

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Maite Murphy, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CHRISTIAN ANTHONY HIMES,

APPELLANT

APPELLATE CASE NO 2017-000870

RECORD ON APPEAL

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ATTORNEYS FOR RESPONDENT **PAGES 1-500**

INDEX

INDEX	i
TRANSCRIPT OF TRIAL HELD APRIL 3 – 6, 2017	1
APRIL 3, 2017	
IMMUNITY HEARING	
TESTIMONY	
MICHAEL WEAVER	
Direct Examination by Mr. Wehman	9
Cross Examination by Assistant Solicitor Sorenson	29
Redirect Examination by Mr. Wehman	38
HEATHER MELISSA HAM	
Direct Examination by Mr. Wehman	40
Cross Examination by Assistant Solicitor Sorenson	65
Redirect Examination by Mr. Wehman	89
MATTHEW ADAMS BROOKS	
Direct Examination by Mr. Wehman	91
Cross Examination by Assistant Solicitor Templeton	93
WADE FRANKLIN ROLLINGS	
Direct Examination by Mr. Wehman	95
Cross Examination by Assistant Solicitor Templeton	101
Redirect Examination by Mr. Wehman	104
TIM WAYNE GRAMBON	
Direct Examination by Mr. Wehman	105
Cross Examination by Assistant Solicitor Sorenson	111
CHRISTIAN ANTHONY HIMES	
Direct Examination by Ms. Williams	114
Cross Examination by Assistant Solicitor Sorenson	136
ARGUMENT ON IMMUNITY	163
IMMUNITY RULING TAKEN UNDER ADVISEMENT	184

APRIL 4, 2017

COURT'S RULING DENYING IMMUNITY	184
COURT'S PRELIMINARY REMARKS TO THE JURY	189
OPENING STATEMENT BY ASSISTANT SOLICITOR TEMPLETON	195
OPENING STATEMENT BY MS. WILLIAMS	198
TESTIMONY	
MATTHEW ADAMS BROOKS	
Direct Examination by Assistant Solicitor Templeton	203
Cross Examination by Ms. Williams	211
KAREN WELBORN	
Direct Examination by Assistant Solicitor Sorenson	217
HEATHER MELISSA HAM	
Direct Examination by Assistant Solicitor Sorenson	225
Cross Examination by Ms. Williams	259
Redirect Examination by Assistant Solicitor Sorenson	307

APRIL 5, 2017

TESTIMONY (continued)

DR. ELLEN RIEMER	
Direct Examination by Assistant Solicitor Sorenson	314
Cross Examination by Ms. Williams	327
SERGEANT JASON FORSYTH	
Direct Examination by Assistant Solicitor Templeton	330
Cross Examination by Ms. Williams	339
WADE FRANKLIN ROLLINGS	
Direct Examination by Assistant Solicitor Templeton	343
Cross Examination by Ms. Williams	353
Redirect Examination by Assistant Solicitor Templeton	361

APRIL 6, 2017

TESTIMONY (continued)

MICHAEL PARKER WEAVER	
Direct Examination by Assistant Solicitor Sorenson	370
Cross Examination by Ms. Williams	400
Redirect Examination by Assistant Solicitor Sorenson	415
STATE RESTS	416
RENEWAL OF IMMUNITY MOTION	416
COURT'S RULING	417
MOTION FOR A DIRECTED VERDICT	417
COURT'S RULING	420
COLLOQUY RE: DEFENDANT'S RIGHT TO TESTIFY	423
TESTIMONY	
JOHN TISDALE	
Direct Examination by Mr. Wehman	434
Cross Examination by Assistant Solicitor Templeton	438
CHRISTIAN ANTHONY HIMES	
Direct Examination by Ms. Williams	440
Cross Examination by Assistant Solicitor Sorenson	463
RENEWAL OF ALL PRETRIAL MOTIONS AND DIRECTED VERDICT	507
COURT'S RULING	507
CLOSING ARGUMENT BY ASSISTANT SOLICITOR SORENSON	509
CLOSING ARGUMENT BY MS. WILLIAMS	528
REBUTTAL ARGUMENT BY ASSISTANT SOLICITOR SORENSON	540
JURY CHARGE	540
VERDICT	560

SENTENCING	564
IMPOSITION OF SENTENCE	569
DEFENDANT'S EXHIBIT 5 (SLED TOXICOLOGY REPORT)	572
DEFENDANT'S EXHIBIT 6 (LETTER FROM HEATHER HAM TO CHRISTIAN HIMES)	577
DEFENDANT'S EXHIBITS 8 AND 9 (CRIME SCENE DRAWINGS)	584
STATE'S EXHIBIT 2 (HIMES' STATEMENT)	586
STATE'S EXHIBIT 6 (TEXT MESSAGE)	589
INDICTMENTS AND SENTENCING SHEETS	590
CERTIFICATE OF COUNSEL	596

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

DEFENDANT'S EXHIBIT NO. 1 (CRIME SCENE DOCUMENTS)
DEFENDANT'S EXHIBIT NOS. 2-4, 7, AND 10 (PHOTOGRAPHS)
DEFENDANT'S EXHIBIT NO. 11 (VIDEO)

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF DORCHESTER) CASE NO.: 2015-GS-18-1882
 and 1883

STATE OF SOUTH CAROLINA,)
)
 v.) TRANSCRIPT OF RECORD
)
 CHRISTIAN ANTHONY HIMES)
)
)

ORIGINAL

Monday, April 3, 2017 - Thursday, April 6, 2017

COMMENCING AT:
 Dorchester County Courthouse
 St. George, South Carolina
 Before The Honorable Maite Murphy, Judge

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 Official Court Reporter

INDEX

Pretrial Motions	7
Jackson v. Denno Hearing	11
<u>State's Witness: Mike Weaver</u>	
Direct Examination by Ast. Sol. Sorenson	11
Cross-Examination by Ms. Williams	28
Redirect Examination by Ast. Sol. Sorenson	39
Pretrial Motions (Continuing)	45
Stand Your Ground Hearing	51
<u>Defense Witness: Mike Weaver</u>	
Direct Examination by Mr. Wehman	51
Cross-Examination by Ast. Sol. Sorenson	71
Redirect Examination by Mr. Wehman	80
<u>Defense Witness: Heather Ham</u>	
Direct Examination by Mr. Wehman	82
Cross-Examination by Ast. Sol. Sorenson	107
Redirect Examination by Mr. Wehman	131
<u>Defense Witness: Matthew Brooks</u>	
Direct Examination by Mr. Wehman	133
Cross-Examination by Ast. Sol. Templeton	135
<u>Defense Witness: Wade Rollings</u>	
Direct Examination by Mr. Wehman	137
Cross-Examination by Ast. Sol. Sorenson	143
Redirect by Mr. Wehman	145
<u>Defense Witness: Tim Grambon (PH)</u>	
Direct Examination by Mr. Wehman	147
Cross-Examination by Ast. Sol. Sorenson	153
<u>Defense Witness: Christian Himes</u>	
Direct Examination by Ms. Williams	156
Cross-Examination by Ast. Sol. Sorenson	178
Court's Rulings on Pretrial Motions	226
Voir Dire	233
Jury Selection	246
Jury Instruction	259

Opening Statements:

Ast. Sol. Templeton	265
Ms. Williams	268

STATE'S WITNESSES (Trial)Witness: Matthew Brooks

Direct Examination by Ast. Sol. Templeton	273
Cross-Examination by Ms. Williams	281

Witness: Karen Welborn

Direct Examination by Ast. Sol. Sorenson	287

Witness: Heather Ham

Direct Examination by Ast. Sol. Sorenson	295
Cross-Examination by Ms. Williams	329
Redirect Examination by Ast. Sol. Sorenson	377

Witness: Dr. Ellen Riemer

Direct Examination by Ast. Sol. Sorenson	384
Cross-Examination by Ms. Williams	397

Witness: Jason Forsyth

Direct Examination by Ast. Sol. Templeton	400
Cross-Examination by Ms. Williams	409

Witness: Wade Franklin Rollings

Direct Examination by Ast. Sol. Templeton	413
Cross-Examination by Ms. Williams	423
Redirect Examination by Ast. Sol. Templeton	431

Witness: Mike Weaver

Direct Examination by Ast. Sol. Sorenson	440
Cross-Examination by Ms. Williams	470
Redirect Examination by Ast. Sol. Sorenson	485

Defendant's Fifth Amendment Rights	493

DEFENSE WITNESSES (Trial)Witness: John Tisdale

Direct Examination by Mr. Wehman	504
Cross-Examination by Ast. Sol. Templeton	508

Witness: Christian Anthony Himes

Direct Examination by Ms. Williams	510
Cross-Examination by Ast. Sol. Sorenson	533

Closing Arguments:

Ast. Sol. Sorenson	579
Ms. Williams	598
Ast. Sol. Sorenson	610
Jury Charge	613
Verdict of the Jury	630
Sentence of the Court	639
Certificate of Reporter	641

PRETRIAL EXHIBITS

(For Identification Only)

<u>COURT'S NO.</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
1	Competency Evaluation	9
<u>STATE'S NO.</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
1	Advisement of Rights Form	14
2	Voluntary Statement	20
3	Advisement of Rights Form	26
4	Photograph	101
5	Inmate Request	25
6	Text Message	117
7	Photograph	130
8	Photograph	136
9	Photograph	144
10	Photograph	145

<u>DEFENDANT'S NO.</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
1	Crime Scene Documents	50
2	Photograph	102
3	Photograph	103
4	Photograph	139
5	SLED Report	148
6	Letter	164

STATE'S EXHIBITS (Trial)

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
1	Advisement of Rights	444
2	Voluntary Statement	456
3	Advisement of Rights	468
4	Photograph (Entered as Defendant's 7)	
5	Inmate Request	466
6	Text Messages	304
7	Photograph	420
8	Photograph	279
9	Photograph (ID Only)	
10	Photograph	280
11	Photograph	407
12	Photograph	406
13	Photograph	406
14	Photograph	312
15	Photograph	312

16	Photograph	420
17	Photograph	422
18	Gun	421
19	Video	401
20	Photograph	275

DEFENSE EXHIBITS (Trial)

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
7	Photograph	286
8	Crime Scene Drawing	424
9	Crime Scene Drawing	425
10	Photograph	507
11	Video	506

COURT'S EXHIBITS (Trial)

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
2	Jury Question	258

1 (The proceedings began at 1:39 p.m.)

2 THE COURT: Good afternoon, everyone. It's my
3 understanding that we have several pretrial matters in the
4 first case that will be called to trial. My understanding
5 is that this is the State versus Christian Himes. Is that
6 correct, Solicitor?

7 AST. SOL. SORENSON: That would be correct, Your Honor.

8 THE COURT: All right. Which motion would you like to
9 start with?

10 MS. WILLIAMS: Thank you, Judge. May it please the
11 Court?

12 THE COURT: Yes, ma'am.

13 MS. WILLIAMS: I believe all the motions are the
14 defense motions.

15 THE COURT: Okay.

16 MS. WILLIAMS: But the first issue that I think the
17 Court needs to address is the Blair hearing in this issue or
18 in this case. Mr. Himes was previously evaluated for the
19 purposes of competency to stand trial. I have that
20 evaluation if I can hand it up to the Court.

21 THE COURT: Yes, please.

22 MS. WILLIAMS: The State also has a copy. Mr. Himes
23 was evaluated and found competent to stand trial. For the
24 purposes of the record, I do not have any issues in
25 communicating with him. I do not believe that he has any

1 MS. WILLIAMS: And I understand, Judge. And just to
2 bring to the Court's attention, one of the -- and the reason
3 why I brought it pretrial is because the statute actually
4 says the person who is requesting it, has to bear the burden
5 of the expense of getting the jury there and back. And so
6 we would, obviously, being the public defender's office,
7 need, if it was ordered, we would have to have a voucher
8 signed and have OID pay for that.

9 THE COURT: We'll obviously cross that bridge when we
10 get to it.

11 MS. WILLIAMS: Thank you, Judge. Can I have those made
12 as a Court's exhibit.

13 THE COURT: You may.

14 MS. WILLIAMS: Or as defense exhibit for the purposes
15 of this hearing.

16 THE COURT: Sure.

17 (Defendant's Exhibit No. 1, Crime Scene Documents, was
18 marked for identification.)

19 MS. WILLIAMS: I think at this point, it's Mr. Wehman's
20 show now.

21 THE COURT: All right. Mr. Wehman?

22 MR. WEHMAN: Thank you, Your Honor. May it please the
23 Court?

24 THE COURT: Yes, sir.

25 MR. WEHMAN: This will be our final motion. It would

1 be a motion to quash the indictment pursuant to the
2 Protection of Persons and Property Act, specifically
3 subsection C, which is the Stand Your Ground provision.
4 According to State v. Duncan, this is a judicial
5 determination, pretrial. And the burden is on the defense
6 to establish entitlement to immunity by the preponderance of
7 the evidence. We are prepared to call witnesses.

8 THE COURT: All right. You may call your first
9 witness.

10 MR. WEHMAN: The first witness would be Detective
11 Weaver.

12 THE COURT: You're still under oath, Detective. You
13 may proceed. Your witness.

14 MR. WEHMAN: Thank you, Your Honor. May it please the
15 Court?

16 THE COURT: Yes, sir.

17 DIRECT EXAMINATION

18 BY MR. WEHMAN:

19 Q. Detective, how are you?

20 A. Good. How are you?

21 Q. I'm doing well. And I know we established your
22 qualifications before, but for the purposes of the record
23 being clean, where are you employed?

24 A. Summerville Police Department.

25 Q. Okay. And how long have you been there?

1 A. Almost, I think, seven years.

2 Q. Okay. And what is your title?

3 A. Sergeant in the criminal investigations.

4 Q. Was that your position in November of 2015?

5 A. No. I was actually corporal at the time in criminal
6 investigations.

7 Q. You were still a detective?

8 A. Yes.

9 Q. Okay. All right. And you had the opportunity to
10 become involved in this case; correct?

11 A. Yes.

12 Q. Okay. In fact, you're the chief investigating officer?

13 A. Yes.

14 Q. And as such, you have all the statements and the
15 reports and you reviewed everything in preparation for
16 today?

17 A. I have.

18 Q. Okay. So to make sure everybody's clear as to who the
19 players are in this case, the victim of the shooting would
20 be David Ham; correct?

21 A. That's correct.

22 Q. Okay. And Mr. Himes, obviously, has been accused of
23 shooting Mr. Ham?

24 A. Yes.

25 Q. Okay. And the main witness that you have in this case

Direct Examination of Det. Weaver by Mr. Wehman

1 would be Heather Ham; correct?

2 A. Yes.

3 Q. Okay. Now, at the time of the incident, David and
4 Heather, David Ham and Heather Ham, were still married;
5 right?

6 A. Yeah. They were separated, but I think they were still
7 legally married.

8 Q. Okay. And at the time of the incident, Heather Ham and
9 Christian Himes were engaged in a romantic relationship;
10 correct?

11 A. Yes.

12 Q. Okay. So they were dating?

13 A. Some type of relationship; yes, sir.

14 Q. Okay. Now, Heather Ham lived at [REDACTED] Dorchester Road;
15 right?

16 A. That's correct.

17 Q. And that's the [REDACTED] [REDACTED] [REDACTED]?

18 A. Yes.

19 Q. Specifically, she lived in apartment 12-D?

20 A. 12-D, that's correct.

21 Q. Now, during your investigation you also learned that
22 Christian Himes was staying with Heather at that address;
23 right?

24 A. Yes.

25 Q. Okay. Now, you received the case on November 1st?

1 A. Yeah. It was that night. I got called out.

2 Q. Okay. Because you were the on-call detective?

3 A. Yes, sir.

4 Q. So you've been on the case from day one. Everything
5 that has happened in this case has come through you?

6 A. Yes. That's fair.

7 Q. Now, as you were going through all of the evidence, you
8 found out that David Ham figured out that Heather Ham was
9 seeing somebody else the Friday before the incident; right?

10 A. Yes. I think about a week before anything happened, I
11 think.

12 Q. And in fact David Ham sent Heather Ham a text message
13 on that day?

14 A. Yes.

15 Q. And you know that because she sent that you?

16 A. Yes. She e-mailed it to me from October 30th.

17 Q. What did that text message say specifically?

18 A. It says sweetie, I care, you don't. What I needed to
19 hear, tell your BF, assuming boyfriend, don't let me catch
20 him slipping. And then it goes -- there's some conversation
21 about the kids. But that was the one text message that I
22 think the defendant wanted me to see.

23 Q. Okay. So she says, or David Ham says to her, "Tell
24 your boyfriend don't let me catch him slipping"?

25 A. That's correct.

1 Q. Okay. And that would've been October 30th?

2 A. Yes. That's what the text message says.

3 Q. Ms. Ham also wrote a statement for you. Is that
4 correct?

5 A. Yes.

6 Q. And that would've been November 11th? Tenth or 11th?
7 Does that sound right?

8 A. One is on the 18th and there's another one, November
9 1st.

10 Q. Okay. So the one on the 18th, that was given to you?

11 A. Yes.

12 Q. She requested to speak to you?

13 A. Yes.

14 Q. All right. And she set up an appointment, she came in
15 and gave you that statement?

16 A. Uh-huh.

17 Q. Okay. All right. Now, based on both of her statements
18 and what you learned from Mr. Himes, Mr. Ham was at the
19 residence that day to pick up his children; correct?

20 A. That's correct.

21 Q. That he shares with Heather Ham?

22 A. Yes.

23 Q. Okay. And did you learn that Heather ham was actually
24 supposed to pick up her children that day?

25 A. She was supposed to go get her kids around 8:00 p.m.

1 that evening.

2 Q. Okay. But she didn't?

3 A. No.

4 Q. Mr. Ham had to come to her?

5 A. Right.

6 Q. And that's because Christian Himes had Ms. Ham's
7 vehicle?

8 A. Yes. He was supposed to have brought it back before
9 then, but he was late for whatever reason.

10 Q. Okay. So he had been at the house that day, took her
11 vehicle, was supposed to be back but hadn't got back yet?

12 A. Yeah. He had permission to use the vehicle.

13 Q. Sure. So we can all agree this apartment at [REDACTED]
14 Dorchester Road, Apartment 12-D, was somewhere that
15 Christian Himes had the legal right to be? That's where he
16 was staying?

17 A. Right.

18 Q. He had her car. He was bringing it back to her and was
19 going to stay the night there; correct?

20 A. I mean, I don't know about staying the night and all of
21 that, but he was supposed to bring the car back from my
22 understanding.

23 Q. Okay. Now, according to her statement, Mr. Himes comes
24 back with the vehicle but David is still there; right?

25 A. That's right.

Direct Examination of Det. Weaver by Mr. Wehman

1 Q. Okay. And she goes out to speak to him? To Christian.

2 A. To Christian, yes.

3 Q. Okay. And let him know that David was there?

4 A. Uh-huh.

5 Q. And he leaves?

6 A. Yes. Christian leaves.

7 Q. Okay. He tells you when you speak to him that he goes
8 to the gas station I think across the street; right?

9 A. At the corner of Dorchester and Ladson.

10 Q. And what gas station was that?

11 A. I think it's Shell. It might be a Kangaroo now. It
12 changes every now

13 Q. Okay. But regardless, he told you he went there for
14 some time?

15 A. Yes. He went there.

16 Q. And he told you that he did that to kill time so that
17 David Ham could get out of the house; correct?

18 A. Right.

19 Q. Okay. All right. Now, you addressed this earlier, but
20 he asked you to get the surveillance video from that, didn't
21 he?

22 A. Yes.

23 Q. Because he wanted to show you, I left the house and I
24 was there?

25 A. That's right.

1 Q: Okay. And you said that you went a couple of times
2 prior to ---

3 A. I went there two different times.

4 Q. Okay. Two different times. The first time they told
5 you that basically a manager had to be on scene to pull it
6 up?

7 A. They didn't know how to operate it. So I left my
8 business card with about the time I was looking to get. I
9 never heard anything back. I went back a few days later, and
10 got the same request. And I never got the surveillance.

11 Q. Okay. And that was one of two things he asked you to
12 do during the investigation was get that footage?

13 A. That's right.

14 Q. The other one was to obtain text messages?

15 A. Yes.

16 Q. Which you were able to do?

17 A. Yeah. I got the text messages.

18 Q. Because he had told you, verbally, that he had been
19 threatened prior by Mr. Ham?

20 A. Yes. From that text message.

21 Q. And he wanted you to be able to back that up? He
22 wanted to show it to you in writing?

23 A. Yeah, exactly. I assumed.

24 Q. Okay. Nonetheless, Christian and Heather, they both
25 agree Heather comes out, tells Christian that David's there,

1 and Christian leaves?

2 A. That's right.

3 Q. Now, Heather did that because she didn't want a
4 confrontation. She was trying to avoid a conflict between
5 the two?

6 A. Yeah. She didn't want the two to see each other.

7 Q. Now, when he came back, he -- because Christian Himes
8 comes back to the apartment and approaches the door of the
9 apartment; correct?

10 A. Yeah. As he's walking up, he said he saw the door open
11 and it was David. I don't know exactly where he was at when
12 it happened, but at that point, it sounds like the words
13 started to be exchanged.

14 Q. Well, he doesn't say that when he drives into the
15 parking lot -- when he drove into the parking lot, he saw
16 David. He says that he arrived at the apartment, is walking
17 up to the door ---

18 A. Right.

19 Q. --- David comes out.

20 A. Yes, that's correct.

21 Q. And that's about as specific as he gets?

22 A. Yeah. He didn't say exactly where they were at. We
23 knew where they end. We know where the shooting happened
24 when the incident took place. But as far as where they made
25 contact, I don't know.

1 Q. You have no evidence to support one way or the other
2 where contact was made?

3 A. No.

4 Q. Okay. And throughout the course of your investigation,
5 you learn that Christian Himes didn't have a cell phone for
6 Heather to call; correct?

7 A. Right. I don't think Christian had a phone. Or he
8 indicated to us that he didn't.

9 Q. Well, that would make sense because Heather had to come
10 out and tell him that David was still there; right?

11 A. Right.

12 Q. So you said there's no way to figure out where they
13 made contact. But at some point, he makes contact with
14 David Ham and there is some sort of argument between the two
15 of them; correct?

16 A. Yes.

17 Q. Okay. And you know there's an argument because
18 Christian tells you, Heather tells you. And you also have a
19 third witness who is able to tell you that there was an
20 argument that night between the two of them; right?

21 A. Right. Some people heard some people arguing.

22 Q. Well, specifically, I believe Officer Brooks, who lives
23 at [REDACTED] [REDACTED] actually talks to law enforcement and tells
24 them that he heard the argument; right?

25 A. I'd have to review his . . .

Direct Examination of Det. Weaver by Mr. Wehman

1 Q. I think he wrote a supplement.

2 A. Yeah. It was Brooks.

3 Q. Okay.

4 A. It's under Detective McElvogue in the report though.

5 Q. It is. And I believe there's a spot on there where
6 Detective McElvogue says that it was mistake and it was
7 really Officer Brooks.

8 A. That's right.

9 Q. So Officer Brooks hears arguing. And at some point,
10 Heather Ham hears David Ham tell Christian Himes, "Come on
11 homeboy. You think you're bad because you have a gun. Come
12 on." Correct?

13 A. Yes.

14 Q. Okay.

15 (Brief pause.)

16 A. Yes. That's what he said.

17 Q. And after that, Heather Ham hears Christian Himes tell
18 David Ham to back up three times; correct? From the door.

19 A. From the door?

20 Q. She was standing at -- she says that she was standing
21 at the door. Because she heard arguing, she went to the
22 door. Is that right?

23 A. Uh-huh.

24 Q. Okay.

25 THE COURT: Detective, can you answer yes or no.

Direct Examination of Det. Weaver by Mr. Wehman

1 THE WITNESS: Oh, I'm sorry.

2 THE COURT: That's okay.

3 THE WITNESS: Yes.

4 Q. Okay. She hears, "Come on homeboy. You think you're
5 bad because you have a gun. Come on." Correct?

6 A. Yes. She put that in her statement.

7 Q. She hears Christian Himes ask David Ham to back up
8 three times in a row. That would be the next sentence.

9 A. I'm sorry. I keep going back and forth between the
10 statements.

11 Q. This would be on the statement given on the 18th to
12 you.

13 A. Right. I heard Christian then ask him to back up three
14 times in a row.

15 Q. And then she hears a gunshot?

16 A. --- gunshot. Yes.

17 Q. Now, when you were talking to David -- I'm sorry --
18 when you were talking to Heather Ham and you were talking to
19 Christian Himes, they told that the amount of time that
20 David Ham was at that apartment was abnormally long for what
21 he was doing; correct?

22 A. That's correct. They did indicate that.

23 Q. Usually, he's there for five to ten minutes when he's
24 picking up or dropping off children?

25 A. Yes.

Direct Examination of Det. Weaver by Mr. Wehman

1 Q. And how long did they estimate he was there on that
2 occasion?

3 A. I don't know if they gave a specific time, but maybe
4 about -- okay, there it is -- about an hour. She said that
5 he had a cigarette on the back patio area. And that was
6 something that was abnormal too. Like you say, it's usually
7 about a five or ten minute meeting.

8 Q. So he was hanging around, according to Heather, smoking
9 a cigarette?

10 A. Yes.

11 Q. Okay. And did Christian tell you how long he was at
12 the gas station?

13 A. Can I look at his statement?

14 Q. Whose statement?

15 A. Christian's.

16 AST. SOL. SORENSON: His copy is what got put in,
17 marked as -- so he doesn't have a copy.

18 COURT REPORTER: These are the ones that?

19 AST. SOL. SORENSON: Yeah. They were marked and --
20 they were marked for ID. And those are his. The originals
21 that were in his file.

22 Q. And I can tell you it is not in his statement. I'm
23 asking from your recollection. Did he ---

24 A. He said that he ran around the neighborhood a couple of
25 times and later when to the Oakbrook Express to pass some

1 time, so . . .

2 Q. He didn't specify how long. But he said he went to
3 pass some time?

4 A. That's correct.

5 Q. But, certainly, to get over there to go inside to pass
6 some time, think it would be around -- at least more than
7 five to ten minutes; correct?

8 A. That's correct.

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

10 THE COURT: You may.

11 Q. I'm going to show you his statement. This is a
12 statement of Christian Himes, the written statement that he
13 gave you either in the late hours of November 1st or the
14 early morning hours of the 2nd. Because I believe the
15 statement took two days to write.

16 A. That is correct.

17 Q. It went over night, or past midnight?

18 A. Correct.

19 Q. The first question and answer that you gave, what was
20 the question?

21 A. What gas station did you go to?

22 Q. And what did he answer?

23 A. Oakbrook Express between 9:30 p.m. to 10:15 p.m.

24 Q. Okay. So he estimates he was there for 45 minutes
25 according to his statement?

Direct Examination of Det. Weaver by Mr. Wehman

1 A. Yeah. I mean, I see it as that or he was there or some
2 time between them.

3 Q. Okay. Now, he obviously gave you a statement. And we
4 talked about that in the previous hearing. The statement
5 that he gave would've been a couple of hours after the
6 shooting; right?

7 A. That's correct.

8 Q. And you noted in your report that he was nervous? He
9 was emotional, shaky?

10 A. He was emotionally and shaky. I do recall that, yes.

11 Q. He was crying during the statement that he gave you.
12 Do you remember that specifically?

13 A. I think by saying emotional, I mean, you know, crying

14 ---

15 Q. Sure.

16 A. --- as being emotional.

17 Q. Okay. So he's at least visibly upset?

18 A. Yes.

19 Q. And he told you he was scared when the incident
20 happened, didn't he?

21 A. I can't recall if he said he was scared or not.

22 MR. WEHMAN: May I approach, Your Honor?

23 THE COURT: You may.

24 Q. I'm going to show you -- this would be the second page
25 of your supplement at the top. Does that help refresh your

1 recollection of your report?

2 A. Yeah, that's right. Okay.

3 Q. So he told you he was scared then?

4 A. Yes, he did.

5 Q. And he told you he scared at the time of the shooting?

6 A. Yes.

7 Q. Now, you also knew, you testified earlier you knew that
8 Heather had told you, or at least Christian had told you,
9 that Heather had told him that David had been abusive to her
10 in the past; correct? You knew that David had abused
11 Heather in the past?

12 A. According to Christian, that's what Christian had told
13 me.

14 Q. Sure. Okay. So he told that there had been abuse in
15 that relationship?

16 A. Right. I don't know that to be true for the record.

17 Q. Okay. But that's just what you learned while you were
18 investigating it?

19 A. Yes.

20 MR. WEHMAN: Court's indulgence.

21 Q. You attended the autopsy in this case; correct?

22 A. I did.

23 Q. Okay. And throughout your investigation, you also sent
24 some samples to be tested by SLED for blood alcohol content?

25 A. I don't think I did that.

Direct Examination of Det. Weaver by Mr. Wehman

1 Q. Well, you were aware that it happened?

2 A. That would have been our crime scene ---

3 Q. So crime scene sent it to SLED?

4 A. Yes.

5 Q. What were the results of that testing?

6 A. From?

7 Q. The blood alcohol content of David Ham that was tested.

8 A. I believe it was .19.

9 Q. Okay. So .19. Now, what is the legal limit to, say,
10 operating a vehicle in South Carolina?

11 A. .08.

12 Q. So that was substantially more intoxicated than you
13 could be to operate a car here?

14 A. According to the law, yes.

15 Q. Okay. Okay. Now, on November 10th you got the request
16 from Christian Himes to come see him. You already testified
17 to that. Where he gave you the verbal statement about the
18 weapon?

19 A. I think it was November 4th. I don't have that with
20 me. It's down there.

21 MR. WEHMAN: May I approach again, Your Honor?

22 THE COURT: You may.

23 A. The November 10th is when I met him at the jail.

24 Q. So the request came in earlier than that?

25 A. I think it was -- it's dated on the request in evidence

1 is actually November 4th.

2 Q. Well, you actually spoke to him on the 10th?

3 A. Right. Exactly.

4 Q. And he told you about the weapon?

5 A. Uh-huh.

6 Q. That he bought it? That he had purchased it recently?

7 A. Yeah. He said he bought it off the streets for \$180.

8 Q. And he told you he did that to protect Heather;
9 correct?

10 A. Yes.

11 Q. And as you talked before, there was no other context in
12 that conversation?

13 A. As far as the gun or ---

14 Q. That's all he told you? He bought it to protect
15 Heather.

16 A. Right.

17 Q. And you already testified before that you were involved
18 in the investigation, sexual assault investigation, that
19 centered around Heather Ham?

20 A. That's correct.

21 Q. And that would've happened at the same apartment;
22 correct?

23 A. Yes.

24 Q. Apartment D?

25 A. I don't speak -- I don't want to say for sure. I don't

Direct Examination of Det. Weaver by Mr. Wehman

1 have my case file in front of me. But I think that's
2 accurate.

3 Q. That's your recollection at least?

4 A. Yes.

5 MR. WEHMAN: May I approach again, Your Honor?

6 THE COURT: You may.

7 Q. Did you ever go to the scene?

8 A. Later, not that night. I did go to the scene, I don't
9 know exactly which day, just to kind of get a layout.

10 Q. Did you go at night?

11 A. No.

12 Q. You never went out there at night?

13 A. No.

14 MR. WEHMAN: One moment, Your Honor.

15 Q. Now, when you booked Christian Himes, what was his
16 height? Did he list it for you?

17 A. Five-seven.

18 Q. And if you remember -- it's in the coroner's report --
19 but if you remember, how tall was David Ham?

20 A. I don't think I have that. Oh, yeah, I do.

21 Five-eleven.

22 Q. Okay. And while I'm looking for this, back to Officer
23 Brooks. Do you have that supplement in front of you?

24 A. I do.

25 Q. Now, Officer Brooks specifically heard, he hears

1 arguing, but specifically, he notes in that supplement that
2 he hears, "You're not going into that apartment." Correct?

3 A. Yes. He heard him yell out, "You're not going into
4 that apartment."

5 Q. And that's really the only thing he can add other than
6 he heard arguing?

7 A. Yeah. He heard that and then he heard a single
8 gunshot.

9 Q. One gunshot.

10 A. Yes.

11 MR. WEHMAN: One more time, Your Honor. May I
12 approach?

13 THE COURT: Yes, sir.

14 Q. All right. This is the coroner's report. Now -- and I
15 can show you -- how tall does it say that David Ham was? I
16 think it's listed in inches.

17 A. 72 inches.

18 Q. So that would be 6 feet?

19 A. Six feet, 143 pounds.

20 Q. Thank you.

21 THE COURT: Mr. Wehman, what was that? Where did that
22 come from?

23 MR. WEHMAN: Oh, this is -- I'm sorry. This is the
24 coroner's report from MUSC.

25 Q. And Heather told you that the in past David has been

Cross-Examination of Det. Weaver by Ast. Sol. Sorenson

1 known to carry a weapon, didn't she?

2 A. I think she said in the 12 years she's known him, she
3 has seen with a gun before. But that that night, she didn't
4 know if he one or not.

5 Q. She was unaware of whether he had one or ---

6 A. Right.

7 Q. She didn't say that he didn't have one. She just
8 didn't know.

9 A. Right.

10 Q. But it's something that he had done in the past? Been
11 known to do?

12 A. By her statement, yes.

13 MR. WEHMAN: I have no further questions, Your Honor.

14 THE COURT: Mr. Sorenson?

15 AST. SOL. SORENSON: Thank you. May it please the
16 Court?

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION

19 BY AST. SOL. SORENSON:

20 Q. That last question Mr. Wehman asked you, I mean, that's
21 not -- I mean, Mr. Wehman, the way he phrased that was
22 whether Heather told you if David Ham was known to carry a
23 gun. Is that correct? That was his question. Is that
24 correct?

25 A. Right.

1 Q. The actual question he asked you that, have you ever --
2 that you asked her is in fact have you ever seen David with
3 a gun on him. And her response was that I'd seen him in
4 possession of a gun within the past 12 years that we've been
5 together, not that he frequently carried a gun around with
6 him. Is that correct?

7 A. That's correct. There's a question I'm trying to find.
8 Yeah. Have you ever seen David with a gun? She said I
9 don't believe that David had a gun on him tonight, but I
10 have seen him in possession of a gun within the past 12
11 years that we've been together.

12 Q. So at some point in time over the last 12 years, but
13 not as Mr. Wehman phrased it that whether he carried a gun.
14 I mean, she did not indicate that he frequently carried a
15 gun around with him. Is that correct?

16 A. That's correct.

17 Q. And Mr. Wehman asked you -- I'm gonna kind of go
18 backwards. I'm kind of going through some of the things he
19 asked you about. I think we've established that David Ham
20 was, you know, five-foot-eleven, six-foot, somewhere in that
21 range. Is that correct?

22 A. That's correct.

23 Q. And the pathologist noted he was approximately 143
24 pounds. Is that correct?

25 A. That's correct.

1 Q. So fairly slender for a six-foot tall individual. Is
2 that correct? 143 pounds.

3 A. In my opinion, yes.

4 Q. And you testified that the Mr. Wehman asked you about
5 the defendant that he was at the time, at least it was noted
6 on his booking report, five-foot-seven. Is that correct?

7 A. Yes.

8 Q. All right. And did you note about what his weight was?

9 A. It was 145 pounds.

10 Q. So they're about the same weight. Is that correct?

11 A. Yes.

12 Q. And the victim was about five, four to five inches
13 taller than him. Is that correct?

14 A. That's correct.

15 Q. Neither one of them were large, muscular individuals.
16 Is that correct? They were both fairly slender.

17 A. Right, yes.

18 Q. Now, the defendant in his written statement or in the
19 statement that you took from him, State's Exhibit No. 1, one
20 of the questions you asked him was why did you shoot David.
21 Is that correct? It was on page 2 of that, about two-thirds
22 of the way down.

23 A. Yes, I did.

24 Q. Okay. And what was his response to that question, why
25 did you shoot David?

1 A. He said I was scared. My father hurt me so much in the
2 past: mentally, physically and emotionally. And I was going
3 through it all over again.

4 Q. Okay. So most of that answer references something that
5 prior happening with his father. Is that correct?

6 A. Yes.

7 Q. Okay. And in fact, in talking with him that night and
8 what you documented and he signed in State's Exhibit No. 1,
9 he actually indicated in that statement that he did not
10 think David Ham had a gun. Is that correct?

11 A. Yes.

12 Q. Okay. In fact, he even made the -- I mean,
13 specifically, I don't think he had a gun. He would have
14 pulled it if he had it. Is that correct?

15 A. Yes.

16 Q. Okay. He also indicated in one of the questions and
17 answers in there that they were never physically fighting.
18 Is that correct?

19 A. Yes. Is that on page 2?

20 Q. That is on page 2. It's the second question, "Were you
21 and David ever physically fighting?"

22 A. Yes.

23 Q. His response to that is no. Is that correct?

24 A. That's correct.

25 Q. He had indicated that he had never seen David Ham prior

1 to that night. Is that correct?

2 A. Correct.

3 Q. Then a little further down, a specific question that
4 you asked him, "Did David have a weapon?" His answer is
5 what to that?

6 A. I did not see him with a weapon.

7 Q. When you asked him and went over why this happened,
8 did, at any point in time, did he tell you that Heather Ham
9 had told him that David Ham was a violent and angry and
10 physically abusive person? Did he ever tell you that?
11 Therefore, is that ever put in a statement that night?

12 A. I'm asking a question, "Was David abusing Heather and
13 their children?" He indicated not recently, but in the
14 past.

15 Q. In fact his answer to that -- he further describes that
16 was, "David was never there for the kids and he is there
17 torturing her mentally. He neglects their kids." That's
18 his response; right?

19 A. Yes.

20 Q. Nothing about him being violent, angry, or physically
21 abusive to her or her children. Is that correct?

22 A. Correct.

23 Q. And the only text message that Heather Ham provided to
24 you -- and yet again, she provided that several weeks after
25 his arrest. Is that correct?

1 A. I received that on November 10th.

2 Q. Okay. And the nature of that text is, it says, "Tell
3 your BF" -- I assume that's supposed to be your boyfriend --
4 "don't let me catch him slipping." Is that correct?

5 A. Yes.

6 Q. And, of course, the text six minutes, seven minutes,
7 after that is, "By the way, I need you to pick up the kids
8 Sunday. Meant to tell you when I was there." Is that
9 correct?

10 A. Yes.

11 Q. Do you have any idea what "slipping" means? "Don't let
12 me catch him slipping"?

13 MR. WEHMAN: Objection, Your Honor. That's
14 speculation.

15 AST. SOL. SORENSON: They've asked him. They
16 characterized this as a threat.

17 THE COURT: I'll allow it for the purposes of this
18 hearing.

19 Q. Do you have any idea what that means? And if you
20 don't, that's fine. I mean, I'm just . . .

21 A. I mean . . .

22 Q. Nowhere in there is he threatening to physically
23 assault him?

24 MR. WEHMAN: Objection, Your Honor. That's leading.

25 AST. SOL. SORENSON: I'm on cross-examination.

1 THE COURT: It's cross-examination.

2 MR. WEHMAN: Thank you, Judge.

3 A. I took it as if he was around the kids or doing
4 something of that nature, disrespecting the kids, or
5 something along those lines is kind of how it came out.
6 Because they found that she just had a boyfriend and he was
7 staying there. So potentially that's what he was referring
8 to.

9 Q. So yet again, you have -- and David's -- I know they
10 had asked about the defendant's age at some point in time.
11 I think during the last -- the Jackson v. Denno hearing,
12 that he is 22 or so. Is that correct?

13 A. I think 23.

14 Q. Twenty-two, 23. Somewhere in that range?

15 A. Yes.

16 Q. Obviously, Heather and David are a little -- both are a
17 little older in their 30s. Is that correct?

18 A. Yes.

19 Q. And just so we kind of -- her Honor understands this, I
20 mean, they have two children together. Is that correct?

21 A. Yes.

22 Q. That are both young children. Is that correct?

23 A. Yes. I'm not sure of the exact ages, but they are
24 younger.

25 Q. I mean, Heather actually in her statement puts their

1 names and dates of birth. Is that correct? In the
2 November 1st statement that's given that night. So that
3 would've been given to the officers out there at the scene.
4 She's got a young ---

5 A. Yes.

6 Q. --- a son by the name of Kingston who was born in 2007.
7 So he would've been 8 years old at the time. Is that
8 correct?

9 A. Yes.

10 Q. And then Lincoln who was born in 2011 who would've been
11 four years old at the time. Is that correct?

12 A. That's correct.

13 Q. Okay. And you're aware that he's actually a
14 special-needs child. Is that correct? Are you aware of
15 that?

16 A. Yes. Ms. Ham has told that to me before.

17 Q. Okay. And Mr. Ham has now found out that the mother of
18 her [sic] children has some other individual who he doesn't
19 know now possibly staying with not only her, but with his
20 children.

21 A. Yes.

22 Q. Is that correct?

23 A. Yes.

24 Q. And the night that this was supposed to happen, just
25 from what not only Heather has told you but also from what

1 Mr. Himes told you, and also from looking at the text
2 messages, that that weekend Heather was supposed to be
3 returning or was supposed to be going to pick up the
4 children from David that Sunday evening. Is that correct?

5 A. Right. Eight o'clock, she was supposed to be going to
6 Mr. Ham's.

7 Q. And that's even referenced in that she needed her
8 vehicle back from Mr. Himes so she could go get her kids by
9 eight o'clock that Sunday night. Is that correct?

10 A. That's correct.

11 Q. And from looking at their statements, it's well after
12 nine o'clock when Mr. Ham has to actually bring his children
13 over, back over, to Heather's apartment because the
14 defendant still has her vehicle, hasn't come home. Is that
15 correct?

16 A. That's correct. She said it was between 9:20 and
17 9:30 p.m.

18 Q. So well over an hour and a half after he was supposed
19 to be back with the vehicle. Is that correct?

20 A. Yes.

21 Q. Other than that one text message, there's no other
22 specific threat, if you want to even characterize it as
23 that, that Mr. Himes or Ms. Ham has told you about that the
24 victim made towards Christian Himes. Is that correct?

25 A. That's correct.

1 AST. SOL. SORENSON: Beg the Court's indulgence.
2 (Brief pause.) That would be all I have for Sergeant
3 Weaver.

4 THE COURT: And redirect?

5 MR. WEHMAN: Briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. WEHMAN:

8 Q. Detective, you stated earlier you are the one that
9 wrote down this statement for Christian, or the words;
10 correct?

11 A. That's correct.

12 Q. Okay. And you agree when writing a statement, words
13 are very important? Would you agree? Words mean things.
14 They're important to get the right things down.

15 A. Yes, words mean things.

16 Q. Right. So when he tells you after being in custody now
17 for two hours plus, when he tells you that he -- he told you
18 that he doesn't think that David had a gun. He didn't say
19 that he didn't think that David had a gun; correct?

20 A. Let me find the question. I mean, he says he did not
21 see him with a weapon.

22 Q. Okay.

23 A. Speculating.

24 Q. Specifically, though, when he says -- when he's talking
25 about the weapon and whether he thought that David Ham had a

1 weapon that night, he said he didn't see one. He says that
2 I don't think that David had a gun. He did not say I didn't
3 think that David had a gun; correct?

4 A. Where are you seeing that in the statement?

5 MR. WEHMAN: May I approach, Your Honor?

6 THE COURT: You may.

7 Q. This would be on page one of the statement. This would
8 be during the narrative section when you're writing down
9 what Christian Himes was telling you.

10 A. Yeah. He said I don't think he had a gun. He would
11 have pulled it if he had.

12 Q. Okay. And that is sitting in an interview room with
13 you two hours or so later. Is that fair? That's when he's
14 giving you this statement.

15 A. Yeah. About an hour or two.

16 Q. Now, it says on the top it's about close to 12:00 a.m.,
17 somewhere around there.

18 A. 11:54.

19 Q. Okay. Now, also when he's talking to you, he tells you
20 that David was reaching around his waistband; right?

21 A. Yes. He was reaching in his pocket.

22 Q. Now, when you went out to view the scene, did you
23 notice whether there were any street lights out in front of
24 that apartment building?

25 A. I can't recall. I don't know.

1 Q. And you testified you didn't go out there at night;
2 correct?

3 A. Right.

4 MR. WEHMAN: May I approach again?

5 THE COURT: You may.

6 MR. WEHMAN: That's all I have, Your Honor.

7 THE COURT: You may step down, Detective. Thank you.

8 You may call your next witness.

9 MR. WEHMAN: Your Honor, the defense would call Heather
10 Ham.

11 (Brief pause.)

12 BY MS. WILLIAMS: Judge, before we start this witness,
13 may it possible to take a bathroom break for my client.

14 THE COURT: Sure. I'll wait right here. Go ahead.

15 BY MS. WILLIAMS: Thank you, Judge.

16 (A brief recess was taken at 3:05 p.m. The proceedings
17 resumed at 3:17 p.m.)

18 (HEATHER MELISSA HAM, was duly sworn and provided the
19 following testimony.)

20 THE COURT: Your witness.

21 MR. WEHMAN: Thank you, Your Honor. May it please the
22 Court?

23 THE COURT: Yes, sir.

24 DIRECT EXAMINATION

25 BY MR. WEHMAN:

Direct Examination of Ms. Ham by Mr. Wehman

1 Q. Ms. Ham, how are you?

2 A. I'm doing well.

3 Q. My name is Pierce Wehman. We've never met. Ms. Ham,
4 how old are you?

5 A. Thirty-six.

6 Q. Okay. Where were you born?

7 A. Charleston.

8 Q. Okay. So you lived here your whole life?

9 A. Yes.

10 Q. And what do you do for a living?

11 A. I'm a program director.

12 Q. And what's your educational history?

13 A. I have a master's and ---

14 Q. Okay. What's your master's in?

15 A. --- license.

16 Q. What's your master's in?

17 A. Counseling.

18 Q. And you're a licensed counselor as well?

19 A. Uh-huh.

20 Q. Now, you were dating Christian Himes around November,
21 October? November of 2015. Is that right?

22 A. October.

23 Q. Okay. When did you meet him? What year?

24 A. 2000. Like, maybe, the latter part of 2008.

25 Q. And when did you and he start dating?

1 A. The end of -- it was either the end of September or
2 somewhere around the beginning of October 2015.

3 Q. So around a month, month and a half, somewhere in
4 there. It was the end of -- was it the middle of September
5 or the end of September?

6 A. It was around the end of September.

7 Q. So a month, maybe a little bit longer than a month?

8 A. It's when -- yeah. I wouldn't say that we started
9 dating per se, but that we had face-to-face contact.

10 Q. Okay. Now, during this time, you were still
11 technically married to David Ham. Is that right?

12 A. Yes, sir.

13 Q. Okay. And you and he were separated?

14 A. Yes, sir.

15 Q. You lived in separate residences?

16 A. Uh-huh.

17 Q. And you were staying at [REDACTED] Dorchester Road in
18 apartment 12-D; right?

19 A. Correct.

20 Q. Okay. Now, you and he were together for around 12
21 years. Is that right?

22 A. Since 2002.

23 Q. Okay. And when did you separate?

24 A. 2014, I believe. It was around April.

25 Q. April or May?

1 A. (Nonverbal response.)

2 Q. Okay. Now, isn't it true that during the course of
3 your relationship, or time together with Christian, that you
4 told him why you separated with David Ham? Did you talk
5 about David Ham?

6 A. I may have.

7 Q. Okay. Isn't true that you told Christian Himes ---

8 AST. SOL. SORENSON: Objection, Your Honor. Leading.

9 THE COURT: Sustained.

10 MR. WEHMAN: Your Honor, if I may put on the record,
11 this line of questioning goes to the defendant's state of
12 mind in a Stand Your Ground -- an element of that is that
13 the defendant reasonably feared attack from the person he
14 claims is attacking him. A lot of that goes to what he knew
15 about him. And the only way we can get into what he knew
16 about the victim in this case would be through the person
17 who told him. I think it goes straight to the state of mind
18 and into what he knew about his past.

19 THE COURT: That doesn't allow you to lead the witness,
20 though. You can ask her, but you can't lead the witness.

21 MR. WEHMAN: Okay. For the purpose of his hearing, we
22 would ask that she be declared an adverse witness. She is
23 potentially going to be listed as a victim and be allowed to
24 stay in courtroom during the rest of the trial as a victim
25 under the Victim's Right Act.

1 THE COURT: Solicitor?

2 AST. SOL. SORENSON: I mean, he hasn't even tried to
3 ask her the question to see how she answers it first. I
4 mean, obviously, if it's something different than -- I mean
5

6 THE COURT: Why don't you proceed, Mr. Wehman. She has
7 not exhibited any adverse behavior towards you at this stage
8 of game. So, certainly, you may proceed without leading at
9 this point.

10 BY MR. WEHMAN (continuing):

11 Q. What specifically did you tell Christian about why you
12 and David split?

13 A. I can't specifically tell you what I said. But I can
14 give you the gist of what happened as to why we actually did
15 separate.

16 Q. Why did you separate from David?

17 A. We were having some financial issues. My son was just
18 diagnosed with autism. I had to stop working for a while so
19 it caused some financial strain. We had gotten into some
20 arguments because it was stressful on him being the sole
21 provider at the time. I don't remember the exact reason for
22 the argument that we did get in, but it became physical in
23 that he tried to drag me out of the house in front of my
24 children. And that's the reason I left is because I wanted
25 to stop something before it started. And I thought that

Direct Examination of Ms. Ham by Mr. Wehman

1 that would be the most reasonable thing to do so that we
2 could both have the right frame of mind to raise our kids
3 and work on something like that never happening again.

4 Q. So you say this attack that you just described happened
5 in front of your children. Is that what you said?

6 A. Yes. My children were present.

7 Q. And is it fair to say that you said that you separated
8 from him in April or May? This was about the same time;
9 correct?

10 A. Uh-huh.

11 Q. Now, did you tell -- what did you tell Christian
12 about -- I believe there's a scar on your lip. Did you tell
13 him about that?

14 A. I don't know. I may have.

15 Q. How did you get the scar on your lip?

16 A. David hit me in the face.

17 Q. Was that this incident in front of the children?

18 A. No. This was before my second son was born back in
19 2008, I would say.

20 Q. Okay. So there's the incident in 2008?

21 A. Uh-huh.

22 Q. The incident in front of the children would have been
23 in 2014 you testified to?

24 A. Uh-huh.

25 Q. Were there any other incidents of physical violence

1 that you would have told Christian about?

2 A. No. That's it.

3 Q. Now, you mentioned that you had taken off work to take
4 care of your child.

5 A. Uh-huh.

6 THE COURT: Ma'am, if you could answer yes or no so the
7 record will reflect ---

8 THE WITNESS: Oh, yes. Sorry.

9 Q. Now isn't it true -- and I think you testified to this
10 -- that you taking off work put a strain on your
11 relationship with David?

12 A. Yeah. It was a financial strain for the both of us.

13 Q. And isn't it also true that you put on Facebook . . .

14 AST. SOL. SORENSON: I'm going to object just to the
15 leading, Your Honor.

16 THE COURT: Please rephrase, Mr. Wehman.

17 Q. Do you remember making a post on Facebook in November
18 of 2013 in response to a post that he had made?

19 A. I have no idea what you're talking about. That was a
20 long time ago.

21 MR. WEHMAN: If I could have moment, Your Honor.

22 (Brief pause.) May I approach, Your Honor?

23 THE COURT: You may.

24 Q. Now, I'm showing you what was taken off of Facebook.
25 Does that appear to be a conversation you had with David

1 Ham?

2 A. (Brief pause.) Okay. What's your question?

3 Q. Is that an accurate depiction of what you wrote to him?

4 That's your Facebook?

5 A. It looks like it.

6 Q. Okay. And the gist of that is -- is it fair to say
7 that there are financial issues like you talked about? Is
8 that right?

9 A. I guess.

10 Q. Okay. And that also that David Ham didn't necessarily
11 seem to be participating very much in the family. Is that
12 fair?

13 A. It was fair because he had to work extra hours. So he
14 worked 60 hours a week.

15 Q. Sure.

16 A. So he didn't have a lot of time to spend with us.

17 Q. But you also put in there that he didn't put any effort
18 into spending any time with you. Is that right?

19 A. I was angry and upset about it.

20 Q. Okay. That's just ---

21 A. Doesn't necessarily mean it's true.

22 Q. So you said it but it doesn't necessarily mean that
23 it's true?

24 A. In emotion, people -- I mean, we were arguing.

25 Q. Okay. All right. Now, while -- at the beginning of

1 Mr. Himes's incarceration, after this incident occurred, you
2 would write him at the jail. Is that correct?

3 A. Uh-huh.

4 THE COURT: Is that a yes?

5 A. Yes. I did write him maybe -- I don't remember.

6 Q. Okay. And you also went to visit him at least once,
7 maybe a couple of times. Is that true?

8 A. That's true.

9 Q. Okay. And do you remember the letters that you wrote
10 him? Those were a while ago. Do you remember them?

11 A. No.

12 Q. Okay.

13 MR. WEHMAN: May I approach, Your Honor?

14 THE COURT: Yes, sir.

15 Q. I'm going to show you a seven-page letter. I don't --
16 feel free to look at all of it if you'd like to. I don't
17 need you to read the whole thing. There's a highlighted
18 portion. I would like you to look over that at least to see
19 if that's your handwriting and that is the letter that you
20 sent Christian Himes at the jail.

21 A. What part is highlighted?

22 Q. It's, I think, on page 4 or 5. But if you flip through
23 it, you'll see it.

24 A. (Witness complies.)

25 Q. Does that refresh your recollection of what you told

Direct Examination of Ms. Ham by Mr. Wehman

1 Christian?

2 A. No. Actually, it doesn't.

3 Q. You're denying that you wrote that letter?

4 A. I did not deny that I wrote it. I just don't remember
5 the content.

6 Q. Having read it now, do you see what you wrote?

7 A. I do see what I wrote, yes.

8 Q. What did you write?

9 A. Only because I knew for many -- only because I knew the
10 way he would become enraged and how he reacts when he's
11 angry. He has hurt many people physically even other family
12 members of his. I should have told him to leave sooner, but
13 many people are afraid of him and I am one of those people.
14 So I try to keep peace to prevent verbal, emotional, and
15 physical abuse by him.

16 Q. So that was sent on December 7th. Does that sound
17 right?

18 A. Yes. I think that's what it said.

19 Q. All right. So we established that you separated in May
20 of 2014; right? With David Ham? You and him separated?

21 A. (Affirmative head nod.)

22 Q. All right. Now, typically, as a result of your custody
23 agreement, who would have the children during the week?

24 A. I would have them during the week.

25 Q. And when would David have them?

1 A. On the weekends.

2 Q. And did you have a customary way of picking up and
3 dropping off? Was it the same every weekend or did it
4 depend on the situation?

5 A. I suppose it depended on the situation. I started off
6 dropping off and picking up the kids. And later on, when he
7 was able to, he started dropping off and picking up the
8 kids. But if one of us had an issue with it, we would help
9 the other one out.

10 Q. Okay. Now, on October 30th, that would be two days
11 before the shooting. That's a Friday. Is that right?

12 A. Correct.

13 Q. And that would've been a day where the children were
14 picked up or dropped off?

15 A. Yes.

16 Q. Okay. Who picked up the children that day?

17 A. He did.

18 Q. Okay. And up until that point, did he know who
19 Christian Himes was?

20 A. Not to my knowledge, no.

21 Q. Okay. When did he find out that you were dating
22 somebody?

23 A. Well, he called shortly after.

24 Q. Shortly after what?

25 A. After he picked up the kids.

1 Q. He called?

2 A. Yeah. So it was that same evening.

3 Q. Okay. Did he communicate with you any other way to let
4 you know that he found out that you had a boyfriend?

5 A. Referring to texts?

6 Q. He texted you?

7 A. Yes.

8 Q. What did he say?

9 A. Something about dating someone else.

10 Q. Okay. Now, you provided that text message to Detective
11 Weaver, didn't you?

12 A. I did.

13 Q. And you don't remember what it said?

14 A. Well, there was more conversation than just that one
15 page, of course.

16 Q. Sure. But do you remember -- you provided one page of
17 text messages to Detective Weaver; correct?

18 A. I did.

19 Q. Okay. Do you remember what you provided him?

20 A. It was a text message from David.

21 Q. Would it help if you saw it again?

22 A. I've seen it. I know what it ---

23 Q. What did it say?

24 A. I believe it said David -- said tell -- by the way you
25 tell your boyfriend don't let me catch him slipping.

1 Q. Okay.

2 A. Something to that effect.

3 Q. You testified earlier that at this point you had never
4 disclosed Christian to David; right?

5 A. No.

6 Q. You kept that from him?

7 A. I wouldn't say I kept it from him. Yes, I mean, I
8 didn't want something to happen. I didn't want any type of
9 conflicts.

10 Q. So you were worried about how he would react if he
11 found out?

12 A. Anybody would.

13 Q. Okay. Now, when you received that text message, isn't
14 it true that you took that as a threat?

15 A. No. I did not take it as a threat.

16 Q. You deny taking that as a threat at that time?

17 A. I did not take it as a threat. Christian took it as a
18 threat.

19 Q. Okay. All right. So you received the text message.
20 Where did Christian stay that night?

21 A. At my house.

22 Q. Where did he stay Saturday?

23 A. He was at my house.

24 Q. Okay. And Sunday was a day that you were supposed to
25 pick up the children again?

Direct Examination of Ms. Ham by Mr. Wehman

1 A. Uh-huh. I was -- David asked me to pick up the kids,
2 yes.

3 Q. But you weren't able to do that, were you?

4 A. No, I wasn't.

5 Q. So David had to drop them off at your house?

6 A. Yes.

7 Q. Okay. And what time did he get there? Estimate. I
8 don't even know exactly.

9 A. Approximately, 9:30-ish. I'm not really sure. I know
10 it was past the time that the kids were supposed to be home.

11 Q. Okay. And, typically, when David would pick up or
12 drop-off, how long would that take?

13 A. Not very long. He would bring kids in. We'd talk
14 about what they did for the weekend and give me an update on
15 how they did and leave.

16 Q. Do you remember telling Detective Weaver what a normal
17 time would be for how long he would stay?

18 A. Maybe ten, 15 minutes.

19 Q. Would it help if you looked at that statement to remind
20 yourself of how long you told Detective Weaver that it would
21 normally take?

22 MR. WEHMAN: May I approach?

23 THE COURT: Yes, sir.

24 Q. How long did you tell Detective Weaver that it normally
25 would take?

1 A. Five to ten minutes.

2 Q. So somewhere close to what you just said to me?

3 A. Somewhere close to what I just said.

4 Q. Okay. All right. Now, that night, how long do you
5 think David Ham was at your house?

6 A. He was there for longer than usual.

7 Q. Is it fair to say a lot longer than normal?

8 A. Yes. It is fair to say that.

9 Q. And at some point ---

10 A. Based on average, yes.

11 Q. At some point, Christian Himes brought your car back.
12 Is that right?

13 A. He did.

14 Q. And you were looking for him at the door?

15 A. Yes. Because he didn't have a phone.

16 Q. He didn't have a phone?

17 A. He didn't have a phone, so I couldn't reach him to get
18 my car back so I could go get my kids.

19 Q. Okay. And you also weren't able to reach him to let
20 him know that David was there?

21 A. I wasn't.

22 Q. Okay. Now, when he got there, you went to cut him off
23 so that he didn't come in; right?

24 A. Right.

25 Q. And why did you do that?

Direct Examination of Ms. Ham by Mr. Wehman

1 A. Because I didn't want a confrontation. I live in a
2 quiet neighborhood.

3 Q. Okay. You were worried about how David would react if
4 he saw Christian?

5 A. I was worried about the confrontation.

6 Q. Sure. Did you ask David to leave?

7 A. No. I didn't ask him to leave.

8 Q. You never asked him to leave. But you asked Christian
9 ---

10 A. I didn't ask him. I asked Christian to turn around and
11 go, yes.

12 Q. And did he do that?

13 A. Yes, he did.

14 Q. Okay. Now, did you tell him what David was driving so
15 he would know whether David was still there?

16 A. No.

17 Q. And you had no way ---

18 A. I didn't know what David was driving.

19 Q. You didn't?

20 A. Huh-uh.

21 Q. Okay. So you had no way to let him know when David was
22 going to be gone from the residence?

23 A. No. I had no way of telling him that.

24 Q. So eventually David decides to leave. Is that right?

25 A. I tried to get him to leave.

1 Q. Sure. And, in your statement, you tell detectives
2 basically/that when he leaves, you go to the bathroom. Is
3 that right?

4 A. That's what I did.

5 Q. Right. Okay. And at some point, he comes back inside
6 the house?

7 A. Uh-huh.

8 Q. Okay. Saying that he forgot his keys?

9 A. Uh-huh. Yes. Yes. Sorry.

10 Q. He comes to you to let you know this. And that's how
11 you know; right? He came and talked to you while you were
12 in the bathroom.

13 A. Yes.

14 Q. And the next thing you know, you hear arguing. Is that
15 what you told Detective Weaver?

16 A. Not while I was on the toilet.

17 Q. No. You eventually get up and go to the door?

18 A. Uh-huh.

19 Q. And you hear arguing?

20 A. Yes.

21 Q. Okay. And then you hear -- you tell detectives that
22 you hear David Ham say that he's not afraid of Christian
23 Himes's weapon; correct?

24 A. Right. Yes, correct.

25 Q. And you hear Christian Himes after that tell David Ham

Direct Examination of Ms. Ham by Mr. Wehman

1 to back up three times?

2 A. Correct.

3 Q. And then you hear a gunshot?

4 A. Correct. Yes.

5 Q. After you hear that gunshot, you run outside?

6 A. Yes.

7 Q. And that is all that you know about the incident -- the
8 events leading up to that incident; correct? What you heard
9 at the door.

10 A. Leading up to the incident?

11 Q. That's all you know about until the gunshot goes off?
12 You didn't see anything?

13 A. Not until I ran out there.

14 Q. You ran outside and saw what had happened; correct?

15 A. Well, I saw him taking off in my vehicle.

16 Q. Okay. So you saw him leaving?

17 A. Yes.

18 Q. But you didn't see the incident unfold?

19 THE COURT: Him who?

20 Q. You did not see -- Oh, I'm sorry. That was for Ms. . . .

21 A. I saw a flash of -- I saw a flash of light from the gun
22 going off.

23 Q. Let's talk about that. Oh, I think the judge wanted to
24 know who did you see taking off in your vehicle?

25 A. Christian.

1 Q. Now, you said you saw a flash of light. Is that right?

2 A. Uh-huh.

3 Q. Okay. Let me ask about your apartment. How long had
4 you lived there at that point?

5 A. Maybe a little over a year.

6 Q. Okay.

7 A. It was about a year and two -- two or three months.
8 Two or three months.

9 Q. Okay. Now, that specific apartment complex doesn't
10 have any flood lighting up on the outside of the building,
11 does it? Do you remember?

12 A. What lighting?

13 Q. Do you remember if it's dark out in front of your
14 apartment when it's nighttime? Is there any lights out
15 there?

16 A. There is lampposts on the side of -- well, to the front
17 side of the building, yeah.

18 Q. Of your building or of the next building over?

19 A. There's one near the next building over and there's one
20 on that side as well from what I remember.

21 Q. So you don't still live there?

22 A. I don't still live there.

23 MR. WEHMAN: May I approach, Your Honor?

24 THE COURT: You may.

25 Q. I want to show you what's been marked as State's 4.

Direct Examination of Ms. Ham by Mr. Wehman

1 Can you tell me what that is? Do you recognize that?

2 (State's Exhibit No. 4, Photograph, was marked for
3 identification.)

4 A. That's the front of my apartment building.

5 Q. Okay. Now, from that shot -- and I realize that's not
6 a shot that shows the entire building.

7 A. Yeah. You would have zoom out.

8 Q. And you're telling me that if I zoomed out I would see
9 a light post?

10 A. Yeah. Yeah, there was a light post out there.

11 Q. Okay. When did you move out?

12 A. February of last year. (Brief pause.) In this picture,
13 it actually looks like light from the lamppost right there.

14 MR. WEHMAN: May I approach, Your Honor?

15 THE COURT: You may.

16 MR. WEHMAN: My I publish, actually, Your Honor? Or
17 I'll pass it up to you if you'd like to see. There's no
18 jury.

19 Q. So from that picture, you're telling me that you think
20 that the light that's displayed is from a light post and not
21 from maybe the flash of a camera?

22 A. It's possible.

23 (Brief pause)

24 MR. WEHMAN: May I approach again, Your Honor?

25 THE COURT: You may.

1 Q. I'm showing you what's -- Defense 2. Do you recognize
2 that?

3 (Defendant's Exhibit No. 2, Photograph, was marked for
4 identification.)

5 A. That looks like the next building over, Building 13.
6 I'm not sure. What am I supposed to be identifying?

7 Q. Does that look an apartment building in your
8 neighborhood?

9 A. Yes.

10 Q. Would you be surprised if you found out that that was
11 Apartment Building 12? The apartment building you lived in.

12 A. Why would I be surprised?

13 Q. You would not be surprised. Well, do you see any
14 floodlight there or any streetlight?

15 A. Floodlights? I don't know what ---

16 Q. Do you see any external lighting on the street or on
17 the walkway, illuminating the walkway?

18 A. Where's the walkway?

19 Q. You can't see the walkway in that picture?

20 A. No.

21 Q. Can you see the entrance to the apartment building?

22 A. I see the apartment building and the breezeway.

23 Q. Okay. Is there a walkway that typically leads up to
24 the breezeway?

25 A. Yes, there is.

Direct Examination of Ms. Ham by Mr. Wehman

1 Q. Is there any light on the ground where that would be?

2 A. On the ground? No. I see the lights from in the
3 breezeway.

4 Q. Now, there are lights in the breezeway in front of the
5 apartment buildings -- or in front of the apartment doors;
6 right?

7 A. I'm sorry. Can you repeat that.

8 Q. Okay. In front of each door in that apartment complex,
9 isn't it true there's a single light that illuminates that
10 door?

11 A. Yes.

12 Q. Other than those lights, do you see any lights on that
13 apartment building or in front of the apartment building?

14 A. Not in this picture.

15 Q. I have one more photograph for you to look at and that
16 would be Defense 3. Now, take a look at that. And take a
17 look at the building number on that picture. What number is
18 on that building?

19 (Defendant's Exhibit No. 3, Photograph, was marked for
20 identification.)

21 A. Twelve.

22 Q. That would be your building?

23 A. Uh-huh. Yes.

24 Q. Are there any streetlights that you said were in front
25 of your building in that picture?

1 A. Not in this picture.

2 MR. WEHMAN: If I may approach?

3 THE COURT: Thank you.

4 MR. WEHMAN: Court's indulgence.

5 (Brief pause.)

6 Q. Now, you said that David Ham was over there for 40, 30,
7 40, 50 minutes. Somewhere in that range?

8 A. I didn't say that.

9 Q. You said that David Ham was over there longer ---

10 A. Longer than usual.

11 Q. Right. Okay. Now, did you notice whether he was
12 intoxicated or not when he was over there?

13 A. No.

14 Q. He didn't act intoxicated?

15 A. No.

16 Q. Now, throughout this investigation, you've told people,
17 including Christian, that David Ham in the past has carried
18 a weapon with him; right?

19 A. No.

20 Q. You've never told anyone that you knew?

21 A. That he carried a weapon?

22 Q. That he has had a weapon?

23 A. Like for work? You mean, like . . .

24 Q. Does he have a weapon for work?

25 A. He doesn't have weapons.

Direct Examination of Ms. Ham by Mr. Wehman

1 Q. You've never known him to have a weapon? That's your
2 testimony right now?

3 A. He's had tools that he has used that may be considered
4 weapons based on how you use them. But he had tools.

5 Q. Now, you gave two statements in this case; correct?
6 You wrote two statements?

7 A. Uh-huh. Yes.

8 Q. One of which would have been the night of the incident
9 on the 1st of November?

10 A. Yes.

11 Q. Do you remember being asked if you ever had seen David
12 with a gun on that day?

13 A. Ever seeing him with a gun?

14 Q. Do you remember being asked have you ever seen David
15 with a gun?

16 A. No.

17 Q. You do not remember?

18 A. No. I was in shock.

19 MR. WEHMAN: May I approach again, Your Honor?

20 THE COURT: You may.

21 Q. All right. I'm showing you the statement that you
22 gave. That would be on the first. Do you see that you were
23 asked that question that night?

24 A. This is have you ever seen David with a gun.

25 Q. I believe I just asked you that question.

1 A. You asked me if I had known of him to carry a weapon.

2 Q. And then I asked you if you known of him to have a gun.

3 Okay. So the answer of that question ---

4 A. --- have you seen David with a gun.

5 Q. Okay. I read you that question a second ago, word for
6 word. Have you seen David with a gun?

7 A. Yes.

8 Q. Okay.

9 A. We were actually together.

10 Q. When he had the gun?

11 A. Yes. We were skeet shooting.

12 Q. So you're telling me the basis of that statement is a
13 skeet-shooting weapon? That's the only weapon you ever seen
14 him -- a gun you ever seen him have is for skeet shooting?

15 A. It wasn't seen as a weapon. They asked me if I have
16 ever seen him with a gun. That's a general statement. Yes,
17 I have seen him holding a gun. He has seen me holding a
18 gun.

19 MR. WEHMAN: May I approach?

20 THE COURT: You may.

21 Q. So your statement under oath is the only weapon, gun,
22 you've seen David Ham handle in your 12 years is a
23 skeet-shooting gun?

24 A. Oh, a BB gun.

25 Q. You've seen him with a skeet-shooting gun and a BB gun?

Cross-Examination of Ms. Ham by Ast. Sol. Sorenson

1 A. A skeet-shooting gun is a shotgun.

2 Q. You tell me. What kind of gun did you see him hold?

3 A. I just told you.

4 Q. I'm asking again. What type of gun did you see him
5 hold?

6 A. A shotgun.

7 (Brief pause.)

8 MR. WEHMAN: I have no further questions, Your Honor.

9 THE COURT: Cross-examination?

10 AST. SOL. SORENSON: Thank you. May it please the
11 Court?

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION

14 BY AST. SOL. SORENSON:

15 Q. Heather, if you would, tell the Court how old are you
16 children? Your two sons.

17 A. My youngest is currently six, and my oldest is
18 currently nine.

19 Q. And they were, I believe, four and eight back when
20 this occurred. Is that correct? Does that sound about
21 right?

22 A. Yes.

23 Q. And both of them are David's children?

24 A. Yes, sir.

25 Q. And they resided -- back on November 1st of 2015, they

1 were residing with you. Is that correct?

2 A. Yes.

3 Q. And your husband, their father, had visitation every
4 weekend?

5 A. Yes. It wasn't something that was court ordered. It
6 was something that we agreed on because of his schedule.

7 Q. Okay. And is that something now -- and my
8 understanding from your testimony was that y'all had
9 separated sometime in either April or May of 2014. Is that
10 correct?

11 A. Correct.

12 Q. So you've been separated for about 18 months.
13 Somewhere in that range?

14 A. Around there, yes.

15 Q. Tell the Court, now, during that 18 -- and obviously
16 you testified -- you testified on direct examination by Mr.
17 Wehman about the problems that led up to the two of y'all
18 separating. Is that correct?

19 A. Yes.

20 Q. Okay. And then also about two occasions, one of them
21 that basically led directly to y'all separating where he
22 tried, David tried, to drag you out of your house. Is that
23 correct?

24 A. Correct.

25 Q. And then another incident that had happened six years

1 prior to that where he had struck you. Is that correct?

2 A. Correct.

3 Q. Okay. Were there any other instances of physical
4 violence between the two of y'all?

5 A. No.

6 Q. Now, when you separated in 2014, is that when you
7 ultimately, shortly after that, moved into the [REDACTED] [REDACTED]

8 [REDACTED] ?

9 A. No. I moved in with my parents for a short while.

10 Q. And during then that time period from April or May of
11 2014 up until the weekend of David's death, was he involved
12 in y'all's children's life?

13 A. Yes.

14 Q. He had visitation and see them regularly during that
15 18-month period of time?

16 A. Every weekend. If he was working a Saturday, he would
17 get them after work and he would have them until Sunday.

18 Q. And obviously during that 18-month period of time,
19 y'all were still just legally separated. Is that correct?

20 You weren't divorced. Is that correct?

21 A. No. We were just separated.

22 Q. Did you have conversations over that 18-month period
23 about potentially reconciling and getting back together?

24 A. Yes.

25 Q. And is that discussion that occurred all the way up

1 until October of 2015?

2 A. Yes.

3 Q. In fact, tell me the night -- Your Honor heard
4 testimony earlier about the text message that David sent to
5 you about, you know, tell your boyfriend don't let me catch
6 him slipping or something to that effect.

7 A. Yes.

8 Q. And that would've been that Friday night, October 30th.
9 Is that correct?

10 A. That's correct.

11 Q. The following day on Saturday, October 31st, did you
12 spend that evening with your husband, David Ham?

13 A. I did. With me and our children.

14 Q. Okay. What was it that y'all did on October 31st?

15 A. We took the boys trick-or-treating in my parents'
16 neighborhood. We actually went by my parents' house just
17 prior to taking them trick-or-treating in their
18 neighborhood.

19 Q. And during that time period then, that weekend,
20 Christian Himes was actually staying at your apartment with
21 you that weekend. Is that correct?

22 A. That's correct.

23 Q. Okay. Tell the Court, was he happy about the fact that
24 you were going trick-or-treating with your children with
25 their father on that Saturday evening?

1 A. No.

2 Q. Let's talk about that text message that you received.

3 So that was -- it's my understanding it was shortly after

4 David had -- did he pick the children up that day from you

5 or did you drop them off?

6 A. He picked them up from me.

7 Q. Okay. So that was over at your apartment complex?

8 A. Yes.

9 Q. Did he actually come into your apartment that day when
10 he got them? Or did you meet him out in the parking lot or

11 do you recall?

12 A. I do not recall.

13 Q. And when that occurred, obviously, so that's that
14 Friday, had Christian Himes spent the night with you the
15 night before? That Thursday night at your apartment.

16 A. I believe so.

17 Q. So where was he when David came by to pick the kids up?

18 A. The first time?

19 Q. That Friday night. That Friday evening when David came

20 ---

21 A. When he came to pick the kids up?

22 Q. Yes, ma'am.

23 A. I have no idea.

24 Q. So you don't know where Christian Himes was during that
25 time period?

1 A. No. But I specifically told him to be back at 6:30 to
2 make sure I can pick up my kids.

3 Q. That's the Sunday we're talking about now. I'm talking
4 about Friday when David came to pick the kids up on Friday?

5 A. Oh, when he came to pick the kids up on Friday.

6 Q. Yes, ma'am?

7 A. I had just picked up Christian from getting a haircut.

8 Q. So where was he located, at when your husband came by to
9 pick up your children?

10 A. I dropped him off behind the apartment complex in the
11 bank parking lot.

12 Q. All right. And at that point in time, you had been
13 keeping him a secret from David. Is that correct?

14 A. Yes.

15 Q. And had you talked to, at that point in time, Christian
16 Himes about your husband, David Ham?

17 A. Yes.

18 Q. Okay. Tell the Court now what exactly had you told him
19 about David.

20 A. I told him that he was more of a fighter than a person
21 that would use a weapon. I told him -- I may have told him
22 about the situation that happened with me and my husband as
23 far as why I left. That's all about what I can really say
24 at this time.

25 Q. And that was all prior to, prior to that text message

1 that y'all had talked about your prior relationship with
2 your husband, your children's father?

3 A. Yes.

4 Q. Did you ever describe David to Christian as being
5 violent, angry, and physically abusive during your
6 relationship?

7 A. No, not to my recollection.

8 Q. Did you ever tell him that David had been known to
9 carry a firearm?

10 A. No.

11 Q. Now, that Friday evening, so your husband comes and
12 picks up your children and then ultimately you end up
13 receiving a text message from him. Is that correct?

14 A. Yes.

15 AST. SOL. SORENSON: Beg the Court's indulgence.

16 Q. You provided this to Detective Weaver. Is that
17 correct?

18 A. Yes, that's correct.

19 Q. Okay. And it's my understanding from when Mr. Wehman
20 was asking you questions that initially David called you. Is
21 that correct? I believe that's what you had indicated.

22 A. I think he did.

23 Q. Okay. And that ultimately y'all at least had some
24 conversation whether it be on the phone or ultimately
25 culminating in some text messages about your boyfriend. Is

1 that correct?

2 A. Correct.

3 Q. And ultimately the text -- and let me ask you this:

4 This text that you provided to Detective Weaver, is that the
5 only text message that David sent you that related to
6 Christian Himes?

7 A. I don't believe so.

8 Q. Do you think there were other text messages that you
9 didn't provide?

10 A. There may have been. I don't have that phone anymore.
11 I can't retrieve them. So I can't really say.

12 Q. Okay. Of course, when you provided this stuff,
13 digital, to Detective Weaver, I mean, you were still talking
14 to him on a regular basis at the point in time. Is that
15 correct?

16 A. That's correct.

17 Q. Talking to him several times a day from the jail?

18 A. Yes.

19 Q. The text message that you provided, though, to
20 Detective Weaver said from David Sweet, "I care, you don't.
21 What I needed to hear. Tell your BF don't let me catch him
22 slipping." Is that correct?

23 A. Yes.

24 Q. Okay. Now, did you show that to Christian Himes?

25 A. No. I didn't show it to him, but he saw it.

1 Q. And it's your testimony that you did not take that as
2 being a threat. Is that correct?

3 A. Correct.

4 Q. But he did?

5 A. Yes. I think he did.

6 Q. Okay. And what was it that he then said to you or
7 asked you after seeing that text message that made you think
8 that he took that as being a threat?

9 A. He asked me if he could fight. He said something to
10 the effect of he might have to get a weapon or a gun or a
11 piece or whatever they call it. But I didn't take that
12 seriously.

13 Q. Let me ask you about that. Prior then to that Friday
14 night, October 30th, had you ever seen Christian Himes with
15 a handgun prior to that night?

16 A. No.

17 Q. Did you see him with a handgun that following day,
18 Saturday, October 31st?

19 A. No.

20 Q. Did you see him with a gun on November 1st?

21 A. No.

22 Q. Let me ask you this: Have you ever seen Christian
23 Himes with a handgun?

24 A. No. Never.

25 Q. Would you have allowed him in your apartment with your

1 two small children with a handgun?

2 A. No.

3 Q. Did you have any further conversation with Christian
4 Himes about David after that night and him seeing that text
5 message and asking you about those couple of questions? Did
6 y'all talk any more about David after that on Saturday or
7 Sunday?

8 A. No. Well, we did when it was time for us to go
9 trick-or-treating. He stated that he wanted -- he wanted to
10 be the one to go with me and the kids. And that's what we
11 talked about.

12 Q. And at that point in time, y'all had been dating for a
13 month to five or six weeks at the most. Is that correct?

14 A. Yeah. It was like four weeks.

15 Q. Let me ask you this, Heather: During the 18 months or
16 so that you were separated from David, were there any
17 incidents of violence at all between the two of y'all during
18 that 18-month period of time?

19 A. No.

20 Q. I mean, that night before that Saturday night when you
21 went trick-or-treating describe for the judge, I mean, how
22 that night progressed, I mean . . .

23 A. Well, he went and found some costumes for the kids. He
24 had a rough time doing that because it was Halloween. We
25 talked about where we were going to meet at. And so we

1 decided we were going to take the kids in my parents'
2 neighborhood and meet up at my parents' house.

3 Q. I guess -- and I'm sorry. Maybe that was an inartful
4 question on my part. I mean, were there any issues between
5 the two of y'all that night?

6 A. Not at all.

7 Q. Argue at all?

8 A. No.

9 Q. Fight at all? Quarrel at all?

10 A. No. Nothing. We had a great time.

11 Q. Let me back up.

12 AST. SOL. SORENSON: May I approach the witness, Your
13 Honor?

14 THE COURT: You may.

15 Q. Heather, let me show you this. Is that basically the
16 screenshot that you sent to Detective Weaver of that text
17 message?

18 A. Yes.

19 AST. SOL. SORENSON: Your Honor, at this time if we can
20 mark this for State's ID.

21 THE COURT: Any objection?

22 MR. WEHMAN: No objection.

23 (State's Exhibit No. 6, Text Messages, was marked for
24 identification.)

25 Q. Heather this --

1 AST. SOL. SORENSON: May I approach the witness, Your
2 Honor.

3 THE COURT: You may.

4 Q. In this text message that we talked about, that
5 happened on October 30th the day before Halloween; right?
6 That would be that Friday night.

7 A. Yes.

8 Q. At 7:26?

9 A. Uh-huh.

10 Q. In the evening?

11 A. Yes.

12 Q. Okay. And, of course, he texted you, what? Seven
13 minutes later basically just telling you that he needed you
14 to pick up the kids. Is that right?

15 A. That's correct.

16 Q. And then the next morning you're actually texting him
17 about whether he had gotten costumes and he says that he's
18 out looking. Is that right?

19 A. Right.

20 Q. Nothing threatening at all in the dialogue that happens
21 after that. Is that correct?

22 A. That's correct. Me and David have that kind of
23 relationship where can fight one minute and be best friends
24 the next.

25 Q. Now on that Sunday, November 1st, the day that this

1 happens, Heather, Christian Himes didn't -- you've already
2 been asked. I mean, he didn't have a phone, a cell phone.

3 Is that correct?

4 A. That's correct.

5 Q. He didn't have a vehicle either. Is that also correct?

6 A. That's correct too.

7 Q. And you had a car at that time; right?

8 A. Yes, sir.

9 Q. And what type of car did you have?

10 A. A Chrysler 300.

11 Q. And at some point in time, did Christian Himes borrow
12 your car on Sunday, November 1st?

13 A. Yes.

14 Q. Tell the judge when did he borrow it that Sunday?

15 A. It was roughly about 3:30, 3:45. Somewhere around
16 there.

17 Q. And did he tell you why he needed to borrow your car?

18 A. No.

19 Q. Did you ask him why he needed to borrow your car?

20 A. Yes.

21 Q. Okay. And what was his response?

22 A. He had somewhere to go.

23 Q. Did you ask him if you could go with him?

24 A. Yes.

25 Q. And what was his response to that?

1 A. He said he didn't want me to come with him.

2 Q. And so you said what time was this? About 3:30? Is
3 that what you said?

4 A. Yeah. Somewhere around there because he had taken my
5 car prior and had been gone for several hours. And I wanted
6 to go with him to know where he was, to know when he was
7 coming back and what he was doing.

8 Q. And did you express to Mr. Himes that Sunday afternoon
9 that you needed your car back by a certain period of time?

10 A. Yes. I said if he was to go then he had to be back by
11 6:30 so I could get the kids. And he promised me that he
12 would be back.

13 Q. And at 6:30 did Christian Himes come back?

14 A. No, sir.

15 Q. Get any kind of message from him any way, shape, or
16 form telling you where he was or why he was running late?

17 A. No. And there was no way I could contact him.

18 Q. Seven o'clock, did he return?

19 A. No.

20 Q. 7:30?

21 A. No.

22 Q. Eight?

23 A. No.

24 Q. 8:30?

25 A. No.

1 Q. Nine?

2 A. No.

3 Q. 9:30?

4 A. No.

5 Q. And during that time period, obviously, did at some
6 point in time have a conversation then with your husband,
7 David, about ---

8 A. Where I am?

9 Q. --- how the kids where getting home?

10 A. Yes.

11 Q. Did you tell David why you couldn't come pick the kids
12 up?

13 A. No.

14 Q. Did he ask?

15 A. Yeah, he asked.

16 Q. Did you at any point in time tell him that you couldn't
17 come get them because your boyfriend had taken your car and
18 had been gone for six hours without you knowing where he or
19 your car were?

20 A. No. I didn't tell him that.

21 Q. At some point in time, did David ultimately bring the
22 children home that night?

23 A. Yes.

24 Q. Let me ask you this: Do you have any idea what David
25 had planned to do that evening at home?

1 A. He said that he had plans for a Halloween party.

2 Q. And, ultimately, he ends up bringing -- I think you had
3 asked this before -- I guess sometime about 9:30 or so, is
4 that right? He said that he got there with the kids.

5 A. Yeah. I think it was around that time.

6 Q. And that's obviously past -- well, I don't know. Is
7 that past their bedtime typically on a Sunday evening?

8 A. Yes. When they have to go to school the next day.

9 Q. And when he got there, what did y'all do when he got
10 there that night?

11 A. When he came, he brought the kids in, sat their stuff
12 down. He helped me get them into bed. They were already
13 bathed and everything. Helped me get their cups ready for
14 bed. And then he -- I gave him some mail that I had gotten
15 from my parents that bizarrely ended up in their vehicle.
16 And we talked about that for a little while. One of them
17 was like a claim on like a vehicle that was sitting,
18 supposedly. He explained to me the situation around that.
19 And we discussed possibly getting back together with some
20 things . . .

21 Q. Did y'all talk at all about that the night before when
22 y'all were trick-or-treating with the kids?

23 A. No.

24 Q. Let me ask you this: The defendant, Mr. Himes, where
25 was he from? Do you remember?

1 A. Columbia area.

2 Q. And you said that y'all had been dating for four weeks
3 or so. Did he stay at your apartment for that entire month?

4 A. No.

5 Q. How often do you think, or how many times do you think,
6 he was at your apartment over that month period of time?

7 A. How many different visits?

8 Q. Yes, ma'am.

9 A. Approximately three.

10 Q. And when he was down here in the Summerville, or the
11 Summerville area, was he basically staying at your place
12 when he was in town?

13 A. When he was here.

14 Q. Was David, during the time period that he was in your
15 apartment, was he ever angry acting?

16 A. Not at all.

17 Q. I think you had testified earlier you were not aware of
18 what kind of vehicle he was driving?

19 A. I did not know.

20 Q. Do you know what he drove when he came to pick the kids
21 up on Friday?

22 A. I don't remember.

23 Q. And just a couple more questions, Heather. So when
24 David initially leaves, when he walks out the door, you go
25 to the restroom. Is that correct?

1 A. Yes.

2 Q. Hear a bang on the door?

3 A. Yes.

4 Q. Does he just come in or how does that ---

5 A. My son let him in.

6 Q. Okay. So your son got up out of bed and basically
7 answered the door?

8 A. Yes.

9 Q. And what is it your understanding that he did when he
10 came in?

11 A. Well, he came in and he was like, you didn't hear me
12 knocking on the door. And I was like, well, I'm using the
13 bathroom. And he was like, oh, well, I forgot my keys. And
14 I didn't see him pick the keys up, but I heard the keys like
15 scrape across the table and I heard the keys jingling when
16 he went out the door.

17 Q. And hear the door close?

18 A. Yes.

19 Q. Okay. What do you do at that point in time?

20 A. Finish using the bathroom.

21 Q. And did -- I don't mean to be graphic here -- but, I
22 mean, the minute he left, is that when you finished using
23 the restroom and got out? Or were you still in there for
24 any period of time whatsoever?

25 A. Not a significant period of time. I mean, I was just

1 trying to go.

2 Q. I understand. So at that point in time, you then go do
3 what? When you do come out of the restroom.

4 A. When I come out of the restroom, I go lock the door
5 like I usually do.

6 Q. Now, prior to you going to lock the door, had you heard
7 any arguing or loud voices outside of your apartment prior
8 to you going to lock the door?

9 A. Yes.

10 Q. Okay. Where was it and when was it that you first
11 heard loud voices or any kind of arguing outside of your
12 apartment? Where were you?

13 A. Well, my apartment is not very big. So, and my
14 bathroom is in my room. So I walked out of my bedroom and
15 then there's the dining room, and the kitchen is on the
16 other side of the wall. And I was probably just passing the
17 table, the kitchen table, or the dining room table. Sorry.

18 Q. And could you tell at that point in time where that
19 arguing or the -- describe, I guess, for the Court, what was
20 it that you first heard? How would you describe it?

21 A. It's kind of -- initially -- I mean, it sounded like
22 guys raising their voices. I mean, I was hoping that it
23 wasn't them.

24 Q. Did you have a feeling at that point in time it could
25 be, though?

1 A. Yes.

2 Q. Okay.

3 AST. SOL. SORENSON: May I approach, again? The
4 picture is up there, Your Honor.

5 Q. And just so -- just so we're clear, Heather --

6 AST. SOL. SORENSON: May I approach the witness?

7 THE COURT: You may.

8 Q. This is State's Exhibit No. 4. That's your building.
9 Is that correct?

10 A. Yes, it is.

11 Q. Okay. And the parking lot would be out here. Is that
12 correct?

13 A. Correct.

14 Q. So you'd walk -- basically, a walkway from the parking
15 lot up into that breezeway?

16 A. Yes.

17 Q. Okay. And what -- first of all, what floor is your
18 apartment located on?

19 A. It's on the first floor.

20 Q. Okay. And if I were to walk kind of up these steps
21 into this breezeway, where would your apartment be located
22 at?

23 A. On the back side.

24 Q. Okay. The right or left?

25 A. On the right in this picture.

1 Q. Okay. So a walkup, it would be not this front
2 apartment, but it would be the back apartment on right-hand
3 side. Is that correct?

4 A. Right. Because the front apartment is B, and mine is
5 D.

6 Q. Okay. And there was somebody residing in that
7 apartment. Is that correct?

8 A. Yes.

9 Q. So you first hear -- so what did you do then? So you
10 started to -- you heard loud voices outside your apartment.
11 What did you then do?

12 A. I approached the door.

13 Q. Okay. And tell the Court what it was that you heard or
14 -- at that time.

15 A. I opened the door and I recognized the voices outside.

16 Q. Who was that that you recognized?

17 A. I recognized David's voice and I recognized Christian's
18 voice.

19 Q. Could hear both of them at that point in time?

20 A. Yes.

21 Q. Okay. All right. And you put in your statement, and
22 you testified earlier, that at that point in time you hear
23 -- you heard David say something to the effect, "Come
24 homeboy. Oh, you think you bad because you got a gun. Come
25 on." Is that correct?

1 A. Yes, that's correct.

2 Q. Is that the first kind of legible -- or legible is not
3 the right word. But the first thing that you heard that you
4 were able to understand what somebody was saying?

5 A. Yes.

6 Q. Okay. So there were voices, both of their voices,
7 prior to that?

8 A. Yes.

9 Q. And you just couldn't understand what was being said
10 between the two of them. Is that correct?

11 A. No. It was very muffled from inside of my apartment.

12 Q. Okay. And were they in your breezeway at that point in
13 time? Where they up ---

14 A. No. No, they were not in my breezeway.

15 Q. And what -- did you look outside?

16 A. Yes. I looked out front in the parking lot where the
17 breezeway was.

18 Q. So you look out your door, look to the left. Is that
19 correct?

20 A. Yes. I have to look to my left when I look out of my
21 apartment.

22 Q. All right. So you did not see them, the two of them.

23 The voices that you heard were not up in the breezeway here.

24 Is that correct?

25 A. They were not within viewing.

1 Q. Okay. And in response to hearing David make that
2 comment that I just read, at that point in time, you heard
3 -- heard Christian say multiple times to him to backup;
4 right? About three times. Is that right?

5 A. Yes.

6 Q. And then heard a gunshot right after that?

7 A. Yes.

8 Q. And after that gunshot, Christian, the defendant, I
9 mean, he doesn't go up to check on you, does he?

10 A. No.

11 Q. Doesn't come to your apartment at all. Is that
12 correct?

13 A. No.

14 Q. He gets back in your car and takes off. Is that
15 correct?

16 A. That's correct.

17 Q. And your husband, where is he? Where is he when you
18 ultimately see him?

19 A. He's lying on the ground in the grass.

20 Q. So you come walking out of your apartment, down the
21 steps, is he off to the left or the right?

22 A. The left.

23 Q. You see any weapons or anything around your husband
24 when -- did you ultimately go over to him?

25 A. I did.

1 Q. You were the first person that went over to him out
2 there?

3 A. Yes, sir.

4 Q. See any weapons or anything in his hands or around him
5 anywhere?

6 A. No.

7 Q. And the vehicle that Mr. Himes left in was your
8 Chrysler 300?

9 A. Yes.

10 Q. Is that correct? Did you have any firearms in that
11 vehicle?

12 A. No.

13 AST. SOL. SORENSON: May I approach the witness, Your
14 Honor?

15 THE COURT: You may.

16 Q. Heather, does that appear to be the interior of your
17 vehicle?

18 A. Yes.

19 Q. And that handgun that's sitting in the passenger seat,
20 have you ever seen that gun before?

21 A. No.

22 AST. SOL. SORENSON: Just mark this for ID purposes.

23 THE COURT: Yes, sir.

24 (State's Exhibit No. 7, Photograph, was marked for
25 identification.)

Redirect Examination of Ms. Ham by Mr. Wehman

1 AST. SOL. SORENSON: Beg the Court's indulgence.

2 (Brief pause.) That would be all I have, Your Honor, for
3 this witness.

4 THE COURT: Any redirect?

5 MR. WEHMAN: For briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. WEHMAN:

8 Q. Now, you testified that there were other text messages.
9 Is that right? Other than the one that you turned over to
10 Detective Weaver.

11 A. It may have been.

12 Q. Where any of those threatening?

13 A. No.

14 Q. And you said there were other phone calls?

15 A. There was only one threatening text message that was
16 perceived as threatening.

17 Q. And you said there were other phone calls. Is that
18 accurate as well? About Christian between you and David.

19 A. After that?

20 Q. Yes.

21 A. Yes, there was further communication.

22 Q. Were any of those communications over the phone
23 threatening?

24 A. Nothing was threatening.

25 Q. Now, let's just go back and talk specifically about

1 what you heard, not just arguing. You heard specifically,
2 "I'm not scared of your gun," and something to the effect of
3 "come at me"; correct?

4 A. Come at me?

5 Q. Is that what you heard?

6 A. No.

7 Q. But you heard David Ham say specifically, I'm not
8 afraid of your gun or I'm not scared of your gun or
9 something similar to that?

10 A. He said something to the effect of, "Come on, homeboy.
11 You think you're bad because you got a gun."

12 Q. Okay. And you heard Christian Himes say "back up" not
13 one time; right?

14 A. He said it more than once.

15 Q. More than twice?

16 A. He said it approximately three times.

17 Q. Three times. Okay. And when you open the door and
18 came outside, you just testified that you found David Ham in
19 the grassy area off to the left-hand side when you come out?

20 A. Yes, sir.

21 MR. WEHMAN: No further questions, Your Honor.

22 THE COURT: You may step down, ma'am. Thank you. You
23 may call your next witness.

24 MR. WEHMAN: At this time, the defense would call
25 Officer Brooks.

Direct Examination of Officer Brooks by Mr. Wehman

1 MS. WILLIAMS: Judge, we'd just ask the sequestration
2 order still remain in effect.

3 THE COURT: Any objection?

4 AST. SOL. SORENSON: I mean, I think she's got a right
5 to be in here ---

6 THE COURT: Pardon me?

7 AST. SOL. SORENSON: I think she's has a right.

8 THE COURT: As to the victim?

9 AST. SOL. SORENSON: From a victim's standpoint, yes,
10 Your Honor. I'll leave that up to Your Honor.

11 THE COURT: Any objection just for the purposes of this
12 hearing to keep her out? Obviously, I think during the
13 trial, she'll have the opportunity to be here.

14 AST. SOL. SORENSON: That's fine, Your Honor.

15 THE COURT: Come on up, Officer Brooks.

16 (MATTHEW ADAM BROOKS, was duly sworn and provided the
17 following testimony.)

18 THE COURT: Your witness.

19 MR. WEHMAN: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. WEHMAN:

22 Q. Officer Brooks, how are you doing?

23 A. I'm good.

24 Q. Good. Now, where are you employed?

25 A. Summerville Police Department.

1 Q. Okay. And what is your rank there?

2 A. I'm a PFC.

3 Q. Okay. Now, on the night of November 1st, were you
4 working?

5 A. No.

6 Q. You were at home?

7 A. Yes.

8 Q. Where did you live at that time?

9 A. [REDACTED] -- Dorchester Road, [REDACTED] [REDACTED] [REDACTED].

10 Q. What apartment did you live in?

11 A. Eleven.

12 Q. Eleven what?

13 A. 11-E.

14 Q. E?

15 A. Uh-huh.

16 Q. Now, that night, did you talk to responding officers
17 about a shooting?

18 A. Yes.

19 Q. Can you tell the Court what it was that you heard that
20 night that you told law enforcement?

21 A. That night when I was in my apartment, I could hear
22 shouting. I muted my television. I heard a male voice say
23 you're not going back in that apartment. Then I heard a
24 single gunshot. At the time, I called and notified dispatch
25 while grabbing my radio and my gun and my ID. I could hear

1 tires screeching from the parking lot. Exited my apartment,
2 and when I was outside, I observed a male laying down on the
3 grass bleeding.

4 Q. So you heard a male voice say, "You're not going into
5 that apartment." Is that right?

6 A. Correct.

7 Q. Did you notice anything else? Any other specific words
8 or anything?

9 A. Before I muted my television, there was shouting. I
10 couldn't tell what was being said though.

11 MR. WEHMAN: I have no further questions, Your Honor.

12 THE COURT: Cross-examination?

13 CROSS-EXAMINATION

14 BY AST.. SOL. TEMPLETON:

15 Q. Officer Brooks, you don't know who was shouting;
16 correct?

17 A. No.

18 Q. You don't know whether it was the victim on the ground?

19 A. No, sir.

20 Q. Or the person that was leaving in the vehicle?

21 A. No, I do not.

22 AST. SOL. TEMPLETON: May I approach the witness, Your
23 Honor?

24 THE COURT: You may.

25 Q. I'm going to show you what's marked as State's Exhibit

1 No. 8. Do you recognize that?

2 A. Yes. That's between the two buildings. The one to the
3 right is actually where I resided. And the building to the
4 left is, I believe, where the victim's wife was residing.

5 (State's Exhibit No. 8, Photograph, was marked for
6 identification.)

7 Q. Okay. So in this photograph, is that your apartment up
8 here?

9 A. Yes. That is my balcony.

10 Q. It's a second-story basically overlooking this location
11 where the victim was ultimately found; correct?

12 A. Correct.

13 Q. And you heard a good bit of yelling; correct?

14 A. Correct.

15 Q. But the only thing you could understand was, "You're
16 not going into the apartment." Correct?

17 A. Correct. That took place after I muted my television.

18 Q. Okay. How much time between that yelling and the time
19 that you end up hearing a gunshot?

20 A. It was almost immediately.

21 Q. Okay.

22 A. It was pretty close to it.

23 Q. And how much time between that gunshot and the time
24 that you hear screeching tires?

25 A. I'd say about 30 to 40 seconds; not even a minute.

1 Q. Okay. And you're outside ultimately just a few seconds
2 after that?

3 A. Correct.

4 Q. Okay.

5 AST. SOL. TEMPLETON: That's all the questions I have,
6 Your Honor.

7 THE COURT: Anything?

8 MR. WEHMAN: No, Your Honor.

9 THE COURT: You may step down, Officer Brooks. Thank
10 you. You may call your next witness.

11 MR. WEHMAN: The defense would call Officer Wade
12 Rollings.

13 (WADE FRANKLIN ROLLINGS, was duly sworn and provided
14 the following testimony.)

15 THE COURT: Your witness.

16 MR. WEHMAN: Thank you, Your Honor! May it please the
17 Court?

18 THE COURT: Yes, sir.

19 DIRECT EXAMINATION

20 BY MR. WEHMAN:

21 Q. Mr. Rollings, or Officer Rollings, where are you
22 employed?

23 A. Summerville Police Department.

24 Q. All right. And what is your job description there?

25 A. I am the crime scene investigator.

1 Q. Now, how long have you worked at the Summerville Police
2 Department?

3 A. Approximately, ten years.

4 Q. Okay. How long have you been in charge of crime scene?

5 A. Three years.

6 Q. And did you have the opportunity to go out to [REDACTED]
7 Dorchester Road -- that would be the [REDACTED] [REDACTED] [REDACTED]
8 -- on November 1st?

9 A. Of 2015, yes, sir.

10 Q. And that was in response to a shooting that occurred
11 out there; correct?

12 A. Yes.

13 Q. Okay. And --

14 MR. WEHMAN: May I approach, Your Honor?

15 THE COURT: You may.

16 Q. Let me show you what's been marked as State's Exhibit 8
17 for identification purposes.

18 A. Okay.

19 Q. Now, what do you notice in that picture?

20 A. Other than the evidence markers, crime scene tape up in
21 the background and articles lying about.

22 Q. Specifically, the evidence markers. Those are your
23 evidence markers?

24 A. Yes.

25 Q. And you placed those there?

Direct Examination of Officer Rollings by Mr. Wehman

1 A. Yes, I did.

2 Q. Okay.

3 MR. WEHMAN: May I approach, Your Honor?

4 THE COURT: You may.

5 (Defendant's Exhibit No. 4, Photograph, was marked for
6 identification.)

7 Q. Showing you what's been marked as Defendant's 4.

8 A. Okay.

9 Q. Do you recognize that photograph?

10 A. Yes, sir.

11 Q. And what is that photograph?

12 A. That will actually be the left side that's missing off
13 of Exhibit 8.

14 Q. Okay. So to put into context, that shows prior to
15 where Exhibit 8 would be? Is that what's closer to the
16 sidewalk?

17 A. Yes.

18 Q. So Exhibit 8 would be further off?

19 A. To the right-hand side of the building. If you were
20 facing the building, yes.

21 Q. Okay. All right. Now, through the -- when you arrived
22 on scene, was the body there or had the body been taken off
23 scene already?

24 A. It had already been moved.

25 Q. Okay. Did you have a location of where the body was?

1 A. I believe it was Trident Medical Center. Or, where it
2 was on scene?

3 Q. On scene, where it would've been? Where they responded
4 and found it.

5 A. Yes. There was two piles of clothing labeled here with
6 the, I believe it was, evidence markers 1. It looks like 2.
7 He was actually located between the piles of clothing. It
8 was located on the on-scene.

9 Q. And the piles of clothing would've been from the EMS
10 taking them off and discarding them?

11 A. Yes.

12 Q. Now, throughout your investigation, were you able to
13 determine how far those piles of clothing were from the
14 front door?

15 A. From the front door of the actual apartment?

16 Q. Or -- there are stairs that lead up to a breezeway;
17 correct?

18 A. Yes.

19 Q. Were you able to determine how far from that location
20 those piles of clothing were?

21 A. From the breezeway, yes.

22 Q. How far is it from the breezeway?

23 A. I -- with them using the left and right side of the
24 breezeway itself. Evidence marker number one, the pile of
25 clothing from the left side of the breezeway, was

1 approximately 133 feet. I'm sorry, 33 feet. The right side
2 was 39 feet. And the evidence marker two was 39 feet from
3 the left side of the breezeway and then 35 feet from the
4 right side.

5 Q. Now, that would be from the bottom step or the top step
6 of the breezeway?

7 A. That would actually be the bottom step of the
8 breezeway.

9 Q. Okay. So you do not know how far it is from the bottom
10 step of the breezeway to the front door of her apartment?

11 A. No, I do not.

12 Q. Okay.

13 MR. WEHMAN: Court's indulgence.

14 Q. Let me show you what has been marked as Defendant's 2.
15 Do you recognize that photograph?

16 A. Yes.

17 Q. And what is that a photograph of?

18 A. That is a photograph of the total building from the
19 opposite side of the parking lot where it also shows the
20 victim's Xterra parked by the tree on the right-hand side.

21 Q. Okay. Now, when you arrived on scene, had a lot of the
22 squad cars and the ambulance, had they all left?

23 A. The ambulance was no longer there, but there were still
24 several squad cars on scene.

25 Q. Now, when you arrived on scene, did you see any, and do

1 you notice in that picture, any streetlights that might be
2 out illuminating the sidewalk or the walkway or anything of
3 that nature?

4 A. I do not see any in this picture. I couldn't tell you
5 if I recall seeing any or not.

6 Q. How dark it is in that picture, does that accurately
7 depict how it was out there that night?

8 A. From this photograph, it does. I was using flash with
9 the camera. Granted, that was a brand new camera to me. So
10 I wasn't quite up to speed with all the bells and whistles
11 so to say.

12 Q. Okay. And let me show you Defense Exhibit No. 3. That
13 would be a different angle of the same building. Is that
14 right?

15 A. Yes, that's correct.

16 Q. And is that an accurate depiction of how dark it was
17 out there from a different angle?

18 A. Yes.

19 Q. Okay. And do you see any exterior lighting on the
20 sidewalks or the walkway or anything on the building itself?

21 A. No, sir.

22 Q. Do you recall any that might not have been in that
23 picture?

24 A. Again, I -- it's been so long ago, I really couldn't
25 recall without actually looking at all of my photographs.

Cross-Examination of Officer Rollings by Ast. Sol. Templeton

1 MR. WEHMAN: I have no further questions, Your Honor.

2 THE COURT: Cross examination?

3 CROSS-EXAMINATION

4 BY AST. SOL. TEMPLETON:

5 Q. Officer Rollings, did you do a diagram of this
6 location?

7 A. Yes, I did.

8 Q. Okay. Do you have that in your file?

9 A. I have my rough draft and I also have the completed
10 theorized diagram.

11 Q. Okay. Can I see that from you real quick?

12 A. Yes, sir.

13 (Brief pause.)

14 Q. All right. In your diagram -- I'm actually going to
15 hand it back to you.

16 A. Okay.

17 Q. Do you have an overview of the location of where all
18 this occurred?

19 A. Yes, I do.

20 Q. I'm going to show you a blowup of that area. Does that
21 area look familiar?

22 A. Yes, sir.

23 Q. Okay. In location, do you know which building is
24 Building 12 on that map?

25 A. I believe it's going to be the one right here in sort

1 of the upper left corner. I believe that's 12 building.

2 Q. Okay. In comparison to that photo?

3 A. Oh, no. Actually, it would be this building.

4 Q. It would be this building?

5 A. Yes.

6 Q. Okay. Would you mind writing on there what building
7 that is, Building 12.

8 A. (Witness complies.)

9 Q. Okay.

10 AST. SOL. TEMPLETON: I'm going to mark this as State's
11 Exhibit Number . . .

12 (State's Exhibit No. 9, Photograph, was marked for
13 identification.)

14 Q. All right. I'm going to give you back State's Exhibit
15 Number 9 now. Can you indicate on there where all of the
16 things that you collected were?

17 A. Certainly.

18 Q. If you can put a circle with maybe an X in the middle
19 of it where all the items were collected.

20 A. (Witness complies.)

21 Q. Okay. And then where was the victim's vehicle in
22 relation from the door and those items? Approximately is
23 fine. If you can put another -- just circle without an X in
24 it.

25 A. (Witness complies.) Okay.

1 Q. Basically, are those items in line with where he would
2 come from the door to where the Xterra was located?

3 A. Yes.

4 Q. So the victim is basically directly on that line?

5 A. Yes. That would be a direct line from the door to the
6 vehicle.

7 Q. Okay. (Brief pause.) I'm going to show State's
8 Exhibit Number 10. What is that?

9 A. That's a photograph of the victim's Xterra.

10 (State's Exhibit No. 10, Photograph, was marked for
11 identification.)

12 Q. And can you actually see the line between that Xterra
13 and building number 12.

14 A. From right here where the vehicle is, you cannot
15 because you -- you see the breezeway, but you can't see
16 where the clothing items were located.

17 Q. Can you tell that that is building number 12? Is the
18 number on there?

19 A. Yes, it is.

20 Q. Okay.

21 AST. SOL. TEMPLETON: No further questions, Your Honor.

22 THE COURT: Any redirect?

23 MR. WEHMAN: Briefly, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. WEHMAN:

1 Q. Officer Rollings, now you were marking on State's 9
2 where, I guess, the clothing was and where David Ham's
3 vehicle was. Is that right?

4 A. Yes, sir.

5 Q. Now, throughout your investigation and when you were
6 out there marking evidence, were you able to determine where
7 Heather Ham's vehicle that was driven by Christian Himes
8 would've been before it left?

9 A. Definitely, no. I believe someone actually said it
10 was parked across the parking lot.

11 MR. WEHMAN: May I approach?

12 Q. So -- showing you State's 9. Where were you told it
13 was?

14 A. Basically, where his vehicle was at would be these
15 opposite vehicles here.

16 Q. Will you circle on there where.

17 A. Certainly. (Witness complies.)

18 MR. WEHMAN: I have no further questions.

19 THE COURT: You may step down, sir. Thank you.

20 THE WITNESS: Thank you, ma'am.

21 MR. WEHMAN: Judge, you want these back?

22 THE COURT: Yes, please. I just want to see them. You
23 may call your next witness.

24 MR. WEHMAN: Court's indulgence. (Brief pause.) The
25 defense calls Tim Grambon.

Direct Examination of Mr. Grambon by Mr. Wehman

1 (TIMOTHY WAYNE GRAMBON, was duly sworn and provided the
2 following testimony.)

3 THE COURT: Your witness.

4 MR. WEHMAN: Thank you, Your Honor. May it please the
5 Court?

6 THE COURT: Yes, sir.

7 DIRECT EXAMINATION

8 BY MR. WEHMAN:

9 Q. Mr. Grambon, how are you?

10 A. Doing pretty well.

11 Q. Good. Good. Now, where are you employed?

12 A. I work at the South Carolina Law Enforcement Division
13 in Columbia in the forensics lab.

14 Q. And what is your job title there?

15 A. I am a forensic toxicologist.

16 Q. And what does a forensic toxicologist do?

17 A. As a forensic toxicologist, my job is to perform
18 analytical analysis of biological samples whether it be
19 blood, urine, tissue samples, so on, so forth, for the
20 presence or absence of drugs and poisons to include
21 pharmaceuticals, alcohol, so forth. And then to issue a
22 report and then interpret that report for pathologists,
23 attorneys, courts of law.

24 Q. Now, in order to become a toxicologist, what type of
25 education do you need to have?

1 A. Well, I personally have a Bachelor of Science degree in
2 chemistry from Wake Forest University. After graduating, I
3 almost immediately began working at SLED and received
4 certification through SLED in forensic toxicology. It was a
5 multi-year program. And since becoming certified through
6 SLED, I have become ---

7 THE COURT: Solicitor, do you have ---

8 AST. SOL. SORENSON: We don't have any objections to
9 his qualifications.

10 THE COURT: Can you stipulate that for the record?

11 MR. WEHMAN: Yes, Your Honor.

12 THE COURT: All right. Let's move on.

13 Q. Now, did you have the opportunity to create a report
14 for this case, for the -- a case that was sent to you by the
15 Dorchester County Sheriff's Office and the deceased would be
16 David Ham?

17 A. Yes.

18 MR. WEHMAN: My I approach, Your Honor?

19 THE COURT: You may.

20 Q. Showing you what is Defendant's 5. Is that an accurate
21 depiction of what the report was? Is that a copy of it?

22 A. It appears to be so.

23 (Defendant's Exhibit No. 5, SLED Report, was marked
24 for identification.)

25 Q. And what were your findings when you analyzed David

1 Ham's blood?

2 A. We reported out a 0.194 percent ethanol in blood and
3 then 0.198 percent ethanol in the ocular fluid.

4 Q. Okay. And what's the difference between the blood and
5 ocular fluid? Why are those different numbers?

6 A. Well, when you drink alcohol, you -- there's a -- your
7 body undergoes a process. We call it ADME for short.
8 It's -- you have to absorb it, your body distributes it,
9 metabolizes it, and then eliminates it. And this process is
10 ongoing as you consume alcohol. As you consume alcohol,
11 your body -- typically, you're going to drink it. It's
12 going to go into your stomach. It's going to go from your
13 stomach into the bloodstream. The bloodstream is gonna
14 circulated it around. It's going to pass through your liver
15 where your body starts to break down alcohol as a foreign
16 substance. So it's gonna try and break it down and get rid
17 of it. It's going to continue to circulate around. As it's
18 circulating, the alcohol is going to end up distributing
19 throughout the rest of your body including the fluid in your
20 eye, which is the vitreous humor or the ocular fluid as
21 reported here. And the reason that we would test both the
22 blood and the ocular fluid is because there is a little bit
23 of a lag time for the alcohol to catch up to the levels of
24 the blood. We can kind of get an idea if the person was --
25 had been drinking for a while, if their blood alcohol level

1 was still increasing or if it had actually maxed out, was on
2 the decline. So that's the reason for doing both. And so
3 that's why there can be a slight difference between the two.
4 Now, for our purposes here that the difference between the
5 two being a 0.194 and 0.198 is fairly negligible. So
6 they're essentially the same number.

7 Q. Sure. Okay. And through your training at SLED and
8 your education also and any further training, are you able
9 to interpret what someone with that type of alcohol content
10 would be acting like? I mean, can you -- are you . . .

11 A. Well, as a board-certified toxicologist, yeah, I've
12 studied fairly extensively the effects of alcohol at
13 different concentrations. And I actually have testified in
14 general sessions, the magistrate's, municipal court here in
15 South Carolina on alcohol and the effects.

16 Q. So in this instance with a reading of 0.198, typically
17 what would you expect behavior-wise from someone that would
18 test like that?

19 A. Well, alcohol in general is a CNS depressant. That's
20 the class of drugs that it would be considered as. So as
21 you start taking it, there's going to be a general run of
22 effects that occur as you're level increase. So at very low
23 levels you're going to start becoming -- you can small
24 amounts of euphoria. It kind of takes the edge off, if you
25 will. People may become a little bit more talkative.

1 Then as the levels increase, you're going to have some
2 slowing of mental processes as such. Your ability to get a
3 visual stimulus and then be able to react to it, you know,
4 identify what's going on, make a correct decision, actually
5 physically carry out that decision. I mean, where this is
6 really important is he was, like, driving a car. So, you
7 know, somebody runs out in front of your car and the ability
8 to be able to see that and then react appropriately and hit
9 the brakes. So a lot of these at the lower levels, these
10 effects are not outwardly visible per se. But they can on
11 complex tasks definitely be present. And as your levels go
12 up, some of the effects are going to be much more outward.
13 You're going to start noticing -- you can have some motor
14 incoordination; you're inability to, you know, walk in a
15 straight line and so forth. And as the levels go up even
16 higher, you're going to have effects -- you can end up
17 becoming unconscious actually and end up having respiratory
18 depression and end up dying as the levels, you know,
19 approach .4 or such.

20 Q. So, specifically, as to aggression, as the level
21 increases, is there any study on that?

22 A. Well, there are several studies that address aggression
23 in alcohol and drugs. And there is mixed conclusions on
24 such. It's pretty well thought of that people can associate
25 alcohol consumption with aggressive behavior. But there is

1 some question as to what the actual cause of that aggressive
2 behavior is from. Whether it's an actual pharmacological
3 response to the drug itself, such as, you know, alcohol,
4 actually does something to your brain that makes you
5 aggressive. You know, like it hits an actual receptor in
6 the brain and causes that effect. Or there's some studies
7 that suggest that alcohol just coincides with
8 aggressiveness. And I'll go a little bit deeper into that
9 for you.

10 So there's some studies that point out that reports of
11 aggressive behavior in conjunction with alcohol, part of
12 that is because if -- excuse me -- coincides with police
13 reports and such, you don't necessarily get a police report
14 of somebody who is intoxicated sitting on their couch being
15 nonaggressive. So you're going to have reports of people
16 acting aggressive whether they're going to be involved in
17 criminal behavior or things along -- so that does not
18 necessarily mean that the alcohol caused that aggressive
19 behavior. It's just you're in a lifestyle that coincides
20 with aggressive behavior and you happen to be also taking
21 alcohol. Now, there's other studies that show that because
22 of the -- suppressant effects of alcohol, you tend to be a
23 bit more of a risk taker than you may put yourself in
24 situations that lend them to then cause you to be aggressive
25 down the road. So, again, alcohol doesn't necessarily cause

1 you to be aggressive, but it puts you in a position to where
2 you may be in a more likely scenario.

3 Q. So basically what you're saying is that alcohol can
4 either bring out the aggressiveness already there that you
5 might be suppressing?

6 A. That's the overall conclusion of the papers I read of
7 the studies. Basically, my take on it is that you've got --
8 doesn't necessarily make you aggressive, but it kind of
9 takes the filter off your previous aggressive tendencies.

10 Q. So someone with an aggressive tendency that has .198
11 that you just stated was on that report, would that be
12 enough to do what you're saying? Is that enough alcohol to
13 bring out the aggressive tendency?

14 A. It's definitely possible.

15 MR. WEHMAN: No further questions, Your Honor.

16 THE COURT: Cross-examination?

17 AST. SOL. SORENSON: Just briefly, Your Honor.

18 CROSS-EXAMINATION

19 AST. SOL. SORENSON:

20 Q. Good afternoon, Mr. Grambon.

21 A. Good afternoon.

22 Q. A couple questions. So one of the things you had
23 indicated that -- and, obviously, there's no way -- I mean,
24 you weren't out there; right? So you have no idea ---

25 A. Correct.

1 Q. But one thing that alcohol you had indicated could do
2 is could make somebody become a risk taker. Is that correct?

3 A. Yes. Very much so.

4 Q. Could make somebody whose had a gun pointed at them
5 instead of running or stopping, actually confront the person
6 that's pointing the gun at them. Is that correct?

7 A. They could. And it also could because of the slowed
8 cognitive abilities of the person, they may not assess a
9 dangerous situation correctly as well. Similar to not being
10 able to properly, you know, assess somebody running out in
11 front of you and them being able to stop in the appropriate
12 time. Also having a threat, you may not properly assess the
13 danger and see the various options you have to escape that
14 danger. So basically just your mental capacities are slowed
15 so the thinking process might not be clear.

16 Q. Okay. And, of course, a lot of this when Mr. Wehman
17 asked you about aggression, I mean, there's no hard and fast
18 rule that, I mean, if a person, you know, has a .194 or 918
19 that they are going to be aggressive. Is that correct?

20 A. No. Because there's no -- like I said before, there's
21 no receptor in the brain or anything that, you know,
22 unequivocally makes alcohol be the cause, therefore, having
23 an effect on there. It just may lead to certain scenarios
24 which could then turn out to be aggressive scenarios.

25 Q. Obviously, it impairs a person's judgment; correct?

1 A. Yes.

2 Q. But, obviously, I mean, law enforcement, they make just
3 thousands and thousands of DUI arrests every night
4 throughout the country. And all of those are not violent
5 encounters. Is that correct?

6 A. To my knowledge.

7 Q. To your knowledge as far -- I mean, you haven't heard
8 that? I mean, every DUI person doesn't become belligerent
9 and, you know . . .

10 A. Correct. As far as I know.

11 Q. Aggressive with law enforcement. I mean, that would
12 clearly probably be in the studies that you've studied if
13 that was the case. Is that . . .

14 A. Right. Not everybody at a .19 is going to be outwardly
15 aggressive.

16 Q. Some people actually get more mellow when they drink.
17 Is that correct?

18 A. Some people tend to have a mellow appearance and some
19 people, you know -- a naive drinker may be becoming on the
20 verge of being passed out at this level too. A lot of it
21 depends on your experience with alcohol consumption and how
22 your body has learned to develop an ability to tolerate
23 various levels of alcohol. But it is, of course, can still
24 be affecting your brain but your outward appearance may be
25 somewhat affected by your experience in drinking.

1 Q. Gotcha. So, you know, a 36-year-old male could
2 conceivably -- a .19 might have -- might be a different
3 outward appearance as opposed to a let's say an underage
4 15-year-old that's drinking for the first time?

5 A. Correct.

6 Q. Correct.

7 AST. SOL. SORENSON: Thank you.

8 THE COURT: Anything further, Mr. Wehman?

9 MR. WEHMAN: Not from this witness, Your Honor.

10 THE COURT: You may step down, sir. Thank you. You
11 may call your next witness.

12 MS. WILLIAMS: Judge, at this time, we would call
13 Christian Himes to the witness stand. Do you want to go
14 into his testimony at this point, or do you want to postpone
15 this until tomorrow?

16 THE COURT: No. I want to keep going. The jury comes
17 here at ten o'clock, so . . .

18 MS. WILLIAMS: I understand, Judge. Defense calls
19 Christian Himes.

20 (CHRISTIAN ANTHONY HIMES, was duly sworn and provided
21 the following testimony.)

22 THE COURT: Your witness.

23 MS. WILLIAMS: Thank you, Judge.

24 DIRECT EXAMINATION

25 BY MS. WILLIAMS:

Direct Examination of Mr. Himes by Ms. Williams

- 1 Q. Can you please state your full name for the record.
- 2 A. Christian Anthony Himes.
- 3 Q. How old are you, Mr. Himes?
- 4 A. I'm 23.
- 5 Q. Where are you from?
- 6 A. Columbia, South Carolina.
- 7 Q. Do you know Heather Ham?
- 8 A. Yes, ma'am, I do.
- 9 Q. When did you meet Heather Ham?
- 10 A. Back in 2008.
- 11 Q. Where were you when you met her?
- 12 A. I was at a group home.
- 13 Q. Who was she to you when you were at that group home?
- 14 A. She was my counselor.
- 15 Q. She worked there?
- 16 A. Yes, ma'am.
- 17 Q. How old was she?
- 18 A. Late 20s.
- 19 Q. Okay. So you were 16?
- 20 A. I was 14 or 15.
- 21 Q. You were 14 or 15, and she was in her late 20s?
- 22 A. Yes, ma'am.
- 23 Q. And that's the first time you met her?
- 24 A. Yes, ma'am.
- 25 Q. Did you have a romantic relationship at that time?

- 1 A. Not at the time; no, ma'am.
- 2 Q. Did you keep in touch with her over the years?
- 3 A. Over the years, I've been in touch.
- 4 Q. Tell me about your past. Who raised you?
- 5 A. Different people throughout my life.
- 6 Q. Tell me about your dad. Was he involved in raising
- 7 you?
- 8 A. He had a hand in raising me. Yes, ma'am.
- 9 Q. Did you have altercations with your dad in the past?
- 10 A. Yes, ma'am.
- 11 Q. Did Heather Ham know about that?
- 12 A. Yes, ma'am.
- 13 Q. Did she know about your struggles growing up?
- 14 A. Yes, ma'am.
- 15 Q. How did she know that?
- 16 A. Over the years, I expressed it to her.
- 17 Q. Was she your counselor when you were at that group
- 18 home?
- 19 A. Yes, ma'am.
- 20 Q. And so she was privy to some of your more private
- 21 background history. Would that be fair to say?
- 22 A. That's fair to say.
- 23 Q. In 2015, did you reach out to Heather Ham?
- 24 A. Yes, ma'am, I did.
- 25 Q. How?

Direct Examination of Mr. Himes by Ms. Williams

1 A. I contacted her.

2 Q. By?

3 A. Phone.

4 Q. And, ultimately, what happened?

5 A. Initially, I just came home from jail. And I was
6 looking for the right direction. And she was the only
7 person that knew at the time who could point me in the right
8 direction.

9 Q. Did y'all become romantically involved?

10 A. Yes, ma'am.

11 Q. When was that?

12 A. Around September; the end of September.

13 Q. What year?

14 A. 2015.

15 Q. And where did she live?

16 A. She stayed in Summerville.

17 Q. At [REDACTED] [REDACTED] [REDACTED]?

18 A. Yes, ma'am.

19 Q. Was that apartment 12-B? The one we've been talking
20 about all day.

21 A. No, ma'am. It was 12-D; yes, ma'am.

22 Q. 12-D. 12-D as in dog?

23 A. Yes, ma'am.

24 Q. And where did you live?

25 A. When I was in Summerville, I was staying with her. But

1 if I was in Columbia, I was with -- at various places.

2 Q. Did you have a car?

3 A. No, ma'am.

4 Q. So how did you get around when you were in Summerville?

5 A. Either her or using her car.

6 Q. Did you have a phone?

7 A. No, ma'am.

8 Q. So if you had to communicate with somebody, how did you
9 communicate with someone? Did you use her phone?

10 A. I just used anybody's phone around me. But, yes, I've
11 used her phone.

12 Q. Tell me about the things that you and Heather Ham
13 planned for the future.

14 A. We planned a life. We planned Christmas, New Year's,
15 basically a future.

16 Q. Did you meet her children?

17 A. Yes, I met her children.

18 Q. What was your relationship with the children?

19 A. We had a good relationship.

20 Q. Did Heather assist you in any other way in getting your
21 life up and running?

22 A. Yes, ma'am, she did.

23 Q. How?

24 A. She got me in touch with this lady, Ms. Patsy Gardner
25 (ph). I'm not really sure of her qualifications. But she

Direct Examination of Mr. Himes by Ms. Williams

1 helped us felons who just got out of jail get assistance on
2 getting jobs and Voc Rehab and stuff like that.

3 Q. And so you would come down and stay for -- what was the
4 longest period of time you stayed in the apartment with Ms.
5 Ham and her children?

6 A. The longest period of time was before all of this
7 happened. And I was there about three weeks.

8 Q. You had been staying there for three weeks?

9 A. Back-and-forth, yes, ma'am.

10 Q. Where was your toothbrush?

11 A. At her house.

12 Q. Where were your clothes? Your change of clothes.

13 A. At her house.

14 Q. And you were welcome there in her house. Did you have
15 a key?

16 A. No, ma'am. I didn't have a key. Not a personal key,
17 no, ma'am.

18 Q. But would she let you borrow her key to get in and out?

19 A. Yes, ma'am. She had her house key on her car key.

20 Q. And so when you would borrow her car, you would also
21 have the key to the house?

22 A. Right.

23 Q. Did she ever talk about David Ham?

24 A. Yes, ma'am.

25 Q. Who was David Ham?

1 A. Her husband.

2 Q. How long had they been separated to your knowledge?

3 A. About a year and a half.

4 Q. When she talked about David Ham, what did she express
5 to you?

6 A. Mixed emotions.

7 Q. Like what?

8 A. Anger, happiness, joy.

9 Q. Did she ever talk about being fearful of him?

10 A. Yes, ma'am.

11 Q. Why?

12 A. Because they had -- well, she stated to me that they
13 had a physical altercation in the past.

14 Q. Okay. Do you remember talking to me about a scar on
15 her lip?

16 A. Yes, ma'am.

17 Q. Is that a visible scar? Is it something I can see from
18 looking at her?

19 A. Yes, ma'am.

20 Q. Did she tell you how she got that scar?

21 A. Yes, ma'am, she did.

22 Q. What did she say to you?

23 A. She said that her and David got into it and ended up
24 fighting. And the result of that was her lip.

25 Q. Did she get punched in the face by him?

1 A. Yes, ma'am.

2 Q. Were there any other altercations between the two of
3 them? Any other fights or physical violence that she
4 suffered at the hands of David Ham that she told you about?

5 A. Just the other incident where she said that she was
6 drug out the house.

7 Q. Restate what she said. She was drug out of the house?

8 A. Yes, ma'am.

9 Q. Did she sustain any injuries from that? Did she get
10 any injuries from that?

11 A. Not physical. Not that I know of, no, ma'am.

12 Q. Other than just being drug physically out of the house?

13 A. Right.

14 Q. And it was after that that she left Mr. Ham?

15 A. As far as my knowledge.

16 Q. And did she ever talk to you about the fact that he
17 owned a gun?

18 A. It came about.

19 Q. So she told you that he owned a gun?

20 A. She told me she's seen him with a gun before.

21 Q. And this was prior to you ever meeting him or seeing
22 him?

23 A. Right.

24 Q. She told you that he had a gun?

25 A. Right.

1 Q. Did she ever tell you that she was afraid of him
2 meeting you?

3 A. Yes.

4 Q. Why?

5 A. Because she knew how he would react if we was in the
6 same room together.

7 Q. How did she tell you he would react?

8 A. It would been an altercation.

9 Q. And by altercation, she was afraid you would hit him or
10 she was afraid he would hit you?

11 A. I think she was afraid that he would hit me.

12 Q. When were you arrested on this charge? Was it
13 November 1, 2015?

14 A. Yes, ma'am.

15 Q. And after you were arrested, did receive letters from
16 Heather Ham?

17 A. Yes, ma'am.

18 MS. WILLIAMS: May I approach?

19 THE COURT: You may.

20 Q. I'm going to show you this document. Can you identify
21 that?

22 A. Yes, ma'am. This is the letter -- one of the letters
23 that I received from Heather when I was in jail.

24 Q. And what's the date on that letter?

25 A. December 7, 2015.

Direct Examination of Mr. Himes by Ms. Williams

1 MS. WILLIAMS: This is marked as Defendant's Exhibit 3
2 -- or 6 for the purposes of this hearing.

3 THE COURT: All right.

4 (Defendant's Exhibit No. 6, Letter, was marked for
5 identification.)

6 Q. Can you look on the screen?

7 A. Yes, ma'am.

8 Q. This is the letter that we're talking about. It was
9 written to you on December 7, 2015; right?

10 A. Yes, ma'am.

11 Q. And it's addressed to you, Christian?

12 A. Yes, ma'am.

13 Q. The bottom she talks about, "I never thought that we'd
14 be in a relationship. But now it feels so right even though
15 at first it seemed so wrong." There we go. Isn't that what
16 that says there?

17 A. Yes, ma'am.

18 Q. It goes on to say, "When you contacted me in August of
19 this year, I was so excited. But When you visited
20 Charleston that time, I was scared. Scared of what might
21 happen when we met. Scared of falling for someone that
22 didn't love me that way I loved them." Isn't that what the
23 letter says to you?

24 A. Yes, ma'am.

25 Q. "Scared of the age gap. And if you're ready so soon at

1 your age to settle down and to create a family." Is that
2 typical of the things that she was telling you prior to
3 November 1, 2015?

4 A. Yes, ma'am.

5 Q. Was that the kind of relationship that you had with her
6 and her children?

7 A. Yes, ma'am.

8 Q. Did she visit you while you were in jail?

9 A. Yes, ma'am, she did.

10 Q. And the discussions you had in the jail, were those the
11 type -- was the discussions like what we're talking about
12 here in this letter?

13 A. Some of them. Yes, ma'am.

14 Q. I'm going to point you to here. I'm going to start
15 right here. Does this say, "It's not fair the situation you
16 were placed in. You were not expecting this to happen. I
17 know that. But I feel responsible in some ways for what has
18 happened only because I knew the way he would become enraged
19 and how he reacts when he's angry." Did I read that
20 correctly?

21 A. Yes, ma'am.

22 Q. She goes on to say, "He's hurt many people physically.
23 Even other family members of his. I should have told him to
24 leave sooner, but many people are afraid of him, and I am
25 one of those people." Are those the types of things she was

Direct Examination of Mr. Himes by Ms. Williams

1 telling you prior to November 1, 2015?

2 A. Sometimes. Yes, ma'am.

3 Q. So we know that she told you he had a gun. We know that
4 she was telling you that we was an angry person. He was
5 violent; right?

6 A. Yes, ma'am.

7 Q. I going to show you what's been marked as State's
8 Exhibit 6. Heather Ham had a cell phone. Did she ever show
9 you a text message the she got from David Ham?

10 A. Yes, ma'am.

11 Q. When did she show it to you?

12 A. We were actually sitting together on the patio when it
13 first came through.

14 Q. Okay. And what did that -- is this the copy of the
15 text message?

16 A. It's a copy of some of them. Yes, ma'am.

17 Q. And is this the text message that says, "Tell your
18 boyfriend don't let me catch him slipping"?

19 A. Yes, ma'am.

20 Q. And that was on October 30th; correct?

21 A. Yes, ma'am.

22 Q. How did you take that? What did you think that means?

23 A. I thought that meant -- to me it meant if he sees me,
24 he's gonna come at me and he's gonna attack me.

25 Q. Do you think Heather thought it meant that?

1 A. Yes, ma'am.

2 Q. Why do you think that?

3 A. Because of her past situations and of the way she was
4 speaking of him about the past.

5 Q. Let's talk about the gun that was used in this
6 shooting. Did you buy that gun?

7 A. Yes, ma'am, I did.

8 Q. When did you buy that gun?

9 A. A couple of days after the sexual assault incident.

10 Q. Okay. Let's talk about the sexual assault incident.
11 What sexual assault incident?

12 A. There was a sexual assault incident that happened at
13 her house the weekend prior to all of this. And we felt
14 like it was in her best interest to go to MUSC to be
15 examined for a rape kit.

16 Q. So sometime around October 26th she alleges that she
17 was raped?

18 A. Yes, ma'am.

19 Q. And were you there when this happened?

20 A. I wasn't there at the apartment when this alleged
21 incident happened.

22 Q. Okay. But she ultimately went to the police.

23 A. Yes, ma'am.

24 Q. And do you know what officer investigated that?

25 A. It was Detective Weaver.

Direct Examination of Mr. Himes by Ms. Williams

1 Q. The same officer that investigated this case?

2 A. Yes, ma'am.

3 Q. And did he meet with you and with Heather Ham during
4 the course of the investigation of the rape?

5 A. Yes, ma'am. We was at the hospital together when he
6 initially -- us.

7 Q. David Ham, is he involved in any way, shape, or form
8 with that rape?

9 A. No, ma'am.

10 Q. So this was a completely separate incident that
11 happened sometime around October 26th?

12 A. The weekend before this happened. Yes, ma'am.

13 Q. And why did you get a gun again?

14 A. Because Heather was raped.

15 Q. And how far before -- did you get the gun before you
16 ever received that text message from David Ham?

17 A. Yes, ma'am.

18 Q. I want to talk about what happened on November 1, 2015.
19 Did you borrow Heather Ham's car?

20 A. Yes, ma'am, I did.

21 Q. Did you have permission?

22 A. Yes, ma'am, I did.

23 Q. Did she tell you to have it back at a certain time?

24 A. Yes, ma'am, she did.

25 Q. Did you do it?

1 A. No, ma'am.

2 Q. Why?

3 A. I was out. I took -- I was out with somebody that I
4 met and I took him home.

5 Q. And when did you get back?

6 A. At the time that I was supposed to be back.

7 Q. Why didn't call her and let her know you were running
8 late?

9 A. I didn't have access to a phone at that time.

10 Q. And when you got back, what happened?

11 A. I was walking up the breezeway to go in but she met at
12 the breezeway. And she told me that David was there and
13 just to leave and give it time to air out so there won't be
14 any conflict.

15 Q. I want to show you State's Exhibit 4. Can you point to
16 there where the breezeway is that everyone keeps referring
17 to?

18 A. It's right there in the middle.

19 Q. You can't do it, can you? You're handcuffed. Okay.
20 I'm going to point to it. You tell me if I'm right. Is
21 this the breezeway?

22 A. Yes, ma'am.

23 Q. So she met you there?

24 A. Yes, ma'am. She met me at the bottom of the steps.

25 Q. Were you mad when she told you to leave?

Direct Examination of Mr. Himes by Ms. Williams

1 A. No, ma'am.

2 Q. Were you angry?

3 A. No, ma'am.

4 Q. Did you have a gun on you?

5 A. Yes, ma'am.

6 Q. Why?

7 A. I had it for the past couple days since Heather was
8 raped.

9 Q. And so what did you do?

10 A. I left.

11 Q. Where did you go?

12 A. Ultimately, I ended up at the gas station.

13 Q. And how long do you think you were at that gas station?

14 A. A good 30, 45 minutes.

15 Q. And did you come back?

16 A. Yes, ma'am.

17 Q. Did you know that David Ham was there when you came
18 back?

19 A. No, ma'am.

20 Q. Did you think that he had left?

21 A. Yes, ma'am.

22 Q. Why would you think he had left?

23 A. Because from understanding from past events, he was
24 only there five, ten minutes at the most.

25 Q. Let's talk about this five-, ten-minute thing. Had you

1 been there before when David Ham had picked up or dropped
2 off the children?

3 A. I had been there a few times, but I was in the back
4 room.

5 Q. You were hidden in the back room?

6 A. Yes, ma'am.

7 Q. Before November 1st, had you ever seen David Ham?

8 A. Not physically.

9 Q. Had you seen a picture of him?

10 A. Yes, ma'am.

11 Q. Is that it?

12 A. Yes, ma'am.

13 Q. Had you ever spoken to him?

14 A. No, ma'am.

15 Q. Had you ever threatened him?

16 A. No, ma'am.

17 Q. Okay. So when you were in the back room when he
18 brought the children or dropped the children off, how long
19 did he typically stay?

20 A. It was just a, hey, how you doing. The kids was great.
21 I'll see you next weekend.

22 Q. And then he would leave?

23 A. Yes, ma'am.

24 Q. So five to ten minutes?

25 A. At most.

1 Q. So on this night you said -- let's go back. You said
2 you were at the gas station 30 to 45 minutes and then you
3 came back?

4 A. Yes, ma'am.

5 Q. When you came back, did you know David Ham was still in
6 that apartment?

7 A. No, ma'am, I didn't.

8 Q. What did you do when you parked the car?

9 A. I got out. I grabbed my stuff out of the cup holder,
10 put it in my pocket. I put my hoodie on. I went back in
11 the house.

12 Q. Okay. And where were you when you first laid eyes on
13 David Ham for the first time? Were you in the breezeway?

14 A. Yes, ma'am.

15 Q. This breezeway here?

16 A. Yes, ma'am.

17 Q. The apartment is over on this side; correct?

18 A. All the way in the back in the corner. Yes, ma'am.

19 Q. How close were you to the door when he came out of that
20 door?

21 A. I was about at that white pole right there.

22 Q. Right here where the stairway starts?

23 A. No. Over towards -- the one in between it.

24 Q. Right there?

25 A. Yes, ma'am.

1 Q. Okay. And what was the first thing that happened when
2 he came out of that door?

3 A. When he came out, he asked me if I was crazy. And I
4 told him, yeah. I told him that I didn't want to do this
5 here and now because his kids was in the house. And he was
6 upset. He was throwing his arms. And he told me that I
7 needed to leave. And he said he didn't want me to be a
8 father to his kids. He wasn't going to allow his children
9 to call me Daddy.

10 Q. Was he yelling?

11 A. Yes, ma'am.

12 Q. Were you yelling?

13 A. Yes, ma'am.

14 Q. And did you notice anything unusual about his behavior?

15 A. Just he seemed a little erratic.

16 Q. And what did you do? What did you notice about him
17 physically? Did you notice anything about him physically?

18 A. I noticed he was taller than me.

19 Q. Okay. So what did you do when you guys were having
20 this argument? What happened?

21 A. Initially, I told him I was going inside. And he
22 blocked me off. And he started walking towards me. And at
23 that time he was stating that he wasn't going to allow me to
24 be a father to his kids. And he kept coming towards me.

25 Q. So what did you do?

Direct Examination of Mr. Himes by Ms. Williams

1 A. I pulled out a gun.

2 Q. Where did you pull out a gun? Where were you when you
3 pulled out that gun?

4 A. A was over there in the grass area on the sidewalk.

5 Q. The side?

6 A. Yes, ma'am.

7 Q. Is that ultimately where the shooting happened?

8 A. Yes, ma'am. Not at that exact spot, but over there.

9 Yes, ma'am.

10 Q. But that's where you were when you first pulled the gun
11 out?

12 A. Yes, ma'am.

13 Q. How far do you think you had backed up from David Ham
14 when you pulled that gun out?

15 A. How far was he from in between me and him?

16 Q. No. How far had you backed from where you were
17 originally were near that white pole? How far do you think
18 you backed up to get all the way to that grassy area?

19 A. I would say that's about 50 feet.

20 Q. Okay. I'm going to show you a different picture right
21 now that's Defense Exhibit 2. Is that the front of building
22 number 12? It says it right there. See it?

23 A. Yes, ma'am.

24 Q. Is that the front of building number 12?

25 A. Yes, ma'am.

1 Q. And is this right here about where the shooting
2 happened in that grassy area right there?

3 A. It happened in that grassy area. Yes, ma'am.

4 Q. Is this where your car was parked?

5 A. Yes, ma'am.

6 Q. So were you backing towards your car?

7 A. Yes, ma'am.

8 Q. I'm going to go back to that other picture. What
9 happened after you pulled your gun out?

10 A. He said -- he told me he wasn't scared of my punk ass
11 gun. And he told me that -- he was yelling at me. He said
12 I'm not scared of your punk ass gun.

13 Q. Did you say anything in return?

14 A. I told him just to leave and that I needed to go
15 inside.

16 Q. Did he say you're not going in that apartment?

17 A. Yes, ma'am, he did.

18 Q. Did you say anything? Did you say backup or did you
19 say don't go?

20 A. When he told me that he wasn't going to let me in the
21 apartment, he started walking towards me aggressively. And
22 I told him to backup.

23 Q. And then what?

24 A. I told him to backup a few times and he charged at me.

25 Q. And what did you do then?

Direct Examination of Mr. Himes by Ms. Williams

1 A. He went to lung at me, and I stumbled back. And I shot
2 him.

3 Q. Do you remember speaking to Detective Weaver about this
4 case after you were arrested?

5 A. Yes, ma'am.

6 Q. And you told Detective Weaver that he had been reaching
7 around in his pockets. Do you remember that?

8 A. Yes, ma'am, I do.

9 Q. You also said to Detective Weaver during your
10 statement, "I don't think he had a gun. He would have --"
11 let me read it, actually. This is State's Exhibit 2. Does
12 this look like the statement that you made to Detective
13 Weaver that was provided to us in discovery?

14 A. Yes, ma'am.

15 Q. Okay. And you say here, "And then things escalated.
16 He was walking towards me. I was backing up. He was
17 reaching in his pocket. And I kept backing up. And I
18 reached in my pocket. I don't think he had a gun. He
19 would've pulled it if he had it. I told him to stop because
20 this was going to destroy the kids." When you say, "I don't
21 think he had a gun because he would've pulled it," did you
22 mean that at that moment when he was lunging towards you,
23 you knew he didn't have a gun?

24 A. No, ma'am.

25 Q. What did you mean in this statement when Detective

1 Weaver wrote this?

2 A. In this statement, I had time to reflect back on
3 everything that happened. And reflecting back, there was
4 more than enough opportunity to pull a gun before I pulled
5 mine out if he had one.

6 Q. How long did the whole thing take from the minute you
7 saw him at the door to the minute the gun went off? How
8 long do you think that was?

9 A. Maybe a minute, a minute and a half.

10 Q. Do you remember anything specifically that you were
11 thinking during that time?

12 A. I was thinking he was going to hurt me.

13 MS. WILLIAMS: Court's indulgence. I have no further
14 questions.

15 THE COURT: Cross-examination?

16 AST. SOL. SORENSON: May it please the Court?

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION

19 BY AST. SOL. SORENSON:

20 Q. Mr. Himes, you've had an opportunity to --

21 AST. SOL. SORENSON: May I approach the witness, Your
22 Honor?

23 THE COURT: You may.

24 Q. Showing you State's Exhibit Number 2. You've seen that
25 document; right?

1 A. Yes, I have.

2 Q. Okay. And that is a fair and accurate compilation of
3 what you told Detective Weaver on the evening of November 1,
4 2015, an hour, hour and a half, after this incident
5 occurred. Is that correct?

6 A. More or less, yes, sir.

7 Q. And, of course, you were given a copy of that when you
8 left the Summerville Police Station and taken to jail. Is
9 that correct?

10 A. Yes, sir, I was.

11 Q. Let me kind of back up. Mr. Himes, you testified that
12 it was you that initially reached back out to Ms. Ham
13 sometime in 2015. Is that correct?

14 A. Yes, sir, it was.

15 Q. When you had gotten out of jail?

16 A. Yes, sir.

17 Q. And was she aware of what you were in the Department of
18 Corrections for?

19 A. I believe so. Yes, sir.

20 Q. Okay. And what was that you were in the Department of
21 Corrections for?

22 A. A burglary.

23 Q. And at some point in time then towards the end of
24 September of 2015, it's your testimony that the two of y'all
25 became romantically involved. Is that correct?

1 A. Yes, sir.

2 Q. Okay. So through the month of October then of 2015,
3 you were -- you spent a fair amount of time at her
4 apartment. Is that correct?

5 A. Yes, sir, I did.

6 Q. Okay. And you were still going back and forth from
7 Columbia occasionally?

8 A. Occasionally, yes, sir.

9 Q. All right. So the conversations that you would've had
10 with Heather about her relationship with her husband, David,
11 would've occurred basically during that month of time that
12 the two of y'all were romantically involved?

13 A. Yes, sir.

14 Q. And it's your testimony that she told you about
15 basically two physical altercations. Is that correct? The
16 one where she got the scar on her lip?

17 A. Yes, sir.

18 Q. And then the incident that when her husband had drug
19 her out of their home. Is that correct?

20 A. Yes, sir.

21 Q. Okay. Did she say when the altercation that happened
22 when she got the scar on her lip had occurred?

23 A. She stated it was a while back. But she didn't state
24 exactly what date, time, year.

25 Q. Okay. And then it's your understanding, consistent

1 with what she testified, that the second of those two
2 incidences is what basically precipitated the two of them
3 separating. Is that correct?

4 A. That was the -- that was the straw that broke the
5 camel's back. Yes, sir.

6 Q. And it's your testimony that she told you that she had
7 seen him with a gun before. Is that correct?

8 A. Yes, sir.

9 Q. And when did she say that she had seen her husband with
10 a gun?

11 A. She stated that some people that came to her house
12 before and he had a gun.

13 Q. So this was, yet again, back when they were together?
14 Were living together?

15 A. Yes, sir.

16 Q. None of this that she told you about is stuff that had
17 occurred during the 18 months that they were separated;
18 correct?

19 A. Not to my knowledge. No, sir.

20 Q. And this text message, so you took this to mean when he
21 says, "Tell your boyfriend don't let me catch him slipping,"
22 that that said basically that he was going to attack you
23 when he saw you?

24 A. Yes, sir.

25 Q. Okay. Not that, you know, don't let me catch you

1 messing up around my kids. You didn't take it to mean that?

2 A. No, sir.

3 Q. Can you understand, I mean, a father's concern about
4 having a 23-year-old who just got out of prison suddenly
5 moving in and being in the apartment with his two young
6 children? Can you understand that concern?

7 A. I can understand the concern. I wasn't aware that he
8 knew about me until October 30th.

9 Q. Because you had hid from him any other time he'd come
10 around. Is that correct?

11 A. Yes, sir.

12 Q. All right. And let's talk a little bit about this gun.
13 So it's your testimony that the reason you got the gun was
14 because of the sexual assault that had occurred against
15 Heather the weekend before. Is that correct?

16 A. Yes, sir.

17 Q. Okay. And a person that allegedly sexually assaulted
18 her was an acquaintance of yours. Is that correct?

19 A. Yes, sir, it was.

20 Q. So it wasn't a total stranger. Is that correct? Is
21 this somebody that had been at the apartment with you and
22 then allegedly had sexually assaulted her when you had left
23 to go somewhere else. Is that correct? To go to the store.

24 A. Yes, sir.

25 Q. My general understanding of it?

1 A. Yes, sir.

2 Q. But it's your testimony so as a result of that, you
3 felt the need to go buy a firearm?

4 A. Yes, sir.

5 Q. And tell the Court, where did you buy that firearm?

6 A. I bought it off the street.

7 Q. Where?

8 A. In Hershey Park.

9 Q. Okay. So it's here in Summerville?

10 A. Yes, sir.

11 Q. And then was that somebody you knew that you bought it
12 from?

13 A. No, sir.

14 Q. And how much did you pay for it?

15 A. \$180.

16 Q. Where did you get \$180 from?

17 A. When I was back and forth in Columbia, I had jobs.

18 Q. So over that month period of time that you were going
19 back and forth, you were -- I mean, how much time -- I mean,
20 it made it sound like you basically spent that whole month
21 period of time here in Summerville. So how much time did
22 you have when you were in Columbia?

23 A. I had a part-time job at Shoney's. And then I quit in
24 about September and got another part-time job at this fast
25 food restaurant called Rush's in Columbia.

1 Q. Okay. And how many -- I mean, how often were you
2 working?

3 A. I was only working about 18 hours a week.

4 Q. Okay. Making minimum wage?

5 A. Yes, sir.

6 Q. Okay. Do you remember what that was two years ago?

7 A. What? Minimum-wage?

8 Q. How much you were making? Eight bucks an hour
9 probably?

10 A. Somewhere around there. Yes, sir.

11 Q. Okay. So before taxes, you were making less than a
12 hundred bucks a week. Is that fair to say?

13 A. On a two-week time frame; two-week pay period.

14 Q. So you were going back to Columbia just to go to work
15 and then were coming back here?

16 A. I was going back to Columbia for work and to see my
17 probation officer.

18 Q. And you somehow had \$180 saved up to buy -- to purchase
19 a handgun. Is that correct?

20 A. Yes, sir.

21 Q. And you never told Heather about that, did you? That
22 you had purchased a handgun.

23 A. No, sir.

24 Q. Do you think she would've allowed you to have that gun
25 in her home with her two small children?

1 A. No, sir.

2 Q. But according to your testimony, if you bought it a
3 couple of days after that sexual assault, I guess you had it
4 in her home for several days prior to that. Is that
5 correct?

6 A. A couple of days prior to that. Yes, sir.

7 Q. And now on -- let me ask you this: On that -- so that
8 Friday when David -- David came and picked the children up
9 that Friday. Is that correct?

10 A. Yes, sir.

11 Q. Okay. And you went and hid yet again when he came by
12 to pick up the kids?

13 A. No, sir. She had just picked me up from getting my
14 hair cut. And she said that she had to drop the kids off
15 and she dropped me off at the bank behind [REDACTED] [REDACTED] And
16 I went to the Hardee's and got something to eat and came
17 back.

18 Q. Okay. Did you see David at that point in time?

19 A. No. I didn't see him.

20 Q. Where did she meet with him? Do you know?

21 A. I assumed it was at the apartment.

22 Q. And then that following day then would've been
23 Saturday, October 31st. Heather left you alone that evening
24 to go trick-or-treating with her kids and her husband. Is
25 that correct?

1 A. Yes, sir.

2 Q. And that bothered you, didn't it?

3 A. I wouldn't say it bothered me, but we had an argument
4 about it. Yes, sir.

5 Q. Because you thought you should be the one to take the
6 kids trick-or-treating. Is that correct?

7 A. No. I mentioned it and she said the same thing that he
8 said that basically I don't want the kids to call you Daddy.
9 And I told her that that wasn't my intention.

10 Q. So you being a 23-year-old who has now been in this
11 home for basically a month, basically wanted to take the
12 place of their father. Is that correct? Or upset with the
13 fact that she would have the nerve to take her kids
14 trick-or-treating with their father. Is that accurate?

15 A. No, sir.

16 Q. Then that Sunday -- all right. You asked to borrow the
17 car, and she let's you borrow the car about 3:30. Is that
18 right? That Sunday afternoon.

19 A. It was Sunday evening; later on in the evening.

20 Q. Okay. Well, tell the Court, what time did she let you
21 borrow the car?

22 A. It was about five or six o'clock because she had
23 already started dinner. I remember we was supposed to have
24 spaghetti that night.

25 Q. All right. So wasn't 3:30. It was closer to 5:30, six

1 o'clock?

2 A. Yes, sir.

3 Q. Okay. What was the reason you asked to borrow her car?

4 A. A friend of mine that I met down here needed a ride
5 from point A to point B.

6 Q. Who was that friend?

7 A. A friend of mine I met around here. Do you need his
8 name?

9 Q. That would -- who was that friend that would be what
10 that question would be asking. Yes, sir.

11 A. My friend Akmir (ph) Brown.

12 Q. Okay. And he needed a ride. And when did y'all talk
13 about that?

14 A. He called me -- well, he didn't call me. He hit me up
15 on Heather's phone.

16 Q. Gotcha. Because you don't have a phone so he couldn't
17 have called you; right?

18 A. Right..

19 Q. Okay. So did Heather know where you had to go?

20 A. She didn't know where I had to go. No, sir.

21 Q. Okay. So you gave her phone number to some guy that
22 you had just met down here?

23 A. I had known AK ever since we were down here back in
24 2008.

25 Q. Okay. All right. And so he calls you on Heather's

1 phone that Sunday afternoon because he needed a ride
2 somewhere?

3 A. Yes, sir. And Heather was familiar with Akmir.

4 Q. Okay. And where did Akmir need a ride to?

5 A. From Cane Bay all the way to West Ashley.

6 Q. Okay. And what was the purpose of him needing a ride?

7 A. Because he needed somewhere to stay. He couldn't stay
8 where he was at that night and needed to get back to where
9 he came from.

10 Q. Okay. So he calls the friend of his that doesn't have
11 a car or a phone to come give him a ride all the way to West
12 Ashley?

13 A. Yes, sir.

14 Q. Okay. And let me ask you when you left -- so you ask
15 her to borrow the car between 5:30 and six o'clock. Is that
16 when he called you? Between 5:30 and six o'clock.

17 A. Maybe earlier than that.

18 Q. Okay. And did she answer the phone when he called?

19 A. No, sir.

20 Q. Okay. So you answered her phone?

21 A. He sent a text message.

22 Q. Okay. I mean, was she the one that saw the text
23 message?

24 A. No, sir.

25 Q. Okay. So you had her phone?

- 1 A. Yes, sir.
- 2 Q. Okay. And what did the text message say?
- 3 A. He hit me up and said he that he needed a ride and
- 4 asked me if I could take him to West Ashley.
- 5 Q. Okay. All right. So did Heather know why you were
- 6 borrowing her car?
- 7 A. She didn't. No, sir.
- 8 Q. Okay. So I assume that meant you deleted that text out
- 9 of her phone?
- 10 A. I don't think I deleted. No, sir.
- 11 Q. So she would've been, obviously, been able to see that
- 12 the text message then. Is that correct?
- 13 A. Certain.
- 14 Q. Okay. Let me ask you: Did she tell you that she
- 15 needed her car back by a certain period of time?
- 16 A. Yes, sir. She did.
- 17 Q. Okay. And when did she tell you she needed her car
- 18 back by?
- 19 A. She said she had to pick the kids up around I think
- 20 eight o'clock; maybe it was seven.
- 21 Q. So she told you she needed it back by about 6:30 so
- 22 she'd be able to go pick the kids up. Is that correct?
- 23 A. About 7, 7:30.
- 24 Q. Okay. So now it's 7 or 7:30. So it's not 6:30 that
- 25 she told you that she needed the car back by?

1 A. I don't believe so. No, sir.

2 Q. Okay. And, of course, the fact of the matter is no
3 matter what one of those times it is, you weren't back
4 anywhere near any of those times. Is that correct?

5 A. That's correct.

6 Q. All right. What did you do? I mean, you're gone --
7 even given your time frame, you're gone for well over three
8 hours. Just given your time frame. Not to mention if we
9 take her time frame where it's closer to six hours.

10 A. Right.

11 Q. What did you do besides giving him a ride to West
12 Ashley?

13 A. I tailed over there at his side of West Ashley.

14 Q. But I thought she said that you were supposed to be
15 having spaghetti for dinner?

16 A. She did.

17 Q. So you basically dissed her. I mean, you borrow her
18 car knowing that she needs it to go pick her children up,
19 say that she's preparing dinner and you don't bother to --
20 why didn't you let her know that you running late?

21 A. I have no answer; no clear answer for that. I just
22 didn't.

23 Q. Okay. So, obviously, you had the means to contact her;
24 right?

25 A. When I got to West Ashley, yes, sir.

1 Q. When you got to the car, I mean, when you went to pick
2 your friend up. I mean, because it's your testimony that he
3 texted Heather's phone. Is that correct?

4 A. Yes, sir.

5 Q. And you, the fact of the matter is, never at any point
6 in time call her, text her, from anybody's phone to let her
7 know where you are or when you're coming home. Is that
8 correct?

9 A. That's correct.

10 Q. Okay. And it's well after 9:30 when you get back to
11 [REDACTED]. Is that correct?

12 A. Around nine, nine o'clock, 8:45. Somewhere around in
13 there. I'm not sure of the exact time frames.

14 Q. Okay. You sure it's not after 9:30?

15 A. I'm pretty sure it wasn't after 9:30.

16 Q. Okay. It's your testimony that you went over to the
17 Oakbrook Express station. And I think you said this even on
18 -- I'm not sure if you got a time or not, but in your
19 statement, you remember -- and, obviously, this would've
20 been fresh in your mind -- that you went to the gas station
21 between 9:30 and 10:15. Is that correct?

22 A. Around that time. Yes, sir.

23 Q. Okay. So if that's accurate, that means that you
24 didn't get back to the apartment complex until, at the very
25 least, right before 9:30. Is that correct?

1 A. Somewhere in between there. Yes, sir.

2 Q. So that's a little bit later than eight or 8:45. Is
3 that correct?

4 A. Yes, sir.

5 Q. Is your testimony that you weren't upset with the fact
6 that as you're walking up to go into this apartment that
7 Heather sticks her head out and tells you that you need to
8 go away, you need to leave? That didn't bother you? That
9 didn't upset you?

10 A. She didn't stick her head out. She came all the way
11 out.

12 Q. Okay. All right.

13 A. No, sir. To answer your question, it didn't bother me.

14 Q. And you go over to the gas station, spend 30 to 45
15 minutes just sitting at the gas station?

16 A. I went and bought a pack of cigars.

17 Q. And then you come back over -- and it's your testimony
18 that you're walking so you park -- you park her car, get
19 yourself all situated, take your gun. Where do you put your
20 gun?

21 A. The gun was still in my pocket.

22 Q. All right. So as you're driving around Summerville,
23 West Ashley, you've got a loaded 3 -- 38 revolver in your
24 pocket the whole time. Is that correct?

25 A. That's correct.

1 Q. And, of course, you realize the fact that you're not
2 allowed to possess a gun. Is that correct? Based on your
3 prior record.

4 A. Yes. I realize that.

5 Q. So you get out of the vehicle. And it's your testimony
6 you don't have that gun with you because of David Ham. Is
7 that correct? That's your testimony.

8 A. I didn't have it for purpose of David Ham?

9 Q. Is that correct?

10 A. Yeah, that's correct. Yes, sir.

11 Q. So you weren't armed because you were afraid of David
12 Ham. You were armed because of what had happened to Heather
13 the week before?

14 A. With the sexual assault situation, yes, sir.

15 Q. All right. And it's your testimony that you're walking
16 up to the apartment. You get up into the breezeway. So you
17 go up the steps, into the breezeway, and her door opens. Is
18 that correct?

19 A. When I come back from the store?

20 Q. Yes.

21 A. Yes, sir.

22 Q. Yeah. When you come back from the store.

23 A. Right.

24 Q. And at that point in time, an individual that you
25 recognized from seeing photographs -- and you knew who that

1 was when he came out; right?

2 A. Yes, sir.

3 Q. So David Ham comes out and the first thing out of his
4 mouth is him asking you if you're Chris. Is that correct?

5 A. Yes, sir, it is.

6 Q. Okay. And you said -- you said, yes, but you don't
7 want to -- don't want to do this now. Thinking about your
8 kids or something; right? Tell me what exactly did you say.
9 He comes out says, you're Chris; right?

10 A. Yes, sir.

11 Q. What do you say in response to that?

12 A. He asked me if I was Chris, and I was like, yes, I'm
13 Chris. But I don't want to do this right here and right now
14 because your kids is in the house.

15 Q. He hadn't threatened you at that point in time, had he?

16 A. Yeah, he had.

17 Q. What did he say besides asking if you were Chris?

18 A. He said in text messages told me not to -- let you
19 boyfriend catch me slipping.

20 Q. Okay. So based on that, that is the whole reason that
21 you now thought that he was going to attack you. Is that
22 correct?

23 A. Right.

24 Q. Okay. And so your response to him asking if you're
25 Chris is basically don't want to do this now because your

1 kids are inside. Is that correct?

2 A. That's correct.)

3 Q. Okay. And the two of y'all started at that point in
4 time arguing and yelling back and forth with each other. Is
5 that correct?

6 A. That's correct.

7 Q. All right. And he was saying something about you're
8 not going to be the person to raise my kids. Is that
9 correct?

10 A. Yes, sir.

11 Q. What else was he saying?

12 A. He was waiving his arms, pointing at me. He told me I
13 needed to leave. He told me that he wasn't going to allow
14 me to be the father to his kids.

15 Q. You had testified on direct examination that you were
16 yelling back.

17 A. Yes, I did.

18 Q. What were you yelling back?

19 A. I told that -- he was walking towards me. And he kept
20 reaching in his pocket and I pulled out my gun. And I told
21 him that this was going to destroy his kids life and I asked
22 him to leave. And then I told him I was going inside. And
23 he blocked me off and he told me I wasn't going in the
24 apartment.

25 Q. Okay. And at that point in time -- so he comes of the

1 apartment and starts walking towards the parking lot; right?.

2 Basically?

3 A. We met like right -- as he was coming out, I was trying
4 to go in.

5 Q. Okay. Did he ever put his hands on you?

6 A. Not physically, no, sir.

7 Q. Okay. The fact of the matter is he never touched you
8 period. Is that correct?

9 A. Not physically, no, sir.

10 Q. -How else -- I mean, how did he touch then if not
11 physically?

12 A. I mean, he ain't touched me.

13 Q. Okay. And, ultimately, then the two of y'all both
14 start going towards the parking lot or towards the grassy
15 area off to the side of the sidewalk. Is that correct?

16 A. Yes, sir.

17 Q. Okay. And, of course, you're aware from looking
18 through, going through the photos and all with your
19 attorney, that that's where he was parked?

20 A. I wasn't aware of that at the time.

21 Q. You're aware of that now though from going through the
22 photographs with your lawyer. Is that correct?

23 A. Certain.

24 Q. All right. And it's your testimony that he is
25 basically telling you that you're not going to go in that

1 apartment; you're not going to be the person that's going to
2 raise his kids, be the father to his kids. Is that correct?

3 A. That's correct.

4 Q. All right. And the fact of the matter is you never saw
5 him with a weapon. Is that correct?

6 A. That's correct.

7 Q. Okay. You told law enforcement that you knew he wasn't
8 armed because he would've pulled the gun out if he was. Is
9 that correct?

10 A. I didn't say I knew for a fact that he wasn't. I said
11 that I don't think he was after the fact when I was
12 reflecting back on what actually happened.

13 Q. And not only after the fact, but during the fact. I
14 mean, there is nothing that he did that ever -- I mean, he
15 never showed you a weapon; correct?

16 A. Correct.

17 Q. He never threatened you out there that he going to use
18 a weapon to do anything with you. I'm going to kill you.
19 I'm going to shoot you. I'm going to stab you. He never
20 said anything like that. Is that correct?

21 A. He never stated nothing. No, sir.

22 Q. The fact of the matter is out there he made no threats
23 whatsoever to you other than telling you you're not going
24 into that apartment where my two kids are. Is that correct?

25 A. Yes, sir.

1 Q. And it's your testimony that your response to that is
2 to pull out a 38 caliber revolver and point it at him. Is
3 that correct?

4 A. Well, he starting reaching around in his pockets. Yes,
5 sir.

6 Q. All right. And it's your -- and at that point in time,
7 it's his response to you that was basically to say that he's
8 not scared of your punk ass gun; right? That's what you
9 said he said.

10 A. After I pulled my gun?

11 Q. Yes, sir.

12 A. Yes, sir.

13 Q. Okay. And what were you doing with the gun? Pointing
14 it at him?

15 A. Yes, sir.

16 Q. You realize that's -- not only the fact that you're not
17 allowed to possess a gun, but that's a crime to point a
18 fireman at somebody?

19 MS. WILLIAMS: Objection, Your Honor. Relevance and
20 speculation.

21 THE COURT: I think it's certainly relevant. You may
22 proceed.

23 AST. SOL. SORENSON: Thank you.

24 Q. I mean, you're aware that it is against the law to
25 point a gun, whether it's loaded or not, to point a gun at

1 somebody. Is that correct? Are you aware of that?

2 A. I'm aware of that. Yes, sir.

3 Q. And where -- let me ask you this: Where, Mr. Himes,
4 where were you when you pulled the gun out?

5 A. I was off the steps of the breezeway over towards the
6 side of the grass.

7 Q. I'm showing you State's Exhibit Number 8 where all the
8 evidence markers are. I mean, were you in that area? Or
9 closer to the building? Or closer to the parking lot?

10 A. When I pulled the gun?

11 Q. Yes, sir. When you pulled the gun out.

12 A. I was more closer to the building.

13 Q. Okay. So you were more up in this area kind of where
14 my finger is? Maybe not exact, but in that direction at
15 least?

16 A. Yes, sir.

17 Q. Okay. And at that point in time, Mr. Ham is still
18 coming in your direction?

19 A. Yes, sir.

20 Q. Okay. And do you continue to back up at that point in
21 time?

22 A. Yes, sir, I do.

23 Q. Okay. And let me ask you: Is there anything at that
24 point in time to stop you from just walking away, running
25 away, or continuing just to back all the way up to your car?

1 A. I was trying to back up to my car and he started
2 charging at me.

3 Q. Okay. And when he started charging at you -- so you
4 got the gun out. You're pointing it at him the whole time?

5 A. Yes, sir.

6 Q. Okay. And how far away is he at that point in time?
7 When you're pointing at him and he's telling you I'm not
8 scared of your punk ass gun, how far away is he from you?

9 A. About from . . .

10 Q. Tell me when to stop. I'll go forward, back. You tell
11 me which way ---

12 A. Okay. Come forward. By the way he was, about right
13 there.

14 Q. Okay. So he's -- let the record reflect maybe eight
15 feet away or so. Is that about accurate?

16 A. More or less, yes, sir.

17 Q. Okay. All right. And it's your testimony at that
18 point in time, he lunged at you?

19 A. He went to charge and lunge. Yes, sir.

20 Q. Okay. Nothing in his hands. Is that correct? I mean,
21 you didn't seem him with a weapon. Is that correct?

22 A. No, sir.

23 Q. And you end up pulling the trigger, shooting one time.
24 Is that correct?

25, A. That's correct.

1 Q. And you told Sergeant Weaver that you were -- he was
2 maybe two or three feet away from you when you shot him. Is
3 that correct?

4 A. More or less, yes, sir.

5 Q. Okay. And the reason he was lunging at you and coming
6 at you is the fact that you're pointing a gun at him. Is
7 that correct?

8 A. I don't know what his reason was.

9 Q. Well, he didn't lunge at you prior to you pulling the
10 gun out, did he? He never attacked you and lunged at you
11 prior to that, did he?

12 A. Not physically, no, sir.

13 Q. You remember Detective Weaver asking you the question
14 why did you shoot David? Do you remember him asking you
15 that?

16 A. Yes, sir.

17 Q. Your answer was I was scared. My father hurt me so
18 much in the past mentally, physically, and emotionally, and
19 I was going through it all over again. Do you remember him
20 -- that was your answer to that. Is that correct?

21 A. I said that right here. Yes, sir.

22 Q. Okay. And that's what you told him that night. Is
23 that right?

24 A. Yes, sir.

25 Q. And right before that question, he had asked you

1 whether David was abusing Heather and their children. Do
2 you remember that question? Your answer to that is not
3 recently, but in the past. He was never there for the kids.
4 He is there torturing her mentally. He neglects their kids.
5 That's what she told you about what led to them separating
6 18 months ago. Is that correct?

7 A. I guess you can say that.

8 Q. She never told you about him abusing her or her kids
9 during the time they were separate for 18 months, did she?

10 A. Not physically, no, sir.

11 Q. Of course, at that point in time, after you shoot him,
12 you take off; right?

13 A. Yes, sir.

14 Q. Okay. You saw Heather come out; right?

15 A. I didn't see her.

16 Q. You didn't see her? You didn't see her come out?

17 A. I was pulling off and I seen her in my rearview mirror.

18 Q. Okay. Well, so that's a little different. You did see
19 her come out. Is that correct?

20 A. Yes, sir.

21 Q. You didn't stop. Is that correct?

22 A. No, I didn't stop.

23 Q. This woman that y'all are so -- supposedly so in love,
24 I mean, you basically left her to deal with this situation;
25 right? As you took off in her vehicle; right?

1 A. Yes, sir.

2 Q. The cops end up pulling you over kind of down Trolley
3 Road. Is that right?

4 A. Yes, sir.

5 Q. You kind of ended up almost more in a neighborhood. Is
6 that correct? You continued kind of down off of Trolley
7 Road where it turns into Carolina Avenue.

8 A. Yes, sir.

9 Q. Okay. Let me just ask you: That was an area that back
10 in November at that point in time, on November 1, 2015, you
11 didn't know where you were, did you?

12 A. I didn't know exactly Trolley Road, point, point,
13 point, from block to block. No, sir.

14 Q. And the fact of the matter is, that is why you
15 ultimately ended up pulling over is because you didn't know
16 where you were; right? You have a thought in your mind to
17 take off from the cops when he got behind you with the blue
18 lights on?

19 A. Yeah. I thought about it.

20 Q. Even though, according to your testimony, you did
21 nothing wrong?

22 A. Correct.

23 Q. After this happened, I mean, you spend -- you and
24 Heather talked a whole lot right after this; right?

25 A. Yes, sir.

1 Q. Talked to her about -- so if there were other
2 threatening text messages, I mean, she would've provided
3 them to Summerville Police Department; right?

4 A. I don't know.

5 Q. I mean, looking at her letters and just this one letter
6 to you, I mean, you wrote her dozens of letters. Is that
7 correct?

8 A. Yeah, that's correct.

9 Q. Called her on the phone every day from the jail those
10 first several months you were locked up; right?

11 A. That's correct.

12 Q. So if there was some other threatening text message out
13 there, I mean, she would've provided them to Detective
14 Weaver on your behalf. Is that correct?

15 A. I would hope so. Yes, sir.

16 AST. SOL. SORENSON: That's all I have, Your Honor.

17 THE COURT: Anything further?

18 MS. WILLIAMS: I have nothing further, Judge.

19 THE COURT: You may step down, sir. Thank you. Any
20 other witnesses?

21 MS. WILLIAMS: No further witnesses, Judge.

22 THE COURT: Anything from the State?

23 AST. SOL. SORENSON: We don't have any witnesses, Your
24 Honor, on this matter.

25 THE COURT: Y'all want to go ahead and put your

1 positions on the record then . . .

2 MR. WEHMAN: Certainly, Your Honor.

3 THE COURT: Okay. You may proceed.

4 MR. WEHMAN: May I approach, Your Honor. (Brief
5 pause.) May it please the Court?

6 THE COURT: Yes, sir.

7 MR. WEHMAN: As the Court's well aware, in order to
8 qualify for immunity under the Stand Your Ground provision
9 of the Protection of Persons and Property Act, the defense
10 bears the burden to show three things; three elements. The
11 first element would be that a person is in a place where he
12 has the right to be. I don't think that it was questioned
13 during any of the testimony that Christian Himes was in a
14 place he had the lawful right to be. There was testimony
15 from both Heather and himself that he stayed there. He had
16 stayed there Friday, Saturday. And Mr. Himes even testified
17 that he supposed to come back and eat dinner there. He was
18 bringing her vehicle back. And when he made contact with
19 Heather initially, she says to come back; basically leave
20 and come back. So and I don't think it's a question that he
21 had the right to be there.

22 The second element under the Stand Your Ground Act
23 would be that the person is not engaged in an unlawful
24 activity. While we understand that Mr. Himes ordinarily
25 wouldn't be allowed to possess a firearm, it is case law in

1 South Carolina that someone armed in self-defense is in
2 lawful possession of a weapon. So due to that, we would
3 also have to meet elements of self-defense absent the duty
4 to retreat in order for him to be lawfully possessing that
5 weapon. So the first element of the self-defense, to get to
6 that, would be that the defendant must be without fault in
7 bringing about the difficulty of the situation. I believe
8 that the testimony of multiple witnesses would be that
9 Christian Himes arrived at this apartment, was met, told to
10 leave, leaves for a period of time and returns. He had no
11 cell phone to know whether David Ham was still at that
12 apartment. He had no knowledge of what David Ham drove.
13 Heather Ham testified she didn't even know what he drove.
14 He had no way to know whether he was still there or not. He
15 approached the apartment and a confrontation ensued. He was
16 denied access to an apartment where he was -- had the right
17 to be. He stayed there the night before. He was going to
18 stay there that night. Heather Ham, it was Heather Ham's
19 apartment. It was not David Ham's apartment. He was denied
20 access to that. Continues to back up and ends up in the
21 grass. Pulls a weapon due to aggressive words from David
22 Ham. And David Ham responds to that weapon by saying he's
23 not afraid -- some phrasing of he's not afraid of the
24 weapon. He's warned three times to back up -- and that's
25 from Heather Ham hearing at the door -- and still continues

1 to pursue and, eventually, a shot is fired.

2 I believe that -- first of all, before an act can cause
3 you to lose the right to self-defense and that you're
4 bringing on the difficulty, it must be willfully and
5 knowingly calculated to lead to the conflict. That's State
6 v. Douglas. I believe that all of the actions of Mr. Himes
7 that were testified to, and I don't think that they were --
8 there was no evidence that was presented contrary to that.
9 That what he was doing at that point was trying to avoid a
10 confrontation. He was arguing and he backs up. I know that
11 Officer Rollings measured from, I believe it was, 33 to 37
12 maybe where the two from the foot of the breezeway. The
13 steps I think he said, 33 feet to the right, 37 to the left.
14 And that's at the bottom of the breezeway. He backed up
15 from up those steps and in towards the apartment. And I
16 know you've seen the diagram. So he backed up further than
17 those 33, 37 feet into the grass. Presents the weapon. He
18 does not fire. He warns David Ham to backup in effort to
19 avoid the confrontation. And his weapon is dismissed. I
20 believe he did everything -- all of his actions were
21 knowingly and calculated to prevent the conflict rather than
22 lead to it.

23 The other two elements of self-defense are that the
24 defendant must have reasonably believed he was in imminent
25 danger of death or serious bodily injury. And that's what

1 he believed. He testified today that he was. He testified
2 that he had been threatened earlier. He took that text
3 message to be a threat. Based on what he experienced on
4 that night, he believed that he was in imminent danger of
5 being attacked. That he had heard from Heather about
6 David's past with her. At the very least that she had seen
7 him with a gun, some sort of gun. He was reaching around
8 his waist band. It was dark. The lighting was poor. And
9 so I believe he adequately met the element of him believing
10 that he was in imminent danger of being attacked. In fact,
11 the manner of the attack that Heather Ham underwent, that
12 she described in court, was being attacked and drug -- I
13 think drug into the street. So not just simply a punch that
14 led to a scar. This was more of a violent attack. And,
15 certainly, he was aware of that at that time.

16 The other element that he must meet is that a
17 reasonably prudent man of ordinary firmness and courage
18 would have entertained the same belief. Now, once the right
19 to fire in self-defense comes about, someone is not required
20 to wait until his adversaries are on equal footing.
21 Meaning, he doesn't have to wait for a weapon to be
22 presented. That fact that -- and he's also entitled to act
23 upon appearances. So if it appears that he is going to be
24 attacked, if it appears that in his mind that David Ham had
25 a weapon -- the fact that he didn't end up having a weapon

1 is of no matter. It's about that moment, what a reasonable
2 person would believe. And it's our position, Your Honor,
3 that a reasonable person who had been -- who had received a
4 message that they deemed threatening a couple of days prior;
5 meeting an individual who he reasons was larger than him by
6 a good bit, six-foot to five-seven; trying to get past not
7 being allowed to, backed up 35 plus the distance between the
8 steps all the way up into that breezeway; -- I don't have
9 that exact measurement. I don't think it was testified to.
10 Over 35 feet -- presented a weapon in an effort to stem this
11 confrontation and was told, I'm not afraid of that, and
12 still pursued; told to back up three times; that a
13 reasonably prudent man would believe that he was about to
14 face an attack that could lead to death or serious bodily
15 injury. The defendant doesn't have the duty to wait for an
16 attack to commence. He is allowed to prevent the attack
17 from happening.

18 So under those elements of self-defense -- and the
19 defense has the burden so show there's a valid case of
20 self-defense. And I believe based on the testimony, there's
21 nothing to rebut the fact that there's at least a valid
22 claim for self-defense. And, therefore, the carrying of a
23 weapon in and of itself, or the pointing of a weapon, that
24 somebody has the right to arm themselves if acting in
25 self-defense, would constitute an unlawful activity for the

1 purposes of Stand Your Ground.

2 The final element of Stand Your Ground is Christian
3 Himes has to reasonably believe that the use of deadly force
4 was necessary to prevent death, great bodily injury, or the
5 commission of a violent crime. I've addressed many of these
6 in the self-defense portion of the argument. It, again,
7 goes to the reasonable person standard and that a person in
8 South Carolina has the right to act on appearances even if
9 that person's belief is ultimately mistaken. The fact that
10 David Ham wasn't armed is of no matter for your
11 determination. And, if I can, the case law in South
12 Carolina that talks about whether the defendant was engaged
13 in unlawful activity, the cases that deal with that are
14 cases that I've read more of people showing up to drug deals
15 and things of that nature that are engaging actively in
16 unlawful activity. Not cases where, as I've said, someone
17 is arming themselves in self-defense.

18 Throughout the testimony, there is no disproof of when
19 Christian Himes got the weapon. There's no testimony from
20 Heather Ham that she saw him buy it. There's no disproof of
21 the fact that he went to the gas station, of how long he was
22 there. I know there's some conflicting timetables of when
23 he might've gotten there. But no one was able to say
24 definitively how long he was there. He tried to get the
25 footage to show how long he was there, and law enforcement

1 was unable in acquire that. And there really is no
2 testimony that we have heard about the ex that led up to
3 this incident. And what happened from when he gets to the
4 door to when the shot is fired, there's no witnesses that
5 can rebut or show that something different happened. All
6 the witnesses we've heard from add bits and pieces to it,
7 corroborate some things that Christian says, but they are
8 not able to dispute his version of events. And based on his
9 version of events and the testimony we've heard, I would
10 assert that he has met the elements of the Act as well as he
11 was acting lawfully as he has a valid claim of self-defense.

12 THE COURT: Thank you, Mr. Wehman. Solicitor?

13 AST. SOL. SORENSON: May it please the Court, Your
14 Honor? I mean, it's our position, I guess, if I kind of
15 start with jus the Castle Doctrine. I mean, it's my
16 position that it doesn't apply in this case to start with.
17 I mean, they are out in, I mean, the common areas of an
18 apartment that neither one of them are residing in. This
19 isn't something that occurred were he's a visitor actually
20 in the apartment and an intruder comes in. So I start with
21 that. But I don't think that -- I mean, otherwise, I mean,
22 if you take it to their stretch, I mean, you can assert the
23 Castle Doctrine basically anywhere you are that you just
24 have a right to be. I mean, if you're walking down the
25 street, you can assert the Castle Doctrine. I just can't

1 imagine that is what is contemplated by this statute, that
2 it would apply to somebody who is basically out -- outside
3 of an apartment where he's basically a visitor. And as Your
4 Honor knows, you know, the significance of that is if
5 determined whether there is a duty to retreat. And I would
6 start with that element of self-defense is that I think in
7 this case that he did have the duty to retreat and
8 ultimately fails miserably on that ground. I mean, there
9 was absolutely nothing stopping him literally from just
10 walking away. I mean, he's the one with the firearm in this
11 case not the victim.

12 But even -- we get past that and Your Honor finds that
13 the Castle doctrine does apply, I think ultimately when you
14 look at the elements of self-defense, I submit that Mr.
15 Himes has an issue. And ultimately that we will prove
16 beyond a reasonable doubt in front of the jury, but even for
17 Your Honor at this point in time, I mean, that he basically
18 fails on about every element of that. If you look at the
19 first element being the defendant was without fault in
20 bringing on the difficulty. I mean, he's the one that
21 ultimately -- it's his actions that precipitate everything
22 that happened that night. The fact that he doesn't --
23 knowing that Heather has to go get her children and he
24 chooses to not bring her car back, to basically put
25 everybody in a situation where David has got to come over

1 there that night. But he shows up then and ultimately he's
2 the one with the weapon. He's the one that I submit brings
3 on the ultimate difficulty that leads to David Ham's death.

4 If Your Honor -- and it kind of goes into some of the
5 other elements of self-defense. But there are no threats
6 that are made that night by the victim. And the victim
7 doesn't make any overt threatening action until well after
8 the defendant has produced a handgun and pointed it at him.
9 So I submit that he fails on that element as far as being
10 without fault in bringing on the difficulties.

11 Then you go on to the next element, must have been in
12 actual imminent danger. And I submit to you, that doesn't
13 even apply. And I don't think Mr. Wehman argued that. But
14 more that we're looking at whether he believed he was in
15 imminent danger of sustaining serious bodily injury or
16 losing his life. And when you look at that belief then as
17 Mr. Wehman said, you're looking at a reasonably prudent
18 standard of an ordinary person of ordinary firmness and
19 courage, would they entertain that same belief. When you
20 look at the totality of this situation, you have Mr. Himes
21 testifying that basically what Ms. Ham told him about David
22 were all things that happened over 18 months prior. Okay.
23 One of them we heard from her happened like eight years
24 prior. He said he wasn't sure when that happened but just
25 that it was a while back. The most recent happened at least

1 18 months later. He talks to law enforcement that night in
2 his written statement that he signed. He doesn't say
3 anything about any kind of physical abuse at the hands of
4 David Ham, committing any physical abuse against Heather.
5 He talks about was Heather -- was David abusing Heather and
6 their children? Not recently, but in the past. Wasn't
7 there for the kids. Torturing her mentally. Neglecting
8 their kids. Yet, again, I submit to you, none of that rises
9 to the level where a reasonably -- where a person of
10 ordinary firmness and courage would've entertained the
11 belief that they were going to sustain serious bodily injury
12 or lose their life the first time that they came into
13 contact with each other. These are two individuals that --
14 while they make it sound -- I mean, the victim was 5 inches
15 taller than him. But they're basically the same weight. I
16 mean, neither one of these are giants. I mean, it's not
17 like we're talking with a six-foot-six, 250-pound, you know,
18 football player and Mr. Himes.

19 You know, and then you look at -- and then the text
20 message. All right. So we're looking at what is in his
21 mind. And I submit to you -- and we can, you know -- I
22 submit to you, it's ultimately going to be -- should be an
23 issue for the jury. But that text message, "Tell your
24 boyfriend don't let me catch him slipping," I don't know how
25 that suddenly becomes -- I mean, he's going to kill me or

1 cause serious bodily injury to me upon the first time I see
2 him. I mean, maybe I'm not up on the lingo, but that seems
3 to be -- I mean, yet again, this is now the victim finding
4 out that some guy that he doesn't know is basically shacking
5 up with his wife around his two small children. And him
6 responding to her, "Don't let me catch him messing up." I
7 mean that, I think, is the reasonable -- and she testified
8 that she did not take that as a threat. So I don't think a
9 reasonably prudent person of ordinary firmness and courage
10 would take that to be the threat to where suddenly I need to
11 worry about this individual killing me or causing great
12 bodily, serious bodily, injury to me upon the first time
13 that I run into them.

14 But then let's look at what happens that night. I
15 mean, yet again, I mean, this is all caused by the fact that
16 he has taken off with her car doing something -- I submit to
17 you, that we haven't heard what he was up to -- and showing
18 back up hours later. Yet again, causing David,
19 unfortunately, in an intoxicated state to have to bring his
20 children home. If you take -- and there are no other
21 witnesses to what happened because he killed the other
22 witness. But you take even what he says, I submit to you,
23 doesn't -- I mean, causes his self-defense argument to fail.
24 I mean, what does he say happens? You know, as he's
25 approaching, coming up to the door, the victim comes out.

1 And at that point in time, the victim asks him who he was.
2 Are you Chris? Yes. And he's the one that immediately
3 turns it into an altercation. You now, you don't want this
4 to go down like this because your kids are inside. I mean,
5 the victim hadn't said a word to him about, hasn't made any
6 threatening motions towards him, or anything. And at that
7 point in time, the two of them become yelling at each other
8 about I don't want you -- I mean, I submit to you, that is
9 the most reasonable, as a father, the most reasonable
10 reaction that the victim could have. I mean, it's now 9:30
11 at night. He has just tucked his two kids into bed. This
12 person he doesn't know is coming to go into that apartment
13 that he's -- to say you're not going in there. I mean, I
14 think that is reasonable. But he doesn't put his hands on
15 him. He doesn't grab him. Doesn't restrain him. Doesn't
16 assault him. But they continue arguing. I submit to you,
17 they are arguing as they're going back out. And the victim
18 is going towards his car. And the argument is continuing,
19 that I submit to you, he is just as involved in it at that
20 point in time. And at that point in time, he pulls a gun
21 out.

22 He said in his statement to Detective Weaver, the
23 statement that he had and had an opportunity to review over
24 several days. So if there was something wrong about that,
25 he had the opportunity to contact him like he did and make

1 any changes to it. But that he said that he knew he didn't
2 have a weapon. And I submit to you, there's nothing the
3 victim did as that -- I mean, he may have put his hands in
4 his pocket initially. But at no point in time does he pull
5 anything out. And then at that point in time, he's the one
6 -- and yet, again, how can he not be without fault in
7 bringing it on when he is the one that now pulls out a
8 loaded gun and points it at the victim, who, I submit to
9 you, if anybody had then a Stand Your Ground or a
10 self-defense claim, it would be David Ham. If he had pulled
11 a gun out and shot Christian Himes, I submit to you, he
12 would be the one that would have a self-defense claim.

13 And then ultimately the fact that, you know, it's
14 suddenly the victim's fault that he ultimately ended up
15 charging him or lunging at him. I mean, that may have been
16 the alcohol at that point in time. But yet, again, I don't
17 think at that point in time when you have somebody pointing
18 a loaded -- a gun at you, I mean, you're gonna turn and run
19 and get shot in the back. I mean, at that point in time, he
20 kind of forced his hand. And I submit to you, that's the
21 only overt aggressive act other than mutual yelling back and
22 forth that David Ham ever did after he had a loaded gun
23 pointed at him. And I submit to you, yet again, this all,
24 when I went back to the very beginning of my argument, is a
25 situation that he had the ability to avoid at that point in

1 time. There's nothing behind him. It's like he's trapped
2 in an alleyway where he can't get out. I mean, there is an
3 open parking lot where his car is behind him. Turn and walk
4 away. Run away. He said that -- I mean, David Ham never
5 laid a hand on him. At any point in time during this whole
6 altercation, never physically touched him.

7 And to think that he suddenly -- I mean, that he has --
8 I mean, not only -- I mean, it almost boggles my mind that
9 he has a legitimate self-defense argument. But the fact
10 that he would be immuned from being prosecuted based on his
11 actions, just nothing more than what he testified about, I
12 submit to you, is not what this statute is intended for.
13 And as I indicated earlier, I think, I mean, when you look
14 at the self-defense grounds, I think he fails on every one
15 of them. And then when you look at the Castle Doctrine, you
16 know, I assume we're proceeding under Section C. I submit
17 to you, yet again, he is -- it's my position he's engaged in
18 an unlawful activity. Attacked in another place where he
19 has the right to be. Yet again, I just can't fathom that, I
20 mean, a parking lot or outside, the sidewalk outside of the
21 apartment complex where neither one of them are living as
22 their residence that that would negate their duty to
23 retreat. But, yet again, we still fail on the last element,
24 reasonably believe that it is necessary to prevent death or
25 great bodily injury to himself. It's our position that

1 given the totality of the situation that was presented to
2 this court today, that that is not a reasonable belief that
3 he had that night. Thank you.

4 THE COURT: Thank you, Solicitor. Any response, Mr.
5 Wehman?

6 MR. WEHMAN: Yes, Your Honor. Briefly. First, as to
7 the Solicitor's concern about the Castle Doctrine and this
8 case's applicability to it, I would cite State v. Dickey
9 which would be 394 South Carolina 491. That's a 2011 case.
10 In that case, the petitioner is a security guard and asked
11 the victim to leave the establishment he was working at. He
12 follows him into the parking lot of the area and an
13 altercation ensues, a shot is fired. It doesn't have to be
14 someone's home. I mean, even if it did, in this instance,
15 Christian Himes is an invited guest of Ms. Ham. And, you
16 know, the testimony was that this altercation started feet
17 from the front door. He was trying to go in, David Ham was
18 coming out. So I do believe that this situation applies to
19 the Act.

20 As to the bringing about the difficulty, the notion
21 that Mr. Himes having the car longer than he was supposed
22 to, bringing on the difficulty, I don't think that's what
23 the intent of that is at all. I think it's bringing about
24 the difficulty, escalating the situation, I believe. And I
25 believe the escalation of the situation, that there are

1 multiple points that you can look at whether -- as the
2 situation escalated. You know, there was testimony that
3 Christian Himes tried to walk past, and he was prevented
4 from walking past. He was denied access to somewhere he had
5 the right to be. He then starts to back up. And I know
6 that there's multiple times been said he should have gone to
7 his car. Under this Act, he has no duty to retreat. He
8 does not have to leave. He doesn't have to turn his back on
9 someone being aggressive to him. And it's only as he's
10 backed up, backed away, comes off of the sidewalk, or the
11 walkway, into the grass. David Ham could have walked down
12 the walkway. He would have -- that could have happened.
13 Christian Himes abandons the walkway, goes into the grass,
14 and he's followed in there. There's no way and there's no
15 testimony to even support the notion that he knew David
16 Ham's car was over there. Heather Ham didn't even know
17 David Ham's car was over there. No one knew what he drove.
18 He abandons the walkway and he's followed. He's pursued.
19 He has the right to act on appearances that he was being
20 pursued. He was not -- David Ham wasn't just going to his
21 car, he was coming after him. That's what it looked like
22 and he has the right to act on that.

23 As to the talk about what he knew about David Ham, I
24 mean, her own letters say that she was worried that he would
25 become, I believe the word in there is enraged. How he

1 would react. This was something contemplated, that he would
2 act violently. And there's testimony that he was kept a
3 secret and that he was hiding to prevent this type of a
4 conflict. That's why Heather Ham comes to him and asks him
5 to leave because she's worried about what would happen. And
6 he leaves and tries to avoid the conflict. He says that he
7 stayed away for as long as he did because under no other
8 circumstance would David Ham still be there when he came
9 back. No other situation that he had been around for that
10 period of time had it not been enough for David Ham to clear
11 out.

12 And Christian Himes was faced with a drunk. I mean, a
13 drunk, aggressive, bigger in height, man who was following
14 him into the grass after he exceeded the right-of-way, so to
15 speak, down the walkway and into the parking lot. And that
16 doesn't even state the threat. I mean, this is all what he
17 perceived. He said he perceived it as a threat, that text
18 message that he received. And bring on the difficulty and
19 saying that he made -- David Ham drove his children to the
20 house more than twice the legal limit, over the legal limit
21 of intoxication to drive a vehicle. It's .08, and he was
22 .18 or something of that nature. So the kids could have
23 stayed with David. There was no testimony that said they
24 couldn't. He drove intoxicated. It's not Christian Ham's
25 -- I'm sorry -- Christian Himes brings on difficulty by

1 making him drive his kids. He drove his kids drunk on his
2 own. The fact that Mr. Himes brought on the difficulty by
3 keeping the car out late, I don't think that's the issue
4 here at all. I think that the Act applies and that he was
5 in a place he had a right to be. A reasonable person would
6 have thought that he was being attacked when he exceeded the
7 right-of-way. A gun was pulled. It was not fired. He said
8 to back up three times. That morning -- and in fact, he was
9 attacked further at that point and he fired a single shot.

10 THE COURT: Let me ask you this, Mr. Wehman: Do you
11 have a copy of the Dickey decision? Did he distinguish that
12 from that person actually being in a business establishment
13 as opposed to a consequent of being outside of where this
14 incident occurred?

15 MR. WEHMAN: Your Honor, I can get a copy. I've been
16 looking through my file. I thought I had a copy of it for
17 you. I can certainly present it.

18 AST. SOL. SORENSON: I have it right here and I'd like
19 to address that because I don't think it applied to what
20 he's saying. So, I mean, at the appropriate . . .

21 THE COURT: I'd be happy to hear from you on that.
22 Were you finished, Mr. Wehman, otherwise?

23 MR. WEHMAN: Yes, Your Honor.

24 AST. SOL. SORENSON: And he cited State v. Dickey, Your
25 Honor. In State v. Dickey is a situation that happened in

1 Columbia where a security guard had ejected several people
2 from a building. I believe it was an apartment complex.
3 There was an altercation out and ultimately he ended up --
4 there were two individuals, I believe, and one of them was
5 reaching under his shirt. And needless to say, he ends up
6 shooting and killing one of those individuals. And,
7 ultimately, I think what our Supreme Court found, basically,
8 they never reached the issue as to the Castle Doctrine.
9 They actually said that -- because the Court, I think, had
10 talked about him not having a duty to retreat. They said
11 that basically we're not -- we don't think it's necessary to
12 determine whether curtilage. That was the whole issue
13 during that was whether they were within the curtilage of
14 the building still. Because there was kind of an overhang
15 that goes kinds of hangs over the sidewalk. But they
16 ultimately said that we don't -- the other thing is
17 necessary to determine whether curtilage can extend to a
18 public sidewalk.

19 In our situation, we're beyond that even. We're
20 actually out away from the building. But, ultimately, what
21 they found in Dickey was that the State in that case failed
22 to disprove beyond a reasonable doubt the petitioner had no
23 other probable means of avoiding danger. So they said
24 that's part of that duty. You don't have a duty to retreat
25 if you can't, basically. And in our situation, I mean, I

1 submit to you, that is not the case. I mean, ours -- in
2 there they found that, you know, he could have turned and
3 attempted to go away. But there were multiple individuals
4 that were drunk and aggressive and that he would've,
5 basically, been in a position where he would've faced an
6 attack at that point in time. In our situation, I submit to
7 you, the defendant is going away. I mean, he's out farther
8 away from the building than the victim is where his car his.
9 And I do submit that that part of it would not. I mean, he
10 had a reasonable means to avoid this difficulty. And I can
11 hand that up, I mean, if you want a copy.

12 THE COURT: That would be great. Thank you.

13 MR. WEHMAN: Your Honor, for purposes of your
14 consideration and response to that, Your Honor, even hearing
15 the facts there, I believe this is also a different
16 situation than that that he stated in Dickey. In this case,
17 the Dickey case, I guess, he stated he was in a public
18 setting. This is a private residence. This is a private
19 apartment complex.

20 THE COURT: But he wasn't in the residence.

21 MR. WEHMAN: Correct, Your Honor. But he was trying

22 ---

23 THE COURT: And the last time he was there, he was told
24 to leave.

25 MR. WEHMAN: He was told to leave and come back. I

1 mean, he was not told don't come back. He was bringing her
2 vehicle back, and he was trying to enter the apartment where
3 he had stayed the night before, that night before that, and
4 was supposed to have spaghetti that night.

5 THE COURT: But he wasn't in the apartment?

6 MR. WEHMAN: He was denied access to that apartment.
7 If he had managed to get the extra five or six feet and open
8 the door, he would be in. I don't think the fact that
9 this -- that David Ham denies him the access and keeps him
10 from going in, you know, strips him of the ability to
11 attach. And even if -- even it -- the analogy, I guess,
12 would be a driveway of a private residence. This parking
13 lot, the common area in front of that apartment complex, the
14 yard so to speak, the walkway up to it, I believe it holds.
15 That it is all the residence. I mean, the fact that this is
16 an apartment complex I don't think strips the ability of
17 them to have a driveway or a yard. And he was up, up the
18 breezeway in the area in front of that apartment when he was
19 denied access. I think that's the same as someone walking
20 up to the front door of a place that they have a right to
21 be.

22 THE COURT: Anything further from y'all?

23 AST. SOL. SORENSON: I mean, other than the fact that,
24 I mean, the victim never laid a hand on him. So how did he
25 deny him access if he didn't? I mean, he didn't -- I mean,

1 I just -- nothing further.

2 THE COURT: What I'm going to do is I'm going to take
3 the time to review the Dickey case along with the other
4 appropriate case law. And I would like to make a copy of
5 the defendant's written statement. I'll review that over
6 night and we can reconvene at nine in the morning. The jury
7 comes in at ten. So be prepared to go forward at that time.
8 I'll issue a ruling then.

9 MS. WILLIAMS: I'm sorry, Judge. You said nine?

10 THE COURT: Yes.

11 MS. WILLIAMS: Okay. Thank you, Judge.

12 (The proceedings adjourned for the day at 6:24 p.m.)

13 - - - - -

14 (The proceedings began at 9:38 a.m., Tuesday, April 4,
15 2017.)

16 THE COURT: Anything before we proceed regarding the
17 ruling on the Castle Doctrine motion?

18 AST. SOL. SORENSON: Nothing more from the State, Your
19 Honor.

20 MR. WEHMAN: No, Your Honor.

21 THE COURT: We're back on the record regarding Mr.
22 Himes's case. The defense had filed a motion for immunity
23 under the act which basically requires a pretrial
24 determination using the preponderance of the evidence
25 standard as to whether or not the Castle Doctrine applies in

1, this case. Under the Castle Doctrine, one which is attack
2 without qualm upon his part on his own premises has a right
3 in establishing self-defense, to claim immunity from the law
4 of the retreat which ordinarily is an essential element of
5 that defense. In this case, there's obviously some
6 different factual circumstances because it's not his own
7 home. Although he claims he has a right to be there, the
8 altercation happened outside of the home. And so there's a
9 question as to whether or not he had to be there. There is
10 case law that extends apartments to the curtilage. So
11 although this Court doesn't think it applies, even if it did
12 apply, the elements of self-defense have not been met by the
13 preponderance of the evidence based upon the following.

14 The first element for self-defenses is that the
15 defendant must have been without fault in bringing about the
16 difficulty. There has been evidence in which the defendant,
17 A, was sleeping with the victim's spouse and was around his
18 minor children. He had been previously warned that that
19 would cause a potential conflict, and a reasonably prudent
20 person could reasonably foresee that that would cause
21 conflict and fault if there was an eventual meeting there.
22 Secondly, regarding the complete disregard of the victim's
23 car and her timing and her requirement that she pick up her
24 children on time, the victim confirmed the defendant
25 completely disregarded that. And it certainly is reasonably

1 foreseeable that that would cause a conflict which would
2 involve the potential victim in this case having either
3 bring his children home or having the children there, and
4 noway to have them picked up. So, certainly, I think the
5 defendant was previously warned that if he was in the same
6 location as the victim that there could be a potential
7 conflict. And, certainly, he is with fault in bringing
8 about that because, A, he was sleeping with the victim's
9 wife and then he didn't even return the car. Although they
10 were separated, they were still legally married and he knew
11 that. Secondly, the defendant must have actually believed
12 he was imminent danger of losing his life or sustaining
13 serious bodily injury or he was actually in such imminent
14 danger. The Court finds that this was not met by a
15 preponderance of the evidence either. The defendant
16 testified himself that the victim did not say: I'm going to
17 shoot you. I'm going to stab you. I'm going to kill you.
18 The defendant on his own testified that he did not think
19 that the victim was armed with a weapon, that he never saw a
20 weapon, and had he had a weapon, he would've had enough time
21 to pull it out. So the Court does not find that that
22 element was met either.

23 In the defense's case, upon his belief of imminent
24 danger, a reasonably prudent man of ordinary firmness and
25 courage would have would've entertained the same belief.

1 That the defendant was actually in imminent danger. The
2 circumstances were such that would warrant a man of
3 ordinary, prudence, firmness and courage to strike the fatal
4 blow in order to save himself from serious bodily harm or
5 losing his own life. The Court does not find that this
6 element was established either because of the fact that a
7 reasonably prudent person -- although he was a little bit
8 taller, there was not that much disparity in size. He as
9 not armed. It appears that the defendant is the one that
10 initially pointed the gun at the victim and not the other
11 way around. The alleged "threat" as far as the text message
12 is concerned can certainly be viewed in different ways.
13 "Don't let your BF let me catch him slipping," could be
14 interpreted in many different ways and certainly could
15 reasonably not be interpreted as a threat if it was not
16 interpreted as a threat by the victim's spouse. And so I
17 think that element was not met either. And fourth and last,
18 the defendant had no other probable means of avoiding the
19 danger of losing his own life versus sustaining serious
20 bodily injury then to act as he did in this particular
21 instance. That element also was not met because of the fact
22 that as soon he saw the victim, he could have just turned
23 around and walked away. He could have certainly avoided the
24 conflict; or instead insisting that he go into the
25 residence, he could have said, sure, I'm not going there.

1 So there's certainly another way to avoid inflicting the
2 fatal blow in this case. So your motion is respectfully
3 denied. Anything else before we -- I guess the jury comes
4 in at ten?

5 AST. SOL. SORENSON: That's correct, Your Honor. I
6 don't know if you want to address the sequestration order
7 with regards to Ms. Ham?

8 THE COURT: I think certainly that, Ms. Ham, I excluded
9 her out of an abundance of caution waiting until the
10 testimony came out to see exactly where she stood. I think
11 certainly under the Victims' Right Act, she is a victim in
12 this case and she can remain in the courtroom.

13 AST. SOL. SORENSON: Thank you.

14 THE COURT: Anything further?

15 MS. WILLIAMS: Judge, just on the motion to sequester,
16 we would just note our objection for the record that she is
17 a substantial fact witness subject to inconsistencies in her
18 statement.

19 THE COURT: Certainly. I understatement that, but
20 under the Victims' Right, I believe she's entitled to be
21 here.

22 MS. WILLIAMS: Thank you, Judge. I have one further
23 question for the Court since there's 15 minutes before the
24 jury gets in here. Just wondering if Your Honor would be
25 willing to do a pretrial on the record, preliminary charge

1 MS. WILLIAMS: No ma'am.

2 THE COURT: Let's have our jury, please.

3 (The jury enters the courtroom at 1:27 p.m.)

4 THE COURT: Welcome back, ladies and gentlemen of the
5 jury. Madam Clerk, if would you please swear in our jury.

6 (The jury was sworn at 1:28 p.m.)

7 THE COURT: Ladies and gentlemen of the jury, thank you
8 for accepting the important responsibility of jury service
9 and for your contribution today to our system of justice.
10 What I will now say to you is intended to serve as an
11 introduction to the trial of this case. These remarks are
12 not a charge on the law in this case. I will instruct you
13 on the law applicable to this case at the end of the trial
14 before you retire to consider your verdict. This is merely
15 an explanation of the procedures that we will follow so that
16 you will better understand what is going on during the court
17 process. You're not allowed to take notes during the trial
18 of this case.

19 Ladies and gentlemen, the defendant in this case is
20 charged with two indictments filed in this Court. One with
21 the crime of murder and one with a crime of possession of a
22 firearm or a knife during the commission of a violent crime.
23 The elements of each of these indictments will be explained
24 to you later. The indictments are simply the charge by
25 which the case is brought to court. And they are not in any

1 sense evidence of any of the allegations that they contain.
2 The defendant has pled not guilty to these indictments. The
3 State, therefore, has the burden of proving each of the
4 elements of -- each of the elements of the indictment beyond
5 a reasonable doubt. It will be your duty, ladies and
6 gentlemen, to decide whether the State has met that burden.

7 Your purpose as jurors is to find and determine the
8 facts. You are the sole judges of the facts. If at any
9 time I make any comment regarding the facts, you are to
10 disregard that. You are to determine the facts from the
11 testimony that you hear and the other evidence that is
12 introduced into court. It is up to you to determine the
13 inferences which you feel may be properly drawn from the
14 evidence. It is especially important that you perform the
15 duty of determining the facts diligently and conscientiously
16 because ordinarily there is no way to correct an erroneous
17 determination of the facts by a jury. On the other hand,
18 and with equal emphasis, the same law that makes you the
19 judges of the facts, makes me the judge of the law. The law
20 as given by the Court is the only law that you may consider.
21 You must accept and follow it even though you may disagree
22 with it. I cannot tell you what the facts are, and you
23 cannot disagree with me about what the law is or what the
24 law should be. Your job is to take the law as I give it to
25 you and apply it to the facts as you find them from the

1 testimony of the witnesses any other evidence that is
2 introduced. After doing that, you will render your verdict
3 under the solemn oath that you just took as jurors.

4 Until I advise you to begin your deliberations, you
5 must not discuss this with anyone including your fellow
6 jurors, your friends, your family, and anyone involved in
7 the case. This includes any discussions face-to-face and
8 those by telephone, e-mail, text, blogs, or any other method
9 of communication. You may not use a computer, a cell phone,
10 or any other electronic device with communication
11 capabilities at any time while you're in the courtroom or
12 during your deliberations. During your breaks or for
13 overnight or meals, when necessary, you may use these
14 devices. However, you may not at any time use these devices
15 to get or send information about the case. This includes
16 any information about a party, a witness, an attorney, a
17 court Officer, any news accounts about the case, research on
18 any topics that may be raised, any topics that you think may
19 be helpful in deciding the case, or any testimony that is
20 presented by any witness. During the trial of this case, do
21 not read, listen to, or watch any news reports about the
22 case. This includes anything that may be in the newspapers
23 or on TV, Internet, radio. You must not consider anything
24 that you have read or heard about the case outside of this
25 courtroom whether before or during the trial of this case.

1 After the case is submitted to you, you must discuss it
2 only in the jury room with your fellow jurors. The
3 attorneys and the parties in this case have been advised or
4 instructed not to talk to you at all. So, again, if you see
5 them during breaks or coming in and out of the courthouse
6 and they don't speak to, again, they're not being
7 unfriendly, they're following the Court's instructions.

8 It is important that you keep an open mind and not
9 decide any issue in the case until all of the evidence has
10 been presented, the parties have made their closing
11 arguments, and you have been instructed on the law in this
12 case. It is your solemn responsibility to determine the
13 guilt or innocence of the defendant, and your verdict must
14 be based solely on evidence as it is presented to you in
15 this trial and the law as I instruct you at the close of the
16 trial. In just a moment, the Solicitor will make what is
17 called an opening statement in which the Solicitor will
18 explain to you what the issues in the case are, at least
19 what the Solicitor thinks the issues in the case are. The
20 attorney for the defendant may also make an opening
21 statement, although they're not required to do so. What the
22 attorney tells you during their opening statements is not
23 evidence in this case. It is only their contention as to
24 what the issues are. The evidence in this case will be
25 presented to you by the testimony of the sworn witnesses and

1 from any exhibits that are properly introduced into the
2 trial of this case. From time to time during the trial you
3 may hear one of the lawyers say something like, Your Honor,
4 we have a question of law or a matter of law, may we
5 approach the bench. Or sometimes I myself might find it
6 necessary to excuse you from the courtroom for a short while
7 so the attorneys and I can discuss a matter of law. The
8 reason for this is because you are the judges of the facts
9 in this case. And sometimes when I'm discussing matters of
10 law with the attorneys, it may be necessary for me to make
11 some comment as to the facts in connection with ruling as to
12 whether or not a particular law applies. I'm not suppose to
13 tell you what I think the facts are. So I will excuse you
14 from the courtroom while these discussions take place so
15 that in no way will you be influenced by anything that I
16 might say or do in connection with the facts of this case.

17 In determining what the true facts are in this case,
18 you must decide whether or not the witness -- the testimony
19 of the witnesses is believable. It will be my
20 responsibility to rule as a matter of law as to whether or
21 not certain testimony is admissible or not. But once a
22 testimony is admitted, whether or not you believe it is
23 solely for you to determine. In deciding whether or not to
24 believe a witness, you have the right to consider the
25 interest of any witness, the bias of any witness, the

1 prejudice of any witness, the opportunity for the witness to
2 have seen the matters and the things about which the witness
3 may testify, and the way that the witness acts on the
4 witness stand. You have a right to consider anything that
5 is in the record that will help you evaluate the testimony
6 of the witnesses. That means it is your duty to pay close
7 attention to these witnesses, to observe the witnesses, to
8 listen to the witnesses, and to pay close attention to the
9 attorneys and to the Court. Please don't let your thoughts
10 wander. But please give strict attention to the testimony
11 in this case so that at the end of all the testimony, after
12 the arguments of counsel and after you have been instructed
13 on the law by the Court, you will then be in a position to
14 determine what the true facts are in the case and to apply
15 the law to the facts and thus render a verdict.

16 It will be the added duty of the foreperson, which I
17 will appoint at a later time, to actually write the verdict
18 on the indictment on the verdict form, and also to be the
19 liaison to the Court if the jury needs anything. I will
20 appoint that person at a later time. In order to preserve
21 everyone's rights, I will give the opportunity to the
22 parties to have any objections to anything I have said
23 either from the State or the defense?

24 AST. SOL. SORENSON: Nothing from the State, Your
25 Honor.

1 MS. WILLIAMS: None, Your Honor.

2 THE COURT: All right. Solicitor, you may proceed.

3 OPENING STATEMENTS

4 AST. SOL. TEMPLETON: May it please the Court?

5 THE COURT: Yes, sir.

6 AST. SOL. TEMPLETON: Ladies and gentlemen, good
7 afternoon. This is a case of murder. On November 1, 2015,
8 Christian Himes, at the defense table, took the life of
9 David Ham. It was about jealousy. Jealousy between
10 Christian Himes and David Ham over David Ham's wife. Ladies
11 and gentlemen, this case is murder, and the second charge is
12 the possession of a weapon during the commission of a
13 violent crime. We all know what murder is. Murder is the
14 killing of another person. And how the law defines it is
15 with malice aforethought. Malice meaning ill will;
16 aforethought meaning in the mind of the defendant at the
17 time that he took that person's life. Possession of a
18 weapon during a violent crime, kind of self-explanatory.
19 That Mr. Himes possessed a handgun when he murdered Mr. Ham.
20 Mr. Himes doesn't deny shooting Mr. Ham, but he is claiming
21 self-defense in this case.

22 There are three elements to self-defense in South
23 Carolina. One, the defendant cannot be at fault in bringing
24 on what occurred. He can't have egged it on. Number two,
25 the defendant was in actual imminent harm or believed that

1 he was in actual imminent harm of death or great bodily
2 injury. What would a reasonable person believe in those
3 circumstances? And three, he had no other way to avoid that
4 harm. He couldn't get away. Ladies and gentlemen, the
5 State has to prove each of the elements that I just talked
6 to you about beyond a reasonable doubt. It's the same
7 standard that's used in every court across this entire
8 country. It's simply that we have to provide sufficient
9 evidence to leave each of you firmly convinced of the
10 defendant's guilt.

11 I want to take you back to early -- sorry -- late
12 September of 2015. Mr. Ham and his wife had been separated
13 for a period of time. David Ham got his children every
14 weekend for visitation. About the same time, Christian
15 Himes comes into the picture. He begins dating Mr. Ham's
16 wife -- they've been separated for a period of time -- and
17 comes into the picture. He's kind of living with Ms. Ham on
18 and off over about a month period of time. And then on
19 October 31st, Halloween, Ms. Ham and Mr. Ham were going to
20 take the kids trick-or-treating. Christian Himes isn't
21 happy about that. He's jealous. He believes that after
22 three weeks of living with Ms. Ham on and off, he should be
23 the one to do that. The next day, November 1, 2015,
24 Christian Himes borrows Heather Ham's vehicle. He needs to
25 go take a friend somewhere. Ms. Ham's only requirement is

1 that he have that car back by 6:30 so she can go pick up her
2 kids. He doesn't come back at 6:30. He doesn't come back
3 at 7:30, 8:30, 9:30. Ultimately, David Ham has to bring the
4 children home instead. He had been drinking that night, but
5 hadn't planned to have to bring those kids over. About the
6 time that -- or just after Mr. Ham brought those kids back
7 to their mother, Christian Himes shows up. Heather Ham
8 tells him to leave so there's not a confrontation. She
9 doesn't want a confrontation. Mr. Ham doesn't want a
10 confrontation. He leaves for a period of time. By the time
11 that Mr. Ham, the victim in this case, is leaving that home,
12 Christian Himes is outside. There's a verbal confrontation;
13 no physical confrontation between the two of them. But
14 Christian Himes pulls out a gun, and he shoots the victim in
15 this case, David Ham. He immediately gets back in Ms. Ham's
16 car and takes off screeching tires. Ultimately, he's
17 stopped by another law enforcement officer some miles away
18 and pulls over; that handgun sitting in the passenger seat
19 and he's placed under arrest at that point.

20 Ladies and gentlemen, the State believes that when you
21 see all of the evidence in this case, and when you hear all
22 of the testimony from the witness stand, you're going to be
23 firmly convinced of Mr. Christian Himes's guilt. Thank you.

24 THE COURT: Counsel?

25 MS. WILLIAMS: Thank you, Judge. May it please the

1 Court?

2 THE COURT: Yes, ma'am.

3 MS. WILLIAMS: Ladies and gentlemen of the jury, the
4 charge today is murder. It gives you a chill when you hear
5 it. It's one of the most serious crimes you can have in the
6 State of South Carolina. The charge of murder, as the State
7 has already told you, is the intentional killing of another
8 with malice ahead of time, aforethought. In South Carolina,
9 the judge is going to tell, you don't have to rely on my
10 telling you this, malice means -- we call it a bunch of
11 different things -- a depraved heart, bent on wickedness.
12 It means that you had some sort of depraved, depraved heart
13 inside of you when you took another's life intentionally.
14 And that's what the charge is today. That's what the
15 Solicitor has charged Christian Himes with. Can you stand
16 up, Christian.

17 (Defendant complies.)

18 That's what the Solicitor has charged Christian Himes,
19 who is 23 years old from Columbia, South Carolina, with
20 today. The Solicitor brought us here. They brought me
21 here. They brought the judge here. They brought each and
22 every one of you here. They're the one that called the
23 docket. They're the ones that called the case. You're
24 heard them call the case in the beginning. And that's
25 because they're the ones that have the burden of proof.

1 The judge is going to talk to you about the burden of
2 proof. We've all seen Law and Order; we've all seen the
3 crime shows. We even hear a lot about the Miranda rights.
4 You have the right to remain silent. You have the right to
5 an attorney. We hear a lot about you have the right to be
6 presumed innocent. We're all in this together here today.
7 And so what does that mean? What does it mean to be
8 presumed innocent? It means that Christian Himes is
9 innocent, period. That's all it means. It means from where
10 you are sitting right now, from where I am standing right
11 now, from where all of us sit in this courtroom, this
12 gentleman, this 23-year-old, is innocent. Just like you
13 would want to be if you were charged with a crime. He sits
14 there innocent. And what the judge is going to tell you is
15 that the Solicitor brought us here. And what the Solicitor
16 has to do is the Solicitor has to build a wall piece by
17 piece by piece, different parts of evidence, different
18 witness testimonies, and that wall has to be flawless. It
19 can't have holes in it. And it has to be built tall enough
20 that you can't see the innocent man sitting behind it. And
21 that's why you're here today. You're here to determine if
22 that wall is tall enough and whether or not that wall has
23 holes in it.

24 The State is right. We are not denying that David Ham
25 was shot by Christian Himes. But what we are telling you is

1 that he shot him in self-defense. What you're going to see
2 throughout today, and maybe tomorrow, as you hear the
3 evidence is it starts with a love story. It starts as a
4 love story between Heather Ham and Christian Himes. And
5 they want you to think that that love story started in 2015,
6 and that's not right. The love story started in 2008 where
7 Heather Ham was Christian Himes's counselor while he was at
8 a group home. He was age 14; she was in her 20s. She was
9 privy to his background. She was privy to his secrets. And
10 she counseled him. He left the group home. He got in some
11 trouble. He's not had an easy time of it. And in 2015, he
12 reached out to Heather Ham and called her. They kept in
13 touch over the years. He didn't have anybody. I need you
14 to look at the courtroom. There's nobody sitting behind
15 him. He had nobody. He reached out to the one person who
16 supported him. She lived in Charleston; he was living in
17 Columbia trying to get back on his feet. And she started to
18 help him, and they fell in love. The only problem was she
19 was still married to a gentleman by the name of David Ham.
20 They were separated. They had been separated for a year,
21 maybe a year and a half when she began a romantic
22 relationship with Christian Himes. And she kept it a secret
23 from David Ham that she was in this relationship with
24 Christian Himes.

25 And you're going to hear the testimony to the point

1 where when David Ham would come to pick up his kids or drop
2 his kids off with Heather Ham, she would hide Christian in
3 the back room. She never had a fear that he'd come out with
4 a gun and shoot anybody. She hid him in the back room. And
5 he would hide back there until David would leave. Her
6 testimony is going to show you that she did this for a
7 reason; she did it because she was afraid of what David Ham
8 would do to Christian Himes when he found out.
9 Unfortunately, he ultimately did find out. And on
10 October 30th of 2015, David Ham saw Heather Ham drop
11 Christian Himes off at a bank because they were trying to
12 avoid him finding out. And he began sending angry text
13 messages. Those aren't my words; those are Heather Ham's
14 words. He began sending -- David Ham began sending angry
15 text messages to her regarding her relationship with
16 Christian Himes because now he knew. And so, that was on
17 October 30th.

18 On November 1, 2015, Christian Himes was staying with
19 Heather Ham. He was living there for all intense purposes.
20 She was helping him get a job. And David Ham came to drop
21 his kids off. Heather Ham met Christian at the door while
22 David was and said, "You got to go. You got to go. David's
23 inside." And so what did Christian do? He didn't pull out
24 a gun. He didn't barge in there. He didn't get mad. He
25 didn't scream. He said, okay, okay, I'm leaving, and he

1 went to the gas station. And he stayed there for 40
2 minutes. And then he came back and he thought David Ham was
3 gone. And he walked up to the breezeway. And I want you to
4 look at the evidence in this case. I want you to look at
5 the scene. I want you look at what it looked like that
6 night. I want you to think about what Christian Himes new
7 as he was walking up there about David Ham; what Heather had
8 told him about David Ham about his prior gun possession,
9 about his prior history of violence. I want you to listen
10 to the toxicologist. The State told you that David Ham had
11 been drinking that night. That's not the case. David Ham
12 was extraordinarily intoxicated that night. He drove his
13 children to that house extraordinarily intoxicated. And as
14 Christian Himes was walking up to the stairs to the place
15 where he lawfully was staying, Heather Ham's apartment,
16 David Ham came out.

17 Independent witnesses, witnesses that lived in that
18 apartment complex, -- it's [REDACTED] [REDACTED] [REDACTED] [REDACTED].
19 It's right over there in Summerville. It's right off of Old
20 Trolley Road. What the independent witnesses are going to
21 tell you is that David Ham said to him, "You're not going in
22 that apartment. Come on." And independent witnesses are
23 going to tell you they heard Christian Himes say, "Back up.
24 Back up. Back up." And independent witnesses are going to
25 tell you that it was dark. Christian Himes backed up

1 anywhere from 60 to a hundred feet until David Ham charged.
2 And that's what the evidence is going to show you today and
3 tomorrow. And at the end of it all, I need you to ask
4 yourselves: Where is the depraved heart? Who in this case,
5 who in all the players here, had malicious intent? And at
6 the end of this case, we're going to stand and we're going
7 to ask you to deliver a verdict of not guilty based on the
8 defense of self-defense. Thank you.

9 THE COURT: You may call your first witness.

10 AST. SOL. TEMPLETON: The State calls Matt Brooks.

11 (MATTHEW ADAM BROOKS, was duly sworn and provided the
12 following testimony.)

13 THE COURT: Your witness.

14 DIRECT EXAMINATION

15 BY AST. SOL. TEMPLETON:

16 Q. Officer Brooks, where are you employed?

17 A. What was that?

18 Q. Where are you employed?

19 A. Employed at Summerville Police Department.

20 Q. Okay. And how old are you?

21 A. Thirty-four years old.

22 Q. Okay. Can you go through just your basic employment --
23 I apologize -- your basic educational experience including
24 any law enforcement training.

25 A. Okay. I had over two years of college. I went for a

1 math major, secondary education major, and switched to law
2 enforcement. At which point, I became a volunteer police
3 officer and that was in New Jersey. Did that for eight
4 years. Came down to South Carolina and became a police
5 officer originally for the City of North Myrtle Beach.
6 Served a year with them before transferring over to
7 Summerville.

8 Q. Okay. Do you recall where you were on November 1,
9 2015?

10 A. I do.

11 Q. Where were you?

12 A. I was at home in my residence.

13 Q. Okay. And where is that residence?

14 A. It's [REDACTED] Dorchester Road, Apartment 11-E.

15 Q. Is that the City of Summerville?

16 A. Correct.

17 Q. Okay. What County is that in?

18 A. That's in Dorchester County.

19 Q. I'm going to show you what's marked as State's Exhibit
20 Number 20.

21 AST. SOL. TEMPLETON: Your Honor, may I approach the
22 witness?

23 THE COURT: You may.

24 Q. I'm going to show you what's marked as State's Exhibit
25 Number 20.

Direct Examination of Officer Brooks by Ast. Sol. Templeton

1 A. Okay.

2 Q. Do you know what that is?

3 A. That is an aerial shot of my residence.

4 Q. Okay. What apartment complex is that?

5 A. That's the [REDACTED] [REDACTED] [REDACTED] [REDACTED].

6 Q. Is that a fair -- fair and accurate representation of
7 that area?

8 A. Yes.

9 AST. SOL. TEMPLETON: Your Honor, at this point, the
10 State would move State's 20 into evidence.

11 THE COURT: Any objection?

12 MS. WILLIAMS: No objection.

13 THE COURT: All right. It's in.

14 (State's Exhibit No. 20, Aerial Photograph, was
15 received into evidence.)

16 Q. If you would, Officer Brooks, can you write on that
17 picture where building -- start off, what building do you
18 live in?

19 A. Okay. (Witness complies.)

20 Q. Okay. And then also if you could write on the building
21 where Ms. Ham lived, if you know.

22 A. Okay. (Witness complies.)

23 Q. I'm going to get that back from you now. All right.
24 So is this is the general area where all this occurred?

25 A. Yes.

1 Q. Okay. Is your this is your writing on here of 11?

2 A. Yes.

3 Q. And your writing as well, 12?

4 A. Yes.

5 Q. Okay. That evening, what were you doing?

6 A. That evening, I was at home watching television. I was
7 off duty that evening.

8 Q. Okay. And does anything stick out in your mind? What
9 happened that night?

10 A. That night, while I was watching television, I heard
11 shouting outside. It sounded like arguing. I couldn't tell
12 what was being said. I muted my television, and at that
13 point I heard a male voicing say you're not going in that
14 apartment followed by a single gunshot. At which point, I
15 grabbed my phone; I called dispatch. While on the phone
16 with dispatch, I grabbed my gun and ID. As I was grabbing
17 for my radio, I could hear tires screeching from the parking
18 lot. I exited my residence and I saw a male laying outside
19 on the ground between buildings 11 and 12.

20 Q. And if you would -- you can actually touch that screen
21 and it will put basically a color.

22 A. Okay.

23 Q. If you would just put where you saw Mr. Ham.

24 A. I approximately saw him . . .

25 Q. That's perfect. Approximately how much time was there

Direct Examination of Officer Brooks by Ast. Sol. Templeton

1 between when you heard some yelling outside to when you
2 heard, "You're not going in the apartment."?

3 A. The shouting before I hit the mute, approximately a
4 minute before hand.

5 Q. Okay. And then between those words and a shot?

6 A. It was pretty much immediately following, "You're not
7 going into that apartment" that I heard the gunshot.

8 Q. Okay. Basically, when you got outside, what's the
9 first thing that you saw when you got outside?

10 A. The first thing I saw was white male laying on the
11 ground. He was bleeding from the front of his throat. And
12 a black female to his right-hand side holding a cloth up to
13 his neck.

14 Q. Was there any interaction between you and the deceased
15 in this case?

16 A. No. When I walked up to him, he was doing a
17 muscular -- kind of like he was trying to grasp or gasp for
18 air. But when I went up, I couldn't hear any gurgling, and
19 it didn't sound like he was breathing at all. It kind of
20 looked like the body was just trying to breathe but nothing
21 was taking place.

22 Q. Okay.

23 A. I also could smell like a metallic smell, kind of like
24 a nickel smell when I came up. And I saw blood pooling
25 under the body.

1 Q. Okay. From there, what did you do next?

2 A. Next, what I did was I made sure that, you know, I
3 tried talking to the female who kept asking for help.

4 MS. WILLIAMS: Objection, Your Honor. Hearsay.

5 AST. SOL. TEMPLETON: I'll move on, Your Honor.

6 Q. Do you know who that female was that was there?

7 A. I recognized her from a previous incident that I worked
8 shortly beforehand. I didn't recognize her as one of the
9 residents, though.

10 Q. Okay. At that point, did you basically just secure the
11 scene and wait for people to -- other officers to arrive?

12 A. Yes. I secured the scene. And when I saw one of the
13 units coming on-scene, I went out to the parking lot,
14 flagged him down, and again, tried to canvas for witnesses
15 while securing the scene.

16 AST. SOL. TEMPLETON: Beg the Court's indulgence.

17 Q. I'm going to show you State's Exhibit Number 8. Do you
18 recognize this?

19 A. Yes.

20 Q. What is that?

21 A. That is where the body was actually laying. That's
22 between -- if you look at the photo, on the right-hand side
23 is my apartment complex where I had exited from. And the
24 left-hand side is Building 12 where the victim's wife was
25 residing.

1 Q. Okay. Is that a fair and accurate representation of
2 that location at the time this incident?

3 A. Yes.

4 AST. SOL. TEMPLETON: Your Honor, at this time we would
5 move State's Exhibit Number 8 into evidence.

6 THE COURT: Any objection?

7 MS. WILLIAMS: Can I see it?

8 THE COURT: Certainly.

9 MS. WILLIAMS: No objection.

10 THE COURT: All right. It's in.

11 (State's Exhibit No. 8, Photograph, was received into
12 evidence.)

13 Q. I'm going to show you State's Exhibit Number 8 now. If
14 you could, on here, can you point out basically where your
15 residence is?

16 A. Yes. My residence is actually right here. That's
17 actually my balcony.

18 Q. Okay. And that would be building?

19 A. That would be Building 11.

20 Q. Okay. And What is the other building here that we see
21 on the . . .

22 A. The one on this side right here is Building 12.

23 Q. Okay. All right. I'm also going to show you State's
24 Exhibit Number 10. Do you recognize that photo?

25 A. Yes.

1 Q. Okay. What is that a photograph of?

2 A. That is a photograph of in front of the 12 building.
3 And I believe the vehicle that's in the tape was actually
4 the victim's vehicle.

5 Q. Okay. Is that a fair and accurate representation of
6 what it looked like out that night?

7 A. Yes.

8 AST. SOL. TEMPLETON: At this time, Your Honor, we'd
9 move State's Exhibit Number 10 into evidence?

10 THE COURT: Any objection?

11 MS. WILLIAMS: Can I see it again? (Brief pause.) No
12 objection.

13 THE COURT: It's in.

14 (State's Exhibit No. 10, Photograph, was received into
15 evidence.)

16 Q. I'm going to show you this one as well. So directly
17 behind the Xterra there, what building would that be?

18 A. That would be Building 12.

19 Q. Okay. And is that the entrance to Building 12
20 basically on line from this picture?

21 A. Correct. That's the walkway. In the center there,
22 that's the walkway to Building 12 which is right by where
23 the vehicle is.

24 Q. I'm gonna go back to State's Exhibit Number 20. The
25 location of the victim in this case, where was that? If you

Cross-Examination of Officer Brooks by Ms. Williams

1 can show us on the . . .

2 A. The victim was located approximately a little to the
3 left of where the icon shown.

4 Q. Okay. And where is that Xterra located?

5 A. Xterra would be located, again ---

6 Q. In that parking spot basically?

7 A. Yeah.

8 Q. Okay.

9 AST. SOL. TEMPLETON: That's all the questions I have
10 for you. If you'd answer any questions the defense has.

11 THE COURT: Cross-examination?

12 MS. WILLIAMS: Yes, ma'am. Thank you, Judge. May it
13 please the Court?

14 THE COURT: Yes, ma'am.

15 CROSS-EXAMINATION

16 BY MS. WILLIAMS:

17 Q. Officer Brooks, you're an officer with the Summerville
18 Police Department; right?

19 A. Correct.

20 Q. But you weren't called out to this scene. You just
21 happened to live there at [REDACTED] [REDACTED] [REDACTED]?

22 A. Correct.

23 Q. And as far as being a fact witness, as far as being
24 just a fact witness, not a police officer on duty, your
25 apartment is right by where this happened?

1 A. Correct.

2 Q. And what you heard was you heard a gentleman yelling --
3 I'm going to read it from your reports so I get it right --
4 you're not going in the apartment?

5 A. Correct.

6 Q. Okay. You don't know who yelled it. You just know
7 that you heard, "You're not going in the apartment?"

8 A. That's correct.

9 Q. Okay. I'm going to direct your attention to what's
10 already been admitted as State's Exhibit 9. I'm sorry,
11 State's Exhibit 20. On here, you've marked Building 12?

12 A. Correct.

13 Q. Okay. That's the building where the incident started.
14 Is that your understanding? That is not where you live?

15 A. That is not where I live.

16 Q. You actually live in Building 11?

17 A. Correct.

18 Q. And I'm going to mark on here. I'm going to point my
19 pen to somewhere and you tell me if I'm right on this. Is
20 this where David Ham was located when you came to the scene?
21 Right there?

22 A. Approximately. A little to left of that I believe.

23 Q. Right here?

24 A. In that area.

25 Q. Okay. I'm going to mark a circle there. And that's

1 where David Ham was located when you came out?

2 A. Correct.

3 Q. Okay. So you come up from your building that's where
4 you seem him located?

5 A. Correct.

6 Q. Laying on the ground?

7 A. Uh-huh.

8 Q. Do you remember, was he on his back?

9 A. He was on his back facing upward. His eyes were open.

10 Q. And his head, was it in line with the corner of the
11 building?

12 A. His head was facing towards my building kind of as his
13 -- he was facing the walkway.

14 Q. Okay. So he would've been facing this walkway here?

15 A. His feet were in the direction of the walkway and his
16 head was towards Building 11.

17 Q. So if he had fallen straight backward, he would have
18 been facing, I guess that would be, building number 13?

19 A. Correct.

20 Q. Okay. So he would've been facing building number 14
21 [sic]. And if he had fallen backward, he would be facing
22 toward this walkway is what you saw?

23 A. I just saw the position. I didn't know which way he
24 was walking.

25 Q. And you had stated that you also, throughout the course

1 of your investigation, as know you've put on the hat of a
2 police officer, and throughout the course of your
3 investigation you discovered that -- and I'm going to point
4 my pen here -- David Ham's vehicle was parked right there?

5 A. Approximately.

6 Q. Okay. I'm going to put an X there. Right here is what
7 you said. And that's where you believe David Ham's vehicle
8 was parked?

9 A. Approximately, yes.

10 Q. Did you ever, throughout the course of your
11 investigation, discover where the vehicle that Christian
12 Himes was driving was parked?

13 A. No.

14 Q. Okay. Do you know anything about the lighting out
15 there? Do you know whether or not there are any lights,
16 light posts, in front of Building 12? Do you remember?

17 A. There are lights in the parking lot area.

18 Q. But you're not exactly sure where they are off the top
19 of your head?

20 A. Off the top of my head, no.

21 Q. I'm going to show you this picture. We just marked an
22 X where David Ham's vehicle was parked. That's David Ham's
23 vehicle. Is that your understanding?

24 A. Yes.

25 Q. And on the other side of it would've been the grassy

Cross-Examination of Officer Brooks by Ms. Williams

1 area where ultimately you said he was located facing ?
2 Building 13 lying on his back; correct?

3 A. Correct.

4 Q. And this is a more close-up version of that. And so
5 this would be Building 12?

6 A. Correct.

7 Q. And this would be Building 11?

8 A. Correct.

9 Q. And Building 13 is gonna be all the way on the other
10 side?

11 A. Uh-huh.

12 Q. Okay. Would you say -- (Brief pause.)

13 MS. WILLIAMS: Judge, may I approach?

14 THE COURT: You may.

15 Q. I'm going to hand you a photo. Can you identify that?

16 A. Yes. That's the front of Building 12.

17 Q. And that's the building that's next to you. That's not
18 technically the building you live in?

19 A. Yes. That's the building next to mine.

20 Q. And is that a fair and accurate representation of
21 Building 12?

22 A. It is.

23 MS. WILLIAMS: At this time, I'd like to enter this
24 picture into evidence as Defense Exhibit 7.

25 THE COURT: Any objection?

1 AST. SOL. TEMPLETON: None, Your Honor.

2 THE COURT: All right. It's in.

3 MS. WILLIAMS: May I publish, Your Honor?

4 THE COURT: You may.

5 (Defendant's Exhibit No. 7, Photograph, was received
6 into evidence.)

7 Q. So this is the front of Building 12?

8 A. Correct.

9 Q. Over here is ultimately -- and it's a little bit off
10 the picture here. It's gonna be a little bit off here -- is
11 ultimately where you saw David Ham lying down?

12 A. Correct.

13 Q. His feet were closer to the walkway?

14 A. Correct.

15 Q. And his head was closer to this side over here where .

16 . .

17 A. Correct.

18 Q. The distance, if you had to estimate off the top of
19 your head, the distance from these stairs to where David Ham
20 was lying down?

21 A. Approximately 15 feet.

22 Q. You think it was about 15 feet?

23 A. Approximately.

24 MS. WILLIAMS: Court's indulgence. I have no further
25 questions, Judge. Thank you.

Direct Examination of Ms. Welborn by Ast. Sol. Sorenson

1 THE COURT: Any redirect?

2 AST. SOL. TEMPLETON: None, Your Honor.

3 THE COURT: You may step down, sir. Thank you.

4 THE WITNESS: Thank you.

5 THE COURT: You may call your next witness.

6 MS. WILLIAMS: Judge, for our purposes, Officer Brooks
7 is excused.

8 THE COURT: Any objection?

9 AST. SOL. TEMPLETON: No, Your Honor.

10 THE COURT: You're free to go.

11 AST. SOL. SORENSON: The state calls Karen Welborn.

12 (KAREN WELBORN, was duly sworn and provided the
13 following testimony.)

14 THE COURT: Your witness.

15 AST. SOL. SORENSON: Thank you, Your Honor. May it
16 please the Court?

17 THE COURT: Yes, sir.

18 DIRECT EXAMINATION

19 BY AST. SOL. SORENSON:

20 Q. Good afternoon, Ms. Welborn.

21 A. Hi.

22 Q. If you would, tell the jury where do you currently
23 live?

24 A. Summerville.

25 Q. Okay. And back in November of 2015, where were you

1 living at that time?

2 A. [REDACTED].

3 Q. If you would, tell the jury how long did you live at

4 [REDACTED]

5 A. Six years.

6 Q. Okay. When did you ultimately move out?

7 A. The end of October of this past year.

8 Q. So you lived there for somewhere around October of 2010
9 to October 2016?

10 A. (Affirmative head nod.)

11 Q. All right. And did you live in the same apartment
12 there the whole six years that you were there?

13 A. Yes.

14 Q. Okay. What apartment was that?

15 A. 12-B.

16 Q. Okay. And showing you what's been marked as Defense
17 Exhibit Number 7.

18 AST. SOL. SORENSON: May I approach the witness, Your
19 Honor?

20 THE COURT: You may.

21 Q. Do you recognize that picture?

22 A. Yes.

23 Q. Is your apartment shown in that picture?

24 A. Yes.

25 Q. Okay. And if you would point it out for me.

Direct Examination of Ms. Welborn by Ast. Sol. Sorenson

1 A. Right there.

2 Q. So right where I'm pointing right now?

3 A. Yes.

4 Q. So that would be -- that would be -- you said that was
5 12-B?

6 A. Yes.

7 Q. And let me show you what's been marked as State's
8 Exhibit Number 8. Do you recognize that photograph?

9 A. Yes.

10 Q. Does that show part of your apartment also?

11 A. My porch.

12 Q. Okay. And point that out for me.

13 A. Right there.

14 Q. So that would be your porch right where I'm pointing?

15 A. Uh-huh.

16 Q. Okay. And that would be, basically, around the side of
17 here. Is that correct?

18 A. Yes.

19 Q. So that would be on the right side of this photograph?

20 A. Yeah.

21 Q. Let me ask you: Back during the time, especially
22 around October into November of 2015, did you know your
23 neighbor that lived in the apartment behind you, 12-D?

24 A. I knew of her.

25 Q. Okay. Did you know her name?

1 A. I believe it was Heather, but I'm not 100 percent sure.

2 Q. And let me ask you this -- and describe Heather. What
3 did she -- was she a white female? A black female?

4 A. Black female.

5 Q. Okay. And do you know ---

6 A. Two children.

7 Q. Two children. That was going to be my next question.

8 Do you know who else was living in her apartment with her?

9 A. Nobody that I know of.

10 Q. Okay. But her two children?

11 A. Right.

12 Q. Okay. Were they young or older children?

13 A. Younger.

14 Q. I want to turn your attention, Karen, if I could, back
15 to the evening of Sunday, November 1st of 2015. Do you
16 remember what you're doing that evening?

17 A. Watching TV.

18 Q. Okay. And where would your television have been
19 located at in your apartment that you were watching?

20 A. In my living room where the big open room is.

21 Q. Okay. And that room, where is that room in relation to
22 the apartment? Is it near the front door or the . . .

23 A. Kind of in the middle.

24 Q. Okay. Would it be closer to the sliding glass door on
25 your patio or the front door from inside the breezeway?

1 A. The patio.

2 Q. And tell the jury, did something end up happening that
3 evening that caught your attention?

4 A. I heard a gunshot.

5 Q. Okay. Did you hear anything prior to the gunshot?

6 A. I heard some arguing. I'm not sure where exactly it
7 was or who it was. But I did hear it.

8 Q. Okay. So you heard some arguing. Could you tell what
9 anybody was saying?

10 A. No. I didn't pay attention.

11 Q. Okay. So when you heard that arguing, did you turn
12 down your television to see what was going on outside?

13 A. (Negative head nod.)

14 Q. And then you said you heard a gunshot?

15 A. Yes.

16 Q. Okay. Tell the jury, if you would, how did that
17 gunshot relate to the argument? Was it immediately ---

18 A. It was after -- it was after the argument. I heard the
19 gunshot, and a few seconds later, I heard someone screaming
20 for help. And I looked out of my peephole and I saw my
21 neighbor that lived behind me going across to the apartment
22 across the breezeway.

23 Q. Okay.

24 A. Asking for help.

25 Q. Okay. So she was the person -- was that Heather that

1 you talked -- that I asked you about a few moments ago?

2 A. Yes.

3 Q. Okay. And you heard her yelling for -- screaming for
4 help?

5 A. Yes.

6 Q. And let me ask you: The arguing or the louder voices
7 arguing you heard and then the gunshot, was there any
8 significant period of time in between those or did they kind
9 of go arguing and then ---

10 MS. WILLIAMS: Objection, Your Honor. Leading.

11 THE COURT: Can you just rephrase?

12 AST. SOL. SORENSON: I'm not sure how that's leading,
13 but okay.

14 Q. I mean, explain, was there any time gap in between the
15 arguing and then hearing the gun shot?

16 A. Maybe a little. I don't know how long. I don't
17 remember.

18 Q. Okay. And you had said earlier that you really didn't
19 pay a whole lot of attention to the arguing you heard
20 without -- obviously, did the gunshot get your attention?

21 MS. WILLIAMS: Objection, Your Honor. Leading.

22 A. It did.

23 AST. SOL. SORENSON: I mean, how is that -- I mean,
24 it's a yes or no question.

25 THE COURT: You just ask her whether or not it got her

1 attention and that will take care of it.

2 AST. SOL. SORENSON: Okay. I'm not sure how I ask
3 that. That's the question. I mean, whether or not the
4 gun -- I mean, that's the same question I asked. Did the
5 gunshot get your attention?

6 THE COURT: Whether or not ---

7 AST. SOL. SORENSON: Whether or not.

8 Q. I mean, yes or no, did the gunshot get your attention?

9 A. Yes.

10 Q. And could you tell where -- you said that you were
11 watching TV kind of just in your living room kind of near
12 that sliding glass door. Could you tell where any of this
13 was happening outside, specifically?

14 A. No. But the gunshot sounded like it was in my front
15 yard.

16 Q. Okay. And by your front yard, let me show you State's
17 Exhibit Number 8 again. Kind of point, is that kind of the
18 area?

19 A. In the area outside my apartment.

20 Q. That would be in vicinity of where the yellow markers
21 are?

22 A. Yeah.

23 Q. Ms. Welborn, did you at any point in time during either
24 one -- and I think you've kind of answered this -- but when
25 you heard the arguing or even when you immediately heard the

1 gunshot, did you look out your window or your sliding glass
2 door?

3 A. No.

4 Q. Okay. And, therefore, let ask you: Did you ultimately
5 see the person that may have fired that gunshot you heard?

6 A. No.

7 Q. Did you ultimately go outside at some point in time?

8 A. I did.

9 Q. Okay. Did you ever go outside in the front where the
10 victim's body was located?

11 A. No, I did not.

12 Q. Let me ask you this: The defendant, Christian Himes,
13 do you recognize him?

14 A. Kind of, sort of.

15 Q. Where do you recognize him from?

16 A. The apartment complex.

17 AST. SOL. SORENSON: Beg the Court's indulgence.

18 (Brief pause.) That would be all I have, Ms. Welborn.

19 Please answer any questions that Ms. Williams has.

20 THE COURT: Cross-examination?

21 MS. WILLIAMS: I have no questions, Judge.

22 THE COURT: You may step down, Ms. Welborn. Thank you.

23 THE WITNESS: Thank you.

24 MS. WILLIAMS: Judge, for our purposes, this witness
25 can be excused for the defense purposes.

Direct Examination of Ms. Ham by Ast. Sol. Sorenson

1 THE COURT: Any objection?

2 AST. SOL. SORENSON: No objection, Your Honor.

3 THE COURT: You're free to go. You may call your next
4 witness.

5 AST. SOL. SORENSON: To State calls Heather Ham.

6 (HEATHER MELISSA HAM, was duly sworn and provided the
7 following testimony.)

8 THE COURT: Your witness.

9 AST. SOL. SORENSON: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY AST. SOL. SORENSON:

12 Q. Heather, if you would, please tell the jury how old you
13 are.

14 A. I'm 36.

15 Q. Okay. And what do you do for a living?

16 A. I'm a program director.

17 Q. And, if you would, tell the jury a little bit of what
18 your educational background is.

19 A. I have a bachelor's in sociology, a master's in
20 clinical counseling. I'm a licensed therapist.

21 Q. And how long have you been employed in that field?

22 A. Since 1999.

23 Q. And, if you would, tell us how many children do you
24 have, Heather?

25 A. I have two children.

1 Q. And what are your children's names?

2 A. My children's names are Kingston H. and Lincoln H. [REDACTED].

3 Q. Okay. And how old is Kingston?

4 A. Kingston is nine and Lincoln is six.

5 Q. Okay.

6 A. He just turned six.

7 Q. And who are Kingston and Lincoln's father?

8 A. David Ham.

9 Q. And David is the victim in this case?

10 A. Yes, sir.

11 Q. And how long were you and David together?

12 A. We were together since 2002 of April.

13 Q. Okay. At some point in time, did the two of y'all get
14 married?

15 A. Yes, we did.

16 Q. And when was that?

17 A. That was April of 2010.

18 Q. Okay. Now let me ask you this: Did there come a time
19 when the two of y'all separated?

20 A. Yes.

21 Q. Okay. And when did that occur that the two of y'all
22 separated?

23 A. We separated in, roughly, April or May of 2014.

24 Q. Okay. And at that point in time, obviously, prior to
25 y'all separating, the two of you and your two children were

1 residing together?

2 A. Yes, sir.

3 Q. Okay. Did there come a time after you separated that
4 you moved into [REDACTED] [REDACTED] [REDACTED]?

5 A. Yes.

6 Q. That's on Dorchester Road?

7 A. Yes.

8 Q. Is that correct? In Summerville. And what apartment
9 was it that you moved into?

10 A. Apartment 12-D.

11 Q. Okay. And who else was living with you then when you
12 moved into apartment 12-D?

13 A. At what period?

14 Q. I guess, initially when you first moved there?

15 A. It was me and my children.

16 Q. Okay. And let me ask you: During that time period
17 when you were separated from your husband, was he still a
18 part of your children's lives during that time period?

19 A. Yes.

20 Q. Okay. So from April or May of 2015 up until November
21 1st of 2015?

22 A. Correct.

23 Q. Okay. And describe for the jury, during that time
24 period, how did you all have kind of visitation set up?

25 A. Well, we both agreed since my husband worked a lot of

1 hours that he would get them every weekend. And he followed
2 through on that with the occasion sometimes he would have to
3 work a Saturday. But he would try to get off on a Saturday
4 afternoon, and he would get the kids then and bring them
5 home on Sundays so they could be prepared for school in the
6 morning.

7 Q. And let ask you this: During the time period that
8 y'all were separated, that was about 18 months or so? Would
9 that be about right?

10 A. About.

11 Q. Okay. Did y'all have conversations throughout that
12 18-month period about possibly trying to reconcile and get
13 back together?

14 A. Yes, we had.

15 Q. And let me ask you this: Heather, do you know the
16 defendant, Christian Himes?

17 A. Yes, I do.

18 Q. And I think he's about 23 years old now. I believe --
19 does that sound about right?

20 A. Yeah, somewhere around there.

21 Q. Okay. And when did you first meet Mr. Himes?

22 A. I met him -- he was admitted into the residential
23 facility that I worked at roughly about the end of 2008.

24 Q. So he would've been a teenager that time. Is that
25 correct?

1 A. Correct.

2 Q. And let me ask you this: Did there ultimately come a
3 time in 2015 when Mr. Himes made contact with you?

4 A. Yes.

5 Q. Okay. And do you know about when that was?

6 A. The very first time, I believe it was the latter part
7 of August.

8 Q. Okay. All right. And what was the reason that he had
9 made contact with you?

10 A. He told me that he was in town and that it was forever
11 since, you know, I had seen him. And he wanted to know if
12 we could get together.

13 Q. Okay. At that point in time, did you, in August of
14 2015, did you get together with Mr. Himes?

15 A. No, I did not.

16 Q. Did there come a time subsequent to that where you did
17 in fact get together with Mr. Himes?

18 A. That was in the latter half of September.

19 Q. Okay. So September. And this is all in 2013 we're
20 talking about. Is that correct?

21 A. Correct.

22 Q. And tell the jury kind of how that came about. I mean,
23 what came from that?

24 A. In September or starting from August?

25 Q. Yes. In September.

1 A. September. Christian was looking to move down to
2 Charleston. He was looking for employment, stable
3 employment, and he asked for my help. So he would come down
4 in between, like, when he was working because he had one job
5 -- at one point, he had two jobs -- to speak with somebody
6 that I knew. I helped him to fill out a resume. We sat
7 down and did a resume together. And the ultimate goal,
8 which I was pushing for, was for him to go job hunt.

9 Q. All right. And when he was coming from Columbia down
10 to the Summerville area, where was he staying at when he was
11 in Summerville?

12 A. He stayed in my apartment.

13 Q. And let me ask you: During that time period then, the
14 end of September and through the month of October, was your
15 husband aware of Christian Himes?

16 A. No.

17 Q. Did he know that he was staying in your apartment with
18 you and his two children?

19 A. No, he did not.

20 Q. Let me ask you this: At some point in time, did your
21 relationship with the defendant end up kind of evolving or
22 changing?

23 A. Yes, it did.

24 Q. Okay. And when did that then occur?

25 A. The first -- I think it was the first weekend that we

1 actually had contact with each other, like eye-to-eye,
2 face-to-face.

3 Q. Okay. So the end of September basically?

4 A. Yeah. It was the end of September.

5 Q. Okay. And would you consider him at that point in time
6 to have become your boyfriend during October then of 2015?

7 A. Not at that time.

8 Q. Okay. All right. And I think I've kind of asked this.
9 But so then through September of 2015 through up until that
10 last weekend of October, did your husband at any point in
11 time know about Christian Himes?

12 A. No, he did not.

13 Q. Okay. Now you were aware of when it was that he found
14 out about the defendant?

15 A. It was on the 30th of October, that Friday.

16 Q. Okay. And tell the jury how that came about or what
17 had happened that day?

18 A. Well, I had went to go pick Christian up from getting a
19 haircut, and we were on our way back. And David called me
20 and said that he was coming to pick up the kids. At that
21 point, he was already in route, so what I did was I dropped
22 Christian off on the backside of the apartment complex where
23 there's a bank. And I dropped him off in the parking lot.
24 And then I went around to exchange with him.

25 Q. Okay. And that would've been that -- about what time

1 do you think that would've been on that Friday,
2 October 30th?

3 A. It's relatively regular. Maybe seven. I really can't
4 remember.

5 Q. Early evening, though?

6 A. Right. I mean, it was still daylight.

7 Q. Okay. All right.

8 A. Barely. But it was still daylight.

9 Q. Okay. So end of October, it could have been a little
10 bit before seven probably then?

11 A. Maybe, yeah.

12 Q. And at some point in time, did you have -- did David
13 get back in touch with you that evening after picking up the
14 kids from you and ---

15 A. Yes.

16 Q. --- the topic of Christian Himes come up?

17 A. Yes, it did.

18 Q. And was David happy about that situation?

19 A. No, he was not.

20 Q. Okay. And, in fact, did y'all talk on the phone?

21 A. I honestly don't remember. We could have. But, I
22 mean, I do remember the text.

23 Q. Okay. That was going to be my next question. Did
24 y'all ultimately exchange some text messages that evening
25 about various things but one of which at least referenced

Direct Examination of Ms. Ham by Ast. Sol. Sorenson

1 Christian Himes?

2 A. Yes, we did.

3 Q. Do you remember what the context of your husband's text
4 to you was regarding the defendant?

5 A. He expressed to me that he knew that I had somebody
6 there. And we argued about it.

7 Q. Okay. And did he ultimately send you a text basically
8 telling you to tell the defendant something?

9 A. Yes.

10 Q. Okay.

11 AST. SOL. SORENSON: May I approach the witness, Your
12 Honor?

13 THE COURT: You may.

14 Q. I'm showing you State's Exhibit Number 6. Is that
15 document, that text that you received?

16 A. That is.

17 Q. And you ultimately provided this to Sergeant Weaver
18 with the Summerville Police Department. Is that correct?

19 A. I did.

20 Q. After this had all happened?

21 A. Yes.

22 AST. SOL. SORENSON: Your Honor, at this time we'd
23 offer State's Number 6 into evidence.

24 THE COURT: Any objection?

25 MS. WILLIAMS: No objection.

1 THE COURT: All right. It's in.

2 (State's Exhibit No. 6, Text Messages, was received
3 into evidence.)

4 Q. And just so I'm understanding, the yellow part I
5 believe is you texting. Is that correct, Heather?

6 A. Yes, that is.

7 Q. And so at the very top it's 7:23 -- kind of, for the
8 most part read this as, "Don't act you care now. No more
9 convo. I'm out." So you texted him that at 7:23. Y'all
10 had started kind of having some discussion about Mr. Himes?

11 A. Yes.

12 Q. His response to that is, "Sweet. I care, you don't.
13 What I needed to hear. Tell your BF don't let me catch him
14 slipping." Is that correct?

15 A. That's correct.

16 Q. Now, did you take that to mean that he was threatening
17 to harm, commit serious bodily injury, or to kill your
18 boyfriend, Christian Himes?

19 A. I did not.

20 Q. And then if seven minutes later he's actually texting
21 you about, "By the way, I need you to pick up the kids
22 Sunday. Meant to tell you when I was there." Is that
23 correct?

24 A. Yes. That's correct.

25 Q. So, I mean, that's obviously not a threatening text

1 after that. Is that correct?

2 MS. WILLIAMS: Objection, Your Honor. Leading.

3 THE COURT: Just rephrase, please.

4 Q. Is that a threatening text that followed up to that
5 text prior?

6 A. No. It was not a threatening text. Me and my husband
7 were together for a long time, and we argued like other
8 couples do. But we were not the type of couple that would
9 hold a grudge for very long. We'd get out what we needed to
10 say and then we'd typically move on.

11 Q. In fact, then the next morning of October 31st at
12 10:41, did you send him a text?

13 A. I did.

14 Q. And what does that say?

15 A. Did you find costumes for the boys?

16 Q. And what would that mean? Obviously, what is
17 October 31st?

18 A. Well, it was Halloween day. He had picked up the kids
19 as we discussed. And he still needed to get them costumes,
20 so he said that when I had spoken to him that he was going
21 to get them costumes from Party City. And he was out
22 looking for costumes. I think shortly after he sent that
23 text, he called me from Party City stating that he was
24 waiting in line. And the lines were really long so he was
25 going to try to go somewhere else and get costumes.

1 Q. And do you recall if on then Saturday, October 31st of
2 2015, did you have any other conversation that day with your
3 husband regarding Christian Himes that you recall?

4 A. No. That was it.

5 AST. SOL. SORENSON: Beg the Court's indulgence.

6 Q. All right. And let me ask you then that Friday
7 evening, the text message that, you know, tell your
8 boyfriend don't let me catch him slipping, did Mr. Himes end
9 up seeing that text message?

10 A. He did.

11 Q. Tell the jury how that came about.

12 A. As I recall, we were sitting out on the patio. And I
13 was sitting in his lab when I got the text message. And
14 that's how he saw it.

15 Q. Okay. What was his reaction to that text message?

16 A. He was upset about it.

17 Q. Okay. Did he ask you anything about your husband David
18 Ham as a result of that text message?

19 A. He asked me if he could fight.

20 Q. Okay. And do you know what your response was to that?

21 A. I was like, yeah, my husband can fight.

22 Q. And did he say anything else at that point in time
23 after you told him that?

24 A. Well, you know, actually I don't want to be
25 contradicting because I'm not sure that when he mentioned

Direct Examination of Ms. Ham by Ast. Sol. Sorenson

1 getting, in fact getting like a weapon, I didn't take him
2 seriously when he said that. But it was after that that he
3 asked me if he could fight. I want to say that that's the
4 chain of events.

5 Q. Okay. So he had asked, made a comment -- all right.
6 So he sees this text message?

7 A. Uh-huh.

8 Q. Tell the jury then what his response was, what did he
9 say as a result of seeing this text message? Just so I
10 understand the sequence here.

11 A. He stated that he might have to get a piece or a slang
12 word for it. I don't remember what that word was exactly.

13 Q. Slang word for what?

14 A. For gun. Weapon.

15 Q. And then after that is when he made -- asked you about
16 whether your husband could fight?

17 A. Right.

18 Q. Let me ask you: Prior to that night, that Friday
19 night, had you ever seen the defendant with a handgun or a
20 weapon?

21 A. No.

22 Q. Have one in your apartment to your knowledge?

23 A. Not at all.

24 Q. Would you have allowed him to have a handgun in your
25 apartment?

1 A. No.

2 Q. Now that following day, Saturday, October 31st, did you
3 -- obviously, according to the text message and what you
4 testified about, your husband was out getting costumes for
5 your two sons. Did you ultimately end up going
6 trick-or-treating with them that night?

7 A. Yes, I did.

8 Q. Okay. Who was it that went?

9 A. It was myself, David, and our two children, Kingston
10 and Lincoln.

11 Q. Okay. And was the defendant aware of that situation?

12 A. Yes, he was. He asked me if -- well, he pretty much
13 stated that he wanted to go trick-or-treating with me and
14 the boys because he knew that I was going with David. And
15 he would have rather have gone. So he knew that I was with
16 David trick-or-treating with the kids.

17 Q. Okay. Did he appear to be upset with that? The fact
18 that you did not bring him or he was not included in that.

19 MS. WILLIAMS: Objection. Leading.

20 THE COURT: Ask what his demeanor was.

21 Q. What was his reaction to not being included in that
22 taking the kids trick-or-treating?

23 A. He didn't like it. He was upset about it, and he
24 expressed that. But I told him that was their father and we
25 always did activities together every holiday. It wasn't

1 anything different from what we were already doing.

2 Q. And let me ask you: That evening then, do you have any
3 idea that Saturday evening what he did? What the defendant
4 did.

5 A. I don't remember. I don't know. He may have sat at
6 the house. I don't remember.

7 Q. Let me ask you this: Back during that time period when
8 he was -- in October of 2015, did he stay with you basically
9 that entire month of October?

10 A. He was back and forth. But there was a time when that
11 storm came through. It was that historical rain that
12 happened.

13 Q. The flooding?

14 A. Yes. And so we got flooded in my apartment. I wasn't
15 -- we weren't able to leave for like a week and a half
16 almost.

17 Q. Okay. And you said he was going back and forth. And
18 that would be back and forth to where?

19 A. To Columbia.

20 Q. Okay. And how was he getting back and forth from
21 Summerville to Columbia and then back to Summerville?

22 A. Greyhound.

23 Q. And you had mentioned earlier that he was working a
24 couple of jobs?

25 A. Yes.

1 Q. In Columbia?

2 A. I think one was Wendy's. There was another one that I
3 think was at skating place or something. I can't remember
4 the name of it.

5 Q. Okay.

6 A. But I don't remember the name.

7 Q. Okay. And when he was staying with you, did he have
8 money when he was staying with you or . . .

9 A. Yeah. He had some money.

10 Q. I mean, by some money, I mean, describe -- I mean, is
11 he paying you any rent or anything of that nature?

12 A. No.

13 Q. Okay. Was he buying his own food and all that or . . .

14 A. No. I had food at the house.

15 Q. Was he contributing to purchasing groceries?

16 A. No.

17 Q. Now that Saturday evening, October 31st, then, did you
18 have any issues with your husband, David, that evening when
19 he had the kids trick-or-treating?

20 A. No. You know, like I said, we scheduled -- I got with
21 him on the phone and we decided we were going to meet at my
22 parents' house and go trick-or-treating in that
23 neighborhood. And we met over there. He came inside. My
24 parents talked to him. And then we went and took the kids
25 trick-or-treating. And the kids had a great time. And we

Direct Examination of Ms. Ham by Ast. Sol. Sorenson

1 had a great time enjoying them. It was wonderful.

2 Q. Now the following day then -- let's forward then to
3 Sunday, November 1st. The defendant had spent the night at
4 your apartment that Saturday night?

5 A. Yes.

6 Q. And let me ask you: During that time period, did he
7 have a vehicle?

8 A. No, he didn't.

9 Q. Okay. And did you have a vehicle back then?

10 A. I did.

11 Q. Okay. And what kind of vehicle did you have back in
12 October of 2015 to November 1st?

13 A. Well, I had just gotten a new vehicle because of the
14 storm totaled my other vehicle. So it may have been a
15 couple of days. I just purchased a Chrysler 300. It looks
16 black in color, but it's actually dark blue. It's a 2012.

17 AST. SOL. SORENSON: May I approach the witness, Your
18 Honor?

19 THE COURT: (Affirms.)

20 Q. Heather, if I could show you State's Exhibit Numbers 14
21 and 15.

22 A. That's my car.

23 AST. SOL. SORENSON: Your Honor, at this time we'd
24 offer State's 14 and 15 into evidence.

25 THE COURT: Any objection?

1 MS. WILLIAMS: No objection.

2 THE COURT: They're in.

3 (State's Exhibit No. 14 and 15, Photographs, were
4 received into evidence.)

5 Q. State's 14 is just a picture of, kind of, from the
6 driver's side, showing the driver's side of your vehicle.
7 Is that correct?

8 A. Yes.

9 Q. And then 15 would be more of the kind of the back. I
10 mean, back and the passenger side?

11 A. Passenger. Yes.

12 Q. Now let me ask you this: You indicated that Mr. Himes
13 didn't have a vehicle. Did he have a cell phone when he was
14 staying with you that you're aware of?

15 A. Well, the first couple -- I think the first time, or
16 maybe the first and second time he came, he did have a
17 MetroPCS phone but it got turned off. And he never got a
18 cell phone after that. So after that, he didn't have a
19 phone.

20 Q. Okay. All right. Now, ultimately, that Sunday,
21 November 1st, of course your kids at that point in time are
22 with their father. Is that correct? Still that Sunday
23 morning, Sunday afternoon, would have been the first?

24 A. Yes.

25 Q. Okay. And Did y'all have -- did you have any

1 arrangements at that point in time with your husband as to
2 how you were going to get the kids back that Sunday?

3 A. Well, I was supposed to pick them up.

4 Q. Okay. And do you remember about what time it was that
5 you would -- typically, y'all would exchange the kids on a
6 Sunday evening?

7 A. About 6:30. We would do dinner first. Or he would do
8 dinner first and then bathe them. And it was 6:30. It was
9 pretty consistent.

10 Q. All right. And, obviously, you would have -- how would
11 you have gone to get your kids?

12 A. Without my car?

13 Q. Well, how would you, I mean, typically?

14 A. Oh, how would I go to get my kids?

15 Q. Uh-huh.

16 A. With my vehicle.

17 Q. Okay. Now, that Sunday afternoon, did the defendant
18 ask you anything regarding your vehicle?

19 A. He asked if he could borrow my vehicle.

20 Q. Do you remember about what time that was that he wanted
21 to borrow your vehicle?

22 A. It was somewhere around 3:30, 3:45.

23 Q. Okay. And did he tell you why he needed to borrow your
24 vehicle?

25 A. He just said he had to go do something.

1 Q. Did you ask him about why?

2 A. I did. He wouldn't tell me. And, you know, he had
3 borrowed my car before and been gone for long periods of
4 time. So I was making dinner. And at the time, I was like,
5 well, I want to come with you. But he didn't want me to
6 come. And we fussed about it for a little while. And then
7 I was like, well, you know, go ahead and go. But if you go,
8 you need to be back at 6:30 because I have to pick up my
9 kids. And he promised me he would be back by then.

10 Q. All right. And let me ask you: Six-thirty rolled
11 around, did Christian Himes come back with your vehicle?

12 A. No.

13 Q. Okay. Did you hear from him?

14 A. No. He didn't have a phone so there was no way to
15 contact him.

16 Q. Let me ask you this: Had anybody, to your knowledge,
17 contacted him by way of your cell phone prior to him leaving
18 to get your car that you're aware of?

19 A. Did some -- can you repeat that.

20 Q. Did anybody either call on your cell phone or text on
21 your cell phone for Mr. Himes prior to him taking your car?

22 A. Did another person text on my phone?

23 Q. Text you or text your cell phone trying to contact him
24 that Sunday afternoon that you recall?

25 A. I don't know. I don't recall that.

Direct Examination of Ms. Ham by Ast. Sol. Sorenson

1 Q. Now let me ask you: Obviously, you testified a moment
2 ago that he didn't, you know, the car wasn't back by 6:30;
3 hadn't heard from him. Is that correct?

4 A. Correct.

5 Q. How about seven o'clock?

6 A. No.

7 Q. 7:30?

8 A. No.

9 Q. Eight o'clock?

10 A. No.

11 Q. 8:30?

12 A. No.

13 Q. Nine o'clock?

14 A. No.

15 Q. Closer to 9:30 now?

16 A. Closer to 9:30? No. I didn't hear from him. I heard
17 from David first.

18 Q. During at no point in time did you hear from Christian
19 Himes?

20 A. No.

21 Q. And he knew your cell phone number; right?

22 A. Correct. My cell phone number hadn't changed, I mean,
23 in 15 years, you know. So, I mean, I had the same cell
24 phone number.

25 Q. Now you did testify a moment ago that at some point

1 time you did hear from your husband, though. Is that
2 correct?

3 A. Yes, I did.

4 Q. Okay. What was the reason for that?

5 A. He was wondering where ---

6 MS. WILLIAMS: Objection. Hearsay.

7 AST. SOL. SORENSON: I mean, it's not really offered
8 for the truth. I mean, I can, I mean . . .

9 Q. Was he concerned about the fact that you didn't show up
10 to pick up your kids?

11 MS. WILLIAMS: Objection, Your Honor. Hearsay and
12 leading.

13 THE COURT: Overruled. You may proceed.

14 AST. SOL. SORENSON: Thank you.

15 Q. You ultimately heard from your husband that night. Is
16 that correct?

17 A. I heard from my husband. He started calling around
18 eight o'clock-ish. He was wondering where I was.

19 MS. WILLIAMS: Objection, Your Honor. Hearsay.

20 AST. SOL. SORENSON: I mean, that just goes to explain
21 ultimately why he ends up having to bring the kids back.

22 THE COURT: Overruled. You may proceed.

23 AST. SOL. SORENSON: Thank you.

24 Q. Go ahead. You can continue.

25 A. Okay. He asked where I was. He expressed that he was

Direct Examination of Ms. Ham by Ast. Sol. Sorenson

1 upset that I hadn't gotten the kids yet, what was taking so
2 long. And I didn't want to tell him why I could not come
3 pick up the kids. And so we kind of argued about it for a
4 little while. Ultimately, he said I'm bringing the kids
5 home because it was getting very late and they had to go to
6 school the next day. So he got -- I mean, he brought the
7 kids home.

8 Q. Okay. At any point in time, did you tell your husband
9 that the reason you couldn't pick the kids up was because he
10 had your car?

11 A. No.

12 Q. All right. Do you know about what time it was that
13 David brought your two sons home?

14 A. It was somewhere around 9:00, 9:30.

15 Q. You indicated that y'all had kind of argued a little
16 but on the phone. When he got there, what was his demeanor
17 when he got your apartment?

18 A. He was fine. He wasn't -- he didn't display anger or
19 didn't state anything or say anything that was argumentative
20 or his tone wasn't changed. It was David bringing the kids
21 home.

22 Q. Ultimately, did he end up staying for a while at your
23 apartment?

24 A. Yes, he did.

25 Q. Tell the jury what did y'all do when he got there.

1 A. Well, when he came, he brought the kids in. He took
2 them straight to their bedroom and put them both in their
3 beds. It was a bunk bed so one was on the bottom and he put
4 the other one on top. And then he put their bags aside.
5 And he helped me make their drinks for bed and kiss them
6 goodnight.

7 Q. Okay. Did y'all have some conversation while he was
8 there also about things?

9 A. Yes.

10 Q. Okay. Did y'all talk at all that night about
11 reconciling at all?

12 A. We did.

13 Q. Tell the jury, what were your kind of concerns while
14 your husband was there in your apartment.

15 A. Well, as far as the discussion of us getting back
16 together, I mean, we were talking about other things prior
17 to that. But I, you know, I asked him if he wanted to get
18 back together and he told me ---

19 MS. WILLIAMS: Objection, Your Honor. Hearsay.

20 THE COURT: Sustained.

21 Q. That's fine. I don't mean to get into a whole lot of
22 detail. But at some point in time, had you heard yet from
23 him? Have you heard from ---

24 A. No.

25 Q. Okay. So did you have any idea when he might show up?

Direct Examination of Ms. Ham by Ast. Sol. Sorenson

1 A. I didn't have a clue.

2 Q. All right. Now, at some point in time, did your
3 husband, David, go anywhere inside your apartment or do
4 anything inside the apartment?

5 A. He went into the kitchen. Like I said, he made juice
6 for the boys. He looked at his mail that I gave him. He
7 went out on the porch, smoked a cigarette. He went to the
8 dining room table, sat down.

9 Q. Okay. At some point in time, did the defendant,
10 Christian Himes, show up at your apartment?

11 A. Yes.

12 Q. Okay. Tell the jury about that.

13 A. Well, when David went out on my patio to go smoke, I
14 went to door to see if I saw any sign of Christian because I
15 hadn't heard from them. And I opened up the door and he
16 just happened to be walking up right at that time to the
17 door. So I told him that David was there and that he needed
18 to go. And he turned around and he left.

19 Q. Did y'all have any other conversations at that point in
20 time with him?

21 A. No. That was it.

22 Q. Do you know where he went?

23 A. No. There was no discussion as where he was going.

24 Q. Do you recall his reaction at all to you telling him
25 that he needed to go?

1 A. He looked surprised. But he turned right back around
2 and he left.

3 Q. Now at some point in time, did your husband end up
4 leaving that night?

5 A. He did.

6 Q. Okay. How long was that after you had told the
7 defendant basically that he needed to leave?

8 A. I want to say 15, 20 minutes. To me, it felt like a
9 long time.

10 Q. Okay. And when your husband left, what did you do at
11 that point in time, Heather?

12 A. I went to the bathroom.

13 Q. Okay. And where is your bathroom located at?

14 A. It is in my master bedroom. So you have to go into my
15 room in order to get to the bathroom.

16 Q. Okay. And tell the jury then when you went into your
17 bathroom, what, if anything, did you hear or what, if
18 anything, happened then.

19 A. When I went to the bathroom, shortly after I got in
20 there, I heard knocking on my front door. But I wasn't able
21 to get up quick enough. But my oldest son was still fairly
22 awake, so he got up and answered the door, and it was David.
23 David came in and stated to me did you hear me knocking, you
24 know, at the door. I was knocking on the door. And I told
25 him that I was using the bathroom. And, I mean, so he was

1 like -- he came in there and he saw I was using the
2 bathroom. And so he said, well, I forgot my keys. And he
3 went back out of my line of sight and I heard him pick up
4 his keys and leave again.

5 Q. Okay. All right. And what did you do after? So he
6 walks out? I mean, your front door closes?

7 A. Yes.

8 Q. Okay. Tell the jury, kind of, what happened after
9 that.

10 A. Well, after I finished using the bathroom, I got up,
11 went to the door to lock it as I do regularly. And as I was
12 walking towards that area, I heard raised voices outside.

13 Q. Keep going. I mean, did you recognize those voices?

14 A. At first, no, I didn't recognize the voices. I was
15 hoping that it wasn't voices that were associated with me.
16 I hoped it wasn't Christian or David because that was my
17 fear of them having any type of confrontation. So as I got
18 closer to the door, I opened, I cracked it open, and I
19 recognized their voices. It was in fact David and Christian
20 outside.

21 Q. You heard both of them?

22 A. Yes.

23 Q. Okay. And describe the tone of what you heard from
24 outside.

25 A. They were arguing.

1 Q. It was both of them that you heard?

2 A. Yes.

3 Q. Okay. And could you tell where those voices were
4 coming from?

5 A. Out front.

6 Q. Okay. And by out front --

7 AST. SOL. SORENSON: May I approach the witness, Your
8 Honor?

9 THE COURT: You may.

10 Q. Let me show you State's Exhibit Number 7. Does that
11 kind of show the area where that the voices were coming
12 from?

13 A. Yes.

14 Q. Okay. Can you kind of point to me where.

15 A. They were to this side. The right side if you're
16 facing the front of the building.

17 Q. Could you see either one of them from -- and your door
18 -- let me back up a little bit. I don't think I asked you
19 this. If I go kind of into that breezeway, where is your
20 apartment located at?

21 A. My apartment is located behind 12-B. It's D on the
22 back right side if you're facing the apartment.

23 Q. So it would be basically behind this apartment where
24 I'm pointing at right here?

25 A. Yes.

1 Q. So when you had an opportunity to look open your door
2 and look out, which direction did you ---

3 A. I could see more of the left side of the building that
4 I could see what was happening from there. It was a limited
5 view.

6 Q. So looking back down that breezeway, were you able to
7 see this area out in front of your apartment?

8 A. No.

9 Q. Okay. But it's your testimony that that's kind of
10 where the voices and the arguing appeared to be coming from?

11 A. Yes.

12 Q. And tell the jury, Heather, were you able to understand
13 what anybody, after you opened your door and realized who it
14 was, were you able to understand anything that either one of
15 them were saying?

16 A. Yes.

17 Q. Okay. And tell the jury what it was that you heard
18 that you were able to understand.

19 A. When I opened the door, I heard David say something to
20 the effect of, you know, "Come on. You think you're bad
21 because you have a gun. You know, what's up homeboy."
22 Something of that nature. And I heard Christian say back up
23 approximately three times.

24 Q. And did you hear anything else after that?

25 A. After that, I heard a gunshot.

1 Q. Just one? One gunshot?

2 A. (Nonverbal response.)

3 Q. And upon hearing that gunshot, what did you do then,
4 Heather?

5 A. I ran out there to see what happened.

6 Q. And tell the jury when you got kind of down -- did you
7 come actually down the steps?

8 A. Yes, sir.

9 Q. Okay. And tell the jury when you got out there what it
10 was that you initially saw.

11 A. When I ran out there, I saw Christian pulling out of
12 the parking space and driving off.

13 Q. What vehicle was he in when he did that?

14 A. He was in my vehicle.

15 Q. Did he stop?

16 A. No.

17 Q. Say anything to you?

18 A. No. I screamed, you know, what have you done. But I
19 don't know if he heard me. He took off very fast. And I
20 looked over to see where David was and he was laying in the
21 grass.

22 Q. I'm showing you --

23 AST. SOL. SORENSON: Your Honor, may I approach?

24 THE COURT: You may.

25 Q. Showing you State's Exhibit Number 8. Does that show

Direct Examination of Ms. Ham by Ast. Sol. Sorenson

1 -- is that kind of the area where your husband was located
2 at?

3 A. Yes.

4 Q. And kind of point out just kind of generally where he
5 was..

6 A. He was in this area.

7 Q. Kind of the area where my fingers are?

8 A. (Affirmative head nod.)

9 Q. Around the markers and all that that are in the grass?

10 A. (Affirmative head nod.)

11 Q. And what did you do at that time, Heather?

12 A. I felt on his body because I didn't see anything on his
13 body. But then when I got closer to his face area, I felt
14 the blood. And it was coming out pretty fast. So I ran to
15 my apartment and I got a towel. And I didn't see my phone
16 in sight, so I just went and banged on as many doors as I
17 could for somebody to help. And then I went out there and I
18 tried to apply pressure to the wound. Just try to stop the
19 bleeding.

20 Q. And was David able to communicate with you at all?

21 A. No.

22 Q. Had you seen around him on that area, I mean, any
23 weapons on the ground? I mean, guns, knife, clubs, bats. I
24 mean, anything around him on the ground.

25 A. No. I didn't see anything.

1 Q. And did police officers ultimately arrive out there?

2 A. Yes.

3 Q. Ambulance arrive?

4 A. Yes.

5 Q. Okay. Where were you when those first officers got out
6 there?

7 A. I was laying -- I was leaning next to him with what I
8 had. I had to take the shirt off my back because I
9 didn't -- I didn't get much from anybody else.

10 Q. And let me ask you: Heather, did you ultimately
11 provide law enforcement out there that night a description
12 of your vehicle?

13 A. Yes.

14 Q. Okay. And his name, the person that you saw driving
15 away with your vehicle?

16 A. Yes.

17 Q. And I had asked you earlier whether up to that Friday,
18 October 30th, whether you had ever seen Christian Himes with
19 a gun. And I believe your answer was no. Is that correct?

20 A. No.

21 Q. On October 31st, did you ever see him with a gun? That
22 Halloween.

23 A. No.

24 Q. How about on November 1st up until the time he left at
25 3:30 or so?

Direct Examination of Ms. Ham by Ast. Sol. Sorenson

1 A. I was never aware of any moment where he possessed a
2 firearm.

3 Q. Let me show you, Heather, what's been marked right now
4 as State's Exhibit Number 18. That's a firearm. Is that
5 correct?

6 A. Yes.

7 Q. Have you ever sen that gun before?

8 A. No.

9 Q. Ever see it in your apartment?

10 A. No.

11 AST. SOL. SORENSON: Beg the Court's indulgence for one
12 moment.

13 Q. And, Heather, let me just back up just real quick.
14 There's a couple of questions about your apartment. The
15 breezeway, so that breezeway kind of leading up where you
16 said your apartment would be in the back right. Is that
17 correct?

18 A. Yes.

19 Q. How many apartments then are on that kind of first
20 floor of that bréezeway?

21 A. There's four total.

22 Q. Okay. And are there lights outside of any of those
23 apartments?

24 A. Directly outside?

25 Q. Uh-huh.

1 A. No.

2 Q. Okay. Is there a light next to any of those doors, I
3 guess, to those -- I mean, do the individual doors have
4 lights?

5 A. Yeah. The breezeway was well lit.

6 Q. How about out in front of Apartment 12? Were there any
7 lights out there that you recall?

8 A. I mean, the neighborhood has lampposts. I believe
9 there's one to the left and one to the right somewhere. But
10 I can't tell you exactly their positioning.

11 Q. You testified earlier that initially when you first
12 went over to David, I mean, you couldn't see where he was
13 bleeding, though, initially. Is that correct? Couldn't
14 actually see it. It wasn't until you felt where he was
15 bleeding. Is that right?

16 A. No. I couldn't see.

17 Q. Let me ask you: Do you know what kind of vehicle he
18 showed up that night with, your husband?

19 A. No.

20 Q. Okay. Are you familiar with what types of vehicles he
21 had access to?

22 A. Yeah, some.

23 Q. Okay. Let me show you State's Exhibit Number 10 and
24 just ask -- I don't know if you recognize. Is that one of
25 the vehicles that your husband would have access to?

Cross-Examination of Ms. Ham by Ms. Williams

1 A. That is his mother's vehicle.

2 Q. And that picture is located in front of Building 12,
3 basically. Is that right?

4 A. Yeah. To the right side.

5 AST. SOL. SORENSON: Is Number 10 in evidence already?

6 THE COURT: It is.

7 Q. That vehicle right there, that would be David's mom's
8 vehicle, basically?

9 A. Yes.

10 AST. SOL. SORENSON: That would be all I have for this
11 witness, Your Honor.

12 THE COURT: Cross-examination?

13 MS. WILLIAMS: Thank you, Judge. May it please the
14 Court.

15 THE COURT: Yes, ma'am.

16 CROSS-EXAMINATION

17 BY MS. WILLIAMS:

18 Q. Ms. Ham, you're 36 years old?

19 A. Yes, ma'am.

20 Q. You're the program director at?

21 A. New Beginnings in Charleston.

22 Q. How long have you been there?

23 A. I'm sorry?

24 Q. How long have you been there?

25 A. Since 1999.

1 Q. That's a group home?

2 A. Yes. It's a residential group home.

3 Q. And you were director there when Christian Himes was a
4 resident at that group home. Isn't that right?

5 A. No.

6 Q. You don't remember knowing Christian Himes in 2008 when
7 he lived there?

8 A. I was not a director then. I was -- at the time, they
9 didn't call it an HSP, but I was an LCS, I think, at that
10 time, so . . .

11 Q. I have no idea what that means. What's an LCS?

12 A. Lead Counseling Staff or Lead Clinical Staff.

13 Q. So you were a counselor when Christian Himes was a
14 resident of that group home?

15 A. Yes.

16 Q. How old was he?

17 A. Fifteen.

18 Q. How old were you?

19 A. Twenty-eight.

20 Q. Okay. So the first time you met Christian Himes he was
21 15 and you were 28?

22 A. Yes.

23 Q. And you had access to his private records being the
24 counselor in the home he was at?

25 A. Yes. I had access to them.

1 Q. You had access to his background and his history and
2 the things he had been through in his life?

3 A. Yes.

4 Q. And you knew all those in 2008?

5 A. Yes.

6 Q. You knew him still in 2015 when you met up with him
7 again?

8 A. Yes. I knew him. I mean, you can't forget somebody
9 that you know.

10 Q. Okay. I agree. Over the eight years between 2008 and
11 2015, did you keep in touch?

12 A. Yes. We kept in touch as I did with a lot of the
13 residents at the program.

14 Q. Okay. How did you keep in touch with them?

15 A. Well, I didn't personally keep in touch with them. The
16 residents, you know, sometimes after they would leave the
17 program or get discharged, they would call and tell us how
18 they're doing. They had my direct number. They had other
19 staff's direct numbers the ones that they were closer to.
20 They would let us know, you know, if they needed help or
21 resources or something or get advice.

22 Q. Let me stop you there. Christian Himes had your cell
23 phone; right?

24 A. That's all I had.

25 Q. Okay. Is that ---

1 A. We all had cell phones.

2 Q. --- what you're referring to as your work number?

3 A. That is my number. That ---

4 Q. Okay. So your work number is your cell phone number?

5 THE COURT: Ms. Williams, if you will allow her to
6 answer the question before you start on the next question,
7 please.

8 THE WITNESS: Yeah. I just -- you're going a little
9 bit too fast.

10 MS. WILLIAMS: Yes, ma'am.

11 Q. Is your work number your cell number?

12 A. Yes.

13 Q. Okay. So christian Himes had your cell phone number?

14 A. Yes.

15 Q. And your testimony is that other residents in the group
16 home also had your cell number?

17 A. Still do.

18 Q. Okay.

19 A. Well, not anymore since I changed my number, but yeah.

20 Q. Okay. And you eventually grew to love Christian?

21 A. When he came.

22 Q. Did you love him before he came?

23 A. No.

24 Q. To see you in 2015?

25 A. No.

1 Q. No. Your testimony today is when he reached out to you
2 in 2015, you didn't already feel love for him?

3 A. I cared.

4 Q. Okay.

5 A. But that's kind of my profession anyways. I mean, I'm
6 naturally a giver. So some people take advantage of that
7 and some people will, you know . . .

8 Q. Do you remember writing letters to Christian Himes
9 while he was in jail, in the Dorchester County Detention
10 Center, after this incident?

11 A. Yes.

12 MS. WILLIAMS: May I approach, Judge?

13 THE COURT: You may.

14 AST. SOL. SORENSON: I believe I have an objection to
15 this letter, Your Honor.

16 MS. WILLIAMS: I'm not entering at this time, Judge.
17 I'm just -- I'm just showing it to you.

18 THE COURT: Okay.

19 Q. I'm going to hand you what's been previously marked as
20 Defense Exhibit 6 for identification purposes. Do you
21 recognize that?

22 A. Yes. I recognize it.

23 Q. Is that a letter that you wrote?

24 A. Yes. That's a letter I wrote.

25 Q. Is that a letter you wrote to Christian Himes?

1 A. It's a letter I wrote to Christian.

2 Q. And that's your signature on the bottom of it?

3 A. Yes. This is mine.

4 Q. And it's dated December 7, 2015?

5 A. Correct.

6 Q. If you review that, would it refresh your recollection
7 as to whether or not you already had feelings for Christian
8 Himes prior to him coming to see you in 2015?

9 A. (No response.)

10 Q. If I can point your attention to the second page. The
11 bottom of the first page, the top of the second page, "When
12 you contacted me in August this year, I was excited. When
13 you visited Charleston, I was scared. Scared of what might
14 happen if we met ---

15 A. I don't know where you are. I'm sorry.

16 MS. WILLIAMS: May I approach?

17 THE COURT: You may.

18 Q. "When you contacted me in August this year," that would
19 have been 2015.

20 A. Correct. Yes.

21 Q. "I was so excited when you visited Charleston this
22 time. I was scared. Scared of what might happen when we
23 met. Scared of falling for someone that didn't love me the
24 way I love them." Isn't that what you wrote in the letter
25 to Christian Himes?

1 A. That would appear to be what I wrote. Correct.

2 Q. So does that refresh your recollection about whether or
3 not you already loved Christian Himes prior to seeing him
4 again in 2015?

5 A. No. Actually, it doesn't. And I would like to explain
6 why.

7 Q. Well, I think we'll get to that in a minute.

8 THE COURT: She can explain. Answer yes or no, and
9 then if she has an explanation, she can explain it. You may
10 explain your answer.

11 A. When I lost my husband, the fact that I had to go
12 through that was very traumatizing. But after that, I was
13 also traumatized. I was traumatized twice. People blamed
14 me for his death. And I began to believe that I was
15 responsible for that. The only person that I felt I could
16 talk to or try to find out what happened was Christian. I
17 didn't see myself -- picture myself of being with anybody
18 harmful, period. That include David or Christian. And I
19 was being attacked. I was not able to rationalize clearly.
20 And I felt like I was at a vulnerable place without clear
21 ration of my thoughts.

22 Q. So my question to you was did you develop a romantic
23 relationship with Christian Himes prior to him coming to see
24 you in 2015? Did you love him prior to him coming to see
25 you in 2015?

1 A. I did not develop a relationship him prior to him
2 coming to see me. In August when he came -- he had been
3 down here and he said that he wanted to see me. I was very
4 hesitant about that because I didn't feel comfortable. So I
5 blew him off. I told him that, you know, -- I didn't meet
6 with him. And he called me and he said, you know, I'm about
7 to leave. I'm going to this place. And, you know, he
8 expressed to me that it hurt his feelings that I remarked
9 the way that I did.

10 Q. So your testimony today is that you know him in 2008
11 when he is a resident at a group home where you're his
12 counselor; right?

13 A. (Affirmative head nod.)

14 Q. You keep in touch with him over the years; right?
15 Correct?

16 THE COURT: Ms. Ham, you need to answer out loud.

17 THE WITNESS: Oh, I'm sorry.

18 Q. You keep in touch with him over the years?

19 A. Yes. He kept in contact with me over the years.

20 Q. And then in 2015, he reaches out to you again?

21 A. Yes.

22 Q. And your testimony to the jury is that you blew him
23 off. Isn't that what you just said?

24 A. I did.

25 Q. And, again, on the second page of that letter, the

1 letter we just read, the letter that you wrote to Christian
2 Himes and have identified as your statement, you say, "When
3 you contacted me in August of this year, I was so excited.
4 But when you visited Charleston that time, I was scared.
5 Scared of what might happen when we met. Scared of falling
6 for someone that didn't love me the way that I love them."
7 Those two statements are inconsistent.

8 A. They are.

9 Q. Correct? Okay. I want to talk a little bit about your
10 marriage to David Ham. You were married to him at the time
11 that this happened. It was not a legal separation or
12 anything along those lines.

13 A. No.

14 Q. But you had been apart for a year or a year and a half?

15 A. About a year and a half.

16 Q. And you broke because -- it was a bad breakup; right?

17 A. It was devastating for me because we had been through
18 things.

19 AST. SOL. SORENSON: Your Honor, I think I have a
20 matter of law that we need to take up.

21 THE COURT: Would you approach.

22 (A bench conference was held off the record and out of
23 the hearing of the jury panel.)

24 BY MS. WILLIAMS (continuing):

25 Q. And you and David Ham broke up in 2014?

1 A. We separated.

2 Q. And you got your own apartment?

3 A. (Affirmative head nod.)

4 Q. He didn't have a key to it. You lived alone with your
5 two children?

6 A. (Affirmative head nod.)

7 Q. Until you and Christian Ham [sic] developed a
8 relationship in August of 2015, or September of 2015?

9 A. September.

10 Q. And it was a pretty close relationship, the
11 relationship you had with Christian. You said that you felt
12 like you could rely on him's.

13 A. I don't know what you're referring to.

14 Q. It was a close relationship that you had with Christian
15 Himes. Y'all were in love.

16 A. Yes. I loved him and I cared for him during that time,
17 yes.

18 Q. And he met your children?

19 A. Yes.

20 Q. And he spent a lot of time with your children?

21 A. He did.

22 Q. They adored him?

23 A. Yeah.

24 Q. He was good to them?

25 A. He was.

1 Q. Was kind and considerate?

2 A. Yes.

3 Q. And showed them the right way to behave?

4 A. Meaning?

5 Q. Meaning that he modeled good behavior for them.

6 A. Oh, yes. I mean, he wasn't -- he didn't do anything
7 harmful to my kids or things that I would be concerned
8 about.

9 Q. And you had a close and loving relationship with
10 Christian?

11 A. At the time, we were. I mean, we were close, yes.

12 Q. In fact, I think you testified earlier you were sitting
13 on Christian's lap on the patio when you got a text from
14 David Ham?

15 A. Yes.

16 Q. And that was the kind of relationship you had?

17 A. Right. I never expected Christian to -- I never
18 expected something like this to happen.

19 Q. You never expected something like this to happen. You
20 never expected David to get angry?

21 A. I never expected Christian to shoot him. I never
22 expected for my husband to die, for my kids not to have a
23 father anymore. There was a lot of unexpected things that
24 happened that I deal with on a daily basis.

25 Q. Well, did you share some of your concerns with

1 Christian about David?

2 A. Yes.

3 Q. Did you share your concerns about prior incidences that
4 you David had that were violent?

5 A. I believe I did.

6 Q. Did you share the incident where David -- did you tell
7 Christian about the time where David Ham hit you in the
8 mouth?

9 A. I believe I did.

10 Q. And caused a scar that you have to this day?

11 A. Yeah. I -- yes.

12 Q. And did you tell Christian about the day that you left
13 David Ham for good?

14 A. I may have.

15 Q. And the day that you left -- did you tell Christian
16 that the day that you left David Ham for good was the day
17 that he dragged you out of your house physically?

18 A. I may have. Christian didn't -- he tried to get my
19 mind off of things that bothered me. So we didn't spend a
20 whole lot of time talking about David. It wasn't -- I mean,
21 yes, this is about David. But it just seems to me like that
22 we spent all of this -- it just seems like your spending --
23 like we spent all this time talking about David and David
24 only. And that's not really ---

25 Q. Well, you didn't because had a loving relationship.

Cross-Examination of Ms. Ham by Ms. Williams

1 You were spending time with your kids; right?

2 A. Right. I mean ---

3 Q. Making dinner together?

4 A. Yeah. It ---

5 Q. You were taking him to get his hair cut?

6 THE COURT: Ms. Williams, will you let her finish her
7 answer before you get to the next question, please.

8 MS. WILLIAMS: Yes, ma'am.

9 Q. You were taking him to get his hair cut?

10 A. Uh-huh.

11 Q. I'm sorry. Is that a yes?

12 A. Yes. Yes.

13 Q. And you had told him, I mean, it wasn't a big part of
14 your relationship, but you had told him that you were afraid
15 of David?

16 A. I don't remember telling him that I was afraid of
17 David.

18 Q. Did you ever at any time tell him that you were afraid
19 of David?

20 A. I just said I don't remember.

21 AST. SOL. SORENSON: I have an objection.

22 THE COURT: Would you like approach?

23 AST. SOL. SORENSON: Please.

24 (A bench conference was held off the record and out of
25 the hearing of the jury panel.)

1 THE COURT: Ladies and gentlemen of the jury, we're
2 going to take just a very brief recess. If you would,
3 please, go to your jury room and do not discuss the case.
4 This will be a good opportunity to have an afternoon break.
5 We'll be right back with you.

6 (The jury exits the courtroom at 3:17 p.m.)

7 THE COURT: All right. Solicitor, it's my
8 understanding that you have an objection to the line of
9 questioning by Ms. Williams at this point.

10 AST. SOL. SORENSON: Yes, Your Honor.

11 MS. WILLIAMS: Judge, if I may, may I ask that the
12 witness be excused from the courtroom during this argument
13 so that she can't be led in her statements to me depending
14 on how you rule on this objection.

15 THE COURT: That's fine. We will put her -- if you
16 would just escort her right outside. Don't put her anywhere
17 close to the jury room or where the jury can see her or
18 anything. Just escort her right out to the hallway.

19 (The witness exits the stand and is escorted out of the
20 courtroom at 3:18 p.m.)

21 THE COURT: All right. Solicitor, you may proceed.

22 AST. SOL. SORENSON: Thank you. May it please the
23 Court? My objection would be I submit the only thing that
24 should be relevant in dealing with any prior, you know,
25 questions about the defendant's temper, violence, prior

1 incidents, that the only thing in this case that is
2 admissible would be whatever she told him prior to the
3 evening of November 1st of 2015. Because I can understand
4 how that would then go into his state of mind in dealing
5 with the victim that night. Things that she may have put in
6 a letter after the fact are irrelevant. I mean, they don't
7 go -- I mean, they're not admissible for any other reason.
8 The only reason that they would be admissible, I mean, prior
9 conduct between her and the victim, would be to go to his
10 state of mind on November 1st of 2015. And she's trying to
11 basically get this in. I mean, it's like she's asking her
12 questions that I submit is kind of confusing to start with.
13 But then trying to basically just get into something, I
14 submit is inadmissible, to supposedly impeach her with it,
15 but it's not admissible to start with. I mean, the only
16 thing that should be admissible question-wise is anything
17 that she told. It's not whether your husband was a violent
18 person towards you, whether he, you know, was an angry
19 person with you, assaulted you. It's whatever she told him
20 prior to November 1st. Anything else is inadmissible. It
21 doesn't go towards his state of mind. I mean, it's
22 basically a prior bad act against the victim. And what's
23 the basis of that being admissible?

24 THE COURT: How is that relevant, Ms. Williams?

25 MS. WILLIAMS: Thank you, Judge. May it please the

1 Court? It might be inartful the way that I ask the
2 questions. And maybe that's why the Solicitor is confused
3 about what I'm trying to do. I'm trying to impeach this
4 witness's credibility. And I'll just give an example. And
5 it's not just about the violence. It really has a lot to do
6 with this letter. And I certainly didn't expect it. And I
7 think that's why I'm so inartful in my cross-examination at
8 this point. For example, she says, you know, I blew him off
9 when he first called me in August of 2015. And I think I
10 impeached her. I might not done that good of a job. But
11 it's pretty clear from here that that's actually not what
12 happened according to what she is saying here. And so we've
13 got that point of impeachment.

14 The second point of impeachment, she says I can't
15 believe Christian did this. He had no reason -- I think --
16 he had no reason to take my husband's life. I can't believe
17 that he did this. And then she stated out of the blue
18 during her direct, "What have you done?" I said to him,
19 "What have you done?" In her letter to him later, she
20 writes, "It's not fair the situation you're placed in. You
21 were not expecting this to happen. I know that. I feel
22 responsible." Again, it's just going back to impeach what
23 she's saying and impeaching her with this letter. At the
24 end, you know, she says, "I had no reason -- I was not
25 afraid of my husband." She testified to that: "I was not

1 afraid of him. I had no reason to believe he was physically
2 violent." She then writes in a letter that she's already
3 acknowledged: "I knew he would become enraged. That's how
4 he reacts when he is angry." I mean, that implies that she
5 knew about that prior. "He hurt so many people physically,
6 even other family members of his." And so, while this may
7 not go to Christian Himes's state of mind, it certainly goes
8 to her credibility as a witness. We have her here telling
9 this jury that David Ham was a peaceful man, that she wasn't
10 afraid of him, that he wasn't -- that they would argue, but
11 then they would reconcile. I think at one point she said we
12 had a normal relationship. But in letters that she's
13 writing, she's saying, "He has hurt many people physically,
14 even other family members of his. I should have told him to
15 leave sooner. Many people are afraid of him, and I am one
16 of those people." And so this really isn't -- the relevancy
17 isn't about Christian Himes's state of mind. I agree with
18 the State in that I kind of touched on, okay, what were
19 telling him about it? What were you telling Christian about
20 it? And now I've moved on to, well, let's talk about your
21 credibility as a witness. And let's talk about what you're
22 telling the jury here today. But what you also said in a
23 statement, a written statement that you've already
24 acknowledged, at some other point in time.

25 THE COURT: Well, I suppose, really, the crux of the

1 issue is the fact that this letter is after the fact, not
2 before the fact. What your client knew before the fact is
3 what's really relevant as to his actions. He's the one on
4 trial here. As far as attacking her credibility, I think
5 you can say inconsistent after the fact, you put this down,
6 but you didn't tell him that before. But ---

7 MS. WILLIAMS: Okay. I can do -- and really, I'm
8 really just trying to attack her credibility as a witness.
9 She saying one thing today where she said something
10 different in the past. And I'm trying to say is this what
11 you're saying today. Okay, let's talk about what you said
12 in the past and impeach her with that.

13 THE COURT: Well, maybe let's word it differently from
14 today and in the past.

15 MS. WILLIAMS: Okay.

16 THE COURT: Because in the past we're talking, A, in
17 the past before the shooting, in the past while he's
18 incarcerated.

19 MS. WILLIAMS: Okay. I can do that.

20 THE COURT: So the difference is, and before you never
21 told him that. So that would be relevant. You've already
22 touched on the fact regarding the issue with the lip and the
23 dragging out of the house. After the fact, you can say
24 after you said something different. You know, I'll allow
25 you to do that because I do think that does attack her

1 credibility. But it can't go to what he thought at the time
2 of the crime because he didn't -- he didn't know that.

3 MS. WILLIAMS: I agree. And if that was the impression
4 I made, I certainly -- I was really just trying to attack
5 her credibility as to what she's telling the jury today
6 versus what she's putting on paper and saying it's her own
7 statement back in December of 2015. And I can say in a
8 letter you wrote December of 2015. It doesn't even need to
9 be a letter to Christian Himes, so . . .

10 THE COURT: Well, and the Solicitor, obviously, on
11 redirect, you can say obviously he didn't know that
12 beforehand.

13 MS. WILLIAMS: Right.

14 AST. SOL. SORENSON: I mean, she obviously can't argue
15 that in her closing either. I mean, because like in her
16 Stand Your Ground motion, I mean, that's basically how she
17 characterizes, I mean, the he knew that he was this violent,
18 angry person.

19 MS. WILLIAMS: Well, that's because my client testified
20 to it. I think my client is going to testify to it again.

21 THE COURT: Well, we'll cross that bridge when we get
22 to it. As far as this cross-examination is concerned, just
23 be very clear what was before.

24 MS. WILLIAMS: Absolutely.

25 THE COURT: What your client knew, and then this was

1 actually after the fact. And he had no way of knowing that
2 after ---

3 MS. WILLIAMS: Absolutely, Judge. Thank you.

4 THE COURT: Bring her back in here, please.

5 MR. WEHMAN: Your Honor, before we bring the jury back
6 in, can we take a five minute break?

7 THE COURT: Sure. How long to expect your
8 cross-examination to be. I'm not going to hold you to it.
9 I'm just trying to plan time-wise so I can let the jury go
10 at a decent time this afternoon.

11 MS. WILLIAMS: Judge, I always go longer than I think
12 I'm going to go. Thirty minutes.

13 THE COURT: Okay. It's about 3:30. Let's take a quick
14 five-minute recess and we'll be right back. Before y'all
15 go, I'm going to put the witness back on the witness stand
16 and tell her not to discuss it . . .

17 (The witness reenters the courtroom at 3:25 p.m.)

18 THE COURT: Ms. Ham, we're just taking a brief recess.
19 You can't discuss your testimony with anybody at this time.
20 Do you need to use the restroom or anything?

21 THE WITNESS: I'm okay.

22 (A brief recess was taken at 3:26 p.m. The proceedings
23 resumed at 3:35 p.m.)

24 THE COURT: Everyone ready to proceed?

25 AST. SOL. SORENSON: Yes, Your Honor.

1 MS. WILLIAMS: Yes, ma'am.

2 THE COURT: All right. Let's have our jury, please.

3 (The jury enters the courtroom at 3:36 p.m.)

4 THE COURT: Welcome back, ladies and gentlemen of the
5 jury. We're now ready to proceed. You may proceed, Ms.
6 Williams.

7 MS. WILLIAMS: Thank you, Judge. May it please the
8 Court?

9 THE COURT: Yes, ma'am.

10 CROSS-EXAMINATION (Resuming)

11 BY MS. WILLIAMS:

12 Q. So I want to talk to you a little bit about what
13 Christian believed or knew prior to November 1st of 2015.
14 Kind of go back a little bit to what we've already talked
15 about. You had told Christian that David Ham had punched
16 you in the face and caused a scar to your lip. You know
17 about that incident; right?

18 A. Yes.

19 Q. You had told Christian that you had been drug out of
20 the house physically by David Ham?

21 A. I may of have told him that.

22 Q. You had told Christian at one point that your husband
23 fights?

24 A. Yes.

25 Q. You had told Christian that your husband -- you had

1 seen your husband with a gun in the past?

2 A. Yes. I've seen him with a gun, but in what context?

3 Q. Let me ask: Did you tell Christian that your husband
4 had a gun in the past?

5 A. I don't remember saying that.

6 Q. As far as what Christian believed or knew prior to
7 November 1st of 2015, prior to when this whole thing went
8 down, I want to talk about the keeping up a secret from
9 David. You had a relationship with Christian from September
10 until November 1st of 2015?

11 A. Yes.

12 Q. And the entire time up until October 30th, Christian
13 was kept a secret from David Ham; right?

14 A. Yeah.

15 Q. You kept that a secret.

16 A. I did.

17 Q. Christian knew he was being kept a secret; right?

18 A. Yes.

19 Q. There were times that David Ham had brought the
20 children to your apartment to drop them off or had come to
21 pick them up from your apartment, that you had Christian
22 hiding in a back room?

23 A. Yes.

24 Q. And there were times when that dropped Christian off,
25 say the bank, so that you could go and exchange the children

1 with David?

2 A. I did it once. I did that one time.

3 Q. You did it once?

4 A. Yeah. I mean, we're talking about, basically, a month
5 of time. So, I mean, there's only but so many weeks --
6 weekends a month that he would actually come into contact
7 with the -- sorry -- David over that.

8 Q. Well, Christian -- I'm sorry. Go ahead. What did you
9 say?

10 A. Within that stretch of time from September to November.

11 Q. There was a point where Christian was down for like a
12 whole week; right? During the flood.

13 A. Yes. But David wasn't able to -- I think he had the
14 kids at that time. So he ended up having to keep the kids
15 with him.

16 Q. But over that period time it was clear to Christian
17 that he was to be kept a secret from David Ham?

18 A. Yeah. I mean, I didn't want David to really
19 necessarily know about me having a relationship with him.
20 So that is correct.

21 Q. Why?

22 A. I still cared about David. It was kind of unexpected
23 for me too, so . . .

24 Q. Did you at any point ---

25 A. Sometimes in -- I mean, it's not uncommon, I would say,

1 if somebody maybe in my situation had separated with someone
2 else is not going shouting around, hey, I'm with this
3 person. Unless you're trying to get a reaction, so . . .

4 Q. Okay. We're going to get back to that in a minute.

5 But I want to stick on what Christian knew from you prior to
6 November 1st of 2015. I want to talk about the text message
7 that came from David Ham. There was a text message that
8 came on October 30, 2015, from David Ham.

9 A. Yes.

10 Q. To your phone?

11 A. Yes, to my phone.

12 Q. There were actually several text messages, weren't
13 there?

14 A. I believe there was more than that. Yes, there was.

15 Q. I'm going to publish State's Exhibit 6. It's already
16 been admitted into evidence. In this text message,
17 specifically at the top, you can see that there's messages
18 going on before October 30th at 7:26 p.m.; right?

19 A. Yes.

20 Q. This one would be from you, the one we know of.

21 A. That's mine.

22 Q. And it's clearly, you guys are arguing, "Don't act.
23 You care now. No more convo. I'm out." Right?

24 A. Yes, we were.

25 Q. And then he says, "Sweet. I care, you don't. What I

1 needed to hear. Tell your boyfriend -- or tell your BF --,"
2 that means boyfriend; right? That's how you would interpret
3 that?

4 A. That's what I interpret it as.

5 Q. "Tell your boyfriend don't let me catch him slipping."
6 Right?

7 A. Yes.

8 Q. And your testimony today was that you did not take that
9 as a threat?

10 A. Not as -- No. I didn't take it as a threat that David
11 was going to come after him and kill him.

12 Q. Okay. Christian took it as a threat; right?

13 A. I believe he did. Yes.

14 Q. Because he says to you, "Do I need to get a gun?" Or a
15 piece, I think that's what he said. He says, "Do I need to
16 get a piece?"

17 A. Right.

18 Q. Yeah. I mean ---

19 A. Because he took it very seriously.

20 Q. Yeah. He took that as a threat. Do I need to get a
21 piece? Can this guy fight? Isn't that he's saying to you
22 as you're on his lap on the porch? He is worried about this
23 text message that came from your husband.

24 A. And I told him, I was like, no, you don't have to do
25 that. Because I really didn't -- I didn't think that he was

1 serious when he was asking me about getting a gun, like that
2 actually happens in my life where I have people around me
3 that do that type of thing. So when he mentioned a weapon,
4 a gun, I kind of shrugged it off. I was like, no, it's not
5 like that, you know. And he goes on to, you know, oh, you
6 know, can he fight and what not.

7 Q. Well, I'm not as much worried about how you felt about
8 the text as much as I want to talk about how Christian
9 responded to that text. His immediate response was can this
10 guy fight? Do I need to get a gun?

11 A. And I told him ---

12 Q. He was worried. He took it as a threat; right?

13 A. I believe he did.

14 Q. From your perspective. And you ultimately gave a
15 statement in this case to the police?

16 A. Uh-huh.

17 Q. Now, when you described that text or the text that you
18 were getting from David to you, you described them as angry
19 texts?

20 A. He wasn't happy.

21 Q. Okay. So you would agree with me that these texts from
22 David -- while you're telling the jury now that you didn't
23 think they were threats?

24 A. No. You're saying all of the texts that he sent me
25 were all threats? I mean . . .

Cross-Examination of Ms. Ham by Ms. Williams

1 Q. No. What I'm asking you is you would at least describe
2 these texts from David as being angry?

3 A. Angry, but not threatening.

4 Q. Okay. And now I want to talk about some of the things
5 that you've testified today and some of the things that you
6 said in the past, okay. Your testimony today is that you
7 were not afraid of David Ham?

8 A. If I was fearful of David, I wouldn't have him around
9 my children. I would not regularly take them or have them
10 over there on weekends. I wouldn't go out and do holiday
11 festivities with him. I wouldn't be around him if I was so
12 fearful and scared of David.

13 Q. So your testimony -- and I don't think you answered yes
14 or no, so I just need a yes or no before you explain. Your
15 testimony to the jury today is that you were not afraid of
16 David?

17 A. I did not feel threatened by David.

18 Q. Okay. So yes or no, your testimony today is that you
19 were not afraid of David? That's your testimony today.

20 A. I was not afraid that David would harm me.

21 Q. So no, you were not afraid of David?

22 A. I was not afraid he would harm me.

23 Q. Okay. Do you remember -- and I think you have a copy
24 up there. I left the copy up there. The letter that you
25 wrote on December 7th of 2015?

1 A. The letter looks familiar. If you're asking me what's
2 in it, I didn't go back and read it time and time again. I
3 sent it. That was well over a year ago. So you have to be
4 specific.

5 Q. Okay. That's your letter? You wrote it? It's your
6 signature?

7 A. That's my letter. I wrote it. That's my signature.

8 MS. WILLIAMS: May I approach?

9 THE COURT: You may.

10 Q. I'm going to refer you to the third page to refresh
11 your recollection. Okay. I'm going to start right here.

12 AST. SOL. SORENSON: I think she can ask her if that
13 refreshes her memory.

14 MS. WILLIAMS: Okay.

15 AST. SOL. SORENSON: I mean, where does this start?

16 Q. Can you read for me right here on the third page, "but
17 I feel responsible" on the third page.

18 A. But I feel responsible that ---

19 AST. SOL. SORENSON: I'm going -- I don't think that's

20 ---

21 THE COURT: Hold on a second. You can ask her to
22 refresh her recollection and then you can ask her a
23 question. But before you publish the letter, you need to
24 introduce it as . . .

25 AST. SOL. SORENSON: Getting her just to read it,

Cross-Examination of Ms. Ham by Ms. Williams

1 that's not . . .

2 A. I thought this was how Christian felt. Now you're
3 asking ---

4 THE COURT: Hold on. Ms. Ham, hold on. You have to
5 wait and answer questions. You have to have her read it.
6 Ask her if it refreshed her recollection and then ask her
7 the question.

8 BY MS. WILLIAMS: (continuing)

9 Q. And that's what I want you to do. Can you start here
10 from this letter at the line that says "but". /

11 A. But I feel ---

12 Q. No, no. Not read aloud. Read to yourself.

13 THE COURT: See if it refreshes your memory as to what
14 you wrote.

15 THE WITNESS: Oh, okay.

16 A. (Witness complies.) I read that yesterday.

17 Q. So does that refresh your recollection?

18 A. I read it yesterday.

19 Q. Is that a yes? Does that refresh your recollection?

20 A. It does not refresh my recollection.

21 Q. Wasn't it true in this letter that you write, "I feel
22 responsible for some ways what has happened ---"

23 AST. SOL. SORENSON: I'm gonna -- because that part
24 doesn't -- she asked her this specific question about
25 whether she felt afraid of the victim. I think she even

1 asked her about -- I mean, there's a part in here where she
2 makes the comment that I was afraid of him. I think she can
3 ask her that. I mean, the rest of this I don't think goes
4 to that.

5 THE COURT: Be more specific with your questions, Ms.
6 Williams.

7 MS. WILLIAMS: Okay. Okay.

8 Q. In this letter do you say, "Many people are afraid of
9 him and I am one of those people."

10 A. Yeah. I see what I say.

11 Q. Okay. And you're referring to David Ham in this
12 letter?

13 A. I feel that what's -- yeah. That's what I was
14 implying.

15 Q. Okay. And your testimony to the jury today, I asked
16 you why did you keep Christian a secret from David. And you
17 said because you were embarrassed or you didn't want him to
18 know about your other relationship.

19 A. I didn't say I was embarrassed.

20 Q. Okay. Did you keep Christian a secret from David Ham
21 because you were afraid that David would become enraged?

22 A. I was afraid of a confrontation period. There were a
23 lot of thoughts that I may have expressed in this letter
24 that were not my own. My thought process was influenced in
25 large number of ways. So I don't depict this as an accurate

1 belief like of what I have worked on to see clearly of what
2 actually took place. Because, like, I feel responsible.
3 Well, I felt responsible but that didn't mean that I was
4 responsible. So there were a lot of unclear thoughts and
5 thought processes that I was going through with the addition
6 of the way that I was treated and the way people began
7 reacting to me as a result of this situation.

8 Q. Did you keep Christian a secret from David because you
9 were afraid David would become enraged? Yes or no?

10 A. No. Not ---

11 Q. Isn't it true in this letter you state, "I knew the way
12 he would become enraged and how he reacts when he is angry."
13 Isn't that true that you wrote that in this letter?

14 A. I wrote that.

15 Q. Isn't it true that later on down, four sentences down,
16 you say, "I try to keep peace to prevent verbal, emotion,
17 and physical abuse by him." Isn't that true what you said
18 in that letter?

19 A. Can you show me?

20 Q. Yes.

21 BY MS. WILLIAMS: May I approach, Judge?

22 THE COURT: You may.

23 Q. "So I try to keep peace to prevent verbal, emotional,
24 and physical abuse by him." Isn't that what you said in the
25 letter?

1 A. Yes. Yes, that's there.

2 Q. Okay. I want to talk a little bit more about your
3 testimony today to the jury. You testified today that on
4 November 1st of 2015, when the shooting happened, Christian
5 came to you and asked to borrow your car. And you said he
6 could; right?

7 A. Yes. But I was ---

8 Q. He was -- okay. He was staying with you at the time?
9 His things were there. His toothbrush. He was living at
10 your apartment right then in Charleston. He had no where
11 else to live in Charleston.

12 A. Yeah. He was residing at my apartment, yes.

13 Q. And you gave him your car keys?

14 A. I did.

15 Q. That also had your house keys on it?

16 A. Yeah. I mean, they're connected. So they had my house
17 keys on it. I don't separate them.

18 Q. And that was the only keys you had to your house?

19 A. No. There's a spare.

20 Q. Okay. And so he leaves with your car keys and your
21 house keys to go do an errand or whatever he's gonna go do;
22 right?

23 A. Uh-huh.

24 Q. And you tell him ---

25 A. Yes.

Cross-Examination of Ms. Ham by Ms. Williams

1 Q. Thank you. You tell him, your testimony to the jury
2 was that you told him to be back by 6:30?

3 A. Yes.

4 Q. Do you remember giving a statement in this case?

5 A. I actually gave two statements I believe.

6 Q. Okay. So you do remember giving a statement?

7 A. Uh-huh.

8 MS. WILLIAMS: May I approach?

9 THE COURT: You may.

10 Q. I'm handing you a document that's got the date of
11 November 1st of 2015 on it.

12 A. Uh-huh.

13 Q. Is this the statement that you wrote in this case?

14 A. That is the statement that I wrote. Yes.

15 Q. And it's got your signature at the bottom?

16 A. Yes.

17 Q. I'm going to read it to you if you could follow along
18 with me. The question is: "Did you give Christian
19 permission to use the vehicle?" Did I say that right?

20 A. Yeah. And to drive it. Permission to drive the
21 vehicle . . .

22 Q. Yes. And then you answer, "Yes. I gave him permission
23 to go see a friend and be back so I could pick up the kids
24 by 8:00 p.m." Isn't that what's in your statement?

25 A. That is what is in my statement.

1 Q. So he had to be back by 8:00 p.m. not 6:30?

2 A. No. I don't -- I don't know. Like, honestly, when I
3 wrote that statement, I just watched my husband dying and
4 they would not allow me to know anything about him until I
5 finished the statement. And just prior to that, the Chaplin
6 came in and he was speaking to someone else and said that
7 they didn't expect for David to survive the night. So I
8 wrote whatever I could and answered those questions so that
9 I could go see my husband because I was not able to ride
10 with him in the ambulance. But that is what I wrote.

11 Q. Okay. So you wrote that Christian had to be back by
12 8:00 p.m. with your car?

13 A. That's what I wrote.

14 Q. And you wrote this statement on November 1st of 2015?

15 A. The night of his shooting.

16 Q. When your memory ---

17 A. There were five police officers in my house and tape
18 outside and -- I mean, yes. They sat me down during this
19 whole fiasco and they had me to write a statement right
20 then. They wanted their statement right then. And so I
21 gave them their statement right then.

22 Q. But a year and a half later, today your recollection is
23 better that it was 6:30 p.m.?

24 A. Because that's the typical time that he would come pick
25 up the kids or that I would drop them off. If the time was

1 eight o'clock, that was something that is out of the
2 ordinary I would say.

3 Q. You had said that Christian took the car around 3 or
4 3:30. That's what your testimony earlier today was; right?

5 A. Right.

6 Q. And that with your permission, he took the car, with
7 your permission, around 3 or 3:30; right?

8 A. Uh-huh.

9 Q. And he was going to bring it back and stay with you
10 that night?

11 A. Uh-huh.

12 Q. Is that a yes?

13 A. Yes. Sorry. Yes.

14 Q. And you also said that you were busy making dinner?

15 A. I was making spaghetti.

16 Q. You were making spaghetti for dinner at 3:30 in the
17 afternoon?

18 A. I believe so.

19 Q. Doesn't it make more sense since that you were probably
20 making spaghetti for dinner around 5:30 or 6, and he was to
21 take the car until eight?

22 A. Not exactly. I mean, sometimes I make breakfast at
23 twelve o'clock. So my chain of breakfast, lunch, dinner
24 becomes different times. So, I mean, I can't -- I mean, if
25 you're going by a typical breakfast, lunch, dinner that

1 people typically have during a specific time, I can't
2 recollect that type of thing from a year and a half ago and
3 tell you exactly -- I mean, I have what I wrote. But, I
4 mean, typically I make dinner at other times. I mean,
5 besides with the kids. I make them dinner around a certain
6 time but my dinner can be 3:30 in the afternoon or twelve
7 o'clock at midnight.

8 Q. Is that then your answer? Are you finished?

9 A. (Affirmative head nod.)

10 Q. I want to talk also about what typically happened when
11 David brought the children to your house or when David came
12 -- David Ham came to pick up the children. Typically, when
13 he would bring the children to your house or pick up the
14 children, he was only there for five or ten minutes?

15 A. That's what I wrote: five, ten, 15 minutes. It wasn't
16 a long period of time. It was a very brief period of time.
17 Unless, you know, he would hang out. But that didn't happen
18 regularly. Like I said, it's the usual thing.

19 Q. So usually he was only there five or ten minutes?
20 Picked the kids up and leave?

21 A. Five to 15 minutes.

22 Q. Okay.

23 A. Because I said ten to 15 minutes yesterday. And
24 there's a discrepancy between five, ten minutes, 15 minutes,
25 but they're all brief periods of time.

1 Q. Typically, he was there briefly?

2 A. Yes.

3 Q. Okay. We can agree on that. And Christian would have
4 known that because he had been hiding in the back room at
5 least once when that happened; right?

6 A. Yes. He would have known that.

7 Q. But this night on November 1, 2015, was pretty
8 atypical?

9 A. It was atypical.

10 Q. He stayed for hours or an hour? How long?

11 A. He stayed -- yeah. A lot longer than he usually stays.

12 Q. How long do you think he stayed?

13 A. It was probably an hour, hour and a half maybe.

14 Q. Did you notice while he was there whether or not he was
15 intoxicated?

16 A. No.

17 Q. Up until November 1st of 2015, Christian Himes had
18 never seen David Ham in person?

19 A. Not to my knowledge.

20 Q. But David Ham had seen Christian Himes; right?

21 A. Not to my knowledge.

22 Q. Well, do you remember telling the police that David Ham
23 told you he had seen you drop Christian Himes at the bank on
24 October 30th?

25 A. Yes, but I don't believe that.

1 Q. Okay. So you told the police something that you didn't
2 believe?

3 A. I told them what he said and I didn't believe his
4 statement. I believe that my son actually told him about
5 Christian. I don't believe he actually saw Christian, but
6 he went off of those basis, so. And I told that to
7 Christian as well.

8 Q. What did you tell to Christian?

9 A. That I didn't believe that he actually saw him. That I
10 think that Kingston may have said something.

11 Q. I want to -- I want to step back. I missed something
12 when we were talking about the text message. I want to go
13 back to the text message that David Ham sent to you. And
14 you testified today that you did not take it as threatening
15 back in October of 2015; right? You thought it was
16 important enough that you sent it to Detective Weaver;
17 right?

18 A. Because Christian told me to.

19 Q. You thought it was important enough that you reached
20 out to me and e-mailed it to me directly?

21 A. Christian told me to do those things. He asked -- I
22 wouldn't say he told me, but he asked me to do it. He asked
23 me to go and to send it to you, to call you and send it to
24 you. He asked me to send it to Detective Weaver. He asked
25 me to ask Detective Weaver if he could pull the surveillance

1 from the store that he said that he went to.

2 Q. And you did all those things?

3 A. Yes, I did.

4 Q. Do you know if that surveillance video was ever
5 recovered?

6 A. I didn't hear anything else about it. I heard nothing
7 else about the surveillance.

8 Q. But you relayed that message to Detective Weaver, hey,
9 you need to go get this surveillance video from the gas
10 station where Christian was?

11 A. Yes, I did.

12 Q. And here's these text messages that my husband was
13 sending to us?

14 A. Yes.

15 Q. Okay. On the night that this happened -- I mean, do
16 you have ---

17 A. It wasn't us. I mean, that was actually sent to me,
18 but . . .

19 Q. Right. But Christian had access to your phone; right?

20 A. Yes. He had access to my phone.

21 Q. He used it sometimes to get messages or send messages?

22 A. Well, he didn't have a phone. So that was our -- I
23 mean, both of our only forms of communication at my house
24 because I didn't have a home phone either.

25 Q. So he would have considered it something that he could

1 use?

2 A. Right. I wouldn't not allow him to use the telephone.

3 Q. On the night that the shooting happened, do you
4 remember interacting with the police at the scene?

5 A. Yes.

6 Q. Are you aware that you never told the police about
7 Christian until they confronted you with it?

8 A. Until they confronted me with it? I was trying to save
9 David's life. So confronting me with Christian was the last
10 thing I was worried about. I told them who did it and where
11 I thought he went. So that was the last thing from my mind.

12 Q. So when the police asked you did you see anything ---

13 A.. I didn't ---

14 Q. --- are you aware that you never told them ---

15 A. Told them what?

16 Q. --- I saw Christian Himes leaving in my car?

17 A. No. I did tell someone at the scene of the crime. I
18 did.

19 Q. Did you tell them that immediately when they first
20 asked you?

21 A. The first -- and I don't know who it was and I don't
22 know what he looked like because everything was a blur. But
23 the first person that came up to me asked me who had my
24 vehicle and I told them. And they asked me what he was
25 driving and I told them him. And they asked me what I

1 thought he had on. And I couldn't identify that person to
2 you now if I saw them. But that is what happened. Whether
3 that was documented or not, I do not know.

4 Q. So your testimony today is that initial officer that
5 came to you about this and said, "Did you see anything?"
6 Your testimony was, yes, I saw Christian Himes. And he's my
7 boyfriend and ---

8 A. He didn't ask me if I saw anything.

9 Q. But would you be surprised if you did and you said no?
10 Would that surprise you?

11 A. It may -- yeah, it would surprise me. Like I said,
12 that was a traumatic experience. So I really don't remember
13 a whole lot of details about that. I may be mistaken.

14 Q. That's understandable.

15 A. Okay.

16 Q. You testified today that as you ran outside that night,
17 you screamed after Christian, "What have you done?"

18 A. Yes.

19 Q. Did you put that in any of your statements to the
20 police?

21 A. I don't know.

22 Q. Would you like to review your statements to see whether
23 or not you did?

24 A. I don't need to review them because I know what I said.

25 Q. Okay.

1 A. But if you want me to look at them, that's fine.

2 Q. Well, I just need you to answer the question. Did you
3 put that in any of your statements to police that you
4 screamed after Christian, "What have you done?"

5 A. I thought I did. Maybe I didn't. I haven't looked at
6 those in over a year.

7 MS. WILLIAMS: May I approach, Your Honor?

8 THE COURT: You may.

9 Q. I'm handing you your statements from November 1st of
10 2015 and November 18th of 2015. If you could review them
11 and advise the jury of whether or not at any point did you
12 tell the police that you said you screamed after Christian
13 Ham -- or Christian Himes, "What have you done?" Did you
14 ever tell the police that?

15 A. Did I put it in my statement?

16 Q. Okay. Let's start there. Did you put it in your
17 statement?

18 A. I don't see it in my statement.

19 Q. Do you remember ever telling the police that you
20 screamed ---

21 A. No, honestly.

22 Q. Okay. So today would've been the first day that you
23 ever mentioned that to anybody?

24 A. No, I don't think so. I don't think it's the first
25 time I ever mentioned to anyone. But as far as

1 documentation goes, it's not in the documentation.

2 Q. Who do you think you mentioned it to? You remember
3 speaking to me at the preliminary hearing?

4 A. Yesterday? What?

5 Q. No. Back in 2016?

6 A. No. I don't think I said that then. But, I mean, I
7 haven't seen you but maybe twice, so . . .

8 Q. Do you remember -- so you didn't tell me. Did you tell
9 Detective Weaver?

10 A. I don't know. I didn't -- I don't know. I know I told
11 my mom. I told my dad. I told my counselor. I mean, at
12 that particular time I did -- maybe I omitted some things
13 that probably were important. But I didn't recognize that
14 they were important at the time. So I just -- I didn't go
15 into detail, I guess, enough. So it's not the fact that I
16 didn't say it, it's just not documented. And I didn't tell
17 the right people.

18 Q. Want to talk to you about the apartment at [REDACTED] [REDACTED],
19 Building 12. You testified on direct that you didn't
20 remember whether or not there were lights out in front of
21 that building.

22 A. Right. I thought there was. But I haven't lived there
23 in a year and a half. And I really -- I mean, you could see
24 enough. But it was somewhat dark in front of my apartment
25 if that's what you're getting at.

1 Q. In the grassy area in front of your apartment, would
2 you call it very dark?

3 A. It was pretty dark for the simple fact that like when I
4 looked over at David, I had to feel around to see like
5 exactly where he was shot at. It wasn't bright enough to
6 see that.

7 Q. I'm showing you Defendant's Exhibit 7. There are no
8 street lamps. That's your building; right? That's Building
9 12 where you lived at [REDACTED] [REDACTED]? There are no street
10 lamps. There's no lampposts, I guess you would say, in that
11 picture; right?

12 A. No, there's not.

13 Q. I'm gonna show you what's been marked as State's
14 Exhibit 10. That's another view of your building, Building
15 12; right?

16 A. Right.

17 Q. There are no lampposts in that picture; correct?

18 A. Huh-uh. No. No, there's not. Sorry.

19 Q. I wan to talk a little bit about the statements that
20 you gave the police. The statement that you gave on
21 November 18th of 2015, you stated David found out the Friday
22 prior to the incident that you were dating Christian Himes?

23 A. Uh-huh. Yes.

24 Q. And that typically he was only there for five or ten
25 minutes to drop the kids off or pick them up. That's what

1 you told the police?

2 A. Yes.

3 Q. But that on this night, he was there a lot longer, an
4 hour or more?

5 A. Yeah. Didn't we talk about already?

6 Q. I'm just going back over what you said in your
7 statement.

8 A. Oh, okay.

9 Q. Isn't that what you said in your statement?

10 A. Yes.

11 Q. And you told the police that you heard arguing out in
12 the breezeway.

13 A. Yes.

14 AST. SOL. SORENSON: Your Honor, I'm gonna -- I mean, I
15 guess I'm gonna object because it's hearsay. I mean, she's
16 not really impeaching her on her statement. I mean, she can
17 ask her what -- I mean, if something is different ---

18 THE COURT: Actually, we've been over this. Asked and
19 answered. Let's move on. You can ask her ---

20 MS. WILLIAMS: Okay.

21 THE COURT: --- testimony, but we've been over this.

22 MS. WILLIAMS: I'm getting there, Judge.

23 BY MS. WILLIAMS: (continuing)

24 Q. And you heard David say, David Ham say to Christian
25 Himes, "Come on, homeboy." Right?

1 A. Yes. I heard him say something to that effect.

2 Q. "You think you're bad because you got a gun. Come
3 on."?

4 A. That is correct.

5 Q. And then you also heard Christian Himes say, "Backup.
6 Backup. Backup."?

7 A. I heard him say that.

8 Q. Three times?

9 A. I heard him say that approximately three times. I'm
10 pretty sure it was three times.

11 Q. And you knew, you knew, that David Ham owned a gun?

12 A. David Ham didn't own a gun.

13 Q. Your testimony to this jury is that you didn't know
14 that David Ham owned a gun?

15 A. That's new to me. Yes. I didn't -- I mean, I've seen
16 him with a gun. As a lawful gun owner, no. He doesn't own
17 a gun.

18 Q. You saw him with a gun, but he didn't own a gun?

19 A. Yes. Like I explained yesterday, I've seen him with a
20 gun. He's seen me with a gun. When we go skeet shooting or
21 when him and his buddies go hunting, that's seeing him with
22 a gun. But as far as knowing him to possess a gun or to
23 regularly have a gun, no.

24 Q. Okay. Do you remember giving a statement on November
25 --

Cross-Examination of Ms. Ham by Ms. Williams

1 MS. WILLIAMS: May I approach?

2 Q. November 1, 2015, to Officer Bennett? Is this your
3 statement?

4 A. Yeah. That's my statement.

5 Q. And you were asked have you ever seen David with a gun
6 on him; right?

7 A. Yes. I've seen David with a gun on him. He's seen me
8 with a gun on.

9 Q. Okay. And you said, I have seen him in possession of a
10 gun within the past 12 years that we have been together?

11 A. Yes.

12 Q. Okay. So he did have possession of a gun and you knew
13 that?

14 A. I've seen -- no. I've seen him in the possession of a
15 gun while he's shooting in the sky. So, I mean, if you want
16 to interpret it some other way, I'm sorry. But I've seen
17 him with a gun. I've been in possession of a gun when I'm
18 doing an activity. With the intent of using it for some
19 other purpose besides a recreational activity, no.

20 Q. Have you ever seen him in possession of a pistol?
21 Something that he could maybe hide in his pocket or . . .

22 A. No. Never.

23 Q. So your testimony today is that you would only ever see
24 him with a rifle or something along that . . .

25 A. We did a lot of sports. We went fishing. I've seen

1 him with fishing hooks. That can be seen as a weapon. It's
2 like the intent.

3 Q. I'm asking about a gun. You've only ever seen him with
4 a long gun like a riffle. Is that your testimony today?

5 A. Right. Like a rifle or a shotgun. I mean, that's just
6 typically him.

7 Q. But you were asked how do you know he didn't have a gun
8 on him tonight when you gave this statement. And you
9 testified I don't know that he didn't. I just don't think
10 that he did.

11 A. Yeah. I don't think he did.

12 Q. And so you didn't say anything about, well, I knew he
13 didn't have a gun because I only ever seen him with a rifle?

14 A. Why would I go into all of that? I don't think -- I
15 didn't think he had a gun because I don't regularly see him
16 with a gun.

17 Q. You did tell the police that you had never seen
18 Christian with a gun ever?

19 A. No. I had not seen Christian with a gun. But the time
20 that I knew Christian, he was in a program and then after
21 that it was several, several, years later during a brief
22 period of time he may have had guns in between there. But I
23 wasn't married to Christian.

24 MS. WILLIAMS: I have no further questions, Judge.

25 Thank you.

Redirect Examination of Ms. Ham by Ast. Sol. Sorenson

1 THE COURT: Any redirect?

2 AST. SOL. SORENSON: Just a couple little brief things,
3 Your Honor.

4 REDIRECT EXAMINATION

5 BY AST. SOL. SORENSON:

6 Q. Just so I understand kind of what -- prior to November
7 1st of 2015, you believed you might've told Christian Himes
8 about two prior incidents of physical abuse involving you
9 and your husband. Is that correct?

10 A. Correct.

11 Q. One was when you got hit in the mouth?

12 A. Uh-huh.

13 Q. When did that occur?

14 A. In 2008 -- no. 2009.

15 Q. Okay. So some six years or so prior to this?

16 A. Yeah. It was quite a while ago.

17 Q. And then the incident that basically precipitated the
18 two of y'all splitting up where he had drug you out of the
19 house. Is that correct?

20 A. Yes.

21 Q. And then in response to him seeing the text message, he
22 had asked you whether the victim could fight, and you had
23 told him yes?

24 MS. WILLIAMS: Objection, Your Honor. Leading.

25 AST. SOL. SORENSON: I mean, I'm just making sure

1 because she got going into -- I mean, I want to make sure
2 that we understand what was told prior to. Because she
3 started asking her about this letter. I want to make sure
4 there's no question about what he knew on November 1st. And
5 I don't know how else to do that other than going through it
6 basically . . .

7 THE COURT: You may proceed.

8 AST. SOL. SORENSON: Thank you.

9 BY AST. SOL. SORENSON: (continuing)

10 Q. That he had asked, in reference to that text message,
11 had asked you whether the victim could fight, and you told
12 him yes?

13 A. Yes.

14 Q. And also that you -- and you don't ever recall telling
15 Christian Himes about basically seeing David Ham with
16 firearm in the past?

17 A. That wasn't even -- that wasn't something that I have a
18 reason to discuss with them. I don't talk about guns on a
19 regular basis and say who's carrying what. I don't have
20 people around me that typically use guns or that carry guns,
21 especially unlawfully, that I am not aware of.

22 Q. In fact, let me just ask you this: During the 18
23 months that you were separated, so you had an opportunity to
24 see your husband basically twice a week?

25 MS. WILLIAMS: Objection, Your Honor. Leading.

Redirect Examination of Ms. Ham by Ast. Sol. Sorenson

1 THE COURT: How often?

2 Q. How often did you get to see your husband during the
3 time you were separated?

4 A. On a weekly basis?

5 Q. Just how often did you see him?

6 A. I saw him regularly. I saw him every weekend.

7 Q. On Friday?

8 A. On Friday to Sunday. Depending on if the kids got out
9 of school, had early release. I mean, there's . . .

10 Q. During that time period, did you ever see your husband
11 with a handgun?

12 A. No.

13 Q. When you provided the text message to Ms. Williams and
14 also to Sergeant Weaver -- obviously, back then you were in
15 pretty frequent contact still with him after this happened;
16 right?

17 A. I was.

18 Q. You were talking almost every day?

19 A. Almost every day. Several times a day. I needed to
20 know what happened. He told me that he was going to kill
21 himself, but he didn't want two deaths on my hands.

22 Q. But my question, so you were in constant contact with
23 him at that point in time. And is it his request that that
24 text ---

25 MS. WILLIAMS: Objection, Your Honor. Leading.

1 Q. At whose request did you provide the text messages to
2 Ms. Williams and Sergeant Weaver?

3 A. Christian Ham -- or Christian Himes.

4 Q. Thank you. Ms. Williams asked you about in your
5 statement the fact that you wrote -- let me ask you this:
6 Where did your husband live back on November 1st of 2015?

7 A. He lived in Creekside off of Bacons Bridge Road.

8 Q. How far do you think that was from your home?

9 A. It wasn't far. Maybe seven to ten minutes.

10 Q. And you put that night -- and this statement, when was
11 -- let me just make -- let me show you so you know what.

12 AST. SOL. SORENSON: May I approach the witness, Your
13 Honor?

14 THE COURT: You may.

15 Q. You remember Ms. Williams asking you this question
16 about that you put in your statement that he had to be back
17 so I could go pick up the kids by 8:00 p.m. Is that
18 correct?

19 A. Yeah. That's what I wrote.

20 Q. Okay. And that statement was written what day and
21 time?

22 A. That was written at . . .

23 Q. November 1st?

24 A. That's November 1st. It's military time.

25 Q. 2216.

1 A. Yeah.

2 Q. 10:16 in the evening. Is that right?

3 A. Yes.

4 Q. And at that point in time, did you know what your
5 husband's condition was when you were giving them that
6 statement out there?

7 A. No. I kept ask -- I wasn't out there. I was in my
8 house. I kept asking them when I could see him, if I could
9 go to the hospital with him. And that was not the subject.
10 It was me writing a statement.

11 Q. But even -- and that's -- obviously, you wrote that.
12 So that night, what you told the police was that he had to
13 be back so you could pick up the kids by 8:00 p.m. Is that
14 correct? I mean, that's what was in your statement? That's
15 what -- right?

16 A. Right. That's what I wrote.

17 Q. And the fact of the matter is, I mean, he wasn't back.
18 No matter what time you told him, he wasn't back.

19 MS. WILLIAMS: Objection. Leading.

20 Q. Was he back by 8:00 p.m.?

21 A. No. He was not back by 8:00 p.m.

22 Q. Or for you to be able to pick up your kids by 8:00
23 p.m.?

24 A. No.

25 AST. SOL. SORENSON: That would be all I have.

1 THE COURT: You may step down, ma'am. Thank you. Will
2 the parties please approach.

3 (A bench conference was held off the record and out of
4 the hearing of the jury panel.)

5 THE COURT: Ladies and gentlemen of the jury, it's
6 about 4:20. I anticipate that our next witness is going to
7 be not super lengthy but a little bit lengthy. And I
8 certainly understand that most of you don't live right next
9 door to the courthouse and may need to get home to pick up
10 kids or do whatever you have to do for your own personal
11 lives. So I don't want to keep you here past five o'clock.
12 So I'm going to go ahead and let you go for the afternoon.
13 Again, please remember my instructions. Do not discuss this
14 case with or allow anyone to discuss this case with you, and
15 that includes amongst yourselves. If you would, please,
16 report back to your jury room say at 9:15, we'll get started
17 again with the testimony first thing in the morning. Have a
18 nice evening.

19 (The jury exits the courtroom at 4:20 p.m.)

20 THE COURT: Anything from either side before we recess
21 for the evening?

22 AST. SOL. SORENSON: I don't think so, Your Honor.

23 MS. WILLIAMS: No, ma'am.

24 THE COURT: If y'all want to go ahead and start putting
25 together any proposed jury charges so that when that time

1 comes, you'll be ready. I'll appreciate that.

2 AST. SOL. SORENSON: Yes, ma'am.

3 THE COURT: We'll see everybody at 9:15.

4 (The proceedings adjourned for the day at 4:21 p.m.)

5 - - - - -

6 (The proceedings began at 9:23 a.m., Wednesday, April
7 5, 2017.)

8 THE COURT: Anything from either party before we bring
9 the jury out?

10 AST. SOL. SORENSON: I don't believe so, Your Honor.

11 BY MS. WILLIAMS: Judge, you had asked us to prepare
12 jury charges. And I worked on some of it over the evening.
13 I was wondering if we could get a copy of what you proposed
14 to charge for self-defense so that I can construct mine
15 around what you already have.

16 THE COURT: Sure. We can do that.

17 BY MS. WILLIAMS: Thank you.

18 THE COURT: All right. Let's have our jury, please.

19 (The jury enters the courtroom at 9:24 a.m.)

20 THE COURT: Good morning, ladies and gentlemen of the
21 jury. Welcome back. I hope that you had a nice evening.
22 Sir, in the blue shirt on the end, what is your name?

23 JUROR: Shay Byrd.

24 THE COURT: Mr. Byrd, I'm going to appoint you as our
25 foreperson since you're sitting right there in the seat. As

1 you can see, this is a very scientific process. So you are
2 our foreperson. You may call your next witness.

3 AST. SOL. SORENSON: Thank you. May it please the
4 Court, Your Honor?

5 THE COURT: Yes, sir.

6 AST. SOL. SORENSON: The State calls Dr. Ellen Riemer.

7 (DR. ELLEN RIEMER, was duly sworn and provided the
8 following testimony.)

9 THE COURT: Your witness.

10 AST. SOL. SORENSON: Thank you, Your Honor. May it
11 please the Court?

12 THE COURT: Yes, sir.

13 DIRECT EXAMINATION

14 BY AST. SOL. SORENSON:

15 Q. Good morning, Dr. Riemer. If you would, please tell
16 the jury where it is that you're employed.

17 A. I'm employed at the Medical University of South
18 Carolina as a forensic pathologist.

19 Q. And how long have you been employed at MUSC as a
20 forensic pathologist?

21 A. A little more than eight years.

22 Q. Okay. If you would, please, just kind of briefly go
23 through your educational background for us.

24 A. Well, I have a Doctor of Medicine degree. And I'm
25 licensed to practice medicine in the State of South

1 Carolina. I did my residency training at Columbia
2 Presbyterian Medical center in New York followed by a
3 fellowship in forensic pathology at the -- also the chief
4 medical examiner of the State of Maryland; followed by a
5 second fellowship in cardiovascular and pulmonary pathology
6 at Johns Hopkins Hospital. And I'm board certified in both
7 anatomic pathology and forensic pathology.

8 Q. Okay. And you indicated that you've been at MUSC for
9 the last eight years. Did you work anywhere prior to that
10 as a forensic pathologist?

11 A. Yes. Between 2003 and 2009, I was a forensic
12 pathologist at Wake Forest University School of Medicine and
13 Wake Forest University Hospital in Winston-Salem, North
14 Carolina.

15 Q. So over the last 14 years, has it been one of your
16 primary responsibilities been to perform autopsies in cases?

17 A. Yes.

18 Q. Okay. And how many autopsies do you think you
19 performed over that time period?

20 A. Over that time period, greater than 3500.

21 Q. And, Dr. Riemer, have you had an opportunity then to
22 come testify in court on occasions about your findings?

23 A. On multiple occasions.

24 Q. Okay. Any idea about how many times you've qualified
25 as an expert?

1 A. Guessing 60. I haven't actually kept track.

2 Q. I understand. So well over 50?

3 A. Yes.

4 AST. SOL. SORENSON: Your Honor, at this time, we would
5 offer Dr. Riemer as an expert in the field of forensic
6 pathology.

7 THE COURT: And voir dire?

8 MS. WILLIAMS: None, Your Honor. I have no objection.

9 THE COURT: All right. She's qualified.

10 AST. SOL. SORENSON: Can you give -- I know some judges
11 give the jury an instruction.

12 THE COURT: Sure. I'm happy to do that. Ladies and
13 gentlemen of the jury, normally a person cannot give opinion
14 testimony. Normally when a person testifies, they must
15 testify as to what they either saw, heard, sensed by smell
16 or something of that nature. However, there's an exception
17 when someone is qualified as an expert witness because of
18 their education or their experience. They're permitted to
19 give their opinion in certain areas if the Court qualifies
20 them that way. Dr. Riemer is qualified to be an expert in
21 the area of forensic path -- forensic pathologist. And she
22 can give an opinion in that area. It does not mean that you
23 must accept that opinion, but it's evidence for you to use
24 in any way that you see fit and give it the weight that
25 you -- and credibility that you feel is appropriate. You

Direct Examination of Dr. Riemer by Ast. Sol. Sorenson

1 may proceed.

2 AST. SOL. SORENSON: Thank you, Your Honor.

3 BY AST. SOL. SORENSON: (continuing)

4 Q. Now, Dr. Riemer, did you have an occasion in this case
5 to perform an autopsy on 36-year-old David Ham?

6 A. Yes, I did.

7 Q. And at whose request was that autopsy done?

8 A. That was requested by Linda Walsh who was the deputy
9 coroner of Dorchester County.

10 Q. And is that typically here in South Carolina how that
11 comes about is the coroner or deputy coroner requests the
12 autopsy to be performed?

13 A. Yes.

14 Q. And if you would, before I get into -- get you to get
15 into the specific findings from that autopsy, can you kind
16 of briefly describe to the jury what an autopsy consists of.

17 A. Yes. And autopsy is a specialized type of examination
18 which includes a surgical examination that also includes,
19 starts with, a complete external exam performed on a
20 deceased individual. And so the first thing that I would do
21 or any forensic pathologist does is review everything about
22 the body, look from head to toe, to look for any
23 abnormalities or signs of injury or anything abnormal that
24 would raise suspicions, what may have contributed to the
25 individual's death. The purpose of the examination is to

1 determine the cause and manner of death. And after a
2 complete external examination, an internal examination is
3 performed which is a surgical type procedure where there's
4 an incision on the front of the body and the body is opened
5 and every single organ is removed and examined individually
6 for signs of injury or natural disease. And upon completion
7 of that examination, other studies might be performed such
8 as a toxicology test or whatever testing may be helpful in
9 order to determine the cause and manner of death.

10 Q. Okay. And is that ultimately what your job as a
11 forensic pathologist, is that what you're attempting to
12 determine is the cause and manner of death?

13 A. Yes.

14 Q. And just briefly describe to me, what is a cause of
15 death?

16 A. So the cause of death, there can be lots of different
17 causes. People can die of natural diseases. So like if
18 somebody dies of lung cancer, lung cancer is a cause. If
19 somebody has a heart attack, a myocardial infarct is a
20 cause. If somebody has a stroke, a stroke is a cause. If
21 somebody dies as a result of a gunshot wound, the gunshot
22 wound is the cause. So it's the actual thing or disease or
23 injury that's responsible for causing the person's death.

24 Q. Then you also talked about then determining the manner
25 of death. Describe to the jury what that term means.

Direct Examination of Dr. Riemer by Ast. Sol. Sorenson

1 A. Yeah. So the manner of death, there is only five
2 manners that we have to choose from. Okay. There's
3 natural. Okay, so this is, you'll get the idea. There's
4 natural, which would be like a natural disease. Suicide.
5 Okay. That would be if somebody harmed themselves, killed
6 themselves. Accident. So if, you know, a car crash and
7 somebody died from injuries from a car crash, they --
8 multiple injuries and the manner would be accident. And
9 then homicide which is death at the hands of another person.
10 And then in rare cases, it cannot -- we don't know the
11 manner of death in which case we would say it's
12 undetermined. So those are our five choices.

13 Q. Okay. Now, if we could, Dr. Riemer, I'd like to turn
14 your attention to this case. When did you perform the
15 autopsy on David Ham?

16 A. On November 2, 2015, beginning at twelve o'clock p.m.

17 Q. Okay. And were you provided any history initially
18 regarding when Mr. Ham may have suffered the injuries that
19 he suffered and also when he was pronounced dead?

20 A. Yeah. That's information that was provided to me. I
21 didn't independently verify that information, but I was told
22 by Linda Walsh that ---

23 MS. WILLIAMS: Objection, Your Honor. Hearsay.

24 AST. SOL. SORENSON: She's an expert witness. I mean,
25 it goes towards her findings.

1 THE COURT: And it's of her opinion. Overruled.

2 A. I was told the incident occurred at about ten o'clock,
3 like 10:04 p.m., is what I was told. And that Mr. Ham was
4 pronounced deceased about an hour later at 11:05 p.m. at
5 Trident Hospital.

6 Q. Initially, you indicated that your autopsy consists of
7 initially doing kind of a general, external exam?

8 A. Yes.

9 Q. And then was that done in Mr. Ham's case?

10 A. Yes.

11 Q. Okay. And as a part of that, are you able to -- do you
12 determine the person's height and estimated weight?

13 A. Yes. I actually measured myself which was 72 inches.
14 And, obviously, with a deceased person, they're actually
15 lying on a table. So I take a tape measure and, you know,
16 there could be a little bit of a bend of the tape measure.
17 They're not standing up next to, you know -- and then the
18 weight is measured. We have a scale. And he weighed 143
19 pounds.

20 Q. Okay. So the 72 inches would be 6 feet?

21 A. Six-feet.

22 Q. So he's gonna be six-feet or just slightly under
23 six-feet, I guess, if the tape measure . . .

24 A. Well, it's -- that's what I measured. It could be a
25 little bit off.

Direct Examination of Dr. Riemer by Ast. Sol. Sorenson

1 Q. Gotcha. All right. And then your further external
2 examination of Mr. Ham, did you note any evidence of
3 external injury to Mr. Ham?

4 A. Yes. He had a gunshot wound to the neck.

5 Q. And tell the jury, or if you kind of show on yourself,
6 about where that injury would be located at.

7 A. Okay. So there were two defects, which corresponded to
8 the entrance and the exit wound on the right side of the
9 neck. The entrance was here, about here (indicating), and
10 the exit was on the back of the neck to the right of
11 midline.

12 Q. And were you able to kind of determine how they kind of
13 related to each other? I mean, were they ---

14 A. Yes.

15 Q. --- a downward angle? An upward angle?

16 A. Yes. The principal angle was from front to back. But
17 there was also a slightly downward deviation. So the way I
18 figured that is by measuring the entrance and the exit, each
19 hole, from the top of the head. And the exit was a little
20 bit lower than the entrance was. So it's a slightly
21 downward deviation. And similarly, it was a slightly right
22 to left deviation. So if I measure from the midline, there
23 was starting on the right side of the neck, front of the
24 neck, it's also ending on the right side of the back of the
25 neck, but slightly closer to midline. So predominately it

1 was a front to back direction but with a slight right to
2 left and slight downward deviation.

3 Q. Now, did you note any other relevant injuries to Mr.
4 Ham besides that gunshot wound entrance and exit?

5 A. Well, that was the cause of death. That was the injury
6 that was responsible for his death.

7 Q. Okay.

8 A. There were a couple of other superficial injuries that
9 did not contribute in any way to the death.

10 Q.. Okay. All right. And in looking at that entrance
11 wound, are you able to look at that and determine -- is
12 there anything that you look at when looking at that
13 entrance wound?

14 A. Yes. I examine the skin around the entrance wound to
15 look for any evidence of gunpowder deposition on the skin or
16 soot, which is gunpowder that would be released from the
17 barrel of the gun. The reason is because if to try to
18 determine if there's any evidence of close-range fire. So
19 you can imagine a gun being shot, a bullet is released from
20 the barrel upon firing. And along ---

21 MS. WILLIAMS: Objection, Your Honor. May we approach?

22 THE COURT: You may.

23 (A bench conference was held off the record and out of
24 the hearing of the jury panel.)

25 THE COURT: You may proceed.

Direct Examination of Dr. Riemer by Ast. Sol. Sorenson

1 AST. SOL. SORENSON: Thank you, Your Honor.

2 Q. All right. Dr. Riemer, so you were telling the jury
3 about basically what you were looking for as far as ---

4 A. Yeah.

5 Q. And that would be?

6 A. There's no gunpowder or soot on the skin. There was
7 just gunpowder stippling. So it's an indeterminate range.

8 Q. Okay. If you had found it there, would you be able to
9 possible give an estimate about how close the firearm was?

10 MS. WILLIAMS: Objection, Your Honor.

11 THE COURT: Overruled.

12 A. Only if it's there. The fact that it wasn't there, I
13 can't say how. I have no indication how close or far away
14 it was.

15 Q. Gotcha. Now let me ask you -- so you indicated in this
16 case you have an entrance wound and an exit wound.
17 Typically in a gunshot wound case, do you then do anything
18 with the body to determine whether there are any foreign
19 bodies that are located there?

20 A. Yes. Every individual who has an apparent gunshot
21 wound, I will X-ray the areas of the body in the vicinity of
22 the gunshot wound just in case. Which frequently there are
23 fragments of projectiles or bullets that remain in the body
24 or bullets. And I want to make sure that I know it's there.

25 Q. And in this case, did you take X-rays of that of

1 Mr. Ham's neck area?

2 A. Yes. And there was no bullet remaining in the body.

3 So it was completely through and through.

4 Q. Okay. No bullets or fragments from the bullet?

5 A. That's correct.

6 Q. Okay. Now you kind of briefly talked about, obviously,
7 where the entrance wound and where the exit wound was. Did
8 you have an opportunity then to kind of perform an internal
9 examination around that area to determine kind of what that
10 wound path was and what damage it did to Mr. Ham?

11 A. Yes.

12 Q. Okay. Could you describe what your findings were in
13 that.

14 A. So we have a lot of vital structures in our body. And
15 in the neck there are major blood vessels that connect the
16 brain to the rest of the body below the neck. And you've
17 heard of the jugular vein probably and also the carotid
18 artery. Well, this bullet injured both of those which
19 caused bleeding.

20 Q. And what ultimately would be the significance of
21 damaged to both that jugular vein and the carotid artery?

22 A. Well, these are very large vessels. And when there's a
23 defect or when they're torn or damaged from a bullet, it's
24 going to cause bleeding outside of the vessels. So blood
25 belongs in blood vessels and not outside of blood vessels.

1 So the heart continues to pump and so blood is just
2 basically pouring out of these vessels and basically leaving
3 the body.

4 Q. And the injury that Mr. Ham suffered, would you expect
5 there to be a significant amount of blood loss from those
6 injuries?

7 A. Yes.

8 Q. Now, Dr. Riemer, did you -- when you talked earlier
9 about part of that an autopsy being a full kind of internal
10 examination of all of the internal organs also.

11 A. Yes.

12 Q. Okay. Did you find any other evidence of injury either
13 during your external examination or the internal examination
14 of Mr. Ham?

15 A. Yes.

16 Q. Okay. What ---

17 A. There was a superficial incised wound on the left side
18 of the neck. So that was like a cut. It was a cut from
19 something. It was very superficial. It just went through
20 the skin. And it was three-quarter inches in length and it
21 was really superficial. So that didn't contribute to his
22 death in any way. I don't know how that was sustained. And
23 then he also had a non-acute. So it was a healing abrasion
24 which is a scab on the right side of the leg, on the right
25 leg, the lower aspect. And he also had a contusion, which

1 is just a word for bruise, on the left foot.

2 Q. Okay. And as far as the internal exam of Mr. Ham, any
3 evidence of injury to any of his other internal organs?

4 A. No.

5 Q. Now you had spoken also earlier, Dr. Riemer, that
6 typically part of an autopsy would be taking a toxicology
7 sample to send up to State Law Enforcement Division?

8 A. Yes.

9 Q. And was that done in this case?

10 A. Yes.

11 Q. Okay. And, ultimately, are those results reported back
12 to you?

13 A. Yes.

14 Q. Okay. Do you have these results?

15 A. I do.

16 Q. And what was Mr. Ham's -- the results of Mr. Ham's ---

17 A. Okay. Well, there was alcohol in the blood. Okay.

18 With a BAC, a blood-alcohol concentration, of 0.194. Okay.

19 So that's not low. A .08, 0.08, is the legal driving limit.

20 And so point, 0.194 is more than double that. So almost two

21 and a half times that. And then the same test, ethanol was

22 in the ocular fluid. So we typically draw fluid from the --

23 draw blood as well as ocular fluid frequently for toxicology

24 testing as well. Especially when somebody has had

25 resuscitated effort administered. So let's say in the

1 emergency room while they tried to resuscitate him, they may
2 have given him a lot of fluid and that might've artificially
3 lowered his blood alcohol level, but the vitreous is
4 relatively in it's own compartment. So that would be less
5 effective. But they were pretty much very close to each
6 other.

7 Q. And, ultimately, Dr. Riemer, in kind of looking at all
8 of your findings from the autopsy and the results of any
9 tests that were done afterwards, were you, within a
10 reasonable degree of medical certainty, able to determine a
11 cause and manner of death for Mr. Ham?

12 A. Yes.

13 Q. Okay. Please tell the jury, if you would, what your
14 opinion was in these regards.

15 A. The cause of death was a gunshot wound to neck and the
16 manner is homicide.

17 AST. SOL. SORENSON: That would be all I have for Dr.
18 Riemer. Thank you, Your Honor.

19 THE COURT: Any cross-examination?

20 MS. WILLIAMS: Yes, ma'am, please.

21 CROSS-EXAMINATION

22 BY MS. WILLIAMS:

23 Q. Dr. Riemer, the number of gunshot wounds was just one?

24 A. Yes.

25 Q. So there were no other shot -- that you could determine.

1 from your autopsy, there were no other shots fired?

2 A. Well, there were no other shots ---

3 Q. That hit him?

4 A. --- that hit Mr. Ham.

5 Q. And you testified about the blood alcohol -- oh, and
6 that shot was front to back?

7 A. That's correct.

8 Q. It went in the front of his neck. You said the right
9 side of the front of his neck?

10 A. Yes.

11 Q. And out the right side of the back of his . . .

12 A. Yes.

13 Q. And it was kind of like a -- you said downward
14 deviation?

15 A. Yeah. A little bit, yes.

16 Q. Okay. I want to talk about blood alcohol content. You
17 said, and I wrote it down, you said the blood alcohol
18 content when you got it back was not low. Does that mean
19 ---

20 A. That's correct.

21 Q. Does that mean it's extraordinarily high?

22 A. Yeah. Well, you know, I would say he was most likely
23 intoxicated. You know, it's hard to say exactly like
24 somebody's behavior or degree of intoxication based only on
25 a level because people who use alcohol regularly, it's

1 amazing how -- what they're able to do with high levels of
2 alcohol. But that's a pretty high level of alcohol. I would
3 say, you know, he didn't actually have any evidence of
4 chronic alcohol abuse. So I would imagine he was
5 intoxicated.

6 Q. You said it was two and half times the legal limit?

7 A. Yes.

8 Q. And are you aware of the studies that show that alcohol
9 level that high is correlated to aggressiveness in
10 individuals?

11 A. I'm not an expert on the real effects of alcohol. But
12 I know that it does -- it is known to have that effect in
13 many people.

14 MS. WILLIAMS: I have no further questions, Judge.
15 Thank you.

16 THE COURT: Anything further?

17 AST. SOL. SORENSON: No. May she be excused, Your
18 Honor?

19 THE COURT: Any objection?

20 MS. WILLIAMS: I don't have Dr. Riemer under subpoena,
21 so yes.

22 THE COURT: You may be excused, Doctor. Thank you.

23 THE WITNESS: Thank you.

24 THE COURT: You may call your next witness.

25 BY AST. SOL. TEMPLETON: State calls Corporal Jason

1 Forsyth.

2 (JASON FORSYTH, was duly sworn and provided the
3 following testimony.)

4 THE COURT: Your witness.

5 DIRECT EXAMINATION

6 BY AST. SOL. TEMPLETON:

7 Q. Good morning, Sergeant Forsyth?

8 A. Good morning, sir.

9 Q. Where are you employed?

10 A. Town of Summerville Police Department.

11 Q. How long have you been employed there?

12 A. Five years.

13 Q. How long have you been in law enforcement?

14 A. Twenty years.

15 Q. If you would, just briefly, go through your educational
16 background including any law enforcement training.

17 A. I have a bachelor's degree, double major, in history
18 and criminal justice from Charleston Southern University.

19 I've been employed in law enforcement for 20 years. The
20 majority of my career was with the City of North Charleston
21 Police Department where I served as a homicide detective and
22 auto-theft detective. And, like I said, I've been at
23 Summerville now five years.

24 Q. Okay. I'm going to show you what is marked as State's
25 Exhibit Number 19. See if you recognize what that is.

Direct Examination of Sgt. Forsyth by Ast. Sol. Templeton

1 A. I do. Yes, sir.

2 Q. What is that?

3 A. This is the video that I watched with you prior to
4 today.

5 Q. Okay. And what is that video of?

6 A. This is a video of the traffic stop that I made for the
7 incident that we're here for today.

8 Q. Okay. And how do you know that's the particular disc
9 that you watched?

10 A. My signature is on here with the name.

11 Q. Okay.

12 A. Or with my initials.

13 Q. All right.

14 AST. SOL. TEMPLETON: Your Honor, at this time State
15 would move State's Exhibit Number 19 into evidence.

16 THE COURT: Any objection?

17 MS. WILLIAMS: Court's indulgence. (Brief pause.)
18 Judge, we'd object to the relevance of this.

19 THE COURT: Overruled. You may proceed.

20 (State's Exhibit No. 19, CD of Video, was received
21 into evidence.)

22 Q. Sergeant Forsyth, do you recall what you were doing on
23 the evening of November 1, 2015?

24 A. I do.

25 Q. Okay. What were you doing that night?

1 A. I was working on paperwork at the station when I heard
2 the call go out at [REDACTED] [REDACTED]

3 Q. Okay. And what did you do when you received that call?

4 A. I got into my patrol vehicle and ran lights and siren
5 towards the location leaving from the station down South
6 Main Street taking a left onto Carolina at Trolley, Bacons
7 Bridge split.

8 Q. Okay. From there, what happened next in this case?
9 For you anyways.

10 A. Well, one of the officers on scene, Office McElvogue,
11 put out a description of a vehicle, suspect vehicle, that
12 was leaving the scene. He broadcasted a description out by
13 radio. I heard that description. And as I was traveling
14 down Trolley Road coming up to the Bacons Bridge split. I
15 saw a vehicle that matched that description. I cut off my
16 blue lights and sirens as to not to alert the driver just in
17 case it might be that vehicle. Got behind that vehicle and
18 followed it back into town on Trolley Road.

19 Q. Okay. Ultimately, did you activate blue lights on the
20 vehicle?

21 A. I did. As I got behind the vehicle, right at Berlin G
22 and Trolley heading back into town towards Carolina, I got
23 immediately behind the vehicle. Saw that there was not tag
24 to call in; had a paper tag on the vehicle. Saw that it was
25 the same exact vehicle that had been broadcast by PSE

Direct Examination of Sgt. Forsyth by Ast. Sol. Templeton

1 McElvogue from the incident location. And initiated a
2 traffic stop right after the light at Berlin G and Trolley
3 Road heading into town.

4 Q. Did that vehicle stop immediately?

5 A. No, sir.

6 Q. Okay. How far did that vehicle go before it ultimately
7 came to a stop for you?

8 A. Probably about a mile.

9 Q. Okay. Did it slow down? Did it speed up?

10 A. Well, at first, the vehicle sped up. I thought that
11 the vehicle was attempting to elude me at first. But then
12 the vehicle came to a quick stop just past East Carolina and
13 North -- or South Main Street.

14 Q. Okay. At that point, what did you do next?

15 A. I called out on the radio. When I got out of the
16 vehicle at first, the subject was wearing a gray hat. I
17 didn't want to draw my gun on what could be possibly an
18 elderly person or citizen just driving their vehicle. So I
19 said, told dispatch, I don't believe this is going to be the
20 vehicle. Like I said, I thought I saw gray hair. As I
21 started to approach the vehicle, the hands came out of the
22 window. I saw a spider tat -- I don't know exactly what --
23 it looked like a spider tattoo on the hand, but there was a
24 tattoo on the hand. I immediately identified that it was
25 not an elderly person. I unholstered my weapon and

1 approached the vehicle at gunpoint.

2 Q. Did you call for backup at that point?

3 A. I did at that time.

4 Q. Once you came up to the vehicle, did you see who that
5 person was?

6 A. I did. I walked up to the vehicle. It was a white
7 male. He had tattoos on his hands. I saw a tattoo on his
8 neck. I approached the vehicle at gunpoint and I said,
9 "Were you involved in the shooting?" He said yes.

10 MS. WILLIAMS: Object. Judge, I would just note by
11 previous objection under Jackson v. Denno. This was not
12 brought up during that time.

13 THE COURT: Overruled. You may proceed.

14 AST. SOL. TEMPLETON: Thank you, Your Honor.

15 Q. Do you recognize the person you stopped that night in
16 the courtroom here today?

17 A. He's the defendant. Yes, sir.

18 Q. He's sitting at the defense table right here?

19 A. Correct.

20 Q. Okay.. Was anyone else in the vehicle?

21 A. No. The vehicle -- he was the sole occupant.

22 Q. Okay. Did you see anything else in the vehicle that
23 concerned you?

24 A. There was a gun directly -- the station beside him. He
25 let us know that the gun was there.

Direct Examination of Sgt. Forsyth by Ast. Sol. Templeton

1 Q. Okay. And that stationed right beside him ---

2 A. Sitting right beside him, you know, in the passenger
3 seat right close to the center console.

4 Q. Okay. I'm going to show you State's Exhibit Number 12
5 and 13.

6 AST. SOL. TEMPLETON: May I approach, Your Honor?,

7 THE COURT: You may.

8 Q. I'm going to show you State's Exhibit 12 and 13. Do
9 you recognize those photographs?

10 A. Yes, sir, I do.

11 Q. Did you take those photographs?

12 A. I did.

13 Q. Okay. What are those photographs of?

14 A. This is a revolver with a brown handle; black, black in
15 color revolver.

16 Q. In both photographs?

17 A. Both photographs. Yes, sir.

18 Q. Okay.

19 A. Inside the vehicle.

20 Q. Is that the handgun that was found at the scene?

21 A. That's correct. Yes, sir.

22 Q. Okay. I'm going to show you State's Exhibit Number 18.
23 Do you recognize this?

24 A. I do, sir.

25 Q. Is that the same handgun?

1 A. Yes, it is.

2 BY AST. SOL. TEMPLETON: Your Honor, at this time, the
3 State is going to move to admit State Exhibit Numbers 13 and
4 -- 12 and 13 into evidence.

5 THE COURT: Any objection?

6 MS. WILLIAMS: No objection.

7 (State's Exhibit No. 12 and 13, Photographs, were
8 received into evidence.)

9 Q. I'm gonna show you State's Exhibit Number 13. Is that
10 a photograph -- that's the photograph that you took?

11 A. Yes, it is.

12 Q. And that's the handgun in the passenger seat?

13 A. Yes, it is.

14 Q. I'm going to show you State's Exhibit Number 12.

15 Likewise, is that the same?

16 A. Yes, it is.

17 Q. And this would have been the angle that you would have
18 seen that gun originally?

19 A. Correct. Yes, sir.

20 Q. I'm also going to show you State's Exhibit Number 11.

21 (Brief pause.) I'm going to show you State's Exhibit Number
22 11. Do you recognize that photo?

23 A. Yes, I do.

24 Q. Okay. What is that a photo of?

25 A. This is a picture that I took. When I photograph a

Direct Examination of Sgt. Forsyth by Ast. Sol. Templeton

1 scene, I like to get a full processing scene including
2 street signs. This is what I took from the back of the
3 vehicle.

4 Q. Okay. And that's the vehicle that you stopped that
5 day?

6 A. Yes, sir. It is.

7 BY AST. SOL. TEMPLETON: Your Honor, we'd move State's
8 Exhibit Number 11 into evidence.

9 MS. WILLIAMS: No objection.

10 THE COURT: It's in.

11 (State's Exhibit No. 11, Photograph, was received into
12 evidence.)

13 AST. SOL. TEMPLETON: I'll publish that to the jury as
14 well.

15 Q. Is that the vehicle that was stopped on West Carolina?

16 A. Yes, it is.

17 Q. Ultimately, did you remove the defendant from the
18 vehicle?

19 A. Yes.

20 Q. Someone else there with you at that point?

21 A. Yes, sir. Corporal Dutrieux showed up. He came quite
22 fast after I told him that I had the subject stopped.

23 Q. Okay. He placed under arrest at that point?

24 A. He was.

25 Q. Once he was placed under arrest, what did you do at the

1 scene after that?

2 A. We took him -- we didn't want -- he was cooperating. We
3 did not want it to seem that we were being too aggressive
4 with him. So we picked him and walked him back towards the
5 car. And I was actually thanking him for not reaching for
6 the gun so that I didn't have to do anything.

7 Q. Okay. Did you secure the scene?

8 A. We did. The scene was completely secured.

9 Q. Did anyone ever go inside of that vehicle at the scene?

10 A. No.

11 Q. Okay. And you were there the entire time?

12 A. Yes, sir.

13 Q. Okay. Was that vehicle ultimately moved from the scene
14 somehow?

15 A. The vehicle was towed from the scene, and I was there
16 when the vehicle was towed from the scene.

17 Q. And where was it towed to?

18 A. Towed to the Summerville Police Department. We secure
19 a lot of our crime scene vehicles in the fire bay which is
20 adjacent to the police department.

21 Q. Okay.

22 A. So it's towed directly there from the scene.

23 Q. So would you have had this vehicle in your sight from
24 the time the stop until ---

25 A. Absolutely.

1 Q. --- it was towed to that bay?

2 A. Absolutely.

3 Q. And who did you ultimately turn that vehicle over to?

4 A. I believe it was turned over to crime scene.

5 Q. Okay.

6 AST. SOL. TEMPLETON: All right. At this point, the
7 State intends to publish State's Exhibit Number 19 which is
8 the video of the stop to the jury.

9 (Video begins play at 9:59 a.m. and stops at 10:07
10 a.m.)

11 AST. SOL. TEMPLETON: Your Honor, we have no further
12 questions for this witness. Answer any questions Ms.
13 Williams might have.

14 THE COURT: Cross-examination?

15 MS. WILLIAMS: Thank you, Judge. May it please the
16 Court?

17 THE COURT: Yes, ma'am.

18 CROSS-EXAMINATION

19 BY MS. WILLIAMS:

20 Q. Mr. Forsyth, we just watched that video of the stop,
21 and I want to go over some of the things that happened in
22 the video.

23 A. Yes, ma'am.

24 Q. When he pulled over, you said put your hands out of the
25 window?

- 1 A. Yes, ma'am.
- 2 Q. And he did that?
- 3 A. That's right.
- 4 Q. Did he ever pull his hands back in?
- 5 A. No, ma'am.
- 6 Q. So he his hands sticking out of the window the whole
- 7 time?
- 8 A. Correct.
- 9 Q. And you walk up and it's a tense situation?
- 10 A. Correct. Yes, ma'am.
- 11 Q. For you, obviously. And you've got your gun pulled on
- 12 him?
- 13 A. Yes, ma'am.
- 14 Q. And you say, "Were you involved in a shooting"?
- 15 A. Yes, ma'am.
- 16 Q. And he immediately responds ---
- 17 A. Yes.
- 18 Q. --- yes, gun is right here?
- 19 A. Uh-huh.
- 20 Q. And he never moves his hands?
- 21 A. No, ma'am.
- 22 Q. So when we see you pulling him out of the car, was that
- 23 because he was resisting or anything?
- 24 A. No. If he would have reached to undo his seatbelt or
- 25 if he would have reached into the car, he would've been.

1 putting himself close to the gun. I've been doing this 20
2 years, and I didn't want to hurt him.

3 Q. Right. And you didn't want to get hurt?

4 A. No. Absolutely. I was more worried about him.

5 Q. Right. So when we see you pulling him out of the car,
6 that's not because he was saying I'm not getting out or he
7 was saying -- he was actually just following what you wanted
8 him to do?

9 A. Correct.

10 Q. You were saying no, no, don't unlock the car. Just
11 keep your hands where you are and we're going to pull you
12 out of there?

13 A. Correct. I went to open the door first so that he
14 wouldn't have to do it, and it was locked. So the only
15 other option, safe option, was to bring him through the
16 window.

17 Q. And he wasn't resisting when you handcuffed him?

18 A. No, ma'am. Not at all.

19 Q. Or when he got up?

20 A. No.

21 Q. Ultimately, you thanked him?

22 A. I did.

23 Q. For being cooperative?

24 A. Several times.

25 Q. Do you normally thank someone when you arrest them for

1 being cooperative?

2 A. Well, anytime somebody puts me in a use of force
3 situation, and I don't have to use force, yes. That's
4 normal for me.

5 Q. Well, would it be fair to say that he was
6 extraordinarily cooperative?

7 A. He was cooperative. I wouldn't say extraordinarily
8 cooperative. Most people want to be cooperative.

9 Q. Well, until the point where you tell the other
10 officers: Hey, take it easy on this guy. He's being
11 helpful.

12 A. Correct. Which I would do with anybody who is being
13 cooperative.

14 MS. WILLIAMS: I have no further questions, Judge.

15 THE COURT: Any further redirect?

16 AST. SOL. TEMPLETON: No, Your Honor.

17 THE COURT: You may step down, sir. Thank you.

18 THE WITNESS: Yes, ma'am.

19 THE COURT: You may call your next witness.

20 BY AST. SOL. TEMPLETON: State calls Detective Wade
21 Rollings.

22 MS. WILLIAMS: Judge, I would just ask that Officer
23 Forsyth be excused. I no longer need him for my subpoena.

24 THE COURT: Any objection?

25 AST. SOL. TEMPLETON: None, Your Honor.

Direct Examination of Det. Rollings by Ast. Sol. Templeton

1 THE COURT: You're free to go.

2 (WADE FRANKLIN ROLLINGS, was duly sworn and provided
3 the following testimony.)

4 THE COURT: Your witness.

5 AST. SOL. TEMPLETON: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY AST. SOL. TEMPLETON:

8 Q. Good morning.

9 A. Good morning, sir.

10 Q. Where are you employed, Detective Rollings?

11 A. Summerville Police Department.

12 Q. How long have you been employed there?

13 A. Approximately, ten years.

14 Q. Okay. If you would, just briefly go through your
15 educational background including any law enforcement
16 education.

17 A. In 2007, I graduated from the Police Academy in
18 Columbia. I have had extensive crime scene training. And
19 recently, I've actually been certified through the
20 International Association of identification as a crime scene
21 analyst.

22 Q. Do you recall what you were doing on the evening of
23 November 1, 2015?

24 A. Yes, sir. I was called at home about a shooting that
25 occurred at [REDACTED] [REDACTED] [REDACTED].

1 Q. Is that pretty regular? If something occurs, you get
2 called at home to come out?

3 A. Yes, sir.

4 Q. Okay. I'm going to show you State's Exhibit Number 20
5 which is already in evidence. Do you recognize that area?

6 A. Yes, sir.

7 Q. Okay. And do you see numbers drawn on those different
8 buildings?

9 A. Yes, sir. I do.

10 Q. Okay. I'm going to take that back so I can show the
11 jury. That's State's Exhibit Number 20. - Is that where you
12 were dispatched to?

13 A. Yes, sir. It is.

14 Q. Okay. And what building in particular were you
15 dispatched to?

16 A. Building 12.

17 Q. Okay. Do you see the dot right in front of Building
18 12?

19 A. Yes, sir.

20 Q. That location, what was at that location when you
21 arrived there?

22 A. When I first arrived there, there were two piles of
23 clothing, what appeared to be blood between the two piles of
24 clothing as well as, I believe, a partially smoked Cigarillo
25 cigar, and various medical waste from the EMPs.

1 Q. Okay. Is that the approximate location of where that
2 was?

3 A. Yes, sir.

4 Q. Did you actually do some measurements?

5 A. I did.

6 Q. Okay. The measurements from -- where did you take
7 those measurements from and to?

8 A. From each article of evidence to the left side of the
9 breezeway and the right side of the building.

10 Q. Okay. Do you recall approximately the distance from
11 the breezeway to that location?

12 A. From the breezeway to that location was approximately
13 33 feet.

14 Q. Okay. Did you do a diagram of that location basically?

15 A. Yes, sir. I did.

16 Q. What are all the items that you found there? If you
17 would go through those one more time with us.

18 A. All of those items I located there in front of the
19 building were two piles of clothing, the pool of what
20 appeared to be blood, and the Cigarillo.

21 Q. Okay. The location on it that has a little X -- I
22 don't know if you can see it. Can you see that?

23 A. Yes.

24 Q. What was located there?

25 A. By the tree was the victim's vehicle.

1 Q. Do you remember what kind of vehicle that was?

2 A. I believe it was an Xterra.

3 Q. Okay. So an SUV?

4 A. Yes, sir.

5 Q. Ultimately, did you go into that vehicle for anything?

6 A. Yes, sir. At the time, Lieutenant Williams had located
7 the window -- I believe the window was down, the door was
8 unlocked. She located a book bag. You can actually see a
9 brown-colored wallet in the book bag. So she opened the
10 door. I went in, retrieved the wallet, and located his ID.

11 Q. And, ultimately, you determined that was the victim's
12 in this case ID?

13 A. Yes, sir.

14 Q. Was the victim still on-scene when you arrived?

15 A. When I arrived? No, sir.

16 Q. Do you know where he had been transported to?

17 A. I believe Trident Hospital.

18 Q. Okay. When you got out there, did you see anything
19 else other than those items? Was there anything else
20 collected?

21 A. The only other thing that was collected was a blood
22 swab or DNA swab from the pool between the two piles of
23 clothing as well as a cell phone SIM card which was located
24 across the parking lot from the building.

25 Q. Ultimately, that SIM card, did you find that had

Direct Examination of Det. Rollings by Ast. Sol. Templeton

1 anything to do with this investigation?

2 A. No, sir.

3 Q. Okay. I'm going to show you State's Exhibit Number 8
4 and 10 which are already in evidence. I'm going to start
5 with Number 8. What is this a photograph of?

6 A. That is a photograph of the articles of evidence with
7 the plastic evidence markers that I placed there.

8 Q. Okay. And can you actually see the crime scene
9 tape in the background?

10 A. Yes, sir.

11 Q. Do you know what building this is here that I'm
12 pointing to with my pen?

13 A. That's going to be number 12.

14 Q. And this building over here?

15 A. That would be 11.

16 Q. And these are the items that you're talking about that
17 you collected?

18 A. Yes, sir.

19 Q. At the different locations?

20 A. Yes, sir.

21 Q. Okay. I'm going to show you State's Exhibit Number 10.
22 What is that photograph of?

23 A. That is the Nissan Xterra that belonged to the victim.

24 Q. Okay. And between that Xterra and the entrance to this
25 building, is that the location where all of those things were

1 collected?

2 A. Yes, sir.

3 Q. Okay. Is it basically a straight line between those
4 things?

5 A. Yes, sir.

6 Q. Okay. After you finished at this scene, what happened
7 to that Xterra?

8 A. It was ultimately towed back to the police station ---

9 Q. Okay.

10 A. --- search warrant.

11 Q. Was a search warrant ultimately received on that
12 vehicle?

13 A. Yes, sir. It was.

14 Q. Did you search that vehicle?

15 A. I did.

16 Q. Did you find anything of evidentiary value in that
17 vehicle?

18 A. No, sir. I did not.

19 Q. Okay. When you got back to the station, was there also
20 another vehicle there at that point?

21 A. Yes, sir.

22 Q. What kind of vehicle was that?

23 A. There was a Chrysler located in one of the truck bays
24 for the fire department.

25 Q. Okay. I'm going to show you State's Exhibit Number 14,

Direct Examination of Det. Rollings by Ast. Sol. Templeton

1 15. We'll start with 14 and 15. 14 and 15 are already in
2 evidence. I'm going to show you Number 14 first. Is that
3 the other vehicle?

4 A. Yes, sir. It is.

5 Q. Okay. And then 15. It that just another angle of that
6 same vehicle?

7 A. Yes, sir.

8 Q. Okay. Now I'm going to show you number -- State's
9 Exhibit Number 7 and State's Exhibit Number 16.

10 AST. SOL. TEMPLETON: May I approach, Your Honor?

11 THE COURT: You may.

12 Q. What is State's Exhibit Number 7?

13 A. Number 7 is a set of car keys and a revolver that was
14 located in the front passenger seat of the Chrysler.

15 Q. Of this Chrysler that's shown on this screen here?

16 A. Yes, sir.

17 Q. Okay. I'll take that one back from you so I can show
18 the jury. What is in State's Exhibit Number 16, I believe.

19 A. Sixteen.

20 Q. Sixteen.

21 A. Miscellaneous paperwork. And underneath, there's a
22 South Carolina license plate. And the only thing visible is
23 the number three.

24 Q. Okay. Were all of these items in the vehicle when you
25 ultimately executed a search warrant on it?

1 A. Yes, sir. They were.

2 AST. SOL. TEMPLETON: Your Honor, at this time, we move
3 State's Exhibit Number 16 and State's Exhibit Number 7 into
4 evidence.

5 MS. WILLIAMS: No objection.

6 THE COURT: They're in.

7 (State's Exhibit No. 7 and 16, Photographs, were
8 received into evidence.)

9 Q. I'm going to show you State's Exhibit Number 7. Is
10 that revolver that you saw in that vehicle?

11 A. Yes, sir. It is.

12 Q. And that's a photograph that you took of it?

13 A. Yes, sir.

14 Q. And the other thing in that vehicle is what?

15 A. In that picture, there is a set of car keys next to the
16 revolver.

17 Q. Okay. I'm going to show you State's Exhibit Number 16.
18 now. You just described that to us as paperwork for the
19 vehicle, basically?

20 A. Yes, sir.

21 Q. Ultimately, did you figure out whose vehicle that was
22 through that paperwork?

23 A. Through the paperwork, there was registration
24 paperwork. But also running a DMV check on the tag once it
25 was uncovered, revealed, that the tag at least was

1 registered to Ms. Ham.

2 Q. Okay. You ultimately recovered that firearm from that
3 vehicle; correct?

4 A. Yes, sir.

5 Q. All right. I'm going to show you State's Exhibit
6 Number 18. What is that?

7 A. That is a revolver that was recovered from the vehicle,
8 itself. It is a Charter Arms 38 special police fold up (ph
9 model.

10 Q. Okay. Anything that you noticed on that weapon
11 immediately when you took possession of it?

12 A. Immediately, I ran a check on the serial number which
13 revealed it was not stolen or at least listed as stolen.
14 But also on the serial number you can see where someone has
15 attempted to scratch off the serial number.

16 Q. Okay.

17 AST. SOL. TEMPLETON: Your Honor, at this time, the
18 State would move to admit State's Exhibit Number 18 into
19 evidence.

20 THE COURT: Any objection?

21 MS. WILLIAMS: No objection.

22 THE COURT: All right. It's in.

23 (State's Exhibit No. 18, Gun, was received into
24 evidence.)

25 Q. All right. I'm now going to show you State's Exhibit

1 Number 17.

2 AST. SOL. TEMPLETON: May I approach, Your Honor?

3 THE COURT: You may.

4 Q. What is State's Exhibit Number 17?

5 A. That is a photograph of the cylinder once it was opened
6 from the revolver.

7 Q. Okay.

8 AST. SOL. TEMPLETON: Your Honor, we would move to
9 admit Number 17 -- State's Exhibit Number 17 into evidence.

10 THE COURT: Any objection?

11 MS. WILLIAMS: No objection.

12 THE COURT: It's in.

13 (State's Exhibit No. 17, Photograph, was received into
14 evidence.)

15 Q. When you opened the cylinder, did you recognize if any
16 of those rounds had been fired?

17 A. Yes, sir.

18 Q. How many of the six rounds there had been fired?

19 A. Just one.

20 Q. Okay. And based on your investigation, could you tell
21 was that like the next round that was in the chamber,
22 basically, had just been fired?

23 A. The round that had been fired, the cylinder rotates to
24 the right. And once you open the cylinder, I would consider
25 the chamber round. But the round that was inline with the

Cross-Examination of Det. Rollings by Ms. Williams

1 barrel to be fired next was a live round. Therefore, the
2 one to the right was the one that was fired.

3 Q. Okay.

4 BY AST. SOL. TEMPLETON: Beg the Court's indulgence,
5 Your Honor. The State has no further questions at this
6 time, Your Honor.

7 THE COURT: Cross-Examination?

8 MS. WILLIAMS: Yes, ma'am. Thank you.

9 CROSS-EXAMINATION

10 BY MS. WILLIAMS:

11 Q. Is it Detective Rollings?

12 A. Yes, ma'am.

13 Q. Detective Rollings, as the crime scene -- as the person
14 who came to this incident location as the crime scene
15 detective, you made some diagrams?

16 A. Yes, ma'am.

17 Q. You refer to them. Do you have those up there?

18 A. I do. Yes, ma'am.

19 Q. The first diagram was just a hand-drawn one; right?

20 A. Yes, ma'am.

21 Q. And it was what you created?

22 A. Yes, ma'am.

23 MS. WILLIAMS: May I approach, Judge?

24 THE COURT: You may.

25 Q. Is this a copy of the hand-drawn diagram that you

1 created?

2 A. Yes, ma'am. It is.

3 Q. It's a fair and accurate representation?

4 A. Yes, ma'am.

5 MS. WILLIAMS: At this point, I would move Defendant's
6 Exhibit 8 into evidence.

7 THE COURT: Any objection?

8 AST. SOL. TEMPLETON: None, Your Honor.

9 THE COURT: All right. It's in.

10 (Defendant's Exhibit No. 8, Crime Scene Drawing, was
11 received into evidence.)

12 Q. Detective Rollings, is this your drawing?

13 A. Yes, ma'am. It is.

14 Q. And that's what you did when you were on scene?

15 A. Yes, ma'am.

16 Q. Okay. I want to talk about the lighting that was at
17 there that night. That's the first thing I want to talk
18 about with these different diagrams and pictures you took.
19 Do you have any indication on this diagram of how dark it
20 was or any lighting that was out there that night?

21 A. No, ma'am.

22 Q. After you did that hand-drawn diagram, you then went
23 back to your office and you did a better computerized
24 diagram; right?

25 A. At a later date. Yes, ma'am.

Cross-Examination of Det. Rollings by Ms. Williams

1 Q. Do you have a copy of that?

2 A. I do.

3 MS. WILLIAMS: May I approach?

4 THE COURT: You may.

5 Q. I'm going to hand you what I have. Is this a copy of
6 the diagram you did?

7 A. Yes, ma'am.

8 Q. Mine is a pretty bad copy, isn't it?

9 A. That's a bad copy. Yes, ma'am.

10 Q. Can we use your copy, please.

11 A. You certainly can.

12 Q. Is this a fair and accurate representation of your
13 computerized diagram of the scene?

14 A. Yes, ma'am.

15 Q. And it's got an overhead photo of the scene; correct?

16 A. Yes, ma'am.

17 MS. WILLIAMS: At this point I would move Defense
18 Exhibit 9 into evidence.

19 THE COURT: Any objection?

20 AST. SOL. TEMPLETON: None, Your Honor.

21 THE COURT: It's in.

22 (Defendant's Exhibit No. 9, Computerized Crime Scene
23 Drawing, was received into evidence.)

24 Q. And this is the computerized version of what I just
25 showed you. It doesn't have the distances or the numbers on

1 it; right?

2 A. Uh ---

3 Q. Sorry. And nowhere on here does it show the lighting?

4 A. No, ma'am.

5 Q. Now I'm going to publish what's already put into
6 evidence as Defendant's 7. Is that a picture that you took?

7 A. Yes, ma'am.

8 Q. And you took it that night?

9 A. Yes, ma'am.

10 Q. And it's of the crime scene?

11 A. Yes, it is.

12 Q. And is that the front of Building 12?

13 A. Yes, ma'am.

14 Q. Can you show on the screen where you would've located
15 the clothes?

16 A. The clothing on the screen would be to the right of the
17 Defendant's Exhibit 7 sticker.

18 Q. Why are the markers and things not on this picture?

19 The ones that we saw on the earlier ---

20 A. They're on another picture that was created.

21 Q. Was this picture taken after you put those markers down
22 or before you put those markers down?

23 A. That picture very well could have been taken prior to.

24 Q. Okay. And that's why the markers aren't shown on
25 there?

1 A. Yes, ma'am.

2 Q. Okay. And, again, the markers would've been over you
3 said to the right side of where Defense Exhibit 7 sticker
4 is?

5 A. Yes, ma'am.

6 Q. Okay. And that would have been where you located the
7 clothes and what you described as the pool of blood?

8 A. Yes, ma'am.

9 Q. Does this picture show any lights?

10 A. No, it does not.

11 Q. Okay. What we see over here, is that just maybe from
12 the flash from your camera?

13 A. It very well could be.

14 Q. Do you happen to recollect whether not there was any
15 outside lighting?

16 A. I know from experience, being to that apartment complex
17 when I was on patrol, at night there are streetlights. But
18 where they're actually at I could not tell you.

19 Q. Okay. Do you remember just from being out -- you were
20 out there that night?

21 A. Yes, ma'am.

22 Q. Yeah. Do you remember whether it was dark?

23 A. It was dark.

24 Q. Okay. So we've talked about lighting. I'm going to
25 move on. I think we've beat that. I want to talk about the

1 positioning of the body when you got out there. Do you have
2 any ability to testify about how the body was positioned
3 when you got there?

4 A. No, ma'am. I do not.

5 Q. Because you never saw anything?

6 A. Exactly.

7 Q. All you saw were two piles of clothes and a pool of
8 blood?

9 A. Yes, ma'am.

10 Q. Were there two pools of blood? Were there two
11 locations where you found blood?

12 A. There were blood drops in other locations, but the main
13 area was between the two piles of clothing.

14 Q. And so was there some sort of indication that maybe the
15 shooting happened somewhere?

16 A. It's possible.

17 Q. Else. And then he fell backwards ---

18 A. It's very possible.

19 Q. And, again, just for -- there was blood other places
20 than where it was pooled. There was drops across the grass?

21 A. Yes, ma'am.

22 Q. And were the drops that you found, were they closer to
23 the sidewalk?

24 A. There, I didn't see no sidewalk. They were mostly near
25 the clothing piles.

1 Q. And I want to talk about the distances. I'm going to
2 put this diagram back up there again. On this computerized
3 drawing that you did when you got to your office, what it
4 shows is D-1 is one pile of clothes; D-2 is another pile of
5 clothes; E-3 is where you describe the vast majority of the
6 blood, the Cigarillo before; and E-5 down here with the SIM
7 card.

8 A. Yes, ma'am.

9 Q. That SIM card that you have noticed there, why is that
10 important? Because that's all the way across the parking
11 lot.

12 A. It is. At the time, PFC McElvogue stated he had
13 located the SIM card across the parking lot, in the one
14 parking space where the suspect vehicle may have been parked
15 at.

16 Q. And did you at any time confirm that that's where the
17 suspect vehicle was parked?

18 A. I have no way to do that.

19 Q. And by suspect vehicle?

20 A. The Chrysler.

21 Q. Okay. The car that was ultimately used ---

22 A. Yes, ma'am.

23 Q. --- by Christian Himes later on. You have no way to
24 determine whether or not that was parked there?

25 A. No, ma'am.

1 Q. But you went and looked at evidence there because there
2 was some information that maybe it was parked at that?

3 A. Yes, ma'am.

4 Q. And that's why that became important to you?

5 A. Yes, ma'am.

6 Q. Okay. And, again, there's no distances noted on here?

7 A. No, ma'am.

8 Q. Okay. But when we look at this one, this is pretty
9 much the same thing. We're gonna deal with -- this is the
10 breezeway up here?

11 A. Yes, ma'am.

12 Q. And then this is where it says, blood, clothes,
13 clothes. Does that say blood?

14 A. Blunt.

15 Q. Blunt. That's a cigarillo?

16 A. Yes, ma'am.

17 Q. And so explain to me where you measured from to get --
18 I think you said it was 33 feet?

19 A. Yes, ma'am. 33 feet from the left side of the
20 breezeway at the bottom of the step.

21 Q. Okay.

22 A. And then 39 feet from the right corner of the building.

23 Q. Can you draw a line from where you measured the
24 33 feet?

25 A. Yes, ma'am.

Redirect Examination of Det. Rollings by Ast. Sol. Templeton

1 Q. On the screen.

2 A. (Witness complies.) It would've been measured like
3 that.

4 Q. Okay. And 39 from that?

5 A. Yes, ma'am.

6 Q. Okay.

7 MS. WILLIAMS: Court's indulgence. (Brief pause.) I
8 have no further questions.

9 THE COURT: Any redirect?

10 AST. SOL. TEMPLETON: Just a few, Your Honor.

11 REDIRECT EXAMINATION

12 BY AST. SOL. TEMPLETON:

13 Q. I'm gonna go back to Defendant's Number 7. The 33 feet
14 and the 39 feet, is that actually off the picture basically?

15 A. Yes, sir. It is.

16 Q. Okay. How much further off that picture you think it
17 is? Do you have an idea?

18 A. In feet or . . .

19 Q. Yeah. Just approximation.

20 A. I would say approximately, maybe, 10 feet.

21 Q. Okay. I'm going to show you State's Exhibit Number 8.
22 Does it basically line up near the end of that building?

23 A. Yes.

24 MS. WILLIAMS: Objection, Your Honor. Leading.

25 THE COURT: Just rephrase please.

1 Q. How close to the end of that building is actually this
2 pile of blood, clothing, and that kind of thing?

3 A. From the right side of the end of the building here?

4 Q. Yeah.

5 A. Evidence marker 1, which would be the clothing closest
6 to the left side of the screen, was 39 feet.

7 Q. And that's from the corners that are coming out and in;
8 correct?

9 A. Yes.

10 Q. Okay. Just from, like, if you lined up straight with
11 the building, how far would that have been to the left? Do
12 you have a general idea?

13 A. I would say maybe 10, 12 feet.

14 Q. Okay. And from the sidewalk, it's all that stuff, do
15 you have a general how far that would have been?

16 A. I would say roughly 10, maybe 15 feet.

17 AST. SOL. TEMPLETON: We have no further questions,
18 Your Honor.

19 THE COURT: You may step down, sir. Thank you.

20 THE WITNESS: Thank you, ma'am.

21 AST. SOL. SORENSON: May we approach?

22 THE COURT: Sure.

23 (A bench conference was held off the record and out of
24 the hearing of the jury panel.)

25 THE COURT: Ladies and gentlemen, it's about 10:30.

1 It's probably a good time to take our morning brief break.
2 If you would please go to your jury room, we'll be back with
3 you shortly. Again, please remember not to discuss this
4 case amongst yourselves. Thank you.

5 (The jury exits the courtroom at 10:32 a.m.)

6 THE COURT: We'll be at ease for a few minutes. Let me
7 know when you're ready.

8 MS. WILLIAMS: Judge, I had some objections and one of
9 them was at the bench. Would you mind if I put some of them
10 on the record?

11 THE COURT: Certainly.

12 MS. WILLIAMS: To preserve for appeal if and when it is
13 necessary. (Brief pause.) I believe my first objection would
14 have been about the forensic pathologist testifying to what
15 I believed to be more of a ballistic type testimony that I
16 believed she could have testified that whether or not she
17 found stippling or whether or not she found gunshot residue.
18 When she went into the distance that it would've been that
19 she -- and then she testified it was indeterminate distance
20 because she didn't find any, that had she found some, she
21 could have said it if it was close range. I object to that
22 because I believe that her expert testimony should have been
23 just about the pathology of that autopsy. And I would've
24 voir dired more had I thought that it was going to go beyond
25 that, going into ballistics or distance of gunshot. And the

1 reason why I think that's important is because I think, and
2 I may be putting the cart before the horse, is that the
3 State is going to get up and say Christian Himes says he
4 shot him because he was charging at him. He's gonna say it
5 was close range. You heard a doctor say there was no
6 stippling. You heard a doctor say there was no gunshot
7 residue. And you head a doctor say that had it been -- had
8 there been gunshot residue or stippling, it would have been
9 easier to determine close range. And so that was the reason
10 why I thought that we probably should have qualified her if
11 she was an expert in that. And I just wanted to put that on
12 the record. And I understand the Court's ruling on that.

13 THE COURT: Solicitor, would you like to place your
14 position on the record?

15 AST. SOL. SORENSON: I mean, I think she's -- I think
16 she's qualified as a forensic pathologist to testify to
17 everything that she testified to. It's part of her ---

18 THE COURT: I agree. And I think that's also part of
19 collecting evidence from the body which would include
20 gunshot residue on the body. And she didn't find any, so
21 she didn't go any further. And, certainly, she didn't
22 testify as to any ballistic testimony. So your objection it
23 noted for the record.

24 MS. WILLIAMS: Thank you, Judge. Further, during
25 Officer Forsyth testimony, in two instances he mentioned a

1 statement made by Christian Himes. It was a statement --
2 the first instance was during his testimony itself where he
3 stated that as he approached the car, he asked Mr. Himes are
4 you the one that was involved in the shooting. And then he
5 said that Christian Himes told him yes. Had that been
6 brought up pretrial, that that was going to be intended to
7 be used by the State, we could have had a Jackson versus
8 Denno hearing on that to determine whether not it was in
9 custody, which I believe it would've been considering a gun
10 was drawn, and whether or not it was elicited by the police
11 officer. And I believe it probably would've been suppressed
12 because he had not been given his Miranda rights at that
13 point. It was a question by the police officer specifically
14 made to elicit a response. It should have been brought up
15 in a Jackson v. Denno. And that was the basis of my
16 objection on those. It came out during his direct
17 testimony. It also came out during the playing of the
18 video. You could hear it where he reports back on the radio
19 chatter: I asked if him if he was the shooter and he said
20 yes. And we now have that in evidence. So that was my
21 second objection under Jackson v. Denno.

22 THE COURT: Solicitor?

23 AST. SOL. TEMPLETON: Your Honor, as to the video, I
24 mean, prior to us entering into evidence, prior to us
25 showing it, the defense had seen it. There was no objection

1 to that testimony coming in from the defense. As to what he
2 said on the stand, it is what happened at the time. Don't
3 believe it's hearsay. At that point, he's not in cuffs. He
4 hasn't been pulled out of the vehicle. I understand that
5 he's being held at gunpoint at that point, but I don't know
6 that he's in custody at that point either.

7 THE COURT: Well, in considering all of the facts and
8 circumstances of the case, Ms. Williams, certainly I
9 understand your objection and how it certainly could have
10 been brought up during the Jackson v. Denno portion of the
11 hearings which we had pretrial. However, your position
12 throughout this trial is not a who done it. He said he did
13 it. It's just a matter of whether it's self-defense or not.
14 So I do find that it is harmless in that sense. And quite
15 frankly, on cross, you asked him the same thing so basically
16 to reinforce that he was cooperative. He did say he was
17 involved in the shooting. So I don't think that's
18 detrimental to your defense because basically that is your
19 defense.

20 MS. WILLIAMS: And, Judge, the reason why I just -- the
21 reason why I did ask that on cross is because I had already
22 been ruled against when I made the objection. Otherwise, I
23 would not have elicited that statement from my client.

24 THE COURT: Well, that was obviously your strategy at
25 the time. Let's move on.

1 MS. WILLIAMS: In addition, I had objected to -- my
2 third argument was objecting to the admission of the video
3 itself. I did object prior to it's admission when the State
4 tried to admit it into evidence. And I objected based on
5 relevance. I did not know that the radio chatter was going
6 to, again, talk about the statement by my client. But I
7 objected based on relevance because I believed it was
8 cumulative and prejudicial and irrelevant at that time.

9 THE COURT: I find the probative value is outweighed
10 the prejudicial events. And it certainly is relevant. It
11 goes to exactly what happened that night. How he was
12 apprehended and that he was the one in the car that belonged
13 to Ms. Ham certainly put him at the scene. So, certainly,
14 it is relevant and the Court overrules your objection.
15 Anything further?

16 MS. WILLIAMS: Yes, ma'am. I believe so.

17 AST. SOL. TEMPLETON: Thank you, Your Honor.

18 THE COURT: We'll be at ease for a few minutes.

19 (A brief recess was taken at 10:38 a.m. The
20 proceedings resumed at 10:48 a.m.)

21 THE COURT: Let us have our jury, please.

22 (The jury enters the courtroom at 10:48 a.m.)

23 THE COURT: Welcome back, ladies and gentlemen of the
24 jury. I wanted to let y'all know that we've been informed
25 that the schools are closed. Obviously, we sent the bailiff

1 in to check and see if y'all had kids that you needed to
2 pick up. I'm concerned, obviously, because of the way that
3 they're saying the storm is going to hit, probably around 12
4 and it's almost 11 now. I don't want y'all driving when
5 there's really bad weather up and down 78. So what I think
6 we're going to do is we're going to recess for the evening
7 today and restart in the morning. I know that the weather
8 is supposed to clear out. We should be good to go in the
9 morning so that we can finish the testimony tomorrow. Just
10 out of an abundance of caution, that way if anybody needs to
11 pick up kids and get home safely, we would prefer that. And
12 we'll reconvene in the morning. And, again, please remember
13 my previous instruction to not discuss this case with anyone
14 or allow anyone to discuss the case with you. If you could
15 be back -- we'll try to start a little bit earlier that way
16 we can get through everything. If you can be back at nine
17 o'clock tomorrow then we'll get started right away. And
18 have a good evening.

19 (The jury exits the courtroom at 10:49 a.m. and is
20 excused for the remainder of the day.)

21 THE COURT: Is there anything further before we recess?

22 AST. SOL. SORENSON: No, Your Honor. We're just double
23 checking. I know we had a couple of jurors that had some
24 issue on Friday. But I don't think either one of them made
25 it on our jury.

1 THE COURT: I don't believe that they did. I think we
2 tried to -- do you know if they're picked?

3 AST. SOL. TEMPLETON: Neither one of them made it on
4 the jury.

5 THE COURT: Okay.

6 MS. WILLIAMS: I have nothing, Judge.

7 THE COURT: Y'all have a good night.

8 (Due to inclement weather, the proceedings adjourned
9 for the day at 10:50 a.m.)

10 - - - - -

11 (The proceedings resumed at 9:05 a.m., Thursday, April
12 6, 2017.)

13 THE COURT: Anything before we bring the jury out?

14 AST. SOL. SORENSON: Don't believe so.

15 MS. WILLIAMS: No, ma'am.

16 THE COURT: All right. Let's have our jury, please.

17 (The jury enters the courtroom at 9:05 a.m.)

18 THE COURT: Good morning, ladies and gentlemen of the
19 jury. I hope that you had a nice evening and weathered the
20 storms okay. We're now ready to proceed with the trial of
21 this case. You may call your next witness.

22 AST. SOL. SORENSON: Thank you. May it please the
23 Court?

24 THE COURT: Yes, sir.

25 AST. SOL. SORENSON: State calls Sergeant Mike Weaver.

1 (MICHAEL PARKER WEAVER, was duly sworn and provided the
2 following testimony.)

3 THE COURT: Your witness.

4 AST. SOL. SORENSON: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY AST. SOL. SORENSON:

7 Q. Good morning, Sergeant.

8 A. Good morning.

9 Q. If you would please, tell the jury where it is that
10 you're employed.

11 A. Summerville Police Department.

12 Q: Okay. And how long have you been with Summerville
13 Police Department?

14 A. Just under seven years.

15 Q. If you would, tell us what your current duties are
16 there.

17 A. I'm the sergeant in the Criminal Investigations
18 Division. I assign cases, check reports, things of that
19 nature.

20 Q. Okay. And back in November of 2015, what capacity were
21 you employed at that time, Sergeant?

22 A. I was a detective -- corporal in investigations. My
23 primary duties were working cases at that time.

24 Q. Okay. And, specifically, in this matter, were you
25 ultimately the investigator that was assigned to investigate

1 the shooting death of David Ham that occurred on the evening
2 of November 1, 2015?

3 A. I was. I was the on-call detective that evening.

4 Q. Were you aware of what time that 911 call came in that
5 evening, Sergeant?

6 A. Yes. I believe the call came in around 10:06 p.m.

7 Q. Tell the jury, if you would, where you were when that
8 call came in if you recall.

9 A. I was at home that evening. I think my wife and I were
10 watching television when I received the call.

11 Q. Okay. What did you do then when that call came in?

12 A. The first thing I did is I had learned that the victim
13 was being transported to the Trident Medical Center. The
14 first thing in a case like this is you want to make contact
15 with the victim as soon as we can. And I immediately went
16 to Trident Medical, Trident Hospital.

17 Q. And what was the victim's condition, Mr. Ham's
18 condition, when you got there?

19 A. I was told he was unresponsive. He was unconscious is
20 what I was told.

21 Q. And were you ever able to talk to him about what had
22 happened?

23 A. No.

24 Q. Or whether any other officer with the Summerville
25 Police Department was ever able to talk to David Ham about

1 what had occurred?

2 A. No other officer was able to speak to him. My
3 understanding, from the time they made contact with him, he
4 was unconscious.

5 Q. All right. And did you become aware sometime around
6 when you were at Trident Hospital that a potential suspect
7 had been taken into custody?

8 A. I did. I learned a suspect was detained on a traffic
9 stop and he was being transported to the police department
10 due to his involvement with the shooting which was the
11 defendant.

12 Q. Okay. And that was my next -- the defendant, Christian
13 Himes?

14 A. Yes, sir. That's correct.

15 Q. And where was Mr. Himes taken to?

16 A. Upon taking him to the police department, he was placed
17 in cell number one. We have a temporary holding facility.
18 We have four cells. He was put in cell number one.

19 Q. What did you then do upon learning about Mr. Himes
20 being back at a holding cell at the Summerville Police
21 Department?

22 A. The first thing I did, I went to the cell. I opened
23 the cell. I introduced myself. I asked him if he wanted to
24 talk to me about what transpired that evening.

25 Q. And what did he indicate?

1 A. He indicated that he did wish to speak to us about what
2 happened.

3 Q. Okay. So what did you do as a result of that? Did you
4 interview him in that holding cell or you take him somewhere
5 else, or?

6 A. No. We have two interview rooms in our detective's
7 office. He was escorted to one of our interview rooms and
8 he was interviewed by myself and Detective Hirsch.

9 Q. All right. And tell the jury how -- obviously, he was
10 in custody at the point in time. Is that correct?

11 A. Yes. That is correct.

12 Q. Okay. Tell the jury then when you have a potential
13 suspect that's in custody, what is the first thing you do
14 before you go about interviewing them?

15 A. We have an Advisement of Rights form; his Miranda
16 rights. Ask him biographical information on it as well as
17 the suspect's rights and the waiver of rights at the bottom.
18 Just they indicate that they wish to speak to us and they
19 have to sign the form before we go into any details about
20 what we're investigating.

21 Q. And did you go over that form with Mr. Himes that
22 evening before attempting to interview him?

23 A. We did.

24 Q. All right.

25 AST. SOL. SORENSON: May I approach the witness, Your

1 Honor?

2 THE COURT: You may.

3 Q. And if I could show you, Sergeant, State's Exhibit
4 Number 1. Do you recognize that document?

5 A. I do.

6 Q. And is that the Advice of Rights form that you went
7 over with Mr. Himes on the evening of November 1, 2015?

8 A. This is.

9 AST. SOL. SORENSON: Your Honor, at this time, we would
10 offer State's Exhibit Number 1 into evidence.

11 THE COURT: Any objections?

12 MS. WILLIAMS: No objection, Your Honor.

13 THE COURT: It's in.

14 MS. WILLIAMS: Except, Judge, I would like note for the
15 record my pretrial objection.

16 THE COURT: Certainly.

17 (State's Exhibit No. 1, Advisement of Rights Form, was
18 received into evidence.)

19 AST. SOL. SORENSON: May I publish this to the jury,
20 Your Honor?

21 THE COURT: You may.

22 Q. Now, Sergeant, you had indicated -- you had indicated
23 at the top portion of that form, basically, has a bunch of
24 kind of biological personal information on it and all?

25 A. That's correct.

1 Q. Okay. And who filled out -- whose handwriting in that
2 first section where -- underneath where it says "Advisement
3 of Rights," whose handwriting is on that?

4 A. That's all my handwriting on the top portion of the
5 form starting with Detective M. Weaver on up. That's all of
6 my handwriting.

7 Q. Okay. All right. And the first part -- I guess the
8 first line there says read and write, and there's an answer
9 next to that?

10 A. Yes.

11 Q. Okay. That information that your documenting on that
12 Advice of Rights form, where are you getting that
13 information from?

14 A. Directly from Mr. Himes, the defendant.

15 Q. So he had indicated to you that he could read and
16 write?

17 A. Yes.

18 Q. Had a highest level of education being a GED?

19 A. Yes. That's correct.

20 Q. And ultimately ends up giving Social Security number,
21 date of birth, and stuff of that nature. Is that correct?

22 A. Yes. That's correct.

23 Q. All right. And his date of birth is [REDACTED]. Is that
24 correct?

25 A. Yes. That's correct. That's what he told me.

1 Q. Okay. So he would've been 22 at that time. Is that
2 correct?

3 A. Yes.

4 Q. And what -- now there's a date -- obviously, it's
5 November 1st. Is that correct? 2015?

6 A. Yes.

7 Q. Okay. And what time is noted on there?

8 A. 11:18 p.m.

9 Q. Okay. And what would that time signify as far as -- I
10 mean, is that when you started the interview or is that . . .

11 .

12 A. Well, right when we got in the interview room,
13 typically we see if anybody wants something to drink,
14 anything of that nature. And then this form is filled out
15 immediately afterwards.

16 Q. So that would pretty much be when that interview
17 started then or when you started going over this form with
18 Mr. Himes?

19 A. That's correct.

20 Q. Okay. And, ultimately, then, in the middle, after
21 getting all of that that kind of background information from
22 him, there's a middle section. Is that correct?

23 A. Yes.

24 Q. Okay. And what does that middle section contain?

25 A. It's Miranda rights, Miranda warnings.

1 Q. Okay. And tell the jury how -- did you ultimately go
2 over those with Mr. Himes that evening?

3 A. I did.

4 Q. And if you would, go over with the jury how you did
5 that with Mr. Himes.

6 A. I signed my name or I put my name Detective M. Weaver.
7 And then what I do is I hand the form to the defendant and I
8 hand him a pen. And then I get a blank copy of the form.
9 And I start, you know, Detective M. Weaver, and read down
10 the whole form. But before I start that, I tell them as I
11 read each item, 1, 2, 3, 4, 5, I say as I go through those,
12 "If you understand what that means, initial next to each
13 number." And that's how I go through this form every time.

14 Q. So the first -- I guess if you could just kind of read
15 each of those rights. So number one says what?

16 A. I have the absolute right to remain silent and do not
17 have to answer any questions or give a statement and this
18 fact cannot be used against me.

19 Q. And did Mr. Himes initial upon you reading that to him?

20 A. He did.

21 Q. And then number two?

22 A. If I do answer questions or give a statement, anything
23 I say can and will be used against me in court of law.

24 Q. Did Mr. Himes initial beside number two?

25 A. He did.

1 Q. And number three?

2 A. I have the right to consult with a lawyer of my choice
3 before I answer questions or give a statement and also to
4 have him present while I'm being questioned.

5 Q. Okay. And did Mr. Himes initial beside number three?

6 A. He did.

7 Q. And then number four?

8 A. If I wish to talk to a lawyer or have him present but
9 unable to afford or hire a lawyer, one will be appointed to
10 represent me free of charge.

11 Q. Did Mr. Himes initial beside number four?

12 A. He did.

13 Q. Okay. And then, lastly, number five?

14 A. If I decide to answer questions or give a statement
15 without having a lawyer present representing me, I have the
16 absolute right during this interview to stop answering
17 questions and remain silent.

18 Q. Okay. And did he initial next to number five?

19 A. He did.

20 Q. Okay. And then after those five -- those five rights
21 you went over with him, is there kind of a statement below
22 that?

23 A. There is.

24 Q. And what is that say?

25 A. I fully understand each of these rights which I have

1 been advised of.

2 Q. Okay. And after that, what is right below that
3 statement?

4 A. There's three signature blanks. The one to the right
5 is where the defendant signed his name.

6 Q. Okay. And did Mr. Himes -- whose signature is that on
7 that right-hand single line?

8 A. It's mr. Himes.

9 Q. Okay. That is indicating that he understood those
10 rights that he had been advised of?

11 A. That's correct.

12 Q. Okay. And whose signatures are under the two witnesses
13 portions of that?

14 A. That's my name and that's my badge number at that time.
15 And then also Detective Hirsch and his badge number.

16 Q. All right. And then the bottom portion of that form
17 then deals with him whether he is willing to waive those
18 above rights. Is that correct?

19 A. That's correct.

20 Q. Okay. And how did you go about going over that portion
21 with him?

22 A. After he signs that, like I said, I still have the
23 blank form in front of me. And then I start, you know, I
24 say waiver of rights. And then I start reading I fully
25 understand each of these rights which I have been advised

1 of. And having those rights in mind, I wish to waive these
2 rights and answer questions. No threats, force, or promise
3 of any kind have been made to induce or to cause me to waive
4 these rights and answer questions.

5 Q. And did Mr. Himes, yet again, also sign indicating that
6 he wished to waive those rights and talk to you?

7 A. He did.

8 Q. Okay. And that was, yet again, witnessed by?

9 A. Myself and Detective Hirsch.

10 Q. At any point in time -- I know that waiver part deals
11 with the fact that no threats, force, or promise of any kind
12 have been made to him. Did you make any promises to him to
13 get him to talk to you?

14 A. No, I did not.

15 Q. Threaten him in any way?

16 A. No.

17 Q. And you indicated Detective Hirsch was in there the
18 whole time with you also when you were going over these
19 rights with him?

20 A. Yes, that's correct.

21 Q. Did he at any point in time threaten, promise, coerce

22 ---

23 MS. WILLIAMS: Objection, Your Honor. Leading.

24 THE COURT: Overruled. You may proceed.

25 Q. Did he threaten, promise, coerce Mr. Himes to get him

Direct Examination of Det. Weaver by Ast. Sol. Sorenson

1 to talk to you?

2 A. No, he did not.

3 Q. Ultimately after completing State's Exhibit Number 1
4 with him, did you then talk with Mr. Himes about what had
5 occurred?

6 A. I did.

7 Q. Hour and 15 minutes or so ago?

8 A. Yes.

9 Q. And did he give you kind of -- kind of go through and
10 give you his side of what had happened out there that night?

11 A. He did.

12 Q. Let me ask you: At some point in time after he did
13 that, did you ask Mr. Himes whether he'd be willing to kind
14 of put what he had just told you into a written statement
15 form?

16 A. I did.

17 Q. Okay. And what was his response to that?

18 A. He indicated that he did not want to write a statement
19 himself.

20 Q. Okay. Did you ask him anything else in response to him
21 saying that he didn't want to write a statement?

22 A. I asked him if I could prepare the statement for him,
23 actually write it out for him.

24 Q. What was his response to that?

25 A. He said yes.

1 Q. And did you then go about doing that?

2 A. I did.

3 AST. SOL. SORENSON: May I approach the witness, Your
4 Honor?

5 THE COURT: You may.

6 Q. Let me show you State's Exhibit Number 2. Is that the
7 document then that was produced as a result of your
8 conversation with Mr. Himes that evening?

9 A. Yes, it is.

10 Q. And just so we're clear, whose handwriting then is that
11 statement in?

12 A. The statement is entirely my handwriting.

13 Q. Okay. And are there also signature lines on that
14 document just like there on the Advice of Rights forms?

15 A. There are.

16 Q. Okay. And did Mr. Himes ultimately sign each of those
17 pages?

18 A. He did.

19 AST. SOL. SORENSON: Your Honor, at this time, we'd
20 over State's Number 2 into evidence.

21 THE COURT: Any objection?

22 MS. WILLIAMS: Yes, ma'am. May we approach?

23 THE COURT: You may.

24 (A bench conference was held off the record and out of
25 the hearing of the jury panel.)

1 THE COURT: Ladies and gentlemen of the jury, we're
2 going to have to take a short recess. If you would please
3 go to your jury room and do not discuss this case. We will
4 be right back with you.

5 (The jury exits the courtroom at 9:20 a.m..)

6 THE COURT: All right. Ms. Williams, what's your
7 objection in particular to the statement of your client?

8 MS. WILLIAMS: First and foremost, Judge, I made a
9 pretrial motion under Jackson v. Denno, which I understand
10 this Court has denied.. However, I would like to renew that
11 objection at this time as far as admitting both the verbal
12 and written portion of this statement.

13 THE COURT: Same ruling applies.

14 MS. WILLIAMS: Thank you, Judge. As far as admitting
15 the written portion, I did make a pretrial Lyle motion at
16 which point the State asserted that they had no intention of
17 admitting any Lyle evidence. I have no objection -- other
18 than the Jackson v. Denno, I have no objection to this
19 officer testifying as to what my client told him. That's
20 pretty standard. I took the statement, this is what he told
21 me in giving that testimonial evidence to the jury.

22 However, what the State is now intending to do is actually
23 admit the written statement by my client. I didn't object
24 to the waiver of rights because, at that point, there's no
25 Lyle in there.

1 THE COURT: Well, tell me specifically what Lyle
2 portion of the statement are you now objecting to?

3 MS. WILLIAMS: Specifically, in this statement Mr.
4 Himes is questioned about what happened that night. He
5 starts to talk about events with his father. He starts to
6 talk about things that have happened in his past with his
7 father and how he is suffering from posttraumatic stress
8 disorder or suffering from those types of issues. All of
9 which would be Lyle evidence and we would ask this Court to
10 preclude.

11 THE COURT: That's not a prior bad act on your client
12 if he suffers from posttraumatic stress disorder because of
13 something that happened to him. So I don't think that's a
14 prior bad act on your client. So that is overruled.
15 Anything else?

16 AST. SOL. SORENSON: He doesn't say anything in here
17 about posttraumatic stress disorder. I mean, that's her
18 term. That's not in his statement.

19 MS. WILLIAMS: That's right. He does not -- he's not
20 sophisticated enough to use that language, Judge. But what
21 he does talk about is, is he talks about I'm scared of my
22 father, I hurt so much, I'm not gonna let it happen all over
23 again. Again, referring to things that have happen in his
24 past. He talks about the fact that the cycle was
25 continuing, I have been here before, same shit, different

1 outcome. Again, what it is referencing is Lyle evidence
2 when the State can get into this without actually handing
3 the statement to the jury. I would just ask that preclude
4 it from this at this time.

5 THE COURT: The only portion I would exclude at this
6 time depending on whether or not your client testifies and
7 what he opens to the door to would be I've been here before.
8 Anything else in that statement or do I need ---

9 MS. WILLIAMS: Hang on two seconds. (Brief pause.)
10 And, Judge, so what we're going to whiteout at this point is
11 I feel like I've been here before.

12 THE COURT: Oh, it says I feel like I've been here
13 before?

14 AST. SOL. SORENSON: It says I feel like -- can I hand
15 it up to Your Honor?

16 MS. WILLIAMS: The cycle continued, I feel like I've
17 been here before, same shit, different outcome.

18 THE COURT: Well, that's different, Ms. Williams, from
19 what you just told me a second ago. You said I have been
20 here before not I feel like I've been here before. I think
21 that is certainly not a prior bad act. I feel like I've
22 been here before, he's obviously emotional, having a
23 difficult time, but that's not a prior bad act. So that's
24 coming in.

25 MS. WILLIAMS: Thank you, Judge.

1 THE COURT: Anything else before we bring the jury back
2 out?

3 (No response.)

4 THE COURT: Guess not. Let's bring our jury out.

5 AST. SOL. SORENSON: Thank you.

6 (The jury enters the courtroom at 9:25 a.m..)

7 THE COURT: You may proceed, Solicitor.

8 AST. SOL. SORENSON: Thank you, Your Honor. I think
9 where I left off, Your Honor, was offering State's Exhibit
10 Number 2 into evidence.

11 THE COURT: Subject to your objection, counsel, it's
12 in.

13 AST. SOL. SORENSON: Thank you. At this time, I'll
14 publish State's 2 to the jury.

15 THE COURT: You may.

16 (State's Exhibit No. 2, Voluntary Statement, was
17 received into evidence.)

18 DIRECT EXAMINATION (Resuming)

19 BY AST. SOL. SORENSON:

20 Q. Detective Weaver, this -- or Sergeant Weaver, this is
21 kind of a statement form that is used by the Summerville
22 Police Department. Is that correct?

23 A. That's correct.

24 Q. And you had already indicated that basically the
25 handwriting is all yours. Is that correct?

Direct Examination of Det. Weaver by Ast. Sol. Sorenson

1 A. Yes.

2 Q. Okay. Whose words are those though that are documented
3 in this statement?

4 A. Either the defendant. As he talks each statement, I
5 would write down the statements that he was saying.

6 Q. Okay. And you had testified earlier that you had
7 initially had kind of talked with him a little bit before
8 beginning this statement with him. Is that correct?

9 A. Yes, that's correct. He provided a verbal statement of
10 what transpired this evening.

11 Q. And is this basically consistent with what he had
12 initially told you before you then did this written
13 statement with him?

14 A. Yes, it is.

15 Q. All right. I guess, if I could just get you to kind of
16 publish for the jury.

17 A. Page one of three. This statement was -- it started at
18 11:54 p.m. It has the defendant's information. That's our
19 case number. Each investigation we have has its own unique
20 case number. And then it starts with his statement was
21 prepared by Detective Weaver for Christian Himes. It says
22 on November 1, 2015, I started to write something, but I
23 have to initial my name anytime we scratch something out.
24 That's how we do it. (As Read): On November 1, 2015,
25 Heather was supposed to pick up the kids. I was late and

1 when I got home Heather came outside and told me he was
2 there. I sat in car and then left. I went around the
3 neighborhood and came back. He never stays that long, so I
4 left and went to gas station. After I left gas station, I
5 went back to the apartment. I sat in car for few minutes.
6 I got out and wanted to make sure Heather was okay. As I
7 was walking up the steps to the breezeway, I saw him. Him
8 is David Ham. As he was coming out the door, I tried to
9 walk past him and he said you Chris. And then things
10 escalated. He was walking towards me and I was backing up.
11 He was reaching in his pocket and I kept backing up. And
12 then I reached in my pocket. I don't think he had a gun. He
13 would've pulled it if he had it. I told him to stop because
14 this was going to destroy the kids. You're not going to
15 destroy their lives. I was just thinking how much he hurt
16 Heather. And I went back to thinking of how my dad treated
17 my family. David said I'm not scared of your gun. He
18 started to charge at me and he lunged, that's when I shot.
19 I ran. I got in car and left then I got stopped by police.

20 Q. And at that point in time, do you start kind of a
21 question and answer section with him?

22 A. We do. We always do kind of a Q&A session in
23 interviews just to kind of verify some loose ends, things of
24 that nature.

25 Q. So the Q, the last part of this page and then going on

1 to pages two and three, the Qs are basically whose words?

2 A. Those are my words. Those are my questions.

3 Q. Okay. And then the A would be the answers. And those
4 would be whose words?

5 A. Those are the answers of Christian Himes.

6 Q. Okay. And if you can go through that part.

7 A. I did -- the first question I asked him, what gas
8 station did you go to. He indicated the Oakbrook Express
9 between 9:30 p.m. and 10:15 p.m.

10 Q. And it's page two of three. You can keep going; yes,
11 sir.

12 A. Okay. The first question, what kind of car were you
13 in. He indicated a dark blue Chrysler 300. I asked where
14 you and David ever physically fighting. He answered no. I
15 asked have you ever seen David before this incident. He
16 answered no. I asked what hand did you hold the revolver in
17 when you shot David. He indicated his right hand. What
18 kind of revolver did you have when you shot David? He said
19 wood handle, dark silver, snubbed nose 38. I asked did
20 David have a weapon. He answered I did not see him with a
21 weapon. I asked was David abusing Heather and their
22 children. He answered not recently, but in the past. David
23 was never there for the kids and he is there torturing her
24 mentally. He neglects their kids. I asked why did you
25 shoot David. He answered I was scared. My father hurt me

1 so much in the past, mentally, physically, and emotionally,
2 and I was going through it all over again. I asked did you
3 see where you shot David. He answered in the chest area or
4 upper body. I asked did you try to help David after you
5 shot him. He answered no. I asked how far away were you
6 from David when you shot him. He answered 2 or 3 feet..

7 Q. And page three of three?

8 A. I asked is there anything else you need to add to your
9 statement. He answered, "I love Heather -- I love Heather.
10 This was never my intention, but I cannot take her being
11 upset. I'm scared and I was scared then. Everything
12 happened so fast. The cycle continued. I feel like I have
13 been here before. Same shit, different outcome."

14 Q. And did that conclude what he wanted to tell you that
15 evening?

16 A. It did.

17 Q. Okay. And as the result of that, did you give him an
18 opportunity to review that? What you had written out.

19 A. I did. I handed him the statement. And before he
20 signed the copies, he had the opportunity to read through it
21 and go over what I prepared for him.

22 Q. Indicate to you any changes that needed to be made or
23 any additions that needed to be made to it?

24 A. No, he did not.

25 Q. And then ultimately is that -- is there a line kind of

1 on page three, kind of, so nothing, could, I guess, can't go
2 back and add anything to it after the fact. Is that
3 correct? Is that the reason for that?

4 A. Right. That line concludes our statements and put my
5 initials at the end of it just so -- it kind of wraps it up.

6 Q. Okay. And after he reviewed it, did you have Mr. Himes
7 do anything with those three pages?

8 A. There's actually two copies on each one. He's provided
9 a copy of his statement, the defendant's copy, and then we
10 keep a statement as well.

11 Q. Okay. And did you get him to -- I noticed at least on
12 the bottom of page three, and I believe it was on the bottom
13 of page one and two also, there's some signature lines off
14 to the right?

15 A. Yes.

16 Q. What's typed in above that top signature line?

17 A. It says I have read, and then parentheses, have read to
18 me the foregoing statement which I have been made freely and
19 voluntarily the facts contained therein are true and correct
20 to the best of my knowledge.

21 Q. Did Mr. Himes sign below that statement on each of
22 those three pages?

23 A. He did.

24 Q. And is there then another kind of typed in part at the
25 bottom right below that signature line?

1 A. There is. It says I have received a copy of this
2 statement.

3 Q. You had indicated earlier that basically your statement
4 forms are kind of carbon so it creates two copies of it when
5 you write it out?

6 A. That's correct.

7 Q. So he was provided with one of those copies?

8 A. Yes.

9 Q. Okay. And did he sign each of those three pages
10 indicating that?

11 A. He did.

12 Q. And were those signatures witnessed on each of those
13 three pages by anybody?

14 A. Detective Hirsch was in the interview room.

15 Q. So it's your name and also Detective Hirsch's signature
16 on each of those three pages?

17 A. Yes.

18 Q. Okay. And at any point in time while talking with him
19 that evening, did you make any promises to Mr. Himes to get
20 him to talk to you and give you that statement?

21 A. No, we did not.

22 Q. Threaten him in any way?

23 A. No.

24 Q. He appeared to be freely and voluntarily talking to
25 you?

Direct Examination of Det. Weaver by Ast. Sol. Sorenson

1 A. He was.

2 Q. At some point in time when you first began this
3 interview, had you learned what David Ham's condition was at
4 Trident Medical Center?

5 A. When we started the interview, we did not know his
6 condition. We knew he had been shot in the neck. We did
7 not know he had passed until -- it was sometime toward the
8 conclusion of this interview when we learned that.

9 Q. Okay. And, ultimately, at the conclusion of this
10 interview, was the defendant arrested and charged with the
11 two indictments that he's charged with here today?

12 A. He was.

13 Q. Now, were there a couple of things he had asked you to
14 do at some point in time to try to look into?

15 A. There were.

16 Q. What were those things that Mr. Himes asked you if you
17 would attempt to do?

18 A. During this investigation, he had two requests. He
19 requested that I obtain some text messages between the
20 victim, David Ham, and Heather Ham. He indicated that there
21 were messages to Heather from David about him. And then
22 also he wanted me to obtain the video surveillance from the
23 gas station. I think it's the Oakbrook Express at the
24 corner of Dorchester and Ladson Road. That's where he said
25 he went the first time Heather told him to leave the

1 apartment complex. And he hung out -- I think it was
2 between 9:30 and 10:15.

3 Q. All right. And did you attempt -- kind of go backwards
4 there and start with that. Did you attempt to obtain any
5 video from that Oakbrook Express gas station?

6 A. I did.

7 Q. And were you able to obtain that video?

8 A. No. I went there on two separate occasions. I left my
9 business card with the times we were looking to look at the
10 surveillance. The first time the manager did not know how
11 to operate the system. The second time they said they were
12 going to do it and it was never obtained.

13 Q. And then he had also asked you about some text
14 messages. And did you ultimately, in the course of your
15 investigation, have contact with Heather Ham?

16 A. I did.

17 Q. All right. And did she, at some point in time, provide
18 you, I believe on November 10th via e-mail, with a
19 screenshot of some text messages?

20 A. She did.

21 Q. I'm showing --

22 AST. SOL. SORENSON: May I approach the witness, Your
23 Honor?

24 THE COURT: You may.

25 Q. Showing you State's Exhibit Number 6. Is that then

1 what you were provided by Ms. Ham?

2 A. Yes.

3 Q. Okay. Is that the only text messages that she provided
4 you?

5 A. Yes, that's correct.

6 Q. Let me ask you on November 10th or at some point in
7 time subsequent to the evening of November 1st of 2015, did
8 you receive any documents from the defendant Christian
9 Himes?

10 A. I did.

11 Q. And what was that document that you received?

12 A. I received an Inmate Request form from the Dorchester
13 County Detention Center. Mr. Himes indicated that he wanted
14 to meet with me again.

15 Q. Let me show you State's Exhibit Number 5.

16 AST. SOL. SORENSON: May I approach?

17 THE COURT: You may.

18 Q. Sergeant, is that the document that you received?

19 A. It is.

20 AST. SOL. SORENSON: Your Honor, at this time, we'd
21 offer State's 5 into evidence.

22 THE COURT: Any objection?

23 MS. WILLIAMS: Renewing my pretrial objections, Your
24 Honor.

25 THE COURT: Yes, ma'am. Same ruling. It's in.

1 (State's Exhibit No. 5, Inmate Request Form, was
2 received into evidence.)

3 Q. And is that the document that you received from
4 Mr. Himes?

5 A. It is.

6 Q. Okay. And when is that dated?

7 A. It's dated as November 4, 2015.

8 Q. I guess the request is somewhere in the middle of that
9 document. Is that correct?

10 A. Yes. The third.

11 Q. Okay. I'm sorry. What is the request that Mr. Himes .

12 . .

13 A. He requested that I need to speak with Detective
14 Michael Weaver of the Summerville Police Department about my
15 case as soon as possible.

16 Q. Your contact information, is that something you
17 provided to him, I guess, that night, or?

18 A. I always give a business card and I put it in the
19 property with the defendant.

20 Q. And as a result this request form that's apparently
21 filled out on November 4th, did it at some point in time
22 subsequent to that make its way to you?

23 A. It did.

24 Q. Okay. And did you have an opportunity as a result of
25 that at some point in time to go see what Mr. Himes wanted?

Direct Examination of Det. Weaver by Ast. Sol. Sorenson

1 A. I did.

2 Q. And that was at the Dorchester County Detention Center?

3 A. I believe it was in St. George.

4 Q. And that was on November 10th that you went there. Is
5 that correct?

6 A. That's correct.

7 Q. And prior to attempting to talk to him, did you do
8 anything else at the time? Or did you go over anything with
9 him prior to talking to him?

10 A. No. I met with him our first interview and then the
11 second interview and that's the only contact I've had with
12 him.

13 Q. Okay. All right. But when you went to go meet with
14 him at the detention center in St. George, what did you do
15 before you attempted to talk to him?

16 A. We provided him with another Advisement of Rights form
17 before we started asking him any questions.

18 Q. Okay.

19 AST. SOL. SORENSON: May I approach the witness, Your
20 Honor?

21 THE COURT: You may.

22 Q. Sergeant, let me show you State's Exhibit Number 3. Is
23 that that document?

24 A. That's correct.

25 Q. And is it the same department issued form that we just

1 went over with the jury that you used on November 1st of
2 2015?

3 A. It is.

4 AST. SOL. SORENSON: At this time we'd offer State's 3
5 into evidence.

6 THE COURT: Same objection?

7 MS. WILLIAMS: Yes, ma'am.

8 THE COURT: Same ruling. It's in.

9 AST. SOL. SORENSON: Thank you, Your Honor.

10 (State's Exhibit No. 3, Advisement of Rights Form, was
11 received into evidence.)

12 Q. And ultimately -- I'm not going to make you go through
13 all this again with the jury. But did you go over those
14 same five rights with him that you went over with him on
15 November 1st of 2015?

16 A. I did.

17 Q. Do it the same that you did it on November 1st?

18 A. Yes.

19 Q. Did he initial next to each of those five rights again?

20 A. He did.

21 Q. Did he also then sign indicating he understood those
22 rights?

23 A. Yes.

24 Q. And did he sign indicating that he wished to waive
25 those rights and talk to you?

Direct Examination of Det. Weaver by Ast. Sol. Sorenson

1 A. Yes, he did.

2 Q. And Detective Hirsch was with you again?

3 A. Yes, he was.

4 Q. And at that point in time, did you briefly talk to him
5 that day?

6 A. We did.

7 Q. Okay. And let me ask you this: Was he following up on
8 some of the requests that he had made of you back on
9 November 1st?

10 A. Yes.

11 Q. Did you at that point in time also ask him about
12 anything about the gun that was recovered from Ms. Ham's
13 vehicle?

14 A. I did.

15 Q. Okay. What was his responses about that gun? Or what
16 did you ask him and what was his response?

17 A. I asked him where he obtained the gun that was used in
18 the shooting. He stated he got it off the street for \$180.

19 Q. Did he indicate why he had gotten that gun?

20 A. Himes stated he got the gun to protect Heather.

21 Q. And at that point in time also did -- obviously, you
22 had testified a little while ago that, you know, nine days
23 earlier you had provided him a copy of this statement. Is
24 that correct?

25 A. That's correct.

1 Q. At that point in time, did Mr. Himes indicate to you
2 that he wished to change anything that was in that
3 statement?

4 A. No, he did not.

5 Q. Did he wish to add anything to what was in that
6 statement?

7 A. No, he did not.

8 AST. SOL. SORENSON: Beg the Court's indulgence.
9 (Brief pause.) That's all I have for you, Sergeant. Thank
10 you, Your Honor.

11 THE COURT: Cross-examination?

12 MS. WILLIAMS: Thank you, Judge. May it please the
13 Court?

14 THE COURT: Yes, ma'am.

15 CROSS-EXAMINATION

16 BY MS. WILLIAMS:

17 Q. Detective Weaver, on November 1, 2015, when you first
18 met -- or when you met Christian Ham [sic] to take his
19 statement, did you already know him?

20 A. Christian Himes?

21 Q. I'm sorry. Christian Himes?

22 A. Yes. Yes. Well, I investigated the case that he was
23 involved with before.

24 Q. Okay. And that was about a week before?

25 A. Approximately. I'm not sure exact -- of weeks,

1 roughly.

2 Q. And did you already know Heather Ham?

3 A. I did know Heather Ham.

4 Q. She was also involved in that incident?

5 A. Yes, ma'am. She was.

6 Q. It was an allegation where Heather was sexually
7 assaulted?

8 A. That is correct.

9 Q. And you met Christian Himes and Heather Ham at the
10 hospital?

11 A. Yes. I was called out to MUSC for that incident.

12 Q. He wasn't the defendant. He wasn't accused. He wasn't
13 in any way, shape, or form involved in a crime the week
14 before?

15 A. No, ma'am. He was not. He was not a suspect in that
16 investigation.

17 Q. He was a victim. I mean, he was there with the victim
18 of a sexual assault; right?

19 A. Right. He was there with Heather Ham. He was not a
20 suspect or anything.

21 Q. And so you had met them about a week prior to the
22 shooting at the hospital because Heather Ham had been
23 sexually assaulted and Christian was there with her?

24 A. That is correct.

25 Q. And so later on when he tells you I got the gun for

1 \$180 on the street, I got it to protect Heather Ham, that's
2 what he told you later on when you talked to him about how
3 he got the gun?

4 A. That's correct.

5 Q. Okay. I want to talk to you a little bit about what
6 Christian was thinking the night of November 1st. And I
7 know you can't tell me what he was thinking, but I want to
8 talk to you about throughout the course of your
9 investigation what you found out about what he knew prior to
10 November 1, 2015. Prior to November 1, 2015, Christian
11 Himes knew that he had to hide from David Ham; right?

12 A. Right. I've heard that.

13 Q. Because Heather Ham would hide Christian in her bedroom
14 when David came to pick or drop off the kids?

15 AST. SOL. SORENSON: Your Honor, I'm going to object.
16 I mean, now, I mean, basically, he's heard that. He's been
17 sitting in court. But I mean that's . . .

18 THE COURT: Would y'all please approach?

19 MS. WILLIAMS: Yes, ma'am.

20 (A bench conference was held off the record and out of
21 the hearing of the jury panel.)

22 Q. So I was saying, Detective Weaver, throughout the
23 course of your investigation, in your interviews of Heather
24 Ham and Christian Himes and the various people that you
25 interviewed, did you discover that Christian Himes had to be

1 hidden from David Ham?

2 A. I don't think anybody ever told me they had to hide
3 Christian Himes. I've heard that in court, but I don't --
4 it's not in his statement I don't think.

5 Q. But when -- did you know that David Ham didn't know
6 about Christian Himes?

7 A. I did know that he did not know Christian Himes.

8 Q. Okay. But that Christian Himes knew about David Ham?

9 A. Right. I think he recently found out.

10 Q. Okay. Recently found out?

11 A. Well, I think a month, month and a half, I think.

12 Q. And they had only been together a month and a half?

13 A. Correct. That's correct.

14 Q. You were the lead investigator in this case?

15 A. That's correct.

16 Q. And as such, you were privy to all the reports and
17 documents related to this case; right?

18 A. That is correct.

19 Q. And I'm going to go back. During your investigation,
20 you found out that David Ham and Heather Ham were married?

21 A. That's correct.

22 Q. But that they were separated?

23 A. That's right. They had been separated for about a year
24 and a half I believe.

25 Q. Lived in separate residences?

1 A. That's correct.

2 Q. And that Christian Himes and Heather Ham were in a
3 romantic relationship as of sometime in September of 2015?

4 A. That's correct also.

5 Q. Christian was not from here?

6 A. No. I believe he lived in Columbia.

7 Q. But, he was staying with Heather Ham?

8 A. Right.

9 Q. And he considered that a place that he could go to, and
10 he had a key to it at some point; right?

11 A. He might've had a key. I'm not entirely sure. But he
12 was staying with her on and off.

13 Q. He had every lawful right to be in her apartment. He
14 was an invited guest?

15 A. That's correct.

16 Q. You found out that on October 30th, David Ham finally
17 discovered that Heather Ham and Christian Himes were dating?

18 A. Yes. That's correct.

19 Q. And when he did that -- up until then, it had been a
20 secret from him?

21 A. Yes.

22 Q. And when he found that out, he sent text messages to
23 Heather Ham?

24 A. That's correct.

25 Q. And those text messages were characterized as angry

1 text messages?

2 A. That's correct.

3 Q. In fact one of them said, "Don't let me catch your
4 boyfriend slipping"?

5 A. Yes.

6 Q. This was two days before the incident that ended in
7 David Ham's death?

8 A. That's correct.

9 Q. You found out that the night that the shooting
10 happened, November 1, 2015, David Ham was extremely
11 intoxicated?

12 A. Yes. He had a blood alcohol .19.

13 Q. And that he had driven his two children from his
14 residence to Heather Ham's residence with .19 blood alcohol
15 level?

16 A. That's correct.

17 Q. After the incident, the police took two statements from
18 Heather Ham?

19 A. Yes.

20 Q. And in the first statement, she said November 1, 2015,
21 I gave Christian Himes permission to use my car.

22 A. That's correct. She gave him permission.

23 Q. And that he had to return it by eight?

24 A. Yeah. She said she had to pick the kids up at 8:00
25 p.m., so she wanted the vehicle by eight.

1 Q. But he returned it about an hour and a half late?

2 A. Yes. That's correct.

3 Q. And that he didn't have a cell phone, and he didn't
4 have a car of his own; right?

5 A. Right. To my understanding, he did not have a cell
6 phone, and he did not have a vehicle at the time.

7 Q. When you questioned Ms. Ham, she stated that she had
8 seen David Ham in possession of a gun in the past?

9 A. Over the past 12 years, she said she has seen David
10 with a gun before, in possession.

11 Q. And you asked her did he have a gun that night, and she
12 said I don't know. I didn't see one, but I don't know.

13 A. Right. Yes. That's correct.

14 Q. In the second statement, she elaborated and said that
15 on the Friday prior to the incident, David Ham had found out
16 that she was seeing someone because she had seen him drop
17 Christian off at a bank.

18 A. Yes.

19 Q. And that Christian Himes returned to the house after
20 David had left that time?

21 A. That's correct.

22 Q. And then that's when the angry text messages came?

23 A. Yes.

24 Q. On November 1, 2015, when David Ham brought the
25 children back when he was extremely intoxicated, brought the

Cross-Examination of Det. Weaver by Ms. Williams

1 children back to the house, he was there what she told you
2 was an unusually long period of time; right?

3 A. That's correct.

4 Q. And during that time she didn't tell David, you know,
5 you need to leave or my boyfriend has the car. She didn't
6 say anything about Christian Himes at that point?

7 A. Correct.

8 Q. Usually, she told you that David Ham was there for
9 about five or ten minutes?

10 A. That's correct.

11 Q. And while he was there, she was so afraid of a
12 confrontation. She told you she went out to look for
13 Christian at least twice?

14 A. Yes. She went to the door.

15 Q. And the second time Christian just happened to be
16 bebopping up into their apartment?

17 A. That's correct.

18 Q. And she caught him. And she said you need to leave,
19 David is inside?

20 A. Yes.

21 Q. And Christian did. He turned around and he was like
22 okay, okay, and backed away. And he went and he left?

23 A. He did.

24 Q. And he told you he went to the gas station?

25 A. Yes.

1 Q. Let's talk about the surveillance video. He asked you
2 on at least two occasions to go get that surveillance video
3 from Oakbrook Express?

4 A. That's correct.

5 Q. To show this is what I was doing, this is where I was,
6 while I was trying to wait for David Ham to leave the
7 apartment; right?

8 A. Yes.

9 Q. And you went back once and they couldn't operate it.
10 You went back a second time and all you did was leave a
11 card?

12 A. Yes.

13 Q. Did you ever follow up again?

14 A. No, I did not.

15 Q. To your knowledge, do you know -- do they end up
16 destroying, just in your general police work, typically
17 surveillance videos, are they destroyed after a period of
18 time?

19 A. My general understanding of it, some of them are on a
20 30-day cycle. Most gas stations in Summerville that I've
21 worked, they don't have surveillance video outside.

22 Q. So by the time anyone else got involved, that probably
23 -- that surveillance video probably would've been gone after
24 about 30 days?

25 A. That's my -- from my general understanding of it and

1 prior investigations I've worked, yes.

2 Q. So when he comes back, he gathers his stuff and he
3 tells you he goes up to the apartment and in the breezeway
4 he meets David Ham?

5 A. Yes.

6 Q. And I'm not an investigator. I'm not a detective. But
7 at this point in evaluating this case, in your head, Heather
8 Ham has told Christian about David Ham. She has hidden
9 Christian from David Ham. She has asked them quietly to
10 leave while David Ham is in the apartment; right?

11 A. That's correct.

12 Q. So she's not afraid of what Christian is going to do/
13 with David Ham; right? I mean, isn't that what we're
14 thinking as we're investigating this case?

15 A. I'm not -- I don't think she wanted a confrontation or
16 anything between the two. I don't want to speculate on . .
17 .

18 Q. Well, throughout your investigation, you know that she
19 never told David about Christian; right?

20 A. That's correct.

21 Q. She never asked David, hey, will you leave because
22 Christian is coming?

23 A. That's correct.

24 Q. When David Ham finally leaves, she hears arguing in the
25 breezeway?

1 A. That's correct.

2 Q. And she hears David say, "come homeboy"?

3 A. Yes.

4 Q. And then she hears him say, "you think you're bad
5 because you've got a gun"?

6 A. Yes.

7 Q. And the third thing she hears him say is, "come on"?

8 A. Yes.

9 Q. And the only thing that anyone ever told you they heard
10 Christian Himes say that night was, "backup, backup,
11 backup"; right?

12 A. That's correct.

13 Q. Christian was arrested within minutes of the shooting.
14 I mean, it was almost -- Summerville Police got on the ball
15 and they stopped him almost immediately right down the
16 street; right?

17 A. Yes.

18 Q. And he was taken to the police station. And you met
19 him there. I think the State said it was within like an
20 hour and half after the incident?

21 A. Yes. It was ---

22 Q. Maybe even shorter?

23 A. It was pretty soon. That's about right.

24 Q. Was he shaken up?

25 A. Yes. He was emotional.

Cross-Examination of Det. Weaver by Ms. Williams

1 Q. Crying?

2 A. Yes.

3 Q. Distraught?

4 A. He was emotional. His voice was trembling. He was
5 upset.

6 Q. And one point he even asked how is David. What
7 happened to him?

8 A. I think he did ask. At that point, we told him we
9 weren't sure.

10 Q. And you wrote the statement, the statement that they
11 admitted into evidence. None of that is Christian's
12 handwriting?

13 A. No, ma'am.

14 Q. Except maybe his signature?

15 A. Just his signature and the initials.

16 Q. And you never read the statement to him?

17 A. No. I did not personally read the statement to him.

18 Q. Because at the bottom it says, I have read, and then it
19 has in parentheses, have read to me. That's actually -- you
20 didn't read it to him?

21 A. No. He read it.

22 Q. You just handed it to him and he went through it?

23 A. Yes, ma'am.

24 Q. And then he signed it?

25 A. Then he signed it?

1 Q. Yep.

2 A. Yes, ma'am.

3 Q. His statement for the most part just reiterates what
4 Heather told you too; correct?

5 A. Yes. It's pretty consistent.

6 Q. He says that David came out and said, "you Chris?"

7 A. Yes. He said that.

8 Q. And things escalated. David moved towards Christian
9 and Christian backed away?

10 A. That's correct.

11 Q. I want to talk about this part of the statement that
12 says, "I don't think he had a gun." So you're writing the
13 statement as Christian is talking to you?

14 A. Yes. And then sometimes I had to slow him down so I
15 could keep up with it.

16 Q. And he's excited, shaken, distraught, crying, all of
17 those things. He's still in shock of this incident?

18 A. He's emotional.

19 Q. Yeah. And so you're writing down as frantically as you
20 can and we get to the point about the gun. (Brief pause.)

21 Okay. So here it says he was -- it says things escalated.

22 He was walking towards me. I was backing up. He was
23 reaching in his pocket, and I kept backing up. He says
24 that, right?

25 A. Yes.

1 Q. And then it goes on and he's talking and you're writing
2 as fast as you can. And he says and then I reached in my
3 pocket. And then almost as if he thinks back. He's sitting
4 here with you, thinking back, and he says, "I don't think he
5 had a gun. I guess he would've pulled it if he had it."
6 Isn't that how you wrote that down there?

7 A. As he was talking, I was writing.

8 Q. So he's already told you he's reaching around in his
9 pocket, but then as he's talking to you and reciting this
10 incident he says, "I don't think he had a gun. He would've
11 gotten if he had it." He doesn't tell you I need to write
12 that in there, he didn't have a gun; right?

13 A. Can you repeat that.

14 Q. He doesn't tell you, you didn't write down, I knew
15 right then he didn't have a gun?

16 A. As he was talking, I wrote what he said.

17 Q. And later on you asked him about the gun again, did
18 David have a weapon. And he doesn't say no, he absolutely
19 didn't, or I know he didn't. All he wrote was I didn't see
20 him with one?

21 A. That's correct.

22 Q. But previously said, "I saw him reaching around in the
23 pockets -- in his pockets"?

24 A. Yes. That's what he said.

25 Q. He never told you I knew he wasn't armed. I was so mad

1 at him I just shot. He never told you about any threats he
2 made toward David Ham?

3 A. No. No, he never said anything, any statements to that
4 effect.

5 Q. And then he says he charged at me and he lunged and
6 that's when I shot?

7 A. Yeah. He said he lunged at me and that's when he shot.

8 Q. And the statement gets a little more specific.

9 Christian had never seen David Ham before this incident?

10 A. Correct.

11 Q. Christian knew of David Ham abusing Heather Ham and her
12 children?

13 A. Correct.

14 Q. And that's when we get down to the motive here. And
15 that's where -- I mean, that's your police work. You get
16 down to the motive of why this shooting happened. And you
17 ask him why did you shoot him. And he tells you, I was
18 scared. That was never my intention. I was scared. I'm
19 scared now and I was scared then. Everything happened so
20 fast. That was his answer; right?

21 A. When I asked him why did you shoot David?

22 Q. Yep.

23 A. He said, "I was scared. My father hurt me so much in
24 the past: mentally, physically, and emotionally. And I was
25 going through it all over again."

1 Q. And then he says, "I'm scared and I was scared then.
2 Everything happened so fast."

3 A. Yes. "I'm scared and I was scared then. Everything
4 happened so fast."

5 Q. And just to finish up some things that I don't know the
6 jury has heard about yet. Did you ever go to the crime
7 scene?

8 A. That night, I did not go to the crime scene. Later on
9 in the investigation, I went there in the daytime.

10 Q. Did you ever go at night to be able to see what it
11 might've looked like at night or where the lighting was?

12 A. No, ma'am. I was there on patrol function years before
13 this incident, but I never went at nighttime for this
14 investigation directly.

15 MS. WILLIAMS: Court's indulgence, Judge. (Brief
16 pause.) I have no further questions.

17 THE COURT: Any redirect?

18 AST. SOL. SORENSON: Just very briefly.

19 REDIRECT EXAMINATION

20 BY AST. SOL. SORENSON:

21 Q. Sergeant Weaver, at no point in time does Christian
22 Himes ever tell you that he thought David Ham had a weapon?

23 MS. WILLIAMS: Objection. Leading.

24 AST. SOL. SORENSON: It's following up to her question.

25 THE COURT: Just rephrase it, please.

1 Q. Is everything that he told you about -- regarding a
2 weapon noted in this statement?

3 A. Regarding a weapon?

4 Q. A weapon. About whether the victim had a weapon, is
5 everything noted in this statement that he told you?

6 A. Yes.

7 AST. SOL. SORENSON: That's all I have.

8 THE COURT: You may step down, Detective. Thank you.
9 You may call your next witness.

10 AST. SOL. SORENSON: Your Honor, at this time, the
11 State would rest.

12 THE COURT: Ladies and gentlemen of the jury, we're
13 going to take a brief recess. If you would please go to
14 your jury room. Again, please remember not to discuss the
15 case quite yet. We'll be right back with you.

16 (The jury exits the courtroom at 10:00 a.m..)

17 THE COURT: Any motions?

18 MS. WILLIAMS: Yes, ma'am. At this point, I would
19 renew the Castle Doctrine motion to quash just based on the
20 new lights -- new facts that came through during the
21 presentation of the State's case. Specifically, and I
22 believe Your Honor had talked about pretrial denying the
23 motion based on the fact that Mr. Himes was party to
24 bringing on this conflict because he returned the car late.
25 I think during the pretrial motion we were all confused

1 about the time that he was supposed to have the car back.
2 He did return it late, but it was about an hour and a half
3 late as opposed to, I think what the State indicated, three
4 and a half to four hours late. And so I would just would
5 renew the motion to quash at this point.

6 THE COURT: Same ruling.

7 MS. WILLIAMS: I would also, Judge, at this point make
8 a directed verdict motion. The defendant is entitled to a
9 directed verdict motion when the State fails to produce
10 evidence of the events charged. If there's any direct or
11 substantial circumstantial evidence reasonably tending to
12 prove the guilt of the accused, then it should go to the
13 jury. But if not, then the Court should declare a directed
14 verdict. In this case, Your Honor, there is scant evidence
15 that would disprove the elements of self-defense. And under
16 State versus Dicky, that's actually what's required at this
17 portion, that the State must disprove the elements of
18 self-defense. And based on that, we make the directed
19 verdict motion.

20 THE COURT: Solicitor?

21 AST. SOL. SORENSON: May it please the Court, Your
22 Honor?

23 THE COURT: Yes, sir.

24 AST. SOL. SORENSON: I respectfully disagree with that.
25 I think to be honest with you, I think at this point in time

1 if we rested and we were arguing charges to go before the
2 jury, I'll be honest with you, I'm not sure that she'd be
3 entitled to a self-defense charge. I think at this point in
4 time there is -- if you look at the elements of self-defense
5 in the light most favorable to the State at this point in
6 time, how Your Honor has to look at it, that when you look
7 at, you know, the first element, who is at fault in bringing
8 on the difficulty, I mean, all of the evidence at this point
9 in time suggests -- I mean, the victim didn't even know the
10 defendant was around. He showed up. He knew the victim was
11 there. He was armed. He comes up. If you look at his
12 statement, I mean, he's the one -- the only thing the victim
13 asked him initially is, "Are you Chris?" And he's the one
14 that says, basically, that it escalated from that point in
15 time. So I think there is sufficient evidence that he was
16 the one that brought on the difficulty.

17 Look at the second element of self-defense, whether he
18 was in imminent danger, whether he was in imminent danger of
19 death or serious bodily injury or if he reasonably believed
20 he was. I mean, there is absolutely no evidence. I mean,
21 his statement indicates that he never saw the victim with a
22 weapon. The victim never physically assaulted him. That he
23 basically said that I knew he didn't have a weapon because
24 he would've pulled it because he's the one that pulls his
25 weapon out. There is no evidence -- I mean, the only

1 hostile act that the victim ends of doing that he indicates
2 is that he lunges or charges at him after he's pointing a
3 loaded firearm at him. I mean, and yet again, I don't think
4 a reasonable person at that point in time could possibly
5 believe, from what this jury has heard at this point in
6 time, that he was in imminent danger to start with. But
7 even if you find that there was some imminent danger of him
8 being assaulted, that he was in imminent danger of either
9 death or serious bodily injury at the point in time,
10 justifying him pulling the trigger.

11 And then the last element would be that he had no other
12 reasonable means to avoid the situation. Yet again, I mean,
13 he's indicating that the victim is forcing him to back up
14 away from this breezeway out towards the parking lot. Which
15 I submit to you is where the car that he has the keys for is
16 parked. So nothing behind him. Nothing stopping him at
17 that point in time from just walking away, running away,
18 leaving if he felt that he was in that much danger. I mean,
19 this isn't a situation where the victim, yet again, never
20 grabbed him, never backed him into a corner. I mean, I just
21 think at this point in time, obviously, my position would be
22 if we were getting ready to talk about jury charges where I
23 would be objecting to a self-defense charge, period. So I
24 clearly don't think at this point in time in looking at the
25 light most favorable to us, I mean, there's clearly enough

1 evidence to go forward to show that he maliciously killed
2 David Ham on the night of November 1st. Thank you.

3 THE COURT: Based upon the evidence that has been
4 presented thus far, the Court does find that there is direct
5 and substantial circumstantial evidence to establish the
6 guilt of the defendant and that the case will go to the
7 jury. And as far as the analysis goes for the self-defense,
8 the Court goes through the same analysis during pretrial and
9 whether or not she had to be there at eight or have the car
10 back by eight, the defendant was still late -- bringing
11 about fault by his own actions as previously discussed
12 during our pretrials. And, Ms. Williams, have you had the
13 opportunity to discuss with your client whether or not he
14 wishes to testify?

15 MS. WILLIAMS: Judge, at this point, I would make a
16 motion to determine the admissibility of prior convictions
17 if the client does decide to testify.

18 THE COURT: All right. What are his convictions?

19 AST. SOL. SORENSON: Beg the Court's indulgence one
20 second. (Brief pause.) Your Honor, he has several
21 adjudications in Family Court from back in -- where he ended
22 up in the Department of Corrections. So, obviously, when he
23 turned 21 I would assume. Sorry, when we turned -- sometime
24 after his 18th birthday, I guess, is when they moved him to
25 DJJ, or 17th birthday. That would be an assault and battery

1 of a high and aggravated nature; an assault and battery --
2 make sure I'm reading this right -- assault and battery,
3 third, and a malicious injury. Also has an assault on a
4 police officer while resisting arrest. That is all juvenile
5 adjudications. Then he's got from 2014 a burglary in the
6 second degree and a petty larceny and a malicious injury to
7 personal property. I believe that would be his prior
8 record, Your Honor.

9 THE COURT: All right. Solicitor, what is your
10 position regarding admissibility of the convictions that he
11 had?

12 AST. SOL. SORENSON: I mean, I think what we would be
13 seeking to get into would be the adult convictions for the
14 burglary, second, and the petty larceny.

15 THE COURT: All right. Ms. Williams?

16 MS. WILLIAMS: Judge, I believe that they're entitled
17 to bring in the petty larceny under the dishonesty ruling.
18 The burglary, second, I believe comes in under the anything
19 punishable by over a year. And it's within the past ten
20 years. I believe -- did you say . . .

21 AST. SOL. SORENSON: 2014, Your Honor.

22 MS. WILLIAMS: So if that's what their limiting their's
23 to, unless we kick the door open, then I have no objection
24 to those.

25 THE COURT: And the Court does find that pursuant to

1 Rule 609, those would be admissible. At this point, is your
2 client ready to proceed with the questioning from the Court
3 or do you need a minute?

4 MS. WILLIAMS: He is. I would ask do you want -- can
5 we address quickly the motion to view the crime scene?

6 THE COURT: Certainly.

7 MS. WILLIAMS: I have brought my investigator in from
8 the Public Defender's office. He has gone out and videoed
9 the crime scene and provided a copy of that video to the
10 State. I would be willing to withdraw that motion if we
11 would just be allowed -- and, certainly, he would be open to
12 cross-examination about when it was taken and how it was
13 taken. But I would be willing to withdraw that motion if
14 the State is willing to allow us to proceed with that
15 testimony from my investigator.

16 THE COURT: Any objection to that?

17 AST. SOL. SORENSON: I would think it -- probably
18 relevance. I'm not sure what basis I would have to object
19 to them calling him as a witness.

20 MS. WILLIAMS: Perfect. Then that motion is withdrawn
21 at this point. And we're ready to go forward with Your
22 Honor's questioning of my client.

23 THE COURT: All right. Mr. Himes, would you please
24 stand.

25 (The defendant, Christian Anthony Himes, is duly

1 sworn.)

2 THE COURT: Mr. Himes, at this time I'm going to
3 explain to you certain of your rights. If you do not
4 understand anything that I say, please let me know. If you
5 want me to explain anything in detail, also please let me
6 know. Do understand?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: We've now reached the stage of the trial
9 where you may present your defense. You have the right to
10 claim the protections given to you by the Fifth Amendment of
11 the Constitution of the United states. This amendment
12 states in part that no person shall be compelled in any
13 criminal case to be a witness against himself. This means
14 that you cannot required to testify in this case. You have
15 the right to testify on your own behalf, however, no one can
16 make you testify. This is a personal right and no one can
17 waive this right except for you. If you decide to testify,
18 you will be subject to the same rules that have governed
19 other witnesses and you may be examined and cross-examined
20 on any relevant issue in this case. In addition, if you
21 have any convictions involving dishonesty or false statement
22 or for crimes punishable by imprisonment for more than one
23 year, and the Court determines that the probative value of
24 admitting this evidence outweighs the prejudicial effect to
25 you, the Solicitor will be able to introduce your record to

1 attack your credibility. If you decide to testify, this
2 decision on your part must be made freely, voluntarily, and
3 intelligently with the knowledge of protections given to you
4 by the Fifth Amendment and the consequences of your decision
5 to testify. If you decide not to testify, I will instruct
6 the jurors that they cannot give the fact that you did not
7 testify any consideration whatsoever and that there is to be
8 absolutely no prejudice to you because you did not testify.
9 It is left entirely up to you as to whether or not you wish
10 you testify. You can certainly talk to attorney, any
11 family, but the decision is entirely left up to you. Do you
12 understand what I have just explained to you?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Do you wish to testify?

15 THE DEFENDANT: Yes, ma'am. I do.

16 THE COURT: Do you need anymore time to talk to your
17 attorneys about this?

18 THE DEFENDANT: No, ma'am. I don't think so.

19 THE COURT: Anything further?

20 MS. WILLIAMS: Judge, nothing in regards to that issue.
21 I think that my cocounsel is requesting about a five-minute
22 break to get some technological issues worked out with the
23 computer and the video. We have to use the State's
24 computer.

25 THE COURT: Anything else?

1 AST. SOL. SORENSON: I will -- prior to the defendant
2 testifying or at some point in time during his testimony, I
3 do have a motion with regards to a portion of his testimony.
4 I don't know when Your Honor wants to hear that.

5 THE COURT: Go ahead and do that now?

6 AST. SOL. SORENSON: I can address it right now if you
7 want. Your Honor, he brought out -- assuming his testimony
8 is going to be similar to how he testified during the Castle
9 Doctrine hearing -- that Ms. Ham had told him about two
10 prior incidents of violence by the victim against her. One
11 of them happened -- I'm not sure if he gave the exact time
12 other than just saying it was something that he knew
13 happened years prior. And she testified it was five or six
14 years prior where her lip had been busted. And then the
15 other one was what precipitated by their separation when he
16 had drug her, basically, out of a room. It's our position
17 that under State versus Day, State versus Raymond Day, it's
18 341 South Carolina 410 2000 -- and it's been cited in a
19 couple of subsequent cases: State v. Douglas, which is 411
20 South Carolina 307, a 2014 case; State versus Meckler, 368
21 South Carolina 1 2005 -- that it would be inadmissible, Your
22 Honor. One second. Basically, what these cases say, Your
23 Honor, is they say in a murder prosecution of one pleading
24 self-defense against an attack by the deceased, evidence of
25 other specific incidents of violence on the part of the

1 deceased are not admissible unless they were directed
2 against the defendant -- in this case, that doesn't apply --
3 or if directed against others were so closely connected at
4 point of time or occasion with a homicide as reasonably to
5 indicate the state of mind of the deceased at the time of
6 the homicide or to produce reasonable apprehension of great
7 bodily harm. I mean, these are two incidents which I submit
8 to you neither one of them did the victim of those assaults
9 suffer great bodily harm or death. The one you have that is
10 five or six years earlier, the other one that is 18 months
11 earlier.

12 You know, the subsequent cases, these cases -- a couple
13 of these cases that deal with situations where they found
14 that it was admissible. One of them was something that
15 happened three months prior, the other was where something
16 happened four months prior. In this, Your Honor, this is a
17 situation where, I mean, this stuff all happened when Ms.
18 Ham and Mr. Ham were married, were living together.
19 Obviously, their situation has changed significantly over
20 the last 18 months when they were not together. And I just
21 don't see how that is relevant to show how that would have
22 any bearing on his state of mind on the night of November 1,
23 2015. The fact that a victim that he has never met, so he
24 clearly has had no prior physical confrontation with him,
25 having assaulted his wife six years prior giving her a

1 busted lip, how that is relevant under basically the second
2 prong of the self-defense.

3 THE COURT: Well, let me ask you this, Mr. Sorenson:
4 In the State's case in chief, though, that was brought out
5 through her testimony. So that's already out there ---

6 AST. SOL. SORENSON: Well, it was ---

7 THE COURT: --- being admissible.

8 AST. SOL. SORENSON: It was brought out on
9 cross-examination. To be honest with you, I kind of wish I
10 had objected to it and I didn't. She testified when Ms.
11 Williams asked her that she might have. She never said that
12 she specifically remembered if she told Mr. Himes that. She
13 said she might have. And in hindsight, I wish I had
14 objected then and I didn't. So I do understand it's kind of
15 out there, but I don't think it's admissible.

16 THE COURT: Was it not brought up in openings as well?

17 AST. SOL. SORENSON: I don't think Mr. -- I defer to
18 Mr. Templeton.

19 THE COURT: Not from the State.

20 AST. SOL. TEMPLETON: Not in my opening.

21 THE COURT: No. If you have extra copies of those
22 cases -- my concern is, obviously, I think the bell has been
23 rung. I think it's already out there.

24 MS. WILLIAMS: May I address the argument, Judge?

25 THE COURT: Yes, ma'am.

1 MS. WILLIAMS: The first is that it is already out
2 there. I mean, Heather Ham has already told the jury that.
3 My recollection is a bit different than Mr. Sorensen's about
4 what she said. My recollection is that she said, yes, I
5 told that -- I told him about the time where he popped me in
6 the mouth and broke my lip open. And my recollection is
7 that she then said when I asked about dragging her from the
8 house, she said I might've, I don't remember. But I will
9 say -- so that's already out there, number one. Number two,
10 what State versus Day says in my reading of it, there's
11 three different ways to bring in these specific incidences
12 of conduct. The first is if it happened against the
13 defendant. That doesn't apply. The second is if it's close
14 in proximity. That doesn't apply. And then the third, the
15 State kind of skated over in reading it, was or to produce a
16 reasonable apprehension of great bodily harm. And what
17 State versus Day is talking about there is what the
18 defendant believed. And so that was why we brought it in.
19 That's why Your Honor let it in on cross. That's why it
20 should come in is because it's just what she told him so
21 that it created a reasonable apprehension of fear in his
22 mind. It just goes to his state of mind. And, certainly,
23 we're not talking about -- we didn't ask for David Ham's
24 prior record or if he had ever hurt anybody else. But we'd
25 only asked about what Christian Himes knew, what was told to

1 him about his prior reputation and prior violence. So I do
2 believe that State versus Day allows it in.

3 THE COURT: All right. We'll take a brief while you
4 get your computer system set up. And I'll take a look at
5 the case and let you know. Did you have anything else?

6 AST. SOL. SORENSON: I've got one other. And I don't
7 know if we need to necessarily put it on the record, but I
8 do have kind of a procedural thing that I'm kind of a little
9 lost as to how things are supposed to proceed at this point
10 in time. I'm assuming Your Honor is familiar with State
11 versus Beaty case that just came out, sort of.

12 THE COURT: Right.

13 AST. SOL. SORENSON: And I guess I'd ask for kind of a
14 ruling. I mean, now that the defense has put evidence up,
15 basically how I'm supposed to proceed with my closing
16 argument.

17 THE COURT: Let me double check it because there's been
18 a lot of consternation about that. But I think -- if the
19 defense does put testimony in, you still have -- let me
20 double check it.

21 AST. SOL. SORENSON: Okay. I mean, the case says that
22 this opinion is not law until -- I forget how -- word it the
23 right way -- until the opinion is final. It's not at this
24 point in time. I know that they granted a motion to rehear
25 it. But at the same time, I mean, I would not be looking to

1 do something and then have it become an appellate issue down
2 the -- I guess, I put that out there to say that from my
3 standpoint, I don't really care. I just would like to know
4 ahead of time how I'm supposed to proceed. If I'm allowed
5 ---

6 THE COURT: Right. Whether you still get last argument
7 or not.

8 AST. SOL. SORENSON: A full last argument.

9 THE COURT: Right.

10 AST. SOL. SORENSON: I mean, I think under Beaty, I'm
11 allowed a rebuttal argument.

12 THE COURT: Certainly.

13 AST. SOL. SORENSON: But that's my question. From what
14 I've heard, it sounds like basically everybody's not happy
15 of how that opinion ended coming down, so . . .

16 THE COURT: I don't think anybody's happy with that.

17 AST. SOL. SORENSON: So I'm not sure. I mean, I can
18 see from a defense standpoint the pros and cons about it
19 either way. So I kind of leave it at that that I would like
20 just some guidance. I mean, I'll be prepared to either open
21 on the law, let them close, and then me fully close. I'll
22 be prepared to basically fully open. Let them close and
23 then have a rebuttal to what they say. Just for preparation
24 standpoint in case we are closing this afternoon, I'd have a
25 little bit of time to think about that.

1 THE COURT: Sure. My initial thought is that you have
2 to close fully and then just reply after her argument. I'll
3 double check and reread it just to make sure that's the same
4 understanding. That's my understanding of how it has
5 changed. Since it's out there, out of an abundance of
6 caution, I'd rather stick to that.

7 AST. SOL. SORENSON: And, obviously, I think they have
8 to request it to be handled that way also. So obviously if
9 they don't want me to do it that way, then I can do it the
10 other way. I just wanted to put that out there. I actually
11 meant to do that yesterday and I forgot.

12 THE COURT: No. I appreciate that. Ms. Williams, are
13 you requesting that?

14 MS. WILLIAMS: Yes, ma'am. I think ultimately their
15 closing is going to be a rebuttal of my closing no matter
16 how we orchestrate at this point. But I would just ask that
17 they open fully, allow me my closing, and then rebut my
18 closing.

19 THE COURT: I'll reread just to make sure, but that's
20 my understanding though of how we should proceed.

21 AST. SOL. SORENSON: I'm fine with that.

22 THE COURT: Okay. We'll just go with that then.

23 MS. WILLIAMS: Thank you, Judge.

24 THE COURT: So we'll be at ease for a few minutes.
25 Y'all let me know when you're ready.

1 (A brief recess was taken at 10:20 a.m. The proceedings
2 resumed at 10:35 a.m.)

3 THE COURT: I've had an opportunity to review the Bates
4 decision. And although it's not, certainly, close in time,
5 the Bates's decision states that as reasonably to indicate
6 the state of mind of the deceased at the time of the
7 homicide to produce reasonable apprehension of great bodily
8 harm. Based on the testimony as it has come out already,
9 Ms. Ham did testify that obviously it's been no secret that
10 there was fear of a confrontation. And I think there's a
11 reasonable expectation that obviously the defendant knew
12 that there was fear of a confrontation or he wouldn't have
13 been hidden and he wouldn't have been told to leave. And
14 whether or not there's two instances -- I think her
15 testimony was that she did tell him about the scaring
16 incident years ago. And she couldn't remember whether or
17 not she had told him about the dragging incident or not.
18 But considering the fact that part of his response that same
19 evening, he did indicate some prior abuse of the victim Ms.
20 Ham by the defendant. So I'm going to allow those two
21 instances in if he knew of them pursuant to what was already
22 brought out on the State's case in chief.

23 MS. WILLIAMS: Thank you, Judge.

24 THE COURT: Anything else before we bring the jury out?

25 AST. SOL. SORENSON: Not from the State.

1 MS. WILLIAMS: No, ma'am.

2 THE COURT: And, Mr. Himes, does he have the leg irons
3 on?

4 MS. WILLIAMS: He does.

5 THE COURT: I'd like for him to go ahead and get up on
6 the witness stand that the jury doesn't see him.

7 MS. WILLIAMS: We were going to call John Tisdale
8 first.

9 THE COURT: Okay.

10 MS. WILLIAMS: I have no objection to them seeing them.
11 I mean, the State's already brought in the fact that he
12 wrote an inmate request from the jail. So I have no
13 objection if Your Honor wants to excuse the jury and bring
14 them back in.

15 THE COURT: I prefer that just to protect any kind of
16 prejudicial effect of him appearing violent to the jury.
17 It's just as if he were wearing handcuffs I would think. So
18 to protect him, I think what we'll do is we can call your
19 other first witness, and we'll take a brief recess and put
20 him on the witness stand.

21 MS. WILLIAMS: Yes, ma'am.

22 THE COURT: All right. Let's have our jury, please.

23 (The jury enters the courtroom at 10:39 a.m.)

24 THE COURT: Welcome back, ladies and gentlemen of the
25 jury. We're now ready to proceed. Counsel, you may call

1 your witness.

2 MR. WEHMAN: Thank you, Your Honor. The defense would
3 call John Tisdale.

4 (JOHN TISDALE, was duly sworn and provided the
5 following testimony.)

6 THE COURT: Your witness.

7 MR. WEHMAN: Thank you, Your Honor. May it please the
8 Court?

9 THE COURT: Yes, sir.

10 DIRECT EXAMINATION

11 BY MR. WEHMAN:

12 Q. Mr. Tisdale, how are you?

13 A. Good. How are you?

14 Q. Tell the jury where you work.

15 A. I work for the First Circuit Public Defender's Office.

16 Q. And what -- go ahead.

17 A. Covering Orangeburg, Dorchester, and Calhoun counties.

18 Q. And what do you do there?

19 A. I'm the investigator.

20 Q. Now, did you have the opportunity to work on this case?

21 That would be the State of South Carolina versus Christian
22 Himes?

23 A. Yes, sir.

24 Q. And what did you do?

25 A. I made a site visit to the incident location and took

Direct Examination of Mr. Tisdale by Mr. Wehman

1 photographs.

2 Q. Did you do anything else when you went there?

3 A. Recorded video of the incident location.

4 Q. Okay. And how many times did you go?

5 A. Twice. I went once in the morning about 11:15, and the
6 second time was later on that night around 9:15.

7 MR. WEHMAN: May I approach the witness?

8 THE COURT: You may.

9 Q. Mr. Tisdale, I'm showing you what's been marked for
10 identification as Defense Exhibit 11. Did you recognize
11 that?

12 A. Yes, sir. I do.

13 Q. What is that?

14 A. This is a thumb drive that I made copying the videos
15 from March 30, 2017, and provided it to the Solicitor's
16 Office.

17 Q. Okay. And what exactly is that video of?

18 A. This is two videos. One video shows myself walking
19 from apartment 12-D to the parking lot area outside of the
20 [REDACTED] and the other video, if you're
21 walking from the parking lot towards apartment 12-D.

22 MR. WEHMAN: This time, Your Honor, we would --

23 Q. Have you had an opportunity to review that?

24 A. Yes, sir. I have.

25 Q. Is that a fair and accurate depiction of when you were

1 out there that night?

2 A. Yes, sir. I have.

3 MR. WEHMAN: At this time, we'd ask to admit Defense 11
4 into evidence.

5 THE COURT: Any objection?

6 AST. SOL. TEMPLETON: None, Your Honor.

7 THE COURT: All right. It's in.

8 (Defendant's Exhibit No. 11, Video, was received into
9 evidence.)

10 MR. WEHMAN: May I published for the jury, Your Honor?

11 THE COURT: You may. (Brief pause.) Can the jury see
12 okay?

13 (Jurors confirm.)

14 (Video began play at 10:42 a.m. and ended at 10:44
15 a.m.)

16 MR. WEHMAN: May I approach, Your Honor?

17 THE COURT: You may.

18 Q. Showing you what's been marked as Defendant's Exhibit
19 Number 10. Mr. Tisdale, do you recognize that?

20 A. Yes, sir. I do.

21 Q. What is that a picture of?

22 A. This is a photograph of the exterior of Building 12
23 looking at from just across the parking lot maybe a hundred
24 feet from the building itself.

25 Q. Who took that photograph?

Direct Examination of Mr. Tisdale by Mr. Wehman

1 A. I did.

2 Q. And is that an accurate depiction of how it looked that
3 night that you were out there?

4 A. Yes, sir.

5 MR. WEHMAN: At this time, Your Honor, we'd ask that
6 Defense 10 be admitted into evidence.

7 THE COURT: Any objection?

8 AST. SOL. TEMPLETON: None, Your Honor.

9 THE COURT: All right. It's in.

10 (Defendant's Exhibit No. 10, Photograph, was received
11 into evidence.)

12 MR. WEHMAN: Publish for the jury, Your Honor?

13 THE COURT: You may.

14 Q. Now, how far away did you say that was?

15 A. About a hundred feet.

16 Q. And what building are we looking at right there?

17 A. Twelve.

18 Q. Now, the video that you took, what did you use to
19 record that video?

20 A. The iPhone 7SE; the 12 megapixel. Twelve megapixel
21 camera.

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

23 THE COURT: Any cross-examination?

24 BY AST. SOL. TEMPLETON: Just a couple, Your Honor.

25 CROSS-EXAMINATION

1 BY AST. SOL. TEMPLETON:

2 Q. When did you go out there and take these videos and the
3 photographs?

4 A. March 30, 2017, about 9:15.

5 Q. Evening time. Do you recall what was the weather like?

6 A. It just finished raining probably about an hour, hour
7 and a half before.

8 Q. So overcast?

9 A. Yes, sir.

10 Q. Do you remember what the moon was like that night?

11 A. It was partly cloudy. Some moonlight was shining.
12 Kind of touch and go.

13 Q. Would it surprise you that it's basically one day after
14 a new moon? So it's almost no moon.

15 A. No, sir. It wouldn't surprise.

16 Q. Okay. Do you know what the moon was like on the night
17 that the actual events occurred?

18 A. No, sir.

19 Q. Did you know that it was probably about two or three
20 nights after a full moon? So a lot of moonlight.

21 A. No, sir. I was unaware.

22 Q. Okay. I'm going to show you Defendant's Exhibit Number
23 10. There's a lot of light coming out of the breezeway;
24 correct?

25 A. Yes, sir.

Cross-Examination of Mr. Tisdale by Ast. Sol. Templeton

1 Q. Good bit of light coming from the right?

2 A. A little bit. It was more -- that was from a light
3 source by Building 13.

4 Q. But you can see the front of that building pretty well;
5 right?

6 A. Yes, sir.

7 AST. SOL. TEMPLETON: That's all the questions I have.
8 Thank you.

9 THE COURT: Anything further?

10 MR. WEHMAN: No, Your Honor.

11 THE COURT: Ladies and gentlemen, I know you feel like
12 you're a jack-in-the-box and you're getting your exercise
13 this morning, but I'm going to ask you to go to your jury
14 room just for one second. We'll be right back with you.
15 Again, please remember not to discuss the case.

16 (The jury exits the courtroom at 10:47 a.m.)

17 THE COURT: You may step down, sir. Thank you.

18 MR. WEHMAN: May he be excused, Your Honor?

19 THE COURT: Any objection?

20 AST. SOL. TEMPLETON: None, Your Honor.

21 THE COURT: He's free to go. Will your next witness be
22 Mr. Himes?

23 MS. WILLIAMS: My next witness, my last witness, is
24 Christian Himes.

25 THE COURT: Okay. Come on up, Mr. Himes.

1 (Defendant complies.)

2 THE COURT: Have a seat, Mr. Himes. All right. Let's
3 have our jury back please.

4 (The jury enters the courtroom at 10:49 a.m.)

5 THE COURT: You may call your next witness.

6 MS. WILLIAMS: Thank you, Judge. The defense calls
7 Christian Himes.

8 (CHRISTIAN ANTHONY HIMES, was duly sworn and provided
9 the following testimony.)

10 THE COURT: Your witness.

11 DIRECT EXAMINATION

12 BY MS. WILLIAMS:

13 Q. Mr. Himes, how old are you?

14 A. I'm now 23.

15 Q. Where are you from?

16 A. Columbia, South Carolina.

17 Q. And who raised you?

18 A. No one in particular. I bounced around.

19 Q. Do you know Heather Ham?

20 A. Yes, ma'am; I do.

21 Q. When did you first meet Heather Ham?

22 A. About 2008.

23 Q. How old were you in 2008?

24 A. Fourteen, just turning 15.

25 Q. And where did you meet her?

1 A. At a group home.

2 Q. Was she a resident of the group home?

3 A. No, ma'am. She was my counselor.

4 Q. What does that mean, "counselor"? She counseled you on
5 issues?

6 A. Yes, ma'am.

7 Q. And how old was she?

8 A. In her late 20s.

9 Q. I want to talk -- did you talk to her a lot like in
10 counseling, tell her about your past and your history?

11 A. Yes, ma'am. I opened up to her.

12 Q. I want to talk to you a little bit about your prior
13 criminal record. Have you been convicted of a burglary?

14 A. Yes, ma'am, I have.

15 Q. And I think also -- what came along with that? What
16 was the other conviction that came along with that?

17 A. Petty larceny from the burglary.

18 Q. And did you go to jail for that?

19 A. Yes, ma'am, I did.

20 Q. When did you get out of jail?

21 A. 2015.

22 Q. And from 2008 when you were at that group home to 2015,
23 did you keep in touch with Heather Ham?

24 A. Yes, ma'am, I did.

25 Q. How?

1 A. I used to reach out to her.

2 Q. Called her? Texted her? Wrote her? How did you keep
3 in touch with her?

4 A. I called her.

5 Q. You had her personal number?

6 A. Yes, ma'am, I did.

7 Q. Ultimately, did you end up starting a romantic
8 relationship with Ms. Ham?

9 A. Ultimately, yes, ma'am.

10 Q. When was that?

11 A. 2015, after I came home from jail.

12 Q. Okay. Where were you living in 2015 most of the time?

13 A. When I came home from jail?

14 Q. Yeah.

15 A. Most of the time, I was staying with Heather.

16 Q. Okay. Were you also staying in Columbia?

17 A. Yes, ma'am.

18 Q. Why?

19 A. Because I had a job there.

20 Q. And were you having to report to somebody because you
21 had just gotten out of jail?

22 A. Yes, ma'am. I had a probation officer in Columbia.

23 Q. Did you have a car?

24 A. No, ma'am.

25 Q. Did you have a cell phone or any type of telephone?

1 A. I had a phone at one point in time, but it ended up
2 getting cut off and I never got it cut back on.

3 Q. Did you have a permanent residence?

4 A. Not a permanent one. No, ma'am.

5 Q. Where were you staying in Columbia?

6 A. With a friend.

7 Q. I saw they had put this Advisement of Rights in
8 earlier. I know you were sitting here and watching them do
9 it. And it said on there you didn't have a permanent
10 address. Is that pretty much how you were living back then?

11 A. Yes, that's how I was living. Yes, ma'am.

12 Q. And then you say you reached out to Heather Ham. And
13 when you reached out to her, what was her reaction to you?

14 A. She was excited to hear from me.

15 Q. And did she invite you down to Charleston?

16 A. Yes, ma'am, she did.

17 Q. So what did you do?

18 A. I came to Charleston.

19 Q. How?

20 A. I came by bus, a Greyhound bus.

21 Q. And do you remember about when that was that you came
22 to Charleston to see her?

23 A. The first time I came to Charleston to see her was --
24 it had to be around August.

25 Q. Of?

1 A. 2015.

2 Q. And we keep saying you came to Charleston. Did you
3 come to Charleston city or did you come to Dorchester
4 County? Where did you come to see her?

5 A. Summerville.

6 Q. And why did you come to Summerville?

7 A. Well, initially, I was reaching out to her to get a job
8 to help me get on my feet. I know she had resources that
9 could help me. And I kept in touch over the years because
10 she was helping me and pointing me in the right direction.
11 And when I came home from prison, I had some part-time jobs
12 that really wasn't doing nothing for me and I needed help.

13 Q. So why -- did she live in Summerville? Is that why you
14 came to Summerville to see her? Did she live in
15 Summerville?

16 A. Yes, ma'am.

17 Q. Where did she live at?

18 A. In [REDACTED] [REDACTED]

19 Q. That's an apartment complex?

20 A. Yes, ma'am.

21 Q. And when you came to see her -- from August to November
22 of 2015, about how many times did you come down to see her if
23 you had to estimate?

24 A. I made about five trips.

25 Q. And how long would you stay, estimated, when you would

1 come down?

2 A. It started Friday, Saturday, and Sunday. And then it
3 ended up being five, six days here, and then I had to go
4 back to Columbia to work part-time. And then I would come
5 right back down here.

6 Q. Did you keep your things at Heather's apartment?

7 A. Yeah. I had some things at her apartment. Yes, ma'am.

8 Q. Like all the time? They just stayed there?

9 A. Some things; yes, ma'am.

10 Q. Like what?

11 A. Like some clothes, some hygiene products.

12 Q. Like a toothbrush?

13 A. Yes, ma'am.

14 Q. If you had to during that time think about one place
15 you would call home during that time, that period of your
16 life from September to November of 2015, what would it be?

17 A. At [REDACTED] with Heather. Yes, ma'am.

18 Q. Did you meet her kids?

19 A. Yes, ma'am.

20 Q. And what kind of things did you guys do?

21 A. We interacted. We played video games together. I
22 mean, it was just -- we went to the playground. I helped
23 them with their homework. Just stuff like that.

24 Q. How would you describe your relationship with Heather
25 and her children during that time period? How would you

1 describe it?

2 A. As a wonderful experience.

3 Q. Would you say that you loved her?

4 A. Yes, ma'am, I did.

5 Q. And would you say that she loved you?

6 A. Yes, ma'am.

7 Q. I want to talk about something that happened the week
8 before November 1, 2015. Do you remember something
9 significant happening the week before November 1, 2015, with
10 Heather?

11 A. Yes, ma'am, I do.

12 Q. What was that?

13 A. It was a sexual assault incident.

14 Q. Where she claimed she was sexually assaulted?

15 A. Yes, ma'am.

16 Q. Did you go to the hospital with her?

17 A. Yes, ma'am.

18 Q. Did you meet anybody from the police department when
19 you were at the hospital?

20 A. Yes, ma'am, I did.

21 Q. Who did you meet?

22 A. We were at the hospital and she had to provide a rape
23 kit. And, initially, they had to call the police. And
24 Detective Weaver was the investigator that came and seen us
25 at MUSC.

1 Q. When you heard Detective Weaver testify that when he
2 asked you later on about where you got the gun, what did you
3 tell him?

4 A. I told him I had got the gun previously because Heather
5 was sexually assaulted and I wanted to protect Heather.

6 Q. Where did you get the gun from?

7 A. I got the gun off the street.

8 Q. I don't know what that means. Did you pay somebody for
9 it? How did you get the gun?

10 A. Well, I didn't know the person that I actually bought
11 it from. It was a friend of a friend.

12 Q. And you paid somebody money for the gun?

13 A. Yes, ma'am.

14 Q. When was that? Do you remember? Was it in the week
15 between?

16 A. Yes, ma'am. It was right after the hospital, when we
17 was at the hospital.

18 Q. That sexual assault didn't have anything to do with
19 David Ham?

20 A. No, ma'am.

21 Q. Did Heather know about the gun?

22 A. No, ma'am.

23 Q. Did you know -- and I've asked you -- I said his name a
24 couple of times and I know you've been hearing a lot -- did
25 you know, at that time, did you know David Ham?

1 A. Not personally. No, ma'am.

2 Q. Did you know of him?

3 A. Yes, ma'am.

4 Q. How did you know of him?

5 A. Through Heather.

6 Q. Did Heather tell you about any prior acts of aggression
7 that David Ham had committed against her?

8 A. Yes, ma'am. ✓

9 Q. And what were those?

10 A. I remember she told me about an incident where they had
11 got into an argument and he punched her in her lip. And
12 then there was another incident that she told me about where
13 he ultimately ended up dragging her out of the house. I
14 don't really know what happened before that. But he ended
15 up dragging her out of the house, and, I guess, she said
16 that was the straw that broke the camel's back because that
17 was the beginning of their separation.

18 Q. Where her kids present when he did that? Do you know?
19 Did she tell you?

20 A. I'm not too sure. I know she said that she didn't want
21 her kids to witness that. But I don't know if they
22 witnessed that personally. I'm not sure.

23 Q. Specifically, and I know when you were talking to me
24 about this incident, about these incidents that you knew
25 about, do you remember telling me what to ask her about with

1 her lip?

2 A. About her scar?

3 Q. Yeah?

4 A. Yes, ma'am.

5 Q. So did she have a permanent scar from the incident
6 where David had hit her in the mouth?

7 A. Yes, ma'am.

8 Q. Did you know whether or not David owned a gun?

9 A. She had said that he had a gun previously. Yes, ma'am.

10 Q. And how did you think Heather felt about David?

11 A. I think she was scared of him.

12 Q. And what are the types of things that made you feel
13 that way? I mean, other than these incidences that she's
14 telling you about, what else did she do that made you feel
15 like she was afraid of him?

16 A. She did wanted him to see me. She didn't want him to
17 know that I was with her. And there was times where she --
18 maybe when he came and picked up the kids, I was hiding in
19 the bathroom because she didn't want him to hurt me.

20 Q. And let's talk about the times you were hiding in the
21 bedroom. So you were there different times when David would
22 bring the kids or drop the kids off?

23 A. Yes, ma'am.

24 Q. How long typically would he stay when he was either
25 picking the children up or dropping the kids off?

1 A. Around five or ten minutes.

2 Q. And about how many times do you think that you were
3 around either in the apartment or waiting somewhere else
4 while this transaction occurred?

5 A. I was actually around about three, four weekends of
6 that interaction.

7 Q. So that would've been at least twice every weekend
8 where he brought the kids or dropped the kids off?

9 A. Right.

10 Q. So it would have been close to ten or 12 times that you
11 had witnessed him picking the children up or dropping them
12 off?

13 A. Yes, ma'am.

14 Q. Do you think -- did any of those times ever exceed 15
15 minutes?

16 A. No, ma'am.

17 Q. Before November 1, 2015, had you ever laid eyes on
18 David Ham?

19 A. Not physically. No, ma'am.

20 Q. What do you mean not physically?

21 A. Well, of course, I've seen him through pictures.

22 Q. And in your head just from looking at the pictures and
23 from knowing Heather's reaction to him and the things that
24 she told you about him, what did you think about David Ham
25 prior to November 1, 2015, in your head? Tell the jury what

1 you thought about him.

2 A. I thought of him as an aggressive person. Yes, ma'am.

3 Q. And physical? Did you think anything physically about
4 him?

5 A. Physically, yeah, I knew he could fight.

6 Q. How did you know he could fight?

7 A. Because of what Heather was telling me about him.

8 Q. I want to talk to you a little bit about October 30th
9 of 2015. It was two days prior to the shooting?

10 A. Yes, ma'am.

11 Q. Did anything significant happen that day?

12 A. Yes, ma'am.

13 Q. What happened?

14 A. He had just picked up the kids. Well, initially, I had
15 got my hair cut that day and Heather picked me up from
16 getting my hair cut. And she was coming. And she had got a
17 text from David saying that he was about to pick the kids
18 up. So on the way coming back, she dropped me off at the
19 bank behind [REDACTED] [REDACTED] so she could go drop the kids off.

20 And when I came back, he was gone. But we were sitting on
21 the patio and he started sending Heather text messages about
22 me and threatening me.

23 Q. What do you mean threatening? You've seen this text
24 message that the State put into evidence, "Tell your
25 boyfriend don't let me catch him slipping." Is that one of

1 the text messages that you saw?

2 A. Yes, ma'am. That's one of them.

3 Q. Tell you boyfriend don't let me . . . where there other
4 text messages that you saw?

5 A. Yes, ma'am.

6 Q. This was just the one that she happened to give to the
7 police?

8 A. Yes, ma'am.

9 Q. How did you interpret those text messages?

10 A. I interpreted as a threat.

11 Q. Like how? Don't tell you boyfriend don't let me catch
12 him slipping. What does that mean to you?

13 A. To me that means if anywhere he sees me, he's gonna try
14 to fight me, attack me.

15 Q. And did you ask -- when you got those text messages,
16 what was your response to Heather?

17 A. I asked her if he could fight.

18 Q. What did she say?

19 A. And she said yeah. If we crossed paths that he would
20 hurt me.

21 Q. Did you ask her whether or not you should get a gun?

22 A. Yes, ma'am.

23 Q. Where there also phone calls in addition to the text
24 messages? Was he calling her and talking to her? She said
25 she didn't remember. Do you remember?

Direct Examination of Mr. Himes by Ms. Williams

- 1 A. I'm not sure if there was actually a phone
2 conversation. I know for a fact that there was other text
3 messages.
- 4 Q. Two days later, you asked to borrow Heather Ham's car?
- 5 A. Yes, ma'am.
- 6 Q. And did she give you permission?
- 7 A. Yes, ma'am; she did.
- 8 Q. There's been some talk about what time she told you to
9 come home. What time do you remember her telling you to be
10 home with the car?
- 11 A. By eight o'clock so she could pick the kids up.
- 12 Q. Where were you going?
- 13 A. I had to take -- well, my friend wanted me to take him
14 from Orangeburg Road to West Ashley.
- 15 Q. And who is this friend?
- 16 A. A friend of mine that I grew up with.
- 17 Q. And did Heather know him?
- 18 A. Yes, ma'am.
- 19 Q. Did she know that that's what you were doing?
- 20 A. Yes, ma'am.
- 21 Q. And did you ultimately do that? Did you go get him and
22 take him to West Ashley?
- 23 A. Yes, ma'am; I did.
- 24 Q. Did you have the car back by eight?
- 25 A. No, ma'am.

1 Q. Why not?

2 A. I was late getting back.

3 Q. Why? I mean, she needed to go pick her kids up. Why
4 were you late?

5 A. Well, I'm not from around here. So Summerville from
6 West Ashley was actually ended up being a longer drive than
7 I had expected.

8 Q. How late did you get the car back?

9 A. Late. It was about an hour, hour and a half late.

10 Q. What did you do when you got back?

11 A. I was trying to get inside so just to let her know that
12 I was home because I know she was upset. I know she had to
13 pick the kids up. So I didn't know what was going -- I
14 didn't know if she had already picked the kids up or I
15 didn't know what was going on.

16 Q. Did you have a cell phone at this time?

17 A. No, ma'am, not at this time.

18 Q. And when you were driving her car, did you have the
19 keys to her car?

20 A. Yes, ma'am.

21 Q. Did you have the keys to the apartment?

22 A. The keys to the permanent was on her keychain. Yes,
23 ma'am.

24 Q. So what happened as you were walking up to apartment
25 12-D?

Direct Examination of Mr. Himes by Ms. Williams

1 A. I was trying to hurry in so she can go pick the kids
2 up. And she rushed outside and told me that David was
3 there. And she said that she didn't want a confrontation.
4 She asked me to leave just to give him time to leave so
5 there wouldn't be any confrontation.

6 Q. So what did you do?

7 A. I left.

8 Q. Did you go get in the car and drive somewhere?

9 A. Yes, ma'am.

10 Q. Where did you go?

11 A. I ended up at the gas station.

12 Q. Which gas station?

13 A. Oakbrook Express.

14 Q. Did you ask Detective Weaver to get that video for you
15 to show that's where you went and that's where you waited?

16 A. Yes, ma'am.

17 Q. Did you ask me to get that video for you?

18 A. I think I asked everybody involved in this case to get
19 the video.

20 Q. And how long do you think you were at that gas station?

21 A. I was at that gas station about 30, 45 minutes.

22 Q. And I want to ask you something that the State brought
23 out earlier. They were talking about the conditions that
24 night. What was the weather like that night?

25 A. I remember it had just got done raining.

1 Q. And so when you get back to the apartment, if you were
2 there for 30 or 45 minutes, that puts you back at the
3 apartment somewhere around ten? A little bit after maybe?

4 A. Maybe a little before -- around ten o'clock. Yes,
5 ma'am.

6 Q. And that's at night?

7 A. Yes, ma'am.

8 Q. So it's dark and raining?

9 A. Right.

10 Q. And what did you do when you got back?

11 A. I gathered my stuff out of the car and was going in.
12 And when I was inside the breezeway, I seen David coming
13 out.

14 Q. I'm going to show you what's been previously admitted
15 into evidence as State's Exhibit 20. Do you recognize this
16 as [REDACTED] [REDACTED] [REDACTED] [REDACTED]

17 A. Yes, ma'am. Yes, ma'am; I do.

18 Q. And this says Building 12. Is that the building where
19 y'all were living?

20 A. Yes, ma'am.

21 Q. Where you were staying. And this shows where David Ham
22 ultimately fell to the ground. That little dot. And this
23 shows where David Ham was parked pursuant to what police
24 officers testified to. Can you show on there where you
25 parked the car when you returned? Can you point to it?

Direct Examination of Mr. Himes by Ms. Williams

1 A. (Witness complies.)

2 Q. If you press hard enough -- there you go. Is that
3 where you parked your car?

4 A. Yes, ma'am.

5 Q. So it would've been right behind where David Ham parked
6 his car? Right over here where that white car is?

7 A. Yes, ma'am.

8 Q. Where there any streetlights out there that you
9 remember?

10 A. There was lights, but I don't remember exactly where.

11 Q. I going to put Defendant's Exhibit 10 up there. Is
12 this the front of the apartment building as it looked that
13 night?

14 A. Yes, ma'am.

15 Q. Can you show there where were you when you first saw
16 David Ham that night?

17 A. I was way in here in the breezeway because ---

18 Q. So this is the breezeway, what we're talking about.
19 Inside there was the stairs?

20 A. Yes, ma'am.

21 Q. And where was Heather's apartment?

22 A. Heather's apartment was the last one on this side.

23 Q. Point to it. I can't see where you're pointing.

24 A. All the way back in the back.

25 Q. Okay. So where you just put that red dot, all the way

1 in the back of that breezeway is where Apartment D was?

2 A. Yes, ma'am.

3 Q. Where were you when you first saw -- where was David
4 when you first saw him?

5 A. When I first saw David, I was walking past these stairs
6 going this way.

7 Q. So you were already up there in that lighted passageway
8 when you first saw David Ham?

9 A. Yes, ma'am.

10 Q. Was he standing just right outside of Apartment D?

11 A. He was coming out as I was walking up.

12 Q. So he was actually just shutting the door and walking
13 out?

14 A. Basically. Yes, ma'am.

15 Q. What's the first thing you thought when you saw him?

16 A. I got scared.

17 Q. Did he say anything to you?

18 A. He asked me if I was Chris.

19 Q. And what happened? What did you say?

20 A. I told him I was Chris, but I didn't want to have this
21 discussion right here because his kids was in the house.

22 Q. What did you think the discussion was going to be? I
23 mean, did you think it was going to be a fight, or . . .

24 A. Yes, ma'am.

25 Q. Were you surprised to see him there?

Direct Examination of Mr. Himes by Ms. Williams

1 A. Yes, ma'am.

2 Q. Why?

3 A. Because I didn't expect him to still be there.

4 Q. This was abnormal. This was nothing ---

5 AST. SOL. SORENSON: Objection, Your Honor. Leading.

6 THE COURT: Sustained.

7 Q. Why were you surprised that he was still there?

8 A. I mean, I was surprised because I never knew him to
9 stay there that long.

10 Q. And what happened after he said are you Chris and you
11 said let's not have this discussion or whatever you said?

12 A. I tried to enter into the apartment and he blocked me
13 off. And he told me that he didn't want me around his kids.
14 He said that he wasn't going to allow me to be a father to
15 his kids. And he was walking towards me and I was backing
16 up.

17 Q. And where did you back to?

18 A. I backed all the way down the steps off the breezeway,
19 backing up basically, trying to get back to my car in
20 between the grass section.

21 Q. And was he saying anything else?

22 A. Yes, ma'am.

23 Q. What else was he saying?

24 A. He told me, like I said, he didn't want me -- he didn't
25 want me to be the father to his kids. He told me that I

1 needed to leave. And he said that he didn't respect anybody
2 trying to be the father to their kids.

3 Q. Did he ever tell you weren't allowed to go back into
4 the apartment?

5 A. Yes, ma'am. He said that he wasn't allow me back in.

6 Q. And did you have your gun on you?

7 A. Yes, ma'am.

8 Q. Why?

9 A. Because I wanted to protect Heather from the
10 previous -- what happened in the past.

11 Q. Did you always have your gun on you?

12 A. Since I got it. Yes, ma'am, I did.

13 Q. Do you know whether it was fully loaded?

14 A. It was.

15 Q. Did you ultimately pull your gun that night?

16 A. Yes, ma'am. When he was walking towards me, we got off
17 the steps to the breezeway, I was in the grassy area and he
18 was reaching around in his pants pocket. So I grabbed my
19 gun out of my pants pocket too.

20 Q. Did you know whether or not he had a gun?

21 A. At that time, no, ma'am, I didn't.

22 Q. You ultimately told Detective Weaver I don't think he
23 had a gun. He would've got it out at the time. And what
24 were you thinking when you said that?

25 A. I was thinking back to what actually happened at that

1 moment. And I think if he had a gun at the time, I would've
2 thought he would have pulled it. But at the time of
3 everything happening, I didn't know if he had one or not.

4 Q. And did you say anything to him as he was reaching
5 around in his pockets and telling you weren't going back in
6 the apartment?

7 A. Yes, ma'am. I told him that it didn't have to be like
8 this. I told him that his kids was in the house. And I
9 asked him to leave, and I asked him just to let me into the
10 apartment.

11 Q. Did you ever tell him to back up?

12 A. After my gun was drawn, I asked him to backup.

13 Q. And what did he do?

14 A. He kept coming towards me. Well, initially, when I
15 pulled my gun, he said, he told me, oh, you think you bad
16 because you got a gun. And I told him it didn't have to be
17 like this, just to back up.

18 Q. And did he ever make any hostile acts at all towards
19 you? Aggressive acts?

20 A. When he first confronted me in the breezeway, he was
21 throwing his hands, like, angrily.

22 Q. Did he ever -- how was he acting from your perspective?

23 A. Angry.

24 Q. Angry?

25 A. Yes, ma'am.

1 Q. Did he ever lunge at you?

2 A. Yes, ma'am. After I had my gun drawn, he kept coming
3 towards me. And I asked him to back up a couple of times
4 and he did charge at me and lung.

5 Q. And what did you do?

6 A. When he lunged at me, I stumbled back and I shot him.

7 Q. How many times did you shoot him?

8 A. Just once.

9 Q. Did you feel like you could just have gone to your car
10 at that point?

11 A. That's where I was trying to make it back to.

12 Q. What did you think about trying to get to your car? I
13 mean, what was going through your head?

14 A. I mean, I was just trying to get out of there,
15 basically.

16 Q. Do you think you would've made it to your car?

17 A. If he wouldn't have charged and lunged at me, I do
18 think I would've made it to my car.

19 Q. What did you do after you shot him?

20 A. I got in my car. I ran.

21 Q. Why?

22 A. I was scared.

23 Q. Ultimately, right down the street, the police pulled
24 you over. Were you cooperative with them?

25 A. Yes, ma'am, I was.

Cross-Examination of Mr. Himes by Ast. Sol. Sorenson

1 Q. And did you give a statement in this case?

2 A. I did.

3 Q. Did you write the statement yourself?

4 A. No. I didn't want to write the statement.

5 Q. Do you think that everything you told to Detective
6 Weaver is in that statement?

7 A. Not every single detail. No, ma'am.

8 MS. WILLIAMS: I have no further questions.

9 THE COURT: Cross-examination?

10 AST. SOL. SORENSON: Thank you. May it please the
11 Court?

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION

14 BY AST. SOL. SORENSON:

15 Q. Mr. Himes, you told the jury you have a prior burglary
16 and petty larceny conviction. Is that correct?

17 A. Yes, sir. That's correct.

18 Q. Okay. And you had contacted Ms. Ham when you got out
19 of being incarcerated on those charges. Is that right?

20 A. Yes, sir. That's right.

21 Q. And that was around August of 2015?

22 A. Well, I got out of prison in July. But I ended up
23 contacting her around August.

24 Q. And let me ask you: You have a mother. Is that
25 correct?

1 A. I have a biological mother. Yes, ma'am -- Yes, sir.

2 Q. Okay. And father. Your parents are still alive. Is
3 that correct?

4 A. Yes, sir.

5 Q. Okay. You talk to them pretty frequently?

6 A. I talk to them every now and then. Yes, sir.

7 Q. All right. And there's nothing stopping them from
8 coming to court today, is there? This week.

9 A. I guess other than them not wanting to be here.

10 Q. Let's talk about Ms. Ham, okay. And the fact of the
11 matter is, I mean, when you first met her you were 14, 15
12 years old. Is that correct?

13 A. That's correct.

14 Q. All right. And she was, I think you testified, in her
15 late 20s at that point in time?

16 A. Yes, sir.

17 Q. Okay. And you basically became infatuated with her at
18 that point in time. Is that correct?

19 A. I wouldn't say infatuated.

20 Q. Okay. Well, you had a crush on her as a teenager. Is
21 that correct?

22 A. That's a fair -- that's a fair statement.

23 Q. And, ultimately, the reason why, part of the reason
24 why, you contacted her in 2015 was hoping for something to
25 become of that?

Cross-Examination of Mr. Himes by Ast. Sol. Sorenson

1 A. To become of my crush?

2 Q. That relationship with her. Yes, sir.

3 A. Not initially. No, sir.

4 Q. Okay. But that's something that -- and tell me, when
5 was first time you came down the Summerville to see her?

6 A. I came August. But I ended up didn't get to see her
7 and I left.

8 Q. Okay. When was the first time you actually got to see
9 her?

10 A. September.

11 Q. Okay. Middle September? End of September?

12 A. Towards the 20th; towards the end I would have to say.

13 Q. Okay. So from the time that you first saw her again
14 after several years; correct?

15 A. Right.

16 Q. Had you seen her at all? I mean, you said that you had
17 some sporadic contact with her. But did you actually
18 physically see her at all between when you were 15 years old
19 and September of 2015?

20 A. No, sir.

21 Q. Okay. All right. So you made contact and actually
22 physically made contact with her around the second or third
23 week of September of 2015; right?

24 A. Yes, sir.

25 Q. Okay. And your relationship with her then over the

1 next five or six weeks basically evolves into a romantic
2 relationship. Is that correct?

3 A. Yes, sir. It did.

4 Q. Okay. And it's your testimony that over that time
5 period you came down to Summerville and visited her about
6 five times. Is that correct?

7 A. Coming back and forth it was -- Yes, sir. About five
8 times.

9 Q. And a few of those occasions were just a weekend? You
10 would show up on Friday, leave on Sunday. And some of them
11 became a little bit longer than that. Is that correct?

12 A. The first ones -- the first ones was the weekend. But
13 then it eventually ended up being longer.

14 Q. Okay. And you testified that you felt like you had a
15 good relationship with her two children. Is that correct?

16 A. Yes, sir.

17 Q. Okay. And the fact of the matter was, Mr. Himes, you
18 ultimately felt like, towards the end of October, you felt
19 in your mind that you could be a better father to those two
20 children than David Ham. Is that correct?

21 A. I wouldn't say a better father.

22 Q. You wanted to be the person that was going to raise
23 those two children with Ms. Ham. Is that correct?

24 A. I mean, I wanted to be in their lives, but I'm not sure
25 if I wanted to raise them.

1 Q. Your testimony is that you didn't feel like you could
2 be a better father to them than their natural father, David
3 Ham?

4 A. I mean, I guess I could.

5 Q. And you were ultimately jealous of the relationship
6 that their father had with the two of them. Is that
7 correct?

8 A. No. That's not correct.

9 Q. You were not jealous of David's relationship with his
10 children?

11 A. I wasn't jealous.

12 Q. Okay. Let me ask you this: Were you jealous of any
13 contact that he was still having with the person that you
14 now considered your girlfriend, Heather Ham?

15 A. No. That was her kids' father. So, of course, I knew
16 she had to have contact with him.

17 Q. And you were ultimately upset -- let me ask you this:
18 You knew that Heather took the kids trick-or-treating that
19 night before on the 31st. Is that correct?

20 A. Yes, sir.

21 Q. Okay. And did you ask -- were you upset about the fact
22 that she was going to go with her husband to trick-or-treat
23 with the two children instead of you being able to go with
24 her to take them?

25 A. I wanted to go. Yes, sir.

1 Q. And then ultimately on November 1st of 2015, you were
2 upset with the fact that when you got back that night -- and
3 I'm going to talk in a few minutes about the car -- but you
4 were upset when you got back and David was there. Is that
5 correct?

6 A. I was surprised. I wasn't upset.

7 Q. So it didn't upset you when you went up to the door and
8 she told you that you needed to leave? That didn't upset
9 you?

10 A. She asked me to leave so to give him time to leave, but
11 it didn't upset me.

12 Q. And it's your testimony that you basically went, and
13 you said, went and sat at the gas station. And that gas
14 station is kind of across the street from the apartment
15 complex. Is that correct?

16 A. That's correct.

17 Q. Okay. So you'd be able to see any vehicles leaving the
18 apartment complex from there?

19 A. No. I don't think you'd be able to see vehicles
20 leaving the complex.

21 Q. But it's your testimony that you went over to that gas
22 station and sat there for 30 to 40 minutes. Is that
23 correct?

24 A. That's correct.

25 Q. And what did you do for those 30 or 40 minutes?

1 A. I went in the gas station. I bought some cigars. And
2 I sat in the parking lot and I rolled up some weed.

3 Q. You did what?

4 A. I rolled up some weed.

5 Q. Some weed?

6 A. Yes, sir.

7 Q. Heather know you had that in her home?

8 A. She knew that I smoked.

9 Q. And while you sat there for 30 or 40 minutes, did you
10 get angrier and more upset with the fact that you basically
11 are being made to go sit in the gas station parking lot
12 while David Ham is inside the apartment with your
13 girlfriend?

14 A. I mean, it was normal for me not to be around when he
15 was around. So I wasn't getting more angry and upset.

16 Q. It's your testimony that that didn't bother you?

17 A. That he was there dropping the kids off?

18 Q. Well, he was obviously doing more than dropping the
19 kids off if he's there for 30 to 40 minutes and more. That
20 didn't bother you? You weren't upset about that?

21 A. At the time, I didn't know he was still there 30, 45
22 minutes.

23 Q. Let's talk about the gun, all right. Just so there's
24 no question about it, State's Exhibit Number 18, that's the
25 gun that you had that night. Is that correct?

1 A. That's correct.

2 Q. And it's your testimony that -- who did you get that
3 gun from?

4 A. I got it from a friend of a friend.

5 Q. Friend of a friend. And where was that that you got
6 it?

7 A. I got it in Cane Break.

8 Q. Cane Break. That's an apartment complex in
9 Summerville?

10 A. Yes, sir.

11 Q. Okay. And who is the friend? Who is the of friend, a
12 friend of a friend? So who was your friend?

13 A. My friend was the friend that I grew up with.

14 Q. Okay. Who?

15 A. Akmir.

16 Q. Akmir?

17 A. Akmir. Yes, sir.

18 Q. Okay. And his name is going to come up in a little
19 while when we talk about that Sunday also, right? Is that
20 right?

21 A. That's right.

22 Q. Okay. All right. And so you -- and what day did you
23 talk to him about getting a gun?

24 A. When the incident, the sexual assault incident,
25 happened on a weekend, and we initially ended up going to

Cross-Examination of Mr. Himes by Ast. Sol. Sorenson

1 MUSC Monday 'morning, so . . .

2 Q. So that would be the Monday before the shooting
3 happened, six days prior. Is that correct?

4 A. Yes, sir.

5 Q. Okay. And the fact of the matter is that sexual
6 assault, and Ms. Williams asked, I mean, obviously, had
7 nothing to do with David Ham; right?

8 A. No, sir.

9 Q. Okay. In fact the suspect in that was actually an
10 acquaintance of yours. Is that correct?

11 A. An acquaintance of -- well, yes, sir.

12 Q. Okay. It wasn't a total stranger situation that
13 occurred. Is that correct?

14 A. No. It wasn't a total stranger. But he was also a
15 friend of Akmir.

16 Q. Okay. All right. So you asked Akmir if you could get
17 a gun to protect Heather from basically a friend of Akmir's.
18 Is that accurate?

19 A. Not a friend of Akmir's, but I asked him to -- I needed
20 a gun basically to protect it from happening again.

21 Q. And that was something that you did not talk to Heather
22 about. Is that correct?

23 A. No, sir.

24 Q. Okay. I mean, she wasn't the one that said I want you
25 to get a gun to protect me. Is that correct?

1 A. Of course not. No, sir.

2 Q. And the fact of the matter is, I mean, if she knew that
3 you had this, she probably wouldn't have been very happy
4 with you having this in her home with her two young
5 children. Is that correct?

6 A. That's correct.

7 Q. All right. So you said you talked to -- so y'all go to
8 the hospital that Monday morning. So what days is it that
9 you actually get the gun?

10 A. I got the gun the next day.

11 Q. That would be Tuesday?

12 A. Yes, sir.

13 Q. And how much did you pay for the gun?

14 A. \$180.

15 Q. Okay. And where were you working back then?

16 A. I had part-time jobs in Columbia.

17 Q. Okay. And how many, I mean, how many hours were you
18 working? I mean, I thought by the end of this you were
19 basically staying, for all practical purposes, was staying
20 down in Summerville. Is that correct?

21 A. Towards the end of my stay, before this happened, yes,
22 sir.

23 Q. Okay. When was the last time you had been to Columbia
24 prior to the shooting?

25 A. The weekend before this sexual assault happened.

1 Q. Two weeks prior?

2 A. Yes, sir.

3 Q. You had been in Summerville for two straight weeks.

4 So, obviously, you were not working for two straight weeks.

5 Is that correct?

6 A. That's correct.

7 Q. Okay. I mean, how much were you making from these
8 part-time jobs you had?

9 A. It was poor wage. I mean, it was minimum wage.

10 Q. But you still had \$180 to purchase a gun out on the
11 street?

12 A. Yes, sir.

13 Q. From a person, and you don't know who this person is;
14 right? You can't tell the person's name that you actually
15 bought the gun from?

16 A. Not the person that I actually bought from.

17 Q. It's your testimony that you did not get that gun
18 because of any threat you felt from David Ham. Is that
19 correct? That wasn't the reason why you purchased that gun
20 and were carrying that gun. Is that correct?

21 A. No, sir. I had purchased the gun before he even
22 threatened me.

23 Q. And it's your testimony on direct examination that the
24 reason you were carrying that gun on the evening of
25 November 1st of 2015 was to protect Heather because of the

1 sexual assault that had occurred the week before?

2 A. That's fair to say. Yes, sir.

3 Q. Just so we're clear, when you were gone with her car --

4 and we're going to talk about for how long in a moment --

5 but when you were gone with her car for that length of time

6 and didn't come back when you were supposed to that Sunday

7 evening, that wasn't when you went and got the gun?

8 A. No, sir.

9 Q. Already had the gun?

10 A. Yes, sir.

11 Q. All right. Let's talk about that Sunday afternoon. So

12 what time is it, your testimony, that you borrowed Heather's

13 Chrysler 300 that afternoon?

14 A. I don't remember exactly what time. I know it was

15 closer towards the evening.

16 Q. Okay. And when did she tell you that she needed to

17 have the car back?

18 A. I needed to have it back by eight o'clock.

19 Q. Okay. Now, what is the reason why you borrowed the

20 car?

21 A. To take a friend home.

22 Q. And that's the same friend that you asked about getting

23 the gun from?

24 A. Yes, sir.

25 Q. Okay. And how -- I mean, back in October of 2015, you

1 testified you did not have a cell phone. Is that correct?

2 A. No, sir.

3 Q. Okay. So how did this friend get ahold of you for you
4 to have to give him a ride?

5 A. On Heather's phone.

6 Q. On Heather's phone?

7 A. Yes, sir.

8 Q. Okay. Did he call you? Text you?

9 A. He called me.

10 Q. He called you. Did Heather answer the phone or did you
11 answer the phone?

12 A. I had access to her phone. I answered the phone.

13 Q. Okay. And he asked you -- and this friend of yours --
14 tell the jury, what did he ask you when he called?

15 A. He said that he couldn't stay the night where he was at
16 and he needed a ride from where he was at to another place
17 that he could stay that night.

18 Q. Okay. So he called you -- I mean, he knew that you
19 didn't have a car; right?

20 A. Yes, sir.

21 Q. Did you even have a driver's license at that time?

22 A. I had a license.

23 Q. You did have a license?

24 A. I had a ID.

25 Q. Let me rephrase that question. Did you have a valid

1 South Carolina driver's license?

2 A. No.

3 Q. So this friend of yours calls you on your girlfriend's
4 phone because he knew you didn't have a phone also. Is that
5 right?

6 A. Right.

7 Q. Calls you who doesn't have a license, who doesn't have
8 a car, who basically doesn't have a job, to come pick him up
9 and give them a ride from Summerville to West Ashley. Is
10 that what you're telling this jury?

11 A. Yes, sir.

12 Q. And you testified on direct examination that Heather
13 knew that.

14 A. Knew that what?

15 Q. That your friend -- I'm going to butcher his name every
16 time I say it. Akmir?

17 A. Right.

18 Q. That Akmir had called you and wanted you to come give
19 him a ride to West Ashley. Heather knew that?

20 A. She knew that I was going to see a friend.

21 Q. Did she ask you if she could go with you?

22 A. Yes, sir. She did.

23 Q. Okay. And what was your response to that?

24 A. I didn't want her to go with me, no.

25 Q. Okay. Why? Why?

1 A. Because I was taking my friend from point A to point B,
2 and I don't know. I didn't want her to go with me.

3 Q. I mean, was there something else y'all were going to be
4 doing that you didn't want her privy to?

5 A. Other than smoking marijuana, no, I don't think so.

6 Q. Were you doing that it in her car?

7 A. Smoking weed?

8 Q. Uh-huh.

9 A. Not in her car.

10 Q. Did you smoke weed in her car?

11 A. Not inside her car. She asked me not to do that. It
12 was brand new car that she had.

13 Q. So on the night of November 1st of 2015, your testimony
14 then to this jury would be that you were sitting out in the
15 parking lot, I mean, outside of the car smoking weed at the
16 gas station?

17 A. I rolled up at the gas station. I didn't smoke
18 nothing.

19 Q. And so she asked you if she could go and you just told
20 her no. Didn't give her any reason?

21 A. Basically. Yes, sir.

22 Q. So you're asking to borrow her car to go take somebody
23 that you're not going to tell her who you're taking nor will
24 you let her go with you. Is that an accurate summation of
25 that conversation?

1 A. She knew Akmir. And this isn't the first time that I
2 borrowed her car to go see Akmir. I mean, she knew Akmir.
3 Didn't really have no stable place to live just like I
4 didn't, and we was just basically bouncing around.

5 Q. And it's your testimony that you don't recall what time
6 it was that you actually left with her car. Is that
7 correct?

8 A. Not actually what time. It was towards the evening
9 because I remember she was cooking spaghetti.

10 Q. Okay. Could it have been 3:30 in the afternoon?

11 A. It was later than that.

12 Q. Could it have been 4:30 in the afternoon?

13 A. I think it was closer to 5:30, 6:00.

14 Q. Closer to 5:30 or 6:00. Okay. And no doubt about it
15 that she told you and you knew that she needed her car back
16 that evening to go pick up her two children. Is that
17 correct?

18 A. Yeah, that's correct.

19 Q. Okay. And her kids, I mean, Lincoln and Kingston, back
20 then were four and eight years old or so.

21 A. That sounds about right.

22 Q. Okay. So tell me, you go pick up your friend. Where
23 did you pick him up?

24 A. In Orangeburg Road in Hershey Park.

25 Q. And that's a mobile home park off of Dorchester and

1 Orangeburg Road? Somewhere back in there?

2 A. Somewhere back in there. Yes, sir.

3 Q. Okay. And where did he ask you to take him?

4 A. To West Ashley.

5 Q. And you drive him to West Ashley?

6 A. I did.

7 Q. Drop him off?

8 A. I did.

9 Q. Did you stay there?

10 A. I stayed for a couple of minutes.

11 Q. For a couple of minutes. What time did you leave?

12 A. I left about -- about eight o'clock.

13 Q. You left about eight o'clock?

14 A. Yes, sir.

15 Q. All right. And, of course, you know, even based on
16 anything -- I mean, everything this jury has heard is that
17 no doubt about it, I mean, you needed to have the vehicle
18 back no later than eight o'clock, possibly earlier than
19 that, but at the latest eight o'clock. Is that correct?

20 A. There's no doubt about that. Yes, sir.

21 Q. Okay. All right. Tell me this then: Why didn't you
22 contact her to let her know that you were running a little
23 bit late?

24 A. Because I didn't have a phone.

25 Q. Akmir had a phone.

1 A. Yeah, he did.

2 Q. Okay. So you never thought about -- I mean, it took
3 you -- I mean, how long did it take you when you picked him
4 up to take him from there to West Ashley?

5 A. It was -- I remember it was a good little drive. It
6 was longer than I expected.

7 Q. Thirty minutes?

8 A. I say closer to 45.

9 Q. Okay. And obviously coming back from there to --
10 coming back to [REDACTED], that's a shorter
11 drive than going all the way back to where you had picked
12 him up on Orangeburg Road. Is that correct? You were
13 closer to West Ashley at [REDACTED] than you
14 would have been on Old Orangeburg Road. Is that correct?

15 A. I'm not familiar with the area, so I couldn't tell you
16 if it was closer or not.

17 Q. I mean, you've been down here now for five or six weeks
18 driving her car, picking up your friend, taking him various
19 places. I mean, you didn't know -- you obviously knew where
20 to go get him on Orangeburg Road. Is that correct?

21 A. Yes, sir.

22 Q. Okay. That's the opposite direction of West Ashley.
23 Is that correct?

24 A. Yes, sir.

25 Q. Okay. So, therefore, when you were coming back, it

1 would be closer than the drive to take it. Is that correct?

2 A. I mean, I guess that would have to be correct; yes.

3 Q. How did you come back?

4 A. I drove back.

5 Q. I mean how? Take the interstate? Take Dorchester
6 Road?

7 A. No. I took a back road.

8 Q. Took a back road. And what back road was that that you
9 took?

10 A. I'm not exactly sure of the name of the road.

11 Q. You didn't get on the interstate?

12 A. No, sir.

13 Q. Did you get on 526 even?

14 A. I don't know what 526 is.

15 Q. And it's your testimony, though, for this jury that you
16 left West Ashley around eight o'clock or so?

17 A. Yeah. I knew I was already late. Yeah.

18 Q. Okay. And it's well after nine o'clock. No doubt
19 about it, it's well after nine o'clock before you show back
20 up at [REDACTED] Is that correct?

21 A. It's in between nine and 9:30.

22 Q. And it's your testimony that at no point in time did
23 you make any attempt to contact Heather to let her know that
24 you'd be running late?

25 A. No, I didn't.

1 Q. When you testified on direct that when you got there
2 and went up to the apartment that you knew Heather was
3 upset. How did you know that?

4 A. That I knew she was upset about? I'm not sure what
5 you're asking me.

6 Q. When Ms. Williams asked you, you said that you had
7 taken a friend from Summerville to West Ashley, that Heather
8 knew this. And that when you didn't get back that she was
9 upset?

10 A. Oh, I knew that she was gonna be upset because I had
11 her car late before. And every time I do that, she was
12 always upset.

13 Q. So you've done this before? Borrowed her car and then
14 not come back when you were suppose to.

15 A. Yes. This wasn't the first this has happened, yes.

16 Q. All right. Let's talk a little bit about what you're
17 saying happened out there that night, okay. So it's your
18 testimony that you come back over from the gas station and
19 you park and you had -- basically, you put the -- just so
20 we're clear -- you put the little dot up on the screen
21 basically where that white car is parked. Is that correct?

22 A. Yes, sir.

23 Q. Okay. And that's where you parked. And did you back
24 into that spot or pull straight into that spot?

25 A. I just pulled straight in.

1 Q. Okay. And you've reviewed your statement that you gave
2 that Sergeant Weaver documented what you said; right? Is
3 that correct?

4 A. I've reviewed it. Yes, sir.

5 Q. Okay. And is it accurate where he put on here, "I left
6 the gas station. I went back to the apartment. I sat in
7 the car for a few minutes. I got out and wanted to make
8 sure Heather was okay." That's accurate; right?

9 A. I gathered my stuff out of the car and was going
10 inside.

11 Q. And your concern at that point in time was to make sure
12 Heather was okay?

13 A. Well, I knew that she and David would get into it, and
14 also I knew that I was late coming home.

15 Q. Okay. So you knew that her and David had been getting
16 into it. Let me ask you this: You testified earlier that
17 you probably saw them, not actually saw, but heard them
18 interact when you were hiding out in the bedroom or whatever
19 ten to 12 times. I think that's what your lawyer said. Is
20 that right?

21 A. It was a couple of weekends back and forth.

22 Q. Okay. So you would be there when David picked the kids
23 up. Did he always pick them up and drop them off?

24 A. Yeah. He did.

25 Q. Okay. So that was typically, in your experience, for

1 that five weeks or so, that was how they did it? Was he'd
2 pick them up at the apartment and then drop them back off.

3 A. That's how they did it. Yes, sir.

4 Q. Okay. But, of course, you knew that night based on
5 these text messages that from a couple days earlier that
6 David had said that he needed Heather to come pick the kids
7 up. Is that right?

8 A. I knew that.

9 Q. Okay. All right. And during that time when you're
10 back in bedroom and the two of them are out there and you
11 said that most of those occasions were are fairly quick, not
12 lengthy?

13 A. Yes, sir.

14 Q. Okay. Ever any fighting or arguing between the two of
15 them when he dropped the kids off or picked them back up?

16 A. There was none of that.

17 Q. Now, it's your testimony that on that night -- so you
18 get back over there. And did you -- and you've heard the
19 testimony that David had left the apartment, had gone back
20 in and got his keys, and then was coming back out. You've
21 heard that testimony. Is that correct?

22 A. I've heard that. Yes, sir.

23 Q. Okay. Did you see him at all initially when he came
24 out of the apartment? Initially, the first time before he
25 went back in.

1 A. No, sir.

2 Q. It's your testimony that as you are approaching the
3 breezeway -- and I think you said that you were near --
4 Defense Exhibit Number 4 -- that you were basically passing
5 those stairs. Is that correct? So you've gone up the
6 little, the initial, little flight of stairs into the
7 breezeway and walking past the stairs that would take you up
8 to the second floor. Is that correct?

9 A. That's correct.

10 Q. Okay. And you see David come out of Heather's
11 apartment. Is that correct?

12 A. That's correct.

13 Q. Okay. And he doesn't -- I mean, he doesn't charge you
14 at that point in time, does he?

15 A. No, not right then and there. No, sir.

16 Q. Doesn't swing at you?

17 A. No, sir.

18 Q. Doesn't pin you up against the wall?

19 A. No, sir.

20 Q. In fact, all he asked at that point in time is if
21 you're Chris. Is that correct?

22 A. That's what he said.

23 Q. Okay. And you're, in fact, the one that then talks
24 about, that brings up, you know, I don't want to start this
25 confrontation now. Is that correct?

1 A. I told him I didn't want have to have this right here,
2 right now. Yes, sir.

3 Q. All right. And it's your testimony -- and what did he
4 do then? The two of y'all are just facing each other,
5 right? Kind of just a little bit outside of her door. Is
6 that correct?

7 A. Right outside her door. Yes, sir.

8 Q. Okay. And what does David say as a result of you
9 saying that?

10 A. I tried to walk past him and he blocked me off.

11 Q. Okay. Did he touch you?

12 A. No. He didn't touch me. He just stepped in my way.

13 Q. Okay. So slides over so you can't get past him?

14 A. Right.

15 Q. Okay. And, of course, I mean, it's ten o'clock at
16 night now; right? A few minutes after ten, maybe.

17 A. Approximately around that time.

18 Q. And his comment at that point in time was that he
19 didn't want you around his kids, didn't want you to trying
20 to be a father to his kids. Is that correct?

21 A. That's what he said. Yes, sir.

22 Q. He didn't threaten you at that point in time. He
23 didn't say I'm going to kill you, I'm going to kick your
24 butt. I mean, he doesn't say anything of that nature to
25 you, does he?

Cross-Examination of Mr. Himes by Ast. Sol. Sorenson

1 A. No. He doesn't say that to me.

2 Q. He doesn't swing at you?

3 A. No.

4 Q. He doesn't grab you and pin you up against the wall?

5 A. No.

6 Q. Doesn't knock you down?

7 A. No.

8 Q. And at that point in time, you said that basically all
9 he told you was that he wanted you to leave. Is that
10 correct?

11 A. He asked me -- he told me to leave. Yeah.

12 Q. Okay. And it's your testimony that you start basically
13 leaving, and he starts walking also. Is that correct?

14 A. He was coming -- I kept backing up and he kept coming
15 towards me.

16 Q. Okay. And, of course, you're familiar now from looking
17 through all the pictures that basically the direction the
18 two of y'all were going is basically where he as parked
19 also. Is that correct?

20 A. I didn't at the time. I didn't know where he was
21 parked.

22 Q. You're familiar with that now from looking at the
23 photos and hearing the evidence and the testimony, though.
24 Is that correct?

25 A. I'm familiar with that now. Yes, sir.

1 Q. And tell this jury when is it that you pulled this out
2 of your pocket?

3 A. When or where?

4 Q. Well, both.

5 A. Well, I was coming down the breezeway, backing up into
6 the grassy area. And when I was backing up towards the
7 grassy area, he was still walking towards me.

8 Q. Was he charging you at that point in time?

9 A. Well, he was yelling and throwing his hands.

10 Q. And in fact the -- and in fact, the two of y'all were
11 both yelling and arguing back and forth with each other. Is
12 that correct?

13 A. I wouldn't say we was arguing back and forth. But, I
14 mean, we was . . .

15 Q. Both had your voices elevated?

16 A. Yes, sir.

17 Q. And your testimony, and I think kind of what you put in
18 your statement, was that you were thinking at that point in
19 time about how he had hurt Heather in the past. Is that
20 correct?

21 A. I knew that -- I knew that. Yes, sir.

22 Q. Okay. And, of course, what you testified that Heather
23 had told you about was basically two prior incidents; right?
24 One that happened five or six years ago. Is that correct?

25 A. The incident that she told me about her, yes, sir.

Cross-Examination of Mr. Himes by Ast. Sol. Sorenson

1 Q. Okay. And the other one that had happened about,
2 basically, when they split up. So 18 months earlier. Is
3 that correct?

4 A. Yes, sir.

5 Q. Okay. And one of those where he had struck her in the
6 lip and she had a scar from that. Is that correct?

7 A. That's correct.

8 Q. And the other where he had just drug her out of her
9 room but she didn't suffer any injuries as a result of that.
10 Is that correct?

11 A. I'm not sure if she suffered any injuries or not. I
12 mean, I know she told me that he drug her out of her own
13 house.

14 Q. And you pull a gun out then so as you're backing down
15 the steps?

16 A. I was already down the steps.

17 Q. And where was David at that time?

18 A. David was right in front of me.

19 Q. Okay. So he was down and off of the steps also?

20 A. Yes, sir.

21 Q. Okay. And no doubt about it, at that point in time, I
22 mean, you -- the fact of the matter is you never saw him
23 with a weapon. Is that correct?

24 A. The fact of the matter now. Yes, sir.

25 Q. Well, I mean, the fact of the matter then. I mean,

1 that night you never saw David Ham with a weapon. Is that
2 correct?

3 A. I never seen him with a weapon.

4 Q. Okay. You saw him with his hand in his pocket at one
5 point in time. Is that correct?

6 A. He did reach in his pocket. Yes, sir.

7 Q. Okay. Have no idea if he was getting his keys out of
8 his pocket or what he was getting out of his pocket, though.
9 Is that correct?

10 A. I didn't know what he was reaching for. That's
11 correct.

12 Q. And the fact of the matter is when you pulled the gun
13 out on him, he didn't pull a gun or any kind of weapon out
14 after you pulled and pointed that 38 revolver at him, did
15 he?

16 A. No, sir.

17 Q. And at that point in time, his comment to you is that
18 he was not afraid of your -- what exactly did he said?

19 A. He told me, "Oh, you think you're bad because you got a
20 gun. I'm not scared of your punk ass gun." And he said,
21 "Oh, what's up, homeboy? Come on."

22 Q. Okay. And, of course, when he's making those comments
23 to you, you're pointing this at him. Is that correct?

24 A. Yeah. That's correct.

25 Q. And at that point in time is when he, your testimony

1 is, he either charged you or lunged at you. Is that
2 correct?

3 A. After he stated that he wasn't scared of my gun, he
4 kept walking towards me. And I told him it didn't have to
5 be like this, to just leave and I can go inside. And he was
6 like, he told me, I wasn't going in the apartment. And I
7 asked him to back up. He kept coming towards me when all of
8 this was happening. And I asked him to back up.

9 Q. And, ultimately, at that point in time, you end up -- I
10 mean, you pull the trigger; right? No question about it,
11 you shot him. Is that right?

12 A. There's no question about it. Yeah, I pulled the
13 trigger.

14 Q. Were you angry when you did that?

15 A. No, I wasn't angry. I was scared.

16 Q. You were scared?

17 A. Yes, sir.

18 Q. All right. I'm going to talk about that in a minute.

19 Do you agree with me that, basically, the only reason David
20 was even over there that night is because of you? Do you
21 agree with that statement?

22 A. Because I didn't -- because he had to drop the kids off
23 because I didn't have the car back in time?

24 Q. Uh-huh.

25 A. I could agree with that. Yes, sir.

1 Q. But for that happening, he would have never even been
2 over there that night. Is that correct?

3 A. I guess that's -- well, I guess that's fair to say.

4 Q. You'd also agree with me that prior to, to your
5 knowledge, prior to him walking out of that door and
6 encountering you in that breezeway, he had no knowledge you
7 were even around that night. Is that correct?

8 A. That's correct.

9 Q. Okay. Because according to your testimony, I mean,
10 when he came to drop the kids off or pick the kids off
11 [sic], I mean, you were -- you may have been there, but he
12 didn't know you were there. Is that correct?

13 A. That's correct.

14 Q. And the fact of the matter is you're the only person
15 that ever pulled out any kind of weapon that night. Is that
16 correct?

17 A. That's correct.

18 Q. All right. And let's talk about -- you put in your
19 statement that you were scared and that's what you testified
20 about tonight. All right. Or today. Did you feel that
21 night that he was an imminent danger to you?

22 A. When he charged and lunged at me, I did feel like I was
23 in imminent danger.

24 Q. Okay. So that was when you, when you're feeling at
25 that point in time, when you realize that you might be in

1 imminent danger when he charged you?

2 A. Right.

3 Q. That was when that developed in your mind? That, oh,
4 my gosh, I might be in danger, when he came charging at you?

5 A. Well, I felt like I was in danger from the start
6 because of the previous threats.

7 Q. Okay. Let's talk about that then. I'm going to get
8 back to that imminent danger. The previous threats, all
9 right. The jury has seen State's Exhibit Number 6: "Tell
10 your BF don't let me catch him slipping."

11 A. Right.

12 Q. Okay. What other threats were there?

13 A. That was the threat.

14 Q. Okay. So that was the threat. Because you implied on
15 direct examination that there were others.

16 A. That there was other text messages.

17 Q. Well, obviously, I mean, they have two kids in common.
18 They're texting back and forth. Were there other text
19 messages that you claim were threatening towards you?

20 A. There was other text messages mentioning me. But I
21 don't think there were any actually threatening me other
22 than that one right there.

23 Q. So this would be the only one. So based on this text
24 message, "Tell your boyfriend don't let me catch him
25 slipping," based on that text message, it's your testimony

1 that you felt that you were in imminent danger of either
2 being killed or being seriously -- having serious bodily
3 injury to you. Is that your testimony?

4 A. I was -- I felt like I was in danger if he would have
5 seen me, if he would have caught me slipping. Yeah.

6 Q. Okay. And slipping would be kind of another word for
7 messing up?

8 A. Slipping would be another word for whenever I see you.
9 That's how I took it.

10 Q. Okay. So you took it that the minute he saw you, he
11 was going to do what to you?

12 A. He was going to hurt me. He was going to fight me.

13 Q. He was going to punch you in the lip like he punched
14 Heather six years earlier? I mean, is that what you were
15 worried about?

16 A. I was worried about him hurting me. I didn't know how
17 far as how he was gonna hurt me.

18 Q. All right. But, I mean, he had never made any direct
19 threat that he was gonna, you know, shoot you, kill you, put
20 you in the hospital?

21 A. That was the only threat.

22 Q. That's the only threat. And the history that you had
23 received from Heather were two incidences -- and, obviously,
24 y'all talked about him, I mean, once you became in a
25 relationship -- about two prior domestic incidents that had

1 occurred. One, five or six years earlier, and one 18 months
2 earlier. Is that correct?

3 A. That actually occurred to Heather, yes.

4 Q. Let me -- so you were 22 back when this happened. Is
5 that right?

6 A. That's right.

7 Q. Okay. And David was in his mid-30s or so. He was
8 older than you; right? He was Heather's age basically.

9 A. Yes, sir.

10 Q. Okay. And the two of y'all, I mean, he was a few
11 inches tall than you. Is that correct?

12 A. He was taller than me. Yes.

13 Q. Okay. Other than that, you were basically the same
14 physical build. Is that correct?

15 A. Yes, sir.

16 Q. I mean, he wasn't some big 250-pound bodybuilder, was
17 he?

18 A. No, sir.

19 Q. Okay. All right. And you said that you had asked --
20 that you had asked Heather after seeing that text message --
21 whether David could fight. Is that correct?

22 A. Yeah. That's correct.

23 Q. Okay. All right. Let me ask you this: I mean, do you
24 know how to fight?

25 A. I mean -- yeah, I know how to fight. I've been in a

1 few fights.

2 Q. Let me ask you this: I mean, you know, after this
3 happened, and the jury heard a little bit about this through
4 Heather's testimony, I mean, y'all were in pretty constant
5 contact right after this happened; right? For several
6 months.

7 A. Who? After the incident happened, me and Heather?

8 Q. Yes, sir.

9 A. After I was in jail?

10 Q. Uh-huh. Yes, sir.

11 A. Yes, sir.

12 Q. You were talking on the phone every day, writing
13 letters back and forth. She maybe even visited you on
14 occasion. Is that correct?

15 A. That's correct.

16 Q. Okay. In fact, even in some of the letters you wrote
17 to her, you expressed to her the fact that that you wanted
18 to be the person that would teacher her son how to fight.
19 Is that correct?

20 A. I'm not sure.

21 Q. You're not sure. Could you have possibly said that in
22 one of your letters?

23 A. I could've possibly said that, yes.

24 Q. Said who will be there to play hot wheels with
25 Kingston? Who will be there to teach him how to fight?

Cross-Examination of Mr. Himes by Ast. Sol. Sorenson

1 Could have said that -- wrote that in a letter to Heather
2 about her eight-year-old son?

3 A. Yes, sir.

4 Q. But it's your testimony that you were scared of getting
5 in a fight with David Ham on November 1st of 2015. Is that
6 correct?

7 A. I was scared of a confrontation.

8 Q. And you want this jury to believe that you reasonably
9 believed that you were in imminent danger that night of
10 either being killed or sustaining serious bodily injury.
11 That's what you're asking this jury to believe. Is that
12 correct?

13 A. That's correct.

14 Q. And the fact of the matter is that back on November 1st
15 of 2015 the two of y'all had never met before. Is that
16 correct?

17 A. Yes, sir.

18 Q. Your testimony is you had never seen David Ham in
19 person?

20 A. I have never seen him in person.

21 Q. Hiding in the next room maybe when he was there. But
22 you never saw him; he had never seen you up close in person.
23 May have seen you at the bank when she by dropped him off
24 that Friday, or dropped you off that Friday, but never
25 actually physically up close. Is that correct?

1 A. Never face-to-face. No, sir.

2 Q. And the only words then that he had ever really
3 conveyed to you would be through Heather to basically tell
4 you not to let him catch you slipping. Is that correct?

5 A. That's correct.

6 Q. And on the night of November 1st of 2015, and according
7 to your testimony, his only words to you were basically that
8 asking you who you were. Is that correct?

9 A. That's correct.

10 Q. Okay. Telling you that you were not going in that
11 apartment. Is that correct?

12 A. That's correct.

13 Q. Okay. And, of course, that's the apartment where his
14 four-year-old and eight-year-old son were residing. Is that
15 correct?

16 A. That's the apartment all of us was residing at.

17 Q. And, of course, he's never seen you over there so he
18 wouldn't even know that you were staying there; right?
19 According to your testimony.

20 A. I mean, maybe know from his son that I was staying
21 there. I mean, I'm not sure.

22 Q. But a reasonable person ---

23 A. I'm not actually -- I'm not actually sure if he would
24 have actually -- I'm not you're sure what you're trying to
25 ask me.

1 Q. Okay. Well, that apartment that he was telling you
2 that you could not go into is where his four- and
3 eight-year-old sons were living. Is that correct?

4 A. That's correct.

5 Q. With their mother, his wife. Is that correct? They
6 were still married. Is that correct?

7 A. They were separated. Yes, sir.

8 Q. So he tells you that. He blocks your way but doesn't
9 put any hands on you or anything. Is that correct?

10 A. That's correct.

11 Q. Okay. Tells you need to leave?

12 A. That's correct.

13 Q. Tells you that on a couple of occasions. Tells you he
14 doesn't want you around his kids, doesn't want you trying to
15 be a father to his kids. Is that correct?

16 A. That's correct.

17 Q. But, yet again, are all just words that he's saying to
18 you. Is that correct?

19 A. Angry words, yeah.

20 Q. You pull a gun on him, point it at him. He makes some
21 comment about come on, I'm not scared of your punk ass gun
22 or something to that effect. Is that correct?

23 A. That's correct.

24 Q. Okay. And I think the way that you then phrased it
25 with your lawyer -- so the hostile act that he was -- when

1 he was doing this with his hands, I mean, that's when he's
2 acting hostile to you in the breezeway?

3 A. He was throwing his hands around. Yes, sir.

4 Q. I mean, was he swinging at you or just kind of
5 gesturing with his hands?

6 A. Just gesturing with his hands.

7 Q. Your testimony is that that was the hostile act that he
8 committed?

9 A. The hostile act that he committed was walking towards
10 me after I tried to go into the apartment. And when he
11 asked me to leave, I was backing up to the parking lot.

12 Q. And he's walking after you. He's not charging you, not
13 tackling you, not laying a hand on you. Is that correct?

14 A. He's -- I'm backing up and he's still walking towards
15 me. Yeah.

16 Q. And then ultimately he only charges and/or lunges at
17 you after you have pointed the gun at him. Is that correct?

18 A. And asked him to back up. Yes, sir.

19 Q. What was stopping you, Mr. Himes, from just leaving
20 like he asked you to?

21 A. I was trying to get back to my car. But I was scared
22 to turn my back and just ride off.

23 Q. What stopped you from just backing up all the way to
24 the parking lot?

25 A. That's what I was doing when he charged and lunged at