

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Berkeley County
Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RECEIVED
RESPONDENT,

V.

MAR 11 2020

ROBERT DAVID NOLEN,

SC Court of Appeals

APPELLANT

APPELLATE CASE NO 2019-000591

RECORD ON APPEAL

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STEWARD - DIRECT EXAM BY MR. ALFARO

1 A. Yes, they are. I recognize them by the
2 unique SLED number, and it also has my initials and
3 date when I entered and exited the pouches.

4 Q. Now, can you tell the jury State's 45,
5 which is SLED 4, what that item is?

6 A. Item 4 is swabs from the concrete in
7 front of the back porch steps.

8 Q. And State's 47, which is SLED 6?

9 A. That is a buccal swab from Jeffrey
10 Simmons.

11 Q. And State's 54, which is SLED 7?

12 A. That is a blood standard from Lance
13 Kenyon.

14 Q. And State's 52, which is SLED 8?

15 A. Blood spot standard from Harry
16 Gressette.

17 Q. And State's 53, which is SLED 13?

18 A. That is a blood spot standard from
19 James Harrison.

20 Q. And can you tell us what you normally
21 use blood spot standards for and what role they
22 play in your analysis?

23 A. Yes. These are known as known
24 standards. We use them for the comparison to the
25 DNA profile that we develop from the evidence to

STEWARD - DIRECT EXAM BY MR. ALFARO

1 see if those individuals can be included or
2 excluded from that DNA profile of the evidence.

3 Q. And do you use a buccal swab as you
4 described State's 47 for the same purposes?

5 A. Yes, we do.

6 Q. And those are both considered known
7 standards?

8 A. That is correct.

9 Q. And would it be fair to say that you
10 develop a profile from the known standard and then
11 compare it to items such as State's 45 or SLED 4?

12 A. That is correct.

13 Q. Now, you came into contact with those
14 items on December 11, 2017. Did you perform
15 analysis on those items?

16 A. Yes, I did.

17 Q. And did you prepare a report detailing
18 your findings related to those items that we just
19 discussed?

20 A. Yes, I did.

21 Q. And subsequent to that, did you also
22 have the opportunity to come into contact with
23 additional evidence on February 14th of 2017?

24 A. Please repeat the date.

25 Q. February 14th, 2017. The SLED item

STEWARD - DIRECT EXAM BY MR. ALFARO

1 numbers that I'm referring to are SLED's 51, 52,
2 and 53.

3 A. Yes, I did.

4 Q. Okay. And for the record, I'm going to
5 show you State's 69, which correlates to SLED 51,
6 State's 70, which correlates to SLED 52, and
7 State's 71, which correlates to SLED 53, and ask
8 you if you recognize those as the items that you
9 came into contact with on February 14th, 2017.

10 A. Yes, I do. These also have the same
11 unique SLED number. They also have my initials and
12 dates when I entered and exited the pouch.

13 Q. And do your records indicate who
14 submitted those items for analysis?

15 A. These items were submitted by Jamie
16 Johnson. And that was on -- I'm sorry, all three
17 of those items were submitted by Jamie Johnson on
18 February 14th, 2017.

19 Q. And could you tell us what State's 69,
20 SLED 51 is described as?

21 A. Swabs from stained area number one in
22 green room.

23 Q. And State's 70, SLED 52?

24 A. Swabs from stained area number two in
25 green room.

STEWARD - DIRECT EXAM BY MR. ALFARO

1 Q. And State's Exhibit 71, SLED 53?

2 A. Swabs from stained area number three in
3 green room.

4 Q. And did you also have the opportunity
5 to come into contact with State's 56, which is SLED
6 75, a sealed box containing miscellaneous,
7 described as sheetrock piece from left side of
8 closet in neon green room?

9 A. Yes, I did.

10 Q. And did you also have the opportunity
11 to come into contact with State's 57, which is SLED
12 75.1?

13 A. Yes, I did.

14 Q. And State's 56, the sealed box, which
15 is SLED 75, who did you receive that item from and
16 when did you receive it?

17 A. I took that item into my custody on
18 April 10, 2018, and that was from Jackie Davis.
19 She was also a forensic technician that worked in
20 our evidence control department.

21 Q. And related to State's 57 or SLED 75.1,
22 can you tell us what that item is and who you
23 received it from?

24 A. That item is a swab from sheetrock
25 piece. I received that item from Jasmine Ruiz-Yi

STEWARD - DIRECT EXAM BY MR. ALFARO

1 on March 30, 2018.

2 Q. So you received that from Jasmine
3 Ruiz-Yi on March 30th?

4 A. That is correct.

5 Q. And those items, were they properly
6 sealed and labeled when they came into your
7 possession?

8 A. Yes, they were.

9 Q. Now, what did you do with State's
10 Exhibit 70 -- or State's 56, SLED 75, the sheetrock
11 piece from the closet? When that came into your
12 possession, did you produce any cuttings from that?

13 A. Yes, I did. I took several pieces from
14 that sheetrock to test them for possible blood.

15 Q. Okay. And for those items 75, SLED
16 75.2 and 75.12, are those items essentially
17 consumed during the course of testing?

18 A. They were not consumed. There's still
19 some portion that's left on the actual sheetrock.
20 Those should be there.

21 Q. Okay. And you already told us what a
22 blood spot card was and a buccal swab was. If I
23 could, I'd like to discuss the results of your
24 analysis. If we could begin with State's 45, which
25 is SLED 4, the swabs from the concrete in the front

STEWARD - DIRECT EXAM BY MR. ALFARO

1 of the back porch steps.

2 A. The presumptive test result is
3 positive. The DNA profile matches the DNA profile
4 of James Harrison. The probability of randomly
5 selecting an unrelated individual having a DNA
6 profile matching this item is approximately one in
7 330 septillion.

8 Q. So the swab from the concrete in front
9 of the back porch steps was positive for -- or
10 matched the DNA profile of James Harrison?

11 A. That is correct.

12 Q. Now, regarding State's Exhibit 69,
13 which is SLED 51, the swabs from the stained area
14 number one in the green room, what findings and
15 conclusions did you come to regarding this item?

16 A. Presumptive testing for blood was
17 positive. The DNA is from an unidentified male
18 individual.

19 Q. When it's an unidentified male
20 individual, does that just mean you didn't -- of
21 the samples that -- the standards that were
22 provided to you, you didn't have a match?

23 A. That is correct.

24 Q. And what were your findings related to
25 State's Exhibit 70, SLED 52, the swabs from area

STEWARD - DIRECT EXAM BY MR. ALFARO

1 two of the green room?

2 A. Presumptive testing for blood was
3 positive. The DNA profile is from an unidentified
4 male individual A.

5 Q. And regarding State's Exhibit 71, which
6 is SLED 53, the swabs from stained area three in
7 the green room?

8 A. Presumptive testing for blood was
9 positive. The DNA profile is from an unidentified
10 male individual A.

11 Q. Now, did you have an opportunity to --
12 in your examination of SLED 75.1 have the -- which
13 is State's 57, the swabs from the sheetrock piece,
14 did you come into any conclusion or findings
15 related to that item?

16 A. A partial DNA profile was developed.
17 Due to the inability to calculate any statistic, no
18 further interpretation will be offered.

19 Q. And did you also perform similar
20 analysis on SLED 75.2 through 75.12, which I
21 believe are all cuttings from the sheetrock piece?

22 A. Yes, I did.

23 Q. And what were your findings related to
24 those cuttings?

25 A. No human blood was identified.

EICHENMILLER - DIRECT EXAM BY MR. ALFARO

1 MR. ALFARO: Thank you. Please answer
2 any questions the defense may have.

3 THE COURT: Any questions for the
4 witness?

5 MS. NORRIS: No questions. Thank you,
6 sir.

7 THE COURT: Any objection to the
8 witness being excused? From the State?

9 MR. ALFARO: No, Your Honor.

10 THE COURT: From the defense?

11 MS. NORRIS: No, Your Honor.

12 THE COURT: Sir, you're excused.

13 THE WITNESS: Thank you.

14 THE COURT: You may proceed.

15 MR. ALFARO: The State calls Michelle
16 Eichenmiller.

17 MICHELLE EICHENMILLER,

18 being first duly sworn, testified as follows:

19 THE CLERK: Please be seated. State
20 your full name, and spell your last name for the
21 record.

22 THE WITNESS: My name is Michelle
23 Eichenmiller, E-I-C-H-E-N-M-I-L-L-E-R.

24 THE COURT: You may proceed.

25 MR. ALFARO: Thank you, Your Honor.

EICHENMILLER - DIRECT EXAM BY MR. ALFARO

1 THE COURT: You're welcome.

2 DIRECT EXAMINATION

3 BY MR. ALFARO:

4 Q. Could you tell us where you work?

5 A. I work for the South Carolina Law
6 Enforcement Division, also known as SLED. I work
7 in the forensic lab in the firearms department.

8 Q. And what's your current rank at SLED?

9 A. I'm a forensic scientist.

10 Q. And how long have you been with SLED?

11 A. Approximately, 13 years.

12 Q. And can you tell us what your current
13 -- currently what your primary duties and
14 responsibilities are?

15 A. In the firearms department we analyze
16 any evidence from crime scenes related to firearms.
17 So the actual firearms themselves, any fired
18 bullets, or fired cartridge cases.

19 Q. And what is your educational
20 background?

21 A. I have a bachelor's degree in biology.
22 I also have a master's of science in forensic
23 science. And in order to be a firearms examiner, I
24 had to go through the SLED in-house training
25 program. There is no university you can go to to

EICHENMILLER - DIRECT EXAM BY MR. ALFARO

1 be a firearms examiner.

2 So whenever you get hired, you go
3 through the internal training program. It's a
4 three to five year program where I learned with
5 court qualified examiners how to examine evidence.
6 I also did a lot of reading and practical exercises
7 on my own.

8 At the end of the three years, you take
9 a practical exam for competency and then do a mock
10 court, and then they deem you competent to do
11 casework on your own.

12 Q. And how long have you been doing
13 casework on your own?

14 A. Approximately, nine years.

15 Q. And how many cases would you say you
16 have worked on in your time at SLED in this
17 capacity?

18 A. Hundreds, maybe even a thousand.

19 Q. And have you ever been qualified as an
20 expert in the area of firearms identification?

21 A. Yes.

22 Q. How many times?

23 A. Approximately, 80 times.

24 Q. And is that -- has that happened in
25 state and federal court in South Carolina?

EICHENMILLER - DIRECT EXAM BY MR. ALFARO

1 A. Just state.

2 Q. Just state court. Okay.

3 MR. ALFARO: Your Honor, at this time,
4 we would offer the witness as an expert in the area
5 of firearms identification.

6 THE COURT: Any objections or
7 questions?

8 MS. NORRIS: No objection.

9 THE COURT: So admitted, without
10 objection. You may proceed.

11 BY MR. ALFARO:

12 Q. Can you tell us -- tell the jury about
13 how you go about matching shell casings or fired
14 bullets to a particular weapon?

15 A. Whenever a firearm is submitted, we'll
16 examine it for safety, we'll write down any
17 information that we need from it, and then we'll
18 test fire it to get perfect samples from it so that
19 I can compare it to anything that came in from the
20 scene.

21 So I'll take the bullets, put them on
22 my comparison microscope, which is basically two
23 stages where I can put the bullets on -- one on
24 each stage, and then look through what looks like a
25 pair of binoculars.

EICHENMILLER - DIRECT EXAM BY MR. ALFARO

1 Using magnification, I look at the
2 marks that I left on the bullet by the firearm and
3 attempt to determine if they were fired by the same
4 firearm.

5 Q. And what kinds of things are you
6 looking for in that analysis?

7 A. There are microscopic scratches that
8 are put on bullets and cartridge cases from the
9 firearms. Those scratches are made during the
10 manufacturing process and then how the firearm is
11 treated after it was manufactured, so it's unique
12 to that firearm.

13 Q. Okay. And did you have the opportunity
14 to examine some firearm evidence submitted to SLED
15 under lab L1616181?

16 A. Yes. May I get my notes out?

17 THE COURT: Yes, ma'am.

18 BY MR. ALFARO:

19 Q. And beginning with State's 44.

20 A. Whenever we get evidence in a case, I
21 will write on it with my initials, item number, and
22 the lab number. So this is the firearm I examined
23 in this case.

24 Q. And can you tell us what kind of
25 firearm that is?

EICHENMILLER - DIRECT EXAM BY MR. ALFARO

1 A. It's a Ruger model 10-22, it's 22 long
2 rifle caliber, and it has a scope, and it was
3 admitted with a magazine.

4 Q. Okay. And did you perform any analysis
5 or examination of that item?

6 A. I did.

7 Q. And what findings, if any, did you come
8 to regarding that item?

9 A. I physically examined the item, I test
10 fired it to get test specimens, and I found it to
11 be in working order.

12 Q. And when you -- you said you fired it
13 to obtain test specimens. What ammunition do you
14 use for that?

15 A. I try to use whatever was -- whatever I
16 received in the case, similar ammo. We have an
17 ammunition reference collection at SLED where we
18 have a little bit of everything. So we try to test
19 fire whatever was submitted in the case, similar
20 ammunition.

21 Q. And did you also have the opportunity
22 on December 5, 2016, to come into possession of a
23 number of shell casings and fired bullets related
24 to this case?

25 A. Yes.

EICHENMILLER - DIRECT EXAM BY MR. ALFARO

1 Q. I'm going to show you what has been
2 entered into evidence as State's 1 through 29, and
3 ask you to take a look at these. I'll give you the
4 corresponding SLED number when you've had a chance
5 to --

6 A. These are items I examined in this
7 case.

8 Q. And I'm also going to show you State's
9 Exhibits 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40
10 and 41, and State's 42 -- State's 42, and ask you
11 if you recognize those items as things you came
12 into contact with as part of this case.

13 A. Yes. These are additional items that I
14 examined in this case.

15 Q. Okay. And did you have the opportunity
16 to examine all of those items that you've just
17 identified?

18 A. Yes.

19 Q. Okay. And did you prepare a report
20 detailing your findings regarding your analysis of
21 these items?

22 A. I did.

23 Q. And is that report dated April 10th,
24 2018?

25 A. Yes.

EICHENMILLER - DIRECT EXAM BY MR. ALFARO

1 Q. Now, if I can, I'm going to try to walk
2 you through some of these. Regarding State's --
3 have you identify what they are. Regarding State's
4 Exhibit 22, which is SLED item 3, can you tell us
5 what that item is?

6 A. SLED item 3 is one unfired 22 long
7 rifle caliber cartridge.

8 Q. And State's 30, which is SLED 9?

9 A. Nine is a fired bullet.

10 Q. Does it tell you any further
11 description as far as where it came from or --

12 A. Oh, it was labeled number 1, from the
13 stomach of James Harrison.

14 Q. And State's Exhibit 31, which is SLED
15 10, do you have a description as to what that item
16 was described as?

17 A. It was one fired bullet described as
18 number 2 from the left flank -- the L flank of
19 James Harrison.

20 Q. And State's Exhibit 32, which is SLED
21 11, what is that described as?

22 A. Eleven is also a fired bullet described
23 as number 3 from the liver of James Harrison.

24 Q. And State's Exhibit 33, which is SLED
25 12?

EICHENMILLER - DIRECT EXAM BY MR. ALFARO

1 A. SLED item 12 is one fired bullet
2 described as number 4 from the left chest wall, rib
3 nine, of James Harrison.

4 Q. And State's 34, which is SLED 15?

5 A. Fifteen was described as one fired
6 bullet as number 1 from Lance Kenyon.

7 Q. And State's 35, SLED 16?

8 A. One fired bullet described as number 2
9 from Lance Kenyon.

10 Q. And State's 46, SLED 17?

11 A. Is another fired bullet described as
12 number 3 from Lance Kenyon.

13 Q. And State's 37, which is SLED 18?

14 A. One fired bullet described as number 4
15 from Lance Kenyon.

16 Q. And State's 38, which is SLED 19?

17 A. One fired bullet described as number 5
18 from Lance Kenyon.

19 Q. And State's 39, SLED 20?

20 A. One fired bullet described as number 6
21 from Lance Kenyon.

22 Q. And State's 40, which is SLED 21?

23 A. One fired bullet described as number 7
24 from Lance Kenyon.

25 Q. And State's 41, which is SLED 22?

EICHENMILLER - DIRECT EXAM BY MR. ALFARO

1 A. Item 22 is one lead fragment described
2 as number 8 from Lance Kenyon.

3 Q. Okay. And State's 42, which is SLED
4 50?

5 A. One fired bullet and one lead fragment.

6 Q. And were you able to come to any
7 findings or conclusion regarding your analysis of
8 the fired bullets that you just described, as well
9 as the lead fragment that you just described?

10 A. Physical and microscopic examination of
11 SLED items 9 through 12 and 15 through 21 showed
12 that they were most consistent with bullets loaded
13 into a 22 long rifle caliber cartridges.

14 Item 50, the bullet portion of item 50
15 was a fragment, and a bullet, was most consistent
16 with a bullet loaded into some 22-caliber
17 cartridges.

18 Q. And you also had in your possession
19 State's 28, which is SLED 23. What is that item?

20 A. One fired 9 millimeter Luger caliber
21 cartridge case.

22 Q. And State's 29, which is SLED 24?

23 A. Is another fired nine millimeter Luger
24 cartridge case.

25 Q. Okay. And were you -- did you perform

EICHENMILLER - DIRECT EXAM BY MR. ALFARO

1 any examination or analysis of those two items?

2 A. I physically examined them and
3 microscopically compared them on my comparison
4 microscope and matching identifying characteristics
5 were found. And I concluded that they were fired
6 by the same firearm.

7 Q. And is it -- you described them as nine
8 millimeter. Is it safe to say they are -- I
9 shouldn't say that. Can they be fired by the Ruger
10 rifle that you have, item one?

11 A. No.

12 Q. Now, you also had the opportunity to
13 look at State's 1 through 21 and 23 through 26,
14 which correlate to SLED 25 to 45 and 46 to 49. So,
15 essentially, 25 through 49, did you have the
16 opportunity to perform any analysis -- or can you
17 tell us what the items were again?

18 A. Those items are 25, fired 22 long or
19 long rifle caliber cartridge cases.

20 Q. So I'm not going to ask you to hold up
21 each individual one, but these are the items --
22 those are each shell casings?

23 A. Yes. Each heat-sealed bag has one
24 fired cartridge case in it.

25 Q. So you examined 25, fired 22 long or

EICHENMILLER - CROSS EXAM BY MS. NORRIS

1 long rifle cartridge casings?

2 A. I did.

3 Q. And was there some further description
4 on the item as far as location or where they were
5 from?

6 A. They were described as from the scene.

7 Q. Okay. And what findings, if any, did
8 you come to regarding your analysis of those items
9 and were they compared to the Luger rifle before
10 you, which is State's 44?

11 A. I compared them to each other and to
12 the test specimens I obtained from the item one
13 rifle. Matching individual identifying
14 characteristics were found, and I concluded that
15 items 25 through 49 were fired by item one.

16 Q. So each of those -- your conclusion is
17 that each of those 25 cartridge casings came from
18 that rifle?

19 A. Yes.

20 MR. ALFARO: Okay. Thank you. Please
21 answer any questions that the defense may have.

22 THE COURT: You may proceed.

23 CROSS-EXAMINATION

24 BY MS. NORRIS:

25 Q. Agent Eichenmiller, did you also

EICHENMILLER - CROSS EXAM BY MS. NORRIS

1 receive a nine millimeter weapon in this case?

2 A. I did not.

3 MS. NORRIS: May I approach, Your
4 Honor?

5 THE COURT: You may..

6 BY MS. NORRIS:

7 Q. I'm going to show you State's Exhibit
8 45, and I don't believe you've seen that before,
9 but I want you to tell us what it is?

10 A. It's a Butler Creek brand magazine.

11 Q. Okay. And would that go into this
12 weapon?

13 A. I believe it's the correct magazine, or
14 a magazine that would work with it.

15 MS. NORRIS: And may I ask her to step
16 down, Your Honor?

17 THE COURT: Ma'am, just speak -- you
18 all might need to switch places so that she's
19 speaking toward the Court Reporter.

20 BY MS. NORRIS:

21 Q. Can you explain for the jury where that
22 would go?

23 A. This is the magazine well for this
24 rifle. It would go right in there.

25 Q. And what is contained in the magazine?

EICHENMILLER - CROSS EXAM BY MS. NORRIS

1 A. A magazine usually contains unfired
2 cartridges.

3 Q. And how does the weapon actually
4 operate if the magazine was in there and bullets
5 were in there and I pulled the trigger? Would a
6 shell casing fly out of there?

7 A. Yes. It's a semiautomatic rifle, so
8 with each pull of the trigger, as long as the
9 magazine has cartridges, it will keep firing and
10 keep ejecting cartridge cases.

11 Q. And about how far would the shell
12 casing fly?

13 A. We don't really do any testing on that.
14 There's no way to tell based on how the firearm was
15 held.

16 Q. Is it safe to say that it's -- unless
17 I'm holding it so that it's going down that way, if
18 I'm shooting forward, would it go at least a couple
19 of feet?

20 A. I would guess it would go at least a
21 couple of feet.

22 Q. All right. You can take your seat.
23 And I'm going to show you what's in evidence as
24 Defense Exhibit 138. Were you provided this weapon
25 before?

EICHENMILLER - CROSS EXAM BY MS. NORRIS

1 A. I was not.

2 Q. Okay. And can you identify what weapon
3 that is?

4 A. It's labeled FN SCAR 17S, caliber 7.62
5 by 51.

6 Q. All right. And compared to -- take
7 that back. Compared to a nine millimeter -- oh,
8 I'm sorry. Compared to a 22 casing or a shell --
9 State's Exhibit 26 is an unfired 22, correct?

10 A. Correct.

11 Q. All right. And State's Exhibit 27?

12 A. Is an unfired nine millimeter.

13 Q. If you would step down here and show
14 the jury the differences in those projectiles.

15 A. This is a 22 caliber; it's pretty
16 small. And then you have a larger nine millimeter
17 Luger caliber.

18 Q. And if we had a -- you can take a seat.
19 If we had a 7.62 round in here, how would that
20 compare to say the nine millimeter?

21 A. It would be much larger.

22 Q. Would it be maybe three or four inches
23 long?

24 A. Uh-huh.

25 Q. And how big around would it be?

EICHENMILLER - CROSS EXAM BY MS. NORRIS

1 A. 7.62 millimeters.

2 Q. Okay. That shows you how much I know.

3 All right, ma'am. And you mentioned that when you
4 get a weapon in and you are doing your testing that
5 you test fire it?

6 A. Correct.

7 Q. Do you do that test firing yourself?

8 A. I do.

9 Q. So you've fired lots and lots and lots
10 of weapons?

11 A. I have.

12 Q. All right. And is it fair to say that
13 a 22 caliber rifle doesn't make as much noise as a
14 nine millimeter pistol?

15 A. Yes, that's correct.

16 Q. And is the difference in the size of
17 the bullets because of the amount of gunpowder
18 that's in it, or what can you tell me about that?

19 A. About the size of the bullets?

20 Q. Right. Why is it that a nine
21 millimeter makes more noise than a 22?

22 A. It's just a larger caliber. So, yeah,
23 it has more powder behind it, and it could -- a
24 little bit more noise.

25 Q. So the more gunpowder, the more noise,

EICHENMILLER - CROSS EXAM BY MS. NORRIS

1 in essence?

2 A. Not necessarily, but larger calibers
3 are usually louder.

4 Q. And the 22 rifle, again, that would
5 eject cartridges out this way, to the right?

6 A. Yes.

7 Q. Unless I was holding down again, and
8 then it --

9 A. Correct, unless you were holding it up.
10 it would --

11 Q. If I were holding it up?

12 A. Yeah.

13 Q. Okay. And with all of these cartridges
14 that you received -- I think there were 25, 22
15 caliber shell casings?

16 A. Correct.

17 Q. Can you look at those and tell when
18 they were fired? I'll hand you four of them. If
19 you would tell us the numbers you're looking at
20 there?

21 A. State's Exhibit 4, 3, 1, and 26.
22 There's no testing to tell when they were fired.

23 Q. So it could have been all the same
24 time, or some of them may have been from before?

25 A. Correct.

EICHENMILLER - REDIRECT EXAM BY MR. ALFARO

1 Q. Okay. And 9, here, actually looks like
2 it's been stepped on or something, doesn't it?

3 A. Yeah. It's a little flattened at the
4 case mouth.

5 MS. NORRIS: Okay. Give me just as
6 second. Thank you, Agent. I don't have any
7 further questions.

8 THE COURT: Any redirect?

9 MR. ALFARO: Just briefly.

10 THE COURT: You may proceed.

11 REDIRECT EXAMINATION

12 BY MR. ALFARO:

13 Q. You were asked about the various noises
14 that firearms make, correct?

15 A. Correct.

16 Q. And you said you test fired this
17 weapon?

18 A. Correct.

19 Q. When you fired it, did you hear it?

20 A. Yes.

21 Q. Okay. So it's not like it's silent.
22 It makes noise when you shoot it?

23 A. Oh, yes, it does make noise.

24 Q. So, for example, in a quiet room like a
25 courtroom, or a house, if you fired it, you would

1 hear it?

2 A. Yes, we would all know.

3 MR. ALFARO: Thank you. No further
4 questions.

5 THE COURT: Any objection to the
6 witness being excused? From the State?

7 MR. ALFARO: No, Your Honor.

8 THE COURT: From the defense?

9 MS. NORRIS: No, Your Honor.

10 THE COURT: Ma'am, you're excused.

11 THE WITNESS: Thank you.

12 THE COURT: Mr. Foreman, ladies and
13 gentlemen, you all have been sitting awhile. I'm
14 going to give you a brief comfort break.

15 During the break, please do not discuss
16 the case, and please leave your notepads in your
17 seats.

18 (Jury out, 2:55 p.m.)

19 THE COURT: You may be seated.

20 Ms. Sas, the drawings that you all indicated to me
21 the crime scene individual had taken with him, did
22 you all relocate the originals?

23 MS. SZYMCZYNSKA-SAS: Your Honor, we
24 have reached out to Mr. McGowan, and he indicated
25 that he didn't have them in his file. We have

1 them, the same blown-up version for demonstrative.
2 We can reprint them and show them to Ms. Norris
3 and --

4 THE COURT: Did they get attached to
5 something else?

6 MS. SZYMCZYNSKA-SAS: Your Honor, and I
7 can certainly --

8 THE COURT: Did they fall on the floor?
9 Did you check to see if you all picked
10 them up?

11 MS. SZYMCZYNSKA-SAS: Your Honor, I
12 have not had a chance to go through all of the
13 boxes. We can certainly do that today and make
14 sure.

15 THE COURT: But if -- Ms. Norris, do
16 you have any objection to them simply being
17 reprinted?

18 MS. NORRIS: No, Your Honor.

19 THE COURT: Why don't you all do that
20 and then substitute them without objection. But I
21 had that on my list of unattended items, and I
22 needed to mention that while I was thinking about
23 it.

24 Is there anything before we take a
25 brief comfort break, from the State.

1 MS. SZYMCZYNSKA-SAS: Not from the
2 State, Your Honor.

3 THE COURT: From the defense?

4 MS. NORRIS: No, Your Honor.

5 THE COURT: Who's the State's next
6 witness? I have according to my list that you all
7 have two witnesses left, or have I miscalculated?

8 MS. SZYMCZYNSKA-SAS: We have three
9 left, Your Honor.

10 THE COURT: You have Lieutenant --
11 well, Officer Wilson, Teela Antwine, and who am I
12 missing?

13 MS. SZYMCZYNSKA-SAS: We are not going
14 to call Teela Antwine. We're going to call James
15 McClellan, Your Honor, and we're admitting the
16 video through him. That video, I think the total
17 play time would be about 40 minutes, Your Honor.
18 And then we also have --

19 THE COURT: Where was Mr. McClellan on
20 my list?

21 MS. SZYMCZYNSKA-SAS: Your Honor, I
22 think he testified during the Denno hearing, and
23 Your Honor I think indicated earlier that you might
24 have checked him off because he testified during
25 Denno. James McClellan?

1 THE COURT: He was number 18. Okay.

2 MS. SZYMCZYNSKA-SAS: So James
3 McClellan, Trey Elrod, and we would be admitting
4 the recorded interview with the defendant through
5 Mr. Elrod, Agent Elrod's testimony.

6 Your Honor, the concern we have at this
7 time, I think we are almost done with the
8 redactions. We have listened to them during the
9 short break that we had. There were,
10 unfortunately, some additional redactions that we
11 had to do in order to make sure --

12 THE COURT: On which one, the one with
13 McClellan or the one with Elrod?

14 MS. SZYMCZYNSKA-SAS: The one with
15 Agent Elrod, Your Honor. I have not a chance to
16 review them, neither has Ms. Norris. And I think
17 it's important that we make sure that there's
18 nothing --

19 THE COURT: I think it's essential that
20 you make sure.

21 MS. SZYMCZYNSKA-SAS: Yes.

22 THE COURT: Let me ask another question
23 because I had somebody -- you're still calling
24 Officer Wilson, correct?

25 MS. SZYMCZYNSKA-SAS: We are, Your

1 Honor.

2 THE COURT: So that's three witnesses
3 left?

4 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

5 THE COURT: And so how long are you all
6 going to need to review those redactions?

7 MS. SZYMCZYNSKA-SAS: Your Honor, it
8 might not be that long.

9 THE COURT: Yeah, but I do think it's
10 important that you look at them. I wouldn't, you
11 know, take the risk of playing them without doing
12 that.

13 Any there any witnesses left that do
14 not involve video?

15 MS. SZYMCZYNSKA-SAS: Your Honor, just
16 Detective Wilson who is the case agent, but the
17 video from Officer McClellan has been reviewed and
18 we would be ready.

19 THE COURT: Oh, you all are ready with
20 that one; is that correct?

21 MS. SZYMCZYNSKA-SAS: Yes. Yes, Your
22 Honor.

23 THE COURT: Okay. So the one that you
24 all need to watch is with Officer Elrod.

25 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

1 THE COURT: Okay. But we could go
2 forward with McClellan and Wilson today?

3 MS. SZYMCZYNSKA-SAS: I believe so,
4 Your Honor.

5 THE COURT: Okay. And while we're
6 taking this break, is there any record that the
7 State would be seeking to introduce to impeach
8 Mr. Nolen's credibility? And I think I asked for
9 his record earlier, and you all gave it to me.

10 MS. SZYMCZYNSKA-SAS: The Court's
11 indulgence.

12 THE COURT: I have it right here. The
13 CDV in 2004 -- actually, I think I'm looking at
14 somebody else's record. No, this is his record.

15 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

16 THE COURT: Yeah, that's what I'm
17 looking at. I have a CDV in 2004, obtaining goods,
18 false pretenses in 2007, a fraudulent check in
19 2004, a public disorderly --

20 MS. SZYMCZYNSKA-SAS: We would not be
21 seeking to --

22 THE COURT: -- in 2002, and a CDV in
23 2000, correct? That's the extent of his record?

24 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

25 THE COURT: And what offenses would you

1 be seeking to use to impeach his credibility?

2 MS. SZYMCZYNSKA-SAS: Your Honor, we
3 would be seeking to introduce the obtaining
4 signature under false pretenses.

5 THE COURT: Are you going to be able to
6 prove that that involved a theft of some type?

7 MS. SZYMCZYNSKA-SAS: Your Honor, we
8 believe that is a crime of dishonesty.

9 THE COURT: I think the Supreme Court
10 has clarified what that means, and you're going to
11 have to -- you can't just -- it's not like an -- it
12 doesn't -- do you have a case that says it falls
13 within the category of dishonesty? And was it a
14 magistrate level offense or a circuit court
15 offense?

16 MS. SZYMCZYNSKA-SAS: It was a court --
17 circuit court offense, Your Honor. And he was
18 placed on supervision for that offense back on
19 July 18 of 2017.

20 THE COURT: And when did his
21 confinement end?

22 MS. SZYMCZYNSKA-SAS: He was terminated
23 from probation on February 7, 2011.

24 THE COURT: So that would be within the
25 ten years.

1 MS. SZYMCZYNSKA-SAS: And if Your Honor
2 would be so inclined to give us perhaps additional
3 time to decide if we would go forward with it or --

4 THE COURT: I was just asking in
5 advance because I didn't want to blind side you,
6 because before we break today I'm going to advise
7 him of his rights so they can have a meaningful
8 conversation with him.

9 MS. SZYMCZYNSKA-SAS: Absolutely, Your
10 Honor.

11 THE COURT: And I wanted them to be
12 able to at least -- even if you don't use it, you
13 still would have the ability -- do you happen to
14 have the indictment for obtaining -- I have that
15 it's obtaining goods by false pretenses. Do you
16 happen to have the indictment and from what county
17 that was in?

18 MS. SZYMCZYNSKA-SAS: Court's
19 indulgence, Your Honor.

20 MR. FARBER: Judge --

21 THE COURT: Yes, sir.

22 MR. FARBER: Perhaps while she's
23 looking for that, our position is confinement means
24 confinement not --

25 THE COURT: That's not what the South

1 Carolina Supreme Court says. It says confinement
2 includes probationary periods because you could
3 still go back to jail. So confinement ends when
4 your probation ends.

5 MR. FARBER: Could I just refer the
6 Court to a case?

7 THE COURT: Sure.

8 MR. FARBER: State v Shands,
9 S-H-A-N-D-S, from the Court of Appeals South
10 Carolina, 424 S.C. 106, 817 S.E.2d 524 from 2018.

11 THE COURT: But if it involves
12 dishonesty, it comes in regardless of -- regardless
13 of punishment or -- I have to look at the rule, but
14 I'll look at the case.

15 MR. FARBER: Thank you, Your Honor.
16 The rule covers there is a ten-year limitation.

17 THE COURT: But there are some other --
18 what's the word that I'm looking for? Where
19 credibility is an issue, as long as they put you on
20 notice in writing that they intend use it to
21 impeach him, it can come in after the ten years.

22 It's my understanding that the Supreme
23 Court has defined confinement as being when you are
24 released from probation, but I'll look at the case
25 that you've cited and look at it and see if that

1 interpretation has changed.

2 MR. FARBER: Thank you, Your Honor.

3 THE COURT: I haven't made a decision
4 about the -- we haven't reached that stage of the
5 trial yet. I asked that question early because
6 before we adjourn today I'm going to give him --
7 advise him of his rights so that you all can have a
8 meaningful discussion about it so I don't have to
9 have a protracted break while you discuss it, but
10 that does not mean that you're precluded from
11 discussing it with him again and in every stage of
12 the proceeding.

13 But I think it's best to be proactive
14 so that if this evening you all want to discuss it
15 with him, you aren't blind sided by it.

16 MR. FARBER: No, I appreciate that.
17 Thank you, Your Honor.

18 THE COURT: You're welcome. And I'm
19 going to have -- I mean, this isn't the argument
20 stage. I just want to know for the worst case
21 scenario they would be seeking to use -- is that's
22 the only thing -- and I need to see the indictment
23 as well.

24 MS. SZYMCHYNSKA-SAS: Yes, Your Honor,
25 and I'm sorry, I think I left my notebook

1 downstairs.

2 THE COURT: That's fine. And that's
3 why I asked earlier in case -- I need to see the
4 indictment and the sentence sheet. Is it a
5 Berkeley County case?

6 MS. SZYMCZYNSKA-SAS: Your Honor, it
7 might be. I believe it was transferred from
8 Berkley to Dorchester so it might be. And, Your
9 Honor, we will let Ms. Norris know before we break
10 up for the day if we will even seek to -- for that
11 to come in.

12 In addition, Your Honor, we would only
13 seek the other convictions for the CDV HAN if the
14 defendant opens the door through his testimony.
15 Then we would approach it at the appropriate time.

16 THE COURT: Yeah, I'd have to cross
17 that bridge when I come to it, if it, in fact, ever
18 happens. I'm not making any decisions about that
19 until -- if he were to say, I've never done
20 anything violent or I've never done anything to --
21 I mean, it's just a lot of variables to that
22 decision, and I'm not going to make a decision
23 about that yet.

24 There's a whole lot of layers for that
25 analysis. So even if he opens the door, I still

1 have to do the probative versus prejudicial and
2 character part of it and all of that before we get
3 to that.

4 Do you want to tell me something.

5 MR. FARBER: No, Your Honor.

6 THE COURT: You were standing --

7 MR. FARBER: I just haven't sat down
8 yet.

9 THE COURT: Why don't we take a quick
10 break. You all go ahead and refresh yourselves and
11 be back in a few minutes.

12 (A recess transpired.)

13 MS. SZYMCZYNSKA-SAS: I think the
14 defense counsel was confirming, Your Honor, and --

15 THE COURT: That's fine. Do you all
16 need more time?

17 MS. NORRIS: If we could have maybe
18 five minutes.

19 THE COURT: Yeah, that's fine.

20 MS. SZYMCZYNSKA-SAS: And in the
21 meantime, if I could pass UP the sentencing sheet
22 that the Court requested.

23 THE COURT: I need the indictment. So
24 this is 2007-GS-18. This is Dorchester.

25 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

1 THE COURT: Did it start in Berkeley or
2 was it always in --

3 MS. SZYMCZYNSKA-SAS: Your Honor, I
4 think -- I was not sure. I think his probation
5 case might have been transferred.

6 THE COURT: He was sentenced in 2007 to
7 five years probation. And it was not revoked, or
8 it was revoked? I can't remember.

9 MS. SZYMCZYNSKA-SAS: Your Honor, I
10 don't have any information about it being revoked.
11 The only information I have is --

12 THE COURT: I'm listening. Go ahead.

13 MS. SZYMCZYNSKA-SAS: The only
14 information I have is when his probationary
15 sentence was terminated.

16 THE COURT: When was that? The 2/7/11
17 date?

18 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

19 THE COURT: And you're arguing that I
20 should calculate the ten years from the day he was
21 sentenced?

22 MR. FARBER: Your Honor, it's ten years
23 from confinement. There was no confinement.

24 THE COURT: I think that's where the
25 confusion is coming in. I'm going to do a little

1 more research. Actually the rule says from the
2 date of -- date of conviction, or the release of
3 the witness from confinement imposed for that
4 conviction, whichever is the latest date.

5 MR. FARBER: So, in this instance,
6 there was no confinement imposed --

7 THE COURT: I'm going to do a little
8 research because there seems to be Supreme Court
9 precedence. I need to look a little bit. I think
10 US Supreme Court says probation is confinement. So
11 I'll have to look it up.

12 My recollection might be inaccurate.
13 I'm fallible. I admit it. But I'm going to do a
14 little research, but I wanted to give you all a
15 heads up to have that conversation with him because
16 it's no harm, no foul if it doesn't come in or if
17 they decide not to use it.

18 MR. FARBER: Understood, Your Honor.

19 THE COURT: But there are lots -- like
20 I said, there's lots of layers to this issue;
21 because, one, if it's more than ten years, they
22 have to given you written notice. I still have to
23 do the probative versus prejudicial analysis, and I
24 still have to determine if this would fall under
25 the definition of dishonesty or false statement.

1 And absent having the transcript to
2 know, I probably am going to have to look at the
3 indictment to see what he was charged with -- I
4 mean, what exactly is alleged to have happened and
5 what he admitted to.

6 We don't need to belabor the issue. We
7 can proceed. Is the State ready? Oh, I'm sorry.
8 Ms. Norris did tell me she needed more time, I'm
9 sorry, I apologize.

10 MS. NORRIS: I can't get my sound to
11 work on this one.

12 THE COURT: Do you all need --

13 MS. SZYMCZYNSKA-SAS: You can have my
14 computer.

15 (A recess transpired.)

16 MS. SZYMCZYNSKA-SAS: Your Honor, I
17 believe we're ready.

18 THE COURT: You all good?

19 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

20 THE COURT: Ms. Norris, you were able
21 to listen to what you needed to listen to? Were
22 you able to listen to what you needed to listen to?

23 MS. NORRIS: Yes, Your Honor.

24 THE COURT: Okay. And this is -- which
25 witness is this again, remind me?

1 MS. SZYMCZYNSKA-SAS: This is James
2 McClellan, Your Honor.

3 THE COURT: And this is his audiovisual
4 statement -- I mean, his recorded statement.

5 MS. SZYMCZYNSKA-SAS: It's the in-car
6 from former officer -- former Officer McClellan's
7 car in addition to his testimony.

8 THE COURT: But you all redacted some
9 of the things I told you to redact, didn't you?

10 MS. SZYMCZYNSKA-SAS: Your Honor, I
11 believe on that recording that's a recording from
12 the scene and then taken to the jail, and there was
13 a racial slur. We have redacted that.

14 THE COURT: I'm talking about those
15 lapses where he's complaining about the handcuffs
16 and all that, or did you all leave all of that in?

17 MS. SZYMCZYNSKA-SAS: Your Honor, we
18 did not -- we did not redact those portions. This
19 is the video where there's some of it still on
20 there because he's initially on the scene, but the
21 majority of it was on Officer Wright's, Your Honor.
22 We've already played that.

23 THE COURT: How long is the video that
24 you're playing with Officer McClellan?

25 MS. SZYMCZYNSKA-SAS: Your Honor, the

1 first video is 28 minutes and 43 seconds, and the
2 second one is, I believe, 18 minutes and
3 46 seconds.

4 THE COURT: That's the one where he
5 pulls up behind the car, and then he puts his mic
6 in the vehicle?

7 MS. SZYMCZYNSKA-SAS: That's the second
8 vehicle that pulls in front of Officer Green's car
9 and picks up the recording. This is the second
10 in-car recording.

11 THE COURT: Is this where they're
12 traveling to the jail?

13 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

14 THE COURT: And he is -- how much of
15 the complaining did you all leave in, him mumbling
16 to himself and all that?

17 MS. SZYMCZYNSKA-SAS: Your Honor, we
18 only took out the redaction that -- about the
19 racial slurs.

20 THE COURT: Okay. Ms. Norris, you've
21 watched the video?

22 MS. NORRIS: I have, Your Honor.

23 THE COURT: And you're fine with all of
24 it, except the racial slurs, absent you're original
25 -- I mean, when I ask that question, I'm not

1 neglecting your --

2 MS. NORRIS: Only our original
3 objection. She redacted the --

4 THE COURT: But you're fine with the
5 rest of it, other than the racial slurs that you've
6 asked to be redacted?

7 MS. NORRIS: Given Your Honor's prior
8 ruling, I am fine with what she has now.

9 THE COURT: Okay. All right.

10 PROBATION AGENT: Your Honor, I'm
11 fairly new, but I would be happy to answer your
12 question.

13 THE COURT: I need to know if you can
14 do something for me.

15 PROBATION AGENT: Yes, ma'am.

16 THE COURT: Would you have -- if a
17 gentlemen was on probation out of Dorchester
18 County, would you all have a copy of the indictment
19 that he pled to?

20 PROBATION AGENT: We may if it's --

21 THE COURT: Could you look for me?

22 PROBATION AGENT: May I approach?

23 THE COURT: Sure.

24 Is the State ready to proceed?

25 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

1 THE COURT: Defense ready to proceed?

2 MS. NORRIS: Yes, Your Honor.

3 THE COURT: Okay. If you could bring
4 in the jury for me please. And is the witness
5 present?

6 MS. SZYMCZYNSKA-SAS: Yes, Your Honor,
7 he's outside the courtroom.

8 THE COURT: I'm sorry, is he in the
9 courtroom or outside the courtroom?

10 MS. SZYMCZYNSKA-SAS: Outside the
11 courtroom.

12 THE COURT: Yes. Go ahead and get him
13 so we're not waiting for him.

14 (Jury in, 3:44 p.m.)

15 THE COURT: You may be seated.

16 Ladies and gentlemen, we appreciate
17 your patience. That took a little longer than
18 anticipated. Technology is beautiful while it
19 works, but sometimes when it doesn't, we have to
20 work our way through some issues.

21 But we appreciate you all being patient
22 as we worked our way through those glitches.
23 Please know that we do not take your time for
24 granted. You may proceed.

25 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

MCCLELLAN - DIRECT EXAM BY MS. SAS

1 The State calls James McClellan.

2 JAMES MCCLELLAN,

3 being first duly sworn, testified as follows:

4 THE CLERK: Please be seated. State
5 your full name, and spell your last name for the
6 record.

7 THE WITNESS: My name is James
8 McClellan, M-C-C-L-E-L-L-A-N, the Third.

9 THE COURT: You may proceed.

10 DIRECT EXAMINATION

11 BY MS. SZYMCZYNSKA-SAS:

12 Q. Mr. McClellan, where are you currently
13 employed?

14 A. The Dorchester County Career and
15 Technology Center as a law enforcement instructor.

16 Q. How long have you been employed there?

17 A. About six months now.

18 Q. Okay. Where were you employed before?

19 A. I worked for Walmart.

20 Q. Okay. What about before Walmart?

21 A. The Summerville Police Department.

22 Q. What about before Summerville Police
23 Department?

24 A. Berkeley County Sheriff's Office.

25 Q. Okay. And how long were you with

MCCLELLAN - DIRECT EXAM BY MS. SAS

1 Berkeley County Sheriff's Office?

2 A. Just over a year, I believe.

3 Q. And what was your position back with
4 Berkeley County Sheriff's Office?

5 A. I was a K9 handler.

6 Q. And were you employed with Berkley
7 County Sheriff's Office October 7, 2016?

8 A. Yes, ma'am.

9 Q. Were you employed in the same position?

10 A. Yes, ma'am.

11 Q. As the K9 handler?

12 A. Yes, ma'am.

13 Q. Okay. Were you and your K9 certified
14 at that point?

15 A. Yes, ma'am.

16 Q. Okay. What was the certification?

17 A. Dual purpose, which is we pretty much
18 did everything but look for bombs.

19 Q. Okay. And was your K9 certified in
20 tracking?

21 A. Yes, ma'am.

22 Q. Okay. And how did you get involved in
23 the case which brings us here today?

24 A. During that time we were working the
25 emergency conditions because of the hurricane, and

MCCLELLAN - DIRECT EXAM BY MS. SAS

1 that's actually the area I was assigned. But being
2 a K9 handler, any time a violent crime happens,
3 that's your first responsibility is to go to the
4 scene and assist in any way you can. That night, I
5 went to the scene to conduct a track, a K9 track.

6 Q. And what did you respond to? What was
7 the location of the --

8 A. The address off of Macio. I do not
9 remember off the top of my head.

10 Q. But it was off Macio Road?

11 A. Yes, ma'am.

12 Q. Okay. And what did you do after
13 arriving on the scene?

14 A. When I arrived on scene, there were
15 already other deputies on scene. Along with other
16 deputies, we spanned out across the wood line to
17 look for any other possible suspect on scene. If
18 there was a gunman in the woods, we didn't know.
19 We didn't have a lot of information.

20 Once we determined that we couldn't see
21 anything, from there I retrieved my K9 to do a
22 track of the area. We didn't have any -- a
23 starting point. We didn't have an area of a
24 starting point. So what generally happens is you
25 have to pick a point and just choose to do a 360

MCCLELLAN - DIRECT EXAM BY MS. SAS

1 degrees around that area.

2 So we used the house as a point, and
3 you basically go off into the woods and do your 360
4 degrees around and see if your dog gives you any
5 indication that there's been someone or something
6 running through that area. What the dogs are
7 trained to do with the fear odor, that's the
8 strongest odor for any type of adrenaline dumps,
9 that odor gives you the strongest odor. That's
10- generally where the dogs are going to go, and
11 they're going to lead the track.

12 So we conducted that. I started in the
13 wood line. I went around doing -- when you do the
14 360, you actually -- you, basically, just find a
15 45-degree angle and go, take another 45-degree
16 angle and go, and you continue to do that until you
17 make your 360, just because you don't know where
18 someone ran. So you're trying to find it.

19 It's basically hide and go seek with a
20 dog using the nose. And we came around the house,
21 we came to the fence line, and I picked up a track
22 leading to Macio Road down where the deputies were.
23 And we tracked that way down behind the house, at
24 the corner, in that area.

25 I came out to where the church is, just

MCCLELLAN - DIRECT EXAM BY MS. SAS

1 past the church, and right around then, because my
2 dog had been on the ground so long doing the 45s,
3 he was exhausted. I actually switched out with
4 Corporal Wright with his dog.

5 There was a -- like a school bus sign
6 right in there, so we used that as our way point of
7 where to switch out dogs.

8 Q. Okay.

9 MS. SZYMCZYNSKA-SAS: Permission to
10 approach the witness, Your Honor?

11 THE COURT: You may.

12 BY MS. SZYMCZYNSKA-SAS:

13 Q. Okay. Do you have a clicker up there.
14 Can you use this to -- that red button right here,
15 and use State's Exhibit 168 for demonstrative. And
16 I know you indicated that -- do you recall the
17 exact specific route that you would have taken?

18 A. I can --

19 Q. Can you just show us a general idea
20 which way you started and which way you tracked?

21 A. On Macio Road, I pulled up here. Like
22 I said, we spanned this wood line, and then I did a
23 360 which -- right in that area that you can't see
24 would be some more woods and a road. We did the
25 360 through here.

MCCLELLAN - DIRECT EXAM BY MS. SAS

1 After fighting through -- this is
2 pretty thick woods through here. After coming
3 back, I picked up a track along this area and
4 basically ran it diagonal. I do not remember if I
5 went behind or in front of this trailer. At that
6 time it was dark; I was basically just following my
7 dog's nose.

8 I know we made it down to Cooper Store
9 Road. I do not remember that house on the corner.
10 I don't remember if I was in front of it or behind
11 it. In that area, I remember coming out Cooper
12 Store Road and picking it back up.

13 And right after this church, I want to
14 say right where this driveway is, there's a school
15 bus stop sign somewhere right in here.

16 (Indicating) And that's about where my dog pretty
17 much gassed out, because at the time, I want to
18 say, he had been on the ground for 35 to 40 minutes
19 fighting through the brush.

20 Q. Is there anything that can influence a
21 track?

22 A. There is a lot of things that can
23 influence tracks. A lot can depend on the odor,
24 the fear odor, plus you have -- you have police
25 officers responding, their adrenaline is dumping.

MCCLELLAN - DIRECT EXAM BY MS. SAS

1 So as they're running out to the scene, they're
2 dropping odor as well. It could be anything. It
3 could be the freshest track through that area.

4 Q. Okay. When you arrived on the scene,
5 was your vehicle equipped with audio and video
6 recording?

7 A. Yes.

8 Q. Okay. How was it -- what was the way
9 that it was audio recording? Was it in one system
10 or was it two separate systems to record the video
11 and --

12 A. The Watch Guard camera system, it was
13 the old DVR system, so it had a DVD that sat inside
14 and it would automatically download to the DVD
15 inside of it. There was a microphone that's
16 supposed to be in the cabin of the vehicle and then
17 a body mic that you wear, but all K9 vehicles, the
18 interior body mic has been disabled; because in the
19 Watch Guard camera system, if it's enabled, all
20 you're going to hear is my dog bark for the entire
21 duration of the video. So they disabled that one,
22 and we used the body mic.

23 It can be turned on by you reaching up
24 and hitting record. You press the record button on
25 the device -- which I reach here (indicating)

MCCLELLAN - DIRECT EXAM BY MS. SAS

1 because this is where I would have kept it, right
2 here, around the center of my chest. And then you
3 turning on your emergency lights and sirens, it
4 would automatically activate the system.

5 And when you activate it, it would go
6 back -- I want to say they were set to either 30 or
7 45 seconds, maybe a minute.

8 Q. And when you were done with the track
9 and your dog was tired, what did you do after that?

10 A. When I was done with the track, there
11 was -- there was -- obviously, the vehicle is here
12 with my K9 car being here (indicating), and us
13 being over here. So we didn't contaminate the
14 scene anymore, what we did is I had another deputy
15 bring my K9 cruiser to right in here. (Indicating)
16 And I picked my K9 back up, and I went back to the
17 incident location.

18 When I got back to the incident
19 location I made contact with Sergeant Wilson, which
20 is now Lieutenant Wilson. I made contact with him
21 and stated because I had a camera in my car, which
22 the other deputies didn't, just like the road
23 deputies didn't have those, that I could place my
24 vehicle in front of Corporal Green's vehicle and
25 place my body mic in the vehicle so that way we

MCCLELLAN - DIRECT EXAM BY MS. SAS

1 could ensure that everybody was protected because
2 we knew that the defendant was possibly
3 intoxicated.

4 Q. And, to your knowledge, what did you do
5 with that video?

6 A. When we got back to the sheriff's
7 office, the video was watched, and we -- it was
8 downloaded from the hard drive to the disk, taken
9 out and placed into evidence.

10 Q. Okay. And was there any way for you to
11 delete any of the footage from the CD that you
12 removed?

13 A. No, ma'am.

14 Q. And would that CD contain videos from
15 maybe prior in that day?

16 A. Yes, ma'am.

17 Q. And you were aware that defense counsel
18 and I have agreed to only pull from that video the
19 footage that pertained to this particular incident,
20 and then we have burned our own CD that includes
21 two parts?

22 A. Yes, ma'am.

23 MS. SZYMCZYNSKA-SAS: Your Honor,
24 permission to approach the witness?

25 THE COURT: You may.

MCCLELLAN - DIRECT EXAM BY MS. SAS

1 BY MS. SZYMCZYNSKA-SAS:

2 Q. I'm going to show you what has been
3 entered into evidence as State's Exhibit 74.

4 MS. NORRIS: Please note our continuing
5 objection.

6 THE COURT: Noted and overruled based
7 on the Court's previous ruling.

8 BY MS. SZYMCZYNSKA-SAS:

9 Q. Can you tell me what it says on that
10 CD?

11 A. Footage from McClellan, Solicitor copy.

12 Q. Okay.

13 MS. SZYMCZYNSKA-SAS: Permission to
14 publish, Your Honor?

15 THE COURT: You may proceed.

16 (DVD played in open court)

17 THE COURT: Mr. Foreman, ladies and
18 gentlemen I have a brief matter of law to take up
19 with counsel. During the break, please do not
20 discuss the case and please leave your notepads in
21 your seats.

22 (Jury out, 4:15 p.m.)

23 THE COURT: You may be seated. I
24 hesitate to interject myself into this, but I was
25 very clear on yesterday when I said some of this

MCCLELLAN - DIRECT EXAM BY MS. SAS

1 stuff was just not relevant. And I thought you all
2 were on the same page when I ruled on it.

3 These long stretches of him sort of
4 mumbling to himself and talking about the cuffs
5 being too tight, it was my understanding, and
6 that's why I really wanted to watch it before you
7 played it to see what was redacted, was that the
8 portions of it that were relevant dealt with any
9 threats made with him asking about Lance; because
10 the purported purpose that the State was seeking to
11 introduce it was to refute that he had any concern
12 about anyone else other than Lance, and that he
13 deliberately, or with premeditated -- well, not
14 premeditated because that's a misleading term, but
15 with intent he shot these other individuals.

16 These rambling sort of periods where
17 he's just talking to himself or he's grunting or
18 making noises about the cuffs being too tight, it
19 just serves no evidentiary purpose, and I
20 anticipated that it would have been redacted.

21 MS. NORRIS: Your Honor, it was
22 actually my request that if we were going to allow
23 the threat in, that I wanted it --

24 THE COURT: Okay. Well, if -- you're
25 fine with that.

MCCLELLAN - DIRECT EXAM BY MS. SAS

1 MS. NORRIS: Yes, ma'am.

2 THE COURT: All right. Then you can
3 finish playing the tape. I just wanted to make
4 sure that was clear for the record. You can get
5 the jury for me, please.

6 BAILIFF: One in the restroom.

7 (Brief pause)

8 THE COURT: Okay. Are you ready to
9 proceed?

10 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

11 THE COURT: Ms. Norris, are you ready?

12 MS. NORRIS: Yes, Your Honor.

13 THE COURT: Okay. Please bring in the
14 jury. I hope they're ready.

15 (Jury in, 4:20 p.m.)

16 THE COURT: Ladies and gentlemen, we
17 appreciate your patience. We're now going to
18 resume the testimony. You may proceed.

19 (Video continued playing.)

20 BY MS. SZYMCZYNSKA-SAS:

21 Q. Mr. McClellan, in the footage that we
22 have just watched, the car that was in the video
23 that was Officer Green's car?

24 A. Yes, ma'am.

25 Q. Okay. And you were seated in which

MCCLELLAN - DIRECT EXAM BY MS. SAS

1 car?

2 A. In the vehicle behind the one -- you
3 can actually see the camera. The one the camera is
4 in, that was my patrol vehicle.

5 Q. Okay. And when you arrived and entered
6 the sally port, where were you positioned?

7 A. I was parked behind him. As you can
8 see the hood of my car right there, I was parked
9 directly behind Corporal Green.

10 Q. Are you on that video physically
11 entering the sally port?

12 A. Yes, ma'am.

13 Q. And are you the officer who stands at
14 the door holding the door?

15 A. Yes, ma'am, that is me.

16 Q. Okay.

17 MS. SZYMCZYNSKA-SAS: Court's
18 indulgence.

19 THE COURT: Yes, ma'am.

20 BY MS. SZYMCZYNSKA-SAS:

21 Q. Mr. McClellan, I know you watched the
22 video here today, but at the scene did you hear the
23 defendant make statements to you at the sally port?

24 A. Yes, ma'am.

25 Q. And what would have been those

MCCLELLAN - CROSS EXAM BY MS. NORRIS

1 statements?

2 A. I was told that he said -- he stated he
3 would shoot me in the fucking head, ma'am.

4 MS. SZYMCZYNSKA-SAS: No further
5 questions for this witness.

6 THE COURT: Any questions for the
7 witness, Ms. Norris?

8 MS. NORRIS: Yes, Your Honor.

9 THE COURT: You may proceed.

10 CROSS-EXAMINATION

11 BY MS. NORRIS:

12 Q. Mr. McClellan, back at the scene when
13 you put your microphone in Mr. Green's car with
14 Mr. Nolen, was he already handcuffed at that point?

15 A. I believe so.

16 Q. And, in fact, we hear him asking to
17 take the cuffs off, loosen the cuffs?

18 A. Yes, ma'am.

19 Q. And Berkeley County Sheriff's Office,
20 do they cuff behind the back, like this?
21 (Indicating)

22 A. I can't see your hands. Normally, they
23 are cuffed behind the back. I wouldn't say exactly
24 the way your hands are. A lot could have depended
25 on the situation when the suspect is handcuffed,

MCCLELLAN - CROSS EXAM BY MS. NORRIS

1 what's going on.

2 Q. But they're cuffed behind the back?

3 A. Yes, ma'am. Unless they're pregnant or
4 a direct order has been given to me by a
5 supervisor.

6 Q. And before putting a person in a car as
7 a matter of routine, after you cuff them, you also
8 pat them down, correct?

9 A. Yes, ma'am.

10 Q. To make sure that they don't have any
11 weapons or anything on them?

12 A. That's what I do, yes, ma'am.

13 Q. Well, that's what you're taught, or you
14 were -- I understand you're not with the sheriff's
15 office now. But all of the officers are taught
16 before you put somebody in the car, you pat them
17 down and make sure they don't have any weapons on
18 them?

19 A. Yes, ma'am.

20 Q. So you assume that he had been patted
21 down before he was put in a car?

22 A. Ma'am, I'll be honest, I would think
23 so, but I honestly don't know.

24 Q. And when you leaned in the car to put
25 your microphone in there, he didn't threaten you

MCCLELLAN - CROSS EXAM BY MS. NORRIS

1 then, right?

2 A. No, ma'am.

3 Q. All right. And there at the jail, at
4 the point where he said I'll shoot you in the head,
5 the issue was he was saying open the door, open the
6 blank door, correct?

7 A. Ma'am, he stated that he would shoot me
8 in the fucking head. I never heard him ask for me
9 to open the door. That's the only thing I heard
10 was screaming. I never heard him say open the
11 door.

12 Q. All right. You were standing right
13 there at -- well, we just played it in the
14 courtroom. You couldn't hear him say open the
15 door, open the door?

16 A. Ma'am, that mic was inside the car. I
17 was standing outside the vehicles, two engines
18 running, and other officers outside talking. I
19 never heard him say open he door.

20 When I leaned back closer to the door,
21 I could hear screaming, and that's when I heard him
22 say he'd shoot me in the fucking head, ma'am.

23 Q. Okay. And regardless of what he said,
24 at that point, he's cuffed in the back of a police
25 car, he's not a threat to you, is he?

MCCLELLAN - CROSS EXAM BY MS. NORRIS

1 A. Ma'am, I take those threats very
2 seriously, especially -- with the knowledge of the
3 training and the military background, with me
4 having the military background, I don't take that
5 stuff lightly, especially with the incident that
6 occurred.

7 MS. NORRIS: I understand. All right.
8 Thank you, sir.

9 THE WITNESS: Yes, ma'am.

10 THE COURT: Any redirect?

11 MS. SZYMCZYNSKA-SAS: Not from the
12 State, Your Honor.

13 THE COURT: Any objection to the
14 witness being excused? From the State?

15 MS. SZYMCZYNSKA-SAS: Not from the
16 State.

17 THE COURT: From the defense?

18 MS. NORRIS: Not from the defense.

19 THE COURT: Okay. Sir, you're excused.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: You're welcome. Call your
22 next witness. Well -- the next witness will take
23 us well beyond five, correct?

24 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

25 THE COURT: Or -- well, actually,

1 approach for me, and let me ask you a quick
2 question.

3 Ladies and gentlemen, indulge us for a
4 moment.

5 (Bench conference, no court reporter)

6 THE COURT: Mr. Foreman, ladies and
7 gentlemen, we're going to take advantage of this
8 break in testimony and take our evening recess.
9 During the break, please do not discuss the case
10 among yourselves or with anyone else. Please do
11 not make any comments regarding your jury service
12 on any social networking sites, and please do not
13 read, watch, or listen to any media accounts about
14 this case.

15 You're strictly instructed not to read,
16 watch, or listen to any media accounts, whether it
17 be newspaper, radio, television, or Internet, and
18 not do any independent research on the Internet.

19 You will follow the same procedure by
20 parking where you parked today. We probably,
21 depending on -- I'm going to sort of gauge how the
22 day is going to see if we need to order lunch for
23 you, and if we do, I'll make you aware of that.
24 And if we do, we'll follow pretty much the same
25 procedure that we did on today.

NOLEN EXAM BY THE COURT

1 You all have been incredibly patient
2 and indulgent with your time, and we appreciate it.
3 I hope you all have a great evening. If you'd
4 leave your notepads in your seats, we'll see you in
5 the morning at 9:30.

6 (Jury out, 4:46 p.m.)

7 THE COURT: You may be seated. Sir,
8 stand for me, please, and raise your right hand to
9 be sworn.

10 ROBERT DAVID NOLEN,
11 being first duly sworn, testified as follows:

12 THE DEFENDANT: Yes, ma'am.

13 EXAMINATION

14 BY THE COURT:

15 Q. You can put your right hand down. Sir,
16 state your full name for the record.

17 A. Robert David Nolen.

18 Q. Mr. Nolen, although we have not reached
19 the exact stage of the trial where you will have
20 the right to present your defense, I'm being a
21 little proactive and I'm doing it a little bit
22 earlier so that you will not feel rushed or pressed
23 in any way in having these discussions with your
24 lawyer, because I anticipate that once the State
25 calls two additional witnesses that we will quickly

NOLEN EXAM BY THE COURT

1 approach the stage of the trial where you will have
2 the right to present your own defense and to
3 testify if you should so desire.

4 If you don't understand something that
5 I say, please let me know, or if you need me to
6 repeat something, please let me know. Do you
7 understand?

8 A. Yes, ma'am.

9 Q. And as I've indicated, I'm going to
10 explain to you your right to testify. And I'm
11 going to explain to you certain of your rights.
12 You have the right to claim the protections given
13 to you by the Fifth Amendment to the Constitution
14 of the United States, and that amendment states in
15 part that no person shall be compelled in any
16 criminal case to be a witness against himself or to
17 testify against himself.

18 You have the right to testify on your
19 own behalf; however, no one can make you testify.
20 This is a personal right and no one can waive this
21 right except you. If you decide to testify, you
22 will be subject to the same rules that govern other
23 witnesses, and you may be examined and cross
24 examined on any relevant issue in this case.

25 In addition, if you have any

NOLEN EXAM BY THE COURT

1 convictions involving dishonesty or false
2 statement, or for crimes punishable by imprisonment
3 for more than one year, and the Court determines
4 that the probative value of admitting this evidence
5 outweighs its prejudicial effect to you, the
6 Solicitor will be able to introduce your record to
7 attack your credibility.

8 If you decide to testify, this decision
9 on your part must be made freely, voluntarily,
10 knowingly, and intelligently with the protection --
11 with the knowledge of the protections given to you
12 by the Fifth Amendment and the consequences of your
13 decision to testify.

14 If you decide not to testify, I will
15 instruct the jury that they cannot give that fact
16 any consideration whatsoever. In fact, I will
17 instruct them that you have the right to remain
18 silent and that right cannot be used against you,
19 that the State has the burden of proving your guilt
20 on every offense beyond a reasonable doubt, and the
21 fact that you did not testify is not to be
22 discussed in any manner whatsoever during the
23 deliberative process.

24 So, again, I will instruct the jury
25 that they cannot give the fact that you did not

NOLEN EXAM BY THE COURT

1 testify any consideration whatsoever and that there
2 is to be absolutely no prejudice to you because you
3 did not testify.

4 Whether or not you testify is left
5 entirely up to you. You may speak with your
6 attorney, your family members, friends, or anyone
7 else, but the final decision is yours.

8 Sir, do you understand your rights as
9 I've explained them to you?

10 A. Yes, Your Honor.

11 Q. Do you have any questions for the Court
12 as to what -- as to your rights as they've been
13 explained to you?

14 A. No, Your Honor.

15 THE COURT: We're going to recess that
16 portion of the colloquy, and we'll come back around
17 to it.

18 Now -- you all can take your seats.
19 We'll come back around to the original issue which
20 is, Mr. Nolen's criminal history is a criminal
21 domestic violence of a high and aggravative nature
22 of 10/7/04; obtaining goods by false pretenses,
23 July 18, '07. I think this says, fraudulent check,
24 if I can read my own shorthand; is that correct? A
25 fraudulent check, 500 or less, which would have

1 been magistrate court --

2 MS. SZYMCZYNSKA-SAS: That's correct.

3 THE COURT: -- 9/2/04; a public
4 disorderly which would have been 8/14/02, and
5 criminal domestic violence 2/22/2000; is that
6 correct?

7 MS. SZYMCZYNSKA-SAS: Yes.

8 THE COURT: That's the extent of his
9 record?

10 MS. SZYMCZYNSKA-SAS: That's correct,
11 Your Honor.

12 THE COURT: Probation looked, and they
13 do not have a record of the indictment, but I'm --
14 on the obtaining goods by false pretense, he pled
15 guilty to that on 7/18/07 before Judge Williams and
16 was sentenced to three years, suspended to five
17 years probation, restitution was ordered in the
18 amount of \$4,883.46, and he was to pay the public
19 defender fee, and he was also allowed PTUP.

20 But Probation looked and indicated to
21 me they don't have a copy of the indictment. And
22 as I've indicated, this -- if the State wanted to
23 seek to introduce that conviction, there are
24 several layers; one of which is the calculation of
25 the ten-year period, the other of which is whether

1 written notice was given if it exceeds the ten-year
2 period. And then we have to go into the probative
3 versus prejudicial value of the testimony, that
4 prong of the analysis.

5 I have done some research -- I think
6 the case that I was thinking about was out of the
7 Fourth Circuit that dealt with somebody's community
8 supervision, and they kept getting revoked on
9 community supervision. And the ten-year period is
10 calculated from the last period of time they were
11 confined. They kept going back to jail.

12 But I think the case law in the last
13 case that we were able to -- all of the cases --
14 actually, we don't have any real issues about the
15 calculation of time, except the Shands case is an
16 unpublished case. And then there's an old case
17 that predated the rules of evidence that indicates
18 that the confinement run from the end of probation
19 or parole, but I think that Shands is the current
20 prevailing case law which was -- I mean, it hasn't
21 -- it's not on cert..

22 It's still -- the rehearing on it was
23 denied, but I don't think anybody's appealed it
24 beyond that. At least our records don't indicate
25 that. And that is predicated on Rule 609(b), which

1 is the calculation of the time limit, and that
2 provides that it would be admissible -- is not
3 admissible if more than ten years has elapsed since
4 the date of the conviction, which ten years from
5 7/18/07 would be 7/19/2017; is that correct? If my
6 math is accurate?

7 MR. FARBER: Yes, Your Honor.

8 THE COURT: Dated from the date
9 conviction -- from the date of the conviction or of
10 the release of the witness from confinement imposed
11 for that conviction. And I think the plain
12 ordinary meaning of that sentence means if he went
13 to jail.

14 And the calculation of that time from
15 the period that you were released from the
16 department of corrections, which did not, based on
17 what I have -- Ms. Sas, you said he completed his
18 probation, right? That it was not revoked. And he
19 completed his probation on 2/7/11 or 2/7 --

20 MS. SZYMCZYNSKA-SAS: It was 2011, Your
21 Honor.

22 THE COURT: So he must have satisfied
23 the restitution or satisfied the obligation because
24 it was terminated a year ahead of the five-year
25 period, if my math again is accurate. Then -- of

1 course, then I would have to go to the probative
2 value of the conviction as supported by specific
3 facts and circumstances.

4 But, again, I would have to determine
5 if the obtaining goods falls within the category of
6 dishonesty, and then we'd go -- well, first I'd
7 have to -- if it falls within the category of
8 dishonesty, if you all received written notice, and
9 then the probative versus prejudicial analysis.

10 I guess I'm a little premature because
11 you need to tell me whether you would use it or not
12 so they can know whether they need to discuss that
13 with him.

14 MS. SZYMCZYNSKA-SAS: Yes, Your Honor,
15 and we will let them know that tonight.

16 THE COURT: Okay. If you'd just give
17 me a heads up as well because I still have to --
18 there's a lot to that issue that needs -- that I
19 would have to deal with.

20 MS. SZYMCZYNSKA-SAS: Absolutely, Your
21 Honor, and we will --

22 THE COURT: And did you all give them
23 written notice that you intended to use to it to
24 impeach him?

25 MS. SZYMCZYNSKA-SAS: Yes, it was in

1 our motion, Your Honor, that we provided to the
2 defense.

3 MS. NORRIS: We got it last Thursday
4 when Your Honor got all the motions.

5 THE COURT: Yeah. I don't think the
6 rules provides a timeframe to give written notice.
7 I think it simply just says written notice, doesn't
8 it?

9 MR. FARBER: Yes, Your Honor.

10 THE COURT: Okay. All righty. Let me
11 know in the morning. Is there anything else we
12 need to take up before we break for the evening?
13 From the State?

14 MS. SZYMCHYNSKA-SAS: Nothing from the
15 State, Your Honor.

16 THE COURT: From the defense?

17 MS. NORRIS: No, Your Honor.

18 THE COURT: Have a good evening. You
19 all can leave your stuff if you want. See you at
20 9:30.

21 (These proceedings were recessed at
22 5:09 p.m., to be continued 3/28/2019, 9:30 a.m.)
23
24
25

1 (The following proceedings were had
2 3/28/2019 in re State v. Nolen, 9:49 a.m.)

3 MS. SZYMCZYNSKA-SAS: Your Honor, we
4 have redacted the defendant's recorded statement
5 with Detective Elrod. Absent the prior objection
6 for admissibility from defense, and we watched the
7 whole interview, we have agreed on the redactions;
8 and I think the Court has also partially ruled on
9 the admissibility of some of the statements,
10 comments that Detective Elrod has made in the
11 video.

12 There are 14 different short videos.
13 Some of them longer and some of them shorter, some
14 didn't have an interview that we intend to play.
15 We shortened the amount of the interview, I
16 believe, by about 40 minutes.

17 I have provided last night a copy of
18 the burned CD after we sat through and listened to
19 each beginning and end to make sure that the
20 redactions were appropriate. We redacted some
21 additional information and some materials that,
22 actually we thought they were going to stay in,
23 were redacted too, and the State is not opposed to
24 that.

25 And it's my understanding that the

1 defense has listened to the recordings and they're
2 also in agreement with the redactions and the
3 portions to be played as they were placed on that
4 CD.

5 THE COURT: Ms. Norris, is that
6 accurate?

7 MS. NORRIS: Yes, Your Honor. One of
8 my co-counsel listened to that to verify.

9 MS. SZYMCZYNSKA-SAS: And, Your Honor,
10 we also have another matter to address with the
11 Court --

12 THE COURT: I'm listening.

13 MS. SZYMCZYNSKA-SAS: -- if at all
14 possible. Detective Wilson advised me this morning
15 that he believes that he has encountered one of the
16 jurors yesterday.

17 THE COURT: I think he wants to tell me
18 that, the juror.

19 MS. SZYMCZYNSKA-SAS: Oh, okay.

20 THE COURT: Uh-huh, yes.

21 MS. SZYMCZYNSKA-SAS: And certainly --

22 THE COURT: And so I'll go from there
23 once I've talked to the juror.

24 MS. SZYMCZYNSKA-SAS: Okay.

25 THE COURT: Please get the foreperson

1 for me.

2 (Foreperson in, 9:39 a.m.)

3 THE COURT: Good morning, sir.

4 THE JUROR: Yes, ma'am.

5 THE COURT: How are you?

6 THE JUROR: Good.

7 THE COURT: You indicated you wanted to
8 speak with the Court.

9 THE JUROR: I wanted to speak with you
10 privately if that's possible.

11 THE COURT: I can't talk to you without
12 the lawyers being privy to what we're saying.

13 THE JUROR: Okay.

14 THE COURT: Is it something of a
15 personal nature about your personal life that you
16 feel is embarrassing?

17 THE JUROR: No. I thought maybe I knew
18 somebody in the --

19 THE COURT: Gallery?

20 THE JUROR: -- sitting out there.

21 THE COURT: Uh-huh.

22 THE JUROR: But maybe not now that I'm

23 --

24 THE COURT: Now that you're looking
25 again. Do you want to take your time and look

1 again and make sure?

2 THE JUROR: I guess if they don't
3 recognize me, then I don't recognize them. I'm
4 sorry.

5 THE COURT: Who is it that you think
6 you might recognize?

7 THE JUROR: Maybe the lady sitting --

8 THE COURT: That's pointing --

9 THE JUROR: No, ma'am, not you.

10 THE COURT: Or that raised her hand?

11 THE JUROR: Right there. Yes, ma'am.
12 Apparently not. No, ma'am.

13 THE COURT: Is there somebody else you
14 thought it was? Somebody that it wasn't maybe?

15 THE JUROR: Yes, ma'am.

16 THE COURT: Okay.

17 THE JUROR: All right.

18 THE COURT: All right, sir. Do you
19 feel you can remain fair and impartial?

20 THE JUROR: Yes, ma'am.

21 THE COURT: Do you feel you can render
22 a fair and impartial verdict in this case?

23 THE JUROR: Yes, ma'am.

24 THE COURT: Do you feel that you can
25 render that verdict based solely on the evidence

1 and the law as the Court will instruct?

2 THE JUROR: Yes, ma'am.

3 THE COURT: And just to be on the safe
4 side, if you could tell me your name and juror
5 number for the record.

6 THE JUROR: Richard Kirby, 91.

7 THE COURT: Thank you, sir. You can
8 return to the jury room. Just please don't discuss
9 anything that you've said -- that we have said to
10 one another to your fellow jurors.

11 THE JUROR: Yes, ma'am.

12 THE COURT: Thank you, sir.

13 (Juror out, 9:40 a.m.)

14 THE COURT: Any exception to the juror
15 remaining? From the State?

16 MS. SZYMCZYNSKA-SAS: None from the
17 State, Your Honor.

18 THE COURT: From the defense?

19 MS. NORRIS: No, Your Honor.

20 THE COURT: Okay. I thought that's why
21 he wanted to talk to me because they said the
22 foreperson wanted to speak to me, and I thought
23 that's what it was about, but apparently it wasn't.

24 So tell me what it is you need to tell
25 me, Ms. Sas.

1 MS. SZYMCZYNSKA-SAS: Your Honor, it's
2 my understanding -- and I don't know the juror's
3 number or name. Detective Wilson believes that one
4 of the jurors that -- an African American gentlemen
5 that may be sitting in the back row, we're not
6 sure, Detective Wilson said he encountered in the
7 parking lot. The juror asked him how he was doing,
8 and he replied back to him, good.

9 THE COURT: Which parking lot?

10 DETECTIVE WILSON: I was parked over by
11 our forensic building.

12 THE COURT: I don't think it can be
13 because we have them parking in front of the
14 courthouse, so they wouldn't be in the back part of
15 the --

16 DETECTIVE WILSON: Okay.

17 THE COURT: Yeah, we have their parking
18 segregated, don't we?

19 THE CLERK: Yes.

20 THE COURT: Yeah, they're parked in the
21 front, so they -- and they come in so -- we've
22 arranged it so they come in and have no contact
23 with anyone, and then they're brought in as a group
24 upstairs.

25 DETECTIVE WILSON: I just wanted to

1 make sure that --

2 THE COURT: Yes. No harm, no foul,
3 better safe than sorry.

4 DETECTIVE WILSON: Yes, ma'am.

5 THE COURT: And people look a lot
6 alike. You know, it's like when I go to buy a
7 green dress and there are 20 shades of green, but I
8 really think I got the right shade, and I get home
9 and it's 20 shades off, you know.

10 MS. NORRIS: And, Your Honor, just for
11 the purpose of the record, that last juror that was
12 pointing to someone in the gallery, that's my
13 client's mother who lives in Kentucky. So I am
14 confident he does not know --

15 THE COURT: Yeah. Like I said, I go to
16 the store, and I just know I got the right shade
17 and then, 20 shades off. But the older I get, the
18 more people -- a lot of people favor one another
19 and -- but I appreciate that clarification for the
20 record, Ms. Norris, and I should have asked that
21 myself.

22 All right. Is there anything else we
23 need to take up before we proceed with -- and our
24 last juror just arrived. They were stuck in
25 traffic. They just got here and got situated. And

1 we're going to order -- we've ordered lunch for
2 them, it will be here at 12:30, and we'll follow
3 the same process that we did on yesterday.

4 MS. NORRIS: Your Honor, you had asked
5 us yesterday to provide proposed charges.

6 THE COURT: Yes --

7 MS. NORRIS: -- and --

8 THE COURT: And did you all give Ms.
9 Sas a copy?

10 MR. FARBER: We did --

11 MS. NORRIS: We did, we gave it to her
12 last night, Your Honor.

13 THE COURT: Thank you, appreciate it.
14 Do you have another copy by any chance?

15 MS. NORRIS: I do, Your Honor.

16 THE COURT: Is that your only copy
17 because I need to mark one as an exhibit and I need
18 to write on one. I can make a copy, Ms. Norris. I
19 can make a copy. Alrighty.

20 Is there anything else we need to take
21 up before we proceed? From the State?

22 MS. SZYMCZYNSKA-SAS: Your Honor, just
23 one other matter. On Monday, Ms. Norris and I have
24 prepared a stipulation that we would like to be
25 entered, it's State's 170, and read to the jury.

1 THE COURT: Uh-huh.

2 MS. SZYMCZYNSKA-SAS: And it's
3 regarding the proper chain of custody regarding
4 evidence 1 through 136.

5 THE COURT: Okay. You said it's a
6 stipulation?

7 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

8 THE COURT: You would just read the
9 stipulation. They aren't generally entered into
10 evidence, and I would instruct -- well, it's
11 entered into evidence because you read it, but it's
12 not generally -- well, you could have it as a
13 writing if you wanted to.

14 MS. SZYMCZYNSKA-SAS: If we could, Your
15 Honor.

16 THE COURT: Whatever you all prefer is
17 fine with me. Ms. Norris?

18 MS. NORRIS: I'm fine with whatever
19 Your Honor decides on this.

20 THE COURT: Yeah. Generally, they're
21 just read, and then I instruct the jury that a
22 stipulation is an agreement and it requires no
23 further proof.

24 MS. SZYMCZYNSKA-SAS: Could we provide
25 it to the Court?

WILSON - DIRECT EXAM BY MS. SAS

1 THE COURT: Oh, I don't read it.

2 MS. SZYMCZYNSKA-SAS: Oh, you want us
3 to --

4 THE COURT: Yeah. No, as long as you
5 all are happy with the language, I'm happy with the
6 language. You know, I don't have a dog in the
7 fight. So I assume that you all have worked out
8 the language.

9 MS. SZYMCZYNSKA-SAS: Yes, Your Honor,
10 and is there a specific time that the Court would
11 like us to read it?

12 THE COURT: It's up to you all.

13 MS. SZYMCZYNSKA-SAS: Okay.

14 THE COURT: Whenever you'd like to do
15 it is fine with me. All right. Is there anything
16 else we need to take up before we proceed? From
17 the State?

18 MS. SZYMCZYNSKA-SAS: Nothing from the
19 State, Your Honor.

20 THE COURT: From the defense?

21 MS. NORRIS: No, Your Honor.

22 THE COURT: All right. Please bring in
23 the jury. And is the next witness already in the
24 courtroom?

25 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

WILSON - DIRECT EXAM BY MS. SAS

1 Detective Wilson.

2 THE COURT: Okay.

3 (Jury in, 9:46 a.m.)

4 THE COURT: You may be seated. Good
5 morning, ladies and gentlemen. I hope everybody
6 had a pleasant evening. We are going to resume
7 testimony. I would ask that you give counsel your
8 attention. You may proceed, Ms. Sas.

9 MS. SZYMCZYNSKA-SAS: Thank you, Your
10 Honor.

11 THE COURT: You're welcome.

12 MS. SZYMCZYNSKA-SAS: The State calls
13 Detective Dan Wilson.

14 DANIEL KENDRICK WILSON,
15 being first duly sworn, testified as follows:

16 THE CLERK: Please be seated. State
17 your full name, and spell your last name for the
18 record.

19 THE WITNESS: Daniel Kendrick Wilson,
20 W-I-L-S-O-N.

21 THE COURT: You may proceed.

22 THE WITNESS: Thank you.

23 THE COURT: You're welcome.

24 DIRECT EXAMINATION

25 BY MS. SZYMCZYNSKA-SAS:

WILSON - DIRECT EXAM BY MS. SAS

1 Q. Good morning, Detective Wilson.

2 A. Good morning, ma'am.

3 Q. Please tell the jury, where are you
4 currently employed?

5 A. Berkeley County Sheriff's Office.

6 Q. And how long have you been employed
7 with the sheriff's office?

8 A. Ten years.

9 Q. And what is your current job and job
10 responsibilities?

11 A. I'm the lieutenant over the criminal
12 investigation division, do the day-to-day
13 administration of the unit.

14 Q. And were you employed in the same
15 capacity with Berkeley County Sheriff's Office back
16 on October 7, 2016?

17 A. I was not. I was a sergeant back then
18 supervising the persons unit.

19 Q. And what was your role in the
20 investigation of this case?

21 A. I was the case detective.

22 Q. Okay. And did you have an occasion to
23 come in contact with an individual named Jeffrey
24 Simons?

25 A. I did.

WILSON - DIRECT EXAM BY MS. SAS

1 Q. And when was that?

2 A. That was that evening, approximately --
3 I got notified on the scene, I responded to the
4 location. Sometime on the scene I was notified
5 that one of our patrol deputies had come in contact
6 with a black male up in, I believe, it was the
7 Black Tom Road, Cooper Store Road area.

8 Q. Okay. And how far is that
9 approximately from the location of the incident?

10 A. From Macio Road, Black Tom runs into
11 Cooper Store Road, and from that point Cooper Store
12 Road and Black Tom intersection to Macio Road is
13 1.3 miles.

14 Q. Okay.

15 MS. SZYMCZYNSKA-SAS: Permission to
16 approach the witness, Your Honor?

17 THE COURT: Yes.

18 BY MS. SZYMCZYNSKA-SAS:

19 Q. Behind you is what has been premarked
20 as State's 168 for demonstrative purposes only.
21 Can you kind of show the jury where that road runs
22 since it's not on that map?

23 A. Sure. This is Macio Road here and it
24 comes down here, goes up. Cooper Store makes a
25 curve up this direction -- this is heading towards

WILSON - DIRECT EXAM BY MS. SAS

1 Moncks Corner -- and then Black Tom Road connects
2 up in this direction here.

3 And then Long Ridge is approximately a
4 tenth or -- to two tenths of a mile. It's another
5 road that comes off of here that's right near Black
6 Tom Road. (Indicating)

7 Q. So it's way past down the road?

8 A. That is correct.

9 Q. Okay. And where did you come in
10 contact with that individual?

11 A. He was transported to the CID office.

12 Q. Okay. And why was he transported?

13 A. So we could conduct an interview. It
14 was still an active investigation, wasn't sure
15 exactly if he was involved or not, but because of
16 the circumstances he was the only individual that
17 was observed of all the detectives -- deputies in
18 that area that was seen walking along the street on
19 the scene. And so I made a decision to go ahead
20 and interview him.

21 Q. And was he in custody because of this
22 incident?

23 A. He was not.

24 Q. Okay. Did he talk to you?

25 A. He did.

WILSON - DIRECT EXAM BY MS. SAS

1 Q. Did he volunteer to give you his buccal
2 swab?

3 A. He did.

4 Q. Did he volunteer for you to do a GSR
5 kit on him?

6 A. He did.

7 MS. SZYMCZYNSKA-SAS: Permission to
8 approach the witness?

9 THE COURT: Yes, ma'am.

10 BY MS. SZYMCZYNSKA-SAS:

11 Q. I'm going to show you what has been
12 premarked as State's Exhibits 46 and 47. And can
13 you actually look inside of the bags to see what
14 those items are -- outside --

15 A. This is a GSR kit for Jeffrey Simmons.
16 It has my name, my badge number on it, and the
17 agency case number and agency name.

18 Q. And what number --

19 MS. SZYMCZYNSKA-SAS: Permission to
20 approach, Your Honor?

21 THE COURT: Yes, ma'am.

22 BY MS. SZYMCZYNSKA-SAS:

23 Q. So that's the GSR. And if you look
24 inside, what is the SLED number on that? Is it No.
25 5?

WILSON - DIRECT EXAM BY MS. SAS

1 A. That's correct.

2 Q. And what is the other item, 47?

3 A. This is a buccal swab collection kit.

4 It's got my name, the subject's name, Jeffrey

5 Simmons, and my agency name.

6 Q. So both of these items are from Jeffrey
7 Simmons?

8 A. That is correct.

9 Q. And can you tell the jury how you would
10 go about collecting each of these items?

11 A. Well, you obtain a buccal swab, which
12 obviously is the DNA from the mouth. You either
13 have to have a consent from the actual individual
14 or you have to obtain a search warrant from a
15 judge.

16 In this case, I asked Mr. Simmons based
17 upon the interview if he would voluntarily provide
18 a buccal swab, and he said sure.

19 Q. And how would you actually collect the
20 buccal swab?

21 A. The buccal swab is a kit that has long
22 wooden Q-tips on it to be able to swab the inside
23 of the mouth. There's -- there's gloves inside so
24 you don't interfere -- get your DNA intermixed in
25 there. There's powder-free gloves.

WILSON - DIRECT EXAM BY MS. SAS

1 You collect it, have -- he has his name
2 on it. He fills out the name, he verifies his name
3 and he verifies his Social Security number, and
4 then once it's collected, it's sealed. I initialed
5 it with my signature under the sealed tape, and he
6 initials it before it's collected and placed into
7 evidence.

8 Q. Okay. And you would place it into
9 evidence?

10 A. Utilizing the chain of custody, which
11 is --

12 Q. That would be the sheriff's office
13 evidence?

14 A. That is correct.

15 Q. What about the GSR kit, can you tell
16 the jury how that will be collected?

17 A. Correct. Basically, the GSR kit has a
18 questionnaire. It's supplied by SLED -- the
19 questionnaire is generated by SLED, and we input --
20 we place that in there.

21 Basically, there's several questions on
22 there, you know, what they were doing since the
23 time of the incident you may be investigating,
24 whether they've washed their hands, things like
25 that, the timeframe the incident occurred. There

WILSON - CROSS EXAM BY MS. NORRIS

1 is a time span that they look at.

2 Basically, it's got vials with
3 adhesive-type items, and you dab -- take the vials
4 -- and it addresses whether it's the palm, back of
5 the hand, left and right on both sides. That's
6 placed into the envelope that is provided by SLED.

7 Again, it's sealed with evidence tape.
8 I initial on that to show that I sealed it, and
9 then I have him initial it to show that it was
10 sealed in his presence.

11 Q. And what would you have done with that
12 kit?

13 A. I would have placed that into evidence
14 also utilizing the chain of custody.

15 MS. SZYMCZYNSKA-SAS: Court's
16 indulgence?

17 THE COURT: Yes, ma'am.

18 MS. SZYMCZYNSKA-SAS: No further
19 questions for this witness at this time.

20 THE COURT: Any questions for the
21 witness?

22 CROSS-EXAMINATION

23 BY MS. NORRIS:

24 Q. Detective Wilson, you were aware that
25 Jeffrey Simmons was Fred Mazyck's cousin, correct?

WILSON - CROSS EXAM BY MS. NORRIS

1 A. I was not at first.

2 Q. But he told you that.

3 A. I believe so during the interview.

4 Q. And he was picked up because he was in
5 the area, correct?

6 A. Above the area.

7 Q. It's about 2:15, 2:30 in the morning?

8 A. Correct. About -- I believe there was
9 about a 23 minute difference between -- if I
10 remember properly, between the time that the call
11 came out, the 911 call, to the time that, I
12 believe, Lieutenant Potteiger made contact,
13 somewhere in that area, I believe.

14 Q. And Potteiger is now captain or
15 lieutenant?

16 A. He's the lieutenant over one of the
17 patrol divisions.

18 Q. And Lieutenant Potteiger picked him up
19 because he was wet, like --

20 A. Correct.

21 Q. -- he had been running through the
22 woods?

23 A. Well, he was on foot, he was walking on
24 foot. And as you know, that was during the storm
25 so it had been raining. If you're familiar with

WILSON - CROSS EXAM BY MS. NORRIS

1 the area, you can see it's very sparsely populated
2 with a lot of lawns in between houses and stuff.

3 He had been walking to his location so he advised.

4 Q. Well, now, during the interview -- you
5 were present for that, correct?

6 A. I was, yes.

7 Q. And during the interview do you recall
8 telling him the officers weren't wet because it
9 hadn't been raining at that point?

10 A. They -- it hadn't been raining, but, I
11 mean, the ground -- the ground was wet. I'm not
12 saying it wasn't raining that night. You could
13 tell on the video -- the previous video it wasn't
14 raining, but had been raining previously.

15 Q. But my point is, if you're just walking
16 down the road, his pants would not have been wet?

17 A. Correct.

18 Q. So it was like he had been through
19 either weeds or the woods?

20 A. Correct.

21 Q. And you all were concerned because the
22 dogs had been tracking right up to him, correct?

23 A. From my understanding, initially, there
24 was an indication that somebody may have gone
25 through the back of the woods. I think there was

WILSON - CROSS EXAM BY MS. NORRIS

1 testimony that the K9, the way it was tracking,
2 appeared to have followed the way Mr. Mazyck went
3 towards his relatives' house at [REDACTED]
4 Road, the same general -- the dog, I believe,
5 picked him up -- picked up the scent on the front
6 of the house there, and then followed it along
7 Cooper Store Road into the general area there.

8 Q. Were you present when then, Sergeant
9 Potteiger, now Lieutenant, said specifically, we
10 had dogs track to just about where you and I were
11 standing?

12 A. I don't know -- he may have said that
13 over the radio, but I'm not sure of the things, I
14 mean, he put down in his report.

15 Q. I'm talking about the actual transcript
16 of the interview. And in fairness to you, sir,
17 I'll show you.

18 A. Yes, sir -- yes, ma'am, I'm sorry.
19 It's been awhile since I've --

20 Q. Sure.

21 A. Sure.

22 Q. I'm looking specifically at page 19, up
23 at the top, those first couple of lines. Do you
24 see that?

25 A. Page 19, number 1 you said?

WILSON - REDIRECT EXAM BY MS. SAS

1 Q. Page 19 up at the top?

2 A. Yes, ma'am. And which --

3 Q. That first line, and go to the bottom
4 of the page before.

5 A. Where we had dogs tracking just about
6 where you and I are standing.

7 Q. And Mr. Simons said, right?

8 A. Right.

9 Q. And the officer says, from the house,
10 right?

11 A. Correct.

12 MS. NORRIS: Okay. Give me just a
13 moment, please. Thank you, sir, I don't have
14 anything further.

15 THE COURT: Any redirect of the
16 witness?

17 MS. SZYMCZYNSKA-SAS: Just one question
18 for the witness.

19 THE COURT: You may proceed.

20 REDIRECT EXAMINATION

21 BY MS. SZYMCZYNSKA-SAS:

22 Q. Were you aware during the interview
23 where Jeffrey Simmons was coming from, that it was
24 up the road further where he lives?

25 A. He lives on Long Ridge Road, which is

WILSON - REDIRECT EXAM BY MS. SAS

1 just around the corner from where -- not around the
2 corner, but the road right before where he was
3 located. So he could have been coming -- would
4 have been towards from his house.

5 Q. And he was traveling up north?

6 A. That's correct.

7 MS. SZYMCZYNSKA-SAS: No further
8 questions.

9 THE COURT: Sir, you may step down.

10 THE WITNESS: Thank you, ma'am.

11 THE COURT: You're welcome.

12 Call your next witness.

13 MS. SZYMCZYNSKA-SAS: The State calls
14 Agent Trey Elrod.

15 JAMES WINFRED ELROD,

16 being first duly sworn, testified as follows:

17 THE CLERK: Pease be seated. State
18 your full name, and spell your last name for the
19 record.

20 THE WITNESS: My name is James Winifred
21 Elrod, III. My last name is spelled E-L-R-O-D.

22 THE COURT: Spell your middle name for
23 us, please.

24 THE WITNESS: It's W-I-N-F-R-E-D.

25 THE COURT: Thank you. You may

ELROD - DIRECT EXAM BY MS. SAS

1 proceed.

2 DIRECT EXAMINATION

3 BY MS. SZYMCZYNSKA-SAS:

4 Q. Agent Elrod, where are you currently
5 employed?

6 A. With the South Carolina Law Enforcement
7 Division.

8 Q. And how long have you been employed
9 there?

10 A. For 15 months.

11 Q. And what's your current job
12 description?

13 A. Right now I'm a special agent in the
14 arson investigation unit, and I investigate fire
15 and explosive incidents.

16 Q. And where were you employed before?

17 A. Prior to that, I was employed at the
18 Berkeley County Sheriff's Office. I was a
19 detective.

20 Q. Okay. How long -- for what kind of
21 period of time?

22 A. At that time, I was at the sheriff's
23 office for two years.

24 Q. What about before?

25 A. Before that, I had did about two and a

ELROD - DIRECT EXAM BY MS. SAS

1 half years at Berkeley County and, also, I did four
2 years at the Charleston Police Department.

3 Q. What about before Charleston Police
4 Department?

5 A. That's -- before that, I was in the
6 Army.

7 Q. Okay. And were you employed with the
8 Berkeley County Sheriff's Office on October 7th,
9 2015?

10 A. Yes, ma'am.

11 Q. Okay. And what was your position back
12 then?

13 A. At that time, I was a detective in CID.
14 I was assigned to the property division of it.

15 Q. And how did you become involved in this
16 case?

17 A. At the time of the incident, we were
18 all working 12-hour shifts for the hurricane that
19 was going on at that time. I was on day shift. I
20 was called by another detective, Detective
21 Phillips, early before I went on shift for the
22 hurricane and told to respond out to the scene to
23 assist the other detectives that were already out
24 there.

25 Q. Okay. And what did you do when you

ELROD - DIRECT EXAM BY MS. SAS

1 arrived on the scene?

2 A. When I got there, I pretty much just
3 met up with the other investigators and was walking
4 around, shown the scene, what was -- you know, what
5 the -- I think the crime scene was processing and
6 stuff like that at the time. And I was just
7 basically standing by waiting to get the task they
8 wanted me to do.

9 Q. Okay. What did you do after responding
10 to the scene?

11 A. Shortly after I got there and proceeded
12 to be briefed on what was going on, I was tasked
13 with responding to Trident Medical Center to go
14 collect some GSR samples, gunshot residue samples,
15 from one of the victims, Lance Kenyon.

16 I was to meet one of the deputy
17 coroners there to do that.

18 Q. Okay. I'm going to show you what has
19 been entered into evidence State's 50.

20 MS. SZYMCZYNSKA-SAS: Permission to
21 approach, Your Honor?

22 THE COURT: You may.

23 BY MS. SZYMCZYNSKA-SAS:

24 Q. Can you go ahead and open up that item,
25 and tell the jury what that is.

ELROD - DIRECT EXAM BY MS. SAS

1 A. Can I break the seal on it?

2 Q. Yes.

3 A. Okay.

4 Q. Do you need scissors? And what is that
5 item?

6 A. This is a gunshot residue evidence
7 collection kit that we were issued at Berkeley
8 County.

9 Q. Okay. And how would you know that?

10 A. It says it on the outside, and, you
11 know, this is the kit that we were taught to
12 collect this type of evidence with.

13 Q. And how would you know that you're the
14 one that collected it?

15 A. My name is on the outside. I filled
16 out all information with the victim's name that we
17 collected the sample from.

18 Q. And when you collected the GSR from
19 Lance Kenyon, can you describe for the jury how you
20 did that?

21 A. Okay. When you receive these kits, you
22 can see it's a series of envelopes. You have an
23 exterior envelope and you have an interior
24 envelope. They're both sealed. Inside of this
25 envelope there are four glass containers that are

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1 about this big.

2 They contain -- they have a plastic top
3 on them. On the underside of that plastic top is
4 an adhesive material. Each one of those glass
5 containers is labeled, like, left back, left palm,
6 right back, right palm. And it has instructions in
7 it so if you've never used it before, you can just
8 follow the instructions.

9 At this time, I had taken many of
10 these. I didn't have to go through the
11 instructions, but the instructions guide you. You
12 take one vial at a time or one container at a time,
13 unscrew the top, have your adhesive material on the
14 other side, and you start with the left back, and
15 you're going to pat that adhesive material on the
16 back of that person's hand.

17 Seal that top back on that glass
18 container, move to the next one, and follow that
19 procedure until you get all four of those
20 collected. And you put it inside the inside
21 envelope.

22 You have a piece of -- like a form in
23 there that has some information on it. It also has
24 some questions, if the person is right-handed or
25 left-handed if you know that, if you know what type

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1 of firearm was fired, if there was one, and
2 different things like that, you fill that out.
3 That also goes inside the envelope with the
4 containers with the samples.

5 You seal that stuff up, and then you
6 have this evidence seal here that you sign, and
7 then you put it inside the exterior envelope and
8 seal it. And then you fill out the chain of
9 custody and turn it into forensics which then
10 transports it to SLED which tests it up at their
11 trace lab.

12 Q. Okay. And, specifically, in regards to
13 the GSR from Lance Kenyon, you said it was done at
14 Trident?

15 A. Yes, ma'am. I'm not sure if he -- I
16 don't know if he was deceased on the scene or if he
17 was pronounced at the hospital, but he was
18 pronounced by the time I got there. The deputy
19 coroner, he may -- I don't know if he was doing
20 some other administrative work for his end, but he
21 assisted me with collecting this with, you know,
22 holding the victim's hand and different things like
23 that.

24 Q. Okay. And once you collected the kit,
25 what did you do with that?

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1 A. I sealed it, filled out the chain of
2 custody, and I transported it back to the sheriff's
3 office where I turned it in to the evidence.

4 Q. Okay. Did you take anyone's statement
5 during the investigation of this case?

6 A. Yes. After -- I came back to the
7 sheriff's office after collecting the samples, I
8 reported back to the supervisor to get my next
9 task. I was partnered up with Detective Jarred
10 Phillips.

11 We were instructed to go back out to
12 the incident location where one of -- the surviving
13 victim, Mr. Mazyck, was living next door to the
14 incident location. We made contact with Mr. Mazyck
15 to inquire if he would provide us with an audio-
16 and video-interview statement, which he agreed to.

17 He followed us -- he followed us back
18 to the sheriff's office where we met him and
19 conducted an audio- and video-recorded interview
20 with him at our interview room at the CID office.

21 Q. And did you have an occasion to also
22 come in contact with the defendant in this case,
23 Robert Nolen?

24 A. Yes. I did interview -- we did
25 interview also the defendant's wife, which after we

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1 talked to Mr. Mazyck we received guidance to go and
2 try to make contact with her at her residence which
3 is in Ladson. I don't know the exact nomenclature
4 on the house, but I believe it's in the Hunters
5 Bend subdivision in Ladson.

6 Me and Detective Phillips made contact
7 with her there. We did speak with her there. She
8 did not provide us a written statement or an
9 audio-recorded statement. Her --

10 Q. And don't tell us what she said.

11 A. No. I'm just -- that's my -- I didn't
12 write a supplemental on that. You can reference
13 that in Detective Phillips' supplement.

14 Q. Okay. And then did you have occasion
15 to come in contact with the defendant?

16 A. Yes, ma'am. We -- we were then
17 instructed to go to the detention center which is
18 where the defendant was being held. We made
19 contact with him. We were sent over there to see
20 if he wanted to provide a statement to us, and we
21 talked to him.

22 He did want -- he did express to us
23 that he would provide us a statement, so we
24 coordinated with the transport unit from the
25 detention center and had the defendant transported

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1 over to the sheriff's office so we could interview
2 him in our interview room. We did conduct an
3 audio- and video-recorded interview with the
4 defendant there.

5 Q. Do you recall approximately what time
6 you made contact with him at the detention center?

7 A. At the detention center, we made
8 contact with the defendant at approximately 4:10 in
9 the afternoon on the 7th.

10 Q. Okay. And do you recall what time you
11 actually got into the interview room?

12 A. I don't know exactly what time we
13 walked him in there, but when we do conduct these
14 interviews, we, you know, give the defendant --
15 advise them of their rights, which is where we also
16 will record down the times that the video -- excuse
17 me, that the interview starts and finishes.

18 And that time would be on that and, I
19 believe, it was like 4:37 p.m. on the 7th.

20 Q. And would it help you to reference --

21 A. Yes.

22 Q. -- that Miranda --

23 A. Yes.

24 Q. I want to show you what has previously
25 entered into evidence as State's 127.

ELROD - DIRECT EXAM BY MS. SAS

1 MS. SZYMCZYNSKA-SAS: Permission to
2 approach?

3 THE COURT: (Nods)

4 BY MS. SZYMCZYNSKA-SAS:

5 Q. Does that refresh your --

6 A. Yes, ma'am. On here it has the
7 starting time, and that's 4:27 p.m.

8 Q. Okay. And who was present during the
9 questioning?

10 A. During the questioning, myself,
11 Detective Phillips, and the defendant.

12 Q. Okay. Do you know if the defendant was
13 intoxicated when he was initially taken into
14 custody earlier that day?

15 A. I was informed by the other
16 investigators that he was intoxicated when he was
17 taken into custody earlier that morning.

18 Q. Okay. And this interview,
19 approximately how many hours later did that
20 interview take place?

21 A. It was approximately 14 hours after he
22 was taken into custody.

23 Q. Okay. At the time of the interview
24 with you and Detective Phillips, did the defendant
25 appear to be under the influence of any drugs or

ELROD - DIRECT EXAM BY MS. SAS

1 alcohol to the extent that it would impair his
2 ability to understand your questions?

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

4 Q. Did he appear to have a physical or
5 mental disability that would impair his ability to
6 understand what you said and what you asked of him?

7 A. No, ma'am, he did not.

8 Q. Okay. Did he ever ask for food, water,
9 bathroom break?

10 A. He did ask for water. I think we gave
11 him a couple of bottles of water during the
12 interview. And, also, he did take one bathroom
13 break.

14 Q. And what was the approximate total time
15 of the interview?

16 A. It was approximately two and a half
17 hours.

18 Q. Okay. Did you promise him anything in
19 return for making a statement or talking to you?

20 A. No.

21 Q. Did you coerce him into making a
22 statement?

23 A. No, ma'am.

24 Q. And, to the best of your knowledge, did
25 he freely and voluntarily give you the statement?

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1 A. Yes, ma'am, he did.

2 Q. And was he already under arrest?

3 A. He was -- he had been detained, and he
4 had been put on hold at the detention center while
5 his arrest warrants were being obtained.

6 Q. Okay. And was he advised why you
7 wanted to question him?

8 A. We advised him that we were questioning
9 him about the incident.

10 Q. Did you advise him verbally or in
11 writing?

12 A. About why --

13 Q. About the -- his -- why you were
14 questioning him?

15 A. Verbally.

16 Q. Okay. And did you give him his Miranda
17 warnings?

18 A. Yes, ma'am, we did.

19 Q. And was that verbally and in writing?

20 A. Yes, ma'am, it was both.

21 Q. Okay. And did he appear to acknowledge
22 that he understood his rights?

23 A. Yes, ma'am, he did.

24 Q. And how -- how did he acknowledge that?

25 A. We use this Miranda form that I have up

ELROD - DIRECT EXAM BY MS. SAS

1 here. It's the standard form used at the sheriff's
2 office. It's the advisement form. It has each
3 portion of the Miranda advisement listed out with a
4 line next to it for initialing.

5 It also has -- so while we read this
6 aloud, we also ask the person getting the
7 advisement to acknowledge verbally and, also, to
8 initial next to that portion of the advisement that
9 they understand it. And after we do read all of
10 the portions out to them, there is a statement on
11 here that they read out to us that says they
12 understand the total advisement, and they sign
13 here.

14 Q. And did he appear to speak the English
15 language?

16 A. Yes, ma'am.

17 Q. And did he appear to have been able to
18 read the English language?

19 A. Yes, ma'am.

20 Q. And did his answers to questions appear
21 to have been rational, or was he so emotional that
22 maybe you had concerns regarding his ability to
23 understand your questions and --

24 A. There was no concerns about his ability
25 to answer.

ELROD - DIRECT EXAM BY MS. SAS

1 Q. Okay. And did he respond initially
2 when you asked him whether he wanted to have an
3 attorney?

4 A. He did not ask for an attorney
5 initially, no, when he was advised that he could.

6 Q. At some point, did he request an
7 attorney?

8 A. Yes, ma'am, he did.

9 Q. And what did you do at that point?

10 A. When he requested an attorney, we
11 ceased asking him questions and concluded the
12 interview.

13 Q. And was his interview audio and video
14 recorded?

15 A. Yes, ma'am.

16 Q. Okay. And what did you do with that
17 recording?

18 A. A copy was made; it was submitted to
19 evidence.

20 Q. Okay. And you have knowledge that the
21 defense attorney and I, due to the length of the
22 interview, have both agreed to only play specific
23 portions of the interview?

24 A. Yes, ma'am.

25 Q. And those portions were played on

1 State's Exhibit Number 76 that's been entered into
2 evidence?

3 A. Yes, ma'am.

4 Q. Okay.

5 MS. SZYMCZYNSKA-SAS: Permission to
6 approach, Your Honor?

7 THE COURT: You may proceed.

8 MS. NORRIS: Please note our continuing
9 objection.

10 THE COURT: Noted and overruled based
11 on the in-camera hearing.

12 (Video was played in open court.)

13 MS. SZYMCZYNSKA-SAS: Please answer any
14 questions that counsel has for you.

15 THE COURT: Do you have any questions
16 for the witness?

17 MS. NORRIS: Thank you. Agent Elrod, I
18 don't have any questions.

19 THE COURT: Any exceptions to the
20 witness being excused? From the State?

21 MS. SZYMCZYNSKA-SAS: None from the
22 State, Your Honor.

23 THE COURT: From the defense?

24 MS. NORRIS: No, Your Honor.

25 THE COURT: You're excused, sir.

1 THE WITNESS: Thank you.

2 THE COURT: You're welcome. The State
3 may proceed.

4 MS. SZYMCZYNSKA-SAS: Your Honor the
5 State rests its case.

6 THE COURT: Mr. Foreman, ladies and
7 gentlemen, the State has rested their case. They
8 are some matters of law that I need to take up with
9 counsel. It should not take that long.

10 During the break, please do not discuss
11 the case. Please leave your notepads in your
12 seats; however, if we get close to -- if your lunch
13 arrives, I'm going to go ahead and let you all eat
14 lunch, and then we'll resume. We've scheduled it
15 for 12:30, so I'll just have to take it as it
16 comes. Enjoy your break. Thank you.

17 (Jury out, 12:06 p.m.)

18 THE COURT: You may be seated. The
19 State has rested their case. Are there any
20 motions?

21 MS. NORRIS: Your Honor, may we take a
22 brief comfort break first?

23 THE COURT: Sure. Go right ahead.

24 (A recess transpired.)

25 THE COURT: The State has rested. Are

1 there any motions?

2 MR. FARBER: Yes, Your Honor. We're
3 moving for a directed verdict under Rule 19 on the
4 three counts of murder. There's certainly been
5 proof that Mr. Nolen killed the three individuals,
6 but there's no evidence whatsoever that he did so
7 with malice aforethought.

8 THE COURT: Is that the entirety of
9 your motion?

10 MR. FARBER: That's the basis for it,
11 Your Honor.

12 THE COURT: You need to argue your
13 motion in its entirety so that the State can
14 respond.

15 MR. FARBER: Well, Your Honor, my
16 argument is that there is no evidence of malice
17 aforethought. That's an element of the offense,
18 and they have put in ample evidence that Mr. Nolen
19 killed three individuals.

20 There's no evidence in the record, let
21 alone any evidence in the record from which a jury
22 could include beyond a reasonable doubt that he did
23 so with malice aforethought.

24 THE COURT: Would the State like to
25 respond?

1 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.
2 In the light most favorable to the State, Your
3 Honor, as the State knows -- as the Court knows,
4 the trial court is concerned only with the
5 existence or nonexistence of the evidence, not its
6 weight.

7 The State presents that we have
8 presented ample evidence to show malice, Your
9 Honor. Malice can expressed or implied. We have
10 presented testimony of the pathologist that there
11 were 22 gunshots wounds on three people who were
12 running away, one of them hiding underneath the
13 porch. There were photographs introduced showing
14 blood underneath the porch and blood behind an AC
15 unit as if someone was hiding.

16 Mr. Kenyon was shot multiple times in
17 the back, Your, Honor. Mr. Harrison was also shot
18 in the back, a total of nine shots on his body.
19 There is evidence of blood coming off from the
20 porch, and his body is located past the blood spot.
21 Mr. Gressette is killed in the head, Your Honor.

22 I'm not sure how much more evidence of
23 malice and -- that we can present during this
24 trial, but we would ask Your Honor to deny the
25 motion for the directed verdict.

1 THE COURT: Anything further from the
2 defense?

3 MR. FARBER: Yes, Your Honor. The
4 evidence that the State has alluded to is just
5 evidence that they were, in fact, shot and that
6 there was blood. That's what happens when someone
7 is shot and killed.

8 They have to prove -- they have to have
9 evidence that it was done with malice aforethought.
10 The fact that there were multiple shots does not
11 establish that.

12 THE COURT: Considering the evidence in
13 the light most favorable to the State, the Court is
14 concerned only with the existence or nonexistence
15 of evidence and not its weight. The Court is
16 required to consider whether there is direct or
17 substantial circumstantial evidence.

18 The State is not required to prove --
19 to prove their case beyond every reasonable doubt;
20 however, they are -- I'm sorry, I misstated what I
21 meant to say. The State is required to prove its
22 case beyond a reasonable doubt; however, they are
23 not required to prove guilt that excludes any other
24 reasonable hypothesis; however, their case must
25 rise among mere suspicion.

1 I find that there is both direct and
2 substantial circumstantial evidence reasonably
3 tending to prove the defendant's guilt. The
4 defendant's argument on the directed verdict hinges
5 on the element of malice, and as we all know, the
6 State is required to prove that element beyond a
7 reasonable doubt.

8 Malice is defined as hatred, ill will,
9 or hostility towards another person. It is the
10 intentional doing of a wrongful act without just
11 cause or excuse and with an intent to inflict an
12 injury or in the circumstances that the law would
13 infer evil intent. Malice is not required to have
14 existed at any particular time before the event;
15 however, the State is required to establish that it
16 was in the mind of the defendant just before and at
17 the time the act was committed.

18 As we are all aware, malice
19 aforethought can be expressed and inferred. Those
20 terms, of course, do not mean different kinds of
21 malice but merely the manner in which malice is
22 shown to have existed.

23 Based on both the direct and
24 substantial circumstantial evidence there is
25 evidence of express and inferred malice, that being

1 in the direct testimony of Mr. Mazyck, who
2 indicated that the only people present were the
3 victims and the defendant and himself; that he was
4 awakened from sleep to multiple rounds of gunshots
5 after which the defendant came into the home and
6 indicated to him, and that statement which is, of
7 course, a statement against interest, his own
8 pecuniary interest, indicated that he had, in fact,
9 killed everyone outside, that he had done it
10 deliberately because he was tired of them messing
11 with him -- my words parenthetically, not his
12 exactly -- after which he shot at him.

13 That in and of itself is enough to have
14 established by direct and substantial
15 circumstantial evidence the element of express
16 malice.

17 The other element, which is inferred
18 malice, can likewise be shown when there is a total
19 disregard for human life. In looking at the
20 totality of the evidence that has been presented by
21 this State, there is more than direct -- and direct
22 circumstantial evidence that shows, based on the
23 weapons used and the harm inflicted, that there was
24 a total disregard for human life; therefore, the
25 motion for directed verdict is denied.

1 Sir, if you would stand for me, please.
2 I'll remind you're still under oath. On yesterday
3 I advised you of your rights against
4 self-incrimination and your right to testify. Have
5 you had an opportunity to fully discuss with your
6 lawyers whether you would like to testify.

7 THE DEFENDANT: Yes, ma'am, I have.

8 THE COURT: Do you need to speak with
9 them any further?

10 THE DEFENDANT: No, Your Honor, I
11 don't.

12 THE COURT: Do you have any questions
13 of the Court regarding your right to testify or of
14 your rights in general?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: And so, do you wish to
17 testify?

18 THE DEFENDANT: Yes, I do, Your Honor.

19 THE COURT: In light of Mr. Nolen's
20 indication that he's going to testify, does the
21 State seek to introduce any of his record to
22 impeach his credibility?

23 MS. SZYMCZYNSKA-SAS: Your Honor, we do
24 not intend to use the obtaining property or
25 signature under false pretences or the fraudulent

1 check; however, if the defendant does decide to
2 take the stand, if he offers any kind of evidence
3 of good character regarding specific traits
4 relevant to the crimes that he's been charged with,
5 we would at that time argue that he would open a
6 door to his prior conviction for CDV.

7 THE COURT: And, Ms. Norris, have you
8 fully explained that to your client and the
9 consequence of any assertions in that regard?

10 MS. NORRIS: I have, Your Honor.

11 THE COURT: And you believe that he is
12 fully apprised of that?

13 MS. NORRIS: Yes, Your Honor.

14 THE COURT: Sir, has your lawyer
15 explained that to you?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: And are you -- do you feel
18 you fully understand that concept?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And knowing that, do you
21 still wish to testify?

22 THE DEFENDANT: I do, Your Honor.

23 THE COURT: Okay. Do we need to do
24 anything else -- well, actually, let's see. Lunch
25 is supposed to get here at -- check with -- see if

1 he's back yet. Bear with me second. You all can
2 take your seats.

3 Other than the defendant, does the
4 defense plan to call any other witnesses.

5 MS. NORRIS: No, Your Honor.

6 THE COURT: Okay. Is the State going
7 to be requesting -- because the State indicated on
8 yesterday that they were going to be seeking an
9 involuntary manslaughter instruction. I'm going to
10 have a charge conference. I'm just being proactive
11 because I'm preparing verdict sheets.

12 MS. SZYMCZYNSKA-SAS: And, Your Honor,
13 at this time we're not certain. A lot of it will
14 depend on the testimony.

15 THE COURT: Worse case scenario, are
16 you seeking any lesser included offenses? And
17 they're only seeking one involuntary, that is to
18 the --

19 MS. SZYMCZYNSKA-SAS: Yes, Your Honor,
20 at the appropriate time we would like to be heard
21 on that.

22 THE COURT: I'm going to have a charge
23 conference. It's easier for me to delete something
24 than to type it in.

25 MS. SZYMCZYNSKA-SAS: Your Honor, I

1 don't see at this point anything, but we will
2 certainly submit proposed charges if it becomes
3 necessary.

4 THE COURT: Thank you. He's not here
5 yet, so we're going to proceed. And when he gets
6 here, we'll just -- because I don't know how long
7 it may take him. I don't know if the restaurant
8 was ready or not, and I'm not going to sit for
9 30 minutes in the event they did not have what they
10 indicated they had.

11 He's here. All right. We're going to
12 break for lunch until 1:00. During the break,
13 please do not discuss the case -- I'm thinking
14 about the jury. You can talk about it all you want
15 to, but, sir, you cannot discuss your testimony --
16 well, you can because you haven't started
17 testifying yet.

18 We're going to break until 1:00. It's
19 12:25. The bailiff is coming up the stairs right
20 now with the jury's lunch. I would ask that you
21 all be particularly careful around the courthouse,
22 because the jury is not sequestered and they may be
23 walking around using their phones or having a
24 cigarette or something, just getting some air after
25 they eat.

1 So I would ask that you have a
2 heightened sense of caution just to make sure that
3 you don't have any inadvertent contact with anyone.
4 We'll see you all at 1:00. You can leave your
5 things where they are. Enjoy your lunch.

6 (A luncheon recess transpired.)

7 THE COURT: Is the State ready to
8 proceed?

9 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

10 THE COURT: Is the defense ready to
11 proceed?

12 MS. NORRIS: Yes, Your Honor.

13 THE COURT: Is the defendant restrained
14 in any way -- go ahead and have him -- well -- all
15 right. Please bring in the jury.

16 (Jury In, 1:08 p.m.)

17 THE COURT: You may be seated. Ladies
18 and gentlemen, I hope you had a pleasant lunch. We
19 are going to resume with the trial. The defense
20 may proceed.

21 MS. NORRIS: Your Honor, the defense
22 calls Robert David Nolen.

23 THE COURT: Sir, come to the stand and
24 be sworn.

25 ROBERT DAVID NOLEN,

NOLEN - DIRECT EXAM BY MS. NORRIS

1 being first duly sworn, testified as follows:

2 THE CLERK: Please be seated. State
3 your full name, and spell your last name for the
4 record.

5

6

7 THE DEFENDANT: Robert David Nolen,
8 N-O-L-E-N.

9

THE COURT: You may proceed.

10

DIRECT EXAMINATION

11 BY MS. NORRIS:

12 Q. Mr. Nolen, how old are you?

13 A. Fifty.

14 Q. And where were you born?

15 A. Olive Hill, Kentucky, which is eastern
16 Kentucky, in the mountains.

17 Q. And why did you leave Kentucky?

18 A. I joined the military.

19 Q. How long did you serve?

20 A. Twelve years.

21 Q. And was part of that National Guard?

22 A. Yes, ma'am.

23 Q. How much?

24 A. Eight, nine years.

25 Q. Okay. And then when you went on active

NOLAN - DIRECT EXAM BY MS. NORRIS

1 duty, how long did you serve active duty?

2 A. From '95 to January 5, 1998,]so three
3 years.

4 Q. And what brought you to South Carolina
5 after that?

6 A. Building cellphone towers.

7 Q. And how long have you been in South
8 Carolina?

9 A. Since 1998.

10 Q. Are you married?

11 A. Yes.

12 Q. Do you have children?

13 A. Yes, ma'am.

14 Q. How old are your children?

15 A. My oldest is J. C., he's 28 from a
16 previous marriage, and then my two with my current
17 wife now Marissa and Tyler, they're 18 and 19.

18 Q. And back in October 2016, when you were
19 arrested, were you working then?

20 A. At that very moment, no, ma'am.

21 Q. Were you between jobs?

22 A. Yes.

23 Q. All right. Mr. Nolan, clearly, you
24 have been charged with crimes against four men, and
25 I wanted to talk with you a little bit about each

NOLEN - DIRECT EXAM BY MS. NORRIS

1 of those.

2 Mr. Lance Kenyon; did you know Lance
3 Kenyon before?

4 A. Yes, ma'am.

5 Q. And what was your relationship to him?

6 A. We were really close friends.

7 Q. For how long?

8 A. Twelve to fifteen years.

9 Q. And when this happened, how long had
10 you been staying at his house?

11 A. I think I had got there either the
12 Thursday or the Friday before, so right at one week
13 exactly.

14 Q. And Harry Gressette, did you know Harry
15 Gressette before all this happened?

16 A. I had met Harry one time before.

17 Q. And what was that meeting for?

18 A. I had just left Donley's Concrete, a
19 big huge job in Athens, Georgia. And they wanted
20 me to travel, and I said no, so I left that company
21 and was in between.

22 And, actually, Lance had approached me
23 that Harry was looking for a concrete
24 superintendent with my knowledge and abilities to
25 go to work for him with his concrete polishing

NOLEN - DIRECT EXAM BY MS. NORRIS

1 company traveling at first the United States and
2 then he was talking globally.

3 Q. Okay. And Mr. James Mark Harrison, had
4 you met him before the day all this happened?

5 A. No, ma'am.

6 Q. And how about Fred Mazyck, what was
7 your knowledge and/or relationship to him?

8 A. I had met him that Saturday or Sunday
9 shortly after getting there. I knew he was the
10 next door neighbor. He came over and drank beer
11 and smoked pot with Lance.

12 Q. Okay. And prior to October 7th, 2016,
13 did you have any malice or problems with any of the
14 four of those men?

15 A. No, I did not.

16 Q. All right. Let's talk about that day,
17 earlier in the day before all this happened. When
18 and where did you wake up?

19 A. I had been staying on the couch in the
20 living room at Lance's house. We got up 7:30,
21 8:00. Me and Lance cooked breakfast, ate
22 breakfast, and then started cleaning up for the
23 hurricane that was supposed to be coming in.

24 Q. And did you -- how much of your
25 personal property did you have at Mr. Kenyon's

NOLEN - DIRECT EXAM BY MS. NORRIS

1 house?

2 A. Some weapons, clothes, and then I
3 brought a good bit of tools and put them in the
4 garage because I was going to work on Lance's house
5 while sitting around doing nothing.

6 Q. And why did you bring your weapons
7 there?

8 A. Lance wanted to shoot, and deer season
9 was there, and I take my son deer hunting every
10 year. And two of the rifles needed to be sighted
11 again because they hadn't been touched in a year.

12 Q. And was Mr. Mazyck there that morning?

13 A. He got there about 9:00.

14 Q. And was anybody else there during the
15 day?

16 A. Yes, there was. Like, I had backed my
17 truck up to a spot in Lance's yard so we could
18 shoot off the tailgate to sight in the rifles and
19 fix the scope on Lance's rifle. And Fred was out
20 there with me, and he said it was his cousin,
21 pulled in in a cream-colored Ford Expedition or
22 something, I think, a great big man. And they
23 stood there and talked, I don't know, maybe
24 15 minutes. He was the first one.

25 Later, the guy from the liquor store, I

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1 heard myself call him Kenny earlier, I'm assuming
2 that's his name, he came. Lance had a zero turn
3 lawn mower that he had been mowing. He'd mowed all
4 morning long -- well, not all morning long, a
5 couple of hours, his property, and then he went
6 down and mowed Fred Mazyck's mother's property and
7 all that down there.

8 And Kenny came to borrow Lance's lawn
9 mower. I think he brought a trailer or maybe Lance
10 had a trailer, I don't know, but --

11 Q. Okay.

12 A. -- he was the next one.

13 Q. So a couple of people stopped by during
14 the day?

15 A. Yes. And then there was two other
16 fellows that came later. One of them actually had
17 been a superintendent with Landmark Construction,
18 their concrete superintendent for years. One of
19 the guys that showed up, I didn't know his real
20 name, his nickname was Slim. And he had actually
21 worked for me for maybe a year. Him and his
22 brother.

23 I can't remember his brother's name. I
24 tried to hire him too at the time. Both of them
25 were concrete finishers, and they stopped by also.

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1 Q. But is it fair to say that for the bulk
2 of the day it was you, Mr. Kenyon, and Mr. Mazyck?

3 A. Yes, ma'am.

4 Q. And did you all fire any weapons that
5 day?

6 A. Yes, ma'am.

7 Q. After you -- about what time of day are
8 we talking about now?

9 A. Fred showed up at nine, helped me put
10 my boat underneath Lance's lean to. We -- I don't
11 remember. We cleaned up some of the stuff in the
12 yard. Lance was mowing. I moved my truck over
13 there and started to sight in the two, 243 deer
14 rifles.

15 I got those sighted in and put those in
16 the house about the time Lance was done mowing, and
17 Lance brought the SCAR 17 out, and we adjusted the
18 scope on it.

19 Q. Okay. And did you all clean up or did
20 you leave shell casings out there?

21 A. Oh, no, ma'am. You always, always
22 police up your brass after you get done shooting
23 whether it's actual long rifle brass, shotgun
24 shells or whatever.

25 Q. And police up your brass means what?

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1 A. Pick it up, clean it up because if a
2 lawn mower hits it, you can do serious damage to
3 somebody or vehicles or --

4 Q. And did you go anywhere that day? The
5 one or more of you, the three of you, did you go
6 anywhere?

7 A. Yes, ma'am, we went --

8 Q. Where did you go?

9 A. Kenny, the guy that had showed up that
10 morning apparently worked at or managed a liquor
11 store in Knightsville. We were sitting in the
12 living room drinking beer talking, and Lance gets a
13 phone call and jumps up and says, all right. Hey,
14 we got to go. We got to go down to the liquor
15 store.

16 And I was a little confused why we
17 needed to go right then, but he let me know in the
18 truck on the way there that the actual owner of the
19 liquor had left, and Kenny was going to give us the
20 alcohol that we actually went and got.

21 Q. And about what time was that; do you
22 recall?

23 A. Between one and three.

24 Q. At that point, do you recall how much
25 you had had to drink?

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1 A. Six or seven beers at least.

2 Q. What kind of beer?

3 A. Bud Light.

4 Q. Are we talking 12-ounce size, 24 ounce?

5 A. Twelve-ounce cans.

6 Q. And did you go anywhere other than the
7 liquor store?

8 A. Yes. The liquor store was actually in
9 a Publix Shopping Center in Knightsville, and we
10 went in there and bought groceries, horseplay like
11 a couple of little kids, me and Lance in the aisles
12 joking with each other, got the groceries.

13 I asked about steaks, and he said,
14 we're going to go across the street to Piggly
15 Wiggly. He knew the guy that managed the meat
16 department, and he was going to cut us steaks over
17 there.

18 Q. And did you all buy any beer at the
19 grocery store?

20 A. I would assume so, yes.

21 Q. But you don't remember?

22 A. I don't remember that. I don't
23 remember exactly what we bought.

24 Q. And at the liquor store, do you recall
25 what you got?

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1 A. Yes. I got a fifth of Crown Royal, and
2 Lance got, I think, a half gallon of Fire Ball.

3 Q. Okay. Anything else?

4 A. No, that was it.

5 Q. Did you all get anything to take shots
6 or was it shots of the Crown Royal and Fire Ball?

7 A. I'm allergic to cinnamon, I can't touch
8 the Fire Ball. I was doing shots of Crown later,
9 and there was an unopened half -- I don't know
10 whether it was opened or not, but a half gallon of
11 vodka on the top of the refrigerator that we got
12 into later that day.

13 Q. All right. Now, at any time during the
14 day before Mr. Gressette and Mr. Harrison came
15 over, were any of the three of you using drugs?

16 A. Yes.

17 Q. Who?

18 A. Lance and Fred.

19 Q. And what were they using and how do you
20 know?

21 A. They were smoking marijuana. Lance had
22 a little -- a little water bong, actually pretty,
23 they were -- they were smoking marijuana out of it.

24 Q. Okay.

25 A. They were doing it in the backyard at

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1 the patio table.

2 Q. And do you know whether either was
3 using pills of any kind?

4 A. I don't -- I never saw Fred use a pill.
5 I know that Lance had taken some pills that
6 morning, but I have to take indigestion pills and
7 stuff like that, so I don't know what.

8 Q. Did you have any kind -- any knowledge
9 of what the pills Lance took were?

10 A. No, ma'am.

11 Q. All right. I want to move up, Robby,
12 to just prior to Mr. Gressette and Mr. Harrison
13 coming over. What were you, Mr. Kenyon, and
14 Mr. Mazyck doing at that point?

15 A. We had started watching a movie,
16 Hateful Eight.

17 Q. Okay. And do you recall when
18 Mr. Gressette and Mr. Harrison came over?

19 A. Yes, I do.

20 Q. Okay. Tell me about that.

21 A. They had -- I'm sorry, we were watching
22 a movie. Me and Lance were -- I don't want to say
23 arguing back and forth, but there was a -- I had
24 sold him my 243 deer rifle that day. He wanted it
25 to shoot a deer out in the back yard with it

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1 because SCAR 17 would do way too much damage.

2 So he wanted to buy that weapon, and I
3 sold it to him. And we were standing there talking
4 later, and I said -- or right before the movie
5 started, and I said, hey, look, keep an eye out for
6 a pistol. I'm looking for a small caliber pistol
7 for my son Tyler.

8 I'm scared -- you know, sometimes when
9 I drop him off at a tree stand 5:00 or 5:30 in the
10 morning, it's dark, and he's got to walk to his
11 tree stand. And there's wild hogs and coyotes and
12 snakes; I need a small caliber handgun for him.
13 And Lance broke out two guns. One was a big 50 cal
14 Desert Eagle, the biggest I'd ever seen, and then a
15 smaller 380.

16 And I asked him then, I want to buy
17 that 380. And he said -- you know, we looked at
18 it, and he didn't have bullets for it, and we
19 didn't get to shoot it, but I told him I wanted
20 that weapon for Tyler. And he said, are you really
21 going to give it to Tyler? And I said yeah. And
22 he said, then I'll give it to you.

23 Q. All right. Robby, focus for me now.

24 A. I'm sorry.

25 Q. I asked you when they came over and

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1 what happened. What time was it? What happened?

2 A. I don't know what time it was. It was
3 late, it was -- it was pretty late. I don't know
4 the exact time. I had --

5 Q. Did you know that Mr. Harrison and
6 Mr. Gressette were coming over?

7 A. Lance got a phone call, got out of his
8 recliner and walked down to his bedroom, shut the
9 door, and then came back and said, Harry and a
10 friend is coming over.

11 Q. And what happened then when he told you
12 that people are coming over?

13 A. He asked me if I could help him clean
14 up a little bit. I went to the kitchen -- I had
15 washed up the breakfast and the lunch plates and
16 stuff. I was putting all of that stuff away and
17 Lance was running the vacuum.

18 Q. And at that point were you aware of
19 whether there were any drugs in the house other
20 than marijuana?

21 A. Yes. I had seen a Ziploc bag of white
22 pills. Lance said there were two different kinds
23 of pills, oxy something or hydro something,
24 hydrocodone, oxycodone. It was in a quart Ziploc
25 bag. If you rolled it down, it was probably about

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1 that big around full of pills. (Indicating) I
2 would say over 100 was in his gun safe in his
3 bedroom.

4 Q. And did you have any knowledge of how
5 much marijuana was in the house?

6 A. Yes, ma'am. There was a one-pound
7 brick that was rolled up in black plastic. There
8 was three -- Lance said there were three, one
9 ounce -- they weighed one ounce -- separated out.
10 It looked like they were vacuum sealed in a gallon
11 Ziploc bag.

12 Q. And how did you become aware that there
13 was a pound of marijuana in the house?

14 A. The day before, Fred and Lance were
15 outside smoking at the table and they had only took
16 like two little puffs off of it. And Lance said
17 that's all I need, and Fred agreed.

18 And I was like, what kind of marijuana
19 are you smoking that it only takes two little
20 puffs. And he said it was the best marijuana that
21 he'd ever had or ever seen or whatever. And then
22 later I'm coming into the house and Lance meets me
23 in the kitchen and says, look here, this is it, and
24 he's got that whole bag.

25 And I said, holy cow, dude, what is

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1 that? And he -- the little baggies were -- the
2 marijuana was like a purplish -- it didn't look
3 like marijuana. It looked like -- I thought
4 marijuana was green. It was like a purplish haze
5 to it, and it looked real hairy like spider legs.
6 It looked like somebody had sprinkled sugar on it
7 maybe, like crystallly sugar.

8 And then the -- he said that's a pound,
9 a one-pound brick. And I reached to pick it up and
10 I about throwed it through the ceiling because I
11 thought it was going to weigh more than one pound.
12 Anyway it was really light, one pound is light, but
13 anyway, right then I knew.

14 Q. And did you know where in the house
15 that was when Mr. Gressette and Mr. Harrison were
16 coming over?

17 A. Yeah. I found it in the oven. I had
18 opened the oven to put the baking pan in the oven
19 that was up on the thing, and it was in -- sitting
20 in the oven. The day -- yeah, the day before,
21 Lance had -- we were in the kitchen, and he was
22 showing it to me, and Fred had come through the
23 front door.

24 I had left him in the backyard, but he
25 come through the front door, and before Lance could

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1 hide it Fred saw it. Don't ask me why it was in
2 the oven; I have no idea.

3 Q. Was it just the marijuana you
4 described, or was there cash or anything else in
5 there?

6 A. There was a big wad of cash that was
7 folded over that had a green and red rubber band on
8 it because I made a joke if it was Christmas money
9 because of the Christmasy color rubber bands.

10 Lance said it was somewhere -- he said
11 it was 13 to \$1900 because it could have been ten.
12 It could have been 15, 16, I don't know.

13 Q. And, now, when Mr. Gressette and
14 Mr. Harrison arrived, tell us what happened.

15 A. We got everything cleaned up, and we
16 were sitting back down watching TV and they showed
17 up. I said hi to Harry, Mark Harrison had come in.
18 I had never seen him before, but the way he was --
19 the way he was moving at first, I thought something
20 was wrong with him mentally and physically.

21 Q. Can you describe how he was behaving
22 that made you think that?

23 A. His arms were like this (indicating)
24 and he was twisting. And he couldn't stand still
25 and his mouth was moving. I really thought there

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1 was something -- something wrong with him, I really
2 did.

3 I didn't know who this guy was or, you
4 know, if this was a family member of Harry's that
5 he kept with him. When I introduced himself I
6 said, hi, I'm Robby, like I was introducing myself
7 to a small child. And then Lance said, holy shit,
8 dude, you're spun. And that's when I realized that
9 there was nothing wrong with the guy; he's on
10 drugs.

11 Q. At some point -- what happened after he
12 came in? Did Mr. Kenyon seem to know Mr. Harrison?

13 A. I don't think so. I don't think so.

14 Q. But, clearly, Mr. Kenyon knew
15 Mr. Gressette, correct?

16 A. Yes, ma'am.

17 Q. All right. And so at some point you
18 all went outside. Tell me how that came to be.

19 A. We were in the living room kind of
20 making a whole lot of noise, and Fred was really,
21 really wanting to see that movie. And I guess
22 Lance noticed that he was all up trying to listen
23 to the TV. And Lance said, hey, let's all take
24 this outside. And we all moved out to the back
25 porch then.

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1 Q. And what happened when you went
2 outside? Well, let me rephrase that. Did you all
3 bring any weapons out there?

4 A. Not at first, no.

5 Q. Okay. What happened?

6 A. Lance was showing off the -- Lance had
7 just got his Green Egg and some kind of outdoor
8 picnic table or dining table, whatever you want to
9 call it.

10 Q. Tell us what a Green Egg is for the
11 folks that might not know.

12 A. It's a grill. I had learned that the
13 first time when I saw it too. I'd never -- never
14 knew what it was, but, anyway, wherever he bought
15 the hot tub, he also bought the patio furniture and
16 grill. And Lance was showing that grill and hot
17 tub off to Harry and Mr. Harrison.

18 Q. And what else happened out there?

19 A. We were just drinking. Lance talked
20 to -- I guess talked Mr. Harrison into getting into
21 the hot tub. He wanted to see what it was about.
22 He got into the hot tub. Harry didn't want to get
23 in the hot tub. I didn't want to get in the hot
24 tub. I'd been in it a couple days before or a
25 couple nights before, or maybe even the night

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1 before.

2 Q. All right. And at some point, did
3 weapons come out?

4 A. Yes, ma'am, they did.

5 Q. And why -- why did weapons come out?

6 A. We were standing there talking and
7 found one of the big -- the big shells for the SCAR
8 17, which is a big 762 Nato round the military
9 uses. And I said, we missed one. Luckily, you
10 didn't hit it with the lawn mower.

11 And that's when Mr. Harrison said, holy
12 cow, what kind of weapon shoots that? And Harry
13 started explaining to Mark about the SCAR 17 that
14 Lance had. And Lance said, well, let's just go get
15 it. So me and Lance went in the house. He said,
16 come help me carry this thing out here.

17 And we went to his gun safe, he got the
18 SCAR 17 and handed to me several -- several
19 magazines. He's got -- in the closet he had a lot
20 of magazines and ammo cans full of ammo.

21 Q. When you say SCAR 17 -- I'm holding
22 Defense Exhibit 138. Is this the SCAR 17 you were
23 talking about?

24 A. Yes, ma'am, it is.

25 Q. All right. So the SCAR 17 came out.

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1 What else?

2 A. We shot that a couple of times -- well,
3 they shot that a couple of times. A couple of
4 times, I mean, a couple of magazines full, and the
5 magazines were 30 round magazines. Me and Harry
6 kind of fell back, and Lance was showing it off on
7 the end of it.

8 Q. Is that the magazine right there?
9 (Indicating)

10 A. Yes, ma'am. And it'll hold -- that
11 magazine there either holds 20 or 30 rounds. I
12 don't know which one that is. On the end of the
13 barrel is what we -- we in the military call a
14 suppressor. Folks in the civilian world who watch
15 a lot of movies call that a silencer.

16 Without that, that thing is
17 unbelievably loud. It's still loud with it, but
18 it's not as loud.

19 Q. Is that what you're talking about here,
20 the silencer? (Indicating)

21 A. Yes. That's the suppresser. Me and
22 Harry got to talking about deer hunting. Harry was
23 asking me about -- he had a son about my son's age
24 and he -- talking about deer hunting with him. And
25 I went in the house and got Tyler's 243, it's a

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1 huge 243, and I was showing that off to Harry that
2 that's the kind of weapon he needed to buy his son.

3 And we were talking about the hunt
4 clubs that I go to, about maybe getting that kid in
5 a tree stand. Oh, and then I went and got my
6 9-millimeter pistol that my father had just given
7 me.

8 They had come down for -- I don't
9 remember what holiday. What's the holiday?
10 Memorial Day or Labor Day? Whichever one is the
11 last. They came down that weekend, and dad brought
12 that pistol and give it to me. He had carried that
13 for years in Kentucky. He was -- worked for law
14 enforcement.

15 Q. And so, correct me if I'm wrong, the
16 SCAR 17 was out, the 243 rifle, and the
17 9-millimeter pistol?

18 A. Yes, ma'am.

19 Q. All right. So what happened? Did you
20 all -- you said you fired the SCAR 17?

21 A. Uh-huh.

22 Q. Did you fire any of the other weapons
23 just target shooting or anything?

24 A. I'm not for sure about the 243; maybe
25 Harry shot it just to get the feel of how it would

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1 kick, which it doesn't have a lot of kick at all.

2 I don't know if we shot the 243. The 9-millimeter,

3 no, we didn't.

4 Q. Did you clean up after yourself?

5 A. After the SCAR 17, yes, ma'am, of

6 course.

7 Q. So you picked up the shell casings that

8 you had fired?

9 A. Yes, we policed up all the brass.

10 Q. All right. Well, Robby, obviously at
11 some point something happened. So at any point did
12 you go in the house or separate yourself because
13 somebody was picking on you? Tell us what
14 happened.

15 A. No, ma'am. Being in construction we
16 play with each all the time, say all kinds of crazy
17 stuff, and you've got to have really, really thick
18 skin, especially among superintendents, project
19 managers, or -- no. No one was picking on no one.

20 Anyway, we were drinking back and
21 forth. I went in the house, we went in the house a
22 couple of times, me and Mark, me and Lance, me and
23 Harry, others back and forth. We were doing shots
24 of Crown, doing shots of vodka. Those guys were
25 doing shots of Fire Ball.

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1 My last -- the last time that I fixed a
2 shot, me and Harry actually went in the house. I
3 had poured myself a shot, and somehow or another
4 being as drunk I was, slipped and fell and drug
5 Harry down with me in the kitchen. And we're
6 laying in the kitchen on -- Harry's on top of me,
7 and it took a second, and we both just started
8 rolling laughing.

9 Lance comes in the house -- hears a big
10 bang, comes in the house and gets -- Harry says,
11 this son of a bitch just drug me to the floor.
12 They -- Lance gets Harry up. They pick me up, and
13 that's when we agreed that I've had a little too
14 much to drink and I need to sit down a minute. So
15 them boys take me to the couch and put me on the
16 couch.

17 Q. Okay. And what happened next?

18 A. I kicked the -- I kicked the recliner
19 out. I totally agreed with them that I was going
20 to sit there for a little bit, and I sat there long
21 enough that I fell asleep.

22 Q. Okay. And what happened then? I mean,
23 obviously you woke up at some point?

24 A. Yes, ma'am.

25 Q. Tell me when and how.

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1 A. I woke up to somebody shaking me
2 saying, Robby, Robby. When I finally come to it's
3 Fred. And I say, what? Fred, what do you want?
4 And he said, they're fighting, they're fighting.
5 Who's fighting, Fred? He said, they're fighting
6 with Lance.

7 And the minute he said, they're
8 fighting with Lance, I come up off that chair, and
9 that's when I can hear -- I can hear commotion
10 coming from outside. Somebody's being really,
11 really loud.

12 I take off through the living room,
13 through the kitchen, out the door, and then I come
14 onto the porch. The only person on the porch was
15 Harry, and he had his back to me, and he's standing
16 at the window looking out the window. And I said,
17 what the fuck's going on out here, loudly.

18 And Harry turned around -- well, Harry
19 spun around, he punched me right in the sternum,
20 and I hit the ground.

21 Q. Okay. When you said that you heard a
22 commotion, could you hear what the commotion was
23 about?

24 A. No. No. At the time, no, I didn't
25 know what it was about at that second, no.

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1 Q. All right. And so after you were hit
2 and went down, tell us what happened.

3 A. Harry took all of the air out of me.
4 I'm on my hands and knees, I can still hear, but
5 it's like I'm underwater hearing. I'm trying to
6 get air in me, I'm trying not to throw up. The
7 next thing I know, I'm feeling something hard hit
8 me on the head, and it's Harry.

9 It's Harry screaming at me, which I --
10 it took a second to realize what it was, but he was
11 poking me in the back of the head. And when I
12 reached up to knock his hand away, I actually
13 caught the suppresser of the 243 in my hand. And
14 that's when I realized Harry was standing over the
15 top of me with that 243 against my head.

16 Q. You're talking about this right here is
17 what was hitting you in the back of the head?

18 (Indicating)

19 A. Yes, ma'am.

20 Q. All right. Keep going. What happened?

21 A. I could hear Mark. Mark's screaming at
22 the top of his lungs; they're accusing Lance and I
23 of stealing an ounce of crystal meth that they had
24 just purchased before they came to Lance's house.

25 Q. How do you know they had just purchased

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1 it before they came?

2 A. Because Harry said they did. They had
3 just spent \$1,000 on a bag of -- on an ounce of
4 crystal meth.

5 Q. Okay. So you said that they were
6 accusing Lance of stealing their drugs?

7 A. They were accusing Lance and myself.
8 Actually, they were actually accusing me more, but
9 Lance -- this is Lance's house, and Lance knew that
10 I was -- that I had done it, that we were together
11 on it, or whatever, but I didn't steal no crystal
12 meth.

13 Q. All right. So at some point you were
14 able to get a weapon. Tell us what happened.
15 They're threatening you. What happens?

16 A. I tried to get up a couple of times and
17 Harry would kick me back down and kept saying, no,
18 you're not getting up. You're -- screaming at me,
19 he wants his drugs. He wants -- he wants that
20 ounce of ice.

21 Mark is outside the window screaming.
22 The more he screams, the louder he gets.

23 Q. Could you see Mark outside the window?

24 A. No, ma'am, I couldn't.

25 Q. What was the lighting situation?

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1 A. The light inside the porch was really,
2 really bright, and there was only one little light
3 outside. Like a little -- the little covered area
4 right off the porch, that light was on, but
5 where -- right in front of the windows, no, you
6 couldn't see off. It was dark outside. You can't.

7 Q. Let me show you, if I can set it up
8 here and not cause a mess, State's Exhibit 80 or 90
9 -- 80. All right. Let me pull it back a little
10 bit so the jurors can see it.

11 Now, on there -- can you see on there?
12 Can you point where the back porch is? Turn it a
13 little bit more.

14 A. Now the question again?

15 Q. Show me where the back porch is.

16 A. Oh, right here, this area.

17 (Indicating)

18 Q. And so you and Mr. Gressette were on
19 the back porch?

20 A. Yes, ma'am.

21 Q. And could you tell where Mr. Harrison
22 and Mr. Kenyon were?

23 A. I couldn't see them, but they were
24 right in this area right here, at the corner.

25 (Indicating)

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1 Q. And you're saying out there you
2 couldn't see because of the dark?

3 A. Right.

4 Q. Okay. And -- all right. So what
5 happened? At some point you get a weapon. So keep
6 -- tell us what happened.

7 A. I'm steadily denying stealing an ounce
8 of crystal meth. And they're saying, well, either
9 you or Fred got it or, you know, we want it. And
10 I'm finally -- or I'm telling Harry, please let me
11 up, let me go find Fred, we'll get this figured
12 out, please let me get up.

13 It takes a couple of minutes of talking
14 to them and Mark's screaming -- Mark is screaming
15 at Harry, let that son of bitch go get him, I want
16 my meth. I want my ice is what he kept calling it.
17 He didn't call it meth, he called it ice.

18 They finally let me up and I come
19 through the house. I'm -- I'm not looking for
20 Fred. I'm looking for a phone; I need to call 911
21 as quick as I can. I can't find my phone nowhere.

22 As I come out of the living room back
23 toward the dinning room table, Fred is actually
24 outside of the porch. The front door -- the front
25 door was open, but the storm door was open and it

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1 was propped up. That shouldn't been like that.

2 But Fred's outside on the porch, and I
3 seen him, and I run to him, dude, where's your
4 phone? We need to call 911 quickly. And he said,
5 man, my phone is broke. You know that. I had it
6 on my charger -- my electric charger in the house
7 trying to charge it for him, but it wouldn't
8 charge.

9 I was frantic. We needed a phone. I
10 ran to the living room looking for my 9-millimeter
11 pistol because I wasn't going back out there
12 without a weapon. It just wasn't going to happen.

13 Q. Why didn't you just leave?

14 A. I wasn't going to leave Lance like
15 that. I'm sorry, I'm not -- I'm not built that
16 way.

17 Q. Did you know whether Mr. Harrison had a
18 weapon at that point?

19 A. At the time, no, I did not.

20 Q. And you said the front door was propped
21 open?

22 A. Yes, ma'am. It was a storm door, so it
23 was moved open and the gas cylinder had the lock on
24 it to keep it wide open.

25 Q. And you said it wasn't like that

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1 before, or it shouldn't have been?

2 A. It shouldn't have been like that, no.

3 It wasn't -- the last time I saw the door, no, it

4 was not like that, and that's when Harry and Mark

5 come through it. They had to open it, and when

6 Mark come through, it shut behind Mark.

7 Q. And I believe you said that you were

8 looking for your 9-millimeter. Did you find it?

9 A. No, ma'am, I did not.

10 Q. Did you find another weapon?

11 A. Yes, I did. I grabbed -- the next best

12 thing I have was the little 22 because it had the

13 most -- the most -- the biggest magazine with the

14 most rounds in it. It's a little teeny, tiny thing

15 so we're shooting a little teeny, tiny bullet.

16 Q. You're talking about this weapon right

17 here? (Indicating)

18 A. Yes, ma'am.

19 Q. And we've seen that banana clip?

20 A. Yes, ma'am.

21 Q. Did you load that up?

22 A. I remember grabbing that and running

23 outside and telling Fred, you gotta go call 911. I

24 remember -- I remember being outside. I remember

25 shoving rounds in that little -- in that clip as

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1 fast as I could get them in there and telling Fred,
2 go call 911. Your house is right there, go call.

3 And that's -- Fred said, all right, I'm
4 going. That's it. Yes, ma'am, that's it.

5 Q. This is State's Exhibit 43, and the
6 weapon I'm holding in my hand is State's 44. So
7 you said you loaded that up?

8 A. Yes, ma'am.

9 Q. How many rounds does that hold?

10 A. Twenty-five.

11 Q. And you loaded this weapon?

12 A. Yes, ma'am, I did. And I grabbed one
13 of the three little 10-round clips.

14 Q. All right. Tell us what happened then.

15 A. I told Fred, I'm going back out there,
16 you gotta go call 911, get out of here and run and
17 go call 911 right now. I turned and ran -- or went
18 back in the house.

19 As I come around the kitchen, I'm
20 making sure that I can get this weapon in there
21 and, again, Harry had his back to me. As you exit
22 on the porch, there's a wall with the door shut
23 about that wide. (Indicating) And I shoved it
24 right there, and set it right there in the corner
25 and walked past it to cover it.

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1 And I said, hey, I can't find -- I
2 can't find Fred. And that's when Harry spun back
3 around with that 247 and told me to get down. And
4 I kind of squatted down. And he said, no, down, on
5 your ass. And I sat down right there in the
6 doorway. I mean --

7 Q. Harry told you to sit down with what?

8 A. Harry told me to -- Harry told me to
9 sit down so I kind of squatted down.

10 Q. What weapon was he holding?

11 A. That SCAR 17.

12 Q. Okay. All right. Go ahead. He told
13 you to sit down. What happened?

14 A. I sat down right there. I can't find
15 Mark -- or I can't find Fred. I'm trying to stall
16 as long as I can. In my mind Fred is gone and he's
17 calling 911, the cops will be there any second. I
18 need to just keep -- keep talking, keep these two
19 going.

20 But I'm not getting a whole lot of
21 words in because Mark is -- by this time he's
22 irate. He is -- I've never heard a man scream like
23 that before, but he was loud and he was mad and he
24 wanted his ice.

25 Q. And what was in your mind at that

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1 point? Did you think help was coming?

2 A. Yes. To stall, just keep talking to
3 them, keep the situation as calm as I could, but I
4 was -- I was so intoxicated it wasn't funny. So I
5 was -- I know I was making a thousand mistakes, but
6 I was trying.

7 That's when Mark come around the corner
8 and made two steps up on the porch and pointed a
9 pistol at me and said, if I don't get my shit, I'm
10 going to blow your fucking brains out.

11 Q. Show the jury on State's Exhibit 80
12 where you're talking about.

13 A. He walked up these steps right here,
14 and he was -- I don't think he came all the way in,
15 but he -- I could see the barrel of the pistol.
16 And I still didn't know what -- I didn't know that
17 he had my 9-millimeter in his hand. I just knew
18 I'm looking down the barrel of a big hole down the
19 end of that thing. (Indicating)

20 Q. So what happened?

21 A. He's backed out. Lance -- I could hear
22 Lance trying to explain what's going on, and Mark
23 ain't having it, Mark is screaming mad. I tried to
24 get up twice to no avail. I tried to get up a
25 couple of times, and Harry said no, no.

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1 And Lance -- or Mark kept screaming,
2 I'm gonna -- I'm gonna blow your brains out if I
3 don't get my shit. I swear to God, I'm going to
4 kill all of you.

5 And Harry -- Harry told me, if he
6 shoots Lance, I'm going to fucking scatter you all
7 over this porch. So I'm just -- I'm trying to
8 stall. These officers are going to be here any
9 second. And, then, I finally think the officer is
10 there because now I've got Mark hollering, who's
11 that? Who's that?

12 And I'm thinking oh, God, they're here.
13 They're finally here. And Harry said, who's out
14 there? And he said, I don't know, but there's one
15 behind that tree and there's another one over at
16 that tree, and somebody is moving behind that
17 building. And, to me, the calvary is arriving, the
18 cops are here, thank, God, but there's nothing
19 happening.

20 There's nobody -- nobody screaming
21 halt, freeze, drop weapons, nothing. They keep
22 screaming. They keep talking -- Mark is back and
23 forth screaming at Lance, and then he's back with
24 people behind the trees moving. There's people
25 behind the shed moving. It's -- it's getting

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1 really, really intense. That's --

2 Q. Well, at some point, gunfire started.
3 What happened? Who shot? Who did what?

4 A. Outside of the porch Mark fired -- Mark
5 fired that 9-millimeter two times. And when that
6 gun went off, I just knew he had just shot Lance.

7 Q. Could you see Mr. Harrison when he
8 fired the 9-millimeter?

9 A. No, ma'am, not at all.

10 Q. Could you see Lance?

11 A. No, ma'am, not at all.

12 Q. All right. So what happened? He fires
13 these two shots. Did you know what he was shooting
14 at?

15 A. No, I didn't. In my mind, he just shot
16 Lance.

17 Q. All right. So what did you do?

18 A. Harry turned away from me and I grabbed
19 the 22 and started shooting. I -- I -- I -- I -- I
20 don't remember shooting Harry the first shot. I
21 don't remember that, but I do remember Mark coming
22 around the corner and coming up those steps, and I
23 just pointed and started firing as fast as I could
24 pull that trigger. Harry --

25 Q. This weapon right here --

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1 A. Yes, ma'am.

2 Q. -- State's Exhibit 44?

3 A. Yes. Mark's got the -- a pistol in his
4 hand pointed at me, and he -- I know I'm next, I'm
5 next. And I just started firing as fast as I could
6 possibly fire.

7 Q. Do you remember shooting Mr. Gressette?

8 A. No. I know I did, of course, but, no,
9 I don't actually remember pulling the trigger. I
10 don't remember the first shot.

11 Q. Okay. So you don't remember the guy on
12 the porch with you dropping?

13 A. I don't remember him dropping. I
14 remember him being on the floor, yes. He was in
15 front of the door and blocking the door. Him and
16 that weapon had fell and kind of blocked the
17 doorway, and I guess that's why Mark stopped where
18 he stopped coming up the steps because he couldn't
19 get in.

20 He would have had to have come up over
21 the top of Harry and that weapon, and I just -- I
22 was pulling the trigger as fast I could pull it.
23 And then he turned -- I think he fell. He turned
24 and went to run to the right, and when he did I
25 just kept firing. And that's those shots through

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1 the glass.

2 I'm watching him run past the glass and
3 I'm firing just as fast as I can fire. I tripped
4 and fell in the middle of firing -- I guess at the
5 end, is what caused me to stop firing through the
6 glass, I tripped and fell.

7 I jumped up, went to run out the
8 door -- off the porch. When I went to come out, I
9 tripped over Harry; I fell out onto the concrete.
10 When I spun around, Mark was laying face down on
11 the concrete.

12 I jumped up real quick to run and see
13 where Lance was at. As I went to run past Mark,
14 Mark is face down, but he -- he had dropped the
15 9-millimeter, but it was like this. (Indicating)
16 And he was going toward it, and I threw the .22
17 down as I ran past him and fired as many times as I
18 could.

19 Being right there, I don't know if I
20 fired two, three, four rounds. I just know I fired
21 as fast I could to stop him from grabbing the
22 weapon. When my forward momentum stopped me, I put
23 it down on him, he wasn't moving. I went up and
24 kicked the 9-millimeter back to me.

25 And he's still -- he had stopped moving

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1 and he wasn't going for it no more, I reached down
2 and picked up the 9-millimeter. I don't remember
3 what I did with the .22, if I put it between my
4 legs or leaned it against the house. I dropped the
5 clip, chambered the round out, put the clip back in
6 it and put the 9-millimeter in my pocket or
7 waistline or something.

8 And as I'm -- as I grabbed the weapon
9 to turn to go find Lance is when I hear Lance. I
10 hear something underneath the porch trying to --
11 trying to say my name is what it -- at first, I
12 didn't know what he was saying, but finally he
13 said, Robby. Robby. And I -- I figured out Lance
14 was under the porch. I couldn't see him.

15 There was a big fan out there that had
16 been plugged up, but I knew that Lance had a little
17 small yellow shop light -- halogen shop light over
18 by the grill. I grabbed it real quick and plugged
19 it to the cord the fan was on, and then I could see
20 Lance underneath the porch.

21 I could see Lance underneath the porch,
22 and he was bleeding from somewhere on his chest.
23 And I said, oh, my, God, man. Where did he shoot
24 you? Where did he shoot you? And that's when he
25 said, he didn't shoot me, you shot me.

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1 When I had thought Mark was running by
2 the window, it was actually Lance running by the
3 window and I had actually shot Lance.

4 Q. So when you were firing out the window,
5 could you see whether it was Mr. Harrison or Mr.
6 Kenyon that you were shooting?

7 A. All I saw was movement -- no. Lance
8 told me that he was fixing to -- he was coming
9 around the corner fixing to tackle -- or do
10 something with Mark, I don't know. And as I'm
11 firing out the door, I'm not only hitting Mark, I'm
12 hitting Lance.

13 And, then, as he runs by the window, I
14 hit him even more. And that's -- that's whenever
15 he fell. He was -- he was bent over trying to stay
16 head below the glass, and I'm just -- I'm firing
17 through the glass down at him thinking it's Mark,
18 and the whole time I'm shooting Lance in the back.

19 Q. All right. So when you said that you
20 picked up the 9-millimeter and you did something
21 with it, tell me again what you did.

22 A. I slid the slide back to eject the --
23 the bullet that would have been in the chamber to
24 clear the weapon.

25 Q. And so State's Exhibit 27 is the

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1 unfired 9-millimeter round that was number 3 on
2 that diagram, right?

3 A. Yes, ma'am.

4 Q. All right. So once you found Lance and
5 he told you that he had been shot. Okay.

6 A. Yes, ma'am.

7 Q. What did you do?

8 A. At first I said, let me get you out
9 from underneath the porch. And I'm crawling
10 underneath, and he was like, man, I can't move.
11 Let me -- just let me lay here a minute. I'm -- I
12 said, Lance, I got to get a phone, I got to call
13 911. Hang on a second. Stay -- don't move.
14 I got out from under the porch. I ran
15 in the house, and as I run in the house -- as I
16 come through the kitchen and start into the dining
17 room, I see somebody run out the front door. And
18 at first I thought it was Fred. I kind of slowed
19 up and I said, Fred. You know, kind of -- I yelled
20 Fred, and nothing.

21 And I took a couple of more steps
22 forward and screamed Fred. And that's when I saw
23 movement out of my -- out of my left eye and I
24 turned, and Fred is actually coming out of the
25 closet by the garage door. Fred was in -- Fred was

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1 in that closet.

2 Q. Okay. And so what happened next? Did
3 you shoot at Fred? Did you come in and take a
4 couple of shoots at him trying to kill him?

5 A. No, ma'am, not at all.

6 Q. All right. Tell me what happened.

7 A. Who was that -- I asked who just went
8 out the front door? Who was that? He said, ain't
9 nobody went out the front door. And, yes, Fred,
10 somebody just went out the front door, and where's
11 the cops? Where -- where is the police officers?
12 Did you call 911?

13 And he's -- I've got the .22 in my
14 hand. And when he comes out of the closet, instead
15 of coming straight to me, he kind of cuts in
16 between Lance's recliner and the couch. And he's
17 kind of skirting around the coffee table coming
18 back toward the TV and telling me, no, I didn't
19 call -- I didn't go call 911. I was scared. I was
20 scared because we need to get the drugs out of the
21 house.

22 And I couldn't understand why -- why --
23 why do we need to get drugs out of the house. We
24 need 911. And when he said he didn't leave, I --
25 he was actually coming to me and tried to come

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1 around me. And that's when I hooked him with the
2 stock of the .22, and I slammed him against the
3 corner of the wall where you actually exit to go
4 out into the dinning room.

5 So he's got his back against the wall
6 kindly of to this side of the TV, to the right-hand
7 side of him, and now I'm pretty pissed. I want to
8 know why haven't you called 911. And he's saying
9 something about the drugs, we need to get the drugs
10 out of the house.

11 And he was saying something about hands
12 doing this or hands doing that. And I didn't
13 understand what he was talking about. And the more
14 he was talking, the more irate I got. Why didn't
15 you call 911? And he's trying to explain, and I
16 fired two rounds. And I don't know why I did that,
17 but I fired two rounds. And when I did, they hit
18 the wall right there to my left.

19 Q. Are you saying that Fred was concerned
20 about you all getting arrested if the drugs weren't
21 in the house?

22 A. I found out later what the hands thing
23 is. It was hands of one, hands of all. He had
24 been to prison and he didn't want to go back. His
25 number one concern was the drugs in the house, not

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1 the three shot people laying outside.

2 Q. And did Fred at some point go out that
3 front door?

4 A. Yes, ma'am. Finally he said, yes, he
5 would go call 911, but he had to get the drugs out
6 of the house. Where was the marijuana and where
7 was the drugs? And I told him it was in the
8 refrigerator. When Lance had got them out of the
9 stove, he had hid them in the refrigerator because
10 he didn't want him Fred to see them again.

11 He hid them in the back of the
12 refrigerator on the -- the refrigerator had a top
13 section of the frig, drawers for drinks, a freezer
14 at the bottom, and he hid it at the top. And I
15 told Fred, Lance put them in the refrigerator.
16 Fred, get that shit and go call 911 quickly.

17 And then I'm back to who just went out
18 the front door. And he said nobody. And I -- no,
19 Fred, you're a liar. Somebody just went out that
20 front door. I turned to go out the front door, and
21 when I went to step out, I fired once or twice into
22 the woods across the street to get someone's
23 attention. And I screamed as loud as I could, and
24 I realize that little .22 is not loud.

25 Anyway, I was trying to scare somebody

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1 up if they were hiding right there by the pickups
2 or something and no one moved. That's when I ran
3 -- I left and ran back around to Lance.

4 Q. Okay. And did you see Fred take
5 anything other than marijuana out of the
6 refrigerator? Was the cash still with it; do you
7 know?

8 A. That bag should have had all the
9 marijuana and the cash in it. And I didn't
10 physically see Fred take it. When I ran out on the
11 porch shooting, I could hear Fred behind me in the
12 refrigerator rattling jars. I guess he got it out
13 of the refrigerator.

14 Q. What had you done with the 9-millimeter
15 pistol at that point? Did you still have it on
16 you?

17 A. I laid it on the corner of the dining
18 room table.

19 Q. Okay. All right. You went back to
20 Lance. All right. When you fired out the front
21 door, were you trying to shoot Fred Mazyck then?

22 A. No, ma'am; Fred was behind me. I was
23 trying to scare somebody up.

24 Q. All right. So you said that he ran,
25 you went back around the house. Tell us what

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1 happened from there.

2 A. I went back around the house, got up
3 underneath the porch, and told Lance exactly what
4 happened. I'm telling Lance, I got to get you out
5 from underneath this porch. I get him out from
6 underneath the porch as far as I can, we're heading
7 -- I'm bringing him out right here in between the
8 house and the air conditioner.

9 And I get him not even -- I didn't even
10 get him all the way out. His head and shoulders
11 might have been out, and he said, Robby, stop I'm
12 -- he was in too much pain. I laid him down, and I
13 said, Lance, I gotta find my phone. I gotta call
14 911. Are you okay? And he -- no, he's not okay.
15 Lance is bleeding severely.

16 Q. At some point -- on that diagram there
17 are numbers 7, 8 and 9 that are off to my right,
18 closest to you, that are shell casings. Did you
19 fire at Mr. Kenyon under that porch from that area?

20 A. No, ma'am. No, no, ma'am.

21 Q. Do you know whether those shell casings
22 were there before or whether that's part of what
23 happened that evening?

24 A. I have no idea. I just know that that
25 sidewalk is only three foot wide. And if someone

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1 stood there and fired, the little shell casings
2 would be in the grass, not on the concrete. If you
3 turned and shot this way -- if I stood at the air
4 conditioner and shot back toward this way, they
5 would come out, hit the house, and fall down on the
6 concrete, but if someone is physically standing on
7 that concrete -- three foot wide is only that wide.

8 You pull that trigger, those rounds are
9 going to jump three or four feet out.

10 Q. So you're saying that if I'm standing
11 on that three feet of concrete, the shell casings
12 are going that way? (Indicating)

13 A. Yes, ma'am.

14 Q. Okay.

15 A. Nobody shoots a weapon turned sideways
16 or upside down, so, no.

17 Q. All right. So you said you pulled
18 Mr. Lance Kenyon out. What happened then?

19 A. I got his -- I got him -- I don't
20 remember how much I got out, but I got him out
21 pretty good. And he said, stop, he was in too much
22 pain. I said, I got to find my phone and if I
23 can't find my phone, I'm bringing my truck around
24 here and I'm going to load you up and I'm going to
25 carry you to the hospital myself.

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1 I jumped up then, ran into the house,
2 and I'm looking everywhere for my phone, and I
3 can't find my phone.

4 Q. So what did you do?

5 A. I changed clothes. I stopped to change
6 clothes. I had realized that --

7 Q. Why did you change clothes?

8 A. I had urinated all over myself.
9 Somewhere when Mark started shooting or -- I had
10 physically pissed all over myself.

11 Q. Was it because you were afraid?

12 A. Well, I would -- yes, ma'am, I imagine
13 so.

14 Q. So you took time to stop and change
15 clothes, and what happened?

16 A. I ran all over the place looking for my
17 phone and I can't find my phone. I run to get my
18 truck, I ran to the truck, started my truck. Fred
19 had parked it that day after we got done shooting.
20 I don't remember if he pulled it up to the house,
21 backed it up to the house, or whatever.

22 And as I pulled out, I'm coming around
23 the house, and that's when my dome light turns off
24 and I realize the light that I see to my right is
25 my phone. I had took my phone apparently out that

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1 evening and plugged it in my truck charger so it
2 would charge, because I had Fred's phone on the
3 charger in the house. And that's when I stopped my
4 truck and called 911.

5 Q. Do you remember calling 911?

6 A. I don't physically remember dialing the
7 numbers. I --

8 Q. Do you recall any portion of the
9 conversation?

10 A. I remember trying to -- I was trying --
11 I remember trying to -- trying to figure out where
12 I was at, trying to tell somebody on the phone the
13 address, and I couldn't -- I couldn't get it right.

14 Q. And have you since been able to hear
15 what has been marked as Defense 142 for
16 identification? In other words, I've played you
17 your 911 calls.

18 A. I was about to say, yes, I think I
19 have. I think you played it awhile back, yes.

20 Q. And were you able to verify that that
21 is, in fact, your voice on there?

22 A. Yes, ma'am.

23 Q. And you heard Mr. Murphy testify that
24 you called 911 twice, correct?

25 A. Yes, ma'am.

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1 Q. Any doubt in your mind that it's you
2 that made those calls?

3 A. No, ma'am, not at all.

4 MS. NORRIS: Your Honor, I offer
5 Defense Exhibit 142 into evidence.

6 THE COURT: Any objection?

7 MS. SZYMCZYNSKA-SAS: No objection.

8 THE COURT: Marked and admitted without
9 objection.

10 (DFT. EXH. 142 in evidence.)

11 MS. NORRIS: May I publish, Your Honor?

12 THE COURT: Yes, ma'am.

13 MS. NORRIS: I seem to be having audio
14 difficulties. May I ask the State to play this for
15 me?

16 (Exhibit 142 played in open court)

17 BY MS. NORRIS:

18 Q. All three of them were fixing to kill
19 you. Was Lance Kenyon trying to kill you that
20 night?

21 A. No, ma'am, not at all.

22 Q. Do you know why you said all three of
23 them?

24 A. Other than I -- just saying that I had
25 shot all three, I guess. I don't know why I said

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1 that.

2 Q. Do you recall what happened after you
3 called 911?

4 A. I remember -- I remember being with
5 Lance, I remember him stop breathing. I remember
6 giving him CPR.

7 Q. You've heard police officers say that
8 you were counting loudly. Do you know why you were
9 doing that?

10 A. In the military, we're trained in the
11 environment of a situation like that, you want to
12 be as loud as you can for your fellow combatants to
13 find you. I'm screaming -- the only thing that I
14 can scream is compression counts because I need to
15 keep counting, and I need to keep singing in my
16 head.

17 Red Cross teaches you to sing, Staying
18 Alive, the '70s song. So at a rhythm, keep
19 singing, keep pressing at that beat. And I'm
20 screaming so the cops will come to me. Not -- I
21 don't need to be spending ten minutes cleaning up a
22 scene for an after shooter.

23 I need them with me. I need somebody
24 taking over because I -- I'm too intoxicated to be
25 doing what I'm doing, because I know -- I know -- I

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1 know I'm screwing it up. I know I'm losing Lance,
2 and I need them. I -- I'm sorry. I needed them.

3 Q. Did you tell officers that the shooter
4 ran off into the woods?

5 A. No, ma'am.

6 Q. Do you recall what you did tell them?

7 A. I remember saying I'm the suspect. I
8 don't know who asked me, or -- how many times I was
9 asked? I don't know. I just -- I remember saying,
10 I'm a suspect.

11 And they immediately grabbed me and
12 pulled me off of Lance, handcuffed me, and I
13 remember getting completely belligerent, you know.
14 Nobody's helping Lance. Everybody's looking at me.
15 Everybody is running over to the woods. They're in
16 the house. They're doing other dumb shit besides
17 helping Lance, and that's not what I needed.

18 I needed them with Lance. And one of
19 the cops slammed me into the ground, and it's
20 really my last memory. I remember being slammed
21 and a knee in the center of my back, and that's all
22 I remember. That's it.

23 Q. And you've been in this courtroom where
24 there have been several videos played of you
25 sitting in a car and you riding in a car and off to

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1 jail. Do you remember any of that?

2 A. I saw the video, but, no, I don't. I
3 have vague, vague memories of being in a police
4 car. I do not -- I don't remember the ride to the
5 jail. I don't remember getting to the jail. I
6 don't remember threatening that officer. Clearly,
7 I did. But, no, I do not.

8 Q. And do you recall -- we sat here this
9 morning for a couple of hours and watched you being
10 interviewed by police. Do you remember that? Do
11 you remember when it actually happened? Obviously,
12 I assume you remember sitting in the courtroom and
13 watching it this morning.

14 A. I remember waking up in the jail. I
15 remember waking up in the jail thinking that --
16 that I was so hung over thinking that I was in
17 there for a DUI. Finally, being caught for a DUI.

18 I remember an officer, I don't know
19 which one, came to me and said, some detectives or
20 officers wanted to speak with you. And I said yes.
21 And that's when they come and got me, and I thought
22 they were in there in the jail, but they actually
23 transported me somewhere.

24 Q. All right. Mr. Nolen, I'm not going to
25 go through all of the photographs with you, Defense

NOLEN - DIRECT EXAM BY MS. NORRIS

1 Exhibits 1 through 17, but I will show you some of
2 them and ask you specifically to tell us what
3 portion this relates to.

4 All right. I'm going to show you
5 Defense Exhibit 2. That pickup truck there, that
6 appears to have the lights on. Is that your truck?

7 A. Yes, ma'am.

8 Q. And earlier before Mr. Gressette and
9 Mr. Harrison came over, where was your truck
10 parked? You have the laser right up there.

11 A. Oh, over -- over in here somewhere.
12 There's a -- Harry had a bass boat out there that
13 he had left with Lance. It was Harry's bass boat,
14 there, and a black pickup truck somebody had left
15 out there that Lance knew. Lance's -- Lance's
16 truck is parked, if I'm not mistaken, in front of
17 this one. This one is Harry's, and mine would have
18 been over here somewhere. (Indicating)

19 Q. Okay. And do you recall moving your
20 truck there?

21 A. Yes, I do.

22 Q. Okay. This is Defense Exhibit 3. Is
23 that Lance's truck in front there?

24 A. Yes, ma'am.

25 Q. And is that the front door?

NOLEN - DIRECT EXAM BY MS. NORRIS

1 A. Yes, ma'am.

2 Q. Defense Exhibit 7. This is out in the
3 back there. What is that that appears with sort of
4 the white cover on it?

5 A. That's the hot tub.

6 Q. And you said earlier that there was a
7 hunting rifle out there?

8 A. Right there. (Indicating)

9 Q. Is that the rifle you were talking
10 about?

11 A. Yes, ma'am. Yes, ma'am.

12 Q. And when you said that as you were
13 going by Mr. Harrison, he moved. Can you show us
14 on there where the 9-millimeter was?

15 A. Right there. (Indicating)

16 Q. And where did Mr. Lance Kenyon end up?

17 A. He was underneath, right there.

18 (Indicating)

19 Q. And where did you pull him out to?

20 A. Right here in between the air
21 conditioner and the house. (Indicating)

22 Q. This is Defense Exhibit 9. Can you
23 show us from this angle where Mr. Kenyon was?

24 A. He was in between the house and the air
25 conditioner back -- you can see some -- something

NOLEN - DIRECT EXAM BY MS. NORRIS

1 there. He was -- he was in between the house and
2 the AC unit.

3 Q. And this end, which would be sort of
4 the bottom left of the picture as I look at it,
5 sort of a little bit beyond there is where those
6 three .22 shell casings were. Were you shooting at
7 Mr. Kenyon from this direction?

8 A. No, ma'am. Those shell casings -- you
9 would have shot the air conditioner, not anyone on
10 the other side of it.

11 Q. And this is Defense Exhibit 10. Can
12 you tell me what that is on the tree back there?

13 A. That's the target that we had -- we'd
14 shot at earlier in the day. And that -- that
15 orange is, I think, spray paint where we
16 spray-painted it really, really bright orange with
17 marking paint so they could shot at it that night.

18 Q. This is Defense Exhibit 13. Is this
19 the back porch where you described all this stuff
20 happened?

21 A. Yes, ma'am.

22 Q. And when you said that you came back
23 carrying this .22 rifle, can you see in that
24 picture where you're saying you put it?

25 A. Right here. (Indicating) That -- if

NOLEN - DIRECT EXAM BY MS. NORRIS

1 you're coming from the laundry room out -- that
2 little piece is about that wide. Just big enough
3 to stick it right there in the corner and kind of
4 lean it up. (Indicating)

5 Q. And is that a different angle of it?

6 A. Yeah. That's in the back porch looking
7 straight in.

8 Q. And go ahead to the next one, please.
9 This is Defense Exhibit 18. Is that your bottle
10 there in the sink?

11 A. Yes, ma'am. Me and Fred and -- well,
12 yes, I -- yeah.

13 Q. By the time all of this had happened,
14 do you know how much you had to drink by that
15 point?

16 A. The majority of that Crown Royal, a
17 bunch of shots of vodka, and, I don't know, maybe
18 18 beers.

19 Q. And what -- again, what time of day did
20 you start drinking all that?

21 A. About 10:00 a.m. that morning and had
22 drank beer most of the day all -- well, yeah. Me
23 and Lance both started about 10:00 a.m. on beer and
24 kind of -- it was beer all day long until we broke
25 into the liquor that night. Close to -- close to

NOLEN - DIRECT EXAM BY MS. NORRIS

1 dark we got into the liquor.

2 Q. Okay. And this is Defense Exhibit 20.

3 Were you drinking the Budweiser?

4 A. No, ma'am. I was drinking the Mountain
5 Dew.

6 Q. And what type of beer did you say you
7 were drinking?

8 A. Bud Light.

9 Q. This is Defense Exhibit 21. Is that
10 the front door area there?

11 A. Yes, ma'am, it is.

12 Q. Can you see on there where the magazine
13 from your weapon dropped?

14 A. Yeah, it's right there. (Indicating)

15 Q. And do you recall dropping that
16 magazine there?

17 A. No, I don't.

18 Q. And when you said earlier that the door
19 was propped open, was it like that when Fred ran
20 out?

21 A. Yeah. Yeah, I think it was open a
22 little more, but, yeah. Yeah.

23 Q. All right. This is Defense Exhibit 22.
24 What room is that that we're looking there on the
25 left?

NOLEN - DIRECT EXAM BY MS. NORRIS

1 A. That's the living room.

2 Q. All right. And that's -- that's back
3 at the front door again. All right. And in the
4 living room there, can you see where you said that
5 you passed out earlier before all of this started?

6 A. Right here in this chair. That's a
7 recliner. That's a physical recliner, but this is
8 a couch with a double recliner on -- either end
9 reclines. (Indicating)

10 Q. And when you said you came back in
11 after the shooting and you said Mr. Mazyck was
12 coming out of the closet, is that in this picture?

13 A. Right here. This little -- this wall
14 that comes out, that's a closet right there.
15 Actually, there's two closets, one on either side
16 of a window. He was coming out of the one closest
17 to the garage. (Indicating)

18 Q. All right. This is Defense Exhibit 28.
19 And is this the wall you fired two bullets into?

20 A. Yes, ma'am. They would have hit
21 somewhere in here.

22 Q. And was Mr. Mazyck sitting in that
23 chair or laying in that chair when you fired those
24 bullets?

25 A. No, ma'am. He was standing over on the

NOLEN - DIRECT EXAM BY MS. NORRIS

1 other wall.

2 Q. So was he -- show me generally where he
3 would be on there.

4 A. You can't see in that picture. This
5 wall -- this wall comes into a corner and comes
6 back this way. He was at the corner of the wall
7 right here where the entrance into the dining room
8 is. (Indicating)

9 Q. All right. So I'm not going to point
10 this weapon, but were you facing Mr. Mazyck?

11 A. Yes.

12 Q. Okay. And you had the weapon to the
13 left?

14 A. All -- just like that right there.

15 Q. Okay. So if I were to point it up and
16 shoot into the wall, that would be generally how
17 you were standing?

18 A. That's exactly right, yes. Your shell
19 casings would kick out to the right.

20 Q. And at that point, were you trying to
21 hit Mr. Mazyck with a bullet?

22 A. No, ma'am, not at all.

23 Q. And does this picture show the general
24 area where you're saying he was standing?

25 A. Yes. On this side of the picture,

NOLEN. - DIRECT EXAM BY MS. NORRIS

1 right in here is where he would have been standing
2 at.

3 Q. This is Defense Exhibit 30. What view
4 is that?

5 A. That's the living room looking down the
6 hallway. Right here is where Fred would have been
7 standing. (Indicating)

8 Q. All right. And Defense Exhibit 32, is
9 there anything significant in this picture to you?

10 A. That's the double closet I was saying
11 -- the picture is taken with the TV behind me.
12 You're looking dead out. That window looks out on
13 that concrete. When -- the air conditioner is
14 underneath that window, there's a closet here and a
15 closet here, and Lance come out of this one.
16 (Indicating)

17 Q. Lance or Fred?

18 A. I mean, Fred come out of this closet
19 over here.

20 Q. Number 37 are the bullet holes right
21 there. So you're saying that Mr. Mazyck was not
22 sitting there when you fired those bullets?

23 A. No, ma'am, not at all.

24 Q. Just a closer view, Number 38. All
25 right. This room, number -- this is Defense

NOLEN - DIRECT EXAM BY MS. NORRIS

1 Exhibit 42. Can you tell me if any of the property
2 in this room is yours?

3 A. Yes, ma'am.

4 Q. What portion?

5 A. That's my red suitcase -- the battery
6 is going dead. That's my red suitcase. That's the
7 Beretta 12-gauge shotgun that's in a sock, some of
8 my clothes. And this is a double gun case, double
9 rifle case.

10 The camouflage rifle that was on the
11 back porch was on this side that's open, and on the
12 other side -- there's another side to it that
13 opens. The other 243 would have been in it. That
14 whole case is about that wide for two scope rifles
15 to go into.

16 Q. Next. All right. This is Defense
17 Exhibit 46. Can you tell me whose room this is?

18 A. That's Lance's bedroom.

19 Q. All right. And this is Defense
20 Exhibit 49. Had you seen this case earlier?

21 A. Yes, ma'am.

22 Q. Was there any -- did Mr. Kenyon keep
23 anything other than his weapons in there?

24 A. Yeah. That's -- that's where I said I
25 saw the bag of pills at.

NOLEN - DIRECT EXAM BY MS. NORRIS

1 Q. And do you know what those canisters
2 are there on the floor in Defense Exhibit 50?

3 A. Yeah, that's the -- that's the
4 ammunition for the SCAR 17.

5 Q. This is Defense Exhibit 52. Can you
6 see in there where you're saying those pills where?

7 A. Yeah. That bag of pills was kept right
8 there. (Indicating)

9 Q. And so, basically, you're saying right
10 above that red folder in Defense Exhibit 53?

11 A. Yes, ma'am.

12 Q. And what we actually see in there --
13 can you read that label?

14 A. Take one tablet by mouth every -- hours
15 needed for severe -- I guess the next word to be
16 pain, I guess.

17 Q. And below that does it say what the
18 medication is?

19 A. Oxycodone. Amphetamine.

20 Q. And it appears that the name of the
21 person that was prescribed to is not there; is that
22 correct?

23 A. Yes. Yes, ma'am.

24 Q. Next one, please. All right. This is
25 Defense Exhibit 55. Is that Mr. Kenyon's

NOLEN - DIRECT EXAM BY MS. NORRIS

1 nightstand?

2 A. Yes.

3 Q. Do you recognize that item in Defense
4 Exhibit 57 that is on the floor?

5 A. Yes, that's Lance's wallet.

6 Q. And had you seen his wallet earlier
7 that evening?

8 A. Yes. It was on the nightstand the last
9 time I saw it.

10 Q. Did Mr. Kenyon generally leave his
11 wallet on the floor?

12 A. No. I mean, I don't know his habits,
13 but, no, ma'am. No man leaves -- throws his wallet
14 on the floor. Not that I know of.

15 Q. And this is outside. Are those the
16 back porch steps there in Defense Exhibit 61?

17 A. Yeah. Right -- yeah, right there.

18 Q. And is that generally -- well, tell me
19 what that general area is in terms of the incident
20 when shooting started? What happened in this area?

21 A. That's the little covered -- the little
22 covered canopy or lean-to area. You've got the
23 screened porch itself, and then as you step off
24 into this area, there's a -- the roof right there
25 above you, that's where the Egg was kept, or that

NOLEN - DIRECT EXAM BY MS. NORRIS

1 grill where the rifle is leaning against the house.

2 (Indicating)

3 Q. But in terms of shooting, once shooting
4 started, was anybody in that area?

5 A. No, ma'am, not that I could tell
6 because I was seated -- where I was sitting at the
7 thing, I wasn't -- no, I don't --

8 Q. Had you seen Mr. Harrison in that area
9 before?

10 A. Yeah. When he come around earlier and
11 pointed the pistol at me.

12 Q. And when he fired the shots, could you
13 see him at that point?

14 A. No. No, I couldn't, no.

15 Q. And you know now that -- that
16 Mr. Harrison dropped there, but you continued
17 shooting. When you were shooting the figure that
18 was running and dodging, that you now know was
19 Mr. Lance Kenyon, were you trying to shoot Mr.
20 Lance Kenyon?

21 A. No, ma'am, I wasn't.

22 Q. Were you trying to shoot Mr. Harrison?

23 A. Yes, I was.

24 Q. And can you see in this picture,
25 Exhibit 67, where Mr. Kenyon was when it all ended

NOLEN - DIRECT EXAM BY MS. NORRIS

1 and you realized that you had shot him?

2 A. Who?

3 Q. Mr. Kenyon.

4 A. He was up underneath the porch but more
5 down here.

6 Q. All right. This is Defense Exhibit 82.
7 Do you remember firing all those shell casings
8 there on the back porch?

9 A. I mean, no. I don't remember each one
10 but, yeah, that's when I was pulling as fast I
11 could go. I'm -- yeah.

12 Q. And these are the shell casings in the
13 living room, correct?

14 A. Yes, ma'am.

15 Q. And that's Defense Exhibit 87. And
16 Defense Exhibit 92 is there by the front door. The
17 officers told us there was an unfired .22 round
18 there. Do you recall when, where, or how that got
19 there?

20 A. No, I don't.

21 Q. Okay. And that tag number 27 there is
22 the magazine, this one here, Defense Exhibit -- I
23 mean, State's Exhibit 43?

24 A. Yes.

25 Q. All right. Do you recall how that got

NOLEN - DIRECT EXAM BY MS. NORRIS

1 there?

2 A. No. No, ma'am. I mean -- no, ma'am,
3 not really.

4 Q. Next. This is Defense Exhibit 97,
5 Mr. Gressette there on the back porch. Did you
6 ever move his body at all; do you recall?

7 A. Yes, ma'am, I did.

8 Q. And why, when, and how did you do that?

9 A. You couldn't -- I couldn't -- back and
10 forth on the porch and the way Harry was laying,
11 the way he fell, I moved Harry out of the way. I
12 moved the weapon, threw it up against over there,
13 and pulled Harry around.

14 Q. So you're saying you moved him and the
15 SCAR 17?

16 A. Yes, ma'am. The SCAR 17 is what I
17 tripped over going out the door.

18 Q. And this is Defense Exhibit 108. Did
19 you know Mr. Kenyon kept pistols in his nightstand?

20 A. I knew he had them, but, no, I didn't
21 know they were in the nightstand.

22 Q. Did you know that he kept pills in
23 there right beside that pistol?

24 A. No, ma'am, I never seen inside that
25 nightstand before.

NOLEN - DIRECT EXAM BY MS. NORRIS

1 Q. Okay. All right. This is Defense
2 Exhibit 110. Officers have told us that this .22
3 that you shot these three men with were on that
4 truck out front of the house, and this .22 is
5 State's Exhibit 44. Do you recall putting this
6 weapon out there?

7 A. No, ma'am, I do not.

8 Q. And that's just a closer view of it in
9 Defense Exhibit 111. And this is Defense Exhibit
10 113. Is that the front porch area?

11 A. Yes, ma'am.

12 Q. Did you fire any shots from that area?

13 A. Yes, from the -- coming out the front
14 door.

15 Q. And there's a shell casing right there,
16 correct?

17 A. Yes, there is. It's kind of in the
18 wrong place if you're firing out the door, but,
19 yeah, it's --

20 Q. And the last one. All right. You can
21 turn it off.

22 Specifically, with respect to the
23 charge of murder of Harry Gressette, did you
24 intentionally shoot him?

25 A. Yes, I did.

NOLEN - DIRECT EXAM BY MS. NORRIS

1 Q. And what was in your mind when you
2 opened fire?

3 A. To stop the threat. I thought I was
4 next. I thought Lance was dead and I was next.

5 Q. And, specifically, with respect to the
6 charge of murder of Mr. James Mark Harrison, did
7 you intentionally shoot him?

8 A. Yes, ma'am, I did.

9 Q. And what was in your mind then?

10 A. Stop the threat. I was next.

11 Q. With respect to the charge of murder of
12 Mr. Lance Donovan Kenyon, did you intentionally
13 shoot and kill Mr. Kenyon?

14 A. No, ma'am, I did not.

15 Q. Are you saying that was an accident?

16 A. That was -- yes, ma'am.

17 Q. And with respect to the charge of
18 attempted murder of Fred Mazyck, did you attempt to
19 kill Fred Mazyck with malice aforethought?

20 A. No, ma'am.

21 Q. And with respect to the charge of
22 threatening a police officer, do you remember any
23 of that?

24 A. No, ma'am, I do not.

25 MS. NORRIS: Okay. Please answer

NOLEN - CROSS EXAM BY MR. ALFARO

1 questions the Solicitor has.

2 THE COURT: You may proceed.

3 CROSS-EXAMINATION

4 BY MR. ALFARO:

5 Q. Mr. Nolen, before we kind of delve
6 deeper into your story today, I'm going to ask you
7 a couple of things and see if maybe we can agree on
8 some of these facts. Okay?

9 A. Okay.

10 Q. First of all, you are admitting and you
11 acknowledge that you used this .22 rifle and this
12 banana clip with 25 rounds in it you said, right?
13 And you used this weapon to shoot and kill Harry
14 Gressette, correct?

15 A. Yes.

16 Q. You admit that you shot him one time in
17 the back of the head?

18 A. Yes.

19 Q. And you admit that you used that
20 weapon, that banana clip, that .22 caliber weapon,
21 to shoot James Harrison, correct?

22 A. Yes.

23 Q. And kill James Harrison by shooting him
24 nine times, correct?

25 A. Yes.

NOLEN - CROSS EXAM BY MR. ALFARO

1 Q. And you heard the testimony, and would
2 you -- I would guess you would agree with it, that
3 all nine of those shots came to the back? He got
4 hit in the back all nine times. Do you acknowledge
5 doing that?

6 A. Yes.

7 Q. And you also, will you -- do you
8 acknowledge that you used that same weapon to shoot
9 and kill Lance Kenyon on that night?

10 A. Yes.

11 Q. And you acknowledge that you shot Lance
12 Kenyon 12 times with that weapon?

13 A. Yes.

14 Q. And nine of those were to the back,
15 correct?

16 A. Yes.

17 Q. And one of them was to his head,
18 correct?

19 A. Yes.

20 Q. And you acknowledge that you came back
21 into the house after all of that shooting and shot
22 two rounds into a wall in the living room right
23 next to the recliner where Fred Mazyck had been
24 watching a movie, correct?

25 A. Yes.

NOLEN - CROSS EXAM BY MR. ALFARO

1 Q. All right. Now, and would you also
2 acknowledge for everyone here that your testimony
3 today, let's be generous and say it's completely
4 different than what your statement was to the
5 police on October 7, 2016, correct?

6 A. Yes.

7 Q. And -- now, your statement to the
8 police, and we listened to it this morning, you
9 were in there for, by my count, about 115 minutes,
10 probably almost two hours. Does that sound about
11 right?

12 A. Yes.

13 Q. And you seemed to be having a fairly
14 pleasant, I guess to some extent, or a kind of back
15 and forth conversation with the police officer in
16 the room, correct?

17 A. Yes.

18 Q. He'd ask you some questions and you'd
19 give him an answer, correct?

20 A. Yes, sir.

21 Q. He never yelled at you or threw you
22 around or slammed you to the ground or put a knee
23 in your back or anything, correct?

24 A. Right.

25 Q. So you were given a full opportunity in

NOLEN - CROSS EXAM BY MR. ALFARO

1 that conversation to tell him everything that
2 happened that night, correct?

3 A. Yes.

4 Q. And you went through some of it, and
5 we'll talk a little bit about it, and if there's
6 anything that we disagree with, you let me know,
7 and we'll -- so everybody is on the same page.
8 Okay? You do acknowledge it was you, Fred, and
9 Lance that morning at Lance's house, right?

10 A. Yes.

11 Q. And consistent with the testimony that
12 you heard during this trial, you, Lance, and Fred
13 went to Piggly Wiggly, correct?

14 A. Yes.

15 Q. And that's in your statement, right?

16 A. Yes.

17 Q. You didn't just go to the store, you
18 remembered you went to Piggly Wiggly, correct?

19 A. Yes.

20 Q. And you -- then the three of you all
21 went to Publix, correct?

22 A. Yes.

23 Q. Not just the store, you went to Piggly
24 Wiggly and you went to Publix, right?

25 A. Reverse order, but, yes.

NOLEN - CROSS EXAM BY MR. ALFARO

1 Q. Okay. So you got that detail. And you
2 went to the liquor store too, right?

3 A. Yes.

4 Q. And you were able to tell that officer
5 exactly what you bought, that you bought a fifth of
6 Crown Royal, right?

7 A. Yes.

8 Q. And you were to tell them what Lance
9 bought when he bought the Fire Ball, right?

10 A. Yes.

11 Q. And you gave them details in your
12 statement about the shooting that you all were
13 doing that morning, target practice, right?

14 A. Yes.

15 Q. And in your statement you also gave
16 them all the details, including that you policed
17 all your brass after all that shooting, correct?

18 A. Yes.

19 Q. So any weapon that was fired you all
20 went out and policed your brass, right?

21 A. Yes.

22 Q. And, again, that's when you go around
23 and you pick up the shell casings, right?

24 A. Yes.

25 Q. And just before I forget, on the shell

NOLEN - CROSS EXAM BY MR. ALFARO

1 casings thing, there was some testimony about
2 positioning the shell casings. You were in the
3 military from what I heard from your testimony,
4 correct?

5 A. Yes, sir.

6 Q. So you've been -- had the opportunity
7 to shoot many weapons, correct?

8 A. Yes.

9 Q. And you would agree with me that shell
10 casings when they come out of a gun, they can go
11 anywhere, correct?

12 A. As long as they're not hitting nothing,
13 yes.

14 Q. But that's the problem. They hit
15 something because they come out of the gun and
16 they've got to go somewhere. They don't just
17 float. They either hit the ground, the table, they
18 get caught in the cuff of your pants, they go down
19 your shirt. All of those things can happen with a
20 shell casing, right?

21 A. Yes.

22 Q. So I could stand here and shoot five
23 times, walk over here, (indicating) and there not
24 being a single shell casing there, because it
25 either went down my shirt, bounced off my shoulder,

NOLEN - CROSS EXAM BY MR. ALFARO

1 went all the way over there. Those things can go
2 anywhere, right?

3 A. Not like that, no, sir.

4 Q. So I could shoot five times and they'd
5 all be right here? (Indicating)

6 A. They'd all be over in here where she's
7 at somewhere.

8 Q. So they can't get caught in your
9 clothes and take a step and they move with you?

10 A. If you're holding that weapon straight
11 forward like you're supposed to, and fire it,
12 they're ejecting to your right, and the gravity
13 pulls them to the ground.

14 Q. Okay. All right. Fair enough. We
15 don't need to argue about that point.

16 You're giving them details about police
17 and brassing. You were specific as to what weapons
18 were out there that day, weren't you?

19 A. Yes.

20 Q. Listed them all, shotguns, your dad's
21 9-millimeter, the .22 long rifle, all of those
22 things. You gave them all those details, correct?

23 A. Yes.

24 Q. You were even able during your
25 statement to tell them the movie that Fred was

NOLEN - CROSS EXAM BY MR. ALFARO

1 watching in the house, right?

2 A. Yes.

3 Q. And you gave them some more details
4 about what happened after Harry Gressette and James
5 Harrison -- or James Mark Harrison, as you called
6 him, came over that night, right?

7 A. Yes, sir.

8 Q. And you were giving them details about
9 what kind of job they had. One guy was -- I can't
10 remember which one -- was a really good concrete
11 guy, and you gave them all those details, right?

12 A. Yes.

13 Q. And you also gave them details to
14 include that you went back in the house after some
15 shooting and put a sock on your 12-gauge and put
16 the 9-millimeter on a table by a lamp; you told
17 them that too, right?

18 A. Yes.

19 Q. Pretty specific, would you agree?

20 A. Yes.

21 Q. And, in fact, you also said during your
22 statement to them that you all had gone outside to
23 shoot some more that night, right?

24 A. I think so, yes, sir.

25 Q. Fired up some lights, I think is the

NOLEN - CROSS EXAM BY MR. ALFARO

1 exact wording that you used, so that you could see
2 out there to shoot, right?

3 A. Yes.

4 Q. Because you're not going to go target
5 practice or do any shooting outside in the dark,
6 right?

7 A. Right.

8 Q. Okay. So you fired up some lights
9 before you all went out there and started to shoot
10 some more, right?

11 A. Yes.

12 Q. And you said that Harry, and I think
13 you said Mark too, were all shooting -- both
14 shooting that SCAR, right? That big assault
15 rifle-looking thing here?

16 A. Yes.

17 Q. And I think, in fact, you said they
18 might have been the worst shots you've ever seen;
19 they couldn't hit the water if they fell off a boat
20 I think is what you said, right?

21 A. Yes.

22 Q. So you remember those details of them
23 shooting the SCAR, that they're not very good
24 shots, right?

25 A. Yes.

NOLEN - CROSS EXAM BY MR. ALFARO

1 Q. And you also told the police that day
2 in this fairly specific conversation that there
3 were no altercations after those two fellows came
4 over last night. You heard that, right?

5 A. Yes.

6 Q. And, in fact, the officer said, did you
7 get into any altercations with them? No, not at
8 all is what you said, right?

9 A. Correct.

10 Q. And that's your statement to the police
11 about -- let's see, the shooting was around two --
12 hours later, hours after this shooting, right? You
13 gave that statement?

14 A. Yes, sir.

15 Q. And in that statement, the officer was
16 trying to get you to give him information about the
17 ultimate issue that they were asking you about,
18 right? The shooting that happened -- the shooting
19 that happened that night. He was asking you
20 questions, right?

21 A. Yes.

22 Q. And in that conversation you never told
23 him anything about being punched, did you?

24 A. No. I didn't remember that at the
25 time.

NOLEN - CROSS EXAM BY MR. ALFARO

1 Q. You never told him you were knocked to
2 the ground?

3 A. No, sir.

4 Q. Never told him that, in fact, as you
5 testified to today at some point during this, this
6 (indicating) was pointed at the back of your head,
7 right?

8 A. Right.

9 Q. By the guy who had never shot it
10 before, but he was pointing that gun at the back of
11 your head, right? That's what you said today?

12 A. Harry had shot it plenty of times.

13 Q. Okay. But you said he pointed -- you
14 said today that this gun was pointed at the back of
15 your head before these three people got killed?

16 A. Yes, sir.

17 Q. You didn't tell the officer that during
18 your statement though?

19 A. I didn't remember that at the time.

20 Q. How many times have you seen this gun?

21 A. A couple.

22 Q. And --

23 A. Several times.

24 Q. And you're telling me and everyone in
25 this room that you wouldn't remember this thing,

NOLEN - CROSS EXAM BY MR. ALFARO

1 (indicating) this thing being pointed at the back
2 of your head?

3 A. Not at that time, no, sir, I didn't.

4 Q. Huh. And you did mention something
5 about Adderall and Lance in the house during your
6 interview, right?

7 A. Yes.

8 Q. Okay. You didn't go into all those
9 details, as you gave here today, about very
10 specific detailed description of the marijuana, the
11 pound of marijuana, that was in that house,
12 correct?

13 A. Right.

14 Q. Now you know it's a pound, then you
15 didn't remember -- you didn't think to mention it?

16 A. Correct.

17 Q. Okay. Even the details you gave today,
18 all this time after, about it even had a little
19 slightly purplish tint to it, a little hairy, I
20 think is how you described it, right?

21 A. Yes, sir.

22 Q. You didn't tell the police any of that?

23 A. I didn't want to get Lance in trouble,
24 no, sir, I didn't.

25 Q. Oh, okay. Well, let's talk about Lance

NOLEN - CROSS EXAM BY MR. ALFARO

1 for a second. You said that after the shooting
2 started, after you shot Lance -- accidentally
3 shooting Lance you said, that you went outside and
4 Lance talked to you, and Lance told you he didn't
5 shoot me, you shot me; is that correct?

6 A. Yes, sir.

7 Q. And you didn't stop and give him CPR
8 then, did you?

9 A. No.

10 Q. You didn't pull him out from under the
11 porch then and try to help him, did you?

12 A. Yes.

13 Q. Did you do it then, or did you go back
14 inside and change your clothes because you had
15 urinated on yourself at some point during this
16 incident?

17 A. The first time I tried to get him out,
18 he said, no, he hurt too bad. So then I ran back
19 in the house, and that's when I encountered Fred.

20 Q. Okay. But at some point you went in
21 and changed clothes?

22 A. Yes, sir.

23 Q. Okay. And you were asked on direct why
24 you didn't just get away from it when they were
25 kind of acting weird, when they showed up and lock

NOLEN - CROSS EXAM BY MR. ALFARO

1 yourself in a room, and I think your exact words
2 were, because I couldn't leave Lance behind, I'm
3 not built like that.

4 A. That's not the question that was asked,
5 sir.

6 Q. Okay. But you said that?

7 A. I wasn't about to leave Lance out there
8 with two men with weapons on him, no.

9 Q. Okay. But you left him to go change
10 clothes?

11 A. The two men were not a threat no more.

12 Q. But Lance, who you feel so bad about
13 accidentally shooting, is bleeding out on the
14 ground from the 12 gunshot wounds that you put in
15 him, including the -- specifically, the nine in his
16 back, he's laying there bleeding out, and you're
17 going to take the time to go change clothes.
18 That's what you want us to believe?

19 A. Yes, sir.

20 Q. Why?

21 A. Why what, sir?

22 Q. Why do you not give CPR then? You went
23 through all this -- all these details today of you
24 were trained to count out compressions, you have to
25 be loud so people know where you are. You weren't

NOLEN - CROSS EXAM BY MR. ALFARO

1 doing that. You went inside and changed clothes.

2 A. Lance was breathing and alive and
3 talking when I went inside and changed clothes.

4 Q. Oh, so 12 gunshots -- in your military
5 history, guys who have 12 gunshot wounds, you're
6 good, I'm just going to change clothes, I'll be
7 right back, you wait right there. That's what you
8 did?

9 A. Around about, yes, sir.

10 Q. Okay. Now, let's talk about some other
11 thing that's not consistent with the testimony that
12 we heard this week. Fred Mazyck went through the
13 details of what you all did that day, going to the
14 shore and the shooting and all that stuff, right?

15 A. Yes, sir.

16 Q. And you heard all that?

17 A. Yes, sir.

18 Q. And it's sort of consistent with what
19 you said today, right?

20 A. Yes, sir.

21 Q. In fact, Fred says that you come into
22 the house with the rifle, shoot twice into the wall
23 right next to the couch or the recliner where he
24 was. You say you came in and shot twice, but he
25 wasn't there, you just shot and you don't know why,

NOLEN - CROSS EXAM BY MR. ALFARO

1 right?

2 A. Correct.

3 Q. And it's just an unknown coincidence
4 why those two bullet holes are about that far
5 (indicating) away from the corner to that couch
6 where he was? You don't know why that is, though,
7 do you?

8 A. The way the barrel was pointed when I
9 pulled the trigger.

10 Q. Okay. So you pointed the barrel
11 directly at the wall and pulled the trigger?

12 A. It was facing that way anyway. Fred
13 was standing in front of me.

14 Q. So -- all right. We'll leave that
15 there.

16 So when you shot the two bullets into
17 the wall, it wasn't to wake Fred up to get him to
18 go call 911 and get his attention, was it?

19 A. Not to wake him up. He was already
20 wide awake.

21 Q. Okay. But it wasn't just to get his
22 attention. I think we heard that at some point
23 this week?

24 A. I don't know the real reason why I
25 pulled the trigger twice. Maybe it was to get his

NOLEN - CROSS EXAM BY MR. ALFARO

1 attention.

2 Q. Okay. You couldn't just go, Fred, call
3 the police?

4 A. I had done that twice already, sir, and
5 he hadn't left.

6 Q. Or, hey, man, I need you to call the
7 cops?

8 A. I'd done that twice already.

9 Q. You just fired two rounds from a rifle
10 into the wall where he was at?

11 A. He was not there. He was standing in
12 front of me, sir.

13 Q. Okay. And, in fact, back to what you
14 didn't tell the police during your statement, in
15 addition to all the details about the way the
16 marijuana looked and this rolled up bag of pills
17 that you now remember is at least a hundred, you
18 didn't tell them anything about Harry Gressette or
19 James Harrison attacking you because they thought
20 you stole their meth, did you?

21 A. I didn't remember it at the time, sir,
22 no.

23 Q. You don't remember being accused by two
24 people of stealing meth?

25 A. Not at the moment, no, I did not.

NOLEN - CROSS EXAM BY MR. ALFARO

1 Q. Okay. And you don't remember to tell
2 the police that one of them pointed a 9-millimeter
3 at you?

4 A. At the time I didn't remember it, no,
5 sir.

6 Q. Okay. In fact, during your statement
7 to the police, you also described how everybody was
8 getting along and laughing. I think you said
9 somebody told a joke about the way a school was
10 leaning because of the way the house was built?

11 A. Yes, sir.

12 Q. And you gave them more details about
13 how you all had watched Django and were rolling on
14 the ground laughing at that movie because it was so
15 funny?

16 A. Yes, sir, that was the night before.

17 Q. Okay. And you're telling them about
18 Django and Hateful Eight, but you're not going to
19 tell them that two guys threatened to shoot you by
20 pointing a SCAR assault military rifle at you and
21 pointing a 9-millimeter at you because they thought
22 you stole their meth?

23 A. After drinking for 14 hours, I couldn't
24 remember that part, but the other parts that I did
25 remember is when I was more sober. But, yes, sir.

NOLEN - CROSS EXAM BY MR. ALFARO

1 Q. So you would agree with me that the
2 details you have today that you didn't have then
3 are a little different than having a little bit too
4 much to drink and walking out on a bar tab, right?

5 A. Say that again, sir.

6 Q. The details you're leaving out, you
7 might have a little bit too much to drink because
8 you had Crown and Bud Light and vodka you said,
9 right? No other drugs, just the alcohol, right?

10 A. Yes, sir.

11 Q. So you drank that and that makes you
12 forget having a military rifle pointed at the back
13 of your head? That makes you forget that somebody
14 pointed a 9-millimeter at you? That makes you
15 forget that you shot all three people and had a
16 conversation with one of them who explained to you,
17 you -- he didn't shoot me, you shot me? All those
18 details you forgot because of Crown, Bud Light, and
19 vodka shots? That's your testimony?

20 A. Due to the quantity, yes, sir.

21 Q. So it's your testimony that that
22 quantity of alcohol that you consumed that made you
23 forget all of these details didn't impact your
24 ability out of a 25-round clip -- you put this
25 magazine in before the shooting started, right?

NOLEN - CROSS EXAM BY MR. ALFARO

1 A. I would assume so, yes, sir.

2 Q. I think you told the story that you --
3 that things were getting bad outside. So you went
4 in and grabbed your rifle and grabbed this clip,
5 right?

6 A. That clip was inside, yes, sir.

7 Q. I think you actually also went through
8 saying that you put the clip in and you leaned it
9 up against the corner when you walked back outside,
10 right?

11 A. Yes, sir.

12 Q. So at that point, there's 25 rounds in
13 this gun, maybe one in the chamber, right? So 26
14 -- 25, 26, sound fair?

15 A. Twenty-five for sure.

16 Q. Twenty-five for sure. All right.
17 We'll use that. So 25 shots and you've had all of
18 this alcohol that made you forget all of these
19 details, right?

20 A. Yes, sir.

21 Q. At this point, you're not drinking in
22 between getting the rifle, you've already had the
23 Crown and the Bud Light and the vodka shots, right?

24 A. Yes, sir.

25 Q. So out of 25 shots, at least 25 -- or

NOLEN - CROSS EXAM BY MR. ALFARO

1 25 for sure you said, you managed to hit Lance
2 Kenyon 12 times, right?

3 A. Yes, sir.

4 Q. And you managed to hit James Harrison
5 nine times, right?

6 A. Yes, sir.

7 Q. And you managed to hit Harry Gressette
8 with one shot straight in the back of the head?

9 A. Yes, sir.

10 Q. And put two in a wall for whatever
11 reason?

12 A. Yes, sir.

13 Q. So that's 24 hits out of what you were
14 shooting out of that magazine for somebody that's
15 too intoxicated to remember somebody pointing an
16 assault rifle at them?

17 A. Yes, sir.

18 Q. And so when Harry -- you said after he
19 pointed the gun at you -- not the gun, the SCAR at
20 you. When he pointed this (indicating) at you, at
21 some point he turned around and that's when you
22 were able to shoot him, right?

23 A. Yes, sir.

24 Q. Did he drop the gun when you shot him?

25 A. I'm not for sure how that went down. I

NOLEN - CROSS EXAM BY MR. ALFARO

1 just know that Harry was in a pile with that weapon
2 right in front of the door as you exit out off of
3 the porch. That's why I moved him.

4 MR. ALFARO: Can you put up State's
5 112, please?

6 BY MR. ALFARO:

7 Q. Now, that's the SCAR there, right? The
8 rifle?

9 A. Yes, sir.

10 MR. ALFARO: Can you put up State's
11 113?

12 BY MR. ALFARO:

13 Q. And that's the same rifle, same
14 picture, right? Or same position?

15 A. Yes, sir.

16 Q. It looks like it's sitting pretty
17 upright, doesn't it? On the --

18 A. Bipod, yes, sir.

19 Q. -- bipod. So it wasn't where he got
20 shot in the back of the head and fell down and the
21 gun went anywhere. The gun is sitting on the
22 ground on the bipod as if someone put it there and
23 had left it there as if it had almost never been
24 moved, didn't they?

25 A. Like I said, I picked it up and put it

NOLEN - CROSS EXAM BY MR. ALFARO

1 over there -- actually, if you take that weapon and
2 lean it against that wall, it'll lean up just like
3 that.

4 Q. Okay. If the pod's in -- the --

5 A. If it's down already.

6 Q. So let me just go -- I'm sorry, were
7 you done?

8 A. The handle that you had ahold of,
9 that's the pod itself.

10 Q. Okay. So just so we're all clear,
11 after the shooting starts, you have managed to
12 stop, take the time to go change clothes, correct?

13 A. Yes, sir.

14 Q. Move two of the three people that you
15 had shot, right?

16 A. Yes, sir.

17 Q. Stand the SCAR weapon upright, right?

18 A. I moved the SCAR, and then I moved
19 Harry. That's why Harry is laying on top of shell
20 casings.

21 Q. Come inside and have some sort of
22 conversation with Fred, right?

23 A. Yes, sir.

24 Q. Shoot two more shots into a wall,
25 right?

NOLEN - CROSS EXAM BY MR. ALFARO

1 A. Yes.

2 Q. Go outside to the front door where the
3 magazine that was in the gun was found, right?

4 A. Yes.

5 Q. Eventually, make your way back outside
6 and just happen to be doing CPR when the police
7 show up, right?

8 A. Yes.

9 Q. And so you're so concerned about
10 getting the phone and calling -- Fred calling
11 police that you have this long, drawn out
12 conversation with him about him calling instead of
13 you just calling, correct?

14 A. Where am I going to call from, sir?

15 Q. You didn't think that maybe instead of
16 taking the time to change your clothes because you
17 supposedly urinated on yourself during the shooting
18 that you should call 911?

19 A. That's what I was doing, sir, trying to
20 find my phone.

21 Q. No. You were changing clothes and
22 fussing with Fred supposedly.

23 A. I couldn't find my phone at the time,
24 sir.

25 Q. And you also admit that Fred ran out

NOLEN - CROSS EXAM BY MR. ALFARO

1 the front door, right?

2 A. Yes, sir.

3 Q. And you fired a round outside the front
4 door?

5 A. Yes, sir, while Fred was in the
6 refrigerator behind me.

7 Q. Again, none of these details that
8 specific in your statement to the police the day of
9 the shooting?

10 A. I couldn't remember, sir. I had just
11 woken up literally after all that drinking. At the
12 time I did not remember.

13 Q. Well, you said you had a hangover?

14 A. Oh, yeah.

15 Q. Yeah. But you were able to give them a
16 lot of details, almost two hours' worth of details,
17 right?

18 A. Yes.

19 Q. Just not this version of details?

20 A. I give them the details that I could
21 remember up to the point of when I couldn't
22 remember no more.

23 Q. Okay.

24 A. I had passed out on a couch and Fred
25 had woke me up, sir.

NOLEN - CROSS EXAM BY MR. ALFARO

1 Q. And so when the police arrived, you
2 acknowledged saying, I'm the shooter, I'm the
3 suspect?

4 A. I remember saying, I'm the suspect. I
5 don't know who asked me where -- where is the
6 suspect or whatever, but I remember saying I'm the
7 suspect.

8 Q. You remember saying I'm the suspect,
9 and you don't remember saying I'm the suspect
10 because they were trying to kill me and Lance, and
11 I had to shoot them 21 times -- I'm sorry, 22 times
12 to save my life because they accused me of stealing
13 their meth?

14 A. No, sir, I was too worried about them
15 saving Lance's life, not mine. I needed them to do
16 CPR. I needed them to take over.

17 Q. They weren't doing CPR when you were in
18 the police station having a conversation with them
19 at 2:30, were they? The next day?

20 A. No, they wasn't, but if one of those
21 cops might have got down to relieve me, maybe he
22 might have lived a little longer, sir.

23 Q. He might have lived a little bit longer
24 if you hadn't shot him 12 times, nine of them to
25 the back, three of them to the front, and one of

NOLEN - CROSS EXAM BY MR. ALFARO

1 those in his head. That's probably what kept him
2 from living longer, not the police not doing CPR
3 fast enough, correct?

4 A. It might have been the two drug addicts
5 that started the whole thing, sir. That might have
6 been what caused the whole thing.

7 Q. Or the person who actually admits that
8 he shot all those people with this rifle that has a
9 different reason for it today.

10 A. I'm not trying to hide, sir. I didn't
11 try to hide that day and I'm not going to hide
12 today.

13 MR. ALFARO: No more questions.

14 MS. NORRIS: No further questions, Your
15 Honor.

16 THE COURT: I wasn't sure if you were
17 done.

18 MR. ALFARO: Yes, Your Honor.

19 THE COURT: Okay. Any redirect?

20 MS. NORRIS: No, Your Honor.

21 THE COURT: Sir, you may step down.
22 The defense may proceed. Ms. Norris, you may
23 proceed.

24 MS. NORRIS: The defense rests, Your
25 Honor.

1 THE COURT: Mr. Foreman, ladies and
2 gentlemen, the defense has rested. I have some
3 matters of law to take up with counsel.

4 During the break, please do not discuss
5 the case and please leave your notepads in your
6 seats. We appreciate your patience.

7 (Jury out, 3:04 p.m.)

8 THE COURT: You may be seated. The
9 defense has rested. Are there any motions?

10 MR. FARBER: Yes, Your Honor. We have
11 a motion for a directed verdict on the three counts
12 of murder under Rule 19. It's the State's burden
13 to prove beyond a reasonable doubt that Mr. Nolen
14 did not act in self-defense. They have not
15 presented any evidence of that.

16 In addition, they've not presented
17 evidence that any of these killings were done with
18 malice aforethought. I understand Your Honor's
19 ruling on our motion at the close of the State's
20 case, but the evidence -- you can't draw an
21 inference in a self-defense case from the fact that
22 the decedents are shot in the back. You can't
23 infer malice from that use of the weapon. Those
24 are things that are inherent in self-defense.

25 And there simply hasn't been any

1 evidence that would be sufficient to take the case
2 to a jury to establish that there was not -- these
3 were not shootings in self-defense in the case of
4 the charges of murder of Mr. Harrison and
5 Mr. Gressette, and in the case of Mr. Kenyon that
6 Mr. Nolen was acting lawfully, but killed him by
7 accident.

8 THE COURT: Would the State like to
9 respond?

10 MS. SZYMCHYNSKA-SAS: We would, Your
11 Honor. Your Honor, we would renew our prior
12 argument when the State rested its case. We would
13 also like to add that as the Court knows, the Court
14 can direct a verdict of acquittal if it finds that
15 the defendant acted in self-defense; however, there
16 has to be facts that establish self-defense as a
17 matter of law, and they have to be unconverted
18 facts.

19 The defendant testified to totally
20 different statements that he gave to law
21 enforcement, not only in the back of the patrol
22 car, not only on the way to the jail, but also in a
23 recorded interview with Detective Elrod. Your
24 Honor, those facts need to go to the jury for them
25 to decide, if Your Honor decides to give a charge

1 of self-defense.

2 THE COURT: Anything further?

3 MR. FARBER: Yes, Your Honor.

4 Mr. Nolen testified that he acted in self-defense.

5 The fact that the State has some evidence to

6 impeach him on that is not affirmative evidence

7 that carries their burden, and it is their burden

8 of disproving self-defense beyond a reasonable

9 doubt. And they don't have any affirmative

10 evidence to disprove that.

11 THE COURT: The Court denies the

12 motion. There is both direct and substantial

13 circumstantial evidence reasonably tending to prove

14 the defendant's guilt in the light most favorable

15 to the State. The Court reincorporates its

16 previous findings of fact and conclusions of law

17 made at the close of the State's case as if stated

18 verbatim at this portion of the record.

19 In addition, the Court finds that all

20 of the issues raised by the defense are factual

21 issues to be resolved by a jury because the Court

22 is not the finder of facts, it is not the arbiter

23 of credibility or believability. It's for the jury

24 to determine whose version of events they believe,

25 and whether the defendant, in fact, acted in

1 self-defense; but it is this Court's duty to
2 determine at this part of the case in regards to
3 the motion whether there is direct or substantial
4 circumstantial evidence which would reasonably tend
5 to prove the defendant's guilt, and there is, that
6 evidence does exist.

7 I do not find that the defendant's
8 testimony regarding self-defense is uncontroverted,
9 and while the defense is correct that it is the
10 State's burden of proof to disprove his defense
11 beyond a reasonable doubt, I think there's more
12 than sufficient evidence in the record to establish
13 that. The motion is denied. All right. Does the
14 State have any rebuttal testimony?

15 MS. SZYMCZYNSKA-SAS: No, Your Honor.

16 THE COURT: What I'm going to do is
17 send the jury home for the day so we can do charge
18 conference, and then we'll have closing argument
19 and instruction in the morning, and then that will
20 give you all time to go through all the exhibits
21 and make sure everything is in place. Is there any
22 exception from the State?

23 MS. SZYMCZYNSKA-SAS: No, Your Honor.

24 Just one more thing I wanted to place on the
25 record.

1 THE COURT: You do need to do the
2 stipulation, don't you?

3 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.
4 We just wanted to place it as 179, and I discussed
5 that earlier with Ms. Norris.

6 THE COURT: Any objection, Ms. Norris?

7 MS. NORRIS: No, Your Honor.

8 THE COURT: It will be marked and
9 admitted.

10 (STATE EXH. 170 in evidence.)

11 THE COURT: Do you all want to do it as
12 a joint exhibit or State's 179?

13 MS. SZYMCZYNSKA-SAS: It's up to the
14 Court.

15 MS. NORRIS: It's already marked as
16 State's 179. I'm happy for it to stay that way.

17 THE COURT: That's fine. It will be
18 marked and admitted State's 179 without objection.

19 MS. SZYMCZYNSKA-SAS: Your Honor, I
20 believe it's actually 170.

21 THE COURT: 170, without objection.

22 Okay. Any exception to us proceeding
23 as I suggested, from the State?

24 MS. SZYMCZYNSKA-SAS: None from the
25 State, Your Honor.

1 THE COURT: From the defense?

2 MS. NORRIS: No, Your Honor.

3 THE COURT: Okay. Please bring in the
4 jury.

5 (Jury in, 3:11 p.m.)

6 THE COURT: You may be seated.

7 Mr. Foreman, ladies and gentlemen, both the State
8 and the defense have rested their cases. The next
9 part of the proceeding would be closing arguments
10 and the Court's instructions.

11 I still have some matters of law I need
12 to take up with counsel that would take us the
13 remainder of the day, so we will begin in the
14 morning with closing arguments and instruction at
15 9:00.

16 During this break, please do not
17 discuss the case among yourselves or with anyone
18 else. Please do not read, watch, or listen to any
19 media accounts about this case. That includes
20 anything on the news, radio, television, or
21 Internet, and don't do any independent research of
22 any type on the Internet.

23 I know it might seem simple to discuss
24 what you've heard, but to do that requires you to
25 draw conclusions and to process the information

1 that you've heard. And that, by its very nature,
2 is deliberations and you are confined to do that
3 among your fellow jury members. So I would ask
4 that you strictly abide by those instructions.

5 Also, please don't have any contact
6 with anyone in or about the courthouse when you
7 return. Again, we would not want an innocent
8 conversation to be misinterpreted. And please
9 don't make any comments regarding your jury service
10 on any social networking sites.

11 If you would leave your notepads in
12 your seats, we'll secure those during the evening
13 recess. I hope you all have a great evening and
14 we'll see you in the morning at 9:00.

15 (Jury out, 3:12 p.m.)

16 THE COURT: You may be seated. I will
17 give the jury a general instruction regarding their
18 responsibility and my responsibility, how they're
19 to judge witness creditability and believability.

20 I will give the general instruction on
21 expert witness testimony. I will give the general
22 instruction on direct and circumstantial evidence.
23 I will give the general instruction that the
24 charge, the arrest, and the indictment are not
25 evidence, as well as on the presumption of

1 innocence.

2 I will charge Victor versus Nebraska on
3 reasonable doubt. I will give the general
4 instruction regarding the statement made by the
5 defendant, which includes the fact that the State
6 has -- still has the burden of proof regarding that
7 statement, as well as them judging the criteria to
8 be given in statements, as well as his Miranda
9 warnings, whether those were provided.

10 I will then instruct on the elements of
11 possession of a weapon during the commission of a
12 violent crime which is 16-23-490. I will then
13 instruct on the element of murder 16-310. I,
14 however, will not charge the inferred malice
15 portion of the case law which deals with the use of
16 a deadly implement pursuant to Belcher; however, I
17 will charge the language regarding total disregard
18 for human life.

19 I will then instruct -- well, is there
20 -- does the State have any exception to the request
21 by the defense for an instruction on involuntary
22 manslaughter?

23 MS. SZYMCZYNSKA-SAS: The Court's
24 indulgence. Your Honor, I would ask that the Court
25 not to charge the involuntary. I don't think

1 they're entitled to charge it based on Harris verus
2 State where the defendant admits that he
3 intentionally fired shots in the intended victims'
4 direction.

5 I would ask that it is not appropriate
6 under the facts of the -- and the testimony that's
7 in the record, Your Honor.

8 THE COURT: He testified that he was
9 trying to defend his friend and that he was
10 lawfully defending himself. If you've proven your
11 case beyond a reasonable doubt, I cannot discern
12 any prejudice to you in instructing it. That was
13 his testimony. It's for the jury to determine
14 whether he was telling the truth or not, not me.

15 I will then instruct on elements of
16 attempted murder which is 16-329, which we all
17 know. I will exclude, of course, the Belcher
18 language regarding inferred malice, as well as any
19 reference to a specific intent to kill not being
20 required as it is an element. I will then define
21 attempt as well as intent.

22 I will then instruct on the elements of
23 self-defense. And under the facts of this case
24 what would be applicable would be the following;
25 the element that he is without fault. There has

1 been testimony regarding contemptuous language
2 which I will instruct as well as mutual combat.

3 The second element is eminent danger;
4 the right to act on appearances, words accompanied
5 by hostile acts, size and age, threats made by the
6 victim as well as intoxication.

7 The last element -- well, the final
8 element is no way to avoid the danger, and I will
9 instruct that he didn't have a duty to retreat if
10 it would have increased the risk of harm to him as
11 well as being a lawful guest.

12 I will then give a general instruction
13 regarding the degree of force continuing until the
14 threat has ended, as well as defense of others,
15 which includes the right to act on appearances,
16 words accompanied by hostile act, size and age,
17 threats by the victim, as well as intoxication, as
18 well as duty to retreat. And, again, the increased
19 risk of harm by retreating as well as being a
20 lawful guest.

21 Habitation would not be applicable in
22 this case as he was not the owner of the residence,
23 and there is no evidence that these individuals
24 were trespassing onto the property.

25 I'm also going to give an instruction

1 regarding voluntary intoxication because there has
2 been a great deal of testimony about the level of
3 intoxication of these individual and the
4 intoxication of the defendant. And him being
5 intoxicated under the law does not provide him with
6 a defense, so to speak; he's completely responsible
7 for all acts he may or may not have committed while
8 being intoxicated.

9 I will also instruct on the defense of
10 accident. And I did not eliminate the threatening
11 a police officer, and I need to print that
12 instruction. And I'm instructing exactly what the
13 statute says, the element of that offense. And
14 that's 16-310-40. Within that, those elements are
15 defining a public employee, as well as knowingly
16 and willfully.

17 I will then instruct regarding multiple
18 charges, in other words, that he is charged with
19 multiple offenses, but the State has the burden of
20 proving each offense independent of -- independent
21 of one another based solely on the facts as well as
22 the law regarding each indictment, and that he may
23 be acquitted or convicted on any or all of each,
24 and that they will have to write a separate verdict
25 for each indictment.

1 I will then instruct on the unanimity
2 of the verdict, as well as the form of the verdict.

3 The defense has submitted several
4 instructions. I've had those marked as court's
5 exhibits. And those proposed charges are as to
6 murder, I'm going to give my general instruction on
7 murder as well as self-defense, as well as defense
8 of others, as well as accident and involuntary
9 manslaughter, as well as attempted murder, and
10 possession of a weapon during the commission
11 violent crime.

12 They have submitted an instruction
13 regarding threatening the life of a public
14 official. I will not be utilizing that instruction
15 as it is not accurate nor is it applicable in South
16 Carolina. The case cited in support of that
17 proposition is a case out of the Western District
18 of Virginia. It is out of the district court.

19 It was reviewed by the Fourth Circuit
20 which in and of itself does not make it
21 inapplicable, but it is not an interpretation of
22 our statute. And I really don't need to look out
23 of South Carolina for direction because the statute
24 is clear and unambiguous.

25 The district court case that is relied

1 on, the individual was convicted of three counts of
2 transmitting a threat in interstate commerce with
3 the intent to extort and one count of transmitting
4 a threat in interstate commerce.

5 The element of that statute and the
6 South Carolina -- the federal statute which this is
7 premised upon, which is 18 USC, Section 875, is
8 basically an extortion statute where someone is
9 extorting someone by threats either by e-mail or
10 otherwise.

11 It does not contain the same elements
12 as the South Carolina statute. It's not
13 interpreting the South Carolina statute, nor -- or
14 is it identical or similar in verbiage to the South
15 Carolina statute, and our statute does not have an
16 element specifically of true threat as is cited in
17 the proposed charge.

18 It is not an element of our statute.
19 It is not an element of proof, and for me to
20 instruct it I think would be error as it introduces
21 a factual posture and an element to our statute
22 that is not required.

23 And as I've already indicated, the
24 charge as proposed imposes an element that is not
25 dictated or required by the plain and ordinary

1 unambiguous language of the South Carolina statute.
2 And I will instruct our statute exactly as it is
3 written as it is clear and unambiguous, and it will
4 read as follows:

5 The defendant is charged with
6 threatening the life, person, or family of a public
7 official. In order to prove this crime the state
8 must prove beyond a reasonable doubt that the
9 defendant knowingly and willfully delivered or
10 conveyed to a public official -- and I'm leaving
11 out the rest of it, teacher, principal, the rest of
12 that because it's not applicable factually. I'm
13 leaving out the language regarding letter, paper,
14 or writing because it is inapplicable.

15 Picking up where I left off: Conveyed
16 to a public official verbal communication which
17 contains a threat to take the life of or to inflict
18 bodily harm upon the public official. And I'm
19 leaving out the rest of the verbiage because,
20 again, it refers to teacher, principal, or members
21 of his immediate family.

22 And picking back up with: The public
23 official, if the threat is directly related to the
24 public official's responsibilities. Leaving out
25 the verbiage regarding teacher or principle because

1 it is not factually applicable.

2 I will then define public official
3 which is defined as section E of the statute.
4 Public official means an elected or appointed
5 official of the United States or of this state or
6 of any -- a county, municipality or other political
7 subdivision of this state.

8 And public employee means a person
9 employed by the state, county, municipality, and
10 I'm leaving out school district because it's not
11 applicable -- political subdivision of the State.
12 And then I'm leaving out the rest of it because it
13 deals with teachers. I don't feel the need to
14 define immediate family because the immediate
15 family was not threatened.

16 And knowingly means with knowledge,
17 consciously, not accidentally; willfully means
18 intending the result which actually occurred not
19 accidentally or involuntarily; intent may be shown
20 by acts and conduct of the defendant and other
21 circumstances from which you may naturally and
22 reasonably infer intent.

23 Then I'm going to add the language that
24 that is simply a factor or circumstance for you to
25 give the weight, value, and effect you decide it

1 should receive. The rest of the statute is
2 inapplicable because it deals with -- I think
3 that's the -- I cut and pasted -- the part that I'm
4 leaving out deals with penalty. That is not
5 applicable. And, again, I've had your requests
6 marked as court's exhibits.

7 Is there any exception to the charge as
8 proposed? From the State?

9 MS. SZYMCZYNSKA-SAS: Your Honor, the
10 State would request the additional charge of
11 transferred intent. We believe, based on the
12 testimony that is in the record, the jury could
13 chose to believe this self-defense or not. And if
14 they don't, then the State would argue that the
15 defendant maliciously also killed Lance Kenyon, and
16 if he didn't maliciously kill him, but he intended
17 to kill the other two and it was just by --
18 basically by accident that we would be entitled to
19 the transferred intent charge.

20 THE COURT: Any exception from the
21 defense?

22 MR. FARBER: Yes, Your Honor. I don't
23 think there is a factual predicate for that.

24 THE COURT: I think I'm going to
25 instruct it. It says: If the defendant with

1 malice aforethought attempts to kill another
2 person, but by mistake injures or kills a different
3 person, the defendant still has the intent to kill.
4 The intent to kill is merely transferred from the
5 original person to -- the defendant attempted to
6 kill to the actual person killed or injured.

7 Actually, I need to look at that. I'm
8 looking at the -- I will have to look it up, but if
9 it's factually applicable, I'm going to instruct
10 it. But I need to look at that.

11 Yeah, I think probably under these
12 circumstances it would be applicable and it's just
13 -- you all are going to argument that it was an
14 accident. They're going to argue that he was
15 shooting to kill somebody else, he was not acting
16 in self-defense and he transferred the intent from
17 killing Mr. Harrison and Mr. Gressette and killed
18 Mr. Kenyon. It's a factual dispute. The jury can
19 resolve it.

20 Anything further from the State
21 regarding the proposed charge?

22 MS. SZYMCZYNSKA-SAS: Nothing else from
23 the State, Your Honor.

24 THE COURT: Any exceptions from the
25 State?

1 MS. SZYMCZYNSKA-SAS: No, Your Honor,
2 I'm sorry.

3 THE COURT: Any exceptions to the
4 charge as proposed, from the defense?

5 MR. FARBER: Well, a couple of things,
6 Your Honor. I mean, as you noted, we submitted
7 proposed charges. So to the extent that Your Honor
8 has rejected what we proposed, we maintain our
9 requests and take exception to that extent.

10 THE COURT: I've had them marked as
11 Court's exhibits. My charges are an accurate
12 statement of the law. I find that when lawyers
13 write charges they tend to include dicta and other
14 elements. I like to keep things simple and to the
15 point and exactly what the case law and the statute
16 say. Not to say that yours do that, but mine are
17 tried and tested and true, and so I stick as to
18 what is most simple.

19 I've had them marked though, with the
20 exception, of course, of the one regarding the
21 statute and including the element. I stand by
22 those findings.

23 MR. FARBER: And then, Your Honor, I'm
24 not sure if I heard correctly so I'd just like to
25 clarify. Did Your Honor say that you were not

1 going to charge an inference of malice on the
2 attempted murder charge?

3 THE COURT: I'm not going to charge --
4 in South Carolina, there are two types of ways
5 inferred malice can be shown. It can be shown by a
6 total disregard for human life or it can be shown
7 by the implement that is used. State versus
8 Belcher says you cannot charge the implement
9 portion of that when someone alleges self-defense
10 or a defense that mitigates their responsibility.

11 Usually, you would instruct a
12 transferred of intent can be shown by the fact you
13 used a deadly weapon, and that's enough for you to
14 imply that you meant to kill somebody. That
15 portion of it I'm taking out, but the total
16 disregard for human life will be left in because
17 that's appropriate.

18 MR. FARBER: Right. Now I understand,
19 and I heard Your Honor say that's about the murder
20 charge, I just want to make sure.

21 THE COURT: I'm doing it for both.

22 MR. FARBER: Thank you.

23 THE COURT: Anything further from the
24 defense?

25 MR. FARBER: No, Your Honor.

1 THE COURT: Okay. You all give me a
2 moment to print the verdict forms and I'll let you
3 look at them. Give us just a couple seconds.

4 And, also, when I say I'm not going to
5 instruct what you submitted, it doesn't mean that
6 it didn't include the element. It just means that
7 I'm going to do it the way I -- does that make
8 sense?

9 MR. FARBER: I understand.

10 THE COURT: It means probably what
11 you've asked is already in my instructions.

12 MR. FARBER: I understand.

13 THE COURT: Yeah. And how long, Ms.
14 Sas, do you anticipate your both opening and
15 closing will be?

16 MS. SZYMCZYNSKA-SAS: The Court's
17 indulgence.

18 THE COURT: Yes, ma'am.

19 MS. SZYMCZYNSKA-SAS: Probably
20 45 minutes to an hour.

21 THE COURT: For both or one?

22 MS. SZYMCZYNSKA-SAS: For one.

23 THE COURT: Well, you're required to
24 open.

25 MS. SZYMCZYNSKA-SAS: Well, yes, Your

1 Honor, for the open. I think for the reply, maybe
2 20 minutes, depending, but I would say up to a half
3 an hour.

4 THE COURT: About an hour and 20
5 minutes, an hour and 30 minutes for both?

6 MS. SZYMCZYNSKA-SAS: Yes.

7 THE COURT: And how long does the
8 defense anticipate their closing argument will be?

9 MS. NORRIS: Forty-five minutes to an
10 hour. And just so it's clear, we do object to
11 anything in rebuttal that is not true rebuttal.

12 THE COURT: Well, you'll have to make a
13 contemporaneous objection. As much as I would like
14 to be clairvoyant, I don't know what Ms. Sas is
15 going to say. I'm dating myself with Johnny
16 Carson, but remember he used to be the Great
17 Carmack?

18 MS. NORRIS: I understand.

19 THE COURT: Am I the only person that
20 remembers that?

21 MS. NORRIS: I'm sorry, I'm aware that
22 I need to do it contemporaneously, but I'm saying
23 now I object, and I'm going to do it again.

24 THE COURT: Well, you should object. I
25 told the jury it's a healthy part of the process.

1 I'm just the umpire. If you want to approach and
2 look at the verdict forms.

3 Any exceptions to the forms of the
4 verdict? From the State?

5 MS. SZYMCZYNSKA-SAS: None from the
6 State, Your Honor.

7 THE COURT: From the defense?

8 MR. FARBER: No, Your Honor.

9 MS. NORRIS: No, Your Honor.

10 THE COURT: All right. Is there
11 anything else we need to take up other than you all
12 going through the evidence with the Court Reporter
13 before we adjourn? From the State?

14 MS. SZYMCZYNSKA-SAS: Nothing from the
15 State, Your Honor.

16 THE COURT: From the defense?

17 MS. NORRIS: No, Your Honor.

18 THE COURT: All right. Guys, you all
19 can take a break and then get with Ms. Denise
20 because there's a lot of evidence. Make sure that
21 everything is where it's supposed to be so that
22 when we start in the morning we can do so without
23 delay. Have a good evening.

24 (These proceedings were recessed at
25 3:53 p.m., to be continued 3/29/2019 at 9:30 a.m.)

1 (The following proceedings were had
2 March 29, 2019, State v. Nolen, 9:20 a.m.)

3 THE COURT: State ready to proceed?

4 MS. SZYMCZYNSKA-SAS: Yes.

5 THE COURT: Defendant ready to proceed?

6 MS. NORRIS: Yes, Your Honor.

7 THE COURT: Okay. Please bring in the
8 jury.

9 (Jury in, 9:09 a.m.)

10 THE COURT: You may be seated.

11 Ladies and gentlemen, I hope you had a
12 pleasant and restful evening. As I indicated on
13 yesterday, both the State and the defense have
14 rested their cases. We have now reached the stage
15 of the trial where we will have closing argument and
16 instruction.

17 You will hear from the State, followed
18 by the defense, and then you will hear rebuttal
19 argument from the State. Under our rules of
20 procedure, the party with the burden of proof gets
21 the last say so to speak.

22 So I would ask that you give counsel
23 your undivided attention. We will take breaks as
24 necessary. The State may proceed.

25 MS. SZYMCZYNSKA-SAS: Thank you, Your

CLOSING ARGUMENT BY MS. SAS

1 Honor.

2 THE COURT: You're welcome.

3 MS. SZYMCZYNSKA-SAS: I am the fucking
4 suspect. They were messing with me. I was tired
5 of it, and I shot all of them motherfuckers.

6 That's what this defendant said on
7 October 7, 2016, and that's why we are here today.
8 He said that because he brutally murdered Harry
9 Gressette, James Harrison and Lance Kenyon.

10 And then to make sure that there were
11 no surviving witnesses on the scene, he tried to
12 shoot Fred Mazyck. And if that wasn't enough, when
13 he got to the jail and he didn't get his way,
14 because they didn't want to let him out of the car,
15 he was going to show them. He said, how about
16 that? I'm going to shoot you in the fucking head.

17 What happened that day is very plain
18 and simple. Lance Kenyon allowed the defendant to
19 stay at his house out of the generosity of his
20 heart.

21 The defendant had marital problems; he
22 came to stay with Lance. The day the hurricane was
23 coming, you heard testimony he was taking some
24 medications, he was drinking. He was drinking a
25 lot; Crown, vodka shots, chasing it with beer.

CLOSING ARGUMENT BY MS. SAS

1 He was getting along with everyone and
2 then James and Harry arrived. And they were a
3 group of friends who hung out before -- Lance,
4 Harry and James. They had known each other for
5 years. Their families knew each other. They were
6 just a group of guys picking at each other, knowing
7 how everybody would respond, but what was different
8 is this defendant. The outsider.

9 He was drunk; he was mad; he was not in
10 a good point in his life. He was tired of them
11 picking on him. At some point Lance calls him a
12 pussy. There's that tweaker motherfucker that he
13 did not like. He tells you Fred was on the couch
14 watching TV.

15 At some point, he gets upset; he's had
16 enough. He was going to show them. He was going
17 to teach them a lesson. You don't talk to him like
18 that. He went and got that rifle, that .22, and he
19 put that clip in.

20 That clip (indicating) that put those
21 22 bullets into the bodies of Harry Gressette,
22 James Harrison and Lance Kenyon. That clip that he
23 told you he loaded. He had to take time to load
24 it, put it in that gun, and he went out there and
25 he shot every single one of them.

CLOSING ARGUMENT BY MS. SAS

1 And then when he realized that Fred was
2 inside, he couldn't let Fred get away. He shot at
3 Fred. He missed. Fred told you on that stand, by
4 God, I don't know how I was able to get away, but
5 he did.

6 He was able to wait until the defendant
7 was distracted enough to run through that door,
8 hide in the woods with no shoes on, and run all the
9 way through the woods to Tiki's house and call 911.
10 And that would have taken some time.

11 What was the defendant doing while Fred
12 was running through the woods for his life? Do you
13 know what he was doing? He was covering up his
14 mess. And he had to figure out what he had to do
15 because the cops, yeah, they were coming. Fred, he
16 was going to call the cops because he was able to
17 get way.

18 So what does he do? He pretends that
19 then he's going to do CPR so when the cops arrive,
20 they find him saving Lance's life. Because, you
21 know, he cared for Lance so much that he shot him
22 12 times. He shot him by accident because he
23 couldn't see.

24 It was so dark out there, he just
25 couldn't see. It was dark out there by the

CLOSING ARGUMENT BY MS. SAS

1 air-conditioner unit when you see Lance's blood and
2 underneath that porch where Lance was bleeding to
3 death.

4 And when the cops arrived, he had no
5 choice but to say he was the suspect. And they
6 kept asking. He had to come up with a story. And
7 in that car, if you pay really close attention to
8 his recording, he tells you how he hopes that Lance
9 is alive.

10 But he slips, and he also says, I don't
11 give a fuck about Lance. Pay close attention to
12 that recording.

13 Then, the next day he gets interviewed
14 by police. And he hadn't had a chance to really
15 come up with a good story yet because he doesn't
16 really know what the cops know yet. He doesn't
17 know every single little piece of evidence.

18 So he gives them just enough. He gives
19 them everything that happened that day, which was
20 also what you heard from Fred. He corroborates his
21 testimony.

22 They were drinking, shooting guns, they
23 went out to the grocery store, they got some
24 drinks, but it's when they get to the important
25 details he didn't remember anything. But now, two

CLOSING ARGUMENT BY MS. SAS

1 years, five months, and 41 days later, he remembers
2 a great number of details.

3 He remembers details that I didn't have
4 time fast enough to write down yesterday. He
5 remembers more people than the people here in this
6 courtroom today, because he had two years,
7 five months and 41 days to review every piece of
8 discovery, every statement of the witness, every
9 video, everything that he said.

10 So he had to come up with a story that
11 would fit into what happened that day to make sure
12 that you understand that he wasn't the guilty one.
13 He wasn't the guilty one except he forgot a few
14 things.

15 From the evidence on this stand and the
16 testimony, I believe we have proven to you beyond a
17 reasonable doubt that Robert Nolen is guilty of all
18 these charges, but I want to go through every
19 single one of the elements and show you how we did
20 that.

21 Murder; the three counts of murder.
22 Harry Gressette, James Harrison, Lance Kenyon; we
23 have to prove that they were killed. We know they
24 were killed. We know they are dead; Dr. Presnell
25 testified. She testified to the cause of death.

CLOSING ARGUMENT BY MS. SAS

1 It was the gunshot wound to each of these
2 individuals.

3 And malice, I want to talk to you about
4 malice in just a minute.

5 Attempted murder. The attempted murder
6 charge is for Fred Mazyck. It's not murder because
7 Fred wasn't shot, and he didn't have to be shot for
8 the defendant to be charged with attempted murder.

9 All we have to prove to you is that he
10 attempted to kill Fred and he had malice and
11 intent, and the malice and intent are tied
12 together. And I will discuss that in just a
13 moment.

14 Malice: For both of these charges we
15 have to prove to you beyond a reasonable doubt that
16 there was malice. Now, there is two types of
17 malice; express and implied. So express malice is
18 just the words that someone uses that they intend
19 to do something or that maybe prepared beforehand
20 to do a certain act, lying or waiting on any other
21 act of preparation that showed deeds were in the
22 defendant's mind; or implied malice which could be
23 inferred from a conduct that showed a total
24 disregard for human life.

25 But the most important thing about

CLOSING ARGUMENT BY MS. SAS

1 malice is that it does not require that it exists
2 in any particular time before the act is committed.
3 It just has to exist just before and during. And
4 there is plenty of malice in this case for the
5 three murders.

6 Well, he tells Fred, I killed them all.
7 I'm tired of them messing with me. I'm not sure of
8 what else is malice if someone's telling you they
9 killed them because they were messing with them.
10 That sure sounds like a reason why someone should
11 be shot one time, nine times, or twelve times.

12 Now you heard the testimony of Fred.
13 That's your evidence. It's going to be up to you
14 to judge the credibility of the witnesses on the
15 stand. And we will go over what Fred's testimony
16 was and why this defendant's testimony was not
17 credible and Fred's was.

18 Now, for the implied malice, those are
19 things that I will ask you to look at of why it was
20 a total disregard to human life. You heard
21 testimony from multiple people that the victims
22 were shot 22 times. That's not once, not twice,
23 not three times, not four, not five, not six, not
24 seven -- I could go on until 22 times.

25 The defendant admitted on the stand

CLOSING ARGUMENT BY MS. SAS

1 that he shot all these individuals 22 times. That
2 he shot Harry in the back once; that he shot with
3 that .22 James nine times, seven of them to the
4 back of his body; and Lance, 12 times. Not just 12
5 times in general; nine to the back of the body and
6 one to the head.

7 You heard Dr. Presnell's testimony.
8 Maybe he could have walked a little, but that shot
9 in the head, he probably wouldn't go very far. You
10 will see and you've heard the testimony and you saw
11 the photographs of where the blood was located on
12 the back porch. Saw the blood on the back of the
13 unit on the left side. You saw all the blood
14 underneath the porch.

15 Lance didn't just run underneath the
16 porch. He was trying to get away. He was hiding
17 behind the AC unit. You saw a cartridge right
18 before the AC unit. When he got hit again, he
19 tried to run underneath that porch. If shooting
20 someone in the back and saying that you killed them
21 for no good reason is not malice, not sure what is.

22 Well, attempted murder we also have to
23 prove malice, and we did so through Fred's
24 testimony as well as the physical evidence on the
25 scene. He shot at Fred multiple times. Fred told

CLOSING ARGUMENT BY MS. SAS

1 you that, but the defendant also told you that he
2 shot in that living room.

3 Well, he had to tell you that because
4 the physical evidence shows you that there is two
5 bullet holes in that wall and two cartridges on the
6 floor. So how are you going to reconcile that with
7 his self-defense? He had to come up with a story.
8 And is his story really credible?

9 Fred told you that he was running away
10 while the defendant was shooting at him, and he was
11 able to get away and not get shot. There's
12 physical evidence that shows you that as well; the
13 cartridges outside of the house.

14 There is also better evidence. It's
15 this defendant telling you that he went outside and
16 he just shot that .22 just as a warning sign to
17 some people that he maybe heard and he knew someone
18 was out there. That's very credible.

19 Of course he had to come up with some
20 kind of story because you can't take those two
21 cartridges away that are in those photographs that
22 Berkeley County collected and placed into evidence
23 and then SLED tested. You can't take that away, so
24 you have to come up with a story. But is the story
25 credible?

CLOSING ARGUMENT BY MS. SAS

1 The threatening life of a public
2 official charge. These are the elements that we
3 are required to prove. No others. Knowing and
4 willfully. No one made him say it. The fact that
5 he was drunk, and he made himself drunk, does not
6 matter. That's voluntary intoxication and that is
7 not a defense, and the judge will charge you later
8 on that law.

9 There is one important thing that he
10 also said right before he tells Officer McClellan
11 that he's going to shoot him in the head. He's
12 thinking about it. How about that? If you don't
13 remember that from the recording, you will be able
14 to re-listen to it.

15 He has to deliver or convey it -- which
16 he did. We have a recording of that, and he told
17 you that he did it on this very stand. It's
18 evidence -- to a public official. Officer
19 McClellan testified that he was at that time with
20 the Berkeley County Sheriff's Office.

21 And a public official means any elected
22 or appointed official of the United States, and a
23 police officer is a public official within the
24 meaning of the statute.

25 The other language on the statute

CLOSING ARGUMENT BY MS. SAS

1 covers all the ways you can communicate a threat.
2 In this case, we only have to prove one, and it was
3 verbally. You heard that on the recording; you
4 heard the defendant say it; you heard Officer
5 McClellan say it.

6 And the threat, well, it has to contain
7 something that basically takes the life of that
8 officer or inflicts a harm upon that officer. I'm
9 going to shoot you in the fucking head. Well,
10 definitely a threat of inflicting harm, but I would
11 say possibly taking a life.

12 Possession of a weapon during the
13 commission of a violent crime. We are required to
14 prove to you, and we have proven to you, that the
15 person's possession of a firearm are visibly
16 displayed what appears to be a firearm during the
17 commission of a violent crime, and they have to be
18 convicted of that crime. Then they have to be
19 guilty of it.

20 If you find him guilty this week of any
21 of the murders or the attempted murder, then he
22 already admitted to you on the stand that he had a
23 gun, you have to convict him of possession of a
24 weapon during the commission of a violent crime.

25 We have to prove these elements to you

CLOSING ARGUMENT BY MS. SAS

1 beyond a reasonable doubt. But what is reasonable
2 doubt? The doubt that would cause you to hesitate.
3 Not all beyond doubt -- beyond all doubt, not
4 absolute certainty you.

5 You have to sit here firmly convinced
6 that Robby Nolen killed all of these individuals
7 and tried to kill Fred and he threatened the
8 officer.

9 Let's talk about Fred. Fred told you
10 he was sitting down on the couch watching TV,
11 watching a movie that he wanted to finish watching.
12 And you know how we know that's true? Because Fred
13 said it. The defendant told you that.

14 Fred didn't want to go out. He just
15 wanted to finish watching his movie and fell
16 asleep. That recliner that he moved sideways and
17 the blanket on the recliner, Lance moved it for him
18 so he could see the TV. That's the kind of friend
19 that Lance was.

20 We have already covered the cartridge
21 casings and the bullet holes. It's all consistent
22 with Fred's testimony of what happened. On those
23 photographs you see the chair that Fred was sitting
24 in, and the bullet holes are maybe this far away
25 from it. (Indicating) But, you know, the rifle

CLOSING ARGUMENT BY MS. SAS

1 just went off accidentally when he was pinning Fred
2 to the wall. Okay.

3 But early in the trial, the defendant
4 tried to tell you that the rifle was shot not
5 accidentally but to get Fred's attention to call 911.
6 I'm not really sure which one of the versions is
7 correct.

8 Fred told you that the defendant aimed
9 the .22 at him. The defendant admitted to being in
10 the living room with Fred because he had no choice.
11 But Fred had a choice. He could have stayed or he
12 could have tried to run for his life, and that's
13 the choice he made that day.

14 Because the choice was, a man just told
15 me that he killed all these people in that
16 backyard, I'm going to try to get away; otherwise,
17 I'm going to be the fourth. Fred was able to get
18 away. The defendant admits it that Fred is running
19 out, Fred said so, you heard testimony from the 911
20 dispatch.

21 You heard the 911 recording of Fred.
22 He tells you how he was able to get away. His
23 story doesn't change. Shirley told you Fred ran
24 into her house with no shoes on. He just ran this
25 entire distance (indicating) from 228 Macio to [REDACTED]

CLOSING ARGUMENT BY MS. SAS

1 [REDACTED] Road through the woods.

2 You heard Officer McClellan on the
3 stand when he said those woods were so thick, he
4 had to really get tired. His K9 dog was tired.
5 Fred had to make it all the way there after hiding
6 up front -- remember, Fred told you when he ran out
7 of the house, he hid right here (indicating) until
8 he was sure that he could make that run and bolt
9 for the woods when the defendant went in the house.

10 I wonder what he went into the house
11 for. Surely, not to call 911. Do you know how I
12 know that? Because of the testimony on that stand.
13 Because Fred calls 911 a minute after the defendant
14 called 911, but yet Fred had to run through all
15 these woods and all this distance to get to
16 Shirley's house. So Shirley's lying, 911 is lying,
17 or the defendant is lying.

18 As I told you before, he gave three
19 different versions of this event. And he gave
20 three different versions of events because what he
21 thought at that appropriate time was what someone
22 is going to believe.

23 The version that he gave you yesterday,
24 well, it's the version that he's trying to fit in
25 every piece of evidence that we have shown you that

CLOSING ARGUMENT BY MS. SAS

1 shows that he brutally murdered three people,
2 including someone that he said was his best friend.

3 And then he tried to kill an innocent
4 person that didn't do anything to him and
5 threatened an officer at the jail because he didn't
6 open the door when he told him to do it.

7 Let's talk about some of those details
8 because I think they are very important, and that's
9 why they show that he's not credible. He tells
10 them -- the cops that I'm the fucking suspect that
11 day, but 14 hours later, he doesn't remember
12 shooting anyone. He doesn't remember any of it.
13 How convenient.

14 When he testified yesterday, oh, no.
15 His story? He's the hero. He is the hero who ran
16 in the house and found the phone and called 911 and
17 tried to save Lance's life when the cops arrived.
18 That's the image that he's trying to portray to you
19 on that very stand. That's the only image that
20 buys into the self-defense.

21 He wants you to believe that he pulled
22 Lance from underneath the porch and he was talking
23 to Lance, and then he went inside to call 911 --
24 well, first, he said he went to get the truck, to
25 move the truck around to get Lance's body to maybe

CLOSING ARGUMENT BY MS. SAS

1 transport him, I guess, to the hospital. Okay.

2 Why doesn't he do that in the first
3 place? You know why he does that? Because he has
4 to account for the photograph of the car with the
5 lights on that was moved from its original
6 location. Because he now knows that Fred saw that
7 truck being moved.

8 That truck wasn't there before. Fred
9 told you that. That truck was parked in a
10 different location. The cops told you that when
11 they arrived, the lights were on. He had to
12 account for it. And that was his reasonable
13 version.

14 And then we wants you to believe, which
15 is the most ridiculous of all the things that he
16 wants you to believe, that he didn't give Lance CPR
17 and didn't call 911 because he had to change his
18 clothes. So he cared for this man, this best
19 friend of his so, so much that he let him lay there
20 on the ground shot 12 times, bleeding to death.

21 You saw all the blood in the
22 photographs. This was not a little spot. There
23 was blood everywhere. But he wants you to believe
24 that it was more important for him to change his
25 clothes and to talk to Fred inside and to move the

CLOSING ARGUMENT BY MS. SAS

1 truck than to call the 911 and give Lance CPR.

2 The only reason he gives Fred (sic) CPR
3 is because he knows those cops are coming. That's
4 the only reason.

5 But he has the audacity to get on this
6 stand and tell you that maybe Lance would have been
7 alive if the cops did the CPR. Maybe Lance would
8 have been alive if he didn't shoot him 12 times.
9 Maybe Lance would have been alive if he didn't
10 shoot him mostly in the back and in his head.

11 He tells the officers on the scene that
12 there's five people; him, Harry, James, Lance and
13 Fred. Now he's drunk, but he remembers that
14 there's five people. He numbers them out. He even
15 corrects himself. He corrects the officers when
16 they ask him. Listen to that recording.

17 Now the next day, 14 hours later, he
18 sticks with that version, five people. He tells
19 the officers that over and over. But what did he
20 do here yesterday? Now there's some mystery
21 people. He hears something in the wood line. He
22 hears someone in the shed. And when he goes
23 inside, he sees someone outside. And maybe it's
24 Fred. And he shoots the rifle out there in the
25 front yard in case there are people out there. Is

CLOSING ARGUMENT BY MS. SAS

1 that really reasonable?

2 I shot all of them motherfuckers. All
3 of them, and I don't give a fuck about Lance. I
4 told you to pay attention to that statement because
5 he slips, and he realizes on that recording he
6 slips. And he corrects himself, but he is very
7 clear in the way he says it. I don't give a fuck
8 about Lance. Because he didn't.

9 Lance picked on him, but it was all in
10 good humor. That's how Lance and James and Harry
11 were. When they got together, they were just a
12 group of men messing with each other. But that day
13 he was not particularly caring for them, because
14 he's never really been around that group. He was
15 not going to let them talk to him like that.

16 Now 14 hours later, everybody was
17 having a great time. There were no arguments,
18 everybody was getting along. Yeah, Lance called
19 him a pussy. He admits that. He also said that
20 the tweaker annoys him. Pretty consistent on that.
21 He admitted it, he annoyed him. It's not a reason
22 to shoot him nine times and seven to the back.
23 That's not what self-defense is.

24 And then yesterday, the best story of
25 all, he had to kill Harry and James because Harry

CLOSING ARGUMENT BY MS. SAS

1 pointed a gun at him, and James, he was shooting
2 the 9-millimeter. His 9-millimeter. You know why
3 he had to tell that story? Because he has to have
4 a reason to really shoot them.

5 So he wants you to believe that Harry
6 was holding that giant SCAR and pointing it at him
7 and he shot him, but then that giant SCAR just
8 magically was perfectly propped in the corner of
9 that room. You saw it on the photograph.

10 Oh, wait. He wants you to actually
11 believe that while he's running around and Lance is
12 barely breathing outside and dying, his best
13 friend, he is picking up the evidence, the giant
14 gun, and perfectly propping it in the corner of
15 that room. That's what he wants you to believe.
16 Really?

17 He has to have you believe that because
18 if he doesn't, the physical evidence does not match
19 up his story. Because that gun could not be any
20 more perfectly propped in that corner. Do you know
21 why? Because Harry didn't pick up that gun. The
22 gun was just sitting there.

23 Now, he wants you to believe that James
24 also shot him with the 9-millimeter, which then
25 picked up and put in his pants or on his person.

CLOSING ARGUMENT BY MS. SAS

1 Well, of course he has to come up with some kind of
2 story. He comes up with the story about the brass,
3 because there's 9-millimeter spent and unspent
4 cartridges.

5 But you heard what he said on that
6 stand; oh, we police all the brass. Then, we don't
7 police all the brass. Oh, I found the SCAR bullet
8 in the yard and I showed it to them because we
9 couldn't -- we apparently missed it. Well, which
10 one is it? You can't have it both ways.

11 But you know what we know about all of
12 those 22 cartridges that were located in the back,
13 we know that there are 22. And he admitted on this
14 stand that he shot them 22 times. When law
15 enforcement arrives on the scene, they find the .22
16 up front. Not only do they find it up front in the
17 truck, it has a case and it has the extra
18 ammunition in it and it has a magazine in it.

19 Because that clip? Well, he ran
20 through that already. So that was left behind in
21 the house. But he conveniently didn't remember on
22 the stand how they got in there. It's because he
23 was out of ammunition; he needed more.

24 Now, the next day, Detective Elrod
25 catches him in a lie and he does not like that

CLOSING ARGUMENT BY MS. SAS

1 either. He tells Detective Elrod at first he shot
2 the .22 that day, but then he tells him he didn't.
3 So which one is it? That's because he doesn't have
4 the story straight yet, and he's not sure exactly
5 what they found and what version he's going to go
6 with.

7 Now, yesterday, oh, he shot that .22,
8 and he used that clip, and there were 25 cartridges
9 in it, and he shot them 22 times, and every one of
10 those bullets that went in, that was from that .22
11 in every single one of those bodies. Because it
12 fits a story now. Oh, now he shot the .22 because
13 he can't say he didn't.

14 When he was arrested and placed in the
15 back of the patrol car, you hear a lot about the
16 cuffs and how uncomfortable are the cuffs. He goes
17 on and on and on about that. That's the only thing
18 that he goes on and on about.

19 You see him 14 hours later in that
20 interview room. Oh, he's thirsty. He has a
21 hangover. He's thirsty. He's drinking lots of
22 water. You don't see any visible injuries on him.
23 He's not complaining of anything.

24 What did he tell you on the stand? He
25 was punched and he was kicked. He wants you to

CLOSING ARGUMENT BY MS. SAS

1 believe how fearful he was and what they did to him
2 and they were so bad.

3 He was drinking Crown shots, vodka,
4 beer, split from his wife, moved in with Lance,
5 taking Xanax. And then he says something really
6 interesting in the car; I'm not this unhappy with
7 anybody. But maybe he was.

8 He was not going to let them put him
9 down. He had enough going on. And then the next
10 day, well, there is no explanation for what
11 happened. Those are his words.

12 But yesterday, oh, wow, there is an
13 explanation. Do you know why there's an
14 explanation now? Because he had two years,
15 five months, 41 days to come up with one. Because
16 he had time to review every single photograph and
17 see how he can fit that story, that robbery and
18 some drug transaction story that he had, two in
19 one.

20 This robbery story that someone comes
21 into the house and steals the purple crystal
22 marijuana, a pound of it. Now, he's not a bad guy,
23 but he knows there was a pound of it that was
24 stored in the oven and then it was placed in the
25 fridge. Okay. No one will look in the fridge.

CLOSING ARGUMENT BY MS. SAS

1 Definitely Fred won't look in the fridge. He'll
2 look in the oven before he'll look in the fridge.

3 Does that make any sense to you? , Do
4 you know why he goes in the fridge? Because
5 there's a photograph of the fridge that's opened.
6 He has to fill those little details to make it work
7 for him.

8 The story about the drugs I will let
9 you figure out for yourself. All of a sudden,
10 there is a bag of crystal meth that Harry and James
11 bring over, and they accuse him and Fred of
12 stealing it and they are trying to shoot Lance. Is
13 that even credible in any way?

14 He didn't want Lance to get in trouble.
15 That's why he didn't tell the cops. That's what he
16 told you on that stand. He didn't tell the cops
17 because he didn't want Lance to be in trouble. He
18 cared.

19 Oh, he cared about Lance a lot. He
20 left him lying bleeding after he shot him 12 times
21 to go change his clothes because he peed on
22 himself.

23 What an interesting thing about the
24 peeing on his clothes. On October 7th when he's
25 talking to Detective Elrod in that interview room,

CLOSING ARGUMENT BY MS. SAS

1 he says that he peed on himself and changed his
2 clothes because he went outside and peed and it got
3 on his clothes he was so drunk.

4 And then he concocted this new version
5 of why he peed on himself and had to change his
6 clothes. None of that makes sense. It only makes
7 sense because he tried to hide evidence.

8 And he tells on the recording in the
9 car that James was a tweaker motherfucker, Lance
10 was a drug addict, but then the next day, oh, yeah,
11 Harry. Harry was going to give him a job and Lance
12 let him stay at the house, best friend.

13 And he also told you something very
14 interesting. He said that James and Harry were bad
15 at shooting guns, but then he says on this very
16 stand to you that he helped the tweaker that was
17 acting weird to shoot the SCAR. Why would you do
18 that? It makes no sense. Do you know why?
19 Because it's a lie. It's a lie that he had to come
20 up with.

21 Now, I anticipate that they are going
22 to argue that this was self-defense based on his
23 testimony. In order for it to be self-defense all
24 four elements need to be established. Not one, not
25 two, not three; all four.

CLOSING ARGUMENT BY MS. SAS

1 He must not be at fault in bringing on
2 the difficulty. He must have actually believed in
3 imminent danger of losing his life or serious
4 bodily injury, or was in actual imminent danger of
5 losing life or serious bodily harm. He had to
6 believe this or it was actually going to happen.

7 If based on the belief of imminent
8 danger of losing life or serious bodily injury, a
9 reasonably prudent man of ordinary firmness and
10 courage would have to have the same belief.

11 If based on the actual imminent danger,
12 the circumstances are such that would warrant a
13 reasonably prudent man of ordinary firmness and
14 courage to strike a fatal blow to save himself from
15 death or serious bodily injury, and the defendant
16 had no other probable means of avoiding danger of
17 losing his own life.

18 We just have to disprove one of those.
19 I believe we have disproved all of them. If you
20 believe the ridiculous version of the events from
21 this stand of the defendant, then you believe the
22 self-defense. If you believe all the other
23 evidence on the scene -- Fred, Shirley, all the
24 officers, the pathologist and, frankly, some of the
25 testimony of the defendant, the ones he knows he

CLOSING ARGUMENT BY MS. SAS

1 can't get around; the fact that he shot them 22
2 times; the fact that they were running away; the
3 fact that he shot in the living room where Fred was
4 seated; the fact that he was shooting while Fred
5 just ran out the door -- these are three murders.

6 These are not self-defense, and there
7 are three murders for these reasons. There's
8 malice. They are shot in the back. Harry has one
9 gunshot wound which would have dropped him right
10 there. The gun is perfectly propped on the tripod.
11 James was shot nine times, seven to the back.
12 That's malice. Dr. Presnell tells you so;
13 Defendant tells you so.

14 I can't stress that enough. There is
15 so much malice. James is running away. You heard
16 testimony about the blood that was located on the
17 steps coming from outside of the porch, and then
18 James's body is located past that blood because
19 James is running away. And SLED tested that blood
20 and they told you that was James's blood. He's not
21 running towards the defendant. He's running away.
22 He's trying to save his life.

23 And Lance, the best friend that he
24 cared for so much, he shot 12 times. Nine to the
25 back. He is running away and he's shot in the

CLOSING ARGUMENT BY MS. SAS

1 back. He admits it on the stand. No question
2 about that. Lance is hiding behind the unit; he's
3 hiding behind the steps. There is no gun on Lance.
4 There is no gun around him.

5 Some of the additional evidence is the
6 GSR kit. But you heard the defendant admit he shot
7 them. You heard all the testimony from the
8 officers about the .22s located, but you don't need
9 that. He admitted that, that he shot them out of
10 the .22. He used that clip.

11 You also heard from his own words, he
12 was highly annoyed and aggravated by James
13 Harrison. He was a tweaker motherfucker. Lance
14 called him names. He was not annoyed by that.
15 That's what they did. But then he tells you
16 something on the stand. He uses the word, he
17 argued with Lance. Then he tries to backtrack a
18 little bit, he realizes what he said, but he did
19 tell you that he argued with Lance that night.

20 What I anticipate is they are going to
21 argue to you that the murder of Lance Kenyon was
22 involuntary manslaughter. Now, for it to be
23 involuntary manslaughter, two elements need to be
24 met. It has to be unlawful killing of another
25 without malice; so there's no malice or lawful act

CLOSING ARGUMENT BY MS. SAS

1 done with reckless disregard.

2 So I asked that you don't consider this
3 at all, but really the only time that you would
4 consider that if you find that James and Harry were
5 killed in self-defense. Then you can even think
6 about it, but I'm going to tell you in just a
7 second why you shouldn't. But that's the only way.

8 If you believe James and Harry were
9 killed and it was murder, it was not self-defense,
10 that Lance's killing was also murder because of
11 transferred intent. So you can only consider that
12 if you believe that Harry and James were killed in
13 self-defense. And that's just not reasonable.

14 (Playing video)

15 MS. SZYMCZYNSKA-SAS: This murder is
16 also -- this is also a murder and not an accident,
17 because for accidents it has to be unintentional.
18 He has to be acting lawfully and it was not a
19 result of negligence. So, again, if you believe
20 that he murdered Harry and James, and it wasn't
21 self-defense, that this wasn't an accident, this
22 was transferred intent.

23 If he intended to kill James and Harry,
24 he said he was shooting at them to kill them, and
25 the evidence shows that he was shooting to kill

CLOSING ARGUMENT BY MS. SAS

1 them, then if he shot Lance, it's murder because of
2 transferred intent. The killing is just merely
3 transferred from one person to another.

4 I want to go over the scene again and
5 the graph that Corporal McGowan prepared. These
6 are the locations of the bodies; Harry inside the
7 porch, James right outside, and Lance.

8 (Indicating)

9 Now you saw the photographs. There's
10 distance between the bodies. James's blood showing
11 that he's running away. Lance running past James,
12 blood on this side of the unit and underneath the
13 porch and then smeared to where Lance was pulled
14 out from underneath the porch. (Indicating)

15 Now, Defendant testified that if
16 someone was shooting at Lance or someone was
17 shooting here, they would have hit the unit. Well,
18 we know they were shooting at Lance there because
19 there is blood there.

20 We saw the photographs and we saw the
21 22 cartridges located on the ground. And the
22 defendant on the stand accounted for every one of
23 those cartridges. He admitted that he shot them 22
24 times.

25 Harry Gressette, located next to the

CLOSING ARGUMENT BY MS. SAS

1 SCAR that's perfectly propped against that wall.
2 Perfectly. And he wants you to believe that he
3 moved all 205 pounds of Harry Gressette, and that's
4 why the cartridges were underneath him. No. He
5 wants to account for what happened, but the
6 cartridges fall out before Harry had a chance to
7 collapse.

8 Perfectly propped against the wall
9 because that's what a reasonable person does when
10 they're trying to call 911 and save their best
11 friend's life.

12 Now, the pointed -- the gun on the back
13 porch that's hid way behind stuff, Harry on the
14 ground looking like -- James on the ground as he's
15 running away and would remain on the scene from
16 Lance's clothing. The blood showing you that James
17 was running away and covering himself, protecting
18 himself from all of the shots that were being fired
19 at him. Look at his hands.

20 Six bullet holes in that window. Not
21 12. Six. And the cartridges that were located
22 outside, they're not just out there. They are by
23 Lance's body. He continues to run and shoot at
24 Lance, but he wants you to believe that was an
25 accident. An accident. The blood of Lance who is

CLOSING ARGUMENT BY MS. SAS

1 trying to hide underneath the porch.

2 A lot has been said about the defendant
3 being drunk. He was so drunk. That is not a
4 defense. You don't get to pour liquor into your
5 body and drink beer and take medication and say,
6 oh, well, I was drunk. Intoxication is not a
7 defense to any of the charges.

8 There is some red herrings they're
9 going to throw out. They're going to talk about
10 the 9-millimeter gun. They are asking questions
11 about Jeffrey Simmons. Jeffrey Simmons, who is
12 living way up north, is walking on the side of the
13 road who volunteered his buccal swab, volunteered
14 his hands for GSR and doesn't have to. What does
15 that have to do with anything?

16 What does the 9-millimeter have to do
17 with anything? You heard about their brassing.
18 Those are just red herrings. Those are things
19 they're going to throw out. They have nothing to
20 do with what happened to Harry Gressette, James
21 Harrison and Lance Kenyon.

22 Because you know what? The defendant
23 told you. He told you twice there were only five
24 people there. It's only yesterday that he started
25 to throw mystery people into that house.

CLOSING ARGUMENT BY MS. SAS

1 Remember what I told you about the big
2 picture earlier in the week? Don't forget about
3 the big picture. When you bring your common sense
4 and you're thinking about all the evidence, don't
5 forget about it. Don't forget how many times all
6 these individuals were shot. Don't forget he
7 admitted to shooting them. They're all dead from
8 these gunshot wounds.

9 The only living survivor tells a very
10 different version of these events. He doesn't
11 claim to know what happened outside because he
12 wasn't out there. He told you everything that
13 happened earlier that day and everything that
14 happened in that house to him and after he ran out.

15 You heard Officer McClellan. Don't
16 forget about the officer. He's important. He
17 didn't do anything to him. He was threatened to be
18 shot in the head after he just left the scene of a
19 triple homicide where people were shot in the head.

20 He's not a hero that he painted himself
21 on the stand. He drug everybody's name through the
22 mud to make himself look good. That one night and
23 that one reason. That's not good enough reason.

24 Pay attention to the credibility of the
25 witnesses, because if you believe his story, that

CLOSING ARGUMENT BY MS. NORRIS

1 means you don't believe anything else. He is
2 guilty as guilty can be.

3 Thank you.

4 THE COURT: Ms. Norris.

5 MS. NORRIS: May it please the Court.

6 THE COURT: Yes, ma'am. You may
7 proceed.

8 MS. NORRIS: Where is the proof? There
9 used to be an old commercial on TV with the little
10 old lady going through the drive-thru, and she gets
11 a hamburger and she's not satisfied and she says,
12 where's the beef. That's what I thought while this
13 young lady was arguing.

14 She wants you to believe at 48 years
15 old, all of a sudden, because he's getting picked
16 on, he just up and shoots three people dead?
17 Seriously? Their witness, Fred Mazyck said in his
18 911 call they're friends. Everybody was getting
19 along. He said that the second time.

20 It's not until Fred thinks about it
21 later on and says, oh, yeah, he said I killed three
22 people. I didn't believe him to start with, but
23 then he said they were messing with me.

24 He did say he had an argument with
25 Lance that night. He was arguing with him because

CLOSING ARGUMENT BY MS. NORRIS

1 Lance wanted to give his son a pistol instead of
2 letting him pay for it.

3 Ladies and gentlemen, I know that it
4 has been a long week. I'm tired, you're tired,
5 everybody is tired, but the toughest part of your
6 job is to come. I've heard it said that jury
7 service -- there's no higher civic duty that you
8 can do for your county, your state, your
9 government, the military service.

10 I've had the pleasure to do both. I've
11 sat in your shoes and I was an Army officer. I
12 think your job is tougher because you, at the end
13 of the day, decide is this man guilty? It's a
14 heavy responsibility. It's a heavy responsibility
15 for the lawyers and the judges in this room, but
16 you have the tougher job.

17 And I ask you as you go through the
18 process -- and when I'm done the Solicitor can
19 argue again, the judge will give you instructions,
20 and at that point, you will decide. And I ask you
21 to remember as you do that, that we all selected
22 you.

23 The judge qualified you, you stood up
24 here and -- unfortunately, they make you stand here
25 and, you know, we each got to say, yeah, we want

CLOSING ARGUMENT BY MS. NORRIS

1 that juror, because we trust you. And we trust you
2 to vote your conscience and to do what you believe
3 is the right thing.

4 And, remember, once you get into the
5 jury room, not a single person can take your vote
6 away. Not me, not the judge, not any of your other
7 jurors. You vote your conscience. Out of all of
8 the law that the State put up there, did you hear
9 her say she has the burden of proof beyond a
10 reasonable doubt?

11 Robby Nolen testified. He didn't have
12 to. She has to prove it. And a reasonable doubt
13 is the kind of doubt that would cause a reasonable
14 person to hesitate to act. If you have any
15 hesitation whatsoever that that man is guilty, then
16 you have to vote not guilty.

17 And, again, he's presumed innocent
18 coming into this courtroom. He's presumed
19 innocent. And I told you from the beginning this
20 is not whodunit. It's not. Is it murder, the
21 unlawful killing with malice aforethought, or is it
22 a lawful killing in self-defense of defense of
23 another.

24 And, again, malice? Motive? They were
25 picking on me? That's what causes this? The

CLOSING ARGUMENT BY MS. NORRIS

1 solicitor told you what self-defense is. The
2 defendant was without fault in bringing on the
3 difficulty.

4 The defendant was actually in imminent
5 danger of death or serious bodily harm or
6 reasonably believed that, and the defendant had no
7 other way to avoid the danger. And just like you
8 can defend yourself lawfully, you can defend
9 another lawfully in the same fashion.

10 Let me talk with you some about the
11 testimony you heard. First officers on the scene
12 saw the emergency lights on Nolen's truck. She
13 wants you to believe that as drunk as he was he had
14 the presence of mind to say, oh, I have to come up
15 with an explanation for all of this. Let me call
16 the cops real quick and be doing CPR and being
17 hysterical, all this is an act. Does anybody
18 believe that?

19 You heard him in that car. Yeah, he
20 got to the point where he was complaining about the
21 cuffs, but before that it was, please, please, God,
22 not Lance. I didn't mean to shoot Lance.

23 And she's right; drunkenness is not a
24 defense. But you can't take it out of this picture
25 either as you're gauging whether he's that good of

CLOSING ARGUMENT BY MS. NORRIS

1 an actor. My God, let's give him an Oscar.

2 Seriously? Does anybody believe that.

3 The officers show up, he's counting,
4 he's yelling, one, two -- all the way up to 20, and
5 doing the compressions. When the cops are
6 harassing him, he's asking them to take over. He's
7 belligerent, he's angry because the cops won't
8 continue the CPR.

9 Corporal Corinthian Green, one of the
10 first officers there, said Mr. Nolen said, I'm the
11 suspect. And then we have a couple of officers who
12 said, well, no, even though he called 911 himself
13 and said, I did it, when we showed up, he sent us
14 off running into the woods.

15 Because a man has a uniform and a badge
16 does not mean automatically they're truthful. And
17 I'm not picking on police officers in general. My
18 brother is a police officer. And we saw some very
19 wonderful officers in this courtroom. Captain
20 Geiger, the senior officer on the scene said he
21 said, I'm the fucking suspect.

22 And then when they put him in the car
23 he's saying, please, please, please, tell me how he
24 is. I didn't mean to shoot him.

25 And the State makes much out of him

CLOSING ARGUMENT BY MS. NORRIS

1 changing clothes. You know, if Mr. Nolen was just
2 sitting around for a couple of years making up a
3 lie, why would he tell you that? They didn't bring
4 any clothes into the courtroom. Why would he tell
5 you that? Because it's the truth. I guarantee he
6 wishes now that he had not stopped to change
7 clothes, and we all do, but it doesn't change the
8 facts.

9 He shot Lance Kenyon accidentally when
10 he was trying to defend himself after he thought
11 that Lance had already been shot. He was not --
12 and the fact that he wasn't doing enough to help
13 Lance after that doesn't change whether the
14 shooting was lawful or not. You heard him crying
15 on the scene, not Lance.

16 You saw him cry on the witness stand.
17 Do you think he made that up? Do you think that
18 man can sit up there and cry when he wants to?
19 Does anyone believe that?

20 You heard from the folks who processed
21 the scene out there. They drew the diagrams, they
22 drew the place where the SCAR 17, that big old gun,
23 just propped up against the wall, they drew where
24 that was, but they didn't mark it and number it.

25 Do you remember what he said? Because

CLOSING ARGUMENT BY MS. NORRIS

1 the lieutenant said, it wasn't important because
2 they didn't find any shell casings. Just because
3 the weapon has not been fired does not mean it's
4 not dangerous.

5 If I took this weapon right here and
6 loaded it and never fired it, but I'm pointing it
7 at somebody in this courtroom, you better believe
8 it's dangerous. It doesn't change the fact that
9 it's potential evidence, that it's related to what
10 happened out there.

11 And you heard the evidence that they
12 did a gunshot residue test on Mr. Nolen, and it was
13 positive. He told them it was going to be
14 positive. He told them he was the shooter. Does
15 that really help anybody?

16 You heard that all three of the
17 deceased also were positive for gunshot residue.
18 Does that really tell us anything? As Lieutenant
19 Nate said, they could have fired a weapon earlier,
20 they could have fired a weapon then. They could
21 have had that from being shot. It doesn't help us.
22 It doesn't tell us whether he committed murder or
23 not.

24 And the State, I don't know how many
25 times, put up there they were shot 22 times to the

CLOSING ARGUMENT BY MS. NORRIS

1 back. It doesn't mean that it's malice. The judge
2 will tell you that if you are shooting in
3 self-defense, you have the lawful right to keep
4 shooting until the danger is over. And if you are
5 in fear for your life and you open fire out into
6 the dark, you are trying to kill. That's why it's
7 self-defense.

8 The number of shots, the position of
9 the shots does not make it malice. They could have
10 been shot one time or 22. It does not change the
11 legal question. If you are that scared, scared to
12 the point that you are urinating on yourself,
13 shooting out into the dark, trying to end the
14 danger, yes, you are shooting to kill.

15 The State also told you they called the
16 young lady from Lexington County to tell you that
17 all of the bullet holes through the window were
18 shot from the inside to the out. Robby Nolen told
19 you that.

20 They presented the stuff about blood
21 being in the green room. There was DNA, but we
22 don't know whose. And it could have been there
23 from this incident or it could have been there for
24 two years. What did that tell us? Nothing.

25 The firearms expert told you that this.

CLOSING ARGUMENT BY MS. NORRIS

1 .22 shot all the bullets, or likely shot all the
2 bullets, that caused the deaths in this case.
3 Robby Nolen told you that. But she also told you
4 that some of those rounds out there, 9-millimeter
5 rounds, could not have been fired from that .22.

6 And the State said, well, they were
7 there from earlier. It has nothing to do with
8 anything. Really? The unfired bullet was this far
9 (indicating) from Mr. Harrison's head. The two
10 fired shell casings are right in the area where
11 she's pointing out the blood. Do you think when
12 they cleaned up earlier that they really missed
13 those? Really? It has nothing to do with it,
14 according to the State who has the burden of proof
15 here.

16 Me? I want to know where the hell that
17 9-millimeter is. And Robby Nolen told you where it
18 went. Last time he saw it, it was on the table.
19 And that SCAR 17 that the lieutenant out there
20 didn't think was important, not important enough to
21 even put a number on, out of all these experts they
22 called in here to essentially tell us nothing, did
23 you hear anybody say that they tested the SCAR 17
24 for fingerprints for DNA?

25 Did you hear anybody say that the nail

CLOSING ARGUMENT BY MS. NORRIS

1 clippings that Dr. Presnell clipped, did they
2 bother to test those for DNA to see if maybe there
3 was some struggle going on out there? No.

4 He said I'm the shooter, and they just
5 stopped, even though they have Jeffrey Simmons out
6 there with a dog tracking right straight from Lance
7 Kenyon's house to him. He's wet like he's been
8 running through the woods, and Detective Elrod
9 wants to tell you he lived in the neighborhood.
10 Really?

11 2:30 a.m. with a hurricane coming in
12 and the man who just happens to be Fred Mazyck's
13 cousin is out there close by. They stopped asking
14 questions because he said, I'm the shooter.

15 And you heard Robby Nolen testify,
16 yeah, there were drugs. You've got three men,
17 unfortunately deceased now, with lots of drugs in
18 them. We know there was some drugs there. Where
19 did the drugs go? Magically disappeared? He told
20 you, Fred Mazyck took them.

21 Fred, who sat on the witness stand and
22 sat in the courtroom throughout the whole trial and
23 told you, I'm just here for Lance. Did he come
24 back and say, no, no, I did not take the drugs?
25 He's lying. I didn't hear him. Did you?

CLOSING ARGUMENT BY MS. NORRIS

1 Did he come back and say, no, my cousin
2 Jeffrey Simmons wasn't in there? I didn't hear
3 him.

4 And, remember, back in the opening I
5 asked you to remember my granny's rule, the first
6 thing a person says spontaneously before they have
7 time to think about it is most likely the most
8 truth you're going to get on the topic.

9 The first thing Fred Mazyck says in
10 that 911 call is, my neighbors shot each other up.
11 And he repeats it up. It's not a slip on the
12 tongue, he repeats it. And he says, they were
13 getting along fine, they were friends. He said
14 absolutely nothing about, Robby said they were
15 messing with me, so I killed him.

16 Firsthand written statement at the
17 scene, he said he only heard one shot. I submit to
18 you, ladies and gentlemen, the shot he heard was
19 the 9-millimeter, the very loud one. But by the
20 time he gets on this witness stand, he heard a lot
21 of shots.

22 But, in that first statement, the
23 firsthand written statement that he wrote out in
24 his own handwriting, he said, when he came in and
25 said I killed him I didn't believe it.

CLOSING ARGUMENT BY MS. NORRIS

1 And he said in that statement, he told
2 me to call 911. And it was only after Mr. Farber
3 asked him about three or four times, he said, oh,
4 yeah, I remember now. He told me to call 911, but
5 I don't remember why. I don't remember why I would
6 have said that.

7 He said it because it was the truth.
8 And the State wants you to believe that this man
9 that the solicitor was happy to tell you over and
10 over again, and I'm happy to tell you this man did
11 shoot them, outside, in the dark, 22 times
12 accurately.

13 Do you really think standing across the
14 room from Fred Mazyck, in the light, if he had
15 wanted to shoot Fred he would have missed? I
16 don't. He's obviously a good shot. And you don't
17 have to be a good shot to shoot somebody when
18 you're standing three feet away from them.

19 And after that, the solicitor wants you
20 to believe that this man as drunk as he was, as
21 excited, as fearful as he was, he had the presence
22 of mind to say, uh-oh, I let Fred get away, he's
23 calling 911, I better call them myself?

24 You heard his 911 call. He said all
25 three of them were fixing to kill me. I killed

CLOSING ARGUMENT BY MS. NORRIS

1 them. Why did he say that? I don't know. If he
2 were making stuff up, he could have stuck with that
3 in this courtroom and said all three of them were
4 trying to kill him, but it's not the truth.

5 I submit that he was drunk, he was
6 afraid, he was trying to do CPR, he was trying to
7 get the cops there, but what is true in that first
8 statement is self-defense. The very first thing
9 that comes out is, essentially, self-defense. They
10 were going to kill me; I killed them. Granny's
11 rule, first thing.

12 Threatening a police officer: He
13 doesn't remember sitting in the car at the scene
14 and he doesn't remember riding to the jail. He
15 doesn't even remember his interview with the police
16 the next day, but, clearly, he said after
17 complaining for an hour that the cuffs hurt and
18 after begging, please, can we go to jail? Do you
19 remember that when he was sitting out there?

20 After almost 30 years as a defense
21 lawyer, this man is the only client that I have
22 said, please, can we go to jail now? And when he
23 gets there, Corporal Green told you he was kicking
24 the door. He was saying, open the door, opening
25 the blank door.

CLOSING ARGUMENT BY MS. NORRIS

1 Mr. McClellan didn't hear that part,
2 but he hears the, I'm going to shoot you in the
3 head. And even though he's been patted down and
4 cuffed behind his back in a car with three officers
5 standing around, he's still afraid. Would a
6 reasonable person be afraid.

7 Was he really saying, I'm going to
8 shoot you? Or did he mean, you are not paying
9 attention to me in any way? That's for you to
10 decide.

11 Possession of weapon during a violent
12 crime: If you find this man not guilty of murder
13 and attempted murder, he's not guilty of that. If
14 you find that he's guilty of one of these other
15 offenses, murder, attempted murder, then he's
16 guilty. It's that simple.

17 Attempted murder: Again, he was not
18 trying to shoot Fred Mazyck. If he had been, Fred
19 Mazyck would have been shot.

20 Murder, self-defense: That's your
21 decision to make. But I ask you when you go in
22 that jury room, hold the State to their burden.
23 They have to prove his guilt beyond a reasonable
24 doubt and they have to disprove self-defense,
25 defense of others, beyond a reasonable doubt.

CLOSING ARGUMENT BY MS. SAS

1 I submit to you, ladies and gentlemen,
2 that when you search your mind and your hearts
3 you're going to come back with a verdict of not
4 guilty.

5 Thank you.

6 THE COURT: You may proceed.

7 MS. SZYMCZYNSKA-SAS: There is plenty
8 of malice here. I'm not saying it was malice
9 because he shot the gun. That's not what I'm
10 saying. There is malice because he shot them in
11 the back for no reason, for no good reason, while
12 they were running away and hiding.

13 Lance was under that porch, behind that
14 unit. James is on the ground with his hand
15 shielding himself. That's malice. And Harry, what
16 chance did he have? Right in the back of the head.
17 He didn't just all of a sudden decide that he was
18 going to shoot them for no good reason.

19 His wife kicked him out of the house.
20 He was staying with Lance just for a few days.
21 He's taking Xanax and he is drinking. He is
22 drinking heavily. Got the Crown, got the shots,
23 he's got the beer. He's drinking it. It's his
24 decision. And, then, he is not going to let them
25 call him names. That's why he did it.

CLOSING ARGUMENT BY MS. SAS

1 Yeah, it's not good enough reason.
2 That's exactly why we're saying it's not
3 self-defense. It's not good enough of a reason,
4 but it's a reason. He wants you to believe that we
5 didn't say anything. That we have the burden to
6 prove it beyond a reasonable doubt. We take that
7 burden and we accept that burden and we have met
8 that burden here this week in this courtroom.

9 We told you what reasonable doubt is.
10 It's not doubt at all. It leaves you firmly
11 convinced sitting in that seat that Robby Nolen
12 shot and murdered three people, tried to kill one
13 person, and threatened an officer on the way to the
14 jail. If you are sitting here firmly convinced,
15 then we have proven it beyond a reasonable doubt.

16 They're throwing the little red
17 herrings at you. I told you about the red
18 herrings. Jeffrey Simmons in the neighborhood. He
19 wasn't in the neighborhood. He was way up the road
20 to the north. He wasn't even traveling the same
21 direction.

22 He volunteered, volunteered, his buccal
23 swab. He volunteered his hands to be tested for
24 GSR. He's walking in the middle of the road. He's
25 not running through the woods and hiding in the

CLOSING ARGUMENT BY MS. SAS

1 woods.

2 The 9-millimeter, I'm not sure which
3 version you're supposed to believe here. The
4 defendant told you that they were so good about
5 policing and brassing, but then he also told you
6 that they found a giant SCAR bullet. So were they
7 that good or were they not? I don't know where the
8 9-millimeter went.

9 But you know what I do know? That this
10 defendant was in the house the entire time while
11 Fred was running through the woods, and I know that
12 their 911 calls came just a minute apart.

13 Didn't take Fred a minute to run to
14 Shirley's house. So what was this defendant doing
15 in the house? They want you to believe that his
16 story is credible about the clothes and that was
17 just a bad choice that he made.

18 But which story is credible? The one
19 that he told you yesterday about the clothes, or
20 the story that he told Detective Elrod on 10/07
21 about the clothes? Those are two very different
22 stories.

23 They made a big deal with the SCAR not
24 being marked on the renderings of the scene. We
25 are not trying to hide the SCAR. You saw the

CLOSING ARGUMENT BY MS. SAS

1 photographs of the SCAR. We told you about the
2 SCAR. The officers testified that the SCAR was
3 taken not into evidence but for safekeeping. We
4 are not trying to hide it.

5 Defense also told you that the very
6 first thing is the thing that you should believe.
7 Well, the very first thing is that all three were
8 trying to kill him. That's not what he told you
9 yesterday. So which story is it? Because I don't
10 know what to believe anymore. The first thing, the
11 last thing, the thing in the middle?

12 But they want you to believe that Fred
13 is the liar. That Fred in that 911 call recording,
14 Fred told them something else. You heard what Fred
15 said on the stand. He just went through the woods.

16 When he started to explain in details
17 to the dispatcher what was happening, what did you
18 hear? He didn't know what happened in the back.
19 Well, you heard on that stand and what you heard in
20 the 911 recordings, are those versions different?

21 You know whose version is very
22 different? This defendant's. Fred had maybe too
23 few seconds when he had to gather his thoughts
24 together while he was running through the woods
25 with no shoes on just being shot at, just finding

CLOSING ARGUMENT BY MS. SAS

1 out that the defendant killed three people in the
2 back; but the defendant had two years, five months,
3 and 41 days to come up with this story.

4 But Fred is the liar. And Fred didn't
5 come to say that those are not -- we don't have to
6 call Fred. You heard from Fred. You heard what
7 Fred had to say what happened that night. He
8 didn't just say he had GSR on his hands. What he
9 said is that he shot all of those motherfuckers.
10 That's how much he cared for Lance and James and
11 Harry.

12 THE COURT: Mr. Foreman, ladies and
13 gentlemen, I'm going to give you a brief comfort
14 break because my instructions are over 30 minutes.
15 During the break, please do not discuss the case
16 and please leave your notepads in your seats.

17 As soon as you're done, we will resume
18 with closing. I anticipate that we will be out
19 about five minutes. Go with the bailiff.

20 (Jury out, 10:46 a.m.)

21 THE COURT: You may be seated. During
22 this break, if you all could just make sure that
23 all of the evidence is with the court reporter.

24 (Jury in, 10:58 a.m.)

25 THE COURT: You may be seated.

JURY CHARGE

1 During this trial, ladies and
2 gentlemen, you and I have certain duties to
3 perform. As the trial judge, it is my
4 responsibility to preside over the trial of this
5 case, and I also have the duty to rule upon or pass
6 upon the admissibility of evidence that has been
7 offered during the trial.

8 You are to consider only the competent
9 evidence that is before you, and you are to
10 disregard and disabuse from your mind any testimony
11 that may have been stricken from the record in this
12 case during the progress of the trial, if there has
13 been any.

14 You are to consider only the testimony
15 which has been presented from the witness stand,
16 together with any exhibits which have been made a
17 part of the record in this case, as well as any
18 stipulations that may have been entered into
19 between the attorneys.

20 I instruct you that a stipulation is an
21 agreement between the attorneys, and it requires no
22 further proof.

23 I have the additional duty to charge or
24 instruct you on the law applicable to this case.
25 As the presiding judge, I'm the sole judge of the

JURY CHARGE

1 law of this case, and it is your duty as jurors to
2 accept and apply the law as I now state it to you.

3 If you have a preconceived idea as to
4 what the law is or what the law ought to be in a
5 case, or in this case, and it should not agree with
6 what I now tell you the law is, you are obligated
7 under your oath to abandon this preconception on
8 your part because you are sworn to accept the law
9 and apply the law precisely as I now state it to
10 you. If I'm wrong, there is another place and time
11 for that error to be corrected.

12 In every case in this court tried
13 before a jury, the jury becomes the sole and
14 exclusive judges of the facts. You are the judges
15 of the facts in this case. I'm the judge of the
16 law.

17 The constitution of our state has
18 declared that a trial judge shall not intimate,
19 state, comment upon or make any statement to a
20 trial jury about the facts in a case. Since you,
21 the jury, are the sole judges of the facts in this
22 case, you are not to infer anything that I have
23 said during the course of this trial in ruling upon
24 the admissibility of evidence or otherwise, or
25 anything that I say to you now during the course of

JURY CHARGE

1 this instruction that I have any opinion about the
2 facts. The law does not permit me to have an
3 opinion about the facts.

4 This is a matter solely for you the
5 jury to determine. As jurors, then, it is your
6 duty as I've instructed to determine the effect,
7 the value, the weight and the truth of the evidence
8 presented during this trial. Necessarily, you must
9 access the credibility of the witnesses who have
10 testified.

11 Credibility is simply a legalistic term
12 meaning believability. It becomes your duty as
13 jurors to analyze and to evaluate the evidence and
14 determine the credibility of that evidence. Some
15 of the things you may consider as you decide
16 whether or not to believe a witness's testimony
17 about a particular matter include, what was the
18 manner and appearance of the witness who testified?

19 Was he or she straightforward or
20 hesitant in answering? Was the testimony of a
21 witness consistent or inconsistent? How did the
22 witness come to know the facts that he or she
23 testified to, or what was his or her ability to
24 know the facts? Is there some reason a witness
25 would want to give testimony that would help or

JURY CHARGE

1 hurt one side or the other?

2 In other words, was the witness biased
3 or prejudiced? Was the testimony of a witness
4 strengthened or weakened by other testimony or
5 evidence?

6 Ladies and gentlemen, you can believe
7 as much or as little of each witness's testimony as
8 you think proper. I further instruct you that in
9 determining the question of the credibility or
10 believability of witnesses who have testified, you
11 may believe one witness as against several
12 witnesses, or several witnesses as against one
13 witness.

14 You may believe a part of the testimony
15 of a witness and reject the remaining part of the
16 testimony of that same witness. If you have a good
17 and sound reason, you may believe the testimony of
18 a witness in its entirety and reject the testimony
19 of a witness in its entirety.

20 You may consider the demeanor of a
21 witness, that is the manner and appearance of the
22 witness from the witness stand. As I've indicated,
23 ladies and gentlemen, you can believe as much or as
24 little of each witness's testimony as you think
25 proper.

JURY CHARGE

1 You are the finders of the facts in
2 this case, and you have but one objective, to
3 determine the facts as you find them.

4 Our rules of evidence ordinarily do not
5 permit witnesses to testify to opinions or
6 conclusions. An exception to this rule exists for
7 witnesses we call expert witness. A witness who by
8 their education, training, and experience has
9 become an expert in some art, science, profession,
10 or calling may state an opinion to relevant and
11 material matters in which the witness claims to be
12 an expert and may also state the reason for the
13 opinion.

14 You should consider any expert opinion
15 received in evidence in this case like any other
16 evidence. Give it the weight you think it
17 deserves. If you decide that the opinion of an
18 expert opinion is not based on sufficient
19 education, training, and experience, or if you
20 decide that -- or if you conclude that the reasons
21 given in support of the opinion are not sound, or
22 that the opinion is outweighed by other evidence,
23 you may disregard the opinion entirely.

24 An expert witness's testimony is to be
25 given no greater weight than that of other

JURY CHARGE

1 witnesses simply because the witness is an expert.
2 Further, you are not required to accept an expert's
3 opinions even though it is not contradicted.

4 Ladies and gentlemen, there are two
5 types of evidence which are generally presented
6 during a trial; direct evidence and circumstantial
7 evidence. Direct evidence is the testimony of a
8 person who asserts or claims to have actual
9 knowledge of a fact such as an eye witness.

10 Circumstantial evidence is proof of a
11 chain of facts and circumstances indicating the
12 existence of a fact. The law makes absolutely no
13 distinction between the weight or value to be given
14 to either direct or circumstantial evidence. Nor
15 is a greater degree of certainty required of
16 circumstantial evidence than of direct evidence.

17 As I've instructed, there are two types
18 of evidence which are generally presented during a
19 trial; direct evidence and circumstantial evidence.

20 Direct evidence directly proves the
21 existence of a fact and does not require deduction.
22 Circumstantial evidence is proof of a chain of
23 facts and circumstances indicating the existence of
24 a fact.

25 Crimes may be proven by circumstantial

JURY CHARGE

1 evidence and, again, the law makes no distinction
2 between the weight or value to be given to either
3 direct or circumstantial evidence; however, to the
4 extent the State relies on circumstantial evidence,
5 all of the circumstances must be consistent with
6 each other and when taken together point
7 conclusively to the guilt of the accused beyond a
8 reasonable doubt.

9 If these circumstances merely portray
10 the defendant's behavior as suspicious, the proof
11 has failed. The State has the burden of proving
12 the defendant beyond a reasonable doubt. This
13 burden rests with the State regardless of whether
14 the State relies on direct evidence, circumstantial
15 evidence, or some combination of the two.

16 Ladies and gentlemen, you should weigh
17 all of the evidence in this case. After weighing
18 all of the evidence, if you are not convinced of
19 the guilt of the defendant beyond a reasonable
20 doubt, you must find the defendant not guilty.

21 Conversely, if you are convinced of the
22 guilt of the defendant beyond a reasonable doubt,
23 then you must find him guilty.

24 I instruct you that the fact that the
25 defendant was arrested, charged, and indicted is

JURY CHARGE

1 not evidence in this case and cannot be considered
2 by you as evidence of guilt in this case, nor does
3 it create any presumption or inference of guilt.

4 This documentation, ladies and
5 gentlemen, are simply the formal written
6 instruments which contain the charge or charges
7 made against the defendant. They simply serve as
8 the formal documentation by which the case is
9 processed or brought into the court.

10 The defendant has pled not guilty to
11 the indictment, and that plea casts the burden on
12 the State to prove the defendant guilty, because a
13 person charged with committing a criminal offense
14 in South Carolina is never required to prove
15 himself innocent.

16 I instruct you that it is a cardinal
17 and important rule of the law of evidence that the
18 defendant in a criminal trial, no matter what the
19 seriousness of the charge or charges made against
20 him may be will always be presumed to be innocent
21 of the crime, or crimes, for which he's indicted
22 unless his guilt has been proven by evidence
23 satisfying you of that guilt beyond a reasonable
24 doubt.

25 This presumption of innocence does not

JURY CHARGE

1 cease when you retire to deliberate, but it
2 accompanies the defendant from the time of his
3 appearance throughout the trial until you reach a
4 verdict in this case.

5 Our Supreme Court has said that the
6 presumption of innocence is like a robe of
7 righteousness placed about the shoulder of the
8 defendant, and it remains with him and assigns him
9 to that class, the innocent until that presumptive
10 robe of righteousness has been stripped from his
11 person by evidence satisfying you of that guilt
12 beyond a reasonable doubt.

13 The presumption of innocence is not
14 mere legal theory. It is not just a legal phrase.
15 It is the substantial right to which every
16 defendant is entitled unless you, the jury, are
17 satisfied from the evidence of his guilt beyond a
18 reasonable doubt.

19 The State has the burden of proving
20 defendant guilty beyond a reasonable doubt. Some
21 of you may have served as jurors in civil cases
22 where you were told that it is only necessary to
23 prove that a fact is more likely true than not
24 true, such as by the greater weight or the
25 preponderance of the evidence.

JURY CHARGE

1 In criminal cases, the State's proof
2 must be more powerful than that. It must be beyond
3 a reasonable doubt.

4 Proof beyond a reasonable doubt is
5 proof that leaves you firmly convinced of the
6 defendant's guilt. There are very few things in
7 this world that we know with absolute certainty,
8 and in criminal cases the law does not require
9 proof that overcomes every possible doubt.

10 If based on your consideration of the
11 evidence you are firmly convinced that the
12 defendant is guilty of the crime charged, you must
13 find the defendant guilty. If, on the other hand,
14 there is a real possibility that the defendant is
15 not guilty, you must give him the benefit of that
16 doubt and find him not guilty.

17 Ladies and gentlemen, there are
18 statements alleged to have been made by the
19 defendant which have been admitted into evidence in
20 this case. While the Court has determined that the
21 statements are admissible, I instruct you that you
22 make the ultimate decision of whether or not the
23 defendant made the statements.

24 If the defendant did make the
25 statement, you must determine whether the

JURY CHARGE

1 statements were made by the defendant voluntarily
2 and of his own free will. This means that the
3 defendant -- that the statements were not caused by
4 pressure, force, fear, threats, coercion, or
5 intimidation, or by hope or promise of leniency or
6 reward of any kind.

7 In determining whether the statement,
8 or statements, were voluntary, you should consider
9 both the characteristics of the defendant and the
10 details of the questioning.

11 Some of the factors that you must
12 consider are the age of the defendant; the
13 defendant's education or lack of education; the
14 defendant's mental ability or capacity; the
15 defendant's IQ or intelligence; the defendant's
16 background and environment; the place and length of
17 detention, the nature of the questioning, and the
18 advice or lack thereof to the defendant of his
19 constitutional rights, including, but not limited
20 to the right to remain silent; that any statement
21 could be used against him in a court of law; the
22 right to have a lawyer present; that if he could
23 not afford a lawyer, a lawyer would be appointed to
24 represent him without any cost; and that he could
25 stop making a statement at any time.

JURY CHARGE

1 You must carefully consider all of the
2 surrounding circumstances before you give any
3 weight to an alleged statement.

4 The State has the burden of proving
5 beyond a reasonable doubt that the alleged
6 statement was voluntary. If you determine it was,
7 you may give the statement any further
8 consideration that you deem proper. You must
9 decide what weight, if any, should be given to the
10 alleged statement.

11 If you determine the alleged statement
12 was not the free and voluntary statement of the
13 defendant, you should not consider the statement at
14 all.

15 Ladies and gentlemen, the defendant is
16 charged with possession of a weapon during the
17 commission of, or attempt to commit a violent
18 crime. The State must prove beyond a reasonable
19 doubt that the defendant was in possession of a
20 firearm, or visibly displayed what appeared to be a
21 firearm, during the commission of a violent crime.

22 A firearm means any machine gun,
23 automatic rifle, revolver, pistol, or any weapon
24 which will, is designed to, or may be readily
25 converted to expel a projectile.

JURY CHARGE

1 In order to find the defendant guilty
2 of possession of a weapon during the commission of
3 a violent crime, you must first find is the
4 defendant guilty of either committing a violent
5 crime or attempting to commit a violent crime.

6 I instruct you that murder and
7 attempted murder -- murder and attempted murder are
8 violent crimes as defined by South Carolina Code
9 Annotated 16-1-60.

10 The defendant is charged with murder.
11 The State must prove beyond a reasonable doubt that
12 the defendant killed another person with malice
13 aforethought. Malice is hatred, ill will or
14 hostility towards another person. It is the
15 intentional doing of a wrongful act without just
16 cause or excuse and with an intent to inflict an
17 injury, or under circumstance the law will infer
18 evil intent.

19 Malice aforethought does not require
20 that malice exist for any particular time before
21 the act is committed, but malice must exist in the
22 mind of the defendant just before and at the time
23 the act is committed; therefore, there must be a
24 combination of the previous evil intent and the
25 act.

JURY CHARGE

1 The malice aforethought may be
2 expressed or inferred. These terms do not mean
3 different kinds of malice, but merely the manner in
4 which malice may be shown to exist. That is either
5 by direct evidence or by inference from the facts
6 and circumstances which are proven.

7 Express malice is shown when a person
8 speaks words which express hatred or ill will for
9 another, or when the person prepared beforehand to
10 do the act which was later accomplished. For
11 example, laying in wait for a person or any other
12 acts of preparation going to show that the deed was
13 within the defendant's mind would be express
14 malice.

15 Malice may be inferred from conduct
16 showing a total disregard for human life. If facts
17 are proven beyond a reasonable doubt sufficient to
18 raise an inference of malice to your satisfaction,
19 this inference would simply be an evidentiary fact
20 to be considered by you, the jury, along with the
21 other evidence in the case and you may give it the
22 weight, value and effect you decide it should
23 receive.

24 I instruct you if the defendant with
25 malice aforethought attempts to kill another person

JURY CHARGE

1 but by mistake injures or kills a different person,
2 the defendant still has the intent to kill. The
3 intent to kill is merely transferred from the
4 original person the defendant attempted to kill to
5 the actual person killed or injured.

6 The defendant would be guilty -- the
7 defendant would be guilty of murder with -- with
8 murder as if the attempt had resulted in the death
9 or injury of the person the defendant attempted to
10 kill.

11 Ladies and gentlemen, if you find that
12 the State has failed to prove beyond a reasonable
13 doubt that the defendant committed murder, you may
14 consider whether the State has proven beyond a
15 reasonable doubt that the defendant committed
16 involuntary manslaughter.

17 Included within the offense of murder
18 is the lesser offense of involuntary manslaughter.
19 To prove involuntary manslaughter, the State must
20 prove beyond a reasonable doubt that the defendant
21 unintentionally killed the victim without malice
22 but while engaged in an unlawful activity not
23 naturally tending to cause death or great bodily
24 harm, or that the defendant unintentionally killed
25 the victim without malice while engaged in a lawful

JURY CHARGE

1 activity with reckless disregard for the safety of
2 others.

3 Unintentional means that the defendant
4 did not intend for anyone to be killed or seriously
5 injured. Reckless disregard for the safety of
6 others is more than mere negligence or
7 carelessness. Mere negligence or carelessness is
8 the failure to use the same care that a person of
9 ordinary reason would use under the same
10 circumstances.

11 Recklessness is a conscious failure to
12 use ordinary care. Reckless disregard for the
13 safety of others means that you are not interested
14 in the consequences of your acts or the rights and
15 safety of others.

16 If a person who knows or should know
17 that ordinary care requires certain precautions be
18 taken for the safety of others when using a
19 dangerous instrumentality, such as a gun or car,
20 that that person failed to use those precautions
21 without concern, the person's actions are
22 considered reckless.

23 The State must also prove beyond a
24 reasonable doubt that the defendant's act was the
25 proximate cause of death. Proximate cause is the

JURY CHARGE

1 direct cause. It is the immediate cause. It is
2 the efficient cause. It is that cause without
3 which the death of the victim would not have
4 resulted.

5 There must be a chain of causation from
6 the time of the injury inflicted by the defendant
7 until the time of the victim's death. Proximate
8 cause does not necessarily mean that it occurred
9 immediately prior to death.

10 There may be more than one proximate
11 cause. The acts of two or more persons may combine
12 together to be a proximate cause of the death of a
13 person.

14 The defendant's act may be regarded as
15 the proximate cause if it is a contributing cause
16 to the death of the victim. The fact that other
17 causes also contributed to the death of the victim
18 does not relieve the defendant from responsibility.
19 The defendant's act need not be the sole cause of
20 the death but must be a proximate cause
21 contributing to the death of the victim.

22 It is not a defense to show that the
23 victim might have recovered had he been treated
24 according to the most approved surgical or medical
25 standards or as a reasonably prudent doctor would

JURY CHARGE

1 have treated in the case or even showing that the
2 treatment was negligent.

3 If however the death was caused not by
4 the wound or the injury that the victim had, but
5 was caused by the gross, erroneous, willful,
6 deliberate treatment the defendant would not be
7 responsible; in other words, negligence on the part
8 of someone else would not relieve the defendant
9 from liability if the injury was the proximate
10 cause of the victim's death.

11 I instruct you that the violation of
12 the statute if it is the proximate cause of an
13 injury is evidence of recklessness.

14 The defendant is charged with attempted
15 murder. In order to prove this crime, the State
16 must prove the defendant attempted to kill another
17 person with malice aforethought, either express or
18 implied.

19 Malice is hatred, ill will, or
20 hostility towards another person. It is the
21 intentional doing of a wrongful act without just
22 cause or excuse and with an intent to inflict an
23 injury upon circumstances that the law will infer
24 evil intent.

25 Malice aforethought does not require

JURY CHARGE

1 that malice exist for any particular time before
2 the act is committed, but malice must exit in the
3 mind of the defendant just before and at the time
4 the act is committed; therefore, there must be a
5 combination of the previous evil intent and act.

6 Malice aforethought may be express or
7 inferred. These terms as I've instructed, express
8 and inferred, do not mean different kinds of
9 malice, but merely the manner in which malice may
10 be shown to exist. That is either by direct
11 evidence or by inference from the facts and
12 circumstances which are proven.

13 Express malice is shown when a person
14 speaks words which express hatred or ill will for
15 another, or when the person prepared beforehand to
16 do the act which was later accomplished. For
17 example, laying in wait for a person, or any other
18 act of preparation going to show that the deed was
19 within the defendant's mind would be express
20 malice.

21 Malice may be inferred from conduct
22 showing a total disregard for human life. If facts
23 are proven beyond a reasonable doubt sufficient to
24 raise an inference of malice to your satisfaction,
25 ladies and gentlemen, this inference would simply

JURY CHARGE

1 be an evidentiary fact to be considered by you, the
2 jury, along with the other evidence in the case,
3 and you may give it the weight, value and effect
4 you decide it should receive.

5 I instruct you that intent means
6 intending the results which actually occurs. Not
7 accidentally or involuntarily. Intent may be shown
8 by acts and conduct of the defendant and other
9 circumstances from which you may naturally and
10 reasonably infer intent.

11 Evidence of the character of the act,
12 the character of the instrument used, the manner in
13 which it was used, the purpose to be accomplished.
14 And the resulting wound or injuries may be
15 considered in determining the intent with which the
16 act was committed.

17 Intent may also be inferred when it is
18 demonstrated that the defendant voluntarily and
19 willfully commits an act, the natural tendency of
20 which is to destroy another's life.

21 To find the defendant guilty of
22 attempted murder, the State must prove beyond a
23 reasonable doubt that the defendant had an intent
24 to kill the victim. An attempt is an effort to
25 accomplish a crime which does not succeed. An

JURY CHARGE

1 attempt includes a specific intent to do a
2 particular criminal act along with an act falling
3 short of the act intended.

4 The State must show more than mere
5 preparation and intent. There must be some overt
6 act committed in an effort to commit the crime.
7 Intent means intending the result that actually
8 occurs, not accidentally or involuntary. Intent may
9 be shown by acts and conduct of the defendant and
10 other circumstances from which you may naturally
11 and reasonably infer intent.

12 The defendant has raised the defense of
13 self-defense. Self-defense is a complete defense,
14 and if it is established, you must find that the
15 defendant is not guilty. The State has the burden
16 of disproving self-defense by proof beyond a
17 reasonable doubt.

18 If you have a reasonable doubt of the
19 defendant's guilt after considering all the
20 evidence, including the evidence of self-defense,
21 then you must find the defendant not guilty.

22 On the other hand, if you have no
23 reasonable doubt of the defendant's guilt after
24 considering all of the evidence, including the
25 evidence of self-defense, then you must find the

JURY CHARGE

1 defendant guilty.

2 The following elements are required to
3 establish self-defense. First, the defendant must
4 be without fault in bringing on the difficulty. If
5 the defendant's conduct was the type which was
6 reasonably calculated to and did provoke a deadly
7 assault, the defendant would be at fault in
8 bringing on the difficulty and would not be
9 entitled to an acquittal based on self-defense.

10 Self-defense is not available to a
11 person who uses language which is so contemptuous
12 that a reasonable person would expect it to bring
13 on a physical encounter and which did actually
14 contribute to the physical encounter.

15 If the defendant voluntarily
16 participated in mutual combat for purposes other
17 than protection, the killing of the victim would
18 not be self-defense.

19 This is true even if during the combat
20 the defendant feared death or serious bodily
21 injury; however, if before the killing is committed
22 the defendant withdraws and tried in good faith to
23 avoid further conflict and either by word or act
24 makes that fact known to the victim, he would be
25 without fault in bringing on the difficulty.

JURY CHARGE

1 For mutual combat there must be a
2 mutual intent and willingness to fight. This
3 intent may be shown by the acts and conduct of the
4 parties and the circumstances surrounding the
5 combat. In addition, it must be shown that both
6 parties were armed with a deadly weapon.

7 The second element of self-defense is
8 that the defendant was actually in imminent danger
9 of death or serious bodily injury. Or that the
10 defendant actually believed he was in imminent
11 danger of death or serious bodily injury.

12 If the defendant was actually in
13 imminent danger, it must be shown that the
14 circumstances would have warranted a person of
15 ordinary firmness and courage to strike the fatal
16 blow to prevent death or serious bodily injury.

17 If the defendant believes he was in
18 imminent danger of death or serious bodily injury,
19 it must be shown that a reasonably prudent person
20 of ordinary firmness and courage would have had the
21 same belief.

22 In deciding whether the defendant
23 actually was or believed he was in imminent danger
24 of death or serious bodily injury, you should
25 consider all the facts and circumstances

JURY CHARGE

1 surrounding the crime, including the physical
2 condition and characteristic of the defendant and
3 the victim.

4 I instruct you that the defendant does
5 not have to show that he was actually in danger.
6 It is enough if the defendant believed he was in
7 danger and a reasonably prudent person of ordinary
8 firmness and courage would have had the same
9 belief.

10 The defendant has the right to act on
11 appearances even though the defendant's belief may
12 have been mistaken. It is for you to decide
13 whether or not the defendant's fear of imminent
14 danger or -- of death or serious bodily injury was
15 reasonable and would have been felt by an ordinary
16 person in the same situation.

17 Words accompanied by hostile acts may,
18 depending on the circumstances, establish
19 self-defense. The relative sizes, ages, and weight
20 of the defendant and the victim, or victims, may be
21 considered in deciding the apparent or actual need
22 for force in self-defense and the amount of force
23 needed.

24 Threats made by the victim may be
25 considered in determining whether the defendant

JURY CHARGE

1 actually was or believed he was in imminent danger.
2 The intoxication of the victim, or victims, may be
3 considered in deciding whether the defendant's fear
4 of death or bodily harm was reasonable.

5 The final element of self-defense is
6 that the defendant had no other probable way to
7 avoid the danger of death or serious bodily injury
8 than to act as the defendant did in this particular
9 instance.

10 The defendant has no duty to retreat if
11 by doing so the danger of being killed or suffering
12 serious bodily injury would increase. A lawful
13 guest in another person's home has no duty to
14 retreat before using deadly force and self-defense
15 against an intruder.

16 A lawful guest who enters the premise
17 of another by either express or implied invitation;
18 however, the guest has a duty to retreat where
19 possible if the attacker is the owner or occupier
20 of the property.

21 I instruct you that a person could not
22 be required to make an exact calculation as to the
23 degree or amount of force which may be needed to
24 avoid death or serious bodily harm; therefore, in
25 self-defense, the defendant has the right to use

JURY CHARGE

1 the force needed to avoid death or serious bodily
2 harm.

3 The force used in self-defense does not
4 have to be limited to the degree or amount of force
5 used by the victim. The defendant has the right to
6 use so much force as appeared to be necessary for
7 complete self-protection and which a person of
8 ordinary reason and firmness would have believed to
9 be needed to prevent death or serious bodily harm.

10 If the defendant is justified in
11 defending himself or others and in firing the first
12 shot, then the defendant is also justified in
13 continuing to shoot until it is apparent that the
14 danger of death or serious bodily injury has
15 completely ended.

16 I know this is kind of long. Why don't
17 you all stand up. It's a little warm in here. Get
18 the blood circulated.

19 (Jury standing)

20 THE COURT: It's either warm or cold.
21 It's sort of comfortable, but it gets a little hot
22 in here with these lights.

23 When you're ready, you can sit down.

24 Under the law of self-defense, the
25 defendant may take another's life in the defense of

JURY CHARGE

1 others. The right to intervene to protect another
2 person is subject to the same rights and
3 limitations as the right of self-defense.

4 The defendant may take the life of a
5 person who assaults a friend, relative, or
6 bystander if that friend, relative, or bystander
7 would have had the right of self-defense.

8 To show that the person need defended
9 had the right of self-defense it must be first
10 shown that the person being defended and the
11 defendant were both without fault in bringing on
12 the difficulty.

13 If the conduct of the person defended
14 or the defendant was the type which was reasonably
15 calculated to and did provoke a deadly assault, the
16 person would be at fault in bringing on the
17 difficulty and would not have the right of
18 self-defense; therefore, the defendant would not
19 have the right to use deadly force in defending
20 that person.

21 The defense of another person is
22 excusable if the defendant had reasonable ground to
23 believe and in good faith did believe that the
24 person being defended was in imminent danger of
25 death or serious bodily harm from the victim.

JURY CHARGE

1 In deciding whether the person defended
2 actually was or that the defendant actually
3 believed the person was in imminent danger of death
4 or serious bodily injury, you should consider all
5 the facts and circumstances surrounding the crime
6 including the physical condition and
7 characteristics of the parties.

8 As I've instructed, the defendant does
9 not have to show that the person the defendant --
10 the defendant defended was actually in danger. It
11 is enough if the defendant believed that the person
12 was in imminent danger. The defendant has the
13 right to act on appearances even though the
14 defendant's belief may have been mistaken.

15 The defendant must show that under the
16 circumstances as they appeared to the defendant,
17 the defendant believed that the person defended was
18 in danger and that a reasonably prudent person of
19 ordinary firmness and courage would have had the
20 same belief under the same circumstances.

21 It is for you, the jury, to decide
22 whether the defendant's fear of immediate danger of
23 death or serious bodily injury to the person
24 defended was reasonable and would have been felt by
25 an ordinary person in the same situation.

JURY CHARGE

1 The defendant does not have to wait
2 until the victim gets the drop on the person
3 defended. The defendant has a right to act under
4 the law of self-preservation to prevent the victim
5 from getting the drop on the person defended.

6 As I've instructed, words accompanied
7 by hostile acts may, depending on the
8 circumstances, establish self-defense. The
9 relative sizes, ages, and weight of the parties may
10 be considered in deciding the apparent or actual
11 need for force in self-defense and the amount of
12 force needed.

13 Threats made by the victim may be
14 considered in determining whether the defendant was
15 -- whether the defendant actually believed the
16 person defended was in imminent danger of death or
17 serious bodily injury or was actually in imminent
18 danger. The intoxication of the victim may be
19 considered in deciding whether the defendant's fear
20 of death or bodily harm to the person defended was
21 reasonable.

22 In order to be entitled to defend
23 another, the person defended have had no other
24 probable cause way to avoided the danger of death
25 or serious bodily injury than to act as the

JURY CHARGE

1 defendant did in this particular instance. Where
2 the person being defended had no duty to retreat,
3 the defendant like this would have no duty to
4 retreat.

5 The defendant had no duty to retreat if
6 by doing so the danger of being killed or suffering
7 serious bodily injury would increase. And, again,
8 a lawful guest in another's home has no duty to
9 retreat before using deadly force against an
10 intruder.

11 A lawful guest is a person who enters
12 the premises of another by either express or
13 implied invitation; however, a guest has a duty to
14 retreat where possible if the attacker is the owner
15 or occupier of the property.

16 I instruct you that insanity caused by
17 the use of drugs or alcohol may be a defense if the
18 insanity is permanent and destroys the defendant's
19 ability to know right from wrong; however, when
20 voluntary intoxication has not produced permanent
21 insanity, it is not a defense to a crime.

22 A person who voluntarily becomes
23 intoxicated is just as responsible for the acts
24 committed while intoxicated as when the person is
25 not intoxicated.

JURY CHARGE

1 The defendant has raised the defense of
2 accident. An act may be excused on the ground of
3 accident if it is shown that the act was
4 unintentional, that the defendant was acting
5 lawfully, and that the reasonable care -- and that
6 reasonable care was used by the defendant in
7 handling the weapon.

8 For example, if a person is lawfully
9 armed in self-defense and the gun accidentally
10 discharges, the defense of accident would apply.
11 The burden is on the State to prove beyond a
12 reasonable doubt that the act was not an accident,
13 but was caused by the negligence or carelessness on
14 the part of the defendant in the handling of a
15 dangerous instrumentality or by unlawful activity
16 by the defendant.

17 The defendant is charged with
18 threatening the life, person, or family of a public
19 official. In order to prove this offense, the
20 State must prove beyond a reasonable doubt that the
21 defendant knowingly and willfully delivered or
22 conveyed to a public official any letter or paper,
23 writing, print, missive, document or electronic
24 communication, or verbal or electronic
25 communication, which contains a threat to take the

JURY CHARGE

1 life of or to inflict bodily harm upon the public
2 official if the threat is directly related to the
3 public official's professional responsibilities.

4 I instruct you that public official
5 means an elected or appointed official of the
6 United States or of this state or of a county,
7 municipality, other political subdivision of the
8 state, and that a public employee means a person
9 employed by the state, a county, a municipality, or
10 a political subdivision of this state.

11 Knowingly means with knowledge,
12 consciously, not accidentally. Willfully means
13 intending the result which actually occurs. Not
14 accidentally or involuntarily. Intent may be shown
15 by acts and conduct of the defendant and other
16 circumstances from which you may naturally and
17 reasonably infer intent.

18 Ladies and gentlemen, there are several
19 indictments in this case which alleged different
20 offenses against the defendant. They are
21 Indictment 2018-GS-08-840, possession of a weapon
22 during the commission of a violent crime;
23 2018-GS-08-841, murder; 2018-GS-08-842 murder;
24 2018-GS-08-843, murder; 2018-GS-08-844, threatening
25 the life, person, or family of a public official;

JURY CHARGE

1 and 2018-GS-08-890, attempted murder.

2 Ladies and gentlemen, each indictment
3 charges a separate and distinct offense. You must
4 decide each indictment separately on the evidence
5 and the law applicable to it uninfluenced by your
6 decision as to any other indictments. The
7 defendant may be convicted or acquitted on any or
8 all of the offenses charged, and you will be
9 required to write a separate verdict of guilty or
10 not guilty for each indictment.

11 Ladies and gentlemen, there are two
12 possible verdicts for each offense, and I'm going
13 to read the verdict forms to you. You do not have
14 to try to write this down; the verdict forms will
15 go into the jury room with you.

16 I emphasize there is no significance
17 whatsoever to the order in which I state these
18 potential verdicts. It is simply that one must be
19 stated first.

20 As to the offense of possession of a
21 weapon during the commission of a violent crime,
22 we, the jury, by unanimous consent, find the
23 defendant guilty of the possession of a weapon
24 during the commission of a violent crime, or not
25 guilty.

JURY CHARGE

1 As to Indictments 2018-GS-08-841, 843,
2 the options are as follows: We, the jury, by
3 unanimous consent, find the defendant guilty of
4 murder, or not guilty.

5 As to Indictment 842, we, the jury, by
6 unanimous consent, find the defendant guilty of
7 murder or as to the lesser included offense, guilty
8 of involuntary manslaughter, or not guilty.

9 And as to Indictment 2018-844, we, the
10 jury, by unanimous consent, find the defendant
11 guilty of threatening the life, person, or family
12 of a public official, or not guilty.

13 As to Indictment 890, we, the jury, by
14 unanimous consent, find the defendant guilty of
15 attempted murder, or not guilty.

16 Again, ladies and gentlemen, there is
17 no significance whatsoever to the order in which I
18 state the potential verdict. It is simply that one
19 must be stated first.

20 Ladies and gentlemen, your verdict must
21 be unanimous. That means all 12 of you must agree
22 in order to reach a verdict on each indictment.

23 Mr. Foreman, once the jury has reached
24 a verdict, you are to fill out each verdict form
25 and sign and date each verdict form, knock on the

JURY CHARGE

1 door and advise the bailiff that the jury has
2 reached a verdict. Also, if the jury has any
3 questions during deliberations, it is your
4 responsibility to write out the questions, to sign
5 and date the note, knock on the door and advise the
6 bailiff that the jury has a question.

7 As to any notes you write, they should
8 never provide a numerical breakdown as your
9 deliberations are secret and they should not be
10 divulged outside of the jury room.

11 Ladies and gentlemen, if there are any
12 questions during deliberations, please know there
13 will be a delay in our response because there is a
14 process that we have to follow in answering your
15 questions. So if you have a question, know there
16 will be a delay because we are following that
17 process, that we are not ignoring you.

18 Again, ladies and gentlemen, your
19 verdict must be a unanimous one which means all 12
20 of you must agree in order to reach a verdict on
21 each indictment. I'm going to ask that you return
22 to your jury room, but do not yet begin your
23 deliberations.

24 I have a brief matter of law to take up
25 with counsel that may require a clarification of an

JURY CHARGE

1 instruction or further instruction; however, if
2 there is no further instruction, we will send in
3 your notebooks, the verdict forms, and the
4 evidence. At that time you will be allowed to
5 begin your deliberations.

6 For your planning purposes, we have
7 ordered lunch and it will arrive at noon. Do not
8 begin your deliberations.

9 (Jury out, 11:39 a.m.)

10 THE COURT: You may be seated.

11 Any exception from the State? Other
12 than what we discussed in charge conference.

13 MS. SZYMCZYNSKA-SAS: None from the
14 State.

15 THE COURT: From the defense? Other
16 than what we discussed in charge conference.

17 MR. FARBER: Your Honor, the only
18 thing, in addition to what we discussed in charge
19 conference is the instructions did not make clear
20 that the involuntary manslaughter lesser included
21 only applies to the indictment --

22 THE COURT: It's clear on the
23 indictment. It's on the verdict form itself. Each
24 indictment has -- each verdict form is attached to
25 each indictment so they can't find involuntary on

JURY CHARGE

1 any of the other ones. It's only on Mr. Kenyon.
2 That's the only verdict form that has involuntary
3 manslaughter.

4 MR. FARBER: I understand, Your Honor.
5 Our request is that they be instructed as part of
6 your instructions that the lesser included only
7 applies to the indictment charging murder of Lance
8 Kenyon.

9 THE COURT: Any exception from the
10 State?

11 MS. SZYMCZYNSKA-SAS: Your Honor, we
12 leave it at the Court's discretion, but we believe
13 that it was clear on the --

14 THE COURT: I think it's abundantly
15 clear, and I think it's abundantly clear on the
16 verdict form. The law as instructed would only
17 apply to each applicable offense, and I very
18 clearly instructed them that on the involuntary it
19 only applies -- I think to go any further than that
20 might be an improper comment on the facts, and I
21 don't want to insert myself into the facts of the
22 case.

23 I think the jury is astute enough based
24 on my review of their educational background, based
25 on jury qualification and selection that they are

JURY CHARGE

1 more than astute to understand that the involuntary
2 would only apply to Mr. Kenyon's indictments.

3 That verdict form is very clear that
4 that's the only one that has a lesser included
5 offense of involuntary.

6 Anything further from the defense? And
7 I think you did mention that yesterday, and I told
8 you I wasn't going to -- or maybe we talked about
9 it.

10 MR. FARBER: We reviewed the verdict
11 form, Your Honor, but not the instruction on this.
12 The instructions we submitted did specifically
13 address --

14 THE COURT: I think you-all raised it
15 though, and I think we talked about it, but my
16 memory isn't infallible.

17 MR. FARBER: Nor is mine.

18 THE COURT: I might be wrong.

19 All right. Can you make sure for me
20 one more time that we have everything, all of the
21 evidence as it should be. You can go ahead and get
22 the jurors' notebooks and put the alternate's
23 notebook on the banister for me and also bring the
24 alternate to me so that the jury can begin their
25 deliberations.

1 (Evidence, verdict form back to the
2 jury, 11:30 a.m.)

3 (Alternate jurors in)

4 THE COURT: Thank you for your time and
5 attention to this case. I know being an alternate
6 can seem thankless because we need you in the event
7 that another juror can't go forward in the case.

8 I would ask that you-all hang around
9 and get some lunch if you'd like. If you don't and
10 you have other things you want to do, you certainly
11 are excused with the Court's profound thanks.

12 You also can discuss this case if you
13 would like; however, I would ask that you not do it
14 until the jury has reached a conclusion of the case
15 and everyone has been dismissed.

16 Sometimes lawyers will contact you just
17 to find out your perspective on the matter. If you
18 need a work excuse, Miss Linda has them for you
19 right behind you, and we'll mail your checks to
20 you.

21 Do you want to hang around?

22 ALTERNATE JURORS: (Shaking head)

23 THE COURT: I don't blame you.

24 ALTERNATE JUROR: It's been a long
25 week.

1 THE COURT: Have a great day. We
2 appreciate your service.

3 The record should reflect that the jury
4 began its deliberation at 11:30. The alternates
5 were likewise excused at 11:30.

6 (A recess transpired.)

7 THE COURT: You may be seated. We have
8 a note from the jury and it reads as follows: Can
9 we get a copy of all the statutes for each charge?

10 My response will be as follows: Ladies
11 and gentlemen If the jury, our procedures do not
12 allow for a copy of the jury charge/instructions to
13 be given to you.

14 If there is a specific instruction that
15 you would like given again, or the entire
16 instruction, please advise us and I will
17 accommodate your request immediately.

18 Any exception from the State?

19 MS. SZYMCHYNSKA-SAS: None from the
20 State.

21 THE COURT: From the defense?

22 MR. FARBER: No, Your Honor.

23 THE COURT: And the jury has their
24 lunch.

25 (A recess transpired.)

1 THE COURT: We have a verdict.

2 You may be seated. Anything before we
3 bring in the jury? From the State?

4 MS. SZYMCZYNSKA-SAS: Nothing from the
5 State.

6 THE COURT: From the defense?

7 MS. NORRIS: No, Your Honor.

8 Your Honor, could we have a minute?

9 THE COURT: Yes, they need to do it
10 quickly.

11 (Brief pause)

12 THE COURT: All right. We have
13 everybody we were waiting on?

14 MS. NORRIS: I think so, Your Honor.

15 THE COURT: Okay. Just before we
16 receive the verdict, I will caution the gallery,
17 there is to be no audible signs of reaction. There
18 is a sense of decorum that we must maintain. I've
19 left security to the discretion of the deputies.
20 If there are any outbursts, you will be removed. I
21 tell you in advance so you won't be surprised to
22 any reactions or consequences.

23 (Jury in, 1:42 p.m.)

24 THE COURT: You may be seated. Is it
25 correct that the jury has reached a verdict?

VERDICT

1 MR. FOREMAN: Yes, ma'am, it is.

2 THE COURT: If you would give the
3 verdict forms to the bailiff please.

4 Sir, if you would stand for
5 pronouncement of the verdicts.

6 County of Berkeley, State of South
7 Carolina v. Robert David Nolen, Indictment No.
8 2018-GS-08-00840; we, the jury, find -- by
9 unanimous consent find the defendant guilty of
10 possession of a weapon during the commission of a
11 violent crime. Signed by the foreperson.

12 Indictment No. 2018-GS-08-00841; we,
13 the jury, by unanimous consent find the defendant
14 guilty of murder. Signed by the foreperson.

15 Indictment No. 2018-GS-08-00842; we,
16 the jury, by unanimous consent find the defendant
17 guilty of murder.

18 Indictment No. 2018-GS-08-00834; we,
19 the jury, by unanimous consent find the defendant
20 guilty of murder.

21 Indictment No. 2018-GS-08-00844; we,
22 the jury, by unanimous consent find the defendant
23 guilty of threatening the life, person, or family
24 of a public official. Signed by the foreperson.

25 Indictment No. 2018-GS-08-00890; we,

VERDICT

1 the jury, by unanimous consent find the defendant
2 guilty of attempted murder. Signed by the
3 foreperson.

4 Ladies and gentlemen of the jury, if I
5 have accurately published your verdicts, please
6 indicate by raising your right hands at the time.

7 THE JURY: (Raised hands)

8 THE COURT: Is there any request to
9 poll the jury? From the State?

10 MS. SZYMCZYNSKA-SAS: No, Your Honor.

11 THE COURT: From the defense?

12 MS. NORRIS: Yes, Your Honor.

13 THE COURT: Madame Clerk, if you would
14 poll the jury.

15 Ladies and gentlemen, the clerk is
16 going to ask you two questions. She is going to
17 call your number and ask you to raise your right
18 hand; and she's going to ask, is this your verdict
19 and is it still your verdict as to each indictment.

20 And you can do them collectively.

21 Is there any exception doing it that
22 way?

23 MS. NORRIS: No, Your Honor.

24 THE CLERK: Okay. Juror 91, is this
25 your verdict?

VERDICT

1 JUROR NO. 91: Yes, ma'am.
2 THE CLERK: Is this still your verdict?
3 JUROR NO. 91: Yes, ma'am.
4 THE COURT: Are these still your
5 verdicts?
6 JUROR NO. 91: Yes.
7 THE CLERK: To all these indictments.
8 THE COURT: Are these your verdicts,
9 sir?
10 JUROR NO. 91: Yes, ma'am.
11 THE COURT: Are they still your
12 verdicts?
13 JUROR NO. 91: Yes, ma'am.
14 THE CLERK: Juror 140, are these your
15 verdicts?
16 JUROR NO. 140: Yes.
17 THE CLERK: Is it still your verdicts?
18 JUROR NO. 140: Yes.
19 THE CLERK: Juror 80, is these your
20 verdicts?
21 JUROR NO. 80: Yes.
22 THE CLERK: Still your verdicts?
23 JUROR NO. 80: Yes.
24 THE CLERK: Juror 182, are these your
25 verdicts?

VERDICT

1 JUROR NO. 182: Yes.
2 THE CLERK: Is it still your verdicts?
3 JUROR NO. 182: Yes, ma'am.
4 THE CLERK: Juror 13, are these your
5 verdicts?
6 JUROR NO. 13: Yes, ma'am.
7 THE CLERK: Are they still your
8 verdicts?
9 JUROR NO. 13: Yes, ma'am.
10 THE CLERK: Juror 20, are these your
11 verdicts?
12 JUROR NO. 20: Yes.
13 THE CLERK: Are these still your
14 verdicts?
15 JUROR NO. 20: Yes.
16 THE CLERK: Juror 183, are these your
17 verdicts?
18 JUROR NO. 183: Yes.
19 THE CLERK: Are they still your
20 verdicts?
21 JUROR NO. 183: Yes.
22 THE CLERK: Juror 38, are these your
23 verdicts?
24 JUROR NO. 38: Yes.
25 THE CLERK: Are they still your

VERDICT

1 verdicts?
2 JUROR NO. 38: Yes.
3 THE CLERK: Juror 110, are these your
4 verdicts?
5 JUROR NO. 110: Yes.
6 THE CLERK: Are they still your
7 verdicts?
8 JUROR NO. 110: Yes.
9 THE CLERK: Juror 28, are these your
10 verdicts?
11 JUROR NO. 28: Yes.
12 THE CLERK: Are they still your
13 verdicts?
14 JUROR NO. 28: Yes.
15 THE CLERK: Juror 189, are these your
16 verdicts?
17 JUROR NO. 189: Yes.
18 THE CLERK: Are these still your
19 verdicts?
20 JUROR NO. 189: Yes.
21 THE CLERK: Juror 169, are these your
22 verdicts?
23 JUROR NO. 169: Yes.
24 THE CLERK: Are these still your
25 verdicts?

VERDICT

1 JUROR NO. 169: Yes.

2 THE CLERK: Your Honor, I polled the
3 jury and the verdict stands.

4 THE COURT: You may take your seats.

5 THE COURT: Mr. Foreman, ladies and
6 gentlemen, we thank you for your time and your
7 attention to this task. I know that jury service
8 may seem thankless, but your service is so very
9 valuable to us.

10 Berkeley County has grown
11 exponentially. In Charleston County, we hold three
12 terms of civil court and three terms of criminal
13 court every week with the exception of holidays.
14 It used to be when I started on family court many
15 years ago -- I'm a little vain, I'm not going to
16 tell you how many years ago -- we used to have
17 court every two or three months in Berkeley County.
18 We now hold court in Berkeley County almost as
19 frequently as in Charleston and almost at the same
20 rate.

21 South Carolina has one of the busiest
22 court systems in the country at over 5,000 case
23 filings per capita. And just to give you some
24 reference, there is just shy of 50 circuit judges
25 who hear both civil court, criminal court and we

VERDICT

1 have appeal -- what we call appellate overview
2 jurisdiction over the magistrate and municipal
3 courts, probate courts, as well as zoning and other
4 things.

5 In addition to hearing jury trials, we
6 also act in a nonjury capacity where we are the
7 finders of the facts. Those 50 judges travel
8 throughout the entire state. Our constitution
9 really if we were doing it like we used to do it
10 when we had a little more resources, we held court
11 outside of our circuit January through June.

12 I lived in another county for six
13 months and then I came home and lived at home July
14 through December. But because of the -- which I
15 think is one of the healthiest parts of our system.

16 We now travel about a week a month
17 because of limited resources. As you can imagine
18 it's quite expensive to have judges rotating
19 throughout the state in that manner, but it is the
20 envy of the nation.

21 I can tell you I've attended course at
22 what we call the National Judicial College where
23 judges come from all over the country. When they
24 hear about our system of doing that, they think it
25 is quite healthy. I think it's incredibly healthy.

VERDICT

1 I like travelling a week a month. It's
2 about the perfect balance. Being away from your
3 house for six months, you develop a whole new
4 routine and when you come back to your house, it's
5 sort of odd. You feel a little out of pocket after
6 living in a hotel for six months.

7 But we travel throughout the state, and
8 even with the really minimal amount of judges
9 compared to our population, we still dispose of
10 cases much more quickly than most states in the
11 union.

12 As a matter of fact, I have some
13 friends who serve on what is called the homicide
14 court in Philadelphia. There are nine of them for
15 the City of Philadelphia that only hear murder
16 cases all year long. So if you compare that to
17 what we do, you can well imagine with our resources
18 we are quite productive.

19 Even with that, we would not be able to
20 do what we do without your willingness to serve as
21 jurors, to act as the finders of the facts in a
22 case and render verdicts after you hear the facts
23 and then apply a very complex set of rules to those
24 facts and render verdicts. We thank you for your
25 time and your attention to this case.

VERDICT

1 You are welcome to discuss this case if
2 you would like. Sometimes the lawyers will contact
3 you to get feedback so they can just do their job a
4 little bit better. That's why we call it the
5 practice of law because it's never quite perfected.

6 You are welcome to discuss the case
7 with them if you would like. If you don't want to,
8 you don't have to. If anyone should exceed your
9 comfort level, please contact the Clerk's Office so
10 that we can take the appropriate action to protect
11 your privacy.

12 If any of you -- we will have your work
13 excuses for you as you leave today, and we will
14 mail your check to you. Is there anyone that wants
15 to remain for sentencing? You can raise your hand
16 for me if you want to. If not, you are welcome to
17 go.

18 And I need the verdict forms.

19 Sir, if you could stay right there.
20 Actually, I need you to come forward.

21 You are free to leave if you would
22 like.

23 (Jury out, 2:10 P.M.)

24 THE COURT: You all can take your
25 seats.

VERDICT

1 Are there any post-trial motions from
2 the State?

3 MS. SZYMCZYNSKA-SAS: Nothing from the
4 State.

5 THE COURT: From the defense?
6 Do we have sentencing sheets?

7 MS. SZYMCZYNSKA-SAS: Mr. Alfaro just
8 stepped out to obtain the sentencing sheets and
9 then we have the other sentencing sheets that was
10 provided earlier.

11 MS. NORRIS: Just as a matter of
12 record, Your Honor, we do renew all objections and
13 motions made during the trial itself.

14 THE COURT: Okay. I will note those as
15 renewed. Does the State wish to respond to the
16 renewed motions?

17 MS. SZYMCZYNSKA-SAS: Your Honor, we
18 would just renew our reply from the previous
19 arguments.

20 THE COURT: Okay. The Court would
21 mark, again, the motions as renewed, will deny them
22 based on the contemporaneous rulings at the time
23 the motions were made and incorporate those
24 findings into this portion of the record. The
25 motions are denied.

VERDICT

1 Now, we were waiting on sentencing
2 sheets. While we're doing that, I would be glad to
3 hear from the State.

4 MS. SZYMCZYNSKA-SAS: Thank you.

5 THE COURT: Yes, ma'am.

6 MS. SZYMCZYNSKA-SAS: Your Honor, you
7 heard this week's testimony of all of the
8 witnesses, so I won't go into great detail, but it
9 was very evident that this was a brutal murder of
10 three people with 22 shots, many of them to the
11 back of their bodies, for no good reason at all,
12 and almost a death of a fourth person, attempted
13 murder, who was able to get away from the scene.

14 Your Honor is aware of his criminal
15 prior history. His 2000 conviction for criminal
16 domestic violence; 2004 conviction for criminal
17 domestic violence of high and aggravated nature,
18 public drunk charge, a couple of the property
19 crimes.

20 Your Honor, based on the malicious and
21 brutal nature of these murders, we would ask for
22 life.

23 And, Your Honor, at the appropriate
24 time, members of each family would like to address
25 the Court.

VERDICT

1 THE COURT: This is the appropriate
2 time. They may proceed.

3 Yes, ma'am, would you state your name
4 for the record?

5 THE WITNESS: Danica Meyers.

6 THE COURT: I'm sorry, say that for me
7 one more time.

8 THE WITNESS: Danica Meyers.

9 THE COURT: Would you spell your first
10 name, please?

11 THE WITNESS: D-A-N-I-C-A Meyers.

12 THE COURT: And is that M-E-Y --

13 THE WITNESS: M-E-Y.

14 THE COURT: Thank you. You may
15 proceed.

16 THE WITNESS: On behalf of the
17 Gressette family or the Brady Bunch as Harry
18 affectionately called us, I will like to thank the
19 Court for their time. Robert Nolen took our
20 father, my mom's husband, our children's
21 granddaddy, a business leader who touched so many
22 lives. Not only did Robert Nolen take one man who
23 meant so much to us, Robert Nolen took the lives of
24 three, shattered three worlds and tried for a
25 fourth, and threatened a fifth.

VERDICT

1 Robert Nolen is just so evil that he
2 robbed us from memories that can never be made.
3 Harry Gressette was our father, our friend, our
4 rock, our teacher, our world (inaudible) now we're
5 filled with sadness and heart broken. Thank you.

6 THE COURT: Thank you, ma'am.

7 Yes, ma'am.

8 THE WITNESS: My name is Shanna Groves.

9 THE COURT: Can you spell your first
10 name for us?

11 THE WITNESS: Yes, ma'am; S-H-A-N-N-A
12 Groves.

13 THE COURT: G-R-O-V-E-S?

14 THE WITNESS: Yes, ma'am.

15 THE COURT: Yes, ma'am.

16 THE WITNESS: A victim impact
17 statement. This will be the fourth time I've
18 written one. The first for the sentencing of our
19 mother's murder last year, and one for each of the
20 two bond hearings for our father's murder, and now
21 for the sentencing.

22 You would think it would get easier,
23 but it doesn't. Each time I have desperately tried
24 to convey the impact their loss has had on my
25 family, and each time I feel like I didn't even

VERDICT

1 come close.

2 So today, Your Honor, I would like
3 instead of doing an impact statement to tell you a
4 little bit about these men. For what seems like a
5 lifetime, I've heard Dad talk about Harry
6 Gressette. He's been to the house on numerous
7 occasions. My mom and his wife used to attend
8 church together. I even remember when she was
9 pregnant with Harry, Junior.

10 Although, I wasn't personally close to
11 the family, I felt as if I was as much as Dad
12 talked about them. Dad loved Harry and he loved
13 his family and I hope they all know that.

14 Lance, on the other hand, I had the
15 blessing of getting to know. Two days after our
16 mother's murder while sitting at a stoplight in
17 Summerville, Lance came to the house to check on
18 us.. Dad was refusing to come out of his room, so
19 Lance comforted me on the front porch while I cried
20 to him.

21 Him and Dad had been friends for well
22 over 15 years. He was devastated over our mother's
23 murder. And even though I didn't think the two
24 could get any closer, they did.

25 Dad loved Lance so much, and I know if

VERDICT

1 either of them had survived that night they would
2 be standing with me here right now. Our father,
3 James Mark Harrison, wasn't just our father. He
4 was my brother's business partner and roommate; he
5 was a Vietnam vet, a widower, a father-in-law, and
6 a grandfather.

7 Our boys were only nine and fifteen at
8 the time of his death. Have you ever had to sit up
9 with your child at 2:00 in the morning while they
10 cry uncontrollably because somebody murdered their
11 grandparents? I would never wish that on any
12 parent.

13 Dad loved boiled peanuts and carrot
14 cake. He loved motorcycle rides through the
15 countryside with his wife. He loved his children
16 and grandchildren.

17 And Lord knows Mark, Lance, and Harry
18 weren't perfect, but they loved each other and so
19 many of us loved them.

20 Robert Nolen may have taken them from
21 us, but he can't take the memories or the love that
22 was shared. That will carry with us for the rest
23 of our lives.

24 THE COURT: Thank you, ma'am.

25 Yes, ma'am, tell us your name.

VERDICT

1 THE WITNESS: Christi Lanier.

2 THE COURT: Thank you, ma'am.

3 THE WITNESS: As I prepared to get
4 ready for this trial, Lance and I's ten-year-old
5 daughter cupped both of her hands to my cheeks and
6 said, Momma, you have to forgive Robby. The child
7 has the same heart her daddy had -- big, loving and
8 giving beyond anything that I have ever seen.

9 Lance was the only son of Steve and
10 Peggy Kenyon. He was a brother to his sister and
11 an uncle to six nieces and nephews. He was a
12 well-respected businessman in the community, and I
13 have never heard of Lance having an enemy.

14 He always carried a big smile on his
15 face everywhere he went. He was a daddy to an
16 eight-year-old at the time his life was taken.
17 Robby spoke of Lance mowing his yard and the
18 neighbor's yard the morning of.

19 There is the same lawn mower that
20 McKenzie sat in his lap as he taught her to drive
21 and learn how to operate a clutch. As he taught
22 her to operate that lawn mower, he and McKenzie
23 talked about him teaching her to drive a car one
24 day.

25 That day will never come, Robby, due to

VERDICT

1 your senseless horrific act of violence. Lance
2 will never get to walk McKenzie down the aisle. He
3 will never see her graduate from high school. He
4 will never get to see what colleges she's accepted
5 into. He will never see or be able to do so many
6 things with McKenzie and me. I sometimes believe
7 the things he will never get to do is what
8 rehabilitates me.

9 There was a point in this trial that I
10 thought I could just go home and tell McKenzie, I
11 forgive Robby. That was due to watching the
12 interrogation and having a forgiving heart and
13 understanding of how God awful it would be to truly
14 be in a blackout and awaken in a jail cell and not
15 remember brutally murdering three men. And then
16 that all shifted when he gave his outlandish story.

17 MS. SZYMCHYNSKA-SAS: Your Honor,
18 nothing further. If I can approach with the
19 sentencing sheets.

20 THE COURT: Yes, ma'am. Be glad to
21 hear anything from the defense.

22 MS. NORRIS: Thank you, Your Honor.
23 You have heard Mr. Nolen testify. He's 50 years
24 old; he graduated from high school; he served in
25 the United States Army for 12 years; he does have

VERDICT

1 some criminal record, but, by and large, he was a
2 working man and a family man.

3 So I do ask Your Honor to consider
4 those as you sentence. And I believe at least his
5 wife and several other family members would like to
6 address the Court as well.

7 THE COURT: I'm sorry, say that for me
8 one more time.

9 MS. NORRIS: At least his wife and
10 possibly several other family members --

11 THE COURT: Whomever would like to
12 speak, they should not feel constrained. They are
13 welcome to say whatever they want.

14 THE WITNESS: I'm Melinda Nolen.

15 THE COURT: Yes, ma'am.

16 THE WITNESS: I wasn't prepared for
17 this. Robby and I were split up at the time. The
18 moment he went to jail he called me, and I was
19 100 percent behind him. He is not the monster that
20 anybody in this courtroom makes him out to be.

21 We did have our issues, but he was a
22 wonderful husband and father to our two children
23 and took very good care of them. I will say that
24 back then, that day, today, and 20 years from now.
25 He's not a murderer. He is a good man and he's a

VERDICT

1 good friend to anybody who knew him.

2 THE COURT: Anything further you would
3 like to say, ma'am?

4 THE WITNESS: I will stand by his side
5 for the rest of his life.

6 THE COURT: Anybody else like to speak?

7 MS. NORRIS: I think that's it, Your
8 Honor.

9 THE COURT: Okay.

10 MS. NORRIS: He is 50 years old. I
11 would ask -- of course, on murder it is a 30-year
12 minimum. I would ask for the minimum sentence and
13 the rest of the sentences to run concurrently so
14 that, in essence, if he lives beyond 80, he might
15 have an opportunity to get out.

16 THE COURT: Sir, do you wish to say
17 anything on the record on your own behalf?

18

19

20 THE DEFENDANT: I would like to
21 apologize to my family. I would like to apologize
22 to Lance Kenyon's family, and the other two
23 families, and to thank my defense team. That's
24 all, Your Honor.

25 THE COURT: Thank you, sir. You can

SENTENCING

1 take your seat.

2 Anything else further from the State?

3 MS. SZYMCZYNSKA-SAS: No, Your Honor.

4 THE COURT: Sir, if you would stand for
5 sentencing.

6 Mr. Mazyck is not here, correct? He
7 didn't want to be heard?

8 MS. SZYMCZYNSKA-SAS: No, Your Honor.

9 THE COURT: I just wanted it to be
10 clear for the record.

11 On each count of murder, sir, you're
12 sentenced to the State Department of Corrections
13 for a period of life. On the threatening the life
14 of a public official, you are sentenced to five
15 years, and the attempted murder 30 years.

16 Each of these sentences will run
17 concurrent with one another. You will get credit
18 pursuant to 241340 to be calculated and applied by
19 the Department of Corrections.

20 As regards to possession of a firearm
21 by a convicted felon, which you pled guilty to on
22 Monday, the 25th, and sentencing was deferred
23 pending the outcome of these proceedings, you are
24 sentenced to the State Department of Corrections
25 for a period of five years.

SENTENCING

1 Again, that sentence is concurrent and
2 you will get credit pursuant to 241340 to be
3 calculated and applied by the Department of
4 Corrections.

5 Now, the possession of a weapon during
6 the commission of a violent crime, the statute
7 provides for a mandatory five-year sentence;
8 however, the statute also states that the five-year
9 sentence does not apply in cases where the death
10 penalty or life sentence without parole is imposed
11 for a violent crime. And I have never really known
12 how to impose that.

13 Do you just impose it and it becomes a
14 nullity? I've never really been clear. I can't
15 suspend it, so --

16 MR. ALFARO: We had that same issue in
17 the last trial we did, and I don't know.

18 THE COURT: I guess you just impose it
19 and it becomes a nullity when they're calculating
20 it.

21 MS. NORRIS: I don't think you
22 sentence. You just put on there, given life, so no
23 sentence by statute.

24 THE COURT: I thought about that as
25 well, Ms. Norris. I appreciate that.

SENTENCING

1 MS. NORRIS: That's the way I have seen
2 it done.

3 THE COURT: You can't impose it where
4 it's a life sentence. It used to and before they
5 amended the statute, it was mandatory that it be
6 consecutive. And they took out that language, but
7 left this other language which probably should have
8 been removed when they changed it from being a
9 mandatory consecutive sentence.

10 MS. NORRIS: That was on there when
11 life was parolable.

12 THE COURT: What I will do is, I will
13 just indicate that he was convicted on the other
14 indictments, and pursuant to 16-23-498, sentence
15 was not imposed as he received a life sentence.

16 Any exception from the State?

17 MS. SZYMCZYNSKA-SAS: No, Your Honor.

18 THE COURT: Any exception from the
19 defense?

20 MS. NORRIS: No, Your Honor.

21 THE COURT: Thank you all very much.
22 Have a good day.

23 (These proceedings were concluded March
24 29, 2019 at 2:23 p.m.)

25

1 CERTIFICATE OF REPORTER

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I, Carol Denise Lauder, Registered

Professional Reporter and Notary Public for the

State of South Carolina at Large, do hereby certify

that the foregoing transcript is a true, accurate,

and complete record.

I further certify that I am neither related

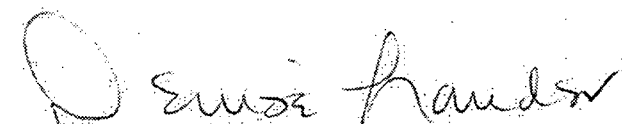
to nor counsel for any party to the cause pending

or interested in the events thereof.

Witness my hand, I have hereunto affixed my

official seal this 15TH day of July, 2019 at

Charleston, Charleston County, South Carolina.



S/Carol Denise Lauder

Carol Denise Lauder

Registered Professional

Reporter, CP

My Commission expires

February 27, 2028

KSS/0322368
WITNESSES

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

2016-10075428

ARREST WARRANT NUMBER

2016A0810401444

DATE OF ARREST

10/07/2016

ACTION OF GRAND JURY

True Bill

Bugan Akwala
Foreperson of Grand Jury

4/11/18
Date:

VERDICT

Guilty

Richard D. King
Foreperson of Petit Jury

3/29/19
Date:

DOCKET NO. 2018-GS-08-00840

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

APRIL TERM 2018

THE STATE

VS.

ROBERT DAVID NOLEN
W/M DOB: [REDACTED]

Indictment for

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT
CRIME

SC Code: § 16-23-0490
CDR Code: 0549

2018 APR 11 PM 1:17

FLH

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

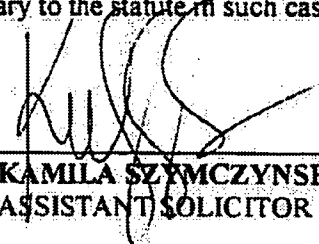
INDICTMENT

At a Court of General Sessions, convened April 2018, the Grand Jurors of Berkeley County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That in Berkeley County, South Carolina, on or about October 7, 2016, the Defendant, Robert David Nolen, did possess a firearm or did visibly display what appeared to be a firearm or did visibly display a knife during the commission of or attempted commission of a violent crime, to wit: Murder and/or Attempted Murder, in violation of Section 16-23-490, 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:


KAMILA SZYM CZYNSKA-SAS
ASSISTANT SOLICITOR

KSS/0322368
WITNESSES

Berkeley County Sheriff's Office

AGENCY CASE NUMBER
2016-10075428

ARREST WARRANT NUMBER
2016A0810401445

DATE OF ARREST
10/07/2016

ACTION OF GRAND JURY

True Bill

Breanna D. Gould
Foreperson of Grand Jury

4/11/18
Date

VERDICT

Guilt

Richard L. Kier
Foreperson of Petit Jury

3/29/19
Date

DOCKET NO. 2018-GS-08-00841

The State of South Carolina
County of Berkeley

COURT OF GENERAL SESSIONS
APRIL TERM 2018

THE STATE

VS.

ROBERT DAVID NOLEN
W/M DOB: [REDACTED]

Indictment for

MURDER

SC Code: § 16-03-0010
CDR Code: 0116

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STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

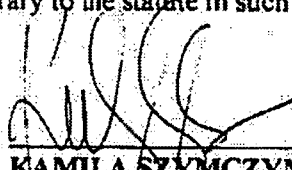
INDICTMENT

At a Court of General Sessions, convened April 2018, the Grand Jurors of Berkeley
County present upon their oath:

MURDER

That in Berkeley County, South Carolina on or about October 7, 2016, the defendant,
Robert David Nolen, with malice aforethought, did kill and murder Harry Lee Gressette, Jr. by
means of a Gunshot Wound, and Harry Lee Gressette, Jr. did die as a proximate result thereof on
or about October 7, 2016 in violation of §16-3-10 of the South Carolina Code of Laws (1976) as
amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.


KAMILA SZYM CZYNSKA-SAS
ASSISTANT SOLICITOR

[Signature]
KSS/0322368
WITNESSES

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

2016-10075428

ARREST WARRANT NUMBER

2016A0810401446

DATE OF ARREST

10/07/2016

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury

4/11/18
Date:

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury

3/29/19
Date:

DOCKET NO. 2018-GS-08-00842

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

APRIL TERM 2018

THE STATE

VS.

ROBERT DAVID NOLEN

W/M DOB: [REDACTED]

Indictment for

MURDER

SC Code: § 16-03-0010
CDR Code: 0116

[Handwritten notes and stamps]
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[Handwritten initials]

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

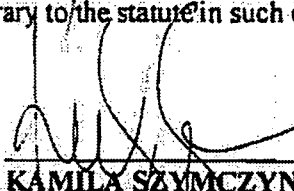
INDICTMENT

At a Court of General Sessions, convened April 2018, the Grand Jurors of Berkeley County present upon their oath:

MURDER

That in Berkeley County, South Carolina on or about October 7, 2016, the defendant, Robert David Nolen, with malice aforethought, did kill and murder Lance Donovan Kenyon by means of a Gunshot Wound, and Lance Donovan Kenyon did die as a proximate result thereof on or about October 7, 2016 in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


KAMILA SZYM CZYNSKA-SAS
ASSISTANT SOLICITOR

KSS/0322368
WITNESSES

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

2016-10075428

ARREST WARRANT NUMBER

2016A0810401447

DATE OF ARREST

10/07/2016

ACTION OF GRAND JURY

True Bill

Beggy Ahmed
Foreperson of Grand Jury

4/11/18
Date:

VERDICT

Guilty

Richard L. King
Foreperson of Petit Jury

3/29/19
Date:

DOCKET NO. 2018-GS-08-00843

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

APRIL TERM 2018

THE STATE

VS.

ROBERT DAVID NOLEN
W/M DOB: [REDACTED]

Indictment for

MURDER

SC Code: § 16-03-0010
CDR Code: 0116

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

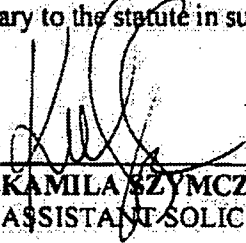
INDICTMENT

At a Court of General Sessions, convened April 2018, the Grand Jurors of Berkeley County present upon their oath:

MURDER

That in Berkeley County, South Carolina on or about October 7, 2016, the defendant, Robert David Nolen, with malice aforethought, did kill and murder James Mark Harrison by means of a Gunshot Wound, and James Mark Harrison did die as a proximate result thereof on or about October 7, 2016 in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


KAMILA SZYMCHYNSKA-SAS
ASSISTANT SOLICITOR

KSS/0322368
WITNESSES

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

2016-10075428

ARREST WARRANT NUMBER

2016A0810401448

DATE OF ARREST

10/07/2016

ACTION OF GRAND JURY

True Bill

Gregory Alford
Foreperson of Grand Jury

4/11/18
Date:

VERDICT

Guilty

Richard D. Lindsey
Foreperson of Petit Jury

3/29/19
Date:

DOCKET NO. 2018-GS-08-00844

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

APRIL TERM 2018

THE STATE

VS.

ROBERT DAVID NOLEN
W/M DOB: [REDACTED]

Indictment for

**THREATENING LIFE, PERSON OR
FAMILY OF A PUBLIC OFFICIAL**

SC Code: § 16-03-1040(A)
CDR Code: 0541

FILED
APR 11 PM 1:17

FILED

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

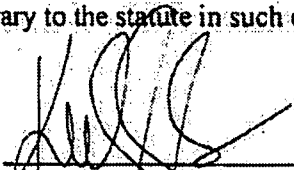
INDICTMENT

At a Court of General Sessions, convened April 2018, the Grand Jurors of Berkeley County present upon their oath:

THREATENING LIFE, PERSON OR FAMILY OF A PUBLIC OFFICIAL

That in Berkeley County, South Carolina, on or about October 7, 2016, the Defendant, Robert David Nolen, knowingly and willfully did deliver or convey to a public official, teacher or principal of an elementary or secondary school, by way of letter, writing, print, missive, document, or electronic or verbal communication, a threat to take the life of or to inflict bodily harm upon such public official, teacher or principal or his immediate family and such threat was directly related to his professional responsibilities, in violation of Section 16-3-1040 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


KAMILA SZYM CZYNSKA-SAS
ASSISTANT SOLICITOR

KSS/0322368
WITNESSES

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

2016-10075428

ARREST WARRANT NUMBER

2016A0810401449

DATE OF ARREST

10/07/2016

ACTION OF GRAND JURY

True Bill

Meghan Arnold
Foreperson of Grand Jury

4/11/18
Date:

VERDICT

Guilty

Richard L. King
Foreperson of Petit Jury

3/29/19
Date:

DOCKET NO. 2018-GS-08-00890

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

APRIL TERM 2018

THE STATE

VS.

ROBERT DAVID NOLEN

W/M DOB: [REDACTED]

Indictment for

ATTEMPTED MURDER

SC Code: § 16-03-0029

CDR Code: 3410

10/11/18 PM 1:17

FILED

FLH

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

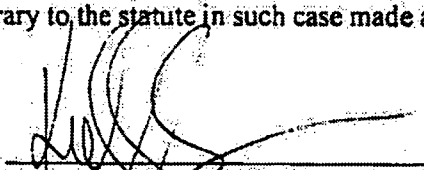
INDICTMENT

At a Court of General Sessions, convened April 2018, the Grand Jurors of Berkeley County present upon their oath:

ATTEMPTED MURDER

That in Berkeley County, South Carolina, on or about October 7, 2016, the Defendant, Robert David Nolen, did, with intent to kill and malice aforethought, attempt to kill Fred A. Mazyck Jr. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


KAMILA SZYMCHYNSKA-SAS
ASSISTANT SOLICITOR

KSS/0322368

WITNESSES

Jury Verdict 5741

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

2016-10075428

ARREST WARRANT NUMBER

2018-GS-08-01672

DATE OF ARREST

10/07/2016

ACTION OF GRAND JURY

True Bill

[Signature] *08/20/2018*
 Foreperson of Grand Jury Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2018-GS-08-01672

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

AUGUST TERM 2018

THE STATE

VS.

ROBERT DAVID NOLEN

W/M DOB: [REDACTED]

Indictment for

POSSESSION OF A FIREARM BY A
PERSON CONVICTED OF A VIOLENT
OFFENSE

SC Code: § 16-23-0500(A)

CDR Code: 3434

FILED
 18 AUG 22 PM 12:21
 CLERK
 COUNTY OF BERKELEY
 S.C.

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

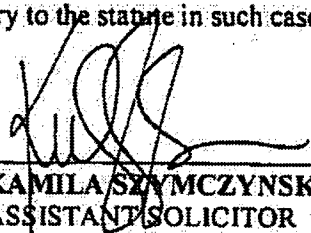
INDICTMENT

At a Court of General Sessions, convened August 2018, the Grand Jurors of Berkeley County present upon their oath:

POSSESSION OF A FIREARM BY A PERSON CONVICTED OF A VIOLENT OFFENSE

That in Berkeley County, South Carolina, on or about October 7, 2016, the Defendant, Robert David Nolen, having previously been convicted of a violent crime as defined in SC Code Section 16-1-60 that is classified as a felony, did possess a firearm or ammunition in violation of Section 16-23-500 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


KAMILA SYMCZYŃSKA-SAS
ASSISTANT SOLICITOR

COUNTY OF BERKELEY
STATE VS.

ROBERT DAVID NOLEN

AKA:
Race: White Non-Latino/Caucasian Sex: M
DOB: [REDACTED] SS#: [REDACTED]
Address: 4035 Exploration Road
City, State, Zip: Ladson, SC 29456-3462
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: Possession Of A Weapon During The Commission Of A Violent Crime
In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

100437 15081
Kamila Szymczyńska-Jas, Assistant Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center,
for a determinate term of _____ 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 Service standard conditions of probation, which
are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP 60
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment:
Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS

Recipient: _____
*Fine: \$ _____
§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00
§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____
§56-5-2995 (DUI Assessment) \$12 \$ _____
§56-1-286 (DUI Breath Test) \$25 \$ _____
Proviso (Public Def/Probation) \$500 \$ _____
§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§14-1-213 (Drug Court Surcharge) \$150 \$ _____
§50-21-114 (HUI Breath Test Fee) \$50 \$ _____
§56-5-2942(I) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ \$ 3.75
TOTAL \$ 128.75

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: The sentence imposed
per SC Code Ann. 316-23-490(a)
As the Defendant was
sentenced to life by
Indictment # 2018-GS-08-841, 842 &
843.
☐ Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk: _____
Court Reporter: _____

Presiding Judge: [Signature]
Judge Code: 2128
Sentence Date: 3/29/19

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BERKELEY

STATE VS.

ROBERT DAVID NOLEN

AKA:

Race: White Non-Latino/CaucasianSex: MDOB: [REDACTED]SS#: [REDACTED]Address: 4035 Exploration RoadCity, State, Zip: Ladson, SC 29456-3462DL# [REDACTED]SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Murder

In violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

A7767E

100437

15081

Kamila Szymanska-Sas, Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of life 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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: all of 3/29/19☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (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 EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS 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 FundOther: ☐ Appointed PD or appointed other counsel.

Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-3-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

Proviso (Public Def/Probation)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-3-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$	
\$	
\$100	\$100.00
\$100	\$
\$12	\$
\$25	\$
\$500	\$
\$25	\$25.00
\$150	\$
\$50	\$
\$40/ea	\$
\$	\$3.75
\$	\$18.75

Clerk of Court/Deputy Clerk: Court Reporter: Presiding Judge: Judge Code: Sentence Date: 3/29/19

870

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

STATE VS.

ROBERT DAVID NOLEN

AKA:

Race: White Non-Latino/CaucasianSex: MDOB: 01/22/1972SSN: 000-00-0000Address: 4035 Exploration RoadCity, State, Zip: Ladson, SC 29456-3462DL# 0000000000SID# 0000000000*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: MurderIn violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)The plea is ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

100437

Kamila Szymczycka-Sas, Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

15081

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of life 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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: all of 3/29/19☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

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,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before any other fees.

Presiding Judge: DR JessJudge Code: 2128Sentence Date: 3/29/19

Clerk of Court/Deputy Clerk: _____

Court Reporter: _____

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BERKELEY
STATE VS.ROBERT DAVID NOLEN

AKA:

Race: White Non-Latino/Caucasian Sex: MDOB: 01/15/1981 SSN: 123-45-6789Address: 4035 Exploration RoadCity, State, Zip: Ladson, SC 29436-1462DL# 0123456789 SID# 9876543210*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: MurderIn violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)The plea is ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

100437

15081

Kamila Szymczyńska, Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of life 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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: all of 3/29/19☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUPTotal: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. ☒May serve W/F beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmis. of \$ Beginning \$ Paid to Public Defender FundOther:

PH 2:53

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before any other fees.

Presiding Judge: Judge Code: 2128Sentence Date: 3/29/19Recipient: *Fine: \$ §14-1-206 (Assessments 107.5%) \$ §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ §56-5-2995 (DUI Assessment) \$12 \$ §56-1-286 (DUI Breath Test) \$25 \$ Proviso (Public Def/Probation) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ TOTAL \$ 3,75\$ 181.75Clerk of Court/Deputy Clerk: Court Reporter:

COUNTY OF BERKELEY

STATE VS.

ROBERT DAVID NOLEN

AKA:

Race: White Non-Latino/Caucasian Sex: MDOB: [REDACTED] SS#: [REDACTED]Address: 4035 Exploration RoadCity, State, Zip: Ladson, SC 29456-3462DL# 06-0000000SID# 06-0000000*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Threaten Life, Person Or Family Of A Public OfficialIn violation of § 16-03-1040(A) of the S.C. Code of Laws, bearing CDR Code # 0541☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense,The plea is: ☐ Without Negotiations or Recommendation,

ATTENT:

☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)☐ Negotiated Sentence, ☐ Recommendation by the State.

100437

15081

Kamila Szymczynska-Sas, Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: all of 3/29/19☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, It is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Ordered PTUP _____ days/hours Public Service EmploymentObtain GED ☐☐ Set by SCDPPPS _____Attend Voc. Rehab. Or Job Corp. 3/29/19May serve W/E beginning 3/29/19Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine: _____ \$

§14-1-206 (Assessments 107.5%) \$

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$

§56-5-2995 (DUI Assessment) \$12 \$

§56-1-286 (DUI Breath Test) \$25 \$

Proviso: (Public Def/Probation) \$500 \$

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$

§50-21-114 (BUI Breath Test Fee) \$50 \$

§56-5-2942(I) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ \$ 3.75TOTAL \$ 188.75

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: DR J...Judge Code: 2128Sentence Date: 3/29/19

Clerk of Court/Deputy Clerk: _____

Court Reporter: _____

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BERKELEY

STATE VS.

ROBERT DAVID NOLEN

AKA:

Race: White Non-Latino/Caucasian Sex: MDOB: [REDACTED] SSN: [REDACTED]Address: 4035 Exploration RoadCity, State, Zip: Ladson, SC 29456-3462DL# [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: Attempted MurderIn violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense,The plea is: ☐ Without Negotiations or Recommendation,☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTENT:

100437

Kamila Szymczynska, Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

15081

SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center,for a determinate term of 30 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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: all of 3/29/19☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine: \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso (Public Def/Probation) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75☐ Ordered PTUP _____ days/hours Public Service EmploymentObtain 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,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk: _____

Court Reporter: _____

Presiding Judge: [Signature]Judge Code: 2120Sentence Date: 3/29/19

COUNTY OF BERKELEY

STATE VS.

ROBERT DAVID NOLEN

AKA:

Race: White Non-Latino/CaucasianSex: MDOB: [REDACTED]SS#: [REDACTED]Address: 4035 Exploration RoadCity, State, Zip: Ladson, SC 29456-3462DL# 0 [REDACTED]SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or☒ PLEADSTO: Possession Of A Firearm By A Person Convicted of A Violent OffenseIn violation of § 16-23-0500(A) of the S.C. Code of Laws, bearing CDR Code # 3434☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury,

(def.'s initials)

The plea is:

☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTORNEY

100437

Kamila Szymczynska-Sas, Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

15081
SC Bar #

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections☐ County Detention Center,for a determinate term of 5 days/months/years or☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$, provided that upon the service of days/months/years and or paymentof \$, 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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: All of 3/29/19☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS 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 FundOther: Recipient: *Fine: \$ §14-1-206 (Assessments 107.5%) \$ §14-1-211 (AX1)(Conv. Surcharge) \$100 \$ 100.00§14-1-211 (AX2)(DUI Surcharge) \$100 \$ §56-5-2995 (DUI Assessment) \$12 \$ §56-1-286 (DUI Breath Test) \$25 \$ Proviso (Public Def/Probation) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$

TOTAL

\$ 3.75\$ 198.75☐ Appointed PD or appointed other counsel

Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk: Court Reporter:

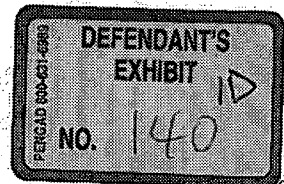
Plea Accepted. Sentencing Deferred.

SCCA/217 (04/2018)

3/25/17 2128

Presiding Judge: Judge Code: 2128Sentence Date: 3/29/19

Sentence Imposed



875

COPY VOLUNTARY STATEMENT
(NOT UNDER ARREST)

I, Fred Magzick, am not under arrest nor am I being detained for any criminal offenses concerning the events I am about to make known to BCSO Det Sgt Antwine. Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 41 years of age, and live at 216 Maco RD Monckton SC 298

I was invited by Lance and Robbi to stay over for the storm we were together since 9:00 this morning Robbi's was staying there for about a month and a half cause of space problems they were shooting ~~in~~ ^{FM} guns at ~~every~~ ^{FM} that day and drinks I was drinking to every thing was fine the house had 2 more guest came over I was a older white male and the other was a little younger white male started drinking evergreen and they ~~said~~ Robbi said they were going back outside to shoot someone then I went to sleep woke up to a gun shot Robbi came in the house said he shot everybody I didn't ~~believe~~ ^{FM} believe him he shot at me with the rifle 2 times it was brown told me to leave and call the police I talked to him until I got to the door and ran through the woods till I got to miss Simms house and call the police.

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at Cooper Shore Rd, this 7th day of October 2016

WITNESS:

WITNESS:

Signature of person giving voluntary statement

Interview between

Interviewer: Detective Phillips, Detective Elrod

Interviewee: Fred Mazyck

Case: State v. Nolan

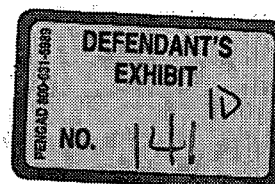
Audio File Name:

ch01(CH1)_161007124000_161007132430_00_163MB_ADMIN

Interview Conducted On

October 7, 2016

Transcribed By: Always On Time



1 [enters room 0:00:54]

2 DETECTIVE: Just have a seat right here and we
3 will be right with you, okay.

4 FRED MAZYCK: Okay

5 DETECTIVE: [leaves room 0:00:57].

6 DETECTIVE PHILLIPS: [enters room 0:01:44]. All right,
7 buddy. Fred, thank you for coming in today. Like I said I'm
8 Detective Phillips with Berkeley County. This is Detective
9 Elrod. Can you please state your name?

10 FRED MAZYCK: My name is Fred Mazyck.

11 DETECTIVE PHILLIPS: Fred Mazyck. You're coming in today
12 to speak with us due to you being a witness to an incident that
13 occurred at 228 Macio [phonetic].

14 FRED MAZYCK: Macio.

15 DETECTIVE PHILLIPS: All right. Today's date is October 7,
16 2016. The time is 12:42 PM. Fred, I just want to go over what
17 occurred yesterday during the day and how everything led up to
18 that night. I want to understand what you saw, what you
19 observed, and what you heard, and who all was there.

20 FRED MAZYCK: Well, Lance, he is the owner of the
21 place.

22 DETECTIVE PHILLIPS: Do you know Lance's last name?

23 FRED MAZYCK: I don't know none of them lasts names.
24 I been with them now for probably about three to four months.

25 DETECTIVE PHILLIPS: Okay.

1 FRED MAZYCK: My mom talked good about him and
2 everything so I figured he was a good guy to be hanging with.
3 DETECTIVE PHILLIPS: Uh-huh.
4 FRED MAZYCK: A storm was going on, so he invited me
5 to stay with him through the storm.
6 DETECTIVE PHILLIPS: Okay.
7 FRED MAZYCK: I been with him ever since 9:00 that
8 morning.
9 DETECTIVE PHILLIPS: How long have you known Lance?
10 FRED MAZYCK: I've known him for about, from the
11 time I came home.
12 DETECTIVE PHILLIPS: And Lance is the homeowner?
13 FRED MAZYCK: He is the homeowner.
14 DETECTIVE PHILLIPS: Owner, okay.
15 FRED MAZYCK: Yeah. We had been together, we bought
16 some [inaudible] stuff, getting ready for the storm. He got some
17 guns, they was out there shooting, target practicing.
18 DETECTIVE PHILLIPS: Who was they?
19 FRED MAZYCK: It was Lance and Robert-Robbie.
20 DETECTIVE PHILLIPS: Robbie.
21 FRED MAZYCK: The one been shooting, Robbie..
22 DETECTIVE PHILLIPS: Okay.
23 FRED MAZYCK: They were shooting guns and stuff and
24 out there talking.
25 DETECTIVE PHILLIPS: Who else was out there?

1 FRED MAZYCK: Just me.

2 DETECTIVE PHILLIPS: It was just you?

3 FRED MAZYCK: Yeah, and Robbie.

4 DETECTIVE PHILLIPS: And Robbie.

5 FRED MAZYCK: In the beginning.

6 DETECTIVE PHILLIPS: In the beginning, okay.

7 DETECTIVE ELROD: About what time was that?

8 FRED MAZYCK: That's was about 9:00 this the

9 morning. We be chillin' together all that day up until about, I
10 would say maybe 12:00, 12:00 that night. You know, look at
11 movies and he had some--

12 DETECTIVE PHILLIPS: How did he know Robbie?

13 FRED MAZYCK: Robbie been staying there with Lance
14 after he had a problem at home with his wife or whatever. Lance
15 let him sleep on the sofa at his house.

16 DETECTIVE PHILLIPS: Okay.

17 FRED MAZYCK: Until he can get his self together.
18 He been there probably about a month, maybe a month and a half.

19 DETECTIVE PHILLIPS: Does Robbie have guns as well?

20 FRED MAZYCK: Yes, he do. He had his own guns.

21 DETECTIVE PHILLIPS: Do you know what they were?

22 FRED MAZYCK: He had a-what he took out and he
23 showed me was a 12 gauge, he had a rifle, I'm not sure what it
24 was, he had a handgun, then he said he about four or five more in
25 the house.

1 DETECTIVE PHILLIPS: Okay.

2 FRED MAZYCK: That's what he took out, that they
3 been shooting.

4 DETECTIVE PHILLIPS: Okay.

5 FRED MAZYCK: Like I said everything was fine.

6 After they finish, we walk around picking up all the stuff out of
7 the yard, the little shotgun shell casings and stuff from the
8 yard. We went to the store to get some stuff for tomorrow to
9 cook or whatever. He got a phone call, Lance got a phone call.
10 Two of his homeboys called and said--asked him what he was doing.
11 They said they wanted to come over, so he told them to come on
12 over. We got beers. [inaudible] drinking or whatever. So they
13 came--

14 DETECTIVE PHILLIPS: Do you know their names?

15 FRED MAZYCK: No, I've never met this person. This
16 first time I met them.

17 DETECTIVE PHILLIPS: The first time you met them, okay.

18 FRED MAZYCK: Actually, I was in and out. While
19 they talked they were drinking a while. They asked me if I
20 wanted a drink. I said, no I already done drank enough, you know
21 I'm good. Robbie said he wanted to go outside and shoot some
22 more guns or whatever. They decided they would go out there and
23 shoot. They asked me if I wanted to go, I said, no I'm going to
24 stay inside, look at TV. So, they went outside, I was looking at
25 TV. The door was open, I heard the gunshots.

1 DETECTIVE PHILLIPS: So, what you are saying is Lance went
2 outside--

3 FRED MAZYCK: Outside.

4 DETECTIVE PHILLIPS: Robbie went outside--

5 FRED MAZYCK: Robbie and the other two--

6 DETECTIVE PHILLIPS: And the other two went outside.

7 FRED MAZYCK: Went outside.

8 DETECTIVE PHILLIPS: Okay.

9 FRED MAZYCK: In the back to shoot guns. I was
10 inside. I was sleeping, I heard the gunshots, I woke up--

11 DETECTIVE PHILLIPS: How many did you hear?

12 FRED MAZYCK: I heard--I heard one shot. You know
13 what I mean, he shot more than that but I heard one shot. One
14 shot I heard and I woke up. I heard the shot and I look around
15 you know, ain't nobody came inside. I said, well damn they still
16 shooting this time of night.

17 DETECTIVE PHILLIPS: Around what time was that?

18 FRED MAZYCK: That was around 1:00 or 1:30.

19 DETECTIVE PHILLIPS: Okay.

20 FRED MAZYCK: So, ain't nobody came in the house, so
21 I was about to lay back and go back to sleep. Then Robbie came
22 in the house, through the back door, with the rifle in his hand.
23 He came in wide open, fast, something telling me to roll. As
24 soon as I roll off the sofa, he let off two shots at me. I
25 pretty sure I see the holes in the wall, by the sofa.

1 DETECTIVE PHILLIPS: What--did he say anything to you?

2 FRED MAZYCK: After I roll off of the floor and I
3 got off the floor and I got up and I approached him, and he throw
4 the gun on me. He said, I killed everybody. I said, what you
5 talking about and he had the gun on me and he said I shot
6 everybody, killed everybody. In my mind, I [inaudible] he done
7 killed. In my mind I was thinking they was dead. So, if he
8 going to kill them now I'm the only one in the house so I figured
9 he was going to, you know, so.

10 DETECTIVE PHILLIPS: So, how did he throw the gun on you?

11 FRED MAZYCK: He came in--gun already aimed when he
12 came through the door. I saw him coming in.

13 DETECTIVE PHILLIPS: So, he was--what you mean by throwing
14 it on you, he was pointing it at you.

15 FRED MAZYCK: He already came at me, he already came
16 in the house he had it aimed towards me.

17 DETECTIVE PHILLIPS: Okay.

18 FRED MAZYCK: When I saw him coming in, I rolled
19 off--tried to get off the chair, I moved from the chair, he let
20 off two shots.

21 DETECTIVE PHILLIPS: Okay.

22 FRED MAZYCK: I hit the floor and then I got off the
23 floor he had the gun on me. I was talking to him, he didn't pull
24 the trigger the third time, so I thought maybe I could talk
25 myself out of this. He was saying I done killed everybody and I

1 shot everybody. I said what's going on, what's going on. He
2 said, I'm tired of them messing with me, I'm tired of them
3 messing. I said, what are you talking about. The whole time we
4 were trying to ease in to--

5 DETECTIVE PHILLIPS: While you were there, did you see
6 anybody?

7 FRED MAZYCK: I didn't see nobody, I was listening,
8 I was looking, I mean I didn't see Lance, I didn't see nobody.

9 DETECTIVE PHILLIPS: So, you didn't--you didn't understand
10 why he was saying--

11 FRED MAZYCK: Why he was saying what he was saying,
12 you know. I already know something ain't right with him because
13 that morning he been taking some prescription medicines.

14 DETECTIVE PHILLIPS: Do you know what they were?

15 FRED MAZYCK: I think he told me one was Xanax and
16 some other medications--he said Xanax supposed to knock the edge
17 off and some prescription that he was supposed to be taking or
18 whatever. He took them this morning with a soda.

19 DETECTIVE PHILLIPS: How many you think he took? How many
20 pills did you see?

21 FRED MAZYCK: He had a--I don't know what he had in
22 his hand, but he had a couple of bottles sitting on the table.
23 He was talking that he was tired of taking the medicine and all
24 that, but he took some medicine this morning. He been drinking
25 too.

1 DETECTIVE PHILLIPS: Was there any other kind of narcotics
2 in the house?

3 FRED MAZYCK: No, no. Rob might have had a little
4 bit of reefer.

5 DETECTIVE PHILLIPS: Okay.

6 FRED MAZYCK: Yeah, he might have had a little bit
7 of weed.

8 DETECTIVE PHILLIPS: Did you see Robbie smoking that?

9 FRED MAZYCK: The weed, no, I mean, he always keeps
10 it, but he had--they were just drinking and if guests came over,
11 I don't know if the people that came over don't smoke with him or
12 whatever but he ain't pull it out, but you know, he keeps a
13 little weed.

14 DETECTIVE PHILLIPS: Okay.

15 FRED MAZYCK: They went out to shoot guns and like I
16 said he came in, and shot at me, and I talked to him, and then I
17 got to the front door. The front door was already open, and I
18 talked to him. I got him to where he dropped the gun a little
19 bit, where he got it off of me, and then I figure he had down
20 enough where I could take a chance and just bolted for the door.

21 DETECTIVE PHILLIPS: Okay.

22 FRED MAZYCK: He shot one time behind me..

23 DETECTIVE ELROD: Did he fire out of the door at you?

24 FRED MAZYCK: He fired out of the door.

25 DETECTIVE ELROD: Okay.

1 FRED MAZYCK: He fired out of the door. I went into
2 the woods, I ran through the woods, down the side of the highway,
3 I run across [inaudible] yard, I went into the woods in front of
4 her and I came across by the church, behind the people next door
5 to the church.

6 DETECTIVE PHILLIPS: Out on Cooper Store?

7 FRED MAZYCK: Yeah, Cooper Store, I ran up the
8 [inaudible] MS. Simmons' house and I called y'all.

9 DETECTIVE PHILLIPS: Did you ever return back to the house?

10 FRED MAZYCK: I was going to, but she told me not go
11 because of the fellow in the woods and you don't know where he's
12 at. So, I stayed there until I saw the police [inaudible]
13 highway in front of her house then I walk out and the police
14 come.

15 DETECTIVE PHILLIPS: Okay. Right. Did you give a written
16 statement or anything today?

17 FRED MAZYCK: Yes, I did. I gave it to a lady.

18 DETECTIVE PHILLIPS: Okay. During the times you had
19 meetings with Robbie, has he ever said—make statements about what
20 he would do to people or that he [crosstalk]

21 FRED MAZYCK: No, like I been telling them, I mean
22 it through me for a loop because, he was fine. I mean they talk
23 a little junk to each other, like everybody else do, I mean, they
24 joke and they laugh.

25

1 DETECTIVE PHILLIPS: Like what kind of things were they
2 picking at him about?

3 FRED MAZYCK: I mean [inaudible] they talking about
4 my thing bigger than yours, I mean. Typical guys stuff.

5 DETECTIVE PHILLIPS: You think they were just joking?

6 FRED MAZYCK: Just joking around, you know. It
7 wasn't nothing serious where he got mad or nothing, I mean.

8 DETECTIVE PHILLIPS: Has he ever been mad around you?

9 FRED MAZYCK: No, I never see him mad. I mean for
10 all I see, he would be out there in the yard, he be trying to do
11 stuff for Lance because Lance let him stay in the house. We do
12 stuff to help Lance around the house, I helped him a little bit
13 when Lance be gone. I go out there and talk to him and he seemed
14 like a pretty good guy.

15 DETECTIVE PHILLIPS: What-all you knew is he was having
16 issues with his wife?

17 FRED MAZYCK: With his fiancé. He tell me something
18 about that, he said that she did him some kind of way. He ain't
19 got into detail because he don't like talking about what going on
20 in they household and all that.

21 DETECTIVE ELROD: He said he had a fiancé?

22 FRED MAZYCK: A wife or fiancé or whatever she is?

23 DETECTIVE ELROD: Okay.

24 FRED MAZYCK: I know she put him out.

25 DETECTIVE ELROD: Okay, so she put him out of the house.

1 FRED MAZYCK: Yeah, and he was staying with Lance.

2 DETECTIVE PHILLIPS: He didn't tell you the reasons why?

3 FRED MAZYCK: No, he ain't never—I didn't know him
4 that long until really—like I said he only been there like a
5 month or month and a half.

6 DETECTIVE PHILLIPS: Okay.

7 FRED MAZYCK: I talked to him in the yard when I see
8 him, I just know he was a friend of Lance and Lance is a friend
9 to me. So, I talked to him whenever I go out there walk over
10 there and Lance in the house and I talked to him in the yard. He
11 seemed like he been a pretty good guy. I mean he was fine, he
12 walked out the house that night said they were going to shoot.
13 He come back, became a whole different person.

14 DETECTIVE ELROD: Whenever you say he came in, did he
15 come in the front door or did he come from the back?

16 FRED MAZYCK: From the back door.

17 DETECTIVE ELROD: But the front door was open.

18 FRED MAZYCK: It was open, wide open. It was wide
19 open.

20 DETECTIVE ELROD: Did y'all—do you normally--

21 FRED MAZYCK: Yeah, Lance leaves it open for the
22 air. With the hurricane and the wind blowing, he had all the
23 windows up. He had the door—the front door and the back door was
24 open but I think they closed it when they went out. When he came
25 in, he opened the door, and he came in with the gun.

1 DETECTIVE ELROD: Okay.

2 FRED MAZYCK: Yeah.

3 DETECTIVE PHILLIPS: The medication, was it his medication
4 that was prescribed to him?

5 FRED MAZYCK: He said it was prescribe, I mean I
6 don't know.

7 DETECTIVE PHILLIPS: Okay.

8 FRED MAZYCK: He said it was medicine they give him
9 for his problems. He said, he dealing with anxiety and something
10 else he said he was dealing with.

11 DETECTIVE PHILLIPS: You don't remember what that was?

12 FRED MAZYCK: No, he would call a bunch of different
13 pills that they had him on, and you know, he said the pill—he did
14 say the pill wasn't working. He said he had to go to the doctor
15 and try to get them to do something different, he did say all
16 that. Yeah. He did say that in the house that morning.

17 DETECTIVE PHILLIPS: Okay.

18 DETECTIVE ELROD: Did he ever mention any—was he ever in
19 the military?

20 FRED MAZYCK: Yeah, he talked about that too.

21 DETECTIVE ELROD: What did he say?

22 FRED MAZYCK: He didn't say—he just said he was in
23 the military. He showed me a gun he had and said his father or
24 somebody he knew was a police officer or whatever. It was
25

1 supposed to be a police special, a handgun he had you know, stuff
2 like that but he never really went into details too much.

3 DETECTIVE PHILLIPS: Okay.

4 FRED MAZYCK: He did say he was in the military,
5 some kind of way.

6 DETECTIVE PHILLIPS: He didn't tell you what he did?

7 FRED MAZYCK: No, he didn't tell me what he did.

8 DETECTIVE ELROD: He never like, talk about being a
9 veteran and stuff like that?

10 FRED MAZYCK: No, he never talked about none of
11 that. Just said that he was in the military.

12 DETECTIVE ELROD Okay. Was Lance in the military, do
13 you know?

14 FRED MAZYCK: I don't know but he had some guns
15 though.

16 DETECTIVE PHILLIPS: Yeah. Did Lance ever talk to you
17 about Robbie?

18 FRED MAZYCK: No, he didn't tell me Robbie was a
19 crazy fellow. I mean, you know.

20 DETECTIVE PHILLIPS: Nothing that concerned you, he didn't
21 say--

22 FRED MAZYCK: No, nothing ever concerned me or
23 nothing. As far as I figured, they was two best friends. I
24 mean, the whole morning like I said they been together. They
25 been together, go to the store, he offered to pay for stuff, and

1 Lance was telling me [inaudible], you good. I mean, Lance paid
2 for everything.

3 DETECTIVE PHILLIPS: Did Lance ever tell you how they met?

4 FRED MAZYCK: No, as far as I—he never told me, just
5 tell me he was a friend. I know both of them did concrete work,
6 but I don't know if he worked for Lance or whatever. But, I know
7 Lance did--

8 DETECTIVE PHILLIPS: Can you tell me what Robbie was
9 wearing?

10 FRED MAZYCK: He was wearing—when I left, when I ran
11 out of that house, he had the same thing on he had on all day.
12 He had a camouflage visor--

13 DETECTIVE ELROD: A camouflage visor.

14 FRED MAZYCK: A visor, he had on a pair of blue
15 jeans, a pair of running sneakers. Now the shirt, I don't know
16 if had a design on it but had stripes or whatever but I'm not
17 sure. It was a shirt with stripes or some kind of design on it.
18 I think white and blue if I ain't mistake.

19 DETECTIVE PHILLIPS: Okay. You didn't see no other kind of
20 clothing that he was wearing?

21 FRED MAZYCK: No, the visor—when I walked up to the
22 officer and left the visor in the back of his truck with the
23 little light on the—on the front.

24 DETECTIVE ELROD: Oh, that's the one. Okay.

25 FRED MAZYCK: Yeah.

1 DETECTIVE ELROD: No, I know—I know which one you are
2 talking about.

3 FRED MAZYCK: Yes, that's the visor he had on all
4 day.

5 DETECTIVE ELROD: A fun thing that I noticed at the
6 scene was they have a hot tub in the back--

7 FRED MAZYCK: Yes.

8 DETECTIVE ELROD: It was running and all. Did he always
9 leave it running?

10 FRED MAZYCK: No, see, what I think is it cuts on at
11 a certain time.

12 DETECTIVE ELROD: Okay, got you.

13 FRED MAZYCK: But it was closed the whole time.
14 When I walked over there that day, after y'all left and
15 everything, it was open.

16 DETECTIVE ELROD: Yeah, it was open when I seen it.

17 FRED MAZYCK: Yeah, so I don't know if they was
18 planning on getting in the tub or not. The tub was closed all
19 day. We even put screws in it to anchor it down so if the wind
20 won't blow the top off.

21 DETECTIVE ELROD: Okay.

22 FRED MAZYCK: So that possible too, at that time of
23 night they got that--

24 DETECTIVE ELROD: Do you think that--do you think that
25 they were out there in that tub or were going to get in?

1 FRED MAZYCK: If they were going to get in—if Lance
2 opened that tub they were going to get in it. That's the tub he
3 always talk about, he tried to get me in there numerous times.

4 DETECTIVE ELROD: You don't like water?

5 FRED MAZYCK: No, me and a small tub like that, me
6 getting in there with a bunch of fellows, I just don't.

7 DETECTIVE ELROD: I can understand that.

8 FRED MAZYCK: Yeah. [crosstalk]

9 DETECTIVE ELROD: We are not trying to be funny here
10 about that stuff but—was there ever, do you think that there is
11 any issues with like, woman or anything between those guys?

12 FRED MAZYCK: I know Robbie had a problem, what was
13 going on with his situation. Lance, I mean, the only thing he
14 ever told was that he separated from his wife and all that. He
15 had to come [inaudible] and he found his place there so he bought
16 that there. He had to start over fresh. I mean, that's the most
17 Lance ever told me about that, after he told me that, he left it
18 alone.

19 DETECTIVE ELROD: Did you ever hear anything like maybe
20 what Robbie and Lance, talking about like a girl that may have
21 both been interested in or anything like that?

22 FRED MAZYCK: No, I would say nothing—Robbie always
23 looking for a woman. He would ask me about girls, if I knew any
24 girls but Lance would never. I didn't even know he was married
25

1 until a couple weeks or two ago, I've been-I've known him for
2 about two to three months. That's how much he kept to himself.

3 DETECTIVE PHILLIPS: How did you find that out?

4 FRED MAZYCK: When Robbie was saying stuff and he
5 said-he was telling me he bought this place and he had a wife and
6 all that. You know, he was starting over fresh. He told me all
7 that. As far as I know Robbie was going where he was going. He
8 tell me Robbie was going through it with his and he was going to
9 sleep on the sofa until he got his stuff together.

10 DETECTIVE PHILLIPS: So, when you saw him come in with the
11 gun, he was wearing a striped shirt, blue jeans--

12 FRED MAZYCK: He had the camouflage visor on. So,
13 he might have put it in the truck when he came out the house.
14 The truck wasn't where it was parked at neither.

15 DETECTIVE PHILLIPS: The truck was moved?

16 FRED MAZYCK: It was moved.

17 DETECTIVE PHILLIPS: Where was--

18 FRED MAZYCK: I moved the truck myself because they
19 were shooting off the tailgate of the other truck.

20 DETECTIVE ELROD: Where was the truck parked at when
21 this happened?

22 FRED MAZYCK: They were shooting off the tailgate
23 over there. All right, we were putting all the guns up and
24 everything in the house and they was talking, after we moved
25 everything, I got in the truck myself and I pulled the truck

1 around to the front of the house, pulled up to the garage, up to
2 the house, on the other side of the black truck.

3 DETECTIVE ELROD: Okay.

4 FRED MAZYCK: I gave him his keys, he ain't never
5 moved that truck. We left there, we went to the store, got more
6 beer and everything and came back home. Now after the shooting
7 and everything happened, I ran up there, came back, and I noticed
8 the truck was parked over in the front of the yard.

9 DETECTIVE ELROD: Like when you come in the yard--

10 FRED MAZYCK: Yeah, it wasn't there, had it pulled
11 up to the house.

12 DETECTIVE ELROD: Okay.

13 FRED MAZYCK: Yeah, it was pulled up to the house.

14 DETECTIVE ELROD: So, who do you think moved it?

15 FRED MAZYCK: I don't know. The truck wasn't where
16 it was supposed to been at.

17 DETECTIVE PHILLIPS: And whose truck was that?

18 FRED MAZYCK: That was Robbie's truck.

19 DETECTIVE PHILLIPS: That was Robbie's truck. What kind of
20 truck was it?

21 FRED MAZYCK: A small--it's the smallest one out
22 there, I think it was maybe a Nissan.

23 DETECTIVE ELROD: It's white?

24 FRED MAZYCK: White.

25 DETECTIVE ELROD: White.

1 FRED MAZYCK: White. There are a bunch of bullet
2 casing in the back of the tailgate.

3 DETECTIVE ELROD: Okay. All right. So, you thought
4 that was strange?

5 FRED MAZYCK: It was strange because I pulled up in
6 the front. I don't know he might of tried to get in, try to
7 leave, or whatever. I don't know, I remember that the truck was
8 pulled up to the house.

9 DETECTIVE ELROD: What-there is-do you know who Lance
10 bought the house from?

11 FRED MAZYCK: Yeah, that's my grandfather's house.

12 DETECTIVE ELROD: Okay. What was his name?

13 FRED MAZYCK: Charles Mazyck.

14 DETECTIVE ELROD: Okay.

15 DETECTIVE PHILLIPS: That explains that.

16 DETECTIVE ELROD: Well we just seen that Charles Mazyck
17 had that address.

18 FRED MAZYCK: Yes.

19 DETECTIVE ELROD: So that was the former owner.

20 FRED MAZYCK: The former owner.

21 DETECTIVE PHILLIPS: It was just you, Robbie, Lance, and
22 the two other guys.

23 FRED MAZYCK: The other guys.

24 DETECTIVE PHILLIPS: There was nobody else there that we
25 need to be concerned about.

1 FRED MAZYCK: No, like I said--like I told them
2 earlier, if somebody else came, then they must of came when they
3 were in the yard shooting. All day until the time his guests
4 came, that's all there was. It was just me, Robbie, Lance, and
5 the two guys.

6 DETECTIVE PHILLIPS: Okay.

7 FRED MAZYCK: They said they was going outside to
8 shoot guns. They went out there and I laid back and look at TV
9 and I drift off.

10 DETECTIVE PHILLIPS: Did Lance have a cell phone?

11 FRED MAZYCK: Yes, he did.

12 DETECTIVE PHILLIPS: How about Robbie?

13 FRED MAZYCK: Yes, he did.

14 DETECTIVE PHILLIPS: Okay. What kind of cell phone did
15 Robbie have?

16 FRED MAZYCK: Robbie got a Samsung because my phone
17 was acting up--

18 DETECTIVE PHILLIPS: Do you know his phone number?

19 FRED MAZYCK: No, I never knew his phone number but
20 he just friend requested me that same day. We were trying to see
21 if his battery would fit mine because my phone don't charge. The
22 charger thing was broke on it so.

23 DETECTIVE PHILLIPS: Okay.

24 FRED MAZYCK: We had the same phone damn near but
25 [inaudible] different on it.

1 DETECTIVE PHILLIPS: Okay.

2 FRED MAZYCK: But the battery didn't work but he

3 friend requested me.

4 DETECTIVE PHILLIPS: How about Lance, he had a cell phone?

5 FRED MAZYCK: Yeah, Lance had a cell phone. I think

6 Lance got a Motorola or something. Yeah, Lance got a phone. All

7 they phones should have been in the house, along with mine.

8 DETECTIVE ELROD: Is yours still in there?

9 FRED MAZYCK: Yes. Mine should've been still put up

10 on a charger.

11 DETECTIVE PHILLIPS: I will be right back. [leaves room

12 0:22:19]

13 DETECTIVE ELROD: It was on the charger?

14 FRED MAZYCK: Uh-huh.

15 DETECTIVE ELROD: Yours was?

16 FRED MAZYCK: Uh-huh. It was on a charger, we were

17 trying to get it to charge.

18 DETECTIVE ELROD: All right, that way will kind of be

19 able to figure out which one was which one.

20 FRED MAZYCK: The one that won't charge, that's

21 mine.

22 DETECTIVE ELROD: The one that won't charge.

23 FRED MAZYCK: Yeah, it won't even charge. You plug

24 in a charger and it won't charge. We were trying to get it to

25 charge for me. I ain't had electricity. They were trying to do

1 stuff to get it to charge but it wouldn't charge. So, it will be
2 the dead phone.

3 DETECTIVE ELROD: Okay.

4 FRED MAZYCK: It got a purple cover, the purple
5 cover should have been outside.

6 DETECTIVE ELROD: A purple cover.

7 FRED MAZYCK: Yeah. The guard protection cover. It
8 should have been outside in the yard because we took--it should
9 have been on top of the pool, actually the pool was closed, there
10 should have been cigarettes all on top of there because we left
11 them on top of the pool, with my phone case.

12 DETECTIVE ELROD: Did you--did you shoot anything--did you
13 shoot any of the guns?

14 FRED MAZYCK: Yeah, I did. Yeah, I did.

15 DETECTIVE ELROD: What--do you remember what kind they
16 were?

17 FRED MAZYCK: I shot the 12 gauge.

18 DETECTIVE ELROD: The 12 gauge.

19 FRED MAZYCK: Yeah.

20 DETECTIVE ELROD: Did y'all--what were y'all shooting at?

21 FRED MAZYCK: Shooting beer cans.

22 DETECTIVE ELROD: Okay.

23 FRED MAZYCK: Skipping cans across the yard.

24 DETECTIVE ELROD: Okay.

25

1 FRED MAZYCK: I was. [crosstalk] couple cans so
2 they gave me a 12 gauge, so I shot the 12 gauge.

3 DETECTIVE ELROD: Okay.

4 FRED MAZYCK: Yeah.

5 DETECTIVE ELROD: Did they have any type-military type
6 rifles or anything?

7 FRED MAZYCK: Oh, yes, they did. They did.

8 DETECTIVE ELROD: What?

9 FRED MAZYCK: Lance did.

10 DETECTIVE ELROD: Oh, so he was the one that was
11 shooting those.

12 FRED MAZYCK: You got the military gun, the green
13 one.

14 DETECTIVE ELROD: I mean I've seen some guns in there,
15 but it sounds like there was more than I seen.

16 FRED MAZYCK: Yeah. Yeah. Yeah. It was a green--
17 the gun was green. I think he said it was--what did he call it, a
18 Scavenger or some--it was a military sniper issue.

19 DETECTIVE ELROD: Okay. Sniper gun.

20 FRED MAZYCK: It had a scope and all on it. It was
21 green and--

22 DETECTIVE ELROD: Did y'all--did y'all shot that gun?

23 FRED MAZYCK: He did.

24 DETECTIVE ELROD: He did.

25 FRED MAZYCK: Yeah.. He did and Robbie did.

1 DETECTIVE ELROD: Okay.

2 FRED MAZYCK: Yeah. It was too much for me. It
3 come with a stand and all, set it on the stand.

4 DETECTIVE PHILLIIPS: [enters room 00:24:20]

5 DETECTIVE ELROD: Oh, did it, okay. All right. Yeah, I
6 think I saw that gun in there sitting on the floor or something
7 like that. Is that where they put it?

8 FRED MAZYCK: I don't know where they—I don't know
9 where he put it. When I brought all of them in the house—I
10 brought them in the house to them because they were putting the
11 stuff up. He took them down the hallway.

12 DETECTIVE ELROD: Okay.

13 FRED MAZYCK: Some of them down the hallway. They
14 took some of them out when I went to sleep. I don't know what
15 they took out to shoot that second time. They said they wanted
16 to go out and shoot so I was in the living room. All of them
17 left out of the living room and they went. So, they went to go
18 out shooting, so they had to go get whatever they had to shoot.
19 I don't know what they was shooting.

20 DETECTIVE ELROD: When you were shooting with them was
21 it still daylight?

22 FRED MAZYCK: Yes, it was.

23 DETECTIVE ELROD: Did you shoot at all with them at
24 night?

25

1 FRED MAZYCK: No, I never left the house. If I did
2 I probably went out there and [inaudible].

3 DETECTIVE PHILLIPS: Fred, I got a question for you.

4 FRED MAZYCK: Yes, sir.

5 DETECTIVE PHILLIPS: Was anybody out there wearing an
6 orange t-shirt and camo shorts?

7 FRED MAZYCK: Orange t-shirt, camo shorts. Couldn't
8 have been Lance. Orange t-shirt and camo shorts. Robbie had on
9 blue jeans, I think. It might have been one of the guests. I
10 don't think Robbie--Robbie ain't had that on and Lance ain't had
11 that on. It had to be one of the guests.

12 DETECTIVE PHILLIPS: Okay.

13 FRED MAZYCK: Unless somebody came while I was in
14 the house. Like I said--it ain't--it ain't been but--

15 DETECTIVE PHILLIPS: So, Robbie wasn't wearing orange when
16 you saw him or camo shorts?

17 FRED MAZYCK: Robbie had on blue jean pants, shorts
18 I'm pretty sure.

19 DETECTIVE PHILLIPS: And blue jean shorts.

20 FRED MAZYCK: I think it was blue jean shorts, but I
21 might have been mistaken. I was drinking so I might been
22 mistaken. I thought it was blue jean shorts. It might have been

23 camo as he had the camo visor. I don't know, I'm not sure.

24 DETECTIVE PHILLIPS: What color was the striped shirt, do
25 you remember?

1 FRED MAZYCK: I think—I'm trying to remember, I'm
2 not sure. Like I said I'm trying to remember, I don't remember
3 strictly but it was like a light-colored shirt. It either had a
4 stripe or it had patterns or something on the shirt.

5 DETECTIVE PHILLIPS: You didn't see him with orange at the
6 time.

7 FRED MAZYCK: No, I didn't. Not that I know of.
8 No.

9 DETECTIVE PHILLIPS: Okay.

10 FRED MAZYCK: We been together all day, blue jeans
11 and some kind of shirt, and some running sneakers.

12 DETECTIVE ELROD: Whenever—I know you already went over
13 like, what he had when we drew down on you--

14 FRED MAZYCK: Uh-huh.

15 DETECTIVE ELROD: He fired at you before he spoke to you
16 right?

17 FRED MAZYCK: Uh-huh.

18 DETECTIVE ELROD: Okay. You said that he—tell us again
19 what he said.

20 FRED MAZYCK: He came in there, and like I said he
21 came in through the back door. I was half a sleep, I opened my
22 eye and he was coming in fast. He was coming in fast, with a gun
23 in his hand and I panicked. I tried to get off the sofa, I
24 rolled off the sofa. When I rolled, he let off two shots. Then
25 when I got up off the floor, I moved toward him because I already

1 was on the floor so I got up and went toward him. He had the gun
2 on me and I asked what's going on, what's going on. He said I
3 killed everybody, I killed everybody. He tell me-he also tell me
4 you better call the police. I said, how you mean, call the
5 police, how I'm going to call the police when I ain't got no
6 phone. He had the gun on me and I was talking to him. He was
7 saying he was tired of them messing with him. He was tired of
8 them bothering him. I said what happened, what happened. He
9 said they messing with me. That's the only thing he would tell
10 me, they messing with me. I was easing towards the front door.
11 Actually, he ain't never pulled the trigger, I ain't understand
12 why he didn't pull that trigger the third time, I don't know
13 what. Like I told [inaudible] I supposed to be dead, I mean he
14 shot at me twice. I don't know what stopped him from shooting
15 the third time.

16 DETECTIVE ELROD: How far-how far is where you were from
17 the door?

18 FRED MAZYCK: When he shot the first time?

19 DETECTIVE ELROD: Uh-huh.

20 FRED MAZYCK: I was on the sofa.

21 DETECTIVE ELROD: Yeah, I know. There is a room between
22 there, right?

23 FRED MAZYCK: Yes, there's a room right there.

24 DETECTIVE ELROD: Uh-huh.

25

1 FRED MAZYCK: Where the TV sitting at and the chair
2 was turned. Lance turned the chair for me before he went outside
3 so I had a good view of the TV. I was sitting on the last chair,
4 the recliner, right there by the TV.

5 DETECTIVE ELROD: But the front door is--there's a--

6 FRED MAZYCK: There's a wall with the TV, there's a
7 wall there.

8 DETECTIVE ELROD: Yeah.

9 FRED MAZYCK: When I got up, he had the gun on me, I
10 walked toward him, I mean, I already figured I was dead so my
11 thing was trying to get out of the house.

12 DETECTIVE ELROD: Yeah.

13 FRED MAZYCK: So, I walked toward him, I said,
14 either he going to kill me or he ain't, I mean. I walked toward
15 him, and he was talking. He was saying they bothering me, and he
16 backed up a couple steps. I got over, where I could get around
17 the wall. I got to the front door and I still was talking to
18 him. Like I said, I still don't understand why he never pulled
19 the trigger.

20 DETECTIVE ELROD: Okay.

21 FRED MAZYCK: I mean, I give him all the reason in
22 the world to pull the trigger. I'm walking and trying to get to
23 the door. When I got to the door, he ain't had the gun aiming
24 exactly at me, he had it downward, I ran and bolted for the front
25 door.

1 DETECTIVE ELROD: When you say he came in fast, did he
2 come in like military like--

3 FRED MAZYCK: He come in the door like he was
4 panicked.

5 DETECTIVE ELROD: Like--

6 FRED MAZYCK: He had the gun like this and come in
7 like this, he come in like he was panicked, he ain't looked right
8 in the face. I mean, he didn't look right. I was probably
9 still--you know, after he shot and everything I got up. I said
10 what the hell is wrong with him and still ain't had hit me that--
11 why the hell you shooting in Lance house. From where I standing
12 people shoot in their house all the time when they are drunk.

13 DETECTIVE ELROD: Uh-huh.

14 FRED MAZYCK: I didn't know what was going on until
15 he said he shot, he killed everybody.

16 DETECTIVE ELROD: Okay.

17 FRED MAZYCK: He said he killed everybody.

18 DETECTIVE PHILLIPS: When you ran out, did you see anybody?

19 FRED MAZYCK: No, but it wasn't light outside. The
20 first thing I looked for when I ran out there, I was running
21 across the yard. I didn't see nobody. I didn't see nobody.

22 DETECTIVE PHILLIPS: [leaves room 0:30:45]

23 DETECTIVE ELROD: Yeah, man, it sounds scary, dude.

24 FRED MAZYCK: Yeah.

25

1 DETECTIVE ELROD: I've been in--I went into the house and
2 there's like a dining room area there.

3 FRED MAZYCK: Yes, there is. It's small.

4 DETECTIVE ELROD: So, when you come through that opening
5 between the living room and the dining room--

6 FRED MAZYCK: Uh-huh.

7 DETECTIVE ELROD --did you go around the table, like on
8 the door side--

9 FRED MAZYCK: Where I was at, the chair, he came at
10 me, and I got up off the floor. Like I said I rolled off the
11 chair unto the floor after he got off two shots. I got up and by
12 the time I got up, he was already on me with the gun. And I
13 already said, well, he tell me he done kill everybody. He said
14 all that bullshit, I know I'm next. I mean, so I got to try and
15 get out of the house.

16 When I started talking to him and he didn't pull the
17 trigger, I was walking and he was backing up, he had the gun on
18 me. He said, I better call the police--he did say that, I better
19 call the police. I said, I don't have a phone, my phone is on
20 the charger and it won't charge. You know, he steady got the gun
21 on me, I'm walking, I'm talking to him, he got the gun on me,
22 then when I got to that door. I seen the door was open, that's
23 when I got [inaudible], I see the door was open. I made it to
24 the door. When I got to the door he still was right there with
25 me. I seen that he got the gun, he lowered the gun a little bit,

1 I talked and I see he dropped the gun some, I said okay, I was
2 talking some more. He still keep on saying they messing with me,
3 I got tired of them messing with me. Then he dropped it a little
4 more, when I see it down and I figure by the time he gets it and
5 get a good hand, I got enough time to--

6 DETECTIVE ELROD: To get out.

7 FRED MAZYCK: To get out. So, I took the chance and
8 I ran.

9 DETECTIVE ELROD: He did fire out--

10 FRED MAZYCK: He did fire one shot. One shot, then
11 he went in the house and he shot again. That's why I said, I
12 don't know if the dog dead because he mad. Lance had a little
13 white--I think a lab or pit bull in the house, he kept him all the
14 time.

15 DETECTIVE ELROD: Okay.

16 FRED MAZYCK: It was a white dog. I don't see the
17 dog nowhere. The dog wasn't in the house. Some of his family
18 members came there right after y'all left and everything and then
19 been to the house and they come to get the dog.

20 DETECTIVE ELROD: But they didn't find it?

21 FRED MAZYCK: The house was locked. They can't get
22 in.

23 DETECTIVE ELROD: Oh, yeah. We would have the key to
24 the house.

25

1 FRED MAZYCK: Yeah, the house was locked him. His
2 family members have been there already.

3 DETECTIVE PHILLIPS: [enters room 00:33:00]

4 DETECTIVE ELROD: Okay.

5 FRED MAZYCK: Yeah. I tell them that somebody come
6 with a key or whatever, I'll get the dog and I'll hold it for
7 them until they come get it. [inaudible] got the peoples number
8 in his phone.

9 DETECTIVE ELROD: Okay. Yeah, we will get that, we will
10 call them.

11 FRED MAZYCK: Yeah.

12 DETECTIVE ELROD: We will let them know--

13 FRED MAZYCK: Yeah, you got the key. He has the
14 number in his phone.

15 DETECTIVE PHILLIPS: Okay. Fred, I got a question.

16 FRED MAZYCK: Yes, sir.

17 DETECTIVE PHILLIPS: I know basically y'all were over there
18 to shoot and drink beer and getting ready for the hurricane and
19 all that. How did the hot tub come into play, is that a normal
20 thing over there?

21 FRED MAZYCK: I don't know. The hot tub--I mean, the
22 hot tub, it was closed all day.

23 DETECTIVE PHILLIPS: Uh-huh.

24 FRED MAZYCK: The wind was blowing and we went and
25 got the screws to put the rest of the little anchors to get that

1 down. He didn't want the storm coming, blow the top off. The
2 pool should have never been open. That pool was closed all day.
3 When we went in the house at 1:00 or at 12:00, when we went in at
4 12:00 that thing was--it happened at around 1:30? Yeah, when I
5 went in there and when I went to sleep, the pool was closed, it
6 was locked down and everything was clamped closed. That pool, I
7 ain't know how or why they open that pool at that time of night.

8 DETECTIVE PHILLIPS: Do you know who opened it?

9 FRED MAZYCK: I don't know. It was closed.

10 DETECTIVE PHILLIPS: Okay. You said Lance in the past has
11 asked you to get in the tub.

12 FRED MAZYCK: In the pool. When I come home from
13 work and in the middle of the day, I go over and check on him,
14 like I said, he was doing work for my momma. He was at my
15 mommas' so I would walk over there and talk to him. I would see
16 him in the yard. I seen him in the pool a couple of times, him
17 and--

18 DETECTIVE PHILLIPS: But you weren't going to get in.

19 FRED MAZYCK: Nah, nah, he already had two people in
20 there. I'm not getting in with three people in. The pool ain't
21 no bigger than--well, you seen the pool. I mean it fit four
22 people but I just--

23 DETECTIVE ELROD: You ain't wanting to be in there with
24 a bunch of guys.

25 FRED MAZYCK: Exactly.

1 DETECTIVE PHILLIPS: Have you seen things suspicious,
2 anybody made an advancement towards you?

3 FRED MAZYCK: No, no, no. I mean, maybe he's the
4 type of man that get in shorts and get in the pool, man, I
5 promise you will like it, it's a massage pool. You get in here
6 and rotate from corner to corner, he tell me, it do different
7 things in each corner, each corner do something different. I
8 mean, [inaudible] I still wasn't getting in it. I mean, I wasn't
9 getting in there.

10 DETECTIVE ELROD: Here's the thing, I'm going to go
11 ahead and ask this and this is so we can rule this out because
12 this stuff happens okay.

13 FRED MAZYCK: Yeah.

14 DETECTIVE ELROD: Do you think it's possible or did you
15 see any indication that maybe Lance might have been trying to
16 have-you know, whenever Robbie got into the pool-you know, in to
17 the thing and maybe he makes advances on him or something like
18 that? I mean, have you ever seen anything that would make you
19 even kind of be like-you know, maybe a little bit different than
20 what you are used to seeing, you know, with guys.

21 FRED MAZYCK: He may have been asking me to get in
22 the pool, I mean that's kind of getting--

23 DETECTIVE ELROD: Yeah, but-

24 FRED MAZYCK: But that don't mean that--

25

1 DETECTIVE ELROD: It's okay, I mean we all got our
2 opinions on that.

3 FRED MAZYCK: I never seen him act feminine in no
4 kind of way. I never seen him say nothing out of the way to
5 nobody.

6 DETECTIVE ELROD: Okay.

7 DETECTIVE PHILLIPS: Did they ever pick at Robbie about
8 that?

9 FRED MAZYCK: No, I mean, the most thing I'd be
10 talking--they be talking about, joking about would be like, women
11 and stuff like that. They joking about them guns, they joke with
12 them guns a lot.

13 DETECTIVE PHILLIPS: What did they joke about guns?

14 FRED MAZYCK: Talking about whose gun that is, like
15 I said he got his. You know what I mean. I never seen them
16 really going too far to where it would come to that, I mean.

17 DETECTIVE PHILLIPS: Okay.

18 FRED MAZYCK: Like I said I don't know what went
19 down outside. Like I said, everything was fine. They were
20 outside, he came in saying he tired of them messing with him. I
21 don't know what happened because they been cool all day. But now
22 that everybody, when them people that come by, I talked to them,
23 they got something to say about Robbie.

24 DETECTIVE PHILLIPS: What had they been saying?

25

1 FRED MAZYCK: They say Robbie's head is bad. They
2 said one time one man told me the last one I talked to was a
3 young kid and a man, he said they locked him up a couple of
4 months back. Said he was in the tree naked shooting at hunting
5 for something. The police had locked him up for that. He was
6 nude up in a tree somewhere.

7 DETECTIVE PHILLIPS: Did they say who locked him up for
8 that?

9 FRED MAZYCK: No, they never said. They said he was
10 up in a tree naked and he been shooting. The police came and got
11 him for that. There been a time-matter of fact, there been a
12 time when Lance and them was talking. They were joking and said
13 when he flips, he flips. One time he had a bunch of police out
14 there, someplace where he been at I mean, but people talk.

15 DETECTIVE PELROD: Yeah.

16 FRED MAZYCK: And they joke around. I got my time,
17 that I done you know. But, for that to go the way it went, no, I
18 can't-I can't say that. I don't understand how. I mean, they
19 like best friends, to me. As far as I know they was. I mean,
20 you invite a man in your house to sleep in your house, you got to
21 know him. You just don't invite no friends into your house to
22 sleep on your sofa.

23 DETECTIVE PHILLIPS: Yeah.

24 FRED MAZYCK: You know what I mean.
25

1 DETECTIVE PHILLIPS: You didn't know—you've never seen the
2 other two guys.

3 FRED MAZYCK: No, this would have been the first
4 time. They called him on the phone and they said—asked what he
5 was doing. He said—the only thing I heard him say on the phone
6 was we getting ready for the storm, put something on the grill,
7 we got some beers, drinks or whatever. He hanged the phone up
8 and he came and told me, he said I got two of my friends coming
9 over.

10 DETECTIVE PHILLIPS: Did he say how he knew them?

11 FRED MAZYCK: No, he just said two of his friends.

12 DETECTIVE PHILLIPS: Okay.

13 FRED MAZYCK: Yeah.

14 DETECTIVE PHILLIPS: Do you think they work with him?

15 FRED MAZYCK: No, I don't think. The one guy was
16 kind of old and he looked like he had problems with his hands so
17 he ain't working no way. You know, the other guy he might have
18 been working somewhere because he was kind of clean and
19 everything. That's whose truck that was up in the yard. Yeah.
20 Yeah.

21 DETECTIVE PHILLIPS: Can you think of anything else?

22 FRED MAZYCK: I mean, I mean, I'm still trying to
23 figure out what happened.

24 DETECTIVE PHILLIPS: Well.

25 FRED MAZYCK: I mean--

1 DETECTIVE PHILLIPS: You got anything to say to him.

2 DETECTIVE ELROD: I don't think so. I think I got-I
3 think I got everything. Again, we really appreciate it man.

4 DETECTIVE PHILLIPS: Thank you.

5 DETECTIVE ELROD: We are very sorry. I mean, dude, that
6 had to be scary.

7 FRED MAZYCK: Yes, it was.

8 DETECTIVE ELROD: I mean, that's--

9 FRED MAZYCK: Shit, I got a one-year old daughter.
10 That's the only daughter I got. I thought I wasn't going to see
11 her again.

12 DETECTIVE PHILLIPS: I'm glad you're still here. At least
13 you gave us some insight to the story and what happened.

14 DETECTIVE ELROD: That's a lot that we didn't-we
15 haven't-that's a lot of information, we just haven't been able to
16 get a lot of it. I know-I know probably initially you were
17 probably still pretty shook up. I know I would be. It would be
18 hard to recall everything. We going to give you some contact,
19 information for us.

20 FRED MAZYCK: Okay.

21 DETECTIVE ELROD: If you do-if you just-because things
22 come back.

23 FRED MAZYCK: Yeah.

24 DETECTIVE ELROD: If you realize something and you feel
25 like this might be significant, just give us a call.

1 FRED MAZYCK: Okay.

2 DETECTIVE ELROD: Let us get that information so we can
3 check on it, okay.

4 FRED MAZYCK: Okay.

5 DETECTIVE PHILLIPS: All right. Fred, also you staying at
6 216.

7 FRED MAZYCK: Uh-huh.

8 DETECTIVE PHILLIPS: Do you have a cell phone or anything
9 like that?

10 FRED MAZYCK: My cell phone was in the house.

11 DETECTIVE PHILLIPS: Okay, at-

12 FRED MAZYCK: At Lance's house.

13 DETECTIVE PHILLIPS: At Lance's house. Okay, well I got to
14 collect it.

15 DETECTIVE ELROD: We will check and see what the deal is
16 with that.

17 FRED MAZYCK: I mean--

18 DETECTIVE PHILLIPS: We got your mom's number.

19 FRED MAZYCK: Yeah, I got my mom's number.

20 DETECTIVE PHILLIPS: What kind of phone was that?

21 FRED MAZYCK: It was a Samsung Galaxy--it had letters
22 on it.

23 DETECTIVE PHILLIPS: Okay.

24 FRED MAZYCK: It's a Samsung Galaxy--

25 DETECTIVE PHILLIPS: What color was it?

1 FRED MAZYCK: The cover was off, and the cover
2 should have been in the yard out there.

3 DETECTIVE PHILLIPS: Okay.

4 FRED MAZYCK: We took the cover off and took the
5 phone in the house, its black.

6 DETECTIVE PHILLIPS: Okay.

7 FRED MAZYCK: Yes.

8 DETECTIVE PHILLIPS: All right.

9 FRED MAZYCK: You going to cut it on, and it don't
10 cut on that's mine.

11 DETECTIVE PHILLIPS: Okay.

12 FRED MAZYCK: Yeah.

13 DETECTIVE PHILLIPS: All right. I'm going to go ahead and
14 end this interview.

15 DETECTIVE ELROD: Real quick, what's your mom's name?

16 FRED MAZYCK: Shirley.

17 DETECTIVE ELROD: Shirley.

18 FRED MAZYCK: Smalls.

19 DETECTIVE ELROD: Okay, I just want to make sure if we
20 have to call her, I would like to call her by her name.

21 FRED MAZYCK: Yeah, y'all got her number.

22 DETECTIVE ELROD: That's 843-291-7222.

23 FRED MAZYCK: Uh-huh

24 DETECTIVE ELROD: Okay, all right.

25 FRED MAZYCK: That's my brother, that's Mark.

1 DETECTIVE ELROD: The other fellow out here?

2 FRED MAZYCK: No, the other number that I gave

3 y'all. The one that bring me is my cousin.

4 DETECTIVE ELROD: Got you.

5 FRED MAZYCK: Yeah.

6 DETECTIVE ELROD: I don't think you gave us a number for

7 him.

8 FRED MAZYCK: I got two numbers. I gave the lady

9 two numbers.

10 DETECTIVE ELROD: Go ahead and give-what's its Mark.

11 FRED MAZYCK: Its 303-4712. It's 843.

12 DETECTIVE ELROD: 843-

13 FRED MAZYCK: 303-4712.

14 DETECTIVE ELROD: Okay. All right. That's the guy out

15 there.

16 FRED MAZYCK: No, that's my brother.

17 DETECTIVE ELROD: Your brother. That's who lives next

18 door to you at 214.

19 FRED MAZYCK: No, 214 that's my sister's house.

20 DETECTIVE ELROD: Your sister, okay, all right, I got

21 you. All right but both of these, we will be able to get ahold

22 of you.

23 FRED MAZYCK: Yeah, you will be able to get a hold

24 of me.

25 DETECTIVE ELROD: Okay, no problem.

1 DETECTIVE PHILLIPS: All right. I will go ahead and
2 conclude this interview. The date is October 7, 2016. The time
3 is 1:22 p.m.

4 DETECTIVE ELROD: All right. We will walk you back
5 around that why you can handle this other stuff. [leaves room
6 0:42:31]

7 [end of audio]

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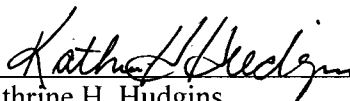
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CERTIFICATE OF COUNSEL FOR APPELLANT

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,



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ATTORNEY FOR APPELLANT

This 11th day of March, 2020.

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