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STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM LANCASTER COUNTY

SC Court of Appeals

Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL E. HYATT,

APPELLANT

APPELLATE CASE NO. 2014-000083

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF LANCASTER
4 2010-GS-29-1589 and 2010-GS-29-1590

5
6 State of South Carolina
7 vs.
8 Michael Hyatt and Aaron Hyatt

9
10
11 Lancaster, South Carolina
12 January 6-10, 2014
13 Before the Honorable Brian Gibbons

14
15 APPEARANCES

16 For the State: Andy Cook
17 For the Defendants: William Frick and Mark Grier

18
19 Reported by: Michael C. Watkins
20 Official Court Reporter

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22
23
24
25

OPENING STATEMENTS

1 THE COURT: All right.

2 MR. COOK: Please the Court?

3 THE COURT: Yes, sir.

4 MR. COOK: Good morning. On September 16th of 2010,
5 Kamil Nassrah, the gentleman sitting right here in the dark
6 coat and glasses, and his crew were out at his hay field
7 located at the end of Merle Lane out in the Heath Springs
8 Community. They were farming hay, Kamil rents that land out
9 from somebody, he's leased it out for years, he has farmed
10 that fields for years. Merle Lane is a one-lane dirt road
11 that leads out to the field, it is a dead-end when you get
12 out there, and that's going to be important about this dirt
13 road, it's going to come into play. So Kamil and his crew
14 were out there, they had been out there all week, it's the
15 last load of the season, they're done, they've cut it down,
16 bailed it up, it's on the trailer, they're ready to go. The
17 crew is gone except for Kamil and his helper, Donnell Melton
18 who is sitting beside him. Donnell is his right-hand man,
19 he helps him out, tends to his farm, helps him out with
20 anything he needs, they're the last two out there. Kamil is
21 driving his F350 truck, he's got the trailer behind it and
22 the bailed hay, Donnell is driving a tractor with the rake.
23 If you're not familiar with a rake, it's a big piece of farm
24 equipment used to till up, plow the hay and bail it up. So
25 they've got their two rigs, they pull out of the gate and

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1 ready to leave the field. They stop, headed out of Merle
2 Lane. Michael Hyatt, who is seated at the far table, he
3 lives on Merle Lane, he lives in a mobile home, if you're
4 coming out of the field up on the left, they stop near the
5 front of his property. Kamil is in his truck. Donnell goes
6 back to lock the gate sitting out near Mike's house. Kamil
7 doesn't get out of the truck, he's waiting on Donnell to
8 make sure everything is in proper order before they leave
9 for the season. Donnell locks the gate, they're headed out,
10 it's time to go home or wherever they're going to take the
11 hay. They pass by Michael Hyatt's house. Michael Hyatt is
12 standing out in the yard, they say he's got a big stick in
13 his hand and he's yelling at them. Why is he yelling at
14 them? Well, it's a dirt road, Kamil and his crew go up and
15 down and they kick up dust, they can't help it and it
16 happens and the Hyatts hate it, they're tired of them
17 kicking up dust. It's that simple. They're tired of them
18 going up and down the street. Well, on this day Kamil and
19 Donnell, they pass by Michael Hyatt, he's out in the yard,
20 nobody says a word to him, they're on their way out. Well,
21 after they pass by the house here comes a light green Ford
22 truck flying up in front of them, Aaron Hyatt gets out of
23 the car -- and Aaron Hyatt is seated at this table, Aaron
24 Hyatt is Michael Hyatt's son -- he pulls up within feet of
25 the front of Kamil's truck, pulls up the truck, gets out,

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1 starts yelling at Kamil. Kamil opens the door, is standing
2 on his running board and tells him, "Get out of the road, I
3 have got to get out of here." He won't let him leave, Kamil
4 is trapped. He's driving a 350 diesel truck with a trailer
5 on the back, tractor behind him on a one way road. There's
6 nowhere to go. Aaron Hyatt's truck is this far from the
7 front, he is stuck. Well, Kamil doesn't want to deal with
8 it. He knows them, they've had issues before, he doesn't
9 want to deal with Aaron so he gets his cellphone out to call
10 law enforcement. Well, Kamil never got to call law
11 enforcement because as soon as he gets this phone out Kamil
12 is going to testify that he feels like he gets shot in the
13 back of the head, at the time he didn't know what hit him,
14 but something hit him in the back of his head and he falls
15 out of his truck. Kamil crawls in between the front of his
16 truck and Aaron's truck and when he comes to his senses he's
17 not in a daze anymore he sees Michael Hyatt standing in
18 front of him with a big wooden stick raised above his head.
19 Kamil, who has got a concealed weapons permit, he runs a gas
20 station, farms, he's got a concealed weapon, he keeps a
21 pistol in his waistband, he pulls it out and tells Michael
22 Hyatt to back up, stop. He's got blood coming down his
23 face, he's dazed and he sees Michael Hyatt coming at him
24 with this big stick he says, "Mike, stop." He doesn't stop
25 coming, he shoots one time in the ground and Michael Hyatt

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1 didn't stop, he kept coming at him. Kamil shoots one more
2 time, actually shoots Michael Hyatt in the side. Now, it's
3 going to be an odd case where the defendant is actually the
4 one who got shot, but Kamil shot him so he wouldn't be hurt
5 anymore. Kamil was in a position where if he didn't shoot
6 Michael Hyatt he would have killed him and he thought he was
7 going to kill him, he'd already hit him in the back of the
8 head one time. And that's -- pretty much that's the story
9 from my point of view. That's what Kamil is going to tell
10 you, that's what Donnell is going to tell you, that's what
11 they saw, that's what happened. Now, I never said that
12 Aaron Hyatt touched anybody and I'm not going to tell you he
13 touched anybody, he never did. Let me explain why he's up
14 here too. Just so y'all are clear, Michael Hyatt is the
15 father, Aaron Hyatt is the son, and I'm going to try to keep
16 this up here for you as much as I can because even reading
17 the file I got confused so you know who everyone is all the
18 time and you don't get confused. Okay. Now, I've got the
19 law up there. This isn't the time for me to explain the law
20 to you, but if you're going to go through this trial you
21 kind of need to know what you're looking for. Now,
22 attempted murder is pretty much what it says it is,
23 attempted murder. They didn't actually murder him because
24 they are still here. He tried to, they wanted to but they
25 didn't, that's why it's an attempt. The second reason is

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1 the person who with the intent to kill attempts to kill
2 another person with malice aforethought, either expressed or
3 implied, commits the offense of attempted murder, and we
4 will go through at the end what all of those words mean.
5 But you can pretty much use your common sense, attempted
6 murder, he tried to kill him, he was unsuccessful. Now,
7 like I said earlier, Aaron Hyatt never touched anybody, not
8 going to tell you he did and nobody is ever going to say he
9 did. He's up here under what's called an accomplice
10 liability theory. Now, what does that mean? In South
11 Carolina we call it hand of one, hand of all. This is one
12 explanation of what it means is one who joins with another
13 to accomplish an illegal purpose is liable criminally with
14 everything done by his confederate incidental to the
15 execution of the common design and purpose. That is kind of
16 confusing. But the gist of it is you're working with
17 somebody and you know what is going on, you're just as
18 guilty as the person who did it. Now, Aaron Hyatt didn't
19 throw a blow but he laid the groundwork for his dad to
20 because he pulled that truck up in front of Kamil's truck
21 and Kamil had nowhere to go. One more little explanation.
22 If a crime is committed by two or more persons who are
23 acting together in the commission of a crime then the act of
24 one is the act of both. The act of Michael Hyatt is the act
25 of Aaron Hyatt. If Aaron Hyatt doesn't block him in Kamil

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1 is riding down the road taking his hay wherever he is going
2 to take it and Michael Hyatt never has a chance to touch
3 him. So that's why they're both here, and we submit that
4 Aaron is just as guilty as his dad is. So you're going to
5 hear from Kamil, you're going to hear from Donnell and you
6 will hear from law enforcement. You will hear from the
7 first responding officer, Deputy Randy Morgan. I even got a
8 videotape of what he saw when he first came up and you will
9 see part of that. You will hear from CSI, two officers who
10 went to canvas the scene and got physical evidence, so
11 you'll hear people testify on the stand and what they
12 actually saw and you'll also see some physical evidence of
13 where it was laid out. And you're going to see where the
14 evidence fell in the relation to the trucks and where
15 everybody said everything happened, and it's going to match
16 up with what Kamil and Donnell say. Because the story they
17 tell is the truth, and quite frankly the only one that makes
18 sense and you'll understand later on. You'll hear from
19 them, I'm not going to go through all of it right now, but
20 they'll tell you what happened, and you'll see everything,
21 where it all lines up. Now, like I said, they're both
22 charged with attempted murder, they worked together to do
23 it. Aaron blocked them in, Mike hit him in the head. Now,
24 I'll get back up at the end after you've heard everything
25 and I'll ask you to find a verdict of guilty for both of

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1 them for attempted murder. I'll just ask you to use your
2 common sense. It's not a difficult case, and you'll see
3 that, everything will unfold. I just ask you to pay
4 attention and be fair to the State and be fair to the
5 defense, but I'm going to come back and ask you for a
6 verdict of guilty for both. Thank you.

7 THE COURT: Thank you, Solicitor. Mr. Frick?

8 MR. FRICK: Thank you, Your Honor. I know what you're
9 thinking, "Oh boy, another power point presentation. Yay."
10 Well, I promise to keep it brief. And I also need to
11 explain to you while I'm coming up here with my fancy
12 technology, while I don't consider myself old I am just old
13 enough to have started my career in courthouses that don't
14 have acoustics nearly as well as this, so if you think I'm
15 yelling at you, I'm really not, it's just this is the way I
16 got trained so I sometimes raise my voice and it's to make
17 sure I can be heard in some of the older courthouses I
18 practiced in, including my own home courthouse back in
19 Fairfield, although I think I've tried more cases in this
20 courtroom than probably anybody sitting in this room.
21 Ladies and gentlemen, I represent Aaron Hyatt, and this is a
22 slightly unusual case because we've got two folks sitting
23 here accused of the same thing, and a lot of times Mr. Grier
24 and I find ourselves on the opposite sides of these issues
25 but we're kind of together on this. We are representing

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1 independently but we have the same goal to show you that the
2 State's case doesn't hold water. And the solicitor can come
3 up here and vouch for his client and testify all he wants in
4 his opening statement, but you're going to hear the facts in
5 a second and you get to determine whether that's what
6 happened or not. And I know the Judge has already talked
7 about it and I'm going to go back over it because it's very
8 important. You are the sole judges of the facts. You get
9 to go back after this is over with and you've heard all of
10 the evidence and make a determination as to what happened
11 that day on that little tiny dirt road. How do you do it?
12 Well, you know how this works, this part is the same as you
13 see on TV. Folks are going to get up here on this witness
14 stand, they'll put their hand on the Bible and they're going
15 to swear to tell the truth. Now, I tell you just because
16 someone gets up there and swears to tell the truth doesn't
17 mean that you've got to believe that they're telling you the
18 absolute truth, that's what y'all are here for. You get to
19 look at them on the stand, you get to examine their
20 demeanor, how they testify, what they say and determine
21 whether you think they're telling you the truth or not. You
22 don't have to accept it just because you heard it up there.
23 You can determine whether someone has any bias for saying
24 what they're saying, whether they're motivated by something,
25 maybe they work for somebody and that could have

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1 repercussions if they don't say what they say up there, you
2 get to consider all of these things. So you're going to
3 hear testimony and you're going to see some physical
4 evidence. Now, don't know what all is going to get
5 presented in this case. I know what's been collected, I
6 don't know what's going to get in to evidence. But you're
7 going to see some physical evidence and they're probably
8 going to be a video for you to look at right after the scene
9 so you can determine what happens. That's what you need,
10 and as I told you you can believe either -- under the
11 physical evidence, you can believe all, part or none. And
12 here is one thing I do agree with the solicitor on, I want
13 you to pay attention to where the stuff is in relation to
14 the stories that you hear, because that's what's going --
15 all it's going to come down to, are you going to believe him
16 or are you going to believe us? That's it, ladies and
17 gentlemen, it's just a swearing contest. And so the only
18 thing you can do is look at where the evidence actually is
19 and determine which side it supports. And I suggest to you
20 that all of the evidence is on the other side and it doesn't
21 support the State's theory and you will find that both Aaron
22 and Michael are not guilty. How does this work? Probably
23 seen this on TV, too, and this is one part that's kind of
24 right. The State has got to prove their case beyond a
25 reasonable doubt. Okay. Now, that don't mean beyond all

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1 doubt, it's not beyond a shadow of a doubt, sometimes you
2 hear that, that's not correct. It's is there any other
3 reasonable explanation about what happened? They've got to
4 show you competent evidence, not just evidence, competent
5 evidence, and competent evidence is believable evidence.
6 Again, that's where you come in to determine whether the
7 evidence is competent or not. Did Michael and Aaron do what
8 the State say they did? Now, let me tell you what it's not.
9 It's not, "I've been sitting there and I see Aaron is
10 wearing a Gamecock pullover and well, I don't really like
11 that so maybe he did do it." It's not, "I've been looking
12 at him and he kind of looks like he might have done this."
13 It's not even it's possible, it's not he might have, it's is
14 there any other reasonable explanation. That's the
15 standard. It is a high burden. If you've ever found
16 yourself in civil court it's slightly different, it's called
17 the preponderance of the evidence, it's more likely than
18 not. If that's what you believe then the State has not
19 proven their case, it's a much higher burden when we get to
20 this level. As you've heard and going to hear several times
21 again, we're here for an attempted murder case. What has
22 the State got to show you? The State has got to show you
23 that Mr. Hyatt has attempted to kill in this case
24 Mr. Nassrah with malice aforethought. Now, they've also got
25 to show you that there was some kind of intent to do bodily

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1 harm. Now, what else does that include? It's got to be a
2 wrongful act. Now, Mr. Nassrah got hit in the head, he got
3 injured, that's an uncontroverted fact in this case, you're
4 going to hear that from both sides here. He was hit in the
5 head. Michael Hyatt was shot in the gut. Was it a wrongful
6 act, though? Because you know what? If somebody points a
7 gun at you you ain't got to wait to find out whether they're
8 going to shoot you or your son. If you feel there's danger
9 we have got this handy dandy thing called self-defense.
10 Now, first and foremost, and this is where the State is
11 going to tell you that we don't have self-defense, is you
12 can't be at fault, you can't have caused the problem. Okay.
13 Y'all get to determine who caused the problem here. Are you
14 or someone else in imminent danger, are you or somebody else
15 pointing a gun at either him or him, right, that's what it
16 comes down to. Do you believe there was imminent danger and
17 is there any other way to avoid it? Are you blocked in on a
18 little narrow road with someone pointing a gun at you and
19 you've got no other alternative? Here is the other thing on
20 it. If you believe that we have shown that there is
21 evidence of self-defense, the State has to disprove it. Not
22 "I kind of think maybe it's self-defense." No. The State
23 again has to show you evidence beyond a reasonable doubt
24 that self-defense does not apply. That's what it comes down
25 to, ladies and gentlemen. Did what happened on that road

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1 occur because these two men had no other alternative? Who
2 was at fault in bringing the action? If you're sitting at
3 home and you get a phone call and it sounds like your dad is
4 having some trouble and you hop in your car to go find out
5 what's going on and find yourself on the other end of a gun,
6 did you cause the problem? The State is going to tell you,
7 yeah, and that's the only reason that Aaron Hyatt is here.
8 Michael Hyatt sees his son at the end of that gun and
9 decides he needed to take action. Does that mean that he
10 caused the problem? The State tells you yeah. Well, I'm
11 telling you that I believe at the end of this case you're
12 going to see that the evidence does not stack up on the side
13 of the State, they have not proven and they cannot disprove
14 that these two gentlemen didn't do exactly what they had to
15 do, and that is defend themselves and each other. And I
16 will ask you at the end of this case to render a verdict of
17 not guilty. Thank you very much.

18 THE COURT: Thank you, Mr. Frick. Mr. Grier?

19 MR. GRIER: Thank you, Your Honor. May it please the
20 Court?

21 THE COURT: Yes, sir.

22 MR. GRIER: Solicitor, ladies and gentlemen of the
23 jury, I hope you got your long johns on today coming in
24 here. I don't have a fancy power point presentation. I'm
25 the kind of old guy when you look around the courtroom as

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1 far as lawyers go, my client has got a couple of years on me
2 but I still do it the old fashioned way, so Mr. Frick and
3 Mr. Cook have their power points but I'm just going to speak
4 to you. Thank you for your service. We are not asked to do
5 a lot in exchange for the benefits we get as citizens of
6 this country, and serving on a jury is one of the most
7 important things that we can do. Paying taxes is an
8 important thing but serving on jury duty is a necessity
9 because we have a reality that is fractured in this case.
10 The only people that know what happened out there are the
11 people that saw it and were present, and you're going to
12 hear different versions of that today. But you are actually
13 going to find the facts, you're going to determine what
14 happened out there because there has to be a legal
15 determination of it and this is the best system for
16 determining that and resolving these issues when the facts
17 are in dispute. So you've got an awesome responsibility and
18 you've got -- you're an officer of the court just like I am,
19 you're a temporary officer of the court. You take an oath
20 and you're sworn to uphold jury duty just like me and
21 Mr. Cook and Mr. Frick are, so I am simply an advocate for
22 my client. The judge -- you're the determiner of the facts,
23 the Judge determines the law and he has already explained
24 all of that to you. But you're going to have to listen to
25 the explanation of the law and we're going to get into a

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1 little bit of that in this conversation. The Judge told you
2 to withhold any deliberations and he'll probably remind you
3 of that during lunch and if we break, and it's doubtful -- I
4 don't know whether we'll get finished today or not, but you
5 will be reminded do not deliberate. Because if you start
6 forming impressions before all of the evidence is in, you
7 know, you can psychologically get tuned in and focused on
8 one thing and ignore the rest. And if you make your mind up
9 at the onset then justice is not going to be served unless
10 you hear everything and deliberate together as a group, so I
11 ask you to do that. And the importance of it is this, the
12 State has a lot of advantages in trials. They get to go
13 first. They have taken my client, Michael Hyatt, and Aaron
14 Hyatt, dragged them in front of you for the hanging, told
15 you they have done all of these terrible things, read out
16 the indictment and you're like, "Whoa." First impressions
17 can be prejudicial. And so the State gets to make all of
18 those first impressions and the defense has to have some
19 protections from that. We do not -- the State gets to go
20 first in argument, they get to go last. They get to present
21 all of their evidence up there. You get to hear all of that
22 before the defense has the opportunity to respond to that.
23 And in exchange for the State having those advantages the
24 designers of our system believe that it was necessary and
25 our constitution guarantees that the defendant will have

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1 protections from the awesome powers of the State, and that
2 design is what we call the State's burden of proof. Our
3 clients are cloaked in innocence, they're presumed innocent
4 and only you can remove that cloak of innocence if you
5 believe the State has proved their case beyond a reasonable
6 doubt. Now, you often hear, okay, so and so is on trial,
7 the Hyatt's are on trial. Well, I will tell you the State
8 is on trial because they have the burden of proof, and
9 really when everything is boiled down to its most common
10 denominator it boils town to has the State met their burden
11 of proof, have they proved guilt beyond a reasonable doubt?
12 I don't think they're going to get very close in this case,
13 but they have that burden of proof and that is to protect
14 the defendant's from the first impressions and from the
15 advantages from the State. Mr. Frick mentioned something
16 and I would just like to talk about it briefly, about the
17 different types of trials, civil trials versus criminal
18 trials. And in talking with jurors -- and I find confusion
19 about that often times when people ask me questions about
20 court they confuse the civil burden of proof and the
21 criminal burden of proof. In a civil case somebody is
22 asking somebody for money. Okay. You know, it boils down
23 to that, they're suing for money. And if you're suing
24 somebody for money, well, nobody's liberty is going to be at
25 stake, and the preponderance of the evidence is the standard

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1 more likely than not. So imagine the scales of justice, if
2 Mr. Nassrah was suing the Hyatts for his medical bills or
3 something, all he would have to show is more likely than
4 not, tip the scales, I mean, tip the scales ever so slightly
5 in his favor, boom, payday if he proves that to the jury, if
6 that burden of proof is met. In a criminal case we're
7 talking about taking away somebody's liberty, and that is
8 the most precious thing that any of us have. If we've got
9 our liberty we can get out and we can make money. And so a
10 lot more is at stake when your liberty is at stake, and that
11 is the fundamental reason that the burden of proof in a
12 criminal trial like this one is beyond a reasonable doubt.
13 Now, what is a reasonable doubt? The Judge is going to give
14 you the law and -- what's called the jury charges, you will
15 hear us talk about the jury charges. But what he is going
16 to tell you, I believe, is that a reasonable doubt is the
17 kind of doubt that would cause a reasonable person to
18 hesitate to act. A reasonable doubt is the type of doubt
19 that would cause one to hesitate to act, and in this case
20 hesitate to convict because of a reason. The Judge will
21 tell you if at the conclusion of this trial and when you're
22 deliberating and when you've heard all of the evidence if
23 you are firmly convinced of the guilt of our clients then
24 you must convict. However, if you believe there is the real
25 possibility that they might be innocent then you must

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1 acquit. So if there's a real reason based on the evidence
2 that they might not be guilty then you must acquit. Now,
3 this is kind of the fourth phase of this case. This case is
4 going on four years old. The first phase was back in 2010
5 on the scene when the officer arrives and he has got a man
6 laying over there shot and he has got a guy over there by a
7 fence post with his head cracked open, blood coming down.
8 He doesn't know who is at fault, he doesn't know who is
9 responsible. He secures the scene, separates everybody,
10 sorts all of that out, other people are arriving and all of
11 that and there is no arrest at that point immediately. They
12 start doing their investigation, but to arrest someone
13 you've got to have probable cause and probable cause is a
14 mere suspicion. Phase one, mere suspicion. And ultimately
15 and law enforcement heard both sides of this, they
16 determined, they believed one side rather than the other is
17 really what it boils down to, really the same thing you're
18 going to do today. They believed one account versus the
19 other account. That's enough to arrest somebody, and they
20 chose to arrest the Hyatts. They could have chosen to
21 arrest and charged Mr. Nassrah and he could be the one
22 sitting over here at the defense table based on the evidence
23 that you're going to hear today. Second phase -- that's the
24 arrest phase. Second phase is what we call -- actually in
25 this case there could be four arrests, we had a preliminary

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1 hearing. The Judge sat probably right up here when they did
2 it and heard the State present their evidence, defense can't
3 put up anything, and said. "Okay. Well, they said it,
4 that's enough evidence to have a suspicion. Okay. I'm
5 going to find probable cause," again, a suspicion of guilt,
6 that's all. If Mr. Nassrah had been sitting there based on
7 what the Hyatt's account they would have found probable
8 cause for that, too, I believe that day. It's just somebody
9 saying we believe that version. The Hyatts version doesn't
10 get presented at that phase. It was presented to the grand
11 jury, and I don't want to get into a bunch of mumbo jumbo,
12 but that's 18 folks that hear every case and just hear the
13 evidence and determine based on the State's evidence whether
14 there's enough evidence against the defendants to create a
15 suspicion. So we've been through three phases where the
16 police have determined they had a suspicion of guilt and a
17 judge has determined that they had a reasonable reason they
18 had to have a suspicion, and the grand jury said that they
19 had a reasonable reason to have suspicion. All that is just
20 based on the State's version. Today the defense gets to
21 have their day in court and you get to determine not whether
22 there's just a suspicion of guilt, not whether the Hyatts
23 might be guilty, not whether you think they probably are
24 guilty, if you thought they probably were guilty then that
25 would be enough evidence to award money in a civil case.

OPENING STATEMENTS

1 Not might, not probably, but you determine whether they
2 might not be guilty is really what you'll determine. And
3 ladies and gentlemen, I believe that after you've heard all
4 of the evidence that is what you will -- the conclusion you
5 will come to. Thank you for your service and look forward
6 to trying this case.

7 THE COURT: Thank you, Mr. Grier. Is the State ready
8 to proceed?

9 MR. COOK: The State is ready, Your Honor.

10 THE COURT: Call your first witness.

11 MR. COOK: State calls Kamil Nassrah.

12 The witness, KAMIL NASSRAH, was first duly
13 sworn and testified as follows, on:

14 DIRECT EXAMINATION

15 BY MR. COOK:

16 Q. Please state your name for the record.

17 A. Kamil Nassrah.

18 Q. How old are you, Mr. Nassrah?

19 A. Sixty-two.

20 Q. What type of education background do you have?

21 A. I'm sorry?

22 Q. What type of educational background do you have?

23 A. I have three years of college.

24 Q. What do you do for a living?

25 A. I own a convenience store and I farm.

TESTIMONY OF KAMIL NASSRAH

1 Q. Okay. Why were you on Merle Lane September 16th of
2 2010?

3 A. I have a field that I cut hay off and I went down to
4 cut hay.

5 Q. Do you own that field?

6 A. No, I'm renting it.

7 Q. How long have you rented that field?

8 A. I have I believe five or six years or something like
9 that.

10 Q. Now, Merle Lane where the field is, is that in
11 Lancaster County?

12 A. Yes, sir.

13 Q. That's in the Heath Springs Community?

14 A. Yes, sir.

15 Q. How many times a year do you go out and farm that land?

16 A. We sometimes go out twice a year usually in May, end of
17 May and toward the end of September, middle of September or
18 end of September, it all depends on the weather.

19 Q. Okay. Describe Merle Lane for me, where your field is
20 located.

21 A. It's a narrow dirt road, short, not long at all.

22 Q. Is it wide enough for two cars?

23 A. No, sir, barely wide enough for one vehicle.

24 Q. All right. If you turn onto Merle Lane from a -- if
25 you're traveling on Merle Lane, how does it end?

TESTIMONY OF KAMIL NASSRAH

1 A. It ends at the field. The field is the end of Merle
2 Lane.

3 Q. Okay. On the 16th you were farming?

4 A. Yes, sir.

5 Q. Was that the first day you were out there that week or
6 had you been out there previously?

7 A. I was out there three days prior to that.

8 Q. Okay.

9 A. I went out to cut the hay first, you cut the hay the
10 first day.

11 Q. So three days prior was there an incident that --

12 A. What?

13 Q. Was there an incident earlier that week involving the
14 Hyatts?

15 A. I didn't hear the question.

16 Q. I'm sorry. Was there an incident earlier that week
17 involving yourself and the Hyatts?

18 A. The first day I went and cut the hay, yes, sir. I went
19 in, I opened the gate and I left it open and drove my
20 tractor to the field and I cut the hay, usually takes about
21 three hours, and started leaving and the gate was locked.

22 Q. Did you lock the gate?

23 A. No, sir. I didn't think I locked it so I figured maybe
24 I did, I don't know. So I got off the tractor, got my keys
25 to open it and it was a different lock on it.

TESTIMONY OF KAMIL NASSRAH

1 MR. FRICK: Your Honor, I'm going to object to this
2 line of questioning on the 404B and 403, the grounds
3 previously stated in pretrial.

4 MR. GRIER: I join it.

5 THE COURT: The objection is overruled.

6 Q. When you went to the gate to check the lock, was
7 anybody there?

8 A. At the gate, no. But there was a truck parked in front
9 of Mike Hyatt's blocking the road completely.

10 Q. Did you see Michael Hyatt out there that day?

11 A. No, sir.

12 Q. Did you see Aaron Hyatt that day?

13 A. No, sir.

14 Q. Did you call law enforcement?

15 A. I got on my tractor immediately, I backed up the
16 tractor to the middle of the field because there's trees on
17 both sides of the tractor. I figured something is wrong. I
18 backed up my tractor to the middle of the field and I called
19 the law.

20 Q. Now, getting back to the 16th, what happened when you
21 left the field that day?

22 A. At the field?

23 Q. When you left the field on the 16th.

24 A. Yes. Before I left home I called the sheriff's
25 department and I asked for an escort because I was provided

TESTIMONY OF KAMIL NASSRAH

- 1 an escort to go to the field every time I go in and out.
- 2 Q. Okay.
- 3 A. And the sheriff met me and I drove to the field.
- 4 Q. On the way in?
- 5 A. On the way in.
- 6 Q. Was he with you on the way out?
- 7 A. I'm sorry?
- 8 Q. Was there a sheriff's deputy with you on the way out of
- 9 the field?
- 10 A. Yes, sir.
- 11 Q. On the 16th?
- 12 A. On the 16th.
- 13 Q. On the day of the incident?
- 14 A. On the day of the incident.
- 15 Q. When you're locking up the field, what's the standard
- 16 procedure to close up the field?
- 17 A. Close up the field?
- 18 Q. Right.
- 19 A. When we finish?
- 20 Q. Uh-huh.
- 21 A. We usually leave all together and get out, and whoever
- 22 is the last one coming out we would lock the gate, it's a
- 23 double gate, and put the chain around it and lock it.
- 24 Q. Who was the last person to leave on the 16th?
- 25 A. It was Donnell Melton.

TESTIMONY OF KAMIL NASSRAH

1 Q. Who is Donnell Melton?

2 A. He works for me.

3 Q. Can you point him out in the courtroom?

4 A. The gentleman sitting right there in the black jacket.

5 Q. Was it just the two of you or were there other people
6 out there with you when you were closing up?

7 A. Earlier we had three other trucks loaded with hay and
8 left, maybe ten minutes earlier or 15 minutes earlier.

9 Q. So when you were leaving, was it just you and Donnell?

10 A. Just me and Donnell.

11 Q. Who actually physically locked the gate?

12 A. Who actually locked the gate? Donnell was behind me,
13 he was the last one and he locked the gate.

14 Q. Where were you when he was locking the gate?

15 A. In my truck in front.

16 Q. What type of truck was it?

17 A. It was an F350 big truck.

18 Q. Was there a trailer attached or was it just a truck?

19 A. I had a long trailer attached to it, it was loaded with
20 hay double stacked.

21 Q. In proximity to Mr. Hyatt's house, where were you
22 stopped waiting on Donnell?

23 A. I can see Mr. Hyatt's property joining the field, so
24 the truck and the trailer is probably 70 feet, maybe more,
25 and the tractor and the rake attached to it and all of that.

TESTIMONY OF KAMIL NASSRAH

1 We have to pull up quite a bit to get out of the gate to
2 lock it.

3 Q. Position wise you've got the gate and then whose cars
4 are in line?

5 A. The gate tractor and hay, rake, then my truck with the
6 trailer in the front.

7 Q. When you're waiting on Donnell to lock the gate, do you
8 actually see Michael Hyatt?

9 A. No, sir.

10 Q. Do you know Michael Hyatt?

11 A. I'm sorry?

12 Q. Do you know Michael Hyatt?

13 A. Yes, I do.

14 Q. How do you know him?

15 A. He worked for my neighbor for awhile before he got
16 fired, and then he lives right there, I seen him several
17 times when I go in. He followed me to the field one time
18 and he told me he wanted to fight me and I told him I don't
19 fight.

20 MR. FRICK: Your Honor, objection, that's 404B.

21 THE COURT: Overruled.

22 Q. All right. You're in your truck, the gate is locked.
23 At that point do you leave?

24 A. Yes, sir.

25 Q. Just tell us what happens as -- you're leaving the

TESTIMONY OF KAMIL NASSRAH

1 field and you pass Michael Hyatt's house?

2 A. I pass the house.

3 Q. Is it on your right or left?

4 A. As we are leaving his house it would be on the left.

5 Q. Did you ever get out of your truck at any point?

6 A. No, sir.

7 Q. Did you speak to Michael Hyatt?

8 A. No, sir.

9 Q. What was -- was Michael Hyatt in the yard?

10 A. I believe he was in the yard.

11 Q. Do you know what he was doing?

12 A. No. I tried not to look that way, I just kept on
13 driving.

14 Q. As you kept on driving what happened?

15 A. I almost got to the end of the road and a green older
16 model truck pulled in and almost hit me and stopped, so I
17 had to stop.

18 Q. Who was driving that truck?

19 A. Aaron Hyatt.

20 Q. How do you know Aaron Hyatt?

21 A. He opened the door and he got out of the truck but he
22 stayed next to the truck.

23 Q. When you first saw him, did you know Aaron Hyatt?

24 A. Yes, sir. I seen him several times in front of his
25 dad's house and he threatened me several times.

TESTIMONY OF KAMIL NASSRAH

1 Q. About how far from the front of your truck did he stop
2 his truck, just estimate?

3 A. Maybe three our four feet.

4 Q. Did he say anything to you when he got out of the
5 truck?

6 A. Yes, sir.

7 Q. What did he say to you?

8 A. He told me my days are numbered. "Where is your
9 escort? Where is the police to protect you now?"

10 Q. Did you get out of the truck?

11 A. I did not get out of the truck. I opened the door and
12 I stood at the running board and I asked him to back up so
13 we can leave.

14 Q. Was there not enough room for you to drive around him?

15 A. No, sir, there's no way.

16 Q. Would it have been possible for him to move? Was there
17 anywhere for him to go?

18 A. He just pulled in to the dirt road, there wasn't a few
19 feet. I can't back up. I have my tractor and rake and I
20 have my truck and load it with hay and there's no way he can
21 back up. It's a very, very narrow road, I don't believe
22 it's more than eight feet wide maybe.

23 Q. All right. Well, now that Aaron is blocking you from
24 leaving the road what did you do next?

25 A. Well, when he shouted at me that my days are numbered

TESTIMONY OF KAMIL NASSRAH

1 and all of that I figured there was trouble, so I reached
2 for my phone to call the police.

3 Q. Did you call the police?

4 A. I couldn't, I was hit.

5 Q. Where were you hit?

6 A. In the back of my head.

7 Q. Have you got a scar, have you got anything to show
8 where you got hit?

9 A. Yes, sir. It opened my head about that big.

10 Q. So the back of your head?

11 A. That right there.

12 Q. Do you know what hit you?

13 A. No, sir. I thought I was shot.

14 Q. You thought you were shot?

15 A. Yes, sir.

16 Q. Did you ultimately get out of the truck?

17 A. I fell not completely to the ground but I fell to the
18 ground and I started -- I didn't know what happened, it
19 happened so quick, I started running to the front of the
20 truck to get away between my truck and Aaron's truck.

21 Q. Let me back up just a minute. You're calling --
22 attempting to call law enforcement --

23 A. I'm sorry.

24 Q. When you're attempting to call law enforcement --

25 A. Yes, sir.

TESTIMONY OF KAMIL NASSRAH

- 1 Q. -- did you hear anybody coming or --
- 2 A. Did I what?
- 3 Q. Did you hear anybody coming up behind you?
- 4 A. No, I didn't hear anything. The truck is so loud you
- 5 can't hear much at all. It's a diesel truck, it's an older
- 6 model diesel truck so it is loud.
- 7 Q. The truck is like -- do you have any issues with your
- 8 hearing?
- 9 A. Now I do.
- 10 Q. Well, back to the point where you're running, crawling
- 11 out of the truck. Walk us through what happened, what you
- 12 remember, what happened.
- 13 A. I heard somebody shouting and it was Aaron, "Kill him
- 14 daddy, kill him."
- 15 Q. When you say, "Kill him daddy," Aaron Hyatt saying
- 16 that, who was he referencing?
- 17 A. At the time I did not know until I turned around to see
- 18 who is coming at me and I saw Mike Hyatt.
- 19 Q. What was Mike Hyatt doing?
- 20 A. Coming toward me, had his hands up holding an object.
- 21 Q. What type of object?
- 22 A. A stick.
- 23 Q. What happened next?
- 24 A. I pulled my gun and I told him to stop.
- 25 Q. Where did you pull a gun from?

TESTIMONY OF KAMIL NASSRAH

- 1 A. I have a permit to carry a gun, I keep it at my side.
- 2 Q. What kind of gun is it?
- 3 A. It's a Beretta 380.
- 4 Q. So what happened after you pulled your gun out?
- 5 A. I pulled my gun out, I told him to stop, he did not, I
- 6 fired a shot to the ground --
- 7 Q. Did it hit him?
- 8 A. -- to make him stop, into the ground, and he kept on
- 9 coming at me.
- 10 Q. What happened next?
- 11 A. I shot him.
- 12 Q. Where did you shoot him?
- 13 A. I don't know. I shot him.
- 14 Q. Are you sure it hit him?
- 15 A. Yes, sir, I am.
- 16 Q. When you pulled your gun out on Michael Hyatt, was that
- 17 the first time you pulled your gun out that day?
- 18 A. That's the first time I pulled my gun, yes, sir.
- 19 Q. After you shot Michael Hyatt, what happened after that?
- 20 A. I heard Aaron say something to the affect, "I'm going
- 21 to get my gun," or, "I've got a gun," and I told him not to
- 22 move. I believe I said it once or twice, "Do not move."
- 23 Q. So you're kind of having a standoff with Aaron, so
- 24 you're holding Aaron off with the pistol?
- 25 A. I'm sorry, I don't know.

TESTIMONY OF KAMIL NASSRAH

1 Q. Let me rephrase it. So did you think Aaron was coming
2 at you afterwards?

3 A. I don't know if he was coming at me. I heard him say
4 it, something to the effect, "I got a gun, I'm going to get
5 a gun." I told him not to move.

6 Q. Did you call law enforcement? How did law enforcement
7 arrive, do you have any idea?

8 A. I honestly don't remember.

9 Q. Do you remember what was going on when law enforcement
10 did arrived?

11 A. Barely. I was almost going in and out of consciousness
12 but I kept on saying to myself, "You can't go to sleep. If
13 you go to sleep they're going to kill you."

14 Q. Do you remember what you were wearing that day?

15 A. Just a regular jeans and shirt.

16 Q. Were you wearing your hat?

17 A. I wear a hat all of the time in the field.

18 Q. What type of hat?

19 A. Just a summer hat. Most of the time it's a John Deere
20 hat, a John Deere hat.

21 Q. When Deputy Morgan arrived what happened then?

22 A. I put my gun down, and honestly I don't remember after
23 that.

24 Q. At what point -- you put the gun down. At what point
25 did you put the gun down?

TESTIMONY OF KAMIL NASSRAH

- 1 A. When I saw the law.
- 2 Q. Did you feel you were safe at that point?
- 3 A. Yes, sir.
- 4 Q. Were you treated by EMS that day?
- 5 A. I'm sorry.
- 6 Q. Take your time. Were you treated by EMS that day?
- 7 A. Yes, I was.
- 8 Q. Were you treated locally or were you taken somewhere
- 9 else?
- 10 A. I was flown to Charlotte.
- 11 Q. Do you remember what hospital you went to?
- 12 A. CMC.
- 13 Q. Do you remember what type of treatment you received?
- 14 A. They did all kinds of tests and they had to put 39
- 15 staples in my head and told me to stay awake for awhile and
- 16 then to go to sleep.
- 17 Q. What kind of treatment did you receive? Just standard
- 18 medication or --
- 19 A. I was there for awhile, I don't really remember what
- 20 they did. All I know is I finally went home. I had staples
- 21 in my head and they told me to come back and take them out.
- 22 Q. Do you remember how long you stayed in the hospital,
- 23 how many days?
- 24 A. I was released late that night.
- 25 Q. I'm going to show you one thing. Do you see this image

TESTIMONY OF KAMIL NASSRAH

1 on your screen? Can you see that?

2 A. Yes, sir.

3 MR. COOK: Can everybody see that on the screen?

4 Q. Does this look familiar? I think you can see it right
5 there. I will do this one. The big green spot in the top,
6 is that your field? Does that look about right?

7 A. That green spot?

8 Q. Right.

9 A. Yes, sir.

10 Q. Is that Merle Lane coming up to it?

11 A. Yes, sir.

12 Q. Can you point out where Aaron Hyatt -- I mean, excuse
13 me, Michael Hyatt's house is? Can you identify where the
14 house is?

15 A. His house?

16 Q. Uh-huh.

17 A. It's the one right there.

18 Q. The one right there in the middle.

19 A. Yeah. The one next to the road not too far from the
20 field.

21 Q. Okay. Where were you when all of this occurred? Where
22 did this incident occur in relationship to this house?

23 A. The incident?

24 Q. Uh-huh.

25 A. To the entrance to the dirt road.

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1 Q. Okay.

2 A. The beginning of the dirt road and the hay field and
3 the end of the dirt road.

4 Q. That's a different picture. Right there in the middle
5 where that white spot is, is that where the dirt road
6 starts?

7 A. Where's it at?

8 Q. See the white spot right in the middle? On the far
9 left there's a house, do you see that?

10 THE COURT: Can you mark it, Solicitor? Can't you mark
11 that? There you go.

12 Q. Do you know what that is?

13 A. That looks like the trailer, the mobile home.

14 Q. Michael Hyatt's?

15 A. Yes, sir.

16 Q. Okay. What's that area right there? Is that where all
17 of this occurred?

18 A. Yes, sir.

19 Q. That's where you met Aaron Hyatt? That's where you ran
20 in to Aaron Hyatt?

21 A. Yes, sir.

22 MR. COOK: No further questions for you right now,
23 answer anything they might have for you. Okay?

24 MR. GRIER: Your Honor, may we approach?

25 THE COURT: Yes, sir.

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1 (Bench conference was held.)

2 THE COURT: All right. Ladies and gentlemen of the
3 jury, we're going to take a brief recess at this time. It's
4 a good midmorning recess for y'all to go to the restroom, to
5 grab a cup of coffee or something to drink or whatever and
6 we'll reconvene in about ten minutes. While you're on your
7 break don't discuss the case, don't talk about it, you've
8 only heard from half of one witness so there's nothing to
9 talk about. Okay. Remember that, and we'll bring you back
10 in here just as soon as possible so have a good break.

11 (The jury left the courtroom.)

12 MR. GRIER: Judge, are we in recess?

13 THE COURT: Yeah, we're in recess. You can step down.

14 MR. FRICK: Your Honor, I would just ask you to remind
15 the witness he can't talk to anybody.

16 THE COURT: Right. You're still under oath, you're
17 still subject to cross examination, you have to sit over
18 there by yourself. Okay. Don't talk to anybody.

19 (A recess was taken.)

20 THE COURT: Are you ready?

21 MR. GRIER: Yes, Your Honor.

22 THE COURT: All right. Let's bring the jury in.

23 (The jury returned to the courtroom.)

24 THE COURT: All members of the jury are present. And
25 Mr. Grier?

TESTIMONY OF KAMIL NASSRAH

1 CROSS EXAMINATION

2 BY MR. GRIER:

3 Q. Mr. Nassrah, how are you today?

4 A. Thank you, sir.

5 Q. How old are you, Mr. Nassrah?

6 A. Sixty-two.

7 Q. What kind of business are you in, Mr. Nassrah?

8 A. Convenience store and farming.

9 Q. Have did you previously own -- or do you own Buford
10 Express? Do you own a convenience store in Buford
11 Crossroads?

12 A. I used to a long time ago.

13 Q. How long has it been since you owned that store?

14 A. I believe I sold it in '99.

15 Q. Okay.

16 A. '98 or '99, I'm not 100 percent sure.

17 Q. All right. And you have another store or now.

18 A. Yes, sir.

19 Q. How long had you been farming on Merle Lane before the
20 incident occurred?

21 A. Either four or five years, might be somewhere around in
22 there.

23 Q. So you were acquainted with the Hyatts?

24 A. I'm sorry.

25 Q. You were acquainted, you knew the Hyatts?

TESTIMONY OF KAMIL NASSRAH

- 1 A. I knew of the Hyatts.
- 2 Q. Well, had you met them before?
- 3 A. I'm sorry?
- 4 Q. You testified that you had previously met them before.
- 5 A. I had met them before.
- 6 Q. Was your meeting with them ever on a social basis?
- 7 A. Social.
- 8 Q. Yeah.
- 9 A. No, sir.
- 10 Q. Campfires, nothing like that out there in the country?
- 11 A. No, sir.
- 12 Q. All right. When -- now, your field is at the very end
- 13 of Merle Lane. Do you know how long Merle Lane is from Lola
- 14 was where it is, right? Or excuse me -- where is Merle
- 15 Lane? What road does it come out on, do you know?
- 16 A. I honestly don't know.
- 17 Q. Whatever road it comes out on, how long is it from --
- 18 A. I don't know.
- 19 Q. Okay. All right. Well, Mr. Hyatt's house is -- where
- 20 would you describe it? About midway between -- would you
- 21 describe it as being about midway between --
- 22 A. No, sir, almost at the end.
- 23 Q. Almost from the end. Okay. So how far from the end?
- 24 A. Almost at the end.
- 25 Q. Okay. So it's right there at the gate where you come

TESTIMONY OF KAMIL NASSRAH

1 out of your pasture.

2 A. Yes, sir. I am not 100 percent sure it's joining the
3 pasture or not, but if it does not join it's very close.

4 Q. There has been some issues about dust from you taking
5 your equipment in and out of that field with the Hyatts.

6 A. Yes, sir. He mentioned that I'm creating dust.

7 Q. Now, did he ask you to slow down?

8 A. I'm sorry?

9 Q. Did he ask you to slow down? What did he ask you to do
10 to prevent that dust?

11 A. He asked me to slow down.

12 Q. Okay. Did you?

13 A. I can't go fast even if I wanted to, sir. A tractor
14 maximum speed on a highway not pulling any equipment is 14
15 or 15 miles an hour. On a dirt road pulling equipment I can
16 barely go through it, I don't believe I can go more than six
17 miles an hour or seven.

18 Q. Well, my question was did you slow down when he asked
19 you to slow down?

20 A. Yes.

21 Q. So you cannot move heavy equipment if it's dry without
22 causing dust to come up?

23 A. I've never seen any dust come up.

24 Q. You never saw dust come up?

25 A. Some dust comes up from the tires but not coming out.

TESTIMONY OF KAMIL NASSRAH

1 There may be dust coming out maybe that high off the ground
2 sometimes.

3 Q. Okay.

4 A. The county has sprayed that dirt road with some kind of
5 chemical, they sprayed all dirt roads with some kind of
6 chemical that prevent dust a few years back.

7 Q. Well, Mr. Hyatt lives right there next to the road,
8 doesn't he? I mean, it's not much more than the width of
9 this courtroom off the road; isn't that right? About that
10 close?

11 A. I guess so.

12 Q. And you can slow a vehicle down to a crawl as a
13 courtesy to somebody, couldn't you?

14 A. Sure you can.

15 Q. Did you do that? Would you take a step of slowing down
16 when you were going in front of his house?

17 A. I have to slow down even if I don't want to when I get
18 close to his house. The gate is right there and the gate is
19 locked so I'm always stopped.

20 Q. So your tractor will only do 14 miles an hour you say?

21 A. Fourteen or 15 miles an hour.

22 Q. What kind of tractor is that?

23 A. I have a John Deere and I have Massey Cobalt.

24 Q. And about what year is it?

25 A. The newest one is 2000 -- it might be 2003/2004, and

TESTIMONY OF KAMIL NASSRAH

1 the other one is 1995.

2 Q. I've got a '61 International Forester with four gears
3 on it that will do 40 miles an hour. How many gears have
4 you got on your tractor?

5 A. There's no tractor that goes 40 miles an hour, sir.

6 Q. Well, okay. I'm a liar.

7 A. I'm sorry, I did not accuse you of anything.

8 Q. Well. All right. How many gears have you got on your
9 tractor?

10 A. Four gears.

11 Q. Four gears? Okay. And you go through four gears to
12 get to 14 miles an hour on your tractor?

13 A. Yes, sir.

14 Q. Okay. Now, when it's not pulling anything it will only
15 do 14 miles an hour?

16 A. Yes, sir.

17 Q. All right. Now, your truck -- you haul this hay on
18 your trailer. And how long is that trailer?

19 A. The bed itself is 26 and then you got the neck and all
20 that, it's probably 35 or 36, somewhere in there.

21 Q. The trailer is 35 or 36 feet long?

22 A. Maybe longer.

23 Q. And what kind of truck is that? You say it's a Ford --

24 A. Ford F350.

25 Q. It's a big old truck. Dually?

TESTIMONY OF KAMIL NASSRAH

- 1 A. I have a dually and a single.
- 2 Q. On the day -- both of those trucks are going up and
3 down that road when you are taking out your hay, right?
- 4 A. Yes, sir.
- 5 Q. Now, how fast will that truck go?
- 6 A. The truck goes fast as any truck.
- 7 Q. So you can go from -- really, it can go very fast if
8 you wanted to, but when you are pulling hay you don't go
9 70 miles an hour down a one lane dirt road, we know that.
- 10 A. You can even got 55 on a highway if you want to when
11 you're pulling that.
- 12 Q. You can do 20 though, can't you?
- 13 A. I'm sorry.
- 14 Q. You can do 20 pulling miles an hour pulling hay, can't
15 you?
- 16 A. Yes, you can.
- 17 Q. Okay. Mr. Nassrah, I would ask you to look at this
18 picture and see if you can identify that picture.
- 19 A. That is my truck and my trailer.
- 20 Q. Okay. Do you know where that picture was taken? It
21 looks like it was taken on a one lane dirt road somewhere,
22 doesn't it?
- 23 A. Yes, sir.
- 24 Q. Now, is that -- do see any dust in that picture?
- 25 A. Yes, sir.

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1 Q. Okay.

2 A. Who is driving that truck, sir?

3 Q. I don't know. I'm saying -- it's your equipment,
4 right?

5 A. It's my truck. It says 9/16, I was not driving that
6 truck if that's the right date.

7 Q. But it's your vehicle.

8 A. It's my vehicle, sir.

9 Q. You're not driving it, but somebody else that works for
10 you is driving it, right?

11 A. Not works for me, I only have one employee.

12 Q. Well, you just testified this is your truck.

13 A. Yes, sir. I have friends who comes and help me.

14 Q. Okay. This hay is being transported under your
15 supervision from your property, right?

16 A. Yes, sir.

17 Q. On the day that this happened.

18 A. Yes, sir.

19 Q. This isn't when this confrontation happened, is it?

20 A. If that's --

21 Q. This isn't the moment. You were in a different truck
22 actually.

23 A. Yes, sir.

24 Q. But, I mean, you can clearly see that dust is coming up
25 in that picture, can't you?

TESTIMONY OF KAMIL NASSRAH

1 A. Yes, sir.

2 Q. It's a dusty road.

3 MR. GRIER: Your Honor, I would offer this as a defense
4 exhibit.

5 THE COURT: Any objection.

6 MR. COOK: No objection.

7 THE COURT: Without objection it's introduced as
8 Defendant's Exhibit Number 1.

9 (The photograph was received as Defendant's 1.)

10 A. I see some dust coming up, yes.

11 MR. COOK: I would ask to publish it to the jury.

12 THE COURT: Any objection from the State?

13 MR. COOK: No objection.

14 THE COURT: You can publish the photo. Y'all can just
15 pass that along as you see fit. Make sure you listen,
16 though, while you're looking at it.

17 Q. Now, Mr. Nassrah, the Hyatts are getting pretty angry
18 about the dust problem because that's what they're saying
19 but you don't see it as a problem.

20 A. I don't see them angry about the dust. I see them
21 angry three days prior about the chicken, the dog killing
22 their chicken and they said it's my dog and I told them I
23 don't have a dog. And they say, "The dog is on the property
24 and it's killing my chicken," I told them, "I don't have a
25 dog."

TESTIMONY OF KAMIL NASSRAH

1 Q. Well, you don't even live near there, do you? You
2 don't live near there.

3 A. No, sir. I live probably 20 or 25 miles away from
4 there.

5 Q. Are you sure you're not confusing -- weren't they
6 accusing say Mr. Truesdale's?

7 A. I'm sorry?

8 Q. Didn't they say Mr. Truesdale's dog killed their
9 chicken?

10 A. I said Mr. Truesdale?

11 Q. No.

12 A. I'm sorry.

13 Q. Did the Hyatts not tell you that Mr. Truesdale's dog
14 killed their chicken?

15 A. No, sir, they said my dog. I don't have a dog.

16 Q. Okay. Now, Mr. Nassrah, on September 16th of 2010
17 pulling out the last load of hay from the field, how many
18 loads of hay come out of that field? How many trailer loads
19 of hay come out of that field?

20 A. Five.

21 Q. Did you say?

22 A. Five. I believe five.

23 Q. Okay. Did all of it come out that day on the 16th?

24 A. Yes, sir. I normally take them out in my own truck one
25 at a time, but that day because I had an escort and they

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1 told me I have to move quick, move it out of there I called
2 several friends and they came and helped me and got them out
3 that same day. It usually takes more than one day.

4 Q. But when this incident happened your helper had locked
5 the gate and that field was done for the year.

6 A. That was done for the year, yes, sir.

7 Q. You pull out with the loaded trailer, and where do you
8 pull when you pull out?

9 A. Pulled down a dirt road.

10 Q. Pull out of the pasture and you pulled down a dirt
11 road. Now, you pulled up in front of Mr. Hyatt, didn't you?

12 A. I go back enough to have room for the tractor and the
13 trailer to get out and shut the gate.

14 Q. Where was that in relation to Mr. Hyatt's house?

15 A. I really can't pinpoint exactly. If you told me how
16 far the house from the gate I will tell you.

17 Q. Did you pull directly in front of Michael Hyatt's house
18 when you pulled out?

19 A. Not directly in front, no.

20 Q. Well, do you remember testifying yesterday in our
21 pretrial hearing?

22 A. Yes, sir.

23 Q. Do you recall Mr. Cook asking you as you're leaving
24 locking up and Donnell is locking up the gate --

25 A. Yes, sir.

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1 Q. -- "Are you in front of Mr. Hyatt's house or are you a
2 little bit past it?" Do you recall what your response was
3 yesterday? You don't? Well, that was line five. Do you
4 want to read your response, line six? Do you see it at line
5 six?

6 A. Yes, sir.

7 Q. What does it say?

8 A. It says in front of it.

9 Q. "I am in front of Mr. Hyatt's house," doesn't it?

10 A. Yeah.

11 Q. So why today don't you want to admit you were in front
12 of Mr. Hyatt's house?

13 A. I did not admit or not admit, I said we pulled. I
14 don't know exactly where when you pull how far is it. It is
15 pretty close, almost if not definitely adjacent to the
16 field. If you tell me how far it is I can tell you how far.

17 Q. Today you don't want to say you pulled in front of the
18 house because you didn't have to pull in front of house, did
19 you?

20 A. I'm sorry, sir, I could not hear you.

21 Q. I'm sorry, I will slow down a little bit.

22 A. Please.

23 Q. You said yesterday you pulled right in front of the
24 house. Okay? Right?

25 A. He asked me the question several times, I don't know

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1 about yesterday. And it's -- I can see the house. I told
2 him I can see the property, I'm right there when I pulled, I
3 have to pull --

4 Q. Okay.

5 A. -- past the gate, yes, sir.

6 Q. Okay. You had words for Mr. Hyatt while you were
7 pulled in front of his house, didn't you?

8 A. I don't believe so.

9 Q. You don't believe so?

10 A. I honestly don't believe so. I don't believe so.

11 Q. You and your helper both had words for Mr. Hyatt. You
12 finished up with your hay field and you were going to give
13 him a piece of your mind before you got out of there. You
14 were carrying a gun, weren't you? You weren't scared.

15 A. If I wasn't scared I wouldn't ask for an escort, sir.
16 I was scared for my life. He threatened me three days
17 earlier in front of the officer. He told me he would take
18 me in the woods and I would never come out.

19 Q. Mr. Nassrah, you've got a gun in your belt that day,
20 don't you?

21 A. It does not matter, sir.

22 Q. Pardon?

23 A. It does not matter.

24 Q. It does not matter?

25 A. He hit me and almost killed me and I had a gun.

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1 Q. Why did you stop in front of his house?

2 A. I don't believe I stopped in front of his house. I
3 have to pull out of the gate to lock the gate, sir.

4 Q. Okay. So you don't remember it the same way you did
5 yesterday, right? Okay. All right. Now, Mr. Nassrah, your
6 lawyer yesterday -- I say your lawyer, the State's lawyer
7 yesterday, right after you say you're in front of his house,
8 the State's lawyer asked you on the 16th did you see Michael
9 Hyatt outside of his house. You testified earlier today you
10 didn't see him?

11 A. As we are leaving when -- I stop in front of the gate
12 to lock it I cannot see everything, as we were leaving
13 driving off Mr. Hyatt was in the yard. Isn't that what I
14 said, sir?

15 THE COURT: No, sir, don't ask questions, just answer
16 the questions. Thank you.

17 Q. The State's lawyer asked you if you saw Mr. Hyatt just
18 a few minutes ago and you said no. True? Well, what did
19 you say yesterday in response to "On the 16th did you see
20 Michael Hyatt outside of his house?" What's the response
21 right after you were asked about being in front of his
22 house, what did you say?

23 A. What was that question, sir?

24 Q. On the 16th.

25 A. When on the 16th, at what time on the 16th?

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1 Q. Okay.

2 A. I saw Mike Hyatt several times on the 16th because we
3 were in and out several times. I was escorted with the
4 police and he was in his yard.

5 Q. So you did see him.

6 A. Sir?

7 Q. So now you're saying you did see him.

8 A. It all depends on when. The question is did I see him.

9 All day?

10 Q. Did you see him --

11 A. Did I see him all day, yes.

12 Q. How many times did you see him?

13 A. Did I see him when it was a certain time?

14 Q. How many times did you see him?

15 A. I don't remember, I was in and out. I remember -- I
16 recall he was in his yard the one time and then the police
17 officer told me that they were gone, you had to go in the
18 car. He asked me how long I have left before we leave and I
19 told him about --

20 MR. GRIER: Your Honor, that's not responsive to my
21 question.

22 THE COURT: All right.

23 A. I'm sorry.

24 Q. All right. Mr. Hyatt, do you -- excuse me,

25 Mr. Nassrah, do you recall giving a statement to law

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1 enforcement?

2 A. I don't recall. I was asked that question yesterday.

3 Q. Okay. Well, yesterday you said you didn't give a
4 statement, didn't you?

5 A. I don't recall giving a statement until the attorney
6 showed me that there was a statement on the 16th.

7 Q. Let's move on to the confrontation. You're pulling
8 out, you've passed -- you've come out of your field, you've
9 waited for you tractor man to lock up, get behind you,
10 you're pulling on out, you've gone -- we've already talked
11 about Mr. Hyatt's house, whether or not you were in front of
12 it. You're past that and in comes Aaron Hyatt.

13 A. Yes, sir.

14 Q. You got your gun in your belt already?

15 A. Yes, sir.

16 Q. You don't have a holster for it?

17 A. Never wore a holster.

18 Q. You wear a gun in your belt all of the time -- I mean,
19 certainly you weren't allowed in here with it I don't
20 suppose, but --

21 A. For the last 37 years.

22 Q. Have you got another gun in the truck?

23 A. Yes, sir.

24 Q. Well, you don't recall giving a statement back on the
25 date of the incident to law enforcement?

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1 A. On the 16th?

2 Q. Yes, sir.

3 A. I don't recall, sir. I wasn't barely conscious.

4 Q. Okay. So is your memory a little bit cloudy about the
5 events of that day?

6 A. I'm sorry?

7 Q. Is your memory cloudy about the events of that day?

8 A. After I got hit and the police officer arrived I was
9 told that I passed out.

10 Q. Okay. What were the first words that were said between
11 you and Mr. Hyatt -- Mr. Aaron Hyatt and who said them?

12 A. When Mr. Hyatt got out of his truck he was shouting
13 stuff and I couldn't hear him, I opened the door and I stood
14 on the side steps on the running board and so I asked them
15 to leave.

16 Q. You made the first statement to him before he said
17 anything to you.

18 A. No, sir. I just said he was shouting and I couldn't
19 hear exactly what he was saying so I stepped out on the
20 running board and he was saying something to the fact, "Your
21 days are numbered. Where is the escort? Where is your
22 police?"

23 Q. You gave a statement on the 16th. I'm going to show
24 you something. Do you recognize that document?

25 A. I have to read it.

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- 1 Q. Okay.
- 2 A. It looks like a document I signed, yes, sir.
- 3 Q. Do you want to read it? You can take a minute or I can
- 4 just ask you what I want to ask you about it. You made a
- 5 statement on the 16th about what Aaron Hyatt said, didn't
- 6 you?
- 7 A. I'm sorry?
- 8 Q. I'm walking away from you, I should be pointing at you.
- 9 You gave a statement that day about what Aaron Hyatt said to
- 10 you.
- 11 A. I said I don't remember.
- 12 Q. In that statement. Okay. That's got your signature on
- 13 it, right? Okay. I've highlighted -- the first thing that
- 14 I've highlighted. Do you want me to read what this
- 15 statement says?
- 16 A. Please.
- 17 Q. "Aaron Hyatt jumped in front of mine, jumped out of his
- 18 truck started and yelling, 'Your days are numbered and you
- 19 ain't going nowhere.' I couldn't go anywhere." Is that
- 20 right? Is that what that statement says? It says what it
- 21 says.
- 22 A. That's what it says.
- 23 Q. Now, today you're saying, "Where is your escort? How
- 24 come you ain't got nobody to protect you?"
- 25 A. And?

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1 Q. You know, that's not what you said contemporaneous with
2 this event.

3 A. I might not have said everything. I was in complete --
4 I was almost unconscious, sir.

5 Q. Well, it sounds a lot better to say that he said you
6 ain't got your escort and your police escort than it does to
7 say that alone.

8 A. Sir, I don't even remember giving that testimony.

9 Q. Well, you signed the statement, didn't you?

10 A. Yes, sir, it's my signature. I don't remember. It's
11 my signature. Have you ever got hit in the head sir?

12 Q. Yes, sir, I have.

13 A. Do you remember everything at the time?

14 THE COURT: Go on to the next question, Mr. Grier.

15 Q. Well, you feel like it's important to say that today
16 and you didn't think it was important enough to talk about
17 this police escort on this day.

18 A. I don't know if it's important. You're asking me a
19 question and answers.

20 Q. All right, Mr. Nassrah. You testified today and --
21 well, you testified today --

22 A. I'm sorry?

23 Q. I'm in the middle of the question. After Aaron said
24 whatever and -- is he saying that to you when you're stepped
25 outside of your truck and on the running board?

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- 1 A. Yes, sir.
- 2 Q. So you're on your running board, this conversation is
- 3 going on.
- 4 A. Do what?
- 5 Q. This conversation is going on while you're standing on
- 6 your running board of your Ford F350 truck.
- 7 A. Yes, sir.
- 8 Q. And you've got a gun in your pocket over there --
- 9 excuse me, in your belt and you pull that gun on Mr. Hyatt,
- 10 didn't you, right there on the running board, didn't you?
- 11 A. Are you accusing me of --
- 12 Q. I'm asking you a question, I get to ask questions.
- 13 A. No, sir. I did not pull my gun at all.
- 14 Q. Did you feel like there was trouble? He just said,
- 15 "Your days are numbered." Did you feel threatened?
- 16 A. I felt threatened and I tried to call the police, yes,
- 17 sir.
- 18 Q. Okay. And so -- well, do you -- so you got out of your
- 19 truck and on the running board.
- 20 A. I did not get out of my truck, sir.
- 21 Q. You got on your running board.
- 22 A. I was standing on my running board.
- 23 Q. You call that being in your truck?
- 24 A. One foot on the running board, one foot in the truck.
- 25 I don't know what you call it, sir. I'm sorry but it's not

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1 out of my truck. You can call it half way in and half way
2 out.

3 Q. Okay. All right. Well, on the 16th you gave a
4 statement about these events apparently, didn't you? All
5 right. Do you recall saying immediately after -- you say he
6 said, "Your days are numbered, you ain't going nowhere. I
7 couldn't go anywhere, his truck stopped me from leaving and
8 there was a tractor behind me, I was stuck. I took off my
9 seatbelt and got my cellphone out. I stuck my head out and
10 looked out the window of my truck to see what Aaron was
11 doing because Aaron was walking towards the back of his
12 truck."

13 A. Okay.

14 Q. "I believe I dialed the number nine on my phone and I
15 was hit in the head -- in the back of my head with
16 something." So in your statement you say you stick your
17 head out of the truck and looked and now you say you were
18 standing on the running board. Did you stick your head out
19 the window and look --

20 A. I stuck my head and see because he stopped getting out
21 of my truck, and when he stepped out of his truck completely
22 and start looking in the bed of his truck I stood up on the
23 running board to see what is he getting or is he doing.

24 Q. Okay.

25 A. I'm not changing my statement, sir, I'm just telling

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1 you exactly what happened.

2 Q. Well, you didn't say anything about being on a running
3 board back when you were giving the statement four years
4 ago.

5 A. I don't really recall giving that statement, sir, I was
6 unconscious almost.

7 Q. When you recall Aaron saying -- okay. Sorry. You get
8 hit, you're standing on the running board and after your hit
9 what's the first thing you recall?

10 A. What do you mean by recall?

11 Q. Where are you? Where do you first remember being after
12 you got hit in the head?

13 A. Falling down from the hip, not completely down but
14 falling down and start running.

15 Q. Okay. Falling down and what?

16 A. Started running.

17 Q. And started running. Okay. You fall down and you get
18 up right there?

19 A. Halfway up and running and that's all I can remember,
20 sir. All I know is I thought I was shot and I was running
21 away from the direction.

22 Q. All right. So Mr. Hyatt hits you with this axe handle
23 is what this turned out to be, right?

24 A. That's what they said.

25 Q. Is what we understand that to be. You're on the

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1 running board, you're on the ground, you're on the ground,
2 right?

3 A. Not completely. I don't think I was completely on the
4 ground.

5 Q. You were totally defenseless?

6 A. I'm sorry?

7 Q. You're totally defenseless. You've been hit the back
8 of the head, off your running board and you're on the ground
9 you are on --

10 A. My feet is on the ground, yes, sir.

11 Q. Your feet are on the ground?

12 A. I was on the ground, not on the running board no more.

13 Q. I understand, you're on the dirt.

14 A. Yes, sir.

15 Q. Outside of the door, I assume.

16 A. Yes, sir.

17 Q. Are you flat out on the ground or are you crawling?

18 A. No. I don't believe I was flat out at all.

19 Q. Okay. From that position weren't you defenseless?

20 A. Was I defenseless?

21 Q. Yeah.

22 A. I didn't think about the defenseless, I was running for
23 my life. I thought I was shot, I wanted to run away from
24 the direction where it came from.

25 Q. But somebody trying to kill you had you in a pretty

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1 good spot to just go ahead and finish you off, didn't they?

2 A. I don't know. I'm not Mr. Hyatt, sir.

3 Q. You don't know? You don't think you were vulnerable
4 after you got hit in the head and you're on the ground and
5 somebody is there with a pickaxe that you're now saying is
6 trying to kill you, you don't think that was a good time to
7 finish you off?

8 A. I don't know, sir. I can't speak for Mr. Hyatt.

9 Q. Did you crawl somewhere? Did you crawl while you were
10 on the ground?

11 A. Did I crawl?

12 Q. Crawl.

13 A. I believe somehow I crawled a little bit, maybe I ran.

14 Q. Okay. You ran around the door, or you were past the
15 door? Do you recall?

16 A. I do not recall, sir.

17 Q. All right. But you end up on the opposite side of the
18 truck from where you say Mr. Hyatt hit you.

19 A. Yes, sir.

20 Q. And that's where you ended up shooting him, kind of on
21 the opposite side of that truck a little bit to the front
22 beside it, correct?

23 A. I don't believe it was on the opposite side of the
24 truck.

25 Q. Okay. Where do you believe it was at?

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1 A. I believe it was in front of the truck.

2 Q. Do you think it was directly in front of the truck?

3 A. I don't recall, sir. I was running between my truck
4 and Aaron's truck.

5 Q. Okay.

6 A. Between the two trucks.

7 MR. GRIER: Your Honor, we're trying to stipulate to a
8 piece of evidence here to save some time.

9 (Break in proceedings.)

10 MR. GRIER: Judge, I would move that yesterday's
11 proceedings -- transcript of yesterday's proceedings be
12 placed into evidence. We've got testimony or if you want me
13 to truncate it to the --

14 THE COURT: The entire proceeding or just his
15 testimony?

16 MR. GRIER: Well, we would have to work on getting that
17 testimony during a break or something in but we could do
18 that and present it and stipulate and agree on that if that
19 would be the proper way to avoid confusion.

20 THE COURT: Let's handle that outside the jury's
21 presence, that may be a matter of law. Are you through with
22 your cross?

23 MR. GRIER: I'm finished.

24 THE COURT: Okay. I hate taking a break during the
25 middle of a witness but I've got some hungry jurors over

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1 there and we've got food in the back getting cold. Okay.
2 So we will take a lunch recess at this point in time.
3 Ladies and gentlemen of the jury, don't talk about the case.
4 Again, you've only heard two-thirds or maybe three-fourths
5 of one witness, there's many other witnesses and other
6 evidence which may come in so don't talk with the case.
7 Before I excuse you for lunch recess, Mr. Kenneth Furr,
8 where are you, sir? Mr. Furr, I'm appointing you as the
9 foreman of the jury. It will be your duty to preside over
10 the deliberations in the jury room. It will be your -- you
11 will be the spokesperson for the jury here in court, and it
12 will also be your duty to write the verdict. However, it
13 can't be your verdict alone, it has to be a unanimous
14 verdict which I will tell all of you about later on. But it
15 will be your duty to write it on the verdict form and I will
16 give you further instructions about that at the conclusion
17 of the case. Okay? Y'all have a good lunch, we'll get you
18 back here in 30 or 45 minutes will be good, then we will go
19 from there. Okay.

20 (The jury left the courtroom.)

21 THE COURT: Mr. Victim, don't talk to anybody about the
22 case or your testimony. Okay. You can't even talk to the
23 solicitor about your testimony. You can go.

24 (A lunch break was taken.)

25 THE COURT: Mr. Grier, you were moving to -- right

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1 before we recessed for lunch you made a motion to introduce
2 into evidence the transcript of testimony from yesterday's
3 pretrial matter of two witnesses, those witnesses being the
4 victim and --

5 MR. GRIER: Your Honor, at this point it would just be
6 the one because we haven't used the transcript yet in the
7 cross examination of that second witness.

8 THE COURT: If he wants it to come in and the State
9 doesn't object you can go ahead and proceed.

10 MR. COOK: I don't have any objection.

11 MR. GRIER: I can introduce it. I actually have it in
12 my hand right now rather than -- if I can have it -- go
13 ahead and put into evidence and take it back to my desk to
14 make any notes with.

15 THE COURT: That's fine, we can go ahead and do that.
16 So it is all coming into evidence without objection by the
17 State then. Defense number 2 is going to be the transcript
18 of testimony of the victim, and defense number three is
19 going to be the transcript of testimony of -- I forget the.

20 MR. GRIER: Of Mr. Harlan Donnell Melton.

21 THE COURT: Mr. Melton. That's without objection.
22 Correct, Solicitor?

23 MR. COOK: Yes, sir.

24 (The two transcripts were received a
25 Defendant's 2 and 3.)

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1 (The jury returned to the courtroom.)

2 THE COURT: All members of the jury are present. And
3 Mr. Frick?

4 MR. FRICK: Thank you, Your Honor.

5 CROSS EXAMINATION

6 BY MR. FRICK:

7 Q. Mr. Nassrah, good afternoon.

8 A. Good afternoon, sir.

9 Q. Has anything come up on your screen in front of you?

10 A. Yes, sir.

11 Q. Is it up? Okay. I think the solicitor showed you
12 something that looked like that as well. Does that look
13 familiar to you?

14 A. I believe so.

15 Q. What does that look like to you?

16 A. Merle Lane.

17 Q. Can you mark with your finger with an X or a dot or
18 however where your field is approximately. Do I need to
19 move it over?

20 A. I don't see it.

21 Q. What is that right there? Is that the intersection of
22 Merle and some road?

23 A. That don't look like a field there, that's looks like a
24 highway.

25 Q. I didn't say that was a field, Mr. Nassrah, I'm asking

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1 if that's the intersection of a road, correct? That's Merle
2 Lane and the main road?

3 A. I believe so, yes, sir.

4 Q. All right. So if we had down this way -- let me get
5 that off there. Do you see your field now?

6 A. Yes, sir.

7 Q. Can you mark where it is?

8 A. It's right here.

9 Q. Okay. The gate to your field on Merle Lane, is it on
10 Merle Lane? Or where is the gate approximately, can you
11 tell?

12 A. I really don't know exactly where is it at, somewhere
13 in here.

14 Q. Okay.

15 A. Somewhere in here.

16 Q. Okay.

17 A. It's a field, then you have to drive between the trees
18 and the end of trees is where the gate at the road.

19 Q. But it's all of way at the end of the road, you can't
20 any further.

21 A. Do what, sir.

22 Q. You can't go any further on Merle Lane, that's the
23 field, right?

24 A. Right where the gate is?

25 Q. Yes, sir?

TESTIMONY OF KAMIL NASSRAH

1 A. That's where the field starts, yes, sir. I mean, I'm
2 assuming. I don't own the property, I never surveyed it,
3 that's where the gate is.

4 Q. Mark where you believe Mr. Hyatt's house is.

5 A. I don't believe I see it in here.

6 Q. Approximately where is it then?

7 A. I don't know, sir, I don't see the house.

8 Q. You don't see the house. Do you see this that the
9 solicitor showed you before and you identified as
10 Mr. Hyatt's house?

11 A. It's very small, I cannot see it.

12 Q. I know. That's a small screen and I understand.

13 You're not trying to be evasive, I understand, it's a small
14 screen. I understand. Well, what I mark right there, do
15 you agree with me that's where Mr. Michael Hyatt's house is?

16 A. I believe so. If it's a house that's where it is, it's
17 the first house.

18 Q. And you said that your gate is somewhere around here,
19 right?

20 A. I'm sorry?

21 Q. You said that the gate to the field is approximately
22 where I put that quasi dot.

23 A. I'm not sure. I said it's -- all I know is there is a
24 driveway --

25 Q. Then let me ask you this. Is the gate right here? Is

TESTIMONY OF KAMIL NASSRAH

1 it in the middle of Merle Lane?

2 A. Is that Merle Lane?

3 Q. You just identified it as Merle Lane. Are you telling
4 me it's not now?

5 A. Sir, if I'm on Merle Lane I can exactly show you, but I
6 cannot show you -- I don't know where the dirt road, where
7 the field, where the gate, I'm sorry.

8 Q. Well, you didn't have any problem when Mr. Cook asked
9 you about it, how come all the sudden you don't understand
10 what I'm asking you about it? What's the problem?

11 A. I don't have a problem.

12 Q. Well, this morning you can completely identify it and
13 now you're telling me you don't know what it is?

14 A. I did not quickly identify the gate at all, sir. It's
15 the gate at the end of the dirt road?

16 Q. Okay. It's the end of the dirt road, we've established
17 this, right? The gate is at the end of the dirt road,
18 correct?

19 A. You tell me where the end of the dirt road --

20 Q. Is that it?

21 A. I don't know, sir. Is that it? I don't know. I can't
22 give you an answer if I don't know.

23 Q. Okay. So your answer is you don't even know what
24 you're looking at here, right?

25 A. I can't see where the dirt road, where the field is

TESTIMONY OF KAMIL NASSRAH

1 connected.

2 Q. Okay.

3 A. Can you show me? And if you can't I don't know.

4 Q. Let's see what the fine folks at Google can do for us.

5 Okay. Can you see there? Do you see something on your
6 screen right now?

7 A. Yes, sir.

8 Q. What is that showing you?

9 A. The gate, I'm assuming, is somewhere in here.

10 Q. Somewhere in there.

11 A. Yes, sir.

12 Q. Okay. All right. You pulled out of there and pulled
13 down the road.

14 A. Yes, sir.

15 Q. You've testified previously you pulled in front of
16 Mr. Hyatt's house. You testified previously you pulled up
17 and you could see his property, but your testimony is you
18 pulled out of the gate, right? Well, did you pull all of
19 the way down here or did you pull here? Where did you pull?

20 A. I pulled enough to clear the gate with my truck,
21 trailer tractor and the hay rake, sir. Where is that
22 exactly? I don't know where that is exactly. If I'm there
23 at the dirt road we can --

24 Q. Were there trees to your left when you pulled out?

25 A. I don't recall, sir.

TESTIMONY OF KAMIL NASSRAH

1 Q. So what you're saying is you did not come down here and
2 pull here, that's what you're saying?

3 A. I don't believe so, sir. I pulled out of the gate,
4 sir, to wait for my help to get there, I can't tell you
5 exactly where. It's just enough to clear the trailer, the
6 truck, the trailer and the hay rake.

7 Q. Okay. And you deny saying yesterday that that was in
8 front of Mr. Hyatt's house.

9 A. I don't know. I don't know if it wasn't -- I can't
10 tell you if it was in front of it, before it, after it, I
11 don't know.

12 Q. You do recall driving past that house, right?

13 A. I have to pass that house to go out, that's the only
14 way in and out.

15 Q. Okay. And when you passed the house you said you did
16 or did not see somebody in that yard?

17 A. When I passed the house?

18 Q. Leaving. Not coming in, when you were leaving.

19 A. Leaving the property, yes, I believe Mike Hyatt was in
20 the yard.

21 Q. You believe he was in the yard. Okay.

22 A. I try not to look or anything, I don't want to have no
23 contact with either, I just kept on going.

24 Q. Sure. All right. You drive down a little further and
25 then something is blocking you, correct?

TESTIMONY OF KAMIL NASSRAH

1 A. Mr. Aaron pulled in.

2 Q. Previously we'd identified this as the driveway of a
3 neighbor where most of this took place; is that correct?

4 A. That is correct.

5 Q. Where were you sitting? Where was your vehicle
6 sitting?

7 A. My vehicle?

8 Q. Yes, sir, when you got blocked in.

9 A. Right there at the driveway, maybe two or three feet
10 before, three feet after, I don't know.

11 Q. You recognize Aaron Hyatt.

12 A. Yes, sir.

13 Q. Did you recognize him that day?

14 A. Yes, sir. When he got out of the truck, yes, sir.

15 Q. He comes toward you?

16 A. No, sir.

17 Q. He stayed at his truck.

18 A. No. He stepped out of the truck.

19 Q. Has he stepped out of his truck? Does he stay beside
20 his truck or approach you or what?

21 A. He stepped out of the truck and he starts shouting.

22 Q. Okay.

23 A. I couldn't exactly make out what he was saying. I
24 stepped on my running boards, then he started shouting and
25 then he starts looking towards the bed of his truck.

TESTIMONY OF KAMIL NASSRAH

1 Q. Okay. Did he go that way and grab something?

2 A. I don't recall.

3 Q. Okay. You were standing -- you're standing on the
4 running board of your F350 diesel pickup truck, correct?

5 A. One foot on the running board, one foot inside the
6 truck.

7 Q. The truck is still running?

8 A. Yes, sir.

9 Q. Did you ever cut your truck off?

10 A. I don't believe so, no.

11 Q. I think you said it's a diesel engine, it's pretty
12 noisy, right?

13 A. Yes, sir.

14 Q. When you're standing on the running board, you can
15 understand what Aaron Hyatt is saying to you?

16 A. Can I understand what he's saying?

17 Q. Yes, sir.

18 A. He is closer to what you and I were right there.

19 Q. And he is telling you your days are numbered and
20 whatever else?

21 A. Where is your escort, where is --

22 Q. Where is your escort, that's right, the statement we
23 hear of this morning. Okay. When are you struck then?

24 A. I'm sorry?

25 Q. When are you struck? That's when you're stuck in the

TESTIMONY OF KAMIL NASSRAH

1 back of your head, right?

2 A. Yes, sir.

3 Q. Where is your scar?

4 A. Where?

5 Q. Yes, sir.

6 A. Somewhere in there.

7 Q. Okay. And was it -- do you know, was it the back of
8 your head, the top of your head, the side of your head, do
9 you know?

10 A. Sir, it's right there. I don't know what you call
11 that.

12 Q. That's what -- quite frankly I don't see anything right
13 there so you tell me.

14 A. You don't see anything?

15 Q. No, sir.

16 A. Sorry.

17 MR. FRICK: Your Honor, I would ask that he come down
18 so the jury can inspect.

19 THE COURT: Solicitor?

20 MR. COOK: No objection.

21 THE COURT: Thank you, sir. If you will please go
22 stand in front of jury under better lighting.

23 Q. Just show them approximately where your scar is, tell
24 them where your scar is.

25 A. Somewhere in here, sir.

TESTIMONY OF KAMIL NASSRAH

1 Q. It's right there. Okay. All right. Thank you, sir
2 that's all I need. Appreciate it. You were struck while
3 you're standing on your running board still?

4 A. I'm sorry?

5 Q. He hit you in the back of the head while you're
6 standing on your running board?

7 A. Yes, sir.

8 Q. Okay. Do you have any idea who struck you in the back
9 of the head? I know what you know now, but at the time did
10 you know what was going on?

11 A. No, sir.

12 Q. Did you fall immediately?

13 A. Sir, you're asking me a question did I fall
14 immediately. I got struck in the head, I don't know, I
15 can't answer that question.

16 Q. Well, here is the problem I've got, Mr. Nassrah.

17 A. I fell to the ground. I'm telling you what I can
18 remember, sir.

19 Q. Okay.

20 A. Is it immediately? I don't know.

21 Q. Okay. Did you lay on the ground, did you stagger?

22 A. I did not lay on the ground.

23 Q. All right. At some point were you on the ground
24 between the two trucks?

25 A. Laying on the ground?

TESTIMONY OF KAMIL NASSRAH

1 Q. Yes, sir.

2 A. Not laying on the ground. I was running, I don't
3 believe I was -- I don't remember exactly, I don't believe I
4 was laying on the ground.

5 Q. Okay.

6 A. If you're talking about immediately or later, or I mean
7 you're asking me a question in general. Is it immediately
8 after I got struck or later on?

9 Q. I'm trying to establish the chain of events. You're
10 standing on your running board, you get hit. You don't end
11 up laying on the driver's side of your truck, you're over in
12 the driveway on the other side of the road. How do you get
13 there?

14 A. I ran away from where I got hit. When you get hit the
15 first thing you say to yourself is to run away from where
16 you got hit with, and that's why I ran away to the other
17 side.

18 Q. Okay. And you're certain you were standing -- the door
19 opened standing on the running board when you were struck.

20 A. Yes, sir.

21 Q. You had your pistol on you the whole time?

22 A. Yes, sir.

23 Q. You had it when you were out in the field, it's just
24 something you have on.

25 A. Yes, sir.

TESTIMONY OF KAMIL NASSRAH

1 Q. At this point you have not drawn your weapon at any
2 time?

3 A. When?

4 Q. Right after you got hit. I apologize, that wasn't a
5 fair question.

6 A. That's okay.

7 Q. While you're in the vehicle when you see Mr. Hyatt,
8 Mr. Aaron Hyatt, you don't draw your weapon out.

9 A. No, sir. I have no reason to.

10 Q. Don't tell him, "I've got a gun, back up."

11 A. I'm sorry?

12 Q. You don't tell him that you've have got a gun, "Get out
13 of my way."

14 A. No, sir.

15 Q. Don't fire a warning shot?

16 A. No, sir. If I don't pull a gun I can't fire a warning
17 shot.

18 Q. It would be difficult. All right. You had one other
19 person out there in the field with you at that time. Harlan
20 was the other guy out there is the only other person out
21 there with you? How many other people were out there when
22 you're locking up?

23 A. Just me and Donnell.

24 Q. And he's behind you on the tractor?

25 A. Yes, sir.

TESTIMONY OF KAMIL NASSRAH

1 Q. Right behind you on the tractor?

2 A. Yes, sir.

3 Q. You've got a trailer with a load full of hay. The
4 trailer is loaded with hay.

5 A. Yes, sir.

6 Q. I'm going to show you a picture. Does any of that look
7 familiar to you?

8 A. Yes, sir.

9 Q. Do you recognize that truck?

10 A. That's my truck.

11 Q. Is this the hay?

12 A. Yes, sir.

13 Q. What's that?

14 A. That's the truck that pulled in in front of me with
15 Aaron Hyatt.

16 Q. Aaron's truck, at least for the purposes of that day.

17 A. Yes, sir.

18 Q. As far as you knew at that time. This is what it
19 looked like, right, that day right at the incident.

20 A. Yes, sir.

21 Q. All right. The tractor with your coworker following
22 is -- it's not visible in this picture, is it?

23 A. No. Something is --

24 Q. There's something back there but it doesn't look like a
25 tractor back there.

TESTIMONY OF KAMIL NASSRAH

1 A. I don't know what it is.

2 Q. But the tractor is back behind this trailer, correct?

3 A. The tractor would have been behind the trailer.

4 Q. Okay.

5 MR. FRICK: Your Honor, at this time I would move that
6 this be in evidence as Defense Number 4.

7 THE COURT: Any objection?

8 MR. COOK: No objection.

9 THE COURT: Without objection it's admitted as Defense
10 Number Four.

11 (The photograph was received as Defendant's 4.)

12 Q. After everything that happens in the driveway, you've
13 been struck, you fired the -- you fire a warning shot?

14 A. Yes, sir.

15 Q. You say he's approaching, you fire at him, correct, at
16 Michael Hyatt?

17 A. I'm sorry?

18 Q. You fired twice, right?

19 A. I fired a warning shot to the ground.

20 Q. The second shot --

21 A. At Michael Hyatt.

22 Q. -- is intended for Michael Hyatt.

23 A. I'm sorry?

24 Q. You're shooting at Michael Hyatt.

25 A. Yes, sir.

TESTIMONY OF KAMIL NASSRAH

- 1 Q. He's coming at you?
- 2 A. Yes, sir.
- 3 Q. Do you know what he has in his hand?
- 4 A. I saw a stick. I couldn't recognize exactly what it is
- 5 but I know what it looked like.
- 6 Q. Is your truck still running?
- 7 A. I believe so.
- 8 Q. At that point you say you hear Aaron Hyatt say, "Kill
- 9 him, Daddy, kill him," correct?
- 10 A. Yes, sir.
- 11 Q. Okay.
- 12 A. At that moment -- you mean at which moment, sir?
- 13 Q. Well, I guess when you're over there on the ground.
- 14 It's your story, not mine.
- 15 A. I'm asking you a question about the incident. You said
- 16 at that moment.
- 17 Q. Okay. Well, when did you say it?
- 18 A. At which moment?
- 19 Q. When did you hear him say it?
- 20 A. After I got hit and I was running I heard Aaron Hyatt
- 21 saying, "Kill him, Daddy, kill him."
- 22 Q. Okay. All right. At some point do you get back to
- 23 your car -- after the event has occurred, you've been
- 24 struck, you fired your shots, do you go back to your truck?
- 25 A. Did I go back to my truck?

TESTIMONY OF KAMIL NASSRAH

- 1 Q. Yes, sir.
- 2 A. I went looking for tissues, paper towels to stop the
3 bleeding, to the passenger's side.
- 4 Q. To the passenger's side?
- 5 A. Not to the driver's side.
- 6 Q. Yes, sir. I'm going to show you another picture.
- 7 A. Sure.
- 8 Q. What is that?
- 9 A. That's my truck.
- 10 Q. Okay. Is that the passenger's side?
- 11 A. Yes, sir.
- 12 Q. Is that the glove box?
- 13 A. Yes, sir.
- 14 Q. Did you get the glove box open?
- 15 A. Yes, sir.
- 16 Q. This is how you left it, correct? Is this an accurate
17 depiction of how you left the vehicle?
- 18 A. I don't know how I left it, sir, I couldn't barely see.
19 I don't know how I left it or if anybody was in it after
20 that, I don't know.
- 21 Q. But you opened the door?
- 22 A. I believe I opened the door, yes.
- 23 Q. You opened the glove box?
- 24 A. And the glove box.
- 25 Q. And I see some tissue.

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1 A. Uh-huh.

2 Q. And you've got a .22 caliber in there, too, don't you?

3 A. I always keep a small caliber for coyotes and stuff
4 because we're out in the field, yes, sir.

5 Q. Well, what does a .22 in the glove box do for you if
6 you are in the middle of the field? Never mind.

7 MR. FRICK: I move this in as Defendant's Exhibit
8 Number 5.

9 MR. COOK: No objection.

10 THE COURT: Without objection Defense 5.

11 (The photograph was received as Defendant's 5.)

12 Q. At any point during the event -- I'll just summarize it
13 as the event -- does Aaron Hyatt have a weapon in his hand?
14 Do you see him with a weapon in his hand?

15 A. I couldn't see it.

16 Q. Okay. So he did not point a weapon at you.

17 A. I'm sorry?

18 Q. He did not point a weapon at you.

19 A. I don't know, I did not see.

20 Q. Okay. All right. Well, he didn't point a gun at you
21 while you were standing there or a stick or anything else
22 while he was at his truck.

23 A. I'm really sorry, I cannot hear you, sir. Did he what?

24 Q. You said you did not see him with a weapon.

25 A. No, sir.

TESTIMONY OF KAMIL NASSRAH

1 Q. Okay. You did not see him with a weapon before all of
2 this took place while he was standing at his truck, correct?

3 A. No, sir. He was looking at the back of his truck.

4 Q. You do not see him afterwards with anything.

5 A. Afterwards, which is --

6 Q. After the event, I'm sorry, I jumped way ahead.

7 A. After the event I heard him saying something about a
8 gun.

9 Q. Heard him say something about a gun?

10 A. Yes, sir.

11 Q. How do you know it was him?

12 A. How do I know it was him?

13 Q. Yeah. Do you know him well enough to recognize his
14 voice?

15 A. I believe I recognized Aaron's voice, he threatened me
16 several times. I know what his voice is like, sir, you
17 don't forget.

18 Q. All right. Mr. Grier asked you a little bit about this
19 but I'm going to show you this. Look through all three
20 pages, we don't have to read it verbatim, just glance over
21 it. Do you recognize what that is?

22 A. It's my signature.

23 Q. Okay. But what is it?

24 A. Suspect rights, Miranda warning.

25 Q. Okay. What's the next page? Does it look familiar to

TESTIMONY OF KAMIL NASSRAH

1 you? Yes or no.

2 A. I don't know.

3 Q. Do you have any idea what that piece of paper is? From
4 your recollection, not reading from the top, as I hand it to
5 you do you recall ever seeing that piece of paper before?

6 A. No.

7 Q. Okay. Do you recall talking to law enforcement on the
8 day of the event?

9 A. That was before they picked me up and took me to the
10 hospital and they were talking. I don't know, people were
11 talking. There were a lot of people talking.

12 Q. There were a lot of folks out there.

13 A. I'm sorry?

14 Q. There were a lot of folks out there. Who did you talk
15 to on this statement, do you know?

16 A. I can't remember. I just -- they were talking and I
17 was answering whatever, I don't remember.

18 Q. You don't recall this statement?

19 A. No, sir.

20 Q. Do you deny giving a statement?

21 A. No.

22 Q. Okay. Let me see it back for a second. You don't
23 recall saying that you were sitting in your car with your
24 head out the window when you got hit?

25 A. Do what, sir?

TESTIMONY OF KAMIL NASSRAH

1 Q. You don't recall telling law enforcement on that day
2 that you were sitting in your car with your head out the
3 window when you were struck?

4 A. In my car?

5 Q. The truck. You don't remember?

6 A. Sitting in my truck, is that what it said?

7 Q. Uh-huh.

8 A. Can I see that, please?

9 Q. Here. Why don't you read through it, not out loud,
10 just glance through it.

11 A. Where is it, sir?

12 Q. All right. "He started yelling, 'Your days are
13 numbered.' I couldn't go anywhere. His truck stopped me
14 from leaving, there was a tractor behind me, I was stuck.
15 Took off my seat belt, got my cellphone out, I stuck my head
16 out and looked out the window of my truck." Does it say
17 that right there?

18 A. That's right, I looked out my truck.

19 Q. "I took off my seatbelt and got my cellphone out." So
20 are you telling me now that you've still got your seatbelt
21 on while you were standing on the running board?

22 A. Can you read that again, sir?

23 Q. Sure. "I stuck my head out and looked out the window
24 of my truck." Let's see, I'm getting my lines mixed up. "I
25 couldn't go anywhere, the truck stopped me from leaving,

TESTIMONY OF KAMIL NASSRAH

1 there was a tractor behind me. I was stuck. I took off my
2 seatbelt, got my cellphone out, I stuck my head out."

3 A. Got myself what?

4 Q. "Cellphone out. I stuck my head out and looked out the
5 window of my truck to see what Aaron Hyatt was doing."

6 A. Right. Okay.

7 Q. So were you still sitting in the truck or were you
8 standing?

9 A. That's not what you asked me. You asked me if I got
10 struck while I was still in the truck and the statement said
11 that I did. Did it say it in there? I didn't see that.

12 Q. "I believe I dialed the number 9 on my phone and I was
13 hit on the back of my head with something."

14 A. Okay. Did it say I was struck while I was still
15 sitting in the truck?

16 Q. That's what I'm asking you. What is your testimony?

17 A. You said it's in here. You said do you remember saying
18 it in here. I don't see it in here.

19 Q. Okay.

20 A. Is it in here or is it not?

21 Q. Does it say you were standing on the running board of
22 your truck?

23 A. Yes, sir. Does it say I was sitting in my truck when I
24 was struck? You told me that's what it said.

25 Q. Wait a minute. If you're saying that it says it's on

TESTIMONY OF KAMIL NASSRAH

1 the running board and I am saying the other thing, it
2 doesn't say either one of them, how are either one of us
3 right?

4 A. No, sir. You said in the testimony I said I was struck
5 in the head while I was sitting in my truck.

6 Q. Okay. See where I've got my finger right here?

7 A. Uh-huh.

8 Q. Read that line.

9 A. "I do not know how I got" -- I can't.

10 Q. Hold it.

11 A. "I do not know how I got out of my truck. I was
12 standing on the running board, one foot on the running
13 board," I said that several times already, "and one foot
14 still in the truck. You even asked me if I was in and out
15 and I said I don't know what you call it, is that in and
16 out? Am I correct, sir?

17 Q. All right. Mr. Nassrah, whatever you say, sir. But
18 you said on the 16th you don't know how you got out of your
19 truck.

20 A. Sir, you get struck and your head is opened that wide,
21 you expect me to remember how I got out of the truck?

22 Q. You somehow remembered how to give them this statement.

23 A. What does the statement say, sir?

24 Q. I have tried to show it to you, you refuse to read it.

25 A. You're asking me too many questions and you're not

TESTIMONY OF KAMIL NASSRAH

1 telling me what you want me to say.

2 MR. FRICK: Your Honor, at this point I would move this
3 statement into evidence as a prior inconsistent statement.

4 THE COURT: Any objection from the State?

5 MR. COOK: No objection from the State.

6 THE COURT: Without objection the document is admitted
7 into evidence as defendant's next in order.

8 (The statement was received as Defendant's 6.)

9 THE COURT: Sir, you're doing fine, I know you're
10 frustrated, just answer the question that's asked and don't
11 ask the lawyer questions. If you answer the question that
12 is asked this will go by a lot quicker and a lot more
13 smoothly. Okay?

14 THE WITNESS: Yes, sir.

15 THE COURT: Thank you, sir.

16 MR. FRICK: Beg the Court's indulgence one moment.

17 THE COURT: Yes, sir.

18 (Break in proceedings.)

19 Q. Let me show you one more picture, Mr. Nassrah. Do you
20 recognize anything in this picture?

21 A. I believe that's the head of the part of my truck and
22 the trailer. That's my tractor, this is Mike's truck.

23 Q. This is the way it was on that day in question?

24 A. I don't know.

25 Q. As you leave the field is what I'm talking about.

TESTIMONY OF KAMIL NASSRAH

1 A. As we leave the field he was behind me. How far, how
2 close --

3 MR. GRIER: Judge, I can't hear him, the mic. has
4 gotten turned.

5 THE COURT: Just try to speak loud. They need to talk
6 loud to you and you need to talk loud to everybody else. Go
7 ahead.

8 A. I'm sorry.

9 Q. It's all right, I had you turned sideways. So this is
10 the tractor and that's your trailer.

11 A. That's my trailer, yes, sir.

12 MR. FRICK: Your Honor, at this time I would move this
13 in as defense next.

14 THE COURT: Without objection defendant's next in order
15 is admitted into evidence.

16 (The photograph was received as Defendant's 7.)

17 MR. FRICK: Thank you, sir, that's all of the questions
18 I have.

19 THE COURT: Any redirect, Solicitor?

20 MR. COOK: Just briefly. May I approach, Your Honor?

21 THE COURT: Yes, sir.

22 (A bench conference was held and a recess was
23 taken.)

24 THE COURT: All right. Redirect?

25 MR. COOK: Thank you, Your Honor.

TESTIMONY OF KAMIL NASSRAH

1 REDIRECT EXAMINATION

2 BY MR. COOK:

3 Q. Mr. Nassrah, the statement that Mr. Frick was showing
4 you, that was just entered into evidence, does this look
5 like the same thing?

6 A. The what?

7 Q. The statement that you were shown, does it look like
8 the same one that Mr. Frick just showed you? And there's
9 some different stuff highlighted on mine.

10 A. Yes, sir.

11 Q. You agree this is a copy of your statement?

12 A. Yes, sir.

13 Q. Okay. Can you tell us when the statement was given,
14 can you read that?

15 A. Date 09-16-10.

16 Q. September 16th of 2010?

17 A. Yes, sir.

18 Q. And your signature is at the bottom?

19 A. Yes, sir.

20 Q. Is this statement handwritten or is it typed?

21 A. It's typed.

22 Q. On September 16th, did you have a typewriter or a
23 computer with you out at the scene?

24 A. No, sir.

25 Q. So you personally didn't type this.

TESTIMONY OF KAMIL NASSRAH

1 A. No, sir.

2 Q. So you orally gave this statement to somebody from law
3 enforcement.

4 A. Yes, sir.

5 Q. But after you gave the statement to the best of your
6 knowledge they captured what you had told them and that's
7 why you signed it, correct?

8 A. They were asking all kinds of questions. I really
9 don't remember who -- whatever they asked me I was answering
10 the questions.

11 Q. So -- and I know you signed it and it's true and
12 correct, but there is a possibility because you didn't
13 personally write this something may not be exactly recorded
14 the way that you recited it to law enforcement.

15 A. I don't remember.

16 Q. Well, where I'm going with this is Mr. Grier and
17 Mr. Frick are talking about you got your head out the window
18 and looking forward, you say you were on the running board
19 looking out. That's not exactly the same thing but you
20 didn't actually write this statement, correct?

21 A. No, sir.

22 Q. Another issue in the statement when you were asked how
23 far out in the field you went and where you stopped when you
24 were leaving the field. They told you that yesterday you
25 testified that you stopped in front of Mr. Hyatt's house.

TESTIMONY OF KAMIL NASSRAH

1 A. That was a completely different question, sir.

2 Q. Okay. Well, today you testified and said that you
3 pulled out far enough that your truck, the hay, the tractor
4 and the rake could fit out of the gate.

5 A. Yes, sir.

6 Q. What I have underlined in blue, this is from your
7 statement on September 16th. Can you read that?

8 A. "Me and Harlan Melton stayed behind to lock the gate.
9 After we locked the gate we start out on the road about
10 150 feet past Mike Hyatt's house.

11 Q. Okay. Stop right there. So on the 16th -- and this is
12 all right after this happened you said the same thing you
13 said today is you came out of the gate, stopped and about
14 150 feet later you passed Michael Hyatt's house, correct?

15 A. (Inaudible.)

16 Q. Okay. So what you said on the 16th is consistent with
17 what you said today that there was --

18 MR. FRICK: Your Honor, is he testifying for the --

19 THE COURT: Sustain the objection, leading question.

20 MR. COOK: Nothing further from the State, Your Honor.

21 THE COURT: All right. Thank you, sir, you may step
22 down. Let me see the lawyers up here real quick.

23 (Bench conference was held.)

24 THE COURT: All right. Ladies and gentlemen, earlier
25 today I indicated that I had some personal business matters

TESTIMONY OF KAMIL NASSRAH

1 day? All right. See y'all in the morning, be ready to roll
2 at 9:30.

3 (Court adjourned for the evening and resumed at
4 9:30 a.m. on January 7th, 2014.)

5 THE COURT: Any issue before we bring the jury in?

6 MR. COOK: None from the State.

7 MR. GRIER: None from the defense.

8 THE COURT: Bring them in.

9 (The jury return to the courtroom.)

10 THE COURT: Let the record reflect all jurors are
11 present. Good morning members of jury, hope you had a good
12 evening, not as cold a morning, although I did have to stop
13 by Advanced Auto and buy my son a new battery this morning.
14 And I didn't like jumping off my car this morning at 6:45 in
15 the morning, so bear with us. All right. Are y'all ready
16 to proceed?

17 MR. COOK: I think we are ready, Your Honor.

18 THE COURT: All right. State can call it's next
19 witness.

20 MR. COOK: State calls Donnell Melton.

21 The witness, HARLAN DONNELL MELTON, was first
22 duly sworn and testified as follows, on:

23 DIRECT EXAMINATION

24 BY MR. COOK:

25 Q. State your name, please.

HARLAN DONNELL MELTON

- 1 A. Harlan Donnell Melton.
- 2 Q. Do you go by Harlan or Donnell?
- 3 A. Either one.
- 4 Q. How old are you, Mr. Melton?
- 5 A. I am 41.
- 6 Q. What do you do for a living?
- 7 A. I'm a farm technician.
- 8 Q. You work for Kamil Nassrah?
- 9 A. Yes, sir.
- 10 Q. How long have you worked for Kamil?
- 11 A. Since 2006, but I took a break in between a little
- 12 while here and there.
- 13 Q. What do you do for Kamil generally?
- 14 A. I maintain farm equipment, take care of the animals,
- 15 make sure all of the stuff on the farm was going right.
- 16 Q. Do you know Michael and Aaron Hyatt?
- 17 A. Not personally. I know who they are when I see them.
- 18 Q. Were you working with Kamil on September 16, 2010?
- 19 A. Yes, sir.
- 20 Q. Do you remember what you were doing that day?
- 21 A. Cutting hay, bailing hay.
- 22 Q. Where at?
- 23 A. On Merle Lane.
- 24 Q. Can you see this image on your screen?
- 25 A. No, there ain't nothing on there.

HARLAN DONNELL MELTON

- 1 THE COURT: Touch it.
- 2 A. Okay. Yes, sir.
- 3 Q. Can you make a mark on your screen with your finger
- 4 where the field is? Can you tell?
- 5 A. (Witness complies.)
- 6 Q. Okay. So that's Kamil hay field?
- 7 A. Yes, sir.
- 8 Q. All right. How long were y'all out there?
- 9 A. It had been pretty much since the dew dried that
- 10 morning because you can't bail hay until it dries, so by the
- 11 time they dew dries until 3:30 or 4:00, or something like
- 12 that.
- 13 Q. The 16th, was that the first time y'all had been out
- 14 there that week?
- 15 A. No, sir.
- 16 Q. Y'all had been out there all week?
- 17 A. Yes, sir, two or three days.
- 18 Q. Okay. Were you working with Kamil every day that week?
- 19 Had you been out there with the crew each time?
- 20 A. Yes, sir.
- 21 Q. Were you out there on the 13th?
- 22 A. I wasn't there at the time of the gate locking incident
- 23 but I came later.
- 24 Q. On the 16th who were the last people to leave the
- 25 field?

HARLAN DONNELL MELTON

1 A. Kamil left in front of me, I was the last one out of
2 the gate.

3 Q. What's your standard procedure when you're finishing up
4 for the day -- what all do you have to do before you can go
5 home?

6 A. Well, we had to load the last load of hay, strap it
7 down, then I had to reattach the rake. And after we did all
8 of that we came out of the gate, he pulled up far enough for
9 me to get out and waited on me to lock the gate.

10 Q. So it's just you and Kamil out there at this time?

11 A. Yes, sir, everyone else had left.

12 Q. What was Kamil driving?

13 A. A white F350 dually pulling a trailer load of hay.

14 Q. What were you driving?

15 A. I was driving a Komodo Tractor with a hay rake behind
16 it.

17 Q. How big is this -- can you tell the jury how big this
18 rake is?

19 A. The length of it is probably 15 or 20 feet, and the
20 length of the tractor is probably 15 feet or so.

21 Q. So it's a pretty big rig?

22 A. It's pretty long, yes, sir.

23 Q. So Kamil is leading out and you are behind him?

24 A. Yes, sir.

25 Q. When you come out -- can you mark where the gate is on

HARLAN DONNELL MELTON

1 that field? Do you know where the gate comes out that turns
2 into Merle Lane?

3 A. That's not it. It's right in there, right at the
4 corner of the field where it transitions from the green to
5 not green.

6 Q. Okay.

7 A. It's right in there somewhere. Right before that
8 little driveway that curves out, it's right there at that
9 driveway.

10 Q. All right. So how far did y'all pull out before you
11 locked the gate?

12 A. It was at least -- I would say over 100 feet away from
13 the gate because the length of the truck and the tractor and
14 all of the implements and the trailer and all, it's pretty
15 long.

16 Q. So you say 100 feet. Are you measuring from the front
17 of Kamil's truck to the gate?

18 A. At least, yes, sir. That's a pretty long rig, the
19 rake, all of that, it's long.

20 Q. With your finger can you mark where Michael Hyatt's
21 house is? Can you circle it?

22 A. I'm thinking that's it right there.

23 Q. So you've got the gate marked and you've got Michael
24 Hyatt's house marked.

25 A. Yes, sir.

HARLAN DONNELL MELTON

1 Q. Can you make a mark where Kamil stopped when y'all came
2 out of the gate? Can you guess about where he was?

3 A. While I was locking the gate?

4 Q. Right.

5 A. It wasn't all the way up to his house, I'm pretty sure
6 we were in front of his property though because I'm not sure
7 where his property line is.

8 Q. Roughly right there?

9 A. Yeah. It's hard to judge distance on a little map.

10 Q. I know, I understand. So Kamil's truck -- if you were
11 sitting in Kamil's truck when he stopped and you looked out
12 the driver's side, would there be trees or would it be
13 Michael Hyatt's house?

14 A. I can't say for sure because --

15 Q. You were at the back?

16 A. -- I was all the way behind him. I couldn't tell what
17 was directly in his driver's window. He could probably see
18 the house but he was probably still in front of the trees.
19 It's hard to say.

20 Q. Well, I'll ask you this, how far did you have to walk
21 from your tractor back to the gate to lock it?

22 A. 20 feet, 30 feet.

23 Q. So not far.

24 A. Not far.

25 Q. So after you locked the gate and back on the tractor,

HARLAN DONNELL MELTON

- 1 what do y'all do next?
- 2 A. Proceed to leave.
- 3 Q. When you leave, do you pass Michael Hyatt's house?
- 4 A. Yes, sir.
- 5 Q. Did you see Michael Hyatt?
- 6 A. Yes, sir.
- 7 Q. What was he doing?
- 8 A. He was standing in his yard with a large axe handle
- 9 piece of wood, some kind of stick in his hand.
- 10 Q. Did he say anything to you?
- 11 A. Not that I recall.
- 12 Q. Did you say anything to him?
- 13 A. No, sir.
- 14 Q. Did you hear Kamil say anything to him?
- 15 A. No, sir.
- 16 Q. Did you stop your tractor in front of his house?
- 17 A. No, sir.
- 18 Q. Did Kamil stop his truck in front of his house?
- 19 A. No, sir.
- 20 Q. All right. So y'all kept riding past Michael Hyatt's
- 21 house.
- 22 A. Yeah.
- 23 Q. What happened next?
- 24 A. About right here at this driveway, right in there,
- 25 Aaron Hyatt had blocked the road with his --

HARLAN DONNELL MELTON

1 Q. Stop right there. At that -- did you come to a stop?

2 A. Yes, sir.

3 Q. Why did you stop?

4 A. I didn't really know at the time. I couldn't see what
5 was directly in front of me because all I could see was a
6 trailer with hay on it and I had to stop all of the sudden.
7 I knew something was wrong because it just don't stop like
8 that.

9 Q. Once you stopped behind the hay, what happened next?

10 A. Mr. Michael Hyatt come running by the tractor, kind of
11 looked and I seen him come by.

12 Q. Was he on your left or your right?

13 A. My left.

14 Q. Was he in his truck? Was he running? What was he
15 doing?

16 A. He was on foot. I can't really say he was running but
17 he was moving on pretty good by me on foot.

18 Q. So after Michael Hyatt comes past you what do you do?

19 A. I locked the tractor down where it wouldn't roll and I
20 jumped off, it takes a second or two, jumped off, ran in
21 front of the tractor to the passenger side door of the
22 truck.

23 Q. Ran up to the passenger side door of whose truck?

24 A. Kamil's truck.

25 Q. When you got up there what did you see?

HARLAN DONNELL MELTON

- 1 A. He was being attacked by Michael Hyatt, he was hit in
2 the head with a piece of wood.
- 3 Q. Did you see Kamil get hit?
- 4 A. Yes, sir, I did.
- 5 Q. Where was Kamil when he got it?
- 6 A. He was kind of half in and half out of his truck
7 standing up looking forward.
- 8 Q. Where were you when you see this?
- 9 A. Passenger door of the truck -- passenger door of the
10 truck opening it.
- 11 Q. Were the doors opened?
- 12 A. I opened them.
- 13 Q. So how far are you from Kamil when he gets hit?
- 14 A. The width of the truck.
- 15 Q. Okay.
- 16 A. Closer than me and you.
- 17 Q. Okay. What did Kamil do when he got hit?
- 18 A. Kind of went down, down towards the ground. The truck
19 is high, after you go down so far you can't see so I don't
20 know if he was laying flat or scrambling or what.
- 21 Q. Because you're on the opposite side of the truck.
- 22 A. I was on the opposite side of the truck.
- 23 Q. What happened next?
- 24 A. He comes back into view in front of the truck and he
25 was bleeding pretty bad already.

HARLAN DONNELL MELTON

1 Q. Where was he bleeding from?

2 A. From the head, the top of his head, up there somewhere.

3 Q. Are you still at the passenger's side of Kamil's truck?

4 A. Yes, sir, I'm on the passenger's side. I don't recall
5 if I'm still standing inside, you know, where the doors open
6 or I had done moved away, but I know I'm on the right side
7 of the truck.

8 Q. All right. Now that you've come up to the truck, what
9 is in front of Kamil's truck?

10 A. Aaron Hyatt's green Ford.

11 Q. How close is Aaron's truck to Kamil's truck?

12 A. I could probably extend my arms and touch both of them.

13 Q. Where is Aaron?

14 A. He's right there near his truck. He's not in it but he
15 is outside of it standing near it right there somewhere.

16 Q. So you're at Kamil's passenger side, Aaron is at his
17 truck. So where is Michael Hyatt right now?

18 A. He's coming around following Kamil. Kamil is coming
19 between the two trucks and he's coming right with him.

20 Q. Does Michael Hyatt still have the stick in his hand?

21 A. Yes, sir.

22 Q. And I know it's kind of small but let me do this
23 picture. All right. Do you recognize where this is now?

24 A. Yes, sir.

25 Q. Will you circle Michael Hyatt's house?

HARLAN DONNELL MELTON

- 1 A. (Witness complies.)
- 2 Q. Can you circle where Aaron Hyatt's truck was?
- 3 A. His truck was right here in these little trees right
- 4 there because Kamil's truck stopped right there.
- 5 Q. Okay. So which way did Kamil go when he's going in
- 6 between the trucks?
- 7 A. His truck is parked like this. He comes from this side
- 8 and goes between the two trucks that way.
- 9 Q. Okay. So he goes toward -- is that a driveway?
- 10 A. Yes, sir. That's a driveway to this house right here.
- 11 Q. So he starts moving towards that driveway.
- 12 A. Yes, sir.
- 13 Q. So Michael Hyatt is here with the stick, Kamil is here.
- 14 What happens next?
- 15 A. Well, he pulls the gun out, tells him to back up, stop,
- 16 whatever he said, I'm really not for sure his exact words.
- 17 Q. Where did Kamil pull a gun from? Did you see Kamil
- 18 pull the gun?
- 19 A. Yes, sir.
- 20 Q. Where was the gun?
- 21 A. It was in his -- it was either in his pocket or his
- 22 waistband, I don't even know. I wasn't paying attention to
- 23 exactly where he had his stuff, but it was on his right side
- 24 somewhere.
- 25 Q. Well, had Kamil had the gun out prior to that?

HARLAN DONNELL MELTON

1 A. No, sir, other than to pick it up and put it in his
2 waistband.

3 Q. Was that the earlier in the day, or when was it?

4 A. It was during the day some time or another, I don't
5 remember particularly the time.

6 Q. From the time he stopped right here at this location,
7 when was the first time you saw the gun?

8 A. Are you talking about when he stopped from that point
9 until I saw the gun?

10 Q. Right.

11 A. It was just a few minutes. It was after he'd been hit.

12 Q. Did you see him shoot the gun?

13 A. Yes, sir.

14 Q. How many times?

15 A. He shot once into the ground, and then after Michael
16 Hyatt wouldn't stop coming towards him he shot again.

17 Q. Where is Aaron while all of this was going on?

18 A. He is still right there beside his truck, right in the
19 general area -- I'm watching this. I can't watch that all
20 at the same time so I'm not sure if he moves a few feet
21 either way or whatever, but he's still right there in the
22 area.

23 Q. Did you hear Aaron say anything?

24 A. I couldn't tell what was -- there was a lot of shouting
25 and stuff going on.

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- 1 Q. When Kamil shoots Mike. Where did he shoot Mike?
- 2 A. To me it looked like he shot him dead in his gut, but
- 3 from a side view you can't really tell this way or that way.
- 4 He shot him below the ribs somewhere.
- 5 Q. What did Mike do when he got shot?
- 6 A. He fell.
- 7 Q. Did he fall flat on the ground?
- 8 A. He fell kind of on his side, I heard him go, "Ugh."
- 9 Q. After Mike is shot, falls down, what happens next?
- 10 A. He lays there for a little bit and Aaron runs over to
- 11 his side, and he's there for a few seconds, maybe up to a
- 12 minute, he finally helps him up and takes him to the back of
- 13 Aaron's truck. After that I didn't look at him anymore.
- 14 Q. After Kamil shot Mike in the stomach, where did Kamil
- 15 go?
- 16 A. He kind of was over here. Next to these trees there's
- 17 a little old fence there, he was kind of near it.
- 18 Q. Was Kamil obviously injured?
- 19 A. Yes, sir, he was injured pretty bad.
- 20 Q. Did you see his injury?
- 21 A. Yes, sir.
- 22 Q. Where was it?
- 23 A. It was kind of in this area right here.
- 24 Q. Was it -- can you describe the injury?
- 25 A. It was a cut probably that long and it had already

HARLAN DONNELL MELTON

1 spread open wide enough to where I could lay my finger in
2 it. I was trying to put pressure on it to keep it from
3 bleeding too bad.

4 Q. So you're taking care of Kamil over here and Aaron is
5 taking care of Michael over here.

6 A. Yes.

7 Q. During the course of that time was there any other
8 altercation or threats between anyone?

9 A. It was kind of a standoff. Because Aaron had picked
10 up -- he either picked up the stick that his dad had or
11 picked up something, anyway and he had -- I know at one time
12 he had a hammer and he threw it across the truck sort of in
13 this area here. I don't know if he was trying to hit Kamil
14 or me, I don't really know. Whenever he picked up whatever
15 he had I went to the back to the truck and grabbed a wrench,
16 a big wrench about this long and --

17 Q. When did you grab that wrench?

18 A. It was after he'd been shot. Because I didn't know if
19 Aaron Hyatt was going to come and try to finish what he had
20 started or not, but I wasn't going to stand by and just take
21 it, you know.

22 Q. Right. Where is the gun at this point?

23 A. I'm not sure. After the shot I didn't see the gun
24 anymore.

25 Q. Did you ever threaten anybody?

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1 A. No. I made myself known that I would defend myself if
2 he came near me.

3 Q. Did you ever chase Aaron Hyatt?

4 A. No, sir.

5 Q. Did you ever chase Michael Hyatt around?

6 A. No, sir.

7 Q. Where were you when law enforcement arrived?

8 A. I was standing beside Kamil trying to apply pressure to
9 the wound to keep him from bleeding real bad.

10 MR. COOK: Thank you, Mr. Melton. Answer anything that
11 they might have for you. Okay?

12 THE WITNESS: Yes, sir.

13 THE COURT: Mr. Grier?

14 MR. GRIER: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MR. GRIER:

17 Q. Mr. Melton, you've worked for Kamil since 2006 and you
18 took a break some time in there, it doesn't matter. But how
19 long have you known Kamil?

20 A. Since I started working for him.

21 Q. Okay. Does he always carry a gun?

22 A. He has one most of the time, yes, sir.

23 Q. On this particular day the State's lawyer asked you
24 about it. Did I understand you to say he took the gun out
25 and put it in his waistband, in his band?

HARLAN DONNELL MELTON

- 1 A. He had to at some point or another.
- 2 Q. Well, did you hear Mr. Nassrah say he carried one all
3 of the time?
- 4 A. I don't have to know he said it because I could see it.
- 5 Q. He said he carried it on him all of the time.
- 6 A. Most of the time he does.
- 7 Q. But at some point this day he takes it out and puts it
8 in his waistband while y'all are out in the field or
9 something? Y'all are out there getting hay, he goes, gets
10 the gun and puts it in his waistband?
- 11 A. I'm assuming so, it got there somehow.
- 12 Q. Well, was that like right --
- 13 A. I'm sure he had it while he was in the tractor bailing
14 hay. I can't say he put it in there at 9:45 a.m. or not, I
15 can't say that because I don't know.
- 16 Q. Why would he take it out and put it in on him while he
17 is bailing hay?
- 18 A. Because he had been harassed and bullied by Aaron
19 Hyatt.
- 20 Q. Okay. So he -- that was the reason for it, he doesn't
21 just keep one on him.
- 22 A. He keeps one on him for self-defense.
- 23 Q. Okay.
- 24 A. I've never saw him pull it out.
- 25 Q. Okay. So when he was going to leave that field he was

HARLAN DONNELL MELTON

1 going to have a gun on his waistband because he felt he'd
2 been threatened and harassed by our clients.

3 A. Yes, sir, he had felt threatened.

4 Q. Okay. Is it your testimony that from where Kamil
5 pulled out before you -- when you were pulling out of the
6 field, Kamil pulled out to wait on you that he could see
7 Michael Hyatt's house probably from where he was sitting to
8 wait on you?

9 A. Probably he could see it. I can't say what that man
10 saw because --

11 Q. Okay. Well --

12 A. -- I don't know what he was looking at.

13 Q. Okay. Well, could you see Michael Hyatt's home from --

14 A. I could only see the truck and trailer in front of me.
15 I'm not particularly sure if I looked that way and could see
16 his house or not, you know, that wasn't on my mind.

17 Q. So you pulled out of the field, you locked the gate and
18 Kamil was waiting on you and then y'all take off.

19 A. Yes, sir.

20 Q. And didn't stop?

21 A. Not in front of his house, we stopped in front of that
22 driveway.

23 Q. Well, you know, and you had to stop when he stopped.

24 A. We had to stop.

25 Q. You didn't voluntarily stop at any point.

HARLAN DONNELL MELTON

1 A. No, sir.

2 Q. You and Mr. Nassrah didn't stop and have words with
3 Michael Hyatt at any point on that last trip out of the hay
4 field until that confrontation happened.

5 A. No, sir, not at all.

6 Q. Okay. Well, you gave a statement -- I assume you did
7 and I'm going to ask you if you did. Do you recognize this
8 document, Mr. Melton?

9 A. That is the statement that I was verbally giving to
10 Investigator Crump. That was Investigator Crump's
11 handwriting I assume because that's his name, that's not my
12 handwriting.

13 Q. Okay. So that is not your handwriting?

14 A. No, sir.

15 Q. But you were questioned, I assume -- where were you at
16 when you were questioned, do you recall? Were you in the --

17 A. I was sitting in a patrol car I'm thinking. I don't
18 really know what kind of vehicle it was, I don't remember.
19 I was inside a vehicle.

20 Q. You were questioned on the scene and this resulted from
21 that questioning, correct?

22 A. Yes, sir.

23 Q. Okay. Do you recall -- well, do you recall being
24 asked, "Is there anything you would like to add to the
25 statement in responding? None of this would have happened

HARLAN DONNELL MELTON

1 if Mike wouldn't have stopped us and his son didn't block
2 the road." What does that mean?

3 A. Let me see that, please.

4 Q. Yeah. Okay.

5 A. Well, Aaron is the one that stopped us, maybe he
6 switched the names or whatever. Aaron was the one that
7 stopped us --

8 Q. Okay.

9 A. -- in the road in front of us.

10 Q. Well, do you know --

11 A. I didn't write this so I can't say how he put it down.

12 Q. And I understand you didn't write it. But this
13 statement says -- and you signed it -- that none of this
14 would have happened if Mike hadn't stopped us and his son
15 didn't block the road. Doesn't that imply that you stopped
16 and had something happen with Mike before his son blocked
17 the road?

18 A. Again, I did not write that.

19 Q. So you deny that --

20 A. Under the duress I was in maybe I didn't read it
21 correctly how he wrote it, I don't know. It's been three
22 and a half years.

23 Q. But you made a statement in the police car, right, or
24 in a car -- it wasn't in y'all's cars. Were there any other
25 cars there? It wasn't in a private citizen's car or

HARLAN DONNELL MELTON

1 anything.

2 A. No, sir, it was a county car.

3 Q. By law enforcement. Okay. Do you remember getting
4 phone calls while you were in there, or being on the phone
5 and talking to people while you were in that police car?

6 A. Yes, sir. I talked to my wife and I think I talked to
7 Kamil's girlfriend.

8 Q. Well, do you remember -- okay.

9 A. I think I did. I don't know if I was in the car when I
10 talked to her but I don't remember.

11 Q. Okay. Do you recall saying on the phone to whoever you
12 are talking to, "Don't say anything about this?"

13 A. I can't remember a conversation I had on the phone
14 three and a half years ago.

15 Q. Okay. So you didn't do any preparation for today to
16 refresh your memory or anything about it?

17 A. I have no reason to, I'm not on trial.

18 Q. Well, I mean, you're trying to take away a man's
19 freedom, don't you think you need to be able to have
20 confidence in what you're saying today?

21 A. I do have confidence in what I'm saying today.

22 Q. Well, you're saying you don't remember.

23 A. You're asking me about a conversation I had on the
24 phone, it had nothing to do with that man hitting that other
25 man in the head with a stick.

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- 1 Q. Oh, you don't think it has anything to do with it?
- 2 A. That happened after the fact, how would that have
- 3 anything to do with it?
- 4 Q. Well, do you recall saying, "I can't talk because they
- 5 record what you're saying in these police cars?"
- 6 A. Again, I state that I don't remember the conversations.
- 7 Q. Okay. Did you ever see -- once this confrontation
- 8 happened -- once you left the hay field and you're leaving,
- 9 did you ever see Michael Hyatt or Aaron Hyatt with a gun?
- 10 A. I'm not sure if I saw one that day, but I have seen one
- 11 while we were passing and he was sitting in his swing
- 12 outside there with a lever action rifle in his hand.
- 13 Q. Okay. On his own property in his swing.
- 14 A. Yes, sir.
- 15 Q. But you're not sure whether you saw one this day.
- 16 A. I don't remember if it was that day or a previous day.
- 17 Q. Okay. Anybody point a gun at you? Did Michael Hyatt
- 18 or Aaron Hyatt -- do you think you would remember if they
- 19 would have pointed a gun or pulled a gun?
- 20 A. I would have remembered if he pointed it at me.
- 21 Q. You don't think you would remember if they had one?
- 22 A. I said he had one. He was sitting in his swing with a
- 23 lever action rifle in his hand.
- 24 Q. Mr. Melton, I said that day. Do you remember what day
- 25 I am talking about? I'm talking about the day this

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1 confrontation and the reason we're in this courtroom, I'm
2 talking about that day now. Okay?

3 A. Okay.

4 Q. All right. Did you see a gun?

5 A. I'll answer this question again for you. I don't
6 remember if it was that day I saw the gun or a previous day.

7 Q. Okay. Once you left the hay field that last time that
8 year, that day, and this -- whatever happened from the time
9 you left that hay field until this incident was over and the
10 police arrived, did you ever see Michael Hyatt or Aaron
11 Hyatt with a gun?

12 A. From the time we left the hay field until Kamil got hit
13 in the head I did not see Michael Hyatt with a gun.

14 Q. Did you see Aaron Hyatt with a gun?

15 A. I did not see a gun.

16 Q. Okay. All right. When you left the hay field that day
17 for the last time, did you see Michael Hyatt with any type
18 of weapon?

19 A. Yes, sir.

20 Q. Okay. And what did he have?

21 A. That big stick.

22 Q. What was he doing with it?

23 A. He was standing outside in his yard shaking it like.

24 Q. Okay. You didn't stop as a result of him doing that?

25 A. No, sir.

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- 1 Q. Okay. All right. Well, you have to stop. You're on
2 the tractor and you have to stop.
- 3 A. I have to.
- 4 Q. You don't know why you are stopping exactly at that
5 time.
- 6 A. Not at that particular second I do not know why we are
7 stopped.
- 8 Q. Michael Hyatt comes running by you or moving, whatever,
9 however he was moving.
- 10 A. He was coming by me, yes, sir.
- 11 Q. Did he appear to be moving as fast as he could?
- 12 A. He was going pretty good for his age, I guess.
- 13 Q. Okay. Now, you're right behind the trailer with the
14 hay on it. You're on your tractor when he runs by?
- 15 A. Yes, sir. I'm still sitting in the seat.
- 16 Q. So he's passed you. And how long is that trailer?
17 33 feet, I believe that's the testimony, something like
18 that, in that neighborhood?
- 19 A. Yeah, something like that, close.
- 20 Q. All right. And is he carrying anything?
- 21 A. Yes, sir.
- 22 Q. Do you see it?
- 23 A. Yes, sir.
- 24 Q. Now, do you recall which hand he was carrying it in?
- 25 A. Not particularly, no. He had it in his hands.

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1 Q. I understand.

2 A. He could have had both hands on it.

3 Q. Okay. He did or he may have?

4 A. He could have. I mean, you know, three and a half
5 years is a long time to remember which hand somebody has got
6 something in.

7 Q. Mr. Melton, I know it has been a long time. Okay. So
8 Mr. Hyatt has passed you. How long after he passes you does
9 it take you to get off of the tractor?

10 A. Just a couple of seconds.

11 Q. All right. And you've got to get off on the left-hand
12 side.

13 A. Yes, sir.

14 Q. Now, your testimony a minute ago was you jumped off,
15 ran around the front of the tractor behind the trailer and
16 up the right-hand side of that truck, opened the door?

17 A. Yes, sir.

18 Q. And at that point you see Mr. Michael Hyatt strike
19 Kamil.

20 A. Yes, sir.

21 Q. Now, Kamil is, if I recall correctly, standing part in
22 and part out of the truck, perhaps one foot in the truck.
23 But his body is outside of the truck on the running board.

24 A. Yeah.

25 Q. Doesn't it kind of have to be?

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1 A. If you've got one foot out part of you is probably
2 outside of the truck, yeah, I guess so.

3 Q. Okay. And why didn't you just follow Michael Hyatt and
4 try to prevent what appeared to be -- I mean, you could have
5 run up behind him. He's an old man not moving that fast
6 apparently, you feel like -- could you run a lot faster than
7 him do you think?

8 A. I doubt it. I have a steel rod in my leg, I can't even
9 straighten out my arm anymore. I should be on disability
10 but I try not to be a burden to the government.

11 Q. I respect that, thank you as a tax payer. So you ain't
12 that fast either.

13 A. Not particularly.

14 Q. Okay. But you're able to after Michael Hyatt passes
15 you and runs 35 or 40 feet, get off that tractor, run around
16 the front of the tractor and run to the front of the tractor
17 and open the door, and it has taken all of that time for
18 Michael Hyatt to get up and come in and whack Mr. Nassrah.

19 A. Is that a question? I guess I don't understand.

20 Q. Yeah, it was an attempted question. You're able to --
21 you probably run about the same speed Mr. Hyatt does, but
22 you're able to do all of that in the same time it takes Mr.
23 Hyatt to get up there and hit Mr. Nassrah, right?

24 A. After I'm on the right side of the trailer I don't see
25 what that man is doing. I don't know if he stopped,

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1 hesitated, I don't know.

2 Q. Well, you know you got a man running up beside you with
3 a stick and you know Kamil is in front of you. Don't you
4 feel like you could have -- the thing to do would have been
5 to try to warn --

6 A. You're asking me to make an assumption, I can't do
7 that. I don't know if this way would have been faster, that
8 way would have been faster, unless you do both you can't
9 really tell.

10 Q. Well, you knew there was a gun in the glove box up
11 there, didn't you?

12 A. No, sir.

13 Q. You didn't?

14 A. No, not to my knowledge. I mean -- I knew there had
15 been but I don't know if there was one then at that point.

16 Q. Why do you go open the door then, the passenger door?

17 A. I don't know, man.

18 Q. You don't know?

19 A. Can you remember an idea that was in your head three
20 and a half years ago?

21 Q. Okay. I just want to try to figure out a reason that
22 you might have done that, and I can't see one except that
23 you were going after that gun that was in the glove box.

24 A. So now you're saying that I was going for a gun?

25 Q. I'm saying that that would make sense to me and you

- 1 can't give me another reason that makes any sense to me.
- 2 A. That's because I don't know what idea was in my head at
- 3 that time.
- 4 Q. Okay.
- 5 A. If I would have wanted a gun I would have used mine.
- 6 Q. You had one?
- 7 A. Yes, sir.
- 8 Q. On you at that time?
- 9 A. Not at that particular time but I had one. If I would
- 10 have wanted to shoot I would have kept my gun.
- 11 Q. Well, you didn't have it with you, and if you wanted
- 12 one you had to get one, didn't you?
- 13 A. No. I don't have to have a gun, I'm not a killer.
- 14 Q. All right. Good enough. Well, the first contact that
- 15 you saw between Michael Hyatt and Mr. Nassrah was Mr.
- 16 Nassrah being hit in the head with that stick.
- 17 A. Say that again.
- 18 Q. The first contact, touching, hitting, anything, the
- 19 only thing you saw happen was Michael Hyatt hitting Mr.
- 20 Nassrah, correct?
- 21 A. I saw that. I'm not saying that that's the only thing
- 22 I saw.
- 23 Q. Well, what else did you see? I'm talking about when
- 24 Mr. Hyatt is at Mr. Nassrah while Mr. Nassrah is on the
- 25 running board with a foot in the truck, what else do you see

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1 going on?

2 A. I saw them shout at him, whatever, you know.

3 Q. There was some shouting going on between those two?

4 A. No, not between those two. The first thing that I saw
5 Michael Hyatt do was hit him with the stick.

6 Q. Okay. And I want to know everything that you recall
7 that you observed at the door of Mr. Nassrah's truck between
8 Michael Hyatt and Mr. Nassrah, and that's basically all you
9 saw was him getting hit with a stick.

10 A. I saw him get hit with a stick and go down out of my
11 sight.

12 Q. And what does Michael Hyatt do then?

13 A. After I see Kamil get back up and come around to the
14 front of the truck he's still following him with that stick.

15 Q. Well, he's got Mr. Nassrah down on the ground, doesn't
16 he?

17 A. Coming around the front of the truck, I don't know if
18 Kamil was laying down on the ground. It's not like he's
19 laying down, he's scrambling trying to move fast to get away
20 from him.

21 Q. You don't recall Mr. Nassrah saying he was crawling
22 some? You didn't see Mr. Nassrah crawling?

23 A. He was on the other side of the truck, the seats and --
24 the view is kind of obstructed.

25 Q. All right. You can't see what happens when he goes

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1 down. But do you get out and go around the truck to try to
2 help him, or what do you do?

3 A. I didn't go all the way around the truck, no, sir, I
4 did not. Because by the time I get out of the door they're
5 coming around the front.

6 Q. All right. Well, the statement, and you signed it,
7 right? Question: Tell me about the events 9" -- this says
8 I believe 9-15-10 -- "on Merle Lane that led to the contact
9 with law enforcement." Do you want to read it or do you
10 want me to ask you a question about it and you can read it?

11 A. Sure, I'll read it.

12 Q. Do you want to read your response? I think it's
13 everything, it's a paragraph, about five or six lines.

14 A. Okay. My response was "We, Kamil Nassrah and I were
15 coming out of the hay field with this last load of hay at
16 about 4 p.m. and as we passed by Mike's house he came out to
17 the edge of the road waiving a big stick at Kamil but we
18 kept going with Kamil driving the truck and me following him
19 on the tractor. About 100 yards past Mike's Kamil slammed
20 on brakes so hard that I almost hit the hay bails, and
21 suddenly Mike came driving up behind me in his red Ford
22 truck and ran past me. After he got out of the truck and
23 pulled Kamil out of his truck and hit him with a stick."

24 Q. Okay. I think there's another question and we can ask
25 you about that later. Well, so -- I mean, you just read it

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1 what you said on that day and you said Michael Hyatt pulled
2 Mr. Nassrah out of the truck and then hit him. I mean
3 that's what somebody says you said, don't they? That's not
4 what you saw?

5 A. I didn't write that. He got the date on it wrong, how
6 can he not mess something else on it?

7 Q. So this statement is not what you told law enforcement.

8 A. That's way I was telling them. If I say something and
9 another man don't write it down exactly word for word I
10 mean, you know.

11 Q. Okay. So you didn't see Michael Hyatt pull Mr. Nassrah
12 out of the truck and then hit him.

13 A. He hit him in the head with a stick, plain and simple.

14 Q. Okay. Did he pull him out of the truck?

15 A. He could have. That's three and a half years, man, I
16 can't remember ever touch that somebody makes.

17 Q. Okay. Well, did you read the statement?

18 A. Yes, sir.

19 Q. All right. Well, did you know on the date that you
20 made the statement that it wasn't --

21 A. That says the 15th, that's the day before it happened.

22 Q. Okay. Well, did you notice that that was wrong that
23 day?

24 A. No, sir, I did not.

25 Q. But your testimony now is that Michael Hyatt did not

1 pull him out of the truck.

2 A. I'm not saying he did or he didn't. I know he hit him
3 in the head with that stick.

4 Q. Okay. Well -- all right.

5 A. I saw that.

6 Q. Okay. You didn't hear any of the words said -- I don't
7 believe you could have heard any of the words said between
8 Mr. Nassrah and Aaron Hyatt at the front of that truck --

9 A. No, sir.

10 Q. -- you just -- you didn't know anything was going on
11 until you see Michael Hyatt. That's the first sense that
12 you've got that something was happening.

13 A. Yes, sir. I knew something was wrong when he stopped
14 the way he did.

15 Q. When he what?

16 A. I said I knew something was going on when he stopped.

17 Q. That was unusual for him to stop like that.

18 A. Yes, slam on brakes with 15 tons of hay on the back of
19 the truck -- or 15,000 pounds, excuse me.

20 Q. Okay. You've been getting hay out of that field for a
21 few years.

22 A. Many times.

23 Q. Before this, I mean.

24 A. Yes, sir.

25 Q. Have you continued? Do you still work --

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1 A. I haven't been back since that day.

2 Q. What do you know about the issue of this dust that the
3 Hyatts had a problem with?

4 A. I live on a dirt road, I know about dust, that dust is
5 not bad at all.

6 Q. Okay.

7 A. I'm pretty sure there was a lot of gravel on that
8 driveway and it does create some dust, you know, it's not
9 like in a gold mine where you can't see what's behind you.
10 It's dusty, yeah.

11 Q. Well, Mr. Melton, how far do you live from the road
12 that the dust -- from the dirt road?

13 A. My front door is approximately 150 feet from the road.

14 Q. How far do you think Mr. Hyatt's front door is from
15 that road? A lot closer than that, isn't it? Maybe
16 50 feet?

17 A. It's 100 feet or so I'm guessing, I can't tell you
18 exactly.

19 Q. I know, I don't think we know exactly. Okay.

20 MR. GRIER: One second, please.

21 (Break in proceedings.)

22 MR. GRIER: Your Honor, I would move that the statement
23 that I cross-examined Mr. Melton about his statement be
24 placed into evidence.

25 MR. COOK: No objection.

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1 THE COURT: Without objection introduced as defendant's
2 next in order.

3 (Melton's statement was received as Defendant's
4 8.)

5 MR. GRIER: That's all, thank you.

6 THE COURT: Mr. Frick?

7 MR. FRICK: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MR. FRICK:

10 Q. Mr. Melton, at the time of this incident you've been
11 working for Mr. Nassrah for what, three or four years? You
12 said 2006.

13 A. Four or five years, yeah.

14 Q. Do you still work for him?

15 A. Yes, sir.

16 Q. Regular?

17 A. Yes, sir.

18 Q. In fact, you said you take care of his animals and take
19 care of his farm, correct?

20 A. Yes, sir.

21 Q. Clarify for me now, at the time you had been working
22 for him about three or four years, are you saying you didn't
23 know where he kept his .380?

24 A. I told you he wears it most of the time.

25 Q. Where did he wear it?

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1 A. On his belt, around his pants, waistband.

2 Q. Well, how come when Mr. Grier asked you where he pulled
3 it out from you didn't know where it was?

4 A. Sometimes it's in his pocket and sometimes it's in his
5 waistband, you know.

6 Q. Okay. All right.

7 A. What does that matter?

8 Q. Huh?

9 THE COURT: Sir, don't ask questions, just answer the
10 questions as asked.

11 Q. Are you aware that he has another gun?

12 A. He's probably got hundreds of guns. Why do you want to
13 ask me that?

14 Q. When y'all go out in the field does he have another
15 gun?

16 A. Not to my knowledge.

17 Q. Not to your knowledge?

18 A. No.

19 Q. I thought you said he would wear that .22 too. Yeah or
20 no.

21 A. I couldn't hear you.

22 Q. Nobody can hear in this trial. There's a .22 in the
23 glove box, right?

24 A. I don't know.

25 Q. You've got no idea. When he got up here -- you were

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1 here, you heard him testify yesterday, he said he keeps a
2 .22 in the glove box for when the coyotes come after him.

3 A. Maybe he does but I didn't see it.

4 Q. Been working for a man for three or four years and
5 don't know he keeps a .22 in his glove box, same side of the
6 truck you decided you needed to go to, right? But you don't
7 know that gun is there.

8 A. Not particularly, no. My gun was in the other truck.

9 Q. Okay. That's fine. How far behind the trailer with
10 the hay were you trailing behind approximately? I know you
11 didn't measure it.

12 A. Not far, I mean, you know.

13 Q. I know you -- on the front end of this thing you've got
14 a big old --

15 A. It's a long spear, yes, sir.

16 Q. So you're far enough behind that when you put on brakes
17 on the tractor it doesn't run up into the bail but you're
18 close.

19 A. It's still a couple of feet between me and him. I
20 didn't actually hit him but I thought I was going to.

21 Q. I'm going to show you what's been marked Defendant's
22 Number 7. Does any of that stuff look familiar to you?

23 A. Yes, sir.

24 Q. What have we got here? Try to speak in the microphone.

25 A. We have got Mr. Hyatt's truck and in front of -- that

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1 is the rake, in front of that is the tractor, in front of
2 that I see hay bails on the trailer.

3 Q. That tractor in the middle there, that's the one you
4 are sitting on?

5 A. Yes, sir.

6 Q. I know it's not exactly because it's further back, but
7 is that basically what you're looking at when you're sitting
8 on the tractor?

9 A. I see the hay, yes, sir.

10 Q. I mean, you can't really see what is going on at the
11 front of the truck, you just see a big giant bail of hay in
12 front of you, don't you?

13 A. Yes, sir.

14 Q. And then you're saying Mr. Hyatt comes running on this
15 side, correct?

16 A. Yes, sir.

17 Q. But you hop off the tractor and go around to this side,
18 to the passenger side.

19 A. Yes, sir.

20 Q. Did you have your gun with you that day?

21 A. I had it before the incident, yes, sir.

22 Q. I mean, on your person, on the tractor, where was it?

23 A. It was in another truck.

24 Q. So you didn't have it in the field with you?

25 A. Not on my person, no, sir. It's kind of hard to ride a

1 bumpy tractor with a gun in the waistband.

2 Q. Probably not a good idea either. All right.

3 A. And that tractor right there rides rough.

4 Q. What made you decide that you needed to hop off the
5 tractor?

6 A. You see a man come running by with a stick, what are
7 you going to do, just stand there and let them watch
8 somebody -- watch them beat somebody to death?

9 Q. Well, it sounds like that's what you did.

10 A. Is he dead?

11 THE COURT: All right. Let me -- Mr. Witness, I know
12 you don't want to be here and I know you're testifying, but
13 please stop asking questions of the lawyers, just answer the
14 questions that the lawyers ask. And please, lawyers, let's
15 not get combative with the witnesses. I'm not saying you
16 are, but you know where this can go.

17 MR. FRICK: I understand. Thank you.

18 Q. You hop off of the truck and instead of --

19 A. I hop off of the tractor.

20 Q. I'm sorry. You hop off of the tractor and instead of
21 following this man that you perceive to be an imminent
22 threat you go around the other side, correct?

23 A. Yeah.

24 Q. Okay. Where was that crescent wrench at that time?

25 A. It was on the back of the truck I'm pretty sure. I

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1 think it was in the tool box or laying in the bed.

2 Q. And when did you grab that?

3 A. After Mr. Hyatt had been shot.

4 Q. Okay. At no time did you have it before?

5 A. No, sir.

6 Q. In the incident. I'm sure at some point in the day you
7 probably worked on something, but during the incident you
8 didn't have it in your hand.

9 A. No, sir. Not during the shooting anyway.

10 Q. Okay. You get to the passenger side in time to see Mr.
11 Nassrah getting struck in the head.

12 A. Yes, sir.

13 Q. And he's -- I'm going to show you State's Number 5. Is
14 this what you're looking at basically?

15 A. Yes, sir.

16 Q. That's the passenger side-view, you've opened up the
17 door.

18 A. Yes, sir.

19 Q. Mr. Nassrah is standing over there.

20 A. Yes, sir.

21 Q. And you see him struck in the side, back of the head.

22 A. Somewhere around there.

23 Q. That's fine. Okay. All right. And then what did you
24 do? Did you stay right here?

25 A. I come back out of the truck and I was in that general

- 1 area after that.
- 2 Q. You went towards the front of the truck?
- 3 A. Yes, sir.
- 4 Q. Let me show you another one, this is Defense Number 4.
- 5 So you leave the passenger side and you come up around here
- 6 to the front.
- 7 A. Yeah. I would say that's pretty close to where I was
- 8 at along in there.
- 9 Q. So you're now standing at the front of the truck.
- 10 Where is Mr. Nassrah in relation to this picture? I know
- 11 it's not the best view.
- 12 A. He's already coming around. After he's getting up he's
- 13 coming in between these two trucks, he is coming that way.
- 14 Q. So he's here running that way kind of.
- 15 A. He's trying to get away.
- 16 Q. Trying to get away.
- 17 A. Yes, sir.
- 18 Q. Okay. Still conscious, not laying on the ground.
- 19 A. He's not unconscious yet.
- 20 Q. You tell Mr. Grier that you have already seen that
- 21 there is a significant amount of blood, is that your
- 22 testimony?
- 23 A. Yes, sir. By the time he gets around there he's
- 24 bleeding pretty good.
- 25 Q. Pretty good bleeding. And that occurs while he's right

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1 there in front of the truck, I guess, maybe even towards the
2 driver's side, correct?

3 A. Well, he's right there somewhere, man, I can't tell you
4 inches to millimeters or whatever, you know.

5 Q. I understand and I'm not trying to get you to be that
6 specific because I know you can't be.

7 A. He's in that area between the two trucks.

8 Q. He's in the middle of the trucks kind of in the middle
9 of the road?

10 A. Somewhere along there.

11 Q. Okay. Where is Aaron Hyatt?

12 A. I wasn't focusing on him very much at that particular
13 time, but he's somewhere near his truck right around in the
14 area somewhere.

15 Q. Well, I'll show you again, this is Number 4 again.
16 That truck there, is that his, that green one?

17 A. Yes, sir.

18 Q. Is he standing up here towards the front where all of
19 the action is going on or is he further back?

20 A. He's a little further back this way I'm pretty sure.
21 Like I said, I wasn't directly focusing on him because
22 there's something going on here.

23 Q. Well, do you see him with anything in his hand at that
24 time, gun, knife, stick, the hammer?

25 A. I saw the hammer. I'm not sure if it was at that

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1 moment or ten seconds later or a minute later, I'm not sure
2 exactly the time frame. But he did throw a hammer out of
3 that tool box, off the back of that truck anyway.

4 Q. At you or near you?

5 A. He throwed it in our direction.

6 Q. In your direction? Okay.

7 A. Well, in the direction of Kamil more or less I'm pretty
8 sure, I don't know. His aim sucked.

9 Q. But he didn't hit you.

10 A. He didn't hit me.

11 Q. It didn't come near you, did it?

12 A. I didn't feel any wind off of it if that's what you're
13 asking me.

14 Q. Of course Mr. Grier went over the statement with you.
15 You maintained that this is just not accurate.

16 A. There's a minor discrepancies probably because I didn't
17 write it.

18 Q. Well, I mean, are you saying the police made it up for
19 you?

20 A. No. He asked me questions and I answered them. Just
21 because I say one word it doesn't mean he wrote that word.
22 I mean, I don't know, man, I don't know.

23 Q. Well, how do you misconstrue, "He pulled Kamil out of
24 the truck?"

25 A. You're saying --

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1 THE COURT: Hang on, y'all don't talk over each other.
2 It's hard for him to type down everything when you're
3 speaking at the same time. Thank you. Go ahead.

4 A. I'm sorry. Ask me again, I'm sorry.

5 Q. That's all right. That's all right. The statement
6 says that you say, the statement says that you say that
7 Kamil is pulled out of the truck, you're saying that's not
8 what you said, right?

9 A. Maybe I did say that to him. I'm not sure what I said
10 on that night, maybe I did, maybe I didn't. I don't
11 remember, man.

12 Q. All right.

13 A. I can't go word for word something that happened three
14 and a half years ago, I'm sorry.

15 Q. Well -- all right. And you say -- let me -- I'm going
16 to show you three pictures. Take a look at it, it's
17 basically the same stuff, but look at all three of them.

18 A. Okay. That's the back of Kamil's truck with the
19 trailer attached.

20 Q. Uh-huh.

21 A. That's the back of Kamil's truck --

22 THE COURT: Speak in the microphone, please.

23 A. And that's the back of Kamil's truck, there's the
24 wrench that I had. That is it, that's the wrench.

25 Q. Is that where you left it? Did you put it back in the

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1 truck?

2 A. Yes, sir, I put it back.

3 Q. When did you put it back in the truck?

4 A. I'm not sure if it was right after the incident or
5 after the law officers got there. I'm not sure when I put
6 it back but I know I did lay it back in there in the truck.

7 Q. But you put it back in that location, nobody else put
8 it back there.

9 A. I'm pretty sure no one else touched it. I'm not
10 sure -- I can't stand there and watch a wrench all day. I
11 don't know if anyone else touched it or not.

12 Q. I understand.

13 MR. FRICK: Your Honor, I would move these in as the
14 next three Defendant's Exhibits.

15 THE COURT: Collectively or individually?

16 MR. FRICK: Individually.

17 THE COURT: Any objection?

18 MR. COOK: No objection.

19 THE COURT: Without objection the next three
20 photographs will be the next three defendant's exhibits
21 collectively.

22 (The photographs were received as Defendant's
23 9, 10, 11.)

24 Q. Was that where you got the wrench from?

25 A. It was on the back of the truck, either there or in

HARLAN DONNELL MELTON

1 that silver tool box. I'm not particularly sure where I got
2 it from.

3 Q. After all of the stuff starts calming back down, I
4 guess there was a -- you said in your statement there was a
5 standoff for a little while.

6 A. Yes, sir. He had something in his hands and I had
7 something in my hands.

8 Q. But no one went towards each other?

9 A. Nobody touched each other. After the gunshot the fight
10 was over, there was no more physical --

11 Q. And, in fact, I think you say in your statement that
12 the only two folks that are involved in any kind of physical
13 altercation were Mr. Nassrah and Mr. Michael Hyatt, was that
14 correct?

15 A. Those are the only two people that came in contact with
16 each other.

17 Q. You had said here today that you had -- you were
18 helping Mr. Nassrah with his injury; is that correct?

19 A. I was trying to apply pressure, I don't remember what I
20 had, a paper towel, I don't remember what I had in my hand.
21 But I was -- I had put it on his head and tried to stop the
22 bleeding a little bit.

23 Q. But you don't remember whether it was a regular towel
24 or a napkin or --

25 A. I don't know.

HARLAN DONNELL MELTON

1 Q. Do you know what happened to that?

2 A. No, sir.

3 Q. Okay. Did you throw it away? Do you have any idea
4 where it went?

5 A. I have no clue.

6 Q. Did you continue to apply pressure until EMS got there
7 or --

8 A. After Deputy Morgan got there I think there was a point
9 that I wasn't applying pressure. I'm not really sure, man,
10 you know, adrenaline rush and all of that, I'm not sure if I
11 wasn't to trying to apply pressure. I think I remember
12 saying something to Officer Morgan, "Could you uncuff his
13 hands from behind him so he could hold it on his head?" I'm
14 pretty sure that I said that. Because it kind of upset me a
15 little bit that he was going to let him sit there and let
16 him bleed like that.

17 Q. Did law enforcement uncuff him?

18 A. I don't remember. I don't think he did, not at that
19 time.

20 Q. In fact, I think when that's going on you were actually
21 sitting beside Mr. Nassrah, aren't you?

22 A. I was there close to him. I don't know if I was
23 sitting, standing, kneeling with Kamil.

24 Q. Let me show you this. Do you recognize anything in
25 that picture?

HARLAN DONNELL MELTON

1 A. I think that's Mr. Morgan, and I think that's Kamil,
2 and I'm pretty sure that's me.

3 Q. Do you recall that being the scene once Deputy Morgan
4 got there?

5 A. I recall, yeah, this looks right, yeah. It has got to
6 be right, it's a photograph.

7 Q. Okay. All right.

8 MR. COOK: No objection.

9 MR. FRICK: Your Honor, I would offer this.

10 THE COURT: All right. Without objection it's the next
11 defendant's exhibit.

12 (The photograph was received as Defendant's
13 12.)

14 Q. So this is the two of y'all sitting there after law
15 enforcement has got there, no one is applying treatment to
16 Mr. Nassrah. In fact, he is handcuffed, correct?

17 A. No, sir.

18 Q. Were you handcuffed?

19 A. No, sir.

20 Q. In fact, it looks like you're on your cellphone.

21 A. I don't guess.

22 Q. I don't know if you can see it on there, it kind of
23 looks like it to me, you tell me if you disagree.

24 A. It looks like I've got something in my hands, looking
25 like it. It probably is a phone.

HARLAN DONNELL MELTON

1 MR. FRICK: Your Honor, I would like to publish this to
2 the jury.

3 THE COURT: Any objection?

4 MR. COOK: No objection.

5 THE COURT: All right. Y'all can just pass the photo
6 around.

7 (Break in proceedings.)

8 Q. Just briefly. I think Mr. Grier touched on it but I
9 wanted to follow-up at some point. You were in the back of
10 Deputy Morgan's patrol car, correct?

11 A. I don't remember if I was in the back seat or front
12 seat.

13 Q. You were in his vehicle?

14 A. I was in his vehicle, or somebody was. I don't know if
15 he was in the vehicle.

16 Q. How did you get in that vehicle?

17 A. How did I get in it?

18 Q. Uh-huh.

19 A. I opened the door and sat down.

20 Q. Okay. Thank you. Who put you in there?

21 A. Nobody put me in there.

22 Q. Okay. You know what I'm asking. Were they putting you
23 under arrest?

24 A. No, sir.

25 Q. Then who invited you to go into his car?

HARLAN DONNELL MELTON

1 A. I am not sure, I don't really remember.

2 Q. Did you just decide you wanted to sit in his car?

3 A. No.

4 Q. How did you get in there?

5 A. I guess somebody said, "Please sit down and have a talk
6 with me."

7 Q. Do you remember whether it was one of the deputies or
8 investigators or something?

9 A. I don't remember who said that or who wanted to talk or
10 who invited me to sit or what, I don't remember.

11 Q. You still had your cellphone at that time? You were
12 making phone calls?

13 A. No one took anything from me.

14 Q. But you were making phone calls while you were in
15 there?

16 A. I might have received a call, made a call, I don't know
17 how it went, whether I did or someone called me.

18 Q. But you were speaking on your phone.

19 A. I had spoke on my phone personally.

20 Q. Spoke to about three different people, I think. You
21 don't dispute that.

22 A. I don't dispute talking to anyone.

23 MR. FRICK: Thank you, Mr. Melton. I believe that's
24 all of the questions I have.

25 THE COURT: Any redirect, Solicitor?

HARLAN DONNELL MELTON

1 MR. COOK: Yes, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. COOK:

4 Q. Mr. Melton, I want to go back to this map here for a
5 second. They were asking you about your statement, asked
6 you about Michael Hyatt coming up, you said he pulled up
7 behind you?

8 A. In that red Ford truck. .

9 Q. Can you circle his house again?

10 A. Here.

11 Q. And you said on direct that Kamil's truck is right
12 here.

13 A. Yes, sir.

14 Q. Is that fair to say?

15 A. Yes, sir. In that general area, yes, sir.

16 Q. So your truck would be -- your tractor would be right
17 here?

18 A. Yeah, I was behind him. I don't know how far back it
19 was.

20 Q. So Michael Hyatt's house is circled, he drove from his
21 house and pulled up behind you?

22 A. Yes, sir.

23 Q. So it was his truck, your tractor, Kamil and then
24 Aaron?

25 A. Yes, sir.



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1 Q. And y'all were blocked in?

2 A. Yes, sir, from the front and back.

3 Q. About how far do you think it is from where Michael
4 Hyatt pulled his truck to his driveway?

5 A. Couldn't be more than 100 yards, 50 yards or 100 yards,
6 it's not very far.

7 Q. They talked about this issue awhile about Kamil's gun,
8 and I asked you earlier, said, "Did you see him pull a gun?"
9 And I think that question was misunderstood. Did you see
10 him put the gun in his waistband that morning or did you
11 just assume he had a gun?

12 A. I know he has a gun, I know he carries a gun. I'm not
13 saying I know what time he put it on his waistband, I don't
14 know.

15 Q. You mean he may have put it in there at breakfast?

16 MR. FRICK: Your Honor, I object to the solicitor
17 continuing to lead the witness.

18 THE COURT: I'm going to overrule the objection and
19 allow him to do that so we can get this witness off the
20 stand. Go ahead.

21 Q. The first time you saw him with that gun that day was
22 when?

23 A. I'm not sure. When you look at someone you don't
24 necessarily look for a gun, you don't look to see if he's
25 got it or don't got it. I know he carries a gun. I can't

HARLAN DONNELL MELTON

1 say I saw him put it in there this time or that time or
2 whatever time. I know when he pulled it out.

3 Q. When was that?

4 A. After he got hit in the head.

5 Q. They also asked you about being in Mr. Morgan's patrol
6 car. You don't remember who you talked to?

7 A. I can't put a face on who I was talking to. I could
8 read that paper and see the name Crump on it so I know his
9 name is Crump. As far as picking him out of a lineup I
10 can't do that, I don't know.

11 Q. When you're on your cellphone, do you know who you were
12 talking to?

13 A. I know I talked to my wife and I talked to Kamil's
14 girlfriend, and it seems like I had to call my brother and
15 tell him that I was going to be late getting there or
16 something like that. I don't remember if I was in the car
17 when I made that call and I decided to call him. I know I
18 talked to someone when I was in the car.

19 Q. Did you tell them what happened?

20 A. Yes, sir, part of it.

21 Q. Why did you just tell him part of it?

22 A. I'm pretty sure I told them part of it. I can't
23 remember the conversation, I don't know.

24 MR. COOK: Nothing further of this witness, Your Honor.

25 THE COURT: All right. Thank you, sir, you may step

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1 video being shown?

2 MR. GRIER: No, Your Honor.

3 MR. FRICK: Your Honor, we have reviewed the video and,
4 of course, Mr. Grier and I have both talked about one of the
5 witnesses. I think the other part of the video is an
6 additional reenactment of my client or questioning so I
7 think it would all come in. I would tell you that those
8 little earphones right there do work somewhat, you have to
9 point them at that little thing up there but it may help
10 some of the jurors if they cannot hear.

11 (The jury returned to the courtroom.)

12 THE COURT: All right. All members of the jury are
13 present. Solicitor, call your next witness.

14 MR. COOK: Please the Court? Your Honor, State calls
15 Deputy Randy Morgan.

16 The witness, RANDY MORGAN, was first duly sworn
17 and testified as follows, on:

18 DIRECT EXAMINATION

19 BY MR. COOK:

20 Q. Can you please state your name for the record?

21 A. My name is Randy Morgan.

22 Q. I know I called you Deputy Morgan but you don't have on
23 law enforcement attire. Do you still do law enforcement?

24 A. Yes. I work for Bovine Security and we provide
25 security for the gold mine in Kershaw, but I'm retired from

TESTIMONY OF RANDY MORGAN

1 the sheriff's office now.

2 Q. Okay. When did you retire from the sheriff's office?

3 A. December of 2010.

4 Q. All right. How long were you at the sheriff's
5 department?

6 A. Ten years, seven months.

7 Q. All right.

8 A. Exactly.

9 Q. So you were working for the sheriff's department on
10 September 16th of 2010?

11 A. Yes, I did.

12 Q. And did you respond to a call on Merle Lane?

13 A. Yes, I did.

14 Q. Is that in the Lancaster County?

15 A. Yes, it is.

16 Q. How did you become aware of a situation on Merle Lane
17 on the 16th?

18 A. I was in a traffic stop in the town of Heath Springs
19 and the call was given out there had been a shooting on
20 Merle Lane.

21 Q. Okay. What's the code for a shooting?

22 A. 1075.

23 Q. So you heard a 1075 on the radio while you're on a
24 traffic stop?

25 A. Yes, I did.

TESTIMONY OF RANDY MORGAN

1 Q. When you initiate a traffic stop -- let me back up.

2 Was your patrol car equipped with a camera?

3 A. Yes, it was.

4 Q. Are there certain times that the camera automatically
5 comes on?

6 A. Yes. The system is designed when you activate the blue
7 lights the recording device comes on.

8 Q. So you were on a traffic stop. Were the blue lights
9 on?

10 A. Yes, it was.

11 Q. So to your knowledge was the camera recording at that
12 time?

13 A. Yes, it was.

14 Q. Okay. So you're on a traffic stop, hear a 1075. What
15 did you do?

16 A. I immediately ended that traffic stop and advised --
17 and I forgot the subject -- to just go ahead, that I've got
18 to go to another call. I didn't state to that person what
19 the call was involved.

20 Q. Okay. So what was your next move? After you heard the
21 call did you head towards Merle Lane?

22 A. Yes, I did. I called dispatch and advised I was in
23 route, code three.

24 Q. What is a code three?

25 A. Code three is blue lights and sirens.

TESTIMONY OF RANDY MORGAN

1 Q. So the blue lights were still on from the initial
2 traffic stop?

3 A. Yes, it was.

4 Q. And to your knowledge was the camera still recording?

5 A. Yes, sir. The system is designed that I would
6 physically have to stop the recording device and I would
7 physically have to cut it off.

8 Q. So it automatically cut on but you have to cut it off.

9 A. Yes.

10 Q. From the time you left the traffic stop when you first
11 cut the lights on and you got to Merle Lane, how far were
12 you time wise?

13 A. Three or four minutes because I was real, real close.

14 Q. So you get to Merle Lane. What type of road is Merle
15 Lane?

16 A. It's a small dirt road.

17 Q. One lane or two lane?

18 A. One lane.

19 Q. You pulled down Merle Lane. What do you see when you
20 get there?

21 A. Well, I got on Merle Lane, I pulled up behind an older
22 model Ford pickup and I believe it was green in color.

23 Q. How many people were out there when you got there?

24 A. Four.

25 Q. Did you recognize these people?

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- 1 A. Yes, I did.
- 2 Q. Can you tell us who they were?
- 3 A. Yes, I knew who they were.
- 4 Q. Who were they?
- 5 A. It was Michael Hyatt, Aaron Hyatt, Kamil Nassrah and I
- 6 learned later it was Mr. Melton out there.
- 7 Q. Had you ever seen Mr. Melton before?
- 8 A. No.
- 9 Q. You knew these people. How did you know -- how were
- 10 you familiar with these people?
- 11 A. Just a few days earlier in the week we had another call
- 12 out on Merle Lane.
- 13 Q. Did you respond to that call?
- 14 A. Yes, I did.
- 15 Q. What was the nature of that call?
- 16 A. A subject was locked inside a pasture where he had been
- 17 cutting hay.
- 18 Q. Where was that pasture located?
- 19 A. On the end of Merle Lane.
- 20 Q. When you responded to that call, who did you see?
- 21 A. Well, my first contact was Michael and Aaron Hyatt on
- 22 Merle Lane. There was a Ford pickup -- an older model Ford
- 23 pickup was across the road and the Hyatts said that it had
- 24 broken down and they couldn't get it cranked.
- 25 Q. Was the truck between -- do you know where Michael

TESTIMONY OF RANDY MORGAN

1 Hyatt's house is on Merle Lane?

2 A. Yes, I do.

3 Q. If you're going towards the hay field is it on the
4 right or left?

5 A. Right-hand side of the road.

6 Q. This green truck, was it between -- where was the truck
7 located on the road?

8 A. Just right north -- east of Michael Hyatt's home there
9 at the yard.

10 Q. Well, you say east. Would east --

11 MR. FRICK: Your Honor, I would object to the relevance
12 on this line of questioning. I think we have established
13 what the solicitor wants to establish, I don't know why the
14 direction of the truck has anything to do with anything. I
15 think we need to move on.

16 THE COURT: I think I know where he's going so I will
17 overrule the objection.

18 Q. I know these people don't know -- if you're looking at
19 Michael Hyatt's they don't which way is east or west. Was
20 it on down the road past Michael Hyatt's house?

21 A. No.

22 Q. Who else was out there on the 13th?

23 A. Kamil Nassrah.

24 Q. What did Kamil tell you?

25 A. Okay. After the Hyatts got the truck cranked then I

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1 proceeded -- and Deputy Lilly come up then, and I went on
2 down to the gate area. Okay. Kamil was coming out and he
3 said --

4 MR. GRIER: Your Honor, I -- you know, this is a
5 question asking for hearsay is exactly what he's asking for,
6 what he is asking. If he wants to ask what Kamil said he
7 needs to ask Kamil what he said.

8 THE COURT: I will overrule the objection. Go ahead.

9 A. Say it again now.

10 THE COURT: Ask the question again now. Go ahead.

11 Q. What was Kamil doing when you got to the hay field?

12 A. Say again now --

13 Q. What was Kamil doing when you made contact with him on
14 the 13th?

15 A. He was coming out of the hay field.

16 Q. Was the gate locked when you got there?

17 A. No.

18 Q. It had been unlocked?

19 A. Yes.

20 Q. Was that the end of that incident? Did you make a
21 report, or what happened?

22 A. Yes. I made the report and advised him of his rights
23 and how to get a copy of a report.

24 Q. In terms of the Hyatts, did you make any contact with
25 them again after you made the report?

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1 A. Yes, sir, I did.

2 Q. Why did you contact the Hyatts?

3 A. I was contacted by David Belk at the sheriff's office
4 that Mr. Nassrah and the landowner, I believe is Blanton,
5 had gone to the sheriff's office and they had got a report
6 of the original incident that day and I guess the homeowner
7 wanted to put Michael and Aaron Hyatt on notice of trespass
8 not to go back on their property.

9 Q. Did you advise them that they were --

10 A. Yes. Later that day I went back out and spoke with the
11 Hyatts and informed them they were put on notice of trespass
12 not to be back on the lady's property.

13 Q. Back to the 16th, three days later, you pulled up you
14 said behind the green Ford truck?

15 A. Yes, sir.

16 Q. Where was everybody when you pulled up? Just kind of
17 layout and tell us what you saw and what you did as far
18 as --

19 A. Okay. When I arrived on the scene the road was
20 blocked, I couldn't proceed any further. And I saw Michael
21 and Aaron Hyatt was at the rear of the Ford truck, and Mr.
22 Nassrah and Mr. Melton were to the left of the white 350
23 Ford truck to the left of it.

24 Q. Left. You're facing it, so it would be the passenger's
25 side?

TESTIMONY OF RANDY MORGAN

- 1 A. Yes, sir.
- 2 Q. Was anybody injured?
- 3 A. Yes.
- 4 Q. Who was injured?
- 5 A. Michael Hyatt and Mr. Nassrah.
- 6 Q. Did anybody have a gun when you got there? Did you see
- 7 a gun?
- 8 A. There was a gun laying to the left of Mr. Nassrah in a
- 9 grassy area.
- 10 Q. Did you call for backup?
- 11 A. Backup was already on the way. Anytime we have a 1075
- 12 EMS and backup responded to a code three.
- 13 Q. When you got there did you have any idea who was the
- 14 victim and who was the suspect or are you just --
- 15 A. No.
- 16 Q. What was your main objective when you arrived on scene?
- 17 A. To secure the area and just control the scene, and I
- 18 just control evidence, keep evidence secure until
- 19 investigation arrived.
- 20 Q. So while you're securing the scene, are the blue lights
- 21 still on in your car?
- 22 A. Yes.
- 23 Q. So to your knowledge was the video still recording?
- 24 A. Yes.
- 25 Q. Okay.

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1 MR. COOK: Your Honor, I've already got the video in
2 here if there's no objection to the publishing it?

3 THE COURT: Are we offering that as an exhibit as
4 State's Exhibit 1?

5 MR. COOK: I would offer the video as State's Exhibit 1
6 (sic), the video of Deputy Morgan's in-car camera.

7 THE COURT: Any objection?

8 MR. FRICK: No objection.

9 MR. GRIER: No objection.

10 THE COURT: All right. Without objection the video is
11 introduced as State's Exhibit Number 1 (sic).

12 (The video was received as State's 21.)

13 THE COURT: And you wish to publish the video at this
14 point in time?

15 MR. COOK: I do, Your Honor.

16 THE COURT: All right. Ladies and gentlemen of the
17 jury, in this beautiful new courthouse y'all have a monitor
18 there in front of you so if you will refer to the monitor as
19 you watch the video. For those of you who may be difficult
20 to hear we have hearing devices or earphones if you would
21 like to wear those to help you hear any audio and they're
22 right there and they work pretty well. So does anybody want
23 one of those? Okay.

24 (The video was played.)

25 MR. COOK: Your Honor, before I continue asking Deputy

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1 lunch we just finished watching Deputy Morgan's in-car
2 video, I don't have anymore questions of Deputy Morgan at
3 this time. Please answer anything that Mr. Grier and
4 Mr. Frick have for you. Thank you.

5 THE COURT: Mr. Grier, any questions?

6 MR. GRIER: Yes, sir.

7 CROSS EXAMINATION

8 BY MR. GRIER:

9 Q. What is your title now?

10 A. Say again?

11 Q. You work at Hailes Gold Mine now?

12 A. Yes.

13 Q. Okay. Still call you officer or Mr. Morgan?

14 Mr. Morgan?

15 A. Whatever you want to call me.

16 Q. Well, Mr. Morgan --

17 THE COURT: Let me interrupt, Mr. Grier. I don't think
18 any of the audio equipment is working.

19 (Break in proceedings.)

20 Q. Mr. Morgan, the video that we watched just a few
21 minutes ago, all of that video was taken out of your dash
22 cam, out of your patrol vehicle?

23 A. Yes, sir, it was.

24 Q. Because you pulled up -- there was a pile coming in
25 behind you, you were blocked in to, right?

1 A. Yes, sir.

2 Q. Can you tell us who all is on that video, all of the
3 different people talking are, or would you like me to just
4 ask you direct questions about that? Do you know or recall
5 the sequence of who is on that video? Obviously you're
6 pulling in and, you know, you're the first on the scene and,
7 you know, all of the immediate investigation is set up and
8 all of that, nobody is really being questioned or anything.
9 But what I'm really getting at is the sequence of there was
10 an interview conducted in your vehicle, or at least one,
11 correct?

12 A. Yes.

13 Q. Do you know who was interviewed in your vehicle? I
14 don't believe you even did the interviews, did you, or maybe
15 you did the initial one?

16 A. No, sir.

17 Q. Okay. So you didn't --

18 A. Investigations took over. And I believe as far as I
19 can recall -- it has been three and a half years ago, as I
20 believe Mr. Melton was interviewed in my vehicle.

21 Q. Okay.

22 A. Just I think.

23 Q. As far as inside of that vehicle it appears he's the
24 only one that's interviewed, that's your interpretation?

25 A. As far as I can recall.

TESTIMONY OF RANDY MORGAN

1 Q. Okay. And there's nothing that you watched -- you
2 watched the video -- that would change your impression that
3 he was the only one interviewed in the vehicle.

4 A. That's correct.

5 Q. All right. And the other, not an interview but
6 whatever, the other person on the video that's standing in
7 the front is Aaron Hyatt in that last video?

8 A. Yes.

9 Q. And I guess is giving a statement, we'll call it a
10 statement, a video statement there as well. He's being
11 asked questions and he's making statements.

12 A. Yes, sir.

13 Q. So the only two interviews of individuals that we saw
14 were inside the vehicle Mr. Melton, Harlan Melton, in the
15 front of the vehicle Aaron Hyatt, correct?

16 A. Yes. As far as I know, yes.

17 Q. Okay. Now, how long have you known Mr. Nassrah?

18 A. Well, just a few days. That's the first day that I
19 had -- I knew he ran a store in Pleasant Hill at one time
20 but that's all. As far as a one on one --

21 Q. Well, I'm just saying if you saw him on the street or
22 did you trade with him or anything prior to this or go into
23 that store?

24 A. No, sir.

25 Q. How about at Buford Crossroads? Didn't he have a store

TESTIMONY OF RANDY MORGAN

1 at Buford Crossroads? If he did were you aware of it?

2 A. Say again now.

3 Q. Did he have a store at Buford Crossroads that you're
4 aware of?

5 A. No, sir, I'm not aware of that.

6 Q. And as far as, had you only met the Hyatts a few days
7 before as well?

8 A. Yes.

9 Q. You didn't make any arrests?

10 A. No, sir.

11 Q. You secured the scene, wrapped that up, remained on the
12 scene -- well, you couldn't exactly drive out for quite
13 awhile, could you?

14 A. No.

15 Q. How long did you remain on the scene?

16 A. Until we cleared up and that was after 6:00, I know
17 that.

18 Q. Okay. You've already testified that your job was to
19 secure the scene, that means first of all secure --

20 A. Personal safety, my safety and the safety of all.

21 Q. Exactly. And then as far as procedurally, is there a
22 protocol for immediate attention -- it appears to me that
23 you secured your protection, which I totally respect and I
24 wouldn't be wanting to roll up on the scene like that.

25 A. I wanted to secure the scene and protect the evidence

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1 was the big thing.

2 Q. Well, it seemed that the second thing that you were
3 concerned about was the medical situation and getting that
4 attended to.

5 A. Yes, sir.

6 Q. And then the third priority is to attend to making sure
7 that the evidence remains secure.

8 A. Yes, sir.

9 Q. From the time you came on that scene nothing changed as
10 far as the location of those trucks, the doors open, doors
11 closed, nothing moved that you're aware of?

12 A. To my knowledge nothing was disturbed until CSI and the
13 investigators come on, nothing.

14 Q. Okay. What I see on the video is the Hyatts at the
15 back of Aaron Hyatt's truck principally, you kind of move
16 them over there and Aaron is over on the -- facing, you
17 know, on the camera to your left some and then you get him
18 over there, get his dad over there, get them on the truck,
19 they stay put throughout that whole time of the
20 investigation. They never went back to Mr. Nassrah's truck
21 or anywhere back there.

22 A. No, sir.

23 Q. Okay. You can see that on the video, can't you?

24 A. Yes, sir.

25 Q. Because it's continuous. You roll in and then, you

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1 know --

2 A. I did have to instruct Aaron just to go back a few
3 times, you saw that on the video.

4 Q. To take care -- yes, sir, saw it. Now, Mr. Nassrah and
5 Mr. Melton were over to the left, that's the Truesdale
6 driveway I believe we say? It belongs to the Truesdales.
7 At any rate, that little drive off to the left of the scene,
8 they're over there and they don't leave that spot or go back
9 to the vehicle after you arrive; is that correct?

10 A. No, sir.

11 MR. GRIER: Okay. Thank you.

12 MR. FRICK: Just briefly.

13 THE COURT: All right, Mr. Frick?

14 MR. FRICK: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MR. FRICK:

17 Q. Mr. Morgan, were you the responding officer on that
18 incident on the couple of days earlier, the 13th?

19 A. Yes.

20 Q. Okay. When you got there, did you make contact with
21 Mr. Nassrah?

22 A. Yes, sir.

23 Q. Okay. And I know that the vehicle was in the road and
24 you had to deal with that situation, but you got down the
25 road and talked to Mr. Nassrah. Was he still in the fence?

TESTIMONY OF RANDY MORGAN

- 1 A. No, sir. He was coming out of the fence.
- 2 Q. So he had --
- 3 A. The gate was open and he was coming out.
- 4 Q. He's coming out of the fence and the Hyatts are down
- 5 there with the truck where you were, correct?
- 6 A. No, sir. I left the truck scene, the trailer and I
- 7 went down. Officer Lilly was there with the Hyatts and I
- 8 just went on down to where the gate area was.
- 9 Q. Okay. But the Hyatts were still down there, they
- 10 didn't go up there with you and you didn't meet them up
- 11 there at that gate.
- 12 A. No.
- 13 Q. Okay.
- 14 A. Mr. Nassrah is the only one I spoke with at the gate
- 15 area.
- 16 Q. Okay. And he was already out.
- 17 A. Uh-huh.
- 18 Q. All right. Then jumping back to the 16th. You're the
- 19 responding officer, I know there were a lot of folks on the
- 20 scene but you do an incident report --
- 21 A. Yes.
- 22 Q. -- just kind of a summation of what you saw and what
- 23 you did, right?
- 24 A. Yes, sir.
- 25 Q. Do you recall who all -- you kind of kept tabs with who

TESTIMONY OF RANDY MORGAN

1 comes in to the scene; is that correct?

2 A. Deputy Lilly was in charge of the people going and
3 coming in to the scene, he put up the crime scene tape and
4 established that.

5 Q. Okay. Let me show you something here. Do you
6 recognize this? You can hold it if you want to.

7 A. Yeah.

8 Q. Is that your incident report?

9 A. Yes.

10 Q. On the second page, this is what I'm looking at right
11 here. Is this a summation of who came in and out of the
12 scene?

13 A. Yes, sir.

14 Q. Can you tell us who the officers and other personnel
15 was that was coming in and out of the scene?

16 A. You want me to read them all?

17 Q. Yes, sir, please.

18 A. Deputy Morgan, Deputy Steele, Deputy Lilly,
19 Investigator Bennett, Deputy Well, Investigator Marshall,
20 Sheriff Faile, Investigator Rogers, Captain Hilton, Captain
21 Bailey, Deputy Taylor, Investigator Crump, Lee Blackmon with
22 SLED. Okay. I guess EMS responders were on the crime
23 scene. Jamie Demby, Craig Robinson, Mike Dazzo?

24 Q. I don't know.

25 A. Lewis Roman, and David Hobnet?

TESTIMONY OF RANDY MORGAN

1 Q. Works for me. Thank you, sir. Y'all kind of have to
2 keep up with everybody who goes in and out just so you can
3 show that everybody who was in there was supposed to be in
4 there and no other folks get in there, right?

5 A. Yes. Now, Officer Lilly was in charge of that going in
6 and out as far as that.

7 Q. Okay. All right. But that's -- to your recollection
8 that's the assessment --

9 A. As far as I know.

10 Q. Okay. That's fine. When you get there you've got two
11 folks that are hurt, one person with the wound to the head
12 and one person with a gunshot wound, correct?

13 A. Yeah.

14 Q. At that point in time you were -- you were just trying
15 to assess the scene, correct?

16 A. Yes, sir.

17 Q. You hadn't figured out who a primary aggressor was, you
18 just --

19 A. No, sir, I did not.

20 Q. And I think you said EMS -- I think the solicitor asked
21 you when you got a 1075 EMS automatically comes?

22 A. Well now, on those type of calls I am confident that
23 EMS was dispatched to that.

24 Q. Okay. Well, they got there, right?

25 A. Yeah, sure.

TESTIMONY OF RANDY MORGAN

1 Q. And we see on your video that I believe it's Mr.

2 Nassrah that gets transported out, right?

3 A. Yes, sir.

4 Q. I don't see Mr. Hyatt, but did he get transported out?

5 A. Yes.

6 Q. By EMS?

7 A. Yes.

8 Q. In fact, I think a helicopter flew in for both of them,
9 didn't they?

10 A. Yes, sir.

11 Q. It was just on the video, I saw one of them but I know
12 it was cutting on and off. I'm not saying you cut it, don't
13 get me wrong now, I'm not saying you cut anything out, but
14 both -- I just want to clarify it, did -- both of those were
15 removed by helicopter.

16 A. Both was treated by EMS and transported, yes.

17 Q. Once the investigators got there you kind of turned it
18 over with them. You assist in taking some statements but
19 you don't collect the evidence, right?

20 A. No, just pass information on.

21 MR. FRICK: Thank you, sir. That's all of the
22 questions I have.

23 MR. COOK: No further questions, Your Honor.

24 THE COURT: All right. Thank you, sir, you may step
25 down. Thank you very much. Call your next witness.

TESTIMONY OF CRAIG LILLY

1 MR. COOK: State calls Deputy Craig Lilly.

2 The witness, CRAIG LILLY, was first duly sworn
3 and testified as follows, on:

4 DIRECT EXAMINATION

5 BY MR. COOK:

6 Q. Please state your name for the record.

7 A. Craig Lilly.

8 Q. Who is your employer?

9 A. The Lancaster County Sheriff's Office.

10 Q. How long have you been with the sheriff's office?

11 A. A little over five years.

12 Q. What are your general duties for the sheriff's office?

13 A. At this time?

14 Q. Sure.

15 A. I'm a training officer with the professional standards
16 unit.

17 Q. Were you working September 16th of 2010?

18 A. Yes, sir.

19 Q. Did you respond to Merle Lane that day?

20 A. Yes, sir, I did.

21 Q. What type of call was it?

22 A. 1075, a shooting call.

23 Q. Were you first on the scene?

24 A. No, sir. I was the third officer that arrived that
25 day.

TESTIMONY OF CRAIG LILLY

1 Q. Besides law enforcement, who else was on the scene when
2 you got there?

3 A. Aaron Hyatt, Michael Hyatt, Mr. Nassrah and Mr. Melton,
4 and Deputy Morgan that is.

5 Q. Besides law enforcement, did you know the parties on
6 the scene when you got there? Were you familiar with them?

7 A. I was familiar with the Hyatts from earlier that week.

8 Q. What happened earlier that week that you gained
9 familiarity with the Hyatts?

10 A. The call that was given out that Deputy Morgan
11 responded to that I also responded to, locked gate call.
12 When I got there Deputy Morgan was talking to the Hyatts, he
13 went to speak to Mr. Nassrah I guess down at the end of the
14 field which I never spoke to at the time. I stood by with
15 the Hyatts as Deputy Morgan spoke with Mr. Nassrah.

16 Q. That incident you referred to, were the parties
17 involved, allegedly Mr. Hyatt and Mr. Nassrah, were they
18 both -- were they the two parties on the incident on the
19 13th?

20 A. Yes.

21 Q. Back to the 16th when you got to the scene, what was
22 your role as far as investigation or casing the scene? What
23 did you do?

24 A. Well, when I responded to the scene I was the third
25 officer on scene. I approached Deputy Morgan and

TESTIMONY OF CRAIG LILLY

1 Investigator Steele to find out what the situation was.
2 Once I left them I went over and spoke to the Hyatts for a
3 second. As soon as EMS arrived that's when I started
4 cording off the crime scene so nobody else would go into the
5 crime scene or disturb any evidence and started the crime
6 scene log.

7 Q. When you prepare the crime scene log as you just heard
8 Deputy Morgan testify all of the names that are on that
9 list.

10 A. Yes, sir.

11 Q. Are you responsible for keeping up with those names on
12 this case, is that one of your duties?

13 A. Right. I wrote down who actually enters the crime
14 scene.

15 Q. Is it who actually comes into the crime scene or is
16 there something somebody has to do to be able to add to that
17 list?

18 A. No. If somebody steps under that crime scene tape
19 their name is added to that list.

20 Q. Does it necessarily mean that they did something on the
21 scene?

22 A. No, sir, it does not.

23 MR. COOK: Nothing further from Deputy Lilly. Thank
24 you.

25 THE COURT: Mr. Grier?

TESTIMONY OF CRAIG LILLY

1 MR. GRIER: I've got no questions.

2 THE COURT: Mr. Frick?

3 CROSS EXAMINATION

4 BY MR. FRICK:

5 Q. Just quickly. The incident on the 13th, you stayed
6 with the Hyatts, right?

7 A. Yes, sir.

8 Q. Both of them? Were both of them there?

9 A. I believe both of them were at the residence while
10 Deputy Morgan went to the end of the road to speak with Mr.
11 Nassrah.

12 Q. You didn't see them go to the end of the road and
13 unlock the gate.

14 A. No, sir, I did not.

15 MR. FRICK: That's all.

16 THE COURT: Thank you, sir, you can step down. Call
17 your next witness.

18 MR. COOK: State calls Investigator Ken Taylor.

19 The witness, KEN TAYLOR, was first duly sworn
20 and testified as follows, on:

21 DIRECT EXAMINATION

22 BY MR. COOK:

23 Q. Please state your name for the record.

24 A. My name is Ken Taylor.

25 Q. Who is your employer?

TESTIMONY OF KEN TAYLOR

- 1 A. Lancaster County Sheriff's Office.
- 2 Q. What do you do at the sheriff's office?
- 3 A. Currently I'm assigned to our crime scene
- 4 investigations unit.
- 5 Q. CSI?
- 6 A. Yes, sir.
- 7 Q. How long have you been with CSI?
- 8 A. I've been with the crime scene unit just a little over
- 9 four years.
- 10 Q. Just overview, what does CSI do?
- 11 A. We, of course, investigate any crime scene. Usually
- 12 we're trying to look more so for physical evidence, and in
- 13 most cases we're called out on burglaries, assaults,
- 14 homicides, things of that nature. We don't come out on
- 15 every call, again, more minor calls they generally don't
- 16 call us out, just something that usually involves a little
- 17 more time spent on gathering evidence, collecting evidence
- 18 or processing some evidence.
- 19 Q. Did you respond to Merle Lane September 16th of 2010?
- 20 A. Yes, I did.
- 21 Q. What type of call was it?
- 22 A. It went out as a shooting call.
- 23 Q. When you arrived on the scene who all was there, do you
- 24 remember?
- 25 A. Quite a few people were there. My Lieutenant, Christy

TESTIMONY OF KEN TAYLOR

1 Rogers, coworker Crime Scene Investigator Jeff Steele was
2 there, Deputy Morgan, I believe Deputy Lilly was there,
3 Mr. Aaron Hyatt, Mr. Michael Hyatt. Mr. Nassrah, I believe,
4 had already been transported by the time I got there.

5 Q. I'm going to show you --

6 A. No, excuse me, I think I've got it in reverse. Mr.
7 Nassrah was getting ready to be transported, I think
8 Mr. Hyatt had already been transported by the time I got
9 there.

10 MR. COOK: Approach the witness, Your Honor?

11 THE COURT: Yes, sir.

12 Q. I show you this diagram. Does this look familiar to
13 you?

14 A. Yes.

15 Q. Can you identify what that is?

16 A. Yeah. This is a sketch drawing that I did to try to
17 depict the overall view of the scene.

18 Q. Does it look altered in any way from when you made it?

19 A. No, sir.

20 Q. What does that diagram show?

21 A. This shows a small portion of Merle Lane which is a
22 dirt road coming in from the paved roadway, which would be
23 off to the right of this particular drawing, leading toward
24 the residence of Michael Hyatt at [REDACTED] Merle Lane.

25 Q. Okay. When you got to the scene, how many vehicles --

TESTIMONY OF KEN TAYLOR

1 non-law enforcement vehicles were on Merle Lane?

2 A. There were, I believe, three pickup trucks, one tractor
3 and a trailer and another implement for I think bailing or
4 bundling hay.

5 Q. Does that diagram show all of those vehicles?

6 A. Yes.

7 Q. The first vehicle, which would be closest to -- can you
8 see this image on this screen?

9 A. Yes, sir, I can.

10 Q. The top right corner, is that Horton Rollins Road, is
11 that familiar to you?

12 A. I'm not familiar with it but I --

13 Q. Would that be the entrance to Merle Lane?

14 A. Yes, sir, coming of Horton Rollins, correct.

15 Q. The vehicle that's closest to the entrance of Merle
16 Lane, what vehicle was there?

17 A. That was a I believe a green colored -- no excuse, me,
18 yeah, a green colored truck that was purportedly driven by
19 Mr. Aaron Hyatt.

20 Q. What was the next vehicle?

21 A. The next vehicle was a pickup truck pulling a trailer,
22 it was purportedly driven by Mr. Nassrah.

23 Q. Was it going in the same direction as the green truck
24 or was it headed out of Merle Lane?

25 A. It was headed out of Merle Lane back toward the main

TESTIMONY OF KEN TAYLOR

1 paved road, whereas the truck that was supposed to be
2 Mr. Aaron Hyatt's was pointed in the other direction
3 directly toward it.

4 Q. What is the next vehicle in line going down Merle Lane?

5 A. It's going to be a tractor pulling a farm implement.

6 Q. What's behind the tractor?

7 A. Behind that is another pickup -- a final pickup truck
8 supposedly or purportedly driven by Mr. Michael Hyatt.

9 Q. Did you measure the distance of how far it was from the
10 back of Aaron Hyatt's truck, the green truck, to the back of
11 the last truck in that caravan of vehicles?

12 A. Yes, sir, we did.

13 Q. How far was it?

14 A. We measured it to be 144 feet and five inches.

15 Q. Okay. Can you see this map on your screen up there
16 right in front of you?

17 A. It's not on my screen here, no, sir.

18 Q. Tap the screen.

19 A. There it is.

20 Q. With your finger can you make a line on that map where
21 the back of Aaron Hyatt's truck would be.

22 A. It should be roughly about right there.

23 Q. Okay. Can you make another line where the back of
24 Michael Hyatt's truck, the red truck in the back, where it
25 would be?

TESTIMONY OF KEN TAYLOR

1 A. It would be approximately there.

2 Q. And how far did you say that was?

3 A. 144 feet, five inches.

4 MR. COOK: Your Honor, the State moves to introduce
5 this diagram into evidence as --

6 MR. GRIER: Your Honor, I would like to have a short
7 cocounsel --

8 THE COURT: Okay.

9 (Break in proceedings.)

10 MR. FRICK: Judge, can we take up a matter outside of
11 the jury's presence quickly?

12 THE COURT: Okay. Ladies and gentlemen of the jury,
13 now is one of those times where I need to take up matters of
14 law outside of your presence, if you would please retire to
15 the jury room, don't talk about the case.

16 (The jury left the courtroom.)

17 MR. GRIER: I think we have a stipulation, Your Honor,
18 that we have no objection to -- am I right -- there will
19 be -- this sketch indicates there is blood on the fender and
20 there ain't no -- there is not blood on the fender. Okay.
21 So we have no problem with it as long as that is redacted.
22 And provided that there's no testimony or evidence or the
23 hemi sticks that they attempted to test the blood with on
24 the scene and there's not going to be evidence about that.

25 THE COURT: You're not asking him about that?

TESTIMONY OF KEN TAYLOR

1 MR. COOK: I'm not going to introduce the fact that
2 they tested for blood on the spot where the diagram
3 indicates there was blood. I'm not going to introduce it.

4 THE COURT: If y'all hand me a sharpie I will mark
5 through it with y'all looking so we can get it on the record
6 that everybody agrees with what the exhibit is redacted.
7 Now, does the document redacted satisfy the defense request?

8 MR. GRIER: That is fine with me, Your Honor.

9 THE COURT: All right. Thank you. Then the State is
10 going to offer this in as the State's next in order?

11 MR. COOK: Yes, sir.

12 (The diagram was received as State's 18.)

13 (The jury return to the courtroom.)

14 THE COURT: All jurors are present. Sorry about that,
15 ladies and gentlemen. Remember, I told you Monday I try not
16 to make y'all get up and down too often but we did have a
17 matter we needed to take up outside of your presence and we
18 have done that so we can resume where we are. Solicitor?

19 MR. COOK: Thank you, Judge. The State moves for
20 Investigator Taylor's diagram be put into evidence.

21 MR. GRIER: No objection.

22 THE COURT: Without objection entered into evidence as
23 State's Number 2?

24 MR. COOK: I ask that I publish this to the jury.

25 THE COURT: Any objection.

TESTIMONY OF KEN TAYLOR

1 MR. GRIER: No objection.

2 THE COURT: All right. Pass it around.

3 BY MR. COOK:

4 Q. Investigator Taylor, did you locate any firearms on the
5 scene?

6 A. Yes, we did.

7 Q. How many?

8 A. Two.

9 Q. Did you locate a .380?

10 A. Yes, we did.

11 Q. Where was that?

12 A. It was, I believe, on the ground near a fence post just
13 off of the edge of the gravel road.

14 Q. Do you know who that gun belonged to?

15 A. It's my understanding, I believe, it belonged to Mr.
16 Nassrah.

17 Q. You said -- was Kamil still on the scene when you got
18 there or was he leaving?

19 A. He was being treated at the time and getting ready to
20 be transported out.

21 Q. When he was being treated, do you know how far the gun
22 was from where he was?

23 A. I think it was just within a few feet I believe, if I
24 recall.

25 Q. Where was the other gun you found?

TESTIMONY OF KEN TAYLOR

1 A. We found another smaller caliber pistol in the glove
2 box in the pickup truck that I believe Mr. Nassrah had been
3 driving.

4 Q. What caliber?

5 A. I think it was a 25 caliber, not 100 percent certain on
6 that. It should be in a narrative in the one of the reports
7 there, but I think it was a 25 caliber.

8 Q. It was in the glove box when you arrived?

9 A. Yes.

10 Q. Did you find any shell casings on the scene?

11 A. Yes, we did.

12 Q. How many?

13 A. If I recall I believe we found two.

14 Q. What caliber were they?

15 A. 380.

16 Q. I really don't know a lot about guns, but can you
17 explain what a shell casing actually is?

18 A. Yeah. The casing is just basically the part left
19 behind of the whole cartridge once the bullet is fired. We
20 may call it a bullet, a cartridge, a cartridge casing, but
21 the casing or the cartridge casing as it's referred to
22 sometimes is the empty, the brass empty or whatever material
23 it's made of, but it's going to be the empty portion that's
24 left behind. It's either retained in the gun or ejected
25 from the gun.

TESTIMONY OF KEN TAYLOR

1 Q. So ejected from the gun?

2 A. Yes.

3 Q. So how does it -- how far can it go -- how far can the
4 casing be from where it was fired?

5 A. It depends. It depends on the gun, depends on -- I'm
6 sure there are a lot of factors. It may depend on the type
7 of ammunition, may depend on the terrain of where the empty
8 casing was ejected by the semiautomatic handgun, a lot of
9 factors there.

10 Q. Where are these two shell casings located?

11 A. Both of these casings -- one was found, if I can recall
12 and I believe it's going to be on our diagram, the location
13 of it there -- one was found just a few feet from the left
14 rear tire, I think, of Aaron Hyatt's pickup truck, and a
15 second one was found down below the fence post which was
16 near where Mr. Nassrah was seated on the ground when I
17 arrived. I think all in all they were probably about 25 or
18 so feet from each other where the two casings were found in
19 that same area.

20 Q. How far were the casings in relation to Kamil?

21 A. I think one was about 25 feet below him and I think the
22 other one was about 25 or 26 feet to the -- I'm going to say
23 to the east back toward Mr. Aaron Hyatt's pickup truck.

24 Q. Okay. Did you recover any articles of clothing?

25 A. Yes, we did.

TESTIMONY OF KEN TAYLOR

1 Q. What all did you recover?

2 A. I believe we recovered a pair of pants, a shirt and a
3 hat I believe it was.

4 MR. COOK: Beg the Court's indulgence for one moment.

5 THE COURT: Okay.

6 (Break in proceedings.)

7 Q. Investigator Taylor, did you recover this hat?

8 A. Yes.

9 Q. Can you identify what type of hat that is?

10 A. That's a John Deere brand hat.

11 Q. Did you process this?

12 A. We collected it.

13 Q. Okay. Where has this hat been since September of 2010?

14 A. In our evidence functions room, and I think that one
15 may have gone to SLED, I'm not 100 percent sure.

16 Q. Do you remember where this hat was on the scene?

17 A. Yes. It was on a fence post beside where Mr. Nassrah
18 was found when I arrived.

19 Q. To your knowledge was this Mr. Nassrah's hat?

20 A. I believe it was.

21 Q. Can you state what side of the hat -- there appears to
22 be a stain of something, what side of the hat it's on?

23 A. It appears to be more on the left side of the hat.

24 Q. Is it more towards the front or the rear of the hat?

25 A. Predominantly toward the left side, it appears to be

TESTIMONY OF KEN TAYLOR

1 from the front brim moving back towards the rear.

2 Q. Did you locate any blood on the scene?

3 A. Yes.

4 Q. Where did you locate blood?

5 A. Where Mr. Nassrah was found seated on the ground when I
6 arrived just off to -- looking at the direction he was
7 facing probably would have been more toward his right down
8 in the gravel. There were several drops of what appeared to
9 be blood down in the gravel, down in the soil there right in
10 the general area where he was at.

11 Q. You said the area he was facing. If you were in Mr.
12 Nassrah's position facing, what would he be looking at?

13 A. When I arrived he was seated on the ground I believe
14 facing back toward the paved road, what is that, Horton
15 Rollins I believe, facing back in that direction.

16 Q. Okay. Can you still see on your screen?

17 A. Yes.

18 Q. I know it's kind of zoomed out a little bit, but can
19 you make a mark where you found blood?

20 A. Yes, sir. It was just off of the gravel road, there's
21 a second mark there kind of down in that area, the second
22 mark to the left.

23 Q. Where is that blood in relation to the shell casings
24 you found?

25 A. One of the casings was found pretty close to it, right

TESTIMONY OF KEN TAYLOR

1 in within several inches of that. The second casing was
2 found up closer to Mr. Aaron Hyatt's pickup truck.

3 Q. One is farther towards the truck, one is closer to
4 Kamil.

5 MR. COOK: Beg the Court's indulgence one moment.

6 THE COURT: Okay.

7 (Break in proceedings.)

8 Q. I know you don't have it in front of you, Investigator
9 Taylor, the diagram you prepared, did you indicate where you
10 found these markings of blood on the casings?

11 A. Yes, I believe so.

12 Q. Did you search Aaron Hyatt's vehicle?

13 A. Yes.

14 Q. What did you find in there?

15 A. I don't think we found anything of any evidentiary
16 value that I recall.

17 Q. Let me backtrack just a little bit. The blood that you
18 found on the ground, when you're training with CSI is there
19 any way you could tell what direction the blood was going,
20 or where the blood came and what direction?

21 A. Sometimes you can. In this particular instance because
22 of the soil, the loose gravel and the sandy soil there in
23 the driveway it was really hard to make a determination on
24 most of that. There was one drop that did appear to have
25 some kind of directionality and without a copy of my

TESTIMONY OF KEN TAYLOR

1 narrative I can't recall what we actually determined. But
2 again, even with that not knowing whether it dripped off
3 someone as they were moving or if it was a limb that was
4 swinging or something like that that it may have what's
5 called cast-off blood, it may cast it off in that particular
6 direction. But there was just that one drop that had any
7 indication of directionality. Again the rest of it landed
8 in rocks and sandy area and it just didn't lend itself good
9 to make any determination on that.

10 Q. Okay. You said you had three spots of blood that you
11 located?

12 A. Actually I noted on my drawing here, let's see. I
13 believe I have noted five locations here on the drawing
14 again over in the gravel area of the roadway.

15 Q. Do you have any idea the area around the -- how large
16 an area where all of that blood it is encompassed?

17 A. Probably in an area up to eight feet in length and
18 maybe three feet in width, just a swath or a path.

19 Q. So a pretty confined area?

20 A. Yes.

21 Q. When y'all got there there wasn't blood splattered all
22 over the gravel road.

23 A. No, sir, that was the only place where we really
24 noticed where some drops appeared to have come off there.

25 MR. COOK: No further questions for him, answer

TESTIMONY OF KEN TAYLOR

1 anything that they may have for you.

2 THE COURT: All right, Mr. Grier?

3 MR. GRIER: Your Honor, Mr. Frick is going to lead on
4 this one if that's in the Court's discretion.

5 THE COURT: All right. Mr. Frick?

6 CROSS EXAMINATION

7 BY MR. FRICK:

8 Q. Are you the one that took the pictures on this one? I
9 can never get it straight whether it's you or --

10 A. I took some of the pictures.

11 Q. Okay. All right. I'm going to show you some pictures.
12 Just look through them and tell me if you recognize -- as a
13 group just tell me.

14 A. Yes, sir, I recognize the pictures.

15 Q. What are they?

16 A. They are pictures of spattered stains on the ground and
17 in the gravel that we believe was blood drops.

18 Q. Okay. That's the stuff that Solicitor Cook was asking
19 you about?

20 A. Yes, sir.

21 Q. Those are the makers that you were talking about? I've
22 got 9, 10, 11, 13 and 14, right?

23 A. Yes, sir.

24 Q. And then I've got another picture here, what does that
25 look like to you?

TESTIMONY OF KEN TAYLOR

1 A. That is some of same markers, some of the same
2 locations, kind of an overall shot of it.

3 Q. Is that all of these just showing you where it was
4 located?

5 A. Yes. All except for number 14, number 14 is not in
6 that particular shot.

7 Q. Do you know where 14 was then? Can you tell where it
8 would be in this picture?

9 A. Yes, sir. Just above number nine, just in this area
10 here.

11 Q. Okay. So it's still kind of in the area?

12 A. Yes, sir.

13 Q. 14 just hadn't been put down on there?

14 A. Yeah. I think when we took that one and then we
15 continued looking and we spotted the final one and just put
16 another marker down after we had already taken that picture.

17 MR. FRICK: I would move these in as the next six
18 defense exhibits.

19 MR. COOK: No objection.

20 THE COURT: Without objection they're received as the
21 next six exhibits.

22 (The photographs were received as Defendant's
23 13-18.)

24 Q. Was Mr. Nassrah out there when you got there or had he
25 already been transported?

TESTIMONY OF KEN TAYLOR

1 A. He was on scene when I arrived, they were readying him
2 to transport him about the time I got there.

3 Q. Okay. I'm going to show you Defendant's Number 12.
4 Was he still in that situation or was he in a different
5 situation?

6 A. When I arrived he was sitting there leaning against
7 that fence.

8 Q. Okay. Did you go up and observe him?

9 A. No, I did not.

10 Q. Do you know who did if anybody?

11 A. No, I don't.

12 Q. I'm going to ask you briefly on these. You put some
13 kind of I would call it a ruler thing here. What is that?

14 A. That's what it is, it's just a scale just to show
15 dimensions.

16 Q. Okay. These are not very large spots we're talking
17 about; is that correct?

18 A. Probably from just a few millimeters up to about five
19 or six millimeters.

20 Q. Millimeter is not real big, is it?

21 A. No, sir.

22 Q. I know they taught me the metric but I can't remember.
23 We're talking about an area not too much bigger than
24 somewhere around there?

25 A. Ah --

TESTIMONY OF KEN TAYLOR

- 1 Q. I don't know, you tell me.
- 2 A. Each group in those photos is probably about anywhere
- 3 from about an inch and a half or smaller.
- 4 Q. Okay. All right. It wasn't just you looking for these
- 5 spots, everybody is looking for spots?
- 6 A. Myself and Investigator Steele.
- 7 Q. Y'all are the CSI team, correct?
- 8 A. Yes, sir.
- 9 Q. Trained.
- 10 A. Yes, sir.
- 11 Q. Gone to school for it.
- 12 A. Yes, sir.
- 13 Q. Out there looking in this gravel.
- 14 A. Yes, sir.
- 15 Q. Y'all looked on the road.
- 16 A. Yes.
- 17 Q. Looked everywhere.
- 18 A. Yes.
- 19 Q. And if you'd seen something else that looked like one
- 20 these are the dots you would have put a marker on it?
- 21 A. Yes, sir.
- 22 Q. Okay. These are the dots you found.
- 23 A. Yes, sir.
- 24 Q. I see a lot of blue granite, it looks like there's some
- 25 pink granite out there too. This is a difficult scene to

TESTIMONY OF KEN TAYLOR

1 try to find blood splatter, would you agree?

2 A. It was rocky, it was gravel and sand.

3 MR. FRICK: Judge, I'm not going to ask that they look
4 at all of them right now, they'll see them later, but I just
5 want to pass one picture, Number 13.

6 THE COURT: All right. Any objection to that?

7 MR. COOK: No objection.

8 THE COURT: Okay. And again, ladies and gentlemen, at
9 the conclusion of the case when you are actually
10 deliberating you will have all of these items with you in
11 your jury room but for right now you can just pass them
12 around.

13 Q. I'll ask you because the solicitor brought it up. This
14 is the hat we're talking about? And I know we don't have it
15 in evidence but I think Mr. Cook is going to take care of
16 that.

17 A. Okay.

18 Q. Is that correct? That's the hat that was on the scene?

19 A. Yes.

20 Q. This is the hat that we say was Mr. Nassrah's?

21 A. Yes.

22 Q. This is the area that you're saying I guess is blood?

23 A. Appears to be blood, yes, sir.

24 Q. Do you know where this hat was located?

25 A. It was hanging on a fence post whenever I arrived.

TESTIMONY OF KEN TAYLOR

1 Q. When you got there.

2 A. Yes, sir.

3 Q. Okay. Got no idea how it got there, that's just where
4 it was.

5 A. No, sir.

6 Q. In fact, let me ask you about that. When y'all get out
7 on the scene do y'all move stuff around? I know -- we've
8 got a whole bunch of pictures of stuff, do y'all go out
9 there and photograph the scene as is?

10 A. We typically try to. Sometimes if other responders, be
11 it fire, EMS, other officers, things like that, they may
12 either deliberately or inadvertently move something before
13 we get there to document that, but we generally as a
14 practice try to document everything as is as it's found.

15 Q. Okay. When you got there do you recall whether --
16 there were a couple of trucks out there, right? Couple of
17 vehicles out there.

18 A. Yes.

19 Q. Let's see. The second vehicle is what I'm going to
20 call it, I think you have it marked here on Number 18 as Mr.
21 Nassrah's truck.

22 A. Right, yes, sir.

23 Q. Do you recall for lack of a better term, the state of
24 that vehicle? Were the doors opened, closed?

25 A. I really don't remember. I don't remember what it was

TESTIMONY OF KEN TAYLOR

1 like when I got there. I was one of the last ones to get
2 there.

3 Q. Okay. We've got some photographs out there. Would
4 that be you I need to ask about or do I need to ask
5 Mr. Steele?

6 A. Mr. Steele and I both took photographs. Again, I was
7 about the last one of our folks to get there so I couldn't
8 say chronologically which one would have been taken first.

9 Q. Okay. I'm going to show you State's Number 12 again.

10 A. Yes, sir.

11 Q. The vehicle here, is that what we're calling Mr.
12 Nassrah's vehicle?

13 A. Yes, I believe it is.

14 Q. It appears to me that the passenger side door is open.

15 A. Correct, sir.

16 Q. Was it that way when you got there?

17 A. I don't recall. I don't remember.

18 Q. Okay. All right. Jeff is in this one so it has got to
19 be you. Take a look at that photograph, does that
20 photograph look familiar?

21 A. Yes.

22 Q. Is that one that you likely took?

23 A. Most likely. Mr. Steele is in the photograph so most
24 likely I took this one.

25 Q. What is that a picture of?

TESTIMONY OF KEN TAYLOR

1 A. That is a picture looking back toward Mr. Aaron Hyatt's
2 truck and Mr. Nassrah's truck and evidence marker eight with
3 a scale marker in the gravel beside it.

4 Q. Okay. All right. To your knowledge had anybody moved
5 these vehicles from where they were when the incident took
6 place?

7 A. Not that I'm aware of.

8 Q. This is the distance they were apart.

9 A. Yes.

10 MR. FRICK: Your Honor, at this time I move this
11 photograph in as the next Defendant's Exhibit.

12 MR. COOK: No objection.

13 THE COURT: Without objection defendant's next in
14 evidence.

15 (The photograph was received as Defendant's
16 19.)

17 Q. I'll go ahead and ask you about these two, you will
18 either tell me you know them or you don't. Take a look at
19 these two photographs.

20 A. Again, I recall the scene. I couldn't say whether I
21 took these or Investigator Steele.

22 Q. Okay. But you were on the scene, is that what it
23 looked like when you were out there?

24 A. Yes, sir.

25 Q. What does that show?

TESTIMONY OF KEN TAYLOR

1 A. This again shows Mr. Aaron Hyatt's green pickup truck
2 and Mr. Nassrah's white pickup truck pulling the
3 trailer-load of hay.

4 Q. Okay. And it seems to be down that driveway we've been
5 talking about; is that right?

6 A. No. It's not down the driveway that comes off to the
7 side, this is on Merle Lane. All of these vehicles were up
8 on Merle Lane.

9 Q. I'm sorry, I'm talking about whoever took the pictures,
10 is this from --

11 A. Yes, sir. From standing down the driveway, yes, sir.

12 Q. What does this look like?

13 A. And this would be showing the same two vehicles looking
14 back toward -- this is going to be Deputy Morgan's patrol
15 car from where he pulled up just at the off-shoot of that
16 driveway.

17 Q. This road I'm looking at here, is that Merle Lane?

18 A. This should be Merle Lane.

19 Q. All right. And this is the driveway we have been
20 talking about.

21 A. Yes.

22 Q. Okay. I'll show you these two.

23 MR. FRICK: Two more photographs, Your Honor.

24 MR. COOK: No objection.

25 THE COURT: Without objection defendant's next in order

TESTIMONY OF KEN TAYLOR

1 are admitted into evidence.

2 (The two photographs were received as

3 Defendant's 20-21.)

4 Q. Two more, you can tell me you're familiar with them or
5 not. I'm going to show these two photographs.

6 A. I do not recall taking those.

7 Q. Okay. But you said Mr. Nassrah was still on the scene.

8 A. Yes.

9 Q. And I think you told me you didn't go up there, so you
10 can't tell whether this is an accurate depiction or not.

11 A. No. I didn't get too close to him. Again, I think EMS
12 was tending to him and they were getting ready to transport
13 him while I was there.

14 Q. That's fine, thank you, sir. I'll show you this
15 photograph.

16 A. Yes.

17 Q. Do you know what that is?

18 A. Yes, sir. That is the Beretta pistol that we collected
19 on the scene I believe it is. Yeah.

20 Q. Okay. You saw the pistol, this is what it looked like
21 on the scene, I mean.

22 A. Yes, sir, that looks like it.

23 Q. Okay. I'm going to move this one into evidence.

24 MR. COOK: No objection.

25 THE COURT: Without objection defendant's next in order

TESTIMONY OF KEN TAYLOR

1 admitted into evidence.

2 (The photograph was received as Defendant's

3 22.)

4 Q. Now, Mr. Taylor, I'm no gun expert but it appears to me
5 that the hammer is back on this thing.

6 A. Yes, sir, it does look to be that way.

7 Q. Did you do any analysis? Did you look at this gun or
8 was that Mr. Steele?

9 A. I think I dusted it for -- no, excuse me -- yeah. I
10 believe I dusted it for prints and took some swabs from it
11 once we got it back to our office, and I believe I unloaded
12 it as well.

13 Q. Do you know how many bullets it had in it, if any?

14 A. It is in my narrative. I think it had one in the
15 chamber and if I recall maybe six. Without looking at the
16 narrative I can't recall.

17 Q. I can take care of that without any problem. Is that
18 your narrative?

19 A. Yes, sir, I believe it is.

20 Q. What can you tell me about this gun?

21 A. Model 84 .380 caliber. It was found beside an item
22 marker marked as item number two in the photographs. I
23 unloaded it there on the scene, it had one cartridge in the
24 chamber and six cartridges in the magazine.

25 Q. What does one in the chamber mean?

TESTIMONY OF KEN TAYLOR

1 A. It had a live cartridge in the chamber that would have
2 been next in line to have been fired.

3 Q. And if the hammer is pulled back is it ready to go?

4 A. It would appear unless the safety is on or something.

5 I don't know, again, without -- but it appears from the
6 picture to be cocked. And again, if it's a semiautomatic
7 once it's fired it's going to cock once, it loads the next
8 one in anyway, it's going to do that automatically.

9 Q. Until it runs out or jams.

10 A. Generally, yeah.

11 Q. Okay. Did you make any determination about the
12 condition of the gun when it was found? Is this thing
13 jammed, is it ready to fire or did you make a determination?

14 A. I don't recall anything on that.

15 Q. Okay. Is there anything in your report there?

16 A. No, sir, not that I can recall. Again, other than just
17 having one in the cartridge -- excuse me, one in the chamber
18 and six cartridges in the magazine.

19 Q. Can I see your report for a second?

20 A. Yes, sir.

21 Q. It wasn't in your report, it's in Mr. Steele's.

22 A. Okay.

23 Q. I always get y'all's stuff confused, I'm sorry. I'm
24 about done showing you pictures, but I'm going to show you
25 three more pictures.

TESTIMONY OF KEN TAYLOR

- 1 A. Yes, sir.
- 2 Q. Does that look familiar to you?
- 3 A. They do. I believe these are photographs that I took.
- 4 Q. What are they pictures of?
- 5 A. I believe they're the inside front passenger area of
- 6 Mr. Nassrah's pickup truck.
- 7 Q. Okay. Now, it looks kind of like it was the glove box.
- 8 A. Yes, sir.
- 9 Q. Was the glove box opened or closed or do you remember?
- 10 A. If I recall it was closed.
- 11 Q. Okay. All right. Somebody opened it, I think. Was it
- 12 you or did somebody else do it?
- 13 A. When we searched it I opened it and searched the inside
- 14 of the glove box.
- 15 Q. This is the condition you saw it in.
- 16 A. Yes, sir.
- 17 Q. There is a marker.
- 18 A. Yes.
- 19 Q. There's something beside that marker.
- 20 A. It was a stain that we thought might be blood.
- 21 Q. Where you swabbed it.
- 22 A. Yes.
- 23 Q. Are you aware of the results of that swab?
- 24 A. I think there was a SLED report on that, I don't recall
- 25 for certain what their answer was on it right now without

TESTIMONY OF KEN TAYLOR

1 actually seeing the report.

2 Q. Okay. I can show you that report if you don't mind.

3 A. Sure.

4 MR. FRICK: And your Honor, I want to move these three
5 into evidence?

6 MR. COOK: No objection.

7 THE COURT: Without objection the three photographs
8 defendant's next in order.

9 (The photographs were received as Defendant's
10 23-25.)

11 Q. Do you remember the marker number of what that one was?

12 A. No, sir, I do not.

13 Q. I'm going to hand you a sheet. Is that the one that
14 lists all of your evidence and how SLED numbered it?

15 A. Yes, sir, it looks like it is.

16 Q. Okay. Do you see on there -- don't tell me what the
17 number is, do you see on there a number that correlates with
18 that swab I was just asking you about?

19 A. I believe I do.

20 Q. I'm going to hand you a report. Do you know what that
21 report is?

22 A. Yes. That is a report back from SLED.

23 Q. Dealing with blood?

24 A. Yes, sir, swabs.

25 Q. Do you see where they did something with that marker

TESTIMONY OF KEN TAYLOR

- 1 number?
- 2 A. Yes, sir.
- 3 Q. What were their results?
- 4 A. The results say blood indicated, see DNA analysis.
- 5 Q. What does it say about that marker?
- 6 A. They labeled it as marker number eight and we had
- 7 listed it as a swab from the glove box door of Ford truck.
- 8 And according to the SLED report it says, "DNA profile
- 9 developed from item 8, 11 and item 12 matches the DNA
- 10 profile of Kamil Nassrah."
- 11 Q. That's a pretty high probability, I'm not going to ask
- 12 you to get into that.
- 13 A. Yes, sir.
- 14 Q. But it's his blood.
- 15 A. According to the report, yes, sir.
- 16 Q. So I went through all of that to ask you one question,
- 17 the stuff we see right here and that dot right there that
- 18 y'all collected is Mr. Nassrah's blood on the glove box in
- 19 his truck?
- 20 A. According to SLED's report, yes.
- 21 Q. All right. Two more pictures and I promise this is
- 22 going to be it. Do you recognize those?
- 23 A. Yes.
- 24 Q. Did you take those?
- 25 A. I believe I did.

TESTIMONY OF KEN TAYLOR

1 Q. What are those pictures of?

2 A. It's going to be the front driver's side of I believe
3 Mr. Nassrah's pickup truck.

4 Q. Okay. That's what it looked like when you got there?
5 I know there was a marker on there.

6 A. Yes.

7 Q. You put that little ruler marker on there.

8 A. Yes.

9 Q. As far as the state of the vehicle, aside from that
10 that's what it looked like when you arrived and took the
11 picture.

12 A. Yes.

13 MR. FRICK: Two more.

14 MR. COOK: No objection, Your Honor.

15 THE COURT: Without objection two more photographs
16 defendant's next in order received into evidence.

17 (The two photographs were received as
18 Defendant's 26 and 27.)

19 MR. FRICK: That's all the questions I have, please
20 answer anything Mr. Grier has.

21 THE COURT: Mr. Grier?

22 MR. GRIER: Very briefly.

23 CROSS EXAMINATION

24 BY MR. GRIER:

25 Q. I always want to find out what your official title is.

TESTIMONY OF KEN TAYLOR

1 A. Crime Scene Investigator.

2 Q. Investigator Taylor, two guns found on the scene,
3 that's it?

4 A. Yes.

5 Q. You would know if there are any others. That's it.

6 A. Yes.

7 Q. One of them is one that you're aware that Mr. Nassrah
8 has stated that he shot Mr. Hyatt with, correct?

9 A. It's my understanding.

10 Q. And number two, that is in the glove box of his
11 vehicle --

12 A. Yes.

13 Q. -- is where it was located.

14 A. Right.

15 Q. Now, you testified about the dusting the Beretta .380.
16 Now, did you dust the .22 in the glove box?

17 A. I don't know if we did. I don't think we did any
18 further processing on that gun.

19 Q. So we don't -- was there any determination made that
20 you're aware of of who may have handled that .22 in any
21 respect?

22 A. Not that I recall.

23 Q. Did you conduct any GSR, any gun residue, on anybody on
24 the scene here? Who would have had that responsibility?

25 A. Generally either myself or Investigator Steele or

TESTIMONY OF KEN TAYLOR

1 possibly -- or Lieutenant. I just don't recall right off
2 hand which one of us may have collected from anyone at that
3 time. It should be in a narrative somewhere.

4 Q. So you can't testify as to whether GSR was performed on
5 Mr. Nassrah or Mr. Melton?

6 A. I don't recall collecting.

7 Q. But you did request the tests for --

8 A. I'm aware that a GSR kit was sent to SLED and processed
9 that had been collected from Mr. Nassrah, I just can't
10 recall which one of us collected it at the time. Again, it
11 should be on one of our narratives somewhere.

12 Q. Well, would the SLED report show who the GSR was
13 performed on as well?

14 A. Yes, sir. The SLED report will state who it was
15 collected from.

16 Q. Do you want to examine that document and see who it was
17 performed on?

18 A. Yes, it does. The SLED report does state the one GSR
19 kit was collected from Kamil Nassrah.

20 Q. Any other indication that GSR was performed on anybody
21 else?

22 A. Not that I am aware of.

23 Q. So you don't know if Mr. Melton -- there's no -- it
24 doesn't appear that any of Mr. Melton's -- a GSR was
25 performed on him or at least --

TESTIMONY OF KEN TAYLOR

1 A. I'm not aware of any.

2 MR. GRIER: Okay. Thank you, that's all.

3 MR. COOK: Briefly, Your Honor?

4 THE COURT: Yes, sir.

5 REDIRECT EXAMINATION

6 BY MR. COOK:

7 Q. Investigator Taylor, the SLED report that Mr. Frick
8 showed you they did the analysis on the blood on the glove
9 box?

10 A. Yes.

11 Q. That report -- you also sent the blood from the markers
12 in the driveway, correct?

13 A. I believe so, yes, sir.

14 Q. Do you remember sending what you had marked as evidence
15 marker as number 9 and number 11 to SLED?

16 A. Yes.

17 Q. I'll show you this report, items analyzed and it lists
18 the blood from the driveway on there?

19 A. Yes, sir. Swab from marker number 11 in the driveway
20 and swab from marker number 9 in the driveway.

21 Q. Those are the ones they asked you earlier. Do you know
22 remember where those were located in reference to Kamil
23 Nassrah?

24 A. Just a few feet from him.

25 Q. Okay. Under the analysis, does it say who SLED

TESTIMONY OF KEN TAYLOR

1 determined that blood belonged to?

2 A. According to SLED the DNA profile matched the profile
3 of Kamil Nassrah.

4 Q. Okay. Does it say what the odds are that that blood
5 belonged to him?

6 A. It says the probability in randomly selecting an
7 unrelated individual having a DNA profile matching these
8 items is approximately one in 140 quadrillion.

9 Q. Okay. 140 quadrillion?

10 A. Yes, sir.

11 Q. Pretty confident that's Kamil blood?

12 A. Pretty confident.

13 MR. COOK: Nothing further, Your Honor.

14 MR. GRIER: Your Honor, if I may, just one briefly.

15 THE COURT: All right.

16 RECROSS EXAMINATION

17 BY MR. GRIER:

18 Q. From the SLED report that you've examined, the only
19 blood that was found on anything that was determined to
20 belong to anybody was from Mr. Nassrah, correct?

21 A. No. I believe on one of the SLED reports there is one
22 additional.

23 Q. Okay. Does that report indicate any blood found by --

24 A. No, sir. This particular one you have here is on the
25 GSR kit.

TESTIMONY OF JEFF STEELE

1 MR. GRIER: Thank you.

2 THE COURT: Thank you, sir, you may step down. You can
3 call your next witness.

4 MR. COOK: State calls Investigator Jeff Steele.

5 The witness, JEFF STEELE, was first duly sworn
6 and testified as follows, on:

7 DIRECT EXAMINATION

8 BY MR. COOK:

9 Q. Please state your name for the record.

10 A. Jeff Steele.

11 Q. Who is your employer, Mr. Steele?

12 A. Lancaster County Sheriff's Office.

13 Q. What's your role at the sheriff's office?

14 A. I am a crime scene investigator.

15 Q. You're Mr. Taylor's partner?

16 A. Yes, sir.

17 Q. Did you respond to Merle Lane on September 16th of
18 2010?

19 A. Yes, sir, I was.

20 Q. What was your general role that day?

21 A. To process the scene.

22 Q. When you say to process the scene, what all does that
23 include?

24 A. Anything from collecting physical evidence to video and
25 photography, just generally anything in reconstruction.

TESTIMONY OF JEFF STEELE

1 Q. Did you photograph the scene that day?

2 A. I took a few photographs, yes, sir.

3 MR. COOK: May I approach the witness, Your Honor?

4 THE COURT: Yes.

5 Q. I've got a series of photos. Look at these and see if
6 you can remember taking these photographs.

7 A. These top few I definitely took, and these were taken
8 by Investigator Taylor.

9 Q. What does this picture show?

10 A. It shows Mr. Hyatt's green truck and the dually truck
11 of Mr. Nassrah's.

12 Q. What about this one?

13 A. This shows the white dually truck of Mr. Nassrah, the
14 green truck of Mr. Hyatt and the area where the firearm was
15 located.

16 Q. Okay. Can you tell us what this shows?

17 A. This is a photo of Mr. Nassrah with his injury to his
18 head.

19 Q. Can you tell us about this photo?

20 A. This is a photo that was taken after Mr. Nassrah was
21 released from the hospital showing where the injury had been
22 repaired.

23 Q. Where was that photograph taken?

24 A. Out of the old sheriff's office.

25 Q. Do you know how long after the incident you took that

TESTIMONY OF JEFF STEELE

1 photo?

2 A. No, sir, I do not.

3 Q. Is that an accurate depiction of what you saw that day
4 when you took the picture?

5 A. Yes, sir, it was.

6 Q. Can you tell us what you see in this picture?

7 A. This is a picture of Mr. Hyatt's truck. Deputy Morgan
8 and the -- Mr. Hyatt that had a gun shot wound to the left
9 side of his abdomen area.

10 Q. What does this picture depict?

11 A. This is an axe handle that was in the back of the green
12 pickup truck of Mr. Hyatt.

13 Q. Which Mr. Hyatt?

14 A. Aaron Hyatt.

15 Q. Okay. All right.

16 MR. COOK: Your Honor, State moves to introduce these
17 into evidence.

18 MR. FRICK: No objection.

19 MR. GRIER: No objection.

20 THE COURT: Without objection introduced as the State's
21 next in order.

22 MR. COOK: It's 1-17.

23 (The photographs were received as State's
24 1-17.)

25 (A bench conference was held.)

TESTIMONY OF JEFF STEELE

1 Q. Investigator Steele, did you collect an axe handle that
2 day on the 16th?

3 A. Yes, sir.

4 Q. Let me show you what this -- there's a tag on here.

5 A. Yes, sir, that's from me.

6 Q. Okay. Did you process this piece of evidence?

7 A. Yes, sir, I did.

8 Q. Can you tell us what it says, what's wrapped up?

9 A. What this is?

10 Q. What's in this --

11 A. This is an axe handle here inside the wrapping.

12 Q. All right. When you took this from the scene, what's
13 the process from when it gets to the scene to when it gets
14 into the evidence room at the sheriff's department?

15 A. It's just transported there securely by either myself,
16 Ken Taylor or Lieutenant Christy Rogers. Once it gets there
17 it's submitted into evidence and assigned out to us to be
18 processed.

19 Q. Okay. Is it in the same condition it was the day of
20 the incident to the best of your knowledge?

21 A. Excuse me?

22 Q. To the best of your knowledge was it in the same
23 condition as it was the day of the incident?

24 A. Yes, sir, besides me processing it.

25 Q. By processing it, what does that entail?

TESTIMONY OF JEFF STEELE

1 A. On that particular I used some swabs to swab some
2 reddish brown stains that were found on one end, those were
3 sent to SLED. And then on the other end I use Ruthenium
4 Tetroxide, a RTX developer to try to develop latent prints
5 and black powder in an effort to locate latent prints on the
6 item.

7 MR. COOK: Your Honor, I would ask if I could publish
8 this piece of evidence to the jury.

9 MR. GRIER: I have no objection to it other than --

10 MR. FRICK: He can open it up I believe but I don't
11 know if he needs to pass it around.

12 THE COURT: All right. You can open it up, Solicitor,
13 if that's what you wanted to do.

14 MR. COOK: Yes, sir. I'm not going to hand it to them.

15 Q. I'm going to keep this bottom piece on here so I don't
16 have to touch it. Did you find this at the scene?

17 A. Yes, sir.

18 Q. Where was it located?

19 A. I can't remember which end -- I processed both ends for
20 latent prints but I can't remember if one end had reddish
21 brown stains on it that were swabbed.

22 Q. How long would you say this axe handle is?

23 A. How long ago has that been?

24 Q. How long is it?

25 A. Two feet, two and a half feet.

TESTIMONY OF JEFF STEELE

1 Q. This was in Aaron Hyatt's truck?

2 A. Sir?

3 Q. This was in Aaron Hyatt's truck?

4 A. Yes, sir, in the bed portion.

5 Q. Can you tell us what it's made of?

6 A. Wood.

7 Q. All right.

8 MR. COOK: I would ask that be admitted into evidence
9 as State's Number 19.

10 MR. GRIER: I thought we had done that, I'm sorry.

11 THE COURT: Without objection from defense admitted
12 into evidence as State's next in order.

13 (The axe handle was received as State's 19.)

14 Q. Investigator Steele, can you identify this?

15 A. Yes, sir. It was a hat found on the scene.

16 Q. Okay.

17 MR. COOK: Your Honor, State moves to introduce the hat
18 into evidence as Exhibit Number 20.

19 THE COURT: All right. Without objection it's entered
20 as the next State's Exhibit.

21 (The hat was received as State's 20.)

22 Q. Investigator Steele, did you make any video recordings
23 of the incident?

24 A. Yes, sir, I did.

25 Q. What type of camera did you use?

TESTIMONY OF JEFF STEELE

1 A. A Sony handheld camcorder.

2 Q. Is it a department issued camera?

3 A. Yes, sir, it is.

4 Q. Did you put a copy of that into evidence?

5 A. I did.

6 MR. COOK: Your Honor, I would ask to admit
7 Investigator Steele's video, it's a seven minute video to
8 canvass the scene to show where everything was and let that
9 be published to the jury.

10 THE COURT: All right. Any objection?

11 MR. FRICK: No objection.

12 THE COURT: We will do that after a break. We'll take
13 a midafternoon break. Y'all don't discuss the case.
14 Mr. Witness, if you will just stay there, we'll take about a
15 ten minute recess and don't talk about the case, see you
16 shortly.

17 (The jury left the courtroom and a recess was
18 taken.)

19 THE COURT: All right. All members of the jury are
20 present. Solicitor?

21 MR. COOK: Please the Court? At this time I would
22 publish Investigator Steele's video of the scene.

23 THE COURT: All right, that's without objection.

24 (The video was played for the jury.)

25 Q. Investigator Steele, when did you take that video?

TESTIMONY OF JEFF STEELE

1 When did you take that video?

2 A. That day.

3 Q. Did you also take another video?

4 A. Excuse me?

5 Q. Did you take anymore videos that day?

6 A. Yes, sir, I did. A reenactment -- Mr. Hyatt had
7 volunteered to give a statement of what he said happened
8 that day and it was also videoed.

9 MR. COOK: Your Honor, the State would like to move
10 that video into evidence, the reenactment.

11 MR. FRICK: Same objection I had in the Denno hearing
12 pretrial.

13 THE COURT: Okay. Well, objection is overruled, you
14 can publish the video.

15 MR. GRIER: Your Honor, for the record I would stand
16 with Mr. Frick on that objection.

17 THE COURT: You're protected.

18 MR. COOK: Your Honor, it started on the wrong part.

19 THE COURT: Ladies and gentlemen, I hate to do this but
20 it would be best if y'all would just go on back to your jury
21 room and relax while we get all of that done. All right.
22 Don't talk about the case, don't discuss anything.

23 (The jury left the courtroom.)

24 THE COURT: All right. All members of the jury are
25 present. Solicitor, you've got it working.

TESTIMONY OF JEFF STEELE

1 MR. COOK: Please the Court?

2 (The video was played.)

3 MR. COOK: That's all we have for this witness.

4 THE COURT: Okay. Mr. Frick?

5 CROSS EXAMINATION

6 BY MR. FRICK:

7 Q. Good afternoon, Investigator Steele, how are you doing?

8 I want to show you Defense Number 22. Do you recognize
9 that?

10 A. Yes, sir, I do.

11 Q. What is that?

12 A. That's a firearm located at the scene.

13 Q. Okay. All right. Did you have any further dealings
14 with this weapon?

15 A. No, sir, I didn't.

16 Q. Well, did you prepare a supplement in this case?

17 A. Yes, sir.

18 Q. It looks like in the top part here you're talking about
19 the gun, don't read it, just glance right through and see if
20 you can see what I'm talking about. Do you see where you're
21 talking about the gun?

22 A. Yes.

23 Q. Is it -- I mean, you didn't take it back to the lab and
24 do any analysis on this.

25 A. No, sir, I did not.

TESTIMONY OF JEFF STEELE

1 Q. Your observation of it was on the scene?

2 A. Yes, sir.

3 Q. Okay. What did you observe about it? And you can have
4 the report if you need to.

5 A. I mean, I don't really need to read it. When I looked
6 at it it appeared that the trigger may have been depressed
7 slightly back, meaning it could be in a bad caution
8 situation if it would have fired, and the trigger is in the
9 firing position, it's just back.

10 Q. And you have had a good deal and training and
11 experience, you're CSI, correct?

12 A. Yes, sir.

13 Q. And you deal with firearms, correct?

14 A. Yes, sir.

15 Q. Did that indicate anything to you as far as the
16 condition of the gun or what had happened with the gun or
17 what was going on with the gun?

18 A. No, sir. I just knew that it was in a position that it
19 looked as if it could fire.

20 Q. All right. Could you tell if it whether it had
21 misfired or jammed or anything like that?

22 A. No, sir. It did not appear to be misfired or jammed,
23 there wasn't no indication of that.

24 Q. All right. But it was ready to fire.

25 A. Yes, sir. In my opinion, yes, sir.

TESTIMONY OF JEFF STEELE

1 Q. Okay. Nothing else -- there was another gun on the
2 scene, right? Do you recall?

3 A. No, sir.

4 Q. All right. You didn't have anything to do with the .22
5 that we've talked about?

6 A. I didn't collect that, no, sir.

7 Q. That's fine. Who got there first, you or Ken Taylor?

8 A. I did.

9 Q. When you got there -- I'm trying to figure out. All
10 right. On State's Number 5, that's Mr. Nassrah's truck,
11 correct?

12 A. Yes, sir.

13 Q. That's the passenger view.

14 A. Yes, sir.

15 Q. The door is open.

16 A. Yes, sir.

17 Q. Was it like that when you got there?

18 A. I can't recall when I got there, if you look back at
19 the photos.

20 Q. Okay. Well, this is another photo.

21 A. Okay.

22 Q. That's Number 4.

23 A. That's the passenger door and it is shut at that time.

24 Q. You don't remember which one was taken first, do you?

25 A. No, sir. Because I don't remember if I took this one,

TESTIMONY OF JEFF STEELE

1 that may have been Investigator Taylor.

2 Q. All right. I guess what I'm getting at, when y'all get
3 on the scene y'all take it as it is, right? I mean,
4 responding folks may do stuff but when y'all get there you
5 photograph things, look at things, this is how we found it,
6 correct?

7 A. Yes, sir.

8 Q. Okay. Then y'all at -- once you've documented, is that
9 when you start going through and collecting evidence or
10 manipulating things so to speak?

11 A. Yes, sir. You assess the scene and then you begin to
12 start collecting. You photograph as soon as possible so
13 that nothing will be moved, nothing tampered with, nothing
14 with anything.

15 Q. Okay. When you got there was Mr. Nassrah still there?

16 A. Yes, sir.

17 Q. Did you go look at him?

18 A. Yes, sir, I did.

19 Q. Close up?

20 A. Yes, sir.

21 Q. I mean, you walked up and saw him sitting --

22 A. Yes, sir.

23 Q. I'm going to show you Defense Number 12. That was kind
24 of where he was?

25 A. Yes, sir.

1 Q. Okay. I'm going to show you what's State's Number 5.

2 Did you take this picture?

3 A. Yes, sir, I did.

4 Q. Okay. All right. Is this the injury we're talking
5 about?

6 A. The injury is kind of toward the back, you know, crest
7 part of the head to the side here.

8 Q. Okay. That looks like some kind of indentation right
9 here. Are we talking about the same spot?

10 A. Well, all of this area is kind of damaged. It's kind
11 of hard to see with all of the hair and I didn't get in real
12 close, I shot it as good as I could from a distance.

13 Q. Okay. All right. Had anybody wiped him clean or done
14 anything before you got there to your knowledge?

15 A. Not to my knowledge, no, sir.

16 Q. Was anybody applying any pressure to that wound when
17 you got there?

18 A. No, sir, they were not.

19 Q. Did you find any bloody rags or anything laying around
20 him or near him?

21 A. No, sir, I did not.

22 Q. I think the solicitor -- this is the one I can lay
23 hands on, State's Number 4. That's the back of Mr.
24 Nassrah's head, correct?

25 A. Yes, sir. And the injury is right up in here.

TESTIMONY OF JEFF STEELE

1 Q. And this was taken not the day of the injury, a little
2 bit after?

3 A. After he received his medical attention and got back
4 out, yes, sir.

5 Q. You took this photograph?

6 A. Yes, sir, I did.

7 MR. FRICK: I believe that's all I've got for you.
8 Thank you, Mr. Steele.

9 THE COURT: Mr. Grier?

10 MR. GRIER: Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MR. GRIER:

13 Q. Who took the axe handle into evidence? Did you take it
14 into evidence?

15 A. No, sir, Investigator Taylor.

16 Q. But you did some testing on it?

17 A. Yes, sir, I did.

18 Q. And do y'all kind of jointly put your stuff together
19 when you put it to SLED and there might be you sending stuff
20 jointly or you sending it -- y'all work together in that
21 respect.

22 A. Yes, sir.

23 Q. Okay. Now, you tested for blood on the axe handle,
24 didn't you?

25 A. Yes, sir, I did.

TESTIMONY OF JEFF STEELE

1 Q. Okay. And a SLED report came back, blood indicated.

2 Whose blood?

3 A. I believe it was Michael Hyatt.

4 Q. Do you have it?

5 A. Yes, sir, I've got it right here.

6 MR. GRIER: That's all of the questions I have. Thank
7 you.

8 THE COURT: All right. Solicitor?

9 MR. COOK: No further questions, Your Honor.

10 THE COURT: Thank you, sir, you may step down. You can
11 call your next witness.

12 MR. COOK: That's all of the witnesses from the State
13 today, Your Honor.

14 THE COURT: Okay. All right. Well, ladies and
15 gentlemen of the jury, that concludes our business for the
16 day. We're going to recess until tomorrow morning at 9:30.
17 Reminder to you, don't discuss this case with anybody, you
18 have not received it yet. Don't do any independent research
19 on it, don't Google it, don't Facebook it or anything else
20 like that, don't go in to detail with your spouse or
21 significant other about it. You can tell them you are
22 serving on jury duty and that's it, say, "The Judge says I
23 can't talk about it," that should suffice. Okay. So be
24 back tomorrow morning at 9:30, look forward to seeing you.

25 (The jury left the courtroom.)

TESTIMONY OF MICHAEL HYATT

1 Grier? All right. You may proceed.

2 MR. GRIER: I'd call Michael Hyatt.

3 THE COURT: All right. Mr. Hyatt?

4 The witness, MICHAEL HYATT, was first duly
5 sworn and testified as follows, on:

6 DIRECT EXAMINATION

7 BY MR. GRIER:

8 Q. Please state your name.

9 A. Michael Hyatt.

10 Q. Mr. Hyatt, how old are you?

11 A. Sixty-three.

12 Q. Mr. Hyatt, what kind of work have you done during your
13 lifetime?

14 A. Construction.

15 Q. And is that principally it?

16 A. Pretty much all of my life, yeah.

17 Q. Okay. Do you do any farming?

18 A. Some, yes, sir.

19 Q. Do you do any farming out when you were living on Merle
20 Lane? Did you do any farming when you were living on Merle
21 Lane?

22 A. I had a farm there, yes.

23 Q. Okay. Mr. Hyatt, are you wearing hearing aids today?

24 A. Yes, sir.

25 Q. Why do you wear hearing aids?

TESTIMONY OF MICHAEL HYATT

1 A. To try to hear better. They're not perfect but they're
2 better than none at all.

3 Q. Do you draw disability?

4 A. Yes, sir, I do.

5 Q. What is that for?

6 A. Because of hearing.

7 Q. Do you have any other health issues?

8 A. I have COPD.

9 Q. What does that mean?

10 A. I have problems with my lungs.

11 Q. Is it heart related, too? Any issues with your heart?

12 A. I take blood pressure medicine -- high blood pressure
13 medicine.

14 Q. How long have you had COPD?

15 A. For about two or three years and I've been taking
16 treatment for it.

17 Q. Okay. Well, had you been diagnosed with that at the
18 time --

19 A. Yeah, I was taking inhalers. I've been taking inhalers
20 and stuff like that for about 10 years.

21 Q. Now, how about your hearing when -- are you legally
22 deaf?

23 A. Yeah. The diagnosis is not comfortable, I can't hear
24 words. Sometimes I hear words and they don't sound exactly
25 like they are even with the hearing aids, and there's no

TESTIMONY OF MICHAEL HYATT

1 hearing aid designed today that will improve it. It helps
2 it some but it's still not perfect, you know what I mean?

3 Q. How long have you had those sorts of hearing
4 difficulties?

5 A. Really started about 25 years ago. And about five or
6 six or seven years ago, or maybe a little bit more, I
7 started going to try to have something done for it and it
8 just kept getting worser and worser. First I wore hearing
9 aids and they would help some but then it got to when I was
10 around loud equipment it was just making me got worse and
11 worse or something, so it just got to a point where the
12 hearing aids don't do that much anymore. I don't even wear
13 them most of the time. I wore them to court to try to hear
14 better.

15 Q. All right. Were you wearing them back in September in
16 2010?

17 A. No.

18 Q. You didn't have them at that time?

19 A. Yes.

20 Q. I'm not saying on this date you had them, but on --
21 well, on this particular date when this confrontation
22 happened, September 16th?

23 A. I never wear them around the house because the way they
24 do the noise, some noises it's louder and they irritate me
25 so I don't wear them. It's just like now, I hear ringing

TESTIMONY OF MICHAEL HYATT

- 1 all the time and it's less when I ain't got them in.
- 2 Q. Are you married?
- 3 A. No, wife is passed away.
- 4 Q. Who lives with you?
- 5 A. Now?
- 6 Q. Well, back in 2010 who was living with you?
- 7 A. Nobody lived with me.
- 8 Q. You were living over on Merle Lane, right?
- 9 A. Yes.
- 10 Q. And were you living by yourself?
- 11 A. Yes.
- 12 Q. This is your son over here with Mr. Frick?
- 13 A. Yes, sir, it is.
- 14 Q. Does he live -- where does he live in relation to you?
- 15 A. He lives about a mile away from me on Lola Drive.
- 16 Q. Now, if you go down Merle Lane, how do you get to his
- 17 house?
- 18 A. You go to Horton Rollins Road, you turn right and go to
- 19 the first gravel road and turn left, then you go on down
- 20 Lola Drive and his private driveway is about 800 or 900-foot
- 21 long off of Lola down in the woods.
- 22 Q. Okay. Now, your home on Merle Lane, how far is that
- 23 off of the road? Do you know the distance?
- 24 A. From the front door?
- 25 Q. Yeah.

TESTIMONY OF MICHAEL HYATT

- 1 A. Probably 35 or 40 foot. Yes, it's probably 35 or 40
2 foot I would say maybe.
- 3 Q. And Merle Lane has got a posted speed limit?
- 4 A. Yes, sir.
- 5 Q. How long has it had a posted speed limit?
- 6 A. How long is it?
- 7 Q. Do you know how long it had been posted.
- 8 A. A long time.
- 9 Q. What is it?
- 10 A. 10 miles an hour.
- 11 Q. All right. Your home is a mobile home.
- 12 A. Yes, sir.
- 13 Q. And did you put that there or -- did you purchase that?
- 14 A. I purchased it.
- 15 Q. Okay. And it's not exactly a new mobile home either,
16 is it?
- 17 A. No. It was old, it was run down. I was trying to fix
18 it up, it was all delapidated, I'd been working on it for a
19 good while trying to fix things up on it.
- 20 Q. Okay. Now, do you recognize this picture?
- 21 A. Yes, I do.
- 22 Q. Who took that picture?
- 23 A. I did.
- 24 Q. Does that show your home?
- 25 A. Yes, it does.

TESTIMONY OF MICHAEL HYATT

1 MR. GRIER: Your Honor, I would offer that as
2 defendant's exhibit whatever it is.

3 MR. COOK: No objection.

4 THE COURT: All right. Without objection introduced as
5 defendant's next in order.

6 (The photograph was received as Defendant's
7 28.)

8 Q. All right. Will you look at that picture? With you
9 looking at it, what is on your left-hand side of that
10 picture?

11 A. My mobile home is.

12 Q. What's on the right-hand side?

13 A. The dirt road.

14 Q. Okay. And looking at your mobile home, have you got
15 air conditioning in that mobile home?

16 A. No.

17 Q. What is -- do you keep it closed up during the
18 summertime?

19 A. No, I keep the windows open.

20 Q. Is the window open or shut on that picture?

21 A. Yes, it's open.

22 Q. Well, why do you leave your windows open?

23 A. To let it air out. I ain't got no air conditioner so
24 it just --

25 Q. Well, it's a dusty road there, though, don't you need

TESTIMONY OF MICHAEL HYATT

1 your windows closed?

2 A. Well, there ain't too much awful traffic on that road,
3 you know what I mean? So I leave them open most of the
4 time. I don't go see many people. There's only one
5 residence past where I live down that road.

6 Q. So do you have a lot of problems with traffic on that
7 road?

8 A. Well, a lot of people go up and down there faster than
9 what they do and I have to try to ask them to slow down, you
10 know what I mean? Two things, dust and it's really narrow
11 too, you can't see good on that road to keep something from
12 happening.

13 MR. GRIER: Your Honor, I would ask to be allowed to
14 publish the photo to the jury.

15 THE COURT: All right. Without objection.

16 Q. How long have you lived there?

17 A. Since 2004.

18 Q. When do you recall you first meeting Mr. Nassrah?

19 A. The first time I met him I was working for a man named
20 Milton Hunter and he was associated with him, and we've done
21 work -- hauled dirt and stuff and that's the first time I
22 ever seen him is when I worked for Milton Hunter.

23 Q. Was he farming out there at that time? Was Mr. Nassrah
24 farming out on Merle Lane at that time?

25 A. Yes.

TESTIMONY OF MICHAEL HYATT

1 Q. So Milton and him worked together on their farm
2 operation, is that what you're saying?

3 A. Yeah, Milton Hunter helped him. Because I hauled hey
4 and stuff for them and he was looking -- they worked
5 together on different projects, yeah.

6 Q. Okay. And how long ago was that do you say? How long
7 ago do you think that was?

8 A. I would guess about five or six years, maybe a little
9 longer than that. When I first met him, yeah, Milton
10 probably more than six or seven years, you know what I mean?

11 Q. Okay. Well, I believe Mr. Nassrah testified he'd been
12 farming out there for five or six years. Do you remember
13 when he started farming out there?

14 A. Yes, sir.

15 Q. Okay. All right. Did you know him when he started
16 farming out there?

17 A. Yes.

18 Q. Okay. So at least since he -- when he started out
19 there y'all met basically when he started farming?

20 A. Yeah. I talked to him many times.

21 Q. All right. Well, describe your relationship with him
22 prior to 2010.

23 A. Well, you know something, I asked him to slow down a
24 couple of times out there and he seemed to --

25 Q. We're going to get to that. But I'm saying --

TESTIMONY OF MICHAEL HYATT

1 A. It was pretty good. I would give him stuff to the can
2 and stuff. I thought it was a pretty good relationship,
3 didn't have no harsh words with him or nothing, you know
4 what I mean?

5 Q. You say what, you gave him what?

6 A. Stuff that I canned. I had raised a garden and I
7 canned stuff up and give him pickles and peppers and
8 different stuff like that, you know what I mean?

9 Q. When did some issue come up about the way that he was
10 using that road as your best recollection?

11 A. When did it first come up?

12 Q. When did it first come up?

13 A. A year or two ago I asked him to slow down -- well, a
14 year or two prior to this happening because I hadn't seen
15 them none since then.

16 Q. Well, was it --

17 A. 2008, 2007, something like that.

18 Q. All right. Well, what made you bring that to his
19 attention?

20 A. About the road?

21 Q. Yeah.

22 A. Because the dust usually just covered us up. He was
23 flying up and down that road with that tractor and that
24 truck, you know what I mean? Yeah.

25 Q. All right. Well, did that conversation seem to help

TESTIMONY OF MICHAEL HYATT

1 resolve the situation?

2 A. Well, when it first happened I thought it did. Until
3 this happened I thought it had, you know what I mean?

4 Q. Okay. So did he seem to be respecting the speed on the
5 road after you talked to him?

6 A. Yeah. But like when you see him, he ain't down there
7 that often, but when you see him, you know what I mean?

8 Q. Well, when do you recall the first time that y'all
9 had -- had you ever had harsh words?

10 A. Yes.

11 Q. When do you recall the first times y'all having hard
12 words?

13 A. On that day, on the day that week, you know what I
14 mean, that this happened.

15 Q. The day of the week. Okay.

16 A. On the 16th is the first time -- well, he said
17 something about us locking him in the gate and they came up
18 there and was raising cane and Deputy Morgan took them on up
19 the road. But, I mean --

20 Q. Well, did you lock the gate on his pasture?

21 A. No.

22 Q. Do you believe that he thought you had?

23 A. I don't know anything about it. We didn't do it, I
24 didn't do it.

25 Q. Okay. Did you -- describe what the words were as best

TESTIMONY OF MICHAEL HYATT

1 you recall.

2 A. That day when Deputy Morgan come about -- Aaron's truck
3 had broke down and he pulled up in the driveway and he just
4 let it roll back out on the flat in the road because the
5 driveway is on a hill like that, and we had the hood raised
6 up to see how come it wouldn't crank back up. And Deputy
7 Morgan came up, and he got out of his car and came around
8 there and asked us to see our driver's license and we give
9 them to him and he said he had been called. A few seconds
10 later another deputy sheriff showed up, his name was Lily.
11 Aaron put the wire on the truck, pulled it up in the yard,
12 Lilly stayed there with us, Morgan went down there to where
13 Kamil was supposed to be at that gate. In a little bit they
14 came back with Melton and Kamil and Deputy Morgan, and they
15 got out of their vehicles and started threatening Aaron in
16 the yard that day and so I said something to Deputy Morgan
17 and he took them up the road. Well, they left and that's,
18 you know --

19 Q. When you say threatening, what were the words, or could
20 you hear the words?

21 A. It was like they were antagonizing him to fight, like,
22 "You ain't nothing." And Kamil told Aaron to come on, and
23 so -- right there in the yard. And I asked Deputy Morgan to
24 take them out of my yard and he did.

25 Q. Okay. Did you speak with Kamil and Melton anymore that

TESTIMONY OF MICHAEL HYATT

1 day?

2 A. No.

3 Q. Okay. Did you have any -- were they -- what's going on
4 with their farming operation then? From that point on, you
5 know, what do you observe about what they're doing as far as
6 going in and out of there?

7 A. The following day, or one day Deputy Morgan came in and
8 Kamil and Melton was behind him and they was going really
9 slow down the road. Deputy Morgan came back out, he was
10 going really slow, Kamil and them was still down there. I'm
11 out in the yard, I'm out in the yard swinging and messing
12 around, so I'm there. A few hours later he comes back and
13 he gets them and he comes out and they're really slow. I
14 called my son and I told him, I said, "You know something?
15 There's no more fussing because there's a deputy sheriff
16 down here and everybody is doing like they're supposed to."
17 Okay. The next day I'm over there, I'm out there sitting in
18 the swing messing with my dog and stuff and they're out
19 there and there's another deputy that is with them, Deputy
20 Lilly, and so they're going back and forth up to my
21 neighbor's house, Bill Truesdale. And then what happens is
22 because they're going fast and they're threatening me, I'm
23 sitting in the swing and the guy on the tractor and the one
24 in the truck is making threatening remarks to me.

25 Q. Well, what are those remarks? What's he saying?

TESTIMONY OF MICHAEL HYATT

- 1 A. Well, you know something? They're shaking their hand
2 at me and hollering at me. So when Deputy Lilly came back
3 out I walked out to the road and stopped him and told him
4 what was happening, that they was threatening me. And his
5 remarks was to me that a judge had sent him down there and
6 if I had anything to say that I needed to talk to him.
- 7 Q. Okay. All right. Well, don't they carry hay into that
8 field and store it, too?
- 9 A. No, just haul it out.
- 10 Q. Is that right? Okay.
- 11 A. Yeah.
- 12 Q. So there wasn't nothing going in, all of the hay is
13 coming out, there ain't no hay going in.
- 14 A. No hay is going in.
- 15 Q. Tell me what was said between you and Mr. Nassrah about
16 your chickens.
- 17 A. I didn't say nothing to him about no chickens.
- 18 Q. Okay. Okay. Does Mr. Nassrah bring a dog out there
19 when he comes?
- 20 A. No. I never seen a dog or nothing with him any time he
21 came out there.
- 22 Q. Did you ever accuse his dog of killing your chickens?
- 23 A. No.
- 24 Q. He doesn't even live out there, does he?
- 25 A. No.

TESTIMONY OF MICHAEL HYATT

- 1 Q. Does he live anywhere even close?
- 2 A. No.
- 3 Q. Do you know where he lives?
- 4 A. Yes.
- 5 Q. Where does he live at?
- 6 A. I lives off of 522 like you're going out towards
- 7 Buford.
- 8 Q. How far from where you live -- I know you don't know
- 9 the exact miles, but how many miles would you just estimate
- 10 that is?
- 11 A. From my house to his?
- 12 Q. Yeah.
- 13 A. Ten or 15.
- 14 Q. It ain't close. His dogs ain't coming over and getting
- 15 your chickens, is it?
- 16 A. No, I don't think so. I ain't never seen him with no
- 17 dog.
- 18 Q. Okay. The day that you describe -- that you mentioned
- 19 that I believe Officer Lilly came out there.
- 20 A. Yes, on the 16th.
- 21 Q. What day was that -- was that the day before -- was
- 22 that the 15th?
- 23 A. When Officer Lilly was there?
- 24 Q. Yeah. This incident happened on the 16th, right?
- 25 A. I think that's right, yes, sir.

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1 Q. Okay. So what day in relation to the day that this
2 incident happened was Officer Lilly out there?

3 A. He was out on the 16th.

4 Q. Oh, he was out there on the 16th.

5 A. Yes, sir, on the 16th.

6 Q. Was he out there on the 15th?

7 A. No.

8 Q. Okay. So it happened earlier that day? Lilly was out
9 there earlier in the day that this happened?

10 A. Yeah, he was out there. He was out there until I left,
11 you know what I mean, and I thought he was still there but
12 evidently he left, you know what I mean?

13 Q. Okay. Did you speak with him?

14 A. I spoke with him when they were threatening me. I
15 informed him that they was threatening me as the trucks was
16 coming by. That's what his remark was, that a judge had
17 sent him out there.

18 Q. Okay. Well, you know, after Morgan had been taking him
19 in and out, you know, what was the situation with the way
20 they were driving in and out of there as far as speed goes
21 after Morgan was escorting him?

22 A. After Morgan?

23 Q. Uh-huh.

24 A. After Deputy Morgan escorted him that day they never
25 came back to the -- the next time they came back was on the

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1 16th.

2 Q. Okay.

3 A. I never seen them no more after it, and I'm pretty sure
4 it was when Morgan was there the next day that they was
5 hauling hay out of the field.

6 Q. Okay. Well, let's move on and focus on the 16th then.
7 Do you recall anything going on that morning that has any
8 relevance to the situation?

9 A. The only thing I seen on the 16th, they were hauling
10 hay out there like I said, they didn't go all of that, they
11 just went up there. Like I said, the first day they didn't
12 go all the way out, they just went to Bill Truesdale's
13 house, that's where they was unloading it, you know what I
14 mean?

15 Q. The morning of the 16th?

16 A. Yeah.

17 Q. Did you see Mr. Melton and -- Mr. Nassrah and Mr.
18 Melton the morning, during the morning time?

19 A. Well, it wasn't early, no, it wasn't early, it was --
20 do you know something? It was -- I guess it was
21 somewhere -- it was later in the morning, you know what I
22 mean? They went there early in the morning.

23 Q. Well, approximately what time is the first time -- did
24 you see them when they came into the field for the day?

25 A. Yes.

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1 Q. What time do you believe that to be?

2 A. Maybe about 10:00, I guess.

3 Q. And when was the first hay coming out that day?

4 A. Where was the hay going?

5 Q. When? What's your estimate of the time when the first
6 hay started coming out, the first hay came out?

7 A. I don't know. It was a little while, you know what I
8 mean? I wasn't keeping up with the time, but it was a
9 little while, maybe an hour or so, you know what I mean,
10 when the first hay come out of there.

11 Q. All right.

12 A. Yeah.

13 Q. Well, did you have any contact with law enforcement on
14 the 15th prior to the arrival of Officer Morgan after this
15 incident happened?

16 A. Deputy Lilly on the 16th when they was taking the hay
17 in and out of the --

18 Q. Well -- you've got to be more careful about where that
19 is.

20 A. But they were taking the hay in and out of the field up
21 there to Bill Truesdale's house, and Deputy Morgan -- I
22 mean, Deputy Lilly was down there escorting them in and out
23 on that 16th. That's when I stopped him and told him that's
24 the day that they was -- when they were coming by there they
25 was behind him and they was threatening me and they was

1 going fast. That's the reason I took that picture, you know
2 what I mean?

3 Q. I think I got my days mixed up, not you, there for a
4 minute. All right. So after that incident did you -- had
5 you done anything else as far as making any phone calls, or
6 what else had you done besides talking to people there on
7 the ground out there about the situation?

8 A. Well, after I talked to Deputy Lilly and he didn't do
9 anything I thought, I'm going to find out how come he didn't
10 do nothing. So I unloaded stuff out of my truck and got in
11 my truck and left, and he was sitting in the road at Bill
12 Truesdale's driveway, Deputy Lilly was.

13 Q. Okay. Make sure we know where Bill Truesdale's
14 driveway is. That's just right up here where this incident
15 happened.

16 A. Right.

17 Q. All right.

18 A. And so what happened was as he moved out of the way and
19 I left and I was going, when I got up to Pleasant Hill I
20 looked around and seen it was late in the afternoon, you
21 know what I mean, I got to thinking I said, "You don't even
22 know who sent him down here or where they're at."

23 Q. Now, where are you headed to?

24 A. I was headed to the magistrate's office to talk to them
25 like he said, and so I decided to turn around and come back

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1 home. When I came back home I didn't see anybody. So I got
2 out of the truck, I went over there to the shed.

3 Q. Well, before you get there let me ask you this: When
4 you get back home, that's the last time you come home before
5 this incident happens, right?

6 A. Yes.

7 Q. All right. What in your mind is going on down in the
8 pasture at that point, and is law enforcement involved?

9 A. I thought they were gone because I didn't see anybody,
10 wasn't nobody on the road, I didn't see nobody and so I
11 thought they had already left.

12 Q. When you say they, you thought Mr. Nassrah and -- you
13 thought the hay crew was gone.

14 A. Yeah. I thought everybody that was down there that
15 didn't live down there that day was gone.

16 Q. In fact, you passed some hay trucks on the road, didn't
17 you?

18 A. Yeah.

19 Q. It shows some on the video that we looked at yesterday.

20 A. Yeah.

21 Q. Okay. So -- all right. So, you know, what did you do?

22 A. So I went there, I went outside and sat down in the
23 swing and I called the sheriff's office and told them I
24 wanted to talk to the supervisor and they said, okay, that
25 she would do something. So he called me back, a supervisor

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1 did, and I'm not sure what his name was or nothing
2 because -- and I told him what was going on and he said,
3 "I'll call you back." Well, I got out of the swing and got
4 that pick handle because on a pole barn.

5 Q. You were working on what?

6 A. A pole barn.

7 Q. P-o-l-e?

8 A. Yeah, pole barn.

9 Q. Tell the jury what a pole barn is in case they don't
10 know. I happen to know one because I've got one.

11 A. A pole barn is just four by fours and then a roof on
12 it, just something that ain't got no sides on it, we was
13 working on that, I was working on that. My son there would
14 help me start putting braces in it and digging around it,
15 that's the reason I got that handle.

16 Q. What were you doing with a handle on a pole barn when
17 you're making one?

18 A. Well, what happens is the pick head, the head of the
19 handle was out at the pole barn where I took it off, I had
20 been prying with it and put braces in and I took the head
21 off. It was on a hill like this and I was putting a board
22 behind the pole barn to keep the water from running down my
23 driveway and so it was treated and I was digging it down. I
24 was going to dig it down with that pick axe so it would be
25 down in the ground so it would make the water run around it.

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1 But I never got that far.

2 Q. Well, the head isn't on the axe.

3 A. No. It's up there at the pole barn.

4 Q. Okay. But you've got -- is this --

5 A. That's it.

6 Q. Now, you were digging with this?

7 A. No. That's called a pick axe handle, and what happened
8 is it has a head, it has a point on one end and flat part on
9 the other side that it slides down there and fits on that
10 and you dig with it like a pick, and that part is out at the
11 pole barn.

12 Q. You were using it with that part on it?

13 A. With a pick on it?

14 Q. That day did it have the pick on it?

15 A. Well, I took it off. I took the pick head off because
16 you could just bump it and it would come of. I'm putting
17 braces in and I was prying, the thing is a little out of
18 swack so I put that up there to pry, to give me some more
19 leverage and I took a screw and screw it up there, you know.

20 Q. So were you out there working on that?

21 A. Yeah, some, and resting some.

22 Q. Why are you resting?

23 A. I ain't in no big hurry. If it was a hot day I would
24 just -- I sleep in that swing sometimes, you know what I
25 mean, I go out there and sit in that swing and take it easy.

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1 Q. Well, how hard can you work with your medical
2 condition?

3 A. Well, I don't believe I can work like I could back in
4 the day but I still work some.

5 Q. Probably be good for you, isn't it?

6 A. Yeah.

7 Q. Okay. All right. Well, are you doing something with
8 the pole barn after you got back home for this last time
9 before the incident?

10 A. No, I didn't do anything.

11 Q. Is the head on the pick axe the whatever, the part that
12 goes on to dig with, is it on there at this point?

13 A. No.

14 Q. Okay. All right. But this is sitting right just like
15 it is right now somewhere close by.

16 A. Yeah.

17 Q. Now, when do you realize that there is somebody in the
18 pasture?

19 A. Well, I was sitting out there and --

20 Q. Where are you sitting?

21 A. In the swing.

22 Q. Okay.

23 A. And so I seen a couple of trucks come by and I got up
24 out of the swing and stood up and looked and I recognized
25 one of the people in the truck, and the only thing I know is

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1 his nickname is Tick. Now, when I worked for Milton Hunter
2 he worked for Milton doing different kinds of jobs, Milton
3 does farm work and logs too and I knew from logging, you're
4 back and forth. So I knew him and he waved at me and I
5 waved back at him.

6 Q. What kind of speed is he doing?

7 A. They weren't going fast, they was just easing up the
8 road.

9 Q. Can you go down this road without kicking up dust if
10 you go slow enough?

11 A. Yes. They say dirt, it's actually a gravel road, you
12 know something. It's packed down pretty good, you have to
13 go on and get up some speed to make it dusty.

14 Q. Okay. You took pictures that day?

15 A. Yes.

16 Q. When did you take the pictures?

17 A. That's the picture up there when they was going up
18 there to Truesdale, when they were taking that load up there
19 to Bill Truesdale, my neighbor's, driveway on that same
20 driveway on that same road.

21 Q. Now, is that before you went -- you intended to go to
22 the magistrate?

23 A. Yes. That's where he talked to the deputy?

24 Q. Well, why did you take that picture?

25 A. Because when I say something to somebody about the dust

1 down there some don't seem to believe me so I took the
2 picture to show them, just to show them what was going on
3 and the deputy would ask me, I told him I would show him.
4 That's why I took them.

5 Q. I understand, that would make sense. Do you know who
6 was driving here?

7 A. No. I don't know who was driving that truck.

8 Q. Was that an acceptable speed?

9 A. No. That thing was going a little faster.

10 Q. Did you have any issues with whoever is in this truck?

11 A. No. Except he was one of them that was making the
12 remarks when he came by there, you know.

13 Q. Do you know who this was?

14 A. I never seen that man before. That's Kamil's truck and
15 trailer but I never seen the man, I don't know who he was.

16 Q. Now, you're saying he's making remarks. On this day?

17 A. Yes, on that day.

18 Q. At this time when he was going by was there something
19 being said?

20 A. No. When I took that I was sitting in that swing, when
21 they come back the other way they had the windows down in
22 their truck and they were making gestures out of the thing,
23 and then Melton was on the tractor, he was doing it, too,
24 you know what I mean? He was driving that tractor going to
25 unload the hay.

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1 Q. There's a bunch of pictures in evidence but I believe
2 this is the first one that went into evidence. Can you tell
3 in the picture whether the window is up or down?

4 A. Looks like it's down to me.

5 Q. All right. But nothing was said at this point, it was
6 on the return trip.

7 A. Yes.

8 Q. Okay. Do you own a gun?

9 A. No.

10 Q. Do you own a bee bee gun?

11 A. Yes, a pellet rifle.

12 Q. Owning one and having one are different things. Do you
13 have a gun at your home?

14 A. Pellet rifle.

15 Q. Okay. That's all?

16 A. That's it, a bow and arrow.

17 Q. Do you recall if you ever had a pellet rifle out there
18 when Mr. Nassrah or Mr. Melton were going back and forth?

19 A. I don't think I ever have.

20 Q. Did you have it out that week?

21 A. I probably did, because I get out there and put cans
22 and stuff up and shoot them, different things like that, you
23 know, just for entertainment.

24 Q. Do you know that you did or you might have?

25 A. Did I have it out there that week?

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- 1 Q. Do you know whether you did or not with certainty?
- 2 A. No, I don't really know of instances.
- 3 Q. Okay. Did you ever use it -- have you ever used it to
- 4 try to intimidate anybody or anything?
- 5 A. No.
- 6 Q. All right. You realize that somebody was coming out of
- 7 the pasture -- did you know -- sorry, can't get my question
- 8 started here, I asked you but now I can't really focus on
- 9 what your response was. When did you first realize somebody
- 10 is coming out of the pasture?
- 11 A. Well, when those first two trucks were coming out
- 12 that's when I knew someone was still down there. So they
- 13 come out and they left, and I stood there at the corner of
- 14 my trailer a little bit so it's -- I don't keep exact
- 15 minutes, but then --
- 16 Q. I'm sorry, what did you say? Jack minutes?
- 17 A. I didn't know exactly how long they would be gone.
- 18 Q. Okay.
- 19 A. But when they left I stood right there at the trailer
- 20 for a little bit and so they left up the road. So I called
- 21 Aaron on the phone, you know, and I'm telling him what's
- 22 going on that day, and Kamil and Melton come up and Kamil
- 23 stops the truck -- the cab of his truck about right where my
- 24 driveway was at and Melton pulls up behind him on that
- 25 tractor. Melton gets off that tractor and Kamil gets out of

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1 the truck and starts threatening to kill me when I'm
2 sleeping. I'm talking to Aaron, I said, "They're in my yard
3 threatening me." He told me, he said, "Okay, I'll come over
4 there." So a little bit they got back in their vehicles but
5 why I don't know, it might be because I was talking on the
6 phone.

7 Q. You're on the phone there. How close are you?

8 A. Well, it was pretty close, they was walking towards me,
9 they was pretty close.

10 Q. Well, I don't think we've got a good picture of the
11 swing. But is the swing -- it's kind of -- let's see.

12 A. You can imagine where it was at, I was sitting there
13 when I took that picture.

14 Q. Exactly. So when you took that picture -- here it is.
15 Okay. It's kind of lateral over to the side?

16 A. Yes.

17 Q. Of your home?

18 A. Yes.

19 Q. Okay. So when Kamil and Melton pull up, where are you
20 at?

21 A. Well, I wasn't in the swing right then. When Terry and
22 them started, when I seen them coming up I got up out of the
23 swing, it was right there at the back of my trailer, it was
24 about five or 10-foot from the trailer. Okay. And so what
25 happened was when they left I started towards my pickup

1 truck because I had stuff in there and I was going to go
2 back to working on the barn, so I went to get some stuff out
3 of there, that's when Kamil and Melton pulled up. I was in
4 the yard about not quite where my door was at and that's
5 when they stopped and got out of the truck and off the
6 tractor and come up in the yard and started threatening me.

7 Q. Were they physically in the yard?

8 A. Yes, they was in the yard.

9 Q. Where is your front -- in front of your house? Where
10 does your property line go to?

11 A. Well, actually, the road is on it. It goes right up to
12 the road and the road is on the my property.

13 Q. It's a state maintained road?

14 A. It's a county maintained.

15 Q. And so they've got an easement across your property
16 technically, right?

17 A. Yes.

18 Q. And so -- but in your yard, how far did they come into
19 your yard?

20 A. About 10-foot.

21 Q. So how far are you from them?

22 A. About 15-foot, maybe that, ten or 15.

23 Q. All right. Now, what kind of weapons do you see or
24 potential weapons at that point?

25 A. Melton had some kind of wrench, a big wrench, some kind

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1 of big wrench, I don't know where he got it from. Kamil had
2 his hand on his pocket but he didn't have nothing in his
3 hand.

4 Q. Who's doing the talking between the two of them?

5 A. Both of them are.

6 Q. Do you remember the specific words?

7 A. Yeah. They was threatening me, you know. Kamil tell
8 me, "Better not go to sleep at night," you know what I mean?
9 And they was threatening to do harm to me, you know, like
10 beating me up, you know what I mean, and cussing at me.

11 Q. All right. And you called -- are you already on the
12 phone with --

13 A. Yes. I'm still on the phone with Aaron when this is
14 happening.

15 Q. They pull up while you're on the phone.

16 A. Yeah. I'm on the phone, they pull up.

17 Q. Okay. All right. So here we go, they leave, or go get
18 in the vehicle.

19 A. Yeah. I'm standing there watching them leave.

20 Q. At what point do you understand that Aaron is coming
21 down there?

22 A. Well, he said he was coming but I didn't know nothing
23 about it. When they was going up the road I watched them
24 and they stopped, and then Melton jumped off the tractor and
25 run around the tractor and run to the passenger's side of

1 the truck. When he did I knew they must have met Aaron, so
2 I jumped in my truck --

3 Q. Let me ask you a little bit more -- something I didn't
4 ask you earlier. How common is it to meet somebody and
5 somebody have to back up on that road? Does that happen
6 from time to time?

7 A. True. The sun is shining right in your eyes when you
8 leave there in the evening and you can't see -- that road is
9 narrow and it's got curves and dips in it, you can't hardly
10 see on that road at all, you've got to be careful.

11 Q. If somebody is coming from the paved road down Merle in
12 the afternoon where is the sun at?

13 A. Right in your eyes, right in your face.

14 Q. And this is about, what time are we talking when this
15 happened?

16 A. 3:00 when this happened, 3:00 or 3:30.

17 Q. This is in September.

18 A. Yes, sir.

19 Q. Sun is getting low?

20 A. Yeah. It's over there, yeah.

21 Q. Now, when Kamil and Melton pull off -- you've already
22 gotten ahead of me a little bit -- but do you go -- where do
23 you walk to?

24 A. Well, I'm standing there in the yard, I can see them
25 leaving.

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1 Q. You can see them going up the road?

2 A. Yeah.

3 Q. You've already said, you saw what happened. Melton
4 jumps off -- it stops.

5 A. Yeah.

6 Q. Now, when it stops what do you do?

7 A. When it stops I don't do nothing.

8 Q. Well, then what happens?

9 A. Then Melton jumped off the tractor and run around on
10 the driver's side of that trailer up through there and when
11 he did that I jumped in my truck because I figured Aaron had
12 come over there, I jumped in my truck and went up there.

13 Q. Why did you jump in your truck? It ain't that far over
14 up there.

15 A. It might not be for somebody but it is for me. I
16 didn't feel like I could run all the way up there, I bet you
17 it's over 100 yards from my driveway to his driveway, you
18 know what I mean?

19 Q. Well, when did you get this in your hand?

20 A. Well, I had it in my hand, I was going to get the head
21 for it and I had it in my hand when I was going back towards
22 the truck I had it then. When they pulled up I had it.

23 Q. Okay. So you already had it before they pulled up.

24 A. Yeah.

25 Q. In your hand.

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- 1 A. Yeah.
- 2 Q. Did you wave it at them?
- 3 A. No.
- 4 Q. Threaten them with it?
- 5 A. No.
- 6 Q. But you're standing there with it while they're coming
- 7 there at you up in the yard.
- 8 A. Yeah.
- 9 Q. Sorry, I had to go back and focus on that again. So
- 10 what do you do -- you jump in your truck. Where does this
- 11 go when you jump in your truck?
- 12 A. With me.
- 13 Q. Why?
- 14 A. It just did.
- 15 Q. You know --
- 16 A. They have been down there threatening me and stuff, I
- 17 didn't know what they was doing.
- 18 Q. Okay. You ain't got no gun?
- 19 A. I ain't got no gun.
- 20 Q. All right. So you drive up -- you drive up there.
- 21 A. Yeah.
- 22 Q. Get up there, what do you do?
- 23 A. I jump out of my truck and run up along side of the
- 24 driver's side of the trailer and the truck to Aaron's truck.
- 25 Q. You run up the driver's side of the trailer and the

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1 truck.

2 A. Yeah.

3 Q. Pass the tractor.

4 A. Yeah.

5 Q. Do you see anything at that point?

6 A. No.

7 Q. When do you see something happening?

8 A. When I come up by the truck I looked in the truck and
9 nobody was in there. I come around the corner truck, I was
10 running and I come up on that truck, and when I did that I
11 seen Kamil standing on the other side and Melton over there,
12 and as soon as I come around that truck I seen him pointing
13 a gun at Aaron and shoot.

14 Q. Okay. You see him pointing the gun what?

15 A. Towards Aaron. He was facing there and he had the gun
16 in his hand.

17 Q. Okay. And then -- all right. Did you have to get --
18 in relation -- you're coming up the left side of Kamil's
19 truck. At what point -- do you see that? Is it before you
20 get to the front of his truck or after you get it?

21 A. After I get to the front of his truck. I couldn't see
22 him until I got to -- I seen him -- once the hood --
23 something you could see across the hood and see over there.

24 Q. Well, where are they at in relation to Mr. Truesdale's
25 driveway?

- 1 A. At that time they're right there -- Melton is closer to
2 the -- over next to the truck away from the front of the
3 truck some, but Kamil is standing right there in Bill
4 Truesdale's driveway.
- 5 Q. Okay. And where is Aaron?
- 6 A. Where is Aaron?
- 7 Q. Yeah.
- 8 A. He's way over here off from his truck back over that
9 way, not right behind it but he was beside it, but actually
10 he's probably a little bit behind it in distance, you know
11 what I mean?
- 12 Q. What happens next? You see that?
- 13 A. As soon as I rounded that corner he had that gun and he
14 shot that gun at Aaron.
- 15 Q. All right. Now -- all right. Now, what did you do
16 then?
- 17 A. I went to get that gun away from him.
- 18 Q. And how did you attempt to do that?
- 19 A. The only thing I thought about was I need to get that
20 gun before he kills my son.
- 21 Q. And how did you attempt to do that?
- 22 A. I was gonna try to knock it out of his hand with that
23 stick, you know what I mean?
- 24 Q. All right. Well, did you make an attempt to do that?
- 25 A. Yeah.

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1 Q. And was that successful?

2 A. No.

3 Q. Okay. All right. Then what happened? When you say
4 knock it out of his hand, what are you trying to strike?
5 You're talking about knocking it out of his hand?

6 A. Yeah, knocking it out of his hand, yeah.

7 Q. How close did you get to that?

8 A. Pretty close.

9 Q. And then what did you go then?

10 A. I slipped -- that gravel is loose right there going to
11 that driveway so I did like this and then -- where he comes
12 out of there makes it loose and I slipped down on one knee
13 and stuff like that and fell, not all the way on the ground
14 but just down on my knee.

15 Q. Did you say anything to him?

16 A. Yeah. I told him to drop that gun or I'll call the
17 law.

18 Q. Did you say that before you attempted -- what was the
19 sequence? When did you say that?

20 A. I was yelling at him to drop the gun when I seen what
21 he was doing when he shot that gun.

22 Q. Right. Okay. All right. You're falling to the
23 ground, and what happened?

24 A. When I got up and stepped right there and he shot right
25 at the side.

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- 1 Q. When you went to get up?
- 2 A. When I went to get up he stepped right up and shot me
- 3 almost point black right in this side.
- 4 Q. Okay. Were you coming at him when you got shot or who
- 5 was coming at you? Who was coming at who?
- 6 A. He stepped to me, I was on my knee on the ground.
- 7 Q. So it was close range?
- 8 A. Yeah.
- 9 Q. All right. What happened to the stick then?
- 10 A. Well, I got up after he shot me and hit him with the
- 11 stick, you know what I mean? I was kind of --
- 12 Q. You were close enough to do that?
- 13 A. Yeah.
- 14 Q. What was he doing with the gun at the time you struck
- 15 him with the stick? What was he doing at the time that you
- 16 recall?
- 17 A. With the gun? He had the gun in his hand. I hit him
- 18 with the stick because Melton was saying, "Shoot him again"
- 19 you know what I mean? And I didn't do, you know -- I knew I
- 20 had to do something to try to make that shooting quit, you
- 21 know what I mean?
- 22 Q. All right. What happened first, you getting shot or
- 23 Kamil getting struck with a pick axe?
- 24 A. He shot me.
- 25 Q. All right. Now, after he's hit with the stick what

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1 happened? What do you do?

2 A. Well, Aaron came over there, got where I was at and got
3 me and picked the stick up, got it out of my hand, I was
4 kind of a little bit -- and took me over there out of the
5 way.

6 Q. Well, tell me what's going through your head. You've
7 been shot, what's going through your head?

8 A. I know I'm shot, I just don't know how bad. I know I
9 was shot in the stomach but I didn't know how bad, you know
10 what I mean?

11 Q. Okay. All right. Aaron comes and gets the stick.
12 What does he do with it?

13 A. What did Aaron do with the stick?

14 Q. Uh-huh.

15 A. He was holding them off because they were still
16 threatening us.

17 Q. What did being shot do to your system as far as -- did
18 you feel a change in your -- you know?

19 A. Yeah. It was like a mule kicked you in the side, you
20 know what I mean? It was a pretty good jolt.

21 Q. Did you ever see -- how many guns did you see out
22 there?

23 A. One.

24 Q. And who had that gun?

25 A. Melton.

TESTIMONY OF MICHAEL HYATT

- 1 Q. And after you -- do you remember seeing the gun being
2 put away?
- 3 A. I'm sorry, Kamil had the gun.
- 4 Q. Okay.
- 5 A. Kamil had the gun.
- 6 Q. All right. Did you ever see Melton with a gun?
- 7 A. No.
- 8 Q. Have you ever seen a -- we've been talking about a
9 .380. You were shot with a Beretta, right, based on what
10 you've learned today. You knew that?
- 11 A. No.
- 12 Q. Did you see -- you didn't see any other gun out there
13 period.
- 14 A. No.
- 15 Q. What did Kamil do with the gun after that? Aaron took
16 the stick --
- 17 A. You know, something after that -- he had the gun in his
18 hand but after Aaron got me over there, you know something?
19 I didn't really see much else going on, you know what I
20 mean? But I knew they was threatening him because Aaron
21 came over that way and he was trying to get me out of the
22 way from where they was at.
- 23 Q. Well, was your ability to make observations about
24 what's going on comprised at that point?
- 25 A. Some.

TESTIMONY OF MICHAEL HYATT

1 Q. Okay. Do you recall anything else you think is
2 significant about this case after that?

3 A. No.

4 Q. Okay. What does -- how does Aaron address you and talk
5 to you? What does he call you?

6 A. Pop.

7 Q. Does he ever call you daddy?

8 A. No.

9 Q. Have you ever heard that before?

10 A. No.

11 Q. All right. Mr. Hyatt, I know you know this case is
12 here today for trial because you're on trial. Did you take
13 any action to make this case come to trial?

14 A. No, sir, I didn't.

15 Q. Did you ask your attorney to take any action?

16 A. Yes.

17 Q. What did you ask me to do?

18 A. To defend me.

19 Q. But did you ask me to take some action to get this case
20 to trial, to file a motion for a speedy trial?

21 A. Yes, I did.

22 Q. Why did you do that?

23 MR. COOK: Objection.

24 THE COURT: Sustained.

25 A. Because I --

TESTIMONY OF MICHAEL HYATT

1 THE COURT: The objection is sustained.

2 Q. You can't go forward, you can't -- my last question.

3 Did you ever see Kamil in his truck or on his running board

4 or on the driver's side of his truck?

5 A. No.

6 Q. Okay.

7 MR. GRIER: Thank you. Answer any questions that

8 Mr. Cook may have for you.

9 THE COURT: Solicitor.

10 MR. COOK: Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MR. COOK:

13 Q. All right. Mr. Hyatt, you said you took this picture

14 the day this happened.

15 A. Yes, I did.

16 Q. What color is that truck?

17 A. Red.

18 Q. What color truck was Kamil driving that day?

19 A. White.

20 Q. So Kamil is not driving that truck.

21 A. No.

22 Q. Okay. Now, you said you get disability?

23 A. Yes.

24 Q. For your hearing.

25 A. Yes.

TESTIMONY OF MICHAEL HYATT

- 1 Q. And you've got hearing aids on today.
- 2 A. Yes.
- 3 Q. But you weren't wearing hearing aids on the 16th at
- 4 your house?
- 5 A. No.
- 6 Q. But you were able to hear people -- where is your
- 7 swing? How far from the road is your swing?
- 8 A. Probably about 40-foot, I guess.
- 9 Q. 40 feet?
- 10 A. Yeah.
- 11 Q. So about this far up the road?
- 12 A. Yeah, about that far, maybe a little further.
- 13 Q. Farther than this?
- 14 A. It might be. Yeah.
- 15 Q. This far off the road?
- 16 A. Yeah.
- 17 Q. So you're sitting on your swing without your hearing
- 18 aids on and there's a big truck pulling a trailer, a diesel
- 19 truck and tractors coming by and you can hear what the
- 20 people in those trucks are saying?
- 21 A. Pretty much so.
- 22 Q. Really?
- 23 A. Yeah.
- 24 Q. And you get disability for your hearing?
- 25 A. Yeah. I can take these hearing aids off, you could

TESTIMONY OF MICHAEL HYATT

1 stand at that door and I can pretty much tell you -- I can
2 read your lips if you're loud. If I'm looking at you I can
3 hear better. I've been reading lips pretty good for 25
4 years.

5 Q. You can read their lips from them sitting in the truck?

6 A. They was making threatening remarks.

7 Q. Well, what did they say?

8 A. "You're going to get it."

9 Q. Who said that?

10 A. Kamil, Melton and the driver that was in that red
11 truck.

12 Q. Who was driving that red truck?

13 A. I don't have no idea. I've never seen him before and
14 I've never seen him since.

15 Q. So some stranger you've never seen was telling you you
16 were going to get it?

17 A. Yeah.

18 Q. Why would he do that?

19 A. Um-um.

20 Q. I don't know either. All right. You said you took
21 those pictures of these trucks going up and down the road,
22 and after that you went and talked to the magistrate but you
23 never got there.

24 A. Yes, sir.

25 Q. And then when you came back home you saw some truck

TESTIMONY OF MICHAEL HYATT

1 coming out?

2 A. When I first came home I didn't see anything.

3 Q. Okay. When did you call Aaron?

4 A. After the first two trucks left.

5 Q. Why did you call him?

6 A. To tell him what had been happening over there on the
7 road and stuff that day.

8 Q. You just called and told him that the truck was going
9 down the road?

10 A. No. I called him over and told him that I told the
11 deputy that people was over there threatening me and he
12 never done nothing, and I called the supervisor and stuff
13 like that and he was supposed to call me back.

14 Q. So after these trucks come out -- who was driving these
15 two trucks? When you called Aaron you don't know who was
16 driving these trucks?

17 A. I knew one of them because I had worked with him with
18 Milton Hunter and I only know his nickname was Tank. He
19 came out of there and I was standing there and he waved at
20 me and I waved back to him.

21 Q. It sounds like that was friendly. Then you called
22 Aaron to complain?

23 A. Huh?

24 Q. So it sounds like that was a pretty friendly
25 interaction between you and that guy. So after that you

- 1 called Aaron to complain?
- 2 A. Not about him.
- 3 Q. But nobody else had come out yet, you were already
- 4 complaining.
- 5 A. About what was going on. I wasn't complaining, I was
- 6 just telling him what was going on and what happened over
- 7 there at the house today.
- 8 Q. And you're standing back at your swing talking to Aaron
- 9 on the phone?
- 10 A. When I was talking to Aaron on the phone?
- 11 Q. Yeah, where were you?
- 12 A. I was in the front yard.
- 13 Q. Okay. So you were talking to Aaron when Kamil and
- 14 Donnell Melton came up?
- 15 A. Yes.
- 16 Q. How far did you say they were from you?
- 17 A. Oh, about 10-foot probably.
- 18 Q. So they walk up to you this far while you're on the
- 19 phone.
- 20 A. A little bit further back, about right there, yeah,
- 21 about like that.
- 22 Q. Did you say anything to them or you just keep talking
- 23 to Aaron and ignore them?
- 24 A. I told them to get out of the yard, they was
- 25 threatening me. I was shocked to start with that they

TESTIMONY OF MICHAEL HYATT

1 stopped in the yard and started threatening me.

2 Q. Why would they do that?

3 A. Who knows.

4 Q. Why would they have any reason to walk up in your yard
5 and threaten you? Have you ever done anything to them?

6 A. No.

7 Q. So Kamil just walks up in your yard while you're on the
8 phone and starts -- what did he say to you?

9 A. He said, "You'd better not be trying to sleep at
10 night," that was him. And Melton saying, "Bring that big
11 old stick down there," he had a big old wrench. I don't
12 know what they were mad for about.

13 Q. Well, if they're 10 feet from you where did Melton get
14 that wrench?

15 A. Melton had the wrench when he got off the tractor.

16 Q. He was driving a tractor holding a wrench?

17 A. Listen, when he got off that tractor -- I don't know
18 how he done it but he had it when he got off.

19 Q. He wasn't but 10 feet from you, you couldn't tell? You
20 were obviously watching him come up.

21 A. When he first got off the tractor he was more than
22 10 foot away from me.

23 Q. Well --

24 A. When he got off the tractor he had the wrench in his
25 hand, when he stepped off of that tractor he had that

TESTIMONY OF MICHAEL HYATT

- 1 wrench, that's what I seen.
- 2 Q. Did you see like a tool box on his tractor?
- 3 A. No.
- 4 Q. So he was balancing it driving the tractor, is that
- 5 where you said he had it?
- 6 A. I don't know how he done it, I know he had it in his
- 7 hand.
- 8 Q. How long were they in your yard?
- 9 A. A few minutes.
- 10 Q. A few, three, four, five?
- 11 A. I don't know exactly, I wasn't counting. It just
- 12 seemed like they was there, it was a pretty good bit, you
- 13 know what I mean?
- 14 Q. But you're on the phone with Aaron while they're
- 15 standing in front of you?
- 16 A. Yes, sir.
- 17 Q. Did you tell Aaron they're in your yard?
- 18 A. I told him they were in the yard threatening me.
- 19 Q. Have you ever driven from your house to Aaron's house?
- 20 A. Have I ever done what?
- 21 Q. Have you ever driven from your house to your son
- 22 Aaron's house?
- 23 A. Yes, sir.
- 24 Q. How long does it take you to get there?
- 25 A. Minutes, I don't really know. It's about a mile over

TESTIMONY OF MICHAEL HYATT

1 there. You've got to go over one dirt road and then go down
2 another one and hit a driveway, it's crooked as all get out.

3 Q. Well, how long does it take you to get there?

4 A. Probably not more than five minutes.

5 Q. Okay.

6 A. If it took that long.

7 Q. So when they walk up in your yard you're already on the
8 phone with Aaron.

9 A. Yes.

10 Q. He can hear them on the phone?

11 A. Yeah.

12 Q. And they're threatening to take your life and your son
13 is on the phone, you say they're in your yard three or four
14 minutes but he doesn't -- he can't get from his house to
15 your house before they get all the way down to Bill
16 Truesdale's driveway? Aaron knew they were in your yard but
17 he couldn't make it down there before they got back in their
18 truck, cut it back on and started heading up the road? They
19 did all of that before he got down there?

20 A. I don't think they turned the truck off. I don't think
21 they got out, put in park, turned it off and set the brakes
22 on it, no, I don't think they done that. The tractor was
23 running and the truck was, too.

24 Q. Well, if you don't put the brake on and put it in park,
25 wouldn't the tractor be riding down the road while they're

TESTIMONY OF MICHAEL HYATT

1 up there threatening you? They had to do something to it or
2 it would be rolling down the road.

3 A. They was in the yard, exactly how long I don't know.

4 Q. But Aaron knew they were in your yard, right? He was
5 on the phone with you at the same time they're in your yard,
6 he could hear them.

7 A. Yeah.

8 Q. And they had enough time to get out of your yard, get
9 the stuff back moving, get their big rig moving and get down
10 the road before he could get down there. Is that --

11 A. That's the way it looks, don't it?

12 Q. You tell me.

13 A. Well, you tell me. That's the way it looks on tape
14 that he met him at Bill Truesdale's driveway, not at my
15 yard.

16 Q. So where were you? When they left how far were you
17 from the road?

18 A. It was about the same distance, I can see up the road
19 from where I was at.

20 Q. Where was your truck?

21 A. Where was my truck?

22 Q. Yeah.

23 A. In the driveway.

24 Q. When they leave -- well, let me back up. Why didn't
25 you turn around and go back in the house if they're out

TESTIMONY OF MICHAEL HYATT

- 1 there threatening you? You just stood there -- did you ever
2 say anything back to them?
- 3 A. Did I say anything back to them?
- 4 Q. Yeah.
- 5 A. When they was threatening me?
- 6 Q. Yeah.
- 7 A. Yeah, "Get out of my yard."
- 8 Q. Well, Melton had a wrench and you said Kamil apparently
9 had his hand on his pocket, why didn't you just go back
10 inside?
- 11 A. Why?
- 12 Q. I assume to get away from them. Why would you just
13 stand right there in front of them if that's what they did?
- 14 A. Well, I wasn't too crazy about turning my back on
15 people when they're threatening me.
- 16 Q. Did you make any effort to get away from them?
- 17 A. No.
- 18 Q. Why not?
- 19 A. They're in my yard.
- 20 Q. Did you have that stick in your hand?
- 21 A. Yes.
- 22 Q. Are you getting ready to fight them?
- 23 A. No.
- 24 Q. You're just going to let them beat you with a wrench
25 and shoot you?

TESTIMONY OF MICHAEL HYATT

1 A. Well, the stick -- when he got the wrench -- I wasn't
2 giving the stick up and then got the wrench, Melton got that
3 wrench. I wasn't turning my back on them and I didn't go
4 back in the house.

5 Q. So you're talking to Aaron and you're talking to them
6 at the same time?

7 A. Uh-huh.

8 Q. Okay. So you see Kamil and the tractor stop down the
9 road.

10 A. I seen them stop, yes.

11 Q. Why did you think they stopped?

12 A. I didn't have no idea.

13 Q. Well, why did you go down there?

14 A. When I seen Melton jump off the tractor and run around
15 the passenger's side of the truck I figured they had met
16 Aaron so that's when I jumped in my truck and went up there.

17 Q. What reason would they have to have an altercation with
18 Aaron down at the road if he's coming?

19 A. I don't know. They had been in the yard threatening to
20 kill me.

21 Q. They didn't threaten to kill Aaron, did they?

22 A. I was going up there to see what was going on.

23 Q. You knew Aaron was up there. You knew Aaron was on his
24 way.

25 A. I figured he was up there. I couldn't see his truck, I

TESTIMONY OF MICHAEL HYATT

1 figured he was up there. I didn't know for a fact, I

2 figured he was.

3 Q. You know he was on his way.

4 A. Yes, sir.

5 Q. You know that's a one-way road, right?

6 A. Yes, sir.

7 Q. So if Aaron is coming and they're going out, how are
8 they going to get out if you're telling Aaron to come up
9 there?

10 A. I don't know. I thought they would be gone before he
11 got there.

12 Q. You couldn't see Aaron's truck past the hay and
13 everything?

14 A. No. I couldn't see Aaron's truck from where I was
15 standing.

16 Q. All right. So when you get -- you got in your truck
17 and drove 100 yards to the tractor?

18 A. Yes, sir.

19 Q. You're already down by the road, why didn't you just
20 walk down there?

21 A. It was a long way up from my house all of the way to
22 where that truck was at.

23 MR. COOK: Beg the Court's indulgence just one moment.

24 THE COURT: Yes, sir.

25 (Break in proceedings.)

TESTIMONY OF MICHAEL HYATT

- 1 Q. Do you see this picture?
- 2 A. I do.
- 3 Q. Is that your truck?
- 4 A. Uh-huh.
- 5 Q. Is that your house in the background? How far do you
- 6 think that is?
- 7 A. Maybe 100 yards.
- 8 Q. Would it not be quicker if you're already down the road
- 9 to just walk down to the tractor to see what was going on
- 10 rather than get in your truck, turn it on, back up and
- 11 driving down there?
- 12 A. Might have been but, you know, I don't breath so good.
- 13 Q. So you said when you got up to Kamil's truck you didn't
- 14 see anybody.
- 15 A. No.
- 16 Q. When you come around you said you saw Kamil shoot at
- 17 Aaron?
- 18 A. Yes, sir.
- 19 Q. Did you see the video yesterday when Aaron is walking
- 20 around showing everybody where everything happened?
- 21 A. Yes, sir.
- 22 Q. Did you hear him say that the first shot he shot you?
- 23 A. Yes, sir.
- 24 Q. Well, who did Kamil shoot at first, did he shoot at you
- 25 or was he shooting at Aaron?

TESTIMONY OF MICHAEL HYATT

- 1 A. He shot at Aaron.
- 2 Q. Well, why didn't Aaron say he shot at him?
- 3 A. I don't you, you'll have to ask him.
- 4 Q. Well, I will. Aaron said when you walked up you said,
- 5 "Kamil, put the gun down, you're going to shoot nobody," and
- 6 he shot you while you're standing right in front of him.
- 7 Today you're up here saying that Kamil is shooting at Aaron
- 8 and you're swinging trying to get the gun out of his hand
- 9 and fall down and you're on one knee getting up and Kamil
- 10 shoots you.
- 11 A. Yes.
- 12 Q. Did Kamil lean over and shoot up?
- 13 A. No.
- 14 Q. He shot you in the side right here, didn't he?
- 15 A. Straight down.
- 16 Q. He shot down?
- 17 A. The bullet is my femur, it went straight up. I was
- 18 getting up and he shot straight down in my side like that
- 19 right there.
- 20 Q. Okay. But you saw him shooting at Aaron.
- 21 A. Yes, sir.
- 22 Q. Was Aaron just running around?
- 23 A. Yes, sir.
- 24 Q. Just running around in circles?
- 25 A. He ain't flying, he's moving around over there.

TESTIMONY OF MICHAEL HYATT

1 Q. Well, how far was Aaron from Kamil when you walked up?

2 A. Probably about half the distance, a little bit further
3 back than what you are.

4 Q. Y'all are about this far apart?

5 A. About where that desk is at. I would say somewhere
6 between from where you stopped the first time and that desk,
7 somewhere around in there, yes, sir.

8 Q. So I'm Kamil and Aaron is this far, he's shooting at
9 Aaron and you come up and try to knock the gun out of his
10 hand?

11 A. Yeah.

12 Q. Okay. How many times did he shoot at Aaron?

13 A. How many times what?

14 Q. How many times did you see him shoot at Aaron?

15 A. Once.

16 Q. How many times did he shoot at you?

17 A. Once.

18 Q. The first shot that he shot at you hit you?

19 A. Yes.

20 Q. So you said you've got COPD, correct?

21 A. Yes.

22 Q. Is that cardiopulmonary disorder, is that what that
23 means?

24 A. Yes.

25 Q. That means you can't breath real well? You have issues

TESTIMONY OF MICHAEL HYATT

1 breathing?

2 A. I can breath but if I take off running you can't do
3 that, you've got to kind of warm up a little bit before you
4 can do something like that.

5 Q. You've got to get cranked up before you get started?

6 A. Yeah.

7 Q. That's why you drove the truck down from your house to
8 the back of the tractor because --

9 A. Well, I just jumped in it. Now, I mean, as far as
10 thinking about getting in your truck, I just was going to go
11 down there.

12 Q. You left fishtail marks coming out of your driveway,
13 didn't you?

14 A. Yes, that's true.

15 Q. You were in a hurry to get down there.

16 A. Yeah, I was.

17 Q. So you've got COPD for your breathing you've been
18 diagnosed, so you drive a truck 100 yards from your house to
19 the back of a tractor so you're not winded, you get up there
20 and get shot in the gut. But you've got enough energy and
21 enough -- you're cranked up enough where you can get up and
22 hit somebody after you got shot?

23 A. Yes, sir.

24 Q. So Kamil shoots you and just stands there looking at
25 you and let's you get up and hit him in the head?

TESTIMONY OF MICHAEL HYATT

1 A. I don't know what Kamil was doing, I know I hit him --
2 I got up and hit him in the head. He had that gun in his
3 hand still.

4 Q. Well, how far is he? Is he this far from you?

5 A. Kamil?

6 Q. Yeah.

7 A. Pretty close, it might have been closer than that.

8 Q. So he shoots you and stands there and looks at you and
9 let's you get up and hit him in the head while he's unharmed
10 with a gun and he allows you to hit him in the head?

11 A. I guess so. That's what happened, right?

12 Q. I wasn't there, that's why I am asking you.

13 A. That's what happened. He shot me and I got up and hit
14 him.

15 Q. Well, how long was it after you got shot when you hit
16 him?

17 A. What?

18 Q. How long in between when you got shot and you hit
19 Kamil?

20 A. Pretty quick.

21 Q. So the first shot you saw him, was Kamil shooting at
22 Aaron?

23 A. Yes.

24 Q. And then you knocked the gun out, try to and fall down
25 and he shoots you while you're getting up.

TESTIMONY OF MICHAEL HYATT

1 A. Yes, sir.

2 MR. COOK: Beg the Court's indulgence for just one
3 moment.

4 THE COURT: Yes, sir.

5 (Break in proceedings.)

6 Q. Mr. Hyatt, do you remember Aaron telling you, "Don't do
7 anything until I got there," on the phone?

8 A. Yes.

9 Q. Don't do anything what? What do you think he meant by
10 that?

11 A. I don't know what he meant, he just said, "Don't do
12 anything until I got there."

13 Q. Don't you think he was probably referencing Kamil and
14 Melton?

15 A. I'm sorry, I didn't quite understand you.

16 Q. When he said, "Don't do anything until I get there,"
17 what else would he be talking about besides Kamil and
18 Donnell Melton?

19 A. Well, he was talking about it, I'm sure he was
20 referring to that. But as far as me thinking about it once,
21 there was a lot of stuff -- they were in my yard threatening
22 me and all the other stuff, I wasn't thinking about 100
23 different reasons about what he said. "Don't do anything,"
24 so I didn't do anything.

25 Q. On that video, too, Aaron said, "My dad is old school."

TESTIMONY OF MICHAEL HYATT

1 Do you know what he meant by that?

2 A. Yeah. Because I do things a lot the way that I live is
3 like old school.

4 Q. Would he be referencing that in the way in terms of how
5 you handle disputes?

6 A. I don't really know exactly what he meant by that, he
7 just said it.

8 Q. How long was it between when Kamil stopped his rig and
9 when you got down to the scene?

10 A. Not very long, just a little bit.

11 Q. Maybe 30 seconds, a minute?

12 A. I don't know, I can't tell you, I wasn't doing time on
13 it. I watched them go down the road, they stopped, as soon
14 as they stopped Melton got off the tractor, jumped and ran
15 around the tractor and run up the passenger's side of the
16 truck. As soon as I seen that I jumped in my truck and ran
17 up.

18 Q. When Aaron is walking around placing everybody where
19 all this happened he said it was five or six minutes before
20 you got down there. You're saying it was as soon as you saw
21 them get off the tractor you got down there?

22 A. That's what I'm saying, as soon as they stopped I got
23 in the truck and went down there.

24 Q. So we're not sure how much time was in between when
25 they stopped and you got down there?

TESTIMONY OF MICHAEL HYATT

1 A. It wasn't no five or six minutes, I can tell you that
2 right now, that's what wanted to hear, right?

3 Q. I just want to hear what happened.

4 A. That's what happened, I run right down there as soon as
5 I seen it stopped.

6 Q. Okay. And you said earlier you've been having issues
7 for a couple of years with Kamil and the dust.

8 A. Yes, I did.

9 Q. How many times do you think you told him to slow down?

10 A. Three or four, asked him to slow down.

11 Q. And that dust drives you nuts, doesn't it?

12 A. No, it was not driving me nuts. It was just --

13 Q. Well, you took pictures and called law enforcement and
14 kept driving to the magistrate about this dust?

15 A. True. So it's a 10 mile an hour speed limit on that
16 road and when you're running 10 miles an hour there's no
17 dust on it. It's a narrow road and there's people that
18 drive golf carts and stuff on that road and it's dangerous
19 driving that fast on that road. Was it driving me nuts?

20 No. It's not respectful to drive by somebody's house like
21 that. I asked him on several different occasions, I even
22 tried to give him stuff to make a gesture and they kept
23 driving it and so I took the pictures so when the law wanted
24 to look at them when I told them that they would have some
25 kind of indication that I just wasn't making it up.

TESTIMONY OF MICHAEL HYATT

1 Q. Okay. You had already been to law enforcement one time
2 that day on the 16th because you had taken these pictures
3 and calling. But when Kamil and Melton allegedly came in
4 your yard, why didn't you call law enforcement then if they
5 threatened to kill you? You never called law enforcement
6 then.

7 A. I was talking on the phone to my son, but I told the
8 law enforcement that same day. Officer Lilly, I told him
9 that they were threatening me and he never done nothing, you
10 know what I mean? So -- right?

11 Q. Well, after they left the yard they were gone, you
12 didn't think to call law enforcement and say, "Kamil is out
13 here and him and his worker threatened to kill me in my
14 yard?"

15 A. No. I didn't think about calling no law, they was
16 gone.

17 Q. You didn't think it was important to call and say,
18 "This happened again?" You called about the dust but you
19 don't want to call about them allegedly threatening to kill
20 you in your sleep?

21 A. I never called law enforcement one time about the dust,
22 not one time. I asked the people personally, "Would you
23 please slow down on the road?" I never called the law and
24 so I didn't call them then and I never called them before
25 about it.

TESTIMONY OF MICHAEL HYATT

1 Q. All right.

2 MR. COOK: I don't have any further questions of the
3 witness, Your Honor.

4 THE COURT: Mr. Frick?

5 MR. FRICK: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. FRICK:

8 Q. Clear up a couple of things, Mr. Hyatt. Mr. Grier was
9 asking you about the day that Aaron's truck broke down and
10 rolled out into the road.

11 A. Yes, sir.

12 Q. Was that on the 16th?

13 A. No.

14 Q. When was that?

15 A. That was earlier that week, I'm not sure exactly,
16 couple or three days before that.

17 Q. And that's when -- the first time you saw law
18 enforcement and they talked to y'all?

19 A. Yes, sir.

20 Q. Said something about something going on up at the
21 pasture with Mr. Nassrah and whoever he had with him that
22 day?

23 A. Yes.

24 Q. Y'all were down at your house.

25 A. Yes, sir.

TESTIMONY OF MICHAEL HYATT

1 Q. Didn't leave there.

2 A. No.

3 Q. Deputy stayed with you, didn't he?

4 A. Yes.

5 Q. Were there any words exchanged between you and

6 Mr. Nassrah or any of his crew that day?

7 A. On that day when Deputy Morgan brought them back up to
8 the house, he stopped right at the house because the other
9 patrol was in their driveway and he stopped there. Kamil
10 and Melton got out and started threatening Aaron to fight.

11 Q. So there had been previous words.

12 A. Yeah.

13 Q. Jump ahead to the 16th. You said there was a guy
14 driving the red truck, I think it's the one -- I think this
15 is the one that they showed you, Defendant's Exhibit Number
16 1.

17 A. Yeah.

18 Q. You said that that guy said something to you?

19 A. Yeah. He was making gestures out the window with his
20 hands and stuff and they was saying stuff, you know what I
21 mean?

22 Q. You didn't know who he was?

23 A. No.

24 Q. It wasn't Mr. Nassrah.

25 A. No.

TESTIMONY OF MICHAEL HYATT

- 1 Q. It wasn't Melton.
- 2 A. No.
- 3 Q. But it was part of his crew?
- 4 A. True.
- 5 Q. I'm going to show you what is Defendant's Number 28.
- 6 That is the picture of your home and the road, correct?
- 7 A. Yes, sir.
- 8 Q. Okay. Which direction is that headed? Is that towards
- 9 the field or is that towards the black top?
- 10 A. It was going towards the black top.
- 11 Q. That's your driveway, correct?
- 12 A. Yeah.
- 13 Q. Okay. This is the view that you have before you hop in
- 14 your truck, right?
- 15 A. Yes.
- 16 Q. Okay. What drew your attention? What made you decide,
- 17 "I need to hop in my truck and go down there?"
- 18 A. I seen him stop, just shortly after he stopped Melton
- 19 jumped off of the tractor and run around the tractor and run
- 20 up the passenger side of the truck. When I saw him do that
- 21 I thought they must have run into Aaron, so I jumped in the
- 22 truck and run up there.
- 23 Q. You hadn't told Aaron, "Hey Bo, meet me in the middle
- 24 of the road, we're going to take care of them this time."
- 25 A. No. I thought Aaron was away from them. I thought --

TESTIMONY OF MICHAEL HYATT

1 they was over there a pretty good time from the yard, I
2 thought they would be gone before he got there.

3 Q. Had you already hung up with Aaron?

4 A. Well, I was talking to them as they left and then it
5 dropped the call, it ain't very good cellphone service down
6 there.

7 Q. Okay. You pull up, you get out of your car. Are you
8 going down the right side of the road or the left side of
9 the road?

10 A. I'm going down the left side of the road.

11 Q. You're going down the left side of the road?

12 A. Yeah.

13 Q. Is that the passenger's side or the driver's side?

14 A. That's the driver's side of the truck.

15 Q. Of your truck?

16 A. Yes, sir.

17 Q. All right. Where do you see the confrontation between
18 Mr. Nassrah and Aaron?

19 A. I don't see it until they get to where I can look
20 across the hood and they're on that side over there.

21 Q. Okay. I'm going to show yet another picture. Do you
22 recognize that?

23 A. Yes, I do.

24 Q. What is that?

25 A. That's Aaron's pickup truck and Kamil's truck in front

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1 with the hay.

2 Q. Okay. All right.

3 MR. FRICK: I'm going to ask this be marked as the next
4 exhibit.

5 MR. COOK: No objection.

6 THE COURT: Without objection introduced as Defendant's
7 next in order.

8 (The photograph was received as Defendant's
9 29.)

10 Q. Now, this is the opposite view from what you had, isn't
11 it?

12 A. Yes.

13 Q. You're coming from this way?

14 A. Yes.

15 Q. Where are you standing in relation to this picture?
16 Where are you standing when the -- where is the stuff
17 happening?

18 A. Melton is right here about across from the front fender
19 and Kamil is over here.

20 Q. So there's a little driveway over here --

21 A. Yeah.

22 Q. And that's where your son --

23 A. That's Bill Truesdale's driveway, yeah.

24 Q. And that's where Mr. Nassrah and your son are?

25 A. Yes, sir.

TESTIMONY OF MICHAEL HYATT

1 Q. Where are you standing at that point?

2 A. Over here. When I come around the truck I come around
3 on this other side between the trucks.

4 Q. You could see over Mr. Nassrah's hood?

5 A. Yeah. As soon as I come around by the hood I seen
6 them.

7 Q. Okay. They're standing close to where that little
8 yellow thing is?

9 A. Yeah. Pretty close, yeah.

10 Q. You get over there and do what?

11 A. When I come around the hood -- as soon as I come around
12 the hood, as soon as I got to about to where I was straight
13 in line with the two trucks I seen Kamil fire that gun and
14 he was facing towards Aaron and he had that gun in his hand.

15 Q. Okay.

16 A. And then when I seen that gun first thing I thought he
17 was trying to kill my son so I was going to get that gun so
18 I just run as fast as I could to try to knock that gun out
19 of his hand.

20 Q. Is that why you went down there in the first place?

21 A. No. I didn't know what they was going to do. They was
22 in the yard and threatening me so I didn't know what they
23 was going to do up there, you know what I mean?

24 Q. Okay.

25 A. Yeah.

TESTIMONY OF MICHAEL HYATT

1 Q. And when you got down there you had a little urgency.

2 What was the urgency? What drove you down there?

3 A. Make sure they wasn't hurting my son.

4 Q. Stand up for a second if you don't mind. Don't unzip
5 your coat, but where did you get shot? Don't unzip it.

6 A. Right here.

7 Q. Right there. The bullet didn't go through you?

8 A. No, it's in my femur.

9 Q. Well, how does it go from here to here?

10 A. Because I was down getting up like that and he put the
11 gun right there against my side and shot it. I was down
12 below my waistline, this part of my body was where he shot
13 me.

14 Q. So he shot you while you were almost on the ground?

15 A. Yes, sir.

16 Q. Do you come up and strike him?

17 A. Yes, sir.

18 MR. FRICK: Thank you, sir. No further questions.

19 THE COURT: Any redirect?

20 MR. GRIER: No, Your Honor.

21 RECROSS EXAMINATION

22 BY MR. COOK:

23 Q. You said you come up and struck Kamil?

24 A. Yes.

25 Q. Well, how in the world did he get hit in the top back

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1 of his head? He got hit right here. You're saying you came
2 up and hit him, how do you make contact right here?

3 A. I don't know, that's where it hit him at. I was coming
4 up right here and swung the stick.

5 Q. I know where he got hit but how did you end up hitting
6 him right there if you're down and you say you're coming up
7 and strike him?

8 A. Came straight like this and strike him just like that.
9 I didn't know exactly where I was going to hit him, I was
10 just trying to do something to keep him from shooting me.

11 Q. Did you golf swing it up or did you like a sledge
12 hammer?

13 A. No, like this. I was getting up just like this and I
14 swung it like that.

15 MR. COOK: No further questions, Your Honor.

16 THE COURT: Thank you, sir, you may step down. Ladies
17 and gentlemen, at this point in time we're going to take a
18 brief morning recess to refresh all of ourselves, we'll
19 reconvene in about ten or 15 minutes. Okay. Don't talk
20 about the case as you have not received it yet.

21 (The jury left the courtroom.)

22 THE COURT: I ask this because I'm required to ask you,
23 but seriously I can't imagine the jury wanting to hear all
24 of that stuff, but if there's anything specific you want me
25 to charge that you think of right now let me know?

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1 revisit that issue before I actually charge, we'll see.

2 (The jury returned to the courtroom.)

3 THE COURT: All members of the jury are present.

4 Mr. Grier, you can call your next witness.

5 MR. GRIER: Your Honor, I rest.

6 THE COURT: All right. Mr. Michael Hyatt rests.

7 Mr. Frick?

8 MR. FRICK: Thank you, Your Honor. We would call

9 Mr. Aaron Hyatt.

10 The witness, AARON HYATT, was first duly sworn

11 and testified as follows, on:

12 DIRECT EXAMINATION

13 BY MR. FRICK:

14 Q. Your name is Aaron Hyatt?

15 A. That's right.

16 Q. Can you spell your first name for us?

17 A. It is A-a-r-o-n.

18 Q. And Hyatt?

19 A. H-y-a-t-t.

20 Q. And Mr. Hyatt at the time of this incident back in 2010

21 where were you living?

22 A. I live at [REDACTED] Lola Drive.

23 Q. Okay. Is that close to Merle Lane?

24 A. If you walk through the woods it's about a half mile,

25 around the black top it's a mile.

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1 Q. All right. I'm going to show you yet another picture
2 in this case. Does that look familiar to you?

3 A. Yeah. That's Merle Lane, that's Horton Rollins and
4 that's Lola.

5 Q. Okay. All right. Does that show the entirety of Merle
6 Lane or can you tell?

7 A. Yeah. This part back here, it's on the edge of this
8 picture, is actually where the field is at. But that's the
9 whole length from the black top to the field.

10 Q. That's an accurate depiction of that area?

11 A. Yeah.

12 MR. COOK: I've seen, it Your Honor, no objection.

13 THE COURT: All right. Without objection it will be
14 introduced as defendant's next exhibit.

15 (The photo was received as Defendant's 30.)

16 Q. I know no one can see this but I'm going to try to get
17 you to point to some things. Show me where Lola Lane is.

18 A. Lola is over here.

19 Q. Where is Merle?

20 A. Right here.

21 Q. Can you take your finger and run it along Merle on this
22 picture?

23 A. It starts right there at the black top and runs all the
24 way to here, it actually turns and stops at that residence
25 right there.

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1 Q. Okay. Who lives at that residence?

2 A. I don't know who lives at it now, I think back then it
3 was a fellow named Merle, actually the road was named after
4 him. His name was Merle, he was a brick mason, that's all I
5 knew about him.

6 Q. Your dad lived on this road?

7 A. Yes, sir.

8 Q. Where did he live?

9 A. He lived right there at the trailer.

10 Q. That's the trailer back there?

11 A. That's it.

12 Q. It looks like about half way down.

13 A. It's about half way.

14 Q. Where is the field we've been talking about?

15 A. It's actually back here.

16 Q. Okay. All right. The pictures makes this look like
17 this is a rather straight road. Is that true if you are
18 driving down it?

19 A. Oh, no. That road when you first come in it
20 actually -- it dives down off the black top road and it kind
21 of turns back like this and then it kind of makes a swing
22 turn right there where Truesdale's driveway is. And then it
23 goes kind of up hill until you get to dad's house, and then
24 when you get on the other side of dad's yard it drops over a
25 hill like this and goes straight down and then flattens down

1 there in that field.

2 Q. All right. Now, there has been some discussion about
3 something that happened on the 13th. Do you recall that
4 day?

5 A. Yeah. I come over to my dad's house -- I had a job
6 interview that morning and I was just coming over there to
7 dad's letting him know how it went. When I went to pull in
8 the driveway that old truck I used to have, the coil wire
9 would vibrate off of it, well when it vibrated off of it it
10 would just shut down and about the time I pulled in the
11 driveway it just shout down. About the time I pulled in the
12 driveway it shut down. So I let it roll back on the dirt
13 gravel road right there because it was easier to get over
14 there in the truck where the coil was at, and when I got
15 over and got the hood up, that's when Deputy Morgan come up.
16 I actually had my dog with me and I've got a pretty good
17 sized dog.

18 Q. Are you the one with the dog that's eating the
19 chickens?

20 A. No, my dog don't eat no chickens.

21 Q. All right. Go ahead.

22 A. He's a pretty good sized dog. He was a little nervous
23 about the dog so I had to put the dog in the truck, and he
24 asked us for our ID's and we give him the ID's and I asked
25 him, "What's going on?" And that's when he told us that

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1 Kamil said we had been down to some field and locked him in
2 here, and I was like, "This is as far as I got so I don't
3 know what you're talking about." Once I got the truck
4 running I pulled up in the yard and Mr. Morgan was talking
5 to us about the situation, I told him that this was as far
6 as I got, I don't know what's going on down there. And
7 that's when Deputy Lilly pulled up and then Officer Morgan
8 took off down through there, and it was probably, I don't
9 know, 10 or 15 minutes later here they come back. Well,
10 when they come back Kamil got out of the truck and was
11 telling Morgan, "Hey, you need to search his truck." And
12 Deputy Morgan was telling him, "I can't just go over there
13 and search a man's truck because you say so." Well, Harlan
14 Melton was out there in the yard, he was running his mouth,
15 talking about, "I'll just whoop, I'll just whoop you." I
16 wasn't over there for all of that nonsense.

17 Q. Are you talking about Mr. Melton who was here and
18 testified?

19 A. Yeah. Then Kamil started with him, "We'll kick your
20 tail, we can take care of this." And that's when dad had
21 Deputy Morgan, "Hey, how about getting them out of the yard
22 and get them gone," and that's what Deputy Morgan did.

23 Q. Anymore trouble that day?

24 A. No.

25 Q. Are you familiar with this dust situation?

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1 A. Yeah. I had been over at dad's house several times
2 throughout the years, I probably had an acquaintance with
3 Kamil for probably six or seven years up to the day that it
4 happened. I worked for Milton Hunter, I've hauled hay and
5 actually took hay to his barn and put it in his barn for
6 him, so I have known Kamil through the years. And he had
7 other workers that worked for him before this Harlan guy,
8 and most of the time -- because he wasn't always down there
9 when they would go get the hay, sometimes it would just be
10 his workers. And if you would ask them they would be pretty
11 cool, they would say, "Yeah, no problem, we understand."
12 Because the main thing is that dust, when you come by that
13 house they're flying, them tractors will go faster than
14 14 miles an hour.

15 Q. Well, what's the deal the dust?

16 A. My dad ain't got no air conditioning, he has got a
17 breathing problem and he has to leave his windows open. He
18 can't be in his yard because they kill him with the dust, he
19 can't be in his house because they kill him with the dust
20 and it's just a little common courtesy. We have asked
21 him -- I have asked him several times, "Hey man, dad is an
22 old man, cut him some slack. You want to fly, fly up to
23 this point, slow down and when you get past to this point
24 drag race, I don't care, just cut him a little slack."
25 Well, most of the people would do it, but when we asked

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1 Kamil to do it he started getting more and more, "I rent
2 this field and I'll do what I want to." We tried to
3 communicate with the guy, tried to make it civil, he just
4 didn't want to hear nothing we had to say. Dad lived on
5 that road, he didn't care, he was going to do whatever he
6 wanted to.

7 Q. How long had this problem been going on approximately?

8 A. For years. It started out four or five years prior to
9 that but it wasn't no arguing, it was just -- like I said,
10 most of the time it wasn't him, it was his workers and we
11 just asked them and they were real polite and they would
12 slow down and once they would get past the house they were
13 gone. But whenever Kamil was out there if you asked him he
14 would get mad, you know what I mean? "I got this field
15 rented and I'll do what I want to do." Well, we'll just
16 leave it alone at that point. Most of the time dad would
17 end up coming to my house until they got gone.

18 Q. All right. Let's get down to it. Do you remember the
19 16th?

20 A. Yes, I do.

21 Q. All right. Did you get a phone call that day or did
22 you call your dad?

23 A. I was sitting at the house. I wasn't -- I didn't have
24 no wallet or nothing, I was in a pair of shorts and a
25 T-shirt watching TV, phone rang, it was dad.

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- 1 Q. Do you remember about what time this happened?
- 2 A. I'm not exactly -- I know it was after 3:00 but I think
3 it was before 4:00, I'm not exactly sure what time it was
4 because I didn't look.
- 5 Q. The phone rings.
- 6 A. The phone rings, it was dad and I said, "What's going
7 on, Man?" And he said, "These guys are over here riding up
8 and down the road over here threatening me and cussing at
9 me." He said, "I stopped Officer Lilly." And I said,
10 "Well, what did he say?" He said, "The magistrate told him
11 he was down here and that if he had any problems that I had
12 to deal with it through the magistrate, he couldn't do
13 nothing." I said, "Well, did you go to the magistrate's
14 office?" He said, "Well, I tried to go up there "-- I think
15 this was a Thursday or a Friday, I'm not sure exactly but I
16 know it was late in the week -- and I said, "Well, did you
17 go up there?" And he said, "Well, it's kind of late in the
18 afternoon." And I said, "That's probably true, if they
19 ain't gone they're getting gone." And I said, "Well, what
20 else did you do?" And he said, "Well, I called the
21 sheriff's department and they're going to have the
22 supervisor call me," or had a supervisor called me one, I
23 can't remember how that went.
- 24 Q. How long was this conversation?
- 25 A. It was a pretty good while. We had been talking

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1 probably three or four minutes, maybe two or three minutes
2 when I heard someone yelling, and I couldn't hear it
3 clearly, I said, "What is that?" And he was like, "They
4 just stopped in front of the house and now they're coming in
5 the yard." And I was like, "Who is?" He was like, "Kamil
6 and his worker." And I was like, "Well, don't do nothing,
7 just keep your distance." I could hear them cussing and as
8 I'm talking to him they're getting worse and worse and
9 louder and louder. I know they're getting close in distance
10 because I can hear them clearly.

11 Q. Did you recognize the voices?

12 A. Yeah, I knew one of them was Kamil. I didn't know -- I
13 wasn't positive about the other guy but I had a pretty good
14 clue. But I told him, I said -- he said -- well, I could
15 hear them threatening him, they were threatening to kill him
16 and all kind of stuff on that phone, I could hear them
17 cussing and calling him all kinds of names. I told him, I
18 said, "Don't do nothing," and I run out my door, down the
19 porch, out in the yard, across the yard to get to my truck.
20 I get in my truck, I turn my truck around and I go out the
21 driveway. I'm talking to him on the phone, you know what I
22 mean? "Man, just don't worry about it, don't do nothing,
23 I'll be over there in a minute and we'll be able to deal
24 with it from there." My main thing was is they were
25 threatening to hurt my father, I was nervous. He's an old

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1 man, there's two of them, they've already been over in the
2 yard previous to this week threatening to hurt people, I
3 didn't want him over there by himself.

4 Q. All right.

5 A. So I get over there and when he come down the road --
6 like I said, it drops off that hill and it kind of does like
7 this. Well, you come around -- the sun is coming right down
8 the road that time of year, in the morning it gets you and
9 in the afternoon it gets -- I come around the corner and I
10 couldn't see nothing. About the time that sun cleared
11 enough where I could see there was Kamil, there was his
12 truck, so I slammed on the brakes to keep from running in to
13 him.

14 Q. Do you know where you were on Merle Lane approximately?

15 A. When I stopped?

16 Q. When you slammed on brakes.

17 A. Well, not -- Truesdale's driveway was here and my truck
18 was kind of like sitting not all the way in front of it but
19 kind of like in the middle. As soon as I stopped Kamil
20 stopped and when he stepped he stepped out on that running
21 board, opened that door and he laid that pistol out across
22 the roof of the truck and pointed it right at me. Well, as
23 soon as he pointed that gun at me I opened the door and
24 bailed out of the truck, I was running to the back of the
25 truck to get some distance between me and him.

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1 Q. All right. Let me stop you there. You're still in
2 your truck, the truck is running, right?

3 A. Well, no. It's automatic, it stalled out when I
4 slammed on the brakes.

5 Q. So you couldn't throw it in reverse and just slam back
6 down the driveway.

7 A. No. It used to be a three speed on a tree but they
8 broke the tree and it was down in the floor and if you
9 didn't take your time putting that truck in gear you was
10 walking.

11 Q. All right. Your truck stalled out and you've got a gun
12 pointed at you. What happened?

13 A. I throwed the door open and jumped out the door and run
14 toward the back right side -- driver's side of my truck to
15 get as much distance between me and that man with that gun.
16 While I'm running back here, "If you don't move that truck
17 you're going to die." Well, I ain't moving it, Jack, you've
18 got that gun pointed at me and I ain't going to get shot and
19 that's all there is to it. Somebody point a gun at me I
20 hope you're best because you're going to have a hard target
21 to hit and that's why I run to the back of the truck. Well,
22 when I run to the back of the truck he got out of the truck,
23 I could see down the hay trailer all the way straight down
24 that hay trailer. I couldn't see the tractor but I could
25 see the --

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1 Q. Which side of the road was that?

2 A. I'm on the driver's side of my truck and the
3 passenger's side of their truck. And I'm looking at Kamil
4 and I see that boy come around that trailer, I can see him
5 and he's coming down through there --

6 Q. When you say that boy, who are you talking about?

7 A. Harlan Melton.

8 Q. Okay.

9 A. He come flying down through there and he got a wrench.
10 Now, I thought he had got the wrench out of the truck but
11 I'm not sure, I don't know whether he had it or he got it
12 out of the truck, it really don't make no difference, that
13 was the biggest crescent wrench I ever seen, me standing out
14 there barefooted I ain't even got a stick in my truck. He
15 come running around there. About that time Kamil come
16 around the front of his truck and him and Harlan come at me
17 this way. My truck is sitting here, I'm standing here and
18 here they come. When they come this way I broke camp and
19 went this way, they started to break camp and tried to come
20 around and meet me, I broke camp back this way. When they
21 come back around this time -- this is about the third
22 time -- when they got almost back to the tailgate and I was
23 going this way then they broke camp going that way. When I
24 come back they had got all the way to about the middle of
25 that Ford pickup truck. When I seen them get to that pickup

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1 truck I could see down the driver's side of that truck I
2 could see dad coming down through there.

3 Q. Your truck or the other truck?

4 A. I could see down past the Ford 350 with the hay on it,
5 I could see all the way down that driveway.

6 Q. Where is Truesdale's driveway?

7 A. It's to my left. I'm standing here, here is
8 Truesdale's driveway, I can see dad running around this side
9 of the truck, Kamil and them is down by here, he's back
10 there by the hay trailer. When they got right there I just
11 took off and they run in to each other, I figured when they
12 run in to each other --

13 Q. Who is they?

14 A. Kamil and Harlan Melton, they run in to each other and
15 when they run in to each other I figured, I'd say, I'm going
16 to break camp, I'm going to try to dive across this barbed
17 wire fence and get to these trees to not get shot. I
18 figured if I can get in them woods if he's going to shoot at
19 me I've got a better chance of not getting shot.

20 Q. Just so I got it straight you're breaking off and
21 you're going to head towards that driveway?

22 A. I'm going to run across that driveway, across that
23 driveway and over his yard and dove over that fence is what
24 I was going to try to do.

25 Q. All right. Did you get to do that?

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1 A. I didn't get that far.

2 Q. How far did you get that?

3 A. When I started down through there they run in to each
4 other, by the time I got halfway down they had started down
5 and were cutting me off. Kamil actually got where he was
6 running side by side where I was at and was cutting me
7 off -- one gate was closed and one gate was opened. So he
8 just about cut me off, and about the time he got me to that
9 gate that's when dad come flying around through there
10 running and running between me and Kamil, and that's when I
11 seen him tell Kamil to put that gun down or we're going to
12 call the law.

13 Q. Okay. Let me stop you for a second. Your dad
14 testified that he seen that you got shot at. Were you shot
15 at at that point?

16 A. From my knowledge no. But just the way I remember it
17 and that was a pretty dramatic deal for me, I could be
18 right, I could be wrong on that deal.

19 Q. Did you hear a shot, or do you recall hearing a shot?

20 A. I don't recall hearing a shot. Like I say, my main
21 goal is I wasn't caring about no shot or no shiny wrench or
22 nothing, I was trying to get some distance between me and
23 whoever had that gun pointed at me, which was Kamil, as fast
24 as I could because you don't pull a gun on somebody unless
25 you plan on shooting them, at least not anywhere I've even

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1 been in my lifetime.

2 Q. Let's get back to the driveway, what happened at the
3 driveway?

4 A. I was standing here or Hilton (sic) here or Harlan,
5 whatever that boy -- Milton (sic) Kamil is here and dad had
6 run in between them. The gate is right here. When dad run
7 in between them and told him that, that's when Kamil turned
8 around and stuck that gun on him and shot him, "pow." When
9 he did dad went down, he had that stick and he went down on
10 the ground, and he wasn't down but a second. He got back up
11 and that's when he came around -- when he got up he come
12 around there and he hit Kamil. When he hit Kamil he hit him
13 right in here, you know what I mean? Kamil was looking
14 right at him, Kamil was down there and it looked like he was
15 either trying to reload that gun or that gun had jammed, he
16 was messing with the gun like this.

17 Q. Okay.

18 A. When dad cracked him it dazed him, you know what I
19 mean? He quit messing with the gun. That's when I went
20 down there and I got ahold of my dad, I grabbed him and I
21 grabbed that stick and I got him and I went up the hill.
22 When I was going up that hill they kept trying to come at
23 me, Kamil and Harlan, they kept -- I had to keep threatening
24 them with that stick, which they still had a damn gun.

25 Q. Who had a gun?

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1 A. Kamil.

2 Q. Did somebody still have a wrench?

3 A. Yeah. Harlan still had that big ole -- that wrench was
4 about that long.

5 Q. What are you doing then?

6 A. Main thing I'm trying to do now is keep them at bay and
7 get my dad over to that truck because I know he had been
8 shot.

9 Q. Okay.

10 A. Well, at some point in time I switched hands with that
11 thing because they were still coming at me -- what they were
12 trying to do was Harlan was coming this way and Kamil was
13 trying to get to where he could surround me. So I went up
14 there and hit the tool box on that truck, and I carry a tool
15 pouch, I grabbed that hammer out of that tool pouch. And
16 when I went to throw it Kamil was over here and Harlan is
17 kind of like over coming toward the truck but they were
18 still off a good distance, when I went to throw it they was
19 standing over here and the hammer went over there so it
20 didn't really work in my favor.

21 Q. Pretty bad throw.

22 A. Well, I was nervous, I was still scared. I thought I
23 was fixin' to get killed.

24 Q. Did you have anybody in particular that you were aiming
25 at?

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1 A. Not really. I figured if I throwed it maybe if they
2 seen me start to throwing something they would get on.

3 Q. Okay. Stop there for a second. Let me show you a
4 couple of pictures. Take a look at these two pictures.

5 A. Yeah. This is the actual hammer and that's where it
6 landed.

7 Q. Okay. Is that the fence you were talking about?

8 A. Yeah. What happened is when I throwed that hammer I
9 was over here, Kamil and them was over here.

10 Q. That's your truck right there.

11 A. That's my truck right there, yeah. Dad was up in this
12 area somewhere. When I grabbed it Harlan Melton was
13 standing -- if you're looking at it like this Harlan was
14 standing like up the hill a little bit and Kamil was still
15 standing right here and they was over in this direction and
16 the hammer actually went over the fence and landed right
17 there.

18 Q. Okay.

19 MR. COOK: No objection.

20 THE COURT: Without objection introduced as defendant's
21 next in order.

22 (The photos were received as Defendant's 31 and
23 32.)

24 Q. All right. Look at this diagram. This is a diagram of
25 the whole situation?

- 1 A. That's right.
- 2 Q. Are you familiar with this? Does this look about
3 right?
- 4 A. Yes.
- 5 Q. This is the driveway.
- 6 A. That's right.
- 7 Q. Is this where all the action takes place?
- 8 A. Yeah, this is where everything happened. The gate was
9 actually right in this area, right back even with that
10 marker, maybe a little bit south of it.
- 11 Q. Clearly you've been sitting here all week. You heard
12 Mr. Nassrah testify, you heard Mr. Melton testify that Mr.
13 Nassrah was standing on the running board of his pickup
14 truck and your dad runs up and pops him in the back of the
15 head. Are you telling us that ain't what happened?
- 16 A. That ain't what happened.
- 17 Q. Where was Mr. Nassrah when he got struck?
- 18 A. He was down there where I said where that number 12
19 marker was at, right in this area right in here. Right in
20 here is where he got hit.
- 21 Q. Nothing happened on the driver's side of Mr. Nassrah?
- 22 A. Nothing happened over here by this truck. The only
23 time he was down there -- when he pulled up and he laid that
24 gun across that hood and pointed it at me, then they came
25 from over there and chased me around this truck two or three

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1 times and when I went to break camp that's when they cut me
2 off here, dad come through here and dad got shot right here
3 and that's where Kamil got hit.

4 Q. All right. And Mr. Cook is going to get up here in a
5 second and ask you about this great conspiracy you and your
6 daddy cooked up to trap these folks on this road. Come on,
7 just go ahead and fess up, tell us, isn't that what
8 happened? Your dad called up and said, "Hey, we got them."

9 MR. COOK: Objection, Your --

10 A. Listen, I ain't got no hard feelings --

11 THE COURT: Hang on. What?

12 MR. COOK: He's leading. He's telling him what he
13 wants him to testify to.

14 THE COURT: Sustained.

15 MR. FRICK: Well, Mr. Cook has been doing it the whole
16 trial.

17 MR. COOK: I objected.

18 Q. Did you and your dad conspire to start this fight?

19 A. No.

20 Q. Who started the fight?

21 A. Kamil and Harlan Melton.

22 Q. Why did you go to your dad's house, or attempt to go to
23 your dad's house?

24 A. To keep him from getting hurt, I was afraid for his
25 safety.

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1 MR. FRICK: Thank you. Answer any questions Mr. Cook
2 has.

3 THE COURT: Solicitor?

4 CROSS EXAMINATION

5 BY MR. COOK:

6 Q. Mr. Hyatt, I'm assuming you don't get in a lot of foot
7 chases.

8 A. I'm sorry?

9 Q. Your tactics are a little questionable when they start
10 chasing you around the truck. You say you pulled up almost
11 bumper to bumper with Kamil and he pulls the gun on you; is
12 that right?

13 A. That's right.

14 Q. You're inside of your truck and he pulls a gun and you
15 decide to get out?

16 A. The truck wasn't running. I was trying to get enough
17 distance between me and that man with that gun because he
18 was pointing it right through the windshield of my truck.

19 Q. Did you tell any law enforcement or anybody that your
20 truck was broke down and that's why you didn't move?

21 A. I'm sorry?

22 Q. Did you tell anybody that your truck was broken down
23 and why you didn't move?

24 A. I didn't say it was broke down, I said the truck
25 stalled out so it wasn't running. That man was pointing a

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1 gun at me through my windshield.

2 Q. What did he tell you? He told you to move, didn't he?

3 A. Not until after he pulled that gun on me and I done
4 broke camp out that truck.

5 Q. Wait. Were you out of the truck when he pulled the gun
6 or are you in the truck?

7 A. He pulled that gun when I was sitting in that truck, as
8 soon as he laid that gun across the hood of the roof of that
9 truck there wasn't no words, I seen a pistol. As soon as I
10 seen a pistol I broke camp, I ain't going to get shot.

11 Q. Well, how far did you run?

12 A. I ran to the back of that truck to get enough distance
13 between me and him.

14 Q. There's a whole road, why don't you just keep on
15 running?

16 A. Because I was gonna try to get my truck --

17 Q. You're going to --

18 A. If the man would have put the gun away I would have got
19 my truck and moved it.

20 Q. Okay. You told Investigator Crump that he said, "Move
21 this truck or you're gone to die."

22 A. That's what he said.

23 Q. Well, why didn't you move the truck?

24 A. The man pulled a gun on me.

25 Q. But he asked you to move the truck.

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- 1 A. There ain't no but to it, he pulled a gun on me.
- 2 Q. Okay. Well, your next idea is -- there's a driveway,
3 there's woods and a barbed wire fence.
- 4 A. That's right.
- 5 Q. And that's your best option to get away?
- 6 A. The only option I had.
- 7 Q. There's a road that goes back to the main road, there's
8 bushes and trees over here, there's a barbed wire fence over
9 here and your best idea is I'm going to run and jump over
10 that barbed wire fence?
- 11 A. That's right, he was chasing me around the truck. He
12 wasn't standing over there by his truck, he was over there
13 chasing me.
- 14 Q. You said that y'all were on every part of the truck.
15 You said that he is going this way and Donnell is going this
16 way and they bump in to each other like a cartoon.
- 17 A. I never said they were going that way or going that
18 way.
- 19 Q. You said it right here.
- 20 A. I said they were both going this way, they both went
21 this way. I never said one went one way and one went the
22 other way.
- 23 Q. And then you said they bumped in to each other.
- 24 A. They run in to each other because it was right there
25 together, when Kamil turned around he run in to him.

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1 Q. So y'all were just do-si-doing around the truck and
2 bump in to each other and it's like bad guys in a cartoon
3 and you just take off running.

4 A. Well, it might be Wylie Coyote but it was real life and
5 I was not getting shot.

6 Q. You never got further than 15 feet from the truck, did
7 you?

8 A. I got a little bit further than 15 foot.

9 Q. In all this time that's as far as you could run away?

10 A. That was the best I could do.

11 Q. Why didn't you just run down the road?

12 A. I'm going to run down the road that's gravel, I'm
13 barefooted, I've got no shoes on, it's rock, with a man a
14 little bit behind me with a gun and run straight up the road
15 so it's easier for him to shoot me? I'm not a little
16 fellow, I'm already an easy target.

17 Q. I don't dispute that.

18 A. So the only thing you can do for me is called strategy,
19 move, put things between me and him. That was my plan. It
20 might not been the best plan but it worked, I didn't get
21 shot.

22 Q. Well, you're worried about gravel on your feet but
23 you're going to dive over the barbed wire?

24 A. That's right.

25 Q. How high is that barbed wire fence?

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1 A. Maybe two foot.

2 Q. Are there not trees on this side of the truck? If
3 you're on your passenger's side of the truck where you said
4 you saw your dad coming, what's over there?

5 A. There's bushes, a barbed wire fence, it's about six and
6 a half to seven foot higher than the road, and then there
7 was pastures with horses in it over there past that.

8 Q. When they came and you're on the driver's side door,
9 Kamil comes from his driver's side, why don't you just run
10 down to Mr. Truesdale's house? There's a wide open gate,
11 there's a house, you can go down there and get help if you
12 wanted to and called the police. Why didn't you run down
13 there?

14 A. That gate is there and that gate is there, my right is
15 right here and they're right here and they're chasing me
16 around that truck in that driveway. I tried to run down the
17 driveway, you seen me -- just like on that picture you can
18 see I tried to run down the driveway and he run right out in
19 front of me and when my dad went through there then he shot
20 my father in the driveway, the driveway you want me to run
21 down that I tried to run down to get away from these people
22 and he shot him.

23 Q. You must not run real fast because you didn't get --
24 you are never more than 20 feet from your truck.

25 A. I ain't never claimed to be no athlete.

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1 Q. Well, you said somebody pulled a gun on you you're
2 going to get out of the way.

3 A. That's what I done. I didn't stand in the way of that
4 gun period. I got myself as far as away -- the best logical
5 thing that come to me was to do what I done and get away
6 from that gun, and it worked for me, I didn't get shot.

7 Q. He never even shot at you.

8 A. Well, I can't say that.

9 Q. Well, you said that the day it happened. They said,
10 "When was the first shot?" And you said, "The first shot he
11 shot my dad."

12 A. And what did I say for the second shot?

13 THE COURT: No, sir, don't ask questions, just answer
14 his questions. And y'all don't talk over each other as
15 well, it's hard for my court reporter to take down two
16 things at one time.

17 THE WITNESS: Can he repeat that question?

18 THE COURT: Yes, sir, absolutely. Go ahead, Solicitor.

19 Q. When they asked you how many shots they said the first
20 shot, you said, "The first shot hit my dad."

21 A. I said the first shot hit my dad and then the second
22 shot I didn't know where it went. He could have shot at me,
23 I don't know.

24 Q. Well no, that's not what your dad said. When he comes
25 out there Kamil is shooting at you. You never once said

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1 anybody shot at you before your dad got there.

2 A. Well, I know I didn't say that but that doesn't mean --
3 if you listen to me now.

4 Q. I'm listening.

5 A. -- that don't mean that things get swapped up. I'm
6 getting chased with a gun and a crescent wrench, now I could
7 be right and I could be wrong about how the shots were fired
8 as far as whether or not he shot at me, but I know for a
9 fact that he shot my father and then my father hit him.

10 Q. Well, you're getting ahead of me here.

11 A. No, I'm stating a fact.

12 Q. When the investigator said, "When is the first shot?"
13 "The first shot, then my dad walked up, my dad had that
14 stick and he said, 'Put the gun down, you're not going to
15 shoot anybody.' Bam, he shot."

16 A. That's what I said.

17 Q. You said that's the first shot.

18 A. That's what I said.

19 Q. That's a lot different than you saying, "I'm running
20 around and they're shooting me," and your dad is saying
21 they're shooting at you.

22 A. I didn't see that.

23 Q. I know you didn't, that's why you're saying now you
24 don't know. But the day it happened three and a half years
25 ago and this is fresh and they asked you what happened you

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1 never said, "I got shot at."

2 A. That's what I said in my statement and I stick with my
3 statement.

4 THE COURT: Remember, don't talk over each over.

5 Q. Your dad said that he went after the gun and fell down
6 and Kamil shot him.

7 A. All I know is when Kamil shot him I heard him go "oof,"
8 and when he shot him --

9 Q. Were you not watching when he shot him?

10 A. Yeah, I was standing right there. This is what I'm --
11 can I answer the question? What I said was this is what I
12 know, I seen Kamil shoot him, I seen him go down and go
13 "oof," that's the only sound he made. He stood right up and
14 he took that stick and he come around and he kit Kamil.
15 When he hit Kamil, Kamil was messing with that gun.

16 Q. You never said your dad fell before Kamil shot him.
17 You said he was standing -- you had law enforcement and you
18 were placing them on the spots, "He was here, he was here,
19 he was here," you had it all set up.

20 A. That was the best of my recollection at that time.

21 Q. And when you did that you said, "My dad right here, him
22 and Kamil was standing right in front of each other and he
23 said, 'Kamil, put that gun down, we're going to call the law
24 right now, and Kamil shot him."

25 A. That ain't how that was set up.

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1 Q. Well, you saw it on the video.

2 A. You can show the video again, I'll show you that it
3 shows I was in front of Kamil, then my father was down the
4 hill from Kamil.

5 Q. You said your father was standing in between you and
6 Kamil -- we'll show it if you want to -- and you said he was
7 standing right there and he shot him. Your dad said that he
8 fell down, was getting up and got shot.

9 A. Okay.

10 Q. Is that -- that's a different story, isn't it?

11 A. Well, it could be. People see things differently, you
12 know what I mean? He's got his traumatic experience and I
13 got my traumatic experience, I'm giving you the best of my
14 knowledge what happened.

15 Q. Well, it's not traumatic until you get shot, you're
16 standing there talking.

17 A. You mess with -- I'm sorry. To me that's traumatic.

18 Q. Well, you set it all up and said, "My dad was standing
19 right in front of Kamil, they're talking to each other and
20 Kamil just shoots him." Your dad's story is he goes after
21 the gun --

22 MR. FRICK: Your Honor, I think we've covered this
23 territory and I say it's asked and answered and move on.

24 MR. COOK: Okay. That's fine.

25 THE COURT: All right.

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1 MR. COOK: Beg the Court's indulgence one moment.

2 THE COURT: Okay.

3 (Break in proceedings.)

4 Q. Do you remember telling Investigator Crump that your
5 dad was old school?

6 A. Yeah.

7 Q. What do you mean by that?

8 A. Old school, he lives kind of by the way things were
9 back in the older days.

10 Q. Do you remember saying, "Old school. Back in the day
11 you just go in and have a fist-fight and that's the end of
12 that shit and it's over." Do you remember saying that?

13 A. I don't remember saying it about him. I remember
14 saying old school, back in the old days that people used to
15 fist-fight and the shit was over, that's what I said. I'm
16 pretty sure that's what I said.

17 Q. Yeah, that is what you said. But you weren't
18 referencing your dad at that point?

19 A. No, I was referencing old school.

20 Q. Just people in general?

21 A. A lot of people is old school.

22 Q. But you said your dad was old school.

23 A. Some people say I'm old school.

24 Q. We're talking about this. Okay?

25 A. Well, you asked me what I was referencing it to and I'm

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1 giving you the answer.

2 Q. How long has your dad been mad about this dust?

3 A. He hadn't been mad about the dust, he asked about the

4 dust, he asked them cordially several times. Asking

5 somebody cordially does not make you mad, that makes you --

6 asking them to show you a little respect and be civil.

7 Q. Well, you said to Investigator Crump, "He called me,

8 he's six (sic) years old, old people raise hell and he

9 called me to complain about it."

10 A. I said what now?

11 Q. You said, "He called me, he's 60 years old, he's an old

12 man, old people raise hell, he called me and complained

13 about it."

14 A. My dad calls me and gripes about all kinds of stuff.

15 Q. Did he call you and gripe about the dust?

16 A. He gripes about the news.

17 Q. What was he complaining about that day?

18 A. He was calling me and telling me what was going on, he

19 was upset because the way they was treating.

20 Q. You said you heard people over the phone when you were

21 on the phone with your dad.

22 A. That's correct.

23 Q. What did they say?

24 A. I heard Kamil and Harlan Melton threatening him,

25 cussing at him, saying a lot of cuss words, telling him he

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1 wasn't going to do nothing and threatening him, and that's
2 what had they said.

3 Q. Wasn't going to do nothing about what?

4 A. This is what I assume, about them just treating him
5 like a piece of trash and that's the way they was doing and
6 we talked to the officers. We tried to do it the right way
7 and calmly and they just wasn't pay it no attention and then
8 this incident happened, we're still trying to get this
9 resolved.

10 Q. So how long did it take you to get from your house to
11 his house that day?

12 A. I have no idea. I come as fast as I could, that's the
13 best guestimate I can give you.

14 Q. Have you driven to his house before?

15 A. Yeah, and I ain't never timed it, not one time. Why
16 would I -- I'm sorry. I have never timed it, not one time.

17 Q. Is it 30 minutes?

18 A. No, it don't take that long.

19 Q. Is it two minutes?

20 A. It's more than that.

21 Q. Ten minutes?

22 A. It takes me a little bit to get there. I can't give
23 you an answer to that, I don't know. I don't really know.

24 Q. You said it's only a mile away.

25 A. Yeah. But you've got to come up -- from my house

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1 you've got to come up that gravel road and turn and twist
2 like this and then you've got to make a turn, go around this
3 gravel road and turn and twist like this, then you've got to
4 get on a black top road, and that's a county road that might
5 have traffic. And then I have to go down, turn left and
6 then go back down the road. I can't tell you exactly how
7 long it takes me to get there. It takes me a little bit,
8 that's the best I can give you.

9 Q. How long was it that you were doing this little dance
10 with Kamil and Harlan around the truck before your dad got
11 down there?

12 A. It seemed like forever to me. If I just guesstimate
13 four or five minutes.

14 Q. You said you were on the phone with your dad and you
15 lost him on the video, there's an opening in the trees when
16 you come through, the driveway was to the left, you said, "I
17 was on the phone with my dad until I got right here,"
18 pointed right back to where your truck was and you said you
19 lost him.

20 A. That's not what I said.

21 Q. I can show you the video, I'm not going to lie to you.

22 A. Okay. That's fine. What I said on that video was I
23 lost signal where my brother was standing in the road, which
24 was halfway up that road where you couldn't see him but the
25 officers could see him.

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1 Q. Well, at that point if you're on the phone with your --
2 you were on the phone with him from the time that they were
3 allegedly in his yard until you almost pulled up in front of
4 Kamil, did you not know they were gone at that point?

5 A. No. He never said nothing about them being gone.
6 Mostly what you hear -- where I live, I live down behind
7 Hanging Rock, I've had every kind of phone you can imagine
8 and I can't -- there's not very good service down there. So
9 it wasn't like we was sitting there talking a conversation
10 like you're sitting on a land line, I was getting bits and
11 pieces. I was doing the best I could with what I had.

12 Q. But the signal is obviously good enough where you can
13 pick out voices and exactly what they say.

14 A. When I was sitting at my house it was, not when I was
15 driving down the road. I wasn't driving down the road when
16 I heard what they said, I was sitting in my house watching
17 TV minding my own business.

18 MR. COOK: One moment, Your Honor.

19 THE COURT: Okay.

20 (Break in proceedings.)

21 Q. At one point on there you said your dad, you said he
22 was ex-military and he doesn't deal with that well. What do
23 you mean by that?

24 A. People talking at him and cussing him like that, that's
25 what I mean by that.

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1 Q. When you said he doesn't deal well, how does he deal
2 with it?

3 A. He don't like it, nobody likes it. What do you mean --
4 how can you deal -- you tell them not to talk to you like
5 that, that's how you deal with it.

6 Q. The reason you came over there is because he called you
7 complaining about the dust.

8 A. The reason I come over there is because I could hear
9 them threatening my father and I was worried about his
10 safety.

11 Q. You told investigators, you said, "That's what this is
12 all about. If they would just slow down there would have
13 never been harsh words between my dad and Kamil."

14 A. That's what started from the 13th.

15 Q. So this has been brewing at least a week -- there has
16 been tension about a week?

17 A. We thought the cops had it resolved when they came down
18 there -- the day before this happened when Morgan was taking
19 them up and down the road there was no trouble so we thought
20 it was resolved.

21 Q. So there's no trouble when law enforcement is coming
22 back and forth with them?

23 A. When Officer Morgan was escorting them there was no
24 trouble. This happened when Lilly was over there. I can't
25 tell you from what was happening over there because I wasn't

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1 over there, but there wasn't no trouble the day before when
2 Officer Morgan was there. When Officer Lilly was there then
3 there was trouble.

4 Q. So there's no trouble while the officers are there.
5 When you got there on the 16th was there an officer there?

6 A. Wasn't no officer there.

7 Q. So the one day there is no officer something happens.

8 A. The only thing -- only reason I know what happened was
9 because I can hear somebody threatening him on the phone so
10 I come over there because I was worried about my dad.

11 Q. And there's no law enforcement when you got there?

12 A. No. I didn't even make it past the Truesdale driveway,
13 so far as I know, no.

14 Q. Whose truck is that in front?

15 A. That's Kamil's.

16 Q. The white one is Kamil's?

17 A. Yeah.

18 Q. The green one is yours?

19 A. That's right.

20 Q. Do you see that driveway right there?

21 A. How do you get this thing to work?

22 Q. Just tap it.

23 A. It ain't doing nothing. There it goes. Are you
24 talking about the fence?

25 Q. Yeah, to the left, that open gate.

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1 A. Yeah, that's the Truesdale's driveway.

2 Q. Okay. Well, you saw Kamil coming, why wouldn't you
3 just pull over to the side and let him go by.

4 A. Because I didn't see him coming, that's what I told
5 you. When I came around that corner what you can't see
6 right here, but there's a tree, and when come up and you
7 turn that sun was beaming straight down that driveway I mean
8 like right here at you, as soon as I seen him I stopped. I
9 didn't know he was there, I didn't know anyone was in front,
10 that's why I was coming down through there so fast. I
11 thought they were still down at my dad's house.

12 Q. Why would you think they're still at your dad's
13 house --

14 A. Because they were threatening him on the phone.

15 Q. Let me finish the question. Why would you think they
16 were still at your dad's house if you were on the phone with
17 him while you're still on Merle Lane?

18 A. Listen, that's what I tried to tell you, I couldn't
19 hear everything that was going on except when I was at the
20 house, I could hear that clearly. As we was coming out when
21 I started coming up Horton Rollings Road I started losing
22 him. I actually lost the whole call when I come in on Merle
23 Lane, but it was breaking up before then. But I didn't know
24 they had left, I didn't know they had left, he never said
25 nothing to me that they had left. I didn't know that they

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1 had left.

2 Q. That's not what you said the day of, you said you the
3 lost the call right back where your brother was standing and
4 then pointed to your brother on the video, and it's not all
5 the way back to Merle Lane.

6 A. My brother is standing up the road up there past them
7 trees up there next to that next driveway.

8 Q. You could see him where you were standing?

9 A. I don't think you could see him on the video. I can
10 see him but I don't think he is on that video where you can
11 see him.

12 Q. And you're past the driveway. Is there room for Kamil
13 to get around you?

14 A. Is there room for him to get around me now?

15 Q. Yeah.

16 A. Yeah. He could have went around me because he could
17 have drove right there in that grass --

18 Q. With that truck?

19 A. -- with that trailer, okay, let me finish. He could
20 have drove right down on that grass to the right in the
21 Truesdale driveway, there's enough room. He could have
22 pulled in there and I could have went right on by his
23 trailer. Because I have passed -- the actual people that
24 own that property come down there with four wheelers and
25 stuff and I have passed several of them with longer trailers

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1 than that in that same spot.

2 Q. Your truck is right there, how is Kamil getting around
3 you?

4 A. Like I said, taking a turn to the right, he could have
5 pulled right there, he could have pulled right down that
6 driveway and rode right around me. I've passed more than
7 one person in the time that my father owned that place on
8 that spot right there.

9 Q. You're saying there's enough room for Kamil to get that
10 rig around your truck?

11 A. Yes, sir.

12 Q. When you were on the phone with your dad you said,
13 "Don't do nothing, don't do anything." What do you mean?

14 A. Don't do nothing.

15 Q. You said, "Don't do anything until I get there."

16 A. Don't do nothing, that's what that means.

17 Q. Well, what was he going to do?

18 A. I can't predict what he was going to do, I just didn't
19 want him to do anything until I got over there.

20 Q. On the video at the end Investigator Crump said, "Your
21 dad didn't know you were coming over here," and you said,
22 "Nope."

23 A. At that time I didn't think he knew I was coming but I
24 guess I told him and I got that wrong on the video. But, I
25 mean, when he asked me at the time I didn't think he knew I

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1 was coming, I just didn't.

2 Q. And you said, "Don't do anything until I get over
3 there."

4 A. That's right.

5 Q. But he didn't know you were coming, and he was on the
6 phone with you while you were in the truck?

7 A. Excuse me?

8 Q. He was on the phone with you while you were in the
9 truck? You said, "Don't do anything until I get there," but
10 then you said you didn't think he knew you were coming.

11 A. Hey man, it was a traumatic deal, people been shot, I
12 done the best I could with that. To be honest with you I
13 would have rather went and seen my dad, I was getting eaten
14 alive by mosquitoes, instead of doing that. I done the best
15 I could with that. I'm not a cop or investigator or
16 anything, I think I done the best I could to give them as
17 much information I could about what happened that day.

18 Q. I just want to make sure you give the same information
19 then as you do now.

20 A. I did. I give them the exact same information that I'm
21 giving you now. There's things in there maybe the words
22 wasn't right but I did the best I could.

23 MR. COOK: Your Honor, I don't have any further
24 questions of Mr. Hyatt.

25 THE COURT: Okay. Mr. Grier?

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1 CROSS EXAMINATION

2 BY MR. GRIER:

3 Q. Aaron, do you recall Kamil saying that you said, "Your
4 days are numbered, where is your escort now?" Tell me, what
5 is your response to --

6 A. I remember him saying that in here but I never said
7 nothing to him. I never got a chance to say nothing to him.

8 Q. Nothing at all was said between -- from you --

9 A. Only person that was talking was him because he had
10 that gun, I was trying to get away from him.

11 Q. Do you own a gun?

12 A. Oh, I've got several guns, yeah. I've got hunting
13 rifles, I don't own no pistols. I've got three or four
14 hunting rifles, high powered rifles and a couple of shotguns
15 and a couple of .22 rifles, you know, like for squirrel
16 rifles.

17 Q. If there's a confrontation and you're concerned about
18 your dad's safety, why didn't you grab a gun when you went
19 over there?

20 A. I went over there just to make sure they wasn't doing
21 nothing to him, I wasn't going over there to do nothing to
22 them.

23 Q. You heard the video. Did anybody accuse you of having
24 a gun at the scene?

25 A. No.

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1 Q. You don't recall anything on the videos where you were
2 accused of having a gun by anybody?

3 A. No.

4 Q. You don't recall a gun being found except for Kamil's
5 two guns at this scene?

6 A. The only gun I know of are Kamil's guns.

7 Q. I think you may have answered this, but why didn't you
8 leave immediately when your dad was taken out to go see
9 about him?

10 A. They asked me to do that reenactment, I didn't want to
11 do it but they asked me to. From my assumption I didn't
12 have much choice.

13 Q. Okay. Describe what you saw at the scene involving the
14 stick.

15 A. When dad come through there Kamil had that gun, he run
16 between me and Kamil. I was running, I wasn't walking, they
17 were chasing me. Dad run between them and was pointing that
18 stick at the gun telling him, "Put that gun down, you ain't
19 going to shoot anybody, we'll call the law." When Kamil
20 started up with the gun that's when dad went to step back
21 and when he did Kamil stuck that gun to him and said, "Pow."
22 Dad fell down and went, "Ooh." Jumped back up, which
23 surprised me that he got right back up, and cracked him with
24 that stick. When he cracked him with that stick Kamil was
25 messing with his gun doing something like this, I don't know

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1 what he was doing but he was trying to do something with
2 that gun. After dad hit him with the stick and he was dazed
3 I got the stick and got dad behind me and just tried to keep
4 them at bay, to keep them away from me and keep enough
5 distance -- because I had called the law in that time, I
6 think a few of us had called the law. I think we talked to
7 a few different the cops on the phone with that occasion, do
8 you know what I mean?

9 Q. You took the stick away from your dad?

10 A. That's right.

11 Q. Where was he at when you took the stick away from him?

12 A. Kamil was here and he was like kind of down the hill
13 from him. When I went down there that's where dad got shot
14 when he stepped up to hit him, and when he stepped up and
15 hit him that's when I got around that fence, I got ahold of
16 him and I took the stick out of his hand. He's right handed
17 so I took it out of his right hand.

18 Q. Did your dad ever drop the stick?

19 A. No.

20 MR. GRIER: Okay. Thank you.

21 THE COURT: Redirect?

22 MR. FRICK: No questions. Thank you.

23 MR. COOK: Nothing further.

24 THE COURT: Thank you, sir, you may step down.

25 Mr. Frick, you can call your next witness.

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1 MR. COOK: Your Honor, maybe half an hour.

2 THE COURT: Okay. Thank you.

3 (The jury returned to the courtroom.)

4 THE COURT: All members of the jury are present.

5 Ladies and gentlemen of the jury, we now move to the portion
6 of the trial that I described to you earlier called closing
7 statements or closing arguments. Mr. Frick?

8 MR. FRICK: I will go first, Your Honor. Thank you,
9 Your Honor, Mr. Cook, ladies and gentlemen of the jury. I
10 know it's been tedious because as you've heard you have the
11 distinct pleasure of having three lawyers tell you the same
12 story at least three different times so I know you've heard
13 everything, but this is the last time you get to hear from
14 all of us. So right after all of this the Judge is going to
15 tell you what the law is, you're going to go back, you get
16 to take all of these fine pictures, all of this other stuff
17 in, the videos if you want to see them and go back and
18 consider the verdict. Ladies and gentlemen, just to remind
19 you, the State is accusing Mr. Aaron Hyatt and Mr. Michael
20 Hyatt of attempted murder. I'm not going to get detailed in
21 the law, but as you're aware that means that they're saying
22 that they did something and intended to kill or cause great
23 bodily injury to Mr. Nassrah who you heard testify. I told
24 you on Tuesday I think is when we came in for opening
25 arguments that it was going to come down to a battle of

1 credibility and that's exactly what you've got. You have
2 heard four witnesses tell you, four people who were out
3 there that day tell you their version of the facts. Now, no
4 versions of facts are ever going to lineup entirely and I
5 would suggest to you that if they ever did there is an
6 issue, that's when you really get leery if all witnesses say
7 the same thing, so there's minor differences in any case.
8 But what you get to examine is when they sit up here on the
9 stand and they told their story did they have any bias?
10 Perhaps you're employed by the person and you continue to be
11 employed by the person. Do you have any other reason why
12 you want to say somebody did something? You get to
13 determine all of that. I'm not suggesting it, ladies and
14 gentlemen, that is for you to determine as to whether or not
15 the folks who sit up there had any reason to say what they
16 said. And again, you can believe anything they say, part of
17 what they say or you ain't going to believe a thing that
18 they say, and that quite frankly goes for the same thing
19 with these photographs, videos, whatnot. You get to weigh
20 the evidence and no one can take that away from you, and in
21 the end you get to determine whether the State has met their
22 burden. And make no mistake, it's all over here. The
23 Hyatts have to prove nothing. They come into this courtroom
24 presumed innocent until the State has shown you the evidence
25 to take that away, and I suggest to you that they have not.

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1 Now, the Judge is going to tell you some stuff what we call
2 lesser-included offenses. Obviously the trial and what
3 you've heard about has been attempted murder, there are
4 lesser-included offenses. There's assault and battery of a
5 high and aggravated nature, first degree, second degree
6 these are lesser-included offenses, meaning lesser degrees.
7 You get to determine whether or not you think the events fit
8 into one of those. I suggest it doesn't fit in any of those
9 because these two gentlemen did what they had to do to
10 defend each other. First, Aaron gets a phone call from his
11 dad, there's trouble, he goes over there to help his dad,
12 then low and behold he's the one in trouble because he's got
13 a gun pointed at him so his dad has to come and defend him.
14 Self defense is an absolute defense meaning you believe that
15 we have shown you that it's self defense and the State has
16 not disproved, remember that. We don't prove it happened,
17 they have to disprove that it happened once we've alleged
18 it. If you believe that self-defense is in effect then you
19 must acquit these two gentlemen, and I suggest to you that's
20 exactly what happened. They were threatened, they go to aid
21 each other, tables kind of get turned in the middle of the
22 game and it was nothing but self-defense. The stories from
23 the State's side, they just -- it doesn't make sense, it
24 doesn't make sense. The story you get is Mr. Nassrah is
25 standing on the running board of his F-350, that ain't a

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1 short truck, and Mr. Michael Hyatt runs by him and pops him
2 in the head. Now, the testimony was he was popped in the
3 back of his head. Okay. Well, you've got the pictures,
4 here is a picture of the back of his head couple days after
5 the incident. I say again, a couple of days after the
6 incident, either he's an amazing healer or that's not where
7 it occurred. You saw him stand before you, some of you
8 probably had a better view than others, but you saw him
9 stand in front of you and show you his alleged injuries.
10 Folks, this is what he looked like on the scene. Here is
11 the blood soaked Mr. Nassrah. Yeah, he bled. I told you at
12 the beginning of the trial we didn't refute the fact that he
13 got hit in the head. The State doesn't refute the fact that
14 Mr. Nassrah shot Michael Hyatt. The question comes down to
15 when and why did those events occur. Here is the actual
16 injury, it's on the side of his head, ladies and gentlemen,
17 it's on the side of his head. Crime scene is out there and
18 they see little teeny droplets. I'm not going to go through
19 all of these, but you saw what the gravel looks like, you
20 will see the teeny little droplets that they say are blood
21 that SLED said, yep, that's Mr. Nassrah's blood. Where do
22 they find it? All over here on the driveway, down here, not
23 up here on the driver's side where Mr. Nassrah and
24 Mr. Melton say that he was attacked. Mr. Melton says -- and
25 you'll hear more about his statement in a minute -- but

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1 Mr. Melton says Mr. Nassrah is popped in the head and is
2 already bleeding pretty good by the time he's getting around
3 to the front of the truck. Crime scene looked all over the
4 place, they didn't find any droplets in the front of the
5 truck or on that road. All of the blood droplets they found
6 were down the driveway. Folks, all of the evidentiary items
7 are on this driveway. There's not a single thing that is up
8 on the driver's side of Mr. Nassrah's truck. How do you
9 want to balance credibility? You've got to look at the
10 evidence and decide what side that supports. What side does
11 that support? That supports the Hyatts' statement that it
12 occurred down here, it occurred down here in this driveway,
13 that supports their argument of self-defense. You even have
14 a nice pictures of the truck, just in case you don't know
15 what an F50 (sic) looks like here it is. It sure looks to
16 me like that door is closed. Now, I know the State is going
17 to get up here and say I can't say whether the door was open
18 or closed, but crime scene said they photographed stuff as
19 they found it, nobody said the driver's side was open. So
20 did Mr. Nassrah shut the door after he got hit in the head?
21 Again, ladies and gentlemen, that's for you to decide.
22 We've got all kinds of photographs of the scene, you will
23 get to see that. I'm running through these pictures but you
24 get to look at everything, take as much time as you want,
25 I'm just pointing at what I think are important issues that

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1 I want you to consider. This photograph right here, this is
2 the passenger's side of Mr. Nassrah's truck, that's looking
3 back down Merle Lane. There is the light green truck you've
4 heard about. Look where this deputy's car is. It ain't
5 nose to tail with Mr. Aaron Hyatt's truck, you see the front
6 of it. What does that tell you? He's in a curve, this road
7 curves exactly where Aaron Hyatt told you that it did, and
8 in just a minute I'm going to show you that part of the
9 video that shows you that as well. It's the inside of Mr.
10 Nassrah's car -- the truck. That's the glove box with the
11 blood stain right there where he was trying to open that up.
12 What's inside there? Yeah, there's some tissue, there's a
13 .22 in there too. Which was he going for? Because this one
14 must not have been firing anymore. Here is exactly how it's
15 found on the ground, it's cocked and it's ready to go. Now,
16 CSI couldn't tell you whether they had misfired it or was
17 just waiting to get fired, but here it is, one in the
18 chamber. He was ready to shoot again, he didn't but he was
19 ready to shoot again. Again, this is the clustering of the
20 blood droplets that are all in one spot suggesting that the
21 defenses' story is the one that was more credible because
22 that's where the evidence is collected, nothing anywhere
23 else. Now, y'all had a fairly unique experience in this
24 situation besides having to listen to three lawyers explain
25 this case to you, you got to be on the crime scene. Now, no

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1 one is ever there when it happens except the witnesses to
2 the event, you got to see exactly law enforcement's view
3 when Deputy Morgan pulled up. The in-car camera got a whole
4 lot on it, and I know it's real difficult to hear because
5 there's a lot of stuff going on, he's miked up so wherever
6 he goes that's recorded. There is audio in his car, his
7 radio is on, there's about three different things going on
8 at the same time. But guess what? It's in stereo. All of
9 this is in evidence, ladies and gentlemen, everything that
10 you heard on that video or attempted to hear, because it was
11 fairly gurgled when you first heard it, is in evidence so
12 you get to consider everything that's going on. Remember,
13 Mr. Melton told you he was sitting in the back of that car
14 and he admitted he was talking and he admitted he was
15 talking on his cellphone. You get to consider what he was
16 doing back there. So let's see if we can take a look at
17 this for a second. First I want to start you off as we go
18 down Merle Lane. Assuming I can get this thing to work.
19 (Video is playing.) Look how long it takes him to get down
20 this road. (Video stopped.) Look at where his view is. How
21 fast did it take him to get down that road? Was the sun in
22 his eyes? Was there a curve? Is it entirely possible that
23 Aaron Hyatt, who fears for his father's safety, is coming
24 down that road at such a speed that he doesn't see
25 Mr. Nassrah until he almost runs in to him? Is it possible

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1 that Mr. Nassrah is coming down that road and doesn't see
2 Mr. Hyatt until they almost run in to each other? They
3 don't run in to each other. But you can see the road wasn't
4 a straight road, it wasn't a straight view. All right. Now
5 we're on the scene. Now folks, I want you to pay attention
6 to something when you watch this. In the top left corner as
7 you see Deputy Morgan securing the scene you see him
8 talking -- first he's going to talk to one party, after he
9 separates the parties out he is going to talk to one side
10 and then he talks to the other side. In your top left
11 corner is Mr. Nassrah who has been so dazed by this blow
12 according to his testimony that he is about to pass out.
13 Look in that top left corner, there's two folks up there,
14 they look pretty ambulatory. Take a look. Don't take my
15 word for it, take a look. (Playing the video again.) All
16 right. Now, Deputy Morgan starts gathering information,
17 you're going to see him going over to Mr. Nassrah and
18 Mr. Melton, listen at Mr. Melton's statement. Listen to
19 him, he starts to tell his side of the story. (Playing
20 video again.) Did you hear that? The first thing he does
21 is says is, "He's got a gun," saying that Aaron has got a
22 gun. You heard absolutely no testimony that he had a gun or
23 that he pointed a gun at anybody. Here he is already
24 starting. (Playing video again.) "Sit down, Kamil, sit
25 down." Mr. Nassrah wasn't sitting down, Deputy Morgan told

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1 him to sit down. (Playing video again.) All right. Now,
2 we've got a witness, Mr. Melton, said, "Yeah, I saw it." So
3 now he starts to tell his side of the story. This next clip
4 is going to run a little while because he is sitting in --
5 and God bless Deputy Morgan, he shows up in a very difficult
6 situation, he's dealt with these folks before and I think he
7 handles it pretty well diffusing the situation and he
8 separates the parties and he has a cool head about it. He
9 now has to collect information. He has Mr. Melton in his
10 car. (Video was played again.) "He was already bloody
11 pretty good." This is after the first hit when he is hit
12 near the truck according to one version, Mr. Melton stated.
13 (Video was played again.) All right. Now, this is where it
14 starts getting a little fuzzy for y'all when y'all are
15 listening to the in-car camera. At this point he begins to
16 talk to Investigator Crump, Clark Crump. It takes place in
17 the car, Deputy Morgan is outside, so you begin to hear two
18 different conversations going on at the same time. But if
19 you focus in on what's going on in the car you can hear what
20 is happening in the car. (Video is played again.) "My
21 instinct is to protect my damn job." That's his boss.
22 (Video is played again.) Now, couple of statements before I
23 move on to the next part there. First he says, "What kept
24 Aaron off is he picked that gun up." Well, no one said that
25 he dropped it. The other thing, he says, "I'm the one that

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1 called 911." Now, you can go back and look at the very
2 beginning, the call that comes through on Morgan's radio,
3 it's a shots fired call and it says they say they're the
4 victim of the shooting. I don't think that was Mr. Melton
5 that called him. All right. Now, at another point when
6 Mr. Melton is up on the stand, and I think Mr. Grier is
7 cross examining him on this, he said he didn't write no
8 statement, wasn't familiar with the statement, didn't write
9 a statement. (Video played again.) Sounds like he was
10 writing something to me. All right. Again, now we talked
11 about Mr. Melton was in the back of the car, he was talking
12 on his phone. Well, this is what you initially heard. (The
13 video was played again.) You've got two conversations going
14 on at the same time, that's good, Deputy Morgan is outside
15 talking to another deputy about the situation. Mr. Melton,
16 you can faintly hear, is inside the car talking to somebody
17 on the cellphone. Well, what's he talking about? Listen
18 close, folks, remember it comes down to credibility. (Video
19 was played.) "He's a smart man, he knows what he's doing"
20 Take it like that. Yeah, it was a setup, who set it up? It
21 wasn't the Hyatts, they were the victim in this situation.
22 Who do you believe? Thank you very much for your time,
23 attention and your service.

24 THE COURT: Thank you, Mr. Frick. Mr. Grier?

25 MR. GRIER: Thank you, Your Honor. Please the Court,

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1 Mr. Cook? I'm going to be as brief as possible, I know this
2 has been a long week for y'all as well. You will recall
3 perhaps, and maybe you won't, but in my opening arguments I
4 alluded to the proceedings that got us to court today, what
5 happened prior to getting to court today, and all of the
6 proceedings prior to getting to court today the evidence was
7 considered in the light most favorable to the State, just a
8 mere suspicion is enough to get you over there at those
9 tables over there. When we get into this courtroom it's a
10 different ballgame and y'all's duty is totally different
11 than what law enforcement's duty is and what a Judge's duty
12 is at a preliminary hearing. In a trial the evidence is --
13 I believe the Judge will charge you today, the evidence is
14 to be considered in the light most favorable to the defense.
15 The constitution is set up to protect freedom and to keep
16 people from being wrongly convicted of crimes. And the --
17 instead of they might be guilty is what law enforcement does
18 when they arrive on the scene and they decide to charge,
19 might be guilty, that's turned on its head in essence in
20 this courtroom when y'all consider the evidence and y'all
21 deliberate and y'all determine guilt or innocence. When you
22 consider the evidence you have -- the burden of proof is on
23 the State, and you have to determine whether after hearing
24 all of the evidence and everything the State has presented
25 whether the defendants might be innocent. The Judge, I

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1 believe, will charge you does the evidence in its totality
2 cause you to hesitate to act in this case, hesitate to
3 convict, if you are firmly convinced -- I believe this is
4 almost verbatim -- if you are firmly convinced of the guilt
5 of the defendants then you must convict. However, if there
6 is the real possibility that they might be innocent you must
7 acquit, the real possibility, so in other words, might they
8 really be innocent, in that case you must acquit. Now, how
9 do we end up spending all of this time and energy and effort
10 to resolve something that evolves out of a dispute over
11 whether somebody is being respected and whether a man's
12 castle is being respected over a dusty road? Well, I think
13 if you spent a lot of time in this courtroom you can see
14 that usually those are the kinds things that we end up in
15 courtrooms about when it comes down to the nitty gritty, and
16 there are difficulties between people. But Mr. Michael
17 Hyatt, he lives on a dirt road in a trailer in a humble home
18 that's not very far off of a dirt road, and as you heard he
19 made a lot of efforts to, you know, ask people to respect
20 that and the difficulties that that causes him. And, you
21 know, that doesn't justify using violence at all when
22 somebody is not respecting you if that's what it's really
23 about. But I submit to you, yeah, Mr. Hyatt might have been
24 mad about being disrespected and might have been mad about
25 the dust but I think the evidence demonstrates to you just

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1 as convincingly that Mr. Nassrah is mad about Michael Hyatt
2 being mad about the dusty road and complaining to law
3 enforcement and he believes that the Hyatt's had locked him
4 in his gate, he's angry too. So this little thing, you
5 know, gets us into the courtroom today. Now, I think there
6 are a lot of misperceptions on everybody's part that got us
7 in this courtroom today quite frankly, I don't think there's
8 any other way for it to actually culminate in this and I
9 think that's what the evidence demonstrates to you today.
10 And for that reason, you know, people saw things a lot
11 different out there, and you heard that in this courtroom,
12 and you've got the hard task of sorting that out and judging
13 what did and didn't happen and finding the facts of this
14 case, and you're going to see inconsistent statements. And,
15 you know, I know what the State is going to jump up here,
16 Mr. Cook -- and that's his job, is to jump up and say the
17 Hyatts were inconsistent about when the first shot was
18 fired, because as you know, Michael Hyatt testified that
19 Mr. Nassrah fired a shot as he's coming around the truck at
20 Aaron. Now, Aaron testified that's not the way he remembers
21 it, he remembers the first shot being when his dad was hit.
22 You know, maybe just, you know, those are the -- that's the
23 way they remember it. Do I wish as an attorney we didn't --
24 those were consistent? Yeah. You know, that would be great
25 for the defense if Michael Hyatt and Aaron Hyatt had got up

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1 there and said the same thing. Okay. But that's not the
2 way they saw it and they aren't going to get up there and
3 lie, that's not the way they recall it. And so I believe
4 that this inconsistency they told you -- there's nothing
5 inconsistent about what Michael Hyatt told you about that
6 day -- his story hasn't changed. So the inconsistencies are
7 not between the time that this happened and what they
8 testified to in the courtroom. Now, when you look at the
9 inconsistencies in the State's case, you know, there's --
10 the inconsistencies are between what they said on the 16th
11 of September, 2010, and what they said in the courtroom, and
12 what they said on those two different occasions is pretty
13 drastically different, it certainly goes to their
14 credibility. I think that there's -- it appears to me, and
15 I think you would have to consider that when Michael Hyatt
16 came around that truck we know that Kamil had his gun out
17 and that when he saw Mr. Hyatt we believe and submit that
18 Mr. Nassrah -- Mr. Nassrah testified that he fired a shot to
19 stop Mr. Hyatt coming at him. Now -- Michael Hyatt, Michael
20 Hyatt is coming around the truck. If Mr. Nassrah fired a
21 shot as a warning shot he sees Michael Hyatt coming at him,
22 he's got Aaron Hyatt in front of him out here, he fires a
23 shot, from Michael Hyatt's perception, and I don't know, but
24 from Michael Hyatt's perception that shot is in the
25 direction of his son. That may be -- I believe that's where

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1 the confusion about that may rest, and it appears to me that
2 it does. Now, what it does prove is that guess what?
3 Michael Hyatt and Aaron Hyatt didn't get together before
4 this trial and cook up a story so they could have consistent
5 statements, you have got to respect that. One thing that I
6 think is -- when I first looked at this case and I had a
7 question, how did Michael Hyatt -- Michael Hyatt says that
8 he hit Kamil after he got shot? Now, does that -- well, you
9 heard testimony about the state of that gun. It appears
10 that maybe it misfired or it was jammed, and you heard Aaron
11 Hyatt say that Kamil was -- after shooting Michael Hyatt
12 he's looking at his gun. Michael Hyatt caught Kamil by
13 surprise, because Kamil I don't believe would let Michael
14 Hyatt shoot (sic) him had he been paying close attention to
15 what Michael Hyatt was doing. He thought after he shot
16 Michael Hyatt was through, he shot him, possibly tried to
17 shoot him more again. But yeah, I think it's pretty
18 compelling evidence and certainly the real possibility that
19 Kamil Nassrah got caught by surprise when he got whacked in
20 the head after he shot Michael Hyatt. Now, what else may
21 even support that possibility and that testimony from
22 Michael Hyatt? Whose blood is on this stick? Well, Michael
23 Hyatt's blood is on this stick, and if you believe that
24 after Michael Hyatt was shot that he dropped that stick
25 immediately then the likelihood of his blood being on that

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1 stick doesn't make sense. But what does make a lot of sense
2 is that after Michael Hyatt was shot and he was on the
3 ground he is able to come back and hit -- in defense of
4 himself and his son, that he is able to surprise
5 Mr. Nassrah -- he's shot and he continues to hold the blow.
6 So we know that he continued to have the stick in his
7 possession after he got shot and not before he got shot.
8 Now, what suggests that he didn't have the stick after he
9 got shot? Well, Harlan Melton in his statement, and you'll
10 get to see this, he says that -- he testified that
11 Michael -- that Aaron picked up the stick afterwards and
12 that Aaron Hyatt testified to that as well. Now, that would
13 have -- if Michael Hyatt dropped the stick when he was shot
14 he didn't get blood on it, he didn't hit Mr. Nassrah after
15 he got shot if that is the case, I believe that's what that
16 blood on that stick proves to you. Mr. Frick has been
17 through the inconsistent statements, but a couple of them I
18 want to point out and remind you of what I think really go
19 to the credibility of the testimony as well, is that
20 according to Mr. Melton he's on the tractor when Mr. Michael
21 Hyatt runs by him. Now, if Michael Hyatt has intentions of
22 doing harm to anybody he's got Harlan Melton sitting on the
23 tractor as he runs up behind him and he could have certainly
24 smacked Mr. Melton right there while he is sitting on his
25 tractor. Michael Hyatt says that's the reason he ran up

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1 there, he sees Harlan Melton get off his tractor and he is
2 like at that point, "Oh, I've got to get up there." Harlan
3 Melton's version of that is totally inconsistent, that
4 Michael Hyatt went past him, got up there to the truck and
5 hit Kamil and took him that long and he was able to get
6 around the other side of that truck, go around between the
7 trucks and around the other side, open the door and that's
8 when it happened. It makes no sense and no evidence
9 supports it, and in fact, it's not consistent with his prior
10 statement that Michael Hyatt ran up and dragged Kamil out of
11 the truck and then hit him. I don't think you forget that.
12 It's inconsistent between the time it happened and today,
13 you've heard all of the evidence. I don't think I can say
14 anything else. I think you've heard it all and you're going
15 to have to sort it out now. I think those are all of the
16 compelling points that I want to make, Mr. Frick has already
17 pointed out all of the things I believe I would like to say
18 here today. But, you know, if Michael Hyatt's intention was
19 to go -- when he went to find out what's going on up Merle
20 Lane from his house, if his intentions are to go up there
21 and do harm to anybody, if he and his son have cooked up a
22 scheme to trap Mr. Nassrah and Mr. Melton and to old school
23 them, why does Aaron Hyatt show up barefoot without his gun?
24 It just makes no sense that they cooked this up and that
25 that was the intention of anybody to trap them and to old

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1 school them, it just does not make sense. And, in fact,
2 looking at the evidence in this case, you know, you could --
3 the same facts and what you've heard in this courtroom could
4 have been a trial of Mr. Nassrah, he could be the one in the
5 courtroom today if the law had chosen to take the facts and
6 the statements and the same evidence, there's enough to
7 create a suspicion of guilt that Kamil Nassrah intended to
8 harm the Hyatts, the same evidence supports that finding.
9 But no, you heard on the video a minute ago after it was
10 sorted out what his employee said about Mr. Nassrah. Mr.
11 Nassrah knew what to do and he is a smart man, he knew what
12 to say, they knew what to say, they knew what version to
13 tell, they had the opportunity to do it, to put Michael
14 Hyatt and Aaron Hyatt in this courtroom today with these
15 charges. Thank you for your service. I ask you to find
16 Michael Hyatt -- both the Hyatts not guilty.

17 THE COURT: Thank you, Mr. Grier. Solicitor?

18 MR. COOK: Thank you, Your Honor. One moment to set
19 up?

20 THE COURT: All right.

21 (Break in proceedings.)

22 MR. COOK: I know all of y'all have seen of all of
23 these videos multiple times, but there's one important thing
24 that goes along with this whole case is time. Michael Hyatt
25 says that Kamil and Harlan Melton come up in his driveway,

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1 park their vehicles, get off their vehicle, walk up in their
2 yard, three, four or five minutes, threaten him, get back in
3 their car, drive down the road, stop. Aaron Hyatt says
4 they're up there stopped five minutes chasing him in
5 circles, then this whole incident occurs. So you add that
6 up, we're looking at ten or 11 minutes from the time they
7 locked the gate, go up, allegedly threaten Mr. Hyatt in his
8 yard, go down, chase Aaron around, all of this ensues and
9 they're laying this out in ten or 11 minutes. Well, Deputy
10 Morgan's in-car camera has a clock on it, and before I start
11 playing it I'll slow you to what look for because it's at
12 the beginning. Kamil testified at the beginning, he said,
13 "We had a whole crew out there, everybody else had left and
14 we were the last ones to leave that day, we were a few
15 minutes behind, three trucks had already gone. Well, when
16 Officer Morgan leaves his traffic stop, turns around to go
17 to Merle Lane you're going to see three trucks pulling hay
18 come past him as soon as he starts going towards Merle Lane.
19 Notice in the top right corner right now it's at 9:00, 9:01,
20 9:02, keeping watching that. (The video was played.) Look
21 here at the intersection, here comes a tractor pulling hay.
22 There's another one. There's another one. We're at 9:25
23 right now. Deputy Morgan is pulling back on Merle Lane,
24 notice what happened when he pulls up. 12:42, it was about
25 three when he got there. Now, from the time those trucks

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1 left Merle Lane and got where Donnell and Kamil had already
2 come out of the field, locked the gate, gone up there,
3 threatened him a little while, gone up the road, chased
4 Aaron a little while, shot at Michael, called EMS and called
5 the sheriff's department, all of that happened, all of that
6 in three and a half minutes. He was out there with that
7 stick, he said he had this stick and waving it around at
8 them, maybe it just rolled on by. Now, they didn't stop out
9 there, and Aaron, he called him when the trucks were over
10 there and Aaron came flying over there. Michael Hyatt, you
11 could see fishtail marks out of his driveway, where they got
12 them conveniently and they stopped in between the two
13 driveways right out in front of the house. Now, Aaron said
14 he couldn't see Kamil coming. Well, look how much further
15 up he is than Deputy Morgan. Look how -- unless that hay is
16 flying at him you can't see it right now because Aaron's
17 truck is sitting there. Well, he wants us to believe that
18 he didn't see that truck coming. And conveniently when he
19 gets up here today the reason he didn't get out of the way
20 is because his truck breaks down. Seems like every time
21 that Kamil and the Hyatts have something happen his truck is
22 broken down. On the road on the 13th when they allegedly
23 locked the gate Aaron's truck is broke down. Aaron's truck
24 is sitting in the road every time something happens. Now,
25 look how close he is to Kamil's truck. All he had to do was

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1 pull over to the left and let him go through. If his dad
2 did say they were here and they were threatening me, they're
3 gone by then, he knows they're on the way out, he knows
4 that's Kamil's truck, obviously they didn't do anything to
5 his dad. But he needed to pull all of the way up just
6 enough past that driveway to where his truck conveniently
7 stalled or whatever it did, broke down, shifter was broke
8 off or whatever he said happened to it. Apparently it won't
9 move anymore. He said that Kamil -- the first thing he said
10 was, "Move or you're gone to die." Now, why would Kamil
11 just pull a gun on Aaron Hyatt? Mr. Grier said Kamil was
12 mad because the Hyatt's are mad. Was that enough? Kamil is
13 going to pull a gun on him because he's mad that they're mad
14 at him? He didn't get out and pull a gun on him. If he did
15 why would Michael Hyatt get out of his truck? He said, "Man
16 pulled a gun on me the thing I'm going to do is get out of
17 the way." He didn't get out of the way, he got in the way.
18 He's in the truck, lean over, they're not going to shoot
19 you. He steps out the door and is looking right at it, and
20 then he says, "My first instinct is to run." He goes behind
21 the truck and is peaking at Kamil. If Kamil wanted to shoot
22 him he would have walked over there and shot him, they're
23 standing right there. Aaron said, "My instinct was to run."
24 He never ran anywhere. He had a whole road behind him where
25 there's cars lined up back there that weren't there

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1 previously, he could have took off running. If he says that
2 he can take off the other way, dive over a barbed wire fence
3 and ran through the woods he sure is capable enough to run
4 down a road where nothing was there. He said, "I didn't
5 have shoes on and the gravel hurt my feet." What does he
6 expect when he goes through the woods? Does he expect a
7 cleaner path through the woods than a road that's gravel?
8 Just run back down the road. He even said to Captain
9 Bailey, he said, "I don't know about you but somebody pulls
10 a gun on me I'm going to be -- you've got to be Wyatt Earp
11 to shoot me because I'm going to be running, taking off."
12 He didn't run, he was there the whole time. He said that
13 they were running back and forth around the truck and I said
14 earlier it was like a cartoon and he said Harlan Melton and
15 Kamil, they were running this way and they bumped into each
16 and he goes this way, he's got enough time to get away. If
17 there's two of them, if one goes this way and the other one
18 goes this way they're going to catch him on the other side.
19 But apparently Kamil and Mr. Melton weren't smart enough for
20 one to take one side and one to take the other and we're
21 going to meet him over there, they just run around in
22 circles. That doesn't make any sense. If Michael was in
23 danger -- excuse me -- if Aaron was in danger he would have
24 ran, ran somewhere, ran in the woods or ran to Mr.
25 Truesdale's house which is right down here, the gate is

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1 open, he could have got down there. He said he was going to
2 jump over the barbed wire fence. He could walk to the
3 neighbor's house, knock on the door and say they were out
4 there and going to shoot him. He didn't do that because
5 that's not what happened. He pulled up close enough to
6 Kamil's truck where he couldn't go anywhere because he knew
7 his dad was coming anywhere from the other way. Those
8 fishtail marks, Michael Hyatt flew down there, he already
9 had the stick in his hand. Now, another thing they talked
10 about is credibility. They showed video and they split up
11 audio and took the one track where you can hear Harlan
12 Melton say, "I jumped off to protect my job." They want you
13 to believe that Darnell -- I'm interchanging them -- that he
14 is so biased to testify and make up this stuff about the
15 Hyatts because that's his job. Now, no offense to Harlan
16 Melton, but he's a farm hand and if Mr. Nassrah is not going
17 to put him to work somebody will. Now, that's their
18 relationship, they're employee/employer and they still work
19 together, he's been working for Kamil. On the other hand
20 look at this bias, that's a father and son. Kamil has
21 employed Harlan Melton for five or six years. Well, he's
22 been his son for over 30. Now, if I -- something happens,
23 Solicitor Barfield is my boss, I may be inclined to be
24 favorable towards him, but I'll tell you right now I would
25 be a lot more favorable towards my father than my employer,

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1 and that's what we've got here. And these two are up here
2 facing the same charge, of course he's going to be more
3 biased to him than Harlan Melton to Kamil. I mean, if you
4 want to judge credibility take that into consideration, that
5 is the strongest bias you can come up with is family, those
6 ties are thick. Now, speaking of family, Mr. Grier --
7 excuse me, well, one of them asked them, said, "What do you
8 call your dad?" And he said -- because Kamil said he heard,
9 kill him daddy, kill him daddy, and he said, "Aaron, what do
10 you call your father? Pop." Well, I mean, let me just play
11 a part of this video for you. He's going to give a
12 reenactment of what happened, listen to how many times he
13 calls him pop when he's referencing his daddy. (The video
14 was played.) Dad. Dad. Dad. He still hasn't called him
15 pop. Called him dad. I'm not going to play the whole
16 thing, he calls him dad every single time. The only time he
17 calls his pop is when they asked him what do you call your
18 dad after they had introduced the question by saying, "Kamil
19 said kill him daddy, what do you call your dad? Pop." He
20 didn't call him pop, he never called him pop except when he
21 was sitting up there yesterday or this morning. He didn't
22 call him pop, he never once called him pop. So now go back
23 to what Kamil heard, "Kill him daddy, daddy." Dad is a form
24 of daddy which he has called him every single time they've
25 asked him about the situation. And what you just saw again,

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1 his interpretation of the story is they're standing there,
2 Kamil has got the gun, "Dad says, 'Kamil, put the gun down,
3 you're not going to shoot nobody.' Boom, first shot he
4 shoots him." So that's another inconsistency here, he's
5 calling him two different names. Michael Hyatt says he goes
6 down there and Aaron is running around and Kamil is shooting
7 at him, so he goes up and tries to knock the gun out of his
8 hand and falls down, and as he is getting up he gets shot,
9 and after he gets shot he hits Kamil. Aaron says they're
10 all standing there, there's not a struggle going on.
11 Michael Hyatt's version of the story, he's swinging this
12 way, falling down, gets up and is getting up and gets shot.
13 Aaron Hyatt walked them all through it and pretty much put
14 them in position of where it all happened, standing there
15 just kind of talking, "You're not going to shoot anybody,
16 put the stick down." Shoots him. Now, Aaron Hyatt never
17 said he got shot at. He said they're chasing him around
18 with a gun, which that didn't even happen either. The
19 stories are completely different. Mr. Grier said it's
20 credible that their stories are different because that means
21 that they haven't sat down and worked up this plan that this
22 is what we're going to say. You don't get points for coming
23 up here with different stories and get credibility because
24 you don't say the exact same thing. They didn't say the
25 exact same thing because neither one of them knows what

1 they're talking about and they're both trying to come up
2 with some story and account for the things that happened in
3 the real story. And there's a whole debate -- we talked a
4 whole day about is Kamil in the truck, was he out of the
5 truck, he's on the running board. Aaron Hyatt is even
6 saying, "Kamil is standing on the running board with the gun
7 pointed at me." He puts Kamil on the running board with the
8 door open, so he's got that part. Then when they're cooking
9 up these stories they've got to account for multiple
10 gunshots. Well, did he shoot dad first and then I was
11 running off and I just heard one, I don't know where it
12 went. Harlan Melton and Kamil told you where the shots went
13 and they were found where they said they shot them. There
14 were two .380 casings found on the scene. And this diagram
15 that Ken Taylor prepared, y'all look at it, it's too small
16 for me to go around and show you right now, but it's in this
17 general direction right here where Bill Truesdale's driveway
18 is and where Aaron stopped and Kamil's truck is. The two
19 shell casings are found right here adjacent in the front of
20 the trucks. Kamil said he got hit in the head, Harlan
21 Melton said Kamil got hit in the head and stumbled out
22 between the trucks and ended up back in Bill Truesdale's
23 driveway, he's coming through and he ends up right here.
24 There's a shell casing up here and there's one back this
25 way. What's Kamil's story? He comes to right here, pulls

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1 his gun out, tells him to back up and he shoots in the
2 ground, it's a warning shot. What did Harlan Melton say on
3 his secret statement when they separated the audio? He
4 said, "Do what you've got to do. And what are you going to
5 do. He won't stop, you've got to shoot him." Michael Hyatt
6 didn't stop, Kamil is backing up, Kamil says he's running
7 backwards in his statement, you can read it, it's in there
8 in that stack of papers, he's backing up, Mike keeps coming
9 with that stick, he shoots him right there in the side and
10 he goes down. There's drops of blood going back, back to
11 where he says this is the post where Kamil was found.
12 Kamil, when Deputy Morgan pulls up he's standing over here,
13 and you can see him, yeah, he's standing up. On that video
14 you can see that Kamil does this number right here, he's
15 obviously hurt. But the blood -- there's blood drops coming
16 right here where Kamil ended up. And they made a point
17 about Harlan Melton said Kamil is pretty bloody at this
18 point when he's over there by the trucks. We showed you the
19 hat, the hat has got blood soaked all through it. There's
20 no question this is what Kamil got hit with, you know,
21 that's what is considered to be a blunt object. It's not
22 the actual pick or whatever that hooks on this thing and
23 Mike Hyatt is digging up dirt and whatever he does with this
24 thing and the other half that's got the hook on it, but it's
25 not a razor blade, it's not something sharp. You can cut

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1 yourself shaving and blood flies everywhere, it's not that
2 bad, it's sharp, it's a cut and it bleeds out. When you can
3 get hit with a blunt object it hits solid and blood doesn't
4 go shooting -- there was blood, when he was still there that
5 blood is soaking in that hat. You can see the picture a
6 couple of days later when he came to the sheriff's office,
7 he had a pretty good bit of hair back there. He's got a
8 little bit more than he's got now, that blood is soaking up
9 in there, it's soaking in the hat. It takes a little while
10 for that to come out and start flying all around. There's
11 not any blood up there. The blood -- it's coming and it
12 ends up down here where Kamil is, where he ends up, he's
13 bleeding, it's coming out. It took a little while for that
14 blood to get out, and Deputy Morgan said when he got there
15 it's not a big bloody, blood bath scene, not that much
16 happened. Kamil is on the running board, he gets hit in the
17 head, comes around, sees Mike, shoots in the ground, he
18 won't stop and he shoots him. And they want to talk about
19 the gun, it's apparently jammed and that's how Mike Hyatt
20 had time to hit Kamil because he's down here fooling with
21 the gun and it's ready to fire. Kamil told you it was ready
22 to fire because he told Aaron Hyatt, "You'd better not move
23 or I'll shoot you, too." He had one in the chamber and he
24 was going to use it on Aaron if he didn't leave him alone.
25 He's sitting here waiting -- Donnell called the deputies,

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1 you can hear it on the in-car, they got another call come
2 in, the Hyatt's called and Donnell called him. Kamil, he
3 wasn't putting that gun down until the deputies arrived,
4 that's why it's ready to fire. He stays, "You stay right
5 there or I'll shoot you, too." He didn't know what Aaron
6 was going to do. Once the deputies come up, you see Kamil
7 has got his hand and he points right here, he points to the
8 gun, he told them where it was. As soon as they got there
9 he put it down. There's another gun they want to talk
10 about, it's a .22 in the glove box. Oh, there is a .22 in
11 the glove box, Kamil told you that he always has one in
12 there. He told you he's always got a .380 on the side, he
13 has had it for 37 years, he has got a concealed weapons
14 permit. He farms, he's out in the field, coyotes or
15 somebody can come up on him, you don't know what's going to
16 happen out there. And this other business, he runs a
17 convenient store and a gas station, if you're long enough
18 that's a dangerous business too. He keeps that on there to
19 protect himself. Unfortunately he had to use it to protect
20 himself against Michael and Aaron Hyatt, and that .22 that's
21 in the glove box, it was in the glove box when they went out
22 there and it was in the glove box when the deputies got
23 there. Nobody took that gun out. If Harlan Melton ran up
24 there and his intention was to get that gun out and injure
25 somebody, then why would he have a crescent wrench instead.

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1 of getting the gun if it's right there and that's his
2 intention. Harlan said, "I got off my tractor and ran up
3 when Mike came by and I saw it through the passenger's
4 side." Is that the most efficient way to get up there? No,
5 probably not. Could he have probably jumped on Mike Hyatt
6 when he went up to the driver's side? Probably. Well,
7 Donnell said he's got a steel rod in his leg but he's not
8 the fastest one either, nobody out here is moving real
9 quick. But if he came up to the passenger's side and his
10 main goal was to go in the glove box and get a .22 it's
11 still there. If he wanted to hurt somebody he would have
12 gotten it out, he wouldn't be standing around with a big
13 wrench. He had the wrench when they came up and Kamil had
14 the gun when deputies came up because they didn't know what
15 else was going to happen and they had a standoff until
16 everybody got there. Now, the whole dust issue, that's what
17 started the whole thing. Is it important? No, it is not.
18 I don't care how fast Kamil's tractor goes, how fast Mr.
19 Grier's tractor goes, nobody can agree on how fast tractors
20 can go and it has absolutely nothing to do with who hit who
21 first. Was Kamil going over ten? Probably. Does he stir
22 up dust? Probably. You saw how big his truck was and he's
23 got a tractor, it's September, it's dry, it's dirt, I mean,
24 yeah, there's dust flying up. Is Mr. Hyatt mad? Yes, he's
25 mad. He's made it very clear that he's mad and he's tired

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1 of Kamil coming through there. There's been issues all
2 week. On the 13th, three days earlier, when another
3 incident occurred when Aaron Hyatt's truck was broken down
4 out in front of the road again, how did Kamil handle that?
5 Did he pull a gun out then? No. He called law enforcement
6 and said there's a situation out here, I need somebody to
7 come out here because that's how he handles things. He
8 understands -- he handles things civilly. If he wanted to
9 pull a gun he could have pulled a gun when they were out
10 there the first time, but he called law enforcement and
11 that's how he handled it and that's what he was going to do
12 this time. But unfortunately when he gets his phone out as
13 he told you he said, "Aaron is standing out in the road, he
14 won't get out of the way, I get my phone to call the police
15 but I never get to call because I feel like I got shot in
16 the back of my head." Now, we can debate about if that's
17 the back of his head or side of his head, it's right here.
18 And obviously everybody's wounds heal in three and a half
19 years, you can't see it that well and he's not going to have
20 a cut still on his head from three and a half years ago. It
21 has healed up but that doesn't mean it didn't happen. And
22 obviously it's closer to the back than the front which is
23 consistent with Michael Hyatt walking up and hitting him in
24 the back of the head. You know, Kamil is here, looking at
25 him he's fine, he got up here on the stand and he told you

1 what happened. And now understand, this is an attempted
2 murder case and the reason he -- it's an attempted murder
3 case is because he is here. Now, you don't look at the end
4 result of what happened to determine if they did it or not.
5 You know, if Kamil is out here with half his face gone and
6 missing limbs and he's still alive it's still attempted
7 murder, it's what they did at the outset or what they
8 intended to do is what they're charged with. They don't
9 look at what happens in the end and say, "Well, he's not
10 hurt that bad, we'll just charge him with this." They look
11 at it and say, "Well, what did they do?" Luckily you don't
12 give the Hyatt's credit for having different stories, you
13 don't take points away from Kamil for being healthy today.
14 You look at what they intended to do and what they did, not
15 the injury, it's what they did. And the Judge is going to
16 tell you what the law is, I just want to walk through a
17 couple of things with you. They're both charged with
18 attempted murder. That's the law on attempted murder. A
19 person, in this case persons, who with intent to kill
20 attempts to kill another person with malice aforethought
21 either expressed or implied commits the offense of attempted
22 murder. Now, malice aforethought is going to be a big issue
23 that you're going to have to debate on. Malice is ill will.
24 Obviously there's ill will between these, they've been
25 arguing all week and they said they've been mad about it for

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1 two or three years about the dust coming up. Aaron Hyatt
2 even characterizes his dad as old school. When they asked,
3 "What do you mean old school? Old school just means you go
4 out and fist fight and that's the end of it." And he said,
5 "Don't do anything until I get there." He's already cast
6 this -- if you take it in the light most favorable to the
7 defendant, Aaron Hyatt is not doing to a good job of keeping
8 that on his dad, he's already saying, "My dad is old
9 school." He said, "My dad is ex-military, he's an old man,
10 he raises hell, he complains. He doesn't deal with this
11 well." Well, how does he deal with it? He hits him in the
12 back of the head with an axe handle that's sitting up here,
13 that's how he deals with it. You know, Kamil doesn't deal
14 with it like that, Kamil calls law enforcement. Not these
15 two, this is how they go about it. And I'm not describing
16 him like that, his own son is the one telling you that's how
17 he handles his issues. Now, you're going to be instructed
18 that you can find one Hyatt or both Hyatts guilty of
19 attempted murder or the lesser-included offenses. And what
20 that means is you start out you've got murder, attempted
21 murder, assault and battery of a high and aggravated nature,
22 assault and battery first degree, second degree, third
23 degree. Now, they're charged with attempted murder because
24 it's the State's position, it's the victim's position that
25 they were out there to kill him. And the reason we believe

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1 that and that the victim believes that is what he heard,
2 "Kill him, daddy. Your days are numbered. You're not going
3 anywhere. Where is your escort now?" You know, the Hyatts
4 testified that everything was fine all week with law
5 enforcement out there, when they're not out there this
6 happens. Aaron Hyatt, "Kill him, daddy." Well, the intent
7 to kill, that's -- there it is, he said, "Kill him," and
8 that's what he heard. He was there, we wasn't there, he
9 heard that. And he didn't say, "Kill him, pop," he said,
10 "Kill him, daddy," because that's what he calls him. It's
11 what he called him the whole time we've been listening to
12 him. I told you about the lesser-included. This is assault
13 and battery of a high and aggravated nature. There's a lot
14 on the screen right now and I want to walk you through it,
15 I'm going to refer to it as ABHAN. "A person commits the
16 offense of assault and battery of a high and aggravated
17 nature if a person unlawfully injures another person and
18 great bodily injury to another person results, or the act is
19 accomplished by a means likely to produce death or great
20 bodily injury." That or, I've got it underlined, I've got
21 it in bold letters. A person unlawfully injures, up at the
22 top, Kamil is injured, he got hit in the head. Y'all saw
23 that, he told you he got airlifted, he got nine staples on
24 his head, there's blood all over his hat. He told you they
25 hit him in the head. Now, great bodily injury, you've got

CLOSING ARGUMENTS

1 down at the bottom, it tells you what great bodily is. It
2 means injury which causes a substantial risk of death or
3 causes serious permanent disfigurement or protracted loss or
4 impairment of the functions of a bodily member or organ.
5 Substantial risk, that's what I said earlier. Kamil is not
6 dead but he sure well could be. He got hit in the head.
7 Michael Hyatt didn't hit him in the foot, didn't hit him in
8 the knee, didn't hit him in the leg, didn't him in the arm,
9 didn't hit him the back, he hit him in his head. That's one
10 thing we all know, if you get hit in the head that's where
11 the most damage is going to come from. You can see on Randy
12 Morgan's in-car video when EMS comes up Aaron Hyatt says,
13 "He's been shot." They said, "He's got a head injury."
14 Where did EMS go? They went to the head injury. They
15 treated the head injury before the gunshot, that shows you
16 how serious it is. EMS picked him over Michael Hyatt
17 because he had blood coming out of his head. Luckily he
18 wasn't greatly injured, but it doesn't say you have to be,
19 it says the substantial risk of death. He hit him in the
20 head, luckily where he hit him it didn't kill him. And you
21 go back up and it says the act is accomplished by means
22 likely to produce death. Well, what's the means? The means
23 is this. What's the act? He hit him in the head. There it
24 is. He used a means likely to produce death or great bodily
25 injury, substantial risk. There it is. That's ABHAN.

1 What's the difference between ABHAN and attempted murder?
2 Intent. I'll submit to you right now that I believe it's
3 attempted murder because he intended to kill him, and he
4 intended to kill him, you can infer that because Aaron
5 stated, "Kill him," and that's as clear an example of intent
6 as you're going to find, somebody actually says, "Let's kill
7 him." But in the event you don't think they tried to kill
8 him and you agreed with what happened as far as we've told
9 you, he hit him in the head, it's nothing less than ABHAN.
10 They're going to instruct you on A and B First, Second and
11 they'll tell you what those are, I'm not going to even tell
12 you what they are because it's not necessary, because what
13 he did doesn't fit those. They're lesser-included's but you
14 don't get to them once you meet the first one. The only
15 difference between that and attempted murder is an intent to
16 kill, and he intended to kill him. I said at the outset,
17 too, that Aaron Hyatt never touched him, and I'm going to
18 tell you again, it doesn't matter, because if he didn't
19 block him in Kamil would never get hit. Aaron is just as
20 guilty as his dad is, he's out there screaming, "Kill him,
21 daddy." He's got him blocked in with nowhere to go, Michael
22 Hyatt pulls up in the back and you've heard the rest 50
23 times. So lastly, proof beyond a reasonable doubt, they
24 harped on that and it is a high burden. It's not an
25 impossible burden, it is beyond a reasonable doubt, it's not

CLOSING ARGUMENTS

1 beyond reason to doubt. There is a reason to doubt
2 everything. There is nothing I could get up here and tell
3 you that you would have no reason to doubt, that's
4 impossible. If that's the standard then there's no point in
5 me being here because I could never prove anything to you
6 beyond a reason to doubt, there's a reason to doubt
7 everything. But beyond a reasonable doubt, a doubt for a
8 reasonable person to hesitate to act, that's a high standard
9 but we've met that standard. Kamil met that standard,
10 Harlan Melton met that standard, Investigator Taylor,
11 Investigator Steele, Deputy Morgan, Deputy Lilly, everything
12 they've told you, you put it all together, that's the only
13 story that makes sense. The Hyatts didn't even -- their
14 story makes no sense, they don't even have the same story.
15 Donnell and Kamil told the same story. According to them
16 that's not beneficial when everybody tells the same story,
17 but it's easy to tell the same story when you're telling the
18 truth. If that's what happened, that's what happened, and
19 they told you what happened, and I ask that you find both of
20 them guilty of attempted murder. Thank you.

21 THE COURT: All right. Thank you, Solicitor. Ladies
22 and gentlemen, we've been in here a little over an hour and
23 a half for closing arguments and I want you fresh before I
24 charge you the law because there is a good amount of law to
25 charge to you, so let's take a brief recess to refresh

JURY CHARGE

1 THE COURT: Right. I'm not going to revisit my ruling
2 on that, motion denied.

3 (The jury returned to the courtroom.)

4 THE COURT: Ladies and gentlemen, the reason I'm down
5 here right in front of you, in my years of experience I find
6 it's more effective when the Judge gives you the charge
7 right up in front of you than me sitting way over there with
8 that talking head theory. Okay. There's going to be a lot
9 of reading I have to do to you and I'll try to not be buried
10 in the paper while I address you and it's for that reason
11 that I'm down here. Okay. So listen very carefully to what
12 I say. You're not going to have these charges back there
13 with you but this is going to be the law which governs your
14 deliberations. And Mr. Foreman and members of the jury, you
15 have heard the testimony, the evidence and the arguments of
16 the State and the defendant -- defendants, I will now
17 explain to you the law that applies to this case. Now,
18 under the constitution and laws of South Carolina you are
19 the finders of the facts in this case. I do not have the
20 right to pass upon the facts or even to express any opinion
21 that I might have as to them because this is a matter solely
22 for you, the jury, to determine. Now, as jurors then it is
23 your duty to determine the effect, the value, the weight and
24 truth of the evidence presented during this trial. Now, you
25 are also the judges, the sole judges, of the credibility,

JURY CHARGE

1 also known as the believability of the witnesses who have
2 testified and of the evidence which has been presented
3 during this trial. In passing upon the credibility you may
4 take into consideration many things such as the demeanor or
5 the manner of the witness, the way he or she testifies,
6 whether or not the witness had reason to be biased or
7 prejudiced, or whether or not the witness' testimony was
8 contradicted on the one hand or was supported and
9 collaborated on the other hand. All of these things you
10 will consider bearing in mind that you should give the
11 defendants the benefit of any reasonable doubt. It becomes
12 your duty as jurors then to analyze and to evaluate the
13 evidence and determine that evidence which convinces you of
14 its truth. Now, as the trial judge it's my responsibility
15 as I have done to preside over this trial and to rule upon
16 the admissibility of the evidence offered. You are to
17 consider only the testimony which has been presented from
18 this witness stand together with any of the exhibits which
19 have been made a part of the record. Just as I'm doing now
20 I have the additional duty to charge you the law applicable
21 to this case, and as the presiding judge I am the sole judge
22 of the law in the case. It is your duty as jurors to accept
23 as correct and to apply the law as I now state it to you and
24 then reach your verdict. And finally I charge you in this
25 regard that you should not be concerned with what you think

JURY CHARGE

1 the law ought to be, but rather what I charge you the law
2 is. Now, there are two types of evidence which are
3 generally presented during a trial, direct evidence and
4 circumstantial evidence. Direct evidence is the testimony
5 of a person who claims to have actual knowledge of a fact
6 such as an eye witness. It is evidence which immediately
7 establishes the main fact sought to be proven.
8 Circumstantial evidence is a proof of a chain of facts and
9 circumstances which indicate the existence of the fact. It
10 is evidence which immediately establishes collateral facts
11 from which the main fact may be inferred. Circumstantial
12 evidence is based upon inference and not on personal
13 knowledge or observation. Well, what does that mean? For
14 example, if on a winter night you're at your house and you
15 look outside and you see brown grass on your lawn, you go to
16 sleep, go to bed, wake up in the morning and you see snow
17 and footprints on your lawn. First, it snowed. Secondly,
18 somebody walked on your front lawn. These are things that
19 you can infer even though you didn't see it snow and even
20 though you didn't see somebody walking on your lawn. The
21 law makes absolutely no distinction between the weight or
22 value to be given to either direct or circumstantial
23 evidence, nor is a greater degree of certainty required of
24 circumstantial evidence than of direct evidence. You should
25 weigh all of the evidence in the case, and after weighing

JURY CHARGE

1 all of this evidence if you are not convinced of the guilt
2 of the defendants beyond a reasonable doubt you must find
3 them not guilty. Now, there has been evidence presented
4 that witnesses have made prior statements which are not
5 consistent with their present testimony in this courtroom.
6 You may use this evidence to decide whether to believe the
7 witness. You may also use evidence of the earlier
8 contradictory statement to determine the truth of those
9 statements. It's up to you, ladies and gentlemen, to decide
10 whether or not to believe the earlier statements or the
11 testimony given at trial. Now, if a witness is shown to
12 have knowingly testified untruthfully concerning any
13 material matter you may consider this in determining whether
14 or not to trust their testimony or not, you may reject all
15 of their testimony or give part of their testimony the
16 weight you think it deserves. Now, the fact that the
17 defendants were arrested, charged and indicted is not
18 evidence in this case and cannot be considered by you as
19 evidence of guilt, nor does it create any presumption or
20 inference of guilt. The indictment is simply the formal
21 written instruments which contain the charge or charges made
22 against the defendants. An indictment is the formal written
23 document by which a case is brought in to court. Now, as
24 you know the defendants have pled not guilty to the charge
25 in the indictments, and those pleas place the burden on the

JURY CHARGE

1 State of South Carolina to prove the defendants guilty. A
2 person charged with committing a criminal offense is never
3 required to prove themselves innocent. I charge you that it
4 is an important rule of law that a defendant in a criminal
5 trial no matter what the seriousness of the charge may be
6 will always be presumed to be not guilty of the crime for
7 which the indictment was issued unless guilt has been proven
8 by evidence satisfying you, the jury, beyond a reasonable
9 doubt. Now, this presumption of innocence does not end when
10 you begin your deliberations, but it accompanies the
11 defendants throughout the trial until you have reached a
12 verdict of guilt based on evidence satisfying you of their
13 guilt beyond a reasonable doubt. This presumption of
14 innocence, ladies and gentlemen, is like a robe of
15 righteousness placed about the shoulders on each defendant
16 which remains with them until it has been stripped from them
17 by evidence satisfying you of their guilt beyond a
18 reasonable doubt. Now, this presumption of innocence is not
19 a mere legal theory, it's not just a legal phrase, it is a
20 substantial right to which every defendant is entitled
21 unless you, the jury, are satisfied from the evidence of
22 their guilt beyond a reasonable. So, what is a reasonable
23 doubt in the law? A reasonable doubt is a doubt which makes
24 an honest, sincere and conscientious juror in search of the
25 truth to hesitate to act. Proof beyond a reasonable doubt

JURY CHARGE

1 must therefore be proof of such a convincing character that
2 a reasonable person would not hesitate to rely and act upon
3 it in the most important of his or her own affairs. Now,
4 proof beyond a reasonable doubt can also be described as
5 proof that leaves you firmly convinced of the defendant's
6 guilt. Now, there are very few things we know in this world
7 with absolute certainty, and in criminal cases the law does
8 not require proof that overcomes every possible doubt. So
9 if based upon your consideration of the evidence you are
10 firmly convinced that either or both of the defendants are
11 guilty then you must find them guilty. And if on the other
12 hand you think there's a real possibility that either or
13 both are not guilty then you must give them the benefit of
14 the doubt and find them not guilty. If a crime is committed
15 by two or more people who are acting together in committing
16 a crime, the act of one is the act of all. A person who
17 joins with another to commit an unlawful act is criminally
18 responsible for everything done by the other person which
19 happens as a probable or natural consequence of the acts
20 done in carrying out the common plan and purpose. For
21 example, two people can be guilty of killing another person
22 when only one of the two had a gun, there was only one
23 bullet and only one of the two fired the shot that caused
24 the death. If two or more people are together, acting
25 together and assisting each other in committing the offense,

JURY CHARGE

1 the act of one is the act of all, or as it is sometimes
2 said, the hand of one is the hand of all. Now, mere
3 presence at the scene is not sufficient to prove someone
4 guilty of a crime. A defendant's presence where a crime is
5 being committed or mere association with a person who
6 commits a crime does not make a defendant an accomplice or
7 an aider or abetter of the person committing the crime. The
8 burden is on the State to prove every element of the crime
9 charged. So if you find after reviewing all of the evidence
10 that the State has proved that one of the defendants was
11 only present at the scene of the crime and that the State
12 has not proved beyond a reasonable doubt any other
13 participation of that defendant in the crime, then you must
14 find that defendant not guilty. The law is that proof of
15 mere presence at the scene of the crime is not sufficient to
16 find someone guilty. Both defendants are charged with
17 attempted murder. In order to prove this crime the State
18 must prove that the defendants attempted to kill another
19 person with malice aforethought either expressed or implied.
20 Malice, ladies and gentlemen, is defined as hatred, ill will
21 or hostility towards another person. It is the intentional
22 doing of a wrongful act without just cause or excuse and
23 with an intent to inflict an injury or under circumstances
24 that the law will infer an evil intent. Malice aforethought
25 does not require that malice exists for any particular time

JURY CHARGE

1 before the act is committed, but malice must exist in the
2 mind of the defendant just before and at the time the act is
3 committed, therefore there must be a combination of the
4 previous evil intent in the act. Malice aforethought may be
5 expressed or inferred. These terms, expressed and inferred,
6 do not mean different kinds of malice, but merely the manner
7 in which malice may be shown to exist and that is either by
8 direct evidence or by inference from the facts and
9 circumstances which are proven. Expressed malice is shown
10 when a person speaks words which express hatred or ill will
11 for another, or when the person prepared beforehand to do
12 the act which was later accomplished. For example, lying in
13 wait for a person or any other acts of preparation going to
14 show that the deed was within the defendant's mind will be
15 expressed malice. Malice may also be inferred from conduct
16 showing a total disregard for human life. If facts are
17 proven beyond a reasonable doubt sufficient to raise an
18 inference of malice to your satisfaction this inference
19 would simply be an evidentiary fact to be considered by you
20 ladies and gentlemen, along with the other evidence in the
21 case and you may give it the weight you decide it should
22 receive. A specific intent to kill is not an element of
23 attempted murder, but there must be a general intent to
24 commit serious bodily injury. Intent means intending the
25 result which actually occurs, not accidentally or

1 involuntarily. Intent may be shown by acts and conduct of
2 the defendants and other circumstances from which you may
3 naturally and reasonably infer intent. Evidence of the
4 character of the act, the character of the instrument used,
5 the manner in which it was used and the purpose it was to
6 have had been accomplished for, the resulting wound or
7 injuries may be considered in determining the intent with
8 which the act was committed. Intent may also be inferred
9 when it is demonstrated that the defendant voluntarily and
10 willfully committed an act, the natural tendency of which is
11 to destroy another's life. Almost done. Assault and
12 battery of a high and aggravated nature, or ABHAN. If you
13 find that the State has failed to prove that either
14 defendant is guilty of attempted murder you must then decide
15 whether the State has proven the lesser-included offense of
16 assault and battery of a high and aggravated nature. A
17 person commits the offense of assault and battery of a high
18 and aggravated nature if the person unlawfully injures
19 another person and great bodily injury to another person
20 results, or the act is accomplished by means likely to
21 produce death or great bodily injury. Great bodily injury
22 means bodily injury which causes a substantial risk of death
23 or which causes serious permanent disfigurement or
24 protracted loss or impairment of a bodily member or organ.
25 Assault and battery first degree. If you find that the

JURY CHARGE

1 State has failed to prove either defendant is guilty of
2 attempted murder or assault and battery of a high and
3 aggravated nature, then you must decide whether the State
4 has proven that either defendant is guilty of assault and
5 battery in the first degree. A person commits the offense
6 of assault and battery in the first degree when the person
7 unlawfully offers or attempts to injure another person with
8 the present ability to do so, and the act is accomplished by
9 means likely to produce death or great bodily injury. Once
10 again, great bodily injury means bodily injury which causes
11 a substantial risk of death or which causes serious
12 permanent disfigurement or protracted loss of impairment or
13 the function of a bodily member or organ. Assault and
14 battery second. If you find that the State has failed to
15 prove that either defendant is guilty of attempted murder,
16 ABHAN or assault and battery in the first degree, you must
17 then decide whether the State has proven that either
18 defendant is guilty of assault and battery in the second
19 degree. A person commits this offense of assault and
20 battery in the second degree if the person unlawfully
21 injures another person or offers or attempts to injure
22 another person with the present ability to do so, and
23 moderate bodily injury to another person results, or
24 moderate bodily injury to another person could result. Now,
25 moderate bodily injury means physical injury requiring

JURY CHARGE

1 treatment to an organ system of the body other than the
2 skin, muscles and connective tissues of the body except when
3 there's penetration of the skin, muscles and connective
4 tissues that require surgical repair of a complex nature, or
5 when the treatment of the injuries requires use of regional
6 or general anesthesia. Almost done. Self-defense. Now,
7 each defendant has raised the defense of self-defense.
8 Self-defense is a complete defense and if it is established
9 you must find the defendants not guilty. The State has the
10 burden of disproving self-defense by proof beyond a
11 reasonable doubt. If you have a reasonable doubt of the
12 defendant's guilt after considering all of the evidence,
13 including the evidence of self-defense, then you must find
14 the defendant not guilty. On the other hand if you have no
15 reasonable doubt of the defendants guilt after considering
16 all of the evidence, including the evidence of self-defense,
17 then you must find the defendant guilty. The following
18 elements are required to establish self-defense. Number
19 one, without fault. First the defendant must be without
20 fault in bringing on the difficulty. If the defendant's
21 conduct was the type which was reasonably calculated to and
22 did provoke a deadly assault, the defendant would be at
23 fault in bringing on the difficulty and would not be
24 entitled to an acquittal based on self-defense. Imminent
25 danger. The second element of self-defense is that the

JURY CHARGE

1 defendant was actually in imminent danger or death -- excuse
2 me, was actually in imminent danger of death or serious
3 bodily injury, or that the defendant actually believed he
4 was in imminent danger of death or serious bodily injury.
5 Evidence of prior difficulties between the defendant and the
6 victim may be considered in deciding whether a threat
7 existed and whether the defendant had a reason to believe a
8 threat existed and how serious that threat was. The final
9 element of self-defense is that the defendant had no other
10 probable way to avoid the danger of death or serious bodily
11 injury than to act as the defendant did in this particular
12 instance. The defendant has no duty to retreat if by doing
13 so the danger of being killed or suffering serious bodily
14 injury would increase. A person cannot be required to make
15 an exact calculation as to the degree or amount of force
16 which may be needed to avoid death or serious bodily harm.
17 Therefore in self-defense the defendant has a right to use
18 the force needed to avoid death or serious bodily harm. The
19 force used in self-defense does not have to be limited to
20 the degree or amount of force used by the victim. The
21 defendant has a right to use so much force as appeared to be
22 necessary for complete self protection in which a person of
23 ordinary reason and firmness would have believed to be
24 needed to prevent death or serious bodily harm. Defense of
25 others. Under the law of self-defense, ladies and

JURY CHARGE

1 gentlemen, the defendant may use force in the defense of
2 others. The right to intervene to protect another person is
3 subject to those same rights and limitations as to the right
4 of self-defense. A defendant may use force against a person
5 who assaults a friend, relative or bystander if that friend,
6 relative or bystander would have had the right of
7 self-defense. To show that the person being defended had a
8 right of self-defense it first must be shown that the person
9 being defended and that the defendant were both without
10 fault in bringing on the difficulty. If the conduct of the
11 person defended or the defendant was the type which was
12 reasonably calculated to and did provoke a deadly assault
13 the person would be at fault in bringing on the difficulty
14 and would not have the right of self-defense, therefore the
15 defendant would not have the right to use deadly force in
16 defending that person. The defense of another person is
17 excusable if the defendant had reasonable grounds to
18 believe, and in good faith did believe, that the person
19 being defended was in imminent danger of death or serious
20 bodily harm from the victim. And in deciding whether the
21 person defended actually was or that the defendant actually
22 believed that the person was in imminent danger of death or
23 serious bodily injury you should consider all of the facts
24 and circumstances. Now, Mr. Foreman and members of the
25 jury, I am required to charge you the law as I have done

JURY CHARGE

1 through these instructions which have been given to help
2 guide you to a just and lawful verdict. Now, whether some
3 of these instructions apply will depend upon what you find
4 to be the facts in your deliberations. The fact that I have
5 instructed you on various subjects in this case must not be
6 taken as indicating an opinion of the Court as to what you
7 should find to be the facts or what your verdict should be.
8 In conclusion you have been selected by both the State and
9 the defense to be fair and impartial jurors. It is your
10 duty then in your deliberations to determine the truth in
11 this case giving the defense the benefit of every reasonable
12 doubt. Now, from the facts which you determine them to be
13 true you take and apply the law which I have just given you
14 and thus arrive at a verdict which speaks the truth in the
15 case. I have told you the standards to apply to the charges
16 of attempted murder, ABHAN, assault and battery first degree
17 and assault and battery second degree, you've heard the
18 evidence and you should consider the evidence separately as
19 to each defendant and now you have heard the law. Whatever
20 your verdict as to the indictments, guilty or not guilty,
21 Mr. Foreman, you will indicate it by marking the jury's
22 decision in the blank on the verdict forms I'm fixin' to go
23 over with you, and then you will then sign and date the
24 verdict form. Remember that although the foreman is the
25 only juror who writes the verdicts it is not his verdict

JURY CHARGE

1 alone, the verdict has to be a unanimous verdict. Mr.
2 Foreman, you are not authorized to write the verdict until
3 all of you have agreed as to what the verdict should be. On
4 the verdict form there's a separate verdict form for each
5 defendant, there are five blanks on the verdict form. I
6 will read the verdict form. As to indictment number
7 2010-GS-29-1589 for the offense of attempted murder, we, the
8 jury, unanimously find the defendant, the first blank is not
9 guilty, second blank is guilty or guilty as to the lesser
10 charge of assault and battery of a high and aggravated
11 nature, or guilty as to the lesser charge of assault and
12 battery in the first degree, or guilty as to the lesser
13 charge of assault and battery in the second degree. You
14 mark one of the blanks and then sign it and date it at the
15 bottom. Now, ladies and gentlemen, I'm going to send you to
16 your jury room but do not begin to discuss this case until
17 you have received the indictments, all of the exhibits, I
18 believe there's 52 exhibits, and the verdict forms. Once
19 you've received all of these things that will be your signal
20 to begin deliberations. Now, once you begin your
21 deliberations, Mr. Foreman and ladies and gentlemen, you
22 will deliberate until you have reached a verdict at which
23 time you will knock on the door, advise the bailiff and we
24 will bring you out to receive your verdict. Thank you very
25 much, you may retire to your jury room.

JURY CHARGE

1 (The jury left the courtroom.)

2 THE COURT: Any exceptions or objections to the charge
3 from the State or from the defense?

4 MR. COOK: Nothing from the State, Your Honor.

5 THE COURT: Other than what's previously been
6 discussed?

7 MR. GRIER: Other than that.

8 MR. FRICK: No, sir.

9 THE COURT: All right. Thank you.

10 (The alternate jurors were dismissed and the
11 jury began deliberations.)

12 THE COURT: We've got a question from the jury. The
13 first question is -- I'll read it verbatim -- the first
14 question is question mark, break to make phone calls, Diet
15 Coke or Coke, sweet tea, smoke breaks, and the plus sign
16 which I guess means they want to break to take a smoke break
17 and a Diet Coke or a Coke. So I plan on telling them no
18 breaks. The solicitor will allow them to use the phone
19 call -- excuse me, the clerk will allow them to use the --
20 Mr. Clerk, tell them what you allow them to do?

21 THE CLERK: My cellphone.

22 THE COURT: Does anybody have an objection to a juror,
23 or perhaps jurors, using the clerk's cellphone to make a
24 phone call.

25 MR. COOK: No objection.

1 MR. GRIER: None.

2 MR. FRICK: No, sir.

3 THE COURT: And obviously y'all can give them whatever
4 refreshments, we'll take care of that. Tell them no to the
5 smoke break, that's what the Nicorette is for. Here is the
6 question: "On the CSI sketch by Ken Taylor there's a marked
7 out area that leads to an arrow on the front left hood of
8 the Nassrah truck. What was written there and who marked
9 this out without any explanation of an error or their
10 initials?" That's a question mark. My planned response to
11 that is you must only consider the evidence received in this
12 courtroom as it was given to you and do not speculate on
13 stuff that you don't know about. Are you okay with that?
14 Or do y'all want to fashion a charge or are y'all okay with
15 the way I --

16 MR. GRIER: I think that's everything we need to have
17 them told about exactly and precisely.

18 MR. COOK: No objection.

19 MR. FRICK: I agree.

20 (The jury returned to the courtroom.)

21 THE COURT: Let the record reflect all jurors are
22 present. Ladies and gentlemen, I received a question piece
23 of paper from you, I answer it as follows: You may use the
24 clerk's phone to make an emergency phone call. I instructed
25 the clerk to make sure you have Diet Cokes and Cokes, I

1 don't know if we have the availability to give you sweet tea
2 but certainly we can refresh you as much as we can. No to
3 the smoke break, this is a non-smoking building, sorry about
4 that. As to your question on the CSI sketch which is in
5 evidence, my charge to you is as follows: Ladies and
6 gentlemen of the jury, you are only to consider the evidence
7 presented in this courtroom and you shall not speculate on
8 matters not testified to. Disregard the marked out area.
9 Thank you, you can resume your deliberations.

10 (The jury left the courtroom and resumed
11 deliberations.)

12 THE COURT: Got a note from the jury. "We need to hear
13 you explain the charges again." I can recharge the entire
14 thing or I can ask them what specifically do you want me to
15 charge you?

16 MR. COOK: They just want to hear the attempted murder
17 through A and B second?

18 THE COURT: I don't know.

19 MR. FRICK: I think we can inquire if there is a
20 specific charge. I'm not saying that you can give whatever
21 they're asking, but --

22 THE COURT: Do you want me to send a note back saying
23 is there a specific charge you would like to hear again, and
24 if so what is it, or do you want me to bring them out and
25 ask? I will respond on this piece of paper which is Court's

1 Exhibit 2, I will make it that once I write on it. Here is
2 what I wrote: "Do you want the entire charge or just a
3 portion? If portion, what charge? Judge Gibbons."

4 (Break in proceedings.)

5 THE COURT: All right. Got a response from the jury on
6 Court's Exhibit 2. First of all on Court's Exhibit 2 at the
7 top somebody wrote in, "Would you re-read the law?" And
8 then scratched that out, and then wrote the word murder,
9 scratched that and out, and then wrote in all caps ABHAN,
10 that's on Court's Exhibit 2. And then the third note that I
11 got back from them, which I think explains what they want to
12 hear which we'll make Court's Exhibit 3 says, "We need the
13 definition of attempted murder, assault and battery of a
14 high aggravated nature, assault and battery first degree,
15 assault and battery second degree." So it seems like all
16 they want is for me to charge them the law of the offenses.
17 All right. I could handle it one or two ways, gentleman. I
18 could bring them back out and recharge them that way or I
19 can just print off my charge for those particular items and
20 hand it to them, or I can printout my entire charge and hand
21 it to the jury. Why don't y'all talk and I will do
22 whichever one of the three y'all choose.

23 (Break in proceedings.)

24 MR. GRIER: If you're going to give them a document --

25 THE COURT: I'm not going to give them a document.

1 MR. GRIER: Okay.

2 THE COURT: I want to make -- here is what I'm going to
3 do. In response to the Court's Exhibit 3 I'm recharging the
4 things that they requested which is attempted murder, ABHAN,
5 A and B first, A and B second, that's all I'm going to
6 charge, I'm going to do it verbally. They will not get my
7 written charge. Okay. All right. Y'all's positions are in
8 the record. Bring the jury.

9 (The jury returned to the courtroom.)

10 THE COURT: All members of the jury are present.
11 Ladies and gentlemen, I thank you for your thorough work so
12 far, I know you are in there working. In response to the
13 last communication that y'all gave me I am going to at this
14 time charge you the offenses which are listed on the verdict
15 form. Attempted murder: The defendants are charged with
16 attempted murder. In order to prove this crime the State
17 must prove the defendants attempted to kill another person
18 with malice aforethought, either expressed or implied.
19 Malice is hatred, ill will or hostility towards another
20 person. It is the intentional doing of a wrongful act
21 without just cause or excuse and with an intent to inflict
22 an injury or under circumstances that the law will infer an
23 evil intent. Malice aforethought does not require that
24 malice exists for any particular time before the act is
25 committed, but malice must exist in the mind of the

1 defendant just before and at the time the act is committed,
2 therefore there must be a combination of the previous evil
3 intent and the act. Malice aforethought may be expressed or
4 inferred. These terms expressed and inferred do not mean
5 different kinds of malice but merely the manner in which
6 malice may be shown to exist, that is either by direct
7 evidence or by inference from the facts and circumstances
8 which are proved. Express malice is shown when a person
9 speaks words which express hatred or ill will for another,
10 or when the person prepared beforehand to do the act which
11 was later accomplished. For example, lying in wait for a
12 person or any other acts of preparation going to show that
13 the deed was within the defendant's mind would be expressed
14 malice. Malice may be inferred from conduct showing the
15 total disregard for human life. If facts are proven beyond
16 a reasonable doubt sufficient to raise an inference of
17 malice to your satisfaction, this inference would be simply
18 an evidentiary fact to be considered by you, the jury, along
19 with the other evidence in the case and you may give it the
20 weight you decide it should receive. A specific intent to
21 kill is not an element of attempted murder, but there must
22 be a general intent to commit serious bodily injury. Intent
23 means intending the result which actually occurs, not
24 accidentally or involuntary. Intent may be shown by acts and
25 conduct of the defendant and other circumstances from which

1 you may naturally and reasonably infer intent. Evidence of
2 the character of the act, the character of the instrument
3 used, the manner in which it was used, the purpose to be
4 accomplished and the resulting wound or injury may be
5 considered in determining the intent with which the act was
6 committed. Intent may also be inferred when it is
7 demonstrated that the defendant voluntarily and willfully
8 commits an act, the natural tendency of which is to destroy
9 another's life. That is attempted murder. ABHAN. If you
10 find that the State has failed to prove that either
11 defendant is guilty of attempted murder you must then decide
12 whether the State has proven that either defendant is guilty
13 of assault and battery of a high and aggravated nature. A
14 person commits the offense of assault and battery of a high
15 and aggravated nature if the person unlawfully injures
16 another person and great bodily injury to another person
17 results or the act is accomplished by means likely to
18 produce death or great bodily injury. Great bodily injury
19 means bodily injury which causes a substantial risk of death
20 or which causes serious -- or which causes serious permanent
21 disfigurement or protracted loss or impairment of the
22 function of a bodily member or organ. That's ABHAN.
23 Assault and battery first degree. If you find that the
24 State has failed to prove that either defendant is guilty of
25 attempted murder or ABHAN then you must decide whether the

1 State has proven that either defendant is guilty of assault
2 and battery in the first degree. A person commits the
3 offense of assault and battery in the first degree if the
4 person unlawfully offers or attempts to injure another
5 person with the present ability to do so and the act is
6 accomplished by means likely to produce death or great
7 bodily injury. Once again, great bodily injury means bodily
8 injury which causes a substantial risk of death or which
9 causes serious permanent disfigurement or protracted loss or
10 impairment of the function of a bodily member or organ.
11 That is assault and battery first degree. Assault and
12 battery second degree. If you find that the State has
13 failed to prove that either defendant is guilty of attempted
14 murder, ABHAN or assault and battery first degree, you must
15 then decide whether the State has proven that either
16 defendant is guilty of assault and battery in the second
17 degree. A person commits the offense of assault and battery
18 second degree if the person unlawfully injures another
19 person or offers or attempts to injure another person with
20 the present ability to do so and/or moderate bodily injury
21 to another person could have resulted. Moderate bodily
22 injury means physical injury requiring treatment to an
23 organ, stem of the body other than the skin muscles and
24 connective tissue of the body except when there is
25 penetration of the skin, muscles and connective tissues that

1 require surgical repair of a complex nature or when
2 treatment of the injuries requires the use of reasonable or
3 general anesthesia. That concludes my charge, y'all please
4 resume deliberating. Thank you.

5 (The jury left the courtroom.)

6 THE COURT: Any exceptions to the charge?

7 MR. COOK: None from the State, Your Honor.

8 THE COURT: Mr. Grier?

9 MR. GRIER: Your Honor, my intention was that the jury
10 hear all of the charges including the charge of self-defense
11 and all of the charges that they had previously heard in
12 their entirety and completely. I ask that they be charged
13 in every respect with what they heard, the unset of the
14 charge.

15 THE COURT: All right.

16 MR. FRICK: I concur in that and I renew my objection
17 to the original charge based on the exclusion of assault and
18 battery third degree.

19 THE COURT: All right. Both of y'all's positions are
20 protected. I deny your motion to recharge the thing. They
21 asked for those four elements and that's what I gave them.

22 (The jury resumed deliberations.)

23 THE COURT: All right. What we are going to do,
24 gentlemen, I am inclined to recess for the evening and bring
25 them back tomorrow morning to continue their deliberations

1 where they can be maybe a little bit more fresh, but I will
2 only do that if all of y'all consent to doing that. Is
3 there any objection to doing that? Under Rule 23, obviously
4 I have the discretion to do it but I always like to get
5 everything on the record. So without objection then what we
6 are going to do is we are going to go ahead and recess for
7 the night, I will bring them in and give them the
8 instructions about not talking with each other or
9 deliberating over the phone or anything like that and bring
10 them back tomorrow morning at 9:30 to continue.

11 (The jury returned to the courtroom.)

12 THE COURT: All right. All members of the jury are
13 present. Ladies and gentlemen, I know y'all have been
14 working hard for a little over three hours now, it's getting
15 kind of late in the evening, some of you may be hungry and
16 ready to go home. So what we're going to do is I will break
17 court for the day, we will be in recess until tomorrow
18 morning at 9:30. Now, it's very important since you have
19 already begun your deliberations to not deliberate any
20 further whatsoever with anybody except your fellow jurors in
21 the jury room tomorrow morning. Okay. Don't talk about the
22 case with anybody else, with your spouse, significant other,
23 don't do any independent research or anything like that. We
24 will see you tomorrow morning at 9:30 where everybody can be
25 refreshed, have an open mind and continue your

JURY VERDICT

1 deliberations. Y'all have a good evening.

2 (The jury left the courtroom and court recessed
3 for the evening and resumed at 9:30 a.m., on
4 Friday, January 10, 2014.)

5 THE COURT: I'm informed all jurors are present and I
6 sent them a message to resume deliberations.

7 (The jury resumed deliberations.)

8 THE COURT: Bring the jury in.

9 (The jury returned to the courtroom with a
10 verdict.)

11 THE COURT: All right. All members of jury are
12 present. Mr. Foreman, it is my understanding that the jury
13 has been able to reach a unanimous verdict; is that correct?

14 THE JUROR: Yes.

15 THE COURT: And have you written that unanimous verdict
16 down on the verdict forms?

17 THE JUROR: Yes, sir.

18 THE COURT: All right. At this time if you would
19 please hand those to my clerk. All right. Mr. Clerk, you
20 may publish the verdict, if the defendants would please
21 stand.

22 THE CLERK: As to indictment number 2010-GS-29-1590,
23 for the offense of attempted murder we, the jury,
24 unanimously find the defendant, Michael E. Hyatt guilty as
25 to the lesser charge of assault and battery of a high and

JURY VERDICT

1 aggravated nature. Signed Kenneth Furr, foreperson, dated
2 January 10th, 2014. As to indictment number
3 2010-GS-29-1589, for the offense of attempted murder we, the
4 jury, unanimously find the defendant, Aaron D. Hyatt, guilty
5 as to the lesser charge of assault and battery of a high and
6 aggravated nature. Signed Kenneth Furr, foreperson, dated
7 January 10th, 2014. Ladies and gentlemen of the jury, if
8 this be your verdict so say you all by the raising of your
9 right hands. Let the record reflect that all jurors raised
10 their right hands.

11 THE COURT: All right. Thank you, Mr. Clerk. Thank
12 you, ladies and gentlemen of the jury, for your very
13 valuable jury service. Your term has and service as jurors
14 this week is now concluded, you are free to leave.

15 MR. FRICK: Your Honor, the defense request polling.

16 THE COURT: Oh, polling?

17 MR. FRICK: Yes, sir.

18 THE COURT: All right. Well, let's poll the jury,
19 Mr. Clerk.

20 MR. FRICK: Your Honor, may we be seated while they
21 poll the jury?

22 THE COURT: Absolutely.

23 MR. FRICK: Thank you.

24 THE CLERK: As for both cases, Mr. Foreman, Kenneth
25 Furr, is this your verdict and is this still your verdict?

JURY VERDICT

1 THE JUROR: Yes.

2 THE CLERK: James Simmons, is this your verdict and is
3 this still your verdict?

4 THE JUROR: Yes.

5 THE CLERK: Donna Immel, is this your verdict and is
6 this still your verdict?

7 THE JUROR: Yes.

8 THE CLERK: Jarred Horn, is this your verdict and is
9 this still your verdict?

10 THE JUROR: Yes, sir.

11 THE CLERK: Jeremy Heller, is this your verdict and is
12 this still your verdict?

13 THE JUROR: Yes, sir.

14 THE CLERK: Shaun Murphy, is this your verdict and is
15 this still your verdict?

16 THE JUROR: Yes, sir.

17 THE CLERK: Norma Estridge, is this your verdict and is
18 this still your verdict?

19 THE JUROR: Yes.

20 THE CLERK: Ronald Springs, is this your verdict and is
21 this still your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Travis Montgomery, is this your verdict and
24 is this still your verdict?

25 THE JUROR: Yes, sir.

JURY VERDICT

1 THE CLERK: Charles Menzel, is this your verdict and is
2 this still your verdict?

3 THE JUROR: Yes, sir.

4 THE CLERK: Sydnie Stroble, is this your verdict and is
5 this still your verdict?

6 THE JUROR: Yes, sir.

7 THE CLERK: Milton Stalls, is this your verdict and is
8 this still your verdict?

9 THE JUROR: Yes, sir.

10 THE CLERK: Thank you.

11 THE COURT: All right. The jury has been polled.

12 (The jury was dismissed.)

13 THE COURT: All right. If the defendants would please
14 come forward for sentencing.

15 MR. FRICK: Your Honor, I have a few post-trial motions
16 I would like to make at this time.

17 THE COURT: Okay.

18 MR. FRICK: Your Honor, at this time I would ask for
19 the Court to set aside the verdict and decide as a matter of
20 law the 13th juror doctrine, I haven't gotten a definition
21 of whether that truly applies in criminal court, I do
22 believe it does. But recently I saw a case, and I think it
23 was my case, I think it was the Curry case that came out a
24 couple of weeks ago, still didn't give me an indication of
25 whether I could do this or not, but I continue to request it

1 and I ask you to do so based on the evidence that was
2 presented.

3 THE COURT: Mr. Grier, I assume --

4 MR. GRIER: I join that motion.

5 THE COURT: Solicitor, you oppose the motion, I assume?

6 MR. COOK: I do, Your Honor.

7 THE COURT: All right. Motion denied.

8 MR. FRICK: Your Honor, the second motion would be, the
9 defense would request a new trial based on our objection to
10 the 404 evidence that the Court allowed in. I understand
11 some of it was allowed by us as well, but there was an
12 original objection to the prior incident that occurred on
13 the 13th, the Court let part of it in, didn't let part of it
14 in. I think that's a factor in this case and I think we
15 should be granted a new trial based on that. Also denial of
16 our preemptory strike motion at the beginning of the case
17 and our denial of the stand your ground, the immunity under
18 the protections of person property act. Anything else,
19 Mark?

20 THE COURT: And Mr. Grier, you join those motions for
21 the record?

22 MR. GRIER: I join those motions.

23 THE COURT: Those motions are denied.

24 MR. FRICK: Thank you, Your Honor.

25 THE COURT: Let me hear from the State first as to

SENTENCING HEARING

1 sentencing and then I'll hear from the defense in
2 mitigation.

3 MR. COOK: Your Honor, the indicted charge was
4 attempted murder, the jury came back with ABHAN, it's a
5 range of zero to 20, I ask for a substantial sentence. Mr.
6 Nassrah is lucky, he's okay but as I said in closing that
7 the end result is not what it should be based on versus what
8 they actually did. Mr. Nassrah is here and he would like to
9 address the Court if you would --

10 THE COURT: Absolutely. I will be glad to hear from
11 you, Mr. Nassrah, at this time.

12 THE WITNESS: Thank you, Your Honor. I would like to
13 thank you, thank the jury. I'm sorry for being emotional.
14 When the defense attorney asked me if I had a scar on my
15 head, it's almost gone after three and a half years. I do
16 have some other problems. But there is one scar that I
17 cannot get rid of, that is the fear of having someone after
18 you to kill you, hate you enough to kill you or to hurt you
19 bad. There is no cure for that fear, Your Honor. I love my
20 community, I love the state when I live in and if they are
21 free I cannot stay here. I thank you all for your services.
22 Thank you.

23 THE COURT: Thank you, sir. Who would like to go
24 first?

25 MR. FRICK: Your Honor, I'll speak on behalf of

SENTENCING HEARING

1 Mr. Aaron Hyatt first. I believe he is 32 or 33 years of
2 age --

3 AARON HYATT: Thirty-five now.

4 MR. FRICK: Excuse me, he was 32 or 33 when this whole
5 thing started three years ago. Your Honor, he has no
6 criminal history to my knowledge, is that correct,
7 Solicitor?

8 MR. COOK: He has one disorderly conduct in 2009.

9 MR. FRICK: He has a disorderly conduct in 2009, Your
10 Honor, that is the extent of his record. Obviously Your
11 Honor is aware that we're here on assault and battery high
12 and aggravated nature, that is a serious felony, in fact, I
13 believe it may be a most serious offense if it's not -- I
14 know it's at least a serious offense so he's going to walk
15 out of here with a strike at the very least. Whatever
16 sentence you're talking about you're looking at 85 percent
17 community supervision when he is released. Your Honor,
18 you're talking about someone who has not done any time in
19 jail, got charged on this, bond was denied, sat in our
20 detention center for 30 days and was able to make bond so he
21 does have some time served on it. No record. Judge, I
22 still believe my argument about a self-defense situation. I
23 think he got a phone call and went to go defend his dad.
24 I'm not trying to argue to the jury now, I'm just trying to
25 give you my mitigation. I do believe there is self-defense

1 issues, obviously the jury did not agree with self-defense,
2 but I do not believe that there was any vast conspiracy to
3 trap Mr. Nassrah in this situation. Quite honestly I think
4 there was some conspiracy on his behalf based on the phone
5 call that his worker makes from the back of the car where he
6 talks about how Mr. Nassrah was not that badly injured and
7 that he was a smart man and he knows what to say, that
8 causes me great trouble in what happened that day. Mr.
9 Aaron Hyatt shows up to this fight with no weapon, had
10 access to weapons, didn't take any over there, didn't even
11 take any shoes over there, was very forthcoming with law
12 enforcement about his side of the situation and cooperated
13 fully and extensively with them. Your Honor, I'm going to
14 ask you for a probationary sentence, I don't know what
15 you're going to do. I understand we went to trial on the
16 matter, we were never really given a plea offer in this
17 situation, nothing that we could seriously talk to our
18 clients over, I'm not fussing at the solicitor on that, they
19 get to make that call, but this is not a situation where you
20 had somebody who was offered probation and they turned down
21 probation, it was nothing that was ever even discussed in
22 this case. And I think that Mr. Aaron Hyatt who works, has
23 been working, he's a construction supervisor and has been
24 working his whole life, is a productive member of society
25 and I think he will continue to be one and I ask you to

SENTENCING HEARING

1 allow him to do that and give him an opportunity.

2 THE COURT: Thank you. Mr. Aaron Hyatt, anything you
3 would like to tell the Court?

4 AARON HYATT: Other than, I mean, I'm sorry it had to
5 come to this kind of situation. I ain't got no hard
6 feelings toward Mr. Nassrah, I hate that this stuff
7 happened. I don't like being involved in anything that has
8 anything to do with this kind of stuff. I work everyday, I
9 go home, that's pretty much my life. I would like to have
10 the opportunity to keep working and be a productive citizen
11 because in jail I cost the county and stuff money, if I'm
12 out I can pay my probation, pay whatever fines I have to and
13 be productive.

14 THE COURT: Thank you, sir. Mr. Grier?

15 MR. GRIER: Your Honor, Michael Hyatt, I believe, is
16 64, he may be 63 years old. Judge, this case had languished
17 for three and a half years and both of our clients, I think,
18 had been anxiousness for a resolution of this case, and this
19 case ultimately came to trial as a result of our motion to
20 make it happen because of the matter hanging over them and
21 the uncertainty of that and the difficulties it was causing
22 for jobs. Mr. Michael Hyatt, of course, is disabled as you
23 know as far as his hearing, draws disability. Your Honor,
24 he's been a productive and a beneficial member of the
25 community. He lives a quiet life down -- up to this point

1 lived on Merle Lane, really, you know, didn't bother
2 anybody. I join, I'm not going to repeat what Mr. Frick's
3 account, and I know the jury has spoken, but these gentlemen
4 believe that they would be vindicated by the trial and
5 obviously the jury didn't agree. Your Honor, I think
6 justice would be served certainly by placing Mr. Michael
7 Hyatt on probation as well, there's no substantial record,
8 he's not a young man. I'm asking you to grant him a
9 probationary sentence because I think -- you've had an
10 opportunity to examine him and speak to the earnestness
11 of -- observed the earnestness of Mr. Hyatt and, you know,
12 the -- I think something that we argued and apparently the
13 jury didn't agree with. I think the character of standing
14 by your convictions of what you believe you saw out there
15 that day was demonstrated on the stand by both of these men
16 in giving their accounts not withstanding their advice of
17 their lawyers that that was perhaps a -- difficult for them.
18 They did not collude and come up with a story to match and
19 obviously they both told what their experience was out there
20 and I think that demonstrates the character of both of the
21 men that stand by your statements of what happened, not
22 withstanding it's difficult for Your Honor. You, I guess,
23 understand that anytime that someone is involved in
24 something of this nature it has some traumatic affect on
25 them and most certainly it had that affect on both of these

SENTENCING HEARING

1 gentlemen as well. Mr. Nassrah was home by that night of
2 this incident, my client was in jail several days and
3 received a gunshot. Your Honor, if we go by -- I think that
4 the punishment of being shot for his transgression should be
5 taken into account and -- you're not going to have anymore
6 trouble out of these gentlemen, Your Honor, if you would
7 consider some probationary sentence, that we would just keep
8 an eye on them and protect Mr. Nassrah.

9 THE COURT: Thank you, Mr. Grier.

10 MR. FRICK: I'm sorry, one thing I forgot to tell
11 you -- I know I already had my turn -- I certainly
12 understand as far as the charge is concerned, not concerned
13 with the severity of the injuries, but the legislature gave
14 you a range of zero to 20, I think that's so you can take in
15 consideration the severity of the injuries.

16 THE COURT: Absolutely, I agree with you on that. Mr.
17 Michael Hyatt, anything you wish to tell me?

18 MICHAEL HYATT: Yes, sir. I'm sorry this whole thing
19 happened. It was no intention of mine to hurt Mr. Nassrah.
20 I was frightened, I didn't know what to do and when I got
21 there I thought what I was doing, you know, I thought that
22 my son was going to get hurt and that's why the things come
23 about like they did. I don't have any hard feelings toward
24 Mr. Nassrah, none at all, I haven't spoke to him in the
25 whole time since this has happened. I stayed mostly around

SENTENCING HEARING

1 my house, I very seldom leave there anymore. I live down
2 there with my son now.

3 THE COURT: Thank you, sir. Solicitor, any prior
4 record on the elder Mr. Hyatt?

5 MR. COOK: Assault and battery in 1991. And that is
6 really the extent of his record as far as convictions, Your
7 Honor.

8 THE COURT: Anything further from the State?

9 MR. COOK: Obviously, Your Honor, I'm opposed to
10 probationary sentences. And they alluded to the fact that
11 there was no real offer, the offer stood as ABHAN to start
12 with and that's because the State felt we had a good case
13 against them, and if I wasn't confident in the facts as
14 given to me by the victim then I may have made a better
15 offer. But we were confident in the case and that's why we
16 didn't offer them anything less than ABHAN because as the
17 jury decided when they heard it all that's what they thought
18 they were guilty of.

19 THE COURT: Was there any cap offered?

20 MR. COOK: It wasn't, it was straight-up ABHAN and the
21 jury agreed with the State, that was their offer and after
22 they spoke that's what they were found guilty of and I think
23 it's a serious offense, Your Honor, and I don't think
24 probation is suitable.

25 THE COURT: All right.

SENTENCING HEARING

1 MR. FRICK: Your Honor, I would point out, if the State
2 was so confident in the case -- I know Mr. Cook picked it
3 up, but it took four years for it to get to trial and there
4 was no additional trouble.

5 THE COURT: I understand. All right. On indictment
6 number 10-GS-29-1590, State of South Carolina versus Michael
7 Hyatt, the sentence of the Court is nine years. Indictment
8 10-GS-29-1589, State of South Carolina versus Aaron Hyatt,
9 sentence of the Court is four years. Good luck to both of
10 you. Take them into custody.

11 (End of trial proceedings.)

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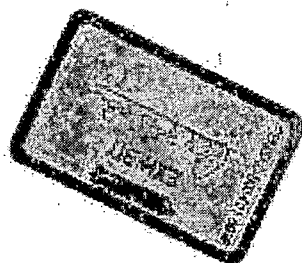
25

A B H A N

~~What you want the law~~

We need to have you explain the
~~the~~ charges again.

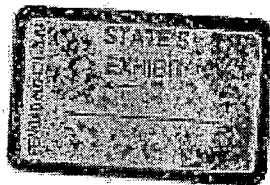
Do you want the entire charge or just a
portion? If portion, what charge? Judge
Gibbons



2-2-16
10:10 AM

We need the definition 8

- * attempted murder
- x assault and battery of a High and Aggravated Nature
- x Assault and battery 1st Degree
- * " " " 2nd Degree



401

WITNESSES

Miller - LCSO #10-29118

ARREST WARRANT NUMBER/DOA

M165468 (DOA-9-21-10)

ACTION OF GRAND JURY

John P. Marshall
Foreperson of Grand Jury
Date: DEC 2 2010

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

DOCKET NO. 2010-GS-29- 1590

The State of South Carolina
County of Lancaster

COURT OF GENERAL SESSIONS

DECEMBER TERM 2010

THE STATE
vs.

Michael E. Hyatt

Arnon Hyatt 1589

ATTEMPTED MURDER

SC Code: §16-3-29
CDR Code: 3410
Class: Felony A

FILED
OFFICE OF CLERK
OF COURT

2010 DEC -2 A 11:15

CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on December 2, 2010, the Grand Jurors of Lancaster County present upon their oath:

ATTEMPTED MURDER

That Michael E. Hyatt did in Lancaster County on or about September 16, 2010, with intent to kill, attempt to kill Kamil Nassrah with malice aforethought, either expressed or implied, by striking the victim on the left rear side of his head with a wooden tool handle, in violation of Section 16-3-29 of the *Code of Laws of South Carolina, (1976), as amended*.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Douglas A. Barfield, Jr., SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF GENERAL SESSIONS

STATE

VS.

Michael Hyatt

INDICTMENT/CASE# 2010-GS-29-1590

AW#: M165468

Date of Offense: 9/16/10

S.C. Code §: 16-3-602.9

CDR Code #: 3140

SENTENCE SHEET

AKA: _____
Race: W Sex: M Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip: Lancaster, SC 29220-2906

DL# _____ SID# _____
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Assault & Battery at Hand and Aggravated Nature

In violation of § 16-3-600 (B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: ☐ As indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: 100052

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 9 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐

☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine: _____ \$ _____
§14-1-206 (Assessments 107.5%) _____ \$ _____
§14-1-211 (A)(1)(Conv. Surcharge) \$100 _____ \$ _____
§14-1-211 (A)(2)(DUI Surcharge) \$100 _____ \$ _____
§56-5-2995 (DUI Assessment) \$12 _____ \$ _____
§56-1-286 (DUI Breath Test) \$25 _____ \$ _____
Proviso 47.9 (Public Def/Prob) \$500 _____ \$ _____
§14-1-212 (Law Enforce. Funding) \$25 _____ \$ _____
§14-1-213 (Drug Court Surcharge) \$150 _____ \$ _____
§50-21-114 (BUI Breath Test Fee) \$50 _____ \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40/ea _____ \$ _____
Proviso 90.5 (SCCJA Surcharge) \$5 _____ \$ _____
3% to County (if paid in installments) _____ \$ _____
TOTAL _____ \$ 13390

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation

Clerk of Court/Deputy Clerk
Court Reporter: Mike Walker

Presiding Judge

Judge Code: 2168

Sentence Date 1-10-14

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

December 11th, 2014

Susan B. Hackett

Susan B. Hackett
Appellate Defender

RECEIVED

DEC 11 2014

SC. Court of Appeals

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

ATTORNEY FOR APPELLANT

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December 11th, 2014

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Susan B. HackettSusan B. Hackett
Appellate Defender**SC Court of Appeals**South Carolina Commission on Indigent Defense
Division of Appellate Defense
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Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL E. HYATT,

APPELLANT

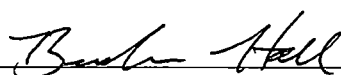
RECEIVED

DEC 11 2014

SC Court of Appeals

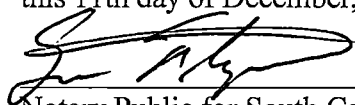
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Christina Catoe Bigelow, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 11th day of December, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 11th day of December, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022