looking at
5 Facebook?

6 A Yes.

7 Q And that is how you picked out the name of
8 Patrick McGowan?

9 A I typed in McGowan. And his name popped up and
10 I clicked on it and it was his picture and it was him.

11 Q You looked through the pictures?

12 A Yes, sir.

13 Q Did your mother and father look through the
14 pictures as well?

15 A Yeah, I showed them the pictures.

16 Q And the three of you guys looked at the pictures
17 and said, Yeah, that's the guy?

18 A Yes, sir. I already knew it was him.

19 Q But all three of you guys were looking together?

20 A Yeah.

21 Q All three of you guys were saying, Oh, yeah,
22 that looks right?

23 A No.

24 Q You just were standing in silence?

25 A No.

TIFFANY GARRETT-CROSS BY MR. ADDUCCI

1 Q So, you were talking about it?

2 A Huh?

3 Q You were talking about identifying him?

4 A No, I typed it in. I showed it to them and I
5 said, This is him. This is the same guy that they
6 identified.

7 Q You said that's the same guy that dad
8 identified?

9 A That they identified.

10 Q That they identified?

11 A What you saying?

12 Q I'm just trying to figure out what you said.
13 Did you say that your father identified or that they --

14 A No, I showed them the picture. And that's the
15 same person who was in our yard.

16 Q And you spoke with your parents about this
17 individual and identifying him?

18 A Yes.

19 Q So, you guys all talked about identifying
20 Patrick McGowan?

21 A No, we didn't talk about it like that. I'm
22 getting confused in what you're saying.

23 Q The three of you were sitting there looking at
24 pictures?

25 A No, I was looking at the pictures.

TIFFANY GARRETT-REDIRECT BY MR. SCOTT

1 Q And you show the pictures to them?

2 A Yes. And they said, Yes, that's him. The same
3 guy that was in our yard that did the shooting.

4 Q Thank you. And you spoke to police on the night
5 of the 31st?

6 A Yes.

7 MR. ADDUCCI: Nothing further, Your Honor.

8 THE COURT: Redirect?

9 REDIRECT EXAMINATION

10 BY MR. SCOTT:

11 Q All right. Would you say you're a good person
12 as far as estimating times?

13 A Kind of.

14 Q Do you know how long 30 seconds is? Let's start
15 the clock right now and time 30 seconds, so you're
16 starting right now. I just stopped it at 30 seconds. Is
17 that how long it takes you to get from your bathroom to
18 the front porch?

19 A Maybe lesser.

20 Q Now, I'm not going to even do five minutes. But
21 your testimony today is that right after he was asked to
22 leave, Patrick McGowan walked directly to the road and
23 began firing shots?

24 A Yes.

25 Q Would that have taken him five minutes to get

TIFFANY GARRETT-REDIRECT BY MR. SCOTT

1 from the porch to that road?

2 A Maybe lesser.

3 Q Maybe?

4 A You said from the porch to the road?

5 Q Yeah.

6 A It was in the yard.

7 Q Five minutes to walk to --

8 MR. ADDUCCI: Your Honor, objection. The
9 question has been asked and answer numerous times.

10 THE COURT: Excuse me, Mr. Adducci.

11 MR. ADDUCCI: Your Honor, the question has been
12 asked and answered numerous times.

13 THE COURT: Well, if it's in response to cross,
14 I'll overrule the objection and allow the question to
15 be asked one more time.

16 Repeat your question, Solicitor.

17 MR. SCOTT: Yes, sir.

18 BY MR. SCOTT:

19 Q What I'm asking Tiffany is this is the star you
20 marked where you were standing?

21 A Yes, sir.

22 Q Approximately at your front porch. That star
23 shows Patrick McGowan firing the shots. Do you think it
24 took him five minutes to walk from there to there?

25 A No, probably lesser. Because the picture shows,

TIFFANY GARRETT-REDIRECT BY MR. SCOTT

1 it look further, but it actually closer.

2 Q Well, do you -- that door from where you are, is
3 that closer or farther from where he was standing when he
4 fired the gun at you?

5 A About the same. I was right here, he was at the
6 door.

7 Q Would that have taken five minutes to walk to
8 that door?

9 A Huh-uh.

10 Q So, do you think maybe that estimate was maybe a
11 little bit off, five minutes?

12 A Maybe.

13 Q Okay. Let's do this, was he walking at a quick
14 pace or was he waking at a slower pace?

15 A He was just walking. He wasn't fast walking,
16 though.

17 Q All right. Was he walking about this pace?
18 Faster or slower?

19 A Faster.

20 Q All right. That took me 14 seconds to walk
21 there.

22 MR. ADDUCCI: Objection, Your Honor, the
23 attorney's testifying.

24 THE COURT: Let's move on to something else
25 please, sir.

TIFFANY GARRETT-REDIRECT BY MR. SCOTT

1 BY MR. SCOTT:

2 Q So, when they asked you about five minutes, you
3 think that was a little bit off? You didn't see the shots
4 coming at you, that was your testimony?

5 A No.

6 Q You didn't see the shots coming at you?

7 A No, they wasn't coming at me.

8 Q Where did they strike your house?

9 A The bathroom, the outside, the living room.

10 Q All right.

11 A My daughter's room.

12 Q Hold on. Let me show you Defense No. -- and
13 listen to my questions when I ask them, okay? All right.
14 Tiffany, what is that?

15 A That my mother's house.

16 Q Okay. Did I understand correctly earlier when
17 you said you were standing approximately between where
18 those two cars were?

19 A Yes, sir.

20 Q Then the shots hit the outside of this house?

21 A Yes, sir.

22 Q Would you agree that they were to the right over
23 here?

24 A Yes, sir.

25 Q Okay. So, is your testimony those shots weren't

TIFFANY GARRETT-REDIRECT BY MR. SCOTT

1 coming towards where you were standing?

2 MR. ADDUCCI: Objection, Your Honor, asked and
3 answered.

4 THE COURT: Sustained.

5 BY MR. SCOTT:

6 Q Okay. Listen to my question, okay? You were
7 standing in front of the house, right?

8 A Yes, sir.

9 Q You didn't see the bullets fly at you. Did you
10 later see where the bullets landed?

11 A Yes, sir.

12 Q Okay. And have you seen the damage inside the
13 house where the bullets hit?

14 A Yes, sir.

15 Q Do you understand my questions?

16 A Yes, sir.

17 Q What you saw that night, you said it looked like
18 he was shooting in the air?

19 A Yes, sir.

20 Q Those bullet holes, were they there before that
21 night began?

22 A No, sir.

23 Q So, when you saw Mr. McGowan walk out there and
24 you saw him shooting, is that your testimony?

25 A Yes, sir.

TIFFANY GARRETT-RECROSS BY MR. ADDUCCI

1 Q Okay. Then after the shooting, you saw bullet
2 holes in the house?

3 A Yes, sir.

4 Q Okay. Thank you.

5 MR. SCOTT: That's all I have.

6 THE COURT: Recross?

7 RECROSS-EXAMINATION

8 BY MR. ADDUCCI:

9 Q Has that house been shot up before?

10 A No, sir.

11 MR. ADDUCCI: Thank you.

12 THE COURT: Thank you for your testimony, ma'am.
13 You can step down.

14 MR. SCOTT: Your Honor, the State rests.

15 THE COURT: All right, Mr. Foreman, ladies and
16 gentlemen, we're at the point in this trial where I
17 need to discuss some matters with the lawyers in
18 light of the fact that the State has rested its case.
19 So, I'm going to ask you to go back to the jury room.
20 I hope to get you back out shortly. Again, remind
21 you no discussions.

22 (WHEREUPON, the jury came into open court at
23 approximately 11:40 a.m.)

24 MR. SCOTT: Your Honor, I'm ready to proceed.

25 THE COURT: All right.. Mr. Adducci, do you have

TIFFANY GARRETT-RECROSS BY MR. ADDUCCI

1 any matters before the Court?

2 MR. ADDUCCI: Yes, sir, Your Honor, I would ask
3 the Court to grant directed verdict for the Defense
4 on all counts. Attempted murder is a specific intent
5 crime. I have a Court of Appeals case from just
6 2015, State v. King 412 S.C. 403. Specific intent to
7 commit murder is an element of attempted murder.

8 I don't believe even in the light most favorable
9 to the State that the State has shown any specific
10 intent to murder. Especially, they're alleging four
11 victims, Mr. Glenn, Ms. Garrett -- Ms. Garrett's
12 testimony was I didn't think the shots were coming at
13 me. I thought they were up in the air. Ms. Irby,
14 who was inside the house, not where there's any
15 windows. And the child that, apparently, had been in
16 bed since the end of the party, since the end of the
17 children's party around 5:00 or 6:00 o'clock. The
18 testimony from the State's witness is that
19 Mr. McGowan arrived sometime 7:00, 7:30 was the first
20 that they saw him. I don't think they have any
21 specific intent for the child and the two women.

22 I would argue also that the State doesn't have
23 specific intent for Mr. Glenn. If the State's theory
24 is that he is trying to murder Mr. Glenn, he waited
25 until Mr. Glenn had gone inside, gone in the house,

1 sat down. Walked across -- he walked across the
2 street, then started firing bullets randomly at the
3 home. There is also testimony that there were only
4 three shots. And there are, apparently, four
5 victims. I don't know how the State can show
6 specific intent to murder four people with three
7 shots at the home.

8 THE COURT: Okay. All right. Solicitor, you
9 want to respond?

10 MR. SCOTT: Judge, I see it as must be general
11 intent to commit serious bodily injury. And I think
12 it's also inferred, Your Honor. It's demonstrated
13 that he voluntarily and willfully commits the acts,
14 natural tendency of which is to destroy another's
15 life. He was clearly firing at an occupied house.

16 The testimony is this, that he's out there
17 engaging in an argument with somebody. I think
18 intent is pretty clear towards Mr. Glenn. The
19 testimony was he was out there in the yard around the
20 time the people are gathered out there. Certainly,
21 Sarah Irby and Tiffany Garrett. Tiffany Garrett is
22 standing right in front of the house when he's firing
23 towards her. Now, what she perceived is him firing
24 in the air. What she says, you know, is she's
25 perceiving him firing, but he's actually aiming at

1 her hitting the house all around her.

2 What you've got to ask is, I think, if he hits
3 her, kills her, what's the charge? I mean, it's a
4 complete reckless disregard for human life. That's
5 murder. That's a clear cut murder if he hits Tiffany
6 Garrett. Likewise, if he gets in an argument with
7 Mr. Glenn, walks inside, has that cooling off period
8 as he walks away from the fray and then turns around
9 and begins firing at a house he watched him just walk
10 into, if he hits him that's a murder trial. So,
11 missing the man is attempted murder. I think it's as
12 simple as that.

13 I think when we kind of lose sight of common
14 sense and don't analogize that way, then it's a
15 directed verdict after that testimony, we're not
16 going to send that to a jury, that's fairly
17 preposterous in my mind. I think the complete
18 reckless disregard for human life is what showed the
19 intent.

20 THE COURT: I want to take a look at this case
21 that Mr. Adducci mentioned because our charge that
22 we're provided, our charge book says that attempted
23 murder is a general intent, not a specific intent.
24 So, I want to take a look at your case.

25 So, just hold your thought, Mr. Adducci, okay.

1 MR. ADDUCCI: Yes, sir.

2 THE COURT: Well, the case that Mr. Adducci has
3 cited, State v. King, Court of Appeals case 2015,
4 specifically says that attempted murder is a specific
5 intent crime and that the trial court erred by
6 charging the jury that attempted murder is a general
7 intent crime.

8 Then we've got a case -- well, yeah, under the
9 old ABWIK, State vs. Sutton, 343 93, says specific
10 intent to kill is not an element of ABWIK.

11 MR. ADDUCCI: At that time, attempted murder was
12 not.

13 THE COURT: I understand.

14 MR. ADDUCCI: And it is -- in fact, if I can
15 hand up a highlighted section of that case.

16 THE COURT: Which one, Sutton?

17 MR. ADDUCCI: Yes. Attempted -- it specifically
18 says attempted murder would require specific intent
19 to kill and conduct towards that end. And it
20 differentiates between attempted murder, which was
21 not a crime in South Carolina, and ABWIK, which was
22 the crime in South Carolina at that time. The law
23 has since changed.

24 So, even that old case says attempted murder,
25 specific attempt, ABWIK, no. Now, that we have

1 attempted murder, it's a specific intent crime as
2 indicated in the King case.

3 THE COURT: Can you get me a good definition for
4 specific intent?

5 MR. SCOTT: Judge, I've got -- this is citing --
6 let's see, this is going to be -- I think it's Sutton,
7 actually, Your Honor.

8 Specific intent means that the Defendant
9 consciously intended the completion of acts
10 comprising the attempted offense. So, consciously
11 intended and that's the completion of acts. I got
12 that 340 S.C. at 397, 532. I think that's Sutton.

13 THE COURT: Okay.

14 MR. SCOTT: Judge, I have -- just looking at
15 this case, I did have some idea -- I think this
16 popped up in another attempted murder case I've done.

17 But what I would propose and what I would be
18 willing to consent to on behalf of the State, lesser
19 included of A and B first for Sarah Irby and the
20 child. But, certainly, I think Tiffany Garrett
21 standing right there in front of the house as well as
22 the person he was arguing with who fired him up so
23 much that he would fire a gun at his house,
24 certainly, those get past the DV on the attempt
25 murder, I think, even under the specific intent

1 theory. I would, however, consent to the child and
2 Sarah Irby an A and B first, which is a lesser
3 included.

4 THE COURT: Right. All right. But --

5 MR. ADDUCCI: Your Honor.

6 THE COURT: Wait a minute. Concerning Sarah
7 Irby and the child. Let's just focus on that for
8 just a second. I understand what you are proposing.
9 Does there still need to be some evidence -- I'm
10 throwing this out for discussion, okay. Does there
11 still need to be some evidence that the Defendant
12 knew or should have known that Sarah and the child
13 were in the house? He knows that Mr. Glenn is in the
14 house. He knows that -- I mean, Tiffany is in the
15 yard. But how does he know that Sarah Irby and the
16 child are in the house even under a assault and
17 battery one theory?

18 MR. SCOTT: Well, I think it would be difficult
19 for us to show the child because I think the
20 testimony lately was that he came around 7:00 o'clock
21 and the children's party ended around 5:00. However,
22 I think there's case law that says it's inherently
23 reckless disregard for human life to fire into the
24 home. Typically, I think you see that with a
25 homicide case. I'd have to look that up, Judge. But

1 I think it's assumed when you fire a gun into a home
2 that there's implied malice.

3 THE COURT: Well, I mean, use of unless --
4 there's going to be some sort of mitigation evidence
5 offered by the Defense -- I mean, we do have malice
6 inferred by the use of a deadly weapon under the
7 Belcher case, unless, again, the Defense puts up some
8 sort of mitigation, which, of course, I don't know
9 what they're planning to do.

10 MR. SCOTT: Sarah -- I really don't think there
11 has to be -- we have to prove that he knew there were
12 occupants in the home to get a charge.

13 THE COURT: Under assault and battery one?

14 MR. SCOTT: Right. I don't think -- because
15 even if you talked about a homicide, if he fired into
16 a home, you know, angrily because he didn't like, you
17 know, that Joe Smith lived in that home and he rode
18 by firing into the home and I think he hit somebody
19 he wasn't aware of was in there, it's still a -- it's
20 a homicide case, it's voluntary homicide.

21 THE COURT: All right. Is assault and battery
22 one, is that a specific intent crime or a general
23 intent crime?

24 MR. SCOTT: I think it's general intent, Your
25 Honor.

1 THE COURT: All right.

2 Mr. Adducci, what do you think?

3 MR. ADDUCCI: Let me check. I would argue that
4 it's specific intent.

5 MR. SCOTT: If I fire into a group of people, no
6 specific target, just recklessly fire into a group of
7 people, I hit one of them, it does not have to be
8 specific intent. Just the reckless nature of that
9 and the understanding of the consequences is enough
10 to get me a --

11 THE COURT: Well -- and if you'll remember,
12 Solicitor, a couple of years ago, we had somewhat of
13 a similar case in Newberry where the defendant was
14 accused of shooting at a crowd of people outside.
15 Some of the -- nobody was hit, but some of the
16 bullets hit the house and maybe some automobiles, if
17 I remember correctly.

18 MR. SCOTT: It was. And that was a -- the jury
19 came back on a lesser included. Perhaps, that may
20 have predated this case. I will say this, too, Your
21 Honor, that I think he certainly knew Sarah -- I
22 can't put myself in his head, but her testimony was
23 she came out there to get John on back in the house.
24 So, presumably, he would have seen her out there
25 fetching her husband, getting him away from the

1 argument. The child's trickier, I consent to A and B
2 first on the child. But I think the way we need to
3 analyze this is if the child had been hit, what would
4 we be dealing with? Him out there arguing and
5 carrying on, firing a gun at a home.

6 THE COURT: Still hold that thought,
7 Mr. Adducci. I'm going to give full opportunity to
8 argue, I just want to look at a couple of things.

9 All right. Do we agree that attempted murder is
10 a specific intent crime? Is the State willing to
11 concede that under the --

12 MR. SCOTT: A very cursory review of this
13 case -- and I'm getting Walter to print it up so I
14 can analyze it a little better. I want to look at
15 the facts on this one, too. I'm looking at the head
16 notes, Your Honor, and it does seem to be they've
17 changed it to specific intent. But I did notice the
18 Court's jury charge on line, they still list it as
19 general intent.

20 THE COURT: Right. It certainly appears from
21 State v. King that attempted murder is a specific
22 intent crime.

23 MR. SCOTT: Yes, sir. So, he gets past DV, but
24 I think the charge would have to be specific intent
25 rather than general.

1 THE COURT: Right.

2 Now, Mr. Adducci, be glad to hear from you.

3 MR. ADDUCCI: In response to -- I guess, what
4 are the Court's questions for me? We've gone over a
5 number of things. I think the State hasn't met its
6 burden for specific intent on any of them, and,
7 especially, the child and the two women. There was
8 no indication that anybody got into an argument with
9 anybody else other than Mr. Glenn. With that
10 specific intent, the State must show that he intended
11 to murder these people. The State, in its opening,
12 said that it was a reckless act. Recklessness does
13 not mean --

14 THE COURT: Well, let me just stop you.
15 Whatever y'all argued in opening does not matter to
16 me. It's not going to influence my decision one way
17 or the other.

18 MR. ADDUCCI: And the State also said, well,
19 what if the people were hit, then it would be a
20 murder. Yeah. Because murder is a specific intent
21 crime. You don't have to intend to kill someone to
22 make the theory, right? So, in correlating murder
23 and attempted murder simply is not correct because
24 murder does not have that specific intent element to
25 it. And when the State is asking for a jury

1 instruction on a lesser included, assault and battery
2 can be done in two ways.

3 One way is where there's an injury -- so,
4 there's an A section and a B section on all the
5 assault and battery charges. Injury plus or the sort
6 of common law assault idea, which is offer or attempt
7 to injure another person with the present ability to
8 do so. And then depending on the level of charge,
9 right? So again, has that intent language. An
10 intent implies specific intent -- attempt, rather,
11 attempt implies specific intent through these cases
12 that I've cited.

13 THE COURT: Doesn't King pretty much say that
14 attempt crimes are specific intent?

15 MR. ADDUCCI: Exactly.

16 THE COURT: It makes that general -- it doesn't
17 necessarily itemize the charges out, but as a general
18 statement, it says attempt crimes. So, it would go
19 under the theory of assault and battery on one or
20 more of the victims as proposed by the State, we
21 still have the attempt situation. We still have the
22 specific intent issue to try to resolve.

23 MR. ADDUCCI: Exactly. And we would be in a
24 different world if somebody was injured. But because
25 we're in a world where there were no injuries, then

1 it is an attempt crime, which, again, has specific
2 intent as an element of it.

3 THE COURT: Let me stop you just a second.

4 Solicitor, do you agree we're dealing -- assault
5 and battery situation and the facts of this case, we
6 are still dealing with an attempt because no one,
7 thank goodness, was hit by the bullets.

8 MR. SCOTT: Yes, sir. I want to speak
9 specifically to the child because that's the
10 troublesome.

11 THE COURT: I want to get to the general and
12 then we're going to hone in on each person.

13 MR. SCOTT: Okay. Yes, sir.. It would be
14 specific intent --

15 THE COURT: As to the assault and battery under
16 the facts of this case.

17 MR. SCOTT: No, for the attempted murder. Now,
18 assault and battery first, that does not have -- it
19 can be actions that are likely to produce great
20 bodily injury or death. So, that's not an attempt
21 type thing. There's an assault, an actual assault,
22 which is not an attempt. The classic law school, if
23 I rear back, if I'm going to punch Tom in the face,
24 that's the assault follow through with it.

25 THE COURT: Well, assault and battery first

1 degree, you either got an injury to a person or the
2 offer or the attempt to injure the person, okay. So,
3 we're still back in the category of attempting. So,
4 depending upon the facts, the way I'm kind of reading
5 assault and battery, it could be a general intent or
6 could be specific. Depending on whether or not if
7 there's injury, it appears that it would be a general
8 intent. If it's no injury and there's an attempt to
9 injure, then it seems like to me that it's going to
10 fall under the specific intent.

11 MR. SCOTT: I think generally these attempt
12 crimes are specific intent. It's not a hard and fast
13 rule. I just don't see -- what is the charge, I
14 mean, if you fire into a home. Murder is a specific
15 intent crime. And I think -- it's a homicide if I
16 fire in there and hit the child. And we're saying
17 it's nothing if I was lucky enough to miss her?

18 I mean, the A and B first I think is applicable
19 to the child and I still stand by all three of them.
20 I think there's argument based on the weight --
21 excuse me, the existence of the evidence, that he had
22 knowledge of Sarah Irby, certainly, Tiffany,
23 certainly, John Glenn. I would concede to the lesser
24 on the child A and B first. And I would harken back
25 to the case Your Honor referenced, that was the Reter

1 case is what I recall in Newberry. And that was just
2 a group of some anonymous people. He got into an
3 argument with one of the group, walked to the road,
4 angrily turned around and fired forwards them.

5 THE COURT: I don't think this issue ever came
6 up in that case that I can recall. It may have.

7 MR. SCOTT: I think that case predates the King
8 case.

9 THE COURT: Back to you, Mr. Adducci.

10 MR. ADDUCCI: The State is asking what is the
11 charge if somebody fires into a home and there are
12 people inside of it. There's a charge that is firing
13 a firearm into an occupied home, which is, I would
14 say, exactly what the State had alleged in this case.
15 I don't think I've got the statute number in front of
16 me, but that is a charge in South Carolina. And if
17 the State's question is what is the charge, then the
18 legislature has specifically contemplated that
19 hypothetical that the State mentioned and
20 specifically formed a charge for it. And I think
21 that when the legislature makes a specific charge for
22 a specific act, we should respect the legislature's
23 consideration and we should apply the specific law as
24 opposed to trying to shoehorn in other charges when
25 the legislature has specifically said a certain

1 charge fits a certain set of facts.

2 If I don't need to argue more on the -- so the
3 difference between the two versions of an assault and
4 battery, sort of an assault versus a battery, I don't
5 have to, but I think that the Court sees the
6 intent -- or the attempted language which the case
7 that I cited earlier shows that attempt means
8 specific intent.

9 THE COURT: All right. Here's what I think I'm
10 going to do. I think both sides have been very clear
11 on their respective positions. I think what I'm
12 going to do is I'm going to study on this a little
13 bit. And I'm going to go ahead and discharge the
14 jury have them come back about 1:00. This will give
15 me a chance to study on this a little bit more.

16 Are there any other grounds concerning your
17 motion for a directed verdict, Mr. Adducci? If there
18 are, let's go ahead and get those out on the record.

19 MR. ADDUCCI: I believe that specific intent --
20 yes, Your Honor, specific intent is the issue that
21 I'm arguing for directed verdict, the lack of
22 evidence to show that specific incident to get DV.

23 THE COURT: Okay. My inkling is -- this is not
24 a definitive ruling, I'll make that when we come back
25 after the break. But not to deny your motion

1 directed verdict, but with respect to Mr. Glenn for
2 sure, and probably grant it as far as the child, but
3 then I've got to decide whether or not to go down to
4 assault and battery concerning the child or not. And
5 then pretty sure on Mr. Glenn, pretty sure on the
6 child, and then I've got to kind of take a look
7 concerning the mom and Tiffany. So, that's kind of
8 where I'm headed. But again, that's not a definitive
9 ruling.

10 MR. SCOTT: Judge -- I'm sorry.

11 THE COURT: All right. Then if y'all come up
12 with anything that helps your respective sides, just
13 e-mail it to me, you know, however, and I'll
14 certainly take a look at it.

15 MR. SCOTT: Okay. And should you make a
16 determination on the two that you're unclear of and
17 you consider the lesser included on those. I just
18 want to reiterate, I don't think that the statute, a
19 specific statute can have sometimes where it requires
20 specific intent and other times require general.

21 THE COURT: And that's one issue that I'm kind
22 of struggling with, too. I can see both sides of
23 that. And I just need to work through that. So,
24 we're going -- I'm going to go ahead send the jury
25 out to lunch. We'll get back together at 1:00.

1 Now, assuming that some or all of this case
2 remains, Mr. Adducci, can you give me a heads up
3 about whether or not you're going to put up a defense
4 or not?

5 MR. ADDUCCI: We're going to put up some
6 witnesses, say, three or four.

7 THE COURT: Okay.

8 MR. ADDUCCI: I think they shouldn't be too
9 long.

10 THE COURT: Okay. Let me go ahead while the
11 jury's out -- well, let me do this, let me go ahead
12 and cut them loose, then let me go ahead and advise
13 him of his rights concerning testifying or not, just
14 go ahead and get that out of the way.

15 So, Mr. Bolt, if you will bring the jury back
16 out, please.

17 (WHEREUPON, the jury came into open court at
18 approximately 11:40 a.m.)

19 THE COURT: Ladies and gentlemen, what we're
20 going to do, I'm going to go ahead and send you to
21 lunch. We've got some legal issues to work through
22 and I just don't want to leave you sitting back there
23 any longer than I have to. And since we're -- it's
24 20 till 12:00, so we're close enough to lunch. So,
25 I'm going to go ahead and send you to lunch. Be back

1 here at 1:00. Again, to remind you as I did
2 yesterday, don't talk with anybody about this case.
3 And also, if you're going to be out in public, keep
4 your little juror badges on so that everybody will
5 know that you're on this jury. We'll see you back at
6 1:00, okay? Have a good lunch.

7 (WHEREUPON, the jury left open court at
8 approximately 11:41 a.m.)

9 THE COURT: Okay. We'll be in recess until
10 1:00. Again, if y'all come up with anything that
11 would be beneficial to me concerning this motion for
12 directed verdict, please get it to me.

13 THE CLERK: Raise your right hand.

14 PATRICK MCGOWAN, after being duly
15 sworn, testified as follows:

16 EXAMINATION

17 BY THE COURT:

18 Q Okay. Mr. McGowan, at this time, I'm going to
19 explain to you certain of your rights. If you do not
20 understand anything that I say, please, let me know. If
21 you want me to explain anything in more detail, please,
22 let me know that as well. Do you understand, sir?

23 A Yes, sir.

24 Q We've now reached or we're close to reaching --
25 and with consent of Mr. Adducci, I'm going to go ahead and

PATRICK MCGOWAN-EXAMINATION BY THE COURT

1 give you your rights now. But we're close to the stage of
2 the trial where you may present your defense. You have
3 the right to claim the protections given to you by the
4 Fifth Amendment to the Constitution of the United States.
5 This amendment states, in part, No person shall be
6 compelled in any criminal case to be the witness against
7 themselves. This means that you cannot be required to
8 testify in this case. You have the right to testify on
9 your own behalf. However, no one can make you testify.
10 This is a personal right and no one can waive this right
11 except you.

12 If you decide to testify, you will be
13 subject to the same rules that govern other witnesses and
14 you may be examined and cross-examined on any relevant
15 issue in this case. In addition, if you have any
16 convictions involving dishonesty or false statement or for
17 crimes punishable by imprisonment for more than one year
18 and this Court determines that the probative value of
19 admitting this evidence outweighs its prejudicial effect
20 to you, the solicitor will be able to introduce your
21 record to attack your credibility if you decide to
22 testify. If you decide to testify, this decision on your
23 part must be freely, voluntarily and intelligently made
24 with knowledge of the protections given to you by the
25 Fifth Amendment and the consequences of your decision to

PATRICK MCGOWAN-EXAMINATION BY THE COURT

1 testify.

2 If you decide not to testify, I will
3 instruct the jurors that they cannot give the fact that
4 you did not testify any consideration whatsoever and that
5 there is to be absolutely no prejudice to you because you
6 did not testify. It's left entirely up to you whether or
7 not you testify. You certainly have the right to talk
8 with your attorney, your family, friends, anyone else, but
9 the final decision will be left entirely up to you.

10 Mr. McGowan, do you understand what I've
11 explained to you?

12 A Yes, sir.

13 Q Do you have any questions whatsoever?

14 A No, sir.

15 Q Okay. Have you had ample time to discuss this
16 matter with your attorney and other individuals?

17 A Yes, sir.

18 Q All right.

19 THE COURT: I'm not going to ask, Mr. Adducci,
20 for his response, whether or not he's going to
21 testify or not, until after I have ruled on the
22 motion for directed verdict. I just wanted to go
23 ahead and get this explanation out.

24 MR. ADDUCCI: Thank you, Your Honor.

25 THE COURT: Certainly, I'm going to give you

PATRICK MCGOWAN-EXAMINATION BY THE COURT

1 some more time to talk with Mr. Adducci whether or
2 not you testify when we adjourn. After I have made
3 the rulings on the motion for directed verdict, at
4 that time, I will ask you whether or not you have
5 decided to testify or not testify. So, I don't want
6 you to tell me now, okay? All right. Thank you,
7 very much.

8 All right. Be in recess until 1:00.

9 MR. SCOTT: Thank you, Your Honor.

10 (WHEREUPON, a lunch break was taken.)

11 THE COURT: All right, Mr. Scott, over the lunch
12 break, I did have an opportunity to review your
13 e-mail, Solicitor, that you sent. I assume -- is
14 there anything else you want to put on the record?

15 MR. SCOTT: No, sir.

16 THE COURT: All right.

17 Mr. Adducci, anything you want to put on the
18 record?

19 MR. ADDUCCI: Would the Court like me to respond
20 to the arguments made in the e-mail?

21 THE COURT: You can respond, do whatever you
22 want to concerning the motion for a directed verdict.
23 Be glad to hear from you.

24 MR. ADDUCCI: Well, in the State's e-mail, it
25 discussed the idea of transferred intent.

PATRICK MCGOWAN-EXAMINATION BY THE COURT

1 Transferred intent applies only in a situation where
2 the same intended harm inflicted on an unintended
3 victim. This is not a situation -- even if -- I'm
4 not conceding that transfer intent even applies at
5 all in this situation where we have a specific intent
6 crime because transfer intent is by it's very
7 definition not specific intent. If we're trying to
8 boot strap getting around specific intent through
9 this other way, why would we have specific intent to
10 begin with? But even if the Court wants to entertain
11 the idea of transferred intent, transferred intent is
12 when I intended to shoot you and another person was
13 hit. This is not that -- this is simply not that
14 case.

15 MR. SCOTT: There's a State v. Childers case
16 that says the opposite of that, that's 373 S.C. 367.
17 As much as the doctrine of transferred intent applies
18 to murder, the Court should find that it applies to
19 attempted murder.

20 THE COURT: What was that cite again, Solicitor?

21 MR. SCOTT: That's Childers, 373 S.C. 367. It's
22 a 2007 case, Your Honor.

23 THE COURT: You may continue.

24 MR. ADDUCCI: Your Honor, I just reviewed that
25 case that the State cited, it looks like that's a

PATRICK MCGOWAN-EXAMINATION BY THE COURT

1 standard transfer intent, not a murder case. That
2 doesn't appear to be attempted murder. I believe
3 there was two bodies.

4 THE COURT: Yeah, I'm trying to find out where
5 in the case, Solicitor, that transferred intent was
6 applicable to attempted murder. This is dealing with
7 a murder, manslaughter case.

8 MR. SCOTT: Yes, Your Honor. I'm trying to find
9 it now.

10 THE COURT: Okay. Well, let me just mention
11 this. I did look pretty hard at the issue of
12 transferred intent under the Pinnel case. And -- but
13 I'm not going to rely on transferred intent in
14 connection with my ruling on the motion for directed
15 verdict. I don't think we have to use that doctrine
16 concerning the motion.

17 But, Mr. Adducci, be glad to hear anything else
18 you want to tell me.

19 MR. ADDUCCI: In the State's argument that the
20 specific intent only, I guess, is towards the act as
21 opposed to the individual, I argue that specific
22 intent is specific intent, intend to commit this
23 crime upon this person. And that specific intent is
24 that. I mean, otherwise, we're just finding ways to
25 negate binding case law which negates our specific

PATRICK MCGOWAN-EXAMINATION BY THE COURT

1 intent crime. That's all I have unless the Court has
2 questions for me.

3 THE COURT: So, that's fine. Thank you, very
4 much.

5 Well, I don't know if we should get so wrapped
6 up on trying to determine whether or not it's
7 specific or general, even though I think we've
8 conceded or everybody agreed that attempted murder is
9 a specific intent crime. I think -- and, of course,
10 as you guys and girls are fully aware of, all I'm
11 concerned about is there any evidence whatsoever
12 that's been presented by the State to justify sending
13 this case to the jury?

14 I don't think there's any question concerning
15 Mr. Glenn. He has an argument allegedly with the
16 Defendant. And after the argument ended or he ended
17 it by going into the house, I think it's clear that
18 the case should go to the jury on Mr. Glenn. And
19 kind of the same theory, Ms. Irby goes into the house
20 either right before or right after or with Mr. Glenn.
21 And, of course, that's when the argument was taking
22 place with the Defendant.

23 Ms. Garrett, she's in the front. There's a
24 distance of approximately 30 feet, I think, has been
25 mentioned. I may be off a little bit on the

PATRICK MCGOWAN-EXAMINATION BY THE COURT

1 distance, but within very close proximity of where
2 the allege shooting took place to where she was in
3 the front. Even though she perceived that he was
4 shooting in the air, in fact, we know that's not the
5 case. The shooter shot into the dwelling. So, what
6 she perceived, I think should not factor in me
7 determining whether or not there's the existence of
8 any evidence to justify sending this case to the
9 jury.

10 What I'm going to do is I'm going to deny the
11 motion for directed verdict on all four indictments.
12 And I'm inclined to charge A and B first as a lesser
13 included to attempted murder as to all four
14 indictments.

15 Now, again, this notion of transferred intent, I
16 don't think that needs to come into play. I guess it
17 could because I seriously considered that. But right
18 now, I don't think that would be a part of my charge.
19 I am going to see how I'm going to charge specific
20 general intent, how that's going to factor into the
21 jury charges, of course, get your input into that.
22 But for purposes of this directed verdict at this
23 stage, I'm going to deny the motion for directed
24 verdict and inclined to charge a lesser included A
25 and B first.

PATRICK MCGOWAN-EXAMINATION BY THE COURT

1 MR. ADDUCCI: That was for all four, including
2 the child?

3 THE COURT: That was for all four. And I'll be
4 candid with you folks, too, I may -- at the
5 conclusion of the case, I may, at a minimum, once you
6 renew your motion for directed verdict, grant it with
7 respect to the child, but at this stage I'm not going
8 to.

9 All right. Anything else before we bring the
10 jury out?

11 MR. ADDUCCI: Your Honor, can I make sure that
12 one of my witnesses has arrived?

13 THE COURT: Sure. Let me go ahead before you do
14 that.

15 Mr. McGowan, would you please stand. Have you
16 made a decision whether or not you're going to
17 testify?

18 MR. MCGOWAN: I'm not going to testify.

19 THE COURT: You're not going to. Is that
20 decision made by you freely, voluntarily and
21 intelligently?

22 MR. MCGOWAN: Yes, sir.

23 THE COURT: Did you have full opportunity to
24 discuss that issue with Mr. Adducci and anybody else
25 that you wanted to talk to?

PATRICK MCGOWAN-EXAMINATION BY THE COURT

1 MR. MCGOWAN: Yes, sir.

2 THE COURT: Okay. All right. Okay. Thank you
3 very much, sir.

4 All right. You want to check on your witness?

5 MR. ADDUCCI: Yes, please.

6 THE COURT: Take your time.

7 MR. ADDUCCI: He's diabetic. He had to go home
8 and take his medicine.

9 THE COURT: We'll be waiting for you.

10 MR. ADDUCCI: Thank you.

11 (WHEREUPON, a short break was taken.)

12 MR. ADDUCCI: Your Honor, Mr. Cunningham has
13 arrived.

14 THE COURT: Oh, okay, so you're ready to go?

15 MR. ADDUCCI: Yep.

16 THE COURT: Okay. All right.

17 Mr. Herron, if you'll bring the jury back out.

18 (WHEREUPON, the jury came into open court at
19 approximately 1:40 p.m.)

20 THE COURT: Ladies and gentlemen, I just want to
21 explain to you, I had you come back at 1:00 and then
22 I was informed by the attorneys in the next case that
23 was scheduled for trial that the Defendant was
24 wanting to plea. So, we took his guilty plea, so
25 that's what we've been doing since 1:00 and that's

BILL CUNNINGHAM-DIRECT BY MR. ADDUCCI

1 why I had you back there. So, I didn't want you to
2 think we were sitting around not doing anything. We
3 were working and dealing that particular case.

4 All right. Mr. Adducci, is the Defense ready,
5 sir?

6 MR. ADDUCCI: Yes, sir, Your Honor.

7 THE COURT: Okay.

8 MR. ADDUCCI: The Defense calls Bill Cunningham.

9 THE COURT: Come around, please, sir.

10 THE CLERK: Place your left hand on the Bible,
11 raise your right hand.

12 BILL CUNNINGHAM, after being duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. ADDUCCI:

16 Q Good afternoon, Mr. Cunningham. Can you speak
17 up and speak into the microphone so the Court can hear
18 you?

19 THE COURT: Get close to that microphone, sir.

20 MR. ADDUCCI: We can move it, actually.

21 BY MR. ADDUCCI:

22 Q Is that better for you?

23 A Yeah.

24 Q Okay. So what's your name, sir?

25 A Willie Cunningham.

BILL CUNNINGHAM-DIRECT BY MR. ADDUCCI

1 Q You said Willie Cunningham?

2 A Yes.

3 Q Now, let me take you back to March 31st of 2012,
4 do you remember that day?

5 A (The witness nods.)

6 THE COURT: You need to verbally respond, don't
7 just shake your head. Get closer to that microphone,
8 sir.

9 THE WITNESS: Yes.

10 THE COURT: There you go. There you go.

11 BY MR. ADDUCCI:

12 Q And back in 2012, where were you living?

13 A I forgot the name of the address, on Boyd Road.

14 Q It was on Boyd Road?

15 A Yes.

16 Q If I show you this picture, which is marked as
17 Defense Exhibit No. 2, could you identify what that
18 residence is?

19 A That's where I stayed at.

20 Q Thank you. Is that in substantially similar
21 condition to the way that it was in 2012?

22 A Correct.

23 Q And how long had you lived there?

24 A About three or four years.

25 Q Okay. And when did you move out?

BILL CUNNINGHAM-DIRECT BY MR. ADDUCCI

1 A About three years ago, two, three years ago, I
2 guess.

3 Q And you still live in the neighborhood, don't
4 you, just right down the road?

5 A Yeah, yeah.

6 Q Now, back on March 31st, 2012, was there a party
7 going on in the neighborhood?

8 A Yeah, across the street.

9 Q Was there anybody over at your house?

10 A Not at the time because I was in the bed.

11 Q Okay. Now, were you outside in the evening
12 hours when the party was going on that day?

13 A Yes.

14 Q And about how far is it from your house to --
15 and I'm going to show you Defense Exhibit No. 1, this
16 residence right here?

17 A Right across the street.

18 Q Okay. So, if I were to show you this large
19 poster board, do you see this, which is identified as
20 1871, is that where you were living?

21 A Yes.

22 Q And down here is that where Mr. Glenn was
23 living?

24 A Yes.

25 Q Okay. Now, you said that you lived there for a

BILL CUNNINGHAM-DIRECT BY MR. ADDUCCI

1 couple of years, right?

2 A Yes.

3 Q Now, do you know of any street lights in front
4 of your home?

5 A On the side of it.

6 Q There's one on the side?

7 A Yeah.

8 Q Are there any street lights in front of
9 Mr. Glenn's home?

10 A I don't recall.

11 THE COURT: You need to sit up closer to the
12 microphone, sir.

13 THE WITNESS: I don't recall.

14 BY MR. ADDUCCI:

15 Q So, now back to March 31st, do you recall how
16 many people were at the party that evening?

17 A Don't know because I was in the bed.

18 Q Okay. Now, did you hear gun fire that day?

19 A Yes.

20 Q About what time did you hear that?

21 A Don't remember.

22 Q Okay. Do you recognize this gentleman sitting
23 at this table right there?

24 A Yes.

25 Q What's his name?

BILL CUNNINGHAM-DIRECT BY MR. ADDUCCI

1 A Patrick.

2 Q Did you see him that day?

3 A Yes.

4 Q Okay, where did you see him?

5 A Over in my yard.

6 Q In your yard?

7 A Yes.

8 Q Okay. About what time did you see him in your
9 yard?

10 A I saw him that day. I saw him again that night.

11 Q In the evening, did you see Mr. McGowan with a
12 gun?

13 A No.

14 Q And after you heard the gunshots, where did you
15 go?

16 A In the house to use the bathroom.

17 Q So, were you inside the house when you heard the
18 gunshots or were you outside of the house when you heard
19 the gunshots?

20 A I was on the porch talking to Patrick. Then I
21 told him I had to go urinate. I said, Sit in the chair
22 until I come back. By the time I took three steps, that
23 when I heard gunshots, so I hit the floor. So, I told my
24 girlfriend, You better get on the floor because they're
25 out there shooting.

BILL CUNNINGHAM-DIRECT BY MR. ADDUCCI

1 Q Okay. So, let me show you Defendant's Exhibit
2 No. 2 again. And you indicated that, again, prior to
3 hearing the gunshots, you were with Patrick?

4 A I was in the house.

5 Q Okay. How long were you in the house when you
6 heard the gunshots?

7 A I just walked from here to that table right
8 there.

9 Q Okay. So, you had just entered the residence?

10 A Yeah, I hit the floor.

11 Q And was Patrick with you immediately before you
12 walked in?

13 A Before the gunfire, yes, sir.

14 Q And where was Patrick standing when you -- when
15 you turned and walked into the house?

16 A I told him, I said, Pat, sit in that chair until
17 I go use the restroom and come back out. I said, Don't go
18 back over there.

19 Q Okay.

20 A So, I turned around and I walking towards the
21 bathroom. By that time, I heard gunfire and I jumped on
22 the floor. And when everything was over with, I came back
23 out. When I came back out, I seen Patrick standing there
24 on the front door step walking toward that way. Everybody
25 was out there running.

BILL CUNNINGHAM-CROSS BY MR. SCOTT

1 Q So, you saw Patrick after the gunshots?

2 A Yeah.

3 Q Did you see a gun in his hand?

4 A I ain't seen no gun.

5 Q And when you came back outside, do you remember
6 how many people were out there running?

7 A I don't remember. I just seen people running.
8 Like, there were two or three cars parked in my yard on
9 the side. And everybody was getting in the car to move,
10 you know.

11 Q You just said that you told Patrick to sit down
12 in a chair. Where was that chair?

13 A On the front porch.

14 Q So, he was close to the front porch when you
15 told him that?

16 A He was on the front porch.

17 Q Okay. So, when you went inside, he was on the
18 front porch?

19 A Yeah.

20 Q Okay.

21 MR. ADDUCCI: Nothing further, Your Honor.

22 THE COURT: Okay. Cross-examination, Solicitor.

23 CROSS-EXAMINATION

24 BY MR. SCOTT:

25 Q Okay. Now, talking about you didn't know how

BILL CUNNINGHAM-CROSS BY MR. SCOTT

1 many people were at the party across the street because
2 you were in the bed, isn't that what you said?

3 A Yes.

4 Q When did you go to bed?

5 A I go to bed with the chickens. I was in bed
6 early.

7 Q Do you remember about what time the gunshots
8 happened?

9 A I don't remember.

10 Q If I told you it was 11:15 p.m., would that
11 surprise you?

12 A Could have been.

13 THE COURT: What was that answer, I didn't hear
14 it?

15 THE WITNESS: It could have been.

16 BY MR. SCOTT:

17 Q Okay. Were you in the bed or were you up in the
18 yard?

19 A I was in the bed.

20 Q When the shots happened?

21 A When I was bed, I heard arguing, that's when I
22 got up.

23 Q Okay.. What happened next?

24 A I heard John, my cousin, him and Patrick were
25 arguing, so I called Patrick over there before they got to

BILL CUNNINGHAM-CROSS BY MR. SCOTT

1 fighting. And that's when Patrick came over there.

2 Q So, you were inside, you heard them arguing?

3 A Yeah.

4 Q It was loud enough you could hear it across the
5 street?

6 A My window was up.

7 Q Okay. Okay. So, you told Patrick -- you're
8 friends with Patrick --

9 A Yeah.

10 Q -- right?

11 A John's my first cousin.

12 Q Okay. So, you know both of these guys?

13 A Yes.

14 Q That was definitely Patrick McGowan that was
15 arguing with John Glenn that night?

16 A No.

17 Q You're not mistaken about that, are you?

18 A No.

19 Q That was definitely --

20 A Yeah, I heard them two. I heard them two.

21 Q Okay. Had Patrick been over at your house
22 earlier?

23 A Yeah.

24 Q What about Willie James?

25 A He could have been because it was -- before they

BILL CUNNINGHAM-CROSS BY MR. SCOTT

1 had the party, they all was over in my yard. I had a
2 little place on the side of the house right there. They
3 was over there -- go over there drinking over there.

4 Q Explain that for me. So, there was a party
5 across the street at John's house and you had a little get
6 together --

7 A I didn't have no get together. It's just a part
8 on the side, just a place on the side where some of them
9 drink at.

10 Q Who was drinking?

11 A A lot of cars was over there, two or three, four
12 cars --

13 Q Patrick was over there drinking, too?

14 A Yeah, I talked to him over there.

15 Q Are you saying a park beside your house? What
16 are you saying?

17 A It was something like a field. Like I said,
18 whenever they have a party, people come over there and
19 park sometimes, too. I tell them, you know, they ain't
20 got nowhere to park, come over there and park.

21 Q So, John Glenn and them are having a get
22 together across the street?

23 A Having a little kid party.

24 Q They're having a kid party --

25 A Yeah.

BILL CUNNINGHAM-CROSS BY MR. SCOTT

1 Q -- and while that was going on, you had a group
2 of people beside your house drinking?

3 A They always drink with my son. They don't drink
4 with me.

5 Q Who's your son?

6 A Rashawn Schumpert.

7 Q What?

8 A Rashawn Schumpert.

9 Q Rashawn Schumpert?

10 A Yeah.

11 Q Okay. Was he out there that day?

12 A Might have been earlier that day.

13 Q Who was Patrick there visiting, do you know?
14 Was he visiting you or was he just hanging out drinking
15 beside your house?

16 A All of them come over to the house all the time,
17 all the guys come over there.

18 Q Okay. All right. But it's your testimony -- do
19 you remember about what time they got to your house to
20 drink beside your house?

21 A It was earlier that day.

22 Q That would have been while you were awake?

23 A I think that was while they was having the kids'
24 party, yeah. Yeah, earlier that day.

25 Q Okay. I'm just trying to --

BILL CUNNINGHAM-CROSS BY MR. SCOTT

1 A Before they went across the street, I reckon. I
2 don't know.

3 Q Correct me if I'm wrong, because it's hard to
4 follow you. You had people beside your house sitting down
5 drinking the same time --

6 A About three or four cars.

7 Q Hold on, man. Listen to me. You got to explain
8 this. There were people beside your house drinking at the
9 same time they had the kid party across the street, is
10 that accurate? Is that what you're --

11 A There was about three or four cars parked beside
12 my house and they was all -- that's where they sit and
13 drink over there sometime. My nephew stay in the house
14 beside my house. They be in my house, their house. They
15 share the yard.

16 Q Do you understand my question I'm asking you?

17 A I'm telling you like I'm telling you.

18 Q Do you understand the question I'm asking you?

19 A Yeah, I understand.

20 Q All right. Who was at your house while they
21 were having the party --

22 A They was in the yard.

23 Q Okay, who was in the yard beside your house
24 while --

25 A There were three or four cars over there.

BILL CUNNINGHAM-CROSS BY MR. SCOTT

1 Q I'm not asking about cars. I want to talk about
2 people.

3 A I don't know who was over there.

4 Q Okay. Was Patrick was over there?

5 A Patrick was over there because I talked to
6 Patrick.

7 Q So, you do know who was over there then?

8 A Yeah.

9 Q Who else besides Patrick was over there?

10 A Patrick -- Patrick -- Patrick and I done forgot
11 that guy now he had introduced me to, I think he was down
12 the road somewhere. Me and him know the same guy. I
13 talked to him for a while. I can't remember. It's been
14 three or four years, I done forgot who was over there, but
15 I know I talked to Patrick that day.

16 Q All right. That's all I was asking. They were
17 over at your house. And then at some point, did you see
18 him go over to John Glenn's yard?

19 A Yeah, because all of them was over there
20 partying. Okay, after the kids' party, they went over
21 there.

22 Q Who's they?

23 A All the guys that was in my yard.

24 Q Name them.

25 A I just told you I was in bed.

BILL CUNNINGHAM-CROSS BY MR.. SCOTT

1 Q Listen, you can't say you were in bed --

2 A It's been three or four years, I don't remember.

3 THE COURT: Wait a minute. Wait a minute. I
4 need to instruct the witness, I need to instruct the
5 Solicitor, please don't talk over each other.

6 Mr. Witness, what you need to do is allow the
7 Solicitor to finish the question before you say
8 anything and then you can give your answer.

9 And Solicitor Scott, as you very well know, let
10 him finish his answer before you go to the next
11 question.

12 I can't have both of you talking over each
13 other, okay?

14 Thank you. You may proceed.

15 BY MR. SCOTT:

16 Q Okay. All right. This is what I'm trying to
17 wrap my head around. You're in the bed, so how do you
18 know who's going across the street to the house? Help me
19 understand.

20 A I can't see through the wall now, can I?

21 Q Patrick McGowan was beside your house drinking.
22 Did you see him go across the street --

23 A I left them guys out there; so I went in the
24 house. Where they went after then, I do not know.

25 Q But you say the next thing you heard was some

BILL CUNNINGHAM-CROSS BY MR. SCOTT

1 arguing of some type?

2 A Right.

3 Q And how did you know who was arguing?

4 A I heard John and I heard Patrick.

5 Q You just recognized their voices from across the
6 street?

7 A Yeah, so I got up and I called -- to keep them
8 from fighting, I called Patrick over to the house. I
9 said, Patrick, come here. What y'all arguing about?

10 Q Could you hear what Patrick was arguing? Could
11 you hear what he was saying?

12 A I just hear them raising sand.

13 Q Raising sand?

14 A Yeah.

15 Q All right. And when you got him over to the
16 house, you said you asked him what they were arguing
17 about. Did he tell you?

18 A Yeah.

19 Q What did he say?

20 A Some things --

21 MR. ADDUCCI: Objection, Your Honor.

22 THE COURT: Wait a minute, wait a minute. Got
23 an objection.

24 MR. ADDUCCI: Calling for hearsay.

25 THE COURT: Okay. What did he say, who is he,

BILL CUNNINGHAM-CROSS BY MR. SCOTT

1 Solicitor?

2 MR. SCOTT: Patrick McGowan.

3 THE COURT: I think he was referring to Patrick.

4 MR. ADDUCCI: I'm still objecting to it. I
5 think it's going to be a statement against interest,
6 I don't know.

7 THE COURT: Overruled. You may proceed.

8 BY MR. SCOTT:

9 Q What did Patrick McGowan say they were arguing
10 about?

11 A Arguing about some things that no man supposed
12 to discuss no way.

13 Q Something a man --

14 A They talking about Masonic stuff.

15 Q Okay. And so, then -- I think I'm following you
16 now. So, you brought him over towards your house?

17 A I called him over there.

18 Q Did he come?

19 A Yeah.

20 Q Was he -- what was his demeanor as he was coming
21 across the street? Was he still angry?

22 A I don't recall.

23 Q What does raising sand mean?

24 A Arguing with one another.

25 Q Did he appear angry when he came back or was he

BILL CUNNINGHAM-CROSS BY MR. SCOTT

1 just arguing in a very --

2 A Didn't seem like he was angry to me, but I asked
3 him, What y'all arguing about?

4 Then he told me, We arguing about Masonic
5 stuff.

6 I said, Well, y'all don't supposed to talk
7 about that stuff no way. I said, Patrick, sit in that
8 chair right there. I said, Let me go in here and use the
9 bathroom.

10 Q What was your concern? Why were you bringing
11 him over to your house?

12 A That was my cousin, he's my friend, I was
13 keeping them from fighting.

14 Q Did he seem aggravated? Did he seem angry?

15 A The way they were arguing, I thought maybe they
16 was going to fight.

17 Q Okay.

18 A So, I tried to stop them before it happened.
19 You see what I'm talking about?

20 Q I think so. I'm just asking you what was his
21 demeanor? Was he angry? Is that what you're describing?

22 A I reckon so.

23 Q Did he seem -- you said he had been drinking
24 since the day time over there. Did you see --

25 A All of them was drinking.

BILL CUNNINGHAM-CROSS BY MR. SCOTT

1 Q I'm asking about Patrick McGowan right now.

2 A Yes.

3 Q He had been drinking over there since earlier.

4 Did he seem intoxicated to you?

5 A I ain't never saw him drunk drunk.

6 Q What's drunk drunk?

7 A Well, probably high.

8 Q Do you remember whether he seemed that way to
9 you?

10 A No, I don't remember.

11 Q All right. Let me show you something,
12 Mr. Cunningham. You don't remember the address of the
13 house?

14 A Maybe 1720, I don't remember.

15 Q Does 1871 sound right?

16 A Yeah, I believe that what it is, 1871.

17 Q All right. Let's see. And it had a tin roof,
18 didn't it?

19 A Yeah.

20 Q You recognize that to be?

21 A Yeah.

22 Q All right. And do you recognize that to be
23 where John Glenn lived?

24 A Yes.

25 Q So, he was in the yard with John Glenn and you

BILL CUNNINGHAM-CROSS BY MR. SCOTT

1 called him over to your porch, is that right?

2 A You see where that black stuff is at right
3 there?

4 Q No.

5 A They probably arguing about right there
6 somewhere when I came out.

7 Q Point right there?

8 A Yeah.

9 Q That's where they were?

10 A I believe about right in there.

11 Q Can you see this? I'm trying to hold it for the
12 jury and you to see.

13 A Yeah, about right in there.

14 Q When you called him to your porch?

15 A Right.

16 Q About how far -- what's the distance probably
17 from there to your porch? You got any way of estimating
18 that?

19 A I can't.

20 Q Further than you are from that door there?

21 A A little bit further than that.

22 Q A little bit further. Okay. All right. So, he
23 came over to your porch?

24 A Yeah.

25 Q And you said you told him to sit there on the

BILL CUNNINGHAM-CROSS BY MR. SCOTT

1 porch?

2 A I asked him what were they arguing about.

3 Q Okay.

4 A You know, I had to urinate, so I said, Sit here
5 and let me go use the restroom until I come back out. I
6 said, Sit in that chair and don't go back over there.
7 That's what I told him.

8 Q And then --

9 A By the time I got at the end of that thing right
10 there, I heard the gunfire, so I jumped on the floor.

11 Q What thing?

12 A That wall right there.

13 Q So, you had to walk approximately this far into
14 your house?

15 A Yeah.

16 Q The distance between you and me?

17 A Right.

18 Q And that's about when you heard the gunshots?

19 A Yeah.

20 Q And we all saw you walk in here. Were you a
21 little bit faster then or are you about --

22 A I wasn't disabled then.

23 Q What happened?

24 A I got hurt on my job.

25 Q Okay. And what do you do for a living?

BILL CUNNINGHAM-CROSS BY MR. SCOTT

1 A Disabled.

2 Q Do what?

3 A Disabled.

4 Q What did you do before?

5 A Work for the county.

6 Q Okay. And -- all right. So, you walked -- you
7 were faster then, but you walked that distance?

8 A Yeah.

9 Q How many gunshots did you hear?

10 A It was one gunfire. I don't know how many it
11 was. Might have been two, three, I don't know.

12 Q All right. Then did you immediately come back
13 out to the porch?

14 A When I heard cars cranking up, that's when I
15 eased up off the floor. I eased back to the front door.

16 Q Okay. What you mean eased?

17 A To the front door.

18 Q Okay. Just probably careful, though?

19 A Right.

20 Q Did the gunshot sound close or far away or do
21 you remember?

22 A I remember, because, like I said, it scared me.

23 Q Okay. And tell me, when you eased back to the
24 front door, what did you see then?

25 A When I got to the front door, I saw Patrick down

BILL CUNNINGHAM-CROSS BY MR. SCOTT

1 there in front of the doorstep walking toward that way,
2 walking towards the driveway.

3 Q Whose driveway?

4 A My driveway. It was a car in my yard. I don't
5 remember whose car it was, but -- I don't remember whether
6 he got in that car or whether he went home. But he lives
7 right there across the street, too.

8 Q Who did, Patrick McGowan?

9 A Yeah.

10 Q Okay. And you said earlier he was walking when
11 you saw him?

12 A Who was walking, Patrick?

13 Q That's what you said during direct examination,
14 when you walked outside, he was walking away towards the
15 car?

16 A Yeah, walking towards the car.

17 Q And everybody else was running?

18 A No, I seen two other people running, jumped in
19 their car.

20 Q So, is he walking fast or he just kind of just
21 walking towards the car?

22 A Just walking. Like I said, I can't remember. I
23 know he was walking toward the car..

24 Q And you didn't see a gun --

25 A I don't know whether he got in the car or he

BILL CUNNINGHAM-CROSS BY MR. SCOTT

1 walked, you know, down the road. I don't remember.

2 Q Did he say anything to you?

3 A Uh-huh.

4 Q Okay.

5 A Because when I came back out -- you know, I
6 didn't get to make it to the restroom, so I got a big
7 front porch, so I urinate on my front porch on the side
8 over there. By the time I turned around, everybody was
9 gone.

10 Q Okay. You didn't see a gun in his hand?

11 A I didn't see no gun.

12 Q You didn't get to go up to him and ask him what
13 happened, did you?

14 A Not after the shooting.

15 Q Okay. He was walking --

16 A Everybody left there.

17 Q Everybody else was running, he was walking
18 towards the car?

19 A Yeah. Then I got -- went over by John.

20 Q Do you remember what kind of clothes he was
21 wearing?

22 A Don't remember.

23 MR. SCOTT: All right. Thank you. That's all
24 the questions I have.

25 THE COURT: Redirect?

JAMES MCGOWAN-DIRECT BY MR. ADDUCCI

1 MR. ADDUCCI: No, Your Honor.

2 THE COURT: Thank you, sir, for your testimony.

3 You can step down. You're free to leave,

4 Mr. Cunningham, or you're welcome to remain with us,

5 either one.

6 MR. ADDUCCI: Next witness is James McGowan.

7 I'll go grab him.

8 THE COURT: Okay. All right.

9 Come around, please, sir.

10 THE CLERK: Place your left hand on the Bible,

11 raise your right hand, please.

12 JAMES MCGOWAN, after being duly sworn,

13 testified as follows:

14 DIRECT EXAMINATION

15 BY MR. ADDUCCI:

16 Q Good afternoon. Would you please state your
17 name?

18 A James McGowan.

19 Q And do you know this gentleman seated right
20 there?

21 A Yes, sir.

22 Q Who is he?

23 A That's P, Patrick.

24 THE COURT: What do you call him, P? What's his
25 nickname?

JAMES MCGOWAN-DIRECT BY MR. ADDUCCI

1 THE WITNESS: P.

2 THE COURT: Like the initial P?

3 THE WITNESS: Yes, sir.

4 THE COURT: Okay. I just want to make sure.

5 BY MR. ADDUCCI:

6 Q And are you related to him?

7 A Yes, sir.

8 Q What's your relationship to him?

9 A That's my cousin.

10 Q Let me take you back to March 31st, 2012. Were
11 you at a party that evening?

12 A Yeah. I left my aunt's house.

13 Q Pardon?

14 A I had left walking from my aunt's house and came
15 up --

16 Q So, you left your aunt's house and came walking
17 to a party. Where does your aunt live?

18 A 1780 Boyd Road.

19 Q So, your aunt lives on Boyd Road?

20 A Yes, sir.

21 Q And what was the address again?

22 A 1780.

23 Q And do you know Mr. Bill Cunningham?

24 A Yes, sir.

25 Q Let me show you what's marked as Defense Exhibit

JAMES MCGOWAN-DIRECT BY MR. ADDUCCI

1 No. 2. Is that Mr. Cunningham's house?

2 A Yes, sir.

3 Q Did you go over to that house on March 31st of
4 2012?

5 A Yes, sir.

6 Q Okay.

7 A Me and Bill long time friends.

8 Q What did you say?

9 A I said me and Bill are friends.

10 Q Okay. Let me show you what's marked as
11 Defendant's Exhibit No. 1. Do you recognize that house?

12 A Uh-huh.

13 Q Whose house is that?

14 A That guy name John Glenn.

15 Q All right. Now, on March 31st, when did you
16 arrive to Bill's house?

17 A It was kind of like nighttime, kind of dark.

18 Q It was after the sun set?

19 A Yes, sir.

20 Q Okay. And were you there with Patrick?

21 A No.

22 Q When did Patrick arrive?

23 A I seen him kind of like dark --

24 Q Okay.

25 A -- dark, too, because I believe him and the

JAMES MCGOWAN-DIRECT BY MR. ADDUCCI

1 other guy just got off work or whatever.

2 Q Okay.

3 A He came there and came speaking to me, talking
4 to me.

5 Q Now, were you guys hanging out by the side of
6 Mr. Cunningham's house?

7 A Yeah.

8 Q Now, did you ever go over across the street?

9 A Over to a guy named Brian Sullivan's yard.

10 Q Okay. Did you go to Mr. Glenn's yard?

11 A Earlier. I had been, you know, like, previous
12 times before.

13 Q Okay. Do you know Mr. Glenn?

14 A Yeah, I know him. We go way back.

15 Q You and he go way back, you said?

16 A Yeah, I know him. Never have had a problem with
17 him or anything.

18 Q Okay.

19 A I know him.

20 Q Okay. Now, in the evening hours, there was an
21 incident?

22 A Uh-huh.

23 Q Were you outside when there were gunshots?

24 A I was running when I was at Bill's house, I ran.
25 I heard shots going off and I was running.

JAMES MCGOWAN-DIRECT BY MR. ADDUCCI

1 Q So, when you heard gunshots, if you could,
2 please, point where you were standing.

3 A Let me see.

4 THE COURT: Maybe acclimate him to the --

5 MR. ADDUCCI: Yeah.

6 BY MR. ADDUCCI:

7 Q I'm going to show you an overhead photo. Would
8 you recognize this as Bill Cunningham's house?

9 A Yes, if that's Bill's house --

10 Your Honor, if I can stand up?

11 THE COURT: You can stand up. The jury needs to
12 see you.

13 THE WITNESS: If this is Bill Cunningham's, I
14 was standing like right in front of the house, right
15 in front of Bill Cunningham's house.

16 THE COURT: All right. I want you to repeat
17 that, sir, and speak up a little louder because
18 you're away from the microphone and our court
19 reporter needs to pick you up. So, would you repeat
20 what you just said? You can stand by the thing, but
21 just speak up louder, okay?

22 THE WITNESS: I was standing in front of Bill
23 Cunningham's house. I was talking to him. He was on
24 the porch. We was communicating.

25

JAMES MCGOWAN-DIRECT BY MR. ADDUCCI

1 BY MR. ADDUCCI:

2 Q Okay. And who was with you in Bill Cunningham's
3 yard?

4 A It was me, a guy, Gary, and Patrick and some
5 ladies, females.

6 Q Do you remember what the ladies' names were?

7 A I don't know their names. It was just a little
8 party. I can't remember their names.

9 Q So, you're just saying there was some guys and
10 girls in front of Bill Cunningham's house?

11 A Yeah, just like here mingling with the girls.

12 Q All right. So, you just said that there were
13 three of you gentlemen?

14 A And like two or three girls.

15 Q Okay. Were you guys all in close proximity to
16 each other?

17 A Yeah, we were just mingling with the girls,
18 talking to them, you know.

19 Q Okay. Was it light out or dark out at this
20 time?

21 A It was dark.

22 Q Okay. And was Patrick next to you at that time?

23 A Yeah, he was just standing around, just talking,
24 chit-chatting, you know.

25 Q And where were you -- strike that. Were you all

JAMES MCGOWAN-DIRECT BY MR. ADDUCCI

1 in that group when you heard gunfire?

2 A Well, somebody shooting, we all ran.

3 Q Okay.

4 A All of us, we all ran.

5 Q Could you identify where the gunfire was coming
6 from?

7 A It was like it was coming from, like, on the
8 side where their was, from that direction, from that way.
9 It didn't come from where we was at. It didn't come from
10 where we was. It came from, like, that way. We was just
11 like oh, man.

12 Q Did you see Patrick with a gun?

13 A No, I didn't see Patrick with no gun.

14 Q Okay.

15 A Patrick had came to see his son. Because him
16 and the guy, Gary, they work like seven days. Then at the
17 time, they seen the shooting, I haven't seen him in, like,
18 four or five days, you know what I mean. He came to visit
19 or whatever. Just crazy. I ain't see him with no gun.

20 Q All right. Did you see any muzzle flash near
21 you?

22 A The only thing I heard was gunshots and I ran.

23 Q Okay. When you ran, did you see Patrick?

24 A Sure, he was -- I was living with Patrick's
25 mother, you know, right down the street from the old man.

JAMES MCGOWAN-CROSS BY MR. SCOTT

1 They came outside, like, who's shooting, who's shooting.

2 We started to run.

3 Q You said you ran with Patrick?

4 A All of us, we took off. We heard somebody
5 shooting, we just ran. Nobody around us was shooting, we
6 just heard shots coming from the opposite way. We just
7 took off. I'm not a stupid man. Somebody shooting or
8 whatever, I don't know who it was. I'm trying to save my
9 life, I'm getting on through, you know.

10 Q But, again, did you see Patrick with a handgun?

11 A I didn't see Patrick with no gun. I'm serious.

12 MR. ADDUCCI: Okay.

13 THE COURT: Cross-examination, Solicitor?

14 CROSS-EXAMINATION

15 BY MR. SCOTT:

16 Q You say you live with Patrick's mother?

17 A Yes, I been over a year.

18 Q Do what?

19 A I was staying with her for a year at that time.

20 Q You still live with her?

21 A No, sir.

22 Q Okay. He's your first cousin?

23 A Yes, sir.

24 Q You said you walked over from your aunt's house
25 that night?

JAMES MCGOWAN-CROSS BY MR. SCOTT

1 A Uh-huh.

2 Q And Bill and you -- Bill Cunningham, did you
3 pass him when you were coming in?

4 A Did I pass him? He spoke me to then, yeah,
5 walked through, hey, how you doing.

6 THE COURT: Speak, up, sir. You need to speak
7 up.

8 THE WITNESS: I said when I came in, he spoke, I
9 spoke to him, how you doing. We got in the lobby,
10 they told us to go in the room over here. And then
11 he came out and that's pretty much it.

12 BY MR. SCOTT:

13 Q Y'all are long-time friends, you and Bill?

14 A I been knowing Bill. I always go visit Bill.
15 Like, I get off work or whatever, I go check on him. We
16 sit down and talk. That's pretty much it.

17 Q That was a pretty traumatic experience that
18 night?

19 A You got to be more specific.

20 Q I mean, gunshots fired, was that traumatic for
21 you?

22 A I mean, yeah, that's serious.

23 Q So, you've talked about this a few times with
24 Bill Cunningham?

25 A No.

JAMES MCGOWAN-CROSS BY MR. SCOTT

1 Q Y'all never discussed this night?

2 A Just over talking to them over about something
3 that we have nothing to do with this, you know what I
4 mean, just that particular night. Then the next day, was,
5 like, man.

6 He said I ran and jumped on -- he said he
7 ran and jumped on the front porch when he heard shots
8 going off.

9 Q Well, did you just say a minute ago that Bill
10 was outside on the porch talking with y'all when the shots
11 went off?

12 A No, I said we was -- I was talking when we first
13 had came. I was still out in front.

14 Q All right. All right. When the shots were
15 fired, how long had you been on Bill's property by the
16 time the shots rang out?

17 A A good while. Because Bill go in, you know,
18 probably to get something to drink or something. Then he
19 in and out of his house or whatever, like use the restroom
20 or something, you know.

21 Q But you were hanging on the side of his yard
22 with some other people earlier that day throughout the
23 night, is that right?

24 A Yeah.

25 Q Okay. And you said Patrick showed up at some

JAMES MCGOWAN-CROSS BY MR. SCOTT

1 point?

2 A Yeah, it was like dark when he got there.

3 Q Okay. Were y'all drinking -- what were y'all
4 drinking, beer, liquor or what?

5 A Only a few cold ones.

6 Q Were you smoking?

7 A I don't smoke.

8 Q Okay. Doing any drugs or anything?

9 A No, I'm drug free. I can take all the drug test
10 y'all got and I'll pass it.

11 Q Okay. Okay. At some point, though, you did
12 walk across the street to talk to John Glenn, didn't you?

13 A Yeah, because he gave me a previous time an
14 application to join the brotherhood, you know. I was like
15 at a point in time I wasn't ready to join, you know what
16 I'm saying, brotherhood, you know.

17 Q We're talking about Masons again?

18 A Yeah.

19 Q So, let me get it straight, he approached you at
20 some point about joining?

21 A Yeah, the brotherhood, yeah.

22 Q Is that something you were interested in?

23 A I was planning on joining or whatever.

24 Q All right. Do you remember when you walked over
25 there and y'all kind of started talking about it that

JAMES MCGOWAN-CROSS BY MR. SCOTT

1 night?

2 A Yeah, he came up, he was, like, you know, I got
3 an application for you or whatever, blah, blah.

4 Said, What?

5 He said, then he just -- he kind of went
6 haywire a little bit.

7 Q John went haywire on you?

8 A No, it wasn't on -- it was kind of like you
9 can't really -- you can't really discuss this world about
10 this right here because this and that.

11 I was like, Well, I need, at least, to know
12 something before join the thing or whatever, you know,
13 bring it to my attention.

14 Q And how did Patrick become involved with that
15 conversation?

16 A Shoot, well, me and Patrick and another guy was
17 talking. And he, basically -- well, I ain't going to say
18 butted in, but he just came in just like something,
19 something, you don't know nothing, you don't nothing. He,
20 basically, asked me, like, Well, could you quote me
21 scripture out of the quash. Then from then, he just went
22 off and told him, you son of a gun and you this, you that,
23 blah, blah. He just like man, I don't want no problem.
24 I'm gone, you know what I mean? No problem.

25 Q You're saying that John Glenn and you got in an

JAMES MCGOWAN-CROSS BY MR. SCOTT

1 argument first, is that what you're saying?

2 A It wasn't, basically, like an argument between
3 me, it was more like a -- he was just saying he can't
4 discuss that with me.

5 Q Okay.

6 A I was like -- my understanding, I was trying to
7 be like, you know, if you want me to be a part of this,
8 you know, tell me a little something about it, you know,
9 give me little.

10 He said, I just can't.

11 Q Are you finished?

12 A Go ahead.

13 Q At what point did Patrick McGowan walk over to
14 where y'all were talking about this?

15 A Shoot, all this was like dark, nighttime.

16 Q Okay. But what did Patrick say when he came
17 over to talk with y'all while y'all were talking about
18 Mason stuff?

19 A No, he just came over and spoke.

20 Q What did he say?

21 A He was like, how you going to keep James from
22 speaking or whatever, whatever. And then he came over and
23 started talking about the Masons or whatever. So, then he
24 was like, I just want all this and that. So, he asked
25 somebody, he asked John, that's what you basically do, he

JAMES MCGOWAN-CROSS BY MR. SCOTT

1 was like quote me a scripture word.

2 Q Who said that?

3 A That what he had told John.

4 Q All right. Patrick asked John to quote him a
5 scripture?

6 A Yeah, he was like, basically, I don't understand
7 how people be, you know, to him -- you know, it wasn't
8 even an argument, it was just like, you know, quote me a
9 scripture or whatever.

10 Q And then how did that conversation end?

11 A And then it went from John was like mother
12 fucking son of a gun, you don't know nothing. You think
13 you got them gold pins and all this and that and all this.
14 He said it wun't [verbatim] no good. I don't have any
15 problem with that.

16 Q All right. At some point, though, Patrick
17 McGowan backed over towards Bill's house after this
18 argument?

19 A He just --

20 Q All right. Then you followed him back over
21 there?

22 A No, what I'm saying, when he went, I was
23 standing there talking to a guy named Shawn right in the
24 yard for about 30 minutes, then I went back over there and
25 started talking to Bill.

JAMES MCGOWAN-CROSS BY MR. SCOTT

1 Q Okay. Then at what point did you hear the
2 gunshots?

3 A When we was standing -- it was probably like an
4 hour or two, like, after. Then we stand, like, an hour or
5 two. It been a while, you know. We just all right there
6 with the girls all together. They all talking, boom, boom
7 boom.

8 Q Did you graduate high school?

9 A Yes, sir.

10 Q Where did you go to school?

11 A Laurens High School.

12 Q Laurens?

13 A Yes, sir.

14 Q What year did you graduate?

15 A 2001.

16 Q Patrick's your first cousin?

17 A Uh-huh.

18 Q And you're still living with his mother now?

19 A No, I got my own place.

20 Q Okay. Do you remember recently calling John up
21 and talking about this case with him? Do you remember
22 that?

23 A I don't remember calling him up.

24 Q All right. You're under oath right now, okay?

25 A Yes, sir.

JAMES MCGOWAN-CROSS BY MR. SCOTT

1 Q Sworn to tell the truth, all right?

2 A Uh-huh.

3 Q Did you call him talking about this case
4 recently?

5 A I ain't talked to him recently. I just seen him
6 yesterday.

7 Q That's your testimony under oath right now,
8 that's the first time you've seen him since this?

9 A He was there. I ain't seen him.

10 Q You deny calling him on the phone...

11 A I haven't even -- I haven't talked to him. I
12 haven't talk to him. I ain't talked to John.

13 Q You never offered him money to make this case --

14 A No, never offered him money. I mean, I work at
15 Carolina [indiscernible].

16 Q What's it called?

17 A Carolina [indiscernible] country club in
18 Fountain Inn. I make a little over minimum wage, ain't no
19 way in the world I can pay somebody to end a case. I only
20 make 850 on my job, you know what I mean? So, I ain't
21 going to sit there and offer somebody some money for a
22 case. No.

23 Q All right. Now, this story, do you have any
24 idea who fired those shots?

25 A I don't know. I heard shots going off, I ran.

JAMES MCGOWAN-CROSS BY MR. SCOTT

1 I don't know.

2 Q So, you don't know who fired them?

3 A No.

4 Q Did you see -- were you watching Patrick McGowan
5 when the shots went off?

6 A You say before or after?

7 Q Before, do you remember --

8 A We was right there too busy conversating with
9 the women.

10 Q But were you watching him when the shots went
11 off? Do you know where he was when the shots went off?

12 A All of us standing there talking to the females.
13 All of us standing there talking to them.

14 Q You don't know where the shots came from?

15 A They came, like -- like, from way over there,
16 from this side of the house or whatever.

17 Q From the back of John Glenn's house?

18 A No, back, like, from the side where Bill lives
19 at and, like, right in front. It was like it had to be,
20 like, somebody from the side.

21 Q Who was over there?

22 A Had to be -- what the guys name, dark-skinned
23 guy?

24 Q Did you see anybody over there?

25 A The guy, Terry, he acted weird like because he

JAMES MCGOWAN-CROSS BY MR. SCOTT

1 was trying to start a problem with the guy that we friends
2 with, trying to, like, rob him or something like that.
3 Then, you know, he was saying -- he was, like, flashing a
4 gun and stuff like that. We was like --

5 Q Wait, hold a second. Now, are you saying in
6 court right now you saw somebody trying to rob somebody
7 that night?

8 A I told the solicitor.

9 Q Do what?

10 A The guy, Derrick, he came down, he's like a
11 friend of ours. But he actually, like, he just walking up
12 at the scene like he was trying to do something to them.

13 Q James, do you remember when law enforcement came
14 and spoke with you?

15 A Yeah.

16 Q Do you remember you told them you weren't there
17 that night?

18 A Law enforcement said I wasn't there.

19 Q Do you remember telling them that?

20 A No, because they -- well, when they came there
21 and the guy already told me, he said the lady say someone
22 down here mentioned your name.

23 Q Do you remember telling them that you weren't
24 there that night?

25 A I said I was at Bill Cunningham's house, I was

JAMES MCGOWAN-CROSS BY MR. SCOTT

1 over there talking to them.

2 Q James, do you remember telling them you weren't
3 there when all this went on, do you remember that?

4 A No.

5 Q All right. You never told law enforcement this
6 story you're telling right now, have you?

7 A Sure. I met with him in front of my house.

8 Q Who? Who you pointing to?

9 A Mr. Bentley.

10 Q Do you remember Mr. Bentley met you in the
11 parking lot today when you were out there with
12 Mr. Handberry in the parking lot?

13 A Uh-huh.

14 Q And that was the first time you told that story
15 to anybody, wasn't it?

16 A No, I told what you call it that story, the guy,
17 Marvin, when they put me in the car and drove me around
18 and I was late for work.

19 Q You told them you were weren't there that night?

20 A I told Martin. He wrote a report what I told
21 him.

22 Q Okay. So, they just got the report wrong is
23 what you're saying?

24 A I can't say they got it wrong. They came --
25 detectives came to my house. I had to be at work. I was,

JAMES MCGOWAN-CROSS BY MR. SCOTT

1 like, I got 10 minutes, seven, eight minutes to get there.

2 I was, like, give me a ride to work.

3 He was like, I'll take you to work.

4 The other guy was, like, We going to take
5 you to work.

6 So, they put me into the car and rode me
7 around and saying all kind of -- saying names and
8 mentioning all kind of crazy stuff. Like you're this,
9 this, this and that.

10 I'm like, No, I'm not, I'm working.

11 Then when they took me to my job, I was
12 getting out the car, they had me on one side of my arm and
13 one on the other side of my arm. They brought me in.
14 Took me right on my job. And the people -- most people on
15 my job was like, What's wrong? What did you do? What's
16 going on?

17 I was like, I didn't do anything.

18 Q Okay. So, you told them you weren't there that
19 night when the shots went off?

20 A Well, I told the story just like I told you.
21 And they was like, Well, we already know, we going to put
22 you in the car and ride you around.

23 MR. SCOTT: I don't have anything further.

24 THE COURT: Any redirect?

25 THE WITNESS: Wanted to ride me around.

JAMES MCGOWAN-REDIRECT BY MR. ADDUCCI

REDIRECT EXAMINATION

BY MR. ADDUCCI:

Q You said that you saw somebody with a gun that evening?

A A guy, Terry, was acting like he wanted to rob the guy, Derrick.

Q The guy Terry?

A Yeah.

Q Is that what you said?

A He was acting like he want to try to, like, rob him or whatever.

Q Do you know Terry's last name?

A It was Cunningham.

Q Terry Cunningham?

A Uh-huh.

Q Did you see a gun on Terry Cunningham?

A Terry Cunningham stood out -- he stood up like this right here. His shirt --

Q Can you stand up and show the jury?

A Yeah. He, like, standing right here. He just --

THE COURT: You need to speak up. You're away from the microphone.

THE WITNESS: He was -- he was walking around like he was trying to -- you know, trying to sneak up.

JAMES MCGOWAN-RECROSS BY MR. SCOTT

1 or whatever. We see him standing over, like, by his
2 yard. He did his shirt like this right here, lift
3 his shirt up, flash the gun.

4 BY MR. ADDUCCI:

5 Q So, when he lifted his shirt, did you see what
6 was underneath his shirt?

7 A Yeah, I was like, whoa, that look like a gun on
8 him.

9 MR. ADDUCCI: Okay. Nothing further.

10 THE COURT: Thank you for your testimony --

11 Recross?

12 MR. SCOTT: I'm sorry.

13 RECROSS-EXAMINATION

14 BY MR. SCOTT:

15 Q When did you tell law enforcement about this
16 mysterious guy with the gun?

17 A This guy ain't mysterious. He was there.

18 Q When did you tell law enforcement about this
19 man?

20 A No -- well, Detective Martin was like -- it was
21 like, oh, we don't believe it. He was acting like you,
22 like it was mysterious and it didn't make sense.

23 Q Well, you just kind of mention it in passing
24 towards the end of this testimony, didn't you? That ought
25 to be the first thing you talk about.

JAMES MCGOWAN-RECROSS BY MR. SCOTT

1 A I had to answer your questions first.

2 Q Tell me the mysterious man's name again.

3 A Terry Cunningham.

4 Q Terry Cunningham. Is related to Bill

5 Cunningham?

6 A I think that's his nephew or somebody.

7 Q Where can we find Terry Cunningham right now?

8 A I have no clue.

9 Q Do you remember him arguing with anybody in John
10 Glenn's yard that night?

11 A He was -- he was hollering at the guy, Derrick.

12 He was trying to start something with him.

13 Q With who?

14 A With the guy, Derrick?

15 Q Who's Derrick?

16 A What Derrick's last name? I don't know his last
17 name.

18 Q I don't know. Were they with your group?

19 A I don't have a group.

20 Q Well, the group drinking on the side of Bill
21 Cunningham's house.

22 A Yeah.

23 Q Derrick was over there with y'all?

24 A Yeah.

25 Q So, Terry Cunningham shows up and what does he

JAMES MCGOWAN-RECROSS BY MR. SCOTT

1 do, he flashes his gun to Derrick?

2 A Well, he walking around, like, trying to be real
3 sneaky like.

4 Q What do you mean?

5 A Like, he do, like, and this guy, he got around
6 him or whatever and try to do something to the guy.
7 People was like hey, man, you know, he okay. He's not no
8 trouble.

9 Q Okay. So, with this information, you ran to law
10 enforcement and told them about Terry Cunningham, didn't
11 you?

12 A You said ran to them?

13 Q You ran to law enforcement and said y'all got to
14 look for Terry Cunningham, didn't you tell them that?

15 A Well, when Detective Martin came and started
16 talking to me or whatever, I was trying to discuss it and
17 tell them.

18 They was like, No, that's mysterious. That
19 don't make any sense.

20 Q Okay. But I want to get this, this Terry
21 Cunningham, what was he dressed in?

22 A Terry had, like -- Terry had on a black tee and
23 black pants.

24 Q Did he try to rob the guy or you're just saying
25 he was acting suspicious.

JAMES MCGOWAN-RECROSS BY MR. SCOTT

1 A Suspicious, like he was trying to, like, rob him
2 or whatever.

3 Q A minute ago, you said he showed a gun.

4 A When he came, that's right, because we was
5 telling him hey, man, this guy's okay. And he done like
6 this right here.

7 Q Okay. Any reason he would have fired at John
8 Glenn's house?

9 A I don't know, that probably between them.

10 Q Okay. Well, did you see Terry Cunningham in
11 John Glenn's yard earlier that night?

12 A Terry, yeah.

13 Q Oh, you did?

14 A (The witness nods.)

15 Q Yes.

16 A Because when we was right here chilling, Terry
17 came over. And Terry, he walked across the street, too.

18 Q Show the jury -- that's Bill Cunningham's yard.
19 Where was Terry Cunningham when you saw him?

20 A Right on the side --

21 THE COURT: Speak up, sir.

22 THE WITNESS: On the side right here.

23 BY MR. SCOTT:

24 Q The backyard of Bill Cunningham's house?

25 A On the back side.

JAMES MCGOWAN-RECROSS BY MR. SCOTT

1 Q All right. If I tell you that's Bill
2 Cunningham's house, you're saying he was in Bill's
3 backyard?

4 A On the side.

5 Q Point to the side.

6 A To this front side.

7 Q I don't know, brother.

8 A I can't hardly read it.

9 Q Stand right here so the jury can see. That's
10 Boyd Road. You recognize Boyd Road? You live on it,
11 right?

12 A That's Boyd right there.

13 Q That's Bill Cunningham's yard. That would be
14 his front yard, right?

15 A Uh-huh.

16 Q What side were you on?

17 A On this side.

18 Q Up under that light?

19 A Up under that light right where the --

20 THE COURT: Speak up.

21 THE WITNESS: Right by the trailer.

22 BY MR. SCOTT:

23 Q Where was Terry Cunningham?

24 A He had came over to where we was here, like, on
25 the side.

JAMES MCGOWAN-RECROSS BY MR. SCOTT

1 Q Okay. Where was he when the shots were being
2 fired?

3 A Terry ended up back over in his yard, but we
4 were standing right here.

5 Q Where's Terry Cunningham's yard?

6 A Over there.

7 Q Terry Cunningham was over there?

8 A Yeah, he --

9 THE COURT REPORTER: I cannot hear y'all. I'm
10 sorry.

11 THE COURT: Solicitor, you're going to have to
12 do it in a way that he can be close to the microphone
13 so the court reporter can hear him. I know it's
14 difficult, I understand.

15 MR. SCOTT: I'll block the court reporter, but
16 I'm going to ask him to speak up. That may be the.

17

18 BY MR. SCOTT:

19 Q Terry Cunningham showed up where?

20 A Right -- in front, like I said, in front.

21 Q Where was he when he flashed the gun at Derrick?

22 A He was -- Terry was right there, we was right
23 here.

24 Q When did he go to John Glenn's yard?

25 A Probably about 30, 40 minutes after that, when

JAMES MCGOWAN-RECROSS BY MR. SCOTT

1 everybody was, like, calmed down. The guys know Derrick.
2 He's not from around here and he don't want no trouble or
3 nothing. He went back over there.

4 Q And Terry Cunningham when across the street to
5 John Glenn's yard, is that right?

6 A Uh-huh.

7 Q What was he doing then?

8 A He was just standing back. And then I ain't
9 paid no attention, still around there talking to the girls
10 or whatever. Probably about an hour or two later, that's
11 when shots fired.

12 Q An hour or two later after you saw Terry
13 Cunningham, you heard the shots?

14 A Yeah. But, I mean --

15 Q It's your testimony today under oath that you
16 told law enforcement about Terry Cunningham? You used
17 that name?

18 A Terry Cunningham.

19 Q That's your sworn testimony, you told them Terry
20 --

21 A When I had told -- when I had discussed that
22 with them, they was like it's a mystery, it don't make
23 sense. And from my understanding here, Detective Martin
24 and them other guys, they said they don't know where I
25 was.

JAMES MCGOWAN-RECROSS BY MR. SCOTT

1 Q How do you know what they said?

2 A Because when I seen the guy earlier, I spoke to
3 him and he just went like. And I had seen on several
4 occasions and he still acted like he didn't know who I
5 was.

6 Q What guy are you talking about?

7 A Detective Martin.

8 Q You talked to him today?

9 A I seen him and I spoke to him. He just like.

10 Q Who else did you talk about testimony in court
11 to?

12 A Who did I talk about?

13 Q When's the last time you talked to Patrick, your
14 cousin?

15 A Yesterday.

16 Q Yesterday?

17 A (The witness nods.)

18 Q All right.

19 A Yeah, he stopped by. I was checking on his mom
20 and son, whatever, see how everybody doing.

21 Q You don't want to see him get in trouble, do
22 you?

23 A Huh?

24 Q You don't want to see him get in trouble, do
25 you?

DERRICK HANDBERRY-DIRECT BY MR. ADDUCCI

1 A I don't want to see you get in trouble either.

2 Q Listen to me, your first cousin, right?

3 A Uh-huh.

4 Q You live with his mother?

5 A No, I don't live with his mom no more.

6 Q You talked with him just yesterday in the middle
7 of his trial?

8 A You say in the middle of trial?

9 Q Yeah, yesterday.

10 A I wasn't around in the middle of the trial.

11 Q But you talked to him yesterday?

12 A He just spoke to me.

13 Q All right.

14 MR. SCOTT: I don't have anything further.

15 THE COURT: Thank for your testimony, sir, you
16 can step down. You're free to leave or you're
17 welcome to remain with us, either way.

18 MR. ADDUCCI: Derrick Handberry. I'll go grab
19 him.

20 THE CLERK: Place your left hand on the Bible,
21 raise your right hand, please.

22 DERRICK HANDBERRY, after being duly
23 sworn, testified as follows:

24 THE CLERK: Thank you.

25 DIRECT EXAMINATION

DERRICK HANDBERRY-DIRECT BY MR. ADDUCCI

1 BY MR. ADDUCCI:

2 Q Good afternoon.

3 A Good afternoon.

4 Q What's your name?

5 A Derrick Handberry?

6 Q Okay. Mr. Handberry, let me take you back to
7 March 31st, 2012. Do you remember that day?

8 A Yes, sir.

9 Q Okay. I'm going to show you Defense No. 2, do
10 you recognize that house?

11 A Yeah, that look like Bill's house.

12 Q Okay.

13 A We was parked there.

14 Q Okay. You said that you were parked at that
15 house?

16 A Bill -- like, Bill's house.

17 Q Now, on March 31st, 2012, did you go to that
18 residence?

19 A Yeah, Bill, yeah.

20 Q Who were you there with?

21 A Mr. McGowan, a few other folks.

22 Q Which Mr. McGowan?

23 A Right there.

24 Q Was James McGowan there?

25 A Yeah.

DERRICK HANDBERRY-DIRECT BY MR. ADDUCCI

1 Q About what time did you leave?

2 A We got there around -- after we got off work,
3 say, around about eight-ish or nine-ish that night,
4 afternoon.

5 Q Who did you arrive with?

6 A Patrick McGowan.

7 Q Did you drive?

8 A No, sir, he did.

9 Q He did, okay. And then you got there at
10 9:00 o'clock. What did you do after you got there?

11 A We got out of the car, was standing in Bill's
12 yard and me and Bill was talking about some folks from
13 down in my area that he know. So, we was sitting right
14 there around Bill's yard.

15 Q Okay. Was there anybody across the street?

16 A There was a big party going on.

17 Q About how many people were over at that big
18 party?

19 A It was over 30 easy. You know, could have been
20 more, give or take.

21 Q Let me show you Defendant's Exhibit No. 1. Do
22 you recognize that house?

23 A I'm thinking that's the house right across from
24 their house.

25 Q Is that the house where the big party was?

DERRICK HANDBERRY-DIRECT BY MR. ADDUCCI

1 A Yeah.

2 Q Okay. Now, later on in the evening, was there a
3 disturbance?

4 A Yeah, gunshots.

5 Q Okay. So, you said there were gunshots. When
6 you heard the gunshots, where were you?

7 A Me and Mr. McGowan was over in Bill's yard and
8 actually had two females we was getting ready to leave
9 with.

10 Q Okay. So, it was you and Patrick?

11 A Yes.

12 Q And you said two females?

13 A Yeah.

14 Q And about how far were you from Patrick when you
15 heard the gunshots?

16 A It was, like, towards me, like, me and the judge
17 and two girls was in between. That's when I got a phone
18 call from my girlfriend. I had turned my phone off, so I
19 got caught on that one.

20 Q So, you heard the gunshots?

21 A Yes.

22 Q And you said that you were right next to
23 Derrick?

24 A Mr. McGowan.

25 Q I'm sorry, Patrick?

DERRICK HANDBERRY-DIRECT BY MR. ADDUCCI

1 A Yes.

2 Q Did you see any muzzle flash?

3 A No.

4 Q Did you see a gun in Patrick's hands?

5 A No.

6 Q Where did you go after you heard the gunshots?

7 A Both me and him hit the ground, got in the car
8 and we left.

9 Q Okay. Could you recognize where the gunshots
10 were coming from?

11 A By the sound, it was like it not close, but it
12 was maybe 10 -- I mean, a hundred feet, somewhere in that
13 area.

14 Q Do you know what direction? Could you identify
15 which direction they were coming from?

16 A I heard them and I hit the ground. Me and
17 Patrick hit the ground. Like I said, after that, we left.

18 Q All right. Later on that evening, did you see a
19 handgun on Patrick?

20 A No.

21 Q At any point that day, did you see a handgun on
22 Patrick?

23 A No, sir.

24 MR. ADDUCCI: Nothing further.

25 THE COURT: Cross-examination?

DERRICK HANDBERRY-CROSS BY MR. SCOTT

CROSS-EXAMINATION

1

2 BY MR. SCOTT:

3 Q How do you know Patrick?

4 A From work.

5 Q From work?

6 A We work at Elgin.

7 Q Where?

8 A Elgin. It's a place called Elgin. We make
9 bearings for turbines, windmills.10 Q Is that the name of the company or the town of
11 Elgin?12 A The company, it's Elgin. The town is Greer,
13 South Carolina.

14 Q Okay. And y'all road together that night?

15 A Yeah, he picked me up from my house. Because he
16 lived in Greenville. We always talk on the phone, so he
17 said he was going to Laurens and I said -- matter of fact,
18 he stopped by my house and I said, I'll ride with you.

19 Q Okay. So, y'all are pretty good friends?

20 A Yeah.

21 Q Y'all drove all the way from Greenville down to
22 Laurens to hang out that night?23 A To Simpsonville, Laurens. I went upstairs and
24 got dressed. Just to get out the house.

25 Q And then go to Bill's house?

DERRICK HANDBERRY-CROSS BY MR. SCOTT

1 A Yeah.

2 Q So, you drove from Simpsonville down to Laurens
3 to hang out in Bill's backyard?

4 A Yeah. We actually took his son down there, then
5 we stopped at Bill's house and, you know, just sat around
6 and lolly-gagged, you know.

7 Q How long were y'all there?

8 A Got there about 9:00, stayed probably about an
9 hour after that or so. Like I said, me and Bill was
10 discussing some folks down from where I'm from. We just
11 out there talking. Bill was putting some coon and stuff
12 on the grill.

13 Q What?

14 A Raccoon.

15 Q Y'all were eating raccoon that night?

16 A No, we was talking about it, you know,
17 discussing about doing that.

18 Q Where are you from? You from Bamberg?

19 A Yeah. I'm from Denmark, South Carolina, Bamberg
20 County.

21 Q How long had you and Patrick been friends at
22 that time?

23 A I want to say almost probably about six months
24 or so, somewhere in there.

25 Q And the girls, where did y'all meet them?

DERRICK HANDBERRY-CROSS BY MR. SCOTT

1 A Right out there.

2 Q At Bill's house?

3 A Yeah.

4 Q Describe that for me, because I'm trying to
5 figure it out. Do people just come to Bill's house to
6 hang out?

7 A No, there was a party going on, so we was in
8 Bill's yard. So, the party's right there. I mean, we in
9 the country, like there's always something going on, have
10 something in three or four different yards. People just
11 standing around. It's not necessarily a party at every
12 house, people just getting out, you know.

13 Q Who was throwing the party, Bill Cunningham?

14 A No, Bill wasn't throwing a party, no. The party
15 was across the street.

16 Q All right. Y'all were just having it in Bill's
17 yard?

18 A We didn't have a party. It wasn't our party.
19 We was sitting out there, bunch of guys. Bill in his own
20 yard and started talking to Bill. The party was going on
21 across the street. We didn't come to the party. We come
22 to talk to Bill right there. There was folks in his yard
23 and people just sitting there talking, you know.

24 Q And you just happened to meet a couple of women
25 there or was about to go home with them?

DERRICK HANDBERRY-CROSS BY MR. SCOTT

1 A Yeah, why not.

2 Q There's nothing wrong with that. I'm saying you
3 met these two women on Bill's porch and they were about to
4 go home with you is what you're saying?

5 A We was going to go ride off somewhere else and
6 do something else.

7 Q Who were these women?

8 A I don't know their names.

9 Q Did they run away with y'all when y'all got in
10 the car?

11 A No.

12 Q You left them?

13 A Yeah.

14 Q At what point did you find out that Patrick had
15 been charged with this crime?

16 A We was getting off of work and we went to the
17 Hot Spot and my girlfriend called me and she said, You
18 know Patrick's on the news?

19 I said, News?

20 MR. ADDUCCI: Objection, Your Honor.

21 MR. SCOTT: Yeah, no hearsay. You can't talk
22 about what anybody else says.

23 THE WITNESS: My girl say she saw --

24 MR. ADDUCCI: Objection.

25 THE COURT: Don't repeat what your girlfriend

DERRICK HANDBERRY-CROSS BY MR. SCOTT

1 said. Just when did you learn that he had been
2 charged?

3 THE WITNESS: It was that -- it was -- I can't
4 say a specific date or anything. It probably been
5 about a week; two weeks after that.

6 THE COURT: Okay.

7 BY MR. SCOTT:

8 Q Did you immediately run down to Laurens County
9 Sheriff's Department and tell them that story you're
10 telling us right now?

11 A No.

12 Q You didn't think that was something to tell
13 them?

14 A No. Laurens County, no.

15 Q Who have you told this story to before -- you
16 were standing outside with James McGowan earlier today
17 smoking cigarettes outside, weren't you?

18 A Yeah.

19 Q How do you know him?

20 A I know him from around Bill's house, that's
21 Patrick's friend. He come to my house as well a couple
22 times.

23 Q Y'all were talking about being in court and
24 everything today?

25 A No, that's the first time I see him -- I drive

DERRICK HANDBERRY-CROSS BY MR. SCOTT

1 trucks, so I don't see nobody.

2 Q You don't? So, what did y'all talk out there
3 today? Just not about the case at all, huh?

4 A No. What about the case? I mean, I'm missing
5 \$250 today.

6 Q When's the last time you saw Patrick?

7 A It's been a while. It's been a little minute
8 since I seen Pat. Like I said, I drive trucks. I'm a
9 truck driver.

10 Q Now, the story you're telling today under oath
11 is the whole truth and nothing but the truth, what you're
12 testifying to?

13 A Yes, it is.

14 Q All right. Are you the same -- what's your
15 middle name, Seth?

16 A Yes, it is.

17 Q Are you the same Derrick Handberry that's been
18 convicted of burglary?

19 MR. ADDUCCI: Objection, Your Honor.

20 THE WITNESS: Yeah, since what, 25 years ago?

21 THE COURT: Hold up. Everybody be at ease for
22 just a minute.

23 (WHEREUPON, an off-the-record bench conference
24 was held in the presence of the jury but out of
25 the hearing of the jury.)

DERRICK HANDBERRY-CROSS BY MR. SCOTT

1 THE COURT: Mr. Foreman, ladies and gentlemen,
2 we've probably been at it for probably about an hour
3 and 10 minutes. It might be a good time to take a
4 short break. I'm going to ask you to go back to the
5 jury room and take a break. No discussions about
6 this case. We'll get you back out in just a little
7 bit.

8 (WHEREUPON, the jury left open court at
9 approximately 2:48 p.m.)

10 THE COURT: Okay. Let's go back on the record.
11 Solicitor, you have some evidence that this
12 particular witness has a 1999 conviction for burglary
13 and grand larceny.

14 And, Mr. Adducci, you have objected to the use
15 of that, is that correct?

16 MR. ADDUCCI: It was a 1990 burglary and '99
17 grand --

18 THE COURT: Oh, 1990 burglary and '99 grand
19 larceny, is that correct?

20 MR. ADDUCCI: Yes, Your Honor. I think as to
21 the burglary, the elements of burglary are unlawful
22 entry with the intent to commit a crime. That
23 doesn't necessarily have to be a crime of dishonesty.
24 Unlawful entry with the intent to commit an assault
25 could be a burglary. So, it doesn't necessarily put

DERRICK HANDBERRY-CROSS BY MR. SCOTT

1 it into the crimes of dishonesty grouping.

2 THE COURT: All right. What about the grand
3 larceny?

4 MR. ADDUCCI: I argue that probative value is
5 negligible given its age.

6 THE COURT: All right, let me ask you this.
7 What about -- and I'm looking at 609(b), that If a
8 conviction of more than 10 years is wanting to be
9 used, there has to be given prior notice of the
10 intent to use that.

11 Look at the last sentence of 609(b).

12 MR. SCOTT: Yes, sir. We just got this man's
13 information as he walked in today. I informed
14 Mr. Adducci of his rap sheets.

15 THE COURT: Okay.

16 MR. SCOTT: Judge, I just say that credibility,
17 obviously, is going to be a major issue with
18 Mr. Handberry as well as the prior witness and this
19 is --

20 THE COURT: Well, when you have about five or
21 six different versions of what happened, then I think
22 credibility -- I think we would all agree credibility
23 is certainly relevant to the entire case, not just
24 one side, but the entire case.

25 MR. ADDUCCI: Absolutely, Your Honor.

DERRICK HANDBERRY-CROSS BY MR. SCOTT

1 MR. SCOTT: Dishonesty is defined as the
2 disposition to lie, cheat or steal. Certainly,
3 burglary, entering the property of another without
4 consent, grand larceny, stealing the goods of another
5 would tend to show dishonesty in my mind.

6 THE COURT: Right. I understand. I'm going to
7 deny the use of either crime. I think the
8 prejudicial effect would outweigh the probative
9 value, just because of the age of the two charges.
10 So, I'm going to deny the use. And I'm going to have
11 to instruct the jury to disregard -- I think maybe
12 Mr. Handberry tried to respond in some fashion about
13 the same time that Mr. Adducci objected. I'm just
14 going to have to instruct the jury to disregard the
15 last question and any attempt to answer by
16 Mr. Handberry for them to disregard that.

17 Okay. Let's go off the record for just a
18 minute, Madam Court Reporter.

19 (WHEREUPON, a short break was taken.)

20 THE COURT: Okay, anything we need to put on the
21 record before we bring the jury out?

22 MR. ADDUCCI: I don't believe so, Your Honor.

23 MR. SCOTT: Nothing from the State, Your Honor.

24 THE COURT: Mr. Bolt, if you will bring the jury
25 out.

DERRICK HANDBERRY-CROSS BY MR. SCOTT

1 (WHEREUPON, the jury came into open court at
2 approximately 3:10 p.m.)

3 THE COURT: Mr. Foreman, ladies and gentlemen of
4 the jury, right prior to the break, the last question
5 from Solicitor Scott and any answer or attempt to
6 answer by this witness is to be disregarded by you
7 completely and it will be so stricken from the
8 record.

9 Solicitor, you may proceed, sir.

10 CONTINUED CROSS-EXAMINATION

11 BY MR. SCOTT:

12 Q All right. So, you do recall speaking with
13 James McGowan out front when y'all were smoking
14 cigarettes, right?

15 A Right. I talked to the solicitor, he was right
16 there as well.

17 Q The investigator?

18 A Yeah.

19 Q Okay. So, y'all were talking about the case out
20 there?

21 A No, we was smoking a cigarette. He was just
22 talking to McGowan because they knew each other.

23 Q And you talked, too?

24 A Did I know him?

25 Q You began speaking with him as well, didn't you?

DERRICK HANDBERRY-CROSS BY MR. SCOTT

1 A I mean, I said what I said about the case
2 because he asked about the case. Patrick didn't have a
3 gun. And that's it. I don't know him and he don't know
4 me, so.

5 Q Nobody knows you because you've never gone to
6 law enforcement with this story, isn't that right?

7 A Why should I?

8 Q Because --

9 A Because it's not your job to --

10 THE COURT: Wait a minute, wait a minute, wait a
11 minute. Again -- it was a different witness, but
12 both of you please let the question be asked
13 completely before the answer. Let the answer be
14 finished before the next question. I can't have you
15 talking over each other, okay?

16 BY MR. SCOTT:

17 Q You know your good friend here has been arrested
18 and charged with shooting a gun into a house. You know
19 that, right?

20 A (The witness nods.)

21 Q You didn't think it was important to go to law
22 enforcement and say he didn't do it, I never saw him with
23 gun, it was somebody else?

24 A Well, by that time, he was out. I mean, he was
25 out. He was out on bond. And I drive trucks.

DERRICK HANDBERRY-CROSS BY MR. SCOTT

1 Q Okay. Does that prevent you from using a
2 telephone or anything like that?

3 A No, it do not.

4 Q Okay. All right. But you don't want to see
5 your buddy get in trouble, I know that.

6 A I mean, I don't want to see nobody get in
7 trouble, you right. I'm about fairness. Somebody that
8 wrong, they wrong. If they right, they right. So, it's
9 not a side thing. It's about fairness.

10 Q You don't think it would have been fair to call
11 law enforcement and tell them that your buddy's going to
12 trial for somebody else having a gun or him not having a
13 gun or whatever your testimony is today?

14 A Because really, it didn't dawn on me because he
15 didn't have it and it was, like, it can't be that serious.
16 I mean, because he didn't have a gun.

17 Q How did you know?

18 A I was there. He picked me up. I was standing
19 beside him the whole time.

20 Q Then you left with him again after that, right?

21 A Yes.

22 Q Then y'all got in the car together and y'all
23 left together, right?

24 A And went home.

25 MR. SCOTT: Nothing further.

DERRICK HANDBERRY-CROSS BY MR. SCOTT

1 THE COURT: Any redirect?

2 MR. ADDUCCI: No, Your Honor. I just move two
3 defense exhibits into evidence.

4 MR. SCOTT: No objection.

5 THE COURT: Without objection, Defendant's
6 Exhibit Nos. 1 and 2 into evidence on behalf of the
7 Defense.

8 (WHEREUPON, Defendant's Exhibits Nos. 1 & 2 were
9 admitted into evidence.)

10 THE COURT: Thank you, sir, for your testimony.
11 You may step down. You're welcome to remain with us
12 or you're free to leave, either way.

13 MR. ADDUCCI: That's the Defense case, Your
14 Honor.

15 THE COURT: Okay, Defense rests.

16 State have any reply or rebuttable case? Need a
17 minute to think about it?

18 MR. SCOTT: Yes, sir, if you don't mind.

19 THE COURT: All right. Solicitor, if you need
20 to walk out of the courtroom with your witnesses,
21 you're free to do that. We're just going to be in
22 here.

23 Everybody be at ease.

24 (WHEREUPON, Solicitor Scott and Solicitor Boykin
25 exited the courtroom while everyone else

1 remained at ease.)

2 MR. SCOTT: Judge, no rebuttal witnesses. We
3 had talked about recalling witnesses, but I think
4 we're just going to go ahead and rest at this point.

5 THE COURT: Okay. No rebuttal case. The
6 evidentiary record in this case is now closed.

7 Mr. Foreman, ladies and gentlemen of the jury,
8 I'm going to take a few minute to talk with the
9 lawyers and try to come up with a schedule. What we
10 have left to do in this case is that the lawyers will
11 make their closing arguments to you, then I will
12 charge you on the law in the case. It may be where
13 we will do that first thing in the morning and go
14 ahead and adjourn for day. But let me talk with the
15 lawyers and kind of figure out if that's going to be
16 the best way of handling it. Otherwise, it may be if
17 we do it this afternoon, it may be kind of late
18 getting the case to you for your deliberations. So,
19 let me talk to the lawyers and see what's best. And
20 we'll get you back out in just a few minutes, okay?

21 So, if you'll just go back to your jury room.
22 Again, no discussions among yourselves. We'll get
23 you back out shortly.

24 (WHEREUPON, the jury left open court at
25 approximately 3:30 p.m.)

1 THE COURT: I think I have my preference on what
2 to do. Let me hear from both sides.

3 Solicitor, do you have a preference?

4 MR. SCOTT: I typically -- just while the
5 testimony is fresh, I typically like to go forward.
6 Of course, I do --

7 THE COURT: The only problem I have is I've got
8 a draft of a charge that's going to probably take a
9 little work on it, so I need some time, which I will
10 do. But, you know, it's going to take a little while
11 for me to get something put together, more than just
12 a rough draft to get it to you guys for you to spend
13 some time on it. I'm just afraid then, even though
14 everything is fresh and I'd like to keep going if we
15 can, I'm kind of leaning towards arguing and charge
16 in morning.

17 Mr. Adducci, do you have a preference either
18 way?

19 MR. ADDUCCI: I think that tomorrow would be
20 better because I do think the jury instructions are
21 going to be vitally important and I think that that's
22 something that we're going -- it's probably going to
23 take a while for us to haggle over. I think that
24 could push us pretty late.

25 THE COURT: Right.

1 MR. ADDUCCI: And I don't know if we would be
2 done before 5:00, before we get the case to the jury.

3 THE COURT: I envision if we were to continue,
4 they're going to be sitting back there probably a
5 good hour or longer. And then once we argue and
6 charge, it's going to be after 5:00.

7 So, unless you just have a big opposition to it,
8 Solicitor, I think let's start back with the jury at
9 9:00. Let's us get together about 8:30. We're going
10 to work on the charge before we leave this afternoon
11 and I'll get Scott to e-mail y'all the draft, but a
12 more polished draft after while, this afternoon.

13 MR. SCOTT: Okay.

14 THE COURT: All right.

15 MR. ADDUCCI: Okay. While the jury is out, I
16 was just going to renew my DV motion previously
17 argued.

18 THE COURT: Right. And I'm going to take it
19 under advisement because I'm still kind of thinking
20 about what to do with the indictment on the --
21 especially on the child, so I'll take it under
22 advisement. Just remind me in the morning to put my
23 ruling on the record, if you would, Mr. Adducci.

24 If you would, bring the jury back out.

25 While the jury is going to be coming in, I had

1 indicated my intent to charge lesser included A and B
2 one.

3 Does the State have any problems with that?

4 Does the Defense have any problems with that?

5 MR. SCOTT: I don't. I have no problem with
6 that.

7 MR. ADDUCCI: I still have my same specific
8 intent argument.

9 THE COURT: Right. And I think I'm going to
10 charge some general and specific intent. I'm going
11 to kind of work on that a little bit. You don't want
12 to commit at this point?

13 MR. ADDUCCI: I think until I see the charges
14 and see everything is worded, exactly.

15 THE COURT: I got you.

16 (WHEREUPON, the jury came into open court at
17 approximately 3:23 p.m.)

18 THE COURT: Mr. Foreman, ladies and gentlemen of
19 the jury, I think we have decided to go ahead and
20 break for the day. Otherwise, probably, we wouldn't
21 even be ready for the jury for, at least, an hour
22 because we need to work on the final charge. When
23 the Court prepares the final charge on the law, the
24 court solicits the input from the lawyers. And that
25 process usually takes a while, so we just think it

1 would be better to go ahead and adjourn for the day
2 and start back at 9:00 o'clock in the morning. So,
3 be back here promptly. Get you a good night's rest.
4 No discussions with anybody about this case. We'll
5 see you in the morning at 9:00.

6 (WHEREUPON, the jury left open court at
7 approximately 3:25 p.m.)

8 THE COURT: All right. We'll be in recess until
9 9:00 o'clock in the morning, but be available around
10 8:30. We can just kind of have an informal charge
11 conference back in chambers and then put on the
12 record whatever we need to concerning the charge.
13 Okay. We'll get you something e-mailed before we
14 leave out this afternoon.

15 MR. SCOTT: Yes, sir.

16 MR. ADDUCCI: Thank you.

17 (WHEREUPON, the proceedings were concluded for
18 the day to be reconvened on June 2, 2016.)
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And, Mr. Adducci, I think you had made three requests. I went along with one and denied the other two. You want to go ahead and put on the record the two that I denied?

Additionally, the Defense would ask for a spoliation charge with regard to the body cam video that was lost by the sheriff's office.

And just for the record, concerning the specific
nt, basically, the Defense believes that the

1 specific act would include not only the shooting, but
2 also the person involved. Whereas, the State takes
3 the position that it's just the shooting. And that's
4 stated kind of in general simple terms, but I think
5 that's the respective positions of both sides,
6 correct?

7 MR. SCOTT: Yes, sir.

8 THE COURT: Okay. All right. Thank you very
9 much.

10 Now, Mr. Adducci, you mentioned in chambers that
11 Mr. McGowan has a request to make. You want to tell
12 me what that is, and then I can certainly hear from
13 him?

14 MR. ADDUCCI: That's correct, Your Honor.
15 Mr. McGowan informed me this morning that he wished
16 to relieve me. I believe it would be appropriate for
17 the Court to advise Mr. McGowan of his rights to
18 represent himself and to have Mr. McGowan make an
19 election.

20 THE COURT: Okay.

21 All right, Mr. McGowan, please stand, please.

22 Madam Clerk, please swear Mr. McGowan in.

23 THE CLERK: Raise your right hand, please.

24 PATRICK MCGOWAN, after being duly
25 sworn, testified as follows:

PATRICK MCGOWAN-EXAMINATION BY THE COURT

EXAMINATION

1

2 BY THE COURT:

3

Q All right. Mr. McGowan, Mr. Adducci says that
4 you talked with him this morning and you're wanting him
5 relieved, is that correct?

6

A Yes, sir.

7

Q Why is that?

8

A I don't feel like he's representing me right,
9 sir.

10

Q Tell me specifically. I don't want a general, I
11 don't think he's representing me right. I want specifics
12 why you believe -- because, quite frankly, I think he has
13 done an excellent job, as has Solicitor Scott and
14 Solicitor Boykin. I think all three lawyers have done a
15 very, very good job in this case in my humble opinion.
16 Now, give me specifics why you think he has not
17 represented you properly?

18

A Because he found the victims in three lies, and
19 when she got on the stand, he didn't even bring none of
20 that up. Like, everything -- like, he know stuff, but he
21 didn't even ask them certain questions --

22

Q Right.

23

A -- to get the truth, so -- you know, it was just
24 like he was just trying to throw me in a hole or
25 something. I just felt like that wasn't right.

PATRICK MCGOWAN-EXAMINATION BY THE COURT

1 Q Which one of the alleged victims do you believe
2 that he did not conduct proper cross-examination? We've
3 got Ms. Garrett and got Ms. Irby. Which --

4 A Well, it's the two of them, Ms. Garrett and
5 Ms. Irby.

6 Q Okay. So, you believe he did not properly
7 cross-examine both of those witnesses, correct?

8 A Yeah, because Ms. Irby told him something that
9 when she got up there, he didn't even ask her about in
10 front of the jury, you know. So, I'm like, Why didn't you
11 ask her when she done told him three different stories,
12 but he didn't bring none of that up.

13 Q Okay.

14 A And Ms. Garrett done told like two or three
15 different stories, too. Ain't none of that coming up.

16 Q All right. You say they told several different
17 stories while testifying on the stand or prior to trial,
18 they told some stories?

19 A Before, like, trial, like, in their statement
20 type thing, they would tell a different story. How many
21 people there and she seen -- I mean, like, she seen
22 running down the street in the dark with a black gun and
23 ain't no lights out there. I mean, he even got the
24 pictures and everything to show that it ain't even out
25 there, so I'm like I don't even understand why he wouldn't

PATRICK MCGOWAN-EXAMINATION BY THE COURT

1 hit them with those questions.

2 Q Okay. What else has he not done specifically
3 that you feel like is not good representation? Anything
4 else?

5 A I just felt like he wasn't just, like, going
6 hard for me. I'm up here, I got a son I got to take care
7 of. I got full custody of my son and I can't be going to
8 jail for over some lies that they got going on. It like
9 he -- he knows some of this stuff, but he ain't coming out
10 with it. So, that why I feel like -- I talked to my
11 family last night and they was just like you need to go
12 ahead and get rid of him and we'll just get up and go get
13 a real attorney.

14 Q Oh, wait a minute. So, what you're suggesting,
15 Mr. McGowan, is for me not only to relieve Mr. Adducci,
16 but also cancel this trial and we start all over again?
17 Is that what you're asking me to do?

18 A I mean, I just want to go get another lawyer.

19 Q Well, then, you're asking me to cancel this
20 trial and you get another lawyer and then we start all
21 back over. So, what we've done since Tuesday will be just
22 a complete waste of time, is that what you're suggesting,
23 sir?

24 A I ain't trying to waste nobody's time, I just
25 looking at my freedom.

PATRICK MCGOWAN-EXAMINATION BY THE COURT

1 Q I understand.

2 A That's the only thing about it. I'm looking at
3 a whole bunch of time for nothing. So, I just can't sit
4 up here and just proceed like that. I can't deal with it,
5 man. It just -- I mean, this is something serious.

6 Q Oh --

7 A It's really serious.

8 Q This is extremely serious. Every case that
9 comes in my court is extremely serious. And this case is
10 extremely serious, absolutely no question about it. And I
11 think everybody has taken this very seriously, including
12 Mr. Adducci. So, you don't have to tell me, sir, that
13 this is very serious, because it is. No question about
14 it.

15 I think -- again, I think Mr. Adducci has
16 provided very good representation for you. Now, if he
17 didn't ask certain questions that you thought maybe he
18 needed to ask, sometimes, lawyers make decisions on trial
19 strategy to ask certain questions, not ask certain
20 questions, call certain witnesses, not call other
21 witnesses. And -- but that doesn't mean that they're not
22 properly representing their client. Lawyers don't do
23 everything that a client thinks should be done. You've
24 got to trust Mr. Adducci, number one. And you've got to
25 recognize, too, sir, that he's an attorney and you're not.

PATRICK MCGOWAN-EXAMINATION BY THE COURT

1 And so, I'm not -- there's absolutely no
2 basis for me to relieve him and cancel this trial and
3 sometime down the road start all back over again. I'm not
4 going to do that. So, your request is denied, sir. Thank
5 you. You can have a seat.

6 MR. ADDUCCI: Your Honor, can you please advise
7 my client as to his right to represent himself?

8 BY THE COURT:

9 Q Now, if I were to relieve, Mr. Adducci, if I
10 felt like there was a basis to, then I would not cancel
11 this trial and you would have to make your own closing
12 argument. You prepared to do that?

13 A No, I can't do that.

14 Q I know.

15 A I never gone to school for that. I can't do
16 that right there.

17 Q I know. And I think that certainly is a smart
18 recognition on your part that without a lawyer to make a
19 closing argument -- and closing arguments are very
20 important. They're not evidence, we all recognize they're
21 not evidence, but they're a very, very vital part of any
22 trial. That's where the advocacy element comes in. It
23 applies for the State because they represent the people of
24 South Carolina. Mr. Adducci represents you. And that's
25 where lawyers really play an important role is in the

PATRICK MCGOWAN-EXAMINATION BY THE COURT

1 closing argument in my opinion. So, you recognize it will
2 be really hard for you to do that and I'm glad that you
3 have made that recognition.

4 Okay. Anything further before we bring the
5 jury out?

6 MR. SCOTT: Not from the State, Your Honor.

7 MR. ADDUCCI: None from the Defense, Your Honor.

8 THE COURT: All right, thank you, very much.

9 All right, Mr. Bolt, if you'll bring the jury
10 out, please, sir.

11 (WHEREUPON, the jury came into open court at
12 approximately 9:25 a.m..)

13 THE BAILIFF: All the jurors present, Your
14 Honor.

15 THE COURT: All right. Thank you, Mr. Bolt.

16 Good morning, ladies and gentlemen. As I told
17 you right before we broke yesterday, what we have
18 left in this trial are the closing arguments that the
19 lawyers will make. Mr. Adducci will go first, then
20 Solicitor Scott on behalf of the State. Then after
21 that's done, we'll probably take a short break and
22 then we'll bring you back in for the Court to give
23 you a final charge on the law. So, these lawyers
24 have worked very hard, give them your very close and
25 undivided attention.

1 Mr. Adducci, are you ready, sir?

2 MR. ADDUCCI: Yes, Your Honor. May it please
3 the Court and the State?

4 THE COURT: Yes, sir.

5 CLOSING STATEMENT

6 MR. ADDUCCI: Good morning. Thomas Adducci
7 again. I really appreciate all your patience with us
8 throughout this week. I notice you have paid
9 exclusive attention and I know everybody here really
10 appreciates that.

11 What you're going to hear is that Patrick is
12 presumed innocent. The courts have said that a
13 defendant is cloaked in innocence and they cannot be
14 convicted of anything until the State brings forth
15 evidence in such quality and quantity to convince you
16 beyond a reasonable doubt of each and every element
17 of that offense. So, I'm going to try to keep this
18 short. I think that the facts are clearly in dispute
19 as to what happened that day.

20 What can we agree on? There was a party at John
21 Glenn's house. There were a lot of people there.
22 Some people said there were dozens, some said there
23 were 30. The State's witnesses said there was
24 family, but family whose names they don't know.
25 There were people from around the block. There were

1 a lot of people there. There were apparently shots
2 fired and the police were called. Let's talk about
3 that investigation.

4 Officer Holmes reported about six minutes after.
5 He said when he there, he was wearing his body
6 camera. Great. This is fantastic. He said that he
7 saw about 12 people there. It was hectic. He was
8 talking to folks trying to get an idea of what was
9 going on. What did he -- and then he passed the
10 investigation off to Investigator Martin, who handled
11 it from there.

12 What did we get? We got an address and a
13 general description. We didn't get a name of the
14 suspect. What did those people say to Officer Holmes
15 is vitally important because they were apparently
16 saying what was going on at the time, six minutes
17 after this allegedly occurred. Does that matter?
18 That absolutely matters. And we should be in luck
19 because it was all recorded.

20 But where did that go? We don't have it. It's
21 the State's burden to prove its case. Its evidence
22 is gone. Who was spoken to, their names, what they
23 said. Nobody knows. Investigator Martin doesn't
24 know because he never thought it was prudent to
25 review the body cam, so he couldn't say oh, yeah, he

1 talked to Sally Smith, who lived down the road. She,
2 apparently, was there. So, why don't we chat with
3 her and we'll bring in Sally Smith and she'll say
4 what she said. That didn't happen. The
5 investigation was apparently just go to the home,
6 talk to these folks that apparently spoke to
7 Mr. Holmes on camera that day. And now, we've got a
8 name. Halleluiah, there's a name all of a sudden.
9 After they were apparently shopping around on
10 Facebook, looking up pictures and saying yeah, yeah,
11 yeah, yeah, that's it. All three of them in
12 agreement. All three of them talking. All three of
13 them looking at pictures. And why would it be any
14 surprise that they identified Patrick? Because all
15 three of them were sitting there together. That's
16 how they got this name. When they initially spoke to
17 the police, no name given. The police come later, we
18 got it. We cracked the case. Really?

19 And again, where is the video? That could
20 answer all these questions, what was originally said,
21 who was there, who said they saw him, who said where
22 they were standing? None of that. The video would
23 show lighting conditions. We could see them, what
24 anybody else could see. Because we have a video of
25 what it looked like out there. It's not there

1 because the server crashed a year later and nobody
2 bothered to look at it. Again, the burden is on the
3 State to prove its case beyond a reasonable doubt.

4 Now, what happened that day? You had some
5 people saying they saw Patrick with the gun. Other
6 people saying, no, he was standing right next to us.
7 We were talking to some girls. Mr. Handberry said
8 within arms reach, right there. We heard gunshots,
9 we got out of there. They didn't want to be around
10 that. So, we've got two competing narratives.

11 Now, let's go through the elements of attempted
12 murder. The Court is going to instruct you on the
13 law. And there are four indictments, four alleged
14 victims, John, Tiffany, Sarah, and the child. Now,
15 we're going to get into the weeds a little bit on
16 something called specific intent. Now, for both
17 attempted murder and assault and battery in the first
18 degree, they're both specific intent crimes, which
19 I'm going to read from here.

20 It says, A person acts with specific intent when
21 the conscious objective is to cause the specific
22 result prescribed by the statute defined in the
23 defense.

24 So, he had to specifically intend the outcome.
25 Had to specifically intend for the four year old

1 child to be dead. Specifically intend for Sarah to
2 be dead. Specifically intend for Tiffany to be dead.
3 And specifically intend for John to be dead. So,
4 both charges have the specific intent requirements
5 because they're attempts.

6 Now, next, let's talk about the elements of
7 attempted murder. So, the State must prove that
8 Patrick -- let's talk about that. Patrick had to
9 act. So, you have two competing narratives, right?
10 Narrative one, State's witnesses, they were sitting
11 in here the entire time watching everything saying,
12 yeah, Patrick shot the gun, that's it. They have to
13 prove that. You had other witnesses come in here who
14 said they were with Patrick the entire time. He
15 didn't have a gun. We were next to him when we heard
16 the gunshots. It didn't sound like it was that
17 close. We didn't see any muzzle flashes and
18 afterwards, he didn't have a gun. Then there were
19 the mysterious dozen to 25 other people that were
20 there that we don't know what was said. We have the
21 dozen people that Officer Holmes said were there when
22 he arrived, but we don't know their names, we don't
23 know their addresses, we just don't know. We don't
24 know. It's 11:00 at night. It's across the road.
25 What could they see? Each and every element must be

1 proven beyond a reasonable doubt.

2 So, I'm going to use this bar throughout my
3 instruction to kind of talk about evidence. So, if
4 we start right here and there's absolutely no
5 evidence at all, right? Clearly, not guilty, right?
6 We all agree to that. If you believe that there is
7 no way that Patrick had a gun, we're all the way down
8 here. Not guilty. Let's move up a little bit this
9 way. Say, I'm not sure, but there's a chance he had
10 a gun. There's a chance he shot. What's that?
11 That's not guilty. Let's move a little bit further
12 down the line, right down the middle. You know what,
13 there are two competing narratives. Some people said
14 he did, some people said he didn't. I'm not sure.
15 Not guilty.

16 Let's go a little bit further, 50 percent plus
17 one. It's more likely than not Patrick had a gun.
18 Let's say that's where you are. That's not guilty.
19 Let's go a little bit further. Let's say, you know
20 what, I'm pretty sure Patrick had that gun, I'm
21 pretty sure Patrick shot that gun. Pretty sure isn't
22 enough. That's not guilty. Let's move down here.
23 You know what, I'm almost there. I'm almost positive
24 Patrick had that gun. I've listened to all the
25 evidence, I'm just about positive. That's not guilty

1 because that's reasonable doubt. If there's a
2 plausible, real, alternative way, that's reasonable
3 doubt. Until you get to that point, that's not
4 guilty on that one element. That's just proving that
5 Patrick had a gun and shot a gun. You have to get
6 past that hurdle before you consider anything else.
7 If you can't get there, game over. You don't have to
8 consider anything else. If you aren't convinced
9 beyond a reasonable doubt that he had that gun and he
10 shot it...

11 Next element, attempted to kill another person
12 with malice aforethought. Attempt. Specific intent.
13 Intended to kill that person. The State's charging
14 him with attempted murder of a four year old that's
15 been in bed since 5:00. How could he possibly have
16 the specific intent to murder a child that everybody
17 agrees was in bed the entire time? What sort of
18 malice has he shown towards that child? Even if you
19 believe everything that the State's witnesses said,
20 every word, they have zero, zero evidence of any
21 malice towards this child.

22 Sarah Irby said she was sitting in -- sitting on
23 the toilet when this happened. Has the State shown
24 any evidence, not just any evidence, proof beyond a
25 reasonable doubt of malice towards Sarah? Absolutely

1 not. There is no evidence of his specific intent to
2 kill Sarah. That's if you believe everything that
3 the State says. Tiffany, proof beyond a reasonable
4 doubt, specific intent to kill her, absolutely not.
5 And that's if you believe everything that the State
6 says. With John, the State's allegation is there was
7 an argument and that argument led to gun fire.

8 The State's argument is that Patrick wants to
9 kill John. And the way he's going to do that is get
10 into an argument, wait for John to walk inside the
11 house, walk all the way down, crossed the street,
12 shoots three times randomly at the house and leave.
13 That's attempted murder? That doesn't show attempted
14 murder. That the State's version. That's
15 notwithstanding the fact that there were people that
16 were standing right next to Patrick who said he
17 didn't have a gun. The gunshots were from further
18 down the way.

19 The State is charging him with four counts of
20 attempted murder. You've heard about three gunshots.
21 The State's theory, I guess, is that he walked across
22 the street, thought he was a deadeye shot, thought he
23 was going to get two for one, through a house,
24 through the siding, through a few walls. That was
25 his specific intent to murder? That's the State's

1 case. That's what the State is telling you.
2 Specifically intended to murder four people with
3 three bullets halfway across the street in the dark,
4 despite the fact that we have Mr. Handberry saying
5 well, I was with Patrick. Didn't have a gun with
6 him. Afterwards was there with him, we heard
7 gunshots, didn't see the muzzle flash, gunshot
8 sounded like it was coming from somewhere else
9 further down.

10 And mind you, every single element has to be
11 proven beyond a reasonable doubt all the way up here.
12 If you have any doubt as to any of these elements,
13 that's not guilty. If you have a reasonable doubt
14 that Patrick didn't fire that gun, not guilty. If
15 you have any reasonable doubt that he didn't intend
16 to kill anybody; that's not guilty. The State has
17 the highest burden that we have in the court system.
18 That's what we're here about, whether the State
19 carried its burden. And I would say if you look at
20 the investigation, it was sloppy. We don't have
21 corroborating witnesses. And that's because the
22 State has simply failed to carry its burden. The
23 State has failed to do the investigation, to bring
24 forth the evidence, to bring forth the witnesses in
25 such a quantity and quality to convince anybody of

1 proof beyond a reasonable doubt.

2 Ladies and gentlemen, when you review the
3 evidence, when you listen to the jury charges and you
4 apply what you heard over this past week to the jury
5 instructions, you will see clearly the State simply
6 has not carried its burden. And when you recognize
7 that and you see that, you will see that the only
8 just verdict is a verdict of not guilty. Thank you
9 very much.

10 THE COURT: Thank you, Mr. Adducci.

11 Solicitor Scott, you ready, sir?

12 CLOSING STATEMENT

13 MR. SCOTT: Yes, sir, Your Honor. Thank you,
14 Your Honor, may it please the Court.

15 Mr. Adducci.

16 When I think of this case, I think of sheer
17 recklessness. I think of a man with recklessness in
18 his mind, coupled with a heart that has absolutely no
19 cares or feelings for his fellow man. I know of no
20 other way to describe a situation like this. I know
21 of no other way to describe a case where a man goes
22 to another man's house, engages in an argument with
23 him, is asked to leave and feels disrespected to the
24 degree that he's going to fire a gun into a home
25 occupied by a family. I know of no other way other

1 than recklessness to describe such action. You think
2 he cared two cents about that family? You think he
3 cared about the life of John Glenn? You think he
4 cared one bit about the life of Sarah Irby, about
5 Tiffany Garrett standing out there on that porch?
6 You think he cared two cents about that four year-old
7 girl asleep in the bed thinking about that birthday
8 party she just had? No. You don't care about human
9 life if you empty a gun. I don't care if you shoot
10 one shot through a home you know to be occupied by
11 people. That is a total and complete disregard for
12 the value of a human life. There's no other way to
13 describe it.

14 It is a man capable of doing something like that
15 that society must deal with. And it is the
16 innocence -- the innocent people, like this family
17 that justice must be had for. What I want to know as
18 I think about this case and when I first started
19 reviewing it and I first started talking to this
20 family, what exactly did they do to deserve this?
21 Did John Glenn deserve it when he asked this drunk,
22 obnoxious man to leave his property? Did he deserve
23 to get shot at? Did he deserve to have bullets
24 whizzed over his wife's head, over his
25 granddaughter's head, over his head, over his

1 daughter's head? Did he deserve that? If you feel
2 disrespected, somebody ask you to leave their
3 property, do you have the right to shoot the house
4 up? You've spent all day at Bill Cunningham's house
5 getting drunk, carrying on, smoking, doing whatever
6 they do at Bill Cunningham's house. You have the
7 right to go engage in an argument, then shoot through
8 a man's walls. I don't think you do. The State
9 doesn't think you have that right.

10 And I wish I could, you know, give this family
11 some explanation why this happened to them. I want
12 to tell you guys here's the reason he did this. But,
13 unfortunately, I've been in this line of work long
14 enough that I've come to realize violence has many
15 forms. Sometimes it impulsive, sometimes it's sudden
16 and quick, almost always it's completely senseless.
17 And the people who do these things, the people who
18 engage in this kind of violence are very rarely sorry
19 about it. Well, they become sorry once they get
20 caught, then they're sorry. Then they start doing
21 things like coming to the victims and saying I'll pay
22 for the damage. I'll pay for everything if you just
23 drop the charge. Don't take it to court, we can
24 squash this thing. As if the price of a TV can atone
25 for whizzing bullets through somebody's house, the

1 only place somebody should feel completely safe..
2 That's what a man like that thinks.. Let me just pay
3 them off. One of the other things they could
4 possibly do is get their friends and family to show
5 up to court and start telling stories that nobody has
6 ever heard before. That's what they do. Because
7 they're only sorry once they get caught and they're
8 only sorry once they've got to face the jury. That's
9 what we're dealing with here.

10 So, I can't offer -- I can't tell y'all the
11 reason he did it. I can't tell you the reason this
12 neighbor did this to him. But what I can hope for
13 you people is we get a little justice today. Because
14 what happened on March 31st, 2012, demands justice,
15 it requires justice. It is not in dispute they still
16 have bullet holes in their house to this day. Bullet
17 holes in the mirror, bullet holes in the shower from
18 what Patrick McGowan decided to do March 31st, I
19 guess, in a fit of rage. I can only describe that he
20 felt disrespected.

21 What happened on the 31st? We've heard there
22 was a birthday party for this four year-old girl.
23 They had a grill going. They had family members
24 over. They had other friends over. Boyd Road,
25 Boyd Road. The testimony that seemed to be pretty

1 consistent was the daytime hours was sort of devoted
2 to the children. And then as daytime turned to dusk,
3 dusk turned to nighttime, the children maybe went to
4 bed, some of the parents left. That group was sort
5 of replaced by another group, maybe doing more
6 adult-type things. The grill was still going,
7 grilling out, maybe had a couple of drinks.

8 At some point, John Glenn is having a
9 conversation about the Masons. This is just the odd
10 part. He's a free Mason. In case you don't know, a
11 free Mason, just a fraternal order. There's a lodge
12 right out here outside the parking lot. Mainly men,
13 historically, only a men's group. For some reason,
14 he's talking about free Masons and other people are
15 asking about joining. I don't understand why, I
16 suspect alcohol and I suspect the goings on over at
17 Bill Cunningham's house had led Patrick McGowan to
18 think it was a good idea to cross the street and
19 confront this man, telling him, I'm a MF'ing Five
20 Percenter. He's a Five Percenter is what he was
21 arguing about.

22 John Glenn, I think rightfully so, tells him,
23 Get out of here. Leave my yard. I don't want you
24 here.

25 Probably not that politely. Do I blame him? I

1 would have probably had some choice words, too. This
2 man coming over to my yard, cussing me, acting
3 belligerent, being drunk. He told him to leave the
4 yard. Apparently, this ruckus had caused enough
5 noise where Sarah comes outside, gets John, come in
6 the house, John. I don't see this argument leading
7 anywhere good.

8 Shortly after -- the times vary, but shortly
9 after, I think it was consistent that they went
10 inside the house. That's when the shots rang out.
11 That's when the bullets ripped through the siding of
12 that trailer and all through the house. Whizzed over
13 everybody's heads. And that is great circumstantial
14 evidence. That is circumstantial evidence because
15 what you have is an argument right here, cussing
16 going on, man leaving angrily. Then right after
17 that, you hear bullets. Circumstantial evidence
18 shows Patrick McGowan. It wasn't anybody else out
19 there arguing with John Glenn. You never heard one
20 testimony via the State or the defense said anybody
21 else was out there threatening John Glenn or arguing
22 with him.

23 But then we've got another thing that's
24 difficult for the Defense, and that was Tiffany
25 Garrett. She didn't go inside. She sat out there on

1 the porch and she watched what happened. She watched
2 what Sarah Irby and John Glenn didn't see. She
3 watched this man angrily walk towards the road, turn
4 around, and under the street light, fire the weapon
5 back at her house, back at her. She saw it. That is
6 direct evidence.

7 Now, circumstantial evidence and direct evidence
8 are given the same weight, but we have both kinds of
9 evidence here. And we've got three different
10 witnesses. But let me tell you this. Ever since
11 March 31st, ever since the first time they talked to
12 law enforcement; ever since the first time they gave
13 their version of what happened, it's been consistent,
14 hasn't changed. What I'm telling you now, what they
15 told you from the stand is what the officer said they
16 said to them that night.

17 MR. ADDUCCI: Objection, Your Honor. Approach?

18 (WHEREUPON, an off-the-record bench conference
19 was held in the presence of the jury but out of
20 the hearing of the jury.)

21 MR. SCOTT: That's something that you get to
22 decide, the consistency. What they said that night
23 to law enforcement has been consistent to this day
24 under oath here in court.

25 The Defense brought up a couple of witnesses

1 themselves. Nobody's ever heard from these people
2 until in court, they suddenly appeared, until after
3 the trial has been called to be heard in front of you
4 jurors. They come to the stand after Mr. McGowan
5 approaches the victims and says, I'll for that TV,
6 let's make this thing go away.

7 Bill Cunningham is the man who has the house
8 across the street. I don't know what all goes on
9 over at Bill Cunningham's house. I'll let you people
10 infer what may be going on over there, but,
11 apparently, he just kind of lets his house be had by
12 other people to hang out and party at. And Bill
13 Cunningham, he was either inside or outside, we don't
14 know because that sort of changed from time to time.
15 And it was difficult really to get a clear answer
16 from him, despite I really gave it my best shot to
17 kind of figure out whether he was inside or he was
18 outside, what was going on in the yard beside his
19 house. But I think what we can gather from that is
20 that he did hear gunshots. I think his final
21 testimony under oath was that he was inside the house
22 when the gunshots rang out. And he runs to the -- or
23 walks to the porch.

24 And I thought it was interesting because he said
25 it multiple times, Everybody's running here, there,

1 everywhere, and Patrick McGowan is walking.

2 I thought that was interesting. I ask him, just
3 to clarify, I said, Now, Patrick was walking,
4 everybody else was running?

5 He said, Yeah.

6 That was interesting to me because it occurs to
7 me why would he be running if he's the man with the
8 gun. He's the man who is popping off the shots.
9 That's why he's walking away. What's he scared of?
10 But that was Bill Cunningham.

11 Then you had James McGowan, the cousin who lives
12 with Patrick McGowan's mother. You had him come up
13 here, and Derrick Handberry. One thing you guys get
14 to decide and determine in this case is credibility
15 of the witnesses. That's believability. I sat there
16 and I was shocked and I was in awe that this Bible
17 didn't burst into flames when they put their left
18 hand on it. That is the most surprising thing about
19 this trial to me because they got up there, under
20 oath, and completely fabricated a story. A story
21 that's never been heard before. A story that your
22 ears heard for the first time. A story that the
23 State has never been made aware of. And I would ask
24 them, You ran to the police to tell them this, right?

25 Handberry said, Well, I'm a truck driver.

1 I said, Your buddy was accused of this crime and
2 you're here to tell me that he didn't do because you
3 were right there beside him?

4 Well, I'm a truck driver. I don't have time for
5 that. I figured -- you know, I didn't think much of
6 it.

7 I'm going to leave that up to you guys because
8 you're the judges of the facts. And you're the
9 judges of credibility. If that made a bit of sense
10 to you guys and y'all thought it was believable, then
11 I want you to give it the weight you think it
12 deserves. But I'm here to tell you that was a
13 completely utter fabrication. And if that wasn't
14 obvious and clear to you, then there's really nothing
15 else I can stand here and say to make any point
16 whatsoever to you guys. But that's the case.

17 I got three witnesses, who if you watch the
18 thing, testified consistently from beginning to here
19 in court. Then they put up two people who -- now,
20 Derrick Handberry, I don't know if he saw this
21 mysterious figure, but James McGowan talked about
22 some mysterious person we've never heard of before
23 who may have fired a shot, it's unclear from where.
24 And these are relatives, good friends of the
25 Defendant and they don't want to see him get in

1 trouble. I don't blame them. For them to come in
2 here under oath and fabricate a story, I think you
3 should do with that information what you feel you
4 should do with the it. I think it's completely
5 discretion and that's what I'll ask you to do.

6 Those are the facts, guys. It seems pretty
7 clear to me, Mr. McGowan was out here during the day.
8 They know his family, they live right down the
9 street. This is Boyd Road. The McGowan family lives
10 down the street. Tiffany's good friends with his
11 brother Mack. He goes by the nickname Mack. She
12 should would recognize the guy. They had all seen
13 him out there earlier. He's the one arguing with
14 Mr. John Glenn. He's the one MF'ing this, MF'ing
15 that. He's the one that Tiffany said I'm 100 percent
16 sure of. She said it then and she says it now. I'm
17 100 percent sure that's the man that turned and began
18 firing at the house. And it only makes sense,
19 there's no leap to a conclusion. He's the only one
20 who's out there arguing with John Glenn that day.
21 He's only one anybody ever saw engage in an argument
22 with John Glenn.

23 So, that's the case. And it really is that
24 simple. It really is. Do your eyes lie to you in
25 case like that? No, they don't. You know what you

1 see. The Defense, their job was very simple. You're.
2 right, I've got to prove the case beyond a reasonable
3 doubt. I don't know the bar trick and this, this,
4 this and this, but I do know what the Judge will tell
5 you. The Judge will tell you, you must find him
6 guilty if the State's proven to you beyond a
7 reasonable doubt that he is guilty. He's going to
8 tell you that beyond a reasonable doubt is you're
9 firmly convinced it happened. Are you firmly
10 convinced that happened or you think there's a real
11 possibility that there was some other mysterious
12 person that nobody saw shooting up John Glenn's house
13 that night? It's not in dispute there's holes in the
14 house. They're there to this day. You think there's
15 a real possibility that it's somebody other than
16 Patrick McGowan? Because that's what you have to
17 believe to find him not guilty. If you're firmly
18 convinced he did it, you must find him guilty. Isn't
19 that what justice requires? The verdict must speak
20 the truth. I submit to you that is the truth in the
21 case. It is as simple as Patrick McGowan being in an
22 argument that everybody saw, firing a weapon that
23 Tiffany Garrett watched. It really is as simple as
24 that.

25 The law -- I'll take some objection to the

1 Defense's version of what the law is, but it's -- I
2 guess it's kind of out of my hands really because,
3 ultimately, he can describe the law, I can describe
4 the law, but it's, ultimately, what the Judge says
5 the law is. That's how you must apply it to the
6 case.

7 As soon as I get this projector to work, I want
8 to show you what I believe the law of attempted
9 murder to be. Charged with four counts of attempted
10 murder. And here's why. There were four people in
11 the house -- or three people inside the house and one
12 outside on the porch when he decides to undertake
13 this completely reckless act. It's my belief that it
14 should be accountability for each one of these people
15 he whizzed bullets by. There's one indictment for
16 indictment for John Glenn for the attempted murder of
17 John Glenn. There's one indictment for the attempted
18 murder of Sarah Irby. There's one indictment for the
19 attempted murder of Tiffany Garrett. Then there's
20 one for that four-year-old child.

21 Here's what I tell you, he saw Sarah Irby. She
22 was out there to bring John Glenn in. Of course, we
23 know he was out there arguing with John Glenn, so he
24 knows John Glenn is in the house. Tiffany Garrett is
25 standing right in front of the house. There had just

1 been a child's party, of course, the child is inside
2 the house.

3 Let me ask you before I go over the law, had his
4 luck failed and he struck one of those people, it
5 would be murder. So, of course, he's being charged
6 with the attempted murder of each and every one of
7 them. I don't think he should get credit for
8 missing. Look at those bullet holes. They're eye
9 level, they're head level. It's not like he's firing
10 up in the eves. If you don't intend to kill
11 somebody, what do you do? If you want to scare them
12 a little bit because you were disrespected, what do
13 you do? I tell you what I'd do. I'd be firing up in
14 the air, not eye level, not head level with these
15 four people sitting in their house. So, to say that
16 he shouldn't be guilty of an attempt to murder these
17 people is a little preposterous to me. Because if he
18 had hit and killed one, he most certainly would be
19 standing trial for murder.

20 Let me tell you what I believe attempted murder
21 to be. This is what the law is and the Judge is
22 going to instruct you on this. Patrick McGowan,
23 prove that he's guilty of attempted murder, the State
24 must show that he attempted to kill another person
25 with malice aforethought, either expressed or

1 implied. What is malice? I've got to tell y'all
2 what malice is because that's also a prerequisite of
3 murder.

4 Leave that down. Leave that off.

5 Malice, that's an important legal term, but
6 you've got to understand what malice is. It's in the
7 statute. It's hatred. It's ill will. It's
8 hostility toward another person. It is the
9 intentional doing of a wrongful act, like shooting a
10 gun in somebody's house, without just cause or
11 excuse, and with an intent to inflict an injury.
12 Intent is important here. What is your intent when
13 you're firing into an occupied house?

14 You're also going to be instructed that malice
15 can be shown if somebody engages in a conduct showing
16 a total disregard for human life. What regard do you
17 have for a human life when you're firing a pistol
18 into a home at eye level? It can be inferred from
19 the use of a deadly weapon. So, we've got malice
20 because there's a gun being used. We've got bullet
21 holes in a house, we know a gun is being used. We
22 hear gunshots. We've got the deadly weapon. And
23 we've got malice shown for a complete and utter
24 disregard for the value of human life. And that is
25 all the State has to show to prove to you and leave

1 you firmly convinced that he's guilty of attempted
2 murder. That's the law. If the Judge says anything
3 different, listen to what he says, but I submit to
4 you those are words gleaned from his jury
5 instructions. Those are words that he will tell you.
6 And that's what attempted murder is and that's what
7 he's guilty of.

8 I also find that it's interesting that the
9 Defense kind of wants it two ways. Did y'all notice
10 that? On the one hand, they say, well, he wasn't
11 there -- or he was there, but he didn't do it. He
12 didn't do it. And then out of the other side of
13 their mouth, they say well, if he did do it, he
14 didn't mean to kill the people. Why would you make
15 that argument? If you didn't do it, you didn't do
16 it. They want to have it both ways. They want you
17 to have some kind of -- because that's all they've
18 got to do. I've got to leave you firmly convinced.
19 They've got to muddy the water enough where you just
20 walk in there and go, I don't know, I mean, we had
21 McGowan up there mumbling about something, James
22 McGowan was up there mumbling about something. And
23 then he was saying that we had to believe that he
24 meant to kill each and every one of those people. I
25 don't know. But that's all they've got to do is

1 muddy the water. Are you not firmly convinced that
2 he had a recklessness in his heart when he's firing
3 that gun in the house? Because either he did it or
4 he didn't.

5 I'm going to sit down. But that's the case.
6 And I feel strongly about it. I feel strongly and
7 think this is an important case to Laurens County. I
8 think people who are capable of doing these sorts of
9 things needs to answer to it. And when the proof
10 holds, I think they have to be found guilty.

11 The law also allows you guys to consider a
12 lesser included offense. I'm going to go over it
13 with you, but I stand by the fact this is an
14 attempted murder. If any one of those people are
15 hit, he attempted to hit them, that would be murder.
16 Because he missed, it is an attempted murder and that
17 is the applicable charge. That's the charge I'm
18 going to ask you to find him guilty on, all four of
19 those counts.

20 But what the law does in a lot of these cases
21 when the State elects to indict on a charge, they --
22 the law allows the jury to say well, if he didn't do
23 the big charge, maybe he's guilty of a smaller
24 charge, a lesser charge is what it's called. So,
25 you're going to get an instruction on assault and

1 battery first degree. That is basically -- I think
2 the main difference is it doesn't require malice.
3 So, you can find him guilty of that if you didn't
4 think there was malice in his heart. I'm going to
5 tell you that's not the right charge in this case.
6 You've got malice two ways. We've got it using a
7 deadly weapon. We've got a complete total utter
8 disregard for human life. He didn't care two cents
9 about that family's well being that night.

10 I submit to you it's a very simple case. I'll
11 sit down now, but I do ask you to go back there and
12 truly consider this case. Truly consider what's
13 reasonable. I don't want you to jump to any
14 conclusions. In fact, I think that would be against
15 your duty to jump to any conclusions. So, if you're
16 back there saying what if this, what if that, I think
17 you've gone off track at that point. I think you
18 should rightfully consider the evidence that came
19 from that stand. What makes sense? What's logical?
20 What is logical, guys? I think if you use your logic
21 and common sense, there's only one verdict and that's
22 guilty on all four counts. And that's what I'm going
23 to ask you to go back there and do, deliberate and
24 come back with guilty on all four of those counts.
25 Thank you.

1 THE COURT: All right. Thank you, Solicitor.

2 Mr. Foreman, ladies and gentlemen of the jury,
3 we're going to take a short break. Then I'll bring
4 you back out and will at that time instruct you on
5 the law in this case. Let's go back to the jury
6 room. Again, don't start your deliberations yet.
7 Don't start any discussions. I'll get you back out
8 and I will give you the final charge on the law.

9 Mr. Bolt, check and make sure their candy is
10 still holding up, if they need some more candy.

11 (WHEREUPON, the jury left open court at
12 approximately 10:11 a.m.)

13 THE COURT: Scott has sent you the revised with
14 the one addition that was that requested. Also, the
15 revised verdict form, take a look at it, make sure
16 everything is good. And we'll just need to bring out
17 a copy for the jury.

18 All right. Everybody be at ease for a few
19 minutes.

20 (WHEREUPON, a short break was taken.)

21 THE COURT: Okay. Back on the record in this
22 case. Anything before we bring the jury out to
23 receive the final charge, the State?

24 MR. SCOTT: None from the State, Your Honor.

25 THE COURT: Defense?

1 MR. ADDUCCI: No, Your Honor.

2 THE COURT: Okay. Thank you very much.

3 Mr. Bolt.

4 (WHEREUPON, the jury came into open court at
5 approximately 10:26 a.m.)

6 THE BAILIFF: All present, Your Honor.

7 THE COURT: Thank you, Mr. Bolt.

8 JURY CHARGE

9 Mr. Foreman and ladies and gentlemen of the
10 jury, I now will charge you the law applicable to
11 this case, and you must consider the charge as a
12 whole and not focus on some portions to the exclusion
13 of other portions. Now, the indictments charge the
14 Defendant with four counts of attempted murder. I
15 remind you, the fact that the Defendant was arrested
16 and charged and indicted in this case is not evidence
17 in this case and cannot be considered by you as
18 evidence of guilt in this case, nor does it create
19 any presumption or inference of guilt. These
20 documents are simply the formal written instruments
21 which contain the charges made against the Defendant.
22 They are the formal documents by which this case is
23 brought into this court.

24 The indictments in this case allege four counts
25 of attempted murder against the Defendant, attempted

1 murder of Sarah Irby, attempted murder of John Glenn,
2 attempted murder of Tiffany Garrett, and attempted
3 murder of the four year-old juvenile. Each
4 indictment charges a separate and distinct offense
5 because each indictment involves a separate alleged
6 victim. You must decide each indictment separately
7 based upon the evidence and law applicable to it
8 uninfluenced by your decision as to any other
9 indictment. The Defendant may be convicted or
10 acquitted on any or all of the indictments. You will
11 be asked to write a separate verdict of guilty or not
12 guilty for each indictment. And I will explain that
13 to you at the conclusion of my charge.

14 I remind you, once again, ladies and gentlemen,
15 that during this trial, you and I have had certain
16 duties to perform. As the trial judge, it has been
17 my responsibility to preside over the trial of this
18 case. And I also had the duty to rule on the
19 admissibility of evidence offered during this trial.
20 You are to consider only the competent evidence
21 before you. If there was any testimony ordered
22 stricken from the record in this case during this
23 trial -- and I believe that happened on two
24 occasions, if my memory serves me correctly, you must
25 disregard that testimony. You are to consider only

1 the testimony which has been presented from the
2 witness stand, any exhibits which have been made a
3 part of the record in this case, and any stipulation
4 of counsel.

5 I have the additional duty to charge you the law
6 applicable to this case. As the presiding judge, I
7 am the sole judge of the law in this case and it is
8 your duty as jurors to accept and apply the law as I
9 now state it to you. As I told you when we started
10 this case, if you already have any idea as to what
11 the law is or what the law ought to be and it does
12 not agree with what I now tell you the law is, you
13 must abandon your idea because you are sworn to
14 accept the law and apply the law exactly as I state
15 it to you.

16 As I told you at the beginning of this case,
17 every case tried in this court before a jury, the
18 jury becomes the sole and exclusive judge of the
19 facts in the case. A trial judge cannot intimate,
20 state, comment on or make any statement to a trial
21 jury about the facts in a case. Since you, the jury,
22 are the sole judge of the facts in this case, you are
23 not to infer from what I have said during the
24 progress of this trial in ruling upon the
25 admissibility of evidence or otherwise or anything

1 that I say now during the course of this instruction
2 to you that I have any opinion about the facts in
3 this case. The law does not allow me to have an
4 opinion about the facts in this case. This is a
5 matter solely for you, the jury, to determine. As
6 jurors, it is your duty to determine the effect,
7 value, weight and truth of the evidence presented
8 during this trial.

9 The Defendant has pled not guilty to these
10 indictments and that plea puts the burden on the
11 State to prove the Defendant guilty. A person
12 charged with committing a criminal offense in South
13 Carolina is never required to prove themselves
14 innocent. I charge you that it is an important rule
15 of law that the defendant in a criminal trial, no
16 matter what the seriousness of the charge or charges
17 may be, will always be presumed to be innocent of the
18 crime or crimes for which the indictment or
19 indictments were issued unless guilt has been proven
20 by evidence satisfying you of that guilt beyond a
21 reasonable doubt.

22 This presumption of innocence does not end when
23 you begin your deliberations, but it accompanies the
24 Defendant throughout the trial unless you reach a
25 verdict of guilt based on the evidence satisfying you.

1 of that guilt beyond a reasonable doubt. This
2 presumption of innocence is like a robe of
3 righteousness placed about the shoulders of the
4 Defendant, which remains with the Defendant unless it
5 has been stripped from the Defendant by evidence
6 satisfying you of the Defendant's guilt beyond a
7 reasonable doubt.

8 Mr. Foreman, ladies and gentlemen of the jury,
9 this presumption of innocence is not mere legal
10 theory. It is not just a legal phrase that judges
11 and lawyers use. It is a substantial right to which
12 every defendant is entitled unless you, the jury, are
13 satisfied from the evidence of the Defendant's guilt
14 beyond a reasonable doubt.

15 Once again, the State has that burden of proving
16 the Defendant guilty beyond a reasonable doubt. Now,
17 some of you may have served as jurors in civil cases
18 where you were told that it is only necessary to
19 prove that a fact is more likely true than not true,
20 such as by the greater weight or the preponderance of
21 the evidence. But in criminal cases, the State's
22 proof must be more powerful than that. It must be
23 beyond a reasonable doubt.

24 Proof beyond a reasonable doubt is proof that
25 leaves you firmly convinced of the Defendant's guilt.

1 There are very few things in this world that we know
2 with absolute certainty. And in criminal cases, the
3 law does not require proof that overcomes every
4 possible doubt. If based on your consideration of
5 the evidence, you are firmly convinced that the
6 Defendant is guilty of the crimes charged, then you
7 must find the Defendant guilty. If on the other
8 hand, you think that there is a real possibility that
9 the Defendant is not guilty, you must give the
10 Defendant the benefit of the doubt and find him not
11 guilty.

12 Now, Mr. Foreman, ladies and gentlemen of the
13 jury, there are two types of evidence which are
14 generally presented during a trial. That being
15 direct evidence and circumstantial evidence. Direct
16 evidence directly proves the existence of a fact and
17 does not require deduction. Circumstantial evidence,
18 however, is proof of a chain of facts and
19 circumstances indicating the existence of a fact.

20 Crimes may be proven by circumstantial evidence.
21 The law makes no distinction between the weight or
22 value to be given to either direct or circumstantial
23 evidence. However, to the extent the State relies on
24 circumstantial evidence, all of the circumstances
25 must be consistent with each other, and when taken

1 together, point conclusively to the guilt of the
2 accused beyond a reasonable doubt. If these
3 circumstances merely portray the Defendant's behavior
4 as suspicious, the proof has failed.

5 Once again, the State has the burden of proving
6 the Defendant guilty beyond a reasonable doubt and
7 that burden rests with the State regardless of
8 whether the State relies on direct evidence,
9 circumstantial evidence or some combination of the
10 two.

11 Necessarily, you must determine the credibility
12 of witnesses who have testified in this case.
13 Credibility simply means believability. It becomes
14 your duty as jurors to analyze and to evaluate the
15 evidence and to determine which evidence convinced
16 you of its truth. In determining the believability
17 of witnesses who have testified in this case, you may
18 believe one witness over several witnesses, or
19 several witnesses over one witness. You may believe
20 a part of the testimony of a witness and reject the
21 remaining part of the testimony of that same witness.
22 You may believe the testimony of a witness in its
23 entirety or reject the testimony of a witness in its
24 entirety. You may consider whether any witness has
25 exhibited to you any interest, bias, prejudice or

1 other motive in this case. You may also consider the
2 appearance and manner of a witness while on the
3 witness stand.

4 Now, Mr. Foreman, ladies and gentlemen of the
5 jury, I instruct you and emphasize that the fact that
6 the Defendant did not testify is not a factor to be
7 considered by you in any way in your deliberations
8 and in your consideration on the question of the
9 guilt or innocence of the Defendant. It must not be
10 considered by you in any manner whatsoever. A
11 defendant has the Constitutional right to remain
12 silent. And the assertion of this right must not be
13 considered by you in your deliberations. I repeat,
14 under your oath, you are to draw no conclusion
15 whatsoever from the fact that the Defendant in this
16 case did not testify. The fact that this Defendant
17 did not testify should not even be discussed in the
18 jury room. The burden of proof, as I've stated to
19 you several times, is on the State. The Defendant is
20 not required to prove his innocence. The burden of
21 proof remains on the State to prove guilt beyond a
22 reasonable doubt, as I have stated to you several
23 times.

24 Now, there's an issue in this case being the
25 identification of the defendant as the person who

1 committed the crimes charged. The State has the
2 burden of proving identity beyond a reasonable doubt.
3 You must be satisfied beyond a reasonable doubt of
4 the accuracy of the identification before you may
5 convict the Defendant. Identification testimony is
6 an expression of belief or impression by a witness.
7 You must determine the accuracy of the identification
8 of the Defendant. You must consider the
9 believability of each identification witness in the
10 same way as any other witness. You may consider
11 whether the witness had an adequate opportunity to
12 observe the offender at the time of the offense.
13 This will be affected by things like how long or
14 short a time was available, how far or close the
15 witness was, the lighting conditions and whether the
16 witness had the chance to see or know the person in
17 the past. Once again, I instruct you, the burden of
18 proof on the State extends to every element of the
19 crime charged. And this specifically includes the
20 burden of proving beyond a reasonable doubt the
21 identity of the Defendant as the person who committed
22 the crimes. If after examining the testimony, you
23 have a reasonable doubt as to the accuracy of the
24 identification, you must find the Defendant not
25 guilty.

1 Now, criminal intent is a necessary element of
2 each crime that must be proven by the State beyond a
3 reasonable doubt. Criminal intent is always a matter
4 that must be determined by the jury from the
5 circumstances surrounding the situation. Now,
6 there's no way to prove intent to a mathematical
7 certainty. There's no way medical science can
8 dissect a person's brain to determine what he or she
9 had in mind. So, the law states criminal intent may
10 be inferred from the circumstances shown to have
11 existed both before and after the fact. This is how
12 you, the jury, make the determination whether or not
13 the element requiring an intent was present.

14 Criminal intent is a state of mind that operates
15 jointly with an act or omission in the commission of
16 a crime. Criminal intent is a mental state of
17 conscious wrongdoing. So, it's up to you, the jury,
18 to determine what the Defendant intended to do based
19 on the circumstances shown to have existed. I tell
20 you that the State must prove criminal intent beyond
21 a reasonable doubt just as the State must prove every
22 element beyond a reasonable doubt as I have
23 previously explained to you.

24 Now, criminal intent can either be specific or
25 general. General intent crimes are crimes which only

1 require the doing of some act and do not require that
2 any specific result was intended by the Defendant.
3 Criminal intent only requires that the prescribed act
4 taken by the Defendant be voluntary in nature. A
5 specific intent crime requires that the Defendant had
6 the intent to cause a particular result or that the
7 Defendant had the specific intent in committing the
8 act. A person acts with specific intent when his
9 conscious objective is to cause the specific result
10 prescribed by the statute defining the events.

11 Now, as you already know, the Defendant is
12 charged with attempted murder. In order to prove
13 this crime, the State must prove the Defendant
14 attempted to kill another person with malice
15 aforethought, either expressed or implied. Malice is
16 hatred, ill will, or hostility towards another
17 person. It is the intentional doing of a wrongful
18 act without just cause or excuse and with an intent
19 to inflict an injury or under circumstances that the
20 law will infer an evil intent.

21 Malice aforethought does not require that malice
22 exist for any particular time before the act is
23 committed. But malice must exist in the mind of the
24 Defendant just before and at the time the act is
25 committed. Therefore, there must be a combination of

1 the previous evil intent and the act.

2 Malice aforethought may be expressed or
3 inferred. These terms expressed and inferred do not
4 mean different kinds of malice, but merely the manner
5 in which malice may be shown to exist, that is either
6 by direct evidence or by inference from the facts and
7 circumstances which are proven. Expressed malice is
8 shown when a person speaks words which express hatred
9 or ill will for another. Or when the person prepared
10 beforehand to do the act which was later
11 accomplished. For example, lying in wait for a
12 person or any other acts of preparation going to show
13 that the deed was within the Defendant's mind would
14 be expressed malice.

15 Malice may be inferred from conduct showing a
16 total disregard for human life. Inferred malice may
17 also arise when the deed is done with a deadly
18 weapon. A deadly weapon is any article, instrument,
19 or substance which is likely to cause death or great
20 bodily harm. Whether an instrument has been used as
21 a deadly weapon depends on the facts and
22 circumstances of each case. A gun, is a deadly
23 weapon. If facts are proven beyond a reasonable
24 doubt sufficient to raise an inference of malice to
25 your satisfaction, this inference would be simply an

1 evidentiary fact to be considered by you, the jury,
2 along with any other evidence in this case. And you
3 may give it the weight you decide it should receive.
4 A specific intent to kill is an element of attempted
5 murder, which must be proven by the State beyond a
6 reasonable doubt.

7 Now, ladies and gentlemen, if you find that the
8 State has failed to prove beyond a reasonable doubt
9 that the Defendant committed attempted murder on any
10 of the four indictments, then you may consider
11 whether the State has proven beyond a reasonable
12 doubt the lesser included charge of assault and
13 battery in the first degree. A person commits the
14 offense of assault and battery in the first degree if
15 the person unlawfully offers or attempts to injure
16 another person with the present ability to do so and
17 the act is accomplished by means likely to produce
18 death or great bodily injury.

19 Great bodily injury means bodily injury which
20 causes a substantial risk of death or which causes
21 serious permanent disfigurement or protracted loss or
22 impairment of the function of a bodily member or
23 organ. A specific intent is an element of assault
24 and battery first degree which must be proven by the
25 State beyond a reasonable doubt.

1 Now, in just a moment, I'm going to come down to
2 the jury box and explain the verdict form that I have
3 prepared to assist you in your deliberations and in
4 reaching your verdict. As to each indictment, your
5 verdict must be unanimous, an agreement by the 12 of
6 you. Once you have reached a verdict as to each
7 indictment, then you will notify the bailiff that a
8 verdict has been reached.

9 Also, what I have just read to you, I will
10 provide a copy of that to you for your use and
11 reference if you so decide while you are engaged in
12 your deliberations in the jury room. I realize that
13 what I have just charged you is a mouthful. I
14 realize that. So, you'll have a copy back in the
15 jury room if you need to refer to it.

16 Mr. Foreman, you will complete this verdict
17 form. Of course, deliberations is among the 12 of
18 you, but the actual marking on the verdict form will
19 be your responsibility.

20 And it's divided up into four sections. One
21 section for each indictment. And it refers as to
22 the -- there's no particular order, it's just as they
23 came about. First indictment involves Sarah Irby.
24 You make a determination whether or not the Defendant
25 is guilt or not guilty as to the attempted murder.

1 If you determine that the Defendant is guilty, then
2 you would go to the second indictment and conduct the
3 same analysis. However, if you believe that the
4 State has failed to meet its burden of proof by
5 proving to you each and every element of attempted
6 murder as to Sarah Irby, then you can go to the
7 lesser included offense of assault and battery in the
8 first degree and determine whether or not the
9 Defendant is not guilty or guilty. That same
10 analysis will apply to each indictment. The next
11 indictment involves John Glenn. The same analysis.
12 The third indictment, Tiffany Garrett, same analysis.
13 The fourth indictment is involving the four-year-old
14 minor. Okay.

15 When the jury has reached a unanimous verdict
16 and you mark the appropriate line, put your initials,
17 okay, to indicate the verdict as to each indictment.

18 Now, I'm going to send you back to your jury
19 room. Do not begin your deliberations yet. I need
20 to talk with the lawyers and make sure that my charge
21 to you -- even though we have spent some time
22 together on the charge, make sure that that charge is
23 proper and I don't need to recharge you on any
24 particular item. If Mr. Bolt brings to you all the
25 exhibits that are into evidence, the verdict form and

1 a copy of my jury charge, that will be your queue for
2 two things to happen.

3 One, Ms. Terrell and Mr. Copeland, you will need
4 to exit the jury room because you cannot participate
5 in deliberations. You will come back and receive
6 further instructions.

7 And that will be your queue to start your
8 deliberations. So, go back to the jury room, all 14
9 of you. Don't start your deliberations. Don't begin
10 any discussions. And as soon as -- you'll either be
11 brought back out for additional charge or Mr. Bolt
12 will bring you those documents I've just mentioned.
13 So go back to the jury room, please.

14 (WHEREUPON, the jury left open court at
15 approximately 10:48 a.m..)

16 THE COURT: All right. Does the State have any
17 objection to the Court's charge?

18 MR. SCOTT: No, Your Honor.

19 THE COURT: Defense?

20 MR. ADDUCCI: Only the exceptions previously
21 noted.

22 THE COURT: Previously noted on the record?

23 MR. ADDUCCI: That's correct, Your Honor.

24 THE COURT: All right. Going off the record
25 now. Let's make sure we've got all the exhibits

1 together.

2 (WHEREUPON, deliberations began at approximately
3 10:50 a.m.)

4 THE COURT: All right. Thank you for your
5 service. Y'all are welcome to hang out, wait around,
6 wait on the verdict if you want to, or if you need to
7 go, you're finished for the week. It's whatever you
8 want to do. Thank you for your service.

9 (WHEREUPON, the alternates were excused.)

10 (WHEREUPON, Court was in recess awaiting a
11 verdict.)

12 THE COURT: Okay. We're back on the record in
13 the McGowan case. It's my understanding that we have
14 a verdict.

15 Everybody ready for the verdict to be brought
16 out -- I mean, for the jury to be brought out?

17 MR. SCOTT: Yes, sir.

18 MR. ADDUCCI: Yes, sir, Your Honor.

19 THE COURT: All right. Mr. Bolt, if you will
20 bring the jury out, please, sir.

21 (WHEREUPON, the jury came into open court at
22 approximately 12:00 p.m.)

23 VERDICT

24 THE COURT: Thank you, Mr. Bolt.

25 Mr. McGowan, if you'd please stand, sir.

1 Mr. Foreman, it's my understanding that you have
2 reached a verdict?

3 MR. FOREMAN: Yes, sir.

4 THE COURT: Okay. And without telling me the
5 verdict, is the verdict for each indictment, was it
6 unanimous?

7 MR. FOREMAN: Yes, sir.

8 THE COURT: If you will hand the verdict form to
9 Mr. Bolt and he will hand it to me.

10 Okay, Madam Clerk, would you publish the
11 verdicts, please?

12 THE CLERK: Yes, sir.

13 In the case of the State of South Carolina vs.
14 Patrick McGowan, case number 2012-GS-30-1367, 68, 69
15 and 70, as to Indictment number 2012-GS-30-1367,
16 which charges the Defendant, Patrick McGowan, with
17 the lesser included charge of assault and battery,
18 first degree against Sarah Irby, we find the
19 Defendant guilty.

20 As to Indictment 2012-GS-30-1368, which charges
21 the Defendant, Patrick McGowan, with the lesser
22 included charge of assault and battery, first degree
23 as to John Glenn, we find the Defendant guilty.

24 As to the Indictment number 2012-GS-30-1369,
25 which charges the Defendant, Patrick McGowan, with

1 the lesser included charge of assault and battery,
2 first degree, we find the Defendant guilty.

3 As to the indictment 2012-GS-30-1370, which
4 charges the Defendant, Patrick McGowan, with the
5 lesser included charge against the four year-old
6 juvenile, we find the Defendant guilty.

7 Signed by Stephen Lanford, Foreperson, Laurens,
8 South Carolina, June 2nd, 2016.

9 Ladies and gentlemen, if that be your verdict,
10 please indicate by raising your right hands.

11 (WHEREUPON, all members of the jury raised their
12 right hand.)

13 THE CLERK: Thank you.

14 THE COURT: All right. Let the record reflect
15 that all 12 jurors raised their right hand.

16 Just a point of clarification, Mr. Foreman,
17 the -- I'm going to call them back as to the
18 attempted murder, there was not a finding of not
19 guilty, was that intended? Was your verdict not
20 guilty as to the attempted murder, that's why you
21 found him guilty on the lesser included charge, is
22 that correct?

23 MR. FOREMAN: Yes, sir.

24 THE COURT: So, it was your intent as to all
25 four indictments, your verdict was unanimous not

1 guilty as to attempted murder, is that correct?

2 MR. FOREMAN: Yes, sir.

3 THE COURT: All right, thank you.

4 Now, does either side want individual polling,
5 the State?

6 MR. SCOTT: None from the State, Your Honor.

7 THE COURT: From the Defense?

8 MR. ADDUCCI: No, Your Honor.

9 THE COURT: Okay. All right. Thank you very
10 much. You can have a seat.

11 Mr. Foreman, ladies and gentlemen of the jury, I
12 want to thank for your jury service. Your verdict
13 does not matter to me. Does not matter what verdict
14 you reach. What does matter to me is that a jury
15 preformed their duties and their jury service
16 diligently, conscientiously and that the jury was
17 very attentive throughout this whole process. And I
18 can say that you were very attentive and that you
19 have performed your duty conscientiously and
20 diligently and that you abided by the oath that you
21 took at the outset of this case. And that's what
22 important to me. And I do appreciate your jury
23 service.

24 Serving on a jury is tough. It's not an easy
25 endeavor. I've never personally served on a jury,

1 but I have certainly presided over many jury trials.
2 And I know that it's tough sometimes. But I hope
3 that you have found this to be a good experience.
4 Not reaching the outcome that you reach necessarily,
5 but just going through the process and seeing the
6 judicial system at work. As I told you on Tuesday,
7 we have the greatest justice system in the entire
8 world. And no one, no country can match up to our
9 justice system. And so, I hope this has been an
10 educational experience for you, maybe an experience
11 that you would like to have again sometime down the
12 road.

13 We have no further work for a jury, so you are
14 now excused for the remainder of the week.

15 Mr. Foreman, you need to hang around for just a
16 minute because you will need to, with the assistance
17 of the clerk, sign the indictments, so if you will
18 hang around.

19 Clerk Lancaster has your checks for your jury
20 service.

21 You want to hand them out to them in the
22 hallway?

23 If y'all will just -- I like to shake the hands
24 of my jury. So, if y'all just would --

25 Mr. Lanford, if you would just hang around.

1 If you would go out into the hallway, she will
2 come and hand you your checks.

3 (WHEREUPON, the jury was excused and dismissed
4 for the day at approximately 10:09 a.m.)

5 THE COURT: We're going to take about a 10
6 minute break before we go into the sentencing phase
7 of this case, so everybody be at ease.

8 (WHEREUPON, a short break was taken.)

9 SENTENCING

10 THE COURT: Okay. We're in the sentencing phase
11 of this case. I'll hear from the State first
12 concerning its position, if any, on the question of
13 sentencing. Then I'll hear from the Defense.

14 So, Solicitor Scott, be glad to hear from you,
15 sir.

16 MR. SCOTT: Thank you, Your Honor. Thank you
17 for hearing us this week. The jury verdict, I don't
18 disagree with it. I think as the testimony unfolded,
19 that was a verdict that we can live with. I will
20 note that at no time that the Defendant showed any
21 remorse. In fact, as the testimony developed, he's
22 tried to pay off my victims in this case, as if
23 that's enough to atone for shooting through their
24 house. I truly believe what I said, he's not sorry.
25 He's sorry he got caught.

1 I've got an '01 conviction. He was actually
2 arrested for ABWIK, so this isn't his first attempted
3 murder type charge. He pled --

4 THE COURT: You said 2001?

5 MR. SCOTT: That is the incident date, yes, sir.
6 He pled down to an ABHAN. The allegations in that
7 case was he attacked a woman with a golf club,
8 beating her head with a golf club. I understand that
9 was 2001, but that certainly shows a predilection for
10 violence and a tendency towards violence.

11 Again, as I said, it's pure luck, I think, that
12 nobody was killed or seriously hurt. I'm asking for
13 a stacked sentence. There's four indictments, four
14 convictions on 10 year felonies each. I've had a
15 similar case, so there is some precedent in this
16 circuit for stacked sentences and consecutive
17 sentences with these types of charges. Very similar
18 set of facts, there was two attempted murders that
19 that jury came back, too, assault and battery, first.
20 In that case, there was a consecutive sentence given.
21 I think that would be called for as well in this
22 case.

23 When Your Honor cares to hear from her, Sarah
24 Irby does wish to address the Court.

25 THE COURT: Okay. I'll hear from you now. We

1 need to swear you in again, Ms. Irby.

2 THE CLERK: Raise your right hand, please.

3 SARAH IRBY, after being duly sworn,
4 testified as follows:

5 THE COURT: Yes, ma'am, Ms. Irby, be glad to
6 hear from you.

7 MS. IRBY: Yeah. I'd just like to say that I
8 still have nightmares and things about what happened
9 that night. And so -- in thinking about my family
10 could have got killed that night. So, other people
11 could have got killed that night. And I got bullet
12 holes in my bathroom right now. I can't even take a
13 shower in there because I'm scared. I have to
14 take -- I have to go in my other room to take a
15 washout everyday. And I could have got killed. So
16 my grandbaby, everybody in my house could have got
17 killed. And I just can't go in there. It hurt me so
18 bad. I'm looking through that hole the way that
19 bullet came across my head and I could have got
20 killed. And Lord know, I still got holes all in my
21 house and it bring back memory, pain, stress, nerve.
22 Doctor got me on nerve pill. And I'm just scared
23 something else is going to happen. I can't sleep at
24 night, scared he going to come back and try to do my
25 family again. And Lord know we ain't did nothing

1 wrong. We good honest people. We don't bother
2 nobody. We sit around and have a good time. And
3 that's all I have to say.

4 THE COURT: All right. Thank you very much,
5 ma'am.

6 Anything further from the State, Solicitor
7 Scott?

8 MR. SCOTT: Judge, they've asked me to ask for a
9 permanent restraining order after whatever sentence
10 is rendered. I told them I'd ask you.

11 THE COURT: All right. Thank you very much.

12 Mr. Adducci, I'll be glad to hear from you, sir.

13 MR. ADDUCCI: Your Honor, as the State, it's my
14 belief that the Defendant's conviction is a 2001
15 misdemeanor ABHAN. My client has maintained his
16 innocence to me from the moment that I've met him. I
17 been meeting with him about this case for quite some
18 time. He's 32 years old, he has two children. His
19 four year old, T.J., lives with him. He works at the
20 pallet manufacturer. This occurred in 2012. We're
21 here in 2016. Four years later, and Mr. McGowan
22 still has not been in trouble. We have a 2001
23 conviction and now, we have this.

24 When the Court hands down its sentence, I think
25 it needs to look towards punishment, rehabilitation.

1 I think when you look at Mr. McGowan, regardless of
2 what you -- what the Court thinks about what happened
3 that day, I think the Court can say that this sort of
4 action is an aberration of his character. He has a
5 2001 conviction and then this. He has not been in
6 trouble since. He went 11 years between his 2001
7 conviction and this incident. We just ask the Court
8 to take all of that into consideration, the whole
9 person as opposed to just this. Judging somebody on
10 their worst day is what happens in court. And I
11 think that when we're sentencing, we need to take all
12 of that into consideration, the entire person. This
13 isn't somebody who's a career criminal coming before
14 the court regularly. I think if we're all judge on
15 our worst day, so help me.

16 Mr. McGowan, anything else that you would like
17 to add?

18 THE COURT: Be glad to hear from you,
19 Mr. McGowan, if you'd like to address the Court.

20 MR. MCGOWAN: Yes, sir. I mean, I don't even
21 know why I'm in this predicament right now because I
22 know to this day I remain my innocence because I know
23 I didn't do that. And I don't know, Your Honor -- I
24 don't even know why I'm here, man. I got a son I
25 ain't going to see no more. I can't talk. I can't

1 even talk.

2 THE COURT: I'll be glad to give you a few
3 moments to collect yourself if you need a few
4 minutes, I'll be glad to give you a few minutes.

5 MR. MCGOWAN: Your Honor, I was going back to
6 school, getting ready to get married. I don't
7 understanding something I know I didn't do. I got
8 kids. Man, this is crazy. That's it, Your Honor.

9 THE COURT: Anything further, Mr. Adducci?

10 MR. ADDUCCI: No, Your Honor.

11 THE COURT: Anything further from the State?

12 MR. SCOTT: Nothing from the State, Your Honor.

13 THE COURT: Okay. Give me about 10 minutes.
14 I'm going to go back in chambers and I'll come back
15 out.

16 MR. ADDUCCI: Thank you, Your Honor.

17 (WHEREUPON, a short break was taken.)

18 THE COURT: Okay, Mr. McGowan, you can just stay
19 where you are, but if you will stand, please.

20 Mr. McGowan, when a jury comes back and finds
21 someone guilty as they have done with you, then it is
22 my responsibility and duty to accept that verdict as
23 the truth. We all have to accept it. Whether we
24 disagree with it or not, it has to be accepted. I
25 have to accept the verdict. But I have taken into

1 some consideration, some, your lack of prior record.

2 I realize the 2001 ABHAN conviction involves some

3 violence of some sort, but it's been 15 years ago.

4 So, I have taken that into consideration. And I've

5 tried to search for other mitigating factors. I've

6 also tried to search for some aggravating factors.

7 But I guess at the end of day, you got to look at

8 what the jury said that you did, that you

9 indiscriminately shot into a house.

10 Now, let me also say that this -- my sentence in

11 this case is of no reflection on how I've sentenced

12 in other cases. I think, Solicitor Scott -- and I'm

13 not being critical, alluded to a very similar case

14 that I tried several years ago in another county.

15 But I try to look at these cases as stand alone and

16 look purely just at the facts and circumstances and

17 not be swayed by other cases, even though, again, I

18 try to be somewhat consistent.

19 What I have done in this case on the two

20 indictments involving Ms. Irby and Mr. Glenn, I have

21 run those sentences consecutive. On the other two

22 indictments, Ms. Garrett and the four year old child,

23 that one is concurrent with each other and with the

24 two consecutive sentences. The amount of time on all

25 four indictments is the same.

1 So, on the Indictment 12-GS-30-1367 and 1368,
2 Mr. McGowan, you're to be committed to the State
3 Department of Corrections for seven and a half years
4 and that will run consecutive, therefore, that's a 15
5 year sentence. Then on the other indictments, you'll
6 be committed to the State Department of Corrections
7 for seven and a half years, that will run concurrent
8 with each other and with the two consecutive charges.
9 So, it's going to be a 1 -year sentence that you'll
10 be looking at. Good luck to you, sir.

11 MR. SCOTT: Your Honor, would you consider the
12 restraining order that the family asked for.

13 THE COURT: Oh, yes, and it will also be
14 included a permanent restraining order as to the
15 three victims.

16 (WHEREUPON, the proceedings were concluded.)
17
18
19
20
21
22
23
24
25

WITNESSES

C. MARTIN
Laurens County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

August Term, 2012

Indictment # 12GS30- 1367

WARRANT NUMBER

M916311

True Bill
J. O. [Signature]

Foreman of the Grand Jury

Date: 8-3-12

THE STATE

vs.

Patrick Oneil Megowan

VERDICT

INDICTMENT FOR

ATTEMPTED MURDER
16-03-0029

Foreman

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County C.C.P. & G.S.

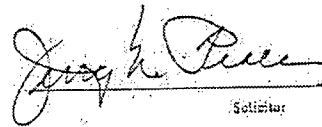
THE STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

INDICTMENT FOR
ATTEMPTED MURDER
16-03-0029

At a Court of General Sessions, convened on the 3rd day of August, 2012 the Grand Jurors of
Laurens County present upon their oath:

That Patrick Onell McGowan, did in Laurens County, state aforesaid, on or about the 31st day of
March, 2012 willfully and unlawfully, with the intent to kill and with malice aforethought, attempted to kill
Sarah Irby, in violation of Section 16-3-29 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made
and provided.


Solicitor

A TRUE COPY OF ORIGINAL


Lynn W. Lancaster
Laurens County CCP & GS

WITNESSES

C. MARTIN

Laurens County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

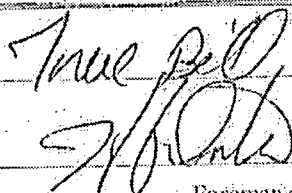
COURT OF GENERAL SESSIONS

August Term, 2012

Indictment # 12GS30-1368

WARRANT NUMBER

M916312



Foreman of the Grand Jury

Date: 8-31-12

THE STATE

vs.

Patrick Oneil McGowan

VERDICT

INDICTMENT FOR

ATTEMPTED MURDER

16-03-0029

Foreman

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Laurens County CCEP & GS

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

INDICTMENT FOR

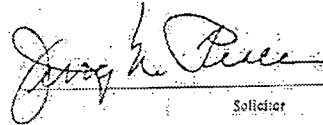
ATTEMPTED MURDER

16-03-0029

At a Court of General Sessions, convened on the 3rd day of August, 2012 the Grand Jurors of Laurens County present upon their oath:

That Patrick Orell McGowan, did in Laurens County, state aforesaid, on or about the 31st day of March, 2012 willfully and unlawfully, with the intent to kill and with malice aforethought, attempted to kill a 4 year old juvenile, in violation of Section 16-3-29 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

A TRUE COPY OF ORIGINAL



Lynn W. Lancaster
Laurens County, CCLP & GS

WITNESSES

C. Martin
Laurens County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

August Term, 2012

Indictment # 12GS30- 1369

WARRANT NUMBER

M916313

THE STATE

vs.

Patrick Oneil McGowan

Leue Bied
J. H. Ouler

Foreman of the Grand Jury

Date: *8-3-12*

VERDICT

INDICTMENT FOR

ATTEMPTED MURDER

16-03-0029

Foreman

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Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

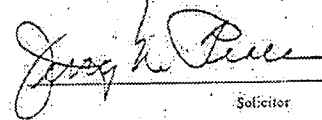
THE STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

INDICTMENT FOR
ATTEMPTED MURDER
16-03-0029

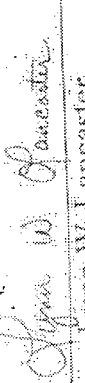
At a Court of General Sessions, convened on the 3rd day of August, 2012 the Grand Jurors of
Laurens County present upon their oath:

That Patrick O'Neill McGowan, did in Laurens County, state aforesaid, on or about the 31st day of
March, 2012 willfully and unlawfully, with the intent to kill and with malice aforethought, attempted to kill
John Glenn, in violation of Section 16-3-29 of the South Carolina Code of Laws, 1979, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made
and provided.


Solicitor

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Lynn W. Lancaster
Laurens County CCCP & GS

WITNESSES

C. MARTIN
Laurens County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

August Term, 2012

Indictment # 12GS30- 1370

WARRANT NUMBER

M916314

THE STATE

vs.

Patrick Oneil McGowan

True Bill
[Signature]

Foreman of the Grand Jury

Date: *8-3-12*

VERDICT

INDICTMENT FOR

ATTEMPTED MURDER

16-03-0029

Foreman:

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Lynn W. Lancaster
Laurens County CCCP & GS

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

INDICTMENT FOR

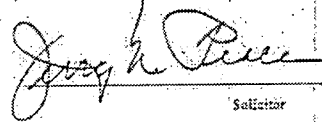
ATTEMPTED MURDER

16-03-0029

At a Court of General Sessions, convened on the 3rd day of August, 2012 the Grand Jurors of Laurens County present upon their oath:

That Patrick Oneil McGowan, did in Laurens County, state aforesaid, on or about the 31st day of March, 2012 willfully and unlawfully, with the intent to kill and with malice aforethought, attempted to kill Tiffany Garrett, in violation of Section 16-3-29 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Solicitor

A TRUE COPY OF ORIGINAL

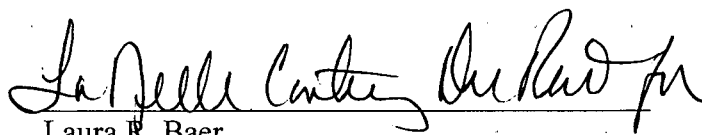


Lynn W. Lancaster
Laurens County CCJP & GS

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 9th day of May, 2018.

RECEIVED
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SC Court of Appeals