

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Chester County

Honorable Brian M. Gibbons, Circuit Court Judge

RECEIVED

SEP 23 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BOBBY RANDOLPH SIMS,

APPELLANT

APPELLATE CASE NO. 2015-000721

RECORD ON APPEAL

DAVID ALEXANDER
Appellate Defender

ALAN WILSON
Attorney General

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

MARK R. FARTHING
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR APPELLANT

RANDY E. NEWMAN, JR.
Solicitor, Sixth Judicial Circuit
Post Office Box 607
Lancaster, SC 29721
(803) 416-9367

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
IMMUNITY HEARING TRANSCRIPT DATED JANUARY 15, 2015	1
OPENING STATEMENT BY MS. FRIAR	4
OPENING STATEMENT BY MR. NIELSON	5
TESTIMONY	
CHRISTOPHER REYNOLDS	
Direct Examination by Mr. Nielson	6
Cross Examination by Ms. Friar	25
Redirect Examination by Mr. Nielson	57
Recross Examination by Ms. Friar	62
BOBBY RANDOLPH SIMS	
Direct Examination by Mr. Nielson	63
Cross Examination by Ms. Friar	78
Redirect Examination by Mr. Nielson	104
CLOSING STATEMENT BY MR. NIELSON	105
CLOSING STATEMENT BY MS. FRIAR	109
TRANSCRIPT OF RULING ON IMMUNITY DATED JANUARY 16, 2015	114
PLEA TRANSCRIPT DATED MARCH 19, 2015	117
SENTENCING	143
INDICTMENT	145
DEFENDANT'S MOTION TO DISMISS DATED DECEMBER 22, 2014	147
STATE'S REPLY TO DEFENDANT'S MOTION TO DISMISS DATED JANUARY 5, 2015	152
ORDER DATED JANUARY 28, 2015	168
SENTENCE SHEET	172

GUILTY PLEA EXPLANATION	173
NOTICE OF APPEAL DATED MARCH 26, 2015	176
LETTER FROM THE COURT OF APPEALS DATED JUNE 22, 2015	178
CERTIFICATE OF COUNSEL	179

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
COURT OF GENERAL SESSIONS
COUNTY OF CHESTER
2014-GS-12-00445
State of South Carolina
vs.
Bobby Randolph Sims

Chester, South Carolina
January 15, 2015
Before the Honorable Brian M. Gibbons

APPEARANCES
For the State: Karen Friar
For the Defendant: Devon Nielson

Reported by: Michael C. Watkins
Official Court Reporter

1	Opening Remarks:	4
2	Christopher Reynolds:	6
3	Bobby Randolph Sims:	63
4	Closing Remarks:	105
5	Certificate:	114
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 STATE'S EXHIBITS

2

3 5 - Photograph - 38

4 6 - Photograph - 38

5 7 - Photograph - 38

6 9 - Photograph - 42

7 10 - Photograph - 42

8 13 - Photograph - 48

9 14 - Photograph - 48

10 15 - Photograph - 48

11 17 - Photograph - 53

12 18 - Photograph - 53

13 DEFENDANT'S EXHIBITS

14 1 - Photograph - 11

15 2 - Photograph - 11

16 3 - Video of Statement - 13

17 4 - Video of Statement - 13

18 5 - CD of still photos - 13

19

20

21

22

23

24

25

1 MS. FRIAR: We are here today in the State versus
2 Bobby Randolph Sims. The defense has made a motion in this
3 case to dismiss this case pursuant to section 16-11-450 of
4 the South Carolina Code of Laws, also known as the Castle
5 Doctrine laws. This motion was made by Mr. Nielson on
6 behalf of his client, Mr. Bobby Sims and he has filed that
7 motion with the Chester County Clerk of Court. The State
8 received the motion that was made by Mr. Nielson and made a
9 reply to the motion to dismiss. Do you have those
10 documents, Your Honor?

11 THE COURT: I have both documents.

12 MS. FRIAR: Thank you, sir. Your Honor, as you read
13 the State versus Duncan, the defendant has the burden of
14 proving this by a preponderance of the evidence so I will
15 turn it over to Mr. Nielson to prove this to the Court.

16 THE COURT: All right. Thank you. Typically how I
17 conduct these hearings, although the defense who files the
18 motion, of course, does bear the burden of proof, I'll
19 allow either party to -- the State can call witnesses to
20 establish matters or the defense can call witnesses or both
21 of you can call witnesses in whatever order you wish to
22 call witnesses, because evidence has to be proffered for me
23 to make My decision.

24 MR. NIELSON: Yes, Your Honor.

25 THE COURT: Do you want to call the witnesses or do

1 you want to have the State call the witnesses like you do
2 in a Jackson versus Denno motion?

3 MR. NIELSON: I believe the solicitor and I have
4 decided that I will call some witnesses and then they'll
5 have the opportunity to call whatever witnesses after my
6 witnesses are done.

7 THE COURT: Of course y'all will be allowed to have a
8 full opportunity to tell me whatever you want to tell me at
9 the end of everything.

10 MS. FRIAR: Thank you, Your Honor. I would also like
11 for the court to know Mr. Nielson and I have agreed to
12 stipulate to hearsay today, I think it's normally done with
13 hearsay but just as a matter of protecting the record we
14 stipulate to it.

15 THE COURT: Is that correct?

16 MR. NIELSON: Yes, Your Honor.

17 THE COURT: I was going to tell you that as well.
18 Since I'm the trier of fact in this case I was going to
19 relax the rules of -- the evidence rules as well to let you
20 get in everything you wanted to get in. Okay.

21 MR. NIELSON: Thank you, Your Honor.

22 THE COURT: Yes, sir, Mr. Nielson.

23 MR. NIELSON: The defense calls Mr. Chris Reynolds.

24 The witness, CHRISTOPHER REYNOLDS, was first duly
25 Sworn and testified as follows:

CHRISTOPHER REYNOLDS

1 DIRECT EXAMINATION

2 BY MR. NIELSON:

3 Q Please state your name for the record.

4 A Detective Christopher Michael Reynolds, Chester
5 County Sheriff's Office.

6 Q And Detective Reynolds, were you involved in the
7 investigation of a case that began on April 11th, 2014 at
8 Elm Street?

9 A Yes, sir, I was.

10 Q And can you tell us what happened that night?

11 A We received a phone call from a passer buyer saying
12 that somebody was injured and needed help. Upon arrival
13 with officers they found the victim, Nantonio Byrd, with
14 gunshot wounds to his chest and one to his arm in the
15 street around Wilson's in the Lowrys community.

16 Q Okay. Right by Wilson's in Lowrys, by the feed and
17 seed place up there?

18 A That's correct.

19 Q And when you got there, did you have a chance to
20 interview the alleged victim in this case?

21 A I did speak to him at the time.

22 Q What did he tell you happened that night?

23 A When I arrived he said that he had been shot and he
24 was shot by he stated Bobby McGee, which later on was
25 Bobby Sims.

CHRISTOPHER REYNOLDS

1 Q How did you make the connection that it was Bobby
2 Sims?

3 A With the community everybody -- a lot of people in
4 the community knows Bobby McGee as Bobby Sims. Bobby Sims
5 is Bobby McGee.

6 Q And can you tell me where Bobby Sims for the purposes
7 of this hearing lived at?

8 A He lived behind Wilson's Feed and Seed Store in a
9 house, which the address is actually Elm Street.

10 Q Was it Elm Street?

11 A Elm Street.

12 Q And so after finding out from Nantonio that it was
13 Bobby Sims, did you -- what did you do next?

14 A As I'm over there with the victim our narcotics
15 officers and road patrol, they didn't know exactly what
16 went on at the time, they went down to Elm Street and
17 detained Mr. Sims.

18 Q Okay. And so they detained Mr. Sims. Tell me what
19 happened after that as part of your investigation.

20 A I arrived at Elm Street. He was sitting on the
21 back of a tailgate of one of our sheriff's office trucks
22 and he was advised of his rights by Lieutenant Neal,
23 Johnny Neal with the narcotics division. He was sitting
24 on the back of a tailgate and he was Mirandized and after
25 he was Mirandized then I spoke to him.

CHRISTOPHER REYNOLDS

1 Q Okay. Did he give a statement to you there at the
2 scene?

3 A I'm going to look back. The night that he was
4 sitting on the tailgate he made the statement that he
5 didn't know who shot Nantonio, and also he made the
6 statement that somebody shot him but he didn't know who
7 and he was shot at at his property.

8 Q And what was Mr. Sims's appearance like at that point?

9 A He did have a cut on I think it was his left hand, a
10 cut on his left hand, he was bleeding and he did have a
11 ripped shirt.

12 Q To the best of your knowledge did he receive any
13 medical attention for the cut on his hand?

14 A He refused treatment.

15 Q Okay. And what was his -- what was his appearance
16 like? Was he disheveled? Tell me more about what you saw.

17 A His clothes were dirty, he had tall rubber boots on.
18 For me to describe him, he did look kind of rough.

19 Q Okay. Was he confident? Was he nervous? What did
20 you see as his emotional state?

21 A He was very upset, very emotional and not making a
22 lot of sense, jumping back and forth with what was going
23 on or what happened.

24 Q At a later point in your investigation did you have
25 any other opportunities to talk to Mr. Sims?

CHRISTOPHER REYNOLDS

1 A I did.

2 Q Did he change his story?

3 A He changed it multiple times.

4 Q What was the next story he told you?

5 A The next story he told us that Nantonio Byrd and
6 another guy pulled up at his house -- and I'm going to
7 refer to my notes. He said Nantonio Byrd arrived at his
8 house -- this is the following day during the first
9 interview, he was interviewed two times. He stated that
10 the victim, Nantonio Byrd, pulled up at his house, the
11 first time he told us that he owed him \$20 and he and
12 Nantonio got into an altercation, a scuffle, actually his
13 words was a tussle, and they tussled around because
14 Nantonio wanted \$5 interest on the \$20 that he owed him.
15 Later on he told us it was \$28, and they tussled over the
16 \$5 interest.

17 Q Did he say anything about the actual shooting?

18 A He did. Bobby stated after he -- first of all he
19 said that they tussled and he walked back in the house and
20 he stated that Nantonio snatched the door open, he walked
21 back outside. During the interview he told us that he
22 went over towards the burn barrel and there was actually a
23 fish cleaning station, he stated that Nantonio grabbed a
24 knife from the fish cleaning station and threatened him
25 with it. Mr. Sims walked back to the house, as he walked

CHRISTOPHER REYNOLDS

1 in the house he -- his exact words was "I latched the door
2 back," and we have pictures of the lock itself, it's just
3 a latch that -- a screen door latch. The door -- the
4 storm door actually stays open, he told us that the screen
5 door -- I mean, the storm door stays open but they use a
6 screen door. He said when he latched the door back that
7 Nantonio actually ripped the door open and that's when he
8 shot him.

9 MR. NIELSON: Your Honor, permission to approach the
10 witness?

11 THE COURT: Yes.

12 Q Take a look at these pictures. Is that a picture of
13 the house?

14 A That's correct.

15 Q That you were on Elm Street?

16 A Yes, sir.

17 Q And is that a close-up picture of the porch?

18 A That is.

19 Q Okay.

20 MR. NIELSON: Your Honor, would you like to see these?

21 A These are the daytime pictures.

22 Q Okay.

23 THE COURT: Do you wish to introduce those for the
24 purposes of this hearing?

25 MR. NIELSON: Yes, Your Honor.

CHRISTOPHER REYNOLDS

1 THE COURT: Any objection?

2 MS. FRIAR: None, Your Honor.

3 THE COURT: All right. This will be Defendant's 1 and
4 2.

5 (The photographs were received as Defendant's 1 and
6 2.)

7 Q So you talked a bit about the tussling that ensued
8 there in front of the house, in front of the house on the
9 picture of the house I just showed you, correct, on the
10 front porch there?

11 A That's correct.

12 Q And that's what Bobby said.

13 A Yes.

14 Q Okay. And he said that he went to the fish
15 cleaning -- you testified he went to the fish cleaning
16 station and came back with a knife. What happened after
17 that according to Bobby?

18 A Okay. When they come back from the fish cleaning
19 station, Bobby walked in the house and his exact words
20 was, "I got in my ambush spot." He described the inside
21 of the door to the left-hand side, he said it was his
22 ambush spot and he waited until Nantonio came in the
23 house, he said he ripped the door open and walked in the
24 house and he said that's when he shot him.

25 Q So at that point that was the first time he admitted

CHRISTOPHER REYNOLDS

1 that he shot him?

2 A Yes.

3 Q But he said it was after Nantonio approached him and
4 came into the house.

5 A That's correct.

6 Q What was the next story he told you?

7 A Okay. I think that was it.

8 Q So that was the only story he told during the first
9 interview.

10 A The first recorded interview.

11 Q The first recorded interview the next day.

12 A Right. It was three differ stories the previous
13 night, the night of the shooting.

14 Q And that interview the next day, was it recorded?

15 A Sir?

16 Q It was recorded.

17 A Yes, it was recorded.

18 Q Okay.

19 A It was actually two interviews that day, two
20 different ones.

21 MR. NIELSON: Your Honor, I would like to present for
22 evidence all of the recordings that were made of interviews
23 of my client that night. This is two hours long, I will
24 allow you to take it under advisement and watch it as the
25 finder of fact when you see fit. I don't see the need to

CHRISTOPHER REYNOLDS

1 necessarily watch them right now, but I would like to put
2 them into evidence.

3 THE COURT: Any objection?

4 MS. FRIAR: Your Honor, those were videotapes that
5 were made the next day after the incident and the State
6 does not object to the Court viewing them.

7 THE COURT: Without objection it will come in as
8 Defense 3.

9 (The CD was received as Defendant's 3.)

10 MR. NIELSON: There's two videos, and then the third
11 thing that I'm asking to introduce is all of the pictures
12 that were taken by the officer that night, it's a DVD with
13 all of the pictures on it.

14 THE COURT: So Defendant's 3 and 4 are all videotaped
15 statements or the audio taped statements, or a little bit
16 of both?

17 MR. NIELSON: They are all video, yes.

18 THE COURT: And then Defendant's 5 is a compilation of
19 still photographs.

20 MR. NIELSON: Yes, Your Honor.

21 THE COURT: Okay.

22 (Defendant's 4 and 5 were received into evidence.)

23 Q And so that was the first recorded statement that you
24 made, correct?

25 A Yes, sir.

CHRISTOPHER REYNOLDS

1 Q Was there any further statements that were made by Mr.
2 Sims that were video recorded?

3 A The second video.

4 Q When was that done at?

5 A After he talked about the ambush spot and -- I'm
6 going to refer to my notes -- he spoke about the ambush
7 spot, and after he shot him he told me that he ran out the
8 front door, broke the gun in half and placed the gun in a
9 well, the top of a well and dropped it down the well.
10 That's about where we ended the interview at.

11 Q Okay.

12 A We went back out to the house and we got a photograph
13 of the well, tried to retrieve the gun, of course, with
14 the search warrant that we already had, and we discovered
15 that the top of the well could not be opened by a single
16 man. Actually the top of the building fell down on top of
17 the well, the roof of the building fell down on top of the
18 well and we knew that he wasn't telling the truth about
19 where he put the gun. So I came back and interviewed him
20 for the second time.

21 Q What story did he tell the second time when you came
22 back and interviewed him?

23 A The second time he admitted that after he shot him he
24 took the gun and put it into a brush pile out back, a
25 brush pile that -- the pictures show it has got multiple

CHRISTOPHER REYNOLDS

1 brush. Actually people would come and dump brush -- when
2 I say brush different types of wood, trees, et cetera, and
3 they would give him money just to dump it on his property.
4 And he stashed it -- he actually hid it up under one of
5 his brush piles.

6 Q And from your investigation of the scene, where was
7 that brush pile in conjunction with the well itself?

8 A The brush pile was I would say anywhere from 25 to
9 100 feet away from the well.

10 Q So it was close.

11 A Because the brush pile actually goes around. That's
12 correct, it's pretty close.

13 Q And did you have the opportunity to interview my
14 client at any other time during the course of your
15 investigation?

16 A Just the second day.

17 Q Did he change his story in any other way other than
18 where the gun was hidden?

19 A After he admitted that he hid it in a brush pile we
20 actually transported him out there to retrieve the gun, he
21 showed us where the gun was.

22 Q He was able to find it immediately?

23 A Right. He took us right directly to it.

24 Q And you -- going back to the -- now, leaving Mr.
25 Sims's statements for a minute and going back to your

CHRISTOPHER REYNOLDS

1 investigation of the case, how many times would you say
2 Nantonio was shot?

3 A I believe it was three.

4 Q And how many shell casings did you find at the scene?

5 A Zero.

6 Q Zero? Did you find any unspent shells?

7 A No. I'm sorry, we found one .22 round, intact round,
8 the bullet and shell casing and everything together, it
9 was one non-fired round. But we did not find any shell
10 casings.

11 Q And to this day you still have not found any shell
12 casings from that gun.

13 A No, sir.

14 Q Okay. When you got to the house the night of this
15 incident on April 11th, can you describe what the -- just
16 describe the front porch and what it looked like, what was
17 on it, that kind of stuff.

18 A The front porch, there was signs of a struggle. It
19 was some type of -- there was this two chairs that sit on
20 the front porch, which we determined during the interview
21 that Mr. Sims and his brother actually share those chairs,
22 they live together at the home. It was a sign of a
23 struggle. We had an open beer and a closed beer with the
24 victim's cellphone laying on the porch. The house is in
25 disarray, there's no power at home.

CHRISTOPHER REYNOLDS

1 Q But you were able to see that there was some kind of
2 struggle there.

3 A Yes, sir.

4 Q The porch was in disarray as you called it.

5 A Yes, sir.

6 Q At any point in this investigation did you have a
7 chance to interview the victim, Mr. Nantonio Byrd?

8 A Yes, I did.

9 Q Tell me about your interview with Mr. Byrd.

10 A We interviewed him a couple of days later after he
11 came out of intensive care and surgery at Carolinas
12 Medical Center. And he informed me that when he
13 arrived -- he comes to the house four or five days a week,
14 he's always welcome at the house with him and his kids.
15 He said that -- he verbally even told me that once he's
16 there somebody will give his kids a few quarters to go to
17 the store, buy them something to drink and something to
18 eat. He said he's been coming there all of his life. He
19 did state that once he got there he was arguing with
20 Johnny, I believe his name is Johnny, his brother, which
21 is Bobby's brother. And during the argument that he
22 looked and Bobby Sims actually came out of the house
23 cussing at him, cussing at his child and making a scene.
24 And after he got done arguing -- they were arguing and he
25 said that Bobby threatened to -- I think his actual

CHRISTOPHER REYNOLDS

1 words -- I can read the statement.

2 Q That will clear it up.

3 A Okay. This is the victim's statement. This
4 statement was written by his sister, I think. With
5 Nantonio, he couldn't write with his arm being in a sling.

6 Q Is that because the arm he normally wrote with had
7 been shot that night?

8 A Right, and he had surgery on it. It says, "I
9 Nantonio Byrd, went to Johnny Ray and Bobby Sims's house
10 around 4/11/2014 around 9:00 p.m after leaving my mom's
11 house, Elizabeth Byrd's house. They stay in Lowrys, South
12 Carolina. While pulling up in the Sims yard Johnny Ray
13 was sitting on the front porch of his house. I got out of
14 the truck with my two kids, Nashawn and Nantonio Byrd. We
15 walked up on the porch, started talking to Johnny Ray
16 because we wanted to check up on them, I asked Johnny
17 Ray where was Bobby and he said he was in the house and
18 smoking crack. My son went to Johnny Ray talking to him
19 like he was normal -- like he normally does and Johnny
20 started using obscene language and talking hateful to him
21 so I told Johnny not to talk to my son, Nantonio, Jr. like
22 that because I wouldn't talk to your child like that.
23 That's when Bobby came outside, yelling, 'Shut the hell
24 up. Tony wouldn't' -- I'm sorry, it's hard to read --
25 'Tony wouldn't want to hear that shit,' he said, 'I'm sick

CHRISTOPHER REYNOLDS

1 of your shit,' and I told him, 'I'm sick of your shit
2 too.' That's when Bobby said, 'Wait a minute, I got
3 something for that shit.' He went in the house, he came
4 back out with a gun. I thought Bobby was playing, but
5 when I seen the gun I grabbed Nantonio, Jr. and Bobby
6 started firing the gun. He shot soon as I grabbed him and
7 threw him and that's when I got shot in the right wrist.
8 So Nantonio wouldn't get shot I threw him" -- I'm sorry, I
9 can't read exactly what that says. "That's when I got
10 shot protecting him. After shooting me in the wrist he
11 shot me two times in the chest, that's when I grabbed
12 Nantonio, Jr. and started running and that's when -- he
13 was already shooting when I was carrying, running with my
14 son. He was running after me shooting yelling, 'I'm going
15 to kill, I'm going to get that mother fucker,' while
16 running being shot three times in my chest. I was running
17 toward the fire department to get help.

18 Q So that's the statement that he gave y'all?

19 A Yes.

20 Q So you stated a minute before you started reading the
21 statement that it was Bobby that was saying something to
22 his son, that he stated that it was Bobby saying something
23 to his son?

24 A It was Johnny.

25 Q So it was Johnny who was saying something to his son?

CHRISTOPHER REYNOLDS

1 A Yes. And Bobby came out cussing.

2 Q But there's no allegation from Nantonio that Bobby was
3 the one who was saying something inappropriate or obscene
4 to his son.

5 A Correct.

6 Q Okay. Throughout the course of your interviews with
7 Bobby, did he ever actually admit he even knew the boy was
8 there?

9 A No. He actually stated that he did not know that his
10 son was with him.

11 Q So he denied over and over that he knew his son was
12 with him.

13 A He did.

14 Q And you questioned him pretty hard about that; isn't
15 that correct?

16 A Yes, sir, I did.

17 Q Saying that he had said something obscene to him and
18 down that line of questioning?

19 A Yes, sir, I did.

20 Q But it was not, in fact, Bobby who was alleged to have
21 said something to his son.

22 A It was Johnny.

23 Q Okay. Thank you. Based on the statement -- also when
24 you were interviewing Bobby, did he ever state that he told
25 Nantonio to leave?

CHRISTOPHER REYNOLDS

1 A Yes.

2 Q Did he say that as part of every one of his statements
3 that he gave to you?

4 A He did.

5 Q So he was very consistent in saying that he told
6 Nantonio at some point to leave.

7 A Right.

8 Q And you --

9 A I do recall that he did state during the interview
10 that when they were walking to the burn barrel he told him
11 "to get the hell out of here" is what he said.

12 Q You just read the statement by Nantonio Byrd.

13 A Right.

14 Q Didn't Nantonio admit that he was told to leave?

15 A I don't remember what he said, it was kind of hard to
16 read.

17 Q I'll let you consult it.

18 A Okay. It says, "That's when Bobby came outside
19 yelling shut the hell up to him. Wouldn't want to -- he
20 said, "I don't want to hear that shit. I told him I
21 didn't want to hear that shit."

22 Q Okay. So --

23 A I don't see it.

24 Q So at best, though, even Nantonio says that Bobby says
25 he didn't want to hear from him.

CHRISTOPHER REYNOLDS

1 A Right.

2 Q Did Nantonio make any statements to you other than
3 what was written out at his written statement at any point
4 during the course of your investigation?

5 A Not a written statement.

6 Q Was there any recorded statements that he made?

7 A No, sir.

8 Q So there was never a recorded interview of Nantonio's
9 conversation with you or any other officer that you know
10 of.

11 A No, sir.

12 Q And how old was Nantonio, Jr. who was on the porch
13 that night?

14 A I'm not sure, five maybe.

15 Q Was there an attempt to interview him?

16 A There was one attempt where a forensic interview was
17 set up and they didn't make the -- we couldn't get ahold
18 of the victim to let them know what time the forensic
19 interview was. So no, there's no interview for the child.

20 Q So there's never an interview of the child in this
21 case.

22 A No, sir, not by me.

23 Q Was Nantonio and/or another caretaker of the child
24 informed of when the interview was supposed to be?

25 A No, sir, we couldn't get ahold of him. And that was

CHRISTOPHER REYNOLDS

1 actually this past Wednesday.

2 Q Okay. So that was this week that the attempt was
3 made.

4 A That's correct.

5 Q Nearly a year after -- nine months after the alleged
6 incident.

7 A I can explain why that happened.

8 Q Okay.

9 A We set it up with a process of forensic interview,
10 which is the paperwork with Safe Passage in Rock Hill,
11 they said that they did not receive our fax. We have
12 proof that we did fax it to them and it did go through, so
13 it was a paperwork mishap.

14 Q From your experience as an officer, would it be better
15 to interview a five year old child close to the time of the
16 incident or nine months after the incident to get a good
17 testimony?

18 A Closer to the time.

19 Q Okay.

20 MR. NIELSON: Thank you. Beg the Court's indulgence
21 for one minute, Your Honor.

22 THE COURT: Yes, sir.

23 (Break in proceedings.)

24 MR. NIELSON: Your Honor, if I may approach the
25 witness and show him a couple of more pictures.

CHRISTOPHER REYNOLDS

1 MS. FRIAR: Can I see them?

2 MR. NIELSON: Yes. Your Honor, I don't know if you
3 want these in evidence, they're already in evidence in the
4 pictures that are part of the DVD.

5 THE COURT: If they are just duplicates you can just
6 show him.

7 Q What is that a picture of, Detective Reynolds?

8 A That's a picture of the front screen door on the
9 front of the house.

10 Q Is that another picture of the front screen door on
11 the front of the house?

12 A That's correct.

13 Q What are these three -- or four pictures pictures of?

14 A This picture with a tape measure on it is the bullet
15 hole where he was shot from inside the house.

16 Q Okay.

17 A These are other holes from other times that -- I
18 can't explain these holes. These are larger holes than
19 the holes that we measure with a tape measure. This is
20 another picture of one of the holes. This is the close-up
21 picture that shows the fibers of the screen in the
22 direction. It's not a very good picture but it's the best
23 we could do in our equipment. But it shows the direction
24 of the fibers of the screen pointing from the inside out
25 as in a bullet would transfer through.

CHRISTOPHER REYNOLDS

1 Q So a bullet would have had to go from in the inside of
2 the screen to the outside of the screen to make that
3 puncture.

4 A That's correct.

5 Q And what's this one?

6 A This is just showing the diameter of the .22. It was
7 a .22 rifle and the .22 round it went through.

8 Q So it's your testimony that the newer holes in that
9 screen door that you measured and believed to be the holes
10 that were made by Mr. Bobby Sims shooting at Mr. Nantonio
11 Byrd were bullet -- were made by a gun shooting from the
12 inside of the house to the outside of the house with the
13 screen door closed; is that correct?

14 A On the night that he was shot, that the victim was
15 shot, yes, sir.

16 MR. NIELSON: No further questions for this witness.
17 Answer anything that the solicitor has.

18 THE COURT: Madam Solicitor?

19 MS. FRIAR: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MS. FRIAR:

22 Q Investigator Reynolds, was Deputy Peoples the first
23 person to arrive on the scene from the sheriff's office?

24 A Yes, ma'am, he was.

25 Q And does he have some sort of equipment in his vehicle

CHRISTOPHER REYNOLDS

1 on his body whereby he can record audio and video from
2 scenes?

3 A He does.

4 Q And did he have the opportunity to record part of this
5 scene this night?

6 A He did.

7 Q If you could tell us, have you had an opportunity to
8 review that?

9 A Yes, ma'am.

10 Q And as Deputy Peoples arrived to the scene, who is
11 present at the place where somebody was shot and where was
12 that?

13 A At the home?

14 Q No. Where was the person who was shot?

15 A The victim?

16 Q Yes, sir.

17 A The victim was in the Lowrys Fire Department.

18 Q So Mr. Byrd was at Lowrys Fire Department.

19 A That's correct.

20 Q How had y'all gotten alerted that something had
21 happened?

22 A A passer buyer in a car seen him on the side of the
23 road and stopped and helped and rendered aid and she said
24 he was shot.

25 Q And did he say that he was with a little boy as well?

CHRISTOPHER REYNOLDS

1 A Yes, sir.

2 Q And that's information y'all received when y'all went
3 there; is that correct?

4 A That's correct.

5 Q And when Deputy Peoples arrived, did he find Mr. Byrd
6 and his son in front of the fire department?

7 A He did.

8 Q And isn't it true that at that time little Nantonio
9 Jr. said to Deputy Peoples, "Bobby had shot my daddy?"

10 A Yes, ma'am, he did. And it was a recorded statement.

11 Q And that's something that has been turned over to the
12 defense and is part of our record; is that correct?

13 A Yes, ma'am.

14 Q And so then when he was at the scene, were the
15 officers responding for two different purposes, one to help
16 the victim and one to find out what went on?

17 A That's correct.

18 Q Can you explain to Judge Gibbons about that, what
19 happened with that, what happened regarding that?

20 A Yes, ma'am. When officers arrived from the narcotics
21 team and also patrol uniformed deputies, we didn't know
22 exactly what the scene was, who was shot, I mean who did
23 the shooting, we did have a name. And they actually went
24 to the home, which is a few hundred yards behind the store
25 in Lowrys, and when the officers arrived at the house on

CHRISTOPHER REYNOLDS

1 foot they found Mr. Sims walking from around the house and
2 went ahead and obtained him then.

3 Q When the officers first arrived, were part of the
4 officers -- some of the officers were Sergeant Neal; is
5 that correct?

6 A That's correct.

7 Q And Sergeant Crawford; is that correct?

8 A That's correct.

9 Q And Captain Darby; is that correct?

10 A That's correct.

11 Q And when they arrived and other officers arrived at
12 the scene and first responding officers arrived at the
13 scene, isn't it true that Mr. Byrd was saying he was
14 concerned for his own life, he thought he was dying?

15 A That's correct.

16 Q And he said, "Get my son;" is that correct?

17 A That's correct.

18 Q All right. What was he referring to trying to tell
19 the officers while he was trying to recover from the --

20 A He was referring to his other son, his second son was
21 actually asleep in the truck during the altercation.

22 Q So one son, one five year old son was with the
23 gentleman when he was found being shot; is that correct?

24 A Correct?

25 Q And the victim kept orating over and over, "Go get my

CHRISTOPHER REYNOLDS

- 1 son, he's in the truck;" is that correct?
- 2 A Yes, ma'am.
- 3 Q And who was he referring to?
- 4 A The son's name?
- 5 Q Yeah. Is it Nashawn?
- 6 A Yes, ma'am.
- 7 Q So Nashawn was in the truck down there by the house;
- 8 is that correct?
- 9 A Right.
- 10 Q And so were y'all able to locate that little boy?
- 11 A We were.
- 12 Q How far was that truck from the entrance of this home
- 13 where the shooting had occurred?
- 14 A It was less than 50 feet.
- 15 Q All right, sir. When the officers arrived and they
- 16 were able to get the other little boy out of the truck and
- 17 able to secure the five year old and get medical assistance
- 18 for the victim, did he have to be held back out?
- 19 A Ma'am?
- 20 Q How did the victim get transported from medical
- 21 attention?
- 22 A The victim?
- 23 Q Yes, sir.
- 24 A He was airlifted to the Charlotte Medical Center.
- 25 Q And during this course of time, was Sergeant Neal and

CHRISTOPHER REYNOLDS

1 Sergeant Crawford able to apprehend Mr. Sims?

2 A They were.

3 Q And have you had an opportunity to review statements
4 that Sergeant Neal, Sergeant Crawford and Captain Darby
5 gave to you?

6 A Yes, ma'am, I have.

7 Q Now, during the course of them going to try to locate
8 Mr. Sims did they say Mr. Sims was rambling on about
9 anything?

10 A Yes, ma'am, he was.

11 Q And is the first thing he said was Somebody else shot
12 Nantonio?

13 A Absolutely.

14 Q "Somebody else did it, I didn't do it at all."

15 A That led us to believe that somebody was still in the
16 area with a gun.

17 Q So what did y'all do because of that?

18 A The team that was down there then, they spread out to
19 go ahead and search the home and -- exigent circumstances
20 search the home and search the property to make sure
21 nobody else was in danger.

22 Q And so nobody else was even down there; is that
23 correct?

24 A No, ma'am, they wasn't.

25 Q And when y'all went into the home -- I'm going to show

CHRISTOPHER REYNOLDS

1 you what has been marked as State's Exhibit Number 1. Is
2 that a true and accurate representation of how the house
3 appeared the evening?

4 A Yes, ma'am.

5 Q As opposed to how the house appeared the next day?

6 A That's correct. This is the nighttime pictures.

7 Q So the picture is already in evidence for the court
8 submitted but the defense are pictures that happened the
9 next day, that y'all took the next day; is that correct?

10 A That's correct.

11 Q This is the picture that was taken that night; is that
12 correct?

13 A Yes, ma'am.

14 Q Can you please describe inside the house right there
15 and what that looks like?

16 A Inside the house is very cluttered, hard to walk,
17 actually no way to walk throughout the home without
18 stepping on some type of items.

19 Q How many rooms were in it?

20 A I'm not sure. I can't remember how many rooms it
21 was.

22 Q Does the first room look like it was occupied?

23 A The first room was actually a foyer type --

24 Q Okay.

25 A -- a small foyer that I'm looking at right here and

CHRISTOPHER REYNOLDS

1 it was cluttered.

2 Q Okay. And that foyer is right in front of the area
3 where the screened porch is; is that correct?

4 A Yes, ma'am.

5 Q And were you able to find any shell casings there?

6 A No, ma'am, we could not.

7 Q And if somebody had shot somebody right there, would
8 you think you would have found shell casings?

9 A Possibly.

10 Q Did you look for them?

11 A We did.

12 Q Couldn't find any.

13 A After the search warrant we could not find any.

14 Q Okay. When you talked with Mr. Sims later on
15 videotape and looking at that photograph right there, could
16 you please describe for the Court the chairs and where
17 people sat and whose chairs were who?

18 A The chair on the left was where Johnny Sims sat and
19 drank his beer, and actually slept. One of the statements
20 from Mr. Sims says he slept in the chair. The other chair
21 was actually Bobby Sims's chair.

22 Q So as far as both the defendant and the victim in this
23 case, they both indicate that Mr. Johnny Ray Sims was
24 sitting in that chair right there that you were describing
25 that's overturned; is that correct?

CHRISTOPHER REYNOLDS

1 A Yes, ma'am.

2 Q And the screen behind him is where the defendant is
3 alleged to have fired from; is that correct?

4 A That's correct.

5 Q So if somebody was sitting in that chair and somebody
6 was firing from that screen, would it be possible that they
7 would try to run away from the scene and overturn the
8 chair?

9 A Yes, ma'am.

10 Q Okay.

11 MS. FRIAR: Your Honor, I would ask that you look at
12 this as we go through and talk about it.

13 THE COURT: That's going to be on Defense Number Five?

14 MR. NIELSON: Yes, Your Honor.

15 MS. FRIAR: Actually, it's not, it's State's Number 1.
16 I think defenses are daytime, this is nighttime, this is a
17 different photograph, it's going to be on the tape.

18 MR. NIELSON: The nighttime photos are also on the DVD
19 as well.

20 MS. FRIAR: Thank you, Your Honor.

21 Q Okay. So the first thing that he said was somebody
22 shot him; is that correct?

23 A Yes.

24 Q Somebody besides himself. And then what was the next
25 thing that he told the officers?

CHRISTOPHER REYNOLDS

1 A The night he told them that he didn't know who shot
2 him, and then he stated that -- let me go back and look.
3 He did state at first he didn't know who shot him, and he
4 stated that -- if I recall it he stated that somebody shot
5 him but couldn't get a description of him.

6 Q And then thereafter did he admit that he did shoot the
7 victim, but he shot him because -- somebody had shot
8 somebody because somebody was trying to rob him and that
9 person robbing him cut his hand; is that correct?

10 A Yes, ma'am, that's correct.

11 Q So that's the second thing he said. He first says, "I
12 didn't shoot the gun, I didn't shoot nobody."

13 A Right.

14 Q Then he says, "I shot somebody that was trying to rob
15 me and that person who was trying to rob me cut me;" is
16 that correct?

17 A That's correct.

18 Q Now, then I believe Captain Darby has an opportunity
19 to interview the victim as well; is that correct?

20 A He does.

21 Q And this has all been under Mirandized rights; is that
22 correct?

23 A That's correct.

24 Q And when he talks with Captain Darby -- and you've had
25 an opportunity to review Captain Darby's statement, have

CHRISTOPHER REYNOLDS

1 you not?

2 A I have.

3 Q Isn't it true that he told Captain Darby two black
4 males tried to attack him and they cut him?

5 A He did, that's correct.

6 Q All right. Regarding the evidence at the scene and
7 the photograph that was taken that night, I'm going to show
8 you what has been marked as State's Number 4 and ask you if
9 you can tell us what this is?

10 A The evidence marker is B that we laid down. There is
11 a knife that was later identified as one of the knives
12 that are over in the fish station -- fish cleaning station
13 is what Mr. Bobby referred to. And also I think it was a
14 black glove or dark colored glove that was laying on the
15 steps.

16 Q So the photograph that the Court is looking at and has
17 access to, State's Exhibit Number 1, that's just a close-up
18 of the knife and the pair of gloves that were found when
19 y'all entered the scene; is that correct?

20 A Yes, ma'am, that's correct.

21 Q If you see anything else on that porch, do you see a
22 cellphone on that porch?

23 A Not in this picture. But there was a cellphone which
24 was the victim's -- identified as the victim's cellphone.

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

CHRISTOPHER REYNOLDS

1 Exhibit Number 8.

2 A That's the victim's cellphone.

3 Q So as you approached the scene and you are at the
4 house in the photograph that the Court has, there was a
5 cellphone that belonged to the victim; is that correct?

6 A That's correct.

7 Q And also, what is there?

8 A There's a Natural Light can, a beer can.

9 Q And was that can full or empty?

10 A It was full.

11 Q Open or unopened?

12 A It was unopened.

13 Q So the victim's cellphone -- did you determine whose
14 beer that was?

15 A Yes, that was the victim's.

16 Q And so the victim's cellphone and the victim's can of
17 beer was on the porch; is that correct?

18 A That's correct.

19 Q The victim did not have the cellphone on him at the
20 time when he got shot then; is that correct?

21 A No, ma'am.

22 Q All right.

23 A He actually stated in a verbal statement that he laid
24 the cellphone down along with an unopened beer and an open
25 beer that he was drinking at the time of the incident.

CHRISTOPHER REYNOLDS

1 Q Okay. I'm going to show you what has been marked --
2 I'm going to show you what has been marked as State's
3 Exhibit Number 2 and 3 and ask you, can you tell what this
4 is?

5 A Yes, ma'am. This is the second knife that was laying
6 in the yard at the scene.

7 Q Okay.

8 A And it's laying really close to the victim's truck.

9 Q And so the knife that -- there was one knife found on
10 the steps with a pair of gloves; is that correct?

11 A Yes, ma'am.

12 Q And then there was another knife found on the ground
13 near the victim's truck; is that correct?

14 A Correct.

15 Q All right, sir. Now, did you have an opportunity to
16 photograph the defendant that night?

17 A Yes, ma'am, I did.

18 Q All right. And I'm going to show you what has been
19 marked as State's Exhibits Number 5, Number 6 and Number 7.
20 Would you please tell us what that is a photograph of?

21 A This is a photograph of Mr. Bobby Sims.

22 Q All right. And what can you tell us about these
23 photographs? How did Mr. Bobby Sims appear as far as his
24 jacket is concerned?

25 A His jacket was -- had a rip or some type of rip or

CHRISTOPHER REYNOLDS

1 cut from -- a vertical rip or a vertical tear.

2 Q And as to State's Number 7 that you reviewed, what is
3 that a photograph of?

4 A Seven is a photograph of his left hand, that's a cut
5 with blood.

6 MS. FRIAR: Your Honor, at this time I would like for
7 you to view these in order so I would like to move them
8 into evidence.

9 THE COURT: Okay. Any objection?

10 MR. NIELSON: No, Your Honor.

11 THE COURT: Have they already been marked?

12 MS. FRIAR: Yes, Your Honor.

13 THE COURT: All right. They've been offered into
14 evidence without objection, they're in evidence.

15 (The photographs were received as State's 5-7.)

16 Q Was Mr. Sims taken into custody at that time?

17 A Yes, ma'am.

18 Q All right. Did you have an opportunity to interview
19 Mr. Sims the next day?

20 A Yes, ma'am, I did.

21 Q Okay. When you spoke to Mr. Sims about Mr. Byrd
22 coming to his house, what did he tell you about that?

23 A He stated that he comes over there anytime, that he
24 has known him since he was a young child, and they come
25 over and pitch horse shoes, drink beer together and

CHRISTOPHER REYNOLDS

1 they're friends.

2 Q Okay, sir. And so Mr. Sims -- Mr. Johnny Sims and Mr.
3 Bobby Sims who live at that house frequently have Mr. Byrd
4 as a guest in their home.

5 A Yes, ma'am.

6 Q He's invited in their home.

7 A Yes, ma'am.

8 Q It is widely done and done often; is that correct?

9 A Yes, ma'am.

10 Q Pretty much everyday?

11 A Yes, ma'am. I think he said it was four or five days
12 a week they come over.

13 Q The next day when you interviewed Mr. Sims, and this
14 was on the tape from the department that's been entered
15 into evidence, Mr. Sims didn't say anything at all like the
16 things that he had said the night before.

17 A No, ma'am, he didn't.

18 Q None of the stories at all about the night -- like the
19 night he said before; is that correct?

20 A No, ma'am.

21 Q On this particular occasion what did he tell you
22 first?

23 A He said that the argument was over \$20 -- first of
24 all he said \$20, later on he said \$28 -- but \$20. He owed
25 Mr. Byrd \$20 and the argument was over a \$5 interest.

CHRISTOPHER REYNOLDS

1 Q Okay. And so he's saying that Mr. Sims -- when he
2 knew Mr. Byrd was at his house, he showed up and said that
3 he owed him \$20 and then they argued over whether there
4 would be \$5 interest; is that correct?

5 A Yes, ma'am.

6 Q All right. And so did any of this time when you're
7 interviewing Mr. Sims, does he say anything about the child
8 being there first of all, the five year old?

9 A No, ma'am.

10 Q Does he say anything about an argument between his
11 brother and the five year old?

12 A No, ma'am.

13 Q And so he does not say anything about them arguing at
14 that time; is that correct?

15 A No, ma'am, he doesn't.

16 Q All right. What is the next thing he told you, sir?

17 A He says that Nantonio pulled -- I'm sorry. His words
18 were -- he said to the -- he said that they were in a
19 tussle. They did not hit each other with closed fists but
20 they were tussling is what he said.

21 Q All right. And so what happened after that?

22 A He said once they tussled that he tried -- he walked
23 in the house and Nantonio ripped the door open.

24 Q At some point in this story does he say he latched the
25 screen door?

CHRISTOPHER REYNOLDS

1 A He does.

2 Q And does he say that Nantonio ripped the door open?

3 A He does.

4 Q I'm going to show you what's been marked as State's
5 Number --

6 A His exact words were that he latched the door.

7 Q So Mr. Sims says he latched the door.

8 A Latched the door closed.

9 Q Is that correct?

10 A Yes, ma'am, the screen doors.

11 Q And I'm going to show you what has been marked as
12 State's Number 9 and 10. And if you could, tell Judge
13 Gibbons what these are?

14 A This is close-up photos of the lock on the door which
15 he referred to as a latch, and the latch is actually just
16 one piece of metal with a I-bolt screwed into the door on
17 the inside of the screen door.

18 Q And you observed this physically yourself, is that
19 correct, Investigator Reynolds?

20 A Yes, ma'am.

21 Q And when you observed the latch part of it, was there
22 any deformity to the part that -- the long part that
23 latches into the hook?

24 A No, ma'am. There was no damage to it.

25 Q And so you got a picture there of the hook you say

CHRISTOPHER REYNOLDS

1 that it goes into; is that correct?

2 A That's correct.

3 Q When you went to the scene, were you able to latch the
4 latch back into the hook on the wall?

5 A I was.

6 Q Was there any indication that it had been ripped
7 apart?

8 A No, ma'am.

9 Q Was there any damage to the latch?

10 A No, ma'am.

11 Q Was there any damage to the hook?

12 A No, ma'am.

13 MS. FRIAR: Your Honor, at this time we move these
14 into evidence.

15 THE COURT: Any objection?

16 MR. NIELSON: No, Your Honor.

17 THE COURT: Without objection introduced then as
18 State's 9 and 10.

19 (The photographs were received as State's 9 and 10.)

20 Q Okay. I believe the next thing he told you was -- Mr.
21 Sims is that he walked outside to the burn barrel and
22 Nantonio picked up a fishing knife and tried to cut him; is
23 that correct?

24 A That's correct.

25 Q Later does he tell you, sir, that Nantonio never had a

CHRISTOPHER REYNOLDS

1 knife?

2 A That's correct.

3 Q And so that was not true what he said.

4 A No, ma'am, it was fabricated.

5 Q Now, please tell the Court what he said to you when he
6 said that Nantonio ripped the door open, what was he doing?
7 What was he already doing?

8 A He said that -- Mr. Sims said he was in his house
9 waiting on Nantonio and he was at his ambush spot.

10 Q Please describe to the Court where his ambush spot
11 was.

12 A He described it in the interview that he walked in
13 the front door and it was over to the left. He said the
14 only light that he had, which I did observe that night,
15 was some type of glass lantern, I don't know what fuel it
16 was, but it was a gas lantern in the background. And he
17 says once you walk through the door you turn to the left,
18 and in between the doorway and the front foyer walk --
19 front wall is his ambush spot, that nobody can see where
20 he was.

21 Q So if somebody was entering the house they wouldn't
22 see him behind in his ambush spot; is that correct?

23 A No, ma'am.

24 Q And that's where he said he was standing; is that
25 correct?

CHRISTOPHER REYNOLDS

1 A That's correct.

2 Q All right. Now, he was telling you that all of this
3 happened when Nantonio walked into his house; is that
4 correct?

5 A Yes.

6 Q So at this time he's staying in his house and Nantonio
7 was in his house; is that correct?

8 A Yes, ma'am.

9 Q What did he tell you that he had done with the gun
10 after he shot Mr. Byrd?

11 A The first thing he told us was that he broke the gun
12 in half, and he describes breaking it over his leg in a
13 downward motion and placing the two pieces in the well.

14 Q All right. And was there a well in the back yard?

15 A Yes, ma'am, it was.

16 Q And did the well have a roof of a building on top of
17 it?

18 A It does.

19 Q I'm going to show you what's been marked as 11 and 12
20 State's Exhibit. Could you please address the Court and
21 tell him what that is a reflection of?

22 A This is a roof of an old storage building. And the
23 second picture, 12, is a picture of the top of the well.
24 The top of the well has a 55 gallon drum with some type of
25 wood top on top of the drum to keep anything -- to prevent

CHRISTOPHER REYNOLDS

1 anything from falling down in the well. And also the
2 picture shows that the roof of the building is on top of
3 the well itself.

4 Q All right. And so isn't it true Mr. Sims told you
5 that the well was deep and that you would not probably find
6 the gun at the bottom of the well?

7 A Yes, ma'am, he did.

8 Q And so did you go search the well at that time?

9 A I did.

10 Q And could you tell the Court the state you found that
11 in?

12 A After the first interview I went back out to the
13 crime scene, and the pictures shows where it's a very
14 heavy -- I couldn't move it myself -- roof that's
15 collapsed on top of the well, which then we realized that
16 he was not telling the truth where he put the gun at.

17 Q So it would be an impossibility for him to have put
18 the gun in that well.

19 A Yes, ma'am.

20 Q So he was making that up when he told you that; is
21 that correct?

22 A Yes, ma'am, he was.

23 Q All right. And this is the weapon that he used to
24 shoot the victim with; is that correct?

25 A That's correct.

CHRISTOPHER REYNOLDS

1 Q So when you went out there the next day, Investigator
2 Reynolds, I assume the first thing you did that day is to
3 interrogate Mr. Sims; is that correct?

4 A Yes, ma'am.

5 Q And the second thing you did was, based on what he
6 told you, go back out to the scene and see if it matched
7 up; is that correct?

8 A That's correct.

9 Q So the first thing you found out was he couldn't have
10 put the gun down the well; is that correct?

11 A That's correct.

12 Q All right. Did you notice anything else regarding the
13 screen door? And I think you illuded to this somewhat with
14 the defense, when it was daylight were you able to find
15 bullet holes in the screen door?

16 A I was.

17 Q And you took measurements of those; is that correct?

18 A Yes, ma'am.

19 Q And we have what I would like to submit to you is
20 somewhat similar to what you have talked about and
21 described but have not been admitted on the photograph by
22 Mr. Nielson states --

23 A We found three holes.

24 Q Okay. Found three holes, 13, 14 and 15; is that
25 correct?

CHRISTOPHER REYNOLDS

1 A That's correct.

2 Q And tell the Judge what these are photographs of.

3 A This is a photograph of the front screen door with
4 some type of projectile starting from the inside of the
5 house and coming through the door. We determined that by
6 the size of the holes that fits the .22 caliber rifle that
7 we were looking for, and also the fibers of the screen was
8 in the direction of the projectile from the inside
9 outward.

10 Q Okay. And so were you able to -- so what you're
11 telling us some fibers in the screen had larger holes and
12 that they were damaged from the outside coming into the
13 house; is that correct?

14 A Yes, ma'am.

15 Q But these photographs depict square or round very
16 sharp and pointing from the inside out photographs of
17 holes in the screen.

18 A That's correct. There were no other holes -- there
19 were three holes that came through the screen door that
20 fit that description.

21 Q All right, sir.

22 MS. FRIAR: Your Honor, at this time I would like to
23 admit these into evidence.

24 THE COURT: Have they already been marked?

25 MS. FRIAR: Yes, sir.

CHRISTOPHER REYNOLDS

1 THE COURT: Any objection?

2 MR. NIELSON: No, Your Honor.

3 THE COURT: Without objection introduced.

4 (The photos were received as State's 13, 14 and 15.)

5 Q Now, was it at this time in the daylight when you had
6 the opportunity to look at the latch and the hook that we
7 talked about earlier?

8 A Yes, ma'am. That's when the photographs were made.

9 Q And that's when the photographs were made; is that
10 correct?

11 A Yes, ma'am.

12 Q All right. So were you able to locate the gun when
13 you were out there?

14 A No, ma'am, not at that time.

15 Q Okay. Did you have an opportunity to go back into an
16 interview with Mr. Sims after you found this evidence at
17 the scene?

18 A Yes, ma'am, I did.

19 Q All right. What did he tell you at that time
20 regarding the gun?

21 A After he was Mirandized again on the same day the
22 second interview, that he did admit -- after we proved
23 that he could not physically have put that gun down a
24 well, that he did admit that he stuck it in a brush pile,
25 I think his words were he stashed it or put it in a brush

CHRISTOPHER REYNOLDS

1 pile behind the house.

2 Q And did you have an opportunity to confront him about
3 his story about Nantonio yanking the door loose and
4 damaging the latch and the hook?

5 A Yes, ma'am, I did. And he did admit that he did
6 discharge a weapon through the door.

7 Q And did he also say that Mr. Byrd didn't yank open the
8 door after all?

9 A He did.

10 Q In fact, Mr. Byrd was not in the house at all.

11 A No, he wasn't.

12 Q And then did you confront him about the holes in the
13 screen that you found where it had been shot through?

14 A I did.

15 Q After hearing all of these things that you confronted
16 him with that the evidence showed, what did he say to you
17 regarding shooting Mr. Nantonio Byrd? Did he shoot him in
18 house or out of his house?

19 A He was outside the house when he discharged the
20 firearm.

21 Q So Mr. Byrd wasn't in the house after all.

22 A No, ma'am.

23 Q He was outside, and he admitted that he was shooting
24 at him through the screen door at that point; is that
25 correct?

CHRISTOPHER REYNOLDS

1 A That's correct.

2 Q All right, sir. After this, sir, did you give Mr.
3 Sims the opportunity to show you where the gun really was
4 at?

5 A I did.

6 Q I'm going to show you what has been marked as Exhibits
7 Number 16 and 17. Did y'all discuss anything else
8 regarding the evidence before you went out to the scene
9 after having this conversation with Mr. Sims?

10 A We did.

11 Q And what was that?

12 A I questioned him about the knives, the two knives we
13 collected from the scene, and he admitted they were from
14 the fish station and he admitted that he planted the
15 knives at the crime scene, that Nantonio did not have a
16 knife and nobody else was with him had a knife.

17 Q What did he say -- so he admitted to planting the
18 knife near the victim's truck?

19 A Yes, ma'am.

20 Q He admitted to planting the knife on the steps.

21 A Yes, ma'am, and the gloves.

22 Q And he admitted to planting the gloves on the steps;
23 is that correct?

24 A Yes, ma'am.

25 Q And as part of his first statement the first time he

CHRISTOPHER REYNOLDS

1 said that the person wore gloves who was attacking him and
2 robbing him?

3 A Right.

4 Q But at this point what does he tell you about how his
5 jacket got ripped open?

6 A I asked him about his clothes and his jacket, and
7 during the video interview he admitted that he took the
8 knife in his right hand, pulled his shirt out and in a
9 downward motion he cut his shirt to make it look like he
10 was attacked, and the knife slipped and accidentally cut his
11 hand.

12 Q So nobody else cut his hand.

13 A No, ma'am.

14 Q He admitted that he ripped his jacket on his own to
15 look like somebody had stabbed at him; is that correct?

16 A Yes, ma'am.

17 Q And in so doing he cut his own hand; is that correct?

18 A It was self inflicted, that's correct.

19 Q Okay. Did he tell you anything else that you think
20 the Court should know before you went out to the scene to
21 look for the gun again?

22 A No, ma'am.

23 Q All right, sir. So you go out to the scene and I have
24 handed up Exhibit Numbers 17 and 18 to you. What is that a
25 photograph of?

CHRISTOPHER REYNOLDS

1 A This is a photograph of the .22 rifle that was used
2 during the shooting that night.

3 Q So this is when Mr. Sims comes to you with the real --
4 this is where he put the gun and showed you where he put
5 it; is that correct?

6 A Yes, ma'am. He was transported out to the scene the
7 following day after the interview to show us exactly where
8 the gun was.

9 Q Had you led him to believe that his brother, Johnny,
10 might be getting trouble regarding this gun if he didn't
11 assist you in finding the gun?

12 A I did.

13 Q And do you feel that is the only reason he told you
14 where this gun was?

15 A Yes, ma'am, I do.

16 Q So you were able to locate the gun.

17 A I was.

18 Q And those are the photographs of where it was found
19 and the gun itself; is that correct?

20 A That's correct.

21 MS. FRIAR: Your Honor, at this time I would like to
22 enter these into evidence.

23 MR. NIELSON: Without objection.

24 THE COURT: Without objection. Have they been marked?

25 MS. FRIAR: Yes, Your Honor, they are State's 17 and

CHRISTOPHER REYNOLDS

1 18.

2 THE COURT: They are in evidence.

3 (The photos were received as State's 17 and 18.)

4 Q When you found this gun and you realized what kind of
5 gun it was, let's go back to when you first walked into the
6 house and you saw that bullet on the floor.

7 A Yes, ma'am.

8 Q What kind of bullet was found on the floor?

9 A It was a .22 long rifle bullet.

10 Q And it was a live cartridge .22?

11 A That's correct.

12 Q Is that consistent with the caliber of weapon that you
13 found?

14 A Yes, ma'am.

15 Q Still no shell casings found, though.

16 A No shell casings.

17 Q Now, in the photograph that we have of the gun, you
18 have the gun in the evidence at the Chester County
19 Sheriff's Department; is that correct?

20 A Yes, ma'am.

21 Q Have y'all had an opportunity to measure the barrel of
22 that thing?

23 A We have.

24 Q And it's a rifle, right?

25 A Yes, ma'am.

CHRISTOPHER REYNOLDS

1 Q It's a sawed off rifle; is that right?

2 A It's a sawed off rifle.

3 Q What is the measurements of the barrel on that gun?

4 A It's about 11 inches long.

5 Q So it's certainly under 16 inches; is that correct?

6 A Yes, ma'am.

7 Q During the course of this interview -- now, you've
8 already read into evidence a statement of the victim, Mr.
9 Byrd, and part of his statement it says, "I asked Johnny
10 Ray where Bobby was and he said getting high off smoking
11 crack;" is that correct?

12 A That's correct.

13 Q Did you have an opportunity to question Mr. Sims about
14 whether or not he was smoking crack that night?

15 A I did.

16 Q And what did he tell you, sir?

17 A He later on did admit that -- I actually asked him if
18 we pulled his blood or if he volunteered a blood test what
19 would show up, and he said that crack cocaine would be in
20 his system.

21 Q And he admitted to using the crack and was under the
22 influence of crack at that time; is that correct?

23 A Yes, ma'am, he was.

24 Q Okay. So then after this, did you have an opportunity
25 to get a written statement from Mr. Bobby Sims?

CHRISTOPHER REYNOLDS

1 A I did.

2 Q All right.

3 A It was actually a typed statement that I typed and I
4 read to him during the interview, it was audio and video
5 recorded and he signed it after I read it and explained
6 the statement to him.

7 Q Okay. So his final story is in this statement that
8 you have; is that correct?

9 A Yes, ma'am.

10 Q And in the statement he says, "We did not hit each
11 other with our fists;" is that correct?

12 A Yes, ma'am.

13 Q He said he told Nantonio to leave and he didn't so he
14 went inside and got his .22 caliber rifle; is that correct?

15 A That's correct.

16 Q He indicates that in this statement he was -- that the
17 victim was walking toward the door so he shot him; is that
18 correct?

19 A That's correct.

20 Q Did he say anything that he walked into the door in a
21 threatening manner?

22 A No, ma'am, he didn't.

23 Q Did he say anything about walking towards the door in
24 an aggressive manner?

25 A No, ma'am.

CHRISTOPHER REYNOLDS

1 Q Did he say anything about walking in the door with a
2 weapon on him?

3 A No, ma'am.

4 Q So he could have been walking in the door just to try
5 to continue to talk with Mr. Sims; is that correct?

6 A It's possible, yes, ma'am.

7 Q There's nothing that says that that's not true; is
8 that correct?

9 A No, ma'am.

10 Q All right. And Mr. Sims has admitted to multiple
11 fabrications of evidence and lying at this point; is that
12 correct?

13 A Yes, ma'am.

14 Q In Mr. Byrd's statement Mr. Byrd says it had nothing
15 to do with money and -- excuse me, in Mr. Sims's statement
16 he's saying he tried to pay him \$28 that he owed him and
17 "He told me I owed him \$5 interest," is that correct, in
18 part of his statement?

19 A That's correct.

20 Q Now, let's look at Mr. Byrd's statement. Does Mr.
21 Byrd say anything or has he ever said anything about
22 wanting to get money from Mr. Sims?

23 A No, ma'am.

24 Q What does he say the nature of the problem was on that
25 particular evening?

CHRISTOPHER REYNOLDS

1 A The problem was that Johnny was cursing at his son
2 and speaking to his son in a threatening manner.

3 Q Okay. And isn't it true that in part of the
4 audio/video recordings that the argument continued and that
5 a man can only take so much of somebody just talking back
6 to him; is that correct?

7 A Absolutely.

8 Q And he was tired of his mess, or his shit if we will
9 go with that.

10 A Yes, ma'am, that's what his words were.

11 Q And so that is why he shot the man; is that correct?

12 A Yes, ma'am.

13 Q And isn't that what Mr. Byrd told you?

14 A That's correct.

15 MS. FRIAR: All right, sir. I don't have any further
16 questions for this witness.

17 THE COURT: All right. Redirect?

18 MR. NIELSON: Yes, Your Honor, just to clarify a few
19 things.

20 REDIRECT EXAMINATION

21 BY MR. NIELSON:

22 Q Did Mr. Bobby Sims ever tell you that the reason he
23 shot him was because he was sick of his shit?

24 A Sir?

25 Q Did Bobby Sims tell you the reason he shot him was

CHRISTOPHER REYNOLDS

1 because he was just sick of his shit?

2 A No, sir, he didn't.

3 Q So the only place that comes from is the victim saying
4 that that is what happened, correct?

5 A Yes, sir.

6 Q But we have no recorded version of the victim giving a
7 statement, correct?

8 A No, sir, we don't.

9 Q Discounting the first statement that Mr. Sims gave you
10 the night that this happened and moving to all the recorded
11 statements after that, was Mr. Sims very clear that he told
12 Nantonio to leave?

13 A Yes, sir.

14 Q Did he make that a part of every statement that he
15 gave you?

16 A Yes, sir.

17 Q Was he very clear that Mr. Nantonio Byrd was coming
18 back towards the house?

19 A That's correct.

20 Q Was he very clear that he was the one who shot him?

21 A Yes, sir.

22 Q So those things never changed once you started getting
23 recorded statements at the police station, correct?

24 A No, sir, they didn't change.

25 Q And that's no different than his written statement,

CHRISTOPHER REYNOLDS

1 correct?

2 A That's correct.

3 Q Now, there's other things that changed but those
4 things never did.

5 A No, sir.

6 Q Okay. When you say you searched the house, did you
7 pull everything out of the foyer to look for shell casings?

8 A No, sir.

9 Q Is it possible that when a gun discharges the shell
10 casing that it could have flipped those shell casings
11 somewhere in that foyer that you did not look?

12 A Yes, sir.

13 Q You stated that the foyer was extremely cluttered,
14 correct?

15 A Yes, it was.

16 Q So that is a very distinct possibility that there may
17 have been .22 shell casings, which are extremely small,
18 that may have been in that room that you did not find.

19 A We searched the best of our possibility.

20 Q Is that possible?

21 A Yes, it's possible.

22 Q How big is a .22 shell casing?

23 A I don't know the size.

24 Q But are they small?

25 A Very small, yes, sir.

CHRISTOPHER REYNOLDS

1 Q When you interviewed Bobby at the police station in
2 the recorded statements, was Mr. Sims very clear throughout
3 the entire time that there was a tussle that took place?

4 A Yes, sir, he was.

5 Q A fight of some kind?

6 A That's correct.

7 Q But did Nantonio deny there was a fight or did you
8 just not make that a part of his statement?

9 A The victim denied it was a fight. And the
10 explanation of chairs being flipped over from the victim
11 was when Johnny was sitting in the chair and the shots
12 started that Johnny flipped it over running from the
13 scene.

14 Q Was it the chair that Johnny was sitting in?

15 A I'm not sure. I do believe -- Johnny clarified that.
16 I believe Johnny's chair was the chair on the left and
17 Bobby's chair was the chair on the right.

18 Q The chair on the left or the chair on the right that
19 was flipped over?

20 A The chair that Johnny was sitting in was not flipped
21 over, but the chair that was flipped over was Bobby
22 Sims's.

23 MR. NIELSON: This is a picture that's already in
24 evidence, Your Honor. It's on the CD if it's not in
25 evidence there.

CHRISTOPHER REYNOLDS

1 Q Is that a picture of the front porch?

2 A Yes, sir.

3 Q And which -- is there anything impeding the spot in
4 front of where Johnny is sitting that would have forced him
5 to cross over the front door to knock over that chair?

6 A There is some type of blockage right here with the
7 gas tank. But if Johnny was sitting on the chair on the
8 left, no, sir. It depends on which angle he would run to.

9 Q Where were the shots coming from again?

10 A Coming from inside the house in the foyer area.

11 Q So to knock over the chair on the right, would Johnny
12 have had to cross over the door where the shots were coming
13 from?

14 A I'm not sure exactly what position the chair was in
15 on the porch, just information that we got from the victim
16 that the chair was on the front porch.

17 Q Okay.

18 A There's so much rummage on the right side that it
19 would not be in front of the door so it would be beside
20 Johnny's chair --

21 Q Okay.

22 A -- in this area here.

23 Q Okay. But did anybody tell you that's where the chair
24 was sitting?

25 A No, sir.

CHRISTOPHER REYNOLDS

1 Q But where the chair is sitting in that picture, is the
2 chair on the opposite side of the door from where Johnny
3 was sitting?

4 A Yes, sir.

5 Q Thank you. Did Nantonio, Jr. make any other recorded
6 statements other than Bobby shot my daddy?

7 A No, sir.

8 Q That was the only statement he made that night that
9 you know of.

10 A Yes, sir.

11 MR. NIELSON: Beg the Court's indulgence just one
12 moment.

13 THE COURT: Okay.

14 (Break in proceedings.)

15 MR. NIELSON: No further questions, Your Honor.

16 THE COURT: Ms. Friar?

17 RECROSS EXAMINATION

18 BY MS. FRIAR:

19 Q Is it possible that the casings were right there where
20 the gentleman shot Mr. Byrd --

21 A Yes, sir.

22 Q -- but he picked them up and took them away so y'all
23 couldn't find them?

24 A That's correct.

25 THE COURT: Thank you sir, you can step down. Let me

BOBBY SIMS

1 see the lawyers.

2 (A lunch break was taken.)

3 THE COURT: The defense can call their next witness.

4 MR. NIELSON: Thank you, Your Honor. The defense
5 calls Mr. Bobby Randolph Sims.

6 THE COURT: All right.

7 The witness, BOBBY RANDOLPH SIMS, was first duly sworn
8 and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. NIELSON:

11 Q Please state your name for the record.

12 A I'm Bobby Randolph Sims.

13 Q And Mr. Sims, do you recall what happened on April
14 11th at Elm Street?

15 A Yes, sir.

16 Q Starting with when you got home that night, can you
17 tell us everything that happened that day?

18 A Well, when I got home from work?

19 Q Yes, sir.

20 A I got home from work, I had been doing landscaping
21 work, just wanted to sit out by the barrel and get a fire
22 going to keep warm. I decided I wanted to split some wood
23 and get the barrel ready for the fire.

24 Q Okay. And at some point that night -- who lives at
25 your house with you?

BOBBY SIMS

- 1 A My brother, Johnny.
- 2 Q And is that your house, Elm Street?
- 3 A Yes, sir.
- 4 Q Does anybody else live there besides you and your
- 5 brother Johnny?
- 6 A No.
- 7 Q Okay. And that night, did anybody come visit you at
- 8 your house?
- 9 A Yes, sir, Mr. Nantonio Allen Byrd.
- 10 Q Mr. Nantonio Allen Byrd?
- 11 A Uh-huh.
- 12 Q What do you call Mr. Byrd?
- 13 A I called him T-Byrd, Byrd man.
- 14 Q Does he have a variety of different names that you
- 15 call him by?
- 16 A Yeah.
- 17 Q How long have you known Mr. Byrd?
- 18 A Since he was about 15.
- 19 Q So you've known him a long time?
- 20 A I used to babysit him. I used to baby sit him.
- 21 Q Do you know how old he is now?
- 22 A He was born in , so he would be 35.
- 23 Q How old are you?
- 24 A Fifty-two.
- 25 Q And he came to your house that night; is that correct?

BOBBY SIMS

1 A Right.

2 Q Can you tell me what happened when he came to your
3 house?

4 A I told him I would go split some wood up and I heard
5 my brother Johnny said, "Bobby, here come Byrd man." And
6 I said, "Okay. What in the hell do he want?"

7 Q Were you excited to see him?

8 A Well, yeah. But just pay him the \$28 I owed him.

9 Q So you say you wanted to pay him \$28 you owed him.
10 You owed him some money?

11 A Yeah, I owed him some money.

12 Q And during the course of that night, did you pay him
13 the money?

14 A Yeah. I paid him 28 one dollar bills.

15 Q And when Nantonio first showed up at the house, what's
16 the first thing you remember happening between you and
17 Nantonio?

18 A Okay. He went to the porch and called Johnny first
19 and he said, "Is McGee here? That's what my name is on
20 the street. So I walk around the front.

21 Q Okay.

22 A He said, "You got what you owe me?" And I said,
23 "Yeah, I got you. Hold on a minute, let me go in the
24 house and get it."

25 Q Then what happened?

BOBBY SIMS

1 A I went in the house and pulled out 28 one dollar
2 bills, single dollar bills. And I folded it up, opened
3 the door and went out to pay him.

4 Q Okay. So you paid him. Then what happened after you
5 paid him?

6 A Well, like he was already mad about something anyway,
7 he was talking about some \$5 interest.

8 Q So he demanded more money.

9 A Yeah.

10 Q What did you tell him?

11 A I told him, "Man, I ain't going to pay you no \$5
12 interest."

13 Q And then what did you tell him?

14 A He said, "You need to pay me \$5." And I said, "I'm
15 not going to pay you no \$5." I handed him the money. I
16 looked at him, "I know you're in a bad mood, here is your
17 money, just go home and leave me alone, I just got off
18 from work."

19 Q So you told him to leave you alone, you just got off
20 from work. What's the next thing that happened after that?

21 A He just sat on the front porch.

22 Q Who is we?

23 A Me, him and my brother, Johnny.

24 Q You, him and Johnny, your brother?

25 A Yeah. I thought him and Johnny would talk a little

BOBBY SIMS

1 bit when I went in the house.

2 Q So him and Johnny were talking about something and you
3 went in the house.

4 A No. I was on the front porch, he was talking to
5 Johnny, talked to Johnny first, he didn't talk to me
6 first.

7 Q And so you're sitting on the porch. What is the next
8 thing you remember happening other than just sitting on the
9 porch?

10 A We just started talking about some other things.

11 Q Okay.

12 A And just some -- a few bags of fertilizer.

13 Q You said there was a feud back and forth. Tell me
14 more about that.

15 A The fertilizer?

16 Q I'm sorry?

17 A You're talking about the fertilizer?

18 Q Yeah. Tell me more about that.

19 A I had got a few bags of old fertilizer that I was
20 going to put in my garden, and he suggested a few days
21 before that, "I know somebody that want to buy it." And I
22 said, "Go ahead and give it to them, I'll take \$200 for
23 them."

24 Q So you offered to sell him some fertilizer for a
25 couple hundred dollars.

BOBBY SIMS

1 A Yeah, it was my merchandise. And I told him tell
2 them give me \$200 and you can have it.

3 Q Okay. Correct me if I'm wrong, but it sounds like you
4 were in an argument about selling some fertilizer.

5 A Yeah, that's what really got it started.

6 Q And then what happens when the argument happened? Did
7 it ever become physical?

8 A Yeah.

9 Q Tell me about that.

10 A Well, it started on the front porch. I was looking
11 right here, "I don't want to do it no more, here is your
12 \$28, I done paid you, go on home and leave me alone." I
13 told him, "I don't want to hear it."

14 Q So you told him to go on home. Did he go home?

15 A No, he did not go home.

16 Q What happened?

17 A Well, the more I told him to leave the more angry he
18 got.

19 Q What happened when he got angry?

20 A Well, he jumped up, I jumped up and got in his face.

21 Q Okay.

22 A And he chest bumped my chest, I bumped him back. I
23 said, "Look, I done told you to get the fuck away from me
24 now. I gave you \$28, get the hell away from me or I will
25 call 911." I know he had been drinking.

BOBBY SIMS

1 Q So you told him go away again.

2 A Right.

3 Q You told him to get off your property again and you
4 told him you were going to call 911 if he didn't.

5 A Right.

6 Q Why did you think you needed to call 911?

7 A I knowed it's going to get violent.

8 Q Why did you think it was going to get violent.

9 A Like I said, he came up with glass-eyed jacked up on
10 those pills he take.

11 Q And you know him very well, right?

12 A Good Lord, since he was 15.

13 Q And so you know that when he is drinking and when he
14 is on stuff, you know how he behaves, correct?

15 A Yeah, I know how he behaves.

16 Q How did he behave?

17 A He would he get mad and kick people's doors in and --
18 if he wanted just five bucks he will pull a gun on you.

19 MS. FRIAR: Your Honor, I object to the relevance of
20 this line of questioning.

21 THE COURT: Well, I will overrule. I'm going to allow
22 him to go into some of that. Go ahead.

23 Q Have you seen him do those kind of things?

24 A Yes, sir.

25 Q Because you said he'll pull guns on people. Have you

BOBBY SIMS

1 seen him pull guns on people?

2 A Yeah. Even people in my yard pitching horse shoes.

3 Q So you've seen him pull guns on people in your yard
4 when you are pitching horse shoes?

5 A Yeah.

6 Q Okay. So it sounds to me like you've seen him get
7 violent with other people in the past over very small
8 things; is that correct?

9 A Yeah. I told you, I had four or five other
10 witnesses.

11 Q Okay. And so after you got into a tussle, what did he
12 do after that?

13 A Okay. I pushed him down. I went back to try to get
14 the phone, I thought I had my phone out at the fire in my
15 jacket. So I came back again, this time he was standing
16 with my brother, Johnny. Johnny said, "Go on, man, go on
17 man. I ain't got shit to do with y'all. That's between
18 y'all two."

19 Q Okay. So at this point Johnny told them to leave.

20 A Yeah.

21 Q Okay. What happened after that?

22 A All right. I was walking to the front to where I
23 could confront him. He stood up, come and stood like a
24 wild man talking, "What, mother fucker. What, mother
25 fucker. What, mother fucker." He pushed me, I pushed him

BOBBY SIMS

1 back. Since he was a little taller than me I just
2 squatted and got the leverage on him, I picked him up and
3 throw him on the ground and we was rolling around on the
4 ground.

5 Q So you were rolling around on the ground. When you
6 wrote in your statement you said you tussled with him, is
7 that what mean when you said you tussled with him?

8 A Okay. I said tussled, it's how you interpret it.

9 Q But that's what you mean by tussle is you were rolling
10 around on the ground and fighting with him.

11 A Yeah. I had him down, just had him down, pinned
12 down.

13 Q Eventually did he get away?

14 A When I let him up.

15 Q So you let him up. What did he do when you let him
16 up?

17 A Well, I was like, "Go on man, get the fuck away from
18 me. You got your money now, go on and get away from
19 here." So he went to his truck.

20 Q And what did you do?

21 A I just went inside the house.

22 Q You went inside your house. What did you do inside
23 your house?

24 A I got the money ready.

25 Q You got your money ready?

BOBBY SIMS

1 A Yeah.

2 Q What money?

3 A Oh, I was going to go to the store to get some beer.

4 Because I know I heard him -- he went to his truck I think

5 I heard him crunk his truck up and I assumed he was

6 leaving.

7 Q Okay. So you heard him crank his truck and you

8 assumed he was leaving so you grabbed some money. Did he

9 leave?

10 A No, he turned around and came back. I was about half

11 on the porch, I went back in the house and locked the

12 door. He had his hands in his pocket and that's where he

13 normally keep that chrome plated nine millimeter like what

14 a narcotics officer use. I seen it, he had done had it a

15 few years.

16 Q So you've seen him store a gun in his pocket before.

17 A Yeah.

18 Q So he was coming towards your porch you say, right?

19 A Right.

20 MR. NIELSON: Your Honor, if I may approach the

21 witness?

22 THE COURT: Yes.

23 Q What's this a picture of, Mr. Sims?

24 A That's my front porch.

25 Q That's your front porch?

BOBBY SIMS

1 A Yeah.

2 Q What are these two pictures of?

3 A This is the screen door. You come from the outside

4 -- no, you come from the outside. This is the screen

5 door.

6 Q Okay. And what's the other picture of?

7 A Same screen door.

8 Q So this is also the screen door, correct?

9 A Yeah.

10 Q Okay. When you saw -- because you said you saw him

11 coming towards your house, right?

12 A Right.

13 Q Coming back towards your house. What did you do at

14 that point?

15 A Well, I distinctly heard -- I been there so many

16 times I know what that means, I heard a click and that

17 means he's got some kind of weapon. So I went back --

18 when he drove himself back I went back in and I locked the

19 door, put the latch on it and stood there, stood back --

20 because it's dark in the house, you can't see, you've got

21 to look real good. I stood back. The next thing I

22 know -- I know if somebody is pissed off at me and you

23 walk up and you can hear boom, boom, boom, he grabbed a

24 hold of the door and he ripped it off.

25 Q Okay. So he grabbed ahold of the door and he broke

BOBBY SIMS

1 the door.

2 A He broke the door.

3 Q And then what did you do at that point?

4 A Well, he reached for the door -- he reached up, he
5 had one hand on the door you pull the handle on, he had
6 one hand like this. Now, what I seen, he had one glove
7 open, it's something chrome in there, I'm not 90 percent
8 sure what it was, I'm sure it was chrome though, he pulled
9 out of his hip pocket, out of his right left right rear
10 pocket.

11 Q And then what did you do?

12 A I said, "Look, man, get the fuck away from here now.
13 I told you to get the hell away from here." He ripped the
14 door open, I seen his hand like this and that's what I
15 aimed at and that's where the threat was, it where a
16 danger is coming from right there. I'm a pretty good
17 marksman, I aim at what I shoot at and that's where I
18 shot.

19 Q And so then you shot him?

20 A Yeah.

21 Q How many times did you shoot your gun?

22 A Three times.

23 Q And then what happened after you shot the gun, what
24 did Nantonio do?

25 A He still had his hand up there and he squatted down

BOBBY SIMS

1 like he was like breathing real hard. He got off of the
2 porch, stumbled and he ran towards the horse pasture and
3 went up beside the fence.

4 Q What did you do --

5 A He had his hand like this right here, just --

6 Q What did you do at that point?

7 A Well, I stood there, went outside and sat on the
8 front porch trying to figure out where he went. I didn't
9 see him after that.

10 Q Okay. What did you do after that?

11 A Well, went back in the house. I don't know if I
12 shot -- I know I was going to jail so I got myself ready
13 for the police to come pick me up.

14 Q Why did you think you were going to jail?

15 A I think I shot him. I didn't know if I did to be
16 honest with you.

17 Q But you figured you were going to jail for shooting at
18 him?

19 A Yeah.

20 Q Were you scared?

21 A Yeah, I was scared.

22 Q Had you ever been to jail before?

23 A No.

24 Q Do you have any kind of criminal record at all?

25 A No, not that I know of.

BOBBY SIMS

1 Q And so you were scared to go to jail?

2 A Yeah.

3 Q How old are you, Mr. Sims?

4 A Fifty-two.

5 Q How old were you when this happened? Were you 52 when
6 it happened?

7 A My birthday is . 52 years, one month and
8 six days.

9 Q So you were 52 years at that point.

10 A Right.

11 Q And what did you do with the gun?

12 A I sat it by the table by the door.

13 Q Did you ever move the gun after you sat it by the
14 table by the door?

15 A Yeah. I sort of got scared and I picked the gun up,
16 run out the front door, run around the house, and it was
17 bushes there's trees, I had pruned the trees and I put it
18 in the pile of pruned trees that was there. I was scared.

19 Q What about the shell casings, did you pick them up?

20 A No.

21 Q Did you do anything with the spent shell casings?

22 A No. It was dark in the house, I didn't have time to
23 look for nothing. I wasn't trying to look at nothing.

24 Q Was there any light in the house at all?

25 A It's like a kerosene lamp, just a little small thing.

BOBBY SIMS

1 Q But there was no electricity.

2 A No.

3 Q And when the police showed up, did you tell them what
4 happened the first time you talked to the police?

5 A Well, they came down and they had those flashlight
6 with guns and they was walking. And I said, "Officer,
7 here I am, I'm right here." And all of them said, "Let me
8 see your hands, down on the ground and let me see your
9 hands." I said, "Wait a minute, I don't want to get my
10 ass blown away. Somebody please tell me what to do." I
11 don't know who it was that said, "Okay. Put one hand up,
12 turn around, put your other hand up, reach around and drop
13 one hand," and someone lifted my shirt up. I said, "I
14 don't have a weapon, it's around the back. It's around
15 back in the pile of bushes."

16 Q Okay.

17 A Officer Jim Darby, my neighbor, he went and talked to
18 me in the back of the truck and I told him where I put it.

19 Q And over the course of the next couple of days, did
20 you tell a variety of different stories to the police?

21 A Yeah. I was scared.

22 Q You told them a variety of different stories because
23 you were scared?

24 A Yeah.

25 Q Did you eventually tell the police what actually

BOBBY SIMS

1 happened?

2 A I eventually told the truth.

3 Q And are you telling the truth today?

4 A The absolute truth.

5 Q And is this the story, the same story you eventually
6 told Detective Reynolds?

7 A Yes, sir.

8 Q And to the best of your recollection is what you've
9 told us today exactly what happened that day?

10 A Exactly what happened.

11 Q Okay.

12 MR. NIELSON: Beg the Court's indulgence.

13 (Break in proceedings.)

14 MR. NIELSON: All right. Mr. Sims, answer any
15 questions that Ms. Friar has to ask you. Okay?

16 THE DEFENDANT: Okay.

17 THE COURT: Solicitor?

18 MS. FRIAR: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MS. FRIAR:

21 Q Mr. Sims, it's your testimony that Mr. Byrd has been a
22 friend of y'all's your whole life and you have known him
23 since he was 15 years old; is that correct?

24 A Yeah.

25 Q And he could come over to your house, and he pretty

BOBBY SIMS

1 much came over to your house all of the time; is that
2 right?

3 A Yeah. But the last three months there --

4 Q You didn't like coming over there so much --

5 A -- got to where I didn't want him around.

6 Q You just didn't like him so much.

7 A It's a bunch of rumors going around and I didn't want
8 to be no part of it.

9 Q Does he run his mouth a lot?

10 A Yeah.

11 Q And it just gets aggravating, doesn't it?

12 A It don't bother me.

13 Q I doesn't bother you when he runs his mouth?

14 A No.

15 Q It doesn't?

16 A I used to babysit him.

17 Q You just didn't want him around over the last three
18 months.

19 A I didn't exactly tell him that.

20 Q So he thought he was free to come over anytime he
21 wanted to; is that right?

22 A Well, sometimes he would be with my brother, Johnny.

23 Q Right. So Johnny could invite him over there too,
24 right?

25 A Yeah. But I'm really paying rent there, I had the

BOBBY SIMS

1 final say so.

2 Q I understand that. But Johnny lives there and sleeps
3 there in the chair at your house; is that right?

4 A Yeah.

5 Q Let's talk about that. At your house, Mr. Sims, it's
6 not owned by you, is it? Who owns the house where you were
7 staying?

8 A Mr. (inaudible.) It used to be Mr. Frank (inaudible)
9 but he's dead.

10 Q So he just let you stay there; is that right?

11 A Yeah.

12 Q And Johnny could stay there too; is that right?

13 A Yeah.

14 Q Did you sleep on the inside of the house, sir?

15 A Oh yeah, inside. I know snakes get up there in the
16 summer.

17 Q All right. Now, did Johnny sleep on the inside of the
18 house mostly or on the outside?

19 A 95 percent of the time on the outside, even when it's
20 frost and cold and snow on the ground. I don't know why
21 he did it.

22 Q Okay. Now, I'm going to show you what's been marked
23 as State's Exhibit Number 1. And I want you to show me
24 which chair did Mr. Johnny sleep in or sit in.

25 A This one right here.

BOBBY SIMS

1 Q This one right here. This green one right here, this
2 is the one Mr. Johnny slept in and stays in?

3 A That's the one.

4 Q The one that's overturned.

5 A Yeah.

6 Q Okay. And there's this other chair on the other side
7 that's not overturned. Do you sit in that chair sometimes?

8 A Yeah. It's braced against that entertainment center,
9 braced so it's not going to tilt over.

10 Q So the chair you sit in here as we look at the
11 photograph on the left-hand side of the door, that's a
12 chair that you would sit in when you sat out on your front
13 porch.

14 A Yeah. When I got off from work, yeah.

15 Q When you got off from work. And this is -- the chair
16 over here on the right that's overturned, that's the one
17 that Johnny stayed in, right?

18 A Yeah.

19 Q Okay. Now, you indicated to us that you've been
20 telling this story the whole time. And you've talked to
21 Mr. Reynolds several times; is that correct?

22 A Correct.

23 Q And you talked to officers there that night several
24 times; is that correct?

25 A Correct.

BOBBY SIMS

1 Q Okay. And you're saying that what happened was you
2 could see when he came over there that he was in a bad
3 mood; is that right?

4 A Yeah, pretty much.

5 Q And you just realized when he first got there that you
6 wanted to pay him some money you owed him; is that right?

7 A Yeah, pay him the \$28.

8 Q What was that money for?

9 A I just borrowed the money from him.

10 Q What did you borrow the money for?

11 A To get me some beer and get my propane tank filled
12 up.

13 Q Okay. So the money that you were going to pay Mr.
14 Byrd back for he had lent you so that you could get some
15 beer and some money, is that what you're saying?

16 A I reckon.

17 Q Okay. So then you said something to Mr. Nielson about
18 sitting on the front porch with you and Johnny and him
19 altogether and y'all started talking about some sort of
20 fertilizer; is that correct.

21 A Yeah. You can see the seed bag right here.

22 Q Let me see where you're talking about. Right there.

23 A Yeah.

24 Q So there's some fertilizer in this photograph, is that
25 what you're referring to?

BOBBY SIMS

1 A No, that's on the front porch.

2 Q So this fertilizer has nothing to do with what we're
3 talking about; is that correct?

4 A Yeah. That's what the argument got started over.

5 Q So the argument got started over some fertilizer; is
6 that correct?

7 A Yeah.

8 Q So the argument wasn't about the fact that he owed you
9 \$28 and he wanted \$5 interest then.

10 A That's the spark that lit the fire, the \$28.

11 Q I thought it was the argument about the fertilizer,
12 Mr. Sims.

13 A No, I said the \$28. He talking about I owed him
14 interest, that's the spark that got the fire started.

15 Q So it's your testimony that you gave to and he should
16 have had in his possession \$28, is that correct, 28 ones?

17 A Yes, 28 one dollar bills.

18 Q Okay. Did you ever tell Investigator Reynolds -- you
19 talked to him for a couple of hours, I think; is that
20 right?

21 A I didn't have a watch on, I don't remember.

22 Q Okay. It was a long time, though, wasn't it?

23 A I have no idea.

24 Q Would you say it was a short time that you talked with
25 Investigator Reynolds or a long time?

BOBBY SIMS

1 A It all depends. Two hours for me is a short time,
2 tow hours for somebody else --

3 Q Was it over an hour?

4 A I didn't have a watch, I wasn't noticing the time.

5 Q Well, let's just ask you this then. Did you ever
6 mention anything about fertilizer to Investigator Reynolds?

7 A Yeah. He said he went back to take a photo here,
8 that's my fertilizer.

9 Q So you're telling the Court that you had a
10 conversation with Investigator Chris Reynolds --

11 A Yeah. He was bringing me back there to find the gun
12 at, he asked me was that fertilizer and I said that's my
13 fertilizer I was going to put around the garden.

14 Q Yeah. But did you tell him that y'all had had an
15 argument over fertilizer?

16 A He didn't ask me.

17 Q No, he didn't ask. And you didn't tell him anything
18 about fertilizer. He didn't know anything about
19 fertilizer, right?

20 A No. He asked me what that fertilizer was back there
21 for and I said --

22 Q Try to listen to my questions and answer me, though.

23 A Okay.

24 Q When you were talking to Investigator Reynolds, you
25 had an opportunity to tell him that y'all had an argument

BOBBY SIMS

1 about some fertilizer, is that right, and you didn't; is
2 that right?

3 A Like I said, I'm new to this court system. I figured
4 everything I said would be incriminating so -- I'm just
5 new to this. I'm assuming had he a recorder of some kind
6 in the truck recording what I said. I know what I seen on
7 TV to get you a lawyer.

8 Q But you'd been read your rights and you never told Mr.
9 Reynolds that you had an argument about some fertilizer
10 with Mr. Byrd. Your argument was about \$28 and owing
11 interest; isn't that right?

12 A That's what started it, yeah.

13 Q Okay. Now, when y'all are arguing, you just told him,
14 "I don't want to hear it," and you didn't want to hear it
15 anymore; is that right?

16 A No. I told him to get the fuck off the porch.

17 Q Well, you just testified, sir, that you told him, "I
18 don't want to hear it."

19 A Yeah.

20 Q So at that time you believed that he was on pills, is
21 that what you're saying?

22 A Yeah. I've been around him a long time.

23 Q And you were high on crack cocaine and had been
24 drinking beer, right?

25 A Well, I smoked that crack about two hours before he

BOBBY SIMS

1 got there, I was sober.

2 Q You're saying that you had not smoked any crack for at
3 least two hours, that's your testimony?

4 A Yeah. I smoked crack that day but that been two
5 hours. I'm not a crack abuser, I just happened to have
6 had a little piece laying around about two months.

7 Q You had a little piece laying around for about two
8 months and you decided on this day to smoke it; is that
9 right?

10 A It's in a medicine bottle on the top shelf. My house
11 didn't have any power, you just fumble your way around to
12 look for it.

13 Q You couldn't just -- like if somebody went in your
14 house and tried to find crack cocaine, they couldn't just
15 go in there and find it, you've got it in a little hidy
16 hole somewhere?

17 A No. It's sitting on the top shelf in a medicine
18 bottle.

19 Q Nobody knows where you keep it, right?

20 A No. Ain't no power and not too many people come in.

21 Q You're the only person who knows where you keep your
22 crack, right?

23 A Yeah, because I smoke it.

24 Q It would be hard for somebody else to find it,
25 wouldn't it?

BOBBY SIMS

1 A That's the intention to put it in there for.

2 Q Now, you're telling us at some point in time you went
3 in the house -- and so you were sitting on the front porch
4 at one point you and Johnny and Byrd, right, T Byrd, y'all
5 were sitting on the porch, right?

6 A Yeah.

7 Q Okay. Where was Nantonio, Jr.?

8 A I don't know, I ain't seen him.

9 Q The little boy wasn't there?

10 A Not that I know of he wasn't.

11 Q Just never saw the little boy there.

12 A No.

13 Q Okay. Now, you're saying to the Court that you were
14 sitting on the porch, and then at some point in time you
15 went back in your house and when you came back outside he
16 had his knee on Johnny and Johnny told him to leave; is
17 that correct?

18 A No. I was outside of the house out by the fire, I
19 heard them arguing and I ran to the front of the house and
20 saw him lean on Johnny's knee -- knee in Johnny's ribcage
21 or shoulder or -- he just leaning over him with his knee
22 on him.

23 Q He was just leaning over him at that point?

24 A That was a violent act, a violent move.

25 Q Okay. And so were y'all rolling around on the ground

BOBBY SIMS

1 at that point, or was he and Johnny rolling around on the
2 ground at that point? What was going on out there?

3 A I walked on the front porch and I confronted him
4 about my brother.

5 Q You said, "I don't like you doing this to my brother."

6 A Right.

7 Q You don't remember seeing Nantonio, Jr. there at all?

8 A No.

9 Q And you don't remember there being an argument between
10 Johnny and Mr. Byrd about him being rude and ugly around
11 this little boy?

12 A No.

13 Q The little boy just wasn't there.

14 A His name was Dooner (phonetically), and Dooner was
15 not there.

16 Q Dooner wasn't there, is that your testimony?

17 A He wasn't there.

18 Q All right, sir. So you're saying to this Court that
19 you walked in your house and that he came behind you with
20 his hands in his pocket; is that correct?

21 A Got on the porch and went in the house. I can tell
22 when somebody is putting a round in the gun chamber.

23 Q So let me ask you this, did you see the man come
24 towards your house with his hands in his pocket?

25 A He had his right hand in his right rear pocket before

BOBBY SIMS

1 he came on the porch, so I'm back-tracking in the house
2 locking the door.

3 Q Uh-huh. And then what?

4 A He came out again. He came on the front, bump, bump,
5 I know when somebody is pissed off, he's lucky he didn't
6 fall through the darn thing.

7 Q That's right.

8 A And he grabbed the door. I could distinctly see he
9 has his right hand on here, I distinctly see some chrome,
10 it was chrome or silver shiny.

11 Q So he took his hands out of his pocket --

12 A He pulled something, had his hand on the door like
13 this.

14 Q He had something chrome on the door, is that what
15 you're saying?

16 A No, in his right hand. He had one hand on the latch
17 pulling the door, right hand over here.

18 Q He had one hand on the latch door and was trying to
19 pull the door open?

20 A He was trying to rip the door open.

21 Q Yeah, trying to rip that latch apart.

22 A Yes, ma'am.

23 Q And then he had the other hand on the door with
24 something chrome in it.

25 A He'd been coming in that house --

BOBBY SIMS

1 Q Pardon me?

2 A He tried to open the door but his left foot had the
3 door blocked. It's an old door.

4 Q And you're saying that before he even came that far --
5 now, you were able to see in this pitch black night that he
6 had put his hands --

7 A No, it's enough daylight.

8 Q Oh, good. I'm glad you --

9 A I've been there for years and there ain't that much
10 lights in there. I'm pretty good at seeing in low light.

11 Q You're good at seeing low light?

12 A Pretty good.

13 Q Okay. And so he put his hand in his pocket and you
14 think he's reaching for a gun; is that correct?

15 A He had his hand there and I seen something chrome I
16 seen something chrome shining, nickel plated, something
17 shiny.

18 Q And when did you hear him put a round in the chamber?
19 Did you hear something like that --

20 A When he went to his truck and slammed the door. I
21 done here it enough times, I seen him pull guns on people
22 because they owe him \$20 for crack, a little piece of
23 crack, or he says somebody at the scrap yard came back a
24 few dollars short. I know how he is.

25 Q So when came back from his truck when he was walking

BOBBY SIMS

1 towards the house, is that when you say you heard him round
2 a chamber?

3 A It's got a very distinct sound.

4 Q It's a very distinctive sound.

5 A I've done been around guns and weapons all my life.

6 Q And you're telling the Court that when he came back
7 from his truck you heard him round something in the
8 chamber, sounded like he was putting a bullet in a gun, is
9 that right? And then you saw him approach your house and
10 put his hand in his back pocket; is that right?

11 A He had his hand in his back pocket.

12 Q Uh-huh. And then you saw --

13 A He stepped on the porch, had the hand on the door
14 trying to pull back, I seen just a -- he's right handed,
15 his right hand is right here, I took aim at him and I'm a
16 pretty good marksman.

17 Q And so that's pretty important stuff, isn't it?

18 That's pretty important information, isn't it, Mr. Sims?

19 A I don't understand.

20 Q Well, I was just wondering, did you ever tell Mr.

21 Reynolds that he went to the truck and then you heard him
22 round some chamber of the gun?

23 A I'm sure I told him.

24 Q If it's not on tape then you didn't tell him. It's
25 not on tape. So did you tell him or not?

BOBBY SIMS

1 A I'm told Captain Reynolds, or Major Reynolds.

2 Q So you told this man right here, Chris Reynolds, that
3 you heard him round the chamber of the weapon. And did you
4 tell him that you saw him reach in his back pocket for a
5 gun?

6 A I can't remember.

7 Q And that's a pretty important thing for you to tell
8 Investigator Reynolds, wouldn't you think?

9 A Yeah. But I didn't have no gun, I ain't going to
10 incriminate myself.

11 Q Well, let's back up, Mr. Sims. How would it be to
12 incriminate yourself to tell Investigator Reynolds that Mr.
13 Byrd was coming to you with a gun? And then you're saying
14 that you saw him put his hand on your doorframe with
15 something chrome in it, and the other hand was trying to
16 pull the door open, right?

17 A Yeah.

18 Q And the only reason he couldn't get the door open is
19 because he had his own foot on the screen preventing him --

20 A No. See, if you don't open the door far enough it's
21 pull backwards you pull on your foot. His left foot had
22 the door blocked and he pulled at the door. He was trying
23 to get in, he was trying to come in.

24 Q But you had latched it.

25 A It's a little latch, it's a latch. It's not a great

BOBBY SIMS

1 big dead bolt. You can see it on the photo.

2 Q So what you're saying now is that he went to his truck
3 and he got something and you heard a chamber being rounded
4 in a gun; is that right? Something like that?

5 A A round in any kind of gun chamber makes that very
6 distinct sound.

7 Q Right. So you are telling this Court now that -- the
8 first time that anybody has ever heard this from you as
9 many times as you've talked to people about this case --

10 A No. I don't talk about it but with my lawyer.

11 Q And you're telling this Court that you told
12 Investigator Reynolds about this; is that correct?

13 A I'm about 60 percent sure I did.

14 Q You didn't tell Investigator Reynolds about it or you
15 did?

16 A I did.

17 Q You did?

18 A In that interrogation room I was cold and shivering,
19 he said, "Bobby, the camera is on, the thing is on."

20 Q And so you told him while you were in the
21 interrogation room and when you told him you were cold you
22 told him that you heard Nantonio when he came back from his
23 truck round a chamber in a gun; is that correct?

24 A Can you give me a second, please? This is confusing,
25 it has been almost a year, I'm 52, my memory has started

BOBBY SIMS

1 fading.

2 Q So you might not have told Investigator Reynolds about
3 it, you just -- you want to be careful not to lie to the
4 Court, sir.

5 A No, I'm not lying to the Court.

6 Q So then did you tell Mr. Reynolds about the fact that
7 he put his hand in his pocket?

8 A Yeah.

9 Q You did tell him that when you were in that room?

10 A I'm pretty sure I did.

11 Q Then did you tell him about when he was trying to get
12 in and pulled the door and pulled the latch?

13 A Yeah. I told that when he was at the crime scene.

14 MR. NIELSON: Your Honor, I'm going to object. This
15 whole line of questioning is asked and answered a bunch of
16 other times already and she's repeating the same question
17 over and over again. I know the rules are a little bit lax
18 but we're going over the same question and over and over.

19 THE COURT: All right. Just move on for me, please.

20 MS. FRIAR: Thank you, Your Honor.

21 Q And so you're telling the Court that when Mr. Byrd
22 tried to enter your house at that time, that is when you
23 shot him, is that correct, sir?

24 A Yeah. It's a clearly defined threat. I seen it in
25 his right hand, I had to make a split second decision.

BOBBY SIMS

1 Q And he had a glove on, is that what you said earlier?

2 A Yeah. The same gloves her wears at the cotton mill,
3 he works right in front of my house.

4 Q What kind of glove was it?

5 A It's a brown old cheap cotton gloves, you can get two
6 for a dollar, I mean two pair for a dollar. I've seen
7 them at Wilson store, I seen those gloves.

8 Q Okay. And so at some point in time you had -- do you
9 have a phone, sir?

10 A I have a cellphone.

11 Q Okay. And where is it now?

12 A It's in my personal inventory at the jailhouse.

13 Q Okay. All right. So it's your testimony that when
14 this was all going on that you just shot three times; is
15 that right?

16 A Yeah.

17 Q When the man's hand was on your doorframe; is that
18 right?

19 A I shot at that first and I was trying to shoot
20 downwards so I can just -- I'm actually military but just
21 disabled, I was trying to shoot low.

22 Q And you don't know whether you hit him or not?

23 A At the time, no.

24 Q But you see real good in the night, right? You don't
25 have much light and you can see pretty good; is that right?

BOBBY SIMS

1 A Yeah.

2 Q And he's standing right there in front of you with the
3 door in his hand and you can't tell?

4 A I'm about six feet away right from my door.

5 Q All right. Well, let's take a look at that.

6 A It's inside the house.

7 Q You were inside the house and he was about six foot
8 away. Where were you?

9 A It's right in there.

10 Q So you are saying that you were in this room right
11 here.

12 A It's an adjacent room here. I keep precious metals
13 in here to keep people from stealing.

14 Q You were right here and that's when you shot him
15 through the door, right here; is that right? You can show
16 the Court.

17 A I'm standing right there, standing right there.

18 Q Okay. Standing right there. That's not six feet, is
19 it?

20 A I can't determine six feet from here on that picture.

21 Q Okay. But you could determine it that night, right?

22 A Yeah.

23 Q Okay. And so what happened was --

24 A But you told me that's not six feet.

25 Q Okay. And so what happened was after you shot him --

BOBBY SIMS

1 and you're saying that you just never did see that little
2 boy.

3 A Positive, absolutely did I see him.

4 Q He just wasn't there.

5 A As far as I know he wasn't.

6 Q All right, sir. And so when the police officers got
7 there, this is how they found the house. Okay.

8 A Well, I ain't done no spring cleaning yet, I normally
9 keep it better than that.

10 Q And so you had done something to move things around
11 before they got there, right?

12 A No.

13 Q Okay. Isn't it true that you shot Mr. Byrd and then
14 you developed a plan about two black men robbed you? Do
15 you remember saying that to the police?

16 A Yeah, I remember saying that.

17 Q You said two black men robbed you and attacked you and
18 cut you, is that not what you said?

19 A Yeah.

20 Q Is that what you said?

21 A Yes.

22 Q That was a lie, or not true, right?

23 A No.

24 Q Not true, right?

25 A Not true.

BOBBY SIMS

1 Q You took a knife and you set it down near Mr. Byrd's
2 truck -- let me see if I can find a picture for you -- and
3 so you sat that knife right there, right? And you've
4 already told us that; is that correct?

5 A No, it was a brown handle.

6 Q There's another one. There's a knife right here with
7 a brown handle on your steps along with some gloves. And
8 you put that there, too, didn't you?

9 A Yeah.

10 Q Because what you were saying was two black men had
11 tried to rob you and they attacked you and cut you, right?

12 A Yeah. I admit to that, yeah.

13 Q And you also told them that they tried to cut you and
14 they cut your jacket, right? Show you what's been marked
15 as State's Exhibit Number 6. Cut your jacket.

16 A Yeah.

17 Q You told them they cut your jacket.

18 A Yeah.

19 Q Okay. And you told them that they cut your hand, in
20 this picture I'm showing you State's Exhibit Number 7, a
21 picture of your cut hand; is that right?

22 A Well, I thought I told Major Reynolds that I was
23 trying to get my jacket off.

24 Q No. No. What you did was you told Investigator
25 Reynolds --

BOBBY SIMS

1 A Yeah. I told him, yeah.

2 Q What did you do, you ripped your own jacket with a
3 knife and you got some blood on your jacket and you cut
4 your hand.

5 A No. That's not a jacket -- my dad gave that to me
6 when he died. I knew if I was going to jail I wasn't
7 going to get my clothes back so I decided -- the zipper
8 wouldn't come off. Like I told the lawyer, the zipper
9 wasn't coming off so I decided to try to rip it off and
10 then I figured I wasn't coming back home.

11 Q So you tried to rip your jacket off and that's when
12 you accidentally cut your hand?

13 A Yeah, right here. My zipper wouldn't go down.

14 Q So when you say that two black men tried to rob you
15 and attack you and cut your hand, that's not true, is it?

16 A No, that's after the fact.

17 Q Okay. And so in order to deceive the officers and
18 make them think you were being robbed by two black men you
19 did all of these things; is that correct?

20 A No.

21 Q You didn't put --

22 A Not just the knife and the gloves and all of that.

23 Q No. Not just the knife, not just the other knife, not
24 just the gloves, not just slicing up your coat, not just
25 cutting your hand, you also went and hid your gun, right?

BOBBY SIMS

1 A Yeah, I hid it around the house. I was scared. I
2 didn't go in the woods and take off running.

3 Q So you went and hid your gun.

4 A And I told them when I was handcuffed on the back of
5 the truck. I told Officer Jim Darby -- Captain Darby,
6 told me, "Bobby, if you tell them where the gun is at it
7 would be a lot easier for you." I told him, "Jim, look
8 behind the house behind the well in a pile of leaves."

9 Q When the officers first got there now, Mr. Sims, think
10 about, you said you didn't shoot Byrd and somebody else had
11 done that and you wanted those officers to believe that you
12 had not shot Mr. Byrd; isn't that right?

13 A Yes, ma'am, that's after the fact.

14 Q So what you did in order to make that look true is you
15 hid your sawed-off rifle in the bush pile in the back yard,
16 that's what you're saying.

17 A I got scared and hid my gun back there.

18 Q And you're saying that you didn't pick up the shell
19 casings off of the floor.

20 A No. The shell casings should have been there. I got
21 all kind of 30 ought six, you can take that metal to the
22 scrap yard, it's brass, and make you some money off it
23 crushed down. They take shell casings and shotgun shells,
24 everything.

25 Q Okay.

BOBBY SIMS

- 1 A There's no way you could have missed it.
- 2 Q There's just no shell casings there though, right?
- 3 A It should have been shell casings there.
- 4 Q There should have been but they weren't, right?
- 5 A The room is full of empty shell casings. It's dark
- 6 and I didn't have time to do nothing. I saw the blue
- 7 lights flashing and that's when I would go give myself up.
- 8 Q Mr. Sims, the truth of the matter is that Mr. Byrd
- 9 came over there that night and you got mad at him; is that
- 10 right?
- 11 A No.
- 12 Q You never got mad at Mr. Byrd this whole time?
- 13 A He made me mad.
- 14 Q He did make you mad and you wanted him to leave; is
- 15 that right?
- 16 A I demanded him to leave, that's the best I can do. I
- 17 might be old fashioned by today's standards but I told him
- 18 to leave three times. I told him to leave, take your
- 19 money, you don't have anymore business here. I was about
- 20 to call the police and put a no trespass on him.
- 21 Q And so when he wouldn't leave you went inside your
- 22 house and you got in your ambush spot and you shot him, is
- 23 that correct, sir?
- 24 A No, it's not correct.
- 25 Q These other things that you're saying, told the Court

BOBBY SIMS

1 so far, they are correct; is that right?

2 A Yes.

3 Q Okay. Do you remember telling Investigator Reynolds
4 that he kept running his mouth and the man can only take so
5 much?

6 A Yeah. The people -- we play horse shoes in the yard,
7 people come down there he will be -- he was beginning to
8 wear out his welcome, beginning to wear out his welcome.

9 Q And so you didn't feel like you should have to pay him
10 \$5 more, right?

11 A No. He gave me \$28 and I gave him \$28 back.

12 Q And so he kept running his mouth, right?

13 A Yeah, he run his mouth.

14 Q Let's talk about this real quick. Now, we didn't --
15 you didn't admit to smoking that crack cocaine and denied
16 it many times with Mr. Investigator Reynolds.

17 A Yeah. I admit I smoked crack but that was two hours
18 before all of this happened. I was clean and sober.

19 Q When Investigator Reynolds told you that Johnny said
20 that you were smoking crack, that's when you admitted that
21 you are smoking crack.

22 A Johnny is on the porch. Johnny was on the porch, he
23 was passed out drunk. So far as he knows maybe an hour
24 had passed or two hours had done passed before then, he
25 was drunk, passed out.

BOBBY SIMS

1 (Break in proceedings.)

2 MS. FRIAR: I'm going to wrap this up, Your Honor.

3 Q Now, you said that you did all of these things that
4 night, plant all of these things, putting these things this
5 and there and it was because you were scared; is that
6 right?

7 A I was scared out of my wits.

8 Q Scared out of your wits. And you have never been to
9 jail before; is that right?

10 A I have never been to jail.

11 Q Has your lawyer told you that you're charged with
12 attempted murder and that carries up to 30 years?

13 A Yes. Judge Zamore at the bond hearing told me that,
14 that's when I realized I'm in a world of trouble.

15 Q Yes, sir. And you're scared, aren't you?

16 A Scared now?

17 Q Yes, sir.

18 A I have been here nine months, I've done come around
19 to the facts.

20 Q Well, you're worried you're going to prison. You
21 don't want to go to prison, do you?

22 A No, I don't want to go to prison. I don't want to
23 volunteer to go to prison.

24 Q So sometimes when you're scared you have to lie and
25 make things up.

BOBBY SIMS

1 A No, I pray to my God.

2 Q But before you become spiritual you have to lie and
3 make things up.

4 A Ever since I've been in jail I've prayed to God.
5 Everything that I said is the truth and nothing but the
6 truth.

7 Q Okay, sir. I appreciate your testimony.

8 MS. FRIAR: Beg the courts indulgence.

9 (Break in proceedings.)

10 MS. FRIAR: I don't have any further questions for
11 this witness.

12 MR. NIELSON: Just a very few short questions, Your
13 Honor.

14 THE COURT: All right.

15 REDIRECT EXAMINATION

16 BY MR. NIELSON:

17 Q When you and Nantonio were at your house that night
18 you fought about fertilizer and money, right?

19 A Yes, sir.

20 Q So during the course of the argument you fought about
21 two different things.

22 A Yeah. But the \$28, that was the main reason.

23 Q That was what started it.

24 A Yeah.

25 MR. NIELSON: No further questions, Your Honor.

1 THE COURT: Thank you, sir. You may step down. Any
2 other witnesses, Mr. Nielson?

3 MR. NIELSON: No, sir.

4 THE COURT: Any other witnesses from the State?

5 MS. FRIAR: Beg the Court's indulgence.

6 (Break in proceedings.)

7 MS. FRIAR: Your Honor, the State doesn't have any
8 witnesses in this matter.

9 THE COURT: All right. State rests. Let's hear
10 arguments. Now, keep in mind when you're making your
11 argument I have read the motion and I have read the reply
12 so tailor your arguments accordingly. Mr. Nielson?

13 MR. NIELSON: Yes, Your Honor. You've read the
14 arguments, you've read the reply, I won't go -- I'm not
15 going to read the act itself, you can do that yourself and
16 understand what the act says. But the facts in this are
17 almost undisputed because we haven't heard another side of
18 it -- in the purposes of this hearing we have not heard
19 anybody get on the witness stand that can testify as to
20 what Mr. Sims's mind state was that night. He's told you
21 that he has known Nantonio for a long time. The State's --
22 the detective on the case told you that all of the
23 witnesses in the case testified that Mr. Sims had known
24 Nantonio for a long time. He knew who he was, he knew what
25 he was capable of. No one can dig inside Mr. Sims's mind

1 but him. The State cites State v. Curry which says you
2 don't have to accept the facts as the defendant sees them,
3 but his state of mind has been uncontradicted as to what he
4 was thinking. Even some of the questions that were asked
5 of both Detective Reynolds and my client by the solicitor
6 in this case show his state of mind. Even if it's true
7 that he had to go to his ambush spot, why did he have to go
8 to his ambush spot? Because he was scared of Nantonio.
9 Even if he ran back inside the house, why did he run back
10 inside the house? Because he was scared of Nantonio. The
11 facts themselves, not the things that my client said but
12 the facts themselves that are uncontradicted in this case
13 show that my client was scared of the man. Also we have no
14 testimony from anyone that says Mr. Sims did not tell
15 Nantonio to leave. If you -- when you read State v. Duncan
16 this is almost exactly on par with State v. Duncan. My
17 client was in his home. Yes, Nantonio was an invited
18 guest, even if he had permission to be there every day he
19 was not a resident of that home. They were not on equal
20 footing on the right to be in that home. Once my client
21 who lived in that home, didn't own the home but paid rent
22 for the home which makes it his home, once he made that --
23 once he made any statement for Nantonio to leave, Nantonio
24 has the duty to leave his property as an invited guest or
25 not as an invited guest he had to leave the property. My

1 client told you that at least three times he told Nantonio
2 to leave. They got in a physical altercation and Nantonio
3 didn't leave. He had the opportunity to withdraw, he had
4 the opportunity to back out. My client, according to the
5 Protection of Persons Property Act, doesn't have to leave,
6 he doesn't have to retreat. There's no nothing in case
7 law, there's nothing in our South Carolina Code that says
8 that my client had to retreat from his own home. He was
9 protecting himself, the evidence has shown that. Yes, he
10 gave multiple statements to the police. But, Your Honor
11 has them and can view them if he would like, the statements
12 that he gave to Detective Reynolds in this case, the things
13 that he was very consistent on throughout the time he
14 talked to Detective Reynolds, was one, that they had a
15 fight. Two, that he asked Nantonio to leave on multiple
16 occasions. Three, that Nantonio did not leave when he was
17 asked to leave. And four, that my client did not see the
18 child there. Now, I don't think that that's even relevant
19 to the matter at all, because whether or not somebody else
20 is present or not has nothing to do with whether Nantonio
21 had a duty to leave, or whether my client felt like he was
22 being attacked, felt like he was in fear of an assault on
23 him. But he was very clear about all of these different
24 things throughout the entire process of talking to
25 Detective Reynolds. Does he change small minute thing in

1 his story? Yes, he did. Did he tell the detective where
2 the right -- where the .22 was immediately off the bat?
3 No, he did not, but eventually he did. He also -- when he
4 told Detective Reynolds where it was, he told him it was a
5 spot that was 50 feet away from where he hid it. It wasn't
6 like he told him it was in the woods in Great Falls when it
7 was really at his house. He didn't lead them astray that
8 badly. My argument is that despite the things, the
9 inconsistencies that he's told, those shouldn't ultimately
10 be held against him in this case, as this was a man who
11 invited somebody into his home, when that person did not
12 leave he ended up shooting that person because of the fear
13 that he had. He told you himself why he had that fear.
14 He's seen Nantonio attack other people, he's seen them do
15 it over very small amounts of money or very small and
16 trivial things. He had no idea what he was -- he knew what
17 he was capable of and did not know what Nantonio was going
18 to do to him. We would ask Your Honor based on the
19 arguments that have been made, based on all of the evidence
20 that is in front of you and following State v. Duncan to
21 find him immune from prosecution in this case, being that
22 he cannot be prosecuted for something -- for defending
23 himself in his own home. And I will leave it at that, Your
24 Honor.

25 THE COURT: All right, thank you. Solicitor?

1 MS. FRIAR: Your Honor, I would ask the Court to
2 examine the law along with me. The burden of proof -- the
3 preponderance of the evidence must be proved by the
4 defendant that Mr. Byrd was in the process of unlawfully
5 and forcefully entering his home, that's the first step
6 under 16-11-440A, Your Honor, one. And when you have a
7 defendant who fabricates evidence and continues to lie then
8 it is very difficult for the Court to believe that the
9 victim was in the process of unlawfully and forcibly
10 entering the home. And I invite you to review the
11 photographs of all of the fabrications that were made and
12 done in this case as the supreme court would view them, I
13 am sure that they would not be in the position as you are
14 not in the position, Your Honor, to determine that Mr. Byrd
15 was even unlawfully or forcefully entering this home at the
16 time he was shot. And so, Your Honor, I don't think we get
17 past 16-11-440A. But in looking how to examine these
18 things, if we do get past looking at 16-11-440A, then let's
19 look at B. There are exceptions to when you can do this,
20 when you can use deadly force. You can't claim this if you
21 have a right to be at the place. And just because you ask
22 somebody to leave, and Mr. Nielson argues repeatedly that
23 he doesn't have a duty to leave, he doesn't -- that
24 Nantonio does have a duty to leave, he doesn't have a duty
25 to unlawfully enter, but he doesn't get shot because he

1 didn't leave. Your Honor, the exceptions that the State
2 would rely on under A, even though we do not feel like Mr.
3 Nielson even proved the burden of proof to a preponderance
4 of the evidence, A is that he had right to be there, he was
5 an invitee in the home. And more importantly and quite
6 frankly the reason why this case absolutely does not fit
7 under this statute is deadly force must be used and engaged
8 by somebody who was engaged -- not engaged in unlawful
9 activity. Okay. That's where this case finally falls
10 apart. Because this law was made for law abiding citizens,
11 and this law does not apply to people who are engaging in
12 unlawful activity, and Mr. Sims was engaging in two
13 unlawful activities that we know. One, using crack
14 cocaine, and according to him in his latest testimony, the
15 crack cocaine being in a pill bottle at this time. And
16 second of all, possessing a sawed off rifle. You've heard
17 testimony from the investigator that they measured the
18 barrel of the rifle, it was approximately 11 inches long
19 and you can't possess a sawed off rifle. This gentleman
20 does not fall under the statute at all because it all falls
21 apart under B.

22 THE COURT: Stop there. Talk to me about that.

23 MR. NIELSON: What she's quoting from the law under C
24 is for third party persons, it's not for people in their
25 own home. Three says a person who is not engaged in

1 unlawful activity and who was attacked in another place
2 where he has a right to be, not his home but in another
3 place he has a right to be including but not limited to his
4 place of business has no duty to retreat and can stand his
5 ground. But the unlawful activity part of the statute only
6 is talking about another place, when you're attacked in
7 another place other than your home. A is the Castle
8 Doctrine, it's in your home, that's the spot in the statute
9 that's talking about the home. C is talking about when
10 you're in a legal other place and you have to stop and
11 defend yourself. So I would argue it doesn't matter if he
12 was smoking crack while this was going on, if he was
13 involved in any illegal activities while this was going on
14 including how long his gun was or anything else, that
15 doesn't destroy the fact that this man has a right to
16 protect himself in his home under Subsection A of this
17 statute.

18 THE COURT: Okay. Go ahead.

19 MS. FRIAR: Thank you, Your Honor. Your Honor, first
20 of all as we indicated, B is the exception to A in that we
21 can show here clearly that if you use deadly force when
22 you're engaged in unlawful activity that you do not get the
23 benefit of this doctrine. And I point out to Mr. Nielson's
24 motion before the Court how he goes on and on and on that
25 it's proper for law abiding citizens to protect themselves,

1 a person who is not engaged in unlawful activity can do
2 this. And Your Honor, in section C of the law, it says a
3 person who is not engaged in unlawful activity and is in
4 another place has no duty to retreat. Well, he can't get
5 past the first one, lest well the second one, and so he
6 doesn't get the benefit of the statute, Your Honor.

7 THE COURT: All right. Any reply argument?

8 MR. NIELSON: Yes, Your Honor. I can't imagine our
9 legislature intended to not allow you to defend your home
10 regardless of whether or not you're involved in some kind
11 of somewhat trivial things that's against our code of
12 conduct.

13 THE COURT: Smoking crack and having possession of a
14 sawed off shotgun, trivial stuff like that?

15 MR. NIELSON: I can't imagine our legislature would
16 say that somebody can come into your home and attack and
17 assault you just because you're smoking crack or just
18 because you're smoking a joint, because that's what the
19 solicitor is asking you to follow. They are asking you to
20 say that because he may have been involved in illegal
21 activity completely unrelated to this situation, that he's
22 not entitled to defend himself in his home, and I can't
23 imagine that that's what our legislature intended to do
24 when they codified the Castle Doctrine. They intended to
25 codify a doctrine that had been around for hundreds of

1 years where a person has a right to defend his home. And
2 if he would have been involved in illegal activity, if he
3 had been buying crack as part of the situation from the
4 victim then I wouldn't have an argument because he's
5 involved in illegal activity pertaining to this case,
6 pertaining to the situation at hand. That's not the case
7 here. And he may have been smoking crack, he may have been
8 in possession of a gun but didn't meet legal regulations,
9 but that doesn't mean he can't defend his home. I can't
10 imagine that's what our legislature would have wanted to
11 codify, Your Honor.

12 THE COURT: All right, I understand. All right. I
13 will take this matter under advisement, I will be back in
14 touch with the decision, maybe I'll have something by
15 tomorrow, I don't know. But I will be back in touch with
16 you. And y'all give my clerk your email addresses if you
17 don't already have them so I can email out instructions for
18 an order. Okay.

19 (End of the hearing.)

20

21

22

23

24

25

1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF CHESTER
4 2014-GS-12-00445
5 State of South Carolina
6 vs.
7 Bobby Randolph Sims
8
9 Chester, South Carolina
10 January 16, 2015
11 Before the Honorable Brian Gibbons
12

13 APPEARANCES

14 For the State: Karen Fryar

15 For the Defendant: Devon Nielson
16

17 Reported by: Michael C. Watkins

18 Official Court Reporter
19
20
21
22
23
24
25

1 THE COURT: This is in the matter of State of South
2 Carolina versus Bobby Randolph Sims, indictment number
3 14-GS-12-445. Based upon the evidence presented the Court
4 denies the defense's motion for immunity from prosecution
5 pursuant to the Stand Your Ground Statute. That is the
6 order of the Court. Will you do a short little order for
7 me?

8 MS. FRYAR: I will. Thank you.

9 (End of the hearing.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of the proceedings had and
5 evidence introduced in the trial of the captioned case
6 relative to appeal in the Court of General Sessions for
7 Chester County, South Carolina, on the 16th days of January,
8 2015.

9 I do further certify that am neither of kin, counsel,
10 nor interest to any party hereto.

11

12

February 26, 2016

13

14

15


Michael C. Watkins

16

Court Reporter

17

18

19

20

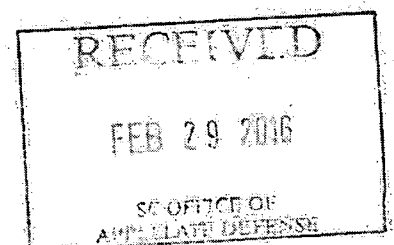
21

22

23

24

25



1 STATE OF SOUTH CAROLINA

2 -----x

3 STATE,

4 Plaintiff,

5 Case No.

6 -against-

2014-GS-12-445

7 BOBBY RANDOLPH SIMS,

8 Defendant.

9 -----x

10 March 19, 2015

11 Chester, S.C.

12

13 B E F O R E:

14 HONORABLE BRIAN M. GIBBONS

15

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

17 KAREN FRYER, Esquire

18 Assistant Solicitor for the State

19

20 DEVON NELSON, Esquire

21 Attorney for the Defendant

22

23 Aileen Butler

24 Official Court Reporter

25

1 BOBBY RANDOLPH SIMS, having been duly sworn by the
2 clerk, was examined and testified as follows:

3 THE COURT: All right, madame solicitor.

4 MS. FRYER: Thank you, Your Honor. We are here
5 today in the matter of State versus Bobby Randolph
6 Sims. Mr. Sims was charged with attempted murder in
7 the Indictment before the Court. He stands here today
8 with his attorney Mr. Devon Nelson.

9 Your Honor, the states entering plea negotiations
10 with with Mr. Sims is going to plead guilty to the
11 charge of assault and battery of a high and aggravated
12 nature.

13 THE COURT: So it's negotiated as to the charge
14 but not as to sentence?

15 MS. FRYER: That is correct, Your Honor.

16 THE COURT: All right, thank you. Mr. Nelson, you
17 represent Mr. Sims?

18 MR. NELSON: I do, Your Honor.

19 THE COURT: Have you had a full opportunity to go
20 over everything with him?

21 MR. NELSON: Yes, Your Honor.

22 THE COURT: And do you agree with his decision to
23 plead guilty to this charge?

24 MR. NELSON: I just wanted to inform the Court I
25 believe there are some defenses in this case and I

1 will get into those a little bit on mitigation, but
2 with him not wanting to go forward with trial I agree
3 it is in his best interest to plead at this time Your
4 Honor.

5 THE COURT: Okay. Thank you.

6 All right, Mr. Sims I have some questions for you,
7 sir. Looking at this sheet that has been handed up to
8 me it looks like you are 53 years of age, sir?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Now do you understand what you are
11 doing in court today.

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: All right. Do you understand this
14 crime you have been charged with.

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: All right. You were initially
17 charged with attempted murder, but it's my
18 understanding what is in front of me now is you are in
19 front of me now to plead guilty to what is called
20 assault and battery of a high and aggravated nature.
21 Do you understand what assault and battery of a high
22 and aggravated nature is?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Have you been over the elements of
25 that crime with your lawyer?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Do you understand that this crime is
3 punishable by up to 20 years in jail?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: All right. Do you also understand
6 that it is classified as violent and a serious offense
7 which affects any possible parole eligibility you
8 would receive based on that active sentence. Do you
9 understand?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Have you been over that with your
12 lawyer?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Okay. So understanding all these
15 things how do you wish to plead?

16 THE DEFENDANT: I plead guilty, Your Honor.

17 THE COURT: Okay. Now Mr. Sims has anybody
18 forced, pressured, coerced or made you plead guilty
19 against your will?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Has anybody promised you anything or
22 held out any hope or reward to get you to plead
23 guilty?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: Are you satisfied with your attorney?

1 THE DEFENDANT: Very. Very much so.

2 THE COURT: Has he answered all of your questions.

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Now, do you understand you have a
5 constitution right to have a jury trial?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And do you understand that you give up
8 that right when you plead guilty?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: You also give up the right to remain
11 silent. You also give up the right to confront
12 witnesses who are accusing you of certain things. Do
13 you understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Is anybody making you do that against
16 your will?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Are you under the influence of
19 anything today that would make you not understand what
20 is going on?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Okay. I want you to listen carefully
23 to what the State says happened and I will come back
24 to you. Okay.

25 Solicitor.

1 MS. FRYER: Thank you, Your Honor. This incident
2 occurred on April the 11th of last year. At that time
3 Mr. Nantonio (phonetics) Bird was visiting at the home
4 of Mr. Bobby Randolph Sims and his brother Johnny
5 Sims. He had known these gentleman -- these brothers
6 all his life. He had been at their house and they
7 were drinking a few beers. Mr. Antonio Bird had his
8 two children with him. One was in his vehicle, the
9 other was with him on the porch in front of the house.

10 Mr. Sims had been smoking crack cocaine. Mr.
11 Bobby Sims. Mr. Johnny Sims was there as well and
12 there became some verbal altercation involving the
13 fact that Mr. Nantonio Bird's son and Nantonio Jr.
14 they were being loud with him. There was argument and
15 pushing back and forth. Mr. Bobby Sims walked in the
16 house and said he was going to kill him. Mr. Nantonio
17 Bird just did not believe he was serious because they
18 had been friends for so long. He walked up on the
19 porch and he saw the gun pointed at him through the
20 screen. He grabbed his son and he was shot in the arm
21 and in the chest two times. He started running while
22 Mr. Sims was shooting at him. A good samaritan
23 stopped at the Lowry Fire Department where Mr. Sims
24 had gone to which is pretty much down the street from
25 where this incident occurred. He was there with his

1 son, Nantonio Jr. Officers arrived on scene at which
2 time the little fella said to the officers Bobby done
3 shot my daddy.

4 THE COURT: Did I hear something in this case
5 before.

6 MS. FRYER: Your Honor, we had a Castle hearing on
7 this, a Castle Doctrine hearing on this. Very
8 involved. Took about a day and we heard testimony
9 from Investigator Bruce Renolds who's in the case.

10 THE COURT: Okay.

11 MS. FRYER: And you may recall that there was some
12 misleading of evidence on the part of Mr. Sims. When
13 officers arrived he had placed two knives around this
14 area and alleged that he was being robbed by two
15 people and ultimately after many stories given to
16 Investigator Renolds admitted that he had shot Mr.
17 Nantonio.

18 THE COURT: All right. I will come back to the
19 State in a moment.

20 Now Mr. Sims, did you hear what the State says
21 happened in this case?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Is that what happened?

24 MR. NELSON: Your Honor, if I may speak for a
25 little bit here at this point. We disagree with some

1 of the facts as they were stated by the solicitor. My
2 client will admit that he did in fact shoot through
3 the screen door with the weapon and it hit Nantonio
4 Bird. I believe that is in of itself is enough to met
5 the definition of ABAN.

6 THE COURT: There's an intent element.

7 MR. NELSON: Well, he intended to hit him. So
8 there was some dispute as to whether this was
9 self-defense, whether it was protection of his home.
10 Some issues like that that we could have gotten in to
11 at trial, but for the issues of the plea he intended
12 to hit him. He used the weapon, he did in fact
13 assault him. We agreed with that part of the facts,
14 but the part about the argument, what happened leading
15 up to it, how it got started, what Mr. Bird was doing
16 as he came up on the porch we disagree with some of
17 those factual issues. And he doesn't want to admit to
18 those factual issues, but we will admit that, yes, he
19 did in fact assault him with intent to hit him with
20 the gun that was fired through the screen.

21 MS. FRYER: And Your Honor, I do think it is
22 important we put on the record that Mr. Nelson felt
23 that a Castle Doctrine Motion was needed in this case
24 and that the Court conducted such hearing.

25 THE COURT: All right. Now, Mr. Sims, did you

1 hear your lawyer just tell me what he says is your
2 version of the facts.

3 MR. NELSON: Yes, Your Honor.

4 THE COURT: All right. Do you agree with what he
5 just told me?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. All right. I accept your plea.
8 Let me hear from the State in regards to sentencing as
9 well as anything else that the victims are here and
10 they wish to speak and then I will go to you, Mr.
11 Nelson, in mitigation.

12 Ms. Fryer: I have shown the victim impact
13 statement that was submitted by Mr. Bird then, via his
14 then girlfriend and mother of his children because he
15 was unable to write and was unable to write at all
16 during this period of time.

17 Your Honor, after Mr. Sims shot Mr. Bird, Mr. Bird
18 as I said was found to be in very serious condition.
19 He was helivac to the medical center in North
20 Carolina; Carolina Medical Center, and he was in ICU.
21 He was on ventilator for a long time. He has had
22 numerous medical issues stemming from this. His lungs
23 have collapsed. They collapsed from the bullet wound.
24 Additionally his wrist, the bone in his wrist was
25 severed to the point where it is pretty much

1 non-functional at this time. He goes to get therapy
2 every Tuesday and Thursday and has since June of 2014.
3 And he does have to go back to have his chest looked
4 at. He is losing circulation now in his whole arm and
5 hand and this has terribly effected his life.

6 I would like for you to hear from Mr. Bird at this
7 time.

8 THE COURT: Any prior record?

9 MS. FRYER: No, sir.

10 THE COURT: Mr. Sims has no prior record.

11 MS. FRYER: He has no prior criminal convictions.

12 THE COURT: All right. Yes, sir, I will be glad
13 to hear from you.

14 MR. BIRD: I just want to say that this was a very
15 close friend of mine and what happened that day, I
16 don't know why he did it, but his brother was drunk.
17 I just had got off from work and I come down there to
18 do his brother a favor and when I pulled up he was
19 inside. He didn't have no power in his house and he
20 was lighting crack stick, smoking crack and somebody
21 probably came by there early. Probably had a drink or
22 something. I don't know. But when I got there his
23 brother -- when I was ready to take his brother
24 because I was going to get my kids and take them with
25 me. So I was going to do him a favor first. When I

1 got there he was all drunk up and stuff and he cussed
2 my son up because he had asked him for a quarter to go
3 to the soda machine. So me and him had an altercation
4 because he cussed my son out. He run out of the
5 house. I was trying to explain it to him. He took a
6 beer can and hit me with it and jump in my face and I
7 pushed him off of me and I told my son let's go and we
8 was walking off. Through the porch I could see he had
9 like a sheet over the barrel. Before I could think I
10 had my son in this hand. I thrown him. That is when
11 hit me. It could have hit my son, and then I grabbed
12 my son. He hit me two more times in the chest and
13 then he kept on shooting and that's when I ran up
14 through the equipment where I work at to get safe. He
15 could have killed my son.

16 THE COURT: Yes.

17 MR. BIRD: And I almost -- I was dead myself. I
18 thought I was dead. Airlifted.

19 THE COURT: Who is with you today, sir?

20 MR. BIRD: This is my girlfriend and this is my
21 mother.

22 MS. BIRD: I'm his mother.

23 THE COURT: Would you like to tell me something
24 ma'am?

25 MS. BIRD: Yes, sir. On that day -- I'm a very

1 sick person, and on that day something had kept
2 running through my mind. I was sitting watching TV
3 and all of sudden I hear the ambulance and something
4 just kept saying your son. So the next thing I know
5 my oldest daughter called me and she said, mom, she
6 said Tony just got shot. I couldn't -- I thought I
7 couldn't breath and he is my only son, and I live by
8 myself. He help me out in the yard and stuff, and he
9 can't even use his right hand. I thought he was dead.
10 I thought he was dead. When I went up there to see
11 him he was laying there. It looked like he was dead.
12 He had this tube in his mouth and all this stuff
13 hooked up to him. And every time I hear a shot, it
14 just goes through my mind. I think I need to have
15 some therapy or something. I can't take this. And I
16 can't stand to look at his hand. I can't stand
17 looking at his right hand, sir.

18 Tony is a good person. He would do anything you
19 asked him to do if it is in the right. He don't mess
20 with nobody. I ain't say that because he's my son,
21 but he don't mess with nobody. He's a good person.
22 He is, but this done took a part of him. He has to
23 take all this medication, back and forth to the
24 doctors. Like sometimes I'm talking to him he ain't
25 himself and I have to put up with all that and I know

1 what he's going through because I see him a lot.

2 It's in God's hand. God know right and wrong.

3 It's in your hand.

4 THE COURT: Yes, ma'am, thank you.

5 MS. FRYER: Your Honor, for record that was Miss
6 Elizabeth Bird. That is Nantonio's mother. Mr. Bird
7 also wanted to tell you that he is concerned about his
8 son.

9 THE COURT: I was fixing to ask that question.
10 How is your son doing?

11 Mr. Bird: He is subject to counseling. He has
12 problems. He always thinking about it and stuff.

13 THE COURT: How old is?

14 MR. BIRD: He just turned six years old and my
15 other one he just turned three. Both of them was with
16 me.

17 THE COURT: All right. Thank you, sir.

18 Ms. Fryer: Your Honor, I think there is one more
19 thing. I think he wants to tell you about his medical
20 situation.

21 THE COURT: Yes, ma'am.

22 MR. BIRD: Yes, I am in a lot of medical
23 situations. Diagnosed PTSD. I'm on prozac. I go to
24 therapy every week. My hand -- I probably have to go
25 back in for surgery because the nerves they're

1 destroyed in my wrist. I got a plate fusion in it
2 like plastic and I can't get the feeling in it and I
3 got rods in my head. I can't nod my head like
4 everybody else because the tendons were shot. And I
5 have poor circulation. That's why my nails are like
6 this and they're lumped out and I got to go back. I
7 got to go to trauma, ortho. I get injections in my
8 neck and in my back because the bullet is still in
9 there, where the bullets is trapped in my lungs and it
10 is going to hurt continuously because they can't move
11 them cause if they move them I will either died or be
12 paralyzed. One bullet is stuck up here in my collar,
13 my muscle(indicating). It's hard to sleep. It's
14 stuck in my muscle. They can't move it cause it can
15 paralyze me.

16 THE COURT: Thank you, sir.

17 MR. BIRD: And I got to deal with that for the
18 rest of my life.

19 THE COURT: How old are you sir?

20 MR. BIRD: Thirty-five. I've always been a hard
21 worker and I have been working practically all my
22 life. Boss man he is very, very upset about because I
23 was one of his very best men. I did all the spraying.
24 I sprayed a lot of yards and stuff and planting in the
25 fields and stuff. I was one of the main operators.

1 While I was working there I was subject to a lot of
2 responsibility and he pushed it down.

3 THE COURT: Got it. Thank you, sir. Thank you
4 for being here.

5 Anything further from the State before I defer to
6 the defense?

7 MS. FRYER: No, Your Honor.

8 THE COURT: All right, Mr. Nelson.

9 MR. NELSON: Your Honor, there is no way to paint
10 a rosy picture about somebody being shot. There is
11 not and I will not try and do that for Your Honor
12 today. This was a tragic incident in the lives of
13 both of these men and the lives of Nantonio's sons and
14 I get that. I am not -- I am not immune to feeling
15 sorry for that.

16 Mr. Bobby Sims stands before you pleading guilty to
17 something that he did in fact do and he has told you
18 he did, but he felt he was like protecting his home.
19 He feels like if he goes to trial it will only get
20 worse. He has been on the witness stand. You heard
21 his side of the story already so I don't think I need
22 to go into that in great detail except to say he did
23 eventually -- he originally told the police something
24 that wasn't true. But once they got him back to the
25 police station he told the same story fairly

1 consistently as far as the important parts of the
2 story. That he did in fact shoot a gun. He did in
3 fact hit Nantonio Bird and he was doing it to protect
4 what he felt was to protect himself and his brother.

5 Now, he comes before you today wanting to take what
6 responsibility he feels like he needs to have in this
7 case, Your Honor.

8 He's was a 52-year old man and we don't see in
9 criminal court very often where a 52-year old man
10 comes before the Court with zero criminal record in a
11 case this serious. He's now 53. He was 52 when this
12 incident happened. He did live with his brother
13 Johnny. He lived in a house right behind the feed
14 store that the victim was talking about, Your Honor.

15 He was working for Mr. Terry Brown at the time. He
16 has done landscaping. He has worked for Mr. Brown
17 since March of 2006. He tells me that if he gets out
18 of jail that that job is available for him. He's a
19 hard worker. He's worked in the community. He was
20 living in basically a little wooden -- from the
21 pictures I've seen the best I can describe a wooden
22 shack behind the feed store we he earned a meager
23 living and was able to live there and he was happy
24 there. That house is not available for him any more.
25 It was torn down. Bulldozed down since he's been in

1 jail. If he gets out he has a sister and brother that
2 live here locally. He'll be there when he gets his
3 affairs sorted out. He has a job available when that
4 does happen. This is a man who has live in Chester
5 County his own life. He is a Chester County resident
6 other than the four years he spent in the United
7 States Army. He's a veteran. From 1980 to 1983 he
8 was in army where he served our country in Texas, in
9 Germany and Fort Lewis, Washington. Those were the
10 three places he was stationed. Along the way. He's
11 worked construction those are the he is worked
12 construction and landscaping his whole life. He was
13 raised in a Christian Baptist church. He still
14 attends a Christian Baptist church before he got
15 locked up. Your Honor, this is not a man that needs
16 more punishment. More punishment is not going to make
17 the victims's lives any easier or take away the
18 counseling they have to go through, the surgery
19 Nantonio has to go through. My own personal opinion
20 is Mr. Sims has been in jail for long enough. I would
21 ask Your Honor to give him time served. He has been
22 in jail for 11 months. If you are not willing to
23 consider time served my second suggestion to Your
24 Honor as far as sentence is concerned is to sentence
25 him to time served, but hang some time over his head

1 because what this is being a sentence that carries 85
2 percent if you give him time served today and hang
3 five years over his head, he's still going to be on
4 community supervision. He'll be supervised by the
5 Department of Probation and Parole for two years. If
6 he violates he goes back to jail. This is a different
7 case then I think anything I ever worked on. I have
8 been working with Mr. Sims for a year. It has been my
9 pleasure to do so because every time I talk to him he
10 is such a humble and nice man, and I don't know what
11 happened that night with him and Nantonio. Only him,
12 Nantonio and Johnny really know what happened that
13 night. Their stories I can tell you are vastly
14 different. You've heard his side of the story and I'm
15 sure you remember it and so with all of that being the
16 case I'm asking Your Honor to look at this case
17 differently then what we usually see in criminal court
18 and consider a time served sentence. But if you feel
19 like he needs to be supervised, to hang four or five
20 years over his head. Let community supervision be
21 what takes effect and let Mr. Sims get back to his
22 life as well and try to rebuild what life he can have
23 left from 53 to the rest of his life.

24 MS. FRYER Your Honor, I hate to interrupt Mr.
25 Nelson. I know you like to give Mr. Sims the last

1 chance to talk so I want to let you know Mr. Bird had
2 failed to tell you something he wanted to tell you.

3 THE COURT: Okay, and I will get back to the
4 defendant and let you say anything else. Yes, sir.

5 MR. BIRD: I understand people come to Court and
6 ask somebody to support somebody such as his lawyer.
7 Public defender is doing to help him, but he don't
8 know nothing about Mr. Sims. I have been knowing him
9 forever and he don't know what he do. Just because a
10 person ain't have nothing on record don't mean you
11 don't know how they are and everybody knows how he
12 are. Even my boss man if I had him here everybody
13 know how he are. He's always been like that. And as
14 far as serving the country how are you going to serve
15 a country when you sit up there and got AWOL because
16 you were scared to even go to the military and got
17 kicked out. That's not serving your country. He ran
18 his whole family out of the house shooting up the same
19 house he shot me out. His whole family his, mom and
20 all of them. That's why they left him up there by
21 himself. He ain't pay his rent in probably about 15,
22 20 years. The man let him stay there on account of my
23 boss man. The boss man looked out for him and all he
24 ever did was stole from him. And that's was a good
25 thing for him to even go up there anyway, him and his

1 brother. His brother stayed drunk. He let brother
2 stayed in the trailer. He kicked him out so his
3 brother slept on the porch. That's where his house
4 was, on the front porch. They got the evidence there.
5 They paint a pretty picture, but that's not the
6 picture.

7 My son's life could have been gone. My life could
8 have been gone. I don't care if he was 523 years old.
9 They can't make up for my life and my son's life.
10 He's nothing like a baby. He didn't do nothing wrong.
11 I didn't do nothing wrong. I work every day. I cut
12 grass and landscaping and construction. Whereby he
13 sit up there and he probably work twice a week. If it
14 rain he can't go. He beg people to go do side jobs
15 and scrape up pine needles. That's not a job. He
16 tell you what you want to hear to save him to try to
17 get probation. I think he need to be where he need to
18 be. Because that ain't what it is. It not what it
19 is. Don't let the devil influence you. It's nothing
20 but the devil's work regardless of what happens God
21 will take care of his and all, like he's been taking
22 been taking care of me and my kids ever since this
23 happened to me and I ain't been able to work and pay
24 for bills and all I did was take care of him. I took
25 food out of my house and gave it to him and his

1 brother and put clothes and shoes on their back. I
2 done did it. My momma know.

3 I couldn't believe it when he shot me for nothing.
4 Nothing. Me and his brother got into an argument over
5 my son because he cussed my son out cause he asked for
6 a quarter to get out soda out of the soda machine. I
7 didn't even get verbal or nothing with him. We were
8 just arguing back and forth. He put his pipe down and
9 ran out of the house, smoke still coming out of his
10 mouth. You can't do this, cussing like this. He go
11 crazy when he get mad. You can look at him and tell.
12 He go crazy when he get mad. He bust the door wide
13 open and came out there running out on the porch.
14 Through the beer can. And I tell you what beer he
15 had, he had a black ice ginci (phonetics). Through
16 it. Hit me with it. When he hit me with it he jumped
17 off the porch right there in my face like this and I
18 pushed him back and went towards the hedges. He
19 jumped on the porch. He said, I'll tell you what.
20 I'm going to show you blah, blah, blah, and ran in the
21 house. When he ran in the house I told my son, lets
22 go. Lets go. His brother still was up there drunk
23 hanging out the chair. I grab my son right there.
24 I'd seen the gun barrel. When he hit it it just went
25 straight through my arm and my arm dropped and went

1 numb and I said you shot me. I'm going to kill you.
2 I'm going to kill you. I grabbed my son right there.
3 While he seen me with my son in my hand he still hit
4 my two more times. Still shooting at me while I had
5 my baby. He tried to kill us and that's what he try
6 to do but when I made it to safety that's when he ran
7 and hid and tried to make it like somebody did it. If
8 I were to drop nobody would have found me cause he
9 said this and that or whatever. He was going to make
10 sure we wasn't there. He was going to make sure.
11 He's crazy. That's what I am trying to tell. Crazy.
12 He hid. Told them lies. Hiding guns here. Cutting
13 himself. Saying this, if somebody came to me and
14 threatened me in my own home I am staying right there
15 with the police and say they came and threatened me.
16 I'm not going to run and hide in the bushes. I'm not
17 going to run and hide no evidence. For what? What am
18 I guilty of? You ain't guilty until you hide
19 something. That's my law. What you going to hide
20 something for if you ain't guilty. That's the whole
21 point right there. What you are going to hide
22 something for if you ain't guilty. If somebody come
23 and start something with you -- if I start something
24 with him and come to his house he defend himself.
25 What are you going to hide something for if he pulled

1 a knife or gun and hit me with it. What is going to
2 sit up there and hide and run and I had to go fall on
3 somebody's car half dead. My son could have been
4 dead, and then they had to go down there and run down
5 there and find him and get him out of the bushes and
6 then he told them a bunch of lies about this and that.
7 What for? Why go through all that trouble if you
8 ain't guilty. Does it make sense to you? It makes
9 sense to me.

10 THE COURT: Every week I hold court it doesn't
11 make sense to me what people do.

12 MR. BIRD: That's right.

13 THE COURT: Miss Fryer, anything else on behalf of
14 the State?

15 MS. FRYER: Nothing further.

16 THE COURT: Mr. Nelson, anything else you like to
17 say before I hear from your client.

18 MR. NELSON: Just to point out a couple things
19 based on what Mr. Bird said. First of all, Mr. Sims
20 according to the police report was found in his home.
21 Was not found in the bushes. Was not found in the
22 woods. Was found -- in the police report they went to
23 the residence and located Mr. Sims. He didn't run.
24 He didn't hide.

25 I submit to you that there are many people and I

1 talk to many clients every day, month and year that
2 when something happens to them they get scared and do
3 irrational things. And I'm not going to rationalize
4 the knives and the things that Your Honor heard about
5 in a previous thing, and I'm not going to rationalize
6 Mr. Sims' actions that night. But what I am going to
7 tell you like you just said, we -- I hear clients tell
8 me stories that don't make a whole lot of sense every
9 day of my life, and it's not our job -- I don't it's
10 our job in the court system to make sense of it, but I
11 do believe it is our job to punish appropriately and
12 for a man regardless of what Mr. Bird says about his
13 army record and other things, a man who did serve four
14 years in the army -- I don't know why he was
15 terminated -- why his service in the army was
16 terminated either voluntarily or involuntarily, I
17 don't know. But I know that he was in the army. I
18 know he is 53 years old and he doesn't have a criminal
19 record. These are things I know. These aren't
20 suspicions. This isn't me guessing what he did or
21 just throwing things out there emotionally, which I
22 understand why Mr. Bird is very emotional today. But
23 these are things I know. He is 53 years old. He has
24 no criminal record before this term of court. Not
25 even in Magistrate Court. Not only does he not have

1 any convictions he has never been arrested from what I
2 understand before this.

3 Your Honor, I am asking you to do what we do with
4 first time offenders in our criminal justice system
5 which is often times probation, even on some very
6 serious cases and I am asking you to do this for this
7 man who stands before you at 53 years old. That's all
8 I got.

9 THE COURT: Thank you. Mr. Sims anything you like
10 to tell me sir.

11 MR. SIMS: Yes, Your Honor. That day it happened I
12 was totally out of character. Sorry that happened. I
13 have been regretting it ever since. Regretting it
14 ever since. Sorry that it happened. What happened
15 here.

16 THE COURT: You know -- thank you. You know
17 hearing everything I heard during this guilty plea,
18 five things stand out to me. Number 1, we got
19 somebody who is high on crack. When you're high on
20 crack your judgement is impaired. Number two, you
21 shot a gun at a man with his five or sick-year old son
22 with him. Regardless of any justification you may
23 have irrationally thought of at that time because you
24 were high on crack, you shot him not once, not twice,
25 not three times, but four times. Those are the five

1 things to stand out. Once in the hand, two in the
2 chest, once in the back is what I was told.

3 MR. NELSON: Three times.

4 MS. FRYER: Three times, Your Honor.

5 THE COURT: Three times. Four things that stand
6 out.

7 MR. NELSON: Not that I think that makes a big
8 deal, Your Honor.

9 THE COURT: Four things that stand out. And I Mr.
10 Nelson, I certainly understand where you are coming
11 from being the excellent defense lawyer that you are.
12 You know, with the number of cases you see you know
13 how the Court normally treats those who don't have a
14 prior record. I mean, that's something that ordinarily
15 I have to do. If Mr. Sims -- that God he didn't die.
16 Let's assume Mr. -- for the sake of argument -- Mr.
17 Bird died, he's convicted of murder. Never been
18 arrested in his life. Guess what, he has got 30 years
19 in jail. That's the minimum sentence for murder. So,
20 I understand when your argue he has know prior record
21 he should get some credit for that. I agree with you.
22 This is a serious crime. And I am concerned -- let's
23 just leave it at that. I'm concerned.

24 Mr. Sims I want you to realize what you were
25 initially charged with, carried 30 years. So the fact

1 that you are in front of me only facing a maximum of
2 20 years today you're a lucky man based upon the facts
3 I heard. If this isn't an attempted murder -- forget
4 the self-defense theory. I'm just going based on the
5 facts, with three shots intentionally fired at a
6 person, with minor child being right there, if this
7 isn't an attempted murder, I don't what is. So I
8 think the State is very gracious pursuant to your
9 efforts in defending your client to get him to do this
10 plea.

11 Mr. Sims, I will sentence you to South Carolina
12 Department of Correction for 16 years. Good luck to
13 you.

14 MR. FRYER: Thank you, Your Honor.
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for Chester County, South Carolina, on the 19th day of March, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 12, 2015

Aileen Butler

P. 2

TO: +18037341397

FROM: Chester County

7/15/2015 4:00 PM

WITNESSES

Chris Reynolds (CSD)

R. Maxson

ARREST WARRANT NUMBER/DOA

2014A1210400032 (DOA-4-12-14)

ACTION OF GRAND JURY

TRUEBILL

Charles McCawley
Foreperson of Grand Jury

Date: 7/8/2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014-GS-12-445

The State of South Carolina
County of Chester

COURT OF GENERAL SESSIONS

JULY TERM 2014

THE STATE
vs.

Bobby Randolph Sims

ATTEMPTED MURDER

SC Code: §16-3-29
CDR Code: 3410
Class: Felony A

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHESTER)

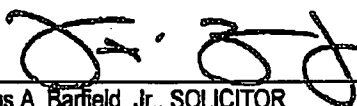
INDICTMENT

At a Court of General Sessions, convened on July 8, 2014, the Grand Jurors of Chester County present upon their oath:

ATTEMPTED MURDER

That Bobby Randolph Sims did in Chester County on or about April 11, 2014, with intent to kill, attempt to kill Nantonio Byrd with malice aforethought, either expressed or implied, by Bobby Randolph Sims, 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 CHESTER)
)
 vs.)
)
 BOBBY RANDOLPH SIMS,)
)
 DEFENDANT.)
)
 _____)

IN THE COURT OF GENERAL SESSIONS

**MOTION TO DISMISS PURSUANT TO
 SECTION 16-11-450 OF THE SOUTH
 CAROLINA CODE OF LAWS**

Warrant
 2014A1210400032

TO: KAREN FRYER, ASSISTANT SOLICITOR:

YOU WILL PLEASE TAKE NOTICE, that the undersigned attorney for the

Defendant will move before the presiding judge at the beginning of the January 12th 2015 general sessions term of court, or as soon thereafter as counsel may be heard, for an order dismissing all charges against the Defendant based upon Section 16-11-450 of the South Carolina Code of Laws, commonly referred to as "the Castle Doctrine", and State v. Duncan, 709 S.E.2d 662 (2011).

a. Facts

The Defendant and the alleged victim were acquaintances, perhaps even friends, at the time of the incident. The incident took place at the home of Mr. Bobby Sims. Nantonio Byrd was not a resident of the home. After Bobby and Nantonio argued, and got into a physical confrontation, about money that was owed from Bobby to Nantonio, Bobby shot a .22 caliber shot through the front screen door of the home as Nantonio approached the door.

b. The South Carolina Protection of Persons and Property Act

The South Carolina General Assembly codified the so-called "Castle Doctrine" by passing the "Protection of Persons and Property Act" in 2006. S.C. Code § 16-11-410 et. seq. The General Assembly memorialized the legislative intent of the Act as follows:

(A) It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the doctrine to include an occupied vehicle and the person's place of business.

(B) The General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.

(D) The General Assembly finds that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.

(E) The General Assembly finds that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.

S.C. Code § 16-11-420.

The sections of the Act relevant to this matter include the following:

(C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force

with force.

The Act textually proves immunity from criminal prosecution:

(A) A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force.

S.C. Code § 16-11-450(A).

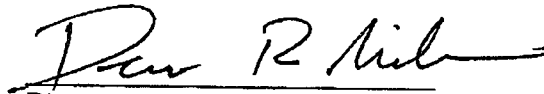
The defendant maintains that the language in S. C. Code Section 16-11-420(B), "it is proper for law-abiding citizens to protect themselves, their families and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others" is unambiguous. The defendant submits that his conduct falls within the circumstances set forth in Section 16-11-440 and *State v. Duncan*, 709 S.E.2d 662 (May 9, 2011) and he should therefore be immune from prosecution.

c. Standard of Proof

In a criminal case where the immunity of Code Section 16-11-420 is asserted, the proper procedure is for the trial court to hold a pre-trial evidentiary hearing on the issue of immunity to decide the factual question of the applicability of the statutory immunity. The South Carolina Supreme Court has rejected the idea that State may defeat the assertion of immunity by a showing of probable cause. The proper standard of proof in determining Immunity under this Code Section is whether the Defendant has produced evidence that he is immune from prosecution by a preponderance of the evidence. *State v. Duncan* 392 S.C. 404, 709 S.E.2d 662 (2011).

Wherefore, the defendant prays that the warrants and charges be dismissed and he be ruled immune from prosecution pursuant in this matter.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Devon R. Nielson", written over a horizontal line.

Devon R. Nielson Esq.
Attorney for Defendant
P.O. Box 132
Chester SC 29732
(803) 385-3232

December 22, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTER)
vs.)
BOBBY RANDOLPH SIMS,)
DEFENDANT.)
_____)

IN THE COURT OF GENERAL SESSIONS

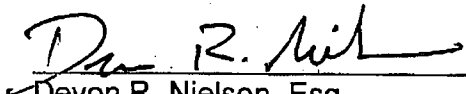
PROOF OF SERVICE FOR:
MOTION TO DISMISS PURSUANT TO
SECTION 16-11-450 OF THE SOUTH
CAROLINA CODE OF LAWS

Warrant
2014A1210400032

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss pursuant to Section 16-11-450 on the State of South Carolina code of laws by personally delivering a copy of it to the office of Assistant Solicitor Karen Fryer, at her office at the Chester County Courthouse, Chester, South Carolina, 29706 on December 23, 2014.

Date: December 23, 2014


Devon R. Nielson, Esq.
Assistant Public Defender
Post Office Box 132
Chester, SC 29706
(803) 385-3232

CLERK OF COURT
JAN 2 2015

2014 DEC 23 A 10:42

FILED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE SIXTH JUDICIAL CIRCUIT
COUNTY OF CHESTER	)	Ind.Nos. 2014-GS-12-445
	)	Warr. No. 2014A121040032
STATE OF SOUTH CAROLINA	)	
	)	
VS.	)	REPLY TO DEFENDANT'S
	)	MOTION TO DISMISS
BOBBY RANDOLPH SIMS	)	
<u>Defendant.</u>	)	

The defendant has moved for a pre-trial hearing in this case, pursuant to S.C. Code Ann. §16-11-410 thru 450, and *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011), for the Court to determine whether there is sufficient evidence for this case to go forward to trial, or to dismiss the charge of Attempted Murder based upon the immunity provision of the statute.¹ The State opposes the defendant's Motion to dismiss, but acknowledges that the Court must conduct a hearing in the matter pursuant to the defendant's Motion.

Relevant Facts.²

On April 11, 2014, at about 9:00 p.m., Natonio Byrd (victim) went to the home of Bobby Sims (defendant), at Elm Road in the town of Chester, in Chester County. Byrd was a friend of Bobby Sims and his brother Johnny Sims, who also stayed at the house. Byrd had been an invited guest at Sims' home on many prior occasions. The incident took place on or in front of Sims' front porch. With Byrd on or in front of the porch, was Byrd's 5-year old son (Byrd's 2 year old son was asleep in Byrd's vehicle in Sims' driveway). Also on or in front of the porch was Sims' brother Johnny Sims.³

Byrd states that when he arrived at Sims' house, Johnny Sims said that Bobby Sims was in the house smoking crack cocaine. A verbal argument started on or in front of Sims' porch between Byrd and Johnny

¹ When referring to the "Castle Doctrine" in this Memorandum, the State is referring to S.C. Code Ann. §16-11-410 thru 450. The statutory sections are reprinted in their entirety in the Appendix attached to this Memorandum, for convenient reference by this Court.

² The State's reiteration of the facts are taken from the statements of the victim, the police investigation reports and collection of evidence, photographs taken of the scene, and the defendant's own confessions. The defendant gave four (4) separate statements: [1] A verbal statement at the scene of the incident; [2] A video-taped statement at the Sheriff's Department shortly after the incident; [3] A second video-taped statement taken a day after the incident and [4] a 1-page written statement signed by the defendant. The defendant was Mirandized for all of the statements. All of information contained herein has been provided to defendant's counsel through discovery.

³ Police investigators did not obtain a statement from Johnny Sims at the time of the incident because he fled and could not be located.

Sims because Johnny used obscene language towards Byrd's 5-year-old son. Sims then came out of the house and onto the porch, also using obscene language. Byrd and Sims had a verbal argument. Sims then said to Byrd: "Wait a minute, I got something for that sh***" and Sims went back into the house.

Bobby Sims came back to the screen door with a gun: a .22 caliber Martin sawed-off rifle. Byrd grabbed his son to flee. Sims then started firing without any provocation or threat from Byrd, and with Byrd's 5-year-old son in the line of fire.⁴ Sims shot Byrd three times: once in Byrd's right hand, and twice in the chest. Byrd managed to grab his 5-year old son and run away, with Sims pursuing them. Sims yelled: "I'm going to get (kill) that motherfu***r" as he shot at Byrd.

An independent witness, Alecia Floyd, corroborates that when Byrd approached her car after he had been shot and asking for help, that Byrd had a small child with him. Byrd was airlifted to CMC Charlotte hospital and was in intensive care for several days, but survived. Sims was arrested at the scene for Attempted Murder, and transported to the Chester County Detention Center. Bond was set but Sims has been unable to post bond. On December 22, 2014, defendant's counsel filed a Motion to Dismiss under the "Castle Doctrine" and appropriate law.

Finally, Sims has given several voluntary yet inconsistent statements. Initially, he stated at the scene that somebody else had shot Byrd. Officers searched the house and found no other persons. Byrd had identified Sims as the shooter before being taken for medical treatment. Then Sims said that Byrd came to his (Sims) house with another "guy" to collect \$28 owed by Byrd to Sims,⁵ but there is in fact no "other guy" (presumably, Sims was possibly referring to Byrd's 5-year-old son as the "other guy"). Sims initially stated that Byrd tried to come into the house with a knife, but then told police that they had argued and did some pushing on the front porch, which made Sims angry so that he (Sims) went inside and got his (Sims)

⁴ It is unclear from Byrd's and Sims' statements as to whether Sims shot through the screen door, or opened the door and fired. The State submits that it is irrelevant for the purpose of this hearing, but that at trial the forensic evidence and photographs would address this issue.

⁵ The State also submits that whether Sims owed Boyd \$28 is irrelevant to this Court's decision under the applicable law for this case to proceed to trial and the defense's burden of proof at the hearing. Even if Byrd was at Sims' house to collect a debt, nothing in the known facts warranted Sims shooting Byrd, since Sims himself has stated in his video-taped confession that Byrd was unarmed and not posing a threat, and that Sims took steps to tamper with the scene, fabricate evidence, and make it appear to be self-defense.

gun. Sims initially told police that he threw the sawed-off rifle into a well behind the house, but then admitted to lying about that, and subsequently took police to where he (Sims) had actually hidden the gun. Sims even admitted to taking a knife that was found by police on the porch, and using the knife to cut his (Sims) own coat to make it look like he (Sims) had been attacked. Sims further admitted that the cuts on his hand were the result of him (Sims) using the knife to cut his own coat. The complete video-taped interviews and confessions of Sims depict additional inconsistencies and admissions by Sims, all of which are contrary to, and undermine Sims' assertion of, the immunity provisions of the "Castle Doctrine" statute.

Therefore, the State submits that upon these facts the defense will fail in its burden under the statute and *Duncan, supra.*, and that the State should be allowed to proceed to trial.

Discussion.

The Defendant Must Prove his Case at a Pre-Trial Hearing by a Preponderance of the Evidence.

A defendant who asserts a right of self-defense under the "Castle Doctrine" is entitled to immunity from prosecution *if* the defendant can meet the specific burden of proof that is required. *State v. Duncan*, 392 S.C. at 407, 709 S.E.2d at 664. In the statute, our Legislature specifically used the words "immune from criminal prosecution," so as to establish a "true immunity" from prosecution, and not just for use as an affirmative defense at a jury trial. *Id.*, 392 S.C. at 409-10, 709 S.E.2d at 665. Thus, a defendant who asserts immunity under the "Castle Doctrine" statute, is entitled to a hearing prior to trial for the Circuit Court to make a determination as to whether the defendant meets the statute's criteria. *Id.*

At such a pre-trial hearing, the *defendant* must present evidence by a preponderance of the evidence standard that he (the defendant) acted in self-defense under the parameters of the statute:

...[W]e hold that when a party raises the question of statutory immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence.

Id., 392 S.C. at 411, 709 S.E.2d at 665.

Our Court has long defined that the burden of proof as to a "preponderance of evidence" means by the "greater weight of evidence." *See, State v. McDaniel*, 68 S.C. 304, 316, 47 S.E. 384, 388 (1904) (Court

defines “preponderance of the evidence”, but also states that a defendant does not have such a burden of proof at jury trial when submitting the defense of accident to a charge of murder). By way of example, in order to introduce a confession into evidence the State must show by a preponderance of the evidence that: the confession was voluntary; and that the defendant waived his rights knowingly and intelligently. *State v. Neeley*, 271 S.C. 33, 40, 244 S.E.2d 522, 526 (1978) (“(T)he burden is on the State to prove by a *preponderance of the evidence* that his rights were voluntarily waived.”).

So, for the pre-trial hearing in this case, the defendant must show that upon the scales of justice the evidence tips in favor of the defendant. This burden of proof is long-established in civil cases in our state, as the standard of proof which a plaintiff must show – and thus, the burden which the defendant (taking on the role of plaintiff in a civil case) must show is that which “outbalances” the State’s case:

The expression, ‘greater weight or *preponderance of the evidence*,’ means just what it says; that is, that, if the weight of the evidence of the defendant’s side equals the weight of the evidence on the plaintiff’s side, the scales would be balanced, and the plaintiff under such circumstances will have failed to establish the matters required to be established by the greater weight of the evidence. In other words, to determine the greater weight of the evidence, the jury must imagine a scale by which the evidence on each side is accurately weighed, and in their mind they put the evidence of the plaintiff on one side of the scale and the evidence of the defendant on the other, and, if the side of the scale containing the evidence of the plaintiff does not go down and outbalance the evidence on the part of the defendant, then the plaintiff has failed to produce the required degree of proof to establish his case, and the recovery in such case would be for the defendant.

McCutchen v. Pacific Mut. Life Ins. Co., 153 S.C. 401, 151 S.E. 67 (1929); *Accord, Bell v. Progressive Direct Ins. Co.*, 407 S.C. 565, 576, 757 S.E.2d 399, 404, (2014) (“[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.”).

Thus, in this case the defendant must prove his case of asserted immunity by the greater weight of the evidence – that *his* evidence outbalances that of the State’s. The State respectfully submits that the defendant’s case is not similar to those in which the trial courts have granted immunity at a pre-trial hearing.

The Defendant Sims’ Case is NOT Similar to the Facts in *Duncan* or *Douglas*. Where the Court Granted Immunity.

Two specific cases demonstrate the kind of proof required of a defendant to establish immunity from prosecution.

In *Duncan, supra.*, the Court affirmed a grant of immunity because the victim was asked to leave the defendant's residence due to inappropriate conduct, and in fact left, but then returned and entered the defendant's residence without permission and in an aggressive manner. The Court found the relevant and decisive facts included the victim returning to the defendant's residence and acting in a physically threatening manner (note that the Court refers to the defendant as "respondent" due to the procedural nature of the appeal):

According to Templeton [defendant's girlfriend], the victim left but returned a few minutes later. The victim was opening the screened porch door when respondent exited the front door of the house onto the porch with the gun. At one point, the victim began advancing across the porch and Templeton was "between [the victim] and [respondent]" and was "trying to get [the victim] off the steps and leave." The victim continued to force his way onto the porch. Templeton claimed respondent pointed the gun at the victim and fired. The victim died as a result of the gunshot wound to the face.

Duncan, 392 S.C. at 407, 709 S.E.2d at 663.

In a similar case, the Court of Appeals recently affirmed a grant of immunity from prosecution in *State v. Douglas*, 2014 S.C. App. LEXIS 315 (S.C. Ct. App. Dec. 23, 2014).⁶ The relevant facts were as follows: the defendant and victim were at defendant's home; they began arguing over the defendant's prescription medicine bottle which the victim had found and refused to return to the defendant; the victim then became physically assaultive, hitting and biting the defendant, throwing him up against a refrigerator and hitting his head, and striking him in the eye; the defendant repeatedly asked the victim to leave, but he (victim) refused to do so; the defendant retrieved a pistol from his bedroom and again asked the victim to leave; the victim advanced on the defendant in an aggressive manner, and the defendant shot one time; the defendant immediately called 911 for help, and went next door to his (defendant's) father's residence for help, too; photographs showed that the defendant had bruises on his upper arms from the victim, and further evidence showed that the defendant had suffered a concussion from the initial assaults. *Id.*, at pp. 1-5.

⁶ It is noted that the *Douglas* opinion is not final because the time has not yet expired for the filing of a motion for rehearing. Nor has it been determined if review will be sought to the S.C. Supreme Court.

However, the defendant Sims in this case cannot show any facts even remotely similar to those in *Duncan* or *Douglas*.

In this case, the victim Byrd had been a frequent guest at Sims' home. Byrd was on or in front of the defendant's front porch and never entered Sims' house. While the defendant may allege that he asked Byrd to leave, there was no intermittent period of time which Byrd had to actually leave since the whole incident apparently happened within minutes. Nor did Byrd act in any threatening manner during any such alleged intermittent period. There was a verbal argument, and possibly some pushing and shoving on or in front of the front porch, but even the defendant states that no punches were thrown and that no other overtly physical assault took place, and the victim never injured the defendant in any way.

Moreover in this case, the victim was unarmed and posed no threat. The victim was present with his 5-year-old son, and did not initiate a fight or other physically aggressive act. The defendant did not call 911, nor seek any medical assistance for the victim after shooting him. The defendant manufactured "self-defense" evidence at the scene, such as cutting his own coat with a knife to make it appear that the victim had assaulted him and cutting his own hand. The defendant lied about where he hid the gun, as well as other fabrications.⁷

The Defendant Sims' Case IS Similar to the Facts in *Curry*, Where the Court Denied Immunity.

It is thus helpful to review a case in which the Court denied a grant of immunity under the statute.

In *State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (2013), the Court affirmed the trial court's denial of a grant of immunity.⁸ In *Curry*, the defendant and victim were both guests in another person's home; they got into an argument and were separated; they got into a second argument and scuffle, and were again separated; the defendant stated that the victim "lunged" at him (defendant); and the defendant shot the

⁷ The defendant's blatant falsehoods are relevant to this Court's determination as to whether the defendant has established his case by a preponderance of the evidence. In other words, this Court is not bound at the pre-trial hearing to accept the defendant's lies as fact, and such prior falsehoods and intentional fabrications of evidence now bear upon the defendant's overall credibility.

⁸ *Curry* was tried before the Court had issued its opinion in *Duncan, supra*, and so there was no pre-trial hearing. On appeal, the Court treated the trial court's review of the defendant's directed verdict motion as a motion under the "Castle Doctrine" statute.

victim six times in the back. *Id.*, 406 S.C. at 368-70, 752 S.E.2d at 265. The defendant was convicted of voluntary manslaughter and the Court affirmed. *Id.*

Significantly, the Court in *Curry* noted that the victim was a guest in the home where the incident occurred – just like Byrd had been a frequent guest of Sims in this case, and was a guest on Sims’ front porch during the incident at issue in this case. On this point, the Court in *Curry* stated as follows:

Section 16-11-440(A), the main thrust of the Act, provides a presumption of reasonable fear of imminent peril of death or great bodily injury to a person who uses deadly force if he is attacked by or attempting to remove another from a dwelling, residence, or occupied vehicle. **However, the presumption of subsection (A) does not apply if the victim has an equal right to be in the dwelling or residence.** *S.C. Code § 16-11-440(B)*. Because Collins [victim] was a social guest and rightfully in the apartment, *subsection (A)* is inapplicable to Appellant, and he is therefore defaulted into *subsection (C)*, which deals with the use of force by one who is attacked in another place where he has a right to be.

State v. Curry, 406 S.C. at 370, 752 S.E.2d at 266. (emphasis supplied).

This means that Sims is not entitled to the presumption found in subsection (A) of the immunity statute. The presumption reads as follows: “A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself ...” *S.C. Code Ann. §16-11-440(A)*. But Sims does not receive the benefit of this presumption because Byrd was a guest at Sims’ home, had not been asked to leave (or given a reasonable chance to leave) and as such, Byrd had a right to be standing on or in front of Sims’ front porch, per *S.C. Code Ann. §16-11-440(B)(1)*.⁹ Furthermore, Sims should not receive the benefit of the presumption – nor be entitled to any defense under the statute – because Sims was engaged in an *unlawful activity*: possessing and using an illegal substance (i.e. – crack cocaine) which Sims admits to in his second video confession. *S.C. Code Ann. §16-11-440((B)(2)*.

Thus, in this case, Sims falls within the purview of the Court’s conclusion in *Curry*, as follows:

Appellant appears to argue the Act should be construed to require a trial court to accept the accused's version of the underlying facts. As a result, the trial court could only determine if the accused is “not engaged in an unlawful activity” and is in a “place he has a right to be.” We find

⁹ The State submits that Sims cannot meet his burden of proof by a preponderance of the evidence even if he is entitled to the presumption under subsection (A), of *S.C. Code Ann. §16-11-440(A)*.

that the General Assembly did not intend such an application. Consistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity. This includes all elements of self-defense, save the duty to retreat.

As the General Assembly stated its intent to codify the common law Castle Doctrine, we believe it appropriate to consider case law in the area. In *State v. Grantham*, we stated that “the [Castle Doctrine] rule is predicated on the absence of aggression or fault on [the defendant's] part in bringing on the difficulty; the doctrine is for defensive, and not offensive purposes.” 224 S.C. 41, 45, 77 S.C. 291, 292 (1953). While the Act may be considered “offensive” in the sense that the immunity operates as a bar to prosecution, such immunity is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence.

Given the facts as presented above, we conclude there is evidence to support the trial court's denial of immunity under the Act. Appellant's claim of self-defense presents a quintessential jury question, which, most assuredly, is not a situation warranting immunity from prosecution. Accordingly, we find the case was properly submitted to the jury, with the claim of self-defense being fully presented, and the State having the burden to disprove at least one element of self-defense beyond a reasonable doubt.

State v. Curry, 406 S.C. at 371-72, 752 S.E.2d at 266-67. (emphasis in original).

Sims' case before this Court presents a “quintessential jury question,” and does not warrant immunity from prosecution. Sims is free to present his claim of self-defense to a jury. And it will be the State's burden of proof beyond a reasonable doubt to disprove at least one element of the defendant's self-defense claim.

For reference, *Curry, supra.*, cogently recites the elements of self-defense. The State recognizes that there is no duty to retreat (the fourth element) in one's own home. *Id.*, 406 S.C. at 373, 752 S.E.2d at 267, citing *State v. Gordon*, 128 S.C. 422, 425, 122 S.E. 501, 502 (1924) (“One attacked, without fault on his part, on his own premises, has the right, in establishing his plea of self-defense, to claim immunity from the law of retreat, which is ordinarily an essential element of that defense.”).

There are four elements required by law to establish a case of self-defense:

First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

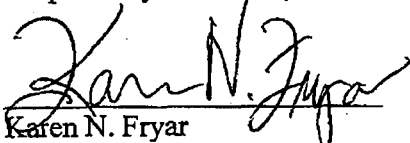
State v. Curry, 406 S.C. at 370, 752 S.E.2d at 266, at Fn. 4.

Finally, it must be noted that in *State v. Isaac*, 405 S.C. 177, 747 S.E.2d 677 (2013), the Court held that an order from the trial court *denying* a defendant's motion to dismiss under the statute is not immediately appealable by the defendant. *Id.*, 405 S.C. at 185, 747 S.E.2d at 681.

CONCLUSION

Therefore, the State respectfully requests that at any pre-trial hearing in this case, after hearing the evidence as offered by the defendant and by the State, that the Court deny the defendant's Motion to Dismiss, and allow this case to go to a jury trial.

Respectfully submitted,



Karen N. Fryar
Assistant Solicitor
Sixth Judicial Circuit
Chester, S.C.

Dated: 1.5, 2015

APPENDIX

S.C. Code Ann. § 16-11-410

S.C. Code Ann. § 16-11-420

S.C. Code Ann. § 16-11-430

S.C. Code Ann. § 16-11-440

S.C. Code Ann. § 16-11-450

FILED

2015 JUN 15 10:51

CLERK OF COURT
SOUTH CAROLINA

S.C. Code Ann. § 16-11-410

This document is current through all Legislation enacted in the 2013 Session

South Carolina Code of Laws Annotated > TITLE 16. CRIMES AND OFFENSES > CHAPTER 11. OFFENSES AGAINST PROPERTY > ARTICLE 6. PROTECTION OF PERSONS AND PROPERTY

§ 16-11-410. Citation of article.

This article may be cited as the "Protection of Persons and Property Act".

History

2006 Act No. 379, § 1, eff June 9, 2006.

Annotations**Case Notes**

Criminal Law & Procedure: Defenses: Self-Defense

Governments: Legislation: Effect & Operation: Retrospective Operation

LexisNexis (R) Notes**Criminal Law & Procedure: Defenses: Self-Defense**

1. Trial court did not err by refusing to retroactively apply the South Carolina Protection of Persons and Property Act, S.C. Code Ann. § 16-11-410 et seq., because the rights under the Act were substantive, and there was a clear indication from the South Carolina Legislature that the Act was not intended to apply retroactively. State v. Dickey, 380 S.C. 384, 669 S.E.2d 917, 2008 S.C. App. LEXIS 201 (S.C. Ct. App. 2008), reversed by 394 S.C. 491, 716 S.E.2d 97, 2011 S.C. LEXIS 308 (S.C. 2011).

Governments: Legislation: Effect & Operation: Retrospective Operation

2. Trial court did not err by refusing to retroactively apply the South Carolina Protection of Persons and Property Act, S.C. Code Ann. § 16-11-410 et seq., because the rights under the Act were substantive, and there was a clear indication from the South Carolina Legislature that the Act was not intended to apply retroactively. State v. Dickey, 380 S.C. 384, 669 S.E.2d 917, 2008 S.C. App. LEXIS 201 (S.C. Ct. App. 2008), reversed by 394 S.C. 491, 716 S.E.2d 97, 2011 S.C. LEXIS 308 (S.C. 2011).

South Carolina Code of Laws Annotated by LexisNexis®

Copyright © 2015 LexisNexis. All rights reserved. Statutes provided under license from the State of South Carolina.

S.C. Code Ann. § 16-11-420

This document is current through all Legislation enacted in the 2013 Session

**South Carolina Code of Laws Annotated > TITLE 16. CRIMES AND OFFENSES > CHAPTER 11.
OFFENSES AGAINST PROPERTY > ARTICLE 6. PROTECTION OF PERSONS AND PROPERTY**

§ 16-11-420. Intent and findings of General Assembly.

- (A) It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the doctrine to include an occupied vehicle and the person's place of business.
- (B) The General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.
- (C) The General Assembly finds that Section 20, Article I of the South Carolina Constitution guarantees the right of the people to bear arms, and this right shall not be infringed.
- (D) The General Assembly finds that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.
- (E) The General Assembly finds that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.

History

2006 Act No. 379, § 1, eff June 9, 2006.

Annotations**Case Notes****LexisNexis (R) Notes****Criminal Law & Procedure: Defenses: Self-Defense**

1. South Carolina Protection of Persons and Property Act, S.C. Code Ann. § 16-11-410 et seq., extended the Castle doctrine to include an occupied vehicle and the person's place of business. The Act also gave citizens the right to protect themselves, their families and others from intruders and attackers without fear of prosecution or civil action. State v. Dickey, 380 S.C. 384, 669 S.E.2d 917, 2008 S.C. App. LEXIS 201 (S.C. Ct. App. 2008), reversed by 394 S.C. 491, 716 S.E.2d 97, 2011 S.C. LEXIS 308 (S.C. 2011).

South Carolina Code of Laws Annotated by LexisNexis®

Copyright © 2015 LexisNexis. All rights reserved. Statutes provided under license from the State of South Carolina.

S.C. Code Ann. § 16-11-430

This document is current through all Legislation enacted in the 2013 Session

South Carolina Code of Laws Annotated > **TITLE 16. CRIMES AND OFFENSES** > **CHAPTER 11.**
OFFENSES AGAINST PROPERTY > **ARTICLE 6. PROTECTION OF PERSONS AND PROPERTY**

§ 16-11-430. Definitions.

As used in this article, the term:

- (1) "Dwelling" means a building or conveyance of any kind, including an attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging there at night.
- (2) "Great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of a bodily member or organ.
- (3) "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.
- (4) "Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

History

2006 Act No. 379, § 1, eff June 9, 2006.

South Carolina Code of Laws Annotated by LexisNexis ®

Copyright © 2015 LexisNexis. All rights reserved. Statutes provided under license from the State of South Carolina.

S.C. Code Ann. § 16-11-440

This document is current through all Legislation enacted in the 2013 Session

South Carolina Code of Laws Annotated > TITLE 16. CRIMES AND OFFENSES > CHAPTER 11.
OFFENSES AGAINST PROPERTY > ARTICLE 6. PROTECTION OF PERSONS AND PROPERTY

§ 16-11-440. Presumption of reasonable fear of imminent peril when using deadly force against another unlawfully entering residence, occupied vehicle or place of business.

- (A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:
- (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and
 - (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.
- (B) The presumption provided in subsection (A) does not apply if the person:
- (1) against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder; or
 - (2) sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship, of the person against whom the deadly force is used; or
 - (3) who uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or
 - (4) against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling, residence, or occupied vehicle in the performance of his official duties, and he identifies himself in accordance with applicable law or the person using force knows or reasonably should have known that the person entering or attempting to enter is a law enforcement officer.
- (C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.
- (D) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or a violent crime as defined in Section 16-1-60.
- (E) A person who by force enters or attempts to enter a dwelling, residence, or occupied vehicle in violation of an order of protection, restraining order, or condition of bond is presumed to be doing so with the intent to commit an unlawful act regardless of whether the person is a resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder.

History

2006 Act No. 379, § 1, eff June 9, 2006.

Annotations

Case Notes

Criminal Law & Procedure: Defenses: Self-Defense

Criminal Law & Procedure: Jury Instructions: Particular Instructions: Theory of Defense

Evidence: Procedural Considerations: Burdens of Proof: Preponderance of Evidence

Governments: Legislation: Effect & Operation: Prospective Operation

LexisNexis (R) Notes

Criminal Law & Procedure: Defenses: Self-Defense

1. Defendant who claimed he shot the victim because he was drunk and grabbing defendant's steering wheel as he attempted to drive was not entitled to a jury instruction that, if he was justified in firing the first shot, he could continue to shoot until the danger had completely ended; the trial court's charge on self-defense explained the principle. State v. Marin, 745 S.E.2d 148, 2013 S.C. App. LEXIS 183 (S.C. Ct. App. 2013).

2. As a victim attempted to force the victim's way onto a porch, defendant showed by a preponderance of the evidence that the victim was in the process of unlawfully and forcefully entering defendant's home in accordance with S.C. Code Ann. § 16-11-440; accordingly, defendant was entitled to immunity under the Protection of Persons and Property Act, S.C. Code Ann. §§ 16-11-410 to 450. State v. Duncan, 392 S.C. 404, 709 S.E.2d 662, 2011 S.C. LEXIS 174 (S.C. 2011).

Criminal Law & Procedure: Jury Instructions: Particular Instructions: Theory of Defense

3. Defendant who claimed he shot the victim because he was drunk and grabbing defendant's steering wheel as he attempted to drive was not entitled to a jury instruction that, if he was justified in firing the first shot, he could continue to shoot until the danger had completely ended; the trial court's charge on self-defense explained the principle. State v. Marin, 745 S.E.2d 148, 2013 S.C. App. LEXIS 183 (S.C. Ct. App. 2013).

4. Because the legislature clearly and unambiguously specified that S.C. Code Ann. § 16-11-440 was to be applied prospectively, it could not be applied retroactively to defendant's case; therefore, the trial court committed no error in refusing instruct the jury on the legal presumption of self defense contained in subsections (A) and (E). State v. Bolin, 381 S.C. 557, 673 S.E.2d 885, 2009 S.C. App. LEXIS 24 (S.C. Ct. App. 2009).

Evidence: Procedural Considerations: Burdens of Proof: Preponderance of Evidence

5. As a victim attempted to force the victim's way onto a porch, defendant showed by a preponderance of the evidence that the victim was in the process of unlawfully and forcefully entering defendant's home in accordance with S.C. Code Ann. § 16-11-440; accordingly, defendant was entitled to immunity under the Protection of Persons and Property Act, S.C. Code Ann. §§ 16-11-410 to 450. State v. Duncan, 392 S.C. 404, 709 S.E.2d 662, 2011 S.C. LEXIS 174 (S.C. 2011).

Governments: Legislation: Effect & Operation: Prospective Operation

6. Because the legislature clearly and unambiguously specified that S.C. Code Ann. § 16-11-440 was to be applied prospectively, it could not be applied retroactively to defendant's case; therefore, the trial court committed no error in refusing instruct the jury on the legal presumption of self defense contained in subsections (A) and (E). State v. Bolin, 381 S.C. 557, 673 S.E.2d 885, 2009 S.C. App. LEXIS 24 (S.C. Ct. App. 2009).

South Carolina Code of Laws Annotated by LexisNexis®

Copyright © 2015 LexisNexis. All rights reserved. Statutes provided under license from the State of South Carolina.

S.C. Code Ann. § 16-11-450

This document is current through all Legislation enacted in the 2013 Session

South Carolina Code of Laws Annotated > TITLE 16. CRIMES AND OFFENSES > CHAPTER 11. OFFENSES AGAINST PROPERTY > ARTICLE 6. PROTECTION OF PERSONS AND PROPERTY

§ 16-11-450. Immunity from criminal prosecution and civil actions; law enforcement officer exception; costs.

-
- (A) A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer.
 - (B) A law enforcement agency may use standard procedures for investigating the use of deadly force as described in subsection (A), but the agency may not arrest the person for using deadly force unless probable cause exists that the deadly force used was unlawful.
 - (C) The court shall award reasonable attorneys' fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of a civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (A).

History

2006 Act No. 379, § 1, eff June 9, 2006.

South Carolina Code of Laws Annotated by LexisNexis®

Copyright © 2015 LexisNexis. All rights reserved. Statutes provided under license from the State of South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE SIXTH JUDICIAL CIRCUIT
COUNTY OF CHESTER	)	Ind.Nos. 2014-GS-12-445
	)	Warr. No. 2014A121040032
STATE OF SOUTH CAROLINA	)	
	)	
VS.	)	ORDER
	)	
BOBBY RANDOLPH SIMS	)	
Defendant.	)	

2015 JAN 28

This matter came before me during a term of Chester County General Sessions Court (January 12-16, 2015), upon a Motion to Dismiss by the defendant, pursuant to the "Castle Doctrine" statute, S.C. Code Ann. §16-11-410 thru 450, and *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011). Both the defendant and the prosecution filed motions and memoranda for the Court's consideration. The Court held a hearing on January 15, 2015, and the defendant was represented by Assistant Public Defender Devin Nielson, and the State was represented by Assistant Solicitor Karen Fryar. The Court denies the Motion.

The Hearing of January 15, 2015: The Relevant Facts and the Applicable Law.

The Court finds the relevant facts as follows.

The Court heard testimony from Deputy Christopher Reynolds, with the Chester County Sheriff's Department. The defendant, Bobby Sims, also testified. The Court also received audio/video exhibits of statements made by the defendant, along with other exhibits and evidence entered into the record at the hearing.

On the evening of April 11, 2014, Byrd (victim) went to the home of Sims (defendant), at Elm Road in the town of Lowrys, in Chester County. Byrd was a friend of Sims, and Byrd had been an invited guest at Sims' home on many prior occasions, and was a guest on this occasion, along with Byrd's 5-year old son. The incident took place on Sims' front porch. A verbal argument started on Sims' porch between Byrd and Johnny Sims, brother of defendant Sims. Then, Byrd and Sims had a verbal argument. Sims went back into the house and retrieved a sawed-off rifle. Sims was also using crack cocaine at or near the time of the incident.

Sims came to the screen door with a gun: a .22 caliber Martin sawed-off rifle. Byrd then grabbed his 5-year old son to flee. Sims then started firing through the screen door without any provocation or threat

from Byrd. Sims shot Byrd three times: once in Byrd's right wrist, and twice in the chest. Byrd managed to grab his 5-year old son and run away, with Sims pursuing them. An independent witness corroborates that when Byrd approached her car after he had been shot and asking for help, that Byrd had a small child with him. The child was also present with his father when deputies from the Chester County Sheriff's Department arrived on the scene. Byrd was airlifted to CMC Charlotte hospital and was in intensive care for several days, but survived. Sims was arrested at the scene for Attempted Murder, and transported to the Chester County Detention Center.

Finally, Sims gave several voluntary yet inconsistent and incriminating statements. This included allegations that: somebody else shot the victim; that Byrd had stabbed him in the hand during a robbery; that two guys came to Sims' house with two knives and tried to rob him; that Byrd came to his (Sims) house with another "guy" to collect money owed by Sims; that Byrd had attacked Sims and had cut Sims coat and the palm of Sims' hand with one of the knives; and other various allegations. Sims finally admitted that he had fabricated any evidence against Byrd, that Byrd did not have any knives, that Sims had planted the two knives, and that Sims had cut his own coat and palm. Sims also admitted to smoking crack cocaine that evening.

The Court makes the following conclusions of law.

The applicable statute controls this case S.C. Code Ann. §16-11-410 thru 450 (known as the "Protection of Persons and Property Act"). The Court also considered the following cases: *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011); *State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (2013); and, *State v. Douglas*, 2014 S.C. App. LEXIS 315 (S.C. Ct. App. Dec. 23, 2014). If the defendant meets his burden of proof under the statute, then the defendant is entitled to immunity from prosecution. If the defendant does not meet his burden of proof, or otherwise fails to come within the purview of the statute, then the defendant is not entitled to immunity. The defendant must prove his case by a preponderance of the evidence at a pre-trial hearing.

In this case, defendant Sims has not proved his entitlement to relief under the statute. The Court finds that the defendant was not credible, and did not meet his burden of proof. In this case, the victim Byrd

had been a frequent guest at Sims' home. Byrd was on the defendant's front porch and never entered Sims' house. While the defendant alleged that he asked Byrd to leave, there was no intermittent period of time which Byrd had to actually leave since the whole incident happened within minutes, if not seconds. Nor is there any credible evidence that Byrd acted in any threatening manner during any such alleged intermittent period. At most, there was a verbal argument, and possibly some pushing and shoving on the front porch, but no punches were thrown and no other overtly physical assault against Sims took place.

Moreover in this case, the victim was unarmed and posed no threat. The victim was present with his 5-year-old son, and did not initiate a fight or other physically aggressive act. The defendant did not call 911, nor seek any medical assistance for the victim after shooting him. In fact, immediately after the incident Sims manufactured "self-defense" evidence at the scene, such as cutting his own coat and his own palm with a knife to make it appear that Byrd had assaulted him (Sims). Sims also placed two knives at or near the front porch. Additionally, Sims lied about where he hid the gun, as well as other fabrications. The defendant's blatant falsehoods and attempts to manufacture and fabricate evidence are relevant to this Court's determination as to whether the defendant has established his case by a preponderance of the evidence. In other words, this Court is not bound at the pre-trial hearing to accept the defendant's lies as fact, and such prior falsehoods and intentional fabrications of evidence now bear upon the defendant's overall credibility.

Furthermore, the defendant is not entitled to the protections of the statute in this case because the defendant was engaged in unlawful conduct. The defendant possessed and used an illegal firearm: a sawed-off rifle. And, at the time of the incident the defendant had been using and was in possession of, an illegal substance: crack-cocaine. The legislature intended to protect "law-abiding citizens" with this statute. S.C. Code §16-11-420(B) ("The General Assembly finds that it is proper for *law-abiding citizens* to protect themselves..."). The Legislature specifically exempted protection for any defendant engaged in unlawful acts. S.C. Code §16-11-440(B)(3). ("The presumption [of immunity] provided in subsection (A) does not apply if the person: ...who uses deadly force is engaged in an *unlawful activity*..."). See also, S.C. Code §16-11-440(C) ("A person who is not engaged in an *unlawful activity*...").

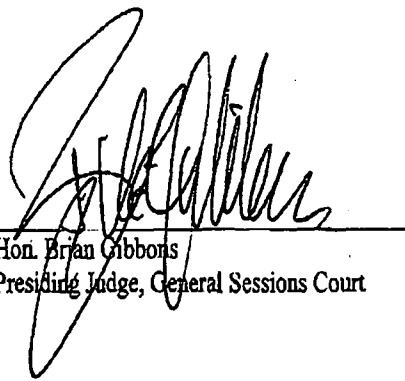
Order.

IT IS THEREFORE ORDERED THAT:

1. The defendant Sims is not entitled to protection under the statute, S.C. Code Ann. §16-11-410 thru 450, because the defendant was engaged in an unlawful activity, specifically two (2) separate unlawful activities at or near the time of the incident: possession and use of an illegal substance, crack cocaine; and possession and use of an illegal firearm, a sawed-off rifle.
2. The defendant Sims is not entitled to protection under the statute, S.C. Code Ann. §16-11-410 thru 450, because the defendant did not meet his burden of proof by a preponderance of the evidence, including but not limited to, that the defendant himself was not credible, that the defendant gave numerous inconsistent versions of the facts immediately after the incident, and that the defendant fabricated or manufactured evidence to make it appear to be "self-defense."
3. The defendant's Motion to Dismiss is DENIED, and the charge of Attempted Murder remains pending in Chester County General Sessions Court.
4. The defendant may or may not be entitled to a jury instruction of self-defense or other similar jury charges, depending upon the facts adduced and presented at trial, and left to the discretion of the trial judge.

AND IT IS SO ORDERED.

Chester, S.C. 26
Dated: January 26, 2015


Hon. Brian Gibbons
Presiding Judge, General Sessions Court

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Chester
STATE VS.INDICTMENT/CASE#: 2014GS12445Bobby Randolph SimsA/W#: 2014A1210400032

AKA:

Date of Offense: 4/11/2014Race: BLACK Sex: M Age: 53S.C. Code §: 16-03-0029DOB: [REDACTED] SS#: [REDACTED]CDR Code #: 3410

Address:

City, State, Zip:

DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Assault and Battery of a High and Aggravated Nature☐ CONVICTED OF or ☒ PLEADS

SENTENCE SHEET

in violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Karen J. Taylor 10385 Bobby R. Sims 107444
Taylor, Christopher D. 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 16 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 the 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: _____

☐ Set by SCDPPPS _____

Recipient: _____

*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 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ ~~133.90~~ 133.90

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐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.

Presiding Judge [Signature]Judge Code: 2168Sentence Date: 3/19/15Clerk of Court/ Deputy Clerk [Signature]Court Reporter: Aileen Butler

SCCA/217 (03/2011)

RECEIVED

APR 21 2015

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM CHESTER COUNTY
Court of General Sessions**

Brian Gibbons, Circuit Court Judge

Case No(s): 2014-GS-12-445

The State of South Carolina,

Respondent.

v.

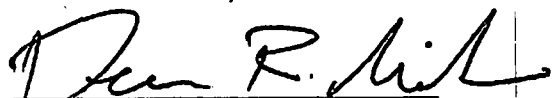
Bobby Randolph Sims

Appellant.

STATEMENT PURSUANT TO RULE 203(d)(1)(B)(iv)

Appellant pled guilty on March 19, 2015. Undersigned counsel files this appeal at the request of Appellant and pursuant to In re Anonymous Member of the Bar, 303 S.C. 306, 400 S.E.2d 483 (1991). Counsel knows of no issue that can be reviewed on appeal from the plea or sentence itself. The client may have an issue coming out of his immunity hearing pursuant to South Carolina's stand your ground law. This hearing was held January 15, 2015 in front of the Honorable Judge Brian Gibbons. The ruling in this hearing given by Judge Gibbons was not appealable without a final order. Now that there is a final order after a plea counsel sees that Judge Gibbon's ruling may now be appealable.

Date: August 13, 2014



Devon R. Nielson, Esq.
Sixth Circuit Assistant Public Defender
Post Office Box 132
Chester, SC 29706
Attorney for Appellant
(803) 385-3232

RECEIVED

MAR 31 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

2015 MAR 26 A 9:42

APPEAL FROM CHESTER COUNTY
Court of General Sessions

FILED

Brian Gibbons, Circuit Court Judge

Case No(s): 2014-GS-12-445

The State of South Carolina,

Respondent.

v.

Bobby Randolph Sims

Appellant.

AMMENDED STATEMENT PURSUANT TO RULE 203(d)(1)(B)(iv)

Appellant pled guilty on March 19, 2015. Undersigned counsel files this appeal at the request of Appellant and pursuant to In re Anonymous Member of the Bar, 303 S.C. 306, 400 S.E.2d 483 (1991). Counsel knows of no issue that can be reviewed on appeal from the plea or sentence itself. The client may have an issue coming out of his immunity hearing pursuant to South Carolina's stand your ground law. This hearing was held January 15, 2015 in front of the Honorable Judge Brian Gibbons. The ruling in this hearing given by Judge Gibbons was not appealable without a final order. Now that there is a final order after a plea counsel sees that Judge Gibbon's ruling may now be appealable.

Date: March 26, 2015

RECEIVED

MAR 31 2015

SC Court of Appeals

Devon R. Nielson

Devon R. Nielson, Esq.

Sixth Circuit Assistant Public Defender

Post Office Box 132

Chester, SC 29706

Attorney for Appellant

(803) 385-3232

Other Counsel of Record:
Karen Fryer, Esq.
Assistant Solicitor
Post Office Box 728
Chester, South Carolina 29706
Attorney for Respondent
(803) 377-1141

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM CHESTER COUNTY
Court of General Sessions**

Brian Gibbons, Circuit Court Judge

Case No(s): 2014-GS-12-445

The State of South Carolina,

Respondent.

v.

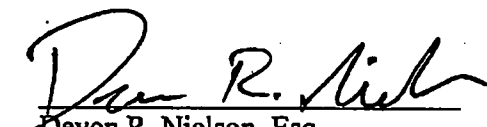
Bobby Randolph Sims

Appellant.

NOTICE OF APPEAL

Bobby Sims appeals his conviction and sentence in this case. The sentence was imposed by the Brian Gibbons on March 19, 2015. Now that a final order is in place in the case he also appeals any issue preserved from his immunity hearing held on January 15, 2015.

Date: March 26, 2015


Devon R. Nielson, Esq.
Sixth Circuit Assistant Public Defender
Post Office Box 132
Chester, SC 29706
Attorney for Appellant
(803) 385-3232

Other Counsel of Record:
Karen Fryer, Esq.
Deputy Solicitor
Post Office Box 728
Chester, South Carolina 29706
Attorney for Respondent
(803) 377-1141

RECEIVED
MAR 31 2015
SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM CHESTER COUNTY
Court of General Sessions**

Brian Gibbons, Circuit Court Judge

2015 MAR 26 A 9:04

FILED

Case No(s): 2014-GS-12-445

The State of South Carolina,

Respondent.

v.

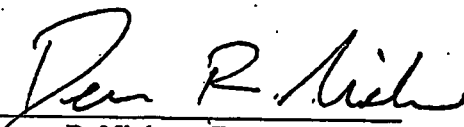
Bobby Randolph Sims,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondents by hand delivery to the solicitor's office located at 140 Main Street, Chester SC 29706.

Date: March 26, 2015


Devon R. Nielson, Esq.
Sixth Circuit Assistant Public Defender
Post Office Box 132
Chester, SC 29706
(803) 385-3232

Other Counsel of Record
Karen Fryer, Esq.
Assistant Solicitor
Post Office Box 728
Chester SC 29706
(803) 377-1141



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 22, 2015

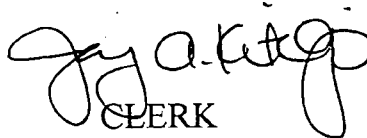
Mr. Devon Russell Nielson, Esquire
PO Box 132
158 Main Street
Chester SC 29732

Re: The State v. Bobby R. Sims
Appellate Case No. 2015-000721

Dear Counsel:

All parties are advised that the above appeal is no longer held in abeyance.
The transcript is due to be ordered within thirty (30) days of the date of this letter.

Very truly yours,

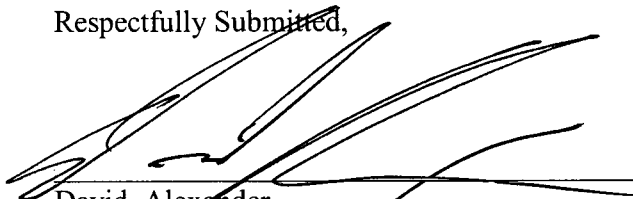

CLERK

cc: Alan McCrory Wilson, Esquire
Salley W. Elliott, Esquire
Karen Newell Fryar, Esquire
Robert Michael Dudek, Esquire

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 23rd day of September, 2016.

RECEIVED

SEP 23 2016

SC Court of Appeals